

**DC/2015/01424**

**CHANGE OF USE OF LAND TO PROVIDE GYPSY CARAVAN SITE CONSISTING SEVEN RESIDENTIAL CARAVANS AND ASSOCIATED DEVELOPMENT**

**LAND ADJACENT TO UPPER MAERDY FARM, LLANGEVIEW**

**RECOMMENDATION: REFUSE**

Case Officer: Kate Young  
Registered: 07/01/16

**1.0 APPLICATION DETAILS**

1.1 The application site relates to part of a long field which hugs part of the southbound slip road of the Usk interchange on the A449 trunk road. The site covers an area of 0.9 hectares and is surrounded by mature hedgerows. An application for use of the site as a permanent base for an extended Romany Gypsy family was allowed on appeal in 2011. This allowed two pitches by the entrance to the site. In allowing the appeal, the Inspector agreed that the use of the site should be limited to the appellants only and not extended to all gypsies and travellers. Currently there is an existing vehicular access into the site, one mobile home, a utility block and two touring caravans as well as some domestic paraphernalia including a washing line and garden furniture. The use of the site seems not to have properly commenced and if it is now occupied, it has been used no more than on a sporadic basis. The current application seeks an additional five pitches. Each pitch will have hardstanding for a mobile home (two of the pitches would be twin units containing a mobile home measuring 12.2 by 8.55 metres, each would have a tourer pitch, utility room measuring approximately 6.7 metres by 4.9 metres and two car parking spaces. The site would contain two cesspits and hardstanding. A paved access drive would link the existing access to the proposed new pitches. The proposed development would be in a separate field approximately 135 metres from the site entrance. A landscaping scheme had been submitted showing substantial landscaping of the site.

1.2 A Design and Access Statement was submitted as part of the application and this is reproduced in full at the end of this report.

**2.0 RELEVANT PLANNING HISTORY**

DC/2009/00057 – Change of Use to site for permanent base for Romany Gypsy family. Site to contain 4 mobile homes, 4 touring caravans for nomadic use. 4 utility dayroom blocks, one railway carriage. Refused 2009. Appeal allowed 2011 (reduced scheme to 2 pitches).

DC/2013/00563 – Removal of condition 2 and 3 of DC/2009/00057 This application sort the removal for the personal permission to allow for a general gypsy site and the requirement that the use should cease and all structures be removed when the land ceased to be occupied for a minimum of 6 months. Refused

**3.0 LOCAL DEVELOPMENT PLAN POLICIES**

Strategic Policies

- S1 Spatial Distribution of New Housing Provision
- S13 Landscape, Green Infrastructure and the natural environment
- S17 Place making and design

Development Management Policies

EP1	Amenity and Environmental Protection
DES1	General Design Considerations
H8	Gypsy, Traveller and Travelling Show people Sites
LC1	New Built Development in the open countryside
LC5	Protection and Enhancement of Landscape Character
NE1	Nature Conservation and Development
G11	Green Infrastructure
MV1	Proposed Developments and Highway Considerations

#### Other Policy Considerations

Welsh Government Circular 30/2007 Planning for Gypsy and Traveller Caravan Sites  
2009 MCC Gypsy and Traveller Accommodation Needs and Sites Study (recently updated)

2015 Gypsy Traveller Accommodation Assessment.

## **4.0 REPRESENTATIONS**

### **4.1 Consultation Responses**

#### Llantrisant Fawr Community Council

Contrary to Development Plan

Adverse impact on village form and character

Additional traffic along narrow lanes that are liable to flooding

Lack of water supply and sewerage disposal

No supporting evidence

No evidence of proven need

No evidence of links to the Llangeview area

No link to the Gypsy and Traveller Accommodation Assessment

Does not meet the criteria of Policy H8

#### Llangwm Community Council – Object

The cost of clearing up the site after removal will be funded by the tax payer

Camp has been set up before consent is granted

The obvious intention is to erect a permanent dwelling in contravention of policy H6

Apparent infringement of numerous covenants preventing such usage which were entered into at the time of the sale of the land.

Threat to highway safety and increase in traffic

Absence of any mains water and electric services on the site.

#### MCC Planning Policy

The policy framework against which the proposal should be assessed is set out in the Adopted Monmouthshire Local Development Plan, PPW (Edition 8, January 2016) and WAG Circular 30/2007 Planning for Gypsy and Traveller Caravan Sites.

#### **LDP Policies**

- The proposed application site is greenfield agricultural land in the open countryside located some distance outside the development boundary of the nearest established settlement of Usk. The development would represent new build residential development in the open countryside and as such would be contrary to Strategic **Policy S1** of the LDP (Spatial Distribution of New Housing Provision). This policy advises that new residential development in the open countryside is only justified for the purposes of agricultural/forestry, rural enterprise dwellings or one planet development. This approach is supported by national planning policy as set out in PPW (paragraphs 4.7.8/9.3.6).

- **Policy LC1** which relates specifically to new built development in the open countryside is also applicable. The policy contains a presumption against new build development in the open countryside although it does identify a number of exceptional circumstances involving new built development that might be acceptable (subject to policies S10, RE3, RE4, RE5, RE6, T2 and T3). It is not considered that these exceptional circumstances would apply to the proposal and as a consequence it would be contrary to this policy.
- Given the site's location in open countryside, consideration should also be given to LDP policies **LC5** Protection and Enhancement of Landscape Character, **NE1** Nature Conservation and Development and **GI1** Green Infrastructure and the associated GI SPG.
- The LDP does not provide a specific site allocation for gypsies and travellers. It does, however, contain a criteria based policy **H8** relating to the development of gypsy and traveller sites. This provides the framework for assessing proposals and should be considered accordingly. It is considered that the proposal would be contrary to criteria a), b), d), f) and g) of Policy H8.

