

**PARISH** Pinxton

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**APPLICATION** Change of use of site to Showman's Business Park comprising Showman's Winter Quarters for 14 plots; construction of access road and plot divisions including front boundary walls; installation of services; and diversion of public footpath 27 (resubmission of 14/00512/FUL)

**LOCATION** Land to the South of FW Masons and Sons Ltd Station Road Pinxton

**APPLICANT** Fair Park Estate 13 Rockwell Avenue Westbury-on-Trym Bristol BS11 0UF

**APPLICATION NO.** 16/00152/FUL

**CASE OFFICERS** Mrs Kay Crago (Thurs,Fri)/Chris Fridlington

**DATE RECEIVED** 4th April 2016

DELEGATED APPLICATION REFERRED TO COMMITTEE

**Reason:**

Any grant of planning permission for the current application would be contrary to the recommendations of the Environment Agency but the determination of this application raises issues of strategic importance in relation to the absence of a five year supply of traveller's sites in the District.

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**SITE**

The application site lies broadly to the south east of the main built up area of Pinxton and adjacent to an existing industrial site. The site has previously been used for storage in association with industrial premises but it is not being used for this purpose at the present time. The M1 motorway runs along the eastern boundary of the site and an existing, well-established showman's site (approximately 19plots) lies nearby on the southern side of the River Erewash.

The River Erewash runs immediately adjacent to the southern boundary of the application site and the Maghole Brook and an unnamed watercourse lie within the application site to the east. An area immediately adjacent to the River Erewash is separately fenced off and this area is characterised by relatively dense scrub under-storey and trees. The lower levels of the application site close to the River Erewash are classified as part of the functional flood plain (Flood Zone 3b). Public Footpath number 27 also crosses the application site linking the Erewash Trail with open countryside to the east of the M1.

**PROPOSAL**

The current application proposes the change of use of the land to provide showman's winter quarters. The submitted plans show the site will be divided into 14 plots, with a new vehicular access off Station Road/Beaufit Lane. Each plot will have a vehicular access onto the central access road that will run through the site and boundaries of the plots fronting on to the central

access road are shown to be 2m high brick faced walls with metal gates. The boundaries on each side of the plots will be provided with 2.4m high chain link security fencing.



The submitted plans, shown above, also show that Public footpath 27 will be re-routed to the north of the site whilst amended plans show the provision of a 10 metre ecological buffer zone adjacent to the River Erewash and an 8m buffer zone between the proposed development and Maghole Brook. Further amended plans clarify the ground levels of six of the plots (Plots 8-13) and the central access road relative to high water levels in 1 in 1000 year and 1 in 100 year flood events. Engineering operations will also be carried out to raise existing grounds levels for the residential units on Plots 8-13 and reduce the existing ground levels for the storage space associated with each of these plots.

The application is supported by the following documents:

- Coal Mining Risk Assessment
- Design and Access Statement
- Flood and Biodiversity Statement
- Flood and Biodiversity Statement
- Flood Risk Assessment
- Phase 1 Environmental Survey
- Phase 1 Tree and Habitat Survey

## **AMENDMENTS**

During the determination period for this application, there have been various submissions of revised flood risk assessments and associated drawings. This work has been done in response to the objections raised by the Environment Agency and includes a floodplain compensation scheme i.e. where storage capacity for water would be decreased by raising ground levels, the amended plans show an equivalent amount of capacity (in terms of volume) would be provided by lowering existing ground levels elsewhere on site.

In addition, further ecological survey work and construction and landscape management plans were pending submission at the date of this report. This work is being done to address the issues raised by Derbyshire Wildlife Trust in relation to the current application.

## **HISTORY**

14/00512/FUL: Planning permission refused for change of use of the current application site to Showman's Winter Quarters for 14 plots on flood risk grounds and in relation to adverse impacts on nature conservation interests.

## **CONSULTATIONS**

### **External Consultees**

#### **Amber Valley Borough Council:**

No objections or observations.

#### **Ashfield District Council:**

No objections but comment on adequacy of realigned right of way and specifications for tree planting.

#### **Coal Authority:**

No overriding objections to the proposals subject to conditions requiring site investigation works to be undertaken prior to commencement of development and if remedial works are identified then any remedial works are also undertaken prior to any other development commencing on site.

#### **Derbyshire Constabulary (Crime Prevention)**

No objections or comments

#### **Derbyshire County Council (Flood Team):**

Issued a holding objection and require additional information with regard to the following issues:

- Calculations of the existing surface water run-off rate observed on site.

