

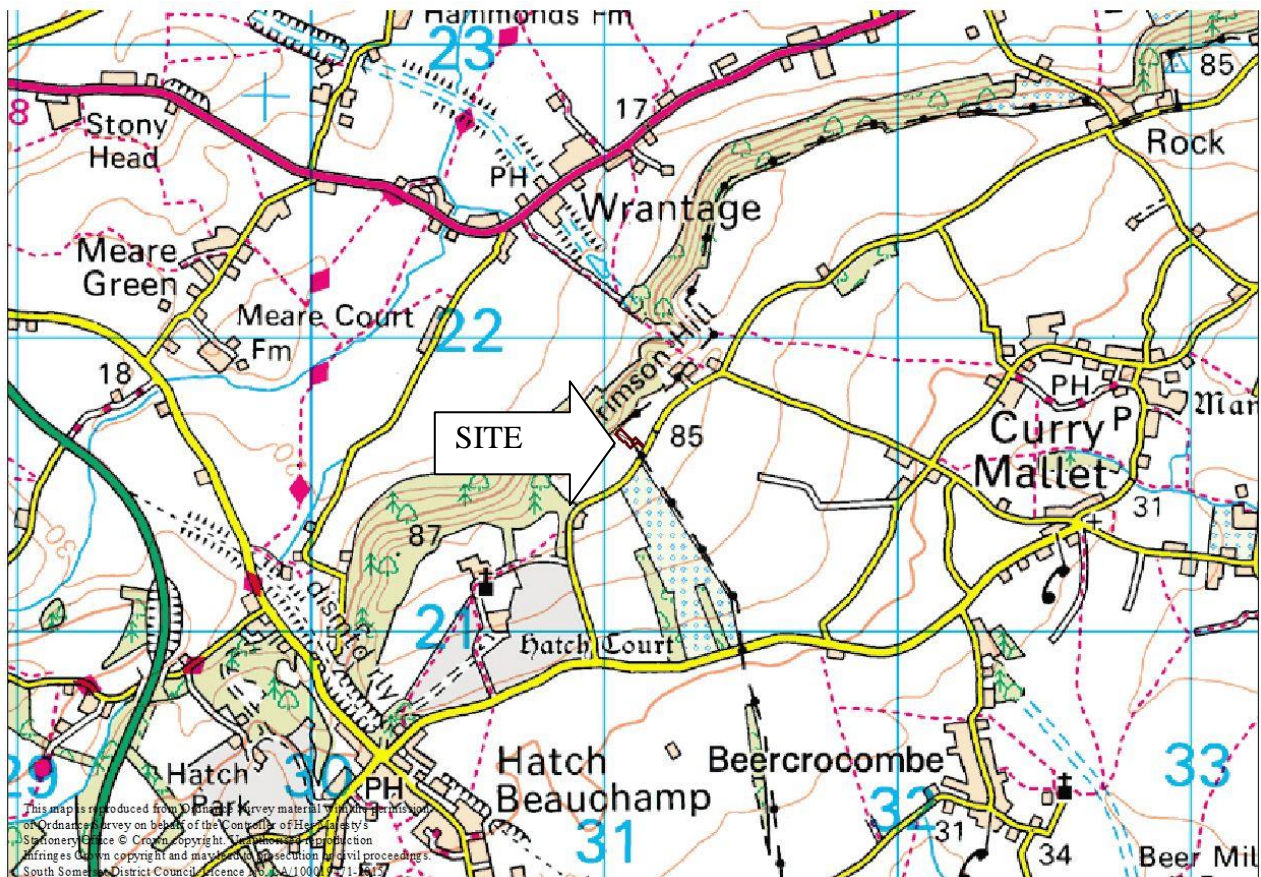
Officer Report On Planning Application: 15/02218/FUL

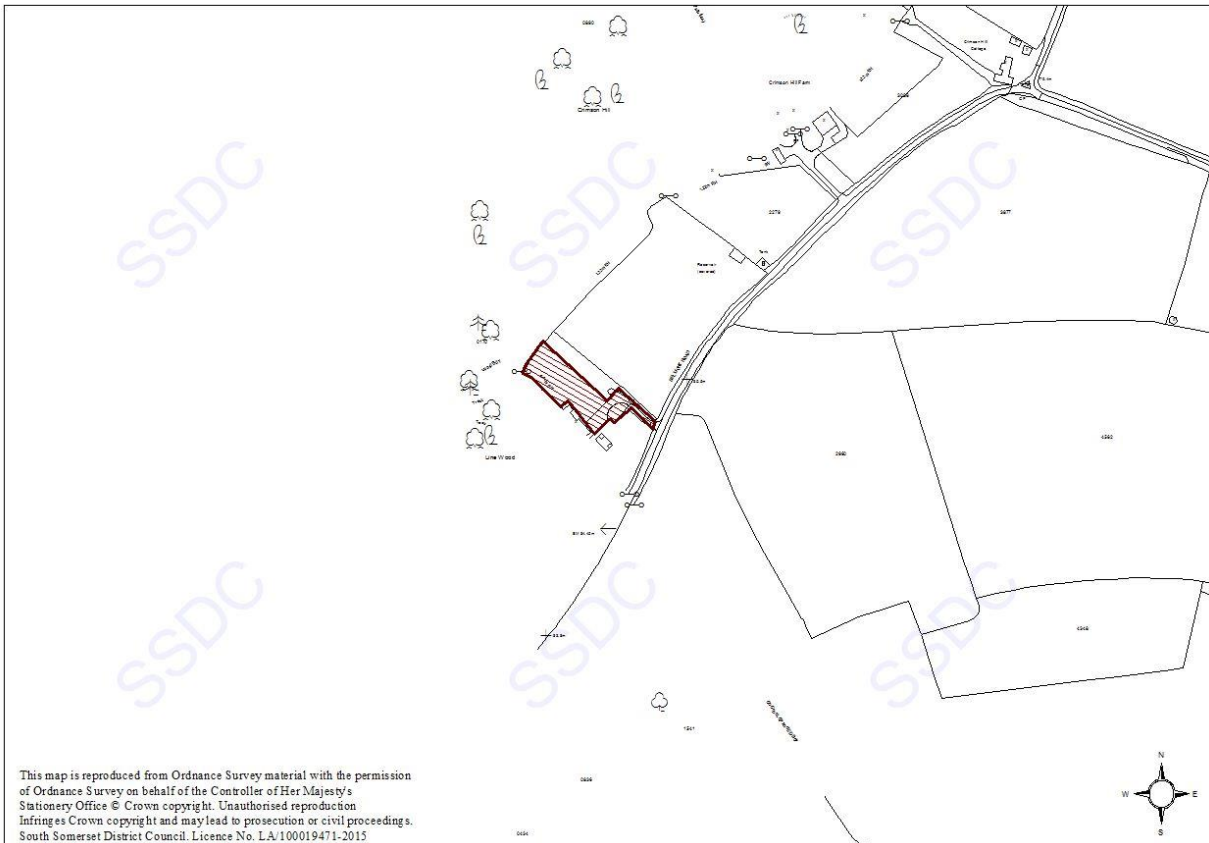
Proposal :	Application for Change of use of land to provide 2 additional Traveller pitches comprising 2 No mobile homes; 2 No Touring Caravans and associated hardstanding. (GR 331100/121615)
Site Address:	Crimson Orchard, Top Road, Curry Mallet.
Parish:	Curry Mallet
ISLEMOOR Ward (SSDC Member)	Cllr Sue Steele
Recommending Case Officer:	John Millar Tel: (01935) 462465 Email: john.millar@southsomerset.gov.uk
Target date :	13th July 2015
Applicant :	Mr J Carson
Agent: (no agent if blank)	Dr Simon Ruston Ruston Planning, The Picton Street Centre, 10-12 Picton Street, Montpelier, Bristol, BS6 5QA
Application Type :	Minor Dwellings 1-9 site less than 1ha

