

Taunton Road. The village has limited services comprising a post office (currently up for sale), public house, and village hall.

The proposal seeks change of use to a gypsy site providing for 4(no.) residential pitches. The area of land measures 0.4 hectares and is divided in half to form respectively the residential compound and a paddock. The pitches measure respectively 15mx35m, 11mx26m, 11mx29m and 17mx 28m. Overall the site (including the area of paddock that lies immediately to the north of the residential compound) measures 210m in length and the strip's depth back from the highway measures approximately 15m (southern end), widening out to about 18m (northern end of residential compound).

Occupation of the site commenced prior to submitting an application, which was received in November 2007 with works on site ongoing without the benefit of planning permission. A 2m high timber fencing has been erected within the hedgerow that runs across the frontage south of the stables block and the entrance gate has been set further back within the site. The mobiles caravans within the site were, at the time of the officer's most recent site visit, parked up south of the stables block.

History

05/02326/FUL - Erection of a stable building. Approved.

Policy

Section 38(6) of the Planning and Compulsory Purchase Act 2004 repeats the duty imposed under 54A of the Town and Country Planning Act 1990 and requires that decisions must be made in accordance with relevant development plan documents unless material considerations indicate otherwise.

Relevant Development Plan Documents:

South West Regional Spatial Plan

Policy GT1 - Housing

Policy VIS 1 - Expressing the Vision

Policy VIS 2 - Principles for Future Development

Somerset and Exmoor National Park Joint Structure Plan Review 2000

Policy 36 - Sites for Gypsies and Travelling People

Policy STR1 - Sustainable Development

Policy STR6 - Development Outside Towns, Rural Centres and Villages

Policy 49 - Transport Requirements of New Development

Policy 5 - Landscape Character

South Somerset Local Plan (Adopted April 2006):

Policy HG11 - Long Term/Residential Sites

Policy ST3 - Development Areas

Policy ST5 - General Principles of Development

Policy ST6 - The Quality of Development

Policy EC3 - Landscape Character

Policy EU3 - Non-mains Sewerage

Circular 01/2006 Planning for Gypsy and Traveller Caravan Sites

Circular 03/99 Non-mains sewerage in new development

Consultations and Representations

Parish Council - Objection. The Parish Council met on 10th Dec.2007 to discuss this application. At public session there were 85 villagers present. This was one of the largest audiences we have had in recent years and shows a clear level of concern. We have tried to address their concerns together with those of the Parish Council in our comments that follow:-

1. Having reference to SSDC Local Development Framework and Policies ST2, ST3 and ST6 of the Joint Structure Plan Review it is clear that Fivehead has not been identified as a village suitable for development and therefore does not have a development plan or a defined development boundary. Any development is therefore considered to be within the open countryside. As the proposed development does not constitute infilling or minor extensions to small groups of houses, it is contrary to the Local Development Framework in that it does not benefit economic activity, maintain or enhance the environment but does foster growth in the need to travel.
2. With reference to the document "PLANNING FOR GYPSY AND TRAVELLER CARAVAN SITES (PGTCS) 01/06":- There has been an obvious disregard of the planning process as there should have been no movement onto the site without planning consent. Consultation with the planning office is advised prior to purchase. Para. 59. This was the most contested item at our public session. Feelings ran strongly as the public felt there one rule for gypsies and travellers and another for the general public. (A local retiring farmer, who does a lot for the community, did ask the Planning Dept, prior to auction, whether a wooden home might be put on this site. He was told quite clearly that this would not be contemplated). Local residents being unable to build on the site are placed at an unfair disadvantage. Because of the gypsies approach to planning matters and the exceptions and provisions for Gypsies and Travellers the land is of greater value to them enabling them to outbid any member of the general public whose interest is restricted to agriculture, horticulture, horses or otherwise.
3. The application is not transparent. The site plan shows only half the site which is extremely misleading. At the northerly end of the paddock, which has a separate entrance, the surface has recently been hard cored to facilitate the parking of heavy plant (a tarmac-ing lorry), in effect using the site for a business. There is also concern at the storage of numerous 200 litre barrels on the site (presumably bitumen). Surely such barrels would come under the Control of Hazardous Substances. Is this site practical for both business and domestic use? (PFGTCS 01/06 para.56).
4. The wooden building, erected as a stable block, when constructed had a tie to the owner of the property 17 Millers Orchard, Fivehead. Use of this building therefore requires planning permission. This was clearly stated in the sale particulars.
5. PFGTCS 01/06 12b states its intention is to reduce the number of unauthorised encampments and developments and the conflict and controversy they cause, and to make enforcement more effective, and under sustainability 64a considers the promotion of peaceful and integrated coexistence between site and the local community.

The community has been quite unsettled by these recent events, clearly demonstrated by the number of people at our meeting.

 - a. The proposed development is directly opposite the parish cemetery and, if allowed, will spoil the solitude and dignity of the cemetery. Mourners will be overlooked by a continuous presence and the character of the cemetery will be

changed. This will be especially so if the site is developed as an industrial work area.

