

Item No.	Application No. and Parish	Statutory Date	Target	Proposal, Location, Applicant
(1)	19/02490/FUL Woolhampton	29 November 2019		<p>Section 73A: Variation of conditions 3 and 12 to increase time limits on previously approved application 19/00031/FUL: Shed to be removed by 30/08/20. Dayrooms to be completed by 30/08/20. Retrospective application for the siting of two day rooms, two mobile homes and two touring caravans, for occupation by Gypsies/Travellers. Creation of new access onto highway. Enclosure of site by fencing.</p> <p>Land West Of Hill Place, Bath Road, Woolhampton, Reading, Berkshire</p> <p>Tammy Black</p>

¹ Extension of time agreed with applicant until 31/01/20.

The application can be viewed on the Council's website at the following link:

<http://planning.westberks.gov.uk/rpp/index.asp?caseref=19/02490/FUL>

Recommendation Summary: The Head of Development and Planning be authorised to GRANT planning permission.

Ward Member: Councillor Pask.

Reason for Committee Determination: Councillor Pask called in the application given the site history and the retrospective nature of the development.

Committee Site Visit: 2nd January 2020.

Contact Officer Details

Name: Michael Butler
Job Title: Principal Planning Officer
Tel No: 01635 519111
Email: Michael.butler@westberks.gov.uk

1. Introduction

- 1.1 This application seeks planning permission for the variation of two conditions applied to the planning permission granted by the Council last year, under reference 19/00031/FUL. This was a retrospective application for a new gypsy site, comprises two mobile homes, on land off the layby at Hill Place, in Woolhampton.
- 1.2 The two conditions in question are firstly number 3, which applied to the full completion of the site (including the two day rooms) within 3 months of the date of the original permission. This would have meant that by the 30th November 2019, the scheme should have been completed. This has not occurred.
- 1.3 Secondly, consequent to the above, condition 12 would need to be amended in order to keep the decision notice internally consistent. Condition 12 currently reads that within one month of the date of the permission (i.e. by the 30th September 2019) the unauthorised shed on the site should be removed. This has not occurred. The applicant is seeking a consequent revision of the permission to ensure the shed is removed on completion of the two day rooms.
- 1.4 The applicant is now seeking the completion of the day rooms and all the other permitted works on site within one year of the original permission date (i.e. by the 30th August 2020). The reason behind the delay is apparently a dispute with the Council as to whether the dayrooms fall within Use Class C3 (dwellinghouse) which would be liable to a CIL charge. Such financial matters are not normally material planning considerations. However in the case of Gypsies this can be a consideration, as discussed below.
- 1.5 Where an application to retrospectively vary conditions under section 73A is granted, the effect is the issue of a new planning permission, sitting alongside the original permission, which remains intact and un-amended. A decision notice describing the new permission should be issued, setting out all of the conditions related to it. To assist with clarity decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. It is therefore necessary to ensure that the notice is consistent and reflects any physical changes on the ground. The only condition that cannot be changed by this mechanism is the time period for implementing a permission, but in this case the application was retrospective so this becomes irrelevant.
- 1.6 For comparison purposes, and clarity, set out in Appendix 1 to this report is a copy of the extant permission, number 19/00031/FUL, which subsists on the site.

2. Planning History

- 2.1 The table below outlines the relevant planning history of the application site.

Application	Proposal	Decision / Date
19/00031/FUL	Retrospective application for the siting of two day rooms, two mobile homes and two touring caravans, for occupation by Gypsies/Travellers. Creation of new access onto highway. Enclosure of site by fencing.	Approved 30/08/2019
19/02438/COND1	Application for approval of details reserved by conditions 3 (landscaping - in part) and 5 (access	Approved

	surfacing) of planning permission reference 19/00031/FUL.	11/12/2019
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3. Procedural Matters

- 3.1 A site notice was displayed at the application site on 08/10/2019, with a deadline for representations of 29/10/2019.
- 3.2 The day rooms are CIL liable. At the time of writing this report advice is being taken as to whether the mobile homes should also be CIL liable: it is known that Council tax is being paid. The mobile units are plumbed in for drainage purposes.

