

TEWKESBURY BOROUGH COUNCIL – DEVELOPMENT CONTROL

Committee:	Planning
Date:	28.02.2020
Site Location:	Land East Of Old Gloucester Road, Staverton , Gloucestershire, GL51 0TG
Application No:	19/01194/FUL
Ward:	Badgeworth
Parish:	Staverton
Proposal:	Change of use of land to provide 9 Travelling Showperson's plots and associated works including hardstanding
Report by:	Mr Adam White
Appendices:	Site location plan Proposed site layout Acoustic fence detail Surface water drainage strategy Sectional elevation Site access Visibility splays
Recommendation:	Permit

1.0 SITE DESCRIPTION AND PROPOSAL

- 1.1 The application relates to a parcel of land to the south east of Old Gloucester Road and east of the M5 motorway, approximately half a mile to the south east of Staverton (see site location plan). The site measures approximately 2.13 hectares and is comprised of open pasture land bound on all sides by mature trees and hedgerows.
- 1.2 The site is located entirely within the Green Belt although it is not subject to any formal or informal landscape designation. The site is located in Flood Zone 1 and is therefore at a low risk from flooding.
- 1.3 Access to the site is gained off an existing entrance directly off the Old Gloucester Road (B4364), which then follows a track along the western boundary of the site to enter the field at the south western corner, using the existing field entrance. Public Right of Way also run along the northern and eastern boundaries of the site, however, these are not apparent on the ground due to dense vegetation.
- 1.4 The current proposal is a full application that seeks permanent permission for the use of the field for 9 Travelling Showpeople plots for Travelling Showpeople who fulfil the definition as set out in Annexe 1 of Planning Policy for Traveller Sites (PPTS 2015). The applicant states that all those proposed to be living on the site travel to fairs and events for work, mainly around the Gloucestershire area but also

further afield in the south west and towards Oxford. The work on fairs and events can happen throughout the year and all of the proposed adult occupants of the site are members of the Showman's Guild of Great Britain. It is accepted that the proposed occupants meet the PPTS definition and are Travelling Showpersons for the purposes of determining this application.

- 1.5 It is proposed that 4 larger plots would occupy the central part of the site with proposed lawn access in the middle. A further large plot is proposed to the south east edge of the site along with 4 smaller plots along the western boundary adjacent to the access track. It is proposed that there would be new hedgerow planting between each of the plots along with a number of new trees.
- 1.6 An acoustic fence of 2.2 metres is proposed along the western and southern boundary to reduce road traffic noise.
- 1.7 The proposed driveway, parking and courtyard areas are to be surfaced using quarry dust laid on a permeable base. The surface water is proposed to drain into adjacent drainage swales with an attenuation pond proposed to the north east boundary of the site.
- 1.8 The existing hedgerows surrounding the site would be retained, along with 8 key trees and a number of smaller trees along the boundary.

2.0 RELEVANT PLANNING HISTORY

- 2.1 A previously submitted application, which is identical to this current proposal, is currently the subject of a non-determination appeal (Council Ref: 18/01179/FUL – PINS Ref: APP/). That appeal is currently scheduled for an Informal Hearing to be held on the 16th April 2020 (CHECK!!).
- 2.2 In respect of that non-determination appeal, a report was presented to Members at the January Planning Committee, which sought a resolution as to what the Council's decision would have been had they gone on to determine the application. Members were of the view that the site was suitable for a permanent Travelling Showperson's site and Very Special Circumstances exist that outweigh the harm to the Green Belt by reason of inappropriateness and any other harm. However, concerns were raised regarding the suitability of the proposed access and the ability to achieve the necessary visibility splays. Essentially, it was not clear as to whether the visibility splay to the north east could be provided on land entirely within the control of the Local Highway Authority. In the absence of that clarity, Members resolved that they would have been minded to refuse the application on the basis that the proposed vehicular access was currently substandard due to severely restricted visibility to the north east and insufficient information had been provided to demonstrate that the required visibility splays could be provided in their entirety, either on highway land or land within the control of the applicant and retained for that purpose thereafter. This is discussed in detail further in this report.

3.0 RELEVANT POLICY

- 3.1 The following planning guidance and policies are relevant to the consideration of this application:
- 3.2 **National guidance**
National Planning Policy Framework (NPPF)

National Planning Policy Guidance (NPPG)
Planning Policy for Traveller Sites (PPTS) 2015

3.3 **Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (JCS) - Adopted 11 December 2017**

Policies SD4, SD5, SD6, SD9, SD13, SD14, INF1

3.4 **Tewkesbury Borough Plan 2011-2031 Pre-Submission Version (July 2019)**

Policies GTTS1, GRB1, ENV2

3.5 Human Rights Act 1998 - Article 8 (Right to Respect for Private and Family Life)

3.6 The First Protocol, Article 1 (Protection of Property)

3.7 Equality Act 2010 - Public Sector Equality Duty

4.0 CONSULTATIONS

4.1 Environmental Health Officer – It is recommended that the acoustic fence/barrier should also extend along the northern boundary in order to further reduce noise levels on the site.

Gloucestershire County Council Highways - The matter relating to visibility has been satisfactorily considered by the applicant and demonstrated such that the Highway Authority is satisfied that any worded condition will relate to land in control of the Highway Authority or the applicant. Subject to no further materials coming to light from the further consultation period, the Highway Authority has no objection.

County Archaeologist – It is advised that there is a low risk that archaeological remains will be adversely affected by the proposed development and no further archaeological investigation or recording is required.

CPRE Cheltenham And Tewkesbury Sub-branch – Object on the basis that is compromises a sensitive part of the Green Belt, is inappropriate and would harm the character and appearance of the area.

