

## Report of Additional Representations

Application Number	23/00028/FUL
Site Address	Little Willow Oxford Road Eynsham Witney Oxfordshire OX29 4BT
Date	11 <sup>th</sup> October 2024
Officer	Chris Wood
Officer Recommendations	Provisional Approval
Parish	Eynsham Parish Council
Grid Reference	444204 E 208709 N
Committee Date	14 <sup>th</sup> October 2024

### Application Details:

The Siting of 2 additional single unit caravans to accommodate existing residents on an approved Gypsy caravan site at present limited to 3 caravans involving a change in the degree of use of the site as a caravan site (retrospective)

### Applicant Details:

Mr Martin Maughan  
Little Willow  
Oxford Road  
Eynsham  
Oxon  
OX29 4BT

### Additional Representations

#### I. Amendments to Original Report and revised Conditions

Paragraph 5.41 should read (alterations in **bold**):

5.41 The main part of the site (where the caravans are located) is on raised land that is a similar height across its whole area and appears to be classified as being in the "medium risk" Flood Zone 2, rather than the surrounding high risk Flood Zone 3. The applicant appears to argue that this was categorised as being in Flood Zone 2 in 2010 and was considered to be acceptable at that time, and as the height of the hard surfaced area is very unlikely to have decreased since then, it must be acceptable now. The applicant also says that the normal **amount by which height of the caravans are elevated above the ground on which they stand** is higher than the level of Flood Zone 1, which would mean that the caravans would not be inundated even in a 1 in 1,000 year event.

Proposed Conditions are as set out below:

The proposed conditions attached to the report are not appropriate, as they relate to the 2013 S.73 approval, whereas the current application is for full planning permission in its own right for two additional caravans, making a maximum total of five.

Officers request that power to negotiate conditions be granted to officers, with conditions likely to require:

1 No more than five caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 shall be stationed on the site at any time.

Any caravans positioned on the site shall be capable of being lawfully moved on the public highway, without division into separate parts.

REASON: To define the consent, to limit visual and neighbour amenity impacts of the development and to protect living conditions at the site. (Policy OS2, OS4 and H7 of the West Oxfordshire Local Plan 2011)

2 The additional two caravans hereby permitted shall not be occupied by any persons other than Gypsies and Travellers as defined in Annex 1: Glossary of Planning Policy for Traveller Sites (or its equivalent in replacement national policy) and/or their dependants.

REASON: To define the permission and to meet the need for housing for gypsies and Travellers in the District in accordance with Local Plan policies H4 and H7 and the provisions of the PPTS.

3 No storage, industrial or other business use, except the parking, manoeuvring and loading and unloading of vehicles, shall take place in any part of the application site by any occupier of the site.

REASON: To protect the residential and visual amenities of the locality and to ensure there is no interference with the circulation and manoeuvring of vehicles on the site. (Policy OS2 of the adopted West Oxfordshire Local Plan 2031)

4 Compliance with an agreed landscaping and biodiversity enhancement scheme [to be agreed prior to approval being granted], which shall include future maintenance arrangements that are expected to include a requirement to fully implement by the end of the next planting season following the date of this permission and that any trees or plants identified in the scheme that die or become dying, diseased or dangerous within 5 years after the date of full implementation shall be replaced in the same location with a replacement tree or plant of the same species, size and age.

Thereafter maintenance of the agreed landscaping scheme shall take place for a minimum period of 10 years in accordance with the agreed schedule of landscape maintenance, which includes details of the arrangements for its implementation.

REASON: To avoid the adverse impacts of the proposal on the character and appearance of the site and nearby area and on ecology/ biodiversity in compliance with Local Plan policies OS2, EH2 and EH3.

5 Compliance with an agreed flood mitigation scheme/ measures [to be specified prior to approval], which shall be fully implemented within three months from the date of this decision and thereafter operated as specified in the agreed scheme.

REASON: To avoid risk to people and properties in a flood event in compliance with Local Plan policies OS2 and EH7.

6 A site access plan showing a visibility splay of 2.4m x 43m from the edge of highway (or such other visibility splay as the LPA may agree) shall be provided to and agreed in writing by the LPA within 6 months of the date of this permission.

Thereafter no vehicles shall be parked, and no items shall be stored, and no plant shall grow above a height of 1m within the agreed visibility splay.

