

Notice of Meeting

Planning Control Committee

Date: Tuesday, 23 September 2014

Time: 17:30

Venue: Conference Room 1, (Beech Hurst), Beech Hurst, Weyhill Road,
Andover, Hampshire, SP10 3AJ

For further information or enquiries please contact:

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Legal and Democratic Service

Test Valley Borough Council,
Beech Hurst, Weyhill Road,
Andover, Hampshire,
SP10 3AJ

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The recommendations contained in the Agenda are made by the Officers and these recommendations may or may not be accepted by the Committee.

PUBLIC PARTICIPATION SCHEME

If members of the public wish to address the meeting they should notify the Legal and Democratic Service at the Council's Beech Hurst office by noon on the working day before the meeting.

Membership of Planning Control Committee

| MEMBER | | WARD |
|-----------------------|---------------|---|
| Councillor C Collier | Chairman | Abbey |
| Councillor I Hibberd | Vice Chairman | Romsey Extra |
| Councillor G Bailey | | Blackwater |
| Councillor P Boulton | | Broughton & Stockbridge |
| Councillor Z Brooks | | Millway |
| Councillor P Bundy | | Chilworth, Nursling & Rownhams |
| Councillor A Dowden | | Valley Park |
| Councillor M Flood | | Anna |
| Councillor M Hatley | | Ampfield and Braishfield |
| Councillor A Hope | | Over Wallop |
| Councillor P Hurst | | Tadburn |
| Councillor N Long | | St.Mary's |
| Councillor C Lynn | | Winton |
| Councillor J Neal | | Harewood |
| Councillor A Tupper | | North Baddesley |
| Councillor A Ward | | Kings Somborne, Michelmersh & Timsbury |
| Councillor J Whiteley | | Alamein |

Planning Control Committee

Tuesday, 23 September 2014

AGENDA

**The order of these items may change as a result of members
of the public wishing to speak**

- 1 Apologies**
- 2 Public Participation**
- 3 Declarations of Interest**
- 4 Urgent Items**
- 5 Minutes of the meeting held on 12 August 2014**
- 6 Information Notes 4 - 8**
Information Notes
- 7 13/01648/FULLN - 12.09.2013 9 - 38**
(RECOMMENDATION OF NORTHERN AREA PLANNING
COMMITTEE: TEMPORARY PERMISSION)
(RECOMMENDATION OF THE HEAD OF PLANNING AND
BUILDING: REFUSE)
SITE: The Atchen Tan, Netherton Road, Netherton, SP11 0DW,
HURSTBOURNE TARRANT
CASE OFFICER: Mr Jason Owen

ITEM 6

TEST VALLEY BOROUGH COUNCIL

PLANNING CONTROL COMMITTEE

INFORMATION NOTES

Availability of Background Papers

Background papers may be inspected up to five working days before the date of the Committee meeting and for four years thereafter. Requests to inspect the background papers, most of which will be on the application file, should be made to the case officer named in the report or to the Development Manager. Although there is no legal provision for inspection of the application file before the report is placed on the agenda for the meeting, an earlier inspection may be agreed on application to the Head of Planning and Building.

Reasons for Committee Considerations

Applications are referred to the Planning Control Committee from the Northern or Southern Area Planning Committees where the Head of Planning and Building has advised that there is a possible conflict with policy, public interest or possible claim for costs against the Council.

The Planning Control Committee has the authority to determine those applications within policy or very exceptionally outwith policy and to recommend to the Cabinet and to the Overview and Scrutiny Committee revisions to policy resulting from its determination of applications.

Approximately 15% of all applications are determined by Committee. The others are determined by the Head of Planning and Building in accordance with the Council's Scheme of Delegation which is set out in the Council's Constitution.

Public Speaking at the Meeting

The Council has a public participation scheme, which invites members of the public, Parish Council representatives and applicants to address the Committee on applications. Full details of the scheme are available from Planning and Building Services or from the Committee Administrator at the Council Offices, Beech Hurst, Weyhill Road, Andover. Copies are usually sent to all those who have made representations. Anyone wishing to speak must book with the Committee Administrator within the stipulated time period otherwise they will not be allowed to address the Committee.

Speakers are limited to a total of three minutes per item for Councillors with prejudicial interests, three minutes for the Parish Council, three minutes for all objectors, three minutes for all supporters and three minutes for the applicant/agent. Where there are multiple supporters or multiple objectors wishing to speak the Chairman may limit individual speakers to less than three minutes with a view to accommodating multiple speakers within the three minute time limit. Speakers may be asked questions by the Members of the Committee, but are not permitted to ask questions of others or to join in the debate. Speakers are not permitted to circulate or display plans, photographs, illustrations or textual material during the Committee meeting as any such material should be sent to the Members *and* officers in advance of the meeting to allow them time to consider the content.

Content of Officer's Report

It should be noted that the Officer's report will endeavour to include a summary of the relevant site characteristics, site history, policy issues, consultations carried out with both internal and external consultees and the public and then seek to make a professional judgement as to whether permission should be granted. However, the officer's report will usually summarise many of the issues, particularly consultations received from consultees and the public, and anyone wishing to see the full response must ask to consult the application file.

Status of Officer's Recommendations and Committee's Decisions

The recommendations contained in this report are made by the officers at the time the report was prepared. A different recommendation may be made at the meeting should circumstances change and the officer's recommendations may not be accepted by the Committee.

In order to facilitate debate in relation to an application, the Chairman will move the officer's recommendations in the report, which will be seconded by the Vice Chairman. Motions are debated by the Committee in accordance with the Council's Rules of Procedure. A binding decision is made only when the Committee has formally considered and voted in favour of a motion in relation to the application and, pursuant to that resolution, the decision notice has subsequently been issued by the Council.

Conditions and Reasons for Refusal

Suggested reasons for refusal and any conditions are set out in full in the officer's recommendation.

Officers or the Committee may add further reasons for refusal or conditions during the Committee meeting and Members may choose to refuse an application recommended for permission by the Officers or to permit an application recommended for refusal. In all cases, clear reasons will be given, by whoever is promoting the new condition or reason for refusal, to explain why the change is being made.

Decisions Subject to Completion of a Planning Obligation

For some applications, a resolution is passed to grant planning permission subject to the completion of an appropriate planning obligation (often referred to as a Section 106 agreement). The obligation can restrict development or the use of the land, require operations or activities to be carried out, require the land to be used in a specified way or require payments to be made to the authority.

New developments will usually be required to contribute towards the infrastructure required to serve a site and to cater for additional demand created by any new development and its future occupants. Typically, such requirements include contributions to community facilities, village halls, parks and play areas, playing fields and improvements to roads, footpaths, cycleways and public transport.

Upon completion of the obligation, the Head of Planning and Building is delegated to grant permission subject to the listed conditions. However, it should be noted that the obligation usually has to be completed sufficiently in advance of the planning application determination date to allow the application to be issued. If this does not happen, the application may be refused for not resolving the issues required within the timescale set to deal with the application.

Deferred Applications

Applications may not be decided at the meeting for a number of reasons as follows:

- * The applicant may choose to withdraw the application. No further action would be taken on that proposal and the file is closed.
- * Officers may recommend deferral because the information requested or amended plans have not been provided or there has been insufficient time for consultation on amendments.
- * The Committee may resolve to seek additional information or amendments.
- * The Committee may resolve to visit the site to assess the effect of the proposal on matters that are not clear from the plans or from the report. These site visits are not public meetings.

Visual Display of Plans and Photographs

Plans are included in the officers' reports in order to identify the site and its surroundings. The location plan will normally be the most up-to-date available from Ordnance Survey and to scale. The other plans are not a complete copy of the application plans and may not be to scale, particularly when they have been reduced from large size paper plans. If further information is needed or these plans are unclear please refer to the submitted application in the reception areas in Beech Hurst, Andover or the Former Magistrates Court office, Romsey. Plans displayed at the meeting to assist the Members may include material additional to the written reports.

Photographs are used to illustrate particular points on most of the items and the officers usually take these. Photographs submitted in advance by applicants or objectors may be used at the discretion of the officers.

Human Rights

"The European Convention on Human Rights" ("ECHR") was brought into English Law, via the Human Rights Act 1998 ("HRA"), as from October 2000.

The HRA introduces an obligation on the Council to act consistently with the ECHR.

There are 2 Convention Rights likely to be most relevant to Planning Decisions:

- * Article 1 of the 1st Protocol - The Right to the Enjoyment of Property.
- * Article 8 - Right for Respect for Home, Privacy and Family Life.

It is important to note that these types of right are not unlimited - although in accordance with the EU concept of "proportionality", any interference with these rights must be sanctioned by Law (e.g. by the Town & Country Planning Acts) and must go no further than necessary.

Essentially, private interests must be weighed against the wider public interest and against competing private interests. Such a balancing exercise is already implicit in the decision-making processes of the Committee. However, members must specifically bear Human Rights issues in mind when reaching decisions on all planning applications and enforcement action.

Natural Environment and Rural Communities Act 2006 (NERC)

The Council has a duty under the Natural Environment and Rural Communities Act 2006 as follows: *"every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity"*.

It is considered that this duty has been properly addressed within the process leading up to the formulation of the policies in the Local Plan and Core Strategy and the adoption of the former. Further regard is had in relation to specific planning applications through completion of the biodiversity checklists for validation, scoping and/or submission of Environmental Statements and any statutory consultations with relevant conservation bodies on biodiversity aspects of the proposals.

Provided any recommendations arising from these processes are conditioned as part of any grant of planning permission (or included in reasons for refusal of any planning application) then the duty to ensure that biodiversity interest has been conserved, as far as practically possible, will be considered to have been met.