#### Policy H8 – Gypsy, Traveller and Travelling Showpeople Sites

Where a need is identified for transit or permanent pitches/ plots for the accommodation needs of Gypsies, Travellers and Travelling Show people, they will be permitted provided they:

- Would enable the established need to be met at a location that is accessible to schools, shops and health care, by public transport, on foot or by cycle;
- Have a safe and convenient access to the highway network and will not cause traffic congestion or safety problems;
- Are of a suitable size to allow for the planned number of caravans, amenity blocks, a play area (for children on sites housing multiple families), the access road and include sufficient space for the parking and safe circulation of all vehicles associated with occupiers within the site curtilage;
- Do not occupy a prominent location and are consistent with LDP policies for protecting and enhancing character and distinctiveness of the landscape and environment. Where necessary the proposal will include mitigating measures to reduce the impact, and assimilate the proposal into its surroundings e.g. screening and landscaping;
- Avoid areas at high risk of flooding and proximity to uses with potential sources of pollution or emissions;
- Are of an appropriate scale to their location and do not have an unacceptable impact on the amenities of neighbouring land uses;
- Are served, or can be served, by adequate on-site services for water supply, power, drainage, sewage disposal and waste disposal (storage and collection), and for Travelling Showpeople that there is a level area for outdoor storage and maintenance of equipment.

The following LDP Policies are also of relevance and should be taken into account:

- S13 – Landscape, Green Infrastructure and the Natural Environment
- DES1 – General Design Considerations
- EP1 – Amenity and Environmental Protection
- MV1 – Proposed Developments and Highway Considerations

In the context of these policies the site is not considered to be a suitable sustainable location for a permanent gypsy site of this scale (7 pitches). The proposal is for development in the open countryside and is some distance from the nearest established settlement. The closest essential services and facilities are located in Usk and are not easily accessible from the site by either walking or cycling. In addition, the site is not served by public transport. Accessing such services would likely to be by car, contrary to local and national policy on sustainability. Although Circular 30/2007 recognises that the consideration of sustainable access to local facilities can be relaxed in the assessment of rural site provision, the applicant has provided

no evidence of exceptional circumstances to justify the proposal in this otherwise unsustainable location.

### **Design & Access Statement**

It is noted that the applicant has submitted a DAS with the application. Paragraph 4 of the DAS incorrectly refers to the Monmouthshire UDP as the development plan for the consideration of this application and to the lack of a criteria based policy for considering permanent gypsy traveller sites. To clarify, the framework for assessing this proposal is the Monmouthshire LDP which contains a specific criteria based policy (H8) for the consideration of permanent gypsy and traveller sites and against which this application will be assessed.

### **Circular 30/2007**

WG guidance on planning for gypsy and traveller caravan sites is provided in WAG Circular 30/2007. In identifying sites for gypsy and traveller caravans, the Circular advises local planning authorities to consider locations in or near existing settlements with access to local services such as shops, doctors, schools, employment, leisure and recreation opportunities (para 20). The Circular identifies the issue of site sustainability as being important for the health and well-being of gypsies and travellers in terms of environmental issues and for the maintenance /support of family and social networks. It advises that this should be considered not only in terms of transport mode, pedestrian access, safety and distances from services but that consideration should also be given to a range of other issues, including:

- 'Promotion of peaceful and integrated co-existence between the site and the local community;
- Wider benefits of easier access to GP and health services;
- Access to utilities;
- Children attending school on a regular basis;
- Not locating sites in areas at high flood risk...' (para. 19).

The Circular provides further advice in relation to rural sites which is applicable to the proposed application. It advises that rural settings may be acceptable in principle subject to planning or other constraints. In assessing the suitability of rural sites it advises LPAs to be 'realistic about the availability, or likely availability, of alternatives to the car in accessing local services' (para 26). While it does not advise the over rigid application of national and local policies that seek a reduction in car borne travel given that they could be used to effectively block proposals for gypsy /traveller sites in a rural location, site sustainability is a factor which should be taken into account.

Paragraph 36 of the Circular sets out other considerations, in addition to the development plan, which may be taken into account in the determination of planning applications for gypsy / traveller sites. These include 'the impact on the surrounding area, existing level of provision and need for sites in the area, availability of alternative accommodation for the applicants and their specific requirements'.

### **Evidence of Need**

No evidence of need for the proposed development has been submitted to the LPA. The need identified in the 2009 MCC Gypsy and Traveller Accommodation Needs and Sites Study (which informed the LDP) has been met through the extant permission on the site for 2 pitches. The Council has recently updated the GTAA which found no evidence of further need for accommodation from the applicant. The applicant has provided no evidence of exceptional personal circumstances to justify the proposal. The most recent caravan counts undertaken in Monmouthshire (January and July 2015) found that the site subject to the extant planning permission (granted in 2011) was unoccupied and therefore not picked up through the counts which again suggests that the applicant has limited need for accommodation at this site.