4. Consultation

Statutory and non-statutory consultation

- 4.1 The table below summarises the consultation responses received during the consideration of the application. The full responses may be viewed with the application documents on the Council's website, using the link at the start of this report.

Woolhampton Parish Council:	Objection. The applicant at the time of the original permission being granted, did not object to the conditions being applied. They should have been responded to in adequate time. Accordingly object .If the officer is minded to approve the application, it should be taken to Committee given the contentious planning history.
WBC Highways:	No objections. Previous highways conditions should apply.
Emergency Planning:	No objections.
Office for Nuclear Regulation:	No objections.
Network Rail:	No response received.
Lead Local Flood Authority:	No objections to the new timescales.

Public representations

- 4.2 No public representations have been received at the time of writing this report.

5. Planning Policy

- 5.1 Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The following policies of the statutory development plan are relevant to the consideration of this application.

- Policies ADPP1, ADPP6, CS1, CS7, CS8, CS13, CS14, CS16, CS19 of the West Berkshire Core Strategy 2006-2026 (WBCS).
- Policy TS3 of the Housing Site Allocations Development Plan Document 2006-2026 (HSA DPD).

5.2 The following documents are relevant material considerations:

- National Planning Policy Framework (NPPG)
- Planning Practice Guidance (PPG)
- MHCLG Planning Policy for Traveller Sites (August 2015)

6. Appraisal

6.1 The main issues for consideration in this application are:

- Whether the proposed elongation of the approved timescales for compliance with the conditions on the original permission are acceptable, having regard to the relevant planning policies and any harm arising.
- Whether any further changes are required to the other conditions of the original planning permission.

Elongation of timescales

6.2 The Council as local planning authority, by virtue of granting permission already to the gypsy site, has accepted the principle of the use of the land for the stationing of the caravans and associated development/paraphernalia. There is no dispute that the site continues to be used for its now authorised purpose, so it is accepted that the principle of development is now satisfactory. Section 73A of the Town and Country Planning Act 1990 allows applicants to submit applications for a retrospective variation of conditions. Any unauthorised development is undertaken at the applicant's own risk, since such application can of course be refused. Taking each of the conditions in turn:

6.3 Condition 1 (approved plans) will not change.

6.4 Condition 2, regarding the limits of development on the site, will not alter. It will still be the two dayrooms, the two mobile units, and the two touring caravans.

6.5 Condition 3 now proposes that the 2 dayrooms are built by the 30th August this year. This will give ample time for the applicant to build out these structures. It is also the case that in originally applying for these dayrooms it is assumed that the applicant must have wanted them to be on site, and so it is reasonable to assume that there remains an intention to complete these. It is also apparent that the introduction of the dayrooms will not be harmful to local visual amenity to any noticeable degree. It was open to the applicant to seek a variation in the original permission to delete the requirement to construct the dayrooms completely. Without prejudice, this remains an option.

6.6 Condition 4 required the provision of access gates set back 5 metres from the edge of the highway within one month. This condition is no longer required because the gates have been removed.

6.7 Condition 5 (now 4) regarding the surfacing arrangements for the access remains in place, but the wording is amended to reflect the condition being now partially satisfied through the removal of the gates and the bonded material laid down.

