Planning Committee: 5 February 2013 **Item Number:** **7**

Application No:W12 / 1438

Registration Date:31/12/12

Town/Parish Council: Beausale, Haseley, Honiley &Wroxall**Expiry Date:**25/02/13

Case Officer: David Edmonds
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Land at Kites Nest Lane Beausale, Warwick

Change of use (partly retrospective) of land formerly used for agriculture and the keeping of horses to the use as a gypsy / traveller site (eight pitches) and associated restoration,landscaping and enhancement works outside the site area denoted by the red line boundary. FOR Kites Nest Lane Gypsy Community Group

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The application is being presented to Committee as it raises issues which the Head of Service considers ought to be assessed with Member engagement.

RECOMMENDATION

Members are recommended to refuse planning permission.

DETAILS OF THE DEVELOPMENT

The application form describes the development as a change of use (partly retrospective of land to a mixed use gypsy/ traveller site (8 pitches) associated with remedial works and former equine business. The description of development had been modified with the agreement of the applicant's. Also, it is clarified that the applicants wish the Council to consider granting a temporary permission should it decline to award a permanent permission. The Council is also invited to take account that there is nowhere for the applicants to relocate.

The site layout plans depict a 4.5 metre wide service road running parallel to, and 5.5 metres distance, from the south east boundary of the site. There would be 8 pitches set in a row along the north west side of the spine road? with a substantial area of the site opposite the junctions of Brownley Green Lane, Kites Nest Lane and Beausale Lane being annotated as 'land to be restored subject to landscape agreement'. The typical pitches would be 16 metres x 18 metres with the addition of link spurs for pedestrian and vehicle access point. The drawings indicate that there would be one utility block containing a kitchen and shower and laundry room for every two pitches. Each utility block would be 4 metres x 4 metres which since would be semi-detached would result in 8 metre x 4 metre size blocks. The size of each pitch would be about 450 square metres which it is asserted is less than the 500 square metres recommended in the Good Practice Guide for Designing Gypsy/Traveller pitches. There would also be a 'community building' of similar dimensions at the end of the spine road close to the southern boundary of the site.

Gypsy Status:

The applicant M Birmingham and his family (the other members of the Kites Nest Lane Gypsy Community Group) are Romany Gypsies who still lead a nomadic

way of life. The applicant and his family all meet the definition of gypsy in 'Planning Policy for Traveller sites'. The applicants have formed themselves into a community group to seek access to Traveller Pitch Funding made available by the Secretary of state due the alleged failure of Council's in the West Midlands to make provision of land available to meet their need. It is claimed the applicant's family originate from the Beausale area. It is said to be normal for gypsy/ travellers to retain links with areas where they were settled for many generations. Thus the applicant's family's ancestor was an agricultural worker who was accepted into the Beausale Parish in the 19th century but was subsequently displaced. It is said that Romany gypsy's tend to settle on land with which they have some associations.

The adult occupants of the site form seven households and there are 19 children mainly in full time education. Four of the adults have been prescribed with anti depressants.

The Design and Access Statement (DAS):

This states that the planning application is made by the 7 families living at the site who have been unable to find accommodation in the West Midlands. It asserts that traveller planning applications are always more complicated than other (applications?) of this type as there is a need to balance if the developers need for a home outweighs other planning objectives. It is argued that the Council conceded at the last inquiry that a smaller scale site might be more acceptable in terms of rural character. It is proposed to infill the gaps in the existing roadside hedge and provide extensive planting particularly along the site boundaries.

A supplementary DAS has been submitted to cover those additional reports required and submitted in accordance with the validation criteria, and to update the application. The site is not ideal for use as a gypsy / traveller site; there is no dispute on this issue. However, there is nowhere else available for the existing occupiers. Since the Secretary of State made available resources to provide sites for gypsy / travellers in January 2012 it is argued that there there have been failures in policy and implementation by Council's and Housing Associations to deliver sites. This followed earlier failures in policy and implementation. Neither Warwick District Council and/or the Secretary of State could have anticipated the failures of Council's and social housing providers to meet needs since the Secretary of State made their decision on 01 September 2011. Also Warwick District Council is unable to demonstrate a five-year supply of land able to meet needs for gypsy /travellers within the district.