REASON) FOR REFERRAL TO COMMITTEE

This application has been referred to committee at the request of the Ward Member and with the agreement of the Area Chairman, in order for full consideration of the planning issues.

SITE DESCRIPTION AND PROPOSAL





The location is part of the wider countryside setting beyond any development area. The nearest settlement is Hatch Beauchamp about 1.6kms away. Access to the A358 (Taunton to Ilminster road) and the A372 (Wrantage to Curry Rivel road) offers access to centres with enhanced services and facilities.

The site is on the north west side of the Belmont Road, a quiet narrow rural lane with hedgerows to either side. Planning permission was granted for use of part of the site as a single pitch traveller site in 2007 (07/01853/FUL). A further two pitches have been occupied on site since 2011, without the benefit of planning permission. The nearest neighbouring residential dwelling is a little over 200m to the north east of the site, although their land holding abuts the application site to the north west. The application site is adjacent to the District boundary with Taunton Deane Borough Council. The site also adjoins Line Wood, a County Wildlife Site, and is a little less than 1km from Hatch Court, a grade I listed property to the south west, both of which are within Taunton Deane area.

The proposal is a retrospective application seeking the provision of two additional traveller pitches comprising two mobile homes, two touring caravans and associated hardstanding. The pitches are proposed to accommodate family and close friends, all of whom are said to fulfil the statutory definition of a Traveller.

HISTORY

11/00690/FUL: A replacement agricultural building - Permitted with conditions 27/04/2011. (NOTE: This application originally sought an additional two traveller/gypsy pitches and compost toilet. Such details were withdrawn from the proposal, leaving agricultural barn to be considered only).

- 07/01853/FUL: The use of land as a site for a mobile home to accommodate travelling family and the erection of two timber buildings to provide bedroom and composting toilet - Permitted with conditions (Committee Decision) 15/02/2008.
- 06/00275/FUL: Application to change existing access - Permitted with conditions 29/03/2006.
- 05/00318/FUL: Construction of new access - Application withdrawn.

POLICY

The South Somerset Local Plan (2006 - 2028) was adopted on the 5th March 2015. In accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended) and Section 70(2) of the Town and Country Planning Act 1990 (as amended), the adopted local plan now forms part of the development plan. As such, decisions on the award of planning permission should be made in accordance with this development plan, unless material considerations indicate otherwise. Legislation and national policy are clear that the starting point for decision-making is the development plan, where development that accords with an up-to-date local plan should be approved, and proposed development that conflicts should be refused, unless other material considerations indicate otherwise.

Policies of the South Somerset Local Plan (2006-2028)

SD1 - Sustainable Development
SS1 - Settlement Strategy
SS2 - Development in Rural Settlements
TA5 - Transport Impact of New Development
TA6 - Parking Standards
HG7 - Gypsies, Travellers and Travelling Showpeople
EQ2 - General Development
EQ7 - Pollution Control

National Planning Policy Framework

Core Planning Principles - Paragraph 17
Chapter 4 - Promoting Sustainable Transport
Chapter 6 - Delivering a Wide Choice of High Quality Homes
Chapter 7 - Requiring Good Design
Chapter 11 - Conserving and Enhancing the Natural Environment
Chapter 12 - Conserving and Enhancing the Historic Environment

National Planning Practice Guidance

Conserving and Enhancing the Historic Environment
Design
Natural Environment

Policy-related Material Considerations

Planning Policy for Traveller Sites - August 2015
Policy H - Determining planning applications for traveller sites

Human Rights Act 1998, particularly 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.'

Equality Act 2010

Requires the District Council to actively seek to eliminate unlawful discrimination, advance equality of opportunity and promote good race relations.

Somerset County Council Parking Strategy (September 2015)

Somerset County Council Highways Development Control - Standing Advice (June 2015)

CONSULTATIONS

Curry Mallet Parish Council: Curry Mallet Parish Council, at its meeting held on Monday June 22nd 2015, was minded to object most strongly to the application as submitted: This objection also reflected the views of the 24 members of the public (from Curry Mallet, Hatch Beauchamp, North Curry, Fivehead & Beercombe parishes) who attended the meeting and expressed, with reasons, their concerns. Neither the applicants nor their agent were present at the meeting to hear these concerns. Rationale for the parish council's objection was that

1. The National Planning Policy Framework, 2012 (NPPF) paragraph 11 requires that planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The relevant local plan policies are HG7 Gypsies, travellers and Show People, EQ2 General Development, EQ7 Pollution Control and SS2 Development in Rural Areas. The Parish Council felt that the above application was contrary to the named policies for the following reasons:

- The addition of a further two mobile homes and touring caravan pitches would be over development of the site and have a detrimental impact on the visual amenity.
- It was noted from the meeting that the compost toilet approved by the previous application was not working correctly and that raw sewage was leaking onto adjoin properties. The addition of a further two composting toilets could further exacerbate the problem.
- South Somerset District Council has already exceeded its quota for Gypsy and Travellers sites.

