

**OX17 1QU**

**Case Officer:** Bob Neville

**Applicant:** Mr James Doran

**Proposal:** Change of use of land to a mixed use for the keeping of horses (existing) and as a residential caravan site for 4no gypsy families. Each with two caravans (including no more than 4no static caravans / mobile homes) together with the laying of hardcore.

**Ward:** Cropredy, Sibfords And Wroxton

**Expiry Date:** 24 September 2020

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## **1. APPLICATION SITE AND LOCALITY**

- 1.1. The application site is a parcel of land lying in open countryside between the villages of Great Bourton (~0.5km to the west) and Cropredy (~0.24km to the east). The site contains a stable building and agricultural storage building, with hardstanding toward the front of the site. The rear of the site is paddock land currently being used for the grazing of horses. The front (northern) boundary of the site is a mature hedgerow with existing gated access onto the road running between Great Bourton and Cropredy. The eastern boundary of the site again is a mature hedgerow with trees with post and rail fencing to the western boundary. There is currently no delineating feature to the southern boundary of the site, with the application's site boundary dissecting an existing area of paddock. There is further post and rail fencing within the paddock area (outside of the application site) with a field boundary hedgerow to its southern boundary.
- 1.2. The site sits adjacent and east of an area of land containing stabling and which benefits from planning permission for a mixed use of equestrian and agriculture. The surrounding land is in agricultural use.

## **2. CONSTRAINTS**

- 2.1. The application site is agricultural land classed by Natural England as being Category 3 (good-moderate) land. Whilst the site is identified by the Environment Agency as being in Flood Zone 1 their records show the site to be in an area with a high chance of flooding from surface water. The London to Birmingham railway line runs across land some 80m east of the site. There are records of protected and notable species (Swifts and Pipistrelle Bats) as being present within the vicinity of the site. The site is in an area known to be affected by Radon Gas. The site is also within an area of archaeological interest (undated enclosures, field system and ridge and furrow).

## **3. DESCRIPTION OF PROPOSED DEVELOPMENT**

- 3.1. The application seeks planning permission for the change of use of land to a mixed use for the keeping of horses (existing) and as a residential caravan site for 4no gypsy families. Each with two caravans (including no more than 4no static caravans/mobile homes) together with the laying of hard standing. The proposals also include additional landscaping with hedgerow and tree planting and new post and rail fencing with gated access into adjacent paddock.

- 3.2. The applicant's description of development refers to "gypsy families" only. Officers are not sure if this is intentional or whether it should have referred to "gypsy and travellers". In this report officers refer to "gypsy and traveller[s]".

#### **4. RELEVANT PLANNING HISTORY**

- 4.1. The following planning history is considered relevant to the current proposal:

05/00198/F - Erection of stables. Application Permitted

06/00593/F - Erection of 1 multi-use livestock and hay store building. Application Permitted

06/01284/F - Resubmission of withdrawn application 06/00599/F - Retrospective: Temporary caravan on site for a period of 3 months for use by builders. Application Permitted.

13/00431/CLUE - Certificate of Lawful Use Existing - An area of rolled gravel hardstanding, a lean-to pig pen and a small soakaway/duck pond. Application Permitted.

#### **5. PRE-APPLICATION DISCUSSIONS**

- 5.1. No pre-application discussions have taken place with regard to this proposal.

#### **6. RESPONSE TO PUBLICITY**

- 6.1. This application has been publicised by way of a site notice displayed near the site, by advertisement in the local newspaper, and by letters sent to all properties immediately adjoining the application site that the Council has been able to identify from its records. The final date for comments was **7 September 2020**, although comments received after this date and before finalising this report have also been taken into account.

- 6.2. 49no letter/emails of objection and 3no letter/emails of comments have been received from local residents during the application. The comments raised by third parties are summarised as follows:

- Contrary to Cherwell Development Plan. Currently no need with the district for additional gypsy/travellers sites.
- Lack of capacity within existing facilities and infrastructure (School, Surgery) to accommodate further development.
- Would set a precedent for further expansion of the site development or residential development in the rural landscape gap between the villages, which should be maintained to prevent coalescence.
- Previous planning permissions (marina and caravan parks) have been granted with the aims of boosting local tourism. Permitting development on the green field sites that make Cropredy an attractive place to visit - is not consistent with this aim and could deter visitors and adversely impact the local economy.
- Not in keeping with nearby villages
- Not an appropriate location for residential development.
- Out-of-keeping with the character of the area and would impact on the character of the neighbourhood.
- Detrimental impact on the existing Public Right of Way (PRoW), affecting the amenity of its users and potentially preventing use of the route.
- Detrimental landscape impact; with views down from Great Bourton and from PRoW. Site is within an area of high landscape value.

- Highway safety issues as a result of increase in vehicular movements and potentially inappropriate vehicle movements and poor access. High volumes of traffic already experienced at peak times.
- Users of the site would be reliant on the use of private vehicles as there is only a limited bus service from both Cropredy and Great Bourton.
- The site is prone to flooding; drainage at the site has been previously impacted upon by hardstanding being laid. Proposals would exacerbate flood-risk to the surrounding area, including the nearby school in Cropredy.
- Lack of detail in respect of how sewage would be treated. Potential contamination issues arising at times of flooding.
- Lack of detail in respect of waste and recycling facilities.
- Potential light pollution.
- Proposals would be detrimental to local wildlife.
- Property devaluation (NB. Not a material planning consideration.)

6.3. The comments received can be viewed in full on the Council's website, via the online Planning Register.

## 7. RESPONSE TO CONSULTATION

7.1. Below is a summary of the consultation responses received at the time of writing this report. Responses are available to view in full on the Council's website, via the online Planning Register.

