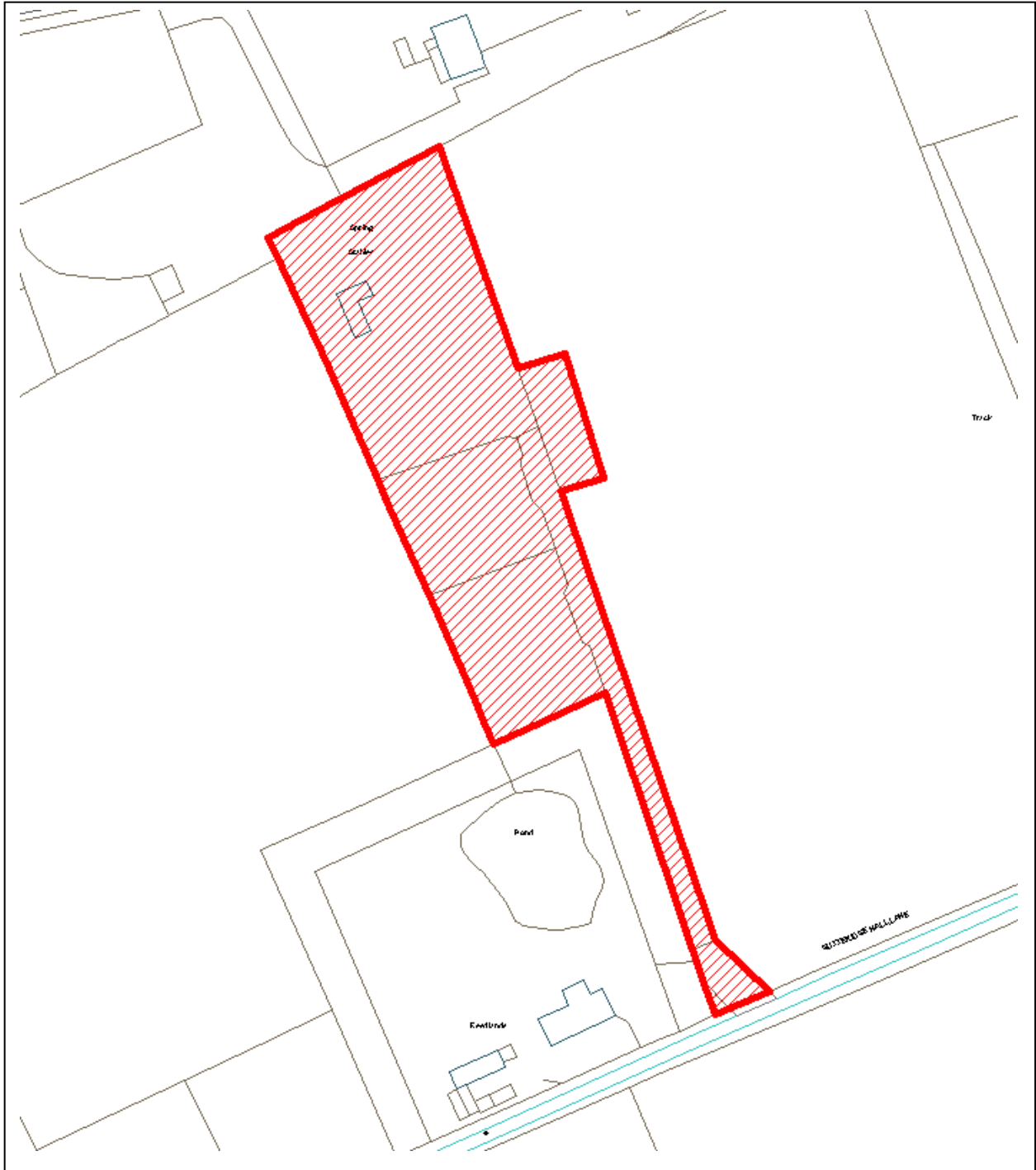


PLANNING COMMITTEE

28 JUNE 2011

REPORT OF THE TEMPORARY HEAD OF PLANNING

**A.5 PLANNING APPLICATION - 11/00475/FUL - SPRING STABLES, GUTTERIDGE HALL LANE, WEELEY**



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<b>Application:</b>	11/00475/FUL	<b>Town / Parish:</b> Weeley Parish Council
<b>Applicant:</b>	Mr T Doran	
<b>Address:</b>	Spring Stables Gutteridge Hall Lane Weeley	
<b>Development:</b>	Change of use of the land to a residential caravan site to include the stationing of caravans for 3 no. gypsy/traveller pitches and for the erection of utility/day-room buildings ancillary to that use on land.	