### **Extant Permission: Appeal Decision**

It is noted that the application is for an extension to the site granted on appeal for 2 pitches comprising 2 caravans and an amenity block in November 2011. Whilst it is acknowledged that the appeal Inspector considered the site to be acceptable at that time, the appeal site was of a much smaller scale than that proposed in the current application. The current proposal represents a considerable intensification of the site with an additional 5 static caravans, 5 tourers, 3 amenity blocks and 10 parking spaces. Moreover, this site was allowed at appeal with the Inspector having been satisfied that the appellant's needs amounted to exceptional circumstances justifying granting planning permission. As stated above, no such justification has been demonstrated in this instance.

### Welsh Government Highway Division

No objection to the proposal although it is necessary to maintain the safety and free flow of the A449 trunk road. There shall be no direct access onto the A449, no works shall be undertaken which could affect the stability of the trunk road or the embankment. There should be no discharge from the site onto the highway and no interference with the highway boundary fence.

### Public Rights of Way

There are no Public Rights of Way recorded on the Definitive Map.

### Welsh Water

As the applicant intends utilising a cesspit facility advise that the applicants seek advice from Building Regulations. No problem is envisaged with the provision of water supply for this development.

### Tim O' Donovan MCC Landscape Unit –

This type of application will have no impact upon the landscape unit and we are happy for it to go ahead.

### Ben Terry - MCC Design, Landscape and GI – recommends refusal.

New built development in the countryside. New built development will only be permitted where all the criteria set out in LC1 is satisfied.

Development may have unacceptable adverse effects on the special character or quality of Monmouthshire's landscape, as defined by LANDMAP.

All development should be of a high quality sustainable design and respect the local character and distinctiveness of Monmouthshire's built, historic and natural environment.

1. The proposal does not meet any of the criteria set out in LC1 and should not be permitted.

a. *LC1 sets out strict criteria for assessing development proposals and seeks to ensure that in exceptional circumstances where new development may be permitted in the countryside, there are no adverse impacts on the environment.*

2. The proposal would have an unacceptable adverse effect on the special character of Monmouthshire's landscape, in particular.

a. *The change of use and amount of development proposed would cause a significant adverse change in the character of the natural landscape; evaluated as high and/or outstanding, as defined by LANDMAP. Particular emphasis is given to those landscapes identified through the LANDMAP Landscape Character Assessment, as being of high and outstanding quality because of a certain landscape quality or combination of qualities.*

- b. *The change of use and amount of development is insensitively and unsympathetically sited within the landscape.*
- c. *The change of use and amount of development fails to harmonise with, or enhance the landform and landscape.*
3. No landscape or visual appraisal was submitted, or contained within the DAS. Policy LC5/DES1
4. Insufficient information within their Design and Access Statement (DAS). Policy DES1
5. The DAS contained little information to support the proposal. An appraisal of landscape character and a visual appraisal would have provided the applicant with the necessary information to develop their proposal properly; informing the design, its scale, massing of units and its layout. The design process should be clearly illustrated within the DAS and in other supporting documents.
6. It is in my opinion, that having undertaken the appropriate assessment and/or appraisal of site constraint's and opportunities, the principle of development would have been deemed unacceptable; development will only be permitted where it would not have an unacceptable adverse effect on the special character or quality of Monmouthshire's landscape.
7. This area has a high scenic quality with strong topography and vegetation cover and long views across the Usk valley. Fields are enclosed by a strong patchwork of hedges and hedge banks, which generally retain their intactness and integrity as agricultural use. The topography and scattered rural settlement pattern is an integral part of its landscape character; this is relatively rare in the county. The proposed development is sited incongruously within the landscape.

#### MCC Biodiversity

Please accept this email as interim comments for the private gypsy caravan site. I have undertaken a brief desk based assessment of the application, previous applications and considered local biological records and local habitat knowledge. It is difficult to assess the potential impacts of the development without having a preliminary ecological appraisal to consider these impacts although it is accepted that the site is relatively small and that considerable landscape proposals are included.

The main extension area is grassland. The nearby areas of grassland associated with the dual carriageway i.e. large verges around the interchange are good to high quality species rich grassland. The site is adjacent to planting and trees associated with the dual carriageway and farmland hedgerows, their quality is unknown but they will largely remain. A pile of debris has been noted on the narrower area adjacent to the slip road which, in combination with other habitats on the site, may be attractive to reptiles.

The quality of the grassland on the site is unknown and therefore, it is difficult to assess if there is an impact and whether we need to consider LDP policy NE1. The presence of protected or priority species is unknown. It may not be reasonable to impose a reptile method statement as the presence/absence has not been established.

When considering the MCC Biodiversity Checklist it indicates we should be considering habitat quality, reptiles, birds, badgers and potentially other protected species. It should be for the applicants to provide us with this information as part of the application.

#### MCC Highways

Whilst we as Highway Authority have no objection to the development, in principle, the following shall be addressed prior to any grant of approval.

Drainage – No details of the proposed means of draining the forecourt/hardstanding area has been indicated. We have reservations regarding the uncontrolled nature of the disposal of surface water from the site. There are concerns that the removal of the topsoil and

replacement with gravel will affect the overall groundwater drainage characteristics of the site and give cause to saturation of the gravel forecourt/hardstanding due to the underlying clay and in turn affecting the efficient operation of the proposed septic tanks. In light of this the applicant is required to provide further details.

Access – Based on the desk top track analysis that was previously carried out as it is clear that the delivery of the proposed mobile homes cannot be undertaken along the C214-1 route without the need to remove hedgerows and widen the existing route particularly at the existing bends. This is particularly the case when you consider the increase in dimensions of the mobile homes. The issue is whether the development can be established as we have reservations whether they could successfully deliver the proposed mobile homes to the site without significant highway improvements albeit on a temporary basis.

