

Removal of condition 2 and variation to condition 4 of planning permission 14/01090/VCI to allow the permanent use of the land as a traveller's site with six touring caravans and amend the size of the day room

Report Item No  
A2

Aylesbury Gardens Newton Road Swebstone Leicestershire

Application Reference  
16/00305/VCU

Applicant:  
Mr A Willshire

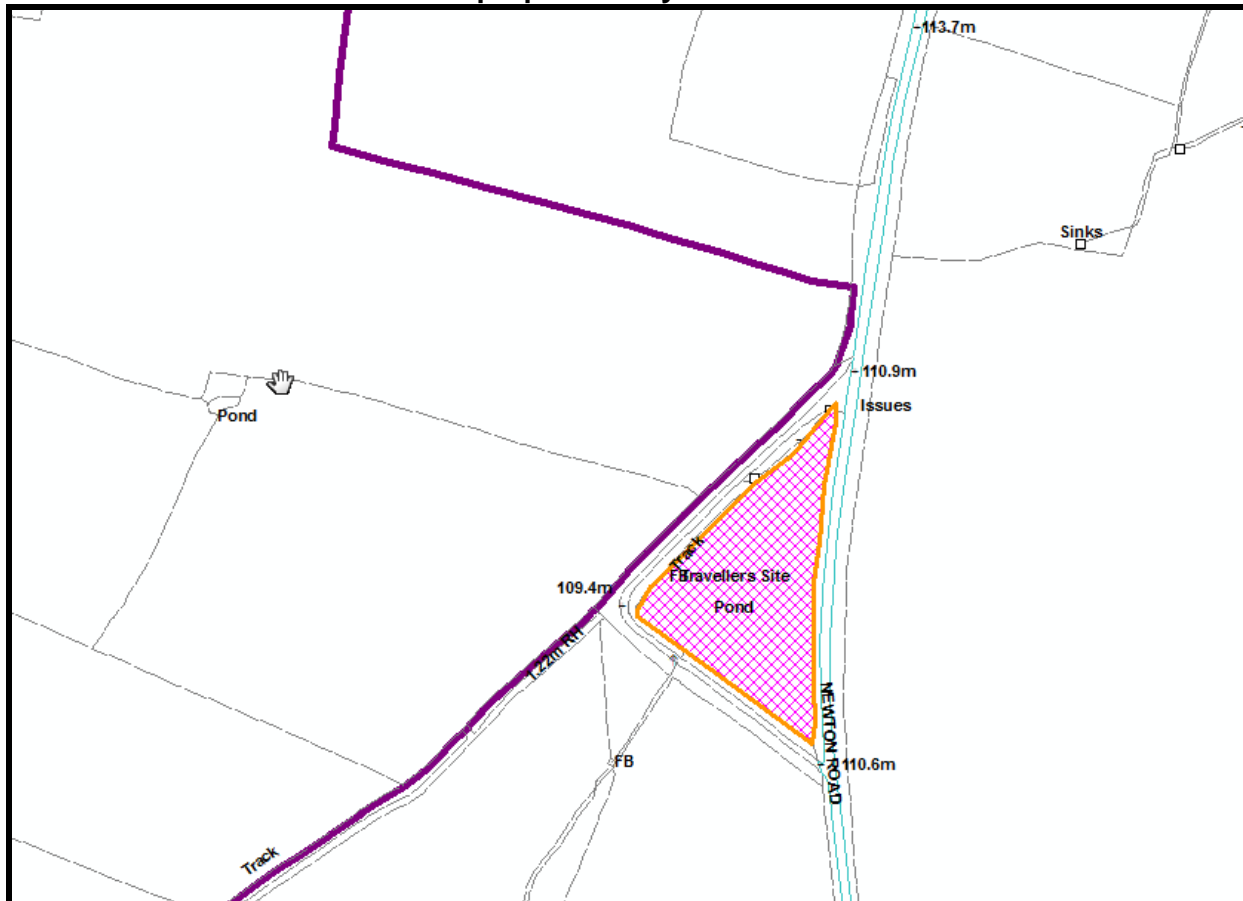
Date Registered  
8 March 2016

Case Officer:  
Jenny Davies

Target Decision Date  
3 May 2016

Recommendation:  
PERMIT

Site Location - Plan for indicative purposes only



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## **EXECUTIVE SUMMARY OF PROPOSALS AND RECOMMENDATION**

### **Proposal**

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 land for a new travellers site with six touring caravans and erection of an amenity block on land at Newton Road, Swepstone. This application seeks to remove condition 2 on the planning permission to allow the traveller's site to remain on the land permanently and to vary condition 4 to increase the size of the day room.

### **Consultations**

Members will see from the main report below that 13 letters of objection from local residents have been received. Swepstone Parish Council also raises objections and Snarestone Parish Council has raised some concerns. No objections have been received from any other statutory consultees.

