

Planning Committee 28 February 2017  
Report of the Head of Planning and Development



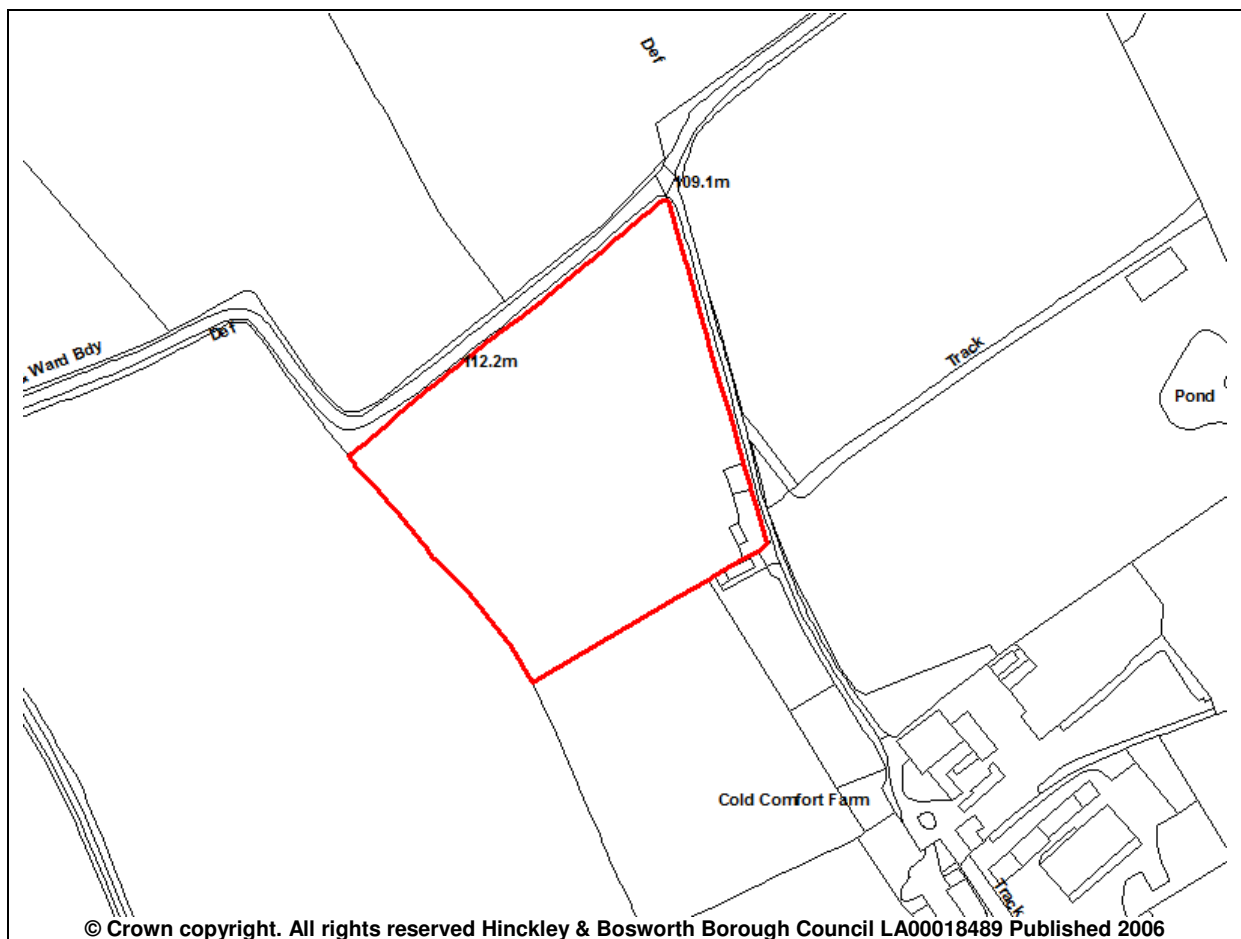
Hinckley & Bosworth  
Borough Council

*A Borough to be proud of*

Planning Ref: 16/00976/FUL  
Applicant: Mr Michael Cash  
Ward: Hinckley Trinity

Site: Land Adj To Cold Comfort Farm Rogues Lane  
Hinckley

Proposal: Erection of two day room buildings and the relocation of the site  
access



**1. Recommendations**

**1.1. Grant planning permission** subject to:

- Planning conditions outlined at the end of this report.

**2. Planning Application Description**

- 2.1. The applicant seeks planning permission for the erection of two day rooms and the relocation of the access to the site. One day room would be located on each of the approved pitches for use by the occupiers of each. The access will also be moved further down the track to enable a straight access through the site onto the pitches.