Landscape Statement: It is asserted that the proposed layout has been informed by the need to avoid the root protection zones of trees and has been designed to accommodate more sustainable foul drainage systems and provide room for planting. However it is asserted that it requires the establishment of a mound 1.5 metres high which would also have the benefit of shielding the caravans from view and potentially be a characteristic of the landscape (earthworks). The species that would be used for the proposed landscaping would be characteristic of the Arden landscape and hurdles (willow) should also be used for screening whilst the hedging becomes established. However no detailed landscaping scheme is submitted and would have to be secured by conditions.

Boundary Statement: This has been submitted to resolve the ambiguity of having a red line site boundary set within the blue line ownership boundary.

This is said to remediate drainage and propose landscaping on those part of the applicant's land that would not be used as a gypsy caravan site.

Tree Survey Constraints Plan: There are 45 trees which mainly fall outside the site development boundary, mainly oak and ash. It is asserted that the Ashe trees are affected by *Chalarafraxinea*and are subject to ash die back. They would need to be replaced. There are to be no impermeable surfaces in the root protection area (RPA). Hedgerow will be planted in a double staggered row. Temporary protection around the trees would be erected around the RPA. Once planning permission is granted a finalised site layout and landscaping scheme would be submitted

Flood Risk Assessment: It is asserted that the application is in Flood zone 1 which is low risk. It is mooted that the site may have been excavated at some point because it lies between 0.5 and 1 metre below some surrounding land perhaps as a result of brick making. The land is heavy clay and there are no drainage ditches and currently some of the land is waterlogged exacerbated by the extent of hard standing leaving only 2000 square metres of grass. This has resulted in the risk of pluvial flooding due to a failure to take account of drainage when developing the site. This makes access to the structure difficult but has little effect on usage. However the land is also surrounded by about 60 trees which with the bolstering by further planting the report asserts would address the pluvial flooding problem.

Foul Sewage Statement: The site is at least 800 metres from a public sewer and the same distance to a private sewer. The occupiers of the site are currently using septic tanks as cess tanks in association with chemical toilets which it is said are regularly emptied. Piping the sewage is ruled out due to distance and disruption and is not considered to be feasible. The water table is too high to enable the use of either a packet sewage treatment plan or a sceptic tank. The current system is working and the alternative is to make the people homeless and living on the road inevitably does not involve foul sewage systems.

Sustainable Building Statement: In addition to energy efficiency measures it will be possible to fit solar panels to the roofs of the utility buildings which it should provide 205 of the site's electrical energy from renewable sources

High Court Judgement case papers: Linfoot and SoS and Chorley BC. It was found that the Inspector in an appeal decision failed to take account of whether planning circumstances would change in the wider area within the period of time for which a temporary planning permission was sought. It was found that the inspector failed to give adequate reasons for his conclusion that temporary planning permission should not be granted

THE SITE AND ITS LOCATION

The application site has a notional boundary which would form a broadly rectangular site of about 0.4 hectares set within the 0.9 hectare parcel of land in the ownership of the applicant, with the same access point.. The site and ownership boundary is set within open countryside, with road frontages on the eastern sides of Kites Nest Lane and Brownley Green Lane of some 330m. It is about 600m north of the settlement of Hatton Park, developed on a former hospital site on the northern side of the A4177, which links Balsall Common and Meriden to Warwick and the M40.

There are several public rights of way which encircle the fields to the east and south of the site from which views of the site can be obtained. These link through to the Hatton Park housing development to the south. To the east and north east (W181g) and to the south is (W181). The nearest village is Hatton which is in 3 parts – Hatton (4.4km distant) to the south west, Hatton Green (2.7km) to the west and Hatton Park (1.7km) to the south east.

The lanes leading to the site are unclassified, narrow, unlit and without footways; in parts there are no passing places. Part of Brownley Green Lane north of Hatton Park is in a shallow cutting without verges. The nearest house to the site is Brownley Green Farm, 50m to its north-west. This stands in extensive gardens running down to Brownley Green Lane

The land in the applicants ownership is linear, some 60m at its widest, with a hedgerow containing some hedgerow trees but with various gaps along the long road side long boundaries. Despite the presence of the hedges, items on the site are readily visible in views either from the lanes or from parts of an extensive public footpath and bridleway network across open fields to the east and south. A low post-and rail fence forms the short southern boundary, which has no screening.