### **Planning Policy**

The application site is outside the Limits to Development as defined in the adopted and submission North West Leicestershire Local Plans. The national Planning Policy for Traveller Sites (August 2015) sets out national policy on such proposals and the National Planning Policy Framework is also relevant.

### **Conclusion**

Whilst the site's unsustainable location weighs against a permanent permission, the limited harm to the character and appearance of the countryside and the significant weight attached to the still largely unmet need, the site's contribution to this unmet need, the family's personal circumstances and interference with their human rights due to the lack of pitch provision in the District and the Council's lack of progress with the Gypsy and Traveller Site Allocations Development Plan Document (DPD) weighs in favour of granting a permanent permission. These matters are considered to form evidence and a material change in circumstances that a permanent permission is now acceptable in this location.

A contribution under the River Mease DSC2 is not required in this instance and there have been no significant material changes in relation to other material planning considerations, including highway safety, residential amenities, protected species, location in the countryside, undue pressure on local infrastructure and domination of the rural community, provision of a healthy and safe environment, flood risk and impact on the County Road and nearby footpaths.

### **RECOMMENDATION - PERMIT subject to conditions**

**Members are advised that the above is a summary of the proposals and key issues contained in the main report below which provides full details of all consultation responses, planning policies, the Officer's assessment and recommended reasons for approval for the application, and Members are advised that this summary should be read in conjunction with the detailed report.**

## MAIN REPORT

### 1. Proposals and Background

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 land for a new travellers site with six touring caravans and erection of an amenity block on land at Newton Road, Swepstone. This application was 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. This 2015 permission also expires on 15 April 2017.

This application seeks to remove condition 2 on planning permission 14/01090/VCI to allow the traveller's site to remain on the land permanently and to vary condition 4 to enlarge the size of the day room. Condition 2 restricts the use of the land as a traveller's site to four years and requires the caravans, buildings and other associated development to be removed from the site and the site restored to its former use in accordance with a scheme that has been agreed under another of the conditions on the permission. Condition 4 lists the approved plans for the site.

The number of caravans and proposed site layout and design remains unchanged from the 2015 planning permission and from the information agreed under the discharge of conditions.

The caravans are positioned in the south western corner of the site and hardsurfacing has been laid in the south west corner, alongside the eastern and south western boundaries, and in the centre of the site. The day room/amenity block, which is located close to the eastern boundary, is under construction. It is understood that water and electricity supplies to the site and a connection to the mains sewer that runs along the County Road have been provided.

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

### 2. Publicity

63 no neighbours have been notified (date of last notification 14 March 2016)

Site Notice displayed 16 March 2016

Press Notice published 23 March 2016

### 3. Consultations

Swepstone Parish Council consulted 14 March 2016

Snarestone Parish Council - Mike Allen - Clerk

County Highway Authority

Environment Agency

Severn Trent Water Limited

Head of Environmental Protection

Natural England

NWLDC Tree Officer

LCC ecology

National Forest Company  
Development Plans  
LCC/Footpaths  
NWLDC Footpaths Officer  
Planning Enforcement  
Matt Bagley

#### **4. Summary of Representations Received Statutory Consultees**

**Sweepstone Parish Council** advised that it opposed the application as it went to appeal and the Parish Council did not feel that sufficient time had lapsed following the Inspector's decision to submit this application.

Subsequently the Parish Council provided further detailed comments advising that it strongly objects to the application as follows:

*'It is sufficient that we say that the grounds for the objection are the same grounds that were before the Council on the original application, on the appeal from the original application, on the second application, and on the appeal from the second application.'*

*It would be fundamentally wrong, when the matter has been considered by the Council twice to be unsuitable as a permanent site and this decision has been backed up by the Inspector on two occasions. Since those decisions there has been no change in circumstances except for the fact that the Council are under an obligation to give consideration to the River Mease and the effect of the development on the River Mease and that the travellers have been very remiss in undertaking to abide by planning conditions.*

*An application was made several years ago for one house to be built on the site which was refused. The approval given to Mr Wilshere was on the basis that it was a temporary approval. If it was not suitable for one house the location has not changed then it is certainly not suitable for 6 caravans on a permanent basis.*

*Perhaps the major change which if ignored could perhaps lead to judicial review is the River Mease situation of which the Council are fully aware. Clearly it is the Parish Council's view that the application should in fact be dismissed. If however the District Council were minded to ignore its two previous decisions and the two planning inspector's decisions then the District Council are under an obligation under both UK and European legislation to consider the River Mease situation and how to remedy it which inevitably will lead at the very least to a requirement for a substantial Section 106 Agreement prior to any planning permission being granted. We emphasise however that the application should be refused but the full environmental impact of the River Mease and in particular with the accumulative effect of applications affecting the River Mease needs to be considered.*

*It is disputed entirely that the occupants are in fact travellers. They are people who are not travelling, they have a desire for a static life and are neither travellers nor gypsies and they do not therefore come within the travellers' and gypsies' policies.*