Other Legislation

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that determination of applications be made in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan for the Borough comprises the saved Policies of the Test Valley Borough Local Plan 2006. Material considerations are defined by Case Law and includes, amongst other things, draft Development Plan Documents (DPD), Supplementary Planning Document (SPD) and other relevant guidance including Development Briefs, Government advice, amenity considerations, crime and community safety, traffic generation and safety.

On the 27 March 2012 the Government published the National Planning Policy Framework (NPPF). The NPPF does not change the statutory status of the development plan as a starting point for decision making. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The Framework sets out that where the development plan is absent, silent or relevant policies are out of date permission should be granted unless:

- Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or
- Specific policies in the Framework indicate development should be restricted.

However, account can also be taken of policies in emerging development plans, which are going through the statutory procedure towards adoption. Annex 1 of the NPPF sets out that greater weight can be attached to such policies depending upon:

- The stage of plan preparation of the emerging plan;
- The extent to which there are unresolved objections to relevant policies; and
- The degree of consistency of the relevant policies in the emerging plan to the policies in the NPPF.

The National Planning Policy Framework states that 'In assessing and determining development proposals, local planning authorities should apply the presumption in favour of sustainable development.'

ITEM 7

| | |
|---|---|
| APPLICATION NO. | 13/01648/FULLN |
| APPLICATION TYPE | FULL APPLICATION - NORTH |
| REGISTERED | 12.09.2013 |
| APPLICANT | Mr Ethan Lee |
| SITE | The Atchen Tan, Netherton Road, Netherton, SP11 0DW, HURSTBOURNE TARRANT |
| PROPOSAL | Siting of 4 caravans for residential use by one family (Retrospective) |
| AMENDMENTS | None |
| CASE OFFICER | Mr Jason Owen |
| Background paper (Local Government Act 1972 Section 100D) | |

1.0 INTRODUCTION

1.1 This application is referred to Planning Control Committee (PCC) as the Northern Area Planning Committee (NAPC) at its meeting on the 31 July 2014 wanted to grant temporary permission for the proposed development which was contrary to the report recommendation for refusal on the basis that it was contrary to policy.

- 1.2
- A copy of the NAPC agenda report is attached at Appendix A
 - A copy of the NAPC Update Paper is attached at Appendix B

2.0 PLANNING CONSIDERATIONS

2.1 During discussion at NAPC Members acknowledged that the proposal gave rise to an impact on the local landscape of the North Wessex Downs AONB. However Members afforded greater weight to the position that the Borough Council had an un-met demand for such sites and that there had been no conclusion on the adoption of the Council's Gypsy, Traveller and Showman's DPD, as reasons that could justify the grant of a temporary consent for the proposed development. Members considered that the likely period of time required to progress the DPD was approximately 2 years and this informed the resolution to grant a temporary permission for a two year period.

2.2 The resolution did not however address the main issue identified by Officers – that being the proposal would give rise to an adverse visual impact on the statutorily protected North Wessex Downs AONB. It is considered unlikely that the impact of development on the local landscape would change, or indeed improve, over the next two years such that the prospect of using the site for Gypsy accommodation beyond this period would be any more acceptable. The applicants do not have control of the land such that additional screen planting could be carried out (or subsequently maintained) and so in this respect the adverse impact of the proposal on the AONB is not likely to change over the period. The advice of Officers on this point remains the same as that set out previously, and detailed in the NAPC reports attached.

2.3 **Personal circumstance of the applicant**

Following the NAPC resolution to grant temporary permission for the site a suggestion that the applicant had started a tenancy at a property in Vernham Dean with a Registered Provider of affordable housing, was made. Further clarification from the applicant was sought on this position and their reply to this is detailed as follows:

“When the planning was recommended for refusal we took a temporary 1 year tenancy but as we suspected ethan and two of the children have failed to cope and are still living at the caravans, the caravans are our only option, we felt forced due to impending eviction to take the house but it is clear this is not a viable option. We tried!!!”

- 2.4 It is noted that the applicants have secured a short term tenancy arrangement on a property within the village of Vernham Dean. Such arrangements do not affect the advice given by the Head of Planning and Building on the appropriateness, or otherwise, of the application site to deliver a site that could be occupied by a Gypsy family.

3.0 **CONCLUSION**

- 3.1 The principle of developing sites in countryside locations to provide for suitable Gypsy accommodation is set out in Policy ESN13 of the TVBLP, as an exception to Policy SET03. These Development Plan policies, together with other local and national Guidance, provide a framework within which to determine the application. It is known that there is a need for Gypsy accommodation to be provided within the Borough through recent studies and appeal decisions, and that no alternative sites exist in the locale to meet the personal requirement of the applicant. The LPA has not planned for the delivery of further gypsy sites to meet the acknowledged short fall within the Borough and these factors weigh in favour of the proposed development.
- 3.2 That said the NAPC in it's consideration and recommendation focussed principally on the position that the Borough Council had not delivered any alternative site(s) or it's wider Policy SPD. While this is a material consideration the main issue which is to be discussed is whether the application site is appropriate, either now or into the future, for the delivery of a Gypsy site. The weight afforded to the visual impact of the proposal, the objection from the council's Landscape Officer and from the North Wessex Downs AONB Management Board, together with the Planning Officer's assessment on this point weigh heavily against this site as providing a suitable site. It is also material to consider that the applicant (due to land ownership issues) is not able to implement or maintain a landscaping scheme that could assist in mitigating the impact on the character and scenic beauty of this part of the North Wessex Downs AONB.

**4.0 RECOMMENDATION OF NORTHERN AREA PLANNING COMMITTEE
TEMPORARY PERMISSION subject to the following conditions:**

- 1. Temporary permission for a 2 year period;**
- 2. To allow occupancy of the caravans to those family members referred to in the planning application;**
- 3. Restrictions to the total number of caravans that can be placed on the land to four.**

**5.0 RECOMMENDATION OF THE HEAD OF PLANNING AND BUILDING
REFUSE for the reasons:**

- 1. The proposed development detracts significantly from the local landscape particularly in the view from Netherton Road where it has an undue impact on the character and visual amenity of the area and detracts from the natural beauty, scenic character and quality of the landscape in this part of the North Wessex Downs Area of Outstanding Natural Beauty. The proposal is therefore contrary to policies SET03, ESN13, DES01 and ENV07 of the Test Valley Borough Local Plan (2006).**
 - 2. The proposed development is a travel generating development which would place an additional demand on the existing transport network. An appropriate legal agreement to secure highway infrastructure improvements to mitigate the impact of development has not been completed. As such the proposal would place an un-mitigated burden on the highway network and be contrary to policy TRA04 of the Test Valley Borough Local Plan (2006) and the adopted Infrastructure and Developer Contributions (February 2009) SPD and the Test Valley Access Plan SPD (2012).**
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APPENDIX A

Officer's Report to Northern Area Planning Committee – 31 July 2014

| | |
|----------------------------------|---|
| APPLICATION NO. | 13/01648/FULLN |
| APPLICATION TYPE | FULL APPLICATION - NORTH |
| REGISTERED APPLICANT SITE | 12.09.2013 Mr Ethan Lee The Atchen Tan, Netherton Road, Netherton, SP11 0DW, HURSTBOURNE TARRANT |
| PROPOSAL | Siting of 4 caravans for residential use by one family (Retrospective) |
| AMENDMENTS | Additional Information: 09.11.2013 (Flood Risk Assessment and Environmental Management Plan) Additional information: 13.01.2014 (Statement in respect of use of Common Land) |
| CASE OFFICER | Mr Jason Owen Background paper (Local Government Act 1972 Section 100D) |

1.0 INTRODUCTION

- 1.1 The application is presented to Northern Area Planning Committee as a member of TVBC staff(Planning and Building Service) has declared an interest in the application.

2.0 SITE LOCATION AND DESCRIPTION

- 2.1 The site which is the subject of the application is located within the delineated“countryside”(as defined in the Inset Maps of the Test Valley Borough Local Plan (2006)) for planning policy purposes, at Netherton Road, Netherton. The site is situated in the North Wessex Downs Area of Outstanding Natural Beauty. The land has also been identified as Common Land, registered as CL299 under the Commons Registration Act.
- 2.2 The land to the rear (west) of the site is a dense copse (Woods Copse) which runs north to south in direct alignment with the site. The site is in part open to the north, with some recent native planting and bunding in place. The site is bound to the east by the Netherton Road. There are trees and hedgerows to the south and east of the site that form part of a further copse.
- 2.3 Land in the immediate area is countryside set within a woodland and enclosed valley, context. The area is relatively devoid of built development although there is another unauthorised Gypsy encampment in close proximity to the site.

3.0 **PROPOSAL**

3.1 The development proposed is the siting of four caravans for residential use by one family, on a permanent basis. It is understood that the applicant is of Romany Gypsy ethnicity.

3.2 The land is currently used for the siting of caravans and the Council's Enforcement Officer, when investigating an alleged breach of planning permission, first visited the site in November 2011.

3.3 Whilst the application is for permanent residential use the applicant's agent has since indicated that a temporary and personal permission would be acceptable.