Parking – The proposed parking for each individual dwelling unit is satisfactory and there is ample room within the application site, should there be the requirement for additional car parking, therefore will have no adverse impact on the adjacent public highway.

#### Usk Civic Society

Usk Civic Society objects to this application for residential pitches for seven caravans, plus pitches for touring vans and ancillary facilities. While it notes that MCC's Gypsy and Traveller Accommodation Assessment identifies a need within the county for eight residential pitches, it does not in its view follow that the Llangeview site is appropriate for all or any of such provision.

Seven pitches on the site would be very crowded and constitute overdevelopment. The existing permission for two pitches for the use of the Lee family relied on exceptional factors relating to their needs as a family unit and was granted in spite of some shortcomings in the amenities of the site. No evidence has been adduced of additional need for accommodation at this location.

The Society notes and agrees with the comments on development policy by Rachel Lewis, in particular the limitations she identifies in the site from the point of view of access to amenities including schools. The site is relatively remote and only accessible for much of the time by car along a narrow lane. It is not suitable provision for an increased number of residents.

The traffic movements which would be generated by a seven pitch facility at the Llangeview site, including large static and touring caravans, would be excessive for the narrow and twisting lane which is the only access to the site. Local residents have testified to the difficulties which have already been encountered in attempting to place a static caravan on the site. MCC's own highways department has asked that the applicant demonstrate by what means the caravans are to be brought safely to the site. The disruption and inconvenience to existing residents in the area from this extra traffic is not acceptable.

#### 4.2 Neighbour Consultation Responses

Letters of Objection received from 10 addresses

The Lawful Use of this site is agricultural as the gypsy site has never been occupied.

No Demonstrable Need

A high pressure water main crosses the site

This is a speculative application

New dwellings in the open countryside is contrary to LDP policy

The vital need for the previous application never materialised

No one has lived on the site for the past 5 years

The site is a total eyesore

Landscape plan not complied with

The gypsy site use of the land has been lost so this current application is not for an extension to the existing site

There are covenants on the land restricting the use to agricultural use

Contrary to previous permission

Further rubbish will be stored on the site  
Increase in traffic flows  
Damage to the road surface and the trees during the delivery of the vans  
Loss of wildlife  
Devastating effect on the neighbouring Listed Buildings including St David's Church  
Damage to the historic value of the site  
Out of keeping with the rural character of the area  
Unsatisfactory means of foul drainage with so many people using the site  
There is an easement for the mains water pipe running through the site  
This is a flood risk  
No consultation with Monmouthshire Gypsy and Traveller Accommodation Needs Assessment  
Restricted visibility from the existing access  
The site is highly visible when viewed from the slip road  
Many walkers use this lane and it is not suitable for caravan delivery  
Additional hard surfaces in place of greenfield sites will add to flooding  
No street lights or amenity facilities for small children  
Travellers should pay a financial contribution for facilities such as school places, repair to roads, cleaning the site and for damage to drainage system  
Lack of infrastructure provision within the area  
The site is always vacant  
Neighbouring properties have been renovated sympathetically under CADW Guidelines, does this current proposal comply with those guidelines?

## **5.0 EVALUATION**

### **5.1 National Background**

- 5.1.1 By way of general background, a survey in March 2009) from the Equality and Human Rights Commission (EHRC) highlighted the urgent need to provide lasting solutions to Gypsy and Traveller accommodation under-provision. It notes that the majority of the 300,000 Gypsies and Travellers in the UK are conventionally housed; a further 17,900 caravans are recorded in England and Wales but about a quarter are not on authorised sites. Previously, local authorities had a duty to provide sites for Gypsies and Travellers but this was repealed in 1994, a situation which apparently led to a rise in unauthorised encampments. The requirements of the Housing Act 2004 and (in Wales) a Circular in 2007 ("Planning for Gypsy and Traveller Caravan Sites") requires LPAs to undertake an initial assessment of needs followed by the selection of sites if that is required. The planning system is largely land-use based, but the consideration of Gypsy and Traveller caravan sites requires a wider perspective to be taken – an approach reflected in appeal decisions and case law which has identified the need to maintain the lifestyle of a section of the community as a factor in decision making, along with the right to a proper education. The courts have held that a balancing exercise must be undertaken weighing the harm arising to the public interest against the rights and personal circumstances of the appellants, with the availability of accommodation provision also being a material consideration.
- 5.1.2 Circular 30/2007 sets out guidance on the planning aspects of finding sustainable sites for 'Gypsies and Travellers' who are defined in the Circular 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*". Previous applications for this site have established that some members of the Lee family, notably Star Lee, do comply with this definition and the Council is not questioning the



Gypsy status of the applicant in this case. The main issue of this current application is whether the personal circumstances of the applicants are such that they outweigh general planning policy and to assess why the provision of seven pitches is required on this specific site.

5.1.3 Paragraph 5, of circular 30/2007 identifies that some gypsies and travellers may wish to find and buy their own sites and to develop and manage them themselves (rather than having sites provided and run by the Local Authority). This appears to be the case in this instance. The applicants own this land and wish to develop it themselves to provide a total of seven pitches. Paragraph 7 states *“There is a need to provide sites, including transit sites, in locations that meet the current working patterns of Gypsies and Travellers. In view of the changes in their work patterns, these may not be the same areas they have located in or frequented in the past. And paragraph 8 continues. This needs to be balanced with the responsibility of Gypsies and Travellers to respect the planning system. A more settled existence can prove beneficial to some Gypsies and Travellers in terms of access to health and education services, and employment and can contribute to greater integration and social inclusion within local communities. Nevertheless the ability to travel remains an important part of Gypsy and Traveller culture. Some communities of Gypsies and Travellers live in extended family groups and often travel as such. This is a key feature of their traditional way of life that has an impact on planning for their accommodation needs.”* While both of these paragraphs may be of relevance to this current application no evidence has been supplied to support this.

