

REPORT TO THE DEVELOPMENT CONTROL COMMITTEE Report No.

Date of Meeting	26th November 2008
Application Number	08/02114/FUL
Site Address	Land Adj Framptons Farm, Sutton Benger, Wilts. SN15 4RL
Proposal	Change of Use of Land to Include the Stationing of One Touring Caravan and One Mobile Home, the Erection of a Day Room Building and Hardstanding Area for One Gypsy Pitch
Applicant	Mr M Ward
Town/Parish Council	Sutton Benger
Grid Ref	395261 178751
Type of application	Full application

Reason for the application being considered by Committee

This application has been submitted to the Committee for decision under the scheme of delegation in force after the 8th April 2002 because 5 letters of objection have been received

Summary of Report

This is a retrospective application to site a mobile home, a touring caravan and a day room building for occupation by a gypsy family.

The key issues to be considered are:

- Implications on DC Core Policy C3 and Gypsy Sites Policy H9
- Policy DP15 of the Wiltshire and Swindon Structure Plan 2016
- Central Government advice as contained in Circular 01/06
- Location, scale and impact of the development
- Highway safety
- The implications of Wiltshire and Swindon Gypsy and Traveller Accommodation Needs Survey and the Draft Regional Spatial Strategy
- Assess the merits of the development against the human rights of the individuals on the site

Officer Recommendation

Planning Permission be GRANTED subject to the conditions

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Proposal and Site Description

The site is located on the south side of the B4069 in the countryside between Sutton Benger and Christian Malford. The site adjacent to some agricultural buildings and a sewage treatment plant is approximately 70m to the south. Access is via an unadopted track and the site is well screened by trees and hedges on the boundaries.

Consultations

Sutton Benger Parish Council make the following comments:

“The Parish Council objects strongly to this proposed planning application, especially as it appears to be retrospective, since some unauthorised activity is already apparent on the site.

It should be noted that an earlier application (ref 00/00731/FUL) was rejected for a mobile home on this site, based on the objection that it was outside the building framework, and damaging to the appearance of the rural area, as well as other issues (full details are given in the application).

The Parish Council notes several inaccuracies in the current application:

Q3. States that work has not already started, although this is clearly not the case, and it is thus a retrospective application.

Q5. Claims that no advice has been obtained from the local authority, although letters included with the application demonstrate that there has been consultation (even if this has been NWDC Officers exempting them from the need for a flood risk assessment!).

Q6 & 16. They claim that there is no new or altered access, although parts of the hedgerow were removed when they moved onto the site.

Q12. States that the site is connected to the main sewer. Since the development is unauthorised, it is not clear how this can be possible.

Q13. Flood Risk: a soakaway is proposed for the removal of surface water. Is this a suitable solution in an area prone to flooding?

Q15. Re existing uses. It is thought that maps exist which show some contamination of the land in this area because of the sewage works. Perhaps this point should be checked by NWDC?

Q25. It is claims that none of the land is an agricultural holding, but is not part of this application for change of use from agricultural to domestic use?

General Points

The application site is outside the building framework, thus it is not an appropriate site for residential development.

Access to the current site is on a dangerous stretch of road, being on a sharp bend on the B4069, an area where there have been numerous accidents in the past. It is unsuitable as an access for touring caravans, and increased usage by other domestic vehicles.

The application is for one mobile home and one touring caravan, constituting one gypsy pitch, but the design statement continually refers to the occupants of the caravans. There are currently more than two caravans using the site, which is itself at odds with this application.

The applicant is not local to the area, and there must be a legitimate concern that there will be an influx of family members on to this site and/or the adjacent land. None of the applicants/occupants appears to have any local connections with this village.

Regardless of the claims made in the letter from Green Planning Solutions (15 September 2008), this area is within a Flood Zone: the road between Sutton Benger and Christian Malford was closed twice in the last year because of severe flooding. It is a matter of concern that NWDC Officers have apparently exempted the applicants from the need for a Flood Risk Assessment.

A recent unauthorised development outside the building framework at Seagry Hill (Springbok) has recently been refused planning permission, with a requirement that the site be cleared and returned to agricultural use. The Parish Council considers that this sets a precedent for any unauthorised development outside the building framework, and looks to the Planning officials to strongly oppose this retrospective application at Frampton Farm.”

Wiltshire County Council Highways make the following comments:

“The site is situated in a location where a dwelling would not be permitted but, given the advice in Circular 1/06, an objection on the grounds of sustainability is not appropriate in this case.