- Details on how the proposed development will alter the existing observed surface water flows on site.
- Calculations of the proposed discharge water of surface water post development.
- Details on where on site surface water will be discharged to post development
- Calculations for the required storage volume of attenuation that will be required post development.

**Derbyshire County Council (Greenways Officer):**

No overriding objections provided the proposed development would not compromise the provision of a proposed Greenway through the site.

**Derbyshire County Council (Highways):**

No objection subject to conditions.

**Derbyshire Wildlife Trust (DWT):**

DWT continue to have concerns about the adequacy of the information that has been provided to support this application in relation to both protected species and habitats. In summary, DWT considers that information on water vole, otter, breeding birds, reptiles and bats is still outstanding and that information on the proposed compensation measures for the loss of wet woodland are not adequate to be able to determine if the measures will be fit for purpose. As DWT have already stated in previous comments on this application; they would expect to see any compensatory habitat to be within the same catchment/floodplain. However, the DWT are not aware of any suitable sites that could be used. Therefore, DWT are still unable to fully support the current proposals having raised objections to the previous application.

Nonetheless, the Wildlife Trust have suggested conditions they would recommend attaching to any permission for the current application including securing compensatory wet woodland habitat through Environment Bank; additional survey work; and submission and approval of a construction environmental management plan and a landscape and ecological management plan prior to the commencement of the proposed development.

**Environment Agency**

The Environment Agency object to the proposals on two main grounds: (i) part of the development would be within the functional floodplain where only water compatible or essential infrastructure would be permissible; and (ii) it has not yet been demonstrated that the proposed changes of levels on the site would not give rise to increased risk of flooding downstream in a flood event.

However, with reference to the most recent flood risk assessment and associated drawings prepared by the applicant, the Environment Agency have indicated that should the proposed development be deemed to appropriate by the Council, with regard to the Flood Zone in which it is located, then further information should be provided on the floodplain compensation scheme submitted by the applicant. The Environment Agency also consider the

robustness and detail of any evacuation plan should be a significant consideration for the Council when determining this application

**Peak and Northern Footpaths Society:**

Reiterate their comments made on the previous application in that the diversion of a footpath should be necessary not desirable and should be the minimum required to allow development to proceed. The Footpaths Society go on to say the Footpath should be constructed to a high standard at the expense of the applicant. This is an opportunity for planning gain and the path should be widened if possible and should be segregated from any vehicles on site so that users are not exposed to danger from moving vehicles or machinery.

**Chesterfield, NE Derbyshire and Bolsover Group of the Ramblers:** second the comments made by Peak and Northern Footpaths Society.

**Pinxton Parish Council:**

The Parish Council have concerns regarding this application due to environmental, flooding and road usage issues.

**Internal Consultees**

**Environmental Protection Officer**

No objections subject to conditions requiring site investigation works and an appropriate scheme of land remediation prior to the commencement of the proposed development.

**Leisure Services:**

Offer qualified support for the proposals subject to re-routing the existing right of way through the site and ensuring the re-routed right of way would be fenced appropriately and meet the appropriate standards for Greenways.

**Planning Policy:**

The Council has undertaken an assessment of need alongside other authorities in Derbyshire and East Staffordshire. The total accommodation need for the whole of Derbyshire is 13 plots. The entire requirement falls within Bolsover District. Most of this requirement is due to new family formations expected to arise from within existing family units on site. Approval of this application would therefore just exceed the District's requirements to 2034, which coincides with the District's local plan period.

If a local planning authority can't demonstrate an up to date 5 year supply of deliverable sites this should be a significant material consideration. The 5 year supply figure is calculated in the Gypsy and Traveller Accommodation Assessment (GTAA) 2014-2019 and this amounts to 8 plots for 2014-2019 and for the period 2016/2021 is 8,4 plots. The Council currently does not have a five year supply of travelling showpeoples plots.

Approval of the whole scheme would meet the likely new local plan target, the GTAA target

and the 5 year supply. If a smaller scheme with less plots would overcome objections concerning flood risk and ecology, a lesser number would still help to meet the targets.

### **Strategic Housing Officer:**

Supports the application to provide further plots for showman's winter quarters on this site taking into account a Gypsy and Traveller Accommodation Assessment for Derbyshire and East Staffordshire Council's and the Peak District National Park carried out in 2014 concluded that 8 additional plots would be required by 2019 and a further 5 plots were estimated to be required by 2034. The extension of this site as proposed would relieve this identified need for further plots.

