

## **Tewkesbury Borough Plan – hearing statement on behalf of Mrs SA Smith, Brookside stables**

### **Introduction**

1. This statement has been prepared on behalf of Mrs SA Smith, the owner of Brookside stables, a site that was originally within the preferred option consultation, but has been removed from the submission draft.
2. The statement will cover the following:
  - Set out the specific circumstances for the Brookside stables
  - Address the Inspector's questions where relevant to my client's situation
  - Suggest a proposed modification

### **The circumstances of Brookside stables**

3. For ease of reference, the relevant extract of my previous submission is set out below:

*We would invite the LPA / examining Inspector to reintroduce Brookside Stables, Cold Pool Lane as an allocation for Gypsy and Traveller use...*

*...By way of background, the site has been occupied by the same family group for a decade and a half. As such, it is incumbent on both the LPA and examining Inspector to consider the article 8 rights of the current occupants. If no allocation is made, the implication is that this close knit family group with longstanding links to the local area will be forced to move elsewhere. It is assumed that the tenure on the other proposed allocations is private so there is no guarantee that they will be made available to the family in question.*

4. Turning to the proposed allocations, it is important to note that the sites are all in private ownership, a matter which the Inspector considering an appeal at Brookside Stables addressed:

*Despite this there are at present no suitable and available alternative pitches within the Borough for the 7 households living on the appeal site. That there are no available sites for people who have lived in a*

*local authority area for some years without a permanent pitch, and hence will have been included in any up-to-date needs assessment, is particularly common where the supply relies upon private sites, as appears to be the case here. Hence meeting the basic requirements of PPTS in terms of a numerical 5-year supply does not necessarily mean that there are sites available for those in need.*

5. Furthermore, I would also like to bring to the attention of the Inspector that the residents of Brookside stables would be unable to move to any of the proposed allocations. There is a long standing family dispute with people who live on Hygrove lane which has involved the Police and the courts. Fieldview is not available to my client (a letter from the owner will be provided, covid has prevented this being submitted sooner). Hillview is a private Irish Traveller site, which a different cultural tradition and is therefore inappropriate.
6. In summary, even if the LPA are able to demonstrate a 5 year supply of sites (which I would question - see below), then this still does not in anyway accommodate the needs of the residents at Brookside stables.

### **The Inspector's questions**

#### ***4.1 and 4.2 ...does the TBP make sufficient provision for gypsies, travellers and travelling showpeople in accordance with the requirements of JCS Policy SD13 and Planning Policy for Traveller Sites (PPTS) 2015? / Is there a 5 year supply of sites***

7. The first point is that the text of the plan admits that sufficient provision will not been made:

*3.81. At the time of writing, there had been 20 pitches granted permission since April 2016. This leaves a requirement for a further 58 pitches. The allocations presented in this plan would provide for a further 30 pitches. This means that there would still be a shortfall of 28 pitches against the total needs regardless of the PPTS definition. However, no further site options were deemed to be available, suitable and achievable to deliver additional pitches. Nevertheless, existing commitments and the allocations in the Borough Plan would provide for a total of 50 pitches. This means that the pitch targets for 'travelling households' (5 pitches) plus the majority of the pitch targets for 'unknown' households (48 pitches) would have been met. As only a proportion of the 'unknown' households are likely to meet the PPTS definition, then the PPTS requirement to identify a supply of sites*

*against pitch targets for gypsies and travellers (as defined by the PPTS) has been satisfied.*

8. The LPA is requested to clarify the existing commitments referred to.
9. A investigation of the LPA's online records does not reveal any further permissions other than a single pitch on a temporary basis have been granted since the drafting of the pre submission plan, so it is assumed that there is still a short fall (if I am wrong about this the LPA are invited to correct me).
10. Furthermore, an appeal decision at Kayte Lane (appendix 1) casts doubt on the accuracy of the identified need figure:

*40. The level of unmet need for gypsy pitches in the Borough. The Inspector's Report on the Joint Core Strategy endorsed the methodology used in the updated Gypsy and Traveller Accommodation Assessment, carried out after the changes to the definition of a traveller in the August 2015 Planning Policy for Traveller Sites. The assessment makes a 10% allowance for those placed in the 'not known' category to be travellers as defined. The appellant considers that insufficient allowance has been made for household formation. Having the opportunity to consider information requested to be presented by the Council after the Hearing, and in comparison with the 2017 Gypsy and Traveller Accommodation Assessment, the appellant casts significant doubt on the evidence base of that document and hence the final Assessment. On the evidence there does appear to be a number of unanswered questions over the figures used, in particular with regard to the percentage of 'unknowns' that should be considered as travellers, and the narrow nature of the travel that has been allowed as proof of gypsy status. In addition to the 13 pitches identified as having gained permission since 2016, there have been refused applications and appeals, indicating a greater need. In all, the appellant casts serious doubt over the evidence presented to the Joint Core Strategy Inspector. It is the case that Policy SD13 allows a criteria-based assessment of a site's suitability and it was agreed that the 5 year figure was a minimum in any event. The findings of the Examining Inspector are clear; that the Council is able to demonstrate a 5 year supply of gypsy and traveller sites, and that there is no longer a strategic requirement for sites, so that the allocation of sites is to be explored through the district level Plans. On that basis paragraph 10 of Planning Policy for Traveller Sites is satisfied, but it appears that reliance would have to be placed on the operation of Policy SD13 to*

*supply the higher level of need alleged by the appellant. **Certainly the number of recent permissions, applications and appeals indicate a likely, but unquantified, level of unmet need. [my emphasis]***

11. Further to the findings above, it is also notable that an application for 4 pitches on the site has just been refused (19/00986/FUL). It may be that this should necessitate an adjustment to the figures, and the LPA is invited to clarify whether it has already / it intending to do this.
12. In summary, it would appear on the basis of the available information that the LPA are unable to meet the need in full, and that the need figure is likely to be an underestimate in any event. It would therefore appear that there is no 5 year supply of sites.