Landscape Consultant – It is advised that there should be no increase or reduction of site levels within the RPA of the retained trees and boundary vegetation.

Tree Officer – No objection subject to a planning condition to secure tree protection measures.

Staverton Parish Council – Object as the development is inappropriate in the green belt, which should safeguard the countryside from urban encroachment. The application if approved would harm the rural character of the area. It is also stated that the local parishes, including Staverton already have a high number of permanent sites housing the travelling community.

Staverton Parish Council – Response to additional highway information:
Staverton Parish Council objects to this application, it runs alongside 18/01179/FUL, which is the subject of an Appeal against non-determination of an application by TBC and is basically the same application. The Borough council were minded to refuse the second application. The applicant has now adjusted the plans to give better view of the highway to aid the movement of traffic on and off the site. The application should be refused on the basis that it has already been refused, for the reasons

stated in their determination.

5.0 PUBLICITY AND REPRESENTATIONS

- 5.1 The application has been publicised through the posting of a site notice for a period of 21 days. A letter has also been sent to the registered land owners of the adjacent land to the north east of the site. That letter has been sent specifically in response of the additional information that has been received from the applicant in respect of the visibility splays and land ownership.
- 5.2 6 letters of objection have been received. Their comments are summarised as follows:
- There are potentially 13 proposed plots and not 9.
 - There is a site on Bamfurlong Lane nearby that would be more suitable for this.
 - Traffic approaching from Cheltenham at speed gives one a very short time to come into view if one is leaving Staverton village to turn right for the B4063. More traffic would make the situation more dangerous.
 - The site is in the Green Belt and does not feature in local or regional plans for the area.
 - The access would be dangerous for slow moving long vehicles turning into and out of the access on such a fast road.
 - Concerns regarding drainage and flooding.

6.0 POLICY CONTEXT

National Planning Policy Framework (NPPF)

- 6.1 The NPPF advises that the purpose of the planning system is to contribute to the achievement of sustainable development. Achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives). The three overarching objectives are an economic objective, a social objective and an environmental objective.
- 6.2 Section 15 of the Framework seeks to conserve and enhance the natural environment. Paragraph 170 advises that this can be achieved, in part, by recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services - including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland.
- 6.3 Section 13 of the Framework sets out that the Government attaches great importance to Green Belts. Paragraph 143 confirms that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations (paragraph 144).
- 6.4 Paragraph 79 of the Framework states that planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more of the following circumstances apply:
- a) there is an essential need for a rural worker, including those taking majority control

of a farm business, to live permanently at or near their place of work in the countryside;

- b) the development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets;
- c) the development would re-use redundant or disused buildings and enhance its immediate setting;
- d) the development would involve the subdivision of an existing residential dwelling; or
- e) the design is of exceptional quality, in that it:
 - is truly outstanding or innovative, reflecting the highest standards in architecture, and would help to raise standards of design more generally in rural areas; and
 - would significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area.

- 6.5 With regard to highway safety, paragraph 108 of the Framework states that in assessing sites that may be allocated for development in plans, or specific applications for development, it should be ensured that:
- a) appropriate opportunities to promote sustainable transport modes can be - or have been - taken up, given the type of development and its location;
 - b) safe and suitable access to the site can be achieved for all users; and
 - c) any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.

- 6.6 Paragraph 109 follows and states that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Planning Policy for Traveller Sites - August 2015 (PPTS)

- 6.7 The PPTS states that the Government's overarching aim is to ensure fair and equal treatment for travellers, in a way that facilitates their traditional and nomadic way of life while respecting the interests of the settled community. For the purposes of planning policy the PPTS defines 'Travelling Showpeople' as:
'Members of a group organised for the purposes of holding fairs, circuses or shows (Whether or not travelling together as such). This includes such persons who on the grounds of their own or their family's or dependents' more localised pattern of trading, educational or health needs or old age have ceased to travel temporarily, but excludes Gypsies and Travellers.'
- 6.8 Policy E: Traveller sites in Green Belt (paragraph 16) states that: *'Inappropriate development is harmful to the Green Belt and should not be approved, except in very special circumstances. Traveller sites (temporary or permanent) in the Green Belt are inappropriate development. Subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances'.*
- 6.9 Paragraph 17 of the PPTS advises that Green Belt boundaries should be altered only in exceptional circumstances and should only be done through the plan making process and not in response to a planning application.
- 6.10 Paragraph 23 of the PPTS highlights that applications should be assessed and determined in accordance with the presumption in favour of sustainable development and the application of specific policies in the NPPF, including landscape protection and highway safety considerations.

- 6.11 Paragraph 24 of the PPTS explains that local planning authorities should consider the following issues amongst other relevant matters when considering planning applications for traveller sites:
- the existing level of local provision and need for sites
 - the availability (or lack) of alternative accommodation for the applicants
 - other personal circumstances of the applicant
 - that the locally specific criteria used to guide the allocation of sites in plans or which form the policy where there is no identified need for pitches/plots should be used to assess applications that may come forward on unallocated sites
 - that they should determine applications for sites from any travellers and not just those with local connections.
- 6.12 Paragraph 25 of the PPTS states that local planning authorities should very strictly limit new traveller sites in open countryside that are 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.
- 6.13 Paragraph 26 provides that when considering applications, local planning authorities should attach weight to the following matters:
- effective use of previously developed (brownfield), untidy or derelict land;
 - sites being well planned or soft landscaped in such a way as to positively enhance the environment and increase its openness;
 - promoting opportunities for healthy lifestyles, such as ensuring adequate landscaping and play areas for children; and
 - - not enclosing a site with so much hard landscaping, high walls or fences, that the impression may be given that the site and its occupants are deliberately isolated from the rest of the community.
- 6.14 Paragraph 27 of the PPTS sets out that if a local planning authority cannot demonstrate an up-to-date five-year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permissions except where the land is in the Green Belt, protected under the Birds and Habitats Directives and/or designated as a Site of Special Scientific Interest, Local Green Space, an Area of Outstanding Natural Beauty, or within a National Park (or the Broads).

