

<b>Application No:11/01356/F</b>	<b>Ward: Yarnton, Gosford and Water Eaton</b>	<b>Date Valid: 01.09.11</b>
<b>Applicant:</b>	Mrs Lily Price	
<b>Site Address:</b>	Land South West Of The Mead Woodstock Road Yarnton	

**Proposal:** Change of use of land for use as a gypsy and traveller site involving the provision of 3 no. household pitches with no more than 3 no. static caravans, 2 no. amenity buildings and associated hardstanding and parking areas (part retrospective)

## 1. Site Description and Proposal

- 1.1 The site comprises approximately 0.42 ha of mostly agricultural land within the Oxford Green Belt to the south west of Woodstock Road (A44), less than 1km to the south of Yarnton and less than 2km from Oxford to the south and from Kidlington to the north-east. Located on the southern most edge of the district, the site is adjacent to Kings Canal Bridge (locally listed) with several residential properties (including the Gables a locally listed building) and business premises located on the opposite side of the A44. Access to the site is via an existing track which enters the northern corner of the site off a lay-by along the A44.
- 1.2 Planning permission is sought for the above proposed development. The site is occupied by the applicant and her family members and currently there are 4 no. touring caravans sited on the land which has been partially surfaced with hardcore.
- 1.3 In support of the application the following factors have been submitted by the applicant as very special circumstances:
- There is an unmet need for gypsy and traveller sites in the district
  - There is no adopted development plan policy which makes provision for meeting the accommodation needs of gypsies and travellers to comply with Circular 01/2006
  - There are no formally identified or are likely to be identified sites imminently in the district for DPD purposes to comply with Circular 01/2006
  - There are health and educational needs of the families which would benefit from a settled base

## 2. Application Publicity

- 2.1 The application has been advertised by way of a site notices. The final date for comments was 20 October 2011

2.2 3 no. letters of objection have been received on the grounds that

- The land on which this application has been made is classified as Green Belt and is paddock/grazing land and should not be for a caravan/travellers site.
- The land has seen deer grazing and there are newts in the stream which would probably die off, any waste should not discharge into the stream and if allowed the use of this land could cause an environmental problems which have not been addressed.
- There is constant noise coming from the site by generator on all the time and dogs barking
- Hopefully this council will not create an Oxfordshire version of Dale Farm in Essex and therefore should be stopped now

Oxford Green Belt Network object to the application and make the following comments:

The site in question is within that part of the Oxford Green Belt commonly known as "the Kidlington Gap". This narrow gap of just a few fields separates the built-up area of Oxford from the settlements of Yarnton and Kidlington. It is one of the fundamental purposes of Green Belt policy, as set out in PPG.2, to prevent nearby settlements from merging. Allowing the development proposed in the above application would create a "stepping stone" of residential development between Oxford and Yarnton, and thereby contribute to the erosion of this important gap. Development at this site would also constitute encroachment into the countryside, contrary to Green Belt policy at both national and District level. Circular 01/2006 recognizes that developments such as this one will normally count as inappropriate development in the Green Belt, and it is our view that that this application does amount to inappropriate development since it would clearly be harmful to the openness of the Green Belt.

Also concerned to note that the applicant appears to have already taken up residence at the site in question.

### **3. Consultations**

- 3.1 Gosford and Water Eaton Parish Council – Objects to the application on the grounds that the proposal is inappropriate development and the land is believed to be within flood risk zone area also the access onto the A44 could cause traffic accidents on this busy trafficked road and could cause potential conflicts with access opposite.
- 3.2 Yarnton Parish Council – Objects to the application on the grounds that the development is inappropriate development and causing harm to the Green Belt and character of the landscape contrary to PPG2 and Policy GB1 of the adopted Cherwell Local Plan.

- 3.3 Oxfordshire County Council (Highways) – No objection subject to conditions. Whilst the access will require upgrading the development accords with Circular 01/2006 in terms of adequate visibility and parking and manoeuvring within the site.
- 3.4 Oxfordshire & Buckinghamshire Gypsy & Traveller Services – The family are not known to the service and they are not on any Council waiting list for any availability.
- 3.5 Oxfordshire County Council (Drainage) - All roof water and surface water from hardstandings should drain to soakaways, be SUDs compliant and not enter onto the highway drainage system.
- 3.6 British Waterways – Raises no objection subject to the site being adequately screened by landscaping to protect views from the canal towpath.
- 3.7 Environment Agency – Objects to the application and recommends refusal on the grounds that one of the caravans is to be sited too close to the Kingsbridge Brook main river and would as a consequence:
- restrict maintenance and emergency access to the watercourse
  - has the potential to cause unacceptable obstruction to flood flows in cases of extreme events
  - affect the stability of the riverbank and its function and increase the risk of flooding in the locality
  - put the occupants of the caravan at risk in cases of extreme events

This objection could be removed subject to the revised layout of the site so that all structures are at least 8m from the top of the river bank.

- 3.8 Thames Water – Raises no objection
- 3.9 Ecologist – the land looks to be rough grassland and it is noted that no ecological information has been submitted; usually a phase 1 survey should be produced of undeveloped land to assess impacts on protected or notable species.