REASON: To avoid adverse highway safety impacts, in compliance with Local Plan policies OS2 and T1.

2. The appellant has commented on the Committee report/ Application Proposal as follows:

## **INTRODUCTION**

The intention of this response is to point out a number of errors in this report which have contributed to misjudgements being made by the parties involved which have led to what I consider to be invalid conclusions reached by the Case Officer.

I will deal with these issues by referring to the various sections as set out in the report, some of which may be relatively minor in respect of the correction of facts, but some of which have materially contributed to what I consider to be an unsatisfactory outcome.

First of all, however, I have to point out an error in respect of the Location Map on the front page of the report which did not fill me with confidence as to what might follow. The hatched area, which purports to indicate the site area, does not accurately represent the area of the submitted application site plan, in respect of the south eastern boundary of the site, in that it is shown as overlapping that boundary.

As I have been making a fuss over the question of the inaccuracy of the boundaries on the Environment Agency's Flood Zoning Map I feel duty bound to draw this to the Sub-Committee's attention as this involves a material consideration in the proceedings.

## **I. CONSULTATIONS.**

It is a pity that the submitted Planning Statement, an essential part of the application, was not sent out to the consultees as they were left in the dark as to the background of the application. This would have informed the Environment Agency (EA) in particular, about the history of the site which may have led to a more rational first response which the so called "Planning Advisor", at the Wallingford Area Office, has found so difficult to back down from.

Most of which I have to say relates to the EA's intransigence in accepting the facts of the site history and the planning status of the application. Their original objections were based on the assumption that the site was within flood Zone 3b, with a high risk of flooding being in the functional flood plain. I did take this up with them by pointing out that the previous "Planning Liaison Officer" at the EA had raised no planning objections to the change of use of the site as the level of the site had been raised above the functional flood plain and given retrospective planning consent in 1983. As such the site was then granted retrospective planning permission in 2010 for the 2 caravans already on the site subject to a condition limiting the number of caravans to the 2 on the site at that time. The zoning of the Flood Plain Map was then amended to Zone 2. The limit of the number of vans on the site was subsequently increased to allow one further caravan.

I had been informed that the EA's document management policy involves the destruction of files after a 7 year period hence their ignorance of the history of the site history not having the benefit of the Planning Statement.

Their second objection had been based on the lack of a Biodiversity Statement. They were not to know, having destroyed their files on the matter, that planning condition 7 on the original consent required the submission of a Biodiversity Enhancement Scheme. An Ecological Survey was carried out on 19<sup>th</sup> May 2010 by a Member of the Institute of Ecology and Environmental Management and a report received on 4<sup>th</sup> June 2010, at the cost of £ 929.14, which formed the basis of a Biodiversity Enhancement Scheme, which was approved by the Council on 18<sup>th</sup> November 2010. This will be further discussed later.

The EA went on to say that it was unclear where the existing caravans were sited. Again this was an issue dealt with in paragraphs 2.5, 2.6 and 2.8 of the Planning Statement. I can also add that the EA, "Planning Advisor" has not looked very carefully at their own Flooding Zones Map which clearly indicates the positions of the caravans on the site.

In his references to the updated position your Case Officer has indicated that he did go back to the EA querying their position which elicited a further response as set out in the report and to this I would comment as follows.

I did in fact enter into correspondence directly with the EA and also had a follow-up telephone conversation with the "Planning Advisor". It was then conceded by the "Planning Advisor" that only part of the site was within Zone 3. I then went back to ask if they could let me know which part of the site was in Zone 3. The response was that this was shown on the Flood Map.

I could see I was getting nowhere. I had also suggested that a site meeting would help so that the "Planning Advisor" could see what the true position was on the ground. This was ignored so I sent a cross section diagram of the site to the Case Officer and the "Planning Advisor" which indicated that the site was to all intents and purposes at one level and that the pixilated Flood Map boundaries that zig-zagged were not a true representation of the actual boundaries on the ground. As the computer software was not able to align with the true site boundaries and as the zig-zaggs by their nature indicated that there was some incursion of Zone 3 into the site the resulting computer print-out rated the site as being in Zone 3. My opinion is that this fault in the compatibility of the software had misled the "Planning Advisor" was given to the EA and the Case Officer, who now seems to agree that the site is in fact within Zone 2.