5.1.4 Although aimed at the identification of sites through the LDP process, the advice in paragraph 19 of the Circular is relevant in general terms in identifying aspects of site sustainability in terms of issues including:

- The health and well-being of Gypsies and family life
- Access to GPs and health services
- Access to utilities including waste recovery and disposal
- Access for emergency vehicles
- Regular school attendance and other educational provision
- Safe play area
- Environmental damage caused by unauthorised encampments
- Nature conservation and landscape interests.

Although it can often be the case that urban sites might be considered more sustainable, paragraph 26 of the Circular says that acceptable sites may also be found in rural or semi-rural settings and advises against the over-rigid application of development plan policies seeking to reduce car-borne travel.

5.1.5 Paragraph 36 of the Circular refers to the statutory duty of local planning authorities to determine planning applications in accordance with the development plan unless material considerations indicate otherwise, and says that other considerations for Gypsy and Traveller site applications, will usually include the impact on the surrounding area, the existing level of provision and need for sites in the area, the availability (or lack of) alternative accommodation for the applicants and their specific personal circumstances. Ensuing paragraphs set out general advice aimed at encouraging a dialogue between the local planning authority and the Gypsy community. The LPA are asked to provide advice and practical help with planning procedures and the Gypsy community are advised that they should always consult local planning authorities on planning matters before buying land on which they intend to establish any caravan site requiring planning permission. In this case planning officers have requested additional information from the applicant in order to help establish the facts and this was received in the form of an email on 23<sup>rd</sup> March 2016.

## 5.2 Evidence of Need

5.2.1 On the 3<sup>rd</sup> February 2016 a report on the Gypsy and Traveller Accommodation Assessment was presented to MCC cabinet. The purpose of this report is to inform the LDP's Annual Monitoring Report and the LDP Review Process to meet the current and future needs of Gypsy and Traveller Sites. This report is produced in full in Appendix 2. The assessment found that there was a higher number of Gypsy and Traveller households in the County than was previously thought with an estimated need for 8 pitches to 2021. This was based on levels of overcrowding, unauthorised occupation and the likelihood of cultural aversion to conventional housing (some of this demand was from within the Brecon Beacons National Park, outside this planning authority's administrative area).

5.2.2 As part of this assessment an officer from the Council's Housing Department visited the site and spoke to members of the Lee family. Those family members declined to co-operate with the survey and instead directed the officer to the family advocate Angus Murdoch, who is also the agent for this application. Despite repeated calls and emails from the housing officer to Mr Murdoch no information was presented.

5.2.3 Circular 30/2007 makes it clear that LPA's should use the Accommodation Assessments when determining planning applications for Gypsy Sites including Private Sites. It also states in paragraph 37 that in order to encourage private site provision the LPA should offer advice and practical help with the planning process and that in return Gypsy and Travellers should always consult LPA's on planning matters before buying land on which they wish to establish a site. In the case of this site in Upper Maerdy Farm the local planning authority (LPA) and Housing Department have tried to offer advice to the applicants and their agent but with little response.

## 5.3 Principle of Development and Development Plan Policy

5.3.1 Paragraph 36 of Circular 30/2007 refers to the statutory duty of local planning authorities to determine planning applications in accordance with the development plan unless material considerations indicate otherwise, and says that other considerations for Gypsy and Traveller site applications will usually include the impact on the surrounding area, the existing level of provision and need for sites in the area, the availability (or lack of) alternative accommodation for the applicants and their specific personal circumstances.

5.3.2 The application site lies in open countryside outside of any development boundary defined in the LDP. Policy S1 of the LDP only allows for new residential development in exceptional circumstances, these being rural building conversions, sub-division of existing dwellings and dwellings necessary for a rural enterprise. No such justification has been put forward so the application seeking what essentially amounts to seven new residential units in the open countryside is contrary to Policy S1 of the LDP. Policy S1 reflects government guidance that new dwellings in the open countryside should not normally be allowed. The policy refers to new residential development and the proposed seven residential caravans do constitute residential development.

5.3.3 LDP Policy LC1 states that there is a presumption against new build development in the open countryside unless justified under national policy or is necessary to sustain a rural enterprise, or is for agricultural, recreation or tourism purposes. In this case no justification has been put forward that the site is needed for any of these specific purposes so that the development is considered to be new built development in the open countryside without justification and therefore contrary to Policy LC1. The development would result in a substantial amount of new build with three utility rooms measuring up

to 6.7 m x 4.9 m with a pitched roof 4 metres in height, in addition to this there would be a significant amount of hard standing and 5 additional mobile homes measuring up to 12.2 m x 8.5 m as well as the inevitable domestic paraphernalia.

5.3.4 As stated above, LPA's are required to assess the accommodation needs of Gypsies as part of the LDP process and that LDPs should include policies for the provision of Gypsy sites. The Council commissioned a Gypsy and Travellers Needs and Sites Study in 2009 to inform the LDP. The report found that Monmouthshire has a very low gypsy and traveller population with only one authorised private site containing one caravan. Since then permission has been granted on appeal for two units at Maerdy Farm. At the time the study found that the Maerdy Farm did not represent need as it was infrequently and little used. As a result of lack of need no specific Gypsy sites were allocated in the LDP however it was considered that there was a need to guide future applications for Gypsy sites. Subsequently Policy H8 of the LDP provided a framework against which proposals for Gypsy, Traveller and Travelling Showpeople sites will be assessed.

