

<b>Applicant:</b>	Clifford Smith And Robert Butcher	
<b>Proposal:</b>	Change of use of land to use as a residential caravan site for 3 gypsy families, each with two caravans and an amenity building; improvement of existing access, construction of driveway, laying of hardstanding, installation of package sewage treatment plant and acoustic bund	
<b>Ward:</b>	Fringford And Heyfords	
<b>Councillors:</b>	Cllr Ian Corkin Cllr James Macnamara Cllr Barry Wood	
<b>Reason for Referral:</b>	Earlier applications on the site were reported to Planning Committee	
<b>Expiry Date:</b>	23 November 2018 (EOT)	<b>Committee Date:</b> 22 November 2018
<b>Recommendation:</b>	Refuse.	

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## **EXECUTIVE SUMMARY OF PROPOSALS AND RECOMMENDATION**

### **Proposal**

The application relates to a proposal for 3 gypsy/traveller pitches. This would include a 5 metre bund and fence adjacent to the M40.

### **Consultations**

The following consultees have raised objections to the application:

- Chesterton Parish Council, CDC Environmental Protection.

31 letters of objection have been received.

### **Planning Policy**

The application has also been assessed against the relevant policies in the NPPF, the adopted Local Plan and other relevant guidance.

### **Conclusion**

The key issues arising from the amended application details are:

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

The report looks into the key planning issues in detail, and officers conclude that the proposal is acceptable subject to conditions.

Overall when assessing the development as a whole, the proposed development, by virtue of its poor access to services and facilities, reliance on the private car to access services and facilities, detrimental impact on the rural character and appearance of the area and poor living environment for future residents in relation to noise, is considered to represent an unsustainable form of development. The harm is not considered to be outweighed by the benefits of the scheme.

## **RECOMMENDATION - REFUSE**

**Members are advised that the above is a summary of the proposals and key issues contained in the main report below which provides full details of all consultation responses, planning policies, the Officer's assessment and recommendations, and Members are advised that this summary should be read in conjunction with the detailed report.**

## **MAIN REPORT**

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

- 1.1 The application site is located outside the built limits of any settlement to the north of the A4095 (Kirtlington Road) and is located approximately 1.1 KM to the north west of Chesterton as the crow flies (1.3km from the access to closest edge of Chesterton by road).
- 1.2 A field access to the A4095 exists in the south west corner of the site. The M40 lies immediately to the east of the site and is situated within a cutting along the length of the eastern boundary. To the north and west of the site is open countryside. The site is broadly triangular in shape and is 2.7 hectare site in size. It is currently laid to grass and includes a small animal shelter to the west of the access.
- 1.3 The site is not within a designated Conservation Area; however, a Grade II listed barn exists approximately 350 metres to the west of the site. Public Footpath 161/11/10 is shown to run along the western boundary of the site, but it is noted by the OCC Public Rights of Way Officer, and is apparent on site, that the path runs outside of the application site. The site has some ecological potential as notable species have been recorded within 250 metres of the site, including the Common Kestrel, Small Heath Butterfly and Brown Hare.

### **2. DESCRIPTION OF PROPOSED DEVELOPMENT**

- 2.1. Planning consent is sought to change the use of the site to a traveller/gypsy site accommodating 3 pitches. An upgraded vehicle access would be positioned in the same location as the existing access and the access road would extend into the site in a northerly direction with 3 pitches to the east of this.
- 2.2. Each pitch would accommodate:
  - a timber clad amenity room accommodating a kitchen, bathroom and small siting area
  - a mobile home
  - an area of hard standing to accommodate a touring caravan and parking.

- 2.3. The areas of land around the pitches would be landscaped with native understorey planting, areas of lawn and wildflower planting. The paddock to the north of the site would be retained in agricultural use.
- 2.4. It is also proposed to erect a 2 metre high earth bund with 3 metre high close boarded fence along the eastern boundary with the M40. This would extend partially along the southern and eastern boundary inside the existing fence line of the site. It is proposed to plant the earth bund with native understorey planting and trees.

### 3. RELEVANT PLANNING HISTORY

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

<u>Application Ref.</u>	<u>Proposal</u>	<u>Decision</u>
16/01780/F	Change of use of land to use as a residential caravan site for 8 gypsy families, each with two caravans and an amenity building. Improvement of existing access, construction of driveway, laying of hard standing and installation of package sewage treatment plant.	Application Refused
<p>This application was recommended for approval by officers on a temporary basis. This was based on a different layout and did not include the bund or fencing. However the Committee considered that the proposed noise environment and harm to the rural character and appearance of the site would be unacceptable and outweigh the benefits of the scheme. It was therefore refused for the following reasons:</p> <ol style="list-style-type: none"> <li>1. The proposed development, by virtue of its siting adjacent to the M40, would be adversely affected by noise, thereby resulting in an unacceptable living environment for the occupiers of the proposed traveller pitches. As such, the development would give rise to "Significant Adverse Effects" on the health and wellbeing of residents of the new development and is considered to be unsustainable, 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 and Noise Planning Practice Guidance.</li> <li>2. The proposed development, by virtue of its siting in the open countryside, overall scale and appearance, would have an urbanising effect on the open countryside, and would result in detrimental harm to the rural character and appearance of the area. Thus, the proposal is 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</li> </ol>		
16/00075/SO	Change of use of land to use as a residential caravan site for 9 gypsy families, each with two caravans and an amenity building. Improvement of existing access, construction of driveway, laying of hard standing and installation of package sewage	Screening Opinion not requesting EIA

treatment plant.

17/01600/F	Change of use of land to use as a residential caravan site for 8 gypsy families, each with two caravans and an amenity building; alterations to existing access, construction of driveway, laying of hard standing, installation of package sewage treatment plant and erection acoustic bund and fence to eastern boundary.	Application Withdrawn
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This application was withdrawn prior to a decision being made. The application was on the Agenda for Planning Committee and recommended for refusal for the following reason:

1. The proposed development, by virtue of its poor access to services and facilities, reliance on the private car to access services and facilities, detrimental impact on the rural character and appearance of the area and poor living environment for future residents in relation to noise, is considered to represent an unsustainable form of development. The harm is not considered to be outweighed by the benefits of the scheme. The proposal is therefore considered to be contrary to Policies ESD1, BSC6, ESD13 and ESD15 of the Cherwell Local Plan Part 1 (2015), Saved Policy C8 Cherwell Local Plan 1996 and advice in the National Planning Policy Framework and Planning Policy for Travellers Sites (2015).