4.0 **HISTORY**

4.1 None relevant

5.0 **CONSULTATIONS**

5.1 **Policy**—No objection:

- Proposal in countryside. SET03 applicable, whilst proposal is for four caravans I note from the DAS that reference is made to one pitch.
- Policy ESN13 sets out a number of criteria which need to be satisfied
- Criterion a) focuses on whether there is a demonstrable need within the Borough. The Council Gypsy & Traveller Accommodation Assessment (Forest Bus - 2013). The GTAA confirmed that there was an estimated need for 4 pitches up to 2017. No sites have been permitted since the study was completed. The new GTAA has been completed in accordance with government guidance 'Planning Policy for Traveller Sites' which is a material consideration. The CLG guidance requires a five year supply of gypsy sites to be identified.
- The GTAA confirms that there is an existing need for 2 permanent pitches (rounded from 1.5) with a need for 4 permanent pitches (including the existing need) by 2017. There is an identified need within the Borough which this proposal for one pitch, if permitted, would help to meet.
- ESN criteria b), d) - f) and h) are best responded to be specialist officers.
- Criterion c) refers to agricultural land quality. No information has been provided although site visit by case officer may determine if the land has been farmed – I note the comment that the land was part of a common but not commoned in the DAS.
- Criterion g) refers to being well located to local community facilities. The site is relatively close to facilities in Hurstbourne Tarrant.
- There is a deficit of informal recreation and children's play space within the parish.
- A contribution is sought towards improving and enhancing the facilities at King George V recreation ground.

- The Bridle View appeal decision of 11.02.14 (file ref: 12/02318/FULLS) is a material consideration. The Inspector confirms that there is an identified need. Under para 67 the Inspector does highlight concerns with the GTAA including with regard to how temporary permissions have been factored into quantifying the level of need. The Wellow Wood Paddock site was included within the initial baseline of permitted sites. However given the sites temporary permission the Council is reviewing whether it should have been included. If the temporary permission were to be excluded it would result in the level of need included in the GTAA for 2012 – 2017 increasing by one further pitch (five pitches needed). Granting permanent permission for this site could then be used to help satisfy the increased need without the risk of double counting.
- The Planning Policy for Traveller Sites is a material consideration. Page 6 deals with matters to consider when determining planning applications. Two issues are particularly relevant;
 - Firstly, criterion c) of para 22 referring to personal circumstance. Note should be had of the content of the DAS.
 - The second issue is para 23 of PPTS. It does refer to strictly limiting development in the open countryside but goes onto recognise that sites can be in the rural area. The site is relatively remote from the nearest village (Hurstbourne Tarrant) however policy ESN13 doesn't prevent this type of development in the countryside and nor, on the basis of para 23, does the PPTS.
- The Bridle View Inspector also highlights that particular policies/ criteria within the BLP and which are pertinent to this proposal are consistent with national guidance e.g. policy DES01.
- The consultation on the Revised Local Plan (Reg 19 draft) closed on 07.03.14. Five representations have been made on policy COM13 'Gypsy & Travellers'. Weight can be applied to the proposed policy given the stage that has been reached although it should be balanced by the comments received ref NPPF para 216. The Council has commenced work on a Gypsy & Traveller DPD. This has yet to be published. The purpose of this DPD is to meet the unmet need within borough.

5.2 **Landscape**–Objection

- I have looked at the comments made by the previous Landscape Officer last year and whilst her landscape assessment is generally sound, i.e.I agree with the viewpoints/visual envelope, I do place a much greater significance on both the nature of the receptor and the nature of the effects in the main view from the road and the sensitivity levels given to these aspects in the earlier assessment.
- I accept that the impact on the wider AONB is limited, however the local effect on the main view (from Netherton Road travelling east), is in my opinion, significant given that this view is sustained for drivers travelling towards the site as it forms the focal point of the view. For walkers and horse riders this view is sustained for some minutes.

- This view is worst in the winter and I note that the previous assessment was made in September when foliage was still present.
- The previous Landscape Officer assessment considered that the visual impacts could be mitigated by requiring new planting and maintenance by condition and that this could be achieved in 5-7 years. I have some concerns about this estimate, given the changing seasons, the physical conditions of the site and the colour/materials of the various vehicles and paraphernalia currently on the site. Since the site is common land and not owned or rented by the applicants, it is not possible, as I understand it, to impose conditions requiring planting and maintenance.
- Some planting has taken place on land to the east of the site but this currently has very little impact, it may be of greater impact in the summer months when it has some foliage, however given the wet ground, it is possible that vegetation will struggle to become established here.
- Some improvement may be made by camouflaging the various vehicles or painting them dark green, could be achievable but may not be compatible with residential use given the size of windows and openings.
- Also In the light of the recent appeal decision at Timsbury, and the lack of planning controls available by conditions, I consider that the development is severely detrimental in the AONB and therefore not acceptable in landscape and visual terms. This is also having regard to national guidance ie the “great weight” to be given to “conserving landscape and scenic beauty” in AONBs (para 115 NPPF) and to the LPAs specific duty to have regard to the “purposes of the AONB designation” required under the CROW Act 2000, the primary purpose of the AONB designation is “to conserve natural beauty”, according to Natural England.

5.3 Trees—No objection

- Caravans, parking and associated domestic paraphernalia are already onsite. Any clearance to create living area is now historic. Area of domestic activity appears tightly defined, spread beyond indicated clearing boundary and damage to other trees / vegetation not apparent.
- Continued use at same level of occupancy and with same occupant discipline needn't lead to any loss of trees or surrounding shrubbery.

5.4 Highways—No objection subject to contributions towards sustainable transport infrastructure.

5.5 Environment Agency—No objection

Additional information acknowledges the risk involved with this location and states that they would monitor the Environment Agency website during adverse weather conditions and if required would be able to move the caravans.

5.6 **HCC Rights of Way**–Comments

The application site sits within an area of Common Land as such various forms of protection are afforded to the site under legislation related to Common Land.

5.7 **HCC Ecology**–No objection

Consider that the submitted management plan considers the potential issues and includes suitable and appropriate measures to address likely impacts.

Satisfied that, if followed, the management plan is acceptable to avoiding further harm to the SINC, and I would advise that adherence to it is secured by a planning condition. I would also suggest that the planning authority is given the opportunity to review conditions at the site on a periodic basis (say, after two years, then every five years after this initial review) through the submission of a management plan review (with photos, description of any works since previous review etc.) so we can assist the applicant in ensuring that the SINC continues to be a viable ecological resource.

5.8 **British Horse Society**–Comments

If approval is considered then a suitable planning gain would be a bridleway connection on the track through Doyley Manor Farm, along the track to join BW21 thus creating a link to RB23.

5.9 **Ramblers Association**–Comment

Common Land law may be relevant.

5.10 **North Wessex Downs AONB Management Board** –Objection

The application site is in the open countryside of the nationally protected North Wessex Downs AONB.

The development has resulted in a form of residential development in a largely unspoilt rural area. The caravans, associated vehicles and domestic paraphernalia appear out of keeping with the rural character of the surrounding countryside, which is recognised for its natural beauty. In addition to the visual impact, the development generates residential and vehicular activity and lighting which detracts from the peace, character and tranquillity of the surrounding rural area. In conclusion, the development causes significant, unacceptable harm to the character and appearance of this part of the North Wessex Downs AONB. The CRoW Act 2000 states that Local Authorities should consider the “*conservation and enhancement*” of AONBs and within the NPPF they are afforded “*great weight*” in the decision making process (paragraph 115). A site in a less sensitive area closer to the required facilities and services should be considered instead.

Note a previous refusal for such development at site at Ashmansworth

5.11 **Commoners of Land** –No response received

5.12 **Open Spaces Society** – No response received

5.13 **English Heritage** – No comment

5.14 **Natural England** – No objection, subject to condition in respect of biodiversity enhancements

6.0 **REPRESENTATIONS** Expired 02.12.2013

6.1 **Parish Council** – Objection

Application is contrary to several policies including policy COM13 as the site is not near to services or facilities and LE18 as the development would be prominent in the landscape of an AONB.

6.2 **1 letter** – Comments

Abbeylands (Access Land and Rights of Way Consultant), Kilnside Farm, Moor Park Lane, Farnham, Surrey

- Would not be surprised if common land designation is incorrect as it looks like highway waste rather than manorial waste as a result of road realigning at some time it does not alter the issues. Is a criminal offence to drive and park on common land or a right of way and so it is not possible to claim by adverse possession due to a criminal act so no planning can be granted on land which they possibly do not have clean title. It is not possible to gain adverse possession of a highway or claim title for any purpose

6.3 **9letters** – Objection

2 Netherton Farm Cottages, Netherton; Netherton Farm House, Netherton; Dean Garage, Hurstbourne Tarrant; Estate Office, Faccombe; Anonymous (x 5).

- Is an unauthorised development in an AONB and contravenes how land is designated in the Local Plans for the area.
- Always a lovely walk, ride, drive. Unauthorised developments of four large caravans and a number of large vehicles and other items, spoil it and are blots on the landscape, and should not be allowed. Surely there must be other areas available in TVBC, perhaps disused Military Land.
- Design and Access Statement basically says that for schooling, some miles away in Vernham Dean and health stability they should be allowed to stay. Based on children's ages they are looking for a schooling residence for a minimum period of 12 years for the youngest. This could be viewed as an almost permanent residence. Obviously intending a longer residence. Based on this should they not be offered a house?
- Environment Agency mapping shows the area has a risk of flooding. This could affect site sewage disposal
- Site entrance was not pre-existing it was blocked by a large log. Flint hard standing has been made. A ditch has been created. Have expanded outside of the site. Have erected gates. Is it lawful to plant hedges on a protected site?
- Granting permission would encourage others to apply and the Valley could end up playing host to numerous sites along the common land. Already another site has set up camp.

- Is a haven for wildlife with thick shrub. Adjacent to the site is 10pprox. 30 metres is mature broadleaf woodland.
- Family have been moved around area, latest situation must make TVBC realise the situation is not going away, a more permanent solution should be found.
- Proposal is in direct contravention of local policy in particular policy E2 – The site is within the AONB and TVBC must have regard to the Management Plan. Site located adjacent to a SINC – proposal will have an impact on BAP species including willow tits. Policy COM13 – site is not serviced by mains services.
- Trespass – Application says no trespass onto adjacent land. Prior to submission had placed structures including poultry housing on neighbouring land. Now removed.
- Flood Risk Assessment says caravans can be moved. Flooding in 2012 but caravans remained on land.
- There was a dismissed appeal for a similar development at Basingstoke and Deane. Inspector concluded that harm to the AONB outweighed the sustainability of the site and the need of the applicants.
- Effect of permission would be that use of land by public for walking and other recreation would be seized.