The site is accessed across the highway verges through a gateway in a 12m wide gap in the roadside hedge near the northern end of the Kites Nest Lane frontage. The former site entrance is further north

The application site is in the Green Belt. The site is within the Arden Regional Character Area, just within the Arden Parklands Local Landscape Type (LLT), with the Ancient Arden LLT beginning just across Kites Nest Lane, and including Brownlow Green Farm

PLANNING HISTORY

The site appears to have formerly been a pasture paddock. Planning permission was granted in 2006 for a 2 box stable and tackroom measuring some 7m x 9.5m, together with a new gated access and a hard standing, at the northern end of the current applications site. In 2008 WDC was preparing to take enforcement action after a caravan was found to be stored on the site, but it was removed before a notice was served.

In late afternoon of Friday 30 April 2010, before the May Bank Holiday weekend, the application which was given the reference W/10/0599 was delivered to WDC's offices. Works began that evening; caravans came on to the site the next day; on Sunday hard standings had appeared, and the site was being subdivided into plots.

The other landmarks in the planning history of the gypsy caravan site included:

- Temporary Stop Notice was served on Sunday 2nd May 2012 that day to, amongst other things, prevent any more caravans being brought on to the site and require most other operations to cease.
- On 27/05/12 an injunction was granted to WDC to prevent any further development until planning permission is obtained, and limiting the number of caravans to 16.
- 02/07/10 – Refusal of planning permission for the change of use of land for use as a gypsy caravan site involving 13 permanent pitches for mobile

homes, 13 touring caravans and 13 utility day rooms. The Reasons include inappropriate development and harm to openness in the Green Belt, unacceptable harm to character and appearance of the Arden landscape and the unsustainable nature of the location

- 07/07/10 – Enforcement notice issued regarding the change of use to a gypsy caravans site requiring the cessation of the use and the removal of infrastructure and caravans giving a one year period of compliance. Reasons include inappropriateness and loss of openness in the Green Belt and harm to the Arden Landscape Character area and unsustainable location
- The subsequent appeals against the enforcement notice and the refusal of planning permission was heard by the public inquiry method with two sessions lasting 7 days in total which took place in January and May 2011.
- 01/09/11: -The Inspectors report and the Secretary of States decision was issued. The enforcement notice appeal was dismissed and the one year period of compliance started.

03/09/12: site visit confirmed that the enforcement notice had not been complied with and 10/09/12 authorisation obtained to follow procedures in pursuit of a Final Injunction Order.

RELEVANT POLICIES

- DP2 - Amenity (Warwick District Local Plan 1996 - 2011)
- RAP10 - Safeguarding Rural Roads (Warwick District Local Plan 1996 - 2011)
- DP1 - Layout and Design (Warwick District Local Plan 1996 - 2011)
- DP3 - Natural and Historic Environment and Landscape (Warwick District Local Plan 1996 - 2011)
- DP6 - Access (Warwick District Local Plan 1996 - 2011)
- DP7 - Traffic Generation (Warwick District Local Plan 1996 - 2011)
- DP13 - Renewable Energy Developments (Warwick District Local Plan 1996 - 2011)
- DP11 - Drainage (Warwick District Local Plan 1996 - 2011)
- National Planning Policy Framework

SUMMARY OF REPRESENTATIONS

Beausale, Haseley, Honiley and Wroxall Parish Council:

The Parish Council objects to the application on the following grounds which can be summarised as follows:

- The Parish Council supports the reasons for the Secretary of State's dismissal of previous appeals for development of the site following a lengthy public inquiry. There has been no change of circumstances to justify a different conclusion being reached on the present application.
- The efforts of the District Council to achieve compliance with the Notice appear to be being met with procrastination and resistance with the intention of continuing to thwart a decision reached through the proper processes.
- Although the proposal is now for a smaller number of pitches, the principle of the use of the site remains unacceptable. It is inappropriate development in the Green Belt. which causes substantial harm from the development by

reducing the openness of the Green Belt and from encroachment into the countryside, contrary to one of the main purposes for the establishment of Green Belts.

- There has already been significant harm to the character and appearance of the surroundings of the site as a result of the current development, contrary to the principles set out in the Warwickshire Landscape Guidelines and to Local Plan Policy DP3. This cannot satisfactorily mitigated by landscaping or by the proposed layout of the site.