I should add that as this is a nationwide data base, I have more recently drawn the attention of the Chief Executive of the Environment Agency, based in Bristol, to this software problem. I have also written to our M.P urging him to take the matter up with the government Minister responsible for overseeing the EA. I have yet to wait for some response.

Notwithstanding this, the EA states that it has not considered this application as a change of use application but still persists in claiming that the Sequential and Exception tests must be passed to ensure that the development will not increase flood risk elsewhere.

This is a clear misunderstanding of what the National Planning Policy Framework says as I explained in my Supplementary Planning Statement dated 4<sup>th</sup> August 2023. In paragraph 2.12 of that Statement, I pointed out that in paragraph 168 of the NPPF and footnote (56), it states that in respect of minor developments only Changes of Use to Caravan Sites should be subject to Sequential and Exception tests. It is quite clear therefore that such tests are not required in respect of this application.

The EA then goes on to criticise the quality of the topographical survey and would welcome a new one "to confirm that levels have not changed since the 2010 topographic survey." As I have had experience in dealing with landfill applications, in particular the raising of the levels of Coral Springs, Witney, by the tipping of the overburden from the Deer Park development area, I find this request to be laughable. At a subsequent Public Inquiry into development for an employment use at Coral Springs that I attended on behalf of the Council, evidence was provided by the appellants that the nature of the fill would have settled over a ten year period.

I also witnessed the nature of the fill when the level of this application site was raised in 1983 and attended the subsequent Public Inquiry. The fill consisted of demolished brickwork with a crushed limestone surface a much firmer type of fill which would not be prone to much settlement. As the survey was carried out 27 years after the ground level was raised my experience tells me that the survey results are still valid.

The EA also states that there should be 300mm freeboard (Floor level above ground level) for the caravans to be safe from flooding. My measurements show that the freeboard of the caravans on the site is 330mm. This means that the floor levels are above the level of the roadway on the frontage of the site which is in Zone 1 on the Flood Map.

In summery the EA states that the applicant needs to submit an adequate Flood Risk Assessment which demonstrates the development will be safe for its lifetime without increasing flood risk elsewhere.

This brings me to the conclusion that the EA has not properly addressed the nature of the application and therefore the EA's recommendations are worthless for the following reasons.

The application is retrospective under the provisions of Section 73A of the Planning Act and relates solely to the proposal for the approval of the two additional single unit caravans on the site. In accordance with established planning policies, and planning practice guidance and the law therefore, it should be determined solely on the planning merits of the development on the basis of what impact the two additional caravans would have on planning interests.

The EA however, has considered it on the basis as to whether; the site is a suitable location for any additional caravans at all. In other words, a re-run of the requirements of a change of use. I have to

point out that the previous “Planning Liaison Officer” when considering the last application for one additional caravan, was quite right in observing that the original planning condition limiting the site to the two units was not a requirement sought by the EA. The reason given to justify the limitation was; “To limit the visual and neighbourly amenity impact of the development.”

As such, the merits of the application should be judged upon what impact if any, the two additional caravans have on these considerations.

As it is, in relation to the EA’s objections, how can they be sustained when evidence has been provided that the site is no longer within the functional Flood Plain? Furthermore, how can they claim that the two caravans would result in flood risk elsewhere when evidence has been provided that the two units have a freeboard within the guidelines should the site be flooded?

I am assuming and trust that the Flood Zone Map and the photographic evidence of the flooding event which took place in January this year will be on display at the Meeting.

I have to conclude that the EA has displayed unreasonable behaviour in declining to have a site meeting when matters could be clarified.

## THE PLANNING ASSESSMENT

5.27. On a point of accuracy I would seriously question whether the Site Plan accompanying the application shows that the site is smaller than the unlawfully extended hard surfaced area. The point being made that some use associated with the application site may occasionally occur, such as parking, can be tacked by a planning condition which I shall come to later.

5.28. The reference to Government Guidance “Designing Gypsy and Traveller Sites is no longer valid. As I pointed out in paragraph 2.7 in the Planning Statement accompanying the application, this Guidance was cancelled by the government’s letter to Chief Planning Officers dated 31<sup>st</sup> August 2015, following its review updating its planning guidance on Gypsy and Traveller matters. This was on the basis that such details were already covered by Site Licensing requirements within the ambit of the Council as a Licensing Authority.