### **3. Description of the Site and Surrounding Area**

- 3.1. The site comprises a parcel of previously agricultural land which is approximately 0.3 hectares in size, to the west of the site the two traveller pitches are situated; currently comprising one static and one touring caravan to each. The site is bounded by mature hedgerows, with an access track to the east of the field, the track itself serves two residential dwellings; namely Cold Comfort Farm and the Barn. To the west of the site is a public footpath, T60 and to the north of the site is Rogues Lane.

### **4. Relevant Planning History**

|              |  |                |            |
|--------------|--|----------------|------------|
| 15/00026/ENF | Without planning permission the unauthorised change of use of land from agriculture to use as a residential gypsy and traveller caravan site | Appeal Allowed | 10.08.2016 |
|--------------|--|----------------|------------|

- 4.1. On the 2 July 2015; on the site known as Land North West of Cold Comfort Farm, Rogues Lane, Hinckley an unlawful gypsy and traveller encampment occurred. The Local Planning Authority served appropriate notices requiring the cessation of the use. The owners then appealed the decision and the application was approved by the Planning Inspector on the 10 August 2016. Inspector`s findings were as follows:
- 4.2. *“The harm I have identified to the character and appearance of the area has been limited to some degree by the context of the site while concern about the relationship to services is similarly reduced because of the distances involved. However, the interests of the unborn child, the families homelessness and the lack of identified gypsy and traveller sites going forward are each matters to which I attach significant weight and, when taken together, they outweigh the harms identified”*
- 4.3. Therefore based on these considerations a temporary planning permission was granted on the site for five years.

### **5. Publicity**

- 5.1. The application has been publicised by sending out letters to local residents. A site notice was also posted within the vicinity of the site.
- 5.2. Two letters of objection have been received; the points raised are summarised below:
- 1) Development would impact further on the countryside.
  - 2) The area is noted for Great Crested Newts; removing sections of hedgerow and blocking/piping the ditch without sufficient monitoring will potentially damage the local ecosystem and habitat for such amphibians.
  - 3) Granting permission for this development would make the site permanent when only a temporary permission has been granted.
  - 4) The site is in an unsustainable location as noted by the Planning Inspectorate.
  - 5) The current static mobile homes on site have all the facilities available to them, why is there a need to have a further permanent structure when all the facilities are available within the caravans.

- 6) County Highways cannot confirm the status of the drive, as they assume that it is an un-adopted public highway. Due to the uncertainty permission should not be granted for this proposal.
- 7) The gypsy status of the occupiers needs to be clarified further in order to determine this application.
- 8) Local residents have stated that their family's rights under Article 1, 6, 8 and 14 of EHCR have been breached by previous decisions granted.
- 9) The area is noted for its bat population, the development will impact unnecessarily upon the local wildlife.
- 10) Altering the access will encourage more development further down the line by easily splitting up the field.

## **6. Consultation**

- 6.1. Leicestershire County Council Gypsy and Liaison Officer has stated that the relocation of the access will provide a safer and more direct access onto the highway. Also the erection of the day rooms will provide better facilities and a safer environment in which to care for the youngest member of the Family.
- 6.2. Severn Trent Water has no objection to the development subject to an appropriate condition imposed surrounding drainage plans for the disposal of surface water and foul sewage.
- 6.3. Leicestershire County Council (Highways) has previously made objections to any increase in development at this site; however as the access proposals are broadly similar to those which have already been approved by the Planning Inspectorate the Highway Authority has no grounds for refusal of this slightly amended proposal.
- 6.4. HBBC Environmental Health (Drainage) has no objection to the proposal and recommended notes to applicant to be included to take into account a suitable permeable surface to be laid.
- 6.5. HBBC Environmental Health (Pollution) has no objection to the application.
- 6.6. No comments have been received from the following:
  - Stoke Golding Parish Council
  - Ramblers Association

## **7. Policy**

- 7.1. Site Allocations and Development Management Policies DPD (2016)
  - Policy DM1: Presumption in Favour of Sustainable Development
  - Policy DM4: Safeguarding the Countryside and Settlement Separation
  - Policy DM7: Preventing Pollution and Flooding
  - Policy DM10: Development and Design
  - Policy DM17: Highway Design
  - Policy DM18: Vehicle Parking Standards
- 7.2. National Planning Policies and Guidance
  - National Planning Policy Framework (NPPF) (2012)
  - Planning Practice Guidance (PPG)
  - Planning Policy for Traveller Sites (2015)

## 8. Appraisal

### 8.1. Key Issues

- Assessment against strategic planning policies
- Impact upon the character and appearance of the area
- Impact upon neighbouring residential amenity
- Impact upon the highway
- Planning Balance

#### Assessment against strategic planning policies

8.2. Policy DM1 of the adopted Site Allocations and Development Management Policies DPD (SADMP) sets out a presumption in favour of sustainable development and states that development proposals that accord with the development plan should be approved.