*If they did, then as the legislation says, there should be equality of treatment and that would mean that they must pay their fair share of any environmental impact alleviation including the alleviation of matters within the River Mease area.*

*For the avoidance of doubt our primary concern is that the application is rejected. We would also in addition to the previous grounds like the matter to be considered as to whether these people are in fact genuine travellers and the effect on the River Mease.'*

**Snarestone Parish Council** queried a couple of points regarding this application:-

*'(1) does this transfer from temporary to permanent site mean that it will be an official Council site?*

*(2) is the project for commercial gain?*

*(3) who will actually own the land?*

*(4) why is there an allocation for 6 caravans when the family numbers only warrant 4?*

*(5) who will be responsible for monitoring the site?'*

Following an officer response to these queries, the Parish Council advises that it doesn't have anything to add and simply wanted clarification on the various points listed, and that question 2 has been answered by the response to question 1.

**NWLDC - Environmental Protection team** has no comments to make and advises that a caravan site licence will be required.

**The National Forest Company** has no comments to make.

**NWLDC - Tree Officer** has no objections.

**The County Ecologist** has no objections.

**Natural England** has no comment to make.

**The Environment Agency** has no objection.

**The County Highway Authority** recommends refusal on the following grounds:

*'The Applicant has failed to demonstrate that their proposal will be in a location where services are readily and safely accessible by walking, cycling and public transport. Leicestershire County Council policies contained in the 'Local Transport Plan 3' and policy IN6 of the '6Cs Design Guide' seek to deliver new development in areas where travel distances can be minimised, and genuine, safe and high quality choices are available (or can be provided) for people to walk, cycle and use public transport facilities and services nearby. The 'LTP3' and the '6Cs Design Guide' reflect Government guidance contained in the 'National Planning Policy Framework.'*

**The County Footpaths Officer** has no objections.

**NWLDC - Footpaths Officer** has no comments to make.

**The County Gypsy/Traveller Liaison Officer** provides information in respect of the occupiers of the site and makes general observations in relation to government and local guidance for gypsies and travellers.

No comments have been received from Severn Trent Water by the date of this report.

### **Third Party Representations**

13 letters of representation have been received by the date of this report which object on the following grounds:

#### *Appeal Decisions/Temporary Permission/Procedure*

- no new grounds to change the appeal decision;
- precedent established at appeal;
- the appeal would not have been allowed without the condition;
- application to remove the condition should be submitted at the end of the four year period;
- this application criticises an Inspector's decision and the condition should have been appealed at the time;
- application defeats principle of finality after an appeal;
- previous applications should have been refused on other grounds including visual and ecological impacts, insufficient infrastructure and impact on River Mease SAC;
- application should be judged on same criteria as previous applications;
- previous application for a house was refused and so not suitable for six caravans on a permanent basis;
- site owner is applying purely for financial gain as site was purchased with intent to make it permanent, and therefore none of the residents' personal conditions should apply;
- applicant has ignored conditions on the appeal decision and no guarantee they would be complied with in the future;
- an enforcement notice could have been issued;
- investigation required into business being run from the site;

#### *Alternative Sites*

- the Council should fulfil its obligation to identify and service a 'suitable' site for the existing residents as a matter of urgency;
- if there is a deficiency of sites then the Council should not make a decision until a plan is agreed for traveller sites in the area;
- if the applicant is relying on a shortage of sites then he should consider other sites that would have a less detrimental impact;
- residents are making no attempt to find alternative arrangements and will continue to make applications to extend planning permissions;
- there are other sites in the area that are more suitable;

#### *Unsuitable Site*

- site is remote and not close to amenities;
- no longer a shop within walking distance and bus service likely to be withdrawn;
- enlarged day room has no prospect of being built as applicant has argued that works not viable unless site is permanent;
- lack of proper amenities as site is unsuitable and caravans are already equipped with facilities needed for travelling;

#### *Residential Amenities*

- noise from the site at night in a quiet area;
- light pollution and constant noise, including from generators;
- does not feel safe to use local roads without feeling scared and intimidated;

#### *Visual Amenities*

- site is in open countryside and between the two villages in a sensitive area which provides their rural context;
- site has deteriorated significantly since appeals were held and now has an extremely untidy

appearance;

- large heaps of soil brought onto the site;
- clear views of the caravans and paraphernalia, in particular as vegetation along the roadside appears to have been removed or broken;
- Newton Road hedge provides minimal screen of the site in particular in winter;
- no additional hedgerow planting has taken place alongside amenity block;
- increased size of amenity block;
- public rights of way surrounding the site were used regularly but have become impassable;
- walkers/horse riders and the disabled must feel they can no longer access the National Forest planting;

#### *Other Matters*

- concerns regarding information provided in respect of rent at previous appeal hearing;
- application is for a permanent site for any travellers/gypsies and not solely for the current residents;
- approval could lead to further planning creep and set a precedent;
- serious accident could occur as vehicles pull out of the site entrance;
- travellers are living adjacent to a road with high speeds of traffic;
- the Council have an obligation to give consideration to the effect of the development on the River Mease;
- government policy relating to traveller sites in Green Belt states that permission should only be granted in special circumstances;
- police incidents;
- the land is good enough to grow food on which would show a willingness to meet the Council halfway;
- bins are left out on the side of the road in a random state and are collected weekly, with no evidence that residents recycle;
- determining the application and likely subsequent appeal is further waste of taxpayer's money.

