

Application No: 16/00670/FULL Full Application

Site: Brambley Hedge, Lyndhurst Road, Landford, Salisbury, SP5 2BJ

Proposal: Use of land as a single pitch gypsy caravan site for a temporary period of 5 years

Applicant: Mr R Whitcher

Case Officer: Paul Hocking

Parish: LANDFORD

1. REASON FOR COMMITTEE CONSIDERATION

Previous Committee consideration of matters at this site

2. DEVELOPMENT PLAN DESIGNATION

No specific designation

3. PRINCIPAL DEVELOPMENT PLAN POLICIES

DP1 General Development Principles
CP13 Gypsies, Travellers & Travelling Showpeople

4. SUPPLEMENTARY PLANNING GUIDANCE

Landford Village Design Statement

5. NATIONAL PLANNING POLICY FRAMEWORK

Sec 11 - Conserving and enhancing the natural environment

6. MEMBER COMMENTS

None received

7. PARISH COUNCIL COMMENTS

Landford Parish Council: Recommend refusal:

Considers this application to be a flagrant abuse of the planning system In the current application there is nothing to prove that the applicant has the benefit of gypsy status. Indeed the keeping of livestock is a contra-indication of a nomadic life-style.

There is nothing to demonstrate that the applicant has made any effort whatsoever to find alternative accommodation.

The Ruston Planning document does not include any assessment of need within the New Forest National Park, as required by CP13. Planning policies and assessed needs from neighbouring planning authorities are irrelevant. The land was previously fallow grassland and had been such for many years. The existing septic tank does not have consent. This site does not satisfy CP13: the impact of the site on the landscape and character is not acceptable. This was the view of Inspector Hellier (at the Inquiry held in October 2014).

Reports of bonfires on the site with noxious smoke – a serious detriment to the amenities of neighbouring properties but something which is notoriously difficult to control by conditions.

It is noted that the application is for a 3-bedroom mobile home which cannot be justified on need ground since the applicant now lives on his own. Difficult to see any justification for granting this application, which seems effectively identical to the previous one that was dismissed on appeal. No evidence has been presented to show any effort to find alternative accommodation, instead there have been a series of attempts to circumvent the relevant planning policies.

To grant *any* temporary permission will provide an opportunity for further applications to extend the period of permission.

Redlynch Parish Council: (neighbouring parish) Recommend refusal:

The Parish Briefing identified that on the property remains an extant Enforcement Notice of the New Forest National Park Authority which precludes the residential use of the site. An Appeal decision in 2015 dismissed the applicant's case to be in residence and subsequently entered into an Order by Consent before a deputy High Court Judge to vacate and clear the site by 16 September 2016.

It has been recognised that the Wiltshire section of the National Park has a disproportionate number of Gypsy and Traveller sites compared with the rest of the Park. Landford and Redlynch has one permanent site each which means the National Park meets its planned requirement up to 2027. Consider that the National Park Authority should identify other sites outside the Wiltshire Section to fulfil all future demand.

8. CONSULTEES

No consultations required

9. REPRESENTATIONS

9.1 21 representations received objecting to the application:

Contrary to policy CP13 and DP1; no fundamental changes in

applicants circumstances; agricultural land; adequate time given to find another site; makes a mockery of the planning system; case proven that no need for development of this site; not appropriate development in the National Park; has been through the Courts and should have vacated the site in September; query whether applicant is a gypsy; no guarantee the applicant would move after 5 years; harms the appearance and tranquillity of the National Park; highway safety implications; application submitted to delay the process; application should be rejected; large accommodation; enforcement of planning control is in the wider public interest; 9 months was ample time to vacate the site; detrimental impact to the area; eyesore; not in the interests of natural justice.

10. RELEVANT HISTORY

- 10.1 High Court Order (by Consent) to vacate the land by 16 September 2016 entered into by Mr Witcher on 25 November 2015.
- 10.2 Change of use of land to single gypsy pitch (12/97573) refused on 15 August 2012 and dismissed at appeal on 23 March 2015.
- 10.3 Enforcement Notice served on 20 July 2005 directed against the stationing of a residential mobile home, amongst other matters, and appeal dismissed on 28 February 2006.