Joint Core Strategy (JCS)

- 6.15 Policy SD13 of the JCS sets out a criteria based policy for dealing with proposals for Gypsies, Travellers and Travelling Showpeople who meet the 2015 who meet the definition of Travellers for planning purposes. The policy requires that: sites do not have an unacceptable impact on the character and appearance of the landscape, amenity of neighbouring properties and that proposals are sensitively designed; safe and satisfactory access; adequate utilities/services can be provided; and that no significant environmental barriers exist.

Emerging Tewkesbury Borough Plan

- 6.16 Emerging Policy GTTS1 identifies the 1.7 hectare site in Staverton for 9 plots (i.e. the current application site) as an allocated site for Travelling Showpeople.

7.0 ANALYSIS

Principle of development

- 7.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 and Section 72(2) of the Town and Country Planning Act 1990 require planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise. In terms of the adopted development plan, policy SD14 of the JCS sets out a criteria based policy for dealing with proposals for Gypsies, Travellers and Travelling Showpeople who meet the definition of Travellers for planning purposes. Whilst policy SD14 does not allocate sites for this purpose, it does provide 'hooks' for the lower level plans to consider site allocations for all members of the traveller community.
- 7.2 In this context, the emerging Tewkesbury Borough Plan to 2031 allocates a number of sites for Gypsies and Travellers to meet the identified need, which has been derived from the 2017 Gypsy and Traveller Accommodation Assessment (GTAA). Insofar as this relates to Travelling Showpeople, the emerging plan allocates a single site for 9 plots against an identified requirement of 18 plots up to 2021. The land, which is identified for that allocation, is also the subject of this current application and is a material planning consideration.

Green Belt

- 7.3 Of particular importance to this site is its location within a designated Green Belt. Policy SD5 of the JCS states: 'To ensure the Green Belt continues to serve its key functions, it will be protected from harmful development. Within its boundaries, development will be restricted to those limited types of development which are deemed appropriate by the NPPF, unless very special circumstances can be demonstrated.' This reflects advice in the NPPF, which states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 144 of the NPPF provides that when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
- 7.4 The NPPF states that a local planning authority should regard the construction of new buildings as inappropriate development in the Green Belt, save for a number of listed exceptions. The development proposed here does not meet any of those exceptions and therefore represents inappropriate development in the Green Belt. This position is accepted by the applicant. The main consideration is therefore whether 'very special circumstances' exist in this case, which clearly outweigh the harm to the Green Belt by reason of inappropriateness and any other resulting harm.
- 7.5 In terms of the harm to the Green Belt, other than by reason of inappropriateness, the proposed development would fundamentally change the open nature of the site by introducing a considerable amount of built form in terms of access roads, hard surfacing and boundary treatment. This would be further compounded by the associated caravans, vehicles and fairground equipment that would be stored on the site. In this regard, the development of the land would fail to safeguard the countryside from encroachment, which is one of the purposes of including land in the Green Belt. Whilst the applicant argues that the harm to the Green Belt is limited as it doesn't conflict with the other purposes of the Green Belt, the extent to which the use of land fulfils these objectives is not itself a material factor in the including of land

within a Green Belt.

- 7.6 The impact on the openness of the Green Belt in visual terms is mitigated to a degree by the fact that the site is relatively well contained by mature trees and hedgerows, which limits most views into the site from public vantage points, with the exception of the immediate views from the Public Right of Ways, which run along the northern and eastern boundaries of the site. It would also be the case that many of the occupants and their associated equipment would be absent for quite lengthy periods throughout the year. Nonetheless, there would be demonstrable harm to the openness of the Green Belt, along with the inherent harm by reason of inappropriateness, and this weighs heavily against the proposal.

Whether 'Very Special Circumstances' exist?

- 7.7 The applicant makes the case that there is a continued lack of alternative sites in Tewkesbury Borough and there is still significant unmet need in the area. In view of the personal circumstances of the applicant and the proposed occupiers, it is argued that these considerations amount to very special circumstances that clearly outweigh any harm to the Green Belt. Furthermore, the applicant considers that, with the exception of its Green Belt location, the proposal site is consistent with national policy.
- 7.8 In summary, the 'very special circumstances' case advanced by the applicant is comprised of the follows:
- The need for Showpeople's sites in Tewkesbury
 - The lack of alternative sites
 - The historic and continuing difficulties of providing Showpeople's sites through the plan led process
 - The time limited option agreement on the application site
 - Personal circumstances
 - The best interest of the children
 - Human Rights
 - The compliance of the proposal with the relevant development plan policy
- 7.9 In advancing this case, the applicant also refers to relevant case law in respect of very special circumstances; namely *Basildon DC v First Secretary of State and Temple* [2004] EWHC 2759 Admin & *Wychavon DC v SSCLG and Butler* [2008] EWCA Civ 692. The first case essentially establishes that a number of factors ordinary in themselves can combine to create something very special. In a related vein, the second case establishes that a number of seemingly ordinary factors can combine to equate to very special circumstances. Such factors do not have to be 'rare' by definition. However, whether the case advanced by the applicant amounts to 'very special circumstances' in this instance will ultimately be for the decision-maker to decide as a matter of planning judgement.