## 1. Executive Summary

- 1.1 Planning permission was granted on appeal for the development in June 2009, subject to conditions. This application is for the same development previously permitted. A new application is necessary because the site owner has failed to comply with conditions on the permission by the due date. Failure to comply means that technically the planning permission has lapsed so the applicant has reapplied. The submission of a new application is an appropriate mechanism for dealing with breaches of planning control and the current application needs to be considered on its planning merits. A copy of the Appeal Decision in respect of application 08/00960/FUL is appended to this report.
- 1.2 The appeal decision is a material consideration that carries significant weight. This needs to be considered in relation to any relevant material changes in planning circumstances since the decision. The main changes are i) the proposed abolition of regional strategies through the Localism Bill; ii) a consultation draft on the replacement guidance to Circular 1/2006 and iii) the consultation draft of the Council's Core Strategy and Development Policies Proposed Submission Document.
- 1.3 The main planning policy context remains unchanged from the previous application, namely Local Plan policies HG22, QL9, QL10, QL11, EN1, EN6 and TRN 1a, East of England Plan policy H3 and Circular 01/2006. The appeal inspector considered that when assessed against these policies that the development was acceptable.
- 1.4 Officers have had regard to the changes in the planning context for the consideration of this application but these do not materially alter the conclusion reached by the inspector and accordingly recommend that planning permission is granted.

### **Recommendation: Approve**

#### **Conditions:**

- Restricted to Gypsy-Traveller occupation;
- No more than two caravans (one mobile and one touring) stationed on each pitch at any one time;
- No more than three pitches;
- No sub-division of pitches;
- Submission of schemes for dealing with foul/surface water;
- Submission of site development scheme;
- No other structures;
- No commercial activities from the site;
- No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site;

- Materials of utility buildings to be submitted and approved;
- The site access shall be constructed to a width of 6m and shall be provided with an appropriate dropped kerb crossing at right angles to the highway carriageway;
- Any gates to open inwards and a minimum of 10m from the highway boundary.
- Existing access to adjoining field to be suitably and permanently closed;
- Details of hard and soft landscaping to be submitted.

**Reason for approval:**

The proposed change of use of land to include the stationing of caravans with utility/day-room buildings ancillary to that use and other ancillary engineering operations, including the formation of hardstandings, waste water treatment facility and the retention of existing access and driveway is considered to comply with policies HG22, QL9, QL10, QL11, COM31a, EN1, EN6 and TR1a of the Tendring District Local Plan (2007) and the guidance in ODPM Circular 01/2006 in terms of its location and impact on the amenities and rural character of the area. Regard has been had to the identified unmet need set out in policy H3 of the East of England Plan (2008) and Policy CP19 of the Core Strategy and Development Policies Proposed Submission Document (2010).

**2. Planning Policy**

National Policy:

PPS3 Housing

ODPM Circular 1/2006 Planning for Gypsy and Traveller Caravan Sites

DCLG Planning for traveller sites - consultation document (2011)

DCLG Designing Gypsy and Traveller Sites – Good Practice guide (2008)

Regional Planning Policy:

H3 Provision for Gypsies and Travellers

Accommodation for Gypsies and Travellers and Travelling Show people in the East of England - A Revision to the Regional Spatial Strategy for the East of England

Local Plan Policy:

The principle Local Plan policy is:

HG22 Gypsy Caravan Sites

Other relevant Local Plan policies are:

QL9 Design of New Development

QL10 Designing New Development to Meet Functional Needs

QL11 Environmental Impacts and Compatibility of Uses

COM31A Sewerage and Sewage Disposal

EN1 Landscape Character

EN6 Biodiversity

TR1A Development Affecting Highways

Core Strategy and Development Policies Proposed Submission Document (2010)

CP19 Gypsies and Travellers

Other guidance

Essex Gypsy and Traveller Accommodation Assessment (GTAA) 2009

### **3. Relevant Planning History**

08/00960/FUL	Change of use of land to include the stationing of caravans with utility - day-room buildings ancillary to that use and retaining the existing use of the land for stabling horses.	Refused - appeal allowed	31/10/2008 17/06/2009
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### **4. Consultations**

- 4.1 The Highway Authority raises no objections subject to the closure of two field access to the land adjoining the application site. The authority has clarified its position following queries from local residents. There are no objections to the continued use of the access to the site from Gutteridge Hall Lane.
- 4.2 Environment Agency – no response. An update will be given at the meeting.
- 4.3 Environmental Services – no response
- 4.4 Weeley Parish Council - objects to the application on the grounds that the plot sizes are much larger than approved at the planning inquiry.

### **5. Representations**

12 individual letters and a 101 signature petition objecting to the application on the following grounds:

- The proposed site layout shows pitches that are larger than in the original application and larger than suggested in Core Strategy policy. This could lead to an increase in use;
- Stable block converted to an amenity block and will not be converted back;
- Registered as 5 -6 plots for Council tax purposes so the applicant is being dishonest in applying for only 3 pitches. This demonstrates that unauthorised infilling is already taking place;
- Original application not complied with so no other applications should be considered;
- Business apparently being run from the site without permission;
- Entrance to Gutteridge Hall Lane dangerous especially when there is school traffic. Allowing additional traffic would compromise the safety of children at the school infringing their rights under UN Convention;

- Query the consultation response from the Highway Authority in terms of the access points to be closed off;
- The applicant has no need for the site as he has property elsewhere. The site is also vacant for long periods;
- Question the status of the application;
- Land outside the village limits and would dominate the local community;
- The site is flooded during the winter and not capable of being occupied;
- No sewer connection and there is no intention of providing an alternative;
- Inappropriate location next to a school;
- Adverse impact on local infrastructure and residential amenity;
- Application gives no indication of the precise number of pitches applied for.

#### Comments on objections

- The Council has received a valid planning application for the development as proposed and must consider it on its planning merits as set out in the report.
- The description has been modified to refer to the number of pitches proposed and otherwise follows the wording adopted by the Inspector in her appeal decision.
- Many of the issues raised by local residents were considered at the public inquiry and addressed in the Inspector's appeal decision. These are addressed in the main report.
- The issue of plot sizes is addressed in more detail in the main report.
- The stable block does not form part of this application and is subject to separate enforcement investigations;
- Officers are not aware of any unauthorised business use of the site and no formal complaints have been made;
- The Highway Authority response is set out in the main report;
- A number of residents have queried the number of plots currently registered on the site for Council Tax purposes. Officers are aware that this is based upon information provided by the Council, but the specific details are understood to be confidential. However, from site visits undertaken by planning officers there is no evidence that the number of caravans allowed under the previous planning permission (2 per unit) has been exceeded. The current application is for three pitches each containing up to 2 caravans (including a mobile home). Should planning permission be granted than further investigations may be necessary to determine whether there is a sub-division of any of the plots into separate residential units. An appropriate condition is proposed to address this.