- b. The Private Keep Out, signs erected within days of the occupation of the site appear unfriendly and do not demonstrate a willingness to integrate into the community. Parishioners have said they find them intimidating.
6. Sustainability. This site does not comply with the requirements for sustainable development. It is not positioned on suitable public transport infrastructure as identified in the Local Development Plan.
7. This proposal would cause an increase in traffic movements both business and domestic. The junction to the north of the site, by the Old Manse, (Isle Abbots Road with Hazel Tree Lane) is dangerous. Furthermore, when development was considered for Fivehead at the request of SSDC, who were seeking additional areas for housing, the junctions out of the village onto the A378 were deemed to be unsuitable to take more traffic hence only infill would be permitted.
8. This is a very narrow site. The field behind it is very wet in winter and historically there is flood water running down the road from the area of the gateway below this site. There are concerns that this waterlogged land is not suitable for the installation of a septic tank. Tests to confirm suitability are needed. There may be current issues over grey water disposal.
9. The council understood that there are vacancies on the nearby Ilton site for gypsies and travellers, if this is the case then we would question the need for this site. Council is concerned at the concentration of permitted gypsy camps/developments in the local area.
10. Should this application be successful Council would like to see more and better screening especially at the southern end beside Stillbrook Farm. This property is the most affected by far, especially in terms of both increased noise and loss of privacy let alone depreciation in value. They have had this situation forced upon them illegally and as such, Council feel more effort should be forthcoming to screen the site at this end to minimise the impact.
11. Council understands the duty on local authorities under the provisions of the European Convention on Human Rights to actively seek to eliminate unlawful discrimination, and promote good race relations but this does not give gypsies and travellers a right to establish sites in contravention of planning control. The rights of the settled community must also be considered.

Community Liaison Officer - (To be reported verbally)

County Highway Authority - Fivehead has no development limit. While it may have a post office, there are no primary or secondary schools and I am not aware that the village has much employment, retail, leisure, recreation and health facilities. As such, the occupants of the site are likely to undertake lengthy journeys to access such facilities. These journeys are likely to be made by the private car, given that the bus service running along the A372 only operates on an hourly basis. Consequently, it could be argued that the development would be contrary to Government guidance given within PPG13 and RPG10, and to the provision of policies STR1 and STR6 of the Somerset and Exmoor National Park Joint Structure Plan Review, that seeks to minimise the need for journeys particularly by the private car.

As a result, under normal circumstances the Highway Authority would recommend the application for refusal on sustainability grounds. However, Policy 36 of the Somerset and Exmoor National Park Joint Structure Plan Review states that 'the provision of sites for gypsies and other travelling people should be made where the site is within reasonable distance of a settlement providing local services and facilities'. The site is approximately 3.0kms from Curry Mallet, which is the nearest settlement with any facilities. I consider that this distance may not be so great as to conflict with Policy 36.

In detail, the access to the site at present is substandard by reason of its consolidation and surfacing and the level of visibility that can be achieved due to the presence of the existing boundary hedge that fronts the highway. However, this is all in land within the applicant's control and as such improvements can be made.

Therefore, in the event of permission being granted I would recommend that the following conditions be imposed:

1. The proposed access over the first 4.5m of its length, as measured from the edge of the adjoining carriageway, shall be properly consolidated and surfaced (not loose stone or gravel) in accordance with details, which shall have been submitted to and approved by the Local Planning Authority.
2. Any entrance gates erected shall be hung to open inwards and shall be set back a minimum distance of 4.5m from the carriageway edge.
3. The gradient of the proposed access shall not be steeper than 1 in 10.
4. Provision shall be made within the site for the disposal of surface water so as to prevent its discharge onto the highway details of which shall have been submitted to and approved by the Local Planning Authority.
5. The development hereby permitted shall not be occupied until the turning space shown on the submitted plan has been properly consolidated and surfaced to the satisfaction of the Local Planning Authority. Such turning space shall be kept clear of obstructions at all times.
6. There shall be no obstruction to visibility greater than 900mm above adjoining road level in advance of lines drawn 2.0m back from the carriageway edge on the centre line of the access and extending to points on the nearside carriageway edge 33.0m either side of the access. Such visibility splays shall be fully provided before the development hereby permitted is first occupied and shall thereafter be maintained at all times.

SSDC Technical Services - No comment

Wessex Water - General Information and informative(s) to be attached to any decision.

Environmental Protection - No observations

Environment Agency - No comment

Planning Policy - Circular 01/06 requires Local Planning Authorities to identify and allocate sites for Gypsy and Traveller accommodation to meet an identified need. The Public Consultation - Review of additional pitch requirements for Gypsies and Travellers in the South West, Draft Policy GT1, identified that there is a requirement for 17 residential pitches and 10 transit pitches in South Somerset. The Examination in Public (EiP) of this Gypsy and Traveller policy took place on 4th to 7th March at the Thistle Hotel in Exeter.

Policy HG11: Long Term Residential Sites, of the adopted South Somerset Local Plan (2006) permits development for gypsy and caravan sites in areas outside of AONBs or SSSI's as long as the following criteria are met:

1. Vehicle movements, noise, fumes or any subsidiary business activities would not harm the residential amenities of neighbouring dwellings or the character of the area.
2. The site is reasonably well related to schools and other community facilities.
3. No serious highway problem would result.
4. The site includes the following facilities:
 1. A refuse collection point.
 2. Access to a drinking water supply.
 3. A satisfactory means of sewage disposal/management and surface water disposal.
 4. Hardstanding for living vehicles and ancillary parking spaces.
 5. A defined safe play area for children.

