

REPORT TO THE WESTERN AREA PLANNING COMMITTEE

Date of Meeting	25.08.2010		
Application Number	W/10/01753/S73		
Site Address	Land West Of Penn Farm Capps Lane Bratton Wiltshire		
Proposal	Removal of conditions 2 and 3 attached to planning permission reference 07/03063/FUL and replaced with condition to allow for gypsy traveller occupation only		
Applicant	Mr W Sherred		
Town/Parish Council	Bratton		
Electoral Division	Ethandune	Unitary Member:	Julie Swabey
Grid Ref	390130 153531		
Type of application	Variation of Condition		
Case Officer	Mr James Taylor	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: The conditions as laid down in the original permission were clear that this site is for the use of Mr Sherred only and that should he leave the site it is to be returned to agricultural land. There will be no management of the site should the conditions be removed and would make way for further development of an already over saturated area with single site pitches.

1. Purpose of Report

To consider the above application and to recommend that planning permission be granted subject to revised conditions to reflect the personal circumstances of the applicant, but continue to restrict occupation so as not to prejudice the Council's Gypsy and Traveller Site Allocation Development Plan Document production

2. Main Issues

The main issues to consider are:

- * Principle of development and progress towards DPD site allocations
- * Planning history

3. Site Description

The application site is located in open countryside off of Capps Lane, nr Bratton. It is relatively flat with a dense hedge to the northern boundary adjacent to the highway.

The site is currently being occupied by Mr Sherred, his son Mr Mathews and Mr Mathews' wife and child. The site has 2 caravans (1 twin-unit and 1 mobile) and an area laid to hard standing with an established access created to highway specifications.

The site also has consent for a dayroom, however upon the most recent site visits this had not been erected.

4. Relevant Planning History

07/03063/FUL - Site for one gypsy family - twin mobile unit and day room – Permission on 19.11.2007

5. Proposal

This is a planning application under section 73 of the planning acts. The applicant is seeking the deletion of conditions 2 and 3 which were imposed under planning permission reference 07/03063/FUL as follows:

2. The development hereby permitted shall be occupied only by William Sherred and his family.
REASON: In order to define the terms of the permission and because the personal circumstances of the applicant are material to the granting of this permission.

3. When the development hereby permitted ceases to be occupied by William Sherred, no further occupation of the mobile home and day room shall take place and anything brought onto the land in connection with its occupation shall be removed from the land within one month. REASON: Because the personal circumstances of the applicant are material to the granting of this permission.

The applicant seeks that the Council imposes an alternative condition so that the site may only be occupied by person or persons who meet the definition of a traveller or gypsy under paragraph 15 of ODPM Circular 01/2006 i.e. make this a permanent traveller site as opposed to a site for Mr Sherred. Currently under the terms of condition 3, family members may only be on site if Mr Sherred is also occupying the site.

6. Planning Policy

Wiltshire Structure Plan 2016
DP1 Priorities for Sustainable Development
DP15 Accommodation for Gypsies and Travellers

West Wiltshire District Plan 1st Alteration (2004)
C1 Countryside Protection
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 conditions in planning permission.
ODPM Circular 01/2006: Planning for Gypsy and Traveller Caravan Sites
ODPM The Planning System: General Principles

7. Consultations

Bratton Parish Council

Mr Sherred had agreed to clause 2 and clause 3 when the original application was granted permission in 2007. Therefore the council can see no reason why they should be omitted now.

The council did however agree to forward a note to the planning officer regarding the information presented at tonight's meeting on the possible solution proposed by those who addressed the council at the open forum (see paragraph below). The hope is that this compromise may help to resolve the matter when heard by the Wiltshire Council planning committee.

This was presented to the council (Bratton Parish) in the open forum.

Mr and Mrs Barthram and Mr Venn (the residents of Capps Lane local to the address of planning application W/10/01753/S73) and Ms Sherred (the applicants agent) and Mr W Sherred (the Applicant) attended the meeting and all spoke on the subject of the planning application and the proposed amendment to the original permission granted in 2007 (07/03063/FUL). The original permission stated 2 clauses as follows: clause 2 stated that the development hereby permitted shall be occupied only by William Sherred and his family. Clause 3 stated that when the development hereby permitted ceases to be occupied by William Sherred, no further occupation of the mobile home and day room shall take place and anything brought onto the land in connection with its occupation shall be removed from the land within one month. The recent application made by Mr Sherred has asked for the removal of clauses 2 and 3 and the replacement with a condition to allow for gypsy or traveller occupation only. Although the Barthrams and Mr Venn have raised objections to the amendment to the application as it stands to remove clauses 2 and 3, they did present the Parish Council with an amendment which all were in favour of including Mr Sherred and his agent. This amendment would allow Mr Sherred's family to remain in residence if anything happened to Mr W Sherred but not allow any gypsy or traveller occupation.