5.31. and 5.32. Concerns are expressed about certain visual aspects where it is claimed willows and other riparian planting that were previously an attractive feature have been removed and replaced with a timber fence. This is not quite true and I will address this point when we come to considering planning conditions.

5.34. This refers to the objections made by the EA on biodiversity matters in relation to the alleged loss of riparian planting. Again I deal with this when considering the matter of conditions.

5.37. On the matter of flood risk the case officer accepts that the land adjoining the site is within the flood plain.

5.38. and 5.39. My comments on the EA consultation on these points have already covered these issues.

5.40. This point refers to the comment that;

“The EA is an objective, professional body set up by the government to provide objective advice on flood risk in these sorts of circumstances and officers consider that its advice should be respected.”

To this I would say, “It depends on the quality of the staff giving such advice.” I have already indicated that I have serious doubts about the competence of the staff giving such advice at the Wallingford area office of the EA. It would be a mistake for the Council’s planning officers to accept such advice uncritically a point I will come to when I will refer to the duty to have regard to the requirements of the Public Sector Equality Duty under the Equality Act which equally applies to the EA and the part of the local planning authority and its officers play in decision making.

5.41. I would just like to clarify that it was after the decision was made to approve the gypsy site when the Flood Map was amended.

5.42. and 5.43. These comments state that a flood mitigation scheme would be relatively straight forward to devise and that officers find it difficult to set aside the EA’s advice. My view is that a Flood mitigation scheme is not necessary for the reasons given above, and I would remind them that government planning advice is that it is for the planning authority to decide what weight to give such advice. My advice to the planning authority would be to ignore such ill conceived advice.

5.45. Again the officers say that the EA advice should be respected. However, I consider that I have already made it clear why such advice is ill-founded. To support such advice would also put the local authority in the danger of also be accused of unreasonable behaviour. As it is, in my correspondence with the Case Officer, I suggested that it would be advisable for the Council to seek a second opinion on the EA's stance in terms of the law. Unfortunately, WODC no longer has in-house legal advice available which I presume is why this suggestion was not taken up.

#### **Personal Circumstances of the Applicants.**

5.48. It is interesting to note that the Case Officer slips into his appeals mode with his reference to "the appellant's submissions". This is understandable as his role in the planning team is that of "Senior Officer (Appeals).

5.49. 5.50. The Case Officer rightly concludes, with his reference to the UN Convention on the Rights of the Child, that this is a very important material planning consideration and should be given very significant weight. I would add that the government's response in its Planning Guidance is that in determining planning applications planning authorities are required to consider children's' best interests.

This is also reflected in the decisions by Planning Inspectors on an increasing number of Gypsy cases where despite sites being in high risk flood zones or in Green Belt locations, appeals are being allowed because of the overriding rights of children on these sites.

Just to remind members there are 7 children on the site as defined by the Convention.

#### **CONCLUSION AND PLANNING BALANCE.**

5.51. The Case Officer refers to "an expanded gypsy site as proposed," I have to point out that the planning application does not propose to expand the site. The proposal in fact seeks permission to site 2 extra caravans within the existing site boundaries. This is an important distinction.

5.54. I cannot accept the statement, "officers cannot see how it can be justified to approve a development with an objection from the EA." I have already explained why I think the EA's claims are baseless.

5.56. The thinking behind this paragraph is flawed as will be explained later.

#### **CONCLUSION.**

5.57. Again, I think the conclusion reached in this paragraph is flawed.

#### **CONDITIONS.**

The matter of appropriate planning conditions is subject to the guidance provided in the National Planning Policy Framework and the rules provided by Government Guidance on the Use of Planning Conditions.

In paragraph 56 of the NPPF, it states that; "Planning conditions should be kept to a minimum and only imposed when they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

More precise rules are set out in government guidance on the Use of Planning Conditions. There are 6 rules as set out below where they must be;

1. Necessary.
2. Relevant to Planning.
3. Relevant to the development permitted.
4. Enforceable.
5. Precise and,
6. Reasonable in all other respects.

I should add that in my experience over the years, these rules are very strictly applied by the Planning Inspectorate when challenged.