There are records of water voles throughout the area along the canal and it is probable that they also utilise the ditches and particularly the brook running along the West of the site. In the current absence of any information on their presence no works, storage of goods, mowing or disturbance to banks should occur within 10m of ditches or water features on site and no discharge of water should affect any ditches or water courses without an assessment.

The hedges and trees surrounding the site are to remain untouched although, this should be confirmed as the vegetation strip to the West in particular forms part of a long vegetated corridor which is likely to be important for wildlife movement in the area. If this is the case then this should not pose a problem however if any woody vegetation is to be removed or cut on site this should not be carried out during the bird breeding season and mature trees affected need to be checked for bat roosts and barn owl nests given the records in the area.

If any sections of hedgerow are proposed for removal these need to be replaced on site as they are likely to qualify as BAP habitat. A 3-5m buffer should be maintained along all hedgerows where mowing and building does not take place.

There may be potential for reptiles to be using the grassland on site - this will largely depend on its previous usage but the applicants should be aware that reptiles are protected by law against killing and injury and a method statement would be needed to ensure their protection during any building work.

At the proposed scale the development would be unlikely to impact the nearby Local Wildlife Site to the North West.

The site falls within a CTA which is an area of opportunity for biodiversity enhancement. Developments in these areas, in particular on currently undeveloped land should, under PPS9, demonstrate no net loss to biodiversity and ideally include some features which fit in with the aims of this CTA.

- 3.10 Head of Planning Policy and Economic Development – there is no doubt that this proposal would cause harm by way of inappropriateness, effect on the openness of the Green Belt and by way of encroachment. There is unmet housing need in Cherwell and subject to confirming that there is no alternative accommodation that is suitable, available, affordable and acceptable, the households concerned would appear to be in housing need. However, an examination of the degree of harm to the Green Belt and any other material considerations would need to be included in any assessment of whether there are very special circumstances that would justify a permanent or temporary permission.

A full assessment of the unmet housing need and comments made in this respect from HOS of PP&ED is detailed in the context of the appraisal.

## **4. Relevant Planning Policies**

### 4.1 National Policy Guidance:

PPS1: Delivering Sustainable Development and Climate Change Supplement

PPG2: Greenbelts

PPS3: Housing

PPS5: Planning for the Historic Environment

PPS7: Sustainable development in rural areas

PPS9: Biodiversity and Geological Conservation

PPG13: Transport

PPS25: Development and flood risk

Draft National Planning Policy Framework – July 2011

ODPM Circular 01/2006 – Planning for gypsy and traveller caravan sites (Circular 1/06)

ODPM Circular C18/94 – Guidance on managing unauthorised camping

Government's Draft guidance 'Planning for Traveller Sites'

Government's publication 'Designing Gypsy and Traveller sites – good practice guide' May 2008

Human Rights Act 1998

The Equality Act 2010

- 4.2 Regional Policy in the South East Plan 2009:  
CO4: Green Belt  
CC7: Infrastructure and implementation  
H4 : Type and size of new housing  
NRM2: Water quality  
NRM4: Sustainable flood risk management  
NRM5: Conservation and improvement of biodiversity  
SP5: Green Belts  
T4: Parking  
Paras 7.27 – 7.30 – provision for gypsies and travellers : interim statement
- 4.3 Local Policy in the Adopted Cherwell Local Plan 1996:  
GB1: Green Belt  
C1: Nature conservation  
C4: Ecology – habitat creation  
C5: Ecology – protection along the Oxford canal and river Cherwell  
C7: Landscape conservation  
C8: Sporadic development  
C14: Trees and landscaping  
C28: Layout, design and external appearance to be compatible with the character of the context of a development proposal  
ENV7: Water quality  
ENV12: Contaminated land
- 4.4 Draft Core Strategy  
SD12: Green Belt  
H8: Travelling communities

## **5. Appraisal**

- 5.1 The main issues for consideration in this application are;
- policy context
  - layout and amenity
  - access, parking and highway safety
  - ecology

### **5.2 Policy Context**

This application must be determined in line with the development plan unless other material considerations indicate otherwise; the main policy considerations for an application of this sort are set out in Section 4 above. Also material to the consideration of this application is the recent appeal decision at Islip (10/00839/F / APP/C3105/A/11/2144721) which has allowed the permanent permission for 8 no. household pitches for gypsy and traveller use, 6 no. pitches for the appellant and his extended family and a further 2 no. pitches for use by other family and friends on

a Green Belt site.

### 5.3 PPS3: Housing

The Government guidance contained in PPS3 sets out policies designed to achieve affordability and supply of housing in all communities, including rural areas. Paragraph 21 echoes the advice in Circular 01/2006 to ensure that Local Planning Authorities should have regard to 'the diverse range of requirements across the area, including the need to accommodate Gypsies and Travellers'.

### 5.4 *Accessibility*

Circular 01/2006 on Planning for Gypsy and Traveller Caravan Sites states that issues of sustainability are important but that authorities should be realistic about the availability, or likely availability, of alternatives to the car in accessing local services.

