

Delegated Report

Planning Ref: 23/00499/CONDIT

Applicant: Mr M Cash

Ward: Hinckley Trinity



Hinckley & Bosworth
Borough Council

Site: Five Acres Rogues Lane Hinckley

Proposal: Variation of Condition 2 and 6 of planning permission APP/K2420/C/15/3132569 (15/00145/UNUSEH). Amendment for 6 additional pitches and the provision of a day room at a residential gypsy and traveller caravan site.

1. Recommendations

1.1. Grant planning permission subject to:

- Planning conditions outlined at the end of this report.

2. Planning application description

- 2.1. Section 73 of the Town and Country Planning Act 1990 allows applications to be made for permission to develop without complying with a condition previously imposed on a planning permission.
- 2.2. In this case, the application site received planning permission to be utilised as a mixed-use site comprising of a residential gypsy and traveller caravan site and the keeping of horses via an informal hearing appeal decision, APP/K2420/C/15/3132569, which quashed the enforcement notice, 15/00145/UNUSEH. The appeal permitted two residential pitches within the 2 hectare application site.
- 2.3. Condition 02 of this appeal decision stated that:
- “There shall be no more than 2 pitches on the site. Neither pitch shall, at any time, contain more than 2 caravans or more than one static caravan (with a caravan being as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968).”*
- 2.4. Condition 06 of this appeal decision required that:
- “Within 3 months of the date of this decision, details shall be submitted to the Local Planning Authority of the part of the site to be used for the residential gypsy and traveller caravan site. This part shall not exceed 0.2ha. Caravans shall thereafter be sited in that part of the site only and no caravans shall be sited on any other part of the site.”*
- 2.5. This application seeks planning permission for the variation of Condition 02 and Condition 06 for the development of six additional residential pitches and a day room within the site. This application therefore increases the capacity of the site from two residential pitches to eight and incorporates a day room within the site.
- 2.6. The day room externally measures 21m in width x 11.6m in depth, with a total footprint of 189.1sqm. The structure utilises a pitched roof that has a ridge height of 4m, and an eaves height of 2.3m.

2.7. The original planning agent for the application has suggested that a previous variation of conditions application has allowed for the provision of a third residential pitch within the site. However, this additional residential pitch was refused via planning application 17/00248/CONDIT.

2.8. The description of the application has been altered to include the provision of the dayroom.

3. Description of the site and surrounding area

3.1. The 2ha application site is located to the north of, but outside of the identified settlement boundary of Hinckley within the designated open countryside. The site is bordered by Rogues Lane to the north and Middlefield Lane to the east, but beyond these roads is open agricultural fields. A Public Right of Way (PRoW), Footpath T60, borders the western boundary to the site. There are also farmsteads located in close proximity to the site such as Westmoreland Farm to the north, Cold Comfort Farm to the southeast, and Hinckley Fields Farm to the southwest.

3.2. Rogues Lane is an adopted but unclassified road subject to the National Speed Limit. In 2016, despite the contentious background of Middlefield Lane, the Local Highway Authority confirmed that they consider the route to be a highway, however there is insufficient evidence to support the view that the highway is adopted.

4. Relevant planning history

4.1 20/01245/CONDIT

- Removal of condition 4 of planning permission APP/K2420/C/15/3132569
- Permitted
- 23.02.2021

4.2 17/00248/CONDIT

- Variation of Condition 2 of appeal reference APP/K2420/C/15/3132569 for the addition of one static mobile home.
- Refused
- 15.09.2017

4.3 APP/K2420/C/15/3132569

- Unauthorised change of use of land from agriculture to use as a residential gypsy and traveller caravan site.
- Allowed
- 10.08.2016

5. Publicity

5.1. The application has been publicised by sending out letters to local residents. A site notice was also posted within the vicinity of the site.

5.2. One member of the public formally objected to the scheme due to highways concerns caused by the absence of off-street parking provision and additional traffic from the development.