I was not clerk at this meeting due to illness but have had clarification from my councillors as to the correct wording of the conversation in the open forum and the council formal objection to the application as presented at that meeting. I understand the situation with any further amendments seems to be changing almost daily so until we have any firm amendments the council will refrain from making further comment.

Spatial Plans

Each application for a Gypsy site should be considered on its individual merits and reflect the guidance outlined in Circular 01/2006. However, the removal of conditions 2 and 3 attached to planning permission reference 07/03063/FUL and replace with a condition to allow for gypsy traveller occupation only, could prejudice the outcome of the Wiltshire Gypsy and Traveller Site Allocations DPD.

The DPD should be the mechanism by which identified need is delivered, through a plan-led and holistic approach to ensure the most suitable and sustainable locations are identified.

Background / Context

Circular 01/06 Planning for Gypsy and Traveller Caravan Sites' contains the Governments' most recent advice on identifying new sustainable sites for Gypsy and Traveller accommodation. ODPM Circular 01/06 supersedes advices contained in Circular 02/94 Gypsy Sites and Planning.

One of the key intentions of Circular 01/06 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. The Circular states, "local planning authorities should first consider locations in or near existing settlements with access to local services." Circular 01/06 also requires that all candidate sites must have their social, environmental and economic impacts assessed in accordance with the requirements of sustainability appraisals, as outlined in Planning Policy Statement 12: Local Development Frameworks (PPS12).

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 and 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 bring 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. 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 through the course of the DPD to ensure that there remains a robust evidence base for the number of pitches eventually proposed 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.

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.

It is understood that the permission granted for application 07.03063.FUL was intended to respond to the specific personal circumstances of the applicant. To allow the removal of conditions 2 and 3 attached to planning permission 07.03063.FUL will pre-empt the conclusions of the Wiltshire Gypsy and Traveller Site Allocations DPD.

If it is considered that the site satisfies the requirements of Circular 01/06, 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.

Conclusions:

To allow the removal of conditions 2 and 3 attached to planning permission 07.03063.FUL will pre-empt the conclusions of the Wiltshire Gypsy and Traveller Site Allocations DPD. The DPD should be the mechanism by which existing and future need is satisfied to ensure the most suitable and sustainable locations are identified.

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 and neighbour notification.

Expiry date: 13 July 2010

5 parties have commented on the proposals. 2 parties objecting to the application raising the following points:

- * Mr Sherred must want to move away and has in the past obtained permission and then moved on.
- * If Mr Sherred does not intend to leave the site there is no need for the restrictions to be lifted.
- * Permission was only granted based on his personal circumstances
- * Mr Sherred is a good neighbour
- * Officer support for this seems to have already been obtained
- * Do not understand why the circumstances should allow for any traveller or gypsy to be allowed on the site.

3 of the parties were writing in support of the application with the following points:

- * Where are Mr Sherred's family to go if they are not allowed to be on the site.
- * Planning should not destroy lives.
- * Support this application as part of the settled community

- * Waste of time and money dealing with this matter that could be focused on meeting the other traveller community needs.
- * Conditions imposed are in conflict with each other
- * We need to protect permanent sites for traveller use.
- * This will help address the need for sites
- * Applicants have been responsible rather than making this as a retrospective application.

9. Planning Considerations

9.1 An application under section 73 is in effect a fresh planning application but should be determined in full acknowledgement that an existing permission exists on the site. Indeed in this case the permission has been implemented and many of the conditions attached to the original permission reference 07/03063/FUL have been satisfied. The Council can reasonably apply conditions to this application as it would under any regular planning application as long as they meet the 6 tests of conditions detailed in Circular 11/95. Indeed planning permission should not be refused if planning conditions could reasonably address the potential grounds for refusal.

9.2 This proposal has been presented in effect 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.

9.3 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.

9.4 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.

9.5 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.

9.6 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.