The need for Travelling Showpeople's sites and the lack of alternative sites

- 7.10 The applicant refers to a shortage of Travelling Showperson plots in the Gloucestershire area and explains that this application is submitted in order meet some of that shortfall. The document specifically refers to a need identified within the Gloucestershire Gypsy and Traveller Availability Assessment (GTAA) for additional pitches.
- 7.11 In terms of 'plan-making', paragraph 9 of the PPTS sets out that local planning

authorities should set pitch targets for Gypsies and Travellers and plot targets for Travelling Showpeople, which address the likely permanent and transit site accommodation needs of travellers in their area, working collaboratively with neighbouring local planning authorities. Paragraph 10 follows that local planning authorities should identify and update annually, a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against their locally set targets and a supply of specific, developable sites, or broad locations for growth, for years 6 to 10.

- 7.12 With respect to 'decision-taking' on specific applications, paragraph 24 of the PPTS cites the existing level of local provision and need for sites and availability (or lack) of alternative accommodation for the applicants among relevant matters for consideration in the determination process.
- 7.13 The Council's most current evidence for the provision of Traveller accommodation is the Gloucestershire (Cheltenham, Cotswold, Forest of Dean, Gloucester, Stroud and Tewkesbury) Gypsy and Traveller Accommodation Assessment (OPS Final Report March 2017). The assessment was based upon the new definition in the PPTS (August 2015) of Gypsies, Travellers and Travelling Showpeople for planning purposes (which compared to the previous PPTS (March 2012) no longer includes those who have ceased to travel permanently). The identified need for Tewkesbury Borough is for 24 plots up until 2031, with an immediate need for 18 plots.
- 7.14 As previously set out, the application site is also included as an allocation for up to 9 Travelling Showpeople's plots in the emerging Tewkesbury Borough Plan to 2031, which has recently been the subject of a final round of public consultation prior to submission to the Secretary of State for Examination in Public. That consultation finished on the 18th November 2019 and no objections were received in respect of that allocation. The proposed allocation is a material planning consideration since it indicates the Council's preferred 'direction of travel'.
- 7.15 Whilst the Council has been proactive in searching for Travelling Showpeople plots in suitable locations, this has proved difficult and in view of the uncertainties in terms of the overall need and the fact that the Borough Plan is unlikely to be adopted until 2020, a precautionary position should be adopted and at this time it cannot be demonstrated that the Council has a 5 year supply of deliverable plots for Travelling Showpeople.
- 7.16 The PPTS states at paragraph 27 that if a local planning authority cannot demonstrate an up-to-date 5 year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission. However, an exception to this is where the proposal is on land designated as Green Belt. In this context, paragraph 16 of the PPTS states that subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances. Nonetheless, the current lack of a 5 year supply holds some weight in favour of the scheme in the planning balance.

Personal circumstances, the best interest the children and Human Rights

- 7.17 The applicant has provided a statement on the personal circumstances of the proposed occupiers of the site. In summary, the statement makes the case that due to the children that would be occupying the site, a settled base is essential to necessitate the security and stability of the family for the future. It stated that those children are all currently residing on insecure yards and overcrowded plots. It is the

applicant's opinion that the health and educational needs of the occupants would be prejudiced if the application was refused. In addition, it stated that a number of the family are without a yard and need to stop with friends and family in between travelling, which increases the uncertainty of a future base and education for the children.

- 7.18 Under the UN Convention on the Rights of the Child (UNCRC), the best interests of any children affected by a decision are a primary consideration. Case law confirms that this means that, in any decision, no other consideration may be treated as inherently more weighty. In this context, the implications of Article 3 of the UNCRC in planning decisions is addressed in *Stevens v Secretary of State* [2013] EWHC 792 concerns the implications of Article 3 of the UNCRC in planning decisions. Hickinbottom J said at paragraph 69:

'From these authorities, in respect of the approach of a planning decision-maker, the following propositions can be derived.

i. Given the scope of planning decisions and the nature of the right to respect for family and private life, planning decision-making will often engage article 8. In those circumstances, relevant article 8 rights will be a material consideration which the decision-maker must take into account.

ii. Where the article 8 rights are those of children, they must be seen in the context of article 3 of the UNCRC, which requires a child's best interests to be a primary consideration.

iii. This requires the decision-maker, first, to identify what the child's best interests are. In a planning context, they are likely to be consistent with those of his parent or other carer who is involved in the planning decision-making process; and, unless circumstances indicate to the contrary, the decision-maker can assume that that carer will properly represent the child's best interests, and properly represent and evidence the potential adverse impact of any decision upon that child's best interests.

iv. Once identified, although a primary consideration, the best interests of the child are not determinative of the planning issue. Nor does respect for the best interests of a relevant child mean that the planning exercise necessarily involves merely assessing whether the public interest in ensuring planning controls is maintained outweighs the best interests of the child. Most planning cases will have too many competing rights and interests, and will be too factually complex, to allow such an exercise.

v. However, no other consideration must be regarded as more important or given greater weight than the best interests of any child, merely by virtue of its inherent nature apart from the context of the individual case. Further, the best interests of any child must be kept at the forefront of the decision-maker's mind as he examines all material considerations and performs the exercise of planning judgment on the basis of them; and, when considering any decision he might make (and, of course, the eventual decision he does make), he needs to assess whether the adverse impact of such a decision on the interests of the child is proportionate.

vi. Whether the decision-maker has properly performed this exercise is a question of substance, not form. However, if an inspector on an appeal sets out his reasoning with regard to any child's interests in play, even briefly, that will be helpful not only to those involved in the application but also to the court in any later challenge, in understanding how the decision-maker reached the decision that the adverse impact

to the interests of the child to which the decision gives rise is proportionate. It will be particularly helpful if the reasoning shows that the inspector has brought his mind to bear upon the adverse impact of the decision he has reached on the best interests of the child, and has concluded that that impact is in all the circumstances proportionate ...'