17/00068/SO	Change of use of land to use as a residential caravan site for 8 gypsy families, each with two caravans and an amenity building. Improvement of existing access, construction of driveway, laying of hard standing and installation of package sewage treatment plant.	Screening Opinion not requesting EIA
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#### **4. PRE-APPLICATION DISCUSSIONS**

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

#### **5. RESPONSE TO PUBLICITY**

- 5.1. 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 12.10.2018, although comments received after this date and before finalising this report have also been taken into account.

- 5.2. 31 letters of objection have been received by third parties. These can be summarised as follows:

- Consideration has not been given to alternative sites;

- Contrary to policy as it is located within the open countryside;
- Not an identified site in the Local Plan;
- Not sustainable development as it offers no economic, social or environmental improvements;
- Proposal contrary to a number of criteria of Policy BSC6.
- Not sustainably located;
- Housing would not be accepted on this site;
- Too close to the village of Chesterton;
- Infrastructure does not have the capacity;
- The village has limited facilities and services and no bus service;
- The school is almost full and does not have the capacity required for this application;
- Would be to the detriment of the village of Chesterton;
- Would harm the character and appearance of the area;
- Would be visible from public footpaths and Kirtlington Road;
- The bund and fence will further add to the urbanisation of the countryside.
- This is a green field site not previously developed land which the onus is on developing
- The site is much larger than the previous refusal.
- Further pitches would be placed on the site in the future.
- Loss of enjoyment for users of the public footpath to west of the site;
- No assessment on heritage
- The local road network cannot accommodate the extra traffic this will create;
- Access is dangerous;
- Required visibility splay could not be achieved;
- There is no footpath next to the site along the Kirtlington Road and the development would be car reliant and unsafe for residents to walk to facilities;
- Noise and air pollution to future residents as the site is located next to the M40;
- Loss of privacy to existing residents;
- Will create noise nuisance;

- No play area for children
- The site does not promote healthy lifestyles
- Would cause harm to protected species;
- Consideration needs to be given to drainage;
- No water, electricity, gas or sewage facilities serving the site;
- The water supply to the site is private supply to Bignell Park Farm who is under no obligation to provide water to the site.
- Insufficient information on landscaping and sewage treatment works
- Chesterton has already had significant levels of development
- Will not be managed properly and will go beyond what consent allows for;
- Travellers would not successfully integrate with the local community;
- Fear of crime and anti-social behaviour (not a material consideration);
- Devaluation of property prices (not a material consideration);
- Sites should be provided on proposed housing sites through S106 agreements.
- Application contains insufficient information and does not meet the Council's local validation list.

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

## 6. RESPONSE TO CONSULTATION

6.1. 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

6.2. CHESTERTON PARISH COUNCIL: **Objects.** Green field site unsuitable for residential usage. There are inadequate services including the present water supply from Bignell Farm. There are environmental issues with the M540 being adjacent and the access to the A4095 with limited visibility. What plans will be in place to ensure the requested number of pitches is not violated. The site is not a suitable location and must be reject.

### STATUTORY CONSULTEES

6.3. HIGHWAYS ENGLAND: **No objection.**

6.4. OCC HIGHWAYS: **No objections** subject to conditions. The access appears acceptable. Full details can be provided by condition and a S278 will be required. Any access gates required need to be set back 12 metres from the carriageway edge to allow vehicles to pull clear of the highway. Highways England should be

consulted in respect of any conflict with the motorway. Request further details on parking, storage of waste and cycle stores. Also request swept path analysis for refuse vehicle. The public footpath alignment on the western boundary is shown different on the definitive map to the walked line however the walked line appears to be in line with the diversion approved in 1987. This needs to be investigated by the Councils Rights of Way Team. The applicant should not obstruct the right of way.

- 6.5. The site plan shows the use of permeable materials. The potential for infiltration needs to be established through soakaway tests. A drainage scheme should be conditioned. OCC raise no objection to the proposed sewerage treatment plans but require an inspection chamber of discharge of the treated water.
- 6.6. ENVIRONMENT AGENCY: **Comment.** New development should be connected to the public mains (with the prior written approval of the statutory undertaker) where possible. Proliferation of individual treatment plants can cause deterioration in local water quality (ground and surface water). This would be contrary to the principles of the EU Water Framework Directive<sup>1</sup> and is supported by paragraph 109 of the National Planning Policy Framework which requires the planning system to ensure the environment is not adversely affected by water pollution. If it is shown not to be feasible to connect to the public foul sewer, an Environmental Permit may be required from the Environment Agency.

#### NON-STATUTORY CONSULTTEES

- 6.7. CDC ENVIRONMENTAL PROTECTION: Original comments: **Objects.** With regards to the internal noise the levels are to be achieved with the windows closed which relies on background ventilation. If the windows are opened this will reduce the noise insulation by approx. 10-15dB. As the noise from the motorway is at a fairly constant level at both daytime and night-time then this means that the occupants would be unable to open the windows if they desire an internal noise level which is only just on the boundary of those set out in BS8233:2014 and by the WHO especially at night-time. In cases such as this we would normally expect to see a higher level or mechanical form of background ventilation to ensure that the required levels of air exchange and thermal comfort are achieved as per ProPG (2.33 and 2.34) – nothing is mentioned in the report or specification to achieve this.
- 6.8. The report indicates that the noise levels in external areas will be between 60-63dB(A) which is 10-13dB(A) above the desired level in BS8233:2014 and 5-8 dB(A) above the upper guideline level acceptable in noisier environments. BS8233:2014 also notes that these may not be achievable in all circumstances where development might be desirable but goes on to say that *“In higher noise areas, such as city centres or urban areas adjoining the strategic transport network, a compromise between elevated noise levels and other factors, such as the convenience of living in these locations or making efficient use of land resources to ensure development needs can be met, might be warranted. In such a situation, development should be designed to achieve the lowest practicable levels in these external amenity spaces, but should not be prohibited”*. Whilst it is for planning officers to make the judgement on whether the development is desirable and if this outweighs the noise concerns in my opinion this location does is not a city centre or urban area adjoining the strategic transport network so a higher level should not be warranted.
- 6.9. ProPG states that *“These guideline values (50-55dB) may not be achievable in all circumstances where development might be desirable. In such a situation, development should be designed to achieve the lowest practicable noise levels in these external amenity spaces”*. I do not feel that all consideration has been made with regards to the design of the bund. The noise report states that a higher

bund/fence had been considered which would give small additional benefits but the visual impact was considered too high and outweighed the benefits. This indicates to me that there could be improvements to be made to achieve the lowest practicable levels and I am not sure on who the visual impact would cause an impact as the view would be from the motorway.