6.4 2 letters – Support

Herbsland Farm, Stoke Road, Hurstbourne Tarrant; Hurst Cottage, The Dene, Hurstbourne Tarrant.

- Since the applicant's have been in the village they have been very helpful regarding my welfare and security. Should I get any weird visitors I only have to give them a ring and they are always willing to help with an emergency or job that comes here that I can't manage. I have never felt as secure as I do now. They keep the site they live on clean and tidy and the children are well behaved. Many other people in the village think the same but don't want to get involved with the parish council over it.
- Support on grounds of ordinary humanity. The family has lived in the area for some 14 years in which they've had to move on four times till settling here on common land about 5 years ago.
- Through that time they have been well liked and respected and in my view should be allowed to stay at least till their children have finished schooling. And to that end is it possible for an application to be granted that is time limited, say ten years? If not, full consent should be granted.

6.5 1 letter – Comments

2 Horseshoe Lane, Ibthorpe

- Write in a personal capacity, views are personal and not speaking in capacity as Chairman of the Hurstbourne Tarrant Parish Council
- Know the applicants well as have been the liaison Cllr for the Parish Council for many years whilst in our Parish.

- Endeavoured to support them as I am of the firm opinion that to properly educate the children is the only way to give them future choice and to break their cycle of their way of life. They are tidy, clean with polite well behaved children who are doing well at school and I would like them to be able to stay during the period of local education.

7.0 **POLICY**

7.1 **Government Guidance -**

The National Planning Policy Framework (March 2012) (NPPF);

7.2 The development plan is the relevant consideration in determining the principle of development and any application should be determined in accordance with it, unless material considerations indicate otherwise. Government Guidance is a material consideration that must be taken into account in planning decisions. The National Planning Policy Framework advises that, *“This National Planning Policy Framework does not change the statutory status of the development plan as the starting point for decision making. Proposed 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.”*

7.3 The National Planning Policy Framework (March 2012) (NPPF)

The NPPF advises that, *“This Framework should be read in conjunction with the Government’s planning policy for traveller sites. Local planning authorities preparing plans for and taking decisions on travellers sites should also have regard to the policies in this Framework so far as relevant.”*

7.4 Planning Policy for Traveller Sites 2012 (March 2012) (PPTS)

Paragraph 13, recognises that there may be a need for using a rural exception site policy *“to address the needs of the local community by accommodating households who are either current residents or have an existing family or employment connection, whilst also ensuring that rural areas continue to develop as sustainable, mixed, inclusive communities.”*

7.5 Paragraph 23 of the PPTS states that, *“Local planning authorities should strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. Local planning authorities should ensure that sites in rural areas respect the scale of, and do not dominate the nearest settled community, and avoid placing an undue pressure on the local infrastructure.”*

7.6 Paragraph 22 of the PPTS includes a list of matters that should be considered when considering applications for Gypsy Sites, it states that *“Local planning authorities should consider the following issues amongst other relevant matters when considering planning applications for traveller sites:*

- a) the existing level of local provision and need for sites*
- b) the availability (or lack) of alternative accommodation for the applicants*
- c) other personal circumstances of the applicant*

- d) *that the locally specific criteria used to guide the allocation of sites in plans or which form the policy where there is no identified need for pitches/plots should be used to assess applications that may come forward on unallocated sites*
- e) *that they should determine applications for sites from any travellers and not just those with local connections”*

- 7.7 Planning Policy for Traveller Sites 2012 (March 2012) (PPTS)
- Policy B: Planning for traveller sites;
 - Policy H: Determining planning applications for traveller sites.

7.8 **Test Valley Borough Local Plan (2006):**

ESN13 (Sites for Gypsies and Travellers)
ESN22 (Public Open Space)
TRA01 (Travel Generating Development)
TRA02 (Parking Standards)
TRA04 (Financial Contributions to Transport Infrastructure)
TRA05 (Safe Access)
TRA06 (Safe Layouts)
TRA09 (Impact on Highway Safety)
DES01 (Landscape Character)
DES08 (Trees & Hedgerows)
DES10 (New Landscaping)
AME01 (Privacy & Private Open Space)
HAZ02 (Flooding)
ENV01 (Biodiversity and Geological Conservation)
ENV03 (Sites of Special Scientific Interest)
ENV04 (Sites of Importance for Nature Conservation)
ENV05 (Protected Species)
ENV07 (North Wessex Downs Area of Outstanding Natural Beauty)

7.9 **Draft Revised Local Plan (2013)**

On the 8 January the Council approved the Revised Local Plan (Regulation 19) for public consultation. The statutory 6 week period of public consultation was undertaken from 24th January to 7th March 2014. The Council is currently in the process of acknowledging and analysing all the representations that were received. At present the document, and its content, represents a direction of travel for the Council. The weight afforded to it at this stage would need to be considered against the test included in para 216 of NPPF. It is not considered that the draft Plan would have any significant bearing on the determination of this application.

7.10 **Other**

- Hampshire and Isle of Wight Gypsy & Traveller Accommodation Assessment (GTAA)
- Test Valley Infrastructure and Developer Contributions Supplementary Planning Document (2009) (SPD)
- Test Valley Access Plan (2012) SPD
- Cycle Network SPD

- Traveller Accommodation Assessment for Hampshire (2013) (TAAH);
- Designing Gypsy and Traveller Sites Good Practice Guide 2008;
- Test Valley Public Open Space Audit (2012);
- National Planning Practice Guidance (PPG).

8.0 **PLANNING CONSIDERATIONS**

8.1 The main planning considerations are:

- The principle of the development – in particular the need for the proposed site to provide gypsy accommodation within the Borough;
- Gypsy status of the applicant;
- The impact of the development upon the character of the area – paying particular regard to the natural beauty, scenic character and quality of the North Wessex Downs Area of Outstanding Natural Beauty (AONB);
- Impact of development on Common Land
- Impact of development on agricultural land
- Impact of the development on access, parking provision and highway safety;
- Impact of development on public open space
- Impact of development on flooding
- Impact of development on ecological interest
- Relationship to community facilities and services;
- Impact of development on residential amenity.

8.2 **Principle of development**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that, *“if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.”*

8.3 There is a general policy of restraint of development in the countryside. Policy SET03 of the Test Valley Borough Local Plan 2006 allows for an exception to the general policy of restraint where there is an overriding need for development in the countryside (part a of policy SET03), or if a development is of a type considered appropriate in the countryside as set out in a defined list of further development plan policies (part b of policy SET03). Policy ESN13 (Sites for Gypsies and Travellers) is one such defined policy, that allows for an exception to the general policy of restraint, subject to a number of criteria being met.

8.4 Policy ESN13 states:

“Applications for the placing and development of single or groups of gypsy caravans will be permitted provided that:

- a) there is a demonstrable need for the facility to be located in the Borough;*

- b) there will be no detrimental impact on the immediate environment or areas of significant landscape, conservation or strategic / local value;*
- c) it will not result in the loss of high quality agricultural land;*
- d) there is no undue impact on the character and visual amenity of the area;*
- e) the site would have appropriate parking and turning areas;*
- f) it would not result in inappropriate activities that would harm the surrounding environment;*
- g) it is well related to local community facilities; and*
- h) landscaping in keeping with the character of the area is provided.”*

8.5 An assessment of the proposed development against the criteria of Policy ESN13 of the TVBLP is discussed in the following paragraphs which also include, where appropriate, consideration of the proposals against other policies in the Development Plan.

Need for Gypsy Accommodation in the Borough

8.6 As set out at paragraph 6.1, policy ESN13 does allow for gypsy accommodation in the countryside, and this is an exception to the general policy of restraint of development in the countryside. This is to reflect the specific needs of gypsy and traveller families. It is understood that the applicant is of Romany Gypsy ethnicity and he, with his family, are the occupants of the caravans.

8.7 The TVBC Gypsy and Traveller Accommodation Assessment (April 2013) forms the most recent evidence base. The GTAA confirmed that there is a need for 2 permanent pitches with a need for 4 permanent pitches (including the existing need) by 2017. Permitting the proposal at this site would help to meet the identified need. It is considered that there is a demonstrable need for such gypsy accommodation within Test Valley, and this weighs in favour of the proposal, in compliance with criterion (a) of policy ESN13 of the TVBLP.

Existing local provision and need for further sites

8.8 In addition to the development plan consideration of need (as set out above at paragraph 8.2 – 8.3), in accordance with paragraph 22 (part a) of the PTTS (see paragraph 7.9) consideration must be given to the existing level of local provision and need for sites. There are no existing Gypsy sites within the vicinity. There are no Council sites within the Borough, and there are no known vacancies on any private sites. No alternative sites can be suggested, and it is not known if the applicants have made efforts to seek alternative sites. There are no allocated sites, and there are no current plans to allocate any sites. The failure of local policy to tackle gypsy and traveller accommodation needs is a material consideration.

- 8.9 The Council can not demonstrate an up-to-date five-year supply of deliverable sites as there is no planned provision to meet unmet demand or future demand. The circumstances are of the sort in which local planning authorities are expected to give substantial weight to the unmet need in considering whether temporary permission is justified, although the PTTS makes this a significant material consideration only when considering applications for the grant of temporary planning permission. The PPTS states that, *“if a local planning authority cannot demonstrate an up-to-date five-year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission”*. The application is not for temporary permission, but the applicant’s have suggested this as a possibility, if considered more appropriate.