The applicant's are of the view that the proposal does comply with Policy HG11. Whilst being well related to the settlement of Fivehead where I believe there is a shop/post office and a public house the site is not closely related to other dwellings so an impact on the amenity of neighbouring dwellings would be minimal. I also believe that there is a primary school at Curry Mallet, which the applicants state is just less than 3 km away; which in my view could be considered to be "reasonably well related". Given that there is a need for sites for Gypsies and Travellers in South Somerset and as long as you can be satisfied that the criteria above are met then no planning policy objection is raised.

Landscape Architect - I see that the site lies outside the village, and in open countryside. Development in such a location is contrary to policy ST3, unless the proposal inherently 'maintains or enhances the environment' which this proposal does not.

The paddock is linear and narrow, and runs alongside Isle Abbots Road. Any development on this plot would appear as ribbon development. This is contrary to the settlement form, which is nucleated around the church, with northward extension back toward the Taunton-Langport road, whilst to the south, there is relatively open land beyond a relatively well defined village edge. I also note that the plot doesn't allow for concentrated development. Hence I view its linear layout beyond the established settlement as being at variance with the locality, and thus contrary to policy ST5 para 4.

2 neighbour notifications were sent to adjoining properties and a site notice (General Interest) posted at the site. There have been 23 responses received. These relate to

- Unsustainable location
- Local services. Oversubscribed school at Curry Mallet
- Highways safety, dangerous junctions, narrow country lane.
- Opposite village cemetery - spoils the solitude and peacefulness of the cemetery. People feel intimidated whilst being overlooked. Intrusive noise.
- Circular 01/06 point 70 on human rights states that 'The obligation on public authorities to act compatibly with Convention rights does not give
- gypsies and travellers a right to establish sites in contravention of planning control.'
- Human Rights of the local settled community, which has been considerable unsettled by the breaking of legislation in the area.
- The system does nothing to enhance mutual respect and consideration between both communities and makes it more difficult for the gypsies to integrate.
- Drainage
- Business as well as a residential site.
- Encroaching on the surrounding countryside.
- Ribbon development
- General downgrading of the amenity value of the area. How is a suitable screening between the road and the new installations is going to be provided. The land sits approx. 2 feet above the road level. Lane verges are breaking down.

- The site is already hideous, with tar macadam everywhere, drums of what looks like chemicals stored on it. This is surely dangerous and potentially hazardous to the environment.

Applicant's Supporting Information

The applicant's claim is to be English/Romany gypsies in compliance with para.15 of Circular 01/06. The site is found approximately 500metres south of the settlement of Fivehead. The site measures approx. 0.40ha. The proposal is for 4 pitches with two caravans for each pitch, one of which may be a mobile home. Entry into the residential compound element of the site is via an existing access adjacent to the stables building. A second access offers access off the highway into the paddock that occupies the northern half of the site.

Considerations

The starting point in considering the proposal is the local plan's exceptions' policy HG11 (Gypsy and Traveller Long Term Residential Sites). Significant weight should be attached to the 'need' for sites, as a result of Circular 01/06.

Where there is no available alternative gypsy and traveller site provision in an area and where there is a reasonable expectation that new sites are likely to become available a temporary permission is appropriate (para. 45, Circular 01/2006).

Policy HG11

This states that applications will be permitted in the countryside (such as this location) subject to:

1. Vehicle movements, noise, fumes or any subsidiary business activities would not normally harm residential amenities or the character of the area.
2. No serious highway problems would result
3. Reasonably well related to schools and other community facilities
4. The site includes the following facilities:
 - 4.1. A refuse collection point
 - 4.2. Access to drinking water,
 - 4.3. A satisfactory means of sewerage disposal/ management and surface water disposal,
 - 4.4. Hard standing for Living vehicles and ancillary parking spaces
 - 4.5. A defined safe play area for children.

The relevant criteria are discussed below:

1. The scale of the proposed development is not considered to introduce any significant vehicle movements and associated activities that might be considered harmful to residential amenity. Its location is set away from most residential properties the nearest found on the southern side. Its built form encourages a loose relationship in terms of the occupation of the applicant's site which is not so far from the built form of Fivehead found a short distance to the north.

In terms of visual amenity the site lies adjacent to the highway with a high hedgerow that adjoins the verge. It is considered that visibility requirements can be achieved without the loss of any part of the hedgerow. As such very little attention is drawn to the occupation of the site. Unlike at Owl Street where the engineering works required the setting back of the hedgerow that in turn caused the passers-by attention to be drawn to the residential

compound set further back into the site, the eye, at Fivehead is not drawn to the mobiles that are close to the roadside behind the hedgerow that aligns with the highway.

The view of the site at present, with the exception of the access, is, at the most, of the tops of the mobiles set behind the hedgerow. During the winter months, when the deciduous planting will inevitably help to 'reveal' the site, and its presence will become more apparent. Additional landscaping, such as the thickening of the hedgerow and in-depth planting would help to reinforce screening of the site. The occupants have erected a 2 metres high fence. This helps screen the activities within but also introduces a degree of domestication. The use of fencing such as this is, of course, found in relation to some residential curtilages in the countryside. The site's proximity and relationship to the farmhouse does not make this site stand out as it might were the site unrelated to other built form.