- 7.19 The statement on the personal circumstances of the proposed occupiers of the site sets out that there are 15 children, the majority of which are currently attending various primary and secondary schools. The applicant considers that there is no doubt that their education would be greatly disrupted were they to be deprived of a settled base and that the health and educational needs of the occupants would be prejudiced if the application is refused. It would clearly be in the best interests of all the children to reside in secure, suitable and lawful accommodation. This would allow proper access to education and medical services and would avoid the hazards of unlawful encampments.

Article 8

- 7.20 Refusal of the application would undoubtedly result in the interference with the home and private life of the occupants of the site. The Council has identified this site within the emerging Borough Plan, no further alternative sites have been identified, therefore it is quite possible that refusal of this application the effect would be to render the families homeless in the future. However Article 8 is not an absolute right and it is necessary to consider whether, given the harm caused by the development, the interference occasioned by the refusal of planning permission would be justified within the terms of A8(2) and proportionate.

Equality Act 2010: Public Sector Equalities Duty

- 7.21 Section 149 of the Public Sector Equalities Duty (PSED) requires that in the exercise of their functions, those subject to the equality duty must have due regard to the need to eliminate unlawful discrimination, harassment and victimisation; and to advance equality of opportunity and foster good relations between people who share a protected characteristic and those who do not. The Council accepts that the applicants are Travelling Showpeople and therefore a 'protected characteristic' for the purposes of the PSED.
- 7.22 The applicants argue that there would be an impact on the families if the application is refused and that the greatest impacts would be felt by the children who would benefit from access to education associated with having a settled base.
- 7.23 The Council has had due regard to its duties under Section 149 of the PSED which, as with the consideration with respect to Article 8 (above), must be balanced against the harm caused by the development.

The time limited option agreement

- 7.24 The applicant points out that there is an Option Agreement on the land, which ultimately expires on the 28th August 2020 (the 'Long Stop Date'). It was stated that in light of this Option Agreement, an application was required to secure the permission on the site in good time before the expiry date. It was suggested that if the Option Agreement expired prior to gaining a permission that was satisfactory to the applicant, the opportunity to secure the site for a Travelling Showperson's site could be lost completely, thus further frustrating the unmet need.

Compliance with Policy SD13 of the JCS

- 7.25 Part of the Very Special Circumstances case advanced includes the purported compliance with the relevant development plan policy; namely policy SD13 of the JCS. It is considered that compliance with policy SD13 does not necessarily add weight to the applicant's very special circumstances case since compliance with this policy would be expected in any event. Nonetheless, compliance with this policy would add weight in favour of the proposal when considered in the planning balance.
- 7.26 Policy SD13 states that proposals for new permanent and temporary, residential and transit Gypsy, Traveller and Travelling Showpeople sites will be assessed against the following criteria:
- i. Proposals on sites in areas of sensitive landscape will be considered in accordance with Policy SD6 (Landscape Policy) and Policy SD7 (The Cotswolds Area of Outstanding Natural Beauty). In all other locations the proposal must not have an unacceptable impact on the character and appearance of the landscape and the amenity of neighbouring properties, and should be sensitively designed to mitigate any impact on its surroundings;
 - ii. The site has safe and satisfactory vehicular and pedestrian access to the surrounding principal highway network;
 - iii. No significant barriers to development exist in terms of flooding, poor drainage, poor ground stability or proximity to other hazardous land or installation where other forms of housing would not be suitable;
 - iv. The site is situated in a suitable location in terms of access to local amenities, services and facilities, including schools, shops, health services, libraries and other community facilities;
 - v. The site can be properly serviced and is supplied with essential services, such as water, power, sewerage and drainage, and waste disposal. The site should also be large enough to enable vehicle movements, parking and servicing to take place, having regard to the number of pitches / plots on site, as well as enabling access for service and emergency vehicles, including circulation space along with residential amenity and play areas.

Landscape impact and tree protection

- 7.27 In terms of criterion (i.) of policy SD13, the site is not located in a designated or non-designated landscape but it does sit in open countryside. Policy SD6 of the JCS seeks to protect the character and appearance of the rural landscape. The policy states that all applications for development will consider the landscape and visual sensitivity of the area in which they will be located.
- 7.28 The current application is supported by a Landscape Character and Visual Impact Assessment (LVIA), which considers the impact of the proposed development on the landscape. In terms of landscape character, the LVIA describes the site as siting within a generally undulating to flat, predominantly pastoral, landscape, which is defined and enclosed by a network of traditional field boundary hedgerows and the associated mature hedgerow trees. The site is identified as siting within the 'Settled Unwooded Vale' Landscape Character Type and the 'Severn Vale' Landscape Character Area.
- 7.29 The LVIA sets out that the site's landscape context generally consists of a patchwork of both arable and pastoral fields enclosed by a strong hedgerow network. These hedgerows, together with their associated mature hedgerow trees, combine to give

the impression of a greater sense of tree cover within the landscape and the site's immediate setting in particular. Consequently, whilst long range views of distant hills are possible across the landscape, the enclosure provided by the natural vegetation of the area limits short to mid-range views and the visual influence of the site is restricted. It goes on to state that the landscape character of the site's immediate setting has been degraded by the presence of the M5 motorway and Old Gloucester Road (B4634), both of which significantly impact upon the tranquillity of the area. These busy transport routes, together with the visual presence of the Hayden Sewage Treatment Works, reduce the sensitivity of the landscape and increase its capacity to accommodate change.