Availability of Alternative Accommodation

- 8.10 In addition to the above, paragraph 22 (part b) of the PTTS requires consideration to be given to the availability (or lack) of alternative accommodation for the applicants. The occupants are on the Test Valley Housing list, and have been since January 2013, but have not been actively bidding on properties, for which there is limited availability. But, in any event, Test Valley could only offer houses as there are no caravan pitches that form part of the portfolio of accommodation, which are not the family’s preference as the applicant has an aversion to bricks and mortar. There is no available alternative accommodation for the family.

Personal Circumstances

- 8.11 When put to the family, *“What would be the implications of leaving the site for the occupiers and anyone resident with them?”* the original occupiers survey (2nd March 2012) indicates that the answer given was, *“nowhere to pitch caravans”*, (the lack of alternative site(s) is discussed above) and *“Disruption to schooling of Children”*. At a later occupiers survey (1st March 2013), these matters were re-iterated, and it was also indicated that there would be, *“massive upset for family who are settled in the community”*.
- 8.12 Two of the children at the site have special education needs and the applicant suffers a chronic back condition, having damage to the spinal cord. The personal circumstances of the family are not considered to be so significant that no other location could meet the requirements of the family. However, as above, there are no known authorised alternative sites available that would or could meet their needs and the family do not own any land. Refusing the application would therefore likely render the occupants homeless, and in need of an alternative pitch for which there is no evidence of availability in the locality. There would therefore likely be only two options available to the occupants, to move to an alternative unauthorised site, or to seek to move out of the locality to an area where there is an available authorised pitch. The first of these options cannot be encouraged in planning terms, and the second would displace the family from an area where they are settled.

The benefits of certainty and a stable location are understandable, not in the least by way of continuity of education. The personal circumstances of the occupants are, as a result of any lack of available alternative accommodation, a significant consideration. The applicants have confirmed that they are happy for any permission to be personal to them and/or for a temporary period.

- 8.13 Rights under Article 8 of the European Convention on Human Rights are engaged. Enforcement action would deprive the occupiers of a settled base for their accommodation, from which they would carry on their private lives, without any certainty of suitable alternative accommodation being readily available. This would represent an interference with their home and family life and adds support for the proposal.
- 8.14 Sustainability: Local Community Facilities
In terms of the proximity of the site to local towns, and villages, and services and facilities, the site is located approximately 1.5 km to the north of Hurstbourne Tarrant, the nearest defined settlement for planning policy purposes (within the Test Valley Borough Local Plan 2006) and 7.0 km from Andover, the nearest major conurbation. The Clere School in Burghclere is approximately 10 km to the north east and Vernham Dean C of E Primary School is approximately 4.5 km to the west. There is a doctors surgery at St Mary Bourne, approximately 5.5 km to the south east. There is no bus service that serves the site, or the immediate vicinity and pedestrian and cycle facilities in the area are poor, with no lighting, footways or cycleways.
- 8.15 Government guidance contained within the PPTS (paragraph 11) in respect of the ensuring that sites are sustainable is that, *“Local planning authorities should ensure that traveller sites are sustainable economically, socially and environmentally. Local planning authorities should, therefore, ensure that their policies:*
- a) promote peaceful and integrated co-existence between the site and the local community*
 - b) promote, in collaboration with commissioners of health services, access to appropriate health services*
 - c) ensure that children can attend school on a regular basis*
 - d) provide a settled base that reduces the need for long-distance travelling and possible environmental damage caused by unauthorised encampment*
 - e) provide for proper consideration of the effect of local environmental quality (such as noise and air quality) on the health and well-being of any travellers that may locate there or on others as a result of new development*
 - f) avoid placing undue pressure on local infrastructure and services*
 - g) do not locate sites in areas at high risk of flooding, including functional floodplains, given the particular vulnerability of caravans*
 - h) reflect the extent to which traditional lifestyles (whereby some travellers live and work from the same location thereby omitting many travel to work journeys) can contribute to sustainability.”*

- 8.16 In respect of the relevant parts to ensuring that the site is well related to local community facilities (parts b, c, and d), the site would provide a settled base (part d), allows the children to attend local schools (part c), which they do, and allows access to health services (part b), the site also meets the needs of the occupants in terms of access to employment. The now revoked circular 01/2006, had urged realism about the availability of alternatives to the car in accessing local services for gypsy sites in rural areas.
- 8.17 It is noted that the distance to facilities compares favourably to other Gypsy Sites within the Test Valley Borough.
- 8.18 Because of the location, limited public transport and local road conditions, journeys to/from the site would be by motor vehicle but, following consideration of the relevant matters contained at paragraph 11 of the PTTS, including the benefits of a permanent base, the spread and location of the services that the family require, as set out above, and comparison with other gypsy sites relative to facilities, it is considered the necessary distances are quite modest and acceptable for the site's location. Though lacking useful public transport, the site for the proposed development is in a sustainable location for the needs of this gypsy family in terms of their access to local services and facilities.
- 8.19 The conclusion set out above is similar to the conclusion reached in 2011 by an Inspector in considering the sustainability of a gypsy appeal site (APP/H1705/A/10/2130900) approximately 4.5 km to the east of the current site further from the facilities referred to above, at Cross Lane, Ashmansworth, within Basingstoke and Deane Borough Council's administrative area.
- 8.20 **The Impact on the Use on the Character and Appearance of the countryside, and the Area of Outstanding Natural Beauty**
As set out at paragraph 6.3, policy ESN13 is a permissive policy that allows for the principle of gypsy sites, subject to criteria, including those relevant to landscape impact, and consideration of the need for landscape screening. In particular it requires that there will be no detrimental impact on the immediate environment or areas of significant landscape, conservation or strategic/local value and no undue impact on the character and visual amenity of the area. This is in addition to policies DES01 and DES10 of the TVBLP2006 which also to ensure that proposals can be accommodated without detriment to the distinctive landscape qualities of the area and are not out of keeping with the character of the area, and would provide sufficient landscaping so as to enable a development to integrate with the local environment respectively.
- 8.21 Importantly, the site is also within the North Wessex Downs Area of Outstanding Natural Beauty. Policy ENV07 of the TVBLP2006 allows for development with the AONB provided that it does not detract from the natural beauty, scenic character and quality of the landscape. The NPPF, at paragraph 115 states that, *"Great weight should be given to conserving landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to landscape and scenic beauty."*

Legislation set out at section 85 of the Countryside and Rights of Way Act 2000 requires that *“In exercising or performing any functions in relation to, or so as to affect, land in an area of outstanding natural beauty, a relevant authority shall have regard to the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty”*.

- 8.22 The PTTS does not in itself make significant reference to Landscape Impact, or any reference to an AONB, as it is intended to be read alongside the NPPF (paragraph 1 of the PTTS). Paragraph 24 of the PTTS does identify that weight should be given to the following matters;

- a) effective use of previously developed (brownfield), untidy or derelict land
- b) sites being well planned or soft landscaped in such a way as to positively enhance the environment and increase its openness
- c) promoting opportunities for healthy lifestyles, such as ensuring adequate landscaping and play areas for children
- d) not enclosing a site with so much hard landscaping, high walls or fences, that the impression may be given that the site and its occupants are deliberately isolated from the rest of the community

- 8.23 AONB, local landscape character and visual impact

The site is bordered to the south, east and west by well-established vegetation, and forms an open area enclosed by that planting and to the west of Netherton Road. Diagonally opposite to the north east, on the opposite side of Netherton Road is a public footpath. To the eastern part of the northern boundary the site is mainly open, although there is a low earth bund and some recent, yet to fully establish planting. To the western part of the northern boundary is a clump of further well established vegetation. The vegetation to the south, east, west, and western part of the northern boundary provides a good level of screening to the site.

- 8.24 The four caravans the subject of the application are central to the site within the open part of the site, with one caravan (the nearest to the site entrance) on an east to west axis, and the three further caravans further into the site on north to west axis's.

- 8.25 This part of the AONB is characterised by its extensive and connected woodland cover which occurs in association with the valley sides, producing a distinct landscape pattern comprising large open arable fields on the higher areas with long sinuous hangers clinging to the sides of the steep coombes where woodland is intermixed with pasture. Netherton Hanging Copse is a very good example of this character, and has arisen from re-planted assarted pre 1810 woodland. Together with evidence of prehistoric field systems this distinct landscape has an historic significance. The diversity of this landscape, ranging from dramatic and open on the higher scarps to the intimate and enclosed in the coombes, has resulted in an area that has retained a remote and tranquil character. It is this distinctive character, archaeological significance and tranquillity that makes this particular landscape important within the wider AONB.