5.3.5 Policy H8 (quoted in Section 4.1 above) should only be used where a need has been identified. In this case the LPA has not been convinced that there is proven need for these additional pitches. Notwithstanding that no need has been proven the proposal will be assessed against criteria a) to g) of Policy H8 above. The site is of sufficient size to meet the needs of any occupiers and is not at risk from flooding or pollution. The site already has the benefit of services including power, water supply and foul drainage it therefore it complies with criteria c), e) and g) respectfully. The site is not in a sustainable location, a primary school, shops and health care facilities are available in the town of Usk which is approximately 2 km away however Usk is not accessible from the site by means of public transport or on foot. This was recognised by the Inspector when allowing the previous appeal saying that "The site is typical of many rural locations in that its distance from local facilities combined with the unlit, narrow winding nature of the country lanes and the absence of a dedicated footway provision, means that the occupiers are likely to rely on a car to access most day to day services. In terms of this aspect of sustainability... the location of the site does not perform well". The Inspector then reminds us of the advice given in paragraph 26 of Circular 30/2007 promoting a more pragmatic approach to car borne journeys in relation to users of Gypsy sites. While the proposal is contrary to criterion a) in that this is not a sustainable location, this issue can be overlooked in light of the advice given in the government circular. Criterion b) refers to vehicular access to the site. The site is accessed by a very narrow and winding lane which accesses off the B4235 Usk to Chepstow Road about 1 km away. This narrow lane serves several residential properties including several converted barns at Upper Maerdy Farm. The traffic generated from 7 residential units on the site may put pressure on this local lane and this will be exacerbated by the frequent movement of touring caravans along the lane to the site. The narrow lane is not considered suitable for this volume of traffic. It has already been established that any occupiers of the site would be dependent on the car for all trips to local facilities. In addition it has been evidenced in the past that the lane is not suitable for the static caravans to enter into the site. The proposed site is contrary to criterion b) of Policy H8 as it does not have a safe and convenient access to the highway network and it may cause traffic congestion and safety problems for users of this narrow lane. The highway safety aspect will be considered in more detail later on in this report.

5.3.6 Criterion d) refers to the visual impact of the proposal. Although the site is relatively well screened by mature hedgerows development on the site will be visible from the A449 trunk road and the adjacent slip road especially in winter when there is less leaf coverage. The site is relatively flat and low lying and could not be said to occupy a prominent location, however this scale of development would clearly be visible when viewed from the surrounding road network even during the summer months. When

allowing the previous appeal for two pitches the Inspector thought that the development was acceptable in visual terms due to the “modest nature of the scheme” but this is not the case with this more intensive scale of development. A landscaping scheme has been submitted as part of the proposal but even this will not completely screen the site from view from public vantage points and it will take several years to establish. A more detailed appraisal of the visual impact of the proposal will be considered elsewhere in this report but at this stage we can say that the development does not comply with criterion d) of the policy as it will not protect or enhance the landscape character of the area. The site would cover an area of 0.9 hectares which represents large scale development in this rural location. The adjoining land uses are agricultural, residential and highway land. The proximity of such a large site so close to existing residential properties could have an adverse impact on the residential amenities of the existing occupiers and so the development is not considered to be of an appropriate scale for this location and is therefore contrary to criterion f) of the policy.

5.3.7 The proposal is contrary to criteria a), b), d) and f) of Policy H8 of the LDP. The next section will consider whether the applicant’s needs constitute so significant a consideration as to justify approving the application.

#### 5.4 Other Material Considerations

5.4.1 In evaluating the application, regard must also be had for ‘other material considerations’ as required by good practice and government guidance, including a consideration of whether there are any ‘very exceptional circumstances’ which justify setting aside land use policy considerations. The main issues in this case are need and the availability of alternative accommodation.

##### 5.4.2 *Exceptional Circumstances of the applicants*

The Design and Access Statement submitted with the application states that the site is needed for Gypsies and Travellers and the Council accepts that the applicants are Romany Gypsies.

In addition the applicant’s agent submitted an email in March 2016 outlining the personal circumstances of the applicants. This has not been published on the web site as it is considered personal information. The email outlines that pitch one will be for Star Lee, who already has a personal permission to occupy this pitch. The person who was granted personal permission to occupy plot 2 has subsequently died and permission is now sought for this plot to be occupied by a 22 year old man who currently lives in the Shirenewton site in Cardiff, with his mother. It is stated that he is no longer able to live with his mother as he has reached maturity and that he is now subsequently homeless. The information received in relation to this states.

*“He is homeless and parking up where he can because once he reached maturity and formed his own household the licence agreement on his mother’s plot on the Shirenewton site required him to vacate the pitch. However ..... it is essential that he lives with his family as he is effectively the main breadwinner, despite his young age.”*

Of the proposed new plots, three of these would be for the applicant’s family, his mother and her two children aged 13 and 15 years, and his grandmother and her 45 year old son who suffers from epilepsy, as well as his great uncle who is 80 years old and cared for by the grandmother. The remaining two new plots would be for another family, a mother and her three children two of which are of school age, one suffering from cystic fibrosis. All these people currently occupy pitches on the Shirenewton Gypsy site in Cardiff.