### PARISH/TOWN COUNCIL AND NEIGHBOURHOOD FORUMS

7.2. THE BOURTONS PARISH COUNCIL: **Objects** on the grounds of:

- Lack of need for further sites, given previous consents within the district;
- Landscape impact; with proposals intruding into the rural landscape;
- Proposal would impact on existing Public Right of Way;
- Potential light pollution;
- Drainage and flood-risk;
- Highway safety;
- Limited services serving the proposed site;
- Noise disturbance for potential occupants resulting from the nearby railway line.

7.3. CROPREDY PARISH COUNCIL: **Objects**. Notes a number of parishioners have made representations to them wishing to object to the application. Issues raised include:

- Proposals outside of the village envelope;
- Landscape impact; destroying historic ridge and furrow and being to the detriment of the landscape between the two villages which should be maintained;
- Proposal would impact on existing Public Right of Way;
- Drainage and flood-risk; proposals would exacerbate flooding;
- Highway safety; inadequacy of the local highway network to cope with additional traffic, with particular regard to weight limit for vehicles passing through Great Bouton; which also has a number of pinch points

### OTHER CONSULTEES

7.4. PLANNING POLICY (CDC): **Objects**. Advises that there is currently a sufficient supply of gypsy and traveller pitches, based on the most up to date evidence on

need; therefore, there is no pressing need for additional land to be released at this time. Raises concerns as to whether a satisfactory living environment could be secured and also highlights environmental impacts of the proposals.

- 7.5. CAMPAIGN TO PROTECT RURAL ENGLAND (CPRE): **Objects** on the following grounds:
  - Lack of need;
  - Detrimental landscape impact;
  - Flooding; proposals would exacerbate flood-risk
  - Proposal would impact on existing Public Right of Way.
- 7.6. ENVIRONMENTAL HEALTH (CDC): **No objections** raised but notes the need for further assessment in respect of noise and land contamination.
- 7.7. GYPSY & TRAVELLER SERVICES (OCC): No comments received.
- 7.8. HOUSING STANDARDS (CDC): No comments received.
- 7.9. STRATEGIC HOUSING (CDC): **Objects**. Raises concerns as to the ability of the proposals to provide a satisfactory living environment for future families. Highlights significant lack in supporting information.
- 7.10. LEGAL SERVICES RIGHTS OF WAY OFFICER (CDC): **Objects**. Proposals will obstruct Bourton Public Footpath numbered 138/8; to which no consideration appears to have been given within the submission.
- 7.11. LICENSING (CDC): No comments to make.
- 7.12. NETWORK RAIL: **No objections**.
- 7.13. LOCAL HIGHWAYS AUTHORITY (OCC): **No objections** subject to a condition requiring details of parking provision to be secured.
- 7.14. RIGHTS OF WAY (OCC): **Objects**. Proposals would obstruct the Public Right of Way.
- 7.15. ADULT SOCIAL CARE (OCC): No comments received
- 7.16. BUILDING CONTROL: **No objections**; however, raises concerns as to whether an acceptable drainage solution could be achieved.
- 7.17. THAMES VALLEY POLICE (Design Adviser): No comments received

## **8. RELEVANT PLANNING POLICY AND GUIDANCE**

- 8.1. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
- 8.2. The Cherwell Local Plan 2011-2031 - Part 1 was formally adopted by Cherwell District Council on 20th July 2015 and provides the strategic planning policy framework for the District to 2031. The Local Plan 2011-2031 – Part 1 replaced a number of the ‘saved’ policies of the adopted Cherwell Local Plan 1996 though many of its policies are retained and remain part of the development plan. The relevant planning policies of Cherwell District’s statutory Development Plan are set out below:

### CHERWELL LOCAL PLAN 2011 - 2031 PART 1 (CLP 2031 Part 1)

- PSD1: Presumption in Favour of Sustainable Development
- BSC6: Travelling communities
- ESD1: Mitigating and Adapting to Climate Change
- ESD6: Sustainable Flood Risk Management

- ESD7: Sustainable Drainage Systems
- ESD10: Protection and Enhancement of Biodiversity and the Natural Environment
- ESD13: Local Landscape Protection and Enhancement
- ESD15: The Character of the Built and Historic Environment
- VILLAGES 1: Village Categorisation

#### CHERWELL LOCAL PLAN 1996 SAVED POLICIES (CLP 1996)

- C8: Sporadic development in the countryside
- C28: Layout, design and external appearance of new development
- C30: Design Control
- ENV1: Development likely to cause detrimental levels of pollution
- ENV12: Contamination

#### 8.3. Other Material Planning Considerations

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- Planning Policy for Traveller Sites (August 2015) (PPTS). This document sets out the Government's planning policy specifically for traveller sites and should be read in conjunction with the NPPF
- Designing Gypsy & Traveller Sites (2008) (although this document was withdrawn by the Government on 1st September 2015, it remains a useful starting point for considering the design and layout of proposed travellers sites)
- Gypsies and Travellers: Planning Provisions – Briefing Paper January 2016. Provides useful background information and summarises changes to the updated PPTS. It is noted however that as this is only a Briefing Paper; it carries very limited weight and should not be relied upon as a substitute for specific advice
- CDC Annual Monitoring Report 2019 (AMR) (December 2019)
- Cherwell, West Oxfordshire and South Northamptonshire Gypsy and Traveller Needs Assessment (2012/2013) (GTAA 2012/2013)
- Cherwell, Oxford City, South Oxfordshire and Vale of White Horse Gypsy, Traveller and Travelling Showpeople Accommodation Assessment (2017) (GTAA 2017)
- The European Convention on Human Rights (ECHR) Articles 8 and Article 14 of Protocol 1
- Housing Act (2004)
- The Equality Act (2010)

