

Item No.	Application No. and Parish	8/13 Week Date	Proposal, Location and Applicant
(1)	19/00031/FUL Woolhampton	29 th March 2019. Eot—19 th July 2019.	Retrospective application. Erection of 2 day rooms, 2 mobile homes, and 2 touring caravans, for occupation by gypsies/travellers. Creation of new access onto highway and hardstanding. Erection of fencing Land west of Hill place, Bath Road, Woolhampton Tammy Black and James Tombs

To view the plans and drawings relating to this application click the following link:

<http://planning.westberks.gov.uk/rpp/index.asp?caseref=19/00031/FUL>

Ward Member(s):	Councillor Graham Pask
Reason for Committee determination:	The Council has received in excess of 10 objections to the application
Committee Site Visit:	10th July 2019
Recommendation.	The Head of Development and Planning be authorised to GRANT planning permission

Contact Officer Details

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1. Site History

18/02751/FUL. Similar application to current one. Found to be invalid.

2. Publicity of Application

Site notice displayed. 6th February 2019. Expiry 27th February 2019.

Amended description –amended site notice—displayed 14th June 2019, expiry 5th July 2019.

3. Consultations and Representations

Woolhampton Parish Council	Objection. Work has already commenced on site. Application site is greenfield outside defined settlement boundary. Not a preferred gypsy site in the Local Plan. No change of use noted in the application description. No details of sewerage disposal and details of flooding. Two day rooms could become additional bedrooms. Has the Council given agreement for access onto the layby?
Highways	No objections to the application. The access, whilst retrospective, is acceptable, subject to conditions. Adequate space on site to satisfactorily accommodate parking and turning for the day rooms etc as proposed. Level of additional traffic movements is acceptable onto the A4 adjacent. Conditional permission is recommended.
Environment Agency	No objections. The application site does not lie in an area subject to any flooding risk, taking into account that caravan sites, being residential, are more vulnerable uses. [Officer comment-the land has been raised in any event]
Office for nuclear regulation	No safeguarding objections, unless the emergency planners indicate otherwise. [Officer note - no objections from our emergency officer.]
Thames Water	On the basis that no foul water or surface water will be discharged into the public network, TW have no objections. If this were to alter, TW should be re consulted. In addition mains water infrastructure crosses the site. No structures should lie within 3m of these mains.
SUDS	Request additional information be submitted to the Council before permission may be granted. Off- site drainage is important in the area given the proximity of two SSSIs. Applicant has submitted suds report - not adequate. Response awaited.
Planning policy	Comprehensive response on file. The report below sets out this in more detail. Notwithstanding the fact that the application site was greenfield outside any defined settlement boundary, given the Council requirement to allocate/permit additional pitches prior to the end of 2019, and the fact that the site generally complies with the advice in Policy TS3, the application may be approved [officer view].
Environmental Health - Licencing	The caravan site, if permitted will require a licence from the Council. Matters to be included are appropriate water supply, drainage, access, boundary treatment, electrical supply, noise from the A4, and from the rail line adjacent and domestic waste storage. The application site [without prejudice] is capable of being an acceptable site subject to the above provisions being met. ie no underlying objections.

Public representations	<p>36 objections have been received to the application, none in support.</p> <p>Concerns are as follows. Site was greenfield, is outside the settlement boundary of the village, flooding and drainage problems, why is the application retrospective? It is not an allocated housing site, nor is it a preferred area for a gypsy/traveller site. Extra traffic impact on layby. Application is currently unauthorised. Not acceptable - abuse of planning regulations. Could the site be extended into the future? Might become a commercial storage site in addition for business purposes. If permission is granted would set a precedent. What of the land to the west of the application site? Impact on surrounding amenity, visual impact in addition. Day rooms could become additional toilets and/or bedrooms in the future. The site location is inappropriate - lacks suitable facilities. Increased propensity for runoff pollution into River Kennet adjacent. Poor access. Highway safety compromised. Application should be refused.</p>
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4. Policy Considerations

National Planning Policy Framework 2019

National Planning Practice Guidance 2014.

