

# REPORT TO THE WESTERN AREA PLANNING COMMITTEE

<b>Date of Meeting</b>	<b>25.08.2010</b>		
<b>Application Number</b>	<b>W/10/01506/FUL</b>		
<b>Site Address</b>	<b>Field No 3757 Lower Westbury Road Bratton Wiltshire</b>		
<b>Proposal</b>	<b>Change of use of land for one mobile home, one utility block and one touring caravan</b>		
<b>Applicant</b>	<b>Mrs Hazel Shelbourne</b>		
<b>Town/Parish Council</b>	<b>Bratton</b>		
<b>Electoral Division</b>	<b>Ethandune</b>	<b>Unitary Member:</b>	<b>Julie Swabey</b>
<b>Grid Ref</b>	<b>390391 152494</b>		
<b>Type of application</b>	<b>Full Plan</b>		
<b>Case Officer</b>	<b>Mr James Taylor</b>	01225 770344 Ext 5169 james.taylor@wiltshire.gov.uk	

## Reason for the application being considered by Committee

Councillor Julie Swabey has requested that this item be determined by Committee due to:

- \* Does not satisfy the criteria for ending a Nomadic lifestyle. Applicant has lived in residential settled property for many years (Bonnie Park) and has been in full time employment in Westbury.
- \* No evidence provided as to what has prompted this application and no evidence of nomadic lifestyle having existed.
- \* Over saturation of single site pitches within Bratton.

### 1. Purpose of Report

To consider the above application and to recommend that a temporary and personal planning permission be granted.

### 2. Main Issues

The main issues to consider are:

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- \* Principle of development and progress towards DPD site allocations
- \* Visual impact of the scheme/landscaping
- \* Highway safety
- \* Amenity issues

### 3. Site Description

The application site is located in open countryside to the east of Bratton, approximately 600 metres from the village policy limits.

The application site slopes from south to north and is currently part of a wider area used to keep horses. The site has a boundary to the south, east and west of a dense hedgerow and is screened by this natural vegetation from the public highway. To the north the edge of the site has no physical boundary present. To the south and east of the site are stables and storage barns in connection with the existing equestrian use of the land.

The access to the site is an existing entrance with a timber 5-bar gate. The road is an Un-classified highway with no through route to the west. The site is located outside of but directly opposite a special landscape area of county-wide significance to the south.

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

None

#### **5. Proposal**

This is a resubmission of a previously withdrawn application as detailed above.

The proposal is for the siting of a mobile home, touring caravan and wooden dayroom structure to be occupied as a single gypsy/traveller site. There are some ancillary works including the provision for a septic tank, hard standing for vehicles, fencing and new solid entrance gates.

The application was submitted with a supporting design and access statement; this was expanded upon in light of the comments of Bratton Parish Council and Edington Parish Council.

#### **6. Planning Policy**

Wiltshire Structure Plan 2016  
DP1 Priorities for Sustainable Development  
DP15 Accommodation for Gypsies and Travellers  
C9 Special Landscape Areas

West Wiltshire District Plan 1st Alteration (2004)  
C1 Countryside Protection  
C3 Special Landscape Areas  
C31a Design  
C38 Nuisance  
CF12 Gypsy Caravan Sites

National guidance  
PPS1: Delivering Sustainable Development  
PPS7: Sustainable Development in Rural Areas

DoE Circular 11/95: The use of condition sin planning permission.  
ODPM Circular 01/2006: Planning for Gypsy and Traveller Caravan Sites  
ODPM The Planning System: General Principles

#### **7. Consultations**

##### Bratton Parish Council

The council raised objections to the application as follows:

1. The council is not satisfied that the applicant has a nomadic/Romany gypsy background.
2. The application states the applicant is resident in Frogmore Road in Westbury, how long has she lived there?
3. When did she last live an active nomadic lifestyle for more than 2 weeks a year?

4. Local knowledge proves that the land has only ever been used for stabling horses and no one has ever lived on it.
5. The council feel that Bratton has been over saturated with single site pitches already.
6. The council is of the opinion that as there have been two applications of this kind granted in the last month, other land owners are "jumping on the band wagon" and trying to obtain the change of use on their own land.
7. The application falls outside the local structure/development plan and the building lines for Bratton and Edington.
8. Should the application be granted the council requests a clause that the change of use is only for the applicant's lifetime.