## 9. APPRAISAL

### 9.1. The key issues for consideration in this case are:

- Principle of development
- Visual Impact and Effect on Landscape Character;
- Residential Amenity;
- Highway Safety;
- Flooding Risk and Drainage;
- Ecological Impact;
- Other Matters

### Principle of Development

- 9.2. The National Planning Policy Framework (NPPF) states that the purpose of the planning system is to contribute towards the achievement of sustainable development. This required the economic, social and environmental objectives to be pursued in mutually supportive ways. Planning law requires planning applications to be determined in accordance with the development plan unless material considerations indicated otherwise.
- 9.3. The most relevant policies to the principle of development are Policies ESD1 and BSC6. Policy ESD1 states that to mitigate the impact of development on climate change growth will be delivered in the most sustainable locations (as defined in the local plan) and reduce the need to travel. Policy BSC 6 of the Cherwell Local Plan 2011-2031 Part 1 builds on this in relation gypsy and travellers pitches in the District and in order to provide and maintain a five year supply of deliverable gypsy and traveller sites. This states that allocations will be made in Local Plan Part 2 and planning permissions will be granted for suitable gypsy and traveller sites. Policy BSC6 also states that locations outside the AONB and Green Belt will be considered and: *“In identifying suitable sites with reasonable accessibility to services and facilities the following sequential approach will be applied:*
- *Within 3km road distance of the built-up limits of Banbury, Bicester or a Category A village.*
  - *Within 3km road distance of a Category B village and within reasonable walking distance of a regular bus service to Banbury or Bicester or to a Category A village.*
- 9.4. The site is not located within an area of Green Belt or AONB. The application site is located approximately 900m by road from the centre of Cropredy and 800m by road from the centre of Great Bourton. Cropredy is a Category A Settlement under Policy Villages 1. Therefore, the site meets the first criteria relating to the sequential test for the location of sites. However, this does not mean the proposal is *de facto* acceptable in principle as Policy BSC6 also requires the assessment of the suitability of sites against the criteria below:
- The following criteria will also be considered in assessing the suitability of sites:
- Access to GP and other health services;
  - Access to schools
  - Avoiding areas at risk of flooding;
  - Access to the highway network;
  - The potential for noise and other disturbance;
  - The potential for harm to the historic and natural environment;
  - The ability to provide a satisfactory living environment;
  - The need to make efficient and effective use of land;
  - Deliverability, including whether utilities can be provided;
  - The existing level of local provision;
  - The availability of alternatives to applicants.
- 9.5. In this case Cropredy is a Category A settlement, which are amongst the most sustainable villages in the district, these range considerably in terms of their size and level of facilities/services. Cropredy has a number of facilities that would be expected within such category A villages including: primary school, public house, GP Surgery, shop a village hall and playing fields. The bus service serving Cropredy is also very limited with only one Saturday service running between Temple Herdewyke and Banbury, which would therefore be unlikely to be of great use to future residents.

- 9.6. There is a footpath connecting Great Bourton and Cropredy passing the site, which would allow pedestrian access to and from the site to services within the villages. The assessment of the proposal against the first two criteria of Policy BSC6 weighs in favour of the sustainability of the site and accessibility to services and facilities.
- 9.7. In relation to the national planning policy context for the provision of gypsy and traveller sites this is contained within the August 2015 'Planning Policy for Traveller Sites' (PPTS) and should be read in conjunction with the NPPF. The Government's overarching aim is to ensure fair and equal treatment for gypsies and travellers in a way that facilitates the traditional and nomadic way of life that they have whilst at the same time respecting the amenity and appearance of the settled community.
- 9.8. Policy H of the Government PPTS states that LPAs should consider the existing level of need for site, the availability of alternative accommodation for applicants and their personal circumstances when considering proposals for gypsies and travellers sites and they should determine applications for sites from any gypsies and travellers and not just those with local connections.
- 9.9. Policy H goes on to advise that LPAs should strictly limit new gypsy and traveller site development in the open countryside that are away from existing settlements or outside areas allocated in the development plan. The application site is located outside of any settlement, not having any strong relationship with the form of any village and clearly separated by open fields.
- 9.10. Given the above, the location of the site in relation to other settlements (as outlined above) and the fact that Policy BSC6 has the 3km criteria in relation to Category A villages, on balance it is considered that the proposal cannot be said to be 'away from existing settlements' so would not conflict with national policy in that respect.
- 9.11. Policy H goes on to state that in rural areas sites development should respect the scale of, and not dominate, the nearest settled community and when considering applications LPAs should attach weight to the following matters:
  - a) effective use of previously developed (brownfield), untidy or derelict land;
  - b) sites being well planned or soft landscaped in such a way as to positively enhance the environment and increase its openness;
  - c) promoting opportunities for healthy lifestyles, such as ensuring adequate landscaping and play areas for children;
  - d) not enclosing sites with excessive hard landscaping, high walls or fences that the impression may be given that the site and its occupants are deliberately isolated from the rest of the community.
- 9.12. Given the location of the site, the number of pitches proposed in this instance and the size of the settlements of Cropredy and Great Bourton, it is considered that the proposal would not dominate the nearest settled community. The majority of the site is a green field site which is not previously developed. The other matters are discussed further below.

#### Need for pitches

- 9.13. The Local Planning Authority is required to make an assessment of the needs for gypsy and traveller sites within the district and to identify and update annually a 5-year supply of specific deliverable sites. Paragraph 27 of the PPTS states that if a local planning authority cannot demonstrate an up to date 5-year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when consideration applications for the grant of temporary planning permission.
- 9.14. Policy BSC6 of the Local Plan 2015 states that the council will provide 19 (net) additional pitches to meet the needs of Gypsy and Travellers from 2012 to 2031.