11. ASSESSMENT

- 11.1 The application site lies within the wider open countryside of the New Forest National Park, in an area comprising mainly agricultural and pasture land divided into smaller fields and paddocks. Copses of deciduous trees line the low ridge which runs parallel to Lyndhurst Road. The area comprises linear development along Lyndhurst Road and is generally of rural residential character. To the immediate rear of the dwellings, the land either comprises long rear gardens or paddocks. The application site itself comprises a small rectangular plot of land, some 0.27ha in size and forms the corner of a larger paddock, with the access track on two sides, and is currently occupied by a static mobile home, an area of hardstanding and some existing structures consisting of former a chicken shed/field shelter and a polytunnel frame.
- 11.2 Mr Witcher, the applicant, has residentially occupied the site unlawfully since September 2012. This application proposes a 5 year period largely premised on a humanitarian basis to enable him more time to find what he considers to be a suitable site/accommodation.
- 11.3 The key planning consideration is whether the case made by Mr

Whitcher in this planning application outweighs the harm previously identified.

- 11.4 As means of overview enforcement matters at this site first commenced in September 2012 when Mr Whitcher stationed a residential mobile home and touring caravan on the land in contravention of an Enforcement Notice from 2005. This followed the refusal of his planning application a month earlier to use the site as a single gypsy pitch. The Authority applied for an Injunction at the High Court but subject to an undertaking by Mr Whitcher the application was held in abeyance by the Judge to enable the refusal of planning permission to be appealed. The original appeal was allowed but was subsequently overturned in the High Court as it was ruled the Inspector erred through his misapprehension of our policies. The appeal was then re-run and dismissed following a Public Inquiry. That decision was then challenged by Mr Whitcher in the High Court but his case was dismissed. This then finally enabled the Authority to conclude its original Injunctive proceedings which were secured with the consent of Mr Whitcher in November 2015. The date to cease his residential occupation of the land and remove the mobile home and other necessary items was agreed for 16 September 2016.
- 11.5 During those latter High Court appearances Mr Whitchers' representatives suggested that they may consider submitting a planning application to try and secure a longer temporary period on a 'humanitarian basis' to enable him to find what he considered to be a suitable site outside of the National Park. We acknowledged that if an application was submitted and then refused and appealed within the timeframe afforded by the Injunction (i.e. by 16 September) we would not oppose an application to the High Court to extend the operation of the Injunction given the time it currently takes the Planning Inspectorate to determine a planning appeal.
- 11.6 However, Mr Whitcher only submitted a valid planning application on 24 August, some 8 months after consenting to the Injunction. There was thus insufficient time for the Authority to consider and determine the application before 16 September let alone Mr Whitcher, should he then disagree with the decision, to lodge a planning appeal and apply to the High Court for an extension of time. It is therefore considered that Mr Whitcher is now in contempt of Court and liable to imprisonment as he has disobeyed the Injunction.
- 11.7 Irrespective of this point it is incumbent on the Authority to determine the planning application as submitted. The Inspector from the dismissed appeal concluded that:

'The NPPF [National Planning Policy Framework] seeks to restrict development in National Parks which would harm their landscape

quality. In accordance with this broad objective Core Strategy Policy CP13 limits traveller development to that which needs to be located in the National Park. The proposal does not comply with Policy CP13. Substantial harm arises from this policy conflict and further significant harm as a result of the actual landscape effect on the ground. This harm is not outweighed by other considerations which favour the proposal, namely the wider unmet need for sites, the accommodation needs of the occupiers and their personal circumstances. This would be an unsustainable development contrary to the NPPF and development plan policies set out.'

'Human rights are integral to considering personal circumstances and accommodation. As such they are already part of the planning balance. Having regard to the alternatives available to the appellant and his dependants and the policy and environmental harm to the National Park I consider dismissing the appeal is the minimum action necessary to avoid the harm and would be a proportionate response to this harm.'