5.4.3 *In support of the application, the following statement has been submitted.*

*"It is clear from the foregoing, due to either caring responsibilities for close family members or for reasons of ill health/disability themselves, the applicant is fit, well and able to work. Unfortunately, he is no longer permitted to live on the Shirenewton site despite his family's increasing need for him to help care for them. The purpose of the application is to bring the family together again on the same site where the applicant can look after his family in the extended Romany Gypsy tradition, this being a material consideration of significant weight. Unfortunately, the Shirenewton site itself has been subject to prolonged anti-social behaviour with police raids and other matters which have made the family's life there intolerable. The police will be able to verify that this family has not been involved in the anti-social behaviour on that site and are of good character and standing in the community. However as the family members grow older, their resilience to such behaviour lessens, particularly in the absence of Tom Lee to protect them. This matter also attracts significant weight. Relocating from the Shirenewton site would also free up pitches for those families on the waiting list for the site, a matter which also attracts significant weight."*

5.4.4 Whilst the Council sympathise with the medical conditions of this group of people they are not so unusual as to justify overriding Development Plan policy and are not unique to these individuals. With regards to the four children who are of school age, they could continue their education within the Cardiff area where they currently have closer access to schools. An email was received in July 2016 from a housing officer for Cardiff Gypsy and Traveller sites, which said that:

*"There is no reason why the family members mentioned cannot stay on the Shirenewton site. There is nothing in the Written Agreement to say that once a child has reached a certain age that they have to move off site. Once a child (Dependant) reaches adulthood he then becomes a (Non Dependant) where a charge of £14.55 is applied to any family claiming Housing Benefit. Tom Lee left site of his own free will and was never forced off site by the local authority. The only part that would cause concern about an extended family would be the space restrictions as stated in part of the Written Agreement: Space restrictions on the plot where the applicant resided did not present itself as a concern."*

5.4.5 It is therefore concluded that there are no compelling reasons why the applicants cannot remain on the Shirenewton Site in Cardiff where there are adequate facilities provided for the family and their needs. It appears that the move from the Shirenewton site to this site near Usk, is more a case of personal preference rather than an exceptional personal circumstance of the applicants. It is understood that Star Lee does not wish to live on plot one alone and that circumstances have changed since the original permission granted for two plots in 2011 but this is no justification for allowing for an additional 5 plots, contrary to overarching Development Plan policies.

5.4.6 With regards to a local connection to this particular site at Upper Maerdy Farm near Usk the agent states that. *"The reason why the family chose this site was because of their close ties to the area, in particular Star Lee. On top of that, the applicant's father was born in the Pontypool Traveller site and brought up in the area. His Uncle was born in Usk itself whilst the family were travelling in the area for work. The applicant also travels for work in the area and has done for many years. As raised above, the intention is to bring the other family members on to the site so that they can all be together again in a safe and secure environment."*

The Council has not been supplied with details of the applicant's work in terms of its nature and location, however there is nothing to suggest that there is a functional need for him to reside in this specific location in order to carry out this work, rather that it appears to be a personal preference to live closer to his place of work.

With regard to need neither the applicants nor their agents have given sufficient evidence to suggest that there is a need for the additional five plots on the site. There is no substantial evidence to support the applicant's claim that they are no longer able to

stay at the authorised public site in Shirenewton. The GTAA has identified that additional pitches are required within the County but the applicants, to the best of our knowledge, have not made a request for a site. There are no alternative Gypsy sites within Monmouthshire, public or private although there is a private site for one family in Crick but this is a personal consent. When compiling the current LDP there was no proven need to provide any Gypsy sites and no evidence has emerged in the Gypsy and Traveller Accommodation Assessment identifying an accommodation need for the applicants with Monmouthshire.

## 5.5 Visual impact

5.5.1 This application seeks new built development in the open countryside where policy LC1 of the LDP will apply. Policy LC1 states that there is a presumption against new built development in the open countryside. It then identifies some circumstances where exceptions may apply such as where development is needed for agriculture or tourism. There is no such exception for Gypsy sites. The proposed development will not be satisfactorily assimilated into the landscape, as stated above it will be visible from several public vantage points particularly during the winter months. The proposed caravans and associated structures will not be located close to the approved caravans; in fact they will be at least 130 metres to the north of the approved caravan and located in a separate field. The proposal represents new residential development that is not well related to the rural character of the area. As will be demonstrated below the proposal may have an unacceptable adverse impact on the landscape but there is insufficient information to evaluate this. The proposal is clearly contrary to Policy LC1 of the LDP as none of the criteria set out in that policy have been satisfied. The applicants have failed to provide a landscape assessment, although a landscaping scheme has been submitted, and have not demonstrated how landscape character has influenced the design, scale, nature and site selection. Without this information it is difficult to fully assess the landscape impact of the proposal. An appraisal of the landscape character and visual appraisal would have provided the applicant with the necessary information to develop their proposal properly, informing the design, scale, massing and layout. The design process has not been illustrated or explained in either the Design & Access statement or in any other supporting documents. Without this work being carried out it is difficult to assess the impact of the proposal on the landscape. The proposed development may have an unacceptable adverse effect of the special character of this part of the Monmouthshire countryside. The proposed development, due to its size and incongruous location may be contrary to Policy LC5 of the LDP as the applicants have failed to demonstrate that the proposal would not harm the landscape character of the area.