9.7 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 not likely to be an issue here since the site has already been set up. However a temporary permission is considered to be unreasonable in this case given that there is an existing 'permanent'/'life-time' permission for Mr Sherrard to live on this site. To erode this by making the

tenure on this site temporary would be unreasonable and fail the tests of a condition. Therefore this application is materially different to other pending traveller applications.

9.8 The set is an established traveller site, albeit on a personal permission and considered to be perfectly in keeping 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.

9.9 The Council's spatial planners are responsible for this work and 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. In such cases normally a temporary permission may be reasonable, but in this specific case that would be unreasonable.

9.10 It is considered though that the material circumstances of this case, even in light of the DPD issues necessitates a pragmatic approach. The existing conditions would stop Mr Sherred's family from living on the site if he were not there and this is a very harsh situation, especially given that his son Mr Mathews is now living on the site with his father, wife and son. Indeed it is noted that Mr Mathews' son is due to be starting at Bratton school in September. In light of this there is clearly a need for Mr Sherred's immediate family to have an authorised site; so varying the conditions so that Mr Sherred is free to live a nomadic life while his son, wife and daughter are settled for the education of their child are reasonable and justified. It is acknowledged that this is not specifically what has been applied for but the planning regulations do allow for this kind of approach to be taken by a planning authority. In addition further private and confidential information has been submitted regarding health and care matters which contribute to a justification for a more flexible approach to the occupation of the site allowing Mr Sherred to be away for periods while his dependents remain.

9.11 Changing the wording of condition 3 so that the site is for 'Mr Sherred and family' would overcome this matter and is justified. This was briefly a point of compromise during the processing of the application, however the applicants sought the wording 'Mr Sherred, family and dependents'; but it is understood that the use of 'dependents' was objectionable to local residents.

9.12 In the interests of good practice it is necessary for the Council to show a consistent approach to the determination of applications. It is noted that members imposed an additional personal condition on a nearby application in May for the applicant and dependents (ref: X). Further it is noted that in permission W/09/02386/FUL the planning inspectorate imposed a personal condition in May 2010 on Mr Edington's site in Bratton for the applicant and dependents. It is also noted that the planning inspectorate's model condition, where personal permissions on traveller sites is warranted, is for the applicant and dependents. Therefore such wording is considered to be good practice.

9.13 On the basis of the above deliberations it is concluded that a permanent permission for any traveller or gypsy would be unacceptable as it may cumulatively, with other applications in the area, prejudice the Council's DPD Traveller and Gypsy Site Allocations work. However in light of the personal circumstances detailed in this application a more flexible wording to the original conditions would be perfectly acceptable to the Council and would be likely to address the applicant's issues without compromising their right to appeal the decision. Therefore it is recommended that permission be granted but with variations to conditions 2 and 3, as stated in 07/03063/FUL, for 'Mr Sherred and dependents' to accord with good practice and recent decisions in the area.

9.14 Finally the outstanding and relevant conditions imposed under permission 07/03063/FUL have been re-imposed. This is only three items namely the number of caravans on site, pollution control and limiting fires. Other conditions have already been discharged and/or complied with.

9.15 It has been noted that the proposals have been subject to some public objection and support 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. Further it is appreciated that the word dependents may have been a source of concern for those parties objecting, however for the above reasons it is considered to be an acceptable compromise that would accord with planning policy and guidance.

Recommendation: Permission

Subject to the following condition(s):

- 1 The occupation of the site hereby permitted shall be carried on only by Mr W Sherred, the applicant and his resident dependants.

REASON: Planning permission has only been granted on the basis of the personal circumstances and status of the applicant.

- 2 When the land ceases to be occupied by those named in condition 1 above the use hereby permitted shall cease and all caravans, structures, materials and equipment brought on to the land in connection with the use including the amenity block hereby approved, shall be removed. Within 1 month of that time the land shall be restored in accordance with a scheme previously submitted to and approved in writing by the local planning authority.

REASON: Planning permission has only been granted on the basis of the personal circumstances and status of the applicant.

- 3 No caravan, other than the twin unit hereby permitted, and one touring caravan shall be placed on the land.

REASON: In order to define the terms of this permission and avoid proliferation of caravans at the site.

- 4 Contaminated water shall not be discharged to any stream, watercourse or underground strata, whether direct or via soakaways.

REASON: To minimise the risk of pollution to the water environment.

POLICY: West Wiltshire District Plan 1st Alteration (2004) Policy U4.

- 5 No controlled waste shall be burnt on site.