- 6.10. As further mitigation it is proposed that the day-rooms have openable patio windows to provide a “relatively quiet externally ventilated space” as suggested in ProPG if a good acoustic design process has been followed. As stated above I feel that there is more scope to improve the noise levels by a large bund/fence should the site be considered to be desirable so I do not feel that at this stage this is a viable alternative. In addition the plans provided for the day rooms do not have patio doors shown on them.
- 6.11. I am still of the opinion as are my colleagues that this is an inappropriate location for such a development that give rise to significant adverse impacts on the health and quality of life of the future residents as per the NPPF para 123.

Comments further to clarification from applicant:

- 6.12. The acceptability of the scheme will all come down to the desirability of the development. The developers have shown that there is an adequate internal noise level as long as the mobile home installed conforms to the British Standard that is mentioned (this can be conditioned) and with regards to the external amenity space whilst it is far from ideal at the levels that will be achieved it can be relaxed where the site is considered desirable.
- 6.13. CDC PLANNING POLICY: **No objection.** Planning Policy did not object to the previous applications. The adopted Local Plan 2011-2031 provides to meet the identified need for pitches for Gypsies and Travellers. The Government Planning Policy for Traveller Sites (August 2015) will need consideration when considering impacts, alternative sites and personal circumstances and sustainability.
- 6.14. Policy BSC 6 provides for 19 net additional pitches from 2012-2031. The current published five year land supply position for gypsies and travellers is reported in the 2017 AMR. Currently it is 0.9 years for the period 2018-2023. (commencing 1 April 2018).
- 6.15. 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. It identifies new needs for each authority based on the new definition of Travellers for planning purposes. It identifies a new objective assessment of need for each authority based on the new 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 new planning definition. The Study also identifies a need for up to 20 additional pitches for ‘unknown’ households, where it was not possible to distinguish whether or not they meet the new planning definition.
- 6.16. The Assessment advises that 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). The published five year land supply position for gypsies and travellers based on the GTAA methodology is reported in the 2017 AMR. Currently it is 4 years for the period 2018-2023. (commencing 1 April 2018). This does not take into account the requirement for the



additional pitches for 'unknown travellers' which should be considered after meeting the need requirement.

- 6.17. The aims of the PPTS include '.... To increase the number of traveller sites in appropriate locations with planning permission to address under provision and maintain an appropriate level of supply'. It requires the maintenance of a five year supply and proper consideration of local environmental quality (such as noise and air quality) on the health and wellbeing of travellers.
- 6.18. It is important to note, however, that whilst the figures in the new GTAA 2017 are a material consideration, they need to be treated with caution as the methodology and results have not been subject to the rigour of public examination.
- 6.19. Nonetheless, the district cannot presently demonstrate a five year supply under either the local plan or GTAA scenarios.
- 6.20. Policy BSC 6 provides a sequential and criteria based approach for identifying suitable locations for new traveller sites whether through site allocations in the Local Plan Part 2 or in the determination of planning applications. The proposed site is within 3km of Chesterton which is a Category A village, one of the more sustainable villages in the District (Policy Villages 1). The site is immediately adjacent to the M40 therefore the amenities of any future residents will need to be protected. The site is likely to be subject to significant noise pollution. Air quality will also be an issue to consider.
- 6.21. In terms of securing a satisfactory living environment this is not an ideal site. There needs to be detailed consideration of the health, safety and residential amenity issues, particularly if young children or other vulnerable people are occupying the site. The accessibility of the existing Public Rights Of Way within the site will also need to be safeguarded or alternative, appropriate provision made.
- 6.22. CDC ECOLOGY: **No objection** subject to condition. Little has changed since the earlier application which was considered acceptable subject to conditions. In regards badgers, the submitted badger report still recommends that any boundary fencing is raised above ground level to allow badger access. Viewing the design and access statement it would be reasonable to omit the acoustic fencing from this requirement as it only runs along a strip of the site and it will be possible for badgers to walk around it. The main concern with badger access is the post and rail fence proposed across the site splitting the North and South parts – this is a boundary of the development and this needs to retain access for badgers and they should state how this will be achieved – this could be included in an LEMP.
- 6.23. CDC LANDSCAPE: **No objections**. Originally requested further details on the bund including a cross section. Has requested a number of detailed changes to the landscaping scheme and a landscaping maintenance schedule. Full details can be controlled by condition. If the acoustic fence is to have natural timber finish then over time the surface patina will change to a silvery grey, plus combined with the establishment and growth of the structural landscaping, the potential visual harm will be mitigated. Therefore the proposals, including the bund (with gradients) are acceptable.
- 6.24. CDC ENVIRONMENT AND LICENCING: **No objections**. If planning permission is granted, the site owners will need to apply for a caravan site license as required under the Caravan Sites Control of Development Act 1960.

## 7. RELEVANT PLANNING POLICY AND GUIDANCE

- 7.1. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
- 7.2. 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

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

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

#### 7.3. 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 2017 (AMR) (December 2017)
- 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)

- Noise Policy Statement for England (NPSE)
- The UK Air Quality Strategy (UKAQS)
- Cherwell District Council Statement of Community Involvement (July 2016)

## 8. APPRAISAL

8.1. The key issues for consideration in this case are:

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

### Principle of development

8.2. 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. The Council's development plan consists of the Policies in the Cherwell Local Plan Part 1 (July 2015) and the Saved policies of the Cherwell Local Plan (1996).

8.3. 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 travellers pitches in the District and in order to provide and maintain a five year supply of deliverable traveller sites. This states that allocations will be made in Local Plan Part 2 and planning permissions will be granted for suitable 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.*

8.4. The site is located outside of the Green Belt and AONB and the application site is located approximately 1.1km road distance from the Chesterton which is a Category A Settlement under Policy Villages A. 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.*