DCLG—Planning Policy for Traveller Sites. August 2015.[PPTS]

Written Ministerial Statement on unauthorised encampments. August 2015.

MHCLG—Response of Government on powers for dealing with unauthorised development and encampments. February 2019.

West Berkshire Core Strategy 2006 to 2026.Policy CS7 –Gypsies, Travellers and Travelling Show people.

HSADPD of May 2017. Policy TS3.

5. Description of development

5.1. Firstly, to make it clear, the application is almost entirely retrospective as members who attended the site visit will have noted. Secondly, whilst the initial description of the application made no specific reference to the site being occupied by gypsies/travellers, this has now been rectified, and in addition, if the application is approved by the Committee this specific type of occupation will be clearly conditioned. In order to ensure no third party or consultee was disadvantaged by this amended description the Council formally re advertised the application by way of an amended site notice for three weeks - see above. The period has now expired.

5.2. The application site lies to the south of the existing layby adjacent the A4 in Woolhampton. It was a greenfield site, and remains outside the defined settlement boundary of the village. The site lies immediately adjacent to the approved affordable housing scheme recently completed. In addition it lies to the north of the existing rail line. The land has been raised and enclosed, with a new vehicular access off the layby as noted. On the site lies two mobile homes, two touring caravans and a shed. Two dayrooms are proposed in addition. Each dayroom will be single storey and have a toilet and utility area. The site will accommodate two families, who apparently own the site in question. The site is 55m in width and at its maximum, 40m in depth. In addition, although the site has been raised, it still lies at a considerably lower level than the layby to the north, but higher than the rail line to the south. Finally to the west of the application site lies open agricultural land. An existing hedgerow abuts the northern boundary, whilst fencing of approximately 2m in height surrounds the remainder of the site, which is to be further landscaped and the fence painted green should planning permission be granted.

5.3. The application site does not lie in any special landscape designation, such as the AONB or conservation area.

6. Consideration of the application

The application will be considered under the following matters.

1. Policy and principle.
2. Intentional unauthorised development
3. Comments on objectors concerns.
4. Human rights.

1. Policy and principle

6.1.1. In 2015 the Government published the PPTS [see above]. This sets out in some detail the national planning policy which Councils should adhere to in respect of determining planning applications for gypsies and travellers. Local Planning Authorities should be fair, inclusive and realistic in applying policies, whilst promoting private traveller site provision where appropriate. Their own assessment of planning need in each District is also required, which should be continually monitored and updated. Finally due regard should be had to the protection of the local environment, tensions where possible between the applicants and the local settled community should be resolved, and access to local facilities for the travellers made possible. Finally any under provision of sites should be addressed, so maintaining a reasonable level of supply. [Paragraph 4].

6.1.2. In addition the Council must take into account the evidence from the applicants as to their particular need for accommodation in the area, and for rural sites [such as the current application] the scale of the site should not dominate the local settled community. In determining applications [para 24] Councils should consider the following: the existing level of local provision, the availability [or lack of] suitable alternative sites, and other relevant personal circumstances of the proposed occupier/applicants. Crucially, in the context of this application, the PPTS allows for, in criterion d] of para 24, that locally specific criteria can be applied to unallocated sites, which may come forward as has happened here. Finally, even if a traveller has no local connections to the area, applications should still be considered. Policy TS3 in the HSADPD accordingly allows for this circumstance, as does CS7 in the Core Strategy.

6.1.3. What is most significant [in the view of officers] is the advice in paragraph 27 of the PPTS. This notes that if a LPA cannot demonstrate an up to date 5 year housing land supply for deliverable gypsy sites, then this is a significant material consideration in determining planning applications –and applying a temporary permission. The current application site does not lie in an exception area [as eg the AONB is] which would preclude such weight being attached to such a decision. Finally LPA's should consider how objections to a site might be overcome by the application of necessary planning conditions which can include specifying the number of caravans on the site, specifying occupants and limiting any possible business use.