### **PUBLICITY**

Site and press notice posted and 19 properties consulted.

One letter has since been received stating there would be no objections to the proposals if the land will be used solely by showmen. A further representation has been received objecting to the proposals on highway safety grounds, referring to the access to the site being close to a blind bend, and on grounds of the potential adverse impacts of the proposals on ecology and biodiversity.

### **POLICY**

Relevant saved policies in the adopted Bolsover District Local Plan ('the Local Plan') include:

GEN 1 Minimum Requirements for Development  
GEN2 Impact of Development on the Environment  
GEN4 Development on Contaminated Land  
GEN5 Land Drainage  
GEN6 Sewerage and Sewage Disposal  
GEN7 Land Stability  
EMP5 Protection of Sites and Buildings for Employment Uses  
CLT10 Countryside Recreation facilities  
ENV5 Nature Conservation interests throughout the District  
HOU14 Residential Caravans and Mobile Homes  
HOU15 Sites for Gypsies and Travellers.

Relevant policies in the National Planning Policy Framework ('the Framework') include:

Paragraphs 14 and 17 with regard to the presumption in favour of sustainable development and core planning principles.

Paragraph 75 which says local planning authorities should protect and enhance existing public rights of way and access and should seek opportunities to provide better facilities for users, for example by adding links to existing rights of way networks including National Trails.

Paragraphs 100-104 with regard to flood risk and detail of sequential and exception tests for development within Flood Risk Zones.

Paragraphs 117-118 with regard to safeguarding nature conservation interests and promoting biodiversity.

Paragraphs 120-121 which define how local planning authorities should address land stability and contaminated land issues.

Planning Practice Guidance also offers further guidance on the application of national policies set out in the above paragraphs and it is of particular relevance to this application that Planning Practice Guidance includes additional technical advice on dealing with flood risk.

### Other

“Planning policy for traveller sites” is a policy document issued by the Government in August 2015 that should be read in conjunction with national planning policies in the Framework. In the first instance, this document is highly relevant to the current application because it includes policy guidance on showman’s sites. Moreover, in the absence of an identified five year supply of plots for travelling showmen, national policies for travellers sites contained in this document should be afforded significant weight in the determination of the current application along with the presumption of sustainable development and other relevant policies in the Framework.

## **ASSESSMENT**

### **Principle**

The current application proposes the change of use of land to Showman's Winter Quarters for 14 plots, which will include pitches for mobile homes (or similar forms of temporary accommodation) and space associated with each pitch for the storage of equipment. The national policy document “Planning policy for traveller sites” says that local planning authorities should have regard to the need that travelling show people have for mixed-use yards to allow residential accommodation and space for storage of equipment. Therefore, there are no overriding objections to the principle of the proposed mixed use of the land and there are a number of factors that indicate the land would be an appropriate site for winter quarters for show people.

Amongst other things, the proposed site is adjacent to a well established showman’s site and the design and layout of the proposed scheme broadly reflects that of the existing Guildhall Drive development. This existing site has operated at this edge of the employment area of Pinxton without affecting the effectiveness of other commercial operations. Other smaller showmen’s sites lie nearby off Plymouth Avenue and there is no record of complaints about these sites from other commercial operators or any other person. Therefore, there are no concerns that the proposals would compromise commercial operations on any of the nearby designated employment sites or would be unneighbourly.

Furthermore, the use of the plots would provide a form of ‘live-work’ accommodation and the type of activities carried out on site would not necessarily be acceptable in a more residential area in terms of neighbourliness, in the Green Belt in terms of loss of openness, or in open

countryside in terms of visual amenity. In the proposed location for the site, there is little risk that the proposed use of the land would harm the character, appearance or amenities of the local area. However, it is equally important that there also no overriding concerns that the type of accommodation proposed would be unsuitable for showman's winter quarters because of the commercial activities taking place on the adjacent sites. Moreover, the site has reasonable links to the nearby services in Pinxton and the site can be considered to be a sustainable location for the proposed development in this respect.