All responses from statutory consultees and third parties are available for Members to view on the planning file.

### **5. Relevant Planning Policy**

#### **National Planning Policy Framework (NPPF) - March 2012**

The NPPF (Paragraph 215) indicates that due weight should be given to relevant policies in existing development plans adopted before 2004 according to their degree of consistency with the Framework. The closer the policies in the development plan to the policies in the Framework, the greater weight they may be given.

The following sections of the NPPF are considered relevant to the determination of this application:

Paragraph 10 (Achieving sustainable development)

Paragraph 14 (Presumption in favour of sustainable development)

Paragraph 17 (Core planning principles)

Paragraphs 32, 34 and 35 (Promoting sustainable transport)

Paragraphs 57, 58, 60, 61 and 64 (Requiring good design)

Paragraphs 69 and 75 (Promoting healthy communities)

Paragraphs 96, 99 and 100 (Meeting the challenge of climate change, flooding and coastal change)

Paragraphs 109, 111, 118, 119, 123 and 125 (Conserving and enhancing the natural environment)

Paragraphs 203, 204 and 206 (Planning conditions and obligations)

**Adopted North West Leicestershire Local Plan:**

The North West Leicestershire Local Plan forms the development plan and the following policies of the Local Plan are consistent with the policies in the NPPF and, save where indicated otherwise within the assessment below, should be afforded weight in the determination of this application:

Policy S1 - Overall Strategy  
Policy S3 - Countryside  
Policy E2 - Landscaped Amenity Open Space  
Policy E3 - Residential Amenities  
Policy E4 - Design  
Policy E7 - Landscaping  
Policy F1 - National Forest - General Policy  
Policy F2 - Tree Planting  
Policy F3 - Landscaping & Planting  
Policy T3 - Highway Standards  
Policy T8 - Parking

**Submitted North West Leicestershire Local Plan**

The publication version of the Local Plan was agreed by Council on 28 June 2016 and submitted for examination on 4 October 2016. The weight to be attached by the decision maker to the submitted Local Plan should be commensurate to the stage reached towards adoption.

Policy S2 - Settlement Hierarchy  
Policy S3 - Countryside  
Policy D1 - Design of New Development  
Policy D2 - Amenity  
Policy H7 - Provision for Gypsies and Travellers and Travelling Showpeople  
Policy IF4 - Transport Infrastructure and New Development  
Policy IF7 - Parking Provision and New Development  
Policy EN1 - Nature Conservation  
Policy EN2 - River Mease Special Area of Conservation  
Policy EN3 - The National Forest  
Policy CC2 - Water - Flood Risk  
Policy CC3 - Water - Sustainable Drainage Systems

**Other Guidance**

The Conservation (Natural Habitats &c.) Regulations 2010 (the 'Habitats Regulations')  
Circular 06/05 (Biodiversity and Geological Conservation - Statutory Obligations and Their Impact Within The Planning System)  
The River Mease Water Quality Management Plan (August 2011)  
The River Mease Developer Contributions Scheme (DCS)  
The Community Infrastructure Levy Regulations 2010  
National Planning Practice Guidance 2014  
Planning Policy for Traveller Sites (PPTS) (August 2015)  
Leicestershire, Leicester & Rutland Gypsies' & Travellers' Accommodation Needs Assessment Refresh Report (May 2013) (GTAA)  
6Cs Design Guide - Leicestershire County Council  
Housing Act 1985  
European Convention of Human Rights/Human Rights Act 1998



## 6. Assessment

The main issues for consideration in the determination of this application relate to the principle of a permanent use of the land as a traveller's site, its suitability in terms of sustainability, its visual impact, impact on the River Mease Special Area of Conservation and whether there are material considerations that would justify removing condition 2 on the appeal decision and granting a permanent planning permission.