5.5 The nearest services and facilities are likely to be those at Yarnton and Kidlington which are relatively nearby (within 2 km). Although the draft Core Strategy 2010 carries little weight, this distance is within that envisaged to be acceptable by policy H8 which seeks to establish criteria for assessing the locational suitability of sites. It is understood that Yarnton has a Primary School, playgroup, medical practice, shops, post office, community and recreational facilities, some places of employment and a regular bus service to Oxford (S3). The HOS for DC&MD agrees with the HOS for PP&ED in that the site is in an acceptable location for a gypsy and traveller site in terms of access to services and facilities.

### 5.6 *Green Belt*

Circular 01/2006 clarifies that new gypsy and traveller sites in the Green Belt are normally inappropriate development, as defined in PPG2: *Green Belts*. PPG2 advises that inappropriate development is, by definition, harmful to the Green Belt and substantial weight will be attached to that harm. It states such development should not be approved, except in very special circumstances and that such circumstances will not exist unless the harm caused by reason of inappropriateness and any other harm is clearly outweighed by other considerations. The very special circumstances forwarded by the applicant have been identified in para 1.3 above. The Government's draft PPS on Planning for Traveller Sites is far bolder than Circular 01/2006 in its protection of the Green Belt. Policy E20 contains a notable shift of emphasis. It states: "there is a general presumption against inappropriate development within Green Belts. Traveller sites in the Green Belt are inappropriate development, within the meaning of PPG2". Little weight should be attached to this document at its current stage although it indicates the Government's direction of travel on this issue.

5.7 PPG2 advises that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open and that the most important attribute of Green Belts is their openness. One of the purposes of including land in Green Belts is to assist in safeguarding the countryside from encroachment.

5.8 Having regard to the recent appeal decision which allowed 8 pitches for Gypsy

households within the Green Belt near Islip, the HOS for DC&MD has no doubt that this proposal would cause harm by way of inappropriateness, detrimentally affect the openness of the Green Belt and cause harm to the Green Belt by way of encroachment, notwithstanding its smaller scale. The proposal would, therefore, be in conflict with South East Plan 2009 policy CO4 and adopted Cherwell Local Plan policy GB1.

- 5.9 The development consisting of extensive hardstandings, access track, 3 pitches with 6 caravans, fencing, amenity blocks, vehicles and domestic paraphernalia, would cause significant harm to the openness of the Green Belt. Contrast this with the land prior to the applicant's occupation, an open field.
- 5.10 There is further harm to one of the purposes of including land in Green Belts in PPG2: to assist in safeguarding the countryside from encroachment. The site lies in the open countryside outside the boundary of any settlement. The amount of urbanising development in a green field location would again be significant.
- 5.11 There would also be visual harm to the character of the landscape by the introduction of obtrusive and incongruous development. Views across the site from the canal towpath would be possible and whilst the site is concealed from the A44 behind a substantial hedge, during winter months the development would be more obvious. The applicant has however advised that additional forms of landscape planting would be provided, specifically along the southern boundary, which would mitigate the harm caused to the visual amenity of the landscape, thereby reducing the degree of visual intrusion.
- 5.12 In respect to this matter in the Islip appeal case, Secretary of State agreed with the Inspector that the proposal would constitute inappropriate development in the Green Belt and also the Inspector's analysis and weightings (detailed in paras 5.27 and 5.28 of this report) and with her conclusion that the significant harm to the openness of the Green Belt and the moderate harm caused by conflict with one of the purposes of including land in the Green Belt add to the substantial harm by reason of inappropriateness. The Secretary of State further agreed that, given these findings, the proposal would be in conflict with the South East Plan 2009 Policy CO4 and LP policy GB1.
- 5.13 *The need for further sites for gypsies and travellers*

One of the aims of Circular 1/06 is to increase significantly the number of gypsy sites with planning permission over a period of 3-5 years from the date of the circular i.e. by 2011. PPS3 requires the accommodation needs of Gypsies and Travellers to be considered in planning for housing. The advice in PPS3 relating to the provision of a 5 year supply of housing land also applies Gypsies and Travellers. The draft PPS on Planning for Traveller Sites (a material consideration albeit one to which limited weight should be given at this stage) proposes that LPAs should identify specific sites that will enable continuous delivery of sites for at least 15 years (from adoption of the plan) and should identify sufficient specific deliverable sites to deliver site need in the first five years. The Inspector for the Islip inquiry stated "*It is clear that the Council cannot demonstrate a 5 year supply of deliverable sites for gypsies and travellers and that they will not be able to meet the*

*aim of the Circular*" (para' 143).