2. The applicants had failed to demonstrate any grounds whereby Condition 2 of the original grant of planning approval (S Gale letter dated 15. 02. 08.) should be rescinded such as to allow expansion of dwellings on the site to be increased from that stipulated viz

"Permission is personal to the applicants Rebeka Davies and James Carson and to their dependents and to no other persons."

Imposition of Condition 2 had been sought by this parish council at its meeting held on 30. 7. 07. to reflect the concerns of local residents regarding any future expansion of the site for additional dwellings; point 2(b) of the Council's Observations dated 07. 8. 07., refers. At that July 30th parish council meeting, the applicants had accepted the inclusion of this condition. (Min. 361.1(g)) refers.

3. This application appears to be retrospective to ground works having been undertaken during the month of May 2011, merely a short time after the applicants had withdrawn from their February 2011 application (11/00690/FUL) their request for two traveller pitches; J Carson e:mail dated 24. 3. 11. to Lee Walton of SSDC Planning refers. In its original form, before the March 24th deletion, the February 2011 application had sought permission for two additional traveller pitches "to accommodate family and/or close

friends who fulfil the statutory definition of a traveller."

This wording almost exactly replicates that used for the present 2015 application.

SCC Highway Authority: The Highway Authority initially objected on the basis of insufficient information in relation to providing satisfactory access to the site, in terms of width of access and provision of visibility splays. The following comments were made: *"The application would bring minimal traffic impact to the local highway network. The application provides minimal information on the site layout and proposals but it appears that the site proposes to use the existing access to 'Crimson Orchard'.*

Visibility from the site onto the Belmont Road can be inhibited by vegetation. Vegetation will need to be cut back (specifically to the right of the site access) and maintained to ensure visibility onto the adjoining highway. Good visibility splays are possible as long as vegetation is cutback and managed.

The site access itself would also need to be enlarged and improved. Due to the increased traffic to and from the site, the first 5.0 m should be surfaced or consolidated. It should also be 5.0 m wide for 6.0 m back from the edge of highway to allow vehicles to pull off the highway and pass any exiting the site.

Any proposed gates at the site access should be set back 5.0m from the edge of the highway and hung to swing inwards.

Facilities, access and parking provision for the application is already provided on site and is deemed appropriate.

Until further information is provided to demonstrate suitable access proposals for the site, and demonstrating suitable visibility splays are achieved, this application should be sent for refusal."

Further amended plans have been received providing the increased width access required. The Highway Authority have also confirmed that the provision of the visibility splays originally required by the original consent for an amended access at this site (06/00275/FUL) and for the 2007 consent for the provision of a traveller pitch (07/001853/FUL) are appropriate. The previously conditioned visibility splays comprised splays of 60m in each direction, set back 2m from the carriageway edge. Additional plans have been also been submitted showing the necessary realignment and maintenance of roadside vegetation necessary to provide the visibility splays. As a result of these amendments, the Highway Authority raise no objections to the scheme.

SSDC Highway Consultant: Consider sustainability issues (transport). Development unlikely to lead to significant impact on the approach roads. Suggest plan is submitted showing the extent of available visibility splays at the access from 2.4m back commensurate with traffic speeds, along with proper surfacing (not loose stone or gravel) of access, surface water drainage measures, etc. Ensure on-site parking provision seeks to accord with SPS standards.

Wessex Water: The proposal is some distance from public water and sewerage services. The applicant has proposed sewage disposal via composting toilets which will require the approval of your Authority and Building Regulations.

There are no existing connections to the public water supply system and it is assumed that existing arrangements are served by a private water supply.

Taunton Deane Borough Council: No comments received.

SSDC Planning Policy: The South Somerset Local Plan (2006 - 2028) was adopted on the 5th March 2015. In accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended) and Section 70(2) of the Town and Country Planning Act 1990 (as amended), the adopted local plan now forms part of the development plan. As such, decisions on the award of planning permission should be made in accordance with this development plan, unless material considerations indicate otherwise. Planning Policy for Traveller Sites, CLG, March 2012 (PPTS) is an important material consideration: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6078/2113371.pdf. The definition of gypsies and travellers can be found in Annex 1 of PPTS and you should satisfy yourself that the proposed occupants of the additional pitches fall within that definition.

The seven site location criteria also set out in Policy HG7 should be used to assess this proposal. As such development should: avoid significantly contaminated land; not result in adverse impact on internationally and nationally recognised designations; not have any significant adverse impact on the landscape character and visual amenity of the area; be reasonably well related to schools and other community facilities; have safe access and occupants should not be at risk from noise pollution or flooding; have adequate space for on-site parking, servicing and turning of vehicles; and where appropriate the option for mixed residential and business use should be considered. The number of pitches provided on a site should be appropriate to the size of the site and the availability of infrastructure, services and facilities.

In addition to the existing pitch the proposal seeks planning permission for an additional two traveller pitches, each accommodating a mobile home and a touring caravan. The application site is located approximately 1.4 km from Curry Mallet where I believe there is a primary school, shop/post office, pub and church. Doctor's surgeries are located at North Curry (Taunton Deane District) approximately 5 km away, Ilminster approximately 12 km away and Broadway approximately 10 km away. Taunton is approximately 15 km away; on this basis it is considered that the site is reasonably well located to schools and other community facilities.

To conclude, in conjunction with the responses from other consultees on matters such as landscape and highways you will need to satisfy yourself that the proposal is in accordance with the remaining criteria set out in Local Plan Policy HG7; if this is the case there will be no conflict with the development plan.

SSDC Equalities Officer: According to Planning Policy for Traveller Sites, CLG, March 2012 (PPTS), Appendix 1,

'For the purposes of this planning policy "Gypsies and Travellers" means: '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 showpeople or circus people travelling together as such.'

Having reviewed relevant case law, it would appear that the applicants fall within this definition.

The definition is based on cases such as Mills v Cooper (1967), which identified that Gypsy status was a "material consideration" in planning cases. Circular 1/94 also used this definition, which was seen as a way of defining Gypsies without reference to their ethnicity,

but focussing on their way of life.

In *Greenwich LBC v Powell*, 1989 Lord Bridge of Harwich stated that a person could be a statutory Gypsy if he led a nomadic way of life only seasonally.