- 8.5. In this case whilst Chesterton 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. Chesterton has a primary school, nursery, public house, a village hall and playing fields. It does not have a shop or any GP or health services which some other category A settlements in the district have. Therefore the extent of services and facilities is relatively limited. The bus service serving Chesterton is also very limited with only 1 morning service to Bicester which would therefore be unlikely to be of great use to future residents.
- 8.6. The fact Chesterton has a primary school weights in favour of the proposal. The closest secondary schools are located in Bicester. In relation to the closest NHS GP facility there are a number of these in Bicester with the closest being approximately 4.8km (road distance) from the application site. There are also a wider range of other services and facilities at Bicester including shops.
- 8.7. Given the nature of the roads around the application site (national speed limit roads with no footpaths or lighting) it is likely that access to most services would therefore be accessed virtually exclusively by private car as there would be little other attractive alternative apart from potentially cycling to the primary school. Overall officers therefore considered that whilst the primary school is within a reasonable distance of the site, the location of the site is not the most sustainable and the assessment of the proposal against the first two criteria of Policy BSC6 weighs against the sustainability of the site and accessibility to services and facilities is limited with residents likely to have a relatively high reliance on the private car. That said, the proposal is now reduced in size, with only 3 pitches proposed and therefore the number of residents would be fewer. Furthermore the distance to Bicester which includes a wide range of services is relatively close compared to many other parts of the district and means that many car trips to access services would be relatively short.
- 8.8. In relation to the national planning policy context for the provision of 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 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.
- 8.9. 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 travellers and not just those with local connections.
- 8.10. Policy H goes on to advise that LPAs should strictly limit new 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. Officers have previously therefore considered that the site would be 'away from existing settlements' however the applicant has pointed to a recent appeal decision (in Aylesbury Vale) near Arnott for 19 pitches (appeal ref: APP/J0405/W/18/3193773). That site was approximately 850m from the edge of Arnott and 1km for a small convenience store and village hall. It was 4km from the nearest primary school and GP surgery in Ambrosden and 7km from Bicester with further healthcare facilities and secondary school. In that case the Inspector considered the site was not physically isolated or 'away from the nearest existing settlements' which together provided a good range of facilities. 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 not considered that the proposal can be said 'away from existing settlements' so would not conflict with national policy in that respect.

8.11. 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.

8.12. Given the location of the site, the number of pitches proposed and the size of Chesterton it is not considered that the proposal would dominate the nearest settled community. The site is a green field site which is not previously developed. The other matters are discussed further below.

8.13. Overall the location of the site is not ideal from a geographical sustainability perspective for a combination of the factors discussed above as residents would be likely to be reliant on cars to access day to day services. However, it is acknowledged that many journeys would be relatively short and the scale of the proposal has been reduced compared to earlier schemes. This issue weighs against the proposal; however, this needs to be considered in the planning balance.

#### Need for pitches

8.14. 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.

8.15. 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. The most recent Annual Monitoring Report (AMR) 2017 (December 2017) displays

two different assessments of the Council's five year supply position for gypsies and travellers as discussed below.

- 8.16. The first assessment is based on figures within the Development Plan. This outlines that at 31<sup>st</sup> March 2017 the total number of authorised pitches in Cherwell for Gypsies and Travellers was 57 and the requirement for pitches within the period 2017-2031 is a need for 31 additional pitches (as there has been a net loss of pitches since the figures in the local plan were formulated). It states that the District currently has a 1.1 year land supply for gypsies and travellers for the period 2017-2022 (18 pitch shortfall) and a 0.9 year land supply for the period of 2018-2023 (19 pitch shortfall). Thus, based on the requirements of the Local Plan Part 1, the Council cannot demonstrate a 5 year supply of sites and has a significant shortfall.
- 8.17. However, since the 2015 Local Plan was adopted the Planning Policy for Traveller Sites (August 2015) has been published. This included a change to the definition of "gypsies and travellers" for planning related purposes so that it now excludes those who have permanently ceased from travelling. The definition of Gypsies and Travellers reads as follows: "*Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependant's education or health needs or old age have ceased to travel temporarily, but excluding members of an organised group of travelling show people or circus people travelling together as such*".
- 8.18. In light of this and in order to provide an evidence base for the preparation of Local Plan Part 2, the Council commissioned a new Gypsy, Traveller and Travelling Showpeople Accommodation Assessment (GTAA 2017) with a number of neighbouring authorities which was published in June 2017. This takes into account the new definition of gypsies and travellers unlike the Local Plan figure which is based on the old definition. The GTAA 2017 identified a significantly lower need for pitches. It concludes there is a need for 7 additional pitches that meet the new planning definition over the next 15 years (2017-2031/2). It also identified a need for up to 20 additional pitches for unknown households in the district over the same period. Unknown households are household that may meet the new definition of gypsy and traveller however interviews during the research where either refused or not possible. It was therefore not possible to establish whether they met the new planning definition. It is noted that the authors of the assessment note that if their national average applied to the unknown households then the need stemming from the unknown households may be as low as 2 additional pitches.
- 8.19. The AMR therefore includes second assessment of the Councils 5 year land supply using based on the known need within the GTAA 2017. However, the second assessment within the AMR 2017 states that the requirement for pitches within the period 2017-2032 is a need for 15 pitches, rather than 7 identified. This is because the second assessment within the AMR includes the potential need for 8 pitches arising from the closure of the Newlands Caravan Site. Based on this the second assessment states that the District currently has a 5.0 year land supply for gypsies and travellers for the period 2017-2022 and a 4.0 year land supply for the period of 2018-2023 (1 pitch shortfall).
- 8.20. This therefore casts some doubt over the figures in the Development Plan as these figures were based on the previous definition of gypsies and travellers which included residents which had permanently ceased travelling. However, whilst the figures in the new GTAA 2017 are a material consideration they need to be treated with caution as the methodology and results have not been subject to the rigour of public examination like the Development Plan figures and it is noted that there are a high number of unknown households (i.e. those who may meet the new definition).

Furthermore in considering this matter the primacy of the development plan for decision making needs to be taken into account.

8.21. Overall there is a fundamental conflict between the two calculations. The calculation based on the development plan figures recognises a significant shortfall against the 5 year requirement whilst the calculation using the recent GTAA indicates that Council can demonstrate a 5 year supply of sites. There are weaknesses in both the sets of figures with the development plan figures being based on an old definition and the methodology and figures in the new GTAA 2017 having not been subject to independent scrutiny or examination.

8.22. Whilst Officers note that Councillors expressed some concerns regarding this matter in the planning application for the gypsy/travellers site in Piddington (which was presented to Planning Committee in February) officers remain of the opinion that the most robust position to base the assessment of the planning applications on at the current time is the figures contained within the development plan. They have been subject to the rigour of examination and form part of the statutory development plan which is the starting point for decision making. Whilst the new GTAA 2017 is a material consideration it is part of the evidence base for the Local Plan Part 2 and in officers view does not outweigh the development plan. A relatively recent appeal decision in South Oxfordshire District Council (ref: APP/Q3115/W/17/3176196) supported this approach to GTAA 2017. In this appeal the Inspector considering the appeal noted that given the methodology used and assumptions made in the study it is possible that there is an underestimation of the need for sites in the new GTAA. Furthermore the Inspector stated:

*'In any event, the latest GTAA has not yet been adopted and these factors mean that the weight that I will attach to it in respect of the level of identified future need is limited.'*

8.23. A similar view was reached by a planning inspector in a planning appeal in the adjoining district of South Northants (appeal reference APP/Z2830/W/17/3172943) where similar conflict existed between the Local Plan figures and their new evidence base.