- 5.14 On 1/4/06 it was understood that Cherwell had 48 household pitches. Since then there has been a loss of an estimated 10 pitches for Gypsies and Travellers at the Bicester Trailer Park site, a gain of 4 pitches at Mollington, 8 new pitches by the A34 near Islip, and an additional pitch with personal permission at Ardley. On this basis, there has been a net gain of 3 pitches. However, a longstanding temporary permission for the Smiths site at Milton Road, Bloxham (20 pitches) has expired and a new application is expected. If the permission were not to be renewed, there would be an overall net loss of 17 pitches since 2006.
- 5.15 A Gypsy and Traveller Accommodation Needs Assessment (GTAA) was produced in 2006 for all authorities in the Thames Valley area. Cherwell's need (corrected) was identified as being 12 additional permanent pitches (2006-2011). The net gain in pitches since 2006 (leaving the Smiths renewal issue aside) reduces this to 9 pitches (2006-2011).
- 5.16 Circular 01/2006 had intended that the GTAAs would also inform Regional Spatial Strategies which would identify pitch numbers for each individual LPA in the light of GTAAs and a strategic view of needs across the region. To assist this process, an Oxfordshire partnership (including this Council) agreed advice for submission to the former Regional Assembly on the number of Gypsy and Traveller pitches required to 2016 and how distribution might be made strategically having regard to the results of the GTAA. The partnership's advice was that the level of need was lower than that suggested by the GTAA and that the need for Cherwell (based on the distribution of existing sites) was for 11 pitches from 2006 to 2016. The net gain of pitches since 2006 lowers this to 8 pitches. An alternative, shared distribution approach (rather than being based on the location of existing sites) was also submitted by the Oxfordshire partnership (but not agreed by Oxford City). This suggested 8 pitches for Cherwell for the same period. The net gain since 2006 lowers this to 5 pitches.
- 5.17 In February 2010, an Examination in Public (EiP) into regional accommodation provision took place (South East Plan single issue review). The South East England Partnership Board's recommendations to the former Secretary of State included that Cherwell should provide an additional 15 pitches (on top of the 2006 baseline position) for Gypsies and Travellers from 2006 to 2016 (the net gain in pitches since 2006 lowers this to 12 pitches). SEEPB also recommended that where Local Development Plan Documents look beyond 2016, onward requirements could be calculated on the basis of 3% compound growth. These figures were a matter of debate at the Examination.
- 5.18 However, the Secretary of State for Communities and Local Government has since announced that the Government intends to revoke Regional Strategies and circular 01/2006 and produce new 'light touch' guidance – the proposed PPS. As a consequence, work on the South East Plan single issue review was not completed.

The Government has stated:

*"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. They should continue to do this in line with current policy. Gypsy and Traveller Accommodation Assessments (GTAAAs) have been undertaken by all local authorities and if local authorities decide to review the levels of provision these assessments will form a good starting point. However, local authorities are not bound by them. We will review relevant regulations and guidance on this matter in due course."*

- 5.19 At the time of writing, officers are considering how a new local assessment of need might be best undertaken and are taking soundings from consultants. Notwithstanding this, even the lowest of the assessments of need (the Oxfordshire partnership's advice) referred to above produces a remaining requirement of either 8 or 5 pitches by 2016. On this basis, there would still be outstanding need even with the 3 proposed pitches.
- 5.20 Circular 1/06 advises that alternatives should be explored before Green Belt locations are considered. Further clarification from the applicant has been sought in this respect, to establish that there is no alternative accommodation for the families that is suitable, available, affordable and acceptable. In para 79 of the Islip case the Inspector advises "Case law has established that there is no onus on an appellant to prove that no other sites were available (*South Cambridgeshire District Council v Secretary of State for Communities and Local Government and Brown* [2008] EWCA Civ 1010) but in light of the advice in paragraph 49 of Circular 01/2006 the Council considers that the lack of evidence of a search for alternative sites before a proposal for a Green Belt site came forward should be weighed against the appellant. However it should be noted that there are no available alternative gypsy and traveller sites in the District that officers are aware of.
- 5.21 In the light of the evidence presented at the Islip inquiry, the HOS for DC&MD would not expect there to be 3 permanent pitches available on any existing site in the district. Although the emerging LDF has been considering Gypsy and Traveller accommodation requirements since 2006, no specific sites have yet been formally identified or are likely to be identified imminently.
- 5.22 That final point was essentially the most significant issue in the Inspectors summing up of the Islip appeal, in accordance with Circular 01/2006, by February 2011 the Council should have been in a position to identify sites to accommodate gypsy and travellers through the development plan process and produce a separate site allocation DPD, but it had not and therefore, failed to comply with the provisions of that circular.
- 5.23 Also material to the case, was the fact that despite only 3 no. of the 8 no. pitches actually demonstrating health needs as very special circumstances in the Green Belt, the Inspector found that given the unmet need for gypsy and traveller sites in the district, the lack of alternative provision and the failure of the development plan to meet the identified need, these factors were considered very special circumstances weighing in favour of the proposed development and to justify allowing inappropriate development in the Green Belt.

5.24 *The families' personal circumstances*

The site accommodates Lilly Price, together with her two sons, Ivor and Douglas. Ivor and Julie Price have 4 children aged 8, 5, 4 and 1. Douglas and Bitty Price have 7 children aged 17, 14, 12, 10, 9, 7 and 5. The applicant and her family are gypsies as defined in paragraph 15 of Circular 1/06. The case officer has been advised that the children attend Yarnton school. Access to a settled base on the application site is clearly beneficial to the childrens' education.