5.3. No further responses have been received.

6. Consultation

6.1. There have been no objections from the following consultants:

- Hinckley & Bosworth Borough Council (HBBC)'s Pollution Officer

- 6.2. On 24 August 2023, the Local Highway Authority objected to the variation of Condition 02 due to the restrictions the existing brick wall has on the visibility splays of the site access. The LHA have confirmed that if the Applicant can demonstrate 2.4m x 17m visibility splays on either side of the access, they will reconsider their objection.
- 6.3. On 25 August 2023, the Applicant reduced the existing brick wall pillars to a height of 0.6m and cut back the existing hedgerow. As a result, the LHA confirmed on 30 August 2023 that they have no objection to the variation of Condition 02.
- 6.4. Leicestershire County Council's Gypsy Liaison Officer did not comment on the application.
- 6.5. No further responses have been received.

7. Policy

- 7.1. Core Strategy (2009)
- Policy 18: Provision of Sites for Gypsies, Travellers and Travelling Showpeople
- 7.2. Site Allocations and Development Management Policies (SADMP) DPD (2016)
- Policy DM1: Presumption in Favour of Sustainable Development
 - Policy DM4: Safeguarding the Countryside and Settlement Separation
 - Policy DM6: Enhancement of Biodiversity and Geological Interest
 - Policy DM7: Preventing Pollution and Flooding
 - Policy DM10: Development and Design
 - Policy DM17: Highways and Transportation
 - Policy DM18: Vehicle Parking Standards
- 7.3. National Planning Policies and Guidance
- National Design Guide (2019)
 - National Planning Policy Framework (NPPF) (2021)
 - Planning Policy for Traveller Sites (PPTS) (2015)
 - Planning Practice Guidance (PPG)
- 7.4. Other Relevant Guidance:
- DCLG Designing Gypsy and Traveller Sites: Good Practise Guide
 - Good Design Guide (2020)
 - Gypsy and Traveller Accommodation Needs Study (2016)
 - Hinckley and Bosworth Landscape Character Appraisal (2017)
 - Leicestershire Highway Design Guide (2020)

8. Appraisal

- 8.1. This application should be read in conjunction with the previously approved appeal APP/K2420/C/15/3132569. The principle of the development, whether the distance to services places undue reliance on the use of the private car have already been considered during the determination of this permission.
- 8.2. Therefore, the main issues for consideration in respect of this application are:
- Design and impact upon the character of the area.
 - Other Issues.
 - Conditions.

Design and Impact upon the Character of the Area

- 8.3 Section 5 of the National Planning Policy Framework (NPPF) states that, to support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, and that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay.
- 8.4 Within this context, Paragraph 62 of the NPPF states that the size, type, and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies (including, but not limited to, those who require affordable housing, families with children, older people, students, people with disabilities, service families, travellers, people who rent their homes, and people wishing to commission or build their own homes.
- 8.5 Policy 18 of the adopted Core Strategy sets out the criteria for the provision of sites for gypsies, travellers, and travelling show people. However, this policy is largely superseded by the Planning Policy for Traveller Sites (PPTS) (2015). Therefore, the targets for residential pitches that are identified within Policy 18 of the adopted Core Strategy are considered to be out-of-date.
- 8.6 Planning Policy for Travellers Sites (PPTS) (2015) sets out how traveller's housing needs should be assessed for those covered by the definition in Annex 1 of that document.
- 8.7 Paragraph 24 within Policy H of the PPTS states that Local Planning Authorities should consider the following issues amongst other relevant matters when considering planning applications for traveller sites:
- (a) The existing level of local provision and need for sites.
 - (b) The availability (or lack) of alternative accommodation for the Applicants.
 - (c) Other personal circumstances of the Applicant.
- 8.8 It is accepted that since 2016 there has been limited additional gypsy and traveller accommodation granted in the Borough.
- 8.9 The Council's most up-to-date Gypsy and Traveller Needs Assessment (2016) identified a need for seven pitches, including the two existing pitches within this site, and a supply of seven pitches. However, evidence on the need for gypsy and traveller accommodation remains to be updated.
- 8.10 Paragraph 25 of PPTS states that local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. Local planning authorities should ensure that sites in rural areas respect the scale of, and do not, dominate, the nearest settled community, and avoid placing an undue pressure on the local infrastructure.
- 8.11 Outside the defined settlement boundaries, the countryside is not regarded as a sustainable location for development. Section 15 of the NPPF requires planning policies and decisions to conserve and enhance the natural and local environment. Paragraph 174(b) specifically highlights that this should be achieved by, "Recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services."