**4.3 Policy GTTS1 allocates three sites for Gypsies and Travellers and one site for Travelling Showpeople. How have these sites been identified from amongst reasonable alternatives?**

13. As mentioned elsewhere, Brookside stables was included within the preferred options consultation, but has since been removed. The site assessment within the 2019 Sustainability Appraisal states the following:

**SUMMARY:**

*There is the potential for a minor positive effect on SA Objective 1 through the provision of pitches for gypsy and travellers, and a positive effect on soils as there is no best and most versatile agricultural land present. No significant effects were found for traffic, air quality, flooding, biodiversity or cultural heritage. Major constraints for the site options includes the lack of accessible services and facilities, employment opportunities, sustainable transport links and public open space, with associated negative effects. The site option is entirely within the Green Belt, however JCS and TBP policies are considered to reduce major negative effects to minor for SA Objective 11.*

14. However, despite this assessment the sustainability appraisal offers the following explanation for the removal of Brookside stables:

*7.72 Policy GTT1 Site Allocations for Gypsies & Travellers: The Policy has been developed to confirm allocation of 3 sites on which occupation will be limited to Gypsies and Travellers - Land adjacent to Hygrove Place, Minsterworth for 7 pitches; Hillview, Bamfurlong Lane, Staverton for 15 pitches; and Land adjacent to Fieldview, A38, The Leigh for 8 pitches. The site at Brookside Stables, Badgeworth has not been progressed because of conflict with Green Belt policy, specifically from the Planning Policy for Travelers. Exceptional circumstances were judged not be to presented to justify development within the Green Belt due to the Borough Council being able to meet its identified needs.*

15. In order to consider the removal of Brookside stables, I would like to bring to the Inspector's attention that there were 13 objections to the inclusion of Brookside stables within preferred options plan. Comments included:

*In my experience the Traveller community are a group of people who take what they can and give nothing in return. Whilst there are exceptions to this statement who will decide which Travellers should be allowed on site? Do you intend to have a permanent presence on site to control the movement of people? As evidence of the unruliness of some Travellers I attach a paper cutting from the Daily Telegraph on Wednesday 21 November. Following the incursion of the travellers an estimated £300,000 worth of damage was done - who pays for this? Whilst not all Travellers act like this it is not an isolated incident and I have personally known Travellers to issue threats and demand money. There are also many travellers who believe that Laws of the land do not apply to them and there are local instances of this happening in the past two years. Are these the kind of people you want to bring into a quiet local community? Concern within Badgeworth is that the granting of a permanent traveller site in Cold Pool Lane will encourage others to look for planning permission to set up further sites thereby eroding this sensitive and diminishing greenbelt. GFWilkinson"*

16. It is unfortunate that the LPA did not see fit to reject this racist submission. Amongst the other objections there were concerns over precedent for other sites, and some planning issues. There was however nothing that in my view that was of sufficient substance to indicate that the site should not be allocated. No new issues were presented. I have not been able to find any explanation beyond that of the Green Belt noted above as to why this site was dropped from the plan.

17. In contrast to the site at Brookside Stables, the other proposed allocations received no comments at all. What is notable here is that as will be pointed out

below, two of the current proposed allocations have significant risks in terms of both flood risk and the effects on health of being next to an airport. All three of the allocations will create large sites, which do not cater well for the needs of families such as those at Brookside stables.

18. It would appear that the implication for Gypsies and Travellers in Tewkesbury is that their accommodation is preferred in concentrated areas with significant numbers of pitches where there is greater risk to health and well being, and not where there is a small amount of public opposition to a previously supported site.

#### **4.4 Comments on specific sites**

19. For the specific points raised by the Inspector, I will address the following in regard to the 3 sites:

*Is the allocation justified given the site selection criteria in JCS Policy SD13, relevant constraints, infrastructure requirements and potential impacts such as visual impact and highway safety? Will the site have an acceptable environment for residential use? Will the site, together with others, dominate the nearest settled community contrary to PPTS paragraph 14?*

20. When considering all three sites, I would invite the Inspector to consider the supporting text of policy SD11 in the plan:

*4.12.1 It is important that new housing development addresses local needs and contributes to the creation of mixed and balanced communities. This means providing sufficient good-quality housing of the right sizes, types and mix, in the right places, which will be attractive to and meet the identified needs of different groups in society, including families with children, first-time buyers, older people, people with disabilities, people wishing to build their own homes and Gypsy, Traveller and Travelling Showpeople communities.*

21. It is my considered view that the LPA have taken the approach of concentrating the proposed Gypsy and Traveller sites in already high density situations. I would suggest that this does nothing to create mixed and balanced communities and is doing a particular disservice to the Gypsies and Travellers who reside in the Borough.

***Land adjacent to Hygrove Place, Hygrove Lane***

22. The Inspector is invited to consider the wider context of Hygrove lane and Minsterworth. By my calculation there are 51 authorised pitches along Hygrove lane, (the LPA are invited to confirm this number). The proposed allocation will take this figure to 58. I also understand that there are at least a further 18 authorised pitches within Minsterworth.
23. The Gypsy, Traveller and Travelling Showpeople Addendum to the 2015 – 16 Assessment of Land Availability (March 2017) contains a site list which records 199 pitches in the borough (including unauthorised pitches). Whilst this was correct as of March 2017 and will have changed due to the granting of various permissions, even without the proposed allocation over 25% of the Gypsy and Traveller pitches are located within a small geographical area, with a particular concentration on one lane.
24. I have been informed that there have been a number of issues with anti social behaviour relating to Hygrove lane. It would perhaps be useful if the LPA could clarify whether they have taken any advice from the Police force on this allocation.

***Land adjacent to Fieldview, A38, The Leigh***

25. Turning to Fieldview, there are two issues with this site. The first is that of its size. It is notable that the Tewkesbury Borough Council Gypsy, Traveller and Travelling Showpeople Site Search Study (July 2015) stated the following:
- This is an existing authorised private Gypsy and Traveller site which needs to be safeguarded in the Local Plan for continued use. The site is permitted for 32 caravans (16 pitches) and is not recommended for additional provision as this would exceed the national best practice recommendation of 15 pitches.*
26. Clearly this advice was ignored. The proposed allocation would take this to 24 pitches.
27. The second issue is the location of the site within flood zone 2. I understand from my client that residents of the site had to evacuate due to flood waters coming very close in recent years. The proposal to increase the number of caravans (being highly vulnerable) at this location is in my view particularly problematic.
28. The July 2019 Sustainability Appraisal states the following:

7.74 The previous SA had found that the site at Fieldview, The Leigh is entirely located within flood zone 2, and therefore a major negative effect was considered for SA Objective 9. However, the site will need to comply with other TBP Policies, including ENV2 Flood Risk & Water Management – thus providing mitigation measures that should reduce the risk towards neutral.