5.25 In respect to the accommodation, the adults would live in the larger static caravans with the younger children and the older children would sleep in the separate touring caravans whilst they were in occupation at the site.

5.26 Bitty Price and one of her children have health issues which need treatment and monitoring and would benefit from a settled site with access to specialist health care. The children would also be able to attend school on a regular basis. Both Circular 1/06 and the 'Planning for Traveller Sites' consultation document acknowledge the sustainability benefits of access to health and education.

5.27 It is understood that the family have come from Evesham, further details of why they have left that area and why they have chosen Yarnton to settle are awaited.

5.28 *Article 8 and 14 of the European Convention on Human Rights and the Equality Act 2010*

Under Article 8 there is a positive obligation to facilitate the gypsy way of life. The Article 8 rights of the applicant and the other site occupiers are clearly engaged. They occupy the site as their home and are likely to face eviction if the application is refused which could lead to a roadside existence and make access to education and health care more difficult. Consideration of the proportionality of this event must be taken into account when considering the harm to the Green Belt caused by the development.

5.29 The Equality Act 2010 places a general equality duty on decision makers in respect of planning permission. The applicant and her family are Irish Travellers [*is this correct?*]. Gypsies and Travellers are believed to experience the worst health and education status of any disadvantaged group in England. The Council has a duty to have due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations between people of different racial groups. Article 14 requires that Convention rights shall be secured without discrimination on any ground including race.

5.30 *The balancing exercise*

Taking the above into account, it is therefore necessary to consider whether the harm to the Green Belt is clearly outweighed by other considerations. In the Islip appeal the Inspector found that the following assessment (paras 164, 165 and 168) weighed in favour of the appellant and therefore allowed the appeal:

“Against the proposal:

- Harm by reason of inappropriateness, which carries substantial weight;
- Harm to openness, which carries significant weight;
- Harm to one of the Green Belt purposes, which carries moderate weight;
- Harm to the character and appearance of the area, which carries moderate weight.

In favour of the proposal:

- The general need for sites which carries significant weight;
- The personal need for sites which carries significant weight for the proposed occupiers of 4 pitches (those without permanent sites);
- The family support and facilitating the gypsy way of life for all proposed residents, including the need for the appellant and parent to live with the rest of the family, which carries moderate weight;
- The lack of suitable, available alternative sites to meet the need, which carries significant weight;
- The failure of the development plan to meet the identified need, which carried significant weight;
- The education benefits for the families, which carries moderate weight;
- The health benefits for 1 family member carries moderate weight and little weight for the other family members without permanent pitches;
- The freeing up of 2 pitches elsewhere in the country carries moderate weight in favour of 2 pitches”.

5.31 Taking into account the rights of the appellant and his family under Article 8 of the ECHR and the Equality Act 2010 the Inspector concluded that “in the circumstances set out above, the harm by reason of inappropriateness and the additional harm identified, which would be caused by the proposed 6 pitches, is clearly outweighed by the totality of the other considerations. In considering the case for 6 pitches as a whole, I conclude that very special circumstances do exist so as to justify this inappropriate development in the Green Belt.”

5.32 The Inspector then went on to consider in paras 169-171 “the additional 2 pitches, for which there are no named occupiers, on the basis that a justification exists for 6 pitches on the site. The additional 2 pitches would only cause limited harm to openness and purposes and to the character and appearance of the area”. Against the proposal were the same 4 factors above, but weighing in favour of the proposal the Inspector found that:

- The general need for sites
- The lack of suitable, available alternative sites to meet the need
- The failure of the development plan to meet the identified need

All carried substantial weight.

5.33 This application is very similar to the Islip appeal case, albeit on a smaller scale and therefore the same balancing exercise would usefully demonstrate the case before Members now.

Against the proposal:

- Harm by reason of inappropriateness, which carries substantial weight;
- Harm to openness, which carries significant weight;
- Harm to one of the Green Belt purposes, which carries moderate weight;
- Harm to the character and appearance of the area, which carries moderate weight.

In favour of the proposal:

- The general need for sites which carries significant weight;
- The personal need for sites which carries significant weight for the proposed 3 pitches.
- The family support and facilitating the gypsy way of life for all proposed residents, which carries moderate weight;
- The lack of suitable, available alternative sites to meet the need, which carries significant weight;
- The failure of the development plan to meet the identified need, which carries significant weight;
- The education benefits for the families, which carries moderate weight;
- The health benefits for 2 family members carries moderate weight and little weight for the other family members.
- A refusal of the application could lead to enforcement action which has the potential to render the family homeless. This would be highly unsatisfactory for the family's education and health needs and contrary to national policy aimed at meeting the needs of gypsies and travellers.

Taking the above into consideration the HOS for DC&MD is of the opinion that essentially the harm to the Green Belt by reason of inappropriateness and the additional harm identified by the proposed development is outweighed by the factors submitted by the applicant and in light of the Islip appeal decision, very

special circumstances do exist so as to justify this inappropriate development in the Green Belt.