- 11.8 Furthermore in respect of a temporary permission the Inspector stated that:

'The PPTS [Planning Policy for Travellers Sites] advises that where there is a lack of a five year supply of sites it should be a significant material consideration. However since I find that the appellant does not need a site in the National Park the situation is unlikely to change at the end of any temporary period. This being so, a temporary permission would be contrary to the advice in the PPG [Planning Practice Guidance]. The evidence is that alternative sites would be hard to find and the appellant has limited resources. However in this instance the option of conventional housing would be a realistic option from where the appellant could continue to search for another site. On balance, although harm to the National Park would be limited to a finite period, I consider it would still be substantial and would not be outweighed by other considerations.'

- 11.9 In terms of policy there has been a change in respect of the PPTS document since the aforementioned dismissed appeal. It is therefore no longer necessary for the Authority to demonstrate a 5 year supply of such sites within the National Park. Furthermore the definition of a gypsy has been clarified to cite consideration of the relevant issues but the planning application, which has been submitted by a professional agent specialising in these planning matters, is silent about whether Mr Whitcher still meets the definition. Clarification was sought but no response was received.
- 11.10 It is observed from the planning application that Mr Whitcher has made some limited efforts to enquire as to the availability of what he considers to be a suitable site but there remains the prospect

of bricks and mortar accommodation in this case as it was recorded by the previous Inspector that Mr Witcher could use a 'conventional property as a base as he has done in the past'. It was recorded that 'for the first forty years of his life Mr Witcher was brought up in, and travelled from, a series of conventional dwellings located outside the National Park.' Furthermore the information provided of Mr Witcher's enquiries do not indicate any greater likelihood of him securing the type of site he wants even by the end of the 5 year period applied for. It is presumed that Mr Witchers' personal circumstances have not changed since the date of the last appeal, as again his application is silent (and whilst clarification was sought no response was received), but it is understood that he has split from his previous partner and so she no longer resides at the site. Whilst those other previous circumstances may remain, recorded in respect of Mr Witcher himself by the Inspector as 'anxiety symptoms' and that his remaining child under the age of 18 does come to visit from where he lives with his mother in Totton, the underlying fact remains that Mr Witcher has lived at this site unlawfully for the last 4 years and the Inspector previously recorded the harm to the character and appearance of the area:

'I conclude that the proposal would have a materially detrimental effect on the landscape character but a more limited visual impact. As this is a designated landscape of national importance I conclude that significant weight should be attached to the overall harm caused to its character and appearance.'

- 11.11 It now appears to be common ground that Mr Witcher does not have a locational need for the site within the National Park as is required by policy CP13 and so he cannot remain. This temporary application has now come forward but it is not considered that a case has been made on a humanitarian basis or otherwise to justify granting a temporary planning permission, even for a lesser period than proposed. His case largely relies on the basis of his enquiries indicating a lack of gypsy sites in neighbouring local authorities. In sum, the continued residential occupation of the application site with the associated accoutrements and harm that has already been identified and accepted at appeal and which remains has not been outweighed.