6.1.4 Policy CS7 in the Core Strategy sets out a range of criteria which need to be examined in determining planning applications. Without repeating the advice in the PPTs these include safe and easy access to local highways, and to local facilities such as schools and shops plus public transport, the compatibility of the new use with adjoining users, impact on the area visually, located outside an area of high flood risk, and the possibility of adequate on site provision for parking, storage, play and amenity.

6.1.5 Policy TS3 in the HSADPD sets out in much greater detail the above criteria to be applied. This includes SUDs /ecological implications, drainage and water supply, landscaping and foul water discharge. These points relate more to the future merit of the site being licenced under separate legislation, as identified in the Environmental Health response.

6.1.6 Clearly there are many pertinent criteria which the Committee will need to take into account in determining this application, but the most significant issue [in officers' view], is the number of pitches approved by the Council over the period 2011 to 2019 as set out in the HSADPD - 4 are required. To date only one pitch has been approved, which was allowed at appeal in December 2013 at Beenham [12/01547/FULD] which was delivered in 2014. Accordingly the Council requires an additional 3 pitches, before the end of this year if its target is to be met. So, if this application is approved this will mean only one more pitch is required to be authorised, prior to the end of this year. This is important given the advice in para 27 of the PPTs which inevitably an Inspector at appeal will take full account of should this application be refused. Entirely without prejudice it is almost inevitable that any refusal will be appealed, given the retrospective nature of the scheme and the fact that the applicants own the site in question.

6.1.7. In terms of the other policy criteria the following is considered to be relevant, by the officer, in the Council determination of the proposal.

1. It is not an offence in planning law to submit a retrospective application although it is of course made entirely at the owner's risk. Accordingly the Committee should not take this into account, subject to the advice on intentional unauthorised development set out later in this report.

2. The application does not propose any business / mixed commercial use - if it did it would be likely to be harmful to local amenity and so not acceptable given the proximity of housing to the east.

3. The scale of the scheme is "small" in relation to the local settled community, at just 2 pitches – again if approved this will be conditioned. As a percentage of the population of Woolhampton parish the occupation by the 9 occupiers involved is low.

4. Officers are satisfied that the gypsies who are the applicants are genuine in their needs and indeed originate from local families in the North Hampshire/Tadley area. The applicants [two couples] have children who are in need of schooling being of that age [5 number]. They have been searching for appropriate accommodation in the area for about 2 years. The applicant's agent was formally requested to provide additional evidence in support of this claim and this has been supplied. Children of both applicants attend Tadley School and both male partners work across the South East in construction living away for periods at a time, in order to provide income. This status is important since should the Council elect to approve the application, the justification will need to be based on the fact that the applicants are genuine members of the local travelling community.

5. The highways officer is content with the application in terms of access, parking and turning area, and traffic generation, so no objections are raised in this respect. The access direct onto the layby is actually preferential to an access direct onto the A4 since the layby enjoys good forward visibility onto the main highway in both directions for vehicles entering and exiting the A4. It is also most unlikely given the scale of the application site that any additional pressures for parking on the highway will be caused and it is believed that this has not occurred to date.

6. There are no objections to the application on ecological terms, or heritage impact. There are no sites of special scientific interest adjoining the application site which could be detrimentally impacted [subject to the drainage situation being examined carefully], and there are no conservation areas or listed buildings in the vicinity which could be damaged or harmed. This is noted in regard to policy CS19 in the WBCS of 2006 to 2026.

7. The site is well contained visually, being set at a lower level than adjacent land uses such as the affordable housing and the layby. In addition it lies in no special landscape designation. Accordingly with the additional landscaping and fence painting which is proposed to be conditioned, it is considered, on balance, that this aspect of the development is acceptable. Officers have had close regard to the advice in policy CS19 in the WBCS of 2006 to 2026 in relation to this. The only place where the site is relatively prominent is when it is viewed from travellers on the adjacent rail line.