Therefore, there are strong grounds on which to base a conclusion that the proposed development is acceptable in principle on the application site with reference to national planning policies. The fact that the proposed accommodation would meet a clearly identified need for traveller's sites in the District also weighs heavily in support of the current application. In this respect, the proposals would meet the identified need for traveller's sites over the plan period of the emerging Local Plan whilst, at present, there are no alternative sites that have been identified that would provide a five year supply of this type of accommodation. Consequently, if this application were to be refused, then there would be a significant problem not only finding an alternative site for the current applicant but also in terms of demonstrating compliance with overarching national policies. A refusal of this application would also have strategic implications with regard to plan making and demonstrating the District has a five year supply of traveller's sites in the emerging Local Plan.

However, this application does give rise to a number of concerns including issues around land stability and contamination, the relocation of an existing right of way, the potential impacts of the proposed development on biodiversity, and flood risk by virtue of part of the application site being located in the functional flood plain. In these respects, national policy on traveller's sites says that local planning authorities should consider how they could overcome planning objections to particular proposals using planning conditions or planning obligations. The following sections of this report set out how planning conditions could be used to address the concerns noted above and how these conditions would also address the main concerns raised in consultation responses on the current application other than with regard to the Environment Agency's requirement for a 'level for level' compensatory scheme in respect of development within a flood plain.

### **Land Stability and Contamination**

The Coal Authority and the Environmental Health Officer have assessed the current application and have no overriding objections to the scheme subject to appropriate pre-commencement conditions. It would be reasonable and necessary to require the additional survey work required by both consultees to be done and any remediation works completed before the proposed development goes ahead because the site is within a former coal mining area, there is potential for contaminated materials to be present on the land, and at least two mine shafts are sited within the application site. As such, the conditions suggested by the Coal Authority and the Environmental Health Officer, including the timing of the works required, would be fundamental to the acceptability of the proposed development and ensure the proposals would comply with national policy in paragraphs 120 and 121 of the Framework and relevant policies in the Local Plan including policies GEN4 and GEN7.



## **Public Right of Way**

Although issues with the proposed vehicular access to the site has been raised as an issue in representations, highways officers at the County Council have no objection to the proposals on highway safety grounds and there are no obvious reasons why the access would not be safe and suitable subject to the conditions suggested by the County Council. However, the public right of way that runs across the site will need to be located if the proposed development were to go ahead. In principle, there are no objections to relocating the right of way albeit it is acknowledged that the proposed development would lead to this path being tightly enclosed between two fences: one that would be erected at the rear of the showman's winter quarters and the high fence around the adjacent existing industrial premises.

However, the relatively short distance of path partially mitigates for any loss of enjoyment of the existing footpath. A degree of betterment can also be achieved by ensuring the proposed line of the footpath is provided with an appropriate width and top surface so the re-located right of way would meet Greenways standard. It is therefore considered reasonable and necessary to require these works as a condition of any planning permission for the current application and to reserve approval of the details of these works not least to ensure both ends of the relocated right of way would link properly with the wider footpath network in the local area. It is considered compliance with these conditions would effectively offset and outweigh the limited harm arising from the re-located public right of way having less amenity value than the existing footpath and the creation of a link to a potential Greenway would be consistent with national policy in paragraph 75 of the Framework.

## **Biodiversity**

Amended plans have been received that address the initial concerns of both the Environment Agency and Derbyshire Wildlife Trust (DWT) insofar as buffer zones will now be provided that should prevent the proposed development having any direct adverse impacts on water voles or their riverside habitat. However, DWT remain concerned about the loss of some wet woodland habitat close to the River Erewash, which is also an issue that has been raised by the Environment Agency taking into account there is insufficient land on the application site to provide compensatory habitat. Notwithstanding the provision of a buffer zone, DWT have also raised concerns that insufficient information has been provided to properly assess the impacts of the proposed development on bats and birds, reptiles, water voles and otters and therefore, it is also not possible to properly assess whether any potential impacts on these species can be appropriately mitigated.