- 9.15. A Gypsy, Traveller and Travelling Showpeople Accommodation Assessment (GTAA) for Cherwell, Oxford, South Oxfordshire and Vale of White Horse Councils was published in June 2017. Since its publication the GTAA 2017 has informed the examination and adoption of Local Plans covered by the study's area.
- 9.16. It identifies a new objective assessment of need for each authority based on the definitions of Gypsies and Travellers and Travelling Showpeople for planning purposes (Annex 1 of the Government's Planning Policy for Traveller Sites (PPTS, 2015)). It identifies a need for 7 additional pitches for households for Cherwell by 2031 that meet the planning definition.
- 9.17. The Assessment also suggests that the overall need could rise by up to 12 pitches if further information be made available to the Council that will allow for the planning definition to be applied to the unknown households. These are households where it was not possible to distinguish whether or not they meet the planning definition. Additionally, a potential need for 8 pitches is highlighted due to the closure of a site (Smiths Caravan Park) therefore the need could increase by up to a further 20 pitches.
- 9.18. The Assessment advises that for 'unknown' travellers 'it would not be appropriate when producing a robust assessment of need to make any firm assumptions about whether or not they meet the planning definition...' based on interviews that have taken place (para. 7.28 of the study).
- 9.19. The AMR 2019 presents a 5-year land supply calculation based on the need identified in support of the adopted Policy BSC6 and a calculation based on the latest GTAA 2017.
- 9.20. As noted above since the preparation of the need evidence/study supporting adopted Policy BSC6, the Government set out planning policies and requirements for Gypsy and Traveller sites in 'Planning Policy for Traveller Sites' (PPTS, 2015). The GTAA 2017 is more up to date and consistent with national policy set out in PPTS 2015.
- 9.21. The published five-year land supply position for gypsies and travellers based on the GTAA methodology as reported in the 2019 AMR is 3.8 years for the period 2020-2025 commencing 1 April 2020 (shortfall of 3 pitches). This does not include an allowance for 'unknown' need but includes the potential need for 8 pitches arising from the Smiths site (a site that was previously included in the district's supply).
- 9.22. The above calculation takes into account planning permissions for a total of 10 new pitches during 2019/20 (4 pitches at Summer Place, Launton, 6 pitches at Widnell Lane, Piddington). A separate permission for 3 new pitches was also granted towards the end of 2019/20 which follows the publication of the 2019 AMR (Land West of M40, Kirtlington Road, Chesterton). Inclusion of the 3 new pitches would mean that the Council can demonstrate a 5-year supply of gypsy and traveller pitches based on the most up to date assessment of need.
- 9.23. The application site is proposed to be used as a site for four families. No details of personal circumstances of the occupants of the site have been submitted in support of the application and it is unclear as to whether the potential future occupants would meet the planning definition of a gypsy/traveller. If the Council was minded to approve the application in order to ensure that the site was only occupied by households meeting the revised definition of gypsy/traveller a planning condition could be used in line with Government guidance. Officers are therefore satisfied that the application is for a site that would be used by gypsies/travellers.
- 9.24. The Council considers that there is currently a sufficient supply of gypsy and traveller pitches based on the most up to date evidence on need therefore there is no pressing need for additional land to be released at this time. In this instance there are also significant concerns as to whether this would be an appropriate location for such development, having regard to whether an acceptable living environment could



be achieved and the environmental impacts of the proposed development could be successfully mitigated against, and these matters are discussed further below. The principle of development is therefore considered unacceptable in this instance and therefore fails to comply with Policy BSC6 of the Cherwell Local Plan 2011 – 2031 Part 1 and Government guidance contained within the NPPF in this regard.

#### Visual Impact and Effect on Landscape Character

- 9.25. The Government attaches great importance to both the protection and enhancement of the natural environment and the design of the built environment within the NPPF. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people.
- 9.26. These aims are also echoed within Policy ESD13 of the CLP 2031, which states that development will be expected to respect and enhance local landscape character, securing appropriate mitigation where damage to local landscape character cannot be avoided. Proposals will not normally be permitted if they would cause undue visual intrusion into the open countryside, cause undue harm to important natural landscape features and topography, be inconsistent with local character, or impact on areas judged to have a high level of tranquillity.
- 9.27. Policy ESD15 of the Cherwell Local Plan Part 1 states that: “New development will be expected to complement and enhance the character of its context through sensitive siting, layout and high quality design. All new development will be required to meet high design standards.”
- 9.28. Saved Policy C28 of the Cherwell Local Plan 1996 reflects Government guidance in relation to the design of new development by seeking to ensure that such development is in harmony with the general character of its surroundings and is sympathetic to the environmental context of the site and its surroundings. Saved Policy C8 of the Cherwell Local Plan 1996 seeks to protect the character of the open countryside from sporadic development.
- 9.29. The site currently positively contributes to the rural character and appearance of the locality and the intrinsic character and beauty of the open countryside through being a largely undeveloped agricultural field in an area where built development is limited structures that would usually be seen in such rural settings. The landscape in which the site sits was previously designated as an Area of High Landscape Value (AHLV) by CDC within the CLP 1996; with the adoption of the 2015 Local Plan this designated was not retained. Instead, Policy ESD13 states that a character-based approach is required and seeks to conserve and enhance the countryside and landscape character of the whole District.
- 9.30. The application proposes the provision of 4 gypsy and traveller pitches with a total of 8 caravans, of which no more than 4 would be mobile homes. Hardstanding would be laid to allow for the stationing of the caravans, parking and access and manoeuvring.
- 9.31. Whilst no elevational details or detailed assessment of potential visual impacts of the proposals has been submitted, the applicant contends within the supporting statement that the site is extremely well screened from public view by the existing boundary hedgerows, and as such, the proposed development would not be prominently located or obtrusive in the landscape and, can be satisfactorily assimilated into its rural surroundings.
- 9.32. Officers do not agree with this assertion. The addition of mobile homes, parked vehicles, hardstanding and domestic paraphernalia would detrimentally impact on the landscape character of the site having an urbanising effect on the site within the open countryside setting. Whilst there is hedgerow screening along the northern and eastern boundaries there are significant views from the surrounding countryside, most notably the PRow network surrounding and actually passing through the site.