R v South Hams District Council, ex parte Gibbs at the Court of Appeal in May 1994, Lord Justice Neil found the 1968 Act redefined Gypsies as; "*Persons who wander or travel for the purpose of making or seeking their livelihood (not persons who move from place to place without any connection between their movements and their means of livelihood)*". It is this definition which is currently used by Government. It focuses on habitual lifestyle rather than ethnicity and includes both "born" Gypsies and Travellers and "elective" Travellers such as New (Age) Travellers. Lord Neil's judgement is that nomadism within the Gypsy and Traveller community had an economic purpose.

In *Maidstone BC v Secretary of State for the Environment and Dunn*, 1996, it was held that a Romani Gypsy who bred horses and travelled to horse fairs at Appleby, Stow-in-the-Wold and the New Forest, where he bought and sold horses, remaining away from his permanent site for up to two months of the year, was entitled to be accorded Gypsy status.

The Court of Appeal, in *Basildon DC v First Secretary of State and Rachel Cooper*, 2004, accepted Gypsy status for a Romani Gypsy woman who travelled to fairs during the summer months and sold craft items at those events.

SSDC Environmental Protection Officer: The Council's Environmental Protection Officer has been involved in relation to objections received in regard to the appropriateness of the existing drainage arrangements for the originally approved pitch. Investigations took place to ascertain whether the system caused local pollution problems. Following investigation of the existing arrangements, no evidence has been found to suggest that the on-site septic tank is causing pollution problems, although this could be as a result of the tank recently being emptied. It is confirmed that the existing drainage arrangements are acceptable for the existing approved use of the site, however proper management is essential. It is suggested that a drainage condition is imposed to ascertain whether the existing drainage is capable of meeting the needs of all development on site or whether additional drainage arrangements are required.

SSDC Ecologist: I've considered this application and I don't have any comments nor recommendations to make.

SSDC Landscape Architect: As the site is already characterised by built form, and this proposal places the proposed new pitches in a field corner to the north of the current development footprint, I consider landscape impact to be minimal.

(In respect to the widened access) not ideal, but providing the hedge is transplanted to the new location to maintain enclosure of the access then the impact is minor only.

REPRESENTATIONS

40 letters of objection have been received from 29 contributors, comprising local residents from several of the surrounding villages, including Curry Mallet and Hatch Beauchamp. A summary of the comments is given below:

Gypsy/Traveller Policy

- SSDC has already exceeded its provision for Traveller and Gypsy pitches.

- There are a disproportional amount of traveller sites in the area. It would appear that SSDC and TDBC are using the area to house travellers with total disregard to the local residents and amenities
- Other sites outside of SSDC should be considered, as other authorities have not met their targets.
- It is not felt that the occupiers of the approved pitches or the proposed pitches meet the established definition of a traveller.
- In gaining the original consent, it is alleged that the applicant's made false assertions which resulted in the permission being granted wrongfully.
- A lack of information has been submitted with the applicant to demonstrate the applicant's case.
- Granting retrospective permission to those who have flagrantly fluted existing planning conditions would reward and encourage future unauthorised development, increasing tension between the settled and traveller communities, contrary to Planning Policy for Traveller Sites.
- The number of pitches would be inappropriate to the size of the site and available infrastructure.
- The site would dominate the local settled community.

Sustainability

- The site is well outside of the settlement limits of Curry Mallet and Hatch Beauchamp. As such any expansion of this site would not be granted if submitted by a group of people other than a gypsy or traveller.
- Residential applications have been refused due to highways and sustainability reasons.
- The site does not have easy access to facilities, as required under national and local policy for traveller sites.

Highways

- The roads in and around the site are not suited to any increased use due to their width and lack of appropriate visibility.
- Previously required improvements to visibility arrangements have not been carried out.
- The required visibility splays of 60m in each direction cannot actually be achieved as part of the splay to the south west incorporates land in separate ownership.

Landscape/Visual Impact

- The site adjoins Line Wood, which is a County Wildlife Site, with rare and protected fauna and flora present. Some species on the application site have been lost already.
- The application represents further loss of open agricultural land that would be out of character with the area.
- The proposal would have an adverse impact on the landscape, character and visual amenity of the area. The existing site is already considered to have too great an impact locally due to noise and general deterioration of the local environment.

Local Amenities

- Would harm local tourism to the area, particularly the holiday facilities available on the adjoining Crimson Hill Farm, which has a holiday-let cottage and exempted caravan site. Users of the adjoining facilities have suggested that they will not return.
- The site adjoins woodland owned by other parties. It is suggested that more people on-site will lead to more trespass into these woods with associated damage to local flora, fauna and wildlife.
- There are inadequate drainage and sewerage arrangements on site, which it is alleged have caused pollution of adjoining land, in the form of raw sewage.
- The proposal will detrimentally impact on already struggling businesses in the area, such as the Curry Mallet shop and public house. Any loss of trade due to the proposed

site could cause these essential services to close.

- As well considering the human rights of the applicant, consideration must also be given to the human rights of adjoining residents, particularly in this case, which may have an impact on income generated from existing tourist facilities, potentially effecting livelihood and also interfere with the neighbour's right to the peaceful enjoyment of their property.
- The site is located near to Hatch Court, a grade I listed building with grade II listed registered park and gardens. Setting a precedent for significant scale gypsy and traveller sites within the locality could have an adverse impact on the setting and landscape character of these heritage assets.

Other Issues

- The original permission was for a single residential unit for one family on the basis that no further intensification of the site would be allowed. This application goes against that original stipulation.
- The original consent is also personal to the applicant's further expansion or the provision of a permanent site would not have been supported. Should the current occupiers move from the site, there is a requirement to clear the site completely.
- The site is currently in breach as a result of the two proposed pitches already being occupied. It is also alleged that the approved agricultural building and parts of the site are being used in connection with the applicant's business for the maintenance of work vehicles, as well as the business being operated from the site. It is also pointed out that other conditions imposed on the various consents have not been complied with.
- The site has been in breach since 2011, why has no enforcement action been taken?
- All the rights and freedoms contained within the Human Rights Act must be protected and applied without discrimination. Article 14 requires there to be no discrimination in the application of human rights on any grounds. Discrimination may occur if a public authority treats a person less favourably than others in similar situations on the basis of a particular characteristic, fails to treat people differently when they are significantly different situations and applies apparently neutral policies in a way that has disproportionate impact on individuals or groups. The occupiers of the adjoining land feel that their human rights would be infringed by granting permission, on the basis that they would be a minority and their business would be crippled.