### PRINCIPLE OF DEVELOPMENT

#### Gypsy/Traveller Status

The site is and will be occupied by Mr & Mrs Smith and their five adult children, three spouses/partners to their children, and three grandchildren. The Planning Policy for Traveller Sites (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 agent advises that Mr Lee Smith has health issues including type 1 diabetes, one of their sons has a severe disability and another son has learning disabilities, and as such are dependent on the extended family. Therefore these family members have ceased to travel temporarily due to their health needs and Mrs Smith's need to care for her husband and sons. The agent also advises that two of the adult children travel for work with their spouse/partner, and the other adult child travels for work whilst his partner remains at home to care for their three children, two of whom are at primary school in Newton Burgoland. Therefore five of the adult family members travel for work and do so for differing periods of time, and intend to continue to travel. The remaining adult and her three children have ceased to travel temporarily due to the children's educational needs. The extended family has travelled in the past, as they previously occupied roadside encampments within Leicestershire and Oxfordshire. Therefore on the basis of the information provided, it is considered that all those occupying the site fall within the revised definition of gypsies and travellers.

#### 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 Authority'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 she 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. She 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 expires 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 occupiers. 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.*'

**Planning Policy/Provision of Sites**

There are no saved policies in the adopted North West Leicestershire Local Plan that relate specifically to gypsy/traveller sites. Policy H7 of the submitted North West Leicestershire Local Plan sets out that provision will be made to meet the accommodation needs of gypsies/travellers for a minimum of:

- O 2012-2017: 27 pitches plus 20 transit pitches
- O 2017-2022: 11 pitches
- O 2022-2027: 14 pitches
- O 2027-2031: 16 pitches

Policy H7 reflects the need for pitches set out in the update to the Leicestershire, Leicester and Rutland Gypsies and Travellers Accommodation Needs Assessment (GTAA) published in May 2013 as the GTAA Refresh Report. As the PPTS requires the use of a robust evidence base to establish accommodation needs, Policy H7 and the GTAA Refresh are considered appropriate for the basis of an assessment of gypsy/traveller needs within the District at this time. Whilst an update of the GTAA is currently being undertaken, primarily to take account of the changed definition of who can be considered to be a traveller as set out in the PPTS, the results of this update have yet to be published.

The provision set out within submitted Policy H7 and the GTAA Refresh takes into account all existing gypsy/traveller sites in the District apart from the temporary six pitches at the

application site. Since publication of the GTAA Refresh five additional pitches at an existing gypsy/traveller site at Shortheath Road, Moira have a resolution to permit and three pitches have been granted at 95 Ravenstone Road, Coalville. An application to retain seven pitches at Netherfields Lane, Hemington has also been refused on flood risk grounds.

Whilst the second appeal Inspector noted that '*...other Gypsy planning permissions could also have been granted by then [April 2017] which would alter the supply situation, taking into account the eight pitches with a resolution or approval referred to above, there is still a requirement for 19 pitches in the District to 2017 and for a further 41 pitches to 2031. As such there is clearly still an insufficient level of local provision and so there is still a need for this site. The Council is also unable to demonstrate a five year supply of gypsy/traveller sites as required by the PPTS and under submitted Policy H7. If the current application was approved, the six pitches would go towards meeting the current shortfall.*

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 four public sites in the county (Meynells Gorse, Greengate Lane, Redhill and Aston Firs) are all full with waiting lists. 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 Mr & Mrs Smith and their family cannot reside on such sites.

There is therefore still a significant unmet need for gypsy/traveller pitches in the District which is now considered to have significant weight in justifying a permanent permission. Also considered to have significant weight is that if permitted the site would immediately contribute to the unmet need for sites compared to the lengthier process involved in identifying sites via the Local Plan/DPD process.

Since the second appeal decision the timescale for progression of the new Local Plan has slipped. At that time examination was scheduled for spring 2016 and adoption for December 2016. However the examination is now scheduled for January 2017 with adoption in June 2017. However the second appeal Inspector concluded that *I agree that the local plan is unlikely to be in place by April 2017...* and therefore it is considered that this change in timescale to the new Local Plan can be afforded limited weight.

There are no known alternative sites that the Council can identify at present. Submitted Policy H7 states that the required provision, along with a five year supply of deliverable sites, will be identified through the production of a Gypsy and Traveller Site Allocations Development Plan Document (DPD), which has been the Council's intention since the first application on the site was determined. At the time of the second appeal the Authority considered a short and unrealistic time frame had passed to allow for further progression and adoption of the DPD. The first appeal Inspector stated that publication of a DPD '*...may not be for some considerable time...*' but that four years was a realistic timeframe. The second appeal Inspector 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 onto 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.*'

Since the second appeal decision the Gypsy and Traveller Site Allocation Consultation

document was published in February 2016, inviting submission of information regarding potential gypsy/traveller and travelling showpeople sites, as well as how the Council might best plan to meet their needs. However, the consultation only generated a small number of comments and no site suggestions were received. As a consequence, to identify as wide a range as possible of sites and broad locations for development, officers have been considering other types of sites and sources of data. The Council's Local Development Scheme (May 2016) identifies that a draft DPD would be presented to Council in November 2016, with further public consultation and then adoption in summer 2018. However the draft DPD will now not be presented to Council until summer 2017 at the earliest which will have a consequential impact on the adoption date.