- 8.12 This is supported by Policy DM4 of the SADMP, which states that the Council will protect the intrinsic value, beauty, open character, and landscape character of the countryside from unsustainable development.
- 8.13 Policy DM4 of the SADMP only considers development in the countryside sustainable where:
- (a) It is for outdoor sport or recreation purposes (including ancillary buildings) and it can be demonstrated that the proposed scheme cannot be provided within or adjacent to settlement boundaries; or
 - (b) The proposal involves the change of use, re-use or extension of existing buildings which lead to the enhancement of the immediate setting; or
 - (c) It significantly contributes to economic growth, job creation and/or diversification of rural businesses; or
 - (d) It relates to the provision of stand-alone renewable energy developments in line with Policy DM2: Renewable Energy and Low Carbon Development; or
 - (e) It relates to the provision of accommodation for a rural worker in line with Policy DM5 - Enabling Rural Worker Accommodation”.
- 8.14 Importantly, Policy DM4 also requires that development meets five further requirements to be considered as sustainable development. These is discussed in detail further in the report.
- 8.15 The proposed development does not relate to, or comply with, any of the criteria above in either Policy DM4 of the SADMP, but this does not mean that the development is not sustainable.
- 8.16 Nevertheless, Policy DM4 of the SADMP states that development in the countryside will be considered sustainable where:
- i.) It does not have a significant adverse effect on the intrinsic value, beauty, open character, and landscape character of the countryside; and
 - ii.) It does not undermine the physical and perceived separation and open character between settlements; and
 - iii.) It does not create or exacerbate ribbon development.
 - iv.) If within a Green Wedge, it protects its role and function in line with Core Strategy Polices 6 and 9; and
 - v.) If within the National Forest, it contributes to the delivery of the National Forest Strategy in line with Core Strategy Policy 21.
- 8.17 Policy DM10 of the adopted SADMP seeks to ensure that development complements or enhances the character of the surrounding area with regard to scale, layout, density, mass, design, materials and architectural features and that the use and application of building materials respects the materials of existing adjoining/neighbouring buildings and the local area generally.
- 8.18 In 2016, the Planning Inspector found that the temporary planning permission for residential pitches in this application site caused harm to the character and appearance of the area and to the aims of sustainability as a result of the reliance for the occupiers of the site. However, on balance, the benefit of providing accommodation for the families, particularly the children (including an unborn child) outweighed the harm identified, and so a temporary planning permission was granted. As a result of this decision, the harm to the landscape and the aims of sustainability had, to some extent, been accepted when the temporary permission was issued for a five-year period.

- 8.19 In 2021, the site received planning permission via 20/01245/CONDIT to enable the site to be permanently occupied as a gypsy and traveller residential site for up to two residential pitches. Therefore, in these site-specific circumstances, the need to provide accommodation for families within two residential pitches was considered to outweigh the harm to the countryside.
- 8.20 At the time of the determination of this application, this residential use has now been in situ for over eight years. Whilst the presence of additional residential pitches within the site is likely to cause further harm the character and appearance of this rural area, the mature boundary hedgerows that surround the site shield long distance views into the site. Therefore, the harm to the countryside is considered to be localised to within the application site, and to the views of it from its access onto Middlefield Lane.
- 8.21 Furthermore, although the proposed dayroom has a large footprint, the structure provides facilities for up to eight residential pitches, that each include one static caravan and one touring caravan. On balance, the harm to the countryside of one day room for these residential pitches is likely to be less than eight individual dayrooms for each pitch. Given the limited massing of the property, and the existing limited localised harm of the use of the site, the dayroom building is not considered to significantly exacerbate the application's site's detrimental impacts to the countryside.
- 8.22 Therefore, given the existing approved use of the site, its character, and its existing boundary treatment, the provision of six additional residential pitches and a dayroom building is not considered to result in significantly more harm to the countryside than the existing development does.
- 8.23 Furthermore, the provision of gypsy and traveller accommodation on the site is considered to help meet a likely need in the Borough, which will be calculated as part of the emerging Local Plan.
- 8.24 By virtue of these factors, the proposal is considered to be acceptable and in accordance with Policies DM4, and DM10 of the adopted SADMP.