The site access is adequate in terms of visibility and geometry and thus, subject to a condition restricting occupation to gypsies, no highway objection is raised.”

Environmental Health have no objections

Wessex Water have no objections subject to conditions and informatives.

Representations

20 letters of objection have been received on the following grounds

- Disregard of planning regulations
- No need
- Objects to exceptions for minority or ethnic groups
- Health risk from sewage works
- Location outside settlement boundary
- Danger from use of access
- Flooding
- Precedent for other sites
- Strain on services
- Untidy appearance
- Effect on house prices (not a planning matter)

Planning Considerations

The application must be determined in accordance with the policies of the Development Plan unless material considerations indicate otherwise. These material considerations include Government advice, the particular circumstances of the site, the personal circumstances of the applicants, previous decisions for similar proposals in the District, previous applications on the site and the provisions of the Human Rights Act and Race Relations Act.

Structure Plan and Local Plan Policies

The following policies are of particular relevance to this proposal:

Wiltshire and Swindon Structure Plan 2016

Policy DP15 states:

Special consideration should be given to bona fide proposals to provide caravan sites for gypsies. Such proposals should not be considered against other policies for towns and villages, due to their particular requirements. Suitable sites may be found both within and outside settlements. They will need to have a minimum impact on adjoining land uses and the natural and built environment, be well located to meet the needs of occupants and permitted business activities and provide acceptable access and services.

North Wiltshire Local Plan 2011

Policy C3 as follows:

New development will be permitted subject to the following criteria:

- i) Respect for the local character and distinctiveness of the area with regard to the design, size, scale, density, massing, materials, siting and layout of the proposal;
- ii) Respect for the quality of the natural and built environment, including the historic environment, archaeology and ecology of the locality and where necessary include measures for the preservation or enhancement of such features;
- iii) Avoid creating developments with unacceptable low levels of privacy and amenities and avoid the unacceptable loss of privacy and amenities to adjacent dwellings or other uses to the detriment of existing occupiers development;
- iv) Ensure access into and within the development is safe, minimises the risk from crime, and is convenient and attractive to pedestrians, cyclists, and people with disabilities;
- v) Incorporate energy conservation features and design principles to promote the use of renewable energy sources and prioritise the use of local, natural and recycled materials, provide satisfactory arrangements for efficient water supply, use and disposal and proposals for the storage, collection and recycling of refuse;
- vi) Promote sustainable patterns of development that will reduce the overall need to travel and support increased use of public transport, cycling and walking;
- vii) Have a satisfactory means of access, turning, car parking and secure cycle storage and not result in a detrimental impact upon highway or pedestrian safety;
- viii) Avoid overloading of existing or proposed services and facilities, the local road network or other infrastructure;
- ix) Avoid locations that would generate, or be subject to, a detrimental effect upon public health or pollution to the environment by the emission or production of excessive noise, light intrusion, smoke, fumes, effluent, vibration, waste or litter.

Policy H9 states:

Proposals for the use of land for the stationing of residential caravans occupied by gypsies will be permitted provided that:

- i) It has reasonable access to local community facilities and services; and
- ii) It would not unreasonably prejudice the amenities of neighbouring residential occupiers and land.

Also relevant is The Report of the Panel Inspector into the Draft Regional Spatial Strategy which requires the provision of 48 gypsy pitches in North Wiltshire.

Government Guidance

The latest Government advice is in Circular 01/06 which has been issued following general consensus that previous advice did not adequately address current issues.

The main advice of the Circular is to:

Create and support sustainable, respectful and inclusive communities where gypsies and travellers have fair access to suitable accommodation, education, health and welfare provision.

To increase significantly the number of gypsy and traveller sites in appropriate locations with planning permission to address under-provision over the next 3 – 5 years.

To identify and make provision for the resultant land and accommodation requirements.

To help avoid gypsies and travellers becoming homeless through eviction from unauthorised sites,

without an alternative to move to.

The Circular recognises that the whole process must begin and be guided by the Local Authority assessing gypsy and traveller accommodation needs, which will then be used to identify and allocate suitable sites, where necessary. Where there is unmet need but no available alternative gypsy and traveller site provision, but there is a reasonable expectation that new sites are likely to become available at the end of that period which will meet the need, the Circular states that Local Planning Authorities should give consideration to granting temporary permission.

Whilst the siting of gypsy sites in rural setting is acceptable in principle, the Circular still recognises that other considerations such as, the scale of the facility, impact on the settled community and local infrastructure and issues of sustainability are important.