The type of road, which is not considered a main route with the result of lower use offers limited wider public views of the site. Passing pedestrians and cyclists will be more aware of the site. The location of the cemetery causes some concern to local respondents with visitors to the graveside aware of several structures as they enter and leave the cemetery. Perhaps the most dominant structure is the stables building that occupied the site prior to the current application being submitted. But, having considered the relevance of the cemetery the main issue remains one of footfall and must be considered in the same way as the pedestrian footfall that passes the site. It is considered that motorists will generally be much less aware of the site given the limited visual impact.

The Landscape Officer is not supportive of the location and objects to the scheme which he describes as ribbon development in contrast to the compact settlement of Fivehead whose built form is tightly clipped around its southern boundary with the proposed linear layout beyond the established settlement at variance with the locality, and thus contrary to policy ST5 para 4.

Seen in isolation the Landscape Architect's observations are absolutely right. However, the guidance contained in circular 01/2006 is of particular relevance. Paragraph 54 states that gypsy/ traveller sites may be found in rural settings where not subject to special planning constraints are acceptable in principle. Central to consideration is policy HG11. More than one or two pitches by their nature have the potential to create ribbon development. Where this type of development was repeated too often this would lead to the undermining of the recognised landscape character, although this argument is considered relatively weak given the number of sites currently required to meet the 'need' for sites identified.

Were alternative sites available or the need for sites not so great then this might not be such an obvious site and it is questionable whether criterion 1 has been complied with. However, the general lack of harm to visual amenity in the short term and the evident need for sites argues in favour of a temporary approval.

2. County Highways have not objected to the proposal on the basis of increased traffic or highway safety. Criterion 2 is considered to have been complied with.

3. Sustainable Location

The circular considers locations in or near existing settlements with access to local services, e.g. shops, doctors and schools (para. 65). Elsewhere (para. 54) it is stated that sites may be found in rural settings, where not subject to special planning constraints, are acceptable in principle. It continues: In assessing the suitability of such

sites, local authorities should be realistic about the availability, or likely availability, of alternatives to the car in accessing local services.

County Highways have raised no objection to the proposal having considered the Structure Plan's policy 36 and believes the site to be within reasonable distance of services and facilities while Planning Policy, subject to the applicant's fulfilling the criteria set out in policy HG11, considers the site acceptable given the recognised need for sites at the present time.

Fivehead is without a development area and therefore is recognised in the local plan to represent a settlement that 'in principle' is not capable of sustaining a level of services and facilities to support an expanding population. Local services and facilities are considered extremely fragile with the Post Office business currently up for sale, the community has access to a public house, community hall and there is a network of sites within the immediate area such as the primary school at Curry Mallet that together offer limited improvement with school buses taking older children to their senior schools.

The relative weakness to provide basic levels of service locally resultant in much longer journeys having to be made suggests criterion 3 is not complied with although the comments from County Highways and Planning Policy indicate that the site is acceptable and it would be unreasonable to refuse on this basis, at this point in time in the absence of suitable alternatives.

4. In terms of the particular details cited, refuse would be a kerbside collection as per other householders. A mains water pipe passes the front of the site. A tapped source is available on site. The applicant's agent proposes a sewerage treatment plant rather than the septic tank previously proposed. The details can be conditioned.

Reference was made to possible flooding of the highway south of the access to the site. The site stands above the highway. The site is designated little or no risk in terms of the potential for flooding. There has not been any reference to problems resulting from occupation of the site by the applicant so far as statutory respondents have drawn attention to the site. The hardcore surfaces are permeable in nature and conditions can be attached to the permission requesting further details that in turn can be presented to the relevant professionals to seek mitigation measures were these found necessary.

The hard-standing extends across the southern half of the site. Part of the paddock immediately to the north of the residential compound is proposed to provide a safe play area for children and is sufficiently spacious to enable a condition to require further details to secure this aspect.

The different elements to criterion 4 are considered to have been complied with, or can be achieved through the use of planning conditions.

Other Matters

County Highways require visibility splays to achieve a sight line extending over 33 metres in both directions drawn 2m back from the edge of the roadside. The submitted drawing (1:500 scale) shows that this to be achieved. The applicant's agent has reported that this aspect was considered at the outset. During the site visit the planning officer measured back 2m from the roadside and found that the visibility could be achieved. The Highways Officer has been asked to review this aspect of the site and is to go back to the site, and their findings will be reported verbally to committee.

Planning conditions seek to limit business use of the site. Conditions can be used to restrict outdoors lighting particularly to avoid glare off site. Likewise, landscaping and screening at the southern end of the site can be conditioned notwithstanding the presence of the timber fence now erected.

Housing Need

Since the Council's criteria-based approach started in the deposit draft version of the Local Plan in 1998, 10 applications have been refused (including 5 at one site at Gawbridge and the one at Owl Street) and during roughly the same period 7 have been approved.

The public consultation - 'Review of Additional Pitch Requirements for Gypsies and Travellers in the South West' (August 2007) identifies a need for 17 residential pitches and 10 transit pitches in the South Somerset District Housing Market Area. The Gypsy and Traveller policy of the Draft Regional Spatial Strategy underwent an Examination in Public (4- 7th March 2008). Publication of its findings is expected at the time of drafting this report and the Community Liaison officer will give a verbal up-date to Area Committee.