## 5.6 Highway Considerations

5.6.1 The application site is accessed from a narrow rural lane which is an unclassified route C214-1 leading from the B4235. The C214-1 is predominantly an access road providing access to a limited number of dwellings and agricultural buildings and fields and although it is a through route, the southern part has more appropriate access routes available. The C214-1 is generally single track with infrequent areas of localised widening or passing bays. The proposed development, once established will result in an increase in vehicular movements along this narrow country lane. The applicants have not provided any information relating to the increase in trip generation as a result of this proposal but the Council's Highways Officer considers that there would be adequate capacity within the road network to accommodate the likely increase resulting from seven additional residential units. Following granting of permission for the original two caravan, it became clear that the caravans could not be brought onto the site along the C214-1 without widening the road or removing hedgerows, as the road is so narrow. The

applicants have not said how they intend to bring the caravans onto the site. This would need to be carefully considered before planning permission could be granted. There is sufficient room on the site to accommodate car parking in line with the adopted standards. No details of the proposed means of draining the forecourt/hardstanding area have been indicated. There are concerns over the uncontrolled nature of disposal of surface water from the site which may cause flooding on the nearby road network.

## 5.7 Biodiversity

5.7.1 It is difficult to assess the potential impacts of the development without having a preliminary ecological appraisal to consider these impacts although it is accepted that the site is relatively small and that considerable landscape proposals are included. The applicants have been asked to carry out a Preliminary Ecological Assessment of the site and this information is awaited.

## 5.8 Residential Amenity

5.8.1 Opposite the entrance to the site is a detached property known as The Yews. The proposed five new plots will be approximately 170 metres from The Yews, this is further than the distance from the approved plots 1 and 2 to The Yews which is approximately 40 metres. When allowing the previous appeal on the site, the Inspector did not refer the residential amenity of neighbouring properties and must therefore have considered the situation with regards to two pitches to be satisfactory. The distance of 170m is considered acceptable and should not impact on the visual or privacy aspects of the occupiers of The Yews. The impact caused by additional traffic using the vehicular access into the site so close to The Yews may have a disturbing impact on occupiers of that property. However this impact is not considered to be so significant as to form a reason for refusal. There are no other residential properties close enough to the proposed site to be significantly adversely affected by it.

## 5.9 Drainage and Flooding

5.9.1 It is proposed that foul water will be disposed of via a cess pit. There is sufficient land available within the site to provide a cess pit with the associated access and Welsh Water have no objection to this proposal. Surface water will be disposed of via soakaway, again there is sufficient land available within the site to provide this. Welsh Government Transport have no objection provided that no drainage from the site be connected to or allowed to discharge into the trunk road drainage system.

5.9.2 The site is not within a flood zone defined in the DAM maps of TAN 15 and neither is the site known to be prone to flooding. The proposed development will increase the area of hard surface as opposed to a greenfield site and this may alter infiltration rates but surface water is capable of being managed acceptably within the site and should not lead to a flooding issue on surrounding roads or properties.

## 5.10 Other Issues Raised

5.10.1 The presence of covenants on the land restricting the use to be agricultural is a private legal matter and not a material planning consideration. The applicants are aware of the water main crossing the site and have not proposed any built development within the easement. If rubbish is being tipped at the site this is a matter for the Council's Environmental Health service and should have no bearing on the outcome of the planning application. It has become evident from past attempts that it is extremely difficult to deliver mobile homes to this site without causing substantial damage to both the mobile homes and surrounding vegetation but this is a logistical problem for the

applicants to overcome, should the application be approved rather than a reason for refusal. The site is not of sufficient size to warrant amenity space for children or street lighting. Utilities including water supply and electricity are already available on the site. All other issues raised by the two community councils have been discussed in detail in the report above.

#### 5.11 Conclusion

5.11.1 If the application is considered solely on land-use policies it is clear from the foregoing appraisal that the site is contrary to planning policy in terms of its open countryside location and lack of agricultural or rural enterprise justification. If an application were made for residential use of the site by a person other than a Gypsy or Traveller such an application would undoubtedly be refused. The applicants have submitted information seeking to explain why the personal circumstance in this case are so exceptional that they outweigh Development Plan policy. The Council recognises that the individuals referred to are Romany Gypsies but they have failed to explain why they can no longer remain on their current site or why this particular site should be considered as the only alternative. As such the proposal does not comply with LDP Policy H8 and there are no overriding material considerations to outweigh these policy objections.

### **6.0 RECOMMENDATION: REFUSE**

#### **Reasons for Refusal:**

1. The proposed site is on greenfield agricultural land in the open countryside outside any development boundary. The development would represent new residential development in the open countryside without any justification and would therefore be contrary to Strategic Policy S1 and Policy LC1 of the adopted Local Development Plan (LDP) within which there is a presumption against new residential development in the open countryside. The proposed development would have an unacceptable adverse visual impact on the special character of this part of the Monmouthshire countryside. The proposed development, due to its size and incongruous location, would be contrary to Policy LC5 of the LDP as the applicants have failed to demonstrate that the proposal would not harm the landscape character of the area.
2. The proposed site is not a sustainable location for residential development (or a Gypsy/ Traveller site) as it is not accessible to schools, shops and health care facilities by public transport on foot or by cycle and is therefore not in accordance with the objectives of Policy S8 of the adopted LDP.
3. The applicants have failed to demonstrate that there are overriding exceptional circumstances that would outweigh the prevailing Development Plan policies. While it is recognised that the applicants are Romany Gypsies there is insufficient evidence to explain why the applicants have to live in this particular location at this time.