- 8.26 National planning guidance is that 'great weight' should be given to 'conserving landscape and scenic beauty' in AONB's (para 115 of the NPPF) and Local Planning Authorities have a specific duty to have regard to the 'purposes of the AONB designation' under the CROW Act 2000. Also according to Natural England the primary purpose of the AONB designation is 'to conserve natural beauty'.
- 8.27 The impact of the use on the wider AONB is limited because of its location. With regard to the visibility of the site, the landform and woodlands contain and limit most views. There is an extensive network of public footpaths that may afford glimpsed views from within the valley floor though once into woodland and on higher ground the site drops into the background, and from the scarp above Essebourne Manor Hotel, the site is not visible. However the local effect of the development on the main view (from Netherton Road travelling east) is a significant one. There is a sustained view of the caravans and other items on the site for drivers travelling towards the site as the caravans form the focal point of the view and detract significantly from it and appear out of keeping with the character and appearance of the landscape. For walkers and horse riders this view is sustained for some minutes. The impact of the caravans in this view is worst in winter. Whilst new planting may have some mitigating effect it is likely to take a considerable number of years before there would be a good level of screening and as the planting would be on Common Land it is not possible to secure that the planting is retained and maintained. Whilst some planting has taken place to the east of the site this has limited impact particularly in winter months and given the wet ground conditions that can affect the site it is possible that this vegetation will struggle to become established. Camouflaging the various caravans/vehicles may reduce the visual impact but it is not clear that any significant camouflaging could be achieved that would be compatible with residential use. In view of the position set out above it is considered that the development is severely detrimental in its impact in the AONB and detracts significantly from the local landscape particularly in the view from Netherton Road where it has an undue impact on the character and visual amenity of the area. The proposal is therefore considered contrary to policies ESN13, DES01 and ENV07 of the TVBLP.
- 8.28 **Impact of development on Common Land**
'Common land' is land over which persons are entitled to exercise rights of common in common with others. Consultations have been sent to the two addresses where such rights are registered, but no response has been received. It is understood in this instance the Commons Register for those commoners includes a right to estovers (right to take small branches for fuel or fencing), and a right to pasturage – the right to graze animals). It is not known that the land is currently actively commoned, and there is no evidence of such rights being exercised currently, which the lack of response from the addresses where Common rights are registered to would appear to support. The area of land that the caravans are sited upon relates only to a small part of the wider Common. It is not considered that there would be any significant harm to the Common by virtue of the loss of part of the common land, or any significant harm to the interests of persons having rights in relation to the land.

- 8.29 It is also a material planning consideration that registered common land is “*access land*” for the purposes of the Countryside and Rights of Way Act 2000, over which the public has a right to roam. There is therefore, public interest in ensuring that such land remains accessible so that people can exercise their statutory rights. The applicants have undertaken a survey of the use of the land by the public over a four week period – noting that the adjacent land was used for two drives of pheasants for the local farm/estate shoots, two lots of horse riders, and one walker during this period. The applicant’s noted that, “*It was evident that we were sufficiently recessed off the main part of the land that we didn’t interrupt or prevent use of the land (even when it is berry picking season people still come down and pick around us)*”. It is correct that land is recessed, by virtue of the vegetation around the site forming an enclave, from what would be a desire line when walking. It is considered that the proposal would not significantly impinge on the public’s right to roam over the common land, by virtue of the recessed position and the small amount of land relative to the wider common land designation.

8.30 **Impact of development on agricultural land**

Natural England Agricultural Land Classification Maps show the area to be of moderate to good quality in terms of agricultural land (three on a scale of one to five, with one being excellent, and five very poor). It is considered the change of use of the land on which the caravans are sited, does not result in the loss of high quality agricultural land.

8.31 **Impact of development on highway related matters**

The site is considered to provide appropriate visibility so as to allow for the use of the site without harm to the free flow, safety or functioning of the highway network, taking account of the number of movements associated with the use, and the number of existing vehicle movements, vehicle speeds, and forward visibility on Netherton Road.

Contribution

- 8.32 The siting of four caravans for residential use for one family would constitute travel generating development for planning policy purposes. Policy TRA04 allows for travel generating development provided that a proportionate financial contribution is made towards improving the transport network and, towards sustainable modes of transport to minimise/mitigate the impact of the development (in this case the change of use) on the transport network.
- 8.33 The schemes that contributions could be put towards is the provision of a crossing of the B3048 linking the school at Hurstbourne Tarrant to the village, approximately 1.7 km to the south of the site, or towards improvements to cycle infrastructure, namely the NCN246, which passes the site, but requires improvement to the south of Hurstbourne Tarrant, which are both projects identified within the Test Valley Access Plan SPD, with the later project also being set out within the Cycle Strategy & Network SPD.

- 8.34 In considering the need for developer contributions towards mitigating for the impact of development on the local infrastructure due consideration has been given to the three tests as set out within the Community Infrastructure Levy Regulations 2010, namely that a planning obligation must be (a) necessary to make the development acceptable in planning terms; (b) directly related to the development; and (c) fairly and reasonably related in scale and kind to the development.
- 8.35 Although recognising that any contribution would be put towards infrastructure in the nearest settlement of Hurstbourne Tarrant, it is considered, given the physical separation from the application site to the projects identified in the consultation response, that improvements to the infrastructure would not be directly related to the development and therefore fails to satisfy the tests in the CIL Regulations. In this particular circumstance the proposal, without such a contribution being secured, accords with Policy TRA04 of the TVBLP, in that it is not necessary to mitigate the impact of development on the local highway network to make the development acceptable in planning terms.
- 8.36 **Impact of development on public open space**
The development (the change of use of the land to provide a gypsy site) would result in a permanent residential presence at the site. Policy ESN22 (Public Recreational Open Space Provision) requires that new housing development where there is a net increase in dwellings provides on-site public open space. Where proposals do not provide on-site public open space the supporting text to the policy indicates that contributions towards off site provision of public open space may be taken in lieu of on-site provision, so as to ensure that any proposal does not cause or exacerbate deficiencies in the general provision or quality of recreational open space. Contributions would be put towards improvements and enhancements to facilities at King George V Playing Field and Dean Rise.
- 8.37 In considering the need for developer contributions towards mitigating for the impact of development on the local infrastructure due consideration has been given to the three tests as set out within the Community Infrastructure Levy Regulations 2010, namely that a planning obligation must be (a) necessary to make the development acceptable in planning terms; (b) directly related to the development; and (c) fairly and reasonably related in scale and kind to the development. The requirement for a contribution is towards public open space infrastructure.
- 8.38 Although recognising that any contribution would be put towards infrastructure in the nearest settlement of Hurstbourne Tarrant, it is considered, given the physical separation from the application site to the projects identified in the Planning Policy consultation response, that improvements to the infrastructure would not be directly related to the development and therefore fails to satisfy the tests in the CIL Regulations. In this particular circumstance the proposal, without such a contribution being secured, accords with Policy ESN22 of the TVBLP, in that it is not necessary to mitigate the impact of development on the local public open spaces to make the development acceptable in planning terms.

8.39 Impact of development on flooding

Approximately a half of the site is within an area at increased flood risk as defined on the Environment Agency Flood Maps. The site has not been surveyed, and that the modelling is computer generated. Environment Agency (EA) advice is that part of the site is within fluvial flood zone 2/3 and that the use (permanent residential caravans) constitutes highly vulnerable development as set out within the technical guidance to the NPPF (at table 2). A further table (flood risk vulnerability and flood zone 'compatibility') (table 3) indicates that highly vulnerable development should not be permitted in flood zone 3. It is however noted that there is a footnote to table 2 to the effect that for any proposal involving a change of use of land to a caravan site the Sequential Test and the Exception Test should be applied, and that table 3 does not show the application of the sequential test.

8.40 The Sequential Test

The Sequential Test is to steer new development to areas with the lowest probability of flooding. Normally, highly vulnerable development 'should' not be permitted in flood zone 3, although for caravan sites, the sequential and exception test should be applied. The NPPF states, at paragraph 101, that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with lower probability of flooding. As discussed at length, there are not considered to be any available alternative sites. It is considered that the Sequential Test is passed

8.41 The Exception Test

The NPPF sets out at paragraph 102, that *"For the Exception Test to be passed:*

- *it must be demonstrated that the development provides wider sustainability benefits to the community that outweigh flood risk, informed by a Strategic Flood Risk Assessment where one has been prepared; and*
- *a site-specific flood risk assessment must demonstrate that the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere..."*

8.42 The site is considered to be sustainable, and would meet an unmet need for the community for a gypsy site. A 'flood risk assessment' has been written by the applicant's which includes confirmation that the caravans at the site can be moved in the event of flooding; that the Environment Agency (EA) web site is monitored in times of flooding; and commenting on flood risk and vulnerability of the site and caravans generally including by way of comparison with development in the village of Hurstbourne Tarrant, and the circumstances of the family with reference to past guidance from the Office of the Deputy Prime Minister (ODPM, 2002) in respect of assessing vulnerability. Based on the EA advice, and that the caravans can simply be moved within the site to an area not at increased flood risk, it is considered that the Exception Test would be passed. The Environment Agency, who provide the Council's specialist advice on flood risk matters have no objection to the proposed development.

8.43 *Recent Flooding*

As a result of the recent adverse weather conditions the site had partially flooded to a depth of approximately 17cm at the deepest. There remained a clearance for the caravans of 35cm, and areas of the site remained unflooded. The family did not move from the site as they did not consider this to be necessary. In response to the flooding the Government had re-affirmed its position as set out in National Guidance, and it has been confirmed with the Environment Agency that in light of the recent flooding and the re-iteration of this advice that they remain content with the situation at the site.

8.44 **Impact of development on ecological interest**

The site is identified as a Site of Importance for Nature Conservation (SINC) and therefore policy ENV04 of the TVBLP applies. This sets out that development which would have an adverse impact on the wildlife interest of a SINC, either directly or indirectly, will only be permitted if it can be demonstrated that:

1. The need for the development outweighs the county importance of the designation, and
2. The benefits from the development outweigh the adverse impact of the site's wildlife interest.

Where development is permitted any adverse impacts should be kept to a minimum and measures to compensate for the harm to the site's wildlife interest will be sought. As the development has already taken place it is not possible to fully assess the impacts as the pre development condition of the land cannot be determined.

8.45 Indications though are that the site supported grassland which had become impoverished through inappropriate management but which retained sufficient elements of relic unimproved grassland to enable recovery. The habitat may have potential to support reptiles such as slow worm and common lizard which are protected species. There is extensive scrub, bramble, woodland and coppice vegetation immediately surrounding the site which would appear to provide good habitat for dormice, also a protected species.