8.24. The Council has does not have any allocations for additional sites and there is a lack of alternative provision in the district with applications being assessed on a case by case basis. As outlined above there is considered to be a significant need for additional sites in the area to meet a general need. These matters, alongside the Councils inability to demonstrate a 5 year land supply on the figures in BSC6, are considered to carry significant weight in determining the application and the provision of new pitches is a significant benefit.

8.25. The application site is proposed to be used as a settled base for members of the travelling community which would have benefits relating to healthcare and education. In order to ensure that the site was only occupied by households meeting the revised definition of gypsy/traveller a planning condition can 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.

8.26. The European Convention of Human Rights is still in force to date. Under Article 8 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. The statement submitted with the application identifies that the proposal is for a residential caravan site for gypsies and travellers and the proposed development therefore provides new accommodation for the gypsy and traveller community within

the Cherwell District. Therefore the contribution the site makes to facilitating the gypsy traveller way of life weighs in favour of the proposal.

#### Visual Impact and Effect on Landscape Character

- 8.27. The NPPF recognising the intrinsic character and beauty of the open countryside. ESD13 of the Cherwell Local Plan Part 1 notes that development will be expected to respect and enhance local landscape character, securing appropriate mitigation where damage to the local landscape character cannot be avoided. Policy ESD13 also states that proposals will not be permitted if they would cause undue visual intrusion into the open countryside or be inconsistent with local character.
- 8.28. 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.”*
- 8.29. 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.
- 8.30. The proposed development includes the provision of 3 pitches and associated infrastructure. Each pitch would have space for mobile home and a touring caravan with an area of hard standing. A small day room would also be provided for each pitch. An access road would be provided across the site. In addition to the pitches, a 2 metre bund and 3 metre high close boarded fence is also proposed along part of the eastern and southern boundary.
- 8.31. The application site itself occupies a relatively flat site and given the topography and vegetation in the wider area the visual impacts of the development will be relatively localised to the proximity of the site. 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 an undeveloped agricultural field in an area where built development is limited. The presence of the M40 reduces the tranquillity and remoteness of the site albeit that the motorway is situated in a cutting.
- 8.32. The proposed development would be visible from the public footpath to the west of the site and whilst there is some confusion as to the exact line of this footpath, the walked route runs outside of site to the west of the hedge. Furthermore views of the site would also be available from people travelling along the A4095 in vehicles particularly from the bridge section over the M40 and through the access to the site. Additionally the bund and fence would be clearly visible from people travelling along the M40.
- 8.33. Undoubtedly the proposal, with the addition of mobile homes and day rooms, 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. This would erode the character and appearance of the site and area. The revised proposal now occupies a smaller part of the site which reduces the visual impacts compared to earlier schemes. The site also has areas of landscaping which provides a more landscaped setting to the site which is supported by Policy H of the PPTS. The fact that the development is largely situated adjacent to the southern boundary of the site, where a planted embankment



exists, also helps to reduce the visual impacts of the development in the wider area given the existing screening.

- 8.34. The proposed 2 metre bund and 3 metre high fence to the eastern boundary of the site would also impact on the area. This has been significantly reduced in length compared to the earlier scheme. Views of the bund itself from the A4095 bridge over the motorway and from the M40 itself would largely appear as an extension of the existing cutting the motorway is located within from this aspect given its height. Subject to appropriate landscaping conditions it is not considered that this would not significantly impact on these views. However, the proposed 3 metre high fencing given its height and appearance would appear as an incongruous and prominent feature that would further contribute to the urbanisation of the site noted above, albeit that it would also be visible for a short period of travel.
- 8.35. Views of the bund and fence from the A4095 immediately to the south of the site would be filtered through the existing tree planting on the southern boundary and by the fact that the site lies between approximately 3-5 metres lower than the A4095 along the extent of the bund. Therefore views from this section of the road would be more apparent in the winter. However, as outlined above views of the bund and fence would be more apparent from the access to the site, the A4095 immediately to the east of the site, the M40 and from the footpaths to the west of site. The height of the bund and fence would appear as an incongruous feature on the site in this open countryside setting and would harm the rural character and appearance of the locality.
- 8.36. Whilst over time appropriate landscaping of the site would help soften the appearance of the bund and fence, this would take a number of years to have any significant benefit and the height of the feature and development of the site would still remain incongruous.
- 8.37. Overall the development would result in harm to the rural character and appearance of the area. This harm would be relatively localised and experienced for relatively short periods of time with people travelling through the landscape. It would also diminish somewhat over time with the landscape maturing. Nevertheless it would be significant where it occurs. This would conflict with Policies ESD13 and ESD15 of the Cherwell Local Plan Part 1, Saved Policy C8 of the Cherwell Local Plan 1996 and Government advice contained within the NPPF and weighs against the development.

#### Residential Amenity

- 8.38. 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 potential adverse impacts resulting from noise and avoid noise giving rise to 'significant adverse impacts' on health and the quality of life.
- 8.39. Saved Policy ENV1 of the adopted Cherwell Local Plan states 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. 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.*"