A new Gypsy and Travellers Accommodation Assessment is to be undertaken as part of the Strategic Housing Market Assessment (as required by government guidance) - although this is in its early stages.

As the allocations Development Planning Document is likely to be produced sometime after 2010, the Council must continue to deal with gypsy need on an ad-hoc basis through one-off planning applications, assisted by the Council's Community Liaison Officer. The Council has also recently undertaken some work to identify sites on County Council owned land that may have the potential to provide sites for gypsies or travellers in the future.

The situation as of May 2008 in South Somerset was that there are two public residential sites. Tintinhull is fully occupied with 8 plots. Ilton is currently with 5 families on licence and two families who are not with a total of 6 plots. Ilton is awaiting the start of refurbishment and the creation of 4 new plots that will bring the total to 10 although the start date is as yet unknown. 7 families are on the waiting list for either of the two Council operated sites at Ilton and Tintinhull.

In terms of other sites these were 3 unauthorised sites holding 9 caravans at the beginning of May 2008.

Personal Circumstances

The proposal seeks a permanent site for gypsies and travellers. An application need not be submitted by a gypsy/traveller but there would be a planning condition attached to any permission to prevent any other type of occupant. As such the personal circumstances of the applicant are not of particular relevance to consideration of the application before us with the proposal considered in terms of the land-use and the relevant exceptions policy.

Legal Issues

The Application

When deciding this application, the Committee has to have regard to relevant material planning considerations and these considerations will include (but not necessarily be

limited to) the development plan policies referred to elsewhere in this report and policy guidance from central government, notably (but not exclusively) Circular 1/2006 (Planning for Gypsy and Traveller Sites). The human rights of both the applicant(s), other occupiers of the site and third parties who may be affected by the Council's decision on this application also need to be considered.

This application is for the provision of a private site for use by gypsies / travellers. Subject to the proposed development meeting the criteria of SSDC Local Plan Policy HG11 there is a legal presumption in favour of the decision on the application being made in the applicant's favour if it accords with the latter planning policy, unless other identified material planning considerations say to the contrary.

As the Solicitor to the Council understands it, the planning officer does not think that the application meets all the criteria specified in Policy HG11 but, having regard to the current shortage in site provision and the need to see if additional site provision can be met within a 5 year period (along with the need to monitor the suggested occupancy condition (see below)), he considers that these latter material considerations 'tip the scales' in favour of granting a temporary permission.

However, that is not the end of the story, because Policy HG11 only applies to sites for 'gypsies and travellers' as defined by Circular 1/2006 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 dependants educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling show people or circus people travelling together as such'.

Thus the status of the occupiers of the site is a condition precedent for use of the site pursuant to a grant of permission under Policy HG11. This means that if this application is granted, SSDC will need to ensure that the occupation of the site is only by gypsies / travellers as defined, and no other persons. The Committee is advised that the way to do this is by a robust occupancy condition as set out in the suggested list of conditions within this report. Because the effectiveness of this condition and compliance with it needs to be monitored, this is another reason for only initially granting a temporary permission. A temporary permission will also enable the planners to monitor the development in the light of the criteria in Policy HG11 (already identified by the planning officer in this report). At the end of the life of the temporary permission, a further application for permission will need to be made and approved, or the site cleared.

In many gypsy application cases, the personal circumstances of the applicant and occupiers of the site are a material consideration, both in terms of the planning application and for human rights assessment purposes. This is primarily of relevance where the development is considered to be contrary to the development plan and the application is recommended for refusal and/or the personal circumstances of the applicant/occupiers are being argued as a reason for granting permission, or where a personal permission is being sought. In such a case, personal circumstances may be a material consideration in favour of granting a permission that would otherwise be refused. However, in this case the applicant's agent has declined to put forward personal circumstances to justify this application, or allow SSDC to seek them from the applicant, maintaining that anyone can apply to develop a private gypsy site, which is technically correct. This is the applicant's choice. Clearly the Committee cannot factor into the decision-making process information that it has not got, despite it being asked for from the applicant.

It is understood that the applicant claims gypsy status, but that is not something with which the Committee need to be concerned for the purposes of this application because the advised occupancy condition will limit the site to occupation by gypsies / travellers. Evidence of the names of occupiers and their gypsy / traveller status will need to be provided to SSDC. Status will be 'tested' then. If the condition is breached, then planning enforcement action can be taken in the normal way, subject to legal and policy guidance and evidence of breach.

Human Rights

In deciding this application, the Committee must also consider whether any planning harm caused by the development in question is outweighed by the damage and interference with the applicant(s) human rights and the human rights of other occupiers of the site. Additionally, the Committee must consider the human rights of others (such as local residents) who may be affected by the development and any grant of planning permission.

The Committee's assessment of the human rights issues will need to be based on this legal advice and the evidence presented to the Council in connection with the planning application.

As the Committee will be aware, the Human Rights Act 1998 (HRA) enacted the European Convention on Human Rights into UK domestic law. The Convention imposes duties on public authorities, including local planning authorities, and Section 6 (1) HRA makes it unlawful for such an authority to act in a way incompatible with Convention rights, unless specifically mandated to do so by legislation that does not allow the authority to act differently. The most relevant Convention rights with this type of application are Articles 8 and 14, namely, (Article 8) the right to respect for private and family life, home and correspondence and (Article 14) the right to freedom from discrimination on the grounds of sex, race, colour, language, religion, political or other opinion, national or social origin, association with national minority, property, birth or other status. Article 1 of Protocol 1 to the Convention (protection of property) is also relevant, as is Article 2 of Protocol 1 (the right to education). Both Article 8 and Article 1 of Protocol 1 allow proportional interference by the State with the rights expressed for purposes of environmental protection (which includes planning controls) or the control of property in the general interest.