Given the elevated position of Great Bourton in relation to the site there are views down into the site from the edge of village. Also given the elevation of the nearby railway line there are significant views of the site experienced by rail users.

- 9.33. The applicant has failed to acknowledge the existing authorised PRow, which crosses through the site, or address the clear impacts that the proposals would have on this route and the amenity of its users.
- 9.34. Additional landscaping is proposed along the western and southern boundaries of the site. Whilst over time landscaping of the site may assist in providing some screening the site this would take a number of years to have any significant benefit. Officers consider that, given the extensive views of the site that are currently experienced, the proposed landscaping would not mitigate the potential detrimental impacts that the proposals would have on this important rural landscape that provides separation between the built forms of Great Bourton and Cropredy. The proposals would result in residential development, including static caravans and associated pitch curtilage and vehicle parking, that would be an alien feature in the landscape and contrary to the existing established character of the area.
- 9.35. Paragraph 180 of the NPPF states that planning 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 (amongst others) limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation. With the site being in a rural location with currently no significant lighting, any proposed new lighting would have the potential for significant visual impacts above those currently experienced and being visually apparent from distance and potentially detrimental to the night-time sky; thereby further compounding the undue landscape harm discussed above.
- 9.36. No detailed information has been submitted in respect of waste and recycling or how the storage of such would be accommodated within the site. Whilst it is considered that there is sufficient space for appropriate storage to be accommodated within the site, clearly, inappropriate storage of waste and recycling would further have the potential to detrimentally impact on the visual amenities of the site and its wider rural landscape setting.
- 9.37. The proposals would result in a substantial new residential development, albeit gypsy and traveller pitches, being introduced on an area of open countryside for which a need has not been demonstrated; and it is considered that it has not been satisfactorily demonstrated that the impacts of such development could be successfully mitigated through an appropriate landscaping scheme. It is considered that the proposals would cause undue visual intrusion into the open countryside and be to the detriment of the general character and appearance of the surrounding valued rural landscape.
- 9.38. The proposals therefore significantly conflict with the provisions and aims of the Development Plan policies identified above and are therefore considered by officers to be unacceptable in terms of landscape and visual impacts.

#### Residential Amenity

- 9.39. The NPPF requires new development provide a high standard of amenity for existing and future occupants. Chapter 15 of the NPPF advises that decision should prevent new development from being subject to unacceptable levels of noise pollution and new development should be appropriate for its location taking into account the likely effects on living conditions. In doing so decisions should mitigate and reduce to a minimum the potential adverse impacts resulting from noise and avoid noise giving rise to 'significant adverse impacts' on health and the quality of life.

- 9.40. Saved Policy ENV1 of the adopted Cherwell Local Plan sets out that development which is likely to cause materially detrimental levels of noise, vibration, smell, smoke other types of environmental pollution will not normally be permitted. Further, where a source of pollution is already established and cannot be abated, the Council will seek to limit its effect by ensuring that development within the affected area maintains a suitable distance from the pollution source. Policy ESD15 of the Cherwell Local Plan Part 1 states that: *“Development should consider the amenity of both existing and future development, including matters of privacy, outlook, natural lighting, ventilation, and indoor and outdoor space.”*
- 9.41. Given the rural context of the site and that it is not located in close proximity to any residential properties, it is considered that there would be no significant harm resulting from the proposed development of the proposals on the site on the residential amenity of neighbours, in terms of loss of light, outlook, privacy or noise and disturbance.
- 9.42. The Environmental Protection Officer and Strategic Housing Officer both raise concerns as to whether an acceptable living environment would be afforded for potential future occupants of the site; echoing concerns of the case officer.
- 9.43. With regard to the layout of the proposal, the proposed pitches would be spacious and officers are of the view that these pitches are all of a sufficient size and would allow for some privacy and amenity space for each pitch and would avoid the overcrowding of the site.
- 9.44. Officers would usually expect to see separate day room facilities to support the pitches and families at the site. However, the applicant indicates adequate washing, cooking and toilet facilities would be provided within the proposed caravans and that access to utilities such as water and electricity are already available on the site.
- 9.45. The site is located in close proximity (approx. 80m) to a busy railway line, and significant noise is experienced within the site when trains are passing. The Council’s Environmental Protection Officer (EPO) considers that further assessment in respect of a noise impact assessment is necessary prior to any positive determination on the application to demonstrate that noise would be acceptable levels within the site. Without such assessment it cannot be established whether or the not an acceptable living environment could be achieved, free from noise nuisance giving rise to ‘significant adverse impacts’ on health and the quality of life.
- 9.46. The site is also in an area known to be in an area known to experience surface water flooding (discussed further below); further calling into question the suitability of the site for highly vulnerable residential development.
- 9.47. Overall, it is considered that the applicant has failed to demonstrate that an acceptable living environment would be afforded for potential future occupants of the site; contrary to the provisions and aims of the Development Plan policies identified above and Government guidance within the NPPF, and therefore unacceptable in this regard.