### Highways

Revised comment:

I expected that this could be the case and I would be happy to cover this issue by condition. Due to the nature of the lane, vehicle speeds would seem to be in the area of 15mph and I would therefore expect splays in both directions of only 17m. This seems achievable with the trimming of the hedgerow adjacent to the carriageway and it does not seem as though 3rd party land would be involved, as the area needing trimming is seemingly highway owned. I would therefore recommend that no Highway objection is raised subject to the following condition being attached to any permission granted:

(WD17) No development shall commence on site until visibility splays have been provided between the edge of the carriageway and a line extending from a point 2.4 metres back from the edge of the carriageway, measured along the centre line of the access, to the points on the edge of the carriageway 17 metres to the East and 17 metres to the West from the centre of the access in accordance with the approved plans. Such splays shall thereafter be permanently maintained free from obstruction to vision above a height of 900mm above the level of the adjacent carriageway.  
REASON: In the interests of highway safety.

Original response:

Whilst I note sufficient parking and turning space is accommodated within the site, the construction of/ siting of a mobile home, utility block and touring caravan is contrary to Planning Policy Guidance Note 13, as the site is located outside of the Housing Policy Boundary. The existing access has insufficient visibility to cope with an intensification of this site and would thus need improvement, of which no information has been submitted. I therefore recommend that this application be refused on Highway grounds for the following reason:

The proposal, located remote from services, employment opportunities and being unlikely to be well served by public transport, is contrary to the key aims of Planning Policy Guidance Note 13 which seeks to reduce growth in the length and number of motorised journeys.

The visibility at the access point is considered to be inadequate for the safety and convenience of the traffic associated with the proposed development.

### Spatial Plans

Circular 01/06 is clear that Development Plan Documents (DPDs) together with the Regional Spatial Strategy (RSS) form part of the Development Plan, and The Planning & Compulsory Purchase Act 2004 (as amended) states that applications should be determined in accordance with the Development Plan.

The Secretary of State for Communities and Local Government (CLG) revoked Regional Strategies by way of an Order laid before Parliament on 6 July 2010. In a letter from the CLG to all Chief Planning Officers it was confirmed that Local councils are best placed to assess the needs of travellers. The abolition of Regional Strategies means that local authorities will be responsible for determining the right level of site provision reflecting local need and historic demand, and for bringing forward land in DPDs. The [LPAs] should continue to do this in line with current policy.

It is clear from this guidance that LPAs should continue to progress with DPDs and in light of this guidance and current issues in Wiltshire surrounding unauthorised encampments and the lack of

alternatives sites, the work started by the Issues and General Approach consultation document should continue in order to meet an existing need for this sector of our community.

The CLG has indicated that further guidance will be made available to assist LPAs in identifying the appropriate level of need. However, at this time it is not clear when this guidance will be made available.

The Wiltshire Gypsy and Traveller Site Allocations DPD is progressing and elements of the recent consultation that relate to a clear, consistent and open methodology for assessing new sites remains relevant. The key issue of pitch provision is being reviewed to ensure that there remains a robust evidence base for the number of pitches eventually proposed through the DPD.

While it is accepted that the RSS has been abolished, and in the absence of more up-to-date assessment, part of the DPD preparation includes a review of the issue of need and will identify appropriate indicators to inform the final level of provision to be allocated through the DPD.

Wiltshire Council is continuing to progress with the Gypsy and Traveller Site Allocations DPD and an important element of this is the Site Selection Methodology and proposed scoring matrix contained within the Issues and General Approach (April 2010) consultation document. Although not yet adopted, the Site Selection Methodology provides a useful assessment tool on which to judge the suitability of this proposals as it reflects national guidance in ODPM Circular 01/06.

Circular 01/06 represents the most relevant policy and I would draw your attention to Paragraphs 58-63 ('Applications'). The key considerations for Gypsy and Traveller Site applications are likely to include:

- \* The likely impact on the surrounding area;
- \* The existing level of provision and need for sites in the area;
- \* The availability (or lack of) alternative accommodation; and,
- \* Other personal circumstances.