- 8.40. The main in this case is the noise environment for future occupiers of the site given the presence of the M40 to the east of the site. This formed one of the reasons for refusal on the earlier application and in order to attempt to address this matter a 2 metre earth bund and 3 metre high fence to the eastern boundary with returns either end is proposed to act as noise mitigation.
- 8.41. A noise survey of the site identifies that traffic noise is high throughout the day and night with the north of the site being louder than the southern part of the site where the motorway is in a larger cutting (approximately 4 metres). The development is now proposed to be restricted to the southern part of the site.
- 8.42. The applicants' noise report notes that without suitable mitigation the noise environment on the site would be unsuitable for residential accommodation. With the proposed mitigation (bund and fence) the noise modelling undertaken indicates that the site (mobile homes and day rooms) would be able to achieve acceptable internal noise level during the day so long as the mobile homes provided on the site were designed to meet the requirements of BS 3632:2015 which requires a higher levels of sound insulation to mobile homes. Noise levels in the mobile homes would be reduced to between 32-33 dB LAeq 16 hour daytime and 31-32dB LAeq 8 hour night time. The daytime internal noise environment would therefore comply with the relevant standards however the night time would be 1-2dB(A) above the recommended design aim for internal specified within BS8233. The British Standard does allow for some flexibility where development is necessary or desirable the standard can be relaxed by up to 5dB and still provided reasonable internal conditions. A planning condition can be imposed requiring confirmation that the mobile homes will comply with this standard and this would also ensure adequate ventilation is provided. Therefore a judgement of whether the development is necessary or desirable needs to be made which is discussed below.
- 8.43. There are also concerns that any person occupying a touring caravan on the site would be likely to be subject to a significantly noisier environment than any occupants of the mobile home given that there noise insulation quality of a touring caravan are likely to be lower. The applicant assessment make no reference to this and this further adds to the concerns. However, each pitch (mobile home and touring caravan) operates as a single residential unit and so people would have the option of not occupying the touring caravan when it is on site.
- 8.44. The Councils Environment Protection Officer continues to raise concerns regarding the sites external noise environment. In referencing external noise levels BS 8233:2014 states:
- “For traditional external areas that are used for amenity space, such as gardens and patios, it is desirable that the external noise level does not exceed 50 dB LAeq,T, with an upper guideline value of 55 dB LAeq,T which would be acceptable in noisier environments. However, it is also recognized that these guideline values are not achievable in all circumstances where development might be desirable. In higher noise areas, such as city centres or urban areas adjoining the strategic transport network, a compromise between elevated noise levels and other factors, such as the convenience of living in these locations or making efficient use of land resources to ensure development needs can be met, might be warranted. In such a situation, development should be designed to achieve the lowest practicable levels in these external amenity spaces, but should not be prohibited.”*
- 8.45. The ProPG: Planning and Noise guidance echoes this guidance. The noise modelling predicts the freefield level of 60 to 63dB LAeq,t would be achieved at the position of the proposed mobile homes. This noise levels would therefore be up to 8dB above the upper guideline level of 55dB given in BS8233:2014.

- 8.46. The applicant seeks to argue that the guidance above states that the external noise environment levels will not be able to be achieved in all circumstances and indicates that development should not be prohibited on these grounds where development is desirable. Officers did originally conclude that this guidance is more relevant to urban areas however it is clear that the use of the phrase '*such as*' means that this guidance can be applied to other areas where development is desirable. In this case Officers consider that whilst there are benefits of the scheme in meeting the shortfall of sites and a lack of alternative provision, given the poor accessibility to services and facilities, and the harmful landscape and visual impacts of the development it is not considered that the development is desirable at this location. Therefore flexibility to the standards to the noise environment should not be applied in this instance.
- 8.47. The applicant has also pointed to other decisions where sites have been allowed on sites with louder noise environments than the current site. However, limited information has been provided of these decisions and they pre-date the current guidance and are therefore not considered to be capable of carrying significant weight and each case needs to be assessed on its own merits.
- 8.48. In terms of achieving the lowest practicable noise level to the external amenity areas the applicant has explored raising the bund/fence higher but this did not have a significant benefit in noise terms and would further exacerbate the visual harm. The applicants are also proposing to provide patio doors in the day rooms to provide a relatively quiet externally ventilated space for residents to use which would further aid in the amenity of residents...
- 8.49. Overall the Council's Environment Protection Team continues to object to the application on the basis of the external noise environment and consider it will lead to a significant adverse impact but notes that ultimately it will come down to whether the development is deemed to be 'desirable' weighing all the planning matters relevant to the case. This factor is therefore considered to weigh against the proposed development as ensuring a good standard of amenity is a core part of achieving sustainable development however it needs to be considered in the planning balance.
- 8.50. The site is located in excess of 200 metres from any neighbouring residential properties therefore it is considered that other residential properties would not be directly affected by the proposal in terms of loss of light, outlook, privacy or noise and disturbance.
- 8.51. 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.

#### Highway safety

- 8.52. Policy SLE4 of the Cherwell Local Plan 2015 states that development is not suitable for the roads that serve the development and which have a severe traffic impact will not be supported. Paragraph 108 of the NPPF states that in assessing planning applications it should be ensured that safe and suitable access can be achieved for all users and that development will be refused there is an unacceptable impact on highway safety.
- 8.53. The local highway authority (LHA) has raised no objection to the scheme subject to a number of conditions. In relation to the technical matters the LHA has indicated that further details are required of the access to the site however full details of this

could be secured by condition. The LHA has previously indicated that it considers that adequate visibility from the access could be provided. It has also requested additional information on the parking serving the units; however, the plans clearly show sufficient parking to serve the pitches and the provision of this could be secured by condition. The other matters the highway engineer has raised regarding details of the internal road, access gates, turning areas and drainage could be controlled through conditions.

- 8.54. Chesterton public footpath 11 is shown on the definitive map to run along the western boundary within the site. However, the provided and walk footpath is outside on the site on the other side of the field boundary. The footpath was diverted via an order in 1987 (associated with building the M40) and the alignment of the path is on the ground is consistent with the position in the order therefore suggesting that the Definitive Map may be incorrect. This matter is still being investigated by OCC and notwithstanding this matter it is considered that the issues relating to the protection of the footpath both during construction and operational stage could be dealt with by planning condition.
- 8.55. Highways England has raised no objection to the proposal and the proximity to the M40.

#### Flooding Risk and Drainage

- 8.56. The site is identified as being within Flood Zone 1, which is land which has a less than 1 in 1,000 annual probability of river flooding. Policy ESD6 of the Local Plan and the Framework states that a Flood Risk Assessment is required for proposals of 1 hectare or more in in Flood Zone 1. The site exceeds 1 hectare and the Flood Risk Assessment which accompanied the earlier scheme has been submitted alongside this application.
- 8.57. Policy ESD7 of the Cherwell Local Plan Part 1 requires the use of Sustainable Drainage Systems (SuDS) to manage surface water drainage systems. This is all with the aim to manage and reduce flood risk in the Cherwell District.
- 8.58. The Environment Agency no longer provides comments on this type of application. The submitted Flood Risk Assessment states that the proposal would use SuDs to ensure that the rate of surface water run-off would not exceed the green field rate and that the hard standing would not be impermeable. OCC as the Local Lead Flood Authority have raised no objection to the application subject to full details of the surface water drainage for the site being secured through condition.
- 8.59. Concerns have been raised with the applicant regarding the use of the proposed sewerage treatment plant to treat sewerage including a lack of details regarding this and also the lack of details on the feasibility of connecting to mains drainage which should be the first option explored as outlined in the Planning Practice Guidance. A response is awaited on this. OCC raises no objection to use of main mains drainage but requires an inspection chamber to be built. As with the previous application very limited details are provided of this respect. Whilst it is noted that the EA have noted this is not desirable in the absence of objections from the relevant statutory bodies and given this was considered an acceptable arrangement in the earlier application, this arrangement is considered to remain acceptable; however, full details of this would need to be secured through planning conditions.