Other issues

- 8.25 Given the existing use of the site and its siting in relation to nearby residential properties, the development is not considered to result in significant adverse impacts on neighbouring residential amenity, or off-street parking provision. In addition, the Planning Inspector considered that there was adequate visibility at the junction of Middlefield Land with Rogues Lane based on the recorded speeds of passing traffic. It is also noted that the Local Highway Authority have not recorded any Personal Injury Collisions (PICs) along Rogues Lane within the last five years. Therefore, it is considered that the development does cause significant harm to highway safety, and given the above, the development remains compliant with Policies DM10, DM17 and DM18 of the SADMP.

Conditions

- 8.26 Appeal decision APP/K2420/C/15/3132569 was subject to 10 conditions.

- 8.27 Condition 01 ensured that the site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1 of *Planning Policy for Traveller Sites* (dated August 2015). The Applicant has not made any requests for this condition to be revised, and therefore this condition still remains reasonable and necessary.
- 8.28 Condition 02 requires amending to refer to eight pitches rather than two pitches.
- 8.29 Condition 03 states that there shall be no commercial activities undertaken at the site, including the external storage of goods or material not ancillary to the residential use or the keeping of horses, and no vehicles over 3.5 tonnes shall be stationed, parked, or stored on the site. The Applicant has not made any requests for this condition to be revised, and therefore this condition remains reasonable and necessary in the interests of visual amenity and protecting the intrinsic value, beauty, open character, and landscape character of the countryside.
- 8.30 Condition 04 limited the use of the site to a period of five years. This condition has since been removed via planning permission 20/01245/CONDIT and is no longer necessary or required.
- 8.31 Condition 05 required details of a scheme for the restoration of the land at the end of the period stated within Condition 04, alongside a timetable for the undertaking of those works, to be submitted within three months of the date of the appeal decision to be submitted to the Local Planning Authority. This condition was removed by planning permission 20/01245/CONDIT and is no longer required.
- 8.32 Condition 06 required details of the parts of the site that were utilised for the residential uses. This condition has since been removed via planning permission 20/01245/CONDIT and is no longer required.
- 8.33 Condition 07 required details within three months of the appeal decision regarding the external lighting, fencing, drainage, landscaping, and hard surfacing, together with a timetable for the implementation of each of these elements, to be submitted to the Local Planning Authority. This condition was removed within planning permission 20/01245/CONDIT and is no longer required.
- 8.34 In accordance with planning permission 20/01245/CONDIT, Condition 08 has been amended to require visibility splays of 2.4m x 17m to be maintained on either side of the site access to the track and must thereafter be kept clear of any obstruction greater than 0.6m in height above the carriageway track. This condition remains reasonable and necessary in the interests of highway safety.
- 8.35 Condition 09 stated that there shall at all times be provision on site for vehicles to enter and leave the site in a forward gear. This condition remains reasonable and necessary in the interests of highway safety.
- 8.36 Condition 10 required vehicular access to the residential gypsy and traveller caravan site to only be from the track. This remains reasonable and necessary in the interests of highway safety.
- 8.37 Therefore, all the conditions remain reasonable and necessary to ensure satisfactory development of the site.

- 8.38 However, two additional planning conditions are required to ensure that the proposed dayroom is built in accordance with the approved plans, and to ensure that the dayroom is only utilised as an amenity block and not for further residential accommodation. These conditions are considered to be reasonable and necessary in the interests of visual amenity and protecting the intrinsic value, beauty, open character, and landscape character of the countryside.

9. Equality implications

- 9.1 Section 149 of the Equality Act 2010 created the public sector equality duty. Section 149 states:-

- (1) A public authority must, in the exercise of its functions, have due regard to the need to:
- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

- 9.2 Officers have taken this into account and given due regard to this statutory duty, and the matters specified in Section 149 of the Equality Act 2010 in the determination of this application.

- 9.3 The equality implications arising from this application relate to persons with protected characteristics as identified within the Equality Act 2010. This has been addressed in the assessment of this application by having regard to the National Planning Policy Framework (2021), Planning Policy for Traveller Sites (2015), and National Guidance (Designing Gypsy & Traveller Sites, Good Practise Guidance), and other National Guidance.