29. It is first notable that the reasoned justification of Policy ENV2 states that it:

*...deliberately omits reference to core policy requirements including the sequential and exception tests as these are sufficiently covered by the JCS and NPPF.*

30. It does however note the particular relevance of flood risk in Tewkesbury:

*8.68. Tewkesbury Borough has suffered from numerous severe flooding events in its history, one of the most notable of which was in the summer of 2007. The effects of global climate change are likely to result in more occurrences of extreme weather events and resultant flooding in the future. With the need for significant levels of new housing and employment development within the Borough, as identified through the Joint Core Strategy, it is imperative that issues associated with water management are identified and subsequently tackled if existing problems are not to be made worse, along with the associated negative social, environmental and economic impacts.*

31. The Inspector is invited to consider whether the LPA's choice to make an allocation in flood zone 2 in accordance with the statement above.

32. I turn now to the question of compliance with the NPPF which states:

*157. All plans should apply a sequential, risk-based approach to the location of development – taking into account the current and future impacts of climate change – so as to avoid, where possible, flood risk to people and property. They should do this, and manage any residual risk, by:*

*a) applying the sequential test and then, if necessary, the exception test as set out below;...*

33. I have not been able to locate where the LPA have applied the sequential test in the case of this specific site, especially when there are other sites available within flood zone 1 (Brookside stables being one). On the face of it, it appears



that the LPA have chosen not to apply the sequential test to the allocation of Gypsy and Traveller sites, which is highly lamentable.

**Hillview, Bamfurlong Lane, Staverton**

34. The proposed allocation here would result in a site of some 17 pitches, which whilst smaller than the other proposed allocations is nevertheless a very large site in my experience.
35. Other than the Green Belt, the key issue here is the impact on residential amenity from Gloucestershire Airport, which it is immediately adjacent to. The LPA's choice here is described in the Sustainability Appraisal:

*The site option is opposite to Gloucestershire Airport, and there is the potential for the issue of noise disturbance from the airport to affect the health of any potential residents of the site option. Therefore, a **potential major negative effect is considered for the site option on health. [my emphasis]***

36. The obvious point is whether this approach is compliant with both the NPPF and JCS. The NPPF states that:

*180. Planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should:*

*a) mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life;*

37. Whilst the JCS at SD13 states:

*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.*

38. The obvious question here is why is a Green Belt site which by the LPA's own admission has a *potential major negative effect* been selected over another Green Belt site with no such issues.

**Proposed modification**

39. We do not make any comment on whether the proposed allocations should be removed, there is a clear need for pitches and the greater the level of provision the better. We would simply ask for Brookside Stables to be reintroduced as an allocation.

40. Whilst I am of the view that this could be on the basis of unrestricted Gypsy use, if need be, an allocation could be made on the basis of a personal condition. This is an approach that has been successfully deployed in the adopted Guildford Local Plan. I attach an example at appendix 2. This way the Article 8 rights of my client and her family, and the best interests of the children living on the site would be safeguarded.

Dr Simon Ruston MRTPI January 2021

Appendix 1 – Kayte lane appeal DL

Appendix 2 – Example policy from Guildford Local Plan



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## Appeal Decision

Hearing Held on 7 November 2017

Site visit made on 7 November 2017

**by S J Papworth DipArch(Glos) RIBA**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 18<sup>th</sup> December 2017**

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**Appeal Ref: APP/G1630/W/16/3144176**

**Land at Kayte Lane, Southam, Gloucestershire GL52 3PD**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Gilbert Smith against the decision of Tewkesbury Borough Council.
  - The application Ref 15/00969/FUL, dated 2 September 2015, was refused by notice dated 9 January 2016.
  - The development proposed is change of use of land to include stationing of caravans for residential occupation by a gypsy-traveller family with associated hard standing and utility block.
  - This decision supersedes that issued on 10 April 2017. That decision on the appeal was quashed by order of the High Court.
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### Decision

1. I allow the appeal and grant planning permission for a limited period of three years for the change of use of land to include stationing of caravans for residential occupation by a gypsy-traveller family with associated hard standing and utility block at Land at Kayte Lane, Southam, Gloucestershire GL52 3PD in accordance with the terms of application Ref 15/00969/FUL, dated 2 September 2015 and subject to conditions 1) to 9) on the attached schedule.

### Procedural Matters

2. The address given on the application form was 'Bishops Cleeve, Cheltenham'. In fact, and as pointed out by local residents and seen at the site inspection, the site lies within the parish of Southam. Whilst the location of the site is clear and the postcode given is correct, the opportunity has been taken to alter the address in this Decision to 'Southam, Gloucestershire'.
3. The Council advised on 1 November 2017 that the *'Inspector's Report on the Examination into the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy'* had been received, and a copy of the *'Table of Main Modifications'* was also supplied. It was explained at the Hearing that all three of the authorities must separately pass a resolution before the Plan is adopted. Tewkesbury resolved to adopt at a meeting on 5 December and the last of the three authorities resolved similarly on 11 December 2017. As a result, the Joint Core Strategy is now part of the Development Plan.
4. This occurred after the closure of the Hearing, but since it had been agreed at the Hearing that, as an emerging document, the Joint Core Strategy should be

afforded very substantial weight in accordance with paragraph 216 of the National Planning Policy Framework, nothing material changes with regard to the discussion at the Hearing or representation made beforehand, and there was no need to seek further representation on this matter.