Changes to Planning Policy for Traveller Sites (adopted August 2015)

- The current and proposed applicants have given up travelling permanently; therefore certainly do not fulfil the definition of a traveller. The 2015 revision of the policy omitted those who have permanently ceased to travel from the definition. Ms Davies and Ms Thomson run businesses in South Petherton, Mr Carson attends festivals as a director of a business and the horsebox, which Mr Wood claims to travel in has been on site all summer. How can operating a highly profitable business at a festival for a few days and then returning home amount to a nomadic lifestyle?
- The word 'very' has been added to the statement that "Local Planning Authorities should very strictly limit new traveller site development in open countryside." This is not only in open countryside but next door to a property to which financial viability is dependent on tourism. The site is also not presently a 'traveller site' as it is has personal consent and is granted for a limited basis for one temporary dwelling.
- In August 2015, "the Government also announced a change to national planning policy to make intentional unauthorised development a material consideration that would normally be weighed in the determination of planning applications and appeals. This change applies equally to the settled and traveller communities." The applicant has made a mockery of the planning system by applying for permission in 2011, withdrawing it and then undertaking the work intentionally. Rewarding this intentional unauthorised development now by granting retrospective planning permission would

- not accord with Government policy.
- The above changes should be applied to this application as it should be assessed in accordance with the relevant up to date planning policy and guidance.

CONSIDERATIONS

The main considerations with regard to this application are legal issues relevant to determination of the planning application, suitable alternative sites, the impact of the proposed development on the countryside setting and local amenities, including impact on residential amenity, flooding and drainage issues, highways issues, and accessibility to services and facilities.

Legal issues relevant to the determination of the planning application

The following advice has previously been provided by the Council's legal team in respect of gypsy/and traveller applications.

All applications must be made in accordance with the development plan unless material considerations indicate otherwise. An assessment therefore has to be made as to whether the application site meets the criteria as outlined in HG7 and guidance in Planning Policy for Traveller Sites and specific policies in the NPPF.

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 HG7, 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 (including other Local Plan policies) say to the contrary.

Policy HG7 only applies to sites for 'gypsies and travellers' as defined within government guidance - 'Planning Policy for Traveller Sites' (*as amended August 2015*).

'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, but excluding members of an organised group of travelling showpeople 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 HG7. 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.

Human Rights

In deciding this application, the Committee must consider whether any planning harm caused by the development in question is outweighed by the 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 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. Whilst Article 8 does not create a positive obligation on the authority to provide any individual with a home, it is relevant as regards family life and the gypsy way of life. Gypsy status is viewed as a special aspect of private life, and the applicants' private life is lived from their caravan.
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. What planning conditions can be imposed?
7. What provision for housing homeless persons can be made if this application is refused?
8. 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. Such considerations are also relevant to ensuring that there is no breach of Article 14 referred to above.

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."

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."

Planning Considerations

Principle of Development

Policy HG7 is one of a small number of exceptions to address the specific needs of defined sections of the population, which in this case are travellers. 'Planning Policy for Travellers' (August 2015) provides guidance to Local Planning Authorities in terms of identifying and allocating appropriate sites for travellers. Importantly for consideration of this application, whilst Local Planning Authorities are required to allocate sites, it is made explicitly clear that this document can also be used for determining planning applications. It aims to provide more authorised traveller sites to enable fair access to suitable accommodation, education, health and welfare provision. It should be read in conjunction with policy HG7 that, subject to compliance with other relevant policies, supports traveller sites in rural locations.

The aim of policy HG7 is to facilitate the provision of sites for genuine gypsies and travellers to meet an identified need. For the Local Plan period up to 2028, HG7 identifies the need for

site allocations to accommodate at least 23 Residential Pitches , 10 Transit Pitches and 6 Travelling Showpeople plots. The written guidance for policy HG7 does however advise that the identified need for residential pitches in South Somerset to 2015 has been exceeded through implemented private planning consents. Therefore any applications coming forward for residential pitches before the end of 2015 will be considered against the criteria set out within HG7. Following this time, the stated policy target will apply. The relevant assessment criteria of Local Plan policy HG7 are:

- Significantly contaminated land should be avoided;
- Development should not result in an adverse impact on internationally and nationally recognised designations (for example: Natura 2000 sites, Sites of Special Scientific Interest and Areas of Outstanding Natural Beauty);
- The development should not have a significant adverse impact on the landscape character and visual amenity of the area;
- The site is reasonably well related to schools and other community facilities;
- The health and safety of occupants and visitors will not be at risk through unsafe access to sites, noise pollution or unacceptable flood risk;
- There should be adequate space for on-site parking, servicing and turning of vehicles;
- The option of mixed residential and business use on sites will be considered where appropriate.

HG7 also specifies that "the number of pitches provided should be appropriate to the size of the site and availability of infrastructure, services and facilities in accordance with the general principles set out in the settlement hierarchy."

Any site accepted under policy HG7 must be for the purposes of occupation by bona fide gypsies and travellers as defined in Annex 1 of Planning policy for traveller sites (August 2015). In this case, objections have been raised on the basis that it is not believed that the land owners who occupy the site in connection with approval 07/01853/FUL, or the intended occupiers of the two new pitches proposed by this application, fulfil the definition of a traveller. This assertion is reiterated following the August 2015 update to the Government Policy for Traveller Sites, as it is argued that the current occupiers and the proposed occupiers have permanently ceased travelling. In considering whether the applicants' comply with the definition of a traveller it is important to note that the existing occupiers (i.e. Mr J Carson and Ms R Davies) occupy the site subject to a personal consent. Their status is not in question in considering this application. It is relevant to consider whether the proposed occupiers of the two new sites comply.