- 7.30 In terms of the visual impact on the landscape, the LVIA assesses the impact from a number of viewpoints surrounding the site. The visual appraisal establishes that with the exception of two locations on Old Gloucester Road opposite the site access, views of the proposed development from the surrounding landscape and from locations accessible to the general public are screened by a combination of existing field boundary hedgerows and their associated mature hedgerow trees, existing tree planting associated with bridge and motorway embankments and, to a lesser degree, the topography of the area.
- 7.31 In terms of landscape mitigation and enhancement, the LVIA sets out a number of measures. These include:
- The introduction of 58 no. native trees, in-keeping in character with those already present, to provide landscape structure and enhance the arboricultural fabric and value of the site.
 - The introduction of 636 linear metres of new native hedgerows to provide landscape structure, define proposed pitches and improve the site's landscape fabric and bio-diversity value.
 - The introduction and careful positioning of 200 square metres of new native understorey plantations to improve screening provided by existing peripheral hedgerows, filter views of the site from Old Gloucester Road further and improve the site's landscape fabric and biodiversity value.
 - - The creation of a carefully integrated surface water drainage system (to include proposed interlinked swales discharging into a new attenuation/drainage pond) to ensure that surface water drainage is dealt with in a sustainable manner and, through appropriate planting, also improves the bio-diversity value of the site.
- 7.32 Subject to the implementation of these mitigation and enhancement measures, the LVIA concludes that the site is able to accommodate the permanent change of use of the land to a private Travelling Showperson's site without unacceptably impacting upon the visual amenity and landscape character area.
- 7.33 With regard to the impact of the proposed development on existing trees, the application is supported with a 'Pre-Development Trees Survey & Assessment', which assesses the existing trees located on and immediately adjacent to the site. This is supplemented by an Arboricultural Method Statement. The supporting information indicates that the proposed development would not result in the removal of any existing trees and details measures for their protection during construction and post construction. However, the information does not take into account any vegetation that may need to be removed to provide the required visibility splay to the north east. Following consultation with the Council's Tree Officer, it is advised that the proposed protection measures are acceptable and can be secured by way of condition. It is further advised that whilst some vegetation would be removed to achieve the required visibility splays, there are no trees of particular value that would

be affected.

- 7.34 In light of the above, it is clear that there would be some harm to the landscape. However for the reasons set out above, the harm can be mitigated to some degree by securing the proposed tree protection measures and landscape mitigation measures. This must be weighed in the overall planning balance.

Highways

- 7.35 In respect of criterion (ii.) of policy SD13, access to the site is currently gained off an existing entrance directly off the Old Gloucester Road (B4364), which then follows a track along the western boundary of the site to enter the field at the south western corner, using the existing field entrance. The proposal is to utilise the existing access off the Old Gloucester Road, which would be substantially improved to allow large HGV's to access and egress the site. This access would lead directly into the site, which would in turn connect to an internal network of roads leading to the various plots. The existing field access to the south western corner of the field would be blocked up, whilst the access to the adjoining land along the existing track would be retained. The submitted plans show tracking for 16.5m Articulated HGV's at the site entrance and 160m visibility splays in either direction.
- 7.36 Whilst appropriate visibility splays have been shown in either direction, concerns had previously been raised that it had not been demonstrated that the land over which the splays crossed were entirely within highway land or land within the control of the applicant. This specifically related to the required visibility splay to the north east. On that basis Members resolved that they would have been minded to refuse the application for that reason only.
- 7.37 Following those concerns, the applicant has provided further information in respect of the land ownership based on evidence obtained from the Land Registry. Following further consultation with the Highways Officer, it is advised that the matter relating to visibility has been satisfactorily considered by the applicant and it has been demonstrated that the visibility splay to the north east can be achieved over land within the control of the Highway Authority or the applicant. Therefore the Highways Officer is satisfied that a planning condition to secure the required visibility splays can be imposed. However, it was considered prudent to publicise the additional information to ensure that any interested party would have the opportunity to comment on the additional information. That additional consultation period was ongoing at the time of writing this report and an update will be provided at Committee. Subject to nothing material arising from that consultation, the Highways Officer does not object to the proposal.

Flood risk, drainage and ground conditions

- 7.38 Turning to criterion (iii.), the site is located in Flood Zone 1 (low risk) as defined by the Environment Agency's most up-to-date flood maps, where such development is considered acceptable in principle. There are no known surface water issues affecting the site and the site is not at an undue risk of flooding.
- 7.39 In respect of site drainage, policy INF2 of the JCS requires new development to incorporate suitable Sustainable Drainage Systems (SuDS) where appropriate to manage surface water drainage. To address this, the applicant has provided details of a surface water drainage strategy that incorporates drainage swales and an attenuation/drainage pond. Following consultation with the Council's Land Drainage Officer, it is advised that the proposed surface water drainage system is a very

sustainable option and no objections are raised in principle. It is not clear as to how the site would discharge from the proposed attenuation/drainage pond, however, these details can be secured by way of condition.

- 7.40 With regard to the site's ground conditions, there is no evidence of poor ground stability or other hazardous land given its undeveloped Greenfield status.