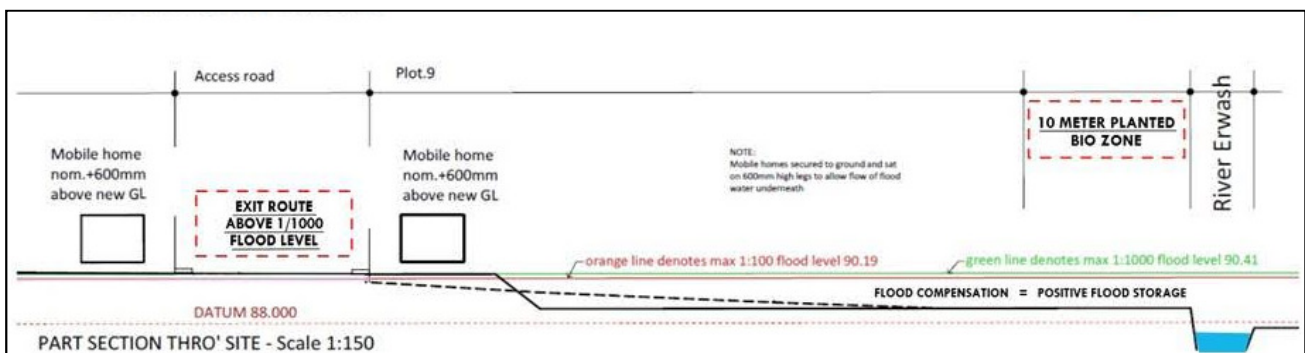
However, DWT also acknowledge that their main concerns could be addressed by appropriate pre-commencement conditions because the main nature conservation issue, other than loss of woodland habitat, appears to be that the proposed development could have a harmful impact on these species during the construction phase. Therefore, it is reasonable and necessary to understand how these species will be protected during the construction phase of the proposed development by securing additional survey work and agreement on a construction environmental management plan before the development goes ahead. It would also be reasonable and necessary to use planning conditions to secure compensatory wet woodland habitat and a landscape and ecology management plan to ensure appropriate mitigation for the impact of the proposed development on habitats and species with nature

conservation value and to ensure the proposed development would not conflict with the objectives of safeguarding and promoting biodiversity set out in paragraphs 117 and 118 of the Framework and policy ENV5 in the Local Plan.

## Flood Risk

The Framework sets strict tests to protect people and property from flooding which all local planning authorities are expected to follow. Where these tests are not met, national policy is clear that new development should not be allowed. This is consistent with the approach taken in the Local Plan. However, one of the key issues raised by this application is whether mobile homes would be sited in the functional flood plain (Flood Zone 3b) and whether the proposed units would be occupied on a permanent basis. The Environment Agency consider this to be the case and therefore object to the current application because the provision of permanent residential accommodation in mobile homes within Flood Zone 3b is simply not permissible. Nonetheless, the Environment Agency acknowledge it is down to the Council to determine whether the mobile homes proposed in this application would be located in Flood Zone 3b.

The extract from the most recent amended plans, shown below, illustrates how the units would be sited above the functional flood plain, and indicates the pitches would be on made ground with a top surface above the high water level of a 1 in 100 year and 1 in 1000 year flood event i.e. the pitches would be sited above the flood plain and the mobile homes should remain above water even if there was a significant flood event.



It is therefore reasonable to conclude that the pitches would not be sited within the functional flood plain (i.e. Flood Zone 3b) where there would be a 1 in 20 year probability of flooding. This conclusion would allow the potential objection to mobile homes being sited within Flood Zone 3b to be addressed even if the mobile homes were to be occupied on a permanent basis. Subject to the changes in the existing ground levels shown on the amended plans, it is considered that the siting of mobile homes can be classified as a highly vulnerable development within Flood Zone 2 if they were to be occupied on a permanent basis. On this basis, it would be then appropriate to consider the acceptability of the proposed development in a Flood Zone with reference to the two tests in national policy rather than to consider that it was simply not permissible as suggested by the Environment Agency.

The first of the tests in national policy for development in Flood Zones 2 and 3 is the Sequential Test, which is generally used to ensure that areas at little or no risk of flooding from any source are developed in preference to areas at higher risk. The aim should be to

keep development out of medium and high flood risk areas (Flood Zones 2 and 3) and other areas affected by other sources of flooding where possible. On a case by case basis, a pragmatic approach on the availability of alternatives should be taken when applying the Sequential Test. For example, where there are sites in Flood Zones 2 and 3 (medium to high probability of flooding) and development is needed on those sites to meet the clearly identified need of a particular community, other sites with less risk of flooding but at some distance away from other members of the same community would be highly unlikely to provide a reasonable alternative. As the showman community is very much based in a particular area in Pinxton, this means any search for alternative sites should focus on a very localised area in and around Pinxton rather than a District-wide search.

However, this is a case where there is an absence of reasonably available alternative sites and the absence of alternative sites is clearly evidenced by the absence of a five year supply of traveller's pitches within the District. Therefore, there can be no doubt the current application passes the Sequential Test because there are no alternative sites for the proposed development that are less at risk of flooding. Consequently, it is appropriate to consider the second test for development in a Flood Zone, which is the Exception Test. On the basis of the information shown on the amended plans, application of the Exception Test would also be appropriate because the siting of mobile homes on the proposed pitches can be classified as a highly vulnerable development within Flood Zone 2, as noted above, rather than highly vulnerable development within Flood Zone 3b.