- 9.4 The decision has been taken having regard to all relevant planning legislation, regulations, guidance, circulars and Council policies, including General Data Protection Regulations (2018) and The Human Rights Act (1998) (HRA 1998) which makes it unlawful for the Council to act incompatibly with Convention rights, specifically Article 6 (right to a fair hearing); Article 8 (right to respect for private and family life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).

10. Conclusion

- 10.1. The proposed development is considered to be compliant with Policies DM1, DM4, DM10, DM17 and DM18 of the SADMP, Policy 1 of the adopted Core Strategy and relevant national as it:

- Does not have an adverse impact upon the character and appearance of the area.
- Does not have a significant adverse impact upon the amenity of neighbours.
- Does not affect the sufficient provision of off-street vehicle parking.

- 10.2. Taking national and local planning policies into account, and regarding all relevant material considerations, it is recommended that planning permission is granted, subject to amended conditions. No additional conditions are considered necessary.

11. Recommendation

- 11.1 **Grant planning permission** subject to:

- Planning conditions outlined at the end of this report.

11.2 Conditions and Reasons

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

Reason: To ensure compliance with Policy 18 of the adopted Core Strategy (2009).

2. There shall be no more than 8 pitches on the site. No pitch shall, at any time, contain more than 2 caravans or more than one static caravan (with a caravan being as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968).

Reason: In the interests of visual amenity and to safeguard the intrinsic value, beauty, open character, and landscape character of the open countryside in accordance with Policies DM4 and DM10 of the Site Allocations and Development Management Policies Development Plan Document (2016), the Good Design Guide, and Section 15 of the National Planning Policy Framework (2021).

3. There shall be no commercial activities undertaken at the site, including the external storage of goods or materials not ancillary to the residential use or the keeping of horses, and no vehicles over 3.5 tonnes shall be stationed, parked or stored on the site.

Reason: In the interests of visual amenity and to safeguard the intrinsic value, beauty, open character, and landscape character of the open countryside in accordance with Policies DM4 and DM10 of the Site Allocations and Development Management Policies Development Plan Document (2016), the Good Design Guide, and Section 15 of the National Planning Policy Framework (2021).

4. Visibility splays shall be maintained to either side of the access to the track of 2.4 metres by 17 metres and these shall be kept clear of any obstruction greater than 0.6m in height above the carriageway of the track.

Reason: In the interests of general highway safety and in accordance with Policy DM17 of the Site Allocations and Development Management Policies DPD (2016) and Paragraphs 108 and 110 of the National Planning Policy Framework (2019).

5. There shall at all times be provision on site for vehicles to enter and leave the site in forward gear.

Reason: To ensure that vehicles entering and leaving the site may do so in a forward gear in a slow and controlled manner, in the interests of general highway safety and in accordance with Policy DM17 of the Site Allocations and Development Management Policies DPD (2016) and Paragraphs 108 and 110 of the National Planning Policy Framework (2019).

6. Vehicular access to the residential gypsy and traveller caravan site shall be from the track only.

Reason: In the interests of highway safety in accordance with Policy DM17 of the Site Allocations and Development Management Policies DPD (2016) and Paragraphs 108 and 110 of the National Planning Policy Framework (2019).

7. The development hereby permitted shall not be carried out otherwise than in complete accordance with the submitted application details, received by the Local Planning Authority as follows:
 - Proposed Day Room Floor Plans & Elevations (submitted: 20.06.2023)
 - Proposed Site Location Plan (submitted: 25.08.2023)

Reason: To ensure a satisfactory form of development in accordance with Policies DM1, DM6 and DM10 of the Site Allocations and Development Management Policies Development Plan Document (2016).

8. The proposed dayroom shall be used as an amenity building ancillary to the residential pitches within the application site only and for no other purpose.

Reason: To ensure a satisfactory form of development in accordance with Policies DM1, DM6 and DM10 of the Site Allocations and Development Management Policies Development Plan Document (2016).

a. **Notes to Applicant:**

1. The approved development may require Building Regulations Approval, for further information please contact the Building Control team via e-mail at buildingcontrol@hinckley-bosworth.gov.uk or call 01455 238141.