Whilst there has been progress with the DPD since the second appeal decision, on balance it is considered that it would be difficult to demonstrate that sufficient progress has been made in identifying gypsy sites since the first appeal decision over three and a half years ago and since the second appeal decision over two years ago. Therefore the second appeal Inspector's expectations in respect of the DPD have not and will not be met. As such it is considered that it can no longer be justified to state that the Council has had insufficient time to progress the DPD. Therefore it is considered that the Council's lack of sufficient progress with the DPD and identifying suitable sites should now be given significant weight in the balance for allowing a permanent permission.

### **Personal Circumstances**

The County Council's Traveller Sites and Liaison Officer advises that stability is required in order 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 and 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 original application, which were seen by the Inspector.

As noted above 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 (the eldest being 27 months). However two of the grandchildren are now aged five and six and attend the primary school in Newton Burgoland. Therefore there has been a material change in relating to personal circumstances that, along with the health issues of one of the family members, are now considered to justify granting a permanent permission.

### **SUSTAINABILITY OF THE SITE**

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 off-set by the positive aspects of the proposal, the overall effect is a negative one.'*

The County Highway Authority objects on the grounds that the applicant has failed to demonstrate that the proposal will be in a location where services are readily and safely

accessible by walking, cycling and public transport.

Since determination of the appeals, the shop in Newton Burgoland has closed and the bus service operates a reduced service, approximately every two hours. A limited Post Office service is available in Newton Burgoland two afternoons a week. As such it is considered that the occupiers of the site would be dependent on the car for most journeys and therefore the site is not sustainable in terms of access to services/facilities.

### **DESIGN AND VISUAL IMPACT**

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.

Since determination of the second appeal decision, permission was granted in March 2015 (14/01090/VCI) to amend the site layout so that three caravans are 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 hardsurfacing laid on the site. The original approved layout showed two caravans adjacent to the south western boundary and four adjacent to the eastern boundary, with the day room/amenity block located in the northern corner of the site.

The amended layout was granted on the basis that it would be in place for a temporary period until April 2017. However since that time the hedgerows and trees along boundaries have matured and provide a greater level of screening than was in place both at the time of the 2013 application and in March 2015. It is acknowledged that a stretch of hedgerow appears to have been removed on the Newton Road boundary but the resulting gap is small and not completely open. Furthermore the level of development alongside the Newton Road boundary has been reduced in comparison to the original layout, with the re-siting of one of the caravans adjacent to the south western boundary and although the day room has been repositioned, this results in the development being located closer together. The extent of the increase in scale of the day room is not considered to make the building significantly prominent. Whilst the development is visible through the hedgerow alongside Newton Road in the winter months and at night time, these views are considered to be limited by the screening available and it is not considered to be overly prominent in views from the road.

At the time of the first appeal decision the hedgerow alongside the boundaries with the County Road was considered to be 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. Whilst there are views into the site through the site access, the central part of the site has since been laid with top soil and seeded. The majority of trees and hedges that bound the site are still in place and their retention is secured by the approved landscaping scheme.

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 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.

### **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. Therefore an assessment of whether the proposal would have a significant effect on the SAC is required.

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 204 of the NPPF.

Sweptstone Parish Council states that the Council is under an obligation to give consideration to the effect of the development on the SAC and how to remedy it, which inevitably will lead at the very least to a requirement for a substantial Section 106 Agreement. The Parish Council also advises that if this issue is ignored it could perhaps lead to judicial review.

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.*

Given the above comments by the Inspectors and that neither Inspector applied the DCS to the development, that the site is in occupation with a mains water supply and discharges foul drainage to the mains sewer, and that the connection to the mains sewer of six caravans has been taken into account in terms of the capacity available at Severn Trent Water's Snarestone Treatment Works, in this case it is considered that there is no requirement for a contribution under DCS2.

A scheme which shows that surface water discharging to the ground and a method statement to prevent impact on the river during construction have been agreed as part of the discharge of

conditions on the appeal decision and these matters could be further secured by condition.

Therefore it can be ascertained that the proposal will, either alone or in combination with other plans or projects, have no likely significant effect on the internationally important interest features of the River Mease SAC, or any of the features of special scientific interest of the River Mease SSSI.

### **OTHER MATTERS**

In terms of highway safety, there would be no change in the scale and nature of the proposal. 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 conditions restricting the access to the site. The Highway Authority has not raised any objections in relation to highway safety matters.

In terms of residential amenities, the new dwellings constructed on the site of the Spade Tree Inn, Newton Burgloland are over 330 metres from the site. No objections have been made by the Council's Environmental Protection team. The external lighting that has been approved under the discharge of conditions is small in scale and faces into the site. A condition was imposed on the appeal decision relating to the provision of a mains electricity supply and cessation of the generator. As noted on the first appeal decision, barking dogs is not a planning matter. A separate caravan site licence would still be required.