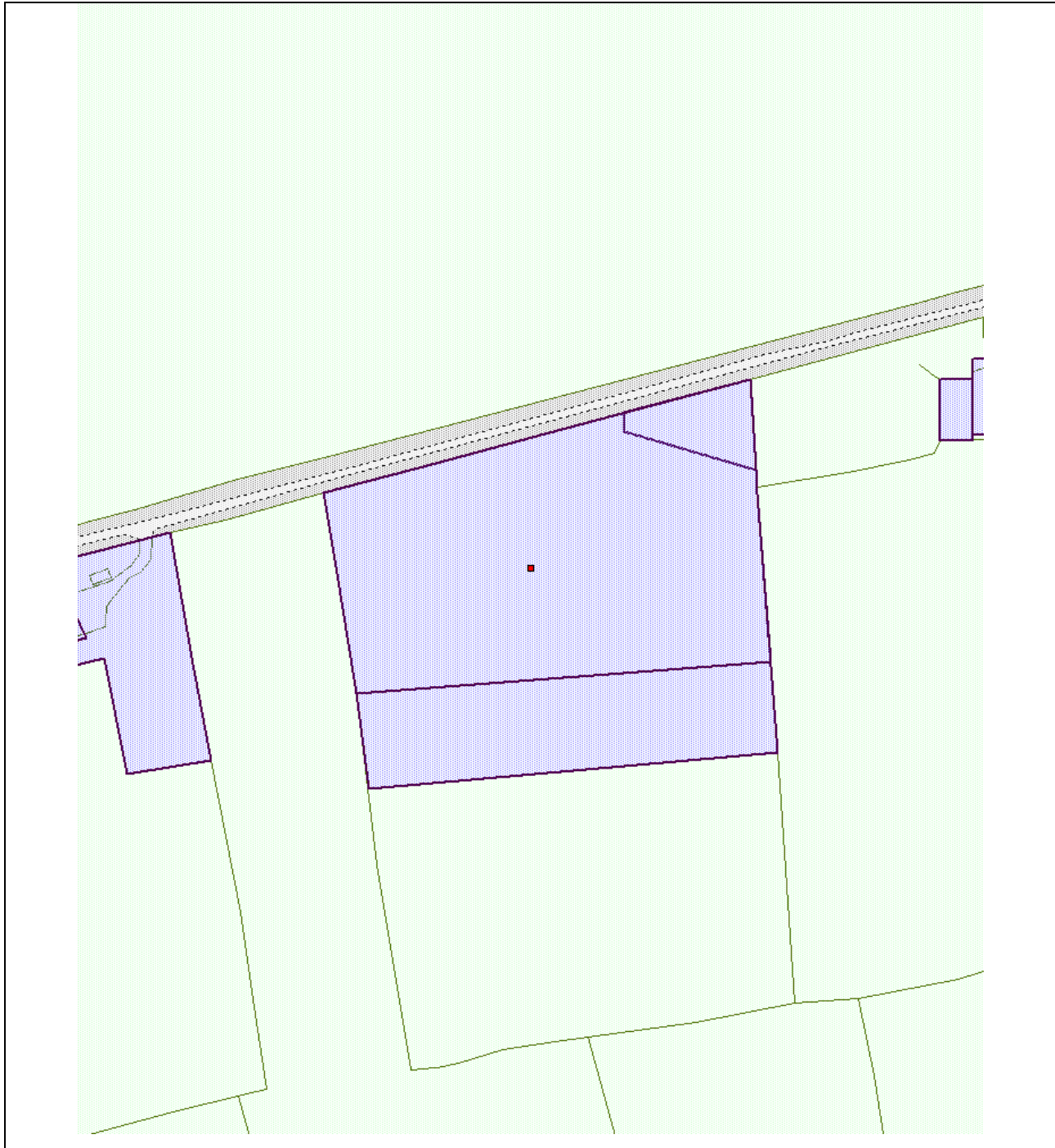
REASON: In order to minimise nuisance.

POLICY: West Wiltshire District Plan 1st Alteration (2004) Policy C38.

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.

Appendices:	
Background Documents Used in the Preparation of this Report:	



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RELEVANT APPLICATION PLANS

Drawing : LOCATION PLAN received on 08.06.2010

Drawing : SEPTIC TANK LOCATION PLAN received on 08.06.2010

Drawing : DAY ROOM ELEVATIONS received on 08.06.2010

Drawing : DAY ROOM PLANS received on 08.06.2010

Drawing : PHOTOS received on 08.06.2010