- 6.8 Condition 6 (now 5) corresponds to the continuing restriction of the occupational use of the site by gypsies. This remains necessary as this was the premise upon which permission was originally granted.
- 6.9 Condition 7 (now 6) ensures as before that no commercial uses persist on the site for reasons of amenity. This remains necessary.
- 6.10 Condition 8 (now 7) must remain as this seeks to control any external lighting on site.
- 6.11 Condition 9 relates to a scheme for protecting the occupiers from external noise to be submitted within 3 months of the date of the permission (i.e. by the 30th November 2019). This has not been achieved. Given that the occupation of the site is by the applicant only, and given that this presumably is not an overriding concern for them due to the non-compliance of the condition, it is recommended, with the applicant's agreement that this condition be deleted.
- 6.12 Condition 10 related to the external facing of the fencing on the south and west being painted green. It is understood at the time of writing (following a site visit) that this has been done. Condition 10 does not need to be reapplied.
- 6.13 Condition 11 (now 8) of the original permission sought to ensure that by the 30th November 2019, details of sustainable drainage measures on site should be submitted to the Council for subsequent approval. This has not been achieved. This matter is clearly of significance given the past and continuing concerns about the physical stability of the application site on the raised ground, in relation to the railway line immediately to the south. Condition 11 (now 8) relating to sustainable drainage measures has been varied, in order to allow the applicant additional time to submit this information. If the permission is granted this would mean that by the 9th March 2020 the applicant would need to submit this information. This is some 6 months since the date of the original permission, which is a considerable time period.
- 6.14 Condition 12 (now 9) relates to the removal of an unauthorised shed. It is proposed to elongate this timescale since the additional visual harm caused by this minor structure is minimal in the surrounding context. Nevertheless it is necessary for removal within a reasonable timescale.
- 6.15 Condition 13 relates to a site investigation relating to land instability to be submitted by the 30th November 2019. This has not occurred. The same principle applies to that in condition 8. The applicant will, by then, have had over 6 months to comply with the submission of the details. This is considered to be entirely reasonable having regard to national guidance on such issues.
- 6.16 Condition 14 (now 11) restricts drainage on to Network Rail Land, which remains necessary as before.
- 6.17 Condition 15 (now 12) ensures the dayrooms, once built, are used only for their permitted use and for not for separate residential accommodation or sleeping accommodation, leading to an overdevelopment of the site. This condition remains necessary to ensure compliance with policy C1 in the HSA DPD.
- 6.18 In summary, the applicant was originally seeking to vary condition 3 to allow three years from the grant of permission to complete the dayrooms (i.e. by no later than the 30th August 2022). This was viewed by the Planning Officer as being far too long a period and would represent a condition that did not meet the reasonableness test as set out in paragraph 55 of the NPPF (conditions should be imposed only where they are necessary, relevant to planning and to the development being permitted, enforceable, precise and reasonable in all other respects). The planning officers consider that **the proposed revised conditions** as set out at the end of this report do meet all of these

tests, in that the wording of condition 3 has been varied to one year after the original consent date (30th August 2019), and the other conditions worded to reflect other issues pertaining on site.

- 6.19 Another factor which the Committee should take into account is the advice in the MHCLG Planning Policy for Traveller Sites, which is national policy that sits alongside the NPPF. This notes in paragraph 24(c) that in relation to gypsy/traveller accommodation the personal circumstances of the applicant **can be taken into account**. Accordingly, financial matters can be taken into account in this instance, such as in regards to the outstanding payment of the CIL charge for the dayrooms (circa £6,000). By extending the condition timescales the Council is taking this into account.

7. Planning Balance and Conclusion

- 7.1 Planning law, as set out in Section38(6) of the Planning and Compulsory Purchase Act 2004 requires that local planning authorities, in determining planning applications must do so in accordance with the development plan, unless material considerations indicate otherwise. It is the view of your officers that whilst the submission of this application may be viewed by some as being unfortunate in the sense that the conditions of the original permission have not been complied with, the focus of the Council's decision must be on whether revised conditions are acceptable, having regard to the aforementioned tests of planning conditions in paragraph 55 of the NPPF.
- 7.2 The facts of the matter are that in economic, environmental and social terms the extension of time limits on the principal permission is acceptable, **on balance**, having regard to the alternative of a refusal, and an almost inevitable appeal given the retrospective nature of the development. If, however, subsequently the revised conditions on that new permission are not satisfied the Council would be in a robust position at a later date to take the necessary enforcement action (without prejudice).

8. Full Recommendation

- 8.1 To delegate to the Head of Development and Planning **to GRANT PLANNING PERMISSION** subject to the conditions listed below.

1. The development must remain in accord with the as approved plans (all prefixed JOO3121): CD01-A, CD02-A, CDO3-C, and CDO4-.

Reason: For the avoidance of doubt and in the interests of proper planning.

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

Reason: Any increase in the number of caravans/ mobile homes/ day rooms on the site may amount to an overdevelopment. This would be contrary to Policy CS7 of the West Berkshire Core Strategy 2006-2026.