- The size of the site is the same as that which the Secretary of State considered would dominate the local community. A smaller number of pitches would still dominate the community.

- The local highway network from the A4177 along Brownley Green Lane to the site entrance is narrow, mainly single track country lanes without footpaths, totally unsuitable for the level of additional traffic, including a high proportion of commercial vehicles, already generated by the development.

- Since the site was first occupied verges have been churned up, mud carried onto the carriageway and the edges of the carriageway damaged, resulting in significant visual and structural damage to the character of these lanes, contrary to the intentions of Policy RAP10 of the Local Plan.

- The location of the site contrary to the principle of providing accommodation in sustainable locations manifested by a lack of shops, healthcare, community facilities and schools within easy reach by means other than private cars and a lack of footpaths along the narrow country lanes,.

- The site to water logging and standing water, clearly due to inadequate natural drainage. The site has continued to be under water after rainfalls and a septic tank did overflow causing an environmental problem cast doubt on the credibility of the Flood Risk report.

Budbrook Parish Council: No formal comment - outside jurisdiction

Warwickshire County Council (WCC) Planning & Development Group (Engineers)

No objections subject to conditions. Although there is no demonstration of internal access geometry it is judged that a large refuse wheel is likely to be able to turn on the site.

A supplementary response has been received in connection with the questioning from the Beausale Parish Council. Reference is made to a response to the 2010 application that the access to the gypsy site has available visibility to the junction of Brownley Green Lane, therefore should a vehicle be travelling along the section of Kites Nest Lane between the junction and the site, a vehicle could wait within the junction for it to pass. The opportunity also exists for a vehicle turning into Kites Nest Lane to wait for a vehicle to pass if the driver considers it could not pass. Due to the above, it is not necessary for the traffic associated with the gypsy site to overrun the verges.

Warwick District Council (WDC) Neighbourhood Services. Community Recycling Officer:

No comment. There are refuse and recycling bins and a collection service already in place at the site.

WDC Private Sector Housing:

No comment to date. The response in connection with the previous application was that it would need to be the subject of a caravan site license. Reference is made to the Community and Local Government Guidance on the design of site for Gypsies and Travellers 2007. Brownlow Green Farm is likely to be the only residential property that might suffer potential noise and disturbance.

WDC Environmental Health Officer:

There was no adverse comments to make on the current application. In response to various specific matters raised by interested parties in this and the previous application some supplementary remarks have been made. The Pollution Control section is not aware of, or has substantiated any noise issues e.g. voices travelling, vehicle movements, dogs barking and it is unlikely that such noise sources would amount to a statutory nuisance.

In respect of assertions that one of the cesspits (tank) on the site had leaked there was an inspection which revealed that one cesspit had overflowed for a shore period causing very localised pollution with no run off or odour. It was cleared up within a few days of the intervention and the solid conditions are such to limit migration to water courses.

At the pre valid application stage Environmental Health suggested that the details of the proposed cess pits and/or septic tanks need to be controlled. Permanent or semi permanent areas of stagnant water may cause an annoyance but this could be addressed through adequate surface water drainage.

Severn Trent Water Ltd.

They state that whilst the company does not have any responsibility for cess pits/ septic tanks they are, in principle, an acceptable means of disposing of foul water in rural locations. Therefore there are no objections.

Hampton on the Hill Residents Association:

It is noted that this application is based on fewer pitches and improved landscaping and that one of the residents developed a stress related illness. Otherwise little is changed from the conclusive dismissal of the last appeal. If stress is a material consideration account also needs to be made of the stress being suffered by the small settled community who have to endure the presence of a large gypsy community.

Individual interested parties.

Between the initial submission of an incomplete application on 16th November and the validation of a complete application on 31st December 2012 the application documents and subsequent additional documents were put on the Warwick District Council web site. During this period and without any formal notification representations were made the Council received representations

from 18 households mostly, but not all living close to the site. The representations were all objecting to the application.

The valid application was the subject of a formal consultation exercise which started on 8th January and included notification of all the occupants of residential properties that were initially notified in connection with the previous application together with those individuals who had already made representations at the pre-validation stage. In addition a site notice was displayed on 10th January 2012.