Other considerations should include, as a minimum:

- \* Road access;
- \* The availability of services;
- \* Potential conflict with statutory undertakers or agricultural interests;
- \* Any significant environmental impacts;
- \* Flood risk.

Finally, an assessment of the sustainability of the site should also be undertaken and in accordance with Circular 01/06, this should consider;

- \* The promotion of peaceful and integrated co-existence between the site and local community;
- \* The wider benefits of easier access to GP and other health services;
- \* Children attending school on a regular basis;
- \* The provision of a settled based that reduces the need for long-distance travelling and possible environmental damage caused by unauthorised encampments; and,
- \* Not locating sites in areas of high flood risk of flooding, including functional floodplains.

Circular 01/06 should form the basis of the assessment and it is accepted that there is a recognised unmet need across Wiltshire and by default a lack of alternative accommodation. However, it is considered that the emerging DPD should be treated as a material consideration in the determination of this planning application and in this respect paragraphs 45 and 46 of Circular 01/06 are relevant.

In such circumstances it is considered that this proposal is premature of the adoption of the Gypsy and Traveller Site Allocations DPD.

The appropriateness of prematurity as a consideration is outlined in paragraphs 17 to 19 of 'The Planning System: General Principles.' The Gypsy and Traveller Site Allocations is at an advanced stage and to grant permanent permission is likely to prejudice the final outcome of the DPD process, by predetermining the final site selection methodology and the final allocation of land to meet current and future need.

In such circumstances, when considering your recommendation, I would like to draw your attention to the possibility of granting a temporary permission as an alternative to the granting of a permanent consent.

Paragraph 45 refers to Circular 11/95 "The Use of Conditions in Planning Permission" with paragraph 110 of that circular advising "...that a temporary permission may be justified where it is expected that the planning circumstances will change in a particular way at the end of the period of the temporary permission. Where there is an unmet need but no available alternative gypsy and site provision in an area but there is reasonable expectation that new sites are likely to become available at the end of that period in an area which will meet need, local planning authorities should give consideration to the grant of a temporary permission."

Paragraph 46 of Circular 01/06 states that: "Such circumstances may arise, for example, in a case where a local planning authority is preparing its site allocations DPD.

#### Conclusion

It is considered that the proposal is premature of the adoption of the Wiltshire Gypsy and Traveller Site Allocations DPD which is expected to be adopted in November 2011. However, if the site is considered to satisfy the requirements of Circular 01/2006 then it may be appropriate to grant a temporary permission in this case. In such circumstances I would recommend that the temporary period is sufficient to allow for the adoption of the DPD and would suggest a minimum of 2 years.

### **8. Publicity**

The application was advertised by site notice, press notice and neighbour notification.

Expiry date: 22 June 2010

5 letters from 4 individuals have been received, of which three are objecting to the proposals.

Summary of points raised:

- \* Fails to comply with planning policy for dwellings in rural areas
- \* Another traveller approval on the land has never been occupied and was probably just a means to increase the land value.
- \* Their own application for dwelling was justified under PPS7, this is not and no precedent has been set.
- \* Applicant has accommodation in Westbury, so there is no need.
- \* Would adversely affect the green belt.
- \* Advertisements have been removed from the site to conceal the application from local people.
- \* This is an attempt to fill Lower Westbury Road with individual gypsy encampments and must be stopped as an abuse of planning regulations.
- \* Ludicrous.
- \* Shame to see agricultural land not being used for such purposes
- \* There is a park in Bratton already dedicated for this type of application.
- \* Harmful to the countryside and wildlife.
- \* Would like to know when the application is going to committee

### **9. Planning Considerations**

9.1 This proposal has been presented as an application for a single private gypsy site. As such it must be principally considered under Policy DP15 of the Wiltshire Structure Plan 2016 and Policy CF12 of the West Wiltshire District Plan (2004). Further the proposals need to be considered in light of other relevant development plan policy and the regional and national context which includes the ODPM Circular 01/2006 on planning for gypsy and traveller caravan sites.