In applying these rules to those proposed in the Committee Report I would respond as follows;  
Condition 1.

I can see some difficulties with this condition as far as Rule 3 is concerned as the application refers to Two Additional Single Unit Caravans and furthermore, the part of the condition in brackets is inappropriate as it negates what is applied for.

I would suggest that a condition which restricts the use of the two additional caravans to the occupation by Gypsies and their dependants would cover the matter. The previously approved 3 caravans would continue to be covered by the conditions attached to that consent.

Condition 2.

The Case Officer has already accepted that the reference to the original consent would be inappropriate. Furthermore, a reference to the 2013 consent for the additional caravan would be equally inappropriate for a number of reasons. Bearing in mind the Planning Practice Guidance on the question of the appropriateness or otherwise of restating conditions imposed on earlier permissions which may now no longer have any effect I would comment as follows. The other conditions set out in that permission are as follows. Conditions 1,2 and 3 have been superseded, the requirements of Condition 4 is time expired, submissions in respect of the requirements of Conditions 5,6 and 9 were approved.

Condition 3.

The landscaping scheme requirement prompted me to have another look at the site in these respects. The riparian margins which were part of the approved biodiversity management plan have been re-examined. Although the applicant cleared out the deadwood from the ditch when he arrived at the site and replaced the old corrugated metal fence with a new wooden fence in the same alignment there remained the old trunks of the willows. A fence was an essential feature for safety reason when there are children and pets on the site. It also has the function of protect the vegetation and wild life in this margin. The willows had been pollarded regularly in the past but had been neglected since the nursery business closed and needed the attention they were given by the applicant. As there have been two growing seasons since the application was submitted I should not have been so surprised about the amount of regenerative growth that has taken place knowing how willows are very prolific in that respect.

A series of photographs which illustrate my point have been taken. I will be forwarding them along with this response. Most of them are taken behind the fence in both directions. You will see that the fence has been set back from the edge of the ditch allowing a shelf to support the growth of vegetation. The trunks of the willows within the sides of the ditch now support substantial re-growth which is effective as a screen. There remains therefore a significant green corridor for wildlife.

One photograph taken from within the site shows how effective the existing vegetation is as a screen from views to be taken from the land to the south east of the site. I hope that from this new information it can be agreed that the condition proposed is not needed.

However, I do think that a new hedgerow should be planted along the south eastern boundary of the application site with a gate at the access point which leads down to the lower field in the applicant's ownership. This will provide screening and also demark the boundary of the application site and prevent any activities straying beyond the approved site area. This can be achieved by a conventional landscaping planning condition.

## **MY ADVICE ON THE MATTER.**

Harking back to the Conclusion in the report with reference to paragraph 5.57, there remains the question of the validity of the suggestion that it would be appropriate to defer a decision until the EA's objections can be overcome. I have made it clear what I think of the EA's objections. Spurious in the extreme meaning of the word. It goes against what remains of my professional integrity to pander to the wrongful whims of the EA. I remain dumfounded that your planners see any merit in their objections.

Now is the time to make an unequivocal decision.

To this end, I think it would be useful for me to refer members to the factors involved in coming to a decision on a rational basis when considering what weight to give to the material considerations. In addition to the UN Convention on the Rights of the Child where precedent planning decisions indicate that huge weight should be given in this respect, I must refer in more detail to the matter of the Public Sector Equality Duty. Government Advice on the issue of making decisions is contained in Part 6. Amongst other things, decision makers should be aware of the potential impacts of the decision. Overly bureaucratic and burdensome approaches should be avoided in decision making. This is clearly the approach taken by the EA, a public body which if their view would prevail. I hope that members can see that a negative approach to this application could result in a negative impact on the welfare of the family occupying the site. Furthermore, the EA, is being over bureaucratic requiring unjustified and unnecessary further information from the applicant which would be burdensome in terms of the unnecessary expenditure involved. Finally, coming to the matter of planning balance, I am firmly of the opinion that the weight to be given to the issue of the Rights of the Child is a factor that on its own overwhelms all other material planning considerations not only of the planning balancing scales but also the scales of justice. I sincerely hope that members can come to a favourable decision subject to appropriate planning conditions and bring this saga to a just ending.

Officers will respond to these comments as appropriate at the Committee meeting.