8. The application site lies outside any area of high flood risk, and the EA have chosen not to comment on the application, albeit they were consulted. Accordingly it is considered that the application complies with the advice in policy CS16 in the WBCS. However the SUDS risk must be adequately considered in this context.

9. The location of the application site is considered by your officers to be "good" in relation to local schools [eg Aldermaston] shops as at Woolhampton and so forth ie it is not in an isolated location.

Bus services are frequent along the A4 and the train station lies some one mile to the west. Accordingly, having regard to the advice in both the PPTS and the Council's own policy advice for new traveller site applications, it is considered that should the application be approved the future likelihood of the current and future occupants [should that alter as the permission if granted will not be personal] being able to access such health and educational opportunities will be acceptable.

10. The PPTS makes it clear that even if a site is not formally allocated through the Local Plan process, it can still be acceptable in principle if it meets the necessary criteria.

6.1.8. Given all of the above, it is considered that whilst the retrospective aspect of the application is "regrettable", the scheme nonetheless is acceptable in planning policy terms.

2 Intentional unauthorised development.

7.1.1 Some of the objectors to the application have identified the requirement of the Council as Local Planning Authority, in determining the application, must have regard to the latest Government advice on this issue as a material planning consideration, in relation to unauthorised encampments. In addition the latest appeal decisions in relation to the issue should also be taken into account.

7.1.2. Firstly, in 2015 the Government introduced a policy which specifically made intentional unauthorised development a material consideration in the planning sphere. This was via a Written Ministerial Statement from the then Secretary of State, Eric Pickles. The Government was, and is concerned that where harm is caused by development of land in advance of obtaining planning permission, there is no opportunity to limit or mitigate the harm already created. This can then cause extensive and expensive action by Authorities, in taking enforcement action. The Government is presently consulting on future options for strengthening this policy, but this process has not been concluded as yet. It does note that confidence and fairness in the planning system must prevail in a civilised society, and no one small minority group should have special protection, unless this is clearly based in planning law and advice/guidance, in respect of special needs. This relates clearly to the travelling community.

7.1.3 It is patently apparent that the present unauthorised occupation of the land was intentional and the applicants knew no planning permission existed on the site. So the above advice applies and the intentional occupation of the land without planning permission is a material consideration.

7.1.4 An appeal decision has been brought to the Council's attention in relation to this issue. It is reference APP/ Q3630/W/18/3200398. It corresponds to a gypsy site Ada's Farm in Chertsey, and the decision letter date was the 9 May 2019. The appeal was dismissed. In the decision, the question of intentional unauthorised development was examined. The Inspector noted that there was a perception in the travelling community that given the difficulties in obtaining planning permission on non-allocated sites in a Local Plan, due to public opposition, a retrospective application was the "best" way forward and provided an advantage in ultimately obtaining permission - an issue which the Government, in the interests of transparency and fairness, wishes to actively discourage.

7.1.5 The Inspector found on this particular occasion that since the site both lay in the Green Belt and was substantial [13 plots and about 1.5ha of land] and the unauthorised development had meant no assessment of the proposal against Local Plan policies the harm to the character and openness of the Green Belt was unacceptable. Accordingly the intentional nature of the scheme was accorded substantial adverse weight in the planning balance. As it was he rejected the appeal, presumably at least in part in recognition of this factor.

7.1.6 However, it does not automatically follow that all such retrospective applications should be rejected. In the present case, clearly the LPA has not been afforded the opportunity of assessing the application against its own policies [CS7 and TS3] or against the PPTS. In addition though, all

planning applications must be considered on their own individual merits: in this case the site does not lie in a Green Belt or AONB designation, the site is “small” in relation to the nature and character of adjoining land uses, and it is clear that the Council is required by its own policies to meet an identified housing need of 3 more pitches this year, if the target is to be achieved. Accordingly, the officer view in considering the planning balance in relation to this issue, is that approval is justified for the reasons set out in the report. It is of course regrettable that any retrospective applications occur, but the visual harm caused by this application can be mitigated by condition.