### **Main Issues**

5. The Council do not dispute the planning status of the appellant as a gypsy, and it is agreed that the proposal is inappropriate development in the Green Belt. The main issues are;
  - The effect of the proposal on the openness of the Green Belt and the purposes of including land in the Green Belt.
  - The effect of the proposal on the character and appearance of the area.
  - The effect of the proposal on the aims of policy on access to services and facilities, and the use of private vehicles.
  - The effect of the proposal on highway safety.
  - The weight to be attached to the planning policy statement of 31 August 2015 on Green Belt protection and intentional unauthorised development.
  - The weight to be attached to the other considerations put forward of the level of unmet need, whether the Council will be able to meet the need for sites and when, the availability of alternative sites, and the personal circumstances of the family including the interests of children.
  - Whether the harm to the Green Belt by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to provide the very special circumstances necessary to justify the development.

### **Reasons**

#### *Green Belt*

6. Paragraph 79 of the Framework states that the Government attaches great importance to Green Belts; the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.
7. Saved Policy GRB1 of the Tewkesbury Borough Local Plan states that planning permission will not be granted for development other than as set out in the policy. That detail does not accord fully with the more recent paragraph 89 of the Framework, but for the purpose of this appeal, the Local Plan policy should be considered as remaining applicable.
8. Policy SD6 of the Joint Core Strategy seeks to ensure that the Green Belt continues to serve its key functions and will be protected from harmful development. As explained in the Inspector's Report, the main purpose of Green Belt designation between Gloucester and Cheltenham is to prevent the merger of the two settlements, with other purposes being the prevention of urban sprawl and the preservation of open character. The purpose of a subsequent extension north of Cheltenham is to prevent the coalescence of

Cheltenham with Bishop's Cleeve. That therefore is the purpose of the Green Belt in the vicinity of the appeal site.

9. The Joint Core Strategy brings about the removal land from the Green Belt in favour of development, under the provisions for exceptional circumstances of paragraph 83 of the Framework, and the Council explained the 'traffic light' methodology in this respect. The Inspector's Report makes clear where exceptional circumstances have been found to exist and that the Green Belt in the vicinity of the appeal site is not to be altered. There is however recognition of the national status of the Racecourse which lies to the south of the appeal site, but the Council explained that any development would be located at the existing cluster of built form, to the south side of the land, away from the appeal site.
10. The appeal site is open land, albeit there remains fencing around the majority of the perimeter, and the surroundings are predominantly open, with the low building of a single dwelling adjacent to the north of the site, and a small group of dwellings on the west side of the lane further to the north, as well as a dwelling on the far side of Southam Lane. The large, open and mainly flat expanse of the racecourse extends to the south of Southam Lane. One further feature affecting the openness of the area is the bridge carrying Southam Lane over the preserved railway line, with the bridge abutments, the steelwork and the roads rising to cross it, all impinging to an extent on through views and hence openness, but that effect is moderated by the railway line being within a cutting below the level of the appeal site.
11. Taking account of the foregoing analysis, the addition of the proposed mobile home, touring caravan and utility building, together with any fencing hardstanding and parking of vehicles would reduce openness as a matter of fact, but the extent of the adverse effect would be limited by the proximity of the bridge and the dwelling to the north.
12. The development and use proposed would erode the separation of Bishops Cleeve and Cheltenham to only a very limited degree, particularly having mind to the extent of the racecourse. It is accepted that a similar argument could be used in many locations with an adverse cumulative effect, as referred to by the Council, but with the site contained by the dwelling to the north and the railway bridge, the purpose of the Green Belt here would not be undermined to a great extent.
13. To conclude, in addition to the harm by reason of being inappropriate development in the Green Belt, there would be a limited reduction in openness, and a limited adverse effect on the purpose of the Green Belt, due to the proximity of other dwellings. Nevertheless, as stated in paragraph 88 of the Framework, substantial weight should be given to any harm to the Green Belt.

#### *Character and Appearance*

14. The Tewkesbury Borough Local Plan saved Policy LND4 seeks to protect the character and appearance of the countryside, and Policy SD6 of the Joint Core Strategy contains similar aims, with applications being required to consider the landscape and visual sensitivity of the area. This consideration forms one of the Criteria in Policy SD13 on the siting of traveller pitches.

15. The wider area is largely rural in character and whilst clearly a managed landscape, the racecourse continues this impression a significant distance to the south. The centre of the built up area of Bishops Cleeve is some distance away as is the less built-up village of Southam. It is a fact that the site is contained by busy roads, the railway line and the adjacent dwelling, there being only a short boundary to truly rural agricultural land, but without the development already in place including the hardstanding and fencing, the site would be seen as a tongue of agricultural land extending to the road and alongside the railway, reducing the effect of the single dwelling.
16. The development and use would adversely affect this rural character and appearance of the area, and this would be encountered by numerous receptors, such as people using the roads and the tourist railway. The countryside would not be protected under the appeal proposals, contrary to Policy LND4 and Policy SD6, and criterion i) of Policy SD13 would not be met. But, having mind to the proximity of the other built form, and hence the low visual sensitivity of the area, only modest weight attaches to the resulting harm.

#### *Access to Services*

17. The site is outside any settlement boundary and is in the countryside for policy purposes. Local Plan Policy TPT1 allows for development to be permitted where provision is made for safe and convenient access by pedestrians and cyclists, and an appropriate level of public transport is available. The Council point out that Policy HOU4, restricting residential development outside settlement boundaries, should not be regarded as being a policy for the supply of housing following the 'Hopkins Homes' case in the Supreme Court, and hence the policy should not be considered out-of-date.
18. Joint Core Strategy Policy SD11 guides residential development to sustainable and accessible locations; and gypsy and traveller Policy SD13 seeks a suitable location in terms of access to local amenities, services and facilities, including schools.
19. The site is at the far end of a road from Bishops Cleeve where there is a range of services, and where significant recent development appears to have taken place. There is a regular bus service along the road and whilst the nearest flagged bus-stop is some way to the north, the appellant's evidence is that a driver would drop him at the site when asked. The Highway Authority confirmed that there is no hard-and-fast rule on when flagged stops should be provided against a more flexible arrangement of stopping where safe to do so. That bus service links the site to Cheltenham and various other locations as well as Bishops Cleeve, and there are additional school-only services.
20. Planning Policy for Traveller Sites provides for sites to be in rural or semi-rural locations as set out in Policy C, and whilst paragraph 25 as amended in the 2015 publication states that development in open countryside, away from existing settlements, should be *very* strictly limited, there is no definition of what constitutes 'open countryside' or 'away from existing settlements'. In this case the nearest settlement is not far away, and whilst the openness has been described with reference to Green Belt policy, the site does not sit alone in truly open countryside away from other development.
21. It would be possible to carry out many journeys on foot or by cycle, particularly in daylight, or by public transport, and the nature of the traveller lifestyle

would inevitably lead to the use of a vehicle for work, with the possibility of other errands being carried out at the same time. To conclude on this issue, the site is not remote, and an appropriate level of public transport is available, with the option of walking or cycling, but that is acknowledged to be more likely in good weather and daylight. Access to schools and other services is available, such that Policies TPT1, SD11 and criterion iv) of Policy SD13 are met, commensurate with the traveller lifestyle.