#### Ecology

- 8.60. Paragraph 109 of the NPPF states that the planning system should contribute to and enhance the natural and local environment by minimising impacts on biodiversity,

and providing net gains in biodiversity where possible, contributing to the Government's aim to halt the overall decline in biodiversity.

8.61. Paragraph 118 of the NPPF seeks to "...conserve and enhance biodiversity by applying, amongst others, the following principles:

- *If significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or as a last resort, compensated for, then planning permission should be refused*
- *Development proposals where the primary objective is to conserve or enhance biodiversity should be permitted*
- *Opportunities to incorporate biodiversity in and around developments should be encouraged"*

8.62. Policy ESD10 seeks to protect and enhance biodiversity and the natural environment, by achieving a net gain in biodiversity, through supporting developments which incorporate features to encourage biodiversity.

8.63. The site is an open agricultural field currently comprising rough grass land and scrub. The application is accompanied by an Ecological Appraisal which concludes the site is of moderate ecological value.

8.64. In earlier applications the Council's Ecologist requested further information in the potential impact of the development on badgers as some evidence of their presence was found on site. This included a survey of the adjacent M40 verge and revealed no clear evidence of badger setts. Further clarification was also sought regarding the grassland habitat which the applicant states is semi-improved.

8.65. The Council's Ecologist is now generally satisfied that other matters subject to appropriate conditions. The site is of moderate ecological value having both grassland and scrub and the surveying ecologist recommends that boundary vegetation on site should remain untouched to retain its value. The proposed planting is generally appropriate to strengthen boundary vegetation. However, this is little information regarding how the site will be managed or used and the use of parts of the site for animals or domestic activities could harm the value of the site. Therefore the ecologist has recommended that a Landscape and Habitat Management Plan (LEMP) to cover these points which could be dealt with by condition. The Council's Ecologist has also confirmed that the acoustic fence will not need to be raised to allow badgers to pass under it as suggested in earlier applications given the reduced length of the fence. The northern part of the site may be suitable for reptiles and the Council's Ecologist has recommended a pre-commencement condition in this respect.

8.66. Overall the Council's Ecologist considers that subject to conditions the ecological impacts of the development can be made acceptable through the use of planning conditions, and officers agree with this assessment.

#### Heritage Impact

8.67. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special regard to the desirability of preserving a listed building or its setting should be taken. The NPPF states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Significance can be harmed through development within its setting. In the earlier application a third party noted a Heritage Statement should have been submitted given the proximity of the site to a

Grade II listed barn at Field Farm to the north west of the site. However, the site is approximately 350 metres from this heritage asset and an agricultural field separates these two entities. Furthermore, the site is visually separated from the listed building by existing buildings and landscaping. Overall, given this separation, officers consider that the proposed development on the site, including structures no more than single storey in scale, would not materially alter the way this barn is appreciated or experienced in a rural setting, and that a Heritage Statement is not necessary in this instance. Thus, it is considered that the proposal would not cause harm to the significance and setting of this Grade II listed barn.

#### Other matters

- 8.68. Concerns have been raised in relation to the primary school at Chesterton being near capacity and that there would be no more places at the school as a result of this proposal. It is worth noting, however, that if the proposal were for 3 dwellings instead of 3 traveller pitches, this would fall below the threshold in the PPG for contributions towards schooling. It is therefore considered unreasonable to justify the refusal of the planning application on such grounds.
- 8.69. Concerns have been raised by third parties in relation to the matter of electricity supply, but this is a matter for the utility companies and there appears to be supply to the existing animal shelter and a transformer on the site. Concerns have also been raised in relation to the matter of water supply however the applicant has stated that the site is already served by water
- 8.70. Third parties have noted that the proposal would set a precedent for housing outside the village. However, each case is assessed on its own merits and the policy context is different for such application.
- 8.71. It is noted by third parties that if planning permission is to be granted, the site would not be well managed and the use of the site will exceed what has actually been granted. However, this is not relevant to the determination of this planning application as consideration needs to be given to what is proposed in this planning application and planning conditions can control the scale of the use.
- 8.72. Whilst a number of issues have been raised by third parties, the following are either not supported by an evidence or are private interests and are therefore not capable of carry any significant weight in determining the planning application:
- Fear and increase in crime to surrounding properties as a result of the proposal;
  - Would create anti-social behaviour;
  - Loss of private view; and
  - Devaluation of property
- 8.73. In the earlier application the issue of air quality was also considered due to the proximity of the site to the M40. This included modelling of the site and concluded that the air quality would be acceptable for residential accommodation. The findings of this are still considered to be relevant to the current application and the Environmental Protection Officer has not raised concerns in this regard.

#### Personal circumstances

8.74. A key matter in this type of application is the European Convention on Human Rights as applied by the Human Rights Act 1998 along with the Council's requirement to act in accordance with the Equalities Act 2010. In terms of Equalities legislation, Gypsies and Travellers have a protected status that must be considered in all decisions made by Public Authorities. The Council needs to coherently apply the PPTS. Specifically, the Council in the exercise of its statutory functions (in this case the determination of planning applications) has a clear duty to have due regard to particular needs and lifestyles when making decisions.

8.75. The Public Sector Equality Duty is set out at Section 149 of the Equalities Act 2010. It imposes a duty on all public authorities that they must, in the exercise of their functions, have due regard to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

8.76. This is a duty that applies to Local Planning Authorities. The key point is that, whilst the duty is not alone justification to grant planning permission, decision makers must have regard to it when considering Traveller cases. There is also a requirement for decision makers to treat the best interests of any children affected by a decision to grant/refuse planning permission 'a primary consideration'. The requirement comes from Article 3(1) of the *UN Convention on the Rights of the Child* (UNCRC) and is considered by the European Court of Human Rights to be integral to the consideration of Article 8 rights in any case where a decision of a public body will affect children. However, this does not mean it is an overriding consideration and could be properly be found to be outweighed by the identified harm with the best interests of any child being at the forefront of the decision-maker's mind.

8.77. The applicant states that the personal circumstances of the prospective occupiers, in particular the Best Interests of the children, weigh heavily in favour of the current development.