8.46 In this instance there is not currently evidence that there are alternative sites available for this development and this has to be taken into account in considering whether the need for the development outweighs the county importance of the SINC designation. The applicants have submitted a Management Plan for the site which incorporates measures to maintain and enhance habitats and species diversity. This includes management of woodland, hedgerows and grassland and safeguarding for all notable flora and fauna. The HCC Ecologist is satisfied that the submitted management plan considers the potential issues and includes suitable and appropriate measures to address likely impacts. Also that if followed the management plan is acceptable to avoid further harm to the SINC. There should be periodic on site reviews with the applicant so that it can be ensured that the SINC continues to be a viable ecological resource. It is concluded that in view of the above the application would be in compliance with policy ENV04 and that there is no indication that there would be harm to protected species or their habitat so that policy ENV05 is also complied with.

- 8.47 The application site is in close proximity to the Sidley Wood Site of Special Scientific Interest (SSSI) and Rushmore and Conholt SSSI. Natural England is satisfied that the development, based on the details submitted, will not damage or destroy the interest features for which these sites have been notified. In this instance therefore the SSSI's do not represent a constraint in determining the application. The proposals are in compliance with policy ENV03 of the TVBLP.

8.48 **Impact on residential amenity**

The site is over 350 metres from the closest house and it is therefore not considered that this development would have any significant impact of any residential properties in the area. The proposal complies with policy AME01 of the TVBLP.

9.0 **SUMMARY AND CONCLUSION**

- 9.1 The principle of developing sites in countryside locations to provide for suitable Gypsy accommodation is set out in Policy ESN13 of the TVBLP, as an exception to Policy SET03. These Development Plan policies, together with other local and national Guidance, provide a framework within which to determine the application. It is known that there is a need for Gypsy accommodation to be provided within the Borough through recent studies and appeal decisions, and that no alternative sites exist in the locale to meet the personal requirement of the applicant. The LPA has not planned for the delivery of further gypsy sites to meet the acknowledged short fall within the Borough and these factors weigh in favour of the proposed development.

- 9.2 The applicant is understood to be of Romany Gypsy ethnicity, the site does not result in the loss of high quality agricultural land, and it can be accessed and egressed safely with sufficient parking and turning areas made on site. The proposal also complies with the relevant policies of the TVBLP in respect of highway safety, ecology, flooding, residential amenity, and public open space.

- 9.3 However, having an unmet need for such accommodation in the Borough *“does not mean that every site should be regarded as acceptable”* (Para 91. Appeal Inspector decision 11.02.2014. APP/C1760/A/13/2198550), and that each application should be judged on its own merits. From the assessment of the site carried out above it is considered that the development detracts significantly from the local landscape particularly in the view from Netherton Road where it has an undue impact on the character and visual amenity of the area and detracts from the natural beauty, scenic character and quality of the landscape in this part of the North Wessex Downs Area of Outstanding Natural Beauty. The proposal is therefore contrary to policies SET03, ESN13 (criterion b and d), DES01 and ENV07 of the Test Valley Borough Local Plan.

- 9.4 The weight afforded to the protection of the local landscaping setting from inappropriate development, which is also given greater statutory protection (being located in the North Wessex Downs AONB) is considered, when balancing all other matters referenced in the preceding paragraphs, of overriding concern and weighs heavily in favour of refusal of planning permission.

- 9.5 It is acknowledged that a refusal of planning permission would deny the applicant the ability to create a lawful home at the site (the presence on the land to date is not lawful in planning terms). However taking this into account, together with the personal circumstances of the applicant (as set out in Para 8.11 and 8.12), it is not considered that these factors are sufficient to outweigh the material harm to a statutorily protected landscape (AONB) that arises from the applicants continued presence at the site. The proposed development is considered unacceptable.

10.0 **RECOMMENDATION**

REFUSE for the reason:

1. **The proposed development detracts significantly from the local landscape particularly in the view from Netherton Road where it has an undue impact on the character and visual amenity of the area and detracts from the natural beauty, scenic character and quality of the landscape in this part of the North Wessex Downs Area of Outstanding Natural Beauty. The proposal is therefore contrary to policies SET03, ESN13, DES01 and ENV07 of the Test Valley Borough Local Plan.**
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APPENDIX B

Officer's Update Report to Northern Area Planning Committee - 31 July 2014

| | |
|------------------------|---|
| APPLICATION NO. | 13/01648/FULLN |
| SITE | The Atchen Tan, Netherton Road, Netherton, SP11 0DW, HURSTBOURNE TARRANT |
| COMMITTEE DATE | 31 July 2014 |
| ITEM NO. | 7 |
| PAGE NO. | 11 |

1.0 UPDATE ON REVISED LOCAL PLAN

On the 24th July the Council approved the Revised Local Plan for submission to the Secretary of State for Examination. At present the document, and its content, represents a direction of travel for the Council. The weight afforded to it at this stage would need to be considered against the test included in para 216 of National Planning Policy Framework.

2.0 CONSULTATIONS/REPRESENTATIONS

2.1 Highway Officer:

The consultation response sought a transport contribution for two potential schemes. The first is NCN 246, the second for a crossing in Hurstbourne Tarrant. The latter is 1.7km. from the site and the former for improvements to the south of Hurstbourne Tarrant. I have no record of our Service advising where the improvements to NCN 246 are proposed.

The children of the family concerned attend school in Vernham Dean and therefore notwithstanding the site could generate traffic past the school site in Hurstbourne Tarrant we are willing to withdraw that particular scheme.

Having looked again at the site the nearest shop is at the garage on the east side of A343 at the northern end of Hurstbourne Tarrant village. It is considered that crossing of A343 is likely to be hazardous for pedestrians and cyclists and an island in the middle of A343 to enable safer crossing of it by both pedestrians and cyclists and would be of benefit to the residents of this site. Contributions towards this would be in accord with Central Government Policy of encouraging short trips by means other than the car. The distance between the site and the shop is approximately 1.5km. This specific scheme meets all of the CIL tests. The proposal based on a lack of transport contribution is in non-compliance with Policy TRA04 and is unacceptable. The objection could be overcome with the applicant entering into a legal agreement.

3.0 PLANNING CONSIDERATIONS

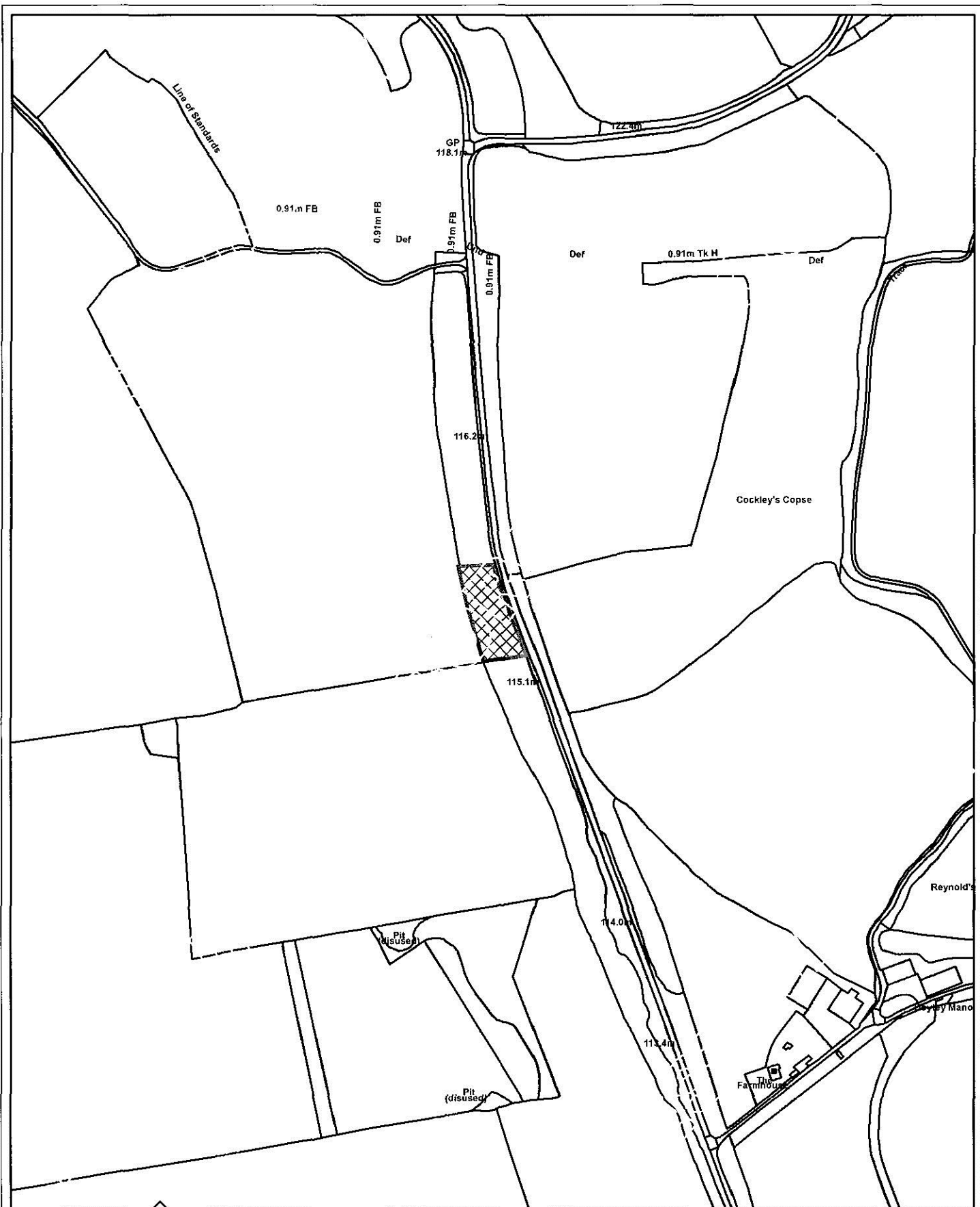
- 3.1 Para 8.33 of the agenda report refers to one of the identified projects being located "south of Hurstborne Tarrant". Confirmation (para 1.1 above) from the Highway Officer indicates that they had not previously identified the location of improvement works on the NCN246 so reference to these taking place to the "south" of the village (and therefore remote relative to the site), was incorrectly summarised.