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 2010 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 hardsurfacing and the access drive, which is likely to make the site even less suitable a habitat for GCN. The County Ecologist has no objections and advises that there is no need for any ecology surveys.

The derelict buildings and boundary hedges/trees are still in place on the site (and will be retained under the agreed landscaping scheme) and the external lighting scheme has been

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 and 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 has been agreed to prevent impact on the watercourse during construction. There is no evidence of badger setts within 30 metres of the site. On this basis it is considered that the proposal will not adversely affect any protected species.

The nearest public right of way (Q49) does not run through or adjoin the site and therefore the conditions requested by the County Footpaths Officer cannot be imposed. The County Road adjoins the site on two sides and the County Footpaths Officer advises that access to Q49 should be maintained from both ends. 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.

There has not been any significant material changes in circumstances in relation to the following matters:

- the principle of the site being located in the countryside, which in itself was not raised as a significant issue by either appeal Inspector;
- as the scale of the proposal remains unchanged, the proposal would not place undue pressure on local infrastructure and services nor would it become of a scale that would dominate the wider rural community;
- a healthy and safe environment, as mains water and electricity supplies and a mains sewer connection are in place and a proper toilet has been provided;
- no further evidence has been provided in relation to flooding of the site and the surrounding area, the Environment Agency has not objected and flood risk was not raised as a significant concern in either appeal decision. The northern part of the site (which would not be occupied by caravans) is within a low risk area for surface water flooding;

It appears that some of the conditions on the current temporary planning permission have not been complied with. However this, and other concerns relating to the operation of a business and untidy land, are matters to be dealt with under the Council's enforcement powers.

In response to the concerns raised in the letters of objection that are not covered above, 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. The right to apply to vary and/or remove conditions on planning permissions and the right to appeal are set out under the Town and Country Planning Act 1990. Although concerns have been raised by local residents about feeling unsafe in the vicinity of the site, it is considered that this does not have significant material land use consequences and as such a reason for refusal on this ground could not be justified. The Council can only consider the proposal that forms part of the planning application and has no powers to insist that the site is put to an alternative use. There is no Green Belt within the District. Whilst rent and viability issues relating to removal of the temporary permission were considered both by the Council and the Inspector under the second appeal decision, these matters have not been referenced in the supporting documentation accompanying the application. The position of bins, frequency of bin collection and level of recycling is a matter for the Council's Waste Services team.



## CONCLUSION

It is considered that the site would not be sustainable in terms of access to services/facilities. However it is considered 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 level of general unmet need still weighs in support of the proposal, and is considered to have significant weight as this need has not been significantly reduced. Significant weight is also given to the site being able to immediately contribute to the unmet need for sites in the District. Given the family's personal circumstances, significant weight should also be attached to the likely consequence for their immediate future of living by the roadside, due to the lack of pitch provision in the District, as this would be an interference with their human rights.

Limited weight is attached to the slippage in the Local Plan timetable. However the Council's lack of sufficient progress with the DPD and identifying suitable sites should now be given significant weight to justify a permanent permission.

The first appeal Inspector considered that the significant harm identified outweighs the factors which favour the proposal and do 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 a permanent permission, the limited harm to the character and appearance of the countryside and the significant weight attached to the still largely unmet need, the site's contribution to this unmet need, the family's personal circumstances and interference with their human rights due to the lack of pitch provision in the District and the Council's lack of sufficient progress with the DPD weighs in favour of granting a permanent permission, These matters are considered to form evidence and a material change in circumstances that justify a permanent permission now being acceptable in this location.

A contribution under DSC2 is not required in this instance and there have been no significant material changes in relation to other material planning considerations, including highway safety, residential amenities, protected species, location in the countryside, undue pressure on local infrastructure and domination of the rural community, provision of a health and safe environment, flood risk and impact on the County road and nearby footpaths.

## RECOMMENDATION- PERMIT subject to the following conditions:

- 1 The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1 of the Planning Policy for Traveller Sites (DCLG, August 2015).

*Reason: the site is only considered appropriate for use by gypsies and travellers and other uses may not be appropriate.*

- 2 No more than 6 touring caravans (and no static 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: for the avoidance of doubt and in the interests of the character and visual amenities of the countryside.*

- 3 The development hereby permitted within 6 months of the date of this decision shall be laid out in accordance with:

- the approved location plan at a scale of 1:2500 (received in respect of planning permission ref. no. APP/G2435/A/12/2182019 (12/00003/RET));
- the proposed site plan drawing no 11.48.04 C (Landscaping Plan) received by the Authority on 8 March 2016; and
- the drawing entitled 'Day Room for Aylesbury Gardens' received by the Authority on 8 March 2016.

This permitted layout shall be maintained as such.

*Reason: to determine the scope of this permission.*

- 5 The amenity block hereby permitted shall be constructed from with Acme Century red plain tiles and Hanson Worcester Red Multi bricks, unless alternative external materials are submitted to and agreed in writing by the Local Planning Authority before any development takes place in relation to the construction of the amenity block.