9.2 Policy DP15 clearly states that proposals for gypsy caravan sites cannot be assessed using policies for settlements and that travellers and gypsies have particular needs which are recognised in

central government policy. Further it is clear that suitable sites may be found within and outside settlements.

9.3 Policy CF12 is consistent with the Structure Plan and also sets out criteria by which to assess applications and has a positive phrasing stating that proposals to provide caravan sites for gypsies will be permitted in appropriate locations having regard to issues such as nuisance, encroachment into open countryside, the needs and safety of future occupants and their children, highway safety, availability and adequacy of infrastructure, proximity to services, protecting agricultural land and flood risk.

9.4 National policy on such matters was updated in February 2006 with the production of ODPM Circular 01/2006. This defines gypsies and travellers as 'persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependant's educational or health needs or old age have ceased to travel temporarily or permanently.....', but acknowledges that the community has generally become more settled. Being settled can have benefits in terms of access to health and education facilities, and can contribute to greater integration and social inclusion within local communities as detailed in the circular.

9.5 The Council's spatial planning team continues to work towards the production of a Development Plan Document for Gypsy and Traveller site allocations as part of the new Local Development Framework for Wiltshire. The consultation with Spatial Plans has revealed that this is continuing in spite of the new government's abolition of the Regional Spatial Strategies and therefore the assessment of need that has been relied upon in recent years. This is set out in the detailed report of consultation responses above.

9.6 In short it is considered that the emergence of the DPD site allocations is now looking more likely and that is material to the determination of this application as detailed in paragraphs 45 and 46 of the circular 01/2006. This indeed may be reasonable justification for the imposition of a temporary planning permission in some cases. However it is noted that this should not occur where it would be unreasonable, such as if the development requires a 'significant capital outlay'. Significant capital outlay is hard to define and may be perceived differently from one party to another.

9.7 The applicant states that they have been living in Westbury since getting married and has lived in 'bricks and mortar' contrary to her cultural background. Ethnicity is not material to the consideration of this application though. What is material is whether a nomadic lifestyle is being lived or has previously been lived and then ceased temporarily or permanently for education or health reasons or old age reasons. In light of this further information has been sought from the applicant by the case officer. They have stated that they married in 1982 but even though based in Westbury they have continued to visit Romany fairs to sell crystal glasswares and flowers. For health reasons they want to move to this site and return to their nomadic roots having terminated their marriage in 2000.

9.8 The applicant upon request has provided a third letter to detail their nomadic lifestyle and highlights that they attended fairs at Stow-on-the-Wold, Appleby & Brough, Baildon Green, Brigg horse fair, Priddy fair, Dorset Steam fair and many other local events. She states that her speciality is herbs & flowers, porcelain and glassware. The applicant states that their daughter lives with them.

9.9 On balance it is considered that the applicant has reasonably demonstrated a nomadic lifestyle consistent with the definition of a traveller in Circular 01/2006. Further their personal circumstances illustrate a need and although they are currently 'housed' this is contrary to the nomadic lifestyle they cultural wish to live. It is reasonable to give the personal circumstances weight in the determination of the application and the imposition of a personal condition may therefore be justified given a personal need but limited information regarding a wider need.

9.10 National and local planning documents accept that private sites are acceptable in principal, indeed this can be beneficial in that it can reduce conflict between different families, ethnicities and cultural origins of travellers on larger communal sites.

9.11 This site is well-related to the village of Bratton being within a reasonable walking distance of its services and facilities. Further the site is much closer to the village than recent single, private pitch gypsy sites granted planning permission on Capps Lane. The first of these was granted by a planning

inspector who considered the site to be reasonably sustainable for a gypsy site given their nomadic lifestyle.

9.12 The planning policy is explicitly clear that applications should not be considered against the normal policies for housing and village and town settlement boundaries. Applications outside of settlements may be perfectly acceptable.

9.13 It is noted that the highway authority comments were initially to object to the principle of allowing the development in open countryside on grounds of sustainability. However this objection has subsequently been removed in acknowledgement that such an approach would be in direct conflict with planning policy. If the site were completely remote from any settlement and had no access to facilities or services then an unsustainable argument could be substantiated, however this is clearly not true in this case.