For the purpose of considering Article 8 rights, any decision-maker (such as the Committee) has a duty to carry out an overt and structured assessment of the proportionality of the interference with human rights resulting from the action it proposes by asking itself a series of connected but discrete questions. To this end, the Committee must identify the (perhaps competing) interests that will be interfered with, carry out a balancing exercise of such interests to ensure the proportionality of the interference, decide the matter before it in the light of that balancing exercise and give reasons for its decision, with those reasons being minuted.

In deciding this application, and for the purposes of the required human rights assessment, the Committee should have regard to the following (particularly if minded to go against the officer's recommendation and refuse permission):

- (a) Does the proposed measure constituting the interference with human rights (a decision to refuse planning permission, contrary to officer advice) serve a legitimate aim of upholding planning policy; that is, is the objective sufficiently important to justify limiting a fundamental right under human rights legislation?

- (b) Is the measure proposed (a refusal of permission) rationally connected to that aim of upholding planning policy; that is, can it in fact serve to further that aim?
- (c) Is it the least restrictive way of achieving the aim; that is, are the means used (a refusal of permission) no more than its necessary to accomplish the objective?
- (d) Is it proportionate in the longstop sense that, viewed overall, the measure does not place too great a burden on the individual for the good of the community?

Some important factual matters that are relevant to the Committee's consideration of the human rights issues pertaining to this application include:

1. The seriousness of the impact of the Committee's decision on the applicant(s) and other occupiers basic rights including their security of accommodation, family life, health, children's education and ability to maintain their traditional travelling way of life;
2. The availability of an alternative site, including its suitability for the individuals particular needs, the financial circumstances of those affected, and the efforts made to find an alternative site;
3. Whether there has been a full and fair opportunity for the applicant(s) and other occupiers of the site to make their case for respecting their Article 8(1) rights, including those arising from their gypsy status, before the relevant administrative authorities, including a planning inspector;
4. The strength of reasons justifying an interference with human rights;
5. The views and rights of others such as third party objectors and any other persons who may be affected by the development.
6. Why the applicant(s) / occupiers came to the site and whether they left a lawful pitch and why?
7. What planning conditions can be imposed?
8. What provision for housing homeless persons can be made if this application is refused?
9. Whether a decision to grant permission could arguably amount to a precedent for the district and whether it is desirable or undesirable in planning terms.

The above does not purport to be an exhaustive list. It will also be relevant to some of the material planning considerations to be considered in connection with this application, such as the availability of alternative sites.

Race Relations Act 1976 ('RRA')

Members need to have regard to the legal obligation imposed on SSDC under the RRA when exercising its planning functions.

The RRA provides so far as material:

"71(1) Every body or other person specified in Schedule 1A or of a description falling within that Schedule shall, in carrying out its functions, have due regard to the need-

- (a) to eliminate unlawful racial discrimination; and
- (b) to promote equality of opportunity and good race relations between persons of different racial groups."

Circular 1/2006 also touches on this issue in the following paragraphs:

"71. Section 19A of the Race Relations Act 1976 (RRA 1976) prohibits racial discrimination by planning authorities in carrying out their planning functions. In addition, the majority of public authorities, including local authorities, have a general duty under the RRA 1976 as amended by the Race Relations (Amendment) Act 2000 to actively seek to eliminate unlawful discrimination and to promote equality of opportunity and good

race relations in all they do. The duty on local authorities to actively seek to eliminate unlawful discrimination, and promote good race relations does not give gypsies and travellers a right to establish sites in contravention of planning control. In line with their race equality scheme (legally required under the RRA 1976 (Statutory Duties) Order 2001) local authorities should assess which of their functions are relevant to race equality and monitor these functions and policies to see how they impact on different racial groups. The SCI [Statement of Community Involvement] is particularly important in this regard.

72. When policies are changed or new ones introduced, authorities should assess and consult on their likely impact, and where an adverse impact is identified which cannot be justified, changes should be made. It is particularly important that authorities consider all the racial groups served by the authority in order to assess the impact of their policies on those groups. Romany Gypsies and Irish Travellers have been recognised by the courts as being distinct ethnic groups covered by the RRA 1976. Under the general duty mentioned above, there is a requirement that local authorities seek to promote good race relations between Gypsies and Travellers and the settled community. This is important in the context of gypsy and traveller site planning."

Conclusion

For the reasons given above it is considered that there is a justification for the Local Planning Authority to grant a temporary planning permission. A permanent planning permission would accept the site for use by any gypsy/ traveller as defined in the circular. A refusal would highlight the site's total unacceptability in terms of local plan policy. A refusal is considered particularly difficult to argue when significant weight must be given to the recognised need for sites.

Circular 01/2006 allows for temporary permissions for sites that would not normally be appropriate places for a permanent planning permission, bearing in mind the lack of identified sites. The information that is available to us suggests that the requirements to identify suitable locations and address the current need is still several years away. Temporary permission is offered by the circular guidance as a vehicle to overcome short-term difficulties where need is great and permits reconsideration of any future application.