#### Highway Safety

- 9.48. National and local policy looks to promote sustainable transport options whilst ensuring that new development proposals do not cause harm to the safety of the highway network.
- 9.49. The NPPF (Para. 108) advises of the need to have due regard for whether new development includes:
- appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location;
  - safe and suitable access to the site can be achieved for all users; and

- any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.
- 9.50. Policy ESD15 of the CLP 2031 states that: *“New development proposals should be designed to deliver high quality safe, attractive, durable and healthy places to live and work in. Development of all scales should be designed to improve the quality and appearance of an area and the way it functions.”*
- 9.51. Policy SLE4 of the CLP 2031 states that: *“New development in the District will be required to provide financial and/or in-kind contributions to mitigate the transport impacts of development.”* Policy SLE4 also states that: *“All development where reasonable to do so, should facilitate the use of sustainable modes of transport to make the fullest possible use of public transport, walking and cycling...Development which is not suitable for the roads that serve the development and which have a severe traffic impact will not be supported.”*
- 9.52. A number of concerns have been raised in third party comments in relation to highway safety issues, including: access through Great Bourton being difficult for larger vehicles; increase in traffic resulting from the proposed development on what is already a busy road and inappropriate access to the site.
- 9.53. The Local Highway Authority (LHA) has assessed the proposals and raised no objection to the scheme subject to details of parking provision being secured by way of condition.
- 9.54. The LHA notes that the proposals would result in an intensification of use at the application site with the addition of eight mobile homes/caravans, but that such intensification is unlikely to have an adverse traffic or road safety impact on the surrounding road network. It is further noted that there is an existing footpath that would allow for pedestrian movement to the nearby villages.
- 9.55. Visibility at the existing access is considered to meet standards, and there would be sufficient space for manoeuvring within the site for vehicles to enter and leave the site in a forward manner.
- 9.56. Taking all transport matters into account, including the third-party objections submitted during the application, officers consider that, subject to securing the LHA’s requirements in respect of parking arrangements, the proposal would not unduly impact upon the safe and efficient operation of the surrounding road network would not cause significant detrimental harm to the safety and convenience of highway users and is therefore acceptable in highway safety terms.

#### Flood-risk and Drainage

- 9.57. Policy ESD6 of the CLP 2015 essentially replicates national policy contained in the NPPF with respect to assessing and managing flood risk. In short, this policy resists development where it would increase the risk of flooding and seeks to guide vulnerable developments (such as residential) towards areas at lower risk of flooding and further, that development should be safe and remain operational in the event of flooding. In addition to safeguarding floodplains from development, opportunities will be sought to restore natural river flows and floodplains, increasing their amenity and biodiversity value.
- 9.58. Policy ESD7 of the CLP 2015 requires the use of Sustainable Drainage Systems (SuDS) to manage surface water drainage systems. This is with the aim to manage and reduce flood risk in the District.
- 9.59. In terms of assessing the potential flood-risk the proposals would constitute ‘Highly Vulnerable’ development. The proposals are not supported by any assessment of flood-risk. Policy ESD6 of the CLP 2031 states that site specific flood risk

assessments (FRAs) will be required to accompany development proposals in the following situations:

- All development proposals located in flood zones 2 or 3
- Development proposals of 1 hectare or more located in flood zone 1
- Development sites located in an area known to have experienced flooding problems
- Development sites located within 9m of any watercourses.

9.60. FRAs should assess all sources of flood risk and demonstrate that:

- There will be no increase in surface water discharge rates or volumes during storm events up to and including the 1 in 100 year storm event with an allowance for climate change (the design storm event)
- Developments will not flood from surface water up to and including the design storm event or any surface water flooding beyond the 1 in 30 year storm event, up to and including the design storm event will be safely contained on site.

9.61. Development should be safe and remain operational (where necessary) and proposals should demonstrate that surface water will be managed effectively on site and that the development will not increase flood risk elsewhere, including sewer flooding.

9.62. Whilst the site is identified by the Environment Agency as being in Flood Zone 1 their records show the site to be in an area with a high chance of flooding from surface water (a fact corroborated in a significant number of third party representations from local residents, the local school that has experience significant flood damage and by Parish Councils).

9.63. Without knowing the extent of any site specific flood-risk and the geology of the area it cannot be established as to what form of drainage would be appropriate for the site or if indeed the site could be appropriately drained to ensure that it would not be to the detriment of the operation of the site or exacerbate flood-risk on surrounding land. Also, the Council's Building Control Manager has confirmed that, having knowledge of the geology at this location, he has serious doubts that either a satisfactory surface water soakaway or a satisfactory foul effluent drainage field could be achieved.

9.64. It is considered that through the lack of appropriate assessment of flood-risk or drainage requirements the applicant has failed to demonstrate that the proposals would not increase the flooding risk on the site or elsewhere and would remain operational in the event of flooding and therefore does not accord with Policies ESD6 and ESD7 of the Cherwell Local Plan (2011-2031) Part 1.

#### Ecology Impact:

9.65. The Conservation of Habitats and Species Regulations 2017 consolidate the Conservation of Habitats and Species Regulations 2010 with subsequent amendments. The Regulations transpose European Council Directive 92/43/EEC, on the conservation of natural habitats and of wild fauna and flora (EC Habitats Directive), into national law. They also transpose elements of the EU Wild Birds Directive in England and Wales. The Regulations provide for the designation and protection of 'European sites', the protection of 'European protected species', and the adaptation of planning and other controls for the protection of European Sites.

9.66. Under the Regulations, competent authorities i.e. any Minister, government department, public body, or person holding public office, have a general duty, in the

exercise of any of their functions, to have regard to the EC Habitats Directive and Wild Birds Directive.