Suitability of the site's location

- 7.41 In respect of criterion (iv.) of policy SD13, the site is located in the open countryside and outside of any recognised residential development boundary and is therefore contrary to policy SD10 of the JCS insofar as the proposal relates to residential development. Furthermore, the proposal is at odds with paragraph 25 the PPTS, which 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. However, should be noted that the PPTS is explicit that issues of sustainability should not be considered narrowly solely in terms of transport mode and distances from services.
- 7.42 The site is located along the Old Gloucester Road (B4634), which is a busy road that connects Staverton and west Cheltenham as well as providing links to the M5 motorway. The site is not well served by footways and street lighting and it is therefore likely that the occupiers of the site would be reliant on the use of the private motor vehicle to reach the majority of community facilities and other services. The fairly remote location of the site is therefore considered to be a disadvantage to the application. However, the nature of travel for a Travelling Showperson is that they are likely to be off site working for a number of weeks or months at a time and would not always rely on the local facilities. It is also considered that the location of the site close to the transport links of the M5 would be beneficial to the occupiers due to the extent of travel and movement around the county and other areas of the country.
- 7.43 Whilst the location of the site is not ideal in terms of access to services and facilities, it is considered that the proposal would not dominate the local community, nor would the movement of large vehicles disturb any neighbours. The site's location also needs to be considered in the context of the lack of a 5-year supply of deliverable Travelling Showpeople sites and the fact that the site is currently indicated as an allocation in the emerging Tewkesbury Borough Plan to 2031.

Site services

- 7.44 The applicants advise that the site can be properly serviced and would be supplied by water, power, sewerage and waste disposal facilities. Moreover, subject to securing drainage details by way of condition, the site would be served by suitable drainage infrastructure. The site would be large enough to enable vehicle movements, parking and servicing to take place, and would enable access for emergency vehicles. Each plot would also give acceptable circulation space along with amenity areas. The proposal therefore accords with criterion (v.) of policy SD13.
- 7.45 In summary, notwithstanding the 'in-principle' objection to the scheme on Green Belt grounds, it is considered that the proposal is broadly in accordance with policy SD13 of the JCS, save for the site's location where occupiers of the site would be heavily dependent on the use of the private motor vehicle.

Noise

- 7.46 The NPPF states that local planning authorities should aim to avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development and should consider whether such impacts can be mitigated through design or through the use of planning conditions. This is also a requirement of policy SD14 of the JCS, which requires new development to result in no unacceptable levels of noise.
- 7.47 Following consultation with the Council's Environmental Health Officer, it was advised that the site is close to the M5 and therefore could experience noise pollution on site from the road traffic noise. In order to address this, it was advised that a 2.2 metre acoustic fence should be erected along the southern and western boundary of the site. The applicant has now incorporated this into the scheme, which can be secured by way of a planning condition to ensure that it is retained in perpetuity. Conditions are also recommended to prevent any commercial activity on the site and to restrict the times when the testing and maintenance of fairground equipment can take place. Subject to these conditions, the proposal would be acceptable in respect of noise and disturbance.

Archaeology

- 7.48 Following consultation with the County Archaeologist, the applicant has provided the results of an archaeological field evaluation. Following that work, the County Archaeologist advised that the results were negative in that no archaeological remains were observed during the investigation. On that basis, the proposed development has low potential to have any impacts on archaeological remains and no further archaeological investigations or recording is required. The proposal is therefore acceptable in this regard.

8.0 CONCLUSION AND RECOMMENDATION

- 8.1 As required by paragraph 144 of the NPPF and paragraphs 16 and 17 of the PPTS substantial weight must be given to all the harms caused to the Green Belt. As set out in this report, the proposal is inappropriate development in the Green Belt and is harmful by definition. In addition to this, the proposed development would fundamentally change the open nature of the site by introducing a considerable amount of built form, which would be further compounded by the associated caravans, vehicles and fairground equipment that would be stored on the site. Whilst the impact on the openness of the Green Belt in visual terms is mitigated to a degree by the fact that the site is relatively well contained by mature trees and hedgerows, there would still be demonstrable harm to the openness of the Green Belt. This weighs heavily against the proposal in the planning balance.
- 8.2 In terms of any other harms, there would be a degree of landscape harm given the site's undeveloped Greenfield status and its location in open countryside. However, the site is reasonably well contained and the harm can be mitigated to some degree by securing the proposed tree protection measures and landscape mitigation measures.
- 8.3 The relatively isolated location also weighs against the proposal insofar as any future occupiers would be largely dependent on the private motor vehicle to access everyday services and facilities. Conversely, the site does offer good access to the M5 motorway, which would facilitate easy access around the country when travelling to different events. Moreover, the nature of travel for a Travelling Showperson is such that they are likely to be working away for a number of weeks or months at a time and would not always be reliant on local services and facilities.

- 8.4 In terms of the applicant's 'Very Special Circumstances', Members previously resolved that the case presented to them at the time amounted to very special circumstances that outweighed the harm to the Green Belt. Given that the same case is presented here and there are no known material changes to that case, it is considered that very special circumstances still exist in this instance, which justify inappropriate development in the Green Belt.
- 8.5 In terms of the other matters relevant to the application, subject to nothing material arising from the additional consultation, the site would be served by a safe and suitable access and the residual cumulative impact on the highway network would not be severe. The site would not be at an unacceptable risk of flooding and suitable drainage facilities can be provided, which can be secured by way of condition. Subject to the provision of acoustic fencing, the site would not be subject to unacceptable levels of noise and there would be no adverse impacts in respect of archaeology.
- 8.6 In balancing these considerations, it is considered that the factors in favour of granting permission advanced by the applicant outweigh the harm to the Green Belt. It is therefore considered that very special circumstances exist in this case to justify inappropriate development in the Green Belt. Subject to nothing material arising from the additional consultation in respect of the site access, the application is recommended for **Permit**.