*Reason: in the interests of the character and visual amenities of the countryside.*

- 6 Development of the permitted layout shall not begin until surface water drainage works have been carried out in accordance with the details shown on Drawing No. 11.48.04 C (Landscaping Plan) received by the Authority on 19 July 2013 in respect of planning permission APP/G2435/A/12/2182019 (12/00003/RET) other than the surface water system for the day room/amenity block which shall be in accordance with the details shown on Drawing No. 11.48.04 C (Landscaping Plan) received on 8 March 2016.

*Reason: to prevent an adverse impact on the River Mease Special Area of Conservation; to ensure a sustainable drainage system is provided on the site.*

- 7 The development hereby approved shall be carried out in accordance with the Method Statement received by the Authority on 13 July 2013 and the details of site spill kits received by the Authority on 1 July 2013 in respect of planning permission ref. no. APP/G2435/A/12/2182019 (12/00003/RET).

*Reason: to prevent an adverse impact on the River Mease Special Area of Conservation.*

- 8 Both vehicular and pedestrian access to the site shall be restricted solely to that set out on Drawing No. 11.48.04 C (Landscaping Plan) received by the Authority on 19 July 2013 in respect of planning permission APP/G2435/A/12/2182019 (12/00003/RET).

*Reason: to reduce the number of vehicular accessed to the site and the number of potential conflict points and removes the need to use unsuitable sections of public highway.*

9 The development shall be carried out in accordance with the following:

(i) The soft and hard landscaping (including means of enclosure, exterior lighting, materials for areas of hard surfacing and the management of the soft landscaping) shall be maintained thereafter in accordance with the details shown on Drawing No. 11.48.04 C (Landscaping Plan) received by the Authority on 19 July 2013 in respect of planning permission APP/G2435/A/12/2182019 (12/00003/RET).

(ii) The connection to mains electricity shall be retained and there shall be no use of any stand alone generators.

*Reason: in the interests of the character and visual amenities of the countryside and residential amenities; to prevent adverse impacts on habitats that have the potential to be used for foraging bats.*

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

*Reason: for the avoidance of doubt and in the interests of visual amenity.*

11 No commercial activities shall take place on the land, including the storage of materials.

*Reason: for the avoidance of doubt and in the interests of visual amenity.*

#### **Notes to applicant**

1 Planning permission has been granted for this proposal. The Local Planning Authority acted pro-actively through positive engagement with the applicant during the determination process which led to improvements to the scheme. The Local Planning Authority has therefore acted pro-actively to secure a sustainable form of development in line with the requirements of the National Planning Policy Framework (paragraphs 186 and 187) and in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended).

2 The proposed development lies within an area which could be subject to current coal mining or hazards resulting from past coal mining. Such hazards may currently exist, be caused as a result of the proposed development, or occur at some time in the future. These hazards include:

- Collapse of shallow coal mine workings.
- Collapse of, or risk of entry into, mine entries (shafts and adits).
- Gas emissions from coal mines including methane and carbon dioxide.
- Spontaneous combustion or ignition of coal which may lead to underground heatings and production of carbon monoxide.
- Transmission of gases into adjacent properties from underground sources through ground fractures.
- Coal mining subsidence.

- Water emissions from coal mine workings.

Applicants must take account of these hazards which could affect stability, health & safety, or cause adverse environmental impacts during the carrying out their proposals and must seek specialist advice where required. Additional hazards or stability issues may arise from development on or adjacent to restored opencast sites or quarries and former colliery spoil tips.

Potential hazards or impacts may not necessarily be confined to the development site, and Applicants must take advice and introduce appropriate measures to address risks both within and beyond the development site. As an example the stabilisation of shallow coal workings by grouting may affect, block or divert underground pathways for water or gas.

In coal mining areas there is the potential for existing property and new development to be affected by mine gases, and this must be considered by each developer. Gas prevention measures must be adopted during construction where there is such a risk. The investigation of sites through drilling alone has the potential to displace underground gases or in certain situations may create carbon monoxide where air flush drilling is adopted.

Any intrusive activities which intersect, disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) require the prior written permission of the Coal Authority. Such activities could include site investigation boreholes, digging of foundations, piling activities, other ground works and any subsequent treatment of coal mine workings and coal mine entries for ground stability purposes.

Failure to obtain Coal Authority permission for such activities is trespass, with the potential for court action. In the interests of public safety the Coal Authority is concerned that risks specific to the nature of coal and coal mine workings are identified and mitigated.

The above advice applies to the site of your proposal and the surrounding vicinity. You must obtain property specific summary information on any past, current and proposed surface and underground coal mining activity, and other ground stability information in order to make an assessment of the risks. This can be obtained from The Coal Authority's Property Search Service on 0845 762 6848 or at [www.groundstability.com](http://www.groundstability.com)