8.3. Planning Policy for Travellers Sites (2015) (PPTS) states that all decisions should be made in line with the National Planning Policy Framework with a presumption in favour of sustainable development. In determining this application, consideration must be given to each of the strands of sustainability.

#### Impact upon the character of the area

8.4. Policy DM4 of the SADMP requires that this development should not have an adverse effect on the intrinsic value, beauty, open character and landscape character of the countryside.

8.5. Policy DM4 also sets out the criteria of development which will be considered sustainable in the countryside.

8.6. Policy DM4 states development in the countryside will be considered sustainable where; it is for outdoor sport or recreation purposes and it can be demonstrated that the proposed scheme cannot be provided within or adjacent to settlement boundaries; the proposal involves the change of use, reuse or extension of existing buildings which lead to the enhancement of the immediate setting; it significantly contributes to economic growth, job creation and/or diversification of rural business; it relates to the provision of stand alone renewable energy developments; it relates to the provision of accommodation for a rural worker. The proposal of the day rooms does not meet any of the criteria and is therefore contrary to Policy DM4 of the SADMP.

8.7. When considering sustainability the site is located a considerable distance away from any services and therefore there is a reliance on using private motor vehicle. The site is located within a countryside location and the erection of the day rooms would significantly harm the character of the countryside and is considered to be an unsustainable form of development and contrary to DM4.

8.8. Policy DM10 of the SADMP seeks to ensure that new development complements or enhances the appearance and character of the surrounding area with regard to scale, layout, density, mass, design, materials and architectural features.

8.9. The two day rooms would be positioned adjacent to the existing gypsy and traveller pitches. The day rooms would be constructed out of traditional red bricks and would be completed with timber slats over the structure; the roof would be constructed out of concrete roof tiles. The day rooms would be 4 metres in height to the ridge and 2.5 metres to the eaves of the buildings. The floor space of each of the buildings would be 36 square metres.

- 8.10. At present, the site is well screened from Rogues Lane by the dense tall hedge that runs along the entirety of that boundary. Moreover, this hedge turns to run alongside the west side of the track and similarly screens the development from that direction. However, despite this; views are possible through the gateway, and those would be increased with the removal of some of the hedge to provide improved sight splays as part of the works to provide the new access. The day rooms would also be clearly visible from the public footpath that runs to the west of the site.
- 8.11. The agent has been contacted to ascertain whether the number of day rooms could be reduced to one which would reduce the impact on the surrounding countryside. At present no response has been received.
- 8.12. It is therefore considered that due to the day rooms location away from any existing buildings which are also visible from public vantage points the impact on the open character of the countryside would be exacerbated. Whilst the site is partially concealed, the development would still cause undue harm to the character of the countryside and is considered to be contrary to Policy DM4 and DM10 of the Site Allocations and Development Management Policies DPD.

#### Impact upon neighbouring residential amenity

- 8.13. Policy DM10 of the SADMP states that development should be permitted providing that the development would not have a significant adverse effect on the privacy and amenity of nearby residents and occupiers of adjacent buildings, including matters of lighting, air quality, noise, vibration and visual intrusion.
- 8.14. The nearest residential property to the existing pitches and proposed location for the day rooms is Cold Comfort Farm ; approximately 230 metres away. However, due to the day rooms being located next to a mature hedgerow and located a considerable distance away from neighbouring properties the position of the day rooms would not have an impact on neighbouring residential amenity. It is therefore considered that the development is in accordance with Policy DM10 of the Site Allocations and Development Management Policies DPD.

#### Impact upon Highway Safety

- 8.15. Policy DM17 and DM18 of the SADMP require development to accord with adopted highway design and vehicle parking standards to ensure that there is adequate highway visibility for road users and adequate provision of off-street parking and manoeuvring facilities. Paragraph 32 of the NPPF states that development should only be refused on highway grounds where the residential cumulative impacts of development are severe.
- 8.16. The proposed access will be altered slightly from the original scheme which was approved by the Inspector but will be of similar design. The Planning Inspector considered that the highway would not have a severe or significantly adverse effect on highway safety due to the limited number of movements at present and their slow speeds. The Inspector was satisfied that the additional activity would not cause harm to highway safety and therefore the development is in accordance with Policy DM17 and DM18 of the Site Allocations and Development Management Policies DPD.
- 8.17. It is considered that it would be appropriate for the existing access to be closed up once the development has been completed to ensure that there is only one access to the site and to ensure the continuity of the hedgerow; and to provide additional screening of the site.
- 8.18. Concerns have been raised about the uncertainty in regard to the status of the access track. However, this has no bearing on the reasoning as there is no basis to consider the access track to be upgraded.