### *Highway Safety*

22. The matter of highway safety and the use of the access was a reason for refusal, but that objection was withdrawn at the time of the original Hearing in February 2017. Subsequently, the Highway Authority became aware of the existence of the W1 and W2 bus routes using Kayte Lane, although that was mentioned in the quashed Appeal Decision. There does appear to be some differences in the information available in the public domain over the route of the buses, which may have led to the misunderstanding, but the route is, without doubt, along Kayte Lane and both services were seen at the site inspection. It was agreed that the Stilwell drawing 01A that was submitted at the previous Hearing should be considered at this Hearing.
23. Paragraphs 32 and 35 of the Framework seek a safe and suitable access, and the creation of safe layouts that minimise conflicts between traffic and cyclists or pedestrians. Local Plan Policy TPT1 requires that an access to the highway can be provided to an appropriate standard and emerging Policy SD13 requires similar at criterion ii).
24. The agreed implication of the site being on a road used by service buses is that '*Manual for Streets 2*' with its longer sightline distances, is the applicable standard rather '*Manual for Streets 1*' that had previously been considered appropriate. As a result, the Council reinstated its objection and the Highway Authority was represented at the Hearing, having submitted a Statement. Agreed measurements were taken at the site inspection.
25. The appellant argues that the slower average speed of buses and the low percentage figures for them, against other vehicles on the lane, should permit some adjustment, whereas the Highway Authority are of the view that they have applied all permissible adjustments, and still find the sightlines unobtainable. It does appear to be the case that whilst it is the presence of the bus route that triggers the change to the longer distance, the approaching bus would be seen further out from the carriageway edge than the 1m allowed for, and the Highway Authority did not agree more than 1m since a motorcyclist would not be seen, notwithstanding that such road users were catered for in the shorter sightline of '*Manual for Streets 1*'.
26. Be that as it may, the evidence at the site inspection was that the sightlines required under either of the guidance manuals cannot be achieved entirely over land that is under the control of the appellant according to the red-line application drawing. There is a dispute over land at the boundary with Newlands View, although that is not a matter for this Decision. The sightlines appear to rely on a view over the open land of the vehicle entry to that neighbouring dwelling. In addition to not being under the appellant's control, there appears little likelihood of co-operation or agreement, and the neighbouring occupier could relocate their access to another at the far end of

their land, replacing it with a 1m wall or fence, or vegetation could be allowed to grow higher, contrary to the aims of condition 10) of the quashed Decision.

27. The conclusion must be that the existing access is substandard and is contrary to national guidance and the Development Plan, representing a threat to highway safety and the satisfactory operation of the highway network. The entry in its present location cannot be made to comply with accepted standards.
28. However, it was clear at the site inspection that by moving the entry to the south, satisfactory sightlines can be provided and the Highway Authority confirmed by measurement that the entry would not be too close to the junction with Southam Lane. There would be some loss of vegetation but that could be made up for where the entry is presently located, and no additional harm would occur with regard to the character and appearance of the area or the openness of the Green Belt. This could be the subject of a negatively worded condition, and no harm need be added to the Green Belt and Planning balance from this main issue.

#### *Intentional Unauthorised Development*

29. On 15 August 2015 the Department for Communities and Local Government published a planning policy statement on Green Belt protection and intentional unauthorised development, making the fact of development a material consideration to be weighed in applications and appeals. This was the subject of the successful challenge to the April 2017 Appeal Decision, and there is no doubt that the planning policy statement applies to this case, due to the timing of the application, and that it applies irrespective of when the unauthorised development took place or when the Injunction was breached.
30. The policy describes this type of action as causing harm, not only because there would be no immediate opportunity for mitigation, which might now be sought, but also because of the time and expense that this causes Councils and other public bodies.
31. In this case there was intentional unauthorised development, although it is less clear the extent to which the appellant was fully aware of the implications of what he now describes as 'just wanting a place to live'. The family's present living arrangements, which will be considered in the Green Belt and planning balance, indicate the family's predicament. It appears from the most recent evidence given that the appellant's decision to move onto the land in breach of the Injunction was intentional, but driven more by desperation for a safe place for his family to live than a desire to circumvent correct procedure.
32. Mitigation would still be possible as there is no evidence of irreplaceable losses of such as ecology or species, and the terms of the injunction on the land are clear. The land is well able to be returned to an agricultural condition, and no lasting damage has been done to the Green Belt or landscape character which cannot be repaired.
33. Turning to the second limb of the harm referred to in the Statement, the Council has clearly incurred costs, although Court costs are being paid by instalments from the appellant by Direct Debit, and although at a seemingly slow rate, the intention is there. In the transcript of the Hearing before Deputy Judge Straker QC on 10 February 2016 it is clear that a profuse apology was



forthcoming from the appellant, but a request to re-enter the land was refused and the Judge expressed a view as to the merits of the planning appeal, whilst emphasising that this was not a matter for the court. No further enforcement action has been taken in respect of the hardstanding and fences, pending the outcome of this appeal.

34. In the balance, there has been harm, but due to the above considerations, the level of harm is considered to be moderate.