Gypsy and Traveller Accommodation Needs Assessment

Under the Housing Act, the Authority now has a duty to assess the accommodation needs of gypsies. The production of a gypsy and traveller accommodation needs survey (GTANA) will in the future determine the strategy of the District Council in assessing whether there are sufficient gypsy sites in the District and where there is an identified shortfall, to identify and allocate new sites.

The Wiltshire and Swindon (GTANA) study was commissioned jointly by Swindon Borough Council and the five Wiltshire Local Authorities (including the County Council) in November 2005 and was undertaken by independent consultants. The final report was issued in early 2008.

The study (GTANA) reports that there is a need for further gypsy and traveller pitch provision in the Wiltshire and Swindon sub region. In relation to North Wiltshire, this need equates to 24 residential (including Minety) and 12 transit pitches in this District. The outcome of the study is part of the evidence base for any future Wiltshire Core Strategy. It has also been used by the South West Regional Planning Body, who have undertaken a review of the additional pitch requirements for gypsies and travellers in the South West, to set the figures for pitch provision in the Regional Spatial Strategy, which will be binding on this Authority. The Inspectors report into the Draft Regional Spatial Study has identified a need for 48 pitches. This Council's Executive has resolved to challenge this assessment.

Having established a need, the next stage of the process is to identify and allocate sites, which can be occupied by gypsies and travellers. Following a study by consultants the council identified six possible sites on public land. It has now been resolved that none of these should be pursued and a further analysis of sites is being undertaken on the basis of site search criteria.

Gypsy Status

The gypsy status of the applicants has been confirmed.

Sustainability

Circular 01/06 makes it clear that sustainability is a large consideration with respect to the development of gypsy caravan sites. Paragraphs 64 to 66 establish that the sustainability considerations for gypsy sites are substantially different from other developments and that consideration should be given to factors such as access to health, education and shops and peaceful co-existence with the local community.

Sutton Benger and Christian Malford both have a range of facilities including a preschool, primary schools, public houses, post offices, a shop and a doctors' surgery.

The site is approximately 500m from Sutton Benger and 1000m from Christian Malford.

Circular 01/06 states that issues of sustainability should not only be considered in terms of transport mode and distances from services. In recent appeals at Chelworth Lodge and Minety for gypsy sites, both Inspectors considered the benefits in terms of sustainability from having a settled base, which

would enable regular access to schools and medical care.

The limited access to public transport and lack of footways and lighting around the site will mean there is greater reliance on the private motor car, however, as stated above when considered against the broader criteria in Circular 01/06 it is considered that the harm would be outweighed by the other identified sustainability benefits outlined in the Circular.

Highway Safety

WCC Highways are satisfied with the adequacy of the access for this purpose.

The Character and Appearance of the Area

The site is in a rural location and Circular 01/2006 states, at paragraph 54, that sites in rural settings, where not subject to special planning constraints, are acceptable in principle. This is reiterated in Policy H9 of the North Wiltshire Local Plan 2011 and acknowledged in Policy Dp15 of the Wiltshire and Swindon Structure Plan 2016.

The site is adjacent to some agricultural buildings in poor condition and the sewage works is to the rear. The site is well screened by existing vegetation. The site will be partially visible from adjacent land but the use will have little impact in larger views or from the road.

Residential Amenity

There are no dwellings in close proximity to the site and the use will have no impact on residential amenity.

Personal Circumstances

The applicants have not claimed any exceptional circumstances. It is understood that the site is occupied by the applicant with his wife and three school aged children.

Human Rights

In determining this application the Committee is required to have regard to the Human Rights Act 1998. This is particularly relevant as the Human Rights Act 1998 (Article 8) states that everyone has the right to respect for his private and family life, his home and his correspondence. It further goes on to say that there shall be no interference by a public authority with the exercise of this right, except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. Any interference in those rights by a public authority must be lawful and proportionate.

The Act further emphasises that the enjoyment of the rights and freedoms in the convention, shall be secured without discrimination (Article 14) and no person shall be denied the right to education. (Article 2). In this instance there are clearly children of school age who have a right to education and residents who need access to social/health care. These circumstances have to be considered together with the merits or dis-benefits of the development, taking into account the public interest in the proper application of planning policies.

Race Relations

The policies of the Structure Plan and Local Plan recognise the special needs of gypsies as a distinct racial group by allowing gypsy sites in locations unacceptable for other forms of development. This application has been considered under these policies and complies with the obligations under the Act. No discriminatory comments have been taken into account in the consideration of the recommendation.