### Planning Balance

- 8.19. In the decision to grant temporary permission for the site the inspector found that harm was caused by the development to the character and appearance of the area, and to the aims of sustainability as a result of the reliance on the car, giving rise to a conflict with the Development Plan and the Framework on those points.
- 8.20. However, this conflict with Council's adopted Development Plan and the Framework had to be balanced against a number of factors.
- At the date of the hearing HBBC could not show a 5 year supply of deliverable sites.
  - The inspector had been told that at the date of the hearing there were no alternative pitches available in the borough and having to leave the site meant that the occupants would be homeless.
  - One of the occupants was expecting her first child and the United Nations Convention on The Rights of Children was engaged.
- 8.21. The case of *Stevens v Secretary of State for Communities and Local Government 2013* was acknowledged in a Court of Appeal case later the same year as the first occasion in which the SoS had made a clear concession that Article 3 (1) of the Convention applied to planning determinations of both local planning authorities and the SoS.
- 8.22. The consequences of the application of Article 3 and Article 24, to which the Inspector also referred was that the Inspector, and also HBBC as Local Planning Authority, was bound to treat the best interests of the child as a 'primary consideration'.
- 8.23. These were the factors which the Inspector had to balance at the hearing in coming to his decision and whether the considerations listed in above outweigh the harm to the open landscape character of the countryside.
- 8.24. He found in paragraph 56 of the appeal decision that the interests of the unborn child, the families' homelessness and the lack of identified gypsy and traveller sites going forward were each matters to which he attached significant weight and when taken together they outweighed the harms identified. The result was that the occupiers have a temporary permission for five years subject to the conditions imposed by the inspector.
- 8.25. A balancing exercise also needs to be taken into account in a consideration of this application for two day rooms and the access proposals.
- 8.26. The report has identified harm to the character of the countryside and this has to be weighed against a number of other factors, namely the temporary permission, which are a material planning consideration and the continuing interests of the child and how the proposed day rooms would impact on those interests.
- 8.27. In balancing the opposing factors consideration should be given to Article 24 of the Convention in the context of the interest of the child and the erection of the day rooms. Article 24 provides that children have the right to inter alia safe drinking water and a clean and safe environment. The Inspector stated that although the development would have some harm on the character of the surrounding area, the rights to a child under Article 24 of the Human Rights Convention to ensure "appropriate pre-natal and post natal health care for mothers". Therefore, although at the time of the Inspector's decision the child was not born, it is considered in the best interests are something that should be a consideration to which significant weight was given in the assessment. If the appeal was dismissed the time for compliance would more or less coincide with when the mother and child was

expected, thereby resulting in a need to move when the mother and child could be requiring medical attention. This would be to the detriment of the child. The proposed day rooms would contain kitchen and washing facilities which meets the requirements of safe drinking water and a clean and safe environment.

- 8.28. The permission if granted would also be temporary and would expire contemporaneously with the grant of temporary planning permission.

#### Other Issues

- 8.29. Concerns have been raised that the site is located in an area of Great Crested Newts and which has a bat population. Leicestershire County Council (Ecology) has been consulted on the application however no comments have been received. In regard to the impact on any existing bat population a survey is only required if works were being undertaken to an existing building. The day rooms are new structures and a bat survey would therefore not be required.
- 8.30. Concerns have been raised that the erection of two brick built buildings would give the impression that the site is permanent; however a suitably worded condition would be imposed to state that the buildings should be removed once the temporary permission has expired. Also the building will be finished with timber slats on the structure to give it an appearance of a temporary structure; this has been agreed with the applicant following negotiations.
- 8.31 Residents have stated that more clarity is needed in regard to the gypsy status of the owners. The Inspector stated in his decision that the owners have never lived in bricks and mortar and none of them have permanently ceased travelling and therefore all inhabitants satisfy the definition of gypsies and travellers given in Planning Policy for Traveller Sites (PPTS).
- 8.32 Concerns have been raised that altering the access to the site could encourage further caravans to move onto the site at a later date. If more caravans are situated on the site then appropriate action could be taken or an application could be submitted and considered on its own merits. This application cannot be determined based on future fears of what could happen on the site.
- 8.33 Objectors have also raised concern that their Human Rights would be affected as result of the development. The relevant articles of the European Convention on Human Rights (usually Article 6, 8 and Article 1 of the First Protocol) should normally be considered as an integral part of the Planning Committee's/Inspector's approach to material considerations, and the effect of the proposed development on adjoining owners must be considered in the context of the relevant Articles, and a balancing exercise is necessary. It should not be forgotten that, in carrying out that balancing exercise, the equivalent rights of the applicant have also to be weighed.
- 8.34 In relation to this application a balancing exercise against the relevant provisions of local and national planning policy has been undertaken. This report has summarised neighbour objections and an objectors are able to speak at the Planning Committee before a decision is made. In these circumstances, it is believed that there is a sound procedure for assessing and balancing competing interests. Therefore, as shown in this report a balancing argument has been made weighing up the decision with a conclusion taken place.