9.14 The highway authority also raised an objection stating that visibility is substandard. However this objection has subsequently been removed in acknowledgement that conditions could overcome this issue. It has to be noted that this is an existing access onto a rural and lightly trafficked highway and with appropriately worded conditions this could be enhanced and made more safe. Further the applicant has stated that the site is visited everyday and if they were to live on the site then movements would actually be likely to be reduced. Further it is noted in Circular 01/2006 at paragraph 66 that 'proposals should not be rejected if they would only give rise to modest additional daily vehicle movements and/or the impact on minor roads would not be significant'. Therefore given that movements are not likely to increase on this junction and the access is onto a very minor rural road then no concern exists subject to conditions.

9.15 The site is located approximately 600 metres from the village policy limits of Bratton which has all the facilities to be expected of a modest rural village, including a rural bus service which connects to larger local settlements and their facilities. This site, in the context of a traveller application is reasonable with access to local facilities and services to satisfy the needs and safety of future occupants and their children including access to education, health facilities and work and leisure opportunities.

9.16 Turning to wider planning considerations of the site it is noted that this proposal is in open countryside that is subject to no special designations; it is not designated as green belt as stated in the public consultation responses. The site is opposite a special landscape area, however it is well screened and no visual intrusion would occur. The amount of development being proposed is quite typical of a single, private gypsy application including a large caravan, a touring caravan and a dayroom. All of this development is limited to single storey heights and would be suitably sited within the context of the area. In summary the proposal would not have a significant impact on the rural character at this point.

9.17 The proposals detail the provision of sewerage treatment facilities on the site and details can be secured via conditions. Since there are no mains facilities in the area then this is an acceptable approach. In terms of electricity for the site then it is noted that the site is close to other development that has electricity and therefore this factor poses no significant concern, although a condition would be prudent to protect against possible noise from generators.

9.18 The application site is subject to the lowest level of flood risk and therefore this factor is not of significance. Further the land is not considered to be the best or most versatile agricultural land.

9.19 It has been noted that the proposals have been subject to some public objection following the display of a site notice and neighbour letters being sent out. All the comments and points received in the consultation process have been noted and given consideration prior to reaching any conclusion or recommendation. It is stressed that this is not green belt land and this is not an application under PPS7. It needs to be assessed under the relevant local and national policy for traveller and gypsy sites.

9.20 In summary the proposals are considered to be in accordance with the development plan policies for the area and national guidance in circular 01/2006. However work on the Council's DPD for Gypsy and Traveller Site allocations is progressing and has now been through the first phase to

identify issues and a general approach. The Regional Spatial Strategy has been abolished and with this the formal need assessment figures are no longer available and are having to be reviewed within the Council's emerging DPD.

9.21 In the context of Circular 01/2006 and the development plan policies it is concluded that on balance this is an acceptable site for a single gypsy application. Its scale and the amount of vehicular movements would be limited by the number of caravans which can be on the site at any time, namely one static and one touring caravan as applied for. The applicant has put forward a reasonable argument for a personal need and demonstration of a nomadic lifestyle (this can be given some weight in the determination of the application), although the assessment of broader needs and number of pitches in this area is no longer clear. Progress on this and specific site allocations are being undertaken in the Council's DPD. The Council's spatial planners that are responsible for this work have put forward a reasonable argument for stating that this proposal is premature of the DPD production and applications such as this would cumulatively prejudice the final outcome of the DPD.

9.22 The timetable for the DPD indicates the production of the examination and inspectors report by November 2011. Allowing for some nominal delays in its production, final adoption and some time for the applicant to consider their options and make any necessary planning applications after the DPD production it would seem reasonable to grant a temporary permission for 3 years. Consideration on the expense involved in this has been given. On balance it is deemed appropriate to offer a temporary permission over a refusal given the material considerations raised by this case. This allows a developer to determine if it is financially worthwhile making use of a temporary permission without compromising the reasonable right to appeal against the condition/decision.