5.34 If Members are minded to disagree with the HOS for DC&MDs opinion and consider refusing the application instead on Green Belt harm grounds, then the advice in Circular 01/2006 should be taken into account. Paras 41- 46 sets out how Local Planning Authorities should consider transitional arrangements and essentially the HOS for DC&MDs advises Members that they should consider a temporary consent where there is a clear unmet need and in the absence of a site allocation DPD. Details provided in paras 5.13 - 5.23 of this application report refer to the unmet need for gypsy and traveller sites. Members should also be aware of:

- details of incidents of unauthorised encampments
- numbers and outcomes of planning applications and appeals
- levels of occupancy, plot turn over and waiting lists for public authorised sites
- the status of existing authorised sites
- twice yearly caravan count undertaken on behalf of ODPM

The HOS for DC&MD can confirm that details of the levels of occupancy, status of existing authorised sites and caravan count all conclude that there is no immediate availability of pitches in the district. Other than this application site there are no other incidents of unacceptable unauthorised encampments that are outstanding. The site at Mollington was occupied without consent but this site is now authorised. In recent years other than the latest application at Mollington, most sites were allowed on appeal.

5.35 Paragraph 45 of the Circular 01/2006 advises 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 unmet need but no available alternative gypsy and traveller site provision in an area but there is a reasonable expectation that new sites are likely to become available at the end of that period in the area which will meet that need, local planning authorities should give consideration to granting a temporary permission”

5.36 Paragraph 46 goes on to say that “such circumstances may arise, for example, in a case where a local planning authority is preparing its site allocations DPD. In such circumstances, local planning authorities are expected to give substantial weight to the unmet need in considering whether a temporary planning permission is justified. The fact that temporary permission has been granted on this basis should not be regarded as setting a precedent for the determination of any future applications for full permission for use of the land as a caravan site. In some cases, it may not be reasonable to impose certain conditions on a temporary permission such as those that require significant capital outlay”.

In considering whether a temporary planning permission would be justified, Members should give substantial weight to the unmet need for gypsy and traveller

sites in the District.

5.37 Layout and amenity

The application site forms the north-western section of a much larger field within the applicant's ownership, but the remaining land is either within a Flood Zone 2 or 3. Therefore the layout of the site is mainly contained to this north-western section; however, one of the pitches is to be sited within 8m of the Kingsbridge Brook main river. Consequently the Environment Agency has raised an objection, but this could be overcome by the repositioning of this pitch. At the time of writing no amended plan has been received, but the case officer has been informed by the applicant's agent that an amended layout will be submitted prior to the Planning Committee Meeting.

5.38 The proposed layout demonstrates that 3 no. static caravans, 2 no. amenity blocks, and positioning for an additional 3 no. touring caravans and vehicles can be accommodated on the site. A waste package plant will be installed on the site, details of which are awaited and will be subject to the Environment Agency's approval. The existing hedge along the A44 north eastern boundary is to be retained with the potential to provide more planting along with the southern boundary edge. All other trees along the north western boundary are to be retained. Small grassed areas are to be retained to the rear of the caravans. The layout generally accords with the guidance contained in the Government's publication 'Designing Gypsy and Traveller sites – good practice guide'.

5.39 The HOS for DC&MD considers that subject to the submission of an acceptable layout plan and the removal of the objection from the Environment Agency the proposed layout is acceptable and accords with Policies C28 and C30 of the adopted Cherwell Local Plan.

5.40 In terms of amenity for neighbouring properties, the comments made by the local residents are duly noted, however the HOS for DC&MD considers that there is no impact on privacy from any direct overlooking and the generator noise could be mitigated by an acoustic enclosure, if the site is not to be connected to the main electricity grid. There is however no planning control over dogs barking, this is a matter for the Anti Social Behaviour Manager under Environmental Law. The proposal therefore accords with Policy C30 of the adopted Cherwell Local Plan.

5.41 Access, parking and highway safety

PPG13 and Policy TR4 of the South East Plan 2009 seeks to ensure standards of road safety and parking provision are maintained. The site is accessed off the A44 Woodstock Road and utilises an existing access entrance and track off a lay-by. Notwithstanding the concerns of the Parish Councils the acceptability of the access and parking provision has been confirmed by the local highway authority, which raise no objection subject to the access being upgraded, demonstrating appropriate width, geometry and surfacing. This could be subject to a condition should an amended plan not be agreed by the Highway Engineer. The proposal therefore accords with PPG13 and Policy T4 of the South East Plan 2009.

#### 5.42 Ecology

Paragraph. 98 of Circular 06/05: Biodiversity and Geological Conservation – statutory obligations and their impact within the planning system states that, “local planning authorities should consult Natural England before granting planning permission” and paragraph 99 goes on to advise that “it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.”

- 5.43 Section 40 of the Natural Environment and Rural Communities Act 2006 (NERC 2006) states that “every public authority must in exercising its functions, must have regard to the purpose of conserving (including restoring / enhancing) biodiversity” and;

Local planning authorities must also have regards to the requirements of the EC Habitats Directive when determining a planning application where European Protected Species (EPS) are affected, as prescribed in Regulation 9(5) of Conservation Regulations 2010, which states that “a competent authority, in exercising any of their functions, must have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions”.