- 9.67. The Regulations provide for the control of potentially damaging operations, whereby consent from the country agency may only be granted once it has been shown through appropriate assessment that the proposed operation will not adversely affect the integrity of the site. In instances where damage could occur, the appropriate Minister may, if necessary, make special nature conservation orders, prohibiting any person from carrying out the operation. However, an operation may proceed where it is or forms part of a plan or project with no alternative solutions, which must be carried out for reasons of overriding public interest.
- 9.68. The Regulations make it an offence (subject to exceptions) to deliberately capture, kill, disturb, or trade in the animals listed in Schedule 2, or pick, collect, cut, uproot, destroy, or trade in the plants listed in Schedule 4. However, these actions can be made lawful through the granting of licenses by the appropriate authorities by meeting the requirements of the 3 strict legal derogation tests:
- (1) Is the development needed to preserve public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment?
  - (2) That there is no satisfactory alternative.
  - (3) That the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.
- 9.69. The Regulations require competent authorities to consider or review planning permission, applied for or granted, affecting a European site, and, subject to certain exceptions, restrict or revoke permission where the integrity of the site would be adversely affected. Equivalent consideration and review provisions are made with respects to highways and roads, electricity, pipe-lines, transport and works, and environmental controls (including discharge consents under water pollution legislation).
- 9.70. Paragraph 170 of the NPPF states that Planning policies and decisions should contribute to and enhance the natural and local environment by (amongst others): a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils; and d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.
- 9.71. Paragraph 175 states that when determining planning applications, local planning authorities (LPAs) should apply the following principles: a) if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused; d) development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity.
- 9.72. Paragraph 180 of the NPPF states that planning 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 (amongst others) limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation.

- 9.73. Policy ESD10 of the Cherwell Local Plan 2011-2031 lists measures to ensure the protection and enhancement of biodiversity and the natural environment, including a requirement for relevant habitat and species surveys and associated reports to accompany planning applications which may affect a site, habitat or species of known ecological value.
- 9.74. These policies are both supported by national policy in the NPPF and also, under Regulation 43 of Conservation of Habitats & Species Regulations 2017, it is a criminal offence to damage or destroy a breeding site or resting place, unless a licence is in place.
- 9.75. The Planning Practice Guidance dated 2014 post-dates the previous Government Circular on Biodiversity and Geological Conservation (ODPM Circular 06/2005), although this remains extant. The PPG states that LPAs should only require ecological surveys where clearly justified, for example if there is a reasonable likelihood of a protected species being present and affected by development. Assessments should be proportionate to the nature and scale of development proposed and the likely impact on biodiversity.
- 9.76. Natural England's (NE) Standing Advice states that an LPA only needs to ask an applicant to carry out a survey if it's likely that protected species are:
- present on or near the proposed site, such as protected bats at a proposed barn conversion affected by the development

It also states that LPAs can also ask for:

- a scoping survey to be carried out (often called an 'extended phase 1 survey'), which is useful for assessing whether a species-specific survey is needed, in cases where it's not clear which species is present, if at all
  - an extra survey to be done, as a condition of the planning permission for outline plans or multi-phased developments, to make sure protected species aren't affected at each stage (this is known as a 'condition survey')
- 9.77. The Standing Advice sets out habitats that may have the potential for protected species, and in this regard the site consists of a single storey stables and barn, hardstanding and paddock land currently used for grazing, with established hedgerows to the north-eastern and north-western boundaries. There are a number of trees close by and in the boundary of the site which would not be affected by proposals. There are no buildings to be removed or altered due to the proposed development.
- 9.78. Having considered NE's Standing Advice and taking account of the site constraints it is considered that the site has limited potential to contain protected species and any species present are unlikely to be adversely affected by the proposed development. As such no formal survey is required and in the absence of which this does not result in a reason to withhold permission. An informative note reminding the applicant of their duty to protected species shall be included on the decision notice and is considered sufficient to address the risk of any residual harm.
- 9.79. Proposals would include additional landscape planting which could benefit biodiversity at the site. Whilst details are limited at this stage it is considered that, the enhancements could be secured by way of appropriate conditions attached to any such permission, had the Council been minded to approve the application; to ensure that that the proposed development would provide a net gain in biodiversity, in accordance with the provisions of Policy ESD10 of the CLP 2031 and Government guidance within the NPPF, regarding the importance of conserving and enhancing the natural environment.

Human Rights and Equalities

- 9.80. The Human Rights Act 1998 (“HRA”) sets out fundamental freedoms which have been laid out by the European Convention on Human Rights (“ECHR”). In making any decisions, Cherwell District Council (“the Council”) should have due regard to and take into account any implications that may arise under the HRA. As a public authority, it is unlawful for the Council to act in a manner which is incompatible with the ECHR.
- 9.81. Under Article 8 of the HRA there is a positive obligation to facilitate the gypsy way of life (paragraph 96 of *Chapman v UK* (2001)) as gypsies and travellers are identified as a specialist group.
- 9.82. The rights under the ECHR which the Council views as being the most likely to affect planning matters are: Article 6 (the right to a fair trial); Article 8 (right to respect for private and family life); Article 14 (prohibition of discrimination); and Article 1 of the First Protocol (protection of property).

*Article 6*

- 9.83. Officers have considered these matters and have resolved that, whilst there are potential rights in play, these will not be affected by the application.

*Article 8 and Article 1 of the First Protocol*

- 9.84. Officers have considered the duties under both Article 8 and Article 1 of the First Protocol and conclude that, in the event that the application is refused planning permission, there would not be any discrimination (or potential discrimination) on the applicant. Potential discrimination may arise from a grant of planning permission without evidence that the proposals would not increase the flooding risk on the site and future occupiers of the development be adversely affected thereby.
- 9.85. Officers have also considered these duties in respect of neighbours to the development and have resolved that, in the event that the application was granted planning permission, there would not be any discrimination (or potential discrimination) on neighbours.