Therefore at the time of report writing completion of completion of the final draft of the report – 28th February This consultation and web publicity exercise has generated a further 70 representations mostly, but not all, from the local vicinity although some of these would have been to supplement comments made at the pre- validation stage:

To date these can be summarised as follows:

- The development is inappropriate in principle in the green belt.
- Contrary to national and local planning policy
- Full account needs to be taken of the behaviour of the applicants and the abuse of the planning stem. This includes the fact that the site was developed without planning permission over a bank holiday together with the fact that planning permission was refused and enforcement notice was issued and appeal dismissed . Also, none of the requirements of the enforcement notice has been undertaken within the generous compliance period.
- Increased traffic problems on a small rural road damaging the hedges and verges and endangering other road users
- Dominance of the sparsely populated settled community by a relatively large concentration of people from the gypsy community.
- The amount of buildings, structures, hard standings, tracks, caravans and vehicles associated with pitches are incompatible with the rural character of the area and the openness of the green belt
- Noise from the site disturbs a previously peaceful lane and the occupants of the nearest residential properties
- Light intrusion at night
- Increased litter on and around the site including along Brownlow Green Lane
- The localised flood risk caused by the practice of attempting to positively drain the site and increased run off and the risk to the occupants themselves
- Poor foul drainage facilities including the difficulties associated with servicing and maintaining the cess pits (tanks) creating the potential for pollution of the site and surroundings
- Highway safety issues related to the use of the site entrance and the junction of Kites Nest Lane with Brownley Green Lane/ Beausale Lane and the increase use of these narrow country lane.
- No planning provision has been made for the education and welfare of the site's occupants.

ASSESSMENT

It is appropriate to consider the Secretary of State's appeal decision in respect of the previous application and to consider whether material considerations have arisen since then which alter the planning balance of the case.

It was common ground at the previous inquiry that the application development is in green belt and so is harmful by definition. It was also agreed that there is substantial harm to the Green Belt's openness, that there is encroachment into the countryside and at least some harm to the area's character and appearance. It was also accepted by all parties that the residents of the site are ethnic Romanis falling within the definition of gypsies and travellers.

In addition to the above paragraph the salient points of the 2011 appeal decision can be summarised as follows:

- The existing development by reason of location and scale is an extremely jarring intrusion into an attractive landscape and can be readily seen through the gappy hedges and long road frontages together with parts of the local footpath network
- Gypsy sites in principle are not unacceptable in the countryside and do not have to be completely hidden from view
- The application layout has certain flaws
- Additional landscaping would not could not overcome the constraints to the layout.
- A densely developed site does not accord with the landscape character of the Ancient Arden landscape type dispersed settlement pattern, which is loose clusters of cottages
- Caravans are out of keeping with the character and appearance of the Arden Parklands and there are only (?)only a small number in the adjacent Ancient Arden landscape types
- However in principle gypsy caravan sites are not unacceptable in the countryside in general
- The local roads are typical of many country lanes and are not necessarily quiet.
- Not persuaded that the additional use of the rural lane would be harmful either to highway safety or landscape character
- Noise from voices or dogs is noticeable but not unduly intrusive from Brownlow Green Farm. It is likely to be worse in the evenings but there is no objective evidence that it is unacceptable.
- There is evidence of a certain amount of walking to access the local facilities in Hatton Park which also has bus stops. The school run in rural areas is typically by car in any event.
- Settled bases for gypsies provide wider sustainability benefits.
- The site is frequently waterlogged despite the pumping of water to disguise the fact. it is more likely this is caused by the impermeable soil than a high water table.
- Waterlogging of the ground would not make the site unsuitable or breach the principles of PPS 25. A drainage solution is likely to be found.
- The cess tank foul drainage causes problems as acknowledged by Circular 3/99. However their use is feasible and accordingly a possible means of foul drainage. This is an issue for conditions
- The Council's case at the last inquiry, that there was no historical demand or local need for permanent sites was found to be flawed with the Inspector concluding that the regional figures had greater credibility, Therefore some sub regional need should be properly attributed to Warwick District.
- Since there is an unmet need this has material weight. It is likely that most of the occupants of the site have not had their needs met elsewhere.
- There has been a longstanding failure of policy
- However about 25% of the Warwick District in outside the Green Belt as are some the site which WDC are currently investigating.