## **6. Assessment**

The main planning considerations are:

- Context and background
- Policy issues
- Principle of the proposed development
- Appeal decision
- Other material considerations

### **Context and background**

- 6.1 A planning application for this traveller site was refused in October 2008. A subsequent appeal was allowed following a public inquiry. The Inspector concluded that *“The development would cause no unacceptable harm to the character and appearance of the surrounding area, no harm to the living conditions of nearby occupiers and no harm to highway safety or the other matters identified. Accordingly, the development would comply with the criteria set out in policy HG22 of the Tendring District Local Plan and with the advice in Circular 1/2006.* This decision is a material consideration that carries significant weight in the determination of this application. A copy of the Appeal Decision in respect of application 08/00960/FUL is appended to this report.
- 6.2 Conditions attached to the decision required, amongst other things the submission of a site development scheme, which was to be implemented within an agreed timetable. The scheme included matters such as landscaping, access improvements, fencing and drainage. A further condition required the removal of structures and clearance of the site within 28 days of failure to comply with the condition. The period for the implementation of the site development scheme ended on 24<sup>th</sup> March 2011 without the scheme having been fully implemented. In particular, the landscaping, drainage and access works had not been completed as approved. Since that date the access and fencing works have been implemented. A foul water drainage scheme has been installed but not in accordance with the approved details. The current application was received within the 28-day period following the deadline. The application needs to be considered on its planning merits in accordance with the relevant policies and other material considerations as set out in this report.

### **Location and site description**

- 6.3 The application site lies to the south west of Weeley station in an area that is rural in character and outside of the settlement limits of both Weeley and Weeley Heath. The site is located on the north side of Gutteridge Hall Lane and amounts to 0.5 hectares. There are a number of residential properties in Gutteridge Hall Lane, mainly near to its junction with Clacton Road as well as a primary school, including playing fields.
- 6.4 The site is reached by a new surfaced access track from Gutteridge Hall Lane, which is fenced with a post and rail fence. The site has been laid out in accordance with the previous planning permission with three pitches. The pitches have been set back from Gutteridge Hall Lane along the western boundary of the site with 1.5 metre close-boarded fencing between each pitch. All the pitches have been surfaced with granular material. The pitch closest to the access is about 1,050m<sup>2</sup>, the middle pitch about 860m<sup>2</sup> with the final pitch being in excess of 1,350m<sup>2</sup>. This incorporates a building permitted as a stable block, which has since been converted into living accommodation. There is no planning permission for this change of use. The area where caravans have been located is enclosed by a 2-metre high close-boarded fence and there are a total of four caravans on site. None of the amenity blocks/day rooms have been constructed.
- 6.5 Beyond the pitches, between the site and the school playing field is an area of open grassland under the ownership of the applicant. Access is gained to this land via a separate access of Gutteridge Hall Lane. An additional access has recently been formed to this land from the highway. The site access runs along the boundary of a residential property known as Reedlands. To the north of the site is another property, Starena Lodge at the end of a

short track to the south of the Colchester-Clacton/Walton railway line. The property is in a derelict condition and is unoccupied. On the north side of the railway line is the Charles Caravan Park.

### **Proposal**

6.6 A change of use of land (including operational development) for the stationing of caravans and mobile homes for 3 no. gypsy pitches, including the construction of access, utility/day rooms and other ancillary works. The development also includes the erection of a close-boarded fence around the pitches, provision of hardstanding and soakaway/waste water treatment area. Much of the development has already been completed, including the layout of the site, formation of a new, gated access and tarmac driveway. This application has become necessary because of the failure to comply with conditions imposed by the planning inspector in respect of the site development scheme. It seeks planning permission for the same development as granted on appeal.

### **Policy Considerations**

6.7 The main policy context remains the same as that considered by the Inspector in her appeal decision; namely Local Plan policies HG22, QL9, QL10, QL11, EN1, EN6 and TRN 1a; East of England Plan policy H3 and Circular 01/2006. However, there have been some changes to the policy context that are material to the consideration of this application. Officers consider that they provide support for the conclusions reached by the appeal Inspector and do not materially alter her conclusions. However, it will be a matter for members to decide how much weight should be attached to them.

6.8 The Localism Bill is currently going through Parliament and is due to become law later this year. The Bill proposes the abolition of Regional Strategies so that the targets set out in policy H3 following the single issue review would no longer apply. Following a number of court cases it has been determined that the Regional Strategies remain part of the development plan until such time as they are abolished and appropriate weight should be given to their policies. However, the intention to abolish is also a material consideration, but officers consider that little weight should be given to this.