**Recommendation:           Permission**

**For the following reason(s):**

**The proposed development conforms to the Development Plan, however it is considered to be an application premature to the Council's adoption of a DPD on Traveller and Gypsy Site Allocations and a revised assessment of need for the area. As such the application may be recommended for permission but only subject to conditions to make this a personal permission for a temporary time period.**

**Subject to the following condition(s):**

- 1     The siting of a mobile home, touring caravan and dayroom (and any ancillary works or structures except planting) shall be removed and the land restored to its former condition on or before the 25 August 2013; in accordance with a scheme to be submitted to and approved by the Local Planning Authority at least 8 weeks prior to that date.

REASON: Permission would normally be granted in light of the demonstrated need, however in light of the Council's on-going work to the production of its DPD on Gypsy and Traveller Site Allocations this application is deemed to be premature and would, cumulatively with similar type applications, prejudice the results of the DPD.

POLICY: ODPM Circular 01/2006: Planning for gypsy and traveller caravan sites paragraphs 45 and 46.

- 2     The occupation of the site hereby permitted shall be carried on only by Mrs Hazel Shelbourne and her resident dependants.

REASON: In light of the applicant's personal need and circumstances which justify the granting of this permission.

POLICY: ODPM Circular 01/2006 Planning for gypsy and traveller caravan sites.



- 3 No more than 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 1 shall be a static caravan or mobile home) shall be stationed on the site at any time.

REASON: In the interests of defining the terms of this permission, highway safety and protecting the rural character of the area.

West Wiltshire District Plan 1st Alteration (2004): POLICY CF12.

- 4 No development shall commence and no caravans shall be brought onto the site until details of a consolidated surface to the first 5 metres of the access, measured from the back edge of the carriageway, have been submitted to and approved in writing by the Local Planning Authority and the works completed in accordance with the approved details. This part of the access shall be maintained in that form thereafter.

REASON: In the interests of highway safety.

West Wiltshire District Plan 1st Alteration (2004): POLICY CF12.

- 5 Any gates shall be set back from the edge of the carriageway by at least 6 metres, such gates shall open inwards only.

REASON: In the interests of highway safety so as to allow vehicles to remain clear of the highway when opening or closing the gates.

- 6 No development shall commence on site until visibility splays have been provided between the edge of the carriageway and a line extending from a point 2.4 metres back from the edge of the carriageway, measured along the centre line of the access, to the points on the edge of the carriageway 17 metres to the East and 17 metres to the West from the centre of the access in accordance with the approved plans. Such splays shall thereafter be permanently maintained free from obstruction to vision above a height of 900mm above the level of the adjacent carriageway.

REASON: In the interests of highway safety.

West Wiltshire District Plan 1st Alteration (2004): POLICY CF12.

- 7 All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the time when the first caravan is brought onto the site; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.

REASON: In the interests of protecting the rural character of the area.

West Wiltshire District Plan 1st Alteration (2004): POLICY CF12.

- 8 There shall be no burning of commercial or equestrian waste on the site.

REASON: In the interests of the amenity of the area.

West Wiltshire District Plan 1st Alteration (2004): POLICY CF12.

- 9 No development shall commence and no caravans shall be brought onto the site until details of the following have been submitted to and approved in writing by the local planning authority:
- i) material samples and elevations for the dayroom
  - ii) boundary treatments and fencing
  - iii) refuse storage facilities
  - iv) any external lighting

- v) any electricity generation.
- vi) existing and proposed levels of the site
- vii) manufacturer's details of the sewerage treatment disposal

The works shall be carried out in strict accordance with the approved details.