- There is a strong likelihood that the transit site and any permanent sites found to be required will not be located in the Green Belt
- There was unreliable and evasive evidence and even untruths told of some of the appellants personal circumstances. This raises concern about the reliability of other evidence of personal circumstances presented.
- Factors such as unmet need, failure of policy and personal needs of some of the occupiers as positive elements of the balancing exercise was found not to come near outweighing the considerable harm to the Green Belt and rural character.
- A temporary permission would reduce this harm but given the likely wait for the delivery of an alternative site it was found to be inappropriate to grant a temporary permission.
- A reduced number of pitches could beneficially increase the space for planting and reduce the impact from the amount of development but the size and shape of the site are such that benefit would be minimal
- A reduction to 5 pitches with substantial landscaping on the rest of the site would not go even near swaying the balance in favour of there being very special circumstances
- A reduction to 2 pitches could accommodate the families of Leonard and Richard Hughes whose children would have the greatest educational needs as potentially being able to stay in primary school longer. However this scale of development equivalent in area to the planning permission site for stables, unlike the stable would be inappropriate development harmful in principle.

This recommended planning balance was adopted by the Secretary of State with minor adjustments. Perhaps the most significant part of the Secretary of State's letter was that there is a strong likelihood that the transit site and any permanent sites found to be required will not be located in the green belt. Also the Secretary of State whilst quantifying the possible term of a temporary permission agreed that the harm identified was too substantial to justify the development even on a temporary basis.

Having set out the planning balance which existed in August 2012 it is necessary to turn to the material considerations that have emerged since then. These relate to national policy and guidance particularly the National Planning Policy Framework and progress that has been made in adopting the new local plan and in identifying appropriate alternative sites. It also relates to further research commissioned to address the shortcomings identified by the Inspector in the Council's assessment of the need for permanent pitches in Warwick District.

National Planning Policy & Guidance

<u>Department of Communities and Local Government - Planning Policy for Traveller Sites:</u>

This sets out the Government's overarching aim to ensure fair and equal treatment for travellers which facilitates the traditional and nomadic way of like of travellers whilst respecting the interests of the settled community. In this context the Government's aims are:

- that local planning authorities (LPA's) should make their own assessment of the need for the purposes of planning
- to ensure that LPA's working collaboratively develop fair and effective strategies to meet need through the identification of land for sites
- to encourage LPA's to plan for sites over a reasonable timescale

- that plan making and decision taking should protect Green Belt from inappropriate development
- to promote more private traveller site provision whilst recognising that there will always be those travellers who cannot provide their own sites
- that plan making and decision taking should aim to reduce the number of unauthorised developments and encampments and make enforcement more effective
- for LPA's to ensure their local plans include fair, inclusive and realistic policies
- to increase the number of traveller sites in appropriate locations with planning permission to address under provision and maintain an appropriate level of supply
- to reduce tensions between settled and traveller communities in plan making and plan decisions
- to enable provision of suitable accommodation from which travellers can access education, health, welfare and employment infrastructure
- for LPA's to have regard to the protection of local amenity and local environment.

Various policies are set out to achieve these aims including:

Policy A: Using evidence to plan positively and manage development In assembling the evidence base necessary to do this LPA's should involve community engagement with both settled and traveller communities. They need to prepare and maintain an up to date understanding of the likely permanent and transit accommodation needs in their areas over the life span working collaboratively with neighbouring LPA's. This evidence base should establish accommodation needs to inform the preparation of local plans and make planning decisions.

Policy B: Planning for Traveller Sites: Taking account of the NPPF including the presumption in favour of sustainable development there is a requirement to set pitch targets for gypsies and travellers. This includes identifying a supply of specific deliverable sites to provide a five year land supply whilst protecting local amenity and environment.

Policy C: Sites in rural areas and the countryside: LPA's should ensure that the scale of such sites do not dominate the nearest settled community.

Policy E: Traveller site in Green Belt. Traveller sites (temporary or permanent) in the green belt are inappropriate development

Policy H: Determining planning applications for traveller sites:

This starts with the planning law which requires that applications must be determined in accordance with the development plan unless material considerations indicate otherwise. Applications should be assessed and determined in accordance with the presumption in favour of sustainable development including the policies in the NPPF and the Planning Policy for Traveller Sites. The issues against which planning applications for traveller sites need to be considered include:

- the existing level of local provision and need for sites
- the availability (or lack) of alternative accommodation for the applicants
- other personal circumstances of the applicants
- locally specific criteria should be used to assess application that may come forward

- application for sites are not just restricted to those with local connections

LPAs should strictly limit new traveller site development in open countryside that is away from existing settlements. In rural areas sites should respect the scale of and not dominate the nearest settled community and avoid placing an undue pressure on the local infrastructure.