6.9 The Core Strategy and Development Policies Proposed Submission Document was published after the Inspector's decision. Policy CP19 sets out the Council's approach to meeting the accommodation needs of gypsies and travellers. This policy is a material consideration which can be given some weight given that no objections have been raised during the consultation period. The requirement for future pitches set out in the policy is based upon the Essex Gypsy and Traveller Accommodation Assessment (GTAA) rather than the regional figures in policy H3. It identifies a requirement for 8 further pitches, although this needs to be readjusted to 10 to take account of the lapse of planning permission at the application site and a permission recently granted elsewhere. Whilst the Core Strategy uses locally derived figures rather than those in the Regional Strategy, policy H3 of the East of England Plan is still relevant. This identifies a requirement for an additional 15 pitches 2006 - 2011, which would increase to 17 with the adjustments referred to above. Beyond that to 2021 a further 13 pitches are required.

6.10 Officers consider that the figures in the Essex GTAA give a better indication of actual local need rather than the figures in policy H3, which are an apportionment of a regionally assessed need. However, whichever figures are used there is a significant unmet need for further pitches within the district.

6.11 Earlier this year the Government published its consultation draft on the replacement for Circular 1/2006. Whilst it is a draft document on consultation, some limited weight can be attached to it. However, the Circular will remain the main policy guidance until it is formally

replaced. One of the stated purposes of the draft policy statement is to increase the provision of traveller sites to meet the identified need and thus reduce the likelihood of unauthorised encampments. To achieve this objective local authorities will need to set targets in their development plan for 'pitches for gypsies and travellers to address their accommodation needs. The draft also lists matters to be considered when determining applications, which include: i) the existing level of local provision and need for sites; and ii) the availability (or lack) of alternative accommodation for the applicants. Policy CP19 of the Submission Document already covers a number of the matters set out in the draft planning policy statement, but may need to be updated to reflect the new policy statement once Circular 1/2006 has been replaced.

### **Principle of the proposed development**

- 6.12 Local authorities have a statutory duty through the 2004 Housing Act to address the needs of gypsies and travellers, where possible, by making land available for their occupation. It is also one of the Government's key objectives for planning for housing, under Planning Policy Statement 3 (Housing), to ensure that everyone has the opportunity of living in a decent home, and this is reiterated in the Council's own corporate priorities of providing affordable and decent housing for everyone.
- 6.13 National advice on the location of gypsy and traveller sites is given in ODPM Circular 01/2006. The Circular states that "*Gypsies and Travellers are believed to experience the worst health and education status of any disadvantaged group in England*". It further states that "*a more settled existence can prove beneficial to some gypsies and travellers in terms of access to health and education services, and employment, and can contribute to greater integration and social inclusion within local communities.*" Whilst sites on the outskirts of settlements may be appropriate from a sustainability point of view, sites in rural or semi-rural settings should also be considered.
- 6.14 The application site is located outside of any defined settlement limits where new development is strictly controlled and where residential caravans would not normally be permitted. However, gypsy and traveller proposals may be acceptable in such locations in accordance with the guidance in the Circular subject to meeting the criteria set out in Local Plan policy HG22 and Core Strategy policy CP19.

### **Appeal Decision**

- 6.15 The Council refused the 2008 application as being contrary to criteria (v) and (vi) of Local Plan policy HG22 and criterion (ii) of Local plan policy QL11. In her appeal decision, the Inspector also took account of Local Plan policies QL9, QL10, EN1, EN6 and TRN1a. The Inspector considered the following main matters:
- Impact on the character and appearance of the area;
  - Impact on living conditions of nearby occupiers
  - Highway safety;
  - Ecology;
  - Flooding;
  - Location of the development;
  - Need.

### **Character and appearance**

- 6.16 The Inspector concluded that the development "*would have minimal impact on the character and appearance of the surrounding area. This minimal impact would be capable of being mitigated by the imposition of suitable conditions.*" She considered that a gypsy and traveller site in this location would be acceptable in principle in accordance with the Circular. Whilst it



would be visible from some locations there is no requirement that it is hidden from view, however, she considered that the site would benefit from additional screening. This could be secured through an appropriate condition. Officers consider that this situation has not changed, however, further landscaping is still required which could be secured by condition with strict timescales as to its implementation.