*Duty under The Equalities Act 2010*

- 9.86. S149 of the Equalities Act 2010 (“EA”) sets out what is known as the Public Sector Equality Duty (“PSED”). Under the PSED, the Council, as a public authority, must have due regard to the need to, inter alia, advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and has to foster good relations between persons who share a relevant protected characteristic and persons who do not share it. The protected characteristics to which the PSED refers are: (a) age; (b) disability; (c) gender reassignment; (d) pregnancy and maternity; (e) race; (f) religion or belief; (g) sex; (h) sexual orientation.
- 9.87. Officers have considered the application and resolved that none of the protected characteristics is affected or potentially affected by the application.

Other Matters:

- 9.88. Whilst no formal comments have been received from the County Council’s Archaeologist, he has verbally confirmed that whilst acknowledging the site is within a wider area of archaeological interest, given the nature of the development and that there are unlikely to be any significant deep excavations, that the lack of any archaeological investigation at this stage is acceptable at this is acceptable in this instance and that the proposals are unlikely to have any significant impact on matters of archaeological importance on the site.
- 9.89. Third parties have noted that the proposal would set a precedent for housing outside the villages. However, each case is assessed on its own merits and the policy context is different for such application. Concern is also raised with regard to the



potential for further expansion of the site for additional pitches should permission be granted for the current scheme. Again, each case must be assessed on its own merits at the time of any such application.

- 9.90. A number of third party comments refer to the potential for property devaluation as a result of the proposed development. This is not a material planning consideration, and as such has not been considered in the context of this application.

## **10. PLANNING BALANCE AND CONCLUSION**

- 10.1. The application seeks planning permission for the change of use of land to a mixed use for the keeping of horses (existing) and as a residential caravan site for 4no gypsy families. The site is located approximately ~0.24km from the category A village of Cropredy and benefits from suitable access to the local and wider highway network so can be considered under Policy BSC6 of the Local Plan.
- 10.2. In assessing the sustainability and suitability of the site the criteria set out within Local Plan Policy BSC6 is relevant in determining the most suitable locations for gypsy and traveller sites.
- 10.3. The nearest NHS GP surgery to the site would be in Cropredy, as is the nearest primary school; both are accessible from the site (cf. criteria (a) and (b) Policy BSC6). The site is considered to be appropriately located without demonstrable harm caused to highway safety (criterion d). The agricultural land is rated moderate to good (grade 3); however, it is considered that the amount of agricultural land lost and the quality of the land would not be a significant loss. The proposal would not have a demonstrably adverse effect on the historic environment (part of criterion f).
- 10.4. Re criterion (k) no alternative sites are allocated in the Local Plan and little progress has been made in this regard. The applicant contends that there are no alternative sites available but has not commented on recent permissions within the district or the availability of such sites.
- 10.5. The proposed development is for a residential caravan site for gypsies and travellers and would therefore provide new accommodation for the gypsy and traveller community with the Cherwell District. The contribution that the site makes to facilitating the gypsy and traveller way of life weighs in favour of the proposal. That said, re criterion (j) of Policy BS6, officers consider that there is currently no pressing need for further land to be released with a sufficient supply of additional gypsy and traveller pitches available within the district.
- 10.6. The proposal is not considered to dominate the nearest settled community and is located relatively well located in terms of access to facilities within the village of Cropredy and further would not have any significant detrimental impacts on highway safety or residential amenity of existing residential properties; these factors weigh neutrally since they demonstrate lack of harm as opposed to any benefits.
- 10.7. The proposal would lead to significant harm to the rural character and appearance of the countryside. The external noise environment is considered likely to lead to significant adverse impacts on the amenity future residents (cf. criteria e and g of Policy BSC6) and the proposals are likely to result in the exacerbation of flood-risk at the site and on surrounding land (cf. criterion c of Policy BSC6) and these factors weigh significantly against the proposals.
- 10.8. Overall, when assessing the development as a whole, the harm to the landscape and visual amenity of the area, potential adverse environmental impacts arising and poor living environment for future residents are considered to outweigh the benefits of the scheme, including the contribution that the site makes to facilitating the gypsy

and traveller way of life. It is therefore recommended that planning permission be refused.

**11. RECOMMENDATION - REFUSAL FOR THE REASONS SET OUT BELOW**

1. By virtue of its siting in the open countryside, overall scale and appearance, the proposed development would have an urbanising effect on the open countryside and would result in significant harm to the rural character and appearance of the area. Furthermore, the proposals would obstruct an existing public right of way restricting access to the authorised route, to the detriment of users of the Public Right of way and the general amenities of such. The proposal is therefore contrary to Policies ESD13 and ESD15 of the Cherwell local Plan Part 1, saved Policies C8 and C28 of the Cherwell local Plan 1996 and Government advice within the National Planning Policy Framework.
2. By virtue of its siting adjacent to the Birmingham to London railway, the proposed development would be adversely affected by noise, thereby resulting in an unacceptable living environment for the occupiers of the proposed gypsy/traveller pitches. Insufficient information has been submitted to demonstrate that such harm could be appropriately mitigated against. As such, the development would not provide a good standard of amenity for the proposed residents and does not result in sustainable development, contrary to Policy ESD15 of the Cherwell Local Plan Part 1, saved Policy ENV1 of the Cherwell Local Plan 1996 and Government advice within the National Planning Policy Framework.
3. A Flood Risk Assessment has not been submitted with this application. Therefore, an assessment has not been made of the flood risks arising from the proposed development and it has not been clearly demonstrated that the development and its future users will be safe over the lifetime of the development. The proposal is therefore contrary to Policy ESD6 of the Cherwell Local Plan Part 1 and Government guidance contained within the National Planning Policy Framework.

CASE OFFICER: Bob Neville

Date: 24/09/2020

CHECKED BY: Nathanael Stock

Date: 12.10.2020