Conditions:

1. The works hereby permitted shall be begun before the expiration of three years from the date of this consent.

Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall be carried out in accordance with the following approved plans:

- TDA.2433.01: Site Location Plan
- TDA.2433.03 Rev. D: Proposed Site Layout & Detailed Landscape Scheme
- TDA.2433.04: Acoustic Fence Detail
- TDA.2433.06: Surface Water Drainage Strategy
- TDA.2433.07: Sectional Elevation A-A
- TDA.2433.10: Tree Protection Drawing
- TDA/2433/AMS/AMP/06.19 June 2019 (Updated October 2019): Arboricultural Method Statement
- 11553-HYD-02-XX-SK-S-001 Rev P1: Site Access General Arrangements
- 17154/02: Proposed Entrance

Reason: To clarify the terms of this permission and for the avoidance of doubt.

3. The occupation of the site hereby permitted shall be limited to members of the Showmen's Guild of Great Britain and their immediate families and shall not be subdivided into more than 9 plots as shown on the approved plans.

Reason: To ensure that the occupants are bona-fide Travelling Showpeople in accordance with the advice contained in Planning Policy for Traveller Sites (August 2015) and to ensure that the development integrates harmoniously with its surroundings locality in accordance with Policies SD5, SD6, SD13 and SD14 of the JCS.

4. Prior to the commencement of the development hereby approved (including all preparatory work), all tree and hedgerow protection must be in place in accordance with BS 5837:2012 and as shown on the submitted Tree Protection Drawing TDA.2433.10. All works shall be carried out in accordance with the submitted Arboricultural Method Statement TDA/2433/AMS/AMP/06.19 June 2019 (Updated October 2019). Any trees or hedgerows which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation. If any plants fail more than once they shall continue to be replaced on an annual basis until the end of the 5 year defects period.

Reason: To safeguard trees during the construction phases and in the interests of visual amenity in accordance with Policies SD5, SD6 and SD13 of the JCS.

5. All planting, seeding or turfing in the approved details of landscaping shown on drawing number TDA.2433.03 Rev. D (Proposed Site Layout & Detailed Landscape Scheme) shall be carried out in the first planting and seeding season following the first occupation of the site or completion of the development, whichever is the sooner, and any trees or plants which within a period of four years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

Reason: In the interests of visual amenity and in accordance with Policies SD5, SD6 and SD13 of the JCS.

6. Notwithstanding the provisions of Part 2 of Schedule 2 of the Town And Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order with or without modification), other than those hereby permitted by condition 2, no gates, wall, fences or other means of enclosure shall be erected on the land unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of visual amenity and in accordance with Policies SD5, SD6 and SD13 of the JCS.

7. No commercial activity other than the storage, maintenance and testing of fairground equipment shall take place on the application site.

Reason: The site is not appropriate for unrestricted commercial use in accordance with Policies SD5, SD6, SD13 and SD14 of the JCS.

8. The storage, testing and maintenance of fairground equipment shall be limited to equipment owned by those lawfully occupying the site and the testing and maintenance of fairground equipment shall not take place except between the hours of 09:00 to 17:00 Monday to Friday, 09:00 to 13:00 on Saturdays and at no time on Sundays or Public Holidays.

Reason: To ensure that the noise emitted from this development is not a source of nuisance to occupants of nearby residential property in accordance with Policy SD14 of the JCS.

9. No vehicle, fairground equipment or other item stored on the site shall exceed 4.5 metres in height (above ground level).

Reason: To ensure that the development integrates harmoniously with its surroundings locality in accordance with Policies SD5, SD6 and SD13 of the JCS.

10. There shall be no means of external lighting on the site other than in accordance with the details that shall have first been submitted to and approved in writing by the Local Planning Authority.

Reason: To minimise light pollution and to limit the impact on the openness of the Green Belt and rural landscape in accordance with Policies SD5 and SD6 of the JCS.

11. The vehicular access hereby permitted shall not be brought into use until the existing roadside frontage boundaries have been set back to provide visibility splays extending from a point 2.4m back along the centre of the access measured from the public road carriageway edge (the X point) to a point on the nearer carriageway edge of the public road 160m distant in both directions (the Y points). The area between those splays and the carriageway shall be reduced in level and thereafter maintained so as to provide clear visibility between 1.05m and 2.0m at the X point and between 0.26m and 2.0m at the Y point above the adjacent carriageway level.

Reason: To avoid an unacceptable impact on highway safety by ensuring that adequate visibility is provided and maintained to ensure that a safe, suitable and secure means of access for all people that minimises the scope for conflict between traffic and cyclists and pedestrians is provided in accordance with Policy INF1 of the JCS.

12. Prior to the occupation of the development hereby permitted the vehicular access shall be laid out and constructed in accordance with the submitted plan drawing no. 11553-HYD-02-XX-SK-S-001 Rev P1 with any gates situated at least 16.5m back from the carriageway edge of the public road and hung so as not to open outwards towards the public highway and with the area of access road within at least 20.00m of the carriageway edge of the public road surfaced in bound material, and shall be maintained thereafter.

Reason: To reduce potential highway impact by ensuring that there is a safe, suitable and secure means of access for all people that minimises the scope for conflict between traffic and cyclists and pedestrians in accordance with Policy INF1 of the JCS.

13. Notwithstanding the submitted plans, development shall not be commenced until full details of the discharge of foul sewage and surface water drainage have been submitted to and approved in writing by the Local Planning. The scheme shall subsequently be implemented in accordance with the approved details before the development is first occupied.

Reason: To ensure that the development is provided with a satisfactory means disposal for foul and surface water drainage in accordance with Policy SD14 and INF2 of the JCS.

Informatives:

1. In accordance with the requirements of the NPPF the Local Planning Authority has sought to determine the application in a positive and proactive manner offering pre-application advice, detailed published guidance to assist the applicant and published to the council's website relevant information received during the consideration of the application thus enabling the applicant to be kept informed as to how the case was proceeding. However, as a consequence of the clear conflict with Development Plan Policy no direct negotiation during the consideration of the application has taken place.