Conclusion

The applicants have gypsy status and a site in the open countryside could be acceptable under adopted policies. Given the small scale of the development, the site is not unacceptably harmful to the character and appearance of the area and nor would it have detrimental impact on the residential amenity of neighbouring residents. Whilst the occupiers of the site would be reliant on the private motor car, the development would provide a permanent base allowing access to education and medical care, as advised in Circular 01/06.

It is clear that there is an unmet need for gypsy site provision in the District and in such circumstances a temporary permission may be justified, however, as the proposal generally complies with policy and bearing in mind Inspectors comments on recent appeal decisions it is recommended that permanent planning permission be granted subject to conditions.

Recommendation and Proposed Conditions/Informatives

Planning Permission be GRANTED subject to the following conditions:

1. The development hereby permitted shall be carried out strictly in accordance with the approved plans subject to such minor amendments to the development as may be approved in writing under this condition by the local planning authority.

Reason: To ensure that the development is implemented in accordance with this decision in the interests of public amenity, but also to allow for the approval of minor variations which do not materially affect the permission.

2. This permission does not authorise use of the land as a caravan site by any other persons other than Gypsies, as defined in Section 24(8) of the Caravan Site and Control of Development Act 1960 as amended (or any Act revoking or re-enacting that Act).

Reason: In order to define the permission and prevent unauthorised uses.

3. No more than two (2) caravans as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, of which no more than one (1) shall be a static caravan or mobile home and no more than one (1) shall be a touring caravan, shall be stationed on the site at any time. The site being defined by the red line on the 1:1250 scale plan submitted with the application.

Reason: It is important for the local planning authority to retain control over the number of caravans on the site in order to safeguard interests of visual and residential amenity in accordance with policies C3 and H9 of the North Wiltshire Local Plan 2001 Wiltshire Local Plan 2011.

4. No More than one commercial vehicle shall be kept on the site for use by the occupiers of the caravans hereby permitted, and it shall not exceed 3.5 tonnes in weight.

Reason: In the interests of residential amenity, highway safety and the character of the countryside.

5. Except for the keeping of commercial vehicles as defined in condition 4, above, no commercial activity or use, including the storage of materials and waste, shall be carried out on the site.

Reason: In the interests of residential amenity, highway safety and the character of the countryside.

6. Notwithstanding the provisions of the town and Country Planning (General Permitted development order 1995 (as amended) (or any order revoking , re-enacting or modifying that Order), no gates, fences, walls or other means of enclosure shall be erected other than in accordance with conditions 7 and 8.

Reason: In the interests of the appearance and character of the rural area

7. Any entrance gates erected shall be hung to open away from the highway only and shall be set back a minimum distance of 4.5m from the carriageway edge.

Reason: In the interests of Highway safety.

8. The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one of the requirements set out in (i) to (iv) below:

(i) within 3 months of the date of this decision a scheme for:

- The means of foul and surface water drainage of the site
- Any proposed and existing external lighting
- Details of surface treatment, internal fencing and gates and parking areas for two vehicles

(hereafter referred to as the site development scheme) shall have been submitted for the written approval of the local planning authority and the said scheme shall include a time table for its implementation.

(ii) within 11 months of the date of this decision the site development scheme shall have been approved by the local planning authority or, if the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

(iii) if an appeal is made in pursuance of (i) above, that appeal shall have been finally determined and the submitted site development scheme shall have been approved by the Secretary of State.

(iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Reason: In the interests of the visual amenity of the area and to ensure the creation of a pleasant environment for the development and to comply with policy C3 of the North Wiltshire Local Plan 2011.

Informative

1. This decision relates to documents/plans submitted with the application, listed below. No variation from the approved documents should be made without the prior approval of this Council. Amendments may require the submission of a further application. Failure to comply with this advice may lead to enforcement action which may require alterations and/or demolition of any unauthorised buildings or structures and may also lead to prosecution.

Plan References

Site Location Plan at 1:1250 scale and Block Plan at 1:500 utility/dayroom, indicative layout/elevations 08-192-004 received 16th September 2008

Reason for Decision

The development is considered to have limited impact on the amenity of the surrounding area and amenity of local residents or highway safety and therefore is considered to comply with Policies C3 and H9 of the North Wiltshire Local Plan 2011.

Appendices:	NONE
Background Documents Used in the Preparation of this Report:	1.03, 1.20, 2.02, 2.25, 4.02, 4.04, 5.02, 5.05