8.78. They states that the future occupants of the site previously resided at the Newlands site in Bloxham and since its closure none of these families have a lawful site to live on and are moving from one unauthorised site to another, sometimes doubling up on other Travellers' pitches whilst they are away travelling. They have an immediate need for accommodation. The occupiers are:

- Mrs. Cybil Butcher (87) lived on the Bloxham site all her life. The intention is for Mrs Butcher to reside on one of the 3 pitches in this application together with her grandson, Mitchell Butcher and his wife (who is expecting her first child at the end of November 2018). Currently Mr. and Mrs. Butcher have no option but to travel from one unauthorised site to another, facing eviction after eviction as there is an acknowledged shortfall in site provision.
- Clifford Smith, his wife and their 3 children (all of whom are under 6 years of age)
- David Stevens, his wife and their 2 children (both of whom are under 5 years of age)

8.79. The applicant claims that all 3 families are Romany Gypsies as well as Travellers in terms of Annex 1 Planning Policy for Travellers Sites (2015) in that they travel for work doing a mixture of landscaping, roofing and other work for up to 6 months of the year. However, beyond the above very limited evidence been provided to demonstrate that the occupiers would meet the new planning definition. The intention is for the application site to be the families' settled base so that their young children can go to school and all parties have access to health services whilst the men would be able to go travelling for work in the knowledge that their wives and children are safe on an authorised site. This weighs in favour of the development however in light of the above these are given limited weight.

## **9. PLANNING BALANCE AND CONCLUSION**

9.1. The proposal seeks permission for the change of use of existing agricultural land to a residential travellers' caravan site comprising 3no pitches. The site is located approximately 1.1km of the category A village of Chesterton and approximately 3KM from edge of Bicester and benefits from suitable access to the local and wider highway network so can be considered under Policy BSC6 of the Local Plan. However, it is noted that Chesterton is one of the Category A settlements which has fewer facilities for residents and has lost its more regular bus service in recent years since the adoption of the Local Plan.

9.2. 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.

9.3. Criterion (a) considers access to GP and other health services, the nearest NHS GP surgery to the site would be in Bicester approximately 4.8km from the site. In order to access this service given, the infrequent nature of the bus service, they are likely to rely on the private car which weights against the proposal albeit journeys would be relatively short and there would be fewer residents than earlier applications.

9.4. Criterion (b) considers access to schools; the nearest primary school is located at Chesterton and given the nature of the roads, without footpaths or lighting, is likely to be travelled by the private car as opposed to alternative modes of transport. Given this it is considered by officers that the site has relatively poor access to education which would weigh against the proposal when assessed against the sustainability and suitability criteria.

9.5. Criterion (c) seeks to avoid areas at risk of flooding. The site is not identified on the Environment Agency's mapping as subject to flooding. A suitable drainage scheme could be controlled through condition. The proposal is considered acceptable in this regard.

9.6. Criterion (d) considers the suitability of the site in relation to access to the existing highway network; in this respect the proposal is considered to be appropriately located without demonstrable harm caused to highway safety.

9.7. Criterion (e) considers the potential for noise and disturbance. The site is considered acceptable in regard to the impact on neighbouring uses. The noise environment of the site is poor however based on the current guidance if the development is considered to be desirable then the flexibility can be given to the external noise environment and the applicant has tried to reduce the noise impacts as far as practical. Therefore this weighs heavily against the development.

9.8. Criterion (f) seeks to ensure harm to the historic and natural environment is limited. The proposal would not adversely impact on any heritage assets or the ecology of



the site. However there would be harm to the rural character and appearance of the site and locality in the immediate vicinity of the site. This harm would be significant were it occurs and weighs against the development.

- 9.9. Criterion (g) seeks to ensure that proposals provide for a satisfactory living environment. In this case due to the noise environment of the site this is not considered to be met as discussed above.
- 9.10. Criterion (h) seeks to ensure that efficient and effective use of land is made. In this case the current proposal would result in the development of a green field site. 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.
- 9.11. Criterion (i) considers the likely deliverability of the proposal, including whether utilities can be provided on the site. The applicant's agent states that water and electricity already serves the site. It is not proposed to connect to mains drainage however this has not been justified. It appears feasible that an electricity supply could be made to the site however the applicant has not produced any compelling evidence that an adequate water supply could be provided.
- 9.12. Criterion (j) looks at the existing level of local provision for gypsy and travellers across the Cherwell District. Officers acknowledge that the issue of general need is unclear based on the new definition of traveller/gypsy. Whilst there is conflict in the figures outlined in the Annual Monitoring Report officers considered that the most robust position to take regarding this is to use the Development Plan figures which show there is a significant shortfall in pitches across the district (1.1 years supply – 18 pitch shortfall). The benefits of the proposal in providing additional pitches to meet a general unmet need therefore carry significant weight in favour of granting permission.
- 9.13. Criterion (k) considers the availability of alternative sites for the applicant. In this case no alternative sites are allocated in the Local Plan and little progress has been made in this regard. The application is supported by some limited information about individuals that are interested in occupying the site; however, there is a significant general identified need for pitches which this application goes some way towards addressing and significant weight is attached to this and the lack of alternative provision.
- 9.14. In conclusion, the site is not the most accessible and future residents would be likely to be highly reliant on private car to access services and facilities with few options for more sustainable forms of transport. The proposal would lead to significant harm to the rural character and appearance of the countryside and whilst this would be relatively localised it would be significant were it occurs. The external noise environment is above the guidance and is considered to lead to significant adverse impacts on future residents. The proposal is not considered to dominate the nearest settled community and officers consider that there is a significant unmet need for gypsy and traveller pitches in Cherwell which should carry substantial weight in support of the application. The lack of alternative provision is also a matter that weighs heavily in support of the proposal and there is limited progress in respect of addressing the need through new allocations. The applicant site providing a settled base for children and providing access to healthcare and education are also considered to weigh in favour of the development.
- 9.15. Overall when assessing the development as a whole, the harm stemming from the poor access to services and facilities, harm to the landscape and visual amenity of the area, and poor living environment for future residents are considered to

outweigh benefits of the scheme. It is therefore recommended that planning permission be refused.

## **10. RECOMMENDATION**

That permission is refused, for the following reason:

1. The proposed development, by virtue of its poor access to services and facilities, reliance on the private car to access services and facilities, detrimental impact on the rural character and appearance of the area and poor living environment for future residents in relation to noise, is considered to represent an unsustainable form of development. The harm is not considered to be outweighed by the benefits of the scheme. The proposal is therefore considered to be contrary to Policies ESD1, BSC6, ESD13 and ESD15 of the Cherwell Local Plan Part 1 (2015), Saved Policy C8 Cherwell Local Plan 1996 and advice in the National Planning Policy Framework and Planning Policy for Travellers Sites (2015).

CASE OFFICER: James Kirkham

TEL: 01295 221896