On originally submitting the application, it was stated that the two pitches were intended for 'friends or family' of the land owners, who fulfil the definition of a traveller. Further information was submitted later to confirm that the current (and intended) occupiers of the pitches, are a Mr J Wood and Ms J Thompson, a couple with a two year old son, and Mr H Davies, the applicant's grown up son who previously lived in the approved residence as a dependent of Mr Carson and Ms Davies. The proposed occupiers' traveller statements are summarised below:

Mr J Wood Started travelling in 1992, at the age of 19. After spending a year on the road, Mr Wood spent a year completing a City and guilds motor mechanics course, after which he found work travelling to different sites in the travelling community to fix vehicles. In 1994, Mr Wood acquired an HGV licence to supplement mechanic work and has travelled widely since. In the summer months, Mr Wood has always found work at festivals doing a variety of jobs including site décor and catering. Mr Wood has been working for an events recycling company since 1999. The events vary from shows and corporate functions to music festivals and sporting events. It is stated that the nature of this work involves continuous travelling

around the country for 8 months of the year. Mr Wood states that he lives in a converted horsebox and has to take his home with him. In winter months he works as a mobile mechanic and welder. Mr Wood met his partner, Ms Thompson in 2006 and has been based in Somerset since 2008, after Ms Thompson established a small silver jewellery business. Mr Wood has been steadily establishing a group of clients locally in relation to his work as a mobile mechanic and welder. Since being based in Somerset, the couple have lived on a temporary site on an industrial cow farm, the conditions of which were detrimental to Mr Wood's health. They now have a two year old son and require a safe base in order to offer more security than unauthorised developments/encampments, where they can also maintain local work and social connections. It is however stated that the work that they do in the summer months is an important part of their income and that their lifestyle is inextricably tied with this. The offer by Mr Carson and Ms Davies to apply for permission on their behalf present them with a way in which to continue to travel for economic purposes in the summer months but return to the area in the winter months to raise their family and work locally.

Ms Thompson Has lived on the road in caravans for over 14 years, living where work was available. This work included seasonal fruit picking and summer festival works, such as strawberry picking in Devon at the start of the summer and apple picking in Kent in the autumn. During mid-summer, work was sought at a variety of festivals and events. Ms Thompson states that on numerous occasions, she has worked for festival décor companies, a travelling café, festival caterers, site service and an events recycling company. Ms Thompson advises that in winter months it was harder to find a legal base so she lived in lay-bys and on various traveller sites in and around Brighton and across the West Country. Ms Thompson moved to Somerset in 2004, where she lived in her trailer on a cow farm, while remaining travelling in the summer for economic purpose. Following this she took up a part time apprenticeship with an established local silversmith and now owns her own business with a local workshop. Ms Thompson converted a caravan into a jewellery workshop and continues to travel during the summer months selling her jewellery and running workshops at various festivals and events. Ms Thompson states that being a 'New Traveller' is a major cultural part of who she is and that this type of cultural community travel/work lifestyle cannot be maintained from living in a house. Since giving birth to her son in 2013, Ms Thompson acknowledges that he will need to be educated both on the road and at a conventional school. She feels that being able to legally live within a small community of travellers at Crimson Orchard, will allow her to bring up her son and live in a way that would enable her to continue to pursue a travelling lifestyle whilst having a secure base to maintain her son's education. It is advised that community and kinship are very important to New Travellers and she would like to remain with people who she considers to be like an extended family. It is further suggested that if they were forced to leave a place that had already been granted consent as suitable for one travelling family, more money would be spent in evicting them from unstable, unauthorised encampments, whereas approval would allow them to be housed in culturally sensitive, stable accommodation.

Mr H Davies Is the applicant's adult son and has therefore lived on the site as a dependent. He is now seeking accommodation of his own and continues following a travelling lifestyle working as a carpenter on events sites.

The application's supporting information includes reference to several pieces of case law and associated appeal decisions relating to the issue of traveller status and contends that all three proposed occupiers fulfil the definition of travellers. Further to the changes in the amended national Planning Policy (August 2015), it is advised that none of the occupants have ceased travelling permanently and still continue, or intend to continue, travelling in the manner that they have since taking up this way of life.

The Council's Equalities Officer has reviewed the submitted information and does confirm

that on the basis of the submission, and the relevant case law, it does appear that the applicant's fall within the definition of a gypsy and traveller, as defined by Planning Policy for Traveller Sites. Accordingly it is considered that this proposal would meet an identified need for a traveller site. The personal circumstances of the intended users of the proposed pitches, tied in with the occupiers of the approved pitches, is also considered acceptable.

Alternative Sites

There are existing SSDC owned gypsy and traveller sites at Tintinhull, Pitney and Ilton, however at the time of submission there were no available pitches on these sites. Contributors have suggested that other Somerset district councils have failed to meet their allocations for gypsy/traveller sites so the applicant's should first look for alternative sites in either districts, however it is not considered appropriate to determine the application on this basis. The application has been made in this district, with an identified connection to South Somerset. On this basis, it noted that there are no available public alternative sites for the applicants to occupy.

Need for the Development:

It has been pointed out that Local Plan policy HG7 identifies that the need for residential pitches in South Somerset to 2015 has already been exceeded through implemented private planning consents. Objectors therefore suggest that this means that there is no need to approve any more consent. HG7 simply states that *"any applications coming forward for residential pitches before the end of 2015 will be considered against the criteria set out within HG7. Following this time (i.e. 2016 onwards), the stated policy target will apply."* Contrary to the view that no more sites should be allowed, it is simply the case that there is no pressure to identify any new sites. Where an application comes forward that meets the criteria identified in HG7, and of course the definition of a gypsy and traveller, it is still appropriate to grant consent.

Sustainability

The site is within the countryside away from service centres, within an area where the highways network is noticeably more rural in character, although relatively close to main roads. The Council's Planning Policy Officer has noted that the application site is located approximately 1.4 km from Curry Mallet, which has a primary school, shop/post office, pub and church. There are doctor's surgeries are located at North Curry (Taunton Deane District) approximately 5 km away, Ilminster approximately 12 km away and Broadway approximately 10 km away. Taunton is approximately 15 km away. In the context of assessing the proposal against the relevant exception policies relating to gypsies and travellers, it is considered that the site is reasonably well located to schools and other community facilities, so as to be acceptable.

Landscape Character/Visual Impact

Notwithstanding the presence of the two unauthorised pitches, the site is already occupied as a single residential pitch by virtue of planning permission 07/01853/FUL. Present on site is the residential accommodation, along with a timber clad agricultural building and a couple of smaller existing buildings. The two additional pitches are discretely located to the north west of the application site, beyond the existing development, where they are well-enclosed by existing hedge and tree planting along the adjoining site boundaries. In considering the proposal, the Council's Landscape Architect has identified the landscape impact to be minimal.