3. Comment on objectors’ concerns/conditions

8.1.1. It is hoped that this report should help to allay most of the objectors’ concerns about this particular application. In addition, the following is relevant. It is considered that no harmful precedent will be set if this application is approved for any expansion of the site to the west. This land is presently under separate ownership in any event and it is a well-established point of planning guidance that each application must be treated on its own individual merits.

8.1.2. The NPPF in paragraph 56 notes that for conditions to be acceptable they must be a] necessary to make the development acceptable in planning terms, b] directly related to the development and c] fairly and reasonably related in scale and kind to the scheme. In this regard the Committee should be made aware that the applicants have noted they would accept a personal permission on the site and a temporary one if the Council thought fit. Officers have carefully considered this matter and have concluded that neither condition would meet all of the three tests in the NPPF. This is because whilst one of the justifications for approving the application is the educational needs of the applicant’s children [ie the personal aspect] this is not the sole justification, for recommending approval. ie if another gypsy family were to occupy the site, it would still remain acceptable in planning terms. Secondly, given the general suitability of the site in physical terms, it is not considered that a 3 year temporary permission is necessary to mean approval can be granted ie the site is considered suitable for a permanent permission.

8.1.3. By way of explanation given that the application is retrospective some of the conditions necessarily will need to be time limited post the decision date - this is reflected in the wording of the conditions below. If they are not adhered to enforcement action could then be taken in the form of serving of breach of conditions notices.

4 Human Rights

9.1.1 The Committee will no doubt be aware of the European Convention on Human Rights. Article 8 of the first protocol relates to the Right to respect for private and family life. This in turn corresponds to how public authorities, in determining planning applications [inter alia] should respect such rights of travellers and gypsies in obtaining reasonable shelter and living conditions, for successful family life. However, the Article also notes that the right given by this article can be interfered with if other issues arise in, for example, national security or the freedom and rights of others. In this instance accordingly the Committee will need to make a balanced judgement on whether an approval would so interfere with the rights and freedoms of the settled community of the Parish, as advanced by the 36 objections, that an exception may be made in relation to the human rights of the applicants [and future potential occupiers] of the site: undoubtedly if refused the applicants over time may well become homeless. Your officers in this particular case, having regard to the lack of immediate environmental or amenity harm, caused by the development, consider that Article 8 should prevail in relation to the applicants “rights and needs.”

10. Conclusion

10.1. The NPPF makes it clear that all applications must be determined in accordance with the Development Plan unless there are material considerations which would mean a different view

being taken. This is set out in the 2004 Act, Section 36. The PPTS, which is an adjunct to the NPPF makes it clear that exceptions to “normal” restrictive planning policies for protection of the rural areas may be made, when considering gypsy and traveller sites. Much the same exception is made [for example] when rural exception sites for affordable dwellings is made in villages - see policy C2 in the HSADPD of 2017. In this instance it is concluded that the application complies with the criteria in both the PPTS and the Development Plan. It is also concluded that, having taken full account of the other two material considerations which apply [ie intentional unauthorised development and human rights] the application meets these tests, and is capable of a conditional approval.

10.2. In addition, all planning applications should be considered against the three principles of sustainability in the NPPF. In economic terms the application will have little impact, albeit local spending in the community may rise slightly. In terms of impact of the occupants on the local facilities and services of the Council, it is understood that Council Tax is being charged, and the application will be CIL liable since it involves C3 space. In social terms the application may [without prejudice] raise local concerns in the area, but balanced against this is the benefit of providing suitable accommodation for the travelling community, meaning that pressure for future unauthorised encampments in the District [and beyond] is expected to be reduced. There is also the Human Rights of the applicants to consider, in particular with reference to the education of the 5 children involved. Finally, in environmental terms the application is considered to have a neutral impact. Visually it is well contained, albeit some impact is notable from private views to the west. The amenity and highways impacts are considered to be acceptable for the reasons set out above. The drainage issues have also been resolved satisfactorily, subject to conditions.

10.3. On balance, taking all the above mentioned policies and mentioned considerations into account, the application is recommended for approval subject to conditions.