### **Impact on living conditions of nearby occupiers**

6.17 The nearest residential property to the site is Reedlands which is next to the site access. Starena Lodge to the north of the site is currently derelict, but could be occupied following rebuilding. The main impact on residential amenity would be on these two properties, however, there are properties further down Gutteridge Hall Lane, which would be passed by site traffic. The impact from this is of concern to local residents. The Inspector considered these impacts, but concluded that the *“development would not harm the living standards of surrounding occupiers”*. In considering the possible impacts she took into account the estimated level of traffic movement to and from the site of 18-30 per day. She considered that this impact was acceptable. Officers are not aware of the traffic levels achieved since the decision, but as the use of the site was for residential purposes, a significant level of traffic generation would not be expected.

### **Highway safety**

6.18 Highway safety was also considered by the Inspector who concluded that the development would not harm highway safety. She referred to the advice in Circular 1/2006 that proposals for gypsy and traveller sites should not be rejected if they would only give rise to modest additional daily vehicle movements and/or the impact on minor roads would not be significant. There are no objections from the Highway Authority. Officers consider therefore, that there has been no material change from the position found acceptable by the Inspector.

### **Ecology and flooding**

6.19 In terms of the impact on ecology and flooding the situation has not changed. The Inspector concluded that the proposals would not conflict with Local Plan policies QL10 or EN6 subject to appropriate conditions. However, objectors have raised the issue of site flooding and officers consider that this could be addressed by an appropriate condition.

### **Location of development**

6.20 Concerns were raised at the public inquiry regarding access to local services. Policy HG22 and policy CP19 seek to ensure that new sites are reasonably accessible to local services. The Inspector refers to the guidance in Circular 1/2006 in her decision in this regard. The advice is that issues of sustainability should take in wider considerations other than transport mode and distances from services. Whilst in a rural area the site is reasonably close to public transport links and local services in Weeley. The Inspector concluded that the site met the guidance in the Circular and would not conflict with the aims of policy HG22.

### **Need**

6.21 The Inspector considered that the appellant (applicant) and his extended family had a need for a site. She also referred to the Council's timescale for the adoption of a Site Allocations Development Plan Document (DPD) and that the Council would not meet the target for 2011 set out in policy H3 of the regional strategy. This position remains the same and whether the regional or locally derived figures are used there remains an unmet need for the provision of new sites. In the Inspector's words *“the appellant's and his extended family's need for a site and the general need for gypsy sites in the District are factors which weigh in favour of the development.”*

- 6.22 The final conclusion of the Inspector was as follows:” *I conclude that the development would cause no unacceptable harm to the character and appearance of the surrounding area, no harm to the living conditions of nearby occupiers and no harm to highway safety or the other matters identified. Accordingly, the development would comply with the criteria set out in policy HG22 of the Tendring District Local Plan and with the advice in Circular 1/06. In addition, the general need for gypsy sites in the District and the appellant’s, and his extended family’s, need for a site and their educational and health needs provide some weight in favour of the appeal.*”
- 6.23 The main policy considerations for the current application are the same as those considered by the Inspector. The changes to the policy context set out earlier in this report do not materially affect this. Therefore, as the Inspector’s decision is recent and relates to the same material planning considerations it should be afforded very significant weight.

### **Other considerations**

#### **Gypsy and Traveller Status**

- 6.24 When assessing an application for a gypsy and traveller site, it is important to assess whether the potential resident(s) meets the planning definition of a Gypsy or Traveller as set out in Paragraph 15 of Circular 01/2006 (and Para 4.181 of the Local Plan).
- 6.25 The definition of a gypsy or traveller is:-

*‘Persons of nomadic habit of life whatever their race or origin, including such persons who on the grounds only of their own or their family’s or dependents educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling show people or circus people travelling together as such.’* The applicant and his wider family meet this definition.