When considering applications LPAs should attach weight to the following matters including:
- sites being well planned or soft landscaped in such a way as to positively enhance the environment and increase its openness
- promoting opportunities for healthy lifestyles, such as ensuring adequate landscaping and play areas for children
- not enclosing a site with so much hard landscaping, high walls or fences, that the impression may be given that the site and its occupants are deliberately isolated from the rest of the community

If a LPA cannot demonstrate a 5 year supply of deliverable sitesthis should be a significant material consideration when considering applications for the grant of temporary permission. Planning conditions and obligations can be used to overcome planning objections.

National Planning Policy Framework

The Government's policy towards green belts is set out Paragraphs 79 to 92. The fundamental aim is to prevent urban sprawl by keeping land permanently open and one of the purposes relevant in this case is assisting in safeguarding the countryside from encroachment. The change of use of land to a gypsy caravan site is not listed as one of the exceptions which might make it appropriate which seems to be firmer line than the former policy, PPG2. Also in this case the utility and community buildings are inappropriate buildings.

Need

Gypsy, Traveller and Travelling Showpeople Accommodation Needs Assessment: Warwick District - Final Report of Lisa Scullion and Phllip Brown of the Salford Housing and Urban Studies Unit of the University of Salford - November 2012.

The assessment starts with the Housing Act of 2004 which placed a duty upon local authorities to produce assessments of accommodation need for Gypsies and Travellers.

The assessment was undertaken by reviewing various data sources including the bi-annual caravan count and a survey of 43 gypsy, traveller and travelling showpeople households living both in trailer based and bricks and mortar accommodation across Warwick District. The sample achieved of what is believed to be 85% of this community is as representative as can reasonably be expected given the relatively hidden nature of the population. It is estimated that there are at least 124 individuals or 33 households within Warwick District. The population is found at the Kites Nest Lane unauthorised development , on the travelling showpeople site and in bricks and mortar accommodation. There are also a number of unauthorised encampments.

The study identifies a residential need between 2012 and 2016 of 25 permanent gypsy and traveller pitches and 31 pitches for the period 2012 to 2026. It also

acknowledges a need to provide 12 transit pitches based on Warwick District Council's Historic Demands and Local Needs report of 2010.

Local Policy

In all this context the planning policy position starts with the fact that the application site is within the Green Belt where national policies (NPPF) discourage inappropriate development which is harmful to the green belt unless special circumstances are demonstrated to outweigh that harm.

There are no saved policies relating to Gypsies and Traveller sites within the current Local Plan (retained policies). The replacement for this document is currently at the stage of preparation of the 'Draft Local Plan'. This document will need to allocate sites for the first five years of the plan for a total of 25 permanent pitches as indicated in the GTAA, published in November 2012 to inform the Local Plan and an area of search for a further 6 pitches within the remaining 10 year period of the Local Plan. This will be subject to regular monitoring of need.

In terms of national policy the NPPF which directs us to 'Planning Policy for Traveller Sites' March 2012. This requires us to provide pitches according to need and we have only recently received that evidence. In the meantime however, we have progressed (albeit with a negative result to date), in looking for suitable sites. We have now responded to the GTAA by launching the 'call for sites' but this has been because we have not been able to establish any sites to consider through the Local Plan process or through the GTAA asking questions directly about possible sites of the travellers themselves.

A 'call for sites' was launched on 16 January 2013 and will close on 13 February 2013. It is expected that a number of possible sites will be submitted which will be assessed against the criteria outlined in 'Planning Policy for Traveller Sites' March 2012 (NPPF refers). Those sites which are considered suitable, sustainable and deliverable will be consulted upon and allocations made within the Draft Local Plan to be submitted to the Secretary of State before a Public Inquiry is held later this year. The result of the call for sites, may mean that we have to look at CPO powers in order to bring them forward

Updated Balancing Exercise.