#### *Conclusions on Policy SD13*

35. Policy SD13 sets criteria for proposals for permanent and temporary gypsy and traveller sites, and whilst there is reference to the need to consider Policy SD6 on the landscape effect if the site is within a sensitive landscape, and Policy SD7 if in the Cotswolds Area of Outstanding Natural Beauty, sites in the Green Belt are assumed to be subject to relevant policy without requiring separate reference.
36. With regard to criterion i) it has been concluded above that modest weight attaches to the failure due to the proximity of built form and the low visual sensitivity of the area. Criterion ii) on the safety of the access can be met through conditions, and no evidence has been adduced to suggest that criterion iii) on flooding and the like would be contravened. The site has been found to be in a suitable location in terms of access to amenities such that criterion iv) is met, and the ability of the site to accord with the final criterion v) on utility services has not been challenged.

#### *Other Considerations*

37. As a result, in addition to the harm by reason of this being inappropriate development in the Green Belt, there is a limited reduction in openness, and a limited adverse effect on the purpose of the Green Belt in this location, although substantial weight should be given to any harm to the Green Belt. The other harm identified is a modest adverse effect on the character and appearance of the area, and moderate harm associated with intentional unauthorised development. No harm has been identified concerning access to services, and no harm with regard to highway safety, subject to a re-located entry, and there is hence a near-complete accord with the relevant Policy SD13.
38. The Framework states that inappropriate development should not be approved except in very special circumstances which will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. The following matters were discussed at the Hearing;
39. *Progress in the supply of sites.* Following post-event correspondence, it was confirmed that 13 pitches had already been granted permission towards the requirement, and this exceeds the numbers required to make up the 5 year supply. The Council consider that to be good progress, but the appellant considers the requirement must have been too low if that many have been granted permission so early in the process.
40. *The level of unmet need for gypsy pitches in the Borough.* The Inspector's Report on the Joint Core Strategy endorsed the methodology used in the updated Gypsy and Traveller Accommodation Assessment, carried out after the

changes to the definition of a traveller in the August 2015 Planning Policy for Traveller Sites. The assessment makes a 10% allowance for those placed in the 'not known' category to be travellers as defined. The appellant considers that insufficient allowance has been made for household formation. Having the opportunity to consider information requested to be presented by the Council after the Hearing, and in comparison with the 2017 Gypsy and Traveller Accommodation Assessment, the appellant casts significant doubt on the evidence base of that document and hence the final Assessment. On the evidence there does appear to be a number of unanswered questions over the figures used, in particular with regard to the percentage of 'unknowns' that should be considered as travellers, and the narrow nature of the travel that has been allowed as proof of gypsy status. In addition to the 13 pitches identified as having gained permission since 2016, there have been refused applications and appeals, indicating a greater need. In all, the appellant casts serious doubt over the evidence presented to the Joint Core Strategy Inspector. It is the case that Policy SD13 allows a criteria-based assessment of a site's suitability and it was agreed that the 5 year figure was a minimum in any event. The findings of the Examining Inspector are clear; that the Council is able to demonstrate a 5 year supply of gypsy and traveller sites, and that there is no longer a strategic requirement for sites, so that the allocation of sites is to be explored through the district level Plans. On that basis paragraph 10 of Planning Policy for Traveller Sites is satisfied, but it appears that reliance would have to be placed on the operation of Policy SD13 to supply the higher level of need alleged by the appellant. Certainly the number of recent permissions, applications and appeals indicate a likely, but unquantified, level of unmet need.

41. *Policy progress and timetable.* Site allocations will now be made in the new Local Plan, and the Council stated that this is anticipated for adoption in summer 2019.
42. *The availability of suitable, acceptable and affordable alternative sites for the appellant.* The evidence of the 2016 Court transcript is that the appellant owns the land, but is clearly not able to live on it. As a result they have had to resort to the roadside, other unauthorised places, or doubling-up on sites, mostly on only a short-term basis. The numbers of permissions granted indicate a need that is higher than has been assessed, and therefore competition for sites. There is no strong indication that the appellant is restricting his search to within close proximity of the appeal site so that another site might be suitable and acceptable, but with his ownership of this land and the remaining Court costs, doubt must exist over his access to affordable alternative sites. For that reason, the alternatives open to this family appear to be continued roadside living, or similar temporary stopping places, and all that goes with it. Substantial weight attaches to this finding.
43. *The personal circumstances of the appellant.* The foregoing finding of a likelihood of continued roadside, or similar, living would have a significantly adverse personal effect on the family. The appellant has given an up-date on the information before the previous Inspector. The precarious nature of the stopping places has adversely affected the appellant's ability to seek work as required by the traveller lifestyle and the expectations of the planning system in that respect, although the evidence is that he takes every opportunity at family events and the like to do so. The appellant gave evidence as to the difficulties over hygiene that their living conditions have caused, having to

make use of public facilities at service stations for basic needs. There have been comments regarding the possibility of 'bricks and mortar' housing being made available, and that the family have made use of temporary housing to be near a hospital in London. However, limited weight should be attached to that event, since clearly the need to be near the hospital would have overridden their normal aversion, with limited possibilities of being able to site caravan that close in any event. The family are in dire need of a settled base and substantial weight attaches to this matter.

44. *The best interest of children.* As set out in the previous Decision, the appellant and his spouse have 4 children, and at that time they looked after a grandson. The written up-date to the present appeal stated that they also look after a second grandson, and at the Hearing it was stated that a third grandchild now resides with the family and this evidence was not disputed. Article 3 of the United Nations Convention on the Rights of the Child requires a child's best interests to be a primary consideration, and no other consideration must be regarded as more important or given greater weight than the best interests of any child. In this case, that weight is to be no less than the substantial weight attaching to the Green Belt harm. It appears that some of the children were attending school at Bishops Cleeve when resident on the site, but that they have not been receiving formal education since then due to the short-term stopping at any one place. In addition, there have been health problems, and although the Council express the view that these have not got worse, the appellant spoke of missing appointments due to the insecurity of the post-box at the vacant site. Both a lack of formal education and doubts over access to healthcare can be extremely damaging to a child's life prospects and the appellant is clearly keen to see his children educated to a better standard than himself. The children are suffering considerably from the present situation and lost opportunities now are not going to be made-up for if the situation continues. Very substantial weight attaches to this consideration, but it has to be acknowledged that the need for education would not be a permanent need when measured against the stated permanence of Green Belt openness.