The location of the site, in terms of sustainability is not ideal given that Fivehead does not benefit from all of the facilities necessary to make it a sustainable settlement. It must however be noted that the County Highway Authority and Planning Policy Manager consider the site to be just about acceptable in terms of its proximity to other settlements.

It is acknowledged that the gypsy site has an impact on the rural character of the area, however the direct visual impact from the public highway is limited and is not considered to be so harmful as to justify a refusal. All other criteria within policy HG11 are considered to have been complied with or could be addressed through condition.

It is important for members to bear in mind that there is a clear requirement for Councils to provide gypsy and traveller sites and that in the absence of adequate provision certain sites may be appropriate for temporary approval to provide time in which to identify location policy that addresses the recognised need for sites.

A temporary approval would permit reconsideration of a future planning application at which time the Council will have had time to have addressed the guidance to identify sites, as set out in circular 01/2006.

Recommendation

TEMPORARY APPROVAL

JUSTIFICATION

It is considered that the deficiencies of this proposal in terms of policy HG11 are not sufficiently harmful to warrant a refusal whilst the Council is undergoing a search for suitable gypsy and traveller sites. As such a temporary permission for a period of 5 years conforms with advice given in Circular 01/06 in that the site may not be acceptable for a permanent consent however there is a demonstrable shortage of suitable sites within the area.

Application Permitted with Conditions

01. The permission shall be temporary for a period not greater than 5 years from the date of the decision notice at which time occupation of the site shall cease and all materials associated with the occupation of the site removed from the site.

Reason: This condition accords with the advice issued in circular 01/2006 and relates to anticipated changes and permits further consideration of issues arising at the time the temporary planning permission expires.

02. For the duration of this permission the site hereby permitted shall only be occupied by 'gypsy and travellers' within the meaning of paragraph 15 of Circular 01/2006 (Planning for Gypsy and Traveller Caravan Sites) whose names shall be provided to the Local Planning Authority in writing within 21 days of the date of this planning permission, together with evidence of their gypsy/traveller status. Any change in name of such occupier is to be similarly notified to the Local Planning Authority (together with evidence of gypsy/traveller status) within 14 days of such change occurring.

Reason: In furtherance of the aims of circular 01/2006 and policy HG11 of the South Somerset Local Plan 2006, to ensure occupiers are 'gypsy and travellers' within the meaning of the said circular 01/2006 and to ensure enforceability and monitoring of this condition throughout the duration of this permission.

03. Pursuant to condition 1 above at the time the land ceases to be occupied all mobile homes; caravans, structures, materials and equipment brought on to the land in connection with the use shall be removed (other than the existing stables building). Details of the area of hardcore surface to be removed, as a part of this condition shall be submitted to and agreed in writing by the Local Planning Authority within 3 months of the date of the decision notice.

Reason: In the interests of visual amenity in accordance with policies ST5, ST6 and EC3 of the South Somerset Local Plan 2006.

04. There shall be no more than 8 caravans covering four pitches with a limit of two caravans per pitch, one of which shall be a mobile home, the other a touring caravan, as defined in the Caravan Sites Act 1968 stationed on the site at any time.

Reason: To avoid any ambiguity as to what is approved and to avoid any detrimental harm arising to visual amenity and character of the locality in

accordance with policies ST5, ST6 and EC3 of the South Somerset Local Plan 2006.

05. No caravan shall be stationed on the site other than within the area shown on the approved drawing (block plan BIR1) dated stamped 29th October 2007.

Reason: To avoid any ambiguity as to what is approved and to avoid any detriment to visual amenity and character in accordance with policies St5, ST6 and EC3 of the South Somerset Local Plan 2006.

06. No commercial activities shall take place on the land unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of visual and neighbour amenity and intensification in the use of the site in accordance with policies ST5 and ST6 of the South Somerset Local Plan 2006.

07. The gradient of the proposed access shall not be steeper than 1 in 10.

Reason: In the interests of highway safety in accordance with policy 49 of the Somerset and Exmoor National Park Joint Structure Plan 2000.

08. The proposed access over the first 4.5metres of its length, as measured from the edge of the adjoining carriageway, shall be properly consolidated and surfaced (not loose stone or gravel) in accordance with details, which shall have been submitted to and agreed in writing by the Local Planning Authority.

Reason: In the interests of highway safety in accordance with policy 49 of the Somerset and Exmoor National Park Joint Structure Plan 2000.

09. There shall be no obstruction to visibility greater than 900mm above the adjoining road level forward of a line drawn 2.0metres back and parallel to the nearside carriageway edge and extending a distance of 33 metres either side of the access. Such visibility splays shall be fully provided within 3 months of the date of the decision and shall thereafter be maintained at all times.

Reason: In the interests of highway safety in accordance with policy 49 of the Somerset and Exmoor National Park Joint Structure Plan 2000.

10. Any entrance gates erected shall be hung to open inwards and shall be set back a minimum distance of 4.5 metres from the carriageway edge.

Reason: In the interests of highway safety in accordance with policy 49 of the Somerset and Exmoor National Park Joint Structure Plan 2000.