Taking the actual and emerging policy changes and the quantification of need into account it is considered that it does not amount to such a significant change in circumstances to justify relaxing the firm stance taken by the previous appeal inspector, only 18 months ago. All kinds of permutations to the balance including a temporary permission, and different quantum's of reduced numbers of pitches were found not outweigh the substantial harm to the green belt and the rural character of the area. The points on the other side of the balance such as the clearly definable unmet need and lack of sites do not appear to be substantially different than they were at the time of the last inspector's decision.

The submission of a suite of reports covering the various other factors helps define the implications of proposing a smaller scale development with some room for significant landscaping, something which was ill defined at the last inquiry. However due to the narrowness of the site even opposite the junction of Brownley Green Road, Kites Nest and Beausale Lanes it is not considered it would successfully integrate what is still a substantial development into to

landscape. Also reliance on the creation of raised bunds which are ill defined and not part of the landscape character would give rise to the need for the importation of material with all the attendant problems of safe access and control of what would be a significant engineering operation. It is not clear if more sustainable foul drainage methods using bund material would work and in any event the Inspector found that the cesspits whilst having problems was not enough to refuse development. The space for such bunds and substantial planting would only be created at the expense of pushing development relatively close to the south-east and southern boundaries which would potentially increase its visual impact from the public footpath network. The suggestion that the main drainage problems would be solved by the mass planting of trees on a bund is considered to be a simplistic solution lacking in credibility. However at the time of writing the report the responses of some of the key consultees who could assist with this aspect of the assessment had not been able to comment substantively. In any event there is insufficient evidence that poor drainage and flood risk is such a problem that it warrants planning permission to be refused as an additional reason. Similarly the issue of sustainability is one which now significant further evidence has been produced to differ from the Inspector's conclusions that in gypsy and traveller terms that this is a reasonable sustainable site.

Tuning to policy and need, it is considered that the fact that the council have given weight to the Inspectors concerns and have made substantial progress towards reviewing the need in a way which accords with national gypsy policy. . In the meantime, the fact that the Inspector at the appeal allowed the travellers a year to find alternative accommodation, means that together with the time that they have overstayed that date, they have now been able to establish a need locally, which we had to take into account through the GTAA process. Whilst these are mitigating circumstance the failure of policy to identify a 5 year supply of deliverable sites is a significant negative parts of the balance. Moreover, Inspectors in some housing cases are reluctant to allow LPA’s to rely on the tardy emergence of local plan policy as a reason for not granting permission where the requirement for a 5 year land supply has not been met.

Nevertheless in the context of the circumstances and history of this particular case it is important that the due process involved with the emergence and adoption of a newlocal plan and the associated alternative site selection is allowed to run its course. Despite the quantum of unmet need it is still reasonable to exhaust the process of trying to find a non-green belt site for a gypsy and traveller site before turning to Green Belt sites. Moreover it is clear from the Inspectors reasoning that the Kites Nest site is set within area which is particularly open and free from encroachment and its rural character has been fully acknowledged such that the appeal was conclusively dismissed.

The Secretary of State agreed with the Inspector's view that a decision to dismiss the appeal would inevitably lead to the eviction of the families in occupation, and so would interfere with their home and family life . There is nothing new in the planning balance to change the judgments on human rights issues. The legitimate aim of protecting the green belt and the countryside can only be adequately safeguarded by refusal of permission and that, on balance, the dismissal of the appeals would not have a disproportionate effect on the families concerned.

Summary/Conclusion.

The proposals constitute inappropriate development with the West Midlands Green Belt as set out in the National Planning Policy Framework and so is harmful by definition. There would also be encroachment and harm to the openness of this part of the Green Belt resulting from both the change of use and erection of buildings inherent with a gypsy caravan site. This together with the significant harm to the character and appearance of Arden Regional Character Area and component Ancient Arden and Arden Parklands landscape type as defined by the Warwickshire Landscape Guidelines amount to substantial other harm which cannot satisfactorily be mitigated by the proposed concept landscaping scheme

On the other side of the balancing exercise it is accepted that there is a quantified and unmet need for permanent gypsy and traveller pitches in Warwick District contrary to national policy and that some of the personal circumstances of some of the applicants need to be given some weight. However it is appropriate to allow the emerging Warwick District Local Plan process to run its course since there is a likelihood that need could be met either on sites outside the green belt or if necessary less attractive sites within the green belt. It is considered that such factors do not amount to very special circumstances that clearly outweigh the policy presumption against the identified harm to the Green Belt

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