#### *Planning Balance and Human Rights*

45. As set out in paragraph 24 of Planning Policy for Traveller Sites, 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. However, 'unlikely' should not be read to mean that these considerations will never clearly outweigh the harm, and any decision must take account of the actual weight afforded both the harm and the other considerations. In this case the best interest of the children has been subject to consideration and has been accorded very substantial weight due to their numbers and the severity of their present situation.
46. Whilst there is stated to be a 5 year supply of sites, the evidence of permissions being given for more sites, and refusal for yet more, indicate a level of unmet need. However, the criterion based Policy SD13 provides a mechanism for further need to be met in the right places. The emerging Local Plan, set for adoption in 2019 should address the supply of sites.
47. In the balance, the harm to the Green Belt and the other harm identified is not outweighed by other considerations such that very special circumstances have

- been shown to exist in order to allow permanent occupation of the site, having regard to the statement on Green Belt land being kept permanently open.
48. There was discussion at the Hearing on the possibility of a temporary permission being granted, and the now quashed Appeal Decision was for a 5 year period. However, the balance is different in the current Decision, due to there being a stated 5 year supply of sites and a more advanced Joint Core Strategy that has been found to be sound. In addition the matter of intentional unauthorised development has been afforded weight. For those reasons, very special circumstances do not exist so as to allow a temporary 5 year permission.
49. Concern was expressed over the degree to which mitigation should be reasonably sought for any shorter temporary period, and the appellant expressed willingness to move the entry point onto Kayte Lane if that was required in order to allow permission. On the evidence including measurements taken, re-positioning is essential in order to allow use of the access no matter the timescale of that use, but the distance of that move may not be great and could overlap that presently in place. Other mitigation through landscaping should be sought by condition requiring the submission of a site development plan, but the aims would not be to screen the site or to give the impression of a permanent occupation; only to secure improvements to the present unattractive arrangement and to control the location of features such as the mobile home, parking and any utility block. For the latter, it would be the appellant's choice as to what type of structure, if any, would be provided.
50. The timetable for the adoption of the Local Plan indicates that a 3 year permission should be considered, and then based on the pressing need to get the children back into formal education and for health concerns to be addressed. In the altered balance on that basis, it is concluded that the points raised, including as they do considerations as to the best interest of children, are sufficient to clearly outweigh the harm identified, so that very special circumstances do exist. Planning permission for a temporary period of 3 years made personal to the appellant and his family is justified.

### **Human Rights and the Public Sector Equality Duty**

51. Article 8 of the European Convention on Human Rights as enshrined in the Human Rights Act 1998, concerns a right to respect for private and family life. The Public Sector Equality Duty was introduced under the Equality Act 2010 which requires at section 149 that a public authority or person exercising a public function must, among other requirements, (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it. The family's Romany origins are a protected characteristic.
52. The decision that follows from the reasoning above to grant permission for a temporary period of 3 years would allow the children to return to formal education and gain secure access to healthcare. This would be a proportionate approach to the legitimate aim of protecting the environment, and granting permission for that limited period would have no greater impact on the family's human rights than would be necessary to address the wider public interest. As a result this Decision has had due regard to the Public Sector Equality Duty.

53. Consideration of Article 8 applies also to the local residents as does Article 1 of the First Protocol; being entitled to the peaceful enjoyment of their possessions, including their home. Clearly there has been ill-feeling and the matter of the boundary dispute alluded to previously should be addressed, and that needs to be instigated by the aggrieved party. Nevertheless, Article 8 and Article 1 of the First Protocol are qualified rights and the decision to allow the short temporary use is necessary in the best interest of children. The degree of interference that would be caused to local residents would be insufficient to give rise to a violation of those rights.

### **Conditions**

54. The conditions attached to the quashed Decision were discussed at the Hearing and amendments in light of the present situation were agreed. The standard time limit for commencement does not sit well with the overall 3 year limit on the use, and so this has been amended. Condition 2) is required again, naming the drawings to which this permission relates, for the avoidance of doubt and in the interests of the proper planning of the area, but in view of the findings over the entry, this should not include the Stilwell drawing 01A. The details in condition 3), making the permission personal were confirmed to still apply, although condition 4) needs altering to include removal and reinstatement at the end of 3 years or when vacated by the family if sooner. Condition 5) restricting the use to gypsies or travellers is not required in a personal permission, particularly one of this duration. It is necessary to restrict the numbers of caravans, as well as commercial activities and the size and number of vehicles, as the previous conditions 6), 7) and 8). A site development scheme should be provided prior to occupation, taking account of the comments in the Reasons to this Decision over the extent that would be appropriate, similar to the previous conditions 9) and 11). A revised highway entry is to be provided, replacing condition 10).

### **Conclusions**

55. The proposal is inappropriate development in the Green Belt and other harm has been identified although there is a near-complete compliance with the newly adopted traveller Policy SD13. However, whilst having regard to the best interests of the children, the Green Belt harm and the other harm caused would not be clearly outweighed by other considerations when considering permanent occupation. In addition and contrary to the conclusions of the previous Inspector, the altered balance now to be applied means that the harm is not outweighed by other considerations so as to permit a 5 year occupancy.
56. For the reasons set out in this Decision however, the lesser harm through granting a 3 year temporary permission is outweighed, due particularly to the dire need of the children whose best interest would be served by a return to formal education and guaranteed access to healthcare. Hence very special circumstances have been shown to exist for that length of temporary permission. It is concluded that the appeal should be allowed and a temporary, personal permission should be granted.