- 3.2 In clarifying the position the Highway Officer has advised that any contributions would be put towards improving pedestrian and cyclist infrastructure that would permit crossing the A343 (close to it's junction with the Netherton Road) thereby enabling the site occupants to access the shop safely.
- 3.3 In considering the need for developer contributions towards mitigating for the impact of development on the local infrastructure due consideration has been given to the three tests as set out within the Community Infrastructure Levy Regulations 2010, namely that a planning obligation must be (a) necessary to make the development acceptable in planning terms; (b) directly related to the development; and (c) fairly and reasonably related in scale and kind to the development. In considering these tests and that the applicant has not completed a legal agreement securing these contributions the proposal is considered unacceptable and therefore contrary to Policy TRA04 of the TVBLP.

4.0 **AMENDED RECOMMENDATION**

REFUSE for the reasons including both No.1 of the main agenda report, and additional reason for refusal 2, as follows:

2. The proposed development is a travel generating development which would place an additional demand on the existing transport network. An appropriate legal agreement to secure highway infrastructure improvements to mitigate the impact of development has not been completed. As such the proposal would place an un-mitigated burden on the highway network and be contrary to policy TRA04 of the Test Valley Borough Local Plan (2006) and the adopted Infrastructure and Developer Contributions (February 2009) SPD and the Test Valley Access Plan SPD (2012).
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Siteplan

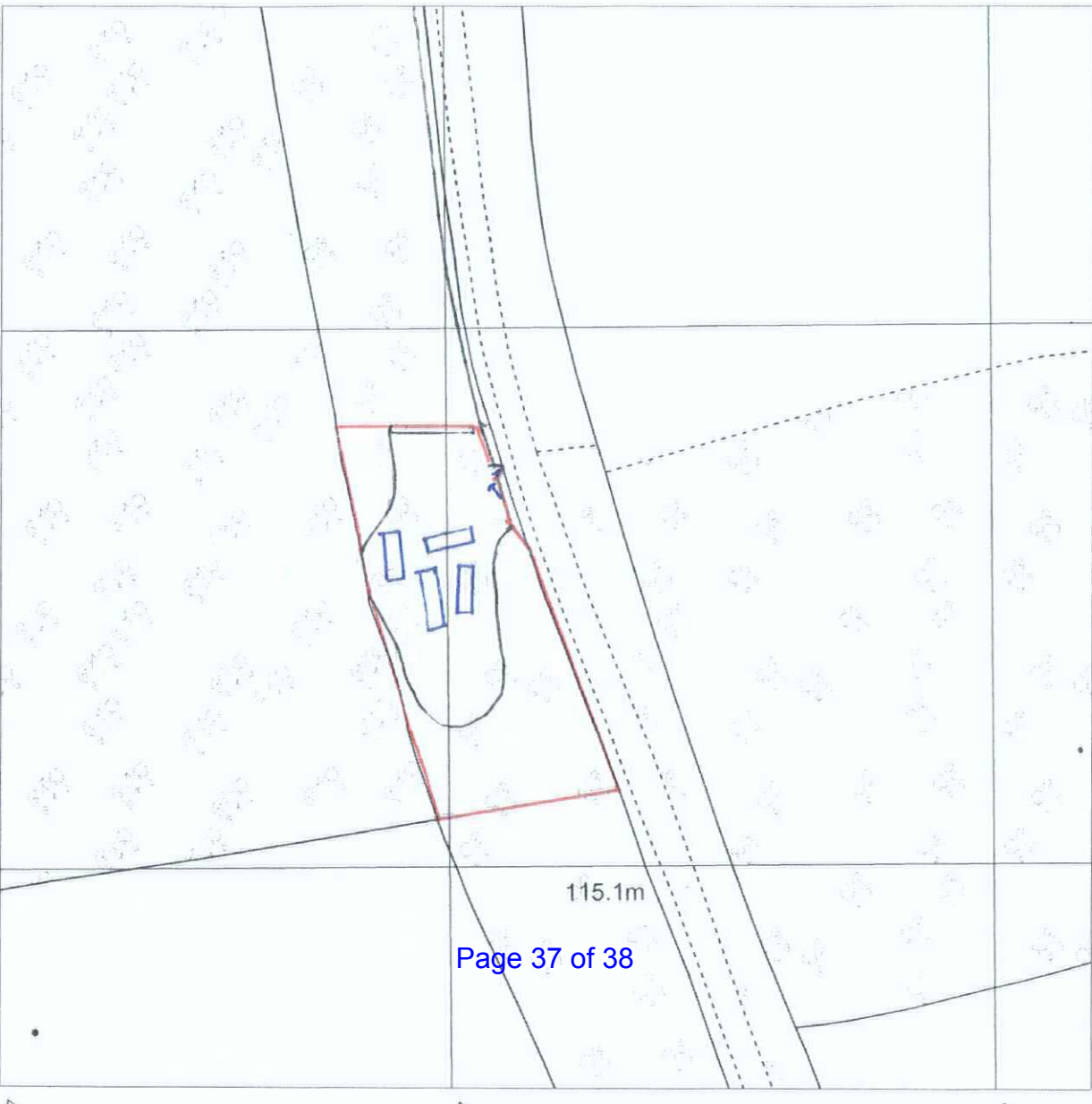
Test Valley
Borough Council

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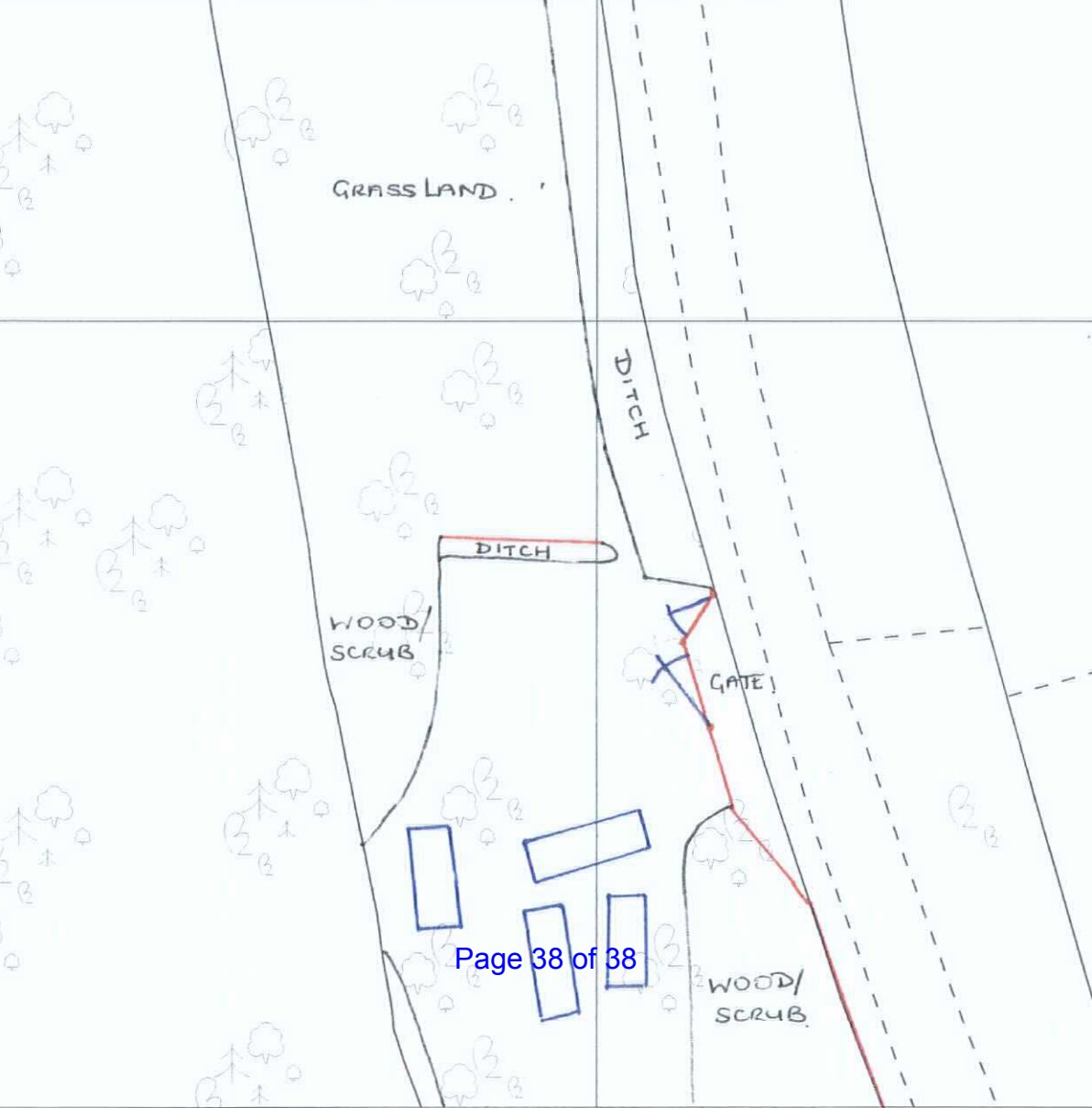
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115.1m



GRASS LAND

DITCH

DITCH

WOOD/
SCRUB

GATE

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WOOD/
SCRUB