- 5.44 Articles 12 and 16 of the EC Habitats Directive are aimed at the establishment and implementation of a strict protection regime for animal species listed in Annex IV(a) of the Habitats Directive within the whole territory of Member States to prohibit the deterioration or destruction of their breeding sites or resting places.

- 5.45 Under Regulation 41 of Conservation Regulations 2010 it is a criminal offence to damage or destroy a breeding site or resting place, but under Regulation 53 of Conservation Regulations 2010, licenses from Natural England for certain purposes can be granted to allow otherwise unlawful activities to proceed when offences are likely to be committed, but only if 3 strict legal derogation tests are met which include:

- 1) is the development needed for **public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature** (development).
- 2) Is there any **satisfactory alternative**?
- 3) Is there **adequate mitigation** being provided to maintain the favourable conservation status of the population of the species?

- 5.46 Therefore where planning permission is required and protected species are likely to be found to be present at the site or surrounding area, Regulation 9(5) of Conservation Regulations 2010 provides that local planning authorities must have

regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions and also the derogation requirements (the 3 tests) might be met. Consequently a protected species survey must be undertaken and it is for the applicant to demonstrate to the Local planning authority that the 3 strict derogation tests can be met prior to the determination of the application. Following the consultation with Natural England and the Council's Ecologist advice given (or using their standing advice) must therefore be duly considered and recommendations followed, prior to the determination of the application.

- 5.47 In respect of planning applications and the Council discharging of its legal duties, case law has shown that:
- 1) if it is clear/perhaps very likely that **Natural England will not grant a licence** then the Council should refuse planning permission
  - 2) if it is likely that **Natural England will grant the licence** then the Council may grant planning permission
  - 3) if it is **unclear/uncertain** whether Natural England will grant a licence then the Council must refuse planning permission (Morge has clarified Woolley)

*[R (Morge) v Hampshire County Council – June 2010 Court of Appeal case]*  
*[R (Woolley) v Cheshire East Borough Council – May 2009 High Court case]*

**NB: Natural England will not consider a licence application until planning permission has been granted on a site, therefore if a criminal offence is likely to be committed; it is in the applicant's interest to deal with the 3 derogation tests at the planning application stage.**

- 5.48 In respect to the application site, a Phase I Ecology survey has been requested and is to be undertaken. Should EPS or other species be identified, sufficient mitigation measures should also be established to ensure that there is no impact upon their existence on the site.
- 5.49 Consequently it is considered that art.12(1) of the EC Habitats Directive has been duly considered in that the welfare of any protected species found to be present at the site and surrounding land will continue and be safeguarded notwithstanding the proposed development. The proposal therefore accords with PPS9 and Policy C2 of the adopted Cherwell Local Plan.
- 5.50 Developer contributions
- The draft Supplementary Planning Document (SPD) relating to the requirement for financial contributions towards infrastructure or service requirements was considered by the Council's Executive Committee on 23 May 2011 and was approved as interim guidance for development control purposes. Further consultation will take place when the revised version of the Core Strategy is published later this year.
- 5.51 New development often creates a need for additional infrastructure or improved community services and facilities, without which there could be a detrimental effect

on local amenity and the quality of the environment. National planning policy sets out the principle that applicants may reasonably be expected to provide, pay for, or contribute towards the cost, of all or part of the additional infrastructure/service provision that would not have been necessary but for their development. Planning Obligations are the mechanism used to secure these measures. Consequently all applications registered on or after 15 August 2011 are affected by this draft SPD.

5.52 It is considered that the development will give rise to infrastructure or service requirements and therefore is liable for planning obligations. The following financial contributions towards general infrastructure related items, facilities or measures which will mitigate the effect of the development have been sought:

- a) Open space and outdoor sport and recreation - £19,361.31
- b) Indoor sports - £3,206.40
- c) Community facilities - £833.97
- d) Refuse bins and recycling banks - £202.50
- e) General Transport and Access impacts - £4,098.00
- f) Education - £39,156.00
- g) Children's Centres and nursery provision - £585.00
- h) Youth services - £303.00
- i) Libraries - £975.00
- j) Adult learning - £117.00
- k) Museum resource centre - £60.00
- l) Strategic Waste Management - £747.00
- m) Health services - £1,995.00

The total contribution sought from your proposal is £71,640.18.

5.53 At the time of writing no legal agreement has been submitted for consideration, however the case officer has been informed that one is to be submitted and entered into. Further negotiation is taking place in respect to the amounts being sought.

#### 5.54 Heritage Assets

Whilst the site is close to locally listed buildings, the HOS for DC&MD does not consider that the proposal will cause harm to the significance of heritage assets in accordance with PPS5: Planning for the Historic Environment.

#### 5.55 Conclusions

Taking the above considerations into account as well as the development plan and national policy and government guidance, the HOS for DC&MD considers that the harm to the Green Belt by reason of inappropriateness and the additional harm identified by the proposed development is outweighed by the factors submitted by the applicant and in light of the Islip appeal decision, very special circumstances do exist so as to justify this inappropriate development in the Green Belt.