*S J Papworth*

INSPECTOR

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

|           |  |
|-----------|--|
| N Sharif  | of Counsel<br>Instructed by S Freckleton Solicitor<br>Tewkesbury Borough Council |
| J Hinett  | Planning Officer<br>Tewkesbury Borough Council                                   |
| M Barker  | Planning Officer<br>Tewkesbury Borough Council                                   |
| J Mattock | Gloucestershire County Council Highways  |
| D Simmons | Gloucestershire County Council Highways  |

### FOR THE APPELLANT:

|             |                      |
|-------------|----------------------|
| A Heine     | Heine Planning       |
| G & S Smith | Appellant and spouse |

### INTERESTED PERSONS:

|                 |                                  |
|-----------------|----------------------------------|
| K Wilcox        | Chair Southam Parish Council     |
| Local Residents | took part at the site inspection |

## DOCUMENTS

|          |    |  |
|----------|----|--|
| Document | 1  | <i>'Inspector's Report on the Examination into the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy'</i> and the <i>'Table of Main Modifications'</i> with e-mail submissions of 1 November 2017, from the Local Planning Authority |
| Document | 2  | Joint Core Strategy Policy SD13 <i>'Gypsies, Travellers and Travelling Showpeople'</i> submitted by the Local Planning Authority   |
| Document | 3  | Plan and Assessment Results of the <i>'Gloucester, Cheltenham and Tewkesbury Green Belt Assessment'</i> submitted by the Local Planning Authority  |
| Document | 4  | Bundle of Photographs submitted by both main parties   |
| Document | 5  | <i>'One Legal'</i> letter of 1 November 2016 and attached High Court Charging Order submitted by appellant   |
| Document | 6  | Extract from <i>'Manual for Streets 2'</i> and Traffic Count submitted by appellant  |
| Document | 7  | School bus timetable submitted by appellant  |
| Document | 8  | Bundle of Decisions totalling 13 pitches granted submitted by the Local Planning Authority   |
| Document | 9  | e-mail 10 November from Local Planning Authority confirming 13 pitches with permission.  |
| Document | 10 | Further submissions from appellant on the LPA's DOC 8 & 9 with supporting documents.   |

## SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 18 months from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Plan 2 and Proposed Utility Block.
- 3) The use hereby permitted shall be carried on only by the following: Mr Gilbert Smith, Mrs Siobhan Smith and their resident dependants, and shall be for a limited period being the period of 3 years from the date of this decision or the period during which the premises are occupied by them, whichever is the shorter.
- 4) When the land ceases to be occupied those named in condition 3) above, or at the end of 3 years, whichever shall first occur, the use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment brought on to the land, or works undertaken to it in connection with the use, or previously, shall be removed and the land restored to its condition before the development took place as shown on photographs attached as documents to this Decision and as agreed in writing by the Local Planning Authority prior to the first occupation of the site.
- 5) There shall be no more than 1 pitch on the site and no more than two caravans (of which no more than one shall be a static caravan), as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, shall be stationed on the pitch at any time.
- 6) No commercial activities shall take place on the land including the storage of materials.
- 7) No more than one commercial vehicle shall be kept on the land for use by the occupiers of the caravans hereby permitted and it shall not exceed 3.5 tonnes in weight.
- 8) Prior to the occupation of the site and notwithstanding any development that has already taken place, a scheme for the development of the site shall be submitted to and approved in writing by the Local Planning Authority. The works shall be carried out as approved in accordance with an agreed timetable. The scheme shall include: details of the site layout including the positions of the caravans and utility block and position and materials of the proposed hard surfacing; details of external lighting; the means of landscaping of the site and a schedule for its maintenance; means of enclosure; details of the external materials of the amenity block; plans for the disposal of surface water and foul sewage.
- 9) No development or use shall commence until a scheme for the relocation of the site vehicle entry has been submitted to and approved in writing by the Local Planning Authority and shall have been implemented in full. The scheme is to show the location and dimensions of the entry and sight lines, and any gates are to be set a minimum of 4.5m back from the carriageway edge and shall open in to the site only, and the area of driveway within 5m of the carriageway edge is to be surfaced in a bound material. The area between the visibility splays and the carriageway shall be thereafter maintained so as to provide clear visibility with any verge landscaping and or vegetation kept no higher than 1m above carriageway level and the entry arrangement, gates and driveway shall be retained as approved for the duration of the use.

| <b>POLICY A49: Four Acre Stables, Aldershot Road, Worplesdon</b> |  |
|--|--|
| Allocation   | The site is allocated for 6 Gypsy and Traveller pitches (gross) (sui generis)  |
| Requirements   | <p>(1) The pitches will be private tenure</p> <p>(2) The site is removed from the Green Belt to ensure delivery. However, this remains a sensitive site surrounded by Green Belt, with development potentially causing harm to the surrounding Green Belt and the character of the area. The historical personal circumstances of the current occupiers, as per the appeal decision below, were a significant consideration when temporary planning permission was granted. This does not remove the harm to the Green Belt and character of the area, as it is a balancing act of harm versus benefits which considers whether planning permission should be granted. For these reasons:</p> <ul style="list-style-type: none"> <li>(a) Occupancy of these pitches is restricted to the family named in appeal decision (APP/Y3615/A/11/2144904) and to meet any needs arising from that family. A planning condition to this effect will be imposed on any permission</li> <li>(b) Any application to remove the personal condition identified above or for occupation of the site by individuals other than the family referred to in that condition will be carefully considered in light of the occupant's/proposed occupant's personal circumstances and their identified need for pitches. It will be necessary to consider whether the harm to surrounding Green Belt and character of the area is outweighed by the benefits</li> <li>(c) Any agricultural buildings on site, such as barns, must be considered in terms of potential harm to surrounding Green Belt and should not be disproportionately high in comparison to the mobile homes and caravans</li> </ul> <p>(3) Ancillary buildings must be proportionate in size to the mobile homes and caravans and should be no more than one storey in height</p> <p>(4) Bricks and mortar housing, or any buildings capable of being converted to bricks and mortar housing, are not appropriate on this site and will be resisted</p> <p>(5) Any application on the site will require sensitive design, siting and form of development, given the location outside of the village</p> <p>(6) The Council will seek to maintain defensible site boundaries sensitive to the countryside setting, whilst not enclosing a site with hard landscaping, high walls or fences, to an extent that suggests deliberate isolation from the community</p> <p>(7) The eastern boundary of the site abuts flood zone 2 (medium risk). Site design should ensure mobile homes and caravans serving as living accommodation are not unnecessarily close to this boundary. Encroachment outside of the site allocation area would be into flood zone 2 which is not appropriate for caravans and mobile homes, and hard standing in this area would likely serve to increase flood risk on site and elsewhere</p> <p>(8) Development of this site must not increase flood risk on site or elsewhere</p> |