#### **Pitch layout**

- 6.26 Guidance in respect of pitch layout is as set out in the Department of Communities & Local Government ‘Designing Gypsy and Traveller Sites – A Good Practice Guide’ published in May 2008.
- 6.27 The DCLG guidance advises that an average family pitch must be capable of accommodating an amenity building, a large trailer and touring caravan (or two trailers, drying space for clothes, a lockable shed), parking space for two vehicles and a small garden area. The layout of the proposed pitches meets the standards set out in the guide, including the separation distances as a fire prevention measure. The guide does not specify the size that is appropriate for individual pitches. Policy CP19 suggests a figure of 250m<sup>2</sup>, which is based upon guidance for regional reviews of gypsy and traveller site provision. The later good practice guide advises that..” *there is no one-size-fits-all measurement of a pitch as, in the case of the settled community, this depends on the size of individual families and their particular needs.*” It goes on to suggest that with larger families (as in this case) larger pitch sizes may be required. This is because families with children approaching teenage years, are likely to need to supplement their accommodation with one or two additional small touring caravans on the pitch as separate sleeping accommodation, until their children are old enough to move on to a separate pitch. Some families may also be in possession of larger mobile homes, which may require a larger pitch size to ensure adequate manoeuvring space.
- 6.28 The pitch sizes proposed in this case are significantly larger than the 250m<sup>2</sup> suggested in policy CP19. This is of concern to local objectors because of the risk of the plots being subdivided into additional pitches. Council Tax records are cited as evidence that this may

already have taken place, although there is no physical subdivision on the ground. The issue of pitch size was not one that the Inspector specifically refers to. This suggests that she considered the size appropriate. The application site area has not changed since the 2008 application, but the site layout plans show a different pitch configuration with larger pitches. The issue of pitch sub-division is one that can be addressed by condition; therefore, the main consideration is the impact of larger pitches on the character and appearance of the area. The appeal Inspector considered impact on character and appearance of the site as a whole and she did not find that there would be a significant impact. The site configuration as currently proposed would not be significantly different when viewed from outside the site; therefore, officers do not consider that the size of the pitch is a material issue. Clearly if any proposals for expanding the site were to come forward either as a planning application or through the Site allocations DPD, then issues of impact and the efficient use of land would need to be taken into account.

- 6.29 Electricity and water are the only mains services currently provided on the site. The site is not connected to any mains sewage system. Therefore, the application proposes that the foul sewage will be treated on site by a private sewage treatment plant. Officers consider that these service connections would meet the criterion and the requirements of policies COM29 and COM31a for sites to be connected to services.
- 6.30 Circular 03/99 sets out how non-mains sewage should be dealt with. The preference is always for discharge to a public sewer, if it can be demonstrated why this is not possible a treatment plant is the next preferred solution. A septic tank is the least preferred option because it is unsustainable, as it would rely on a third party emptying it and could have other impacts as set out in Paragraph 6 of the Circular for example pollution of the water environment and overloading.
- 6.31 No comments have been received from the Environment Agency on this issue but officers anticipate that details will be available for the meeting. Members should note however, that no objections were raised by the Environment Agency to a private sewage treatment plant in the 2008 application. The inspector considered such proposals acceptable.

### **Human Rights Issues**

- 6.32 Paragraph 70 of Circular 01/2006 states that the human rights of the applicant should be considered as part of a Local Authorities' decision. The consequences of refusing or granting a permission or taking enforcement action on the individuals concerned should be weighed against the impact of the proposal.
- 6.33 Article 8 of the Human Rights Convention gives the right to 'respect for private and family life, home and correspondence'. In this case the important issue to consider is the right to respect of home. In the event of this application being refused, the applicants would in effect lose their home and the resultant benefits, i.e. access to stable education and health facilities. It is therefore important that the Local Authority gives full consideration to the need of balancing the perceived impact or harm of the proposal, against the rights of the family with regard to their right to a home. However, consideration should also be given to the wider Human rights of the community which are capable of overcoming those of individuals. The Inspector did not address this issue as she allowed the appeal. Should members be minded to refuse permission then consideration must be given to human rights issues.

### **Background Papers**

None