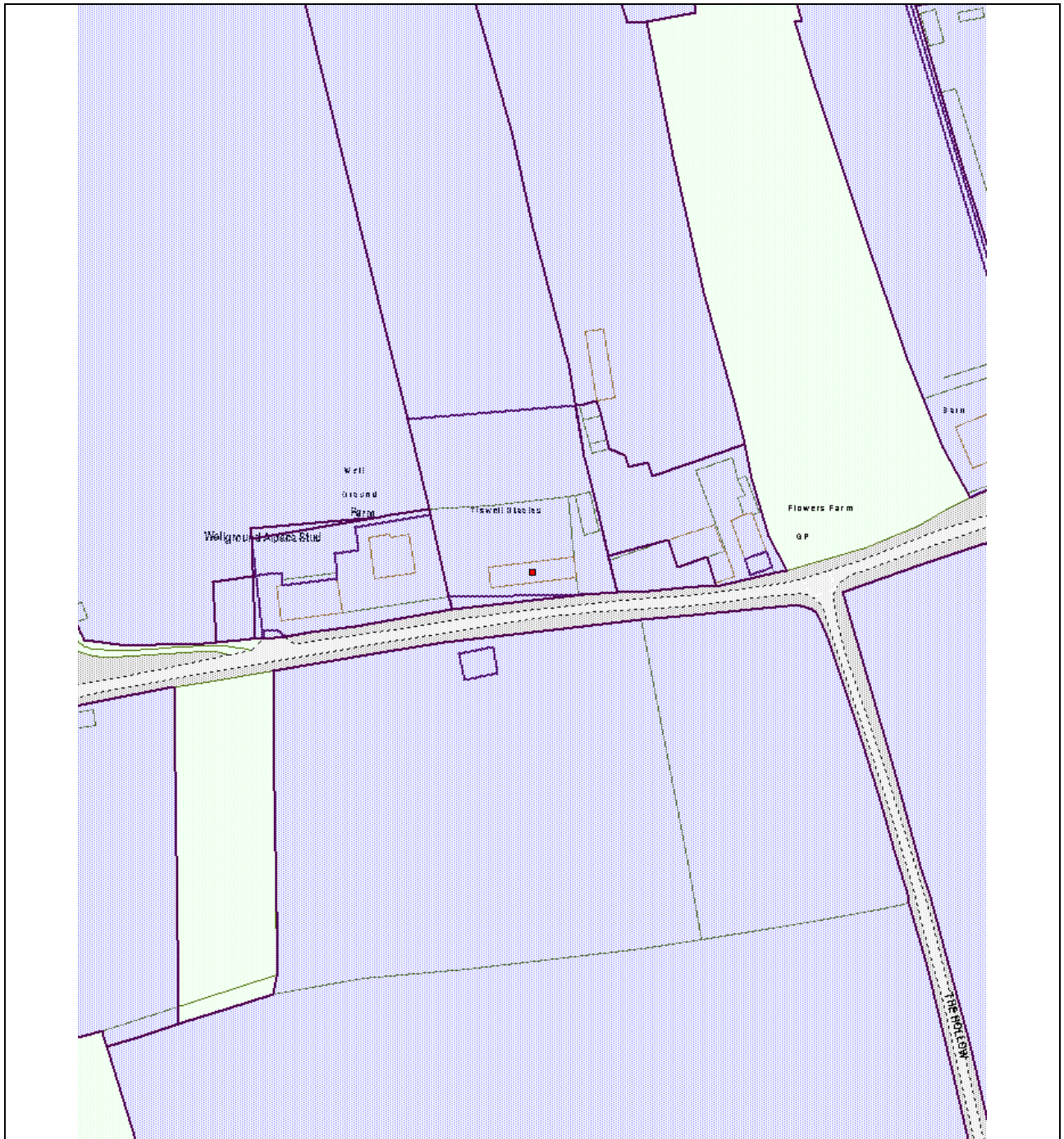
REASON: In the interests of preserving the amenities of the area.

West Wiltshire District Plan 1st Alteration (2004): POLICY CF12.

**Informative(s):**

- 1 The developer is advised that under paragraph 46 of ODPM Circular 01/2006 that the granting of any temporary planning permission should not be regarded as setting a precedent for the determination of any future applications for full permission. If you have not done so already you are therefore advised as a matter of urgency to contact the Council's spatial planning team responsible for the production of the Council's DPD on Traveller and Gypsy Site Allocations to discuss bringing this site forward for consideration under this planning document. They may be contacted on 01225 713489.

<b>Appendices:</b>	
<b>Background Documents Used in the Preparation of this Report:</b>	



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## RELEVANT APPLICATION PLANS

Drawing : LWR.1.A received on 11.05.2010

Drawing : LOCATION PLAN received on 11.05.2010