11. Recommendation

11.1. The Head of Development and Planning be authorised to GRANT conditional planning permission.

CONDITIONS

1. The development must remain in accord with the as approved plans - JOO3121-CD01-REV A, JOO3121-CD02-REV A, JOO3121-CD03-REV C, and JOO-CD04.

Reason. To clarify the permission in accord with the advice in the DMPO of 2015.

2. At no time shall more than 2 mobile homes, 2 touring units and 2 day rooms be located on the application site.

Reason. The Council considers that any increase in the number of caravans/ mobile homes/ day rooms on the site may amount to an over-development. This would be contrary to policy CS7 of the WBCS of 2006 to 2026.

3. Within 3 months of the grant of this permission the applicant shall ensure that the development is completed in accord with the revised block plan number CD03-Rev C. In addition within 1 month of the date of this permission a landscaping plan for the western buffer shall be submitted to the LPA for consideration. On approval such a plan shall be planted out to the satisfaction of the LPA within the next available planting season.

Reason. To enhance the visual aspects of the site in accord with policy CS19 in the WBCS of 2006 to 2026.

4. Within one month of the date of this permission the access gates where vehicles enter or leave the site, shall open away from the adjoining highway and be set back a distance of at least 5 metres from the edge of the highway.

Reason: In the interest of road safety and to ensure that vehicles can be driven off the highway before the gates are opened. This condition is imposed in accordance with the National Planning Policy Framework, and Policy CS13 of the West Berkshire Core Strategy (2006-2026).

5. Within one month of the date of this permission, details of the surfacing arrangements for the vehicular access to the highway must be submitted to and approved in writing by the Local Planning Authority. Such details shall ensure that bonded material is used across the entire width of the access for a distance of 3 metres measured back from the carriageway edge. Thereafter [within one month of the approval of the details] the surfacing arrangements shall be constructed in accordance with the approved details.

Reason: To avoid migration of loose material onto the highway in the interest of road safety. This condition is imposed in accordance with the National Planning Policy Framework, and Policy CS13 of the West Berkshire Core Strategy (2006-2026).

6. The site hereby permitted shall not be occupied at any time other than by Gypsies and Travellers as defined in Annex 1 of Planning policy for traveller sites /MHCLG].

Reason. The special reasons for permitting this use must persist on site in accord with policy CS7 in the WBCS of 2006 to 2026.

7. No commercial use or activities shall take place on the red line application site at any time, including the storage of any materials .In addition no vehicle over 3.5 tonnes shall be stationed, parked or stored on the application site.

Reason. The site lies adjacent to dwellings; to introduce a B2/ B8 use next to such a site would be harmful to amenity and not in accord with the advice in the NPPF of 2019.

8. No external lighting shall be installed on the site at any time unless a planning application for that express purpose is submitted to and approved in writing by the Council. Once approved the lighting must be erected in accord with the as approved scheme and thereafter maintained in accordance with the approved details.

Reason. The site lies in the rural area where additional lighting would be harmful, in accord with the advice in para 180 of the NPPF.

9. A scheme for protecting the occupiers of the 2 mobile homes from noise from traffic on the adjacent roads and from noise and vibration from the railway lines shall be submitted to the local planning authority within 3 months of date of permission, for approval in writing. Any works which form part of the scheme approved by the authority, shall be completed within 6 months of date of permission, unless an alternative period is agreed in writing by the authority.

Reason: as occupiers of the development, without such a scheme, are likely to suffer from noise caused by the traffic and rail line to an unacceptable degree. In accord with the advice in policy OVS6 in the WBDLP of 1991 to 2006.

10 Within 2 months of the date of this permission the external facing elevations of the west and south perimeter boundary fences shall be painted a dark green colour to the satisfaction of the Council.

Reason. To ensure the visual impact of the new fencing is reduced in accord with the advice in policy CS19 in the WBCS of 2006 to 2026.

- 11. SUDs**
Should the SUDs team confirm that SUDs conditions are required they will be reported on the Update Sheet.