Consideration has been given to the fact that the existing site is subject to a personal consent and does theoretically have to be cleared should Mr Carson and Ms Davies cease to occupy it, however over the many years since commencement of the residential use of the site, it is considered that the use has become established at this location with associated landscaping treatments also becoming well-established. This is considered to be a natural extension of this site that will have minimal impact on the surrounding landscape, which includes Line Wood, a designated County Wildlife Site, which lies beyond the border with Taunton Deane Borough Council. Due to the discreet nature of the site it is considered to be appropriate for continued occupation and as such, a personal, or other form of temporary permission, is not considered necessary.

It is noted that there is a grade I listed building (Hatch Court) and its listed park and gardens lie a little under a 1km from the site. Considering the scale of the proposed development, limited visibility and distance from this heritage asset, there is considered to be no adverse impact on its setting or character. Taunton Deane Borough Council have been consulted but have made no comments in respect to this application.

Local Amenity

Objections have been received in relation to the number of gypsy and traveller sites in the wider area, both within South Somerset and Taunton Deane. It is also suggested that granting this permission may have an adverse impact on local tourism and the ability for local services, such as the shop and pub in Curry Mallet, to remain viable. Taking this into account, there is considered to be no reason to assume that granting consent should have any adverse impact on tourism in general, as there are no grounds to take the view that this proposal should be any more harmful than any other residential occupation in the open countryside, especially taking into account the small-scale nature of the proposal.

More pertinent to this application is the location adjoining land relating to the nearest property, Crimson Hill Farm, which is located just over 200m to the north east of the site. The adjoining residents operate a tourism business with a holiday-let cottage and an exempted caravan site. The neighbours have objected to the proposal, particularly on the basis that their human rights could be compromised as the granting of planning permission could adversely affect their business so that their income is significantly compromised. Objection has also been raised on the basis that it would appear that existing drainage provision to serve the application site is not appropriate, and this has allegedly resulted in the contamination of part the neighbour's woodland with raw sewage.

Turning first to the general impact on the adjoining site initially, the main property and the holiday-let cottage are located at over 200m from the site, with the applicant's agricultural field in between. It is not considered that there would be any unacceptable harm to residential amenity or the ability to enjoy these properties. It is noted that there is a narrower strip of field that adjoins the north east corner of the application site, in which it is advised that caravans are often sited in relation to the neighbour's exempted caravan site. While it is noted that this is close to the application site and may potentially be close enough for the proposed development to be apparent, it should be noted that the neighbour has a large landholding, with several places where caravans could be sited that would be at a more desirable distance from the application site so as not to be adversely affected. While it is acknowledged that the area identified has the potential to be the most isolated and tranquil location, it is not considered that it has been demonstrated that granting this permission would lead to the neighbour's business being unacceptably harmed. Of course, Member's may wish to consider this matter in more detail and give the appropriate consideration to the impact on the neighbour's human rights, just as they will have to consider the human rights of the applicant and intended occupiers.

In respect to foul sewage disposal, there is a composting toilet on site, which is a tried and tested feature that should raise no concerns in respect to contamination of the site and adjoining land. It is also noted that drainage provision was provided following the grant of planning permission 07/01853/FUL, in the form of a sewage treatment plant. Following the reports of potential contamination, the Council's Environmental Protection Officer visited the site to investigate further. There was no evidence directly linking the contamination to the application site, however, dye testing was carried out. Following this no dye has appeared on the neighbouring land, however it is also noted that the effluent storage tank was emptied not long before the Environmental Protection Officer's visit. It is therefore possible that the tank may have overflowed, however it is considered that this installed drainage scheme is appropriate to deal with the effluent generation from the approved site, however this is reliant on proper management and regular emptying, in the same way as any similar system would require. This in itself is not a planning matter, with the Local Planning Authority having to assume that the drainage system is properly maintained. The control of such matters falls within the remit of Environment Agency and Environmental Protection Legislation. This does strictly relate to the already approved application and not this proposal, however it is considered that adequate provision either exists or can be provided to address the need of the site. A condition will be imposed to ensure that appropriate drainage provision is provided.

In considering the general wider impact of the proposal, policy contained in 'Planning Policy for Traveller Sites' states that sites located in rural areas should respect the scale of, and not dominate the nearest settled community. If approved, the proposal would lead to the provision of a small-scale site limited to three discretely located pitches. As such, it is not considered that, there is sufficient evidence to indicate that the nearest settled communities would be adversely dominated by this proposal. Moreover, if this application were to be approved, then a set of conditions would be imposed that seek to strictly control the use of the site including the number of caravans and to prohibit business use. If there was any breach of one or more of those conditions, then the LPA may use enforcement powers to regularise the situation.

In respect to enforcement powers, it has been suggested that the applicant has carried out commercial operations from the application site, however no such operation has been evident during officer visits to the site. This does not however preclude action should a future breach be reported and subsequently confirmed.

Highways Safety

The application site is served via an access that was first put in place following planning permission 06/00275/FUL. As part of the approval, a properly consolidated access track and visibility splays of 60m set back 2m from the carriageway edge were required by condition. In the submission of later applications for the residential use of the site and the provision of an agricultural building, these requirements were repeated by the County Highway Authority.

In considering this application, the Highway Authority consider that the proposal will have minimal traffic impact on the local highway network and that there are already appropriate parking and turning facilities on site to serve the development. As such no objections are raised in principle. It however requested that the access needs to be widened to 5m over its first 6m and that appropriate visibility splays need to be put in place. At present the visibility is inhibited by vegetation, however the Highway Officer has confirmed that good visibility splays are possible with the cutting back and management of the vegetation. It is advised that the provision of the originally approved splays (i.e. 60m by 60m) will be acceptable. It has been brought to the attention of the Local Planning Authority that the originally approved visibility splay has not been put in place, as such amended plans were sought to provide the

increased width access and also to provide the visibility originally required. Should permission be granted, it is suggested that a condition be imposed to require these splay to be provided within two months of the decision.

An objection has been raised on the basis that 60m cannot be achieved to the south west of the access as part of the visibility splay shown on the submitted drawing actually crosses land not in the applicant's ownership. This is noted and it is indeed clear that the frontage in this direction that is in the applicant's control extends to approximately 53m. While this does not meet the full 60m requirement, this is still a considerable distance and it is felt that this would provide an acceptable level of visibility to address any highway safety concerns associated with this development.