5.56 The site is considered to be in a sustainable location that would not give rise to any highway safety issues. Furthermore the proposal would not cause unacceptable harm to residential amenity, visual amenity, ecology and significance of heritage assets nor would it give rise to increase flood risk. The proposal is therefore

acceptable and complies with the relevant development plan policies.

## 6. Recommendation

### Approval, subject to

#### i) Departure procedure

ii) **The submission of an amended drawing revising the layout of the site, the removal of the objection from the Environment Agency**

iii) **The applicants entering into an appropriate legal agreement with Cherwell District Council to secure financial contributions outlined in paragraph 5.51**

#### iv) **The imposition of the following conditions;**

1) SC 1\_4A (Time limit for implementation)

2) The site shall not be occupied by any persons other than gypsies and travellers as defined in paragraph 15 of ODPM Circular 01/2006.

Reason - This consent is only granted in view of the special circumstances and needs of the applicant, which are sufficient to justify overriding the normal planning policy considerations which would normally lead to a refusal of planning consent and in accordance with PPG2 and policy GB1 of the adopted Cherwell Local Plan, and to comply with Government advice contained in ODPM Circular 01/2006

3) No commercial activities shall take place on the land; including the storage of materials and no vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.

Reason - In order to safeguard the amenities of the area and in the interests of highway safety in accordance with Policies GB1 and C28 of the adopted Cherwell Local Plan and PPG2: Green Belts and PPG13: Transport.

4) No more than 6 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than 3 shall be static caravans or mobile homes) shall be stationed on the site at any time.

Reason - This consent is only granted in view of the special circumstances and needs of the applicant, which are sufficient to justify overriding the normal planning policy considerations which would normally lead to a refusal of planning consent and in accordance with Policies GB1 of the adopted Cherwell Local Plan and PPG2: Green Belts and to comply with Government advice contained in ODPM Circular 01/2006

5) Except where otherwise stipulated by conditions attached to this permission, the development shall be carried out strictly in accordance with the documents submitted with the application and the following drawings: **Amended Site layout (to be received)**, site location plan, detail of boundary fencing, proposed amenity building

Reason - For the avoidance of doubt, to ensure that the development is carried out only as approved by the Local Planning Authority and to comply with government guidance in

PPS1: Delivering Sustainable Development.

- 6) That within 2 months of the date of the permission a scheme for landscaping the site shall be submitted to and approved in writing by the Local Planning Authority, the scheme shall include
- (a) details of the proposed tree and shrub planting including their species, number, sizes and positions, together with grass seeded/turfed areas,
  - (b) details of the existing trees and hedgerows to be retained as well as those to be felled, including existing and proposed soil levels at the base of each tree/hedgerow and the minimum distance between the base of the tree and the nearest edge of any excavation,
  - (c) details of the hard surface areas, pavements, pedestrian areas, crossing points and steps.

Reason - In the interests of the visual amenities of the area, to ensure the creation of a pleasant environment for the development and to comply with Policy C4 of the South East Plan 2009 and Policy C28 of the adopted Cherwell Local Plan.

- 7) That 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 occupation of the building(s) or on the completion of the development, whichever is the sooner; and that any trees and shrubs which within a period of five 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 consent for any variation.

Reason - In the interests of the visual amenities of the area, to ensure the creation of a pleasant environment for the development and to comply with Policy C28 of the adopted Cherwell Local Plan.

- 8) That within 2 months of the date of the permission, samples of the materials to be used in the construction of the external surfaces of the day rooms hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details

Reason - To ensure the satisfactory appearance of the completed development and to comply with Policy BE1 of the South East Plan 2009 and Policy C28 of the adopted Cherwell Local Plan.

- 9) generator condition
- 10) Highway conditions
- 11) Ecology conditions
- 12) Environment Agency conditions

**SUMMARY OF REASONS FOR THE GRANT OF PLANNING PERMISSION AND RELEVANT DEVELOPMENT PLAN POLICIES**

The Council, as local planning authority, has determined this application in accordance with

the development plan unless material considerations indicated otherwise. The development is considered to be acceptable on its planning merits as the harm to the Green Belt by reason of inappropriateness and the additional harm identified by the proposed development is outweighed by the factors submitted by the applicant and that very special circumstances do exist so as to justify this inappropriate development in the Green Belt. Furthermore, the site is considered to be in a sustainable location that would not give rise to any highway safety issues. Furthermore the proposal would not cause unacceptable harm to residential amenity, visual amenity, ecology and significance of heritage assets nor would it give rise to increase flood risk. As such the proposal is in accordance with government guidance contained in PPS1, PPG2, PPS3, PPS4, PPS5, PPS7, PPS9, PPG13 and PPS25 and Policies CO4, CC7, H4, NRM2, NRM4, NRM5, SP5 and T4 of the South East Plan 2009 and Policies C1, C4, C5, C7, C8, C14, C28, ENV7 and ENV12 of the adopted Cherwell Local Plan. For the reasons given above and having regard to all other matters raised, the Council considers that the application should be approved and planning permission granted subject to appropriate conditions, as set out above.

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