## **9. Equality Implications**

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

(1) A public authority must, in the exercise of its functions, have due regard to the need to:

(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

9.2 Officers have taken this into account and given due regard to this statutory duty in the consideration of this application. The Committee must also ensure the same when determining this planning application.

9.3 The equality implications arising from this application relate to the protected characteristics of the current owners and occupiers of the site as gypsies and travellers and the rights of a child. As stated within the previous Inspector's decision significant weight was given to these matters. In this report full consideration has been given to the personal circumstances of the owners.

## 10 Conclusion

10.1 The proposed development of the two day rooms and the alteration of the access would cause harm to the character and appearance of the countryside and is therefore contrary to Policy DM4 and Policy DM10 of the Site Allocations and Development Management Policies DPD. To take into account the impact the development would have on the countryside negotiations have taken place with the applicant to ensure the finish of the structure would be in timber to lessen the impact on the countryside. However, given the previous appeal decision; considerable weight has to be given to the rights of the child and the fact that the day rooms are required as part of the cultural requirements of the gypsy and travellers lifestyle. The application is therefore contrary to the terms of the development plan however there are material considerations that outweigh the harm to the open character of the countryside.

10.2 As the site has been granted temporary planning permission it is considered acceptable to grant this application on a temporary basis in line with this time scale.

## 11. Recommendation

11.1 **Grant planning permission** subject to:

- Planning conditions outlined at the end of this report.

### 11.2 Conditions and Reasons

1. This permission shall expire on 10 August 2021 at which date all development detailed on the plan: Proposed Elevations and Floor Plan (Scale 1:100) and Proposed Plan (Scale 1:500) received on the 24 October 2016 shall be removed and the site restored to agriculture.

**Reason:** To ensure a satisfactory appearance and impact of the development to accord with Policies DM1, DM4 and DM10 of the adopted Site Allocations and Development Management Policies DPD.

2. Prior to the commencement of development drainage plans for the disposal of surface water and foul sewage shall be submitted in writing to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details before the development is first brought into use.

**Reason:** To ensure the development is provided with a satisfactory means of drainage as well as reduce the risk of creating or exacerbating a flooding



problem and to minimise the risk of pollution in accordance with Policy DM7 of the Site Allocations and Development Management Policies DPD.

3. The development hereby permitted shall not be carried out except in complete accordance with details shown on the submitted plans: Proposed Elevations & Floor Plans (Scale 1:100), Proposed Plan (Scale 1:500) and Location Plan (Scale 1:2500) received by the Local Planning Authority on the 24 October 2016.

**Reason:** To ensure a satisfactory appearance and impact of the developments to accord with Policies DM1, DM4 and DM10 of the adopted Site Allocations and Development Management Policies DPD.

4. The existing access at land adjacent to Cold Comfort Farm, Rogues Lane, Hinckley shown on the site Proposed Plan shall be permanently closed and incorporating the planting of a hedgerow in this location, within 7 days of the proposed new access being brought into use.

**Reason:** To ensure the removal of unnecessary points of traffic conflict in the highway in the interests of highway safety in accordance with Policy DM17 of the Site Allocations and Development Management Policies DPD.

### 11.3 Notes to Applicant

1. The approved development may require Building Regulations Approval, for further information please contact the Building Control team via e-mail at [buildingcontrol@hinckley-bosworth.gov.uk](mailto:buildingcontrol@hinckley-bosworth.gov.uk) or call 01455 238141.
2. This permission is granted on a temporary basis only. No renewal of this permission will be likely and you will therefore need to address a permanent solution before the period of the permission expires.
3. Any access drives, parking and turning areas, paths and patios should be constructed in a permeable paving system, with or without attenuation storage, depending on ground strata permeability. On low-permeability sites surface water dispersal may be augmented by piped land drains, installed in the foundations of the paving, discharging to an approved outlet.