Conclusion

The provision of two additional pitches for use by travellers, subject to the proposed development meeting the criteria of SSDC Local Plan policy HG7 is considered to be acceptable as there is a presumption in favour of the proposal, subject to acceptance by any relevant policy and other material considerations. In this case, it is considered that the applicants have satisfactorily demonstrated that they fulfil the legal definition of a gypsy/traveller and that this way of life has not permanently ceased. On balance the recommendation is to approve the application.

SECTION 106 PLANNING OBLIGATION/UNILATERAL UNDERTAKING

Not relevant to this application.

RECOMMENDATION

Approve planning permission with conditions

01. Notwithstanding the concerns raised in respect of sustainability, local landscape character, highway safety, flooding, impact on heritage assets, residential and other local amenity, the proposed development of an additional two gypsy/traveller site pitches, would meet a recognised need without detriment to visual or residential amenity or highways safety. The site is reasonably well located relative to schools and other community facilities and can provide for appropriate sewerage disposal and other necessary facilities. As such the proposal complies with policies SD1, TA5, TA6 and HG7 of the South Somerset local Plan and the policies contained in the National Planning Policy Framework.

SUBJECT TO THE FOLLOWING:

01. The development hereby permitted shall be carried out in accordance with the following approved plans: 'Site Location Plan - drawing no. BJC15-SLP', received 14th May 2015, 'Site Layout Plan - drawing no. BJC15-LAYOUT Revision B', received 2nd June 2015 and 'VISIBILITY AND LANDSCAPING - drawing no. BJC15-VSL', received 1st September 2015.

Reason: For the avoidance of doubt and in the interests of proper planning.

02. The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1 of Planning Policy for Travellers.

Reason: To avoid any ambiguity as to who can occupy the site hereby permitted as an exception to policy.

03. There shall be no more than 2 pitches on the whole of the application site contained within the area outlined in red on the submitted location plan, drawing no. 'BJC15-SLP'. Each pitch shall be limited to the areas identified as 'Plot 1' and 'Plot 2' on submitted site layout plan, drawing no. 'BJC15-LAYOUT Revision B'. On each of the 2 pitches hereby approved, no more than 2 caravans shall be stationed at any time, of which no more than one caravan shall be a residential mobile home.

Reason: To ensure that the Local Planning Authority have control with regard to the number and type of caravans on the site in the interests of visual amenity and highway safety in accordance with policies TA5, TA6 and EQ2 of the South Somerset Local Plan and the provisions of chapters 4, 7 and 11 of the National Planning Policy Framework.

04. No commercial activities, including the storage of materials, shall take place on the land.

Reason: In the interests of visual and residential amenity and highway safety in accordance with policies TA5, TA6 and EQ2 of the South Somerset Local Plan and the provisions of chapters 4, 7, 11 and the core planning principles of the National Planning Policy Framework.

05. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no buildings or structures shall be erected on site other than those expressly authorised by this permission.

Reason: In the interests of visual amenity in accordance with policy EQ2 of the South Somerset Local Plan and the provisions of chapters 7 and 11 of the National Planning Policy Framework.

06. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), all means proposed external lighting shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the development hereby approved. Such details, as may be approved, shall be retained and not varied or added to without the prior written consent of the Local Planning Authority.

Reason: In the interests of visual amenity and to prevent unnecessary pollution of the night sky in accordance with policies TA5, TA6 and EQ2 of the South Somerset Local Plan and the provisions of chapters 4, 7 and 11 of the National Planning Policy Framework.

07. The area identified as 'car park' on the submitted site layout plan, drawing no. 'BJC15-LAYOUT Revision B', shall be kept clear of obstruction at all times and shall not be used other than for the parking and turning of vehicles in connection with the development hereby permitted and that approved by planning permission 07/01853/FUL.

Reason: In the interests of highway safety, in accordance with policies TA5 and TA6 of the South Somerset Local Plan (2006-2028) and the provisions of chapter 4 of the National Planning Policy Framework.

08. Visibility splays shall be provided in accordance with details, as indicated on submitted visibility splay and landscaping plan, drawing no. 'BJC15-VSL'. There shall be no obstruction to visibility greater than 900mm above the adjoining road level in advance of said visibility splays in so far as they are within the applicant's land ownership, as indicated by the areas of land outlined in red and blue on submitted site location plan, drawing no. 'BJC15-SLP'. Such visibility shall be provided within two months of the date of this decision and shall be maintained at all times thereafter.

Reason: In the interests of highway safety, in accordance with policy TA5 of the South Somerset Local Plan (2006-2028) and the provisions of chapter 4 of the National Planning Policy Framework.

09. A properly consolidated and surfaced access (not loose stone or gravel), measuring 5.0m in width and 6.0m back from the edge of the adjoining carriageway, in accordance with details as indicated on the submitted site layout plan, drawing no. 'BJC15-LAYOUT Revision B', shall be constructed within two months of the date of this decision, or within an agreed timeframe to be approved in writing by the Local Planning Authority.

Reason: In the interests of highway safety, in accordance with policy TA5 of the South Somerset Local Plan (2006-2028) and the provisions of chapter 4 of the National Planning Policy Framework.

10. Any proposed gates at the site access shall be hung to open inwards and shall be set back a minimum distance of 5.0m from the adjoining carriageway edge. Said gates shall thereafter be maintained in that condition at all times.

Reason: In the interests of highway safety, in accordance with policy TA5 of the South Somerset Local Plan (2006-2028) and the provisions of chapter 4 of the National Planning Policy Framework.

11. A scheme of landscaping shall be carried out Landscaping in accordance with the details indicated on the submitted visibility splay and landscaping plan, drawing no. 'BJC15-VSL'. Such approved scheme of landscaping shall be implemented in its entirety during the first planting season (October to March inclusive) following the date of this decision. Any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

Reason: In the interests of visual amenity in accordance with policy EQ2 of the South Somerset Local Plan and the provisions of chapters 7 and 11 of the National Planning Policy Framework.

12. Details of 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 completed and become fully operational within two months of the date of this decision, or within an agreed timeframe to be approved in writing by the Local

Planning Authority. Following its installation such approved scheme shall be permanently retained and maintained thereafter.

Reason: In the interests of residential amenity and highway safety in accordance with policies TA5, TA6 and EQ2 of the South Somerset Local Plan and the provisions of chapter 4 and the core planning principles of the National Planning Policy Framework.