12. RECOMMENDATION

Refuse

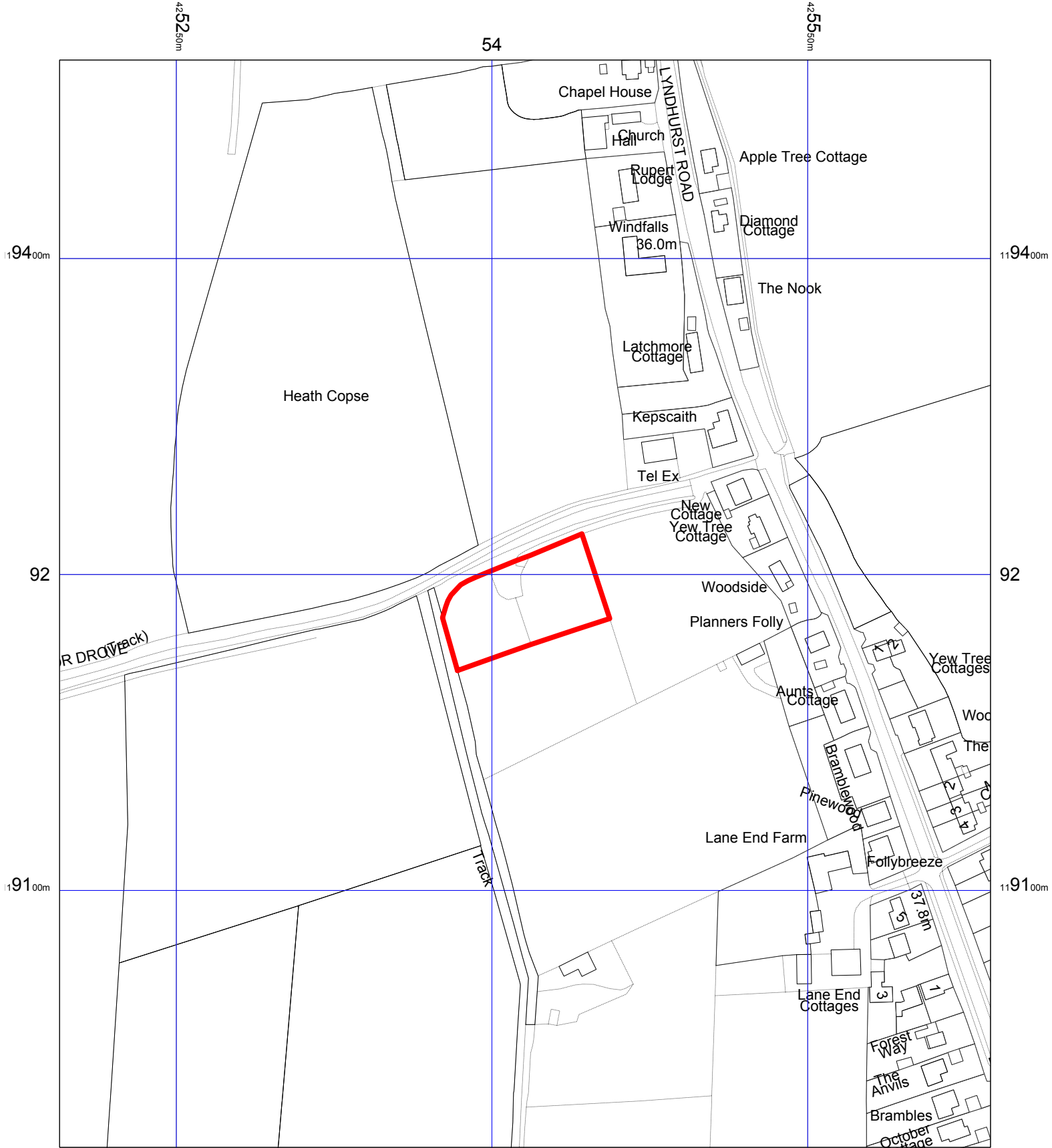
Reason(s)

- 1 The applicant's residential occupation of the site is contrary to policy CP13 of the adopted New Forest National Park Core Strategy and Development Management Policies DPD. Whilst an application for a temporary period has been submitted a case has

not been made on a humanitarian basis or otherwise to justify granting a temporary planning permission, even for a lesser period than the proposed 5 years. The continued residential occupation of the site with the associated accoutrements and harm that has been identified and accepted at Appeal and which remains is not outweighed and is also contrary to policy DP1 of the aforementioned DPD as well as paragraph 115 of the National Planning Policy Framework and associated Planning Practice Guidance and Planning Policy for Travellers Sites documents.

Informative(s):

The Authority has considered the application in relation to its adopted Core Strategy, the National Planning Policy Framework and any other relevant material planning consideration and has concluded that the application proposes such an inappropriate form of development that no amendments could be recommended to enable planning permission to be granted.



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