3. By the 30th August 2020, the applicant shall ensure that the development is completed in accordance with the revised block plan (number CD03-Rev C), including the two dayrooms. The landscape works for the western buffer shall be completed within the first planting season following the date of this decision. Any trees, shrubs, plants or hedges planted in accordance with the approved scheme which are removed, die, or become diseased or become seriously damaged within five years of completion of this completion of the approved soft landscaping scheme shall be replaced within the next planting season by trees,

shrubs or hedges of a similar size and species to that originally approved.

Reason. To enhance the visual aspects of the site in accord with policy CS19 in the West Berkshire Core Strategy 2006-2026.

4. Within one month of the date of this permission, the vehicular access to the highway shall be constructed in accordance with the approved plans, including a bonded material across the entire width of the access for a distance of 3 metres measured back from the carriageway edge.

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.

5. 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 accordance with policy CS7 in the West Berkshire Core Strategy 2006-2026.

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

Reason. The site lies adjacent dwellings; to introduce a B2/ B8 use would be harmful to amenity and not in accordance with the advice in the NPPF or Policy CS14 of the West Berkshire Core Strategy 2006-2026.

7. No external lighting shall be installed on the site at any time unless details have first been submitted to and approved in writing by the Local Planning Authority. Once approved the lighting must be erected in accordance with the approved details.

Reason. The site lies in the rural area where excessive additional lighting would be harmful, in accordance with paragraph 180 of the NPPF and Policy CS19 of the West Berkshire Core Strategy 2006-2026.

8. Within two months of the date of this permission, details of sustainable drainage measures to manage surface water within the site must be submitted to and approved in writing by the Local Planning Authority. These details shall:
 - a) Include and be informed by a ground investigation survey which establishes the soil characteristics and groundwater levels to confirm the principles applied are feasible in practice;
 - b) Include flood water exceedance routes, both on and off site; Include flow routes such as low flow, overflow and exceedance routes;
 - c) Include details of how the SuDS measures will be maintained and managed in perpetuity.

Once approved, these sustainable drainage measures shall be implemented in accordance with the approved details within a further 3 months of the date of that approval. The sustainable drainage measures shall be maintained in the approved condition thereafter.

Reason: To ensure that surface water will be managed in a sustainable manner; to prevent the increased risk of flooding; to improve and protect water

quality, habitat and amenity and ensure future maintenance of the surface water drainage system can be, and is carried out in an appropriate and efficient manner. This condition is applied in accordance with the National Planning Policy Framework, Policy CS16 of the West Berkshire Core Strategy (2006-2026), and Part 4 of Supplementary Planning Document Quality Design (June 2006).

9. By the 30th August 2020, the unauthorised shed on the site shall be removed in its entirety from the application site.

Reason. In the interests of visual amenity, in accordance with the NPPF and Policy CS14 of the West Berkshire Core Strategy 2006-2026.

10. Within two months from the date of this decision, a site investigation of the nature and extent of any land instability shall be carried out, in accordance with a methodology which shall have previously been submitted to and approved in writing by the Local Planning Authority. The results of the site investigation shall be made available to the Local Planning Authority. If any land instability issues are found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the Local Planning Authority. The site shall be remediated in accordance with the approved measures within 3 months of the date of approval of the agreed scheme.

Reason. To ensure the site will not impact valued infrastructure in accord with Policy CS5 of the West Berkshire Core Strategy 2006-2026.

11. No surface water shall be discharged onto adjacent Network Rail land, and no soakaways, attenuation ponds or other drainage infrastructure shall be within 5 metres of the boundary to the adjacent railway land.

To protect valued infrastructure in accord with Policy CS5 of the West Berkshire Core Strategy 2006-2026.

12. The two day rooms hereby permitted shall only be used for purposes ancillary and/or incidental to the use of the two mobile homes hereby permitted on the site. The day rooms shall not be used as separate residential accommodation nor shall they be used to provide additional sleeping accommodation.

Reason. To ensure no overdevelopment of the site and to restrict new dwellings in the rural areas in accordance with Policies ADPP1, ADPP6 and CS1 of the West Berkshire Core Strategy 2006-2026, and Policy C1 of the Housing Site Allocations DPD 2006-2026.