11. A scheme of planting shall be submitted to and agreed in writing by the Local Planning Authority. The scheme shall be submitted within 3 months of the date of the decision. The scheme shall be implemented in its entirety during the first season (October to March inclusive) following the decision. Full particulars shall show a buffer zone at the southern end of the site and shall involve the thickening of the hedgerow (double hedgerow) along the entire road frontage related to the presence of the residential pitches, and tree planting as appropriate. Any tree, shrub or hedge plant (including replacement plants) removed, uprooted, destroyed, or be caused to die, or become seriously damaged or defective, within 5 years of planting, shall be replaced by the occupants with species of the same

type, size and in the same location as those removed, in the first available planting season following removal.

Reason: In the interests of visual amenity in accordance with policy ST5 and ST6 of the South Somerset Local Plan 2006

12. The turning space shown on the submitted plan shall be properly consolidated and surfaced to the satisfaction of the Local Planning Authority within one month of the date of the decision. Such turning space shall be kept clear of obstructions at all time.

Reason: In the interests of highway safety in accordance with policy 49 of the Somerset and Exmoor National Park Joint Structure Plan 2000.

13. Within three months of the date of the decision provision shall be made within the site for the disposal of surface water so as to prevent its discharge onto the highway details of which shall have been submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of highway safety in accordance with policy 49 of the Somerset and Exmoor National Park Joint Structure Plan 2000.

14. Pursuant to condition 13 above within three months of the decision details of the foul and surface water drainage to serve the development, shall be submitted to and approved in writing by the Local Planning Authority. Such approved drainage details shall be have been completed and become fully operational within six months of the date of this decision. The scheme shall be permanently retained and maintained thereafter.

Reason: To ensure that the site is adequately served and disposes of water without interference or contamination of the surrounding area, further to policies ST5 and ST6 and HG11 of the South Somerset Local Plan 2006.

15. No floodlighting shall at any time be installed and/or operated on any part of the site, except as in accordance with details showing the shielding and orientation of any light source away from neighbouring property, which shall have been submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of neighbour amenity and the openness of the countryside in accordance with policies ST5, ST6 and EC3 of the South Somerset Local Plan 2006.

Appendix A

Minute of discussion at Area North Committee on 23rd April 2008

178. Planning Applications (agenda item 13)

07/05377/COU – Change of use of land from paddock to gypsy site for 4 no. pitches on Land O/S 2847 part, Isle Abbotts Road, Fivehead, Taunton, Somerset TA3 6QH.

The Planning Officer drew Members attention to the briefing note he had issued prior to the meeting regarding the amendment and deletion of several conditions in his agenda report. He said that although permanent permission had been applied for, he was recommending temporary approval to allow time for more suitable sites to be identified within the district.

The Senior Legal Executive reminded the Committee that Planning Circular 01/06 indicated that there was an obligation on Local Authorities to provide gypsy and traveller sites and where there was an unmet need for sites then substantial consideration should be given to rural settings and whether a temporary planning permission was justified.

In response to questions from Members, the Planning Team Leader, Development Control clarified that:-

- Paragraph 45 of Planning Circular 01/06 accommodated temporary sites where Local Authorities had not yet made adequate provision of sites in their area as identified in their Gypsy & Traveller Accommodation Assessment.
- Although the application was for permanent permission, the planning officer was recommending temporary permission to allow the Council time to identify sufficient authorised sites in the district.
- The applicant's Agent had indicated that temporary permission was acceptable.

Mr M Cavill, Chairman of Fivehead Parish Council spoke of the strong local opposition to occupation of the site. He said the site had been deemed unsuitable for development in the Local Plan and the occupants had shown a blatant disregard for the planning process by occupying the site prior to obtaining planning permission. He referred to the many other gypsy and traveller sites in the local area and asked that substantial screening be carried out if permission were granted.

The Ward Member, Councillor Sue Steele, said the site was very narrow and very close to Stillbrook Farm to the south. She expressed concern at the number of vehicles to be accommodated on the site, the consequent increase in traffic on the narrow access road, the disposal of surface water, toilet facilities, and night time illumination of the site and the number of other gypsy and traveller sites in the local area.

During discussion Members expressed concern that the officers report did not accurately reflect the applicants original request for permanent permission. They also expressed deep concern that the Highway Authorities recommendation of a 33 metre visibility splay at the entrance to the site, potentially involved the removal of a large section of hedging which currently screened the site. Other points made were:-

- Intensive occupation of a narrow site
- Concern at commercial operations taking place at the site
- Inappropriate and unsustainable site

- Adverse effect on indigenous population
- The applicants must justify the need of this particular site

In conclusion, Members felt that there was inadequate information before them to make an informed decision and it was proposed to defer the application. The Senior Legal Executive concurred that the changes to the conditions and the points raised regarding the visibility splay and treatment of sewage and floodwater from the site were reasonable grounds to defer the application for further clarification.

A second proposal to refuse the application was made however this was not seconded and the Councillor withdrew his proposal.

It was then proposed to defer the application for further clarification on the altered conditions, the amount of hedge to be removed to create the necessary visibility splay and the treatment of sewage and floodwater from the site. The proposal to defer was seconded and on being put to the vote was carried.

RESOLVED: That planning permission be **DEFERRED** for further clarification on:-

- the altered conditions
- the amount of hedge (if any) to be removed to create the necessary visibility splay
- the treatment of sewage and surface water from the site

(Voting: 8 in favour, 2 against, 0 abstentions)