Paragraph 102 of the Framework says 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, and, where possible, will reduce flood risk overall.

This paragraph goes on to say both elements of the test will have to be passed for development to be allocated or permitted.

In terms of the first part of the Exception Test, it is acknowledged that the showmen have been seeking additional sites for a number of years and it is noted at various points in this report that there is no evidence that any alternative sites are likely to be made available in the foreseeable future or that the demand for pitches could be met anywhere else in the District. Therefore, the development would provide wider sustainability benefits to the showman community by meeting a clearly identified need for more pitches that cannot be met in any other way. In principle, this consideration could be considered to outweigh flood risk in its own right.

However, beyond the absence of a five year supply of traveller's pitches and the absence of alternative sites, it also has to be acknowledged that show people live in a quasi industrial/residential environment and such specific requirements are difficult to cater for within predominantly residential or industrial areas. Therefore, the application site is

particularly suitable for showmen's winter quarters because it is close to the edge of Pinxton on the fringe of an industrial area. The application site also has the advantage that there are several sites used by showmen within walking distance of the application site. These existing sites have been established for many years and there are economic, functional and social benefits to this well established community being close to each other. In these respects, it is accepted that there are wider clear benefits to the showman's community in expanding their presence close to existing sites and it is considered the proposed development would provide wider sustainability benefits to the showman's community that outweigh flood risk in this case.

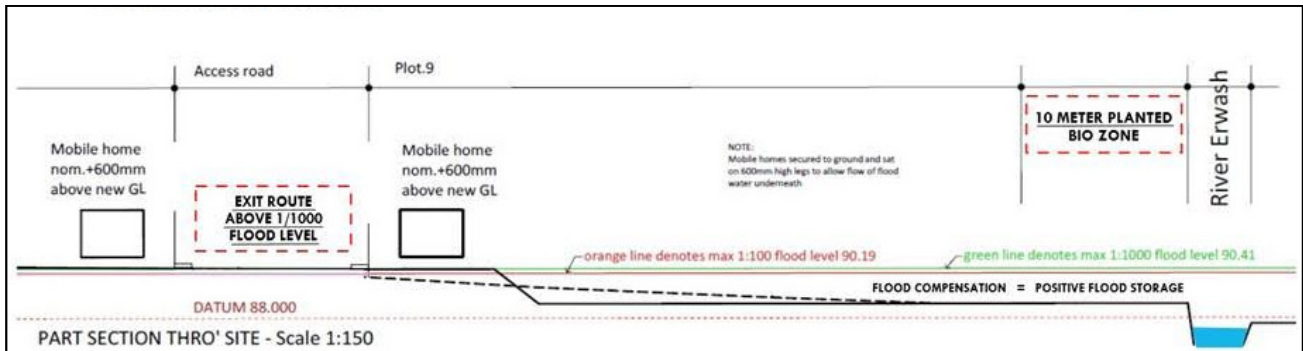
Therefore, the current application can be considered to pass the first part of the Exception Test and the acceptability of the proposed development rests on the application of the second part of the Exception Test and (i) whether the development will be safe for its lifetime taking account of the vulnerability of its users, and (ii) whether the development can go ahead without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall. In this case, the Environment Agency have raised concerns on both points (i) and (ii) and Derbyshire County Council's Flood Team have concerns that there is insufficient evidence to demonstrate that the development would not increase flood risk downstream of the site through increased levels of surface water run off.

In terms of whether the development will be safe for its lifetime, the amended plans show that a safe escape route can be provided from the site because the central access track would be above 1 in 100 year and 1 in 1000 year flood levels. Therefore, there is no substantive reason to consider the health of the occupants of the mobile homes would be at substantial risk in a flood event even if some of the occupants were more vulnerable to risk through their age or health. Notably, the Environment Agency do not dispute this conclusion in their most recent comments and appear to be more concerned about items in the storage areas that would be within the functional flood plain. The main concern is some of these items may be buoyant and would float off site in a flood event and then create a hazard or obstruction elsewhere. In short, it is considered these concerns can be dealt with through the submission of, and agreement on a robust emergency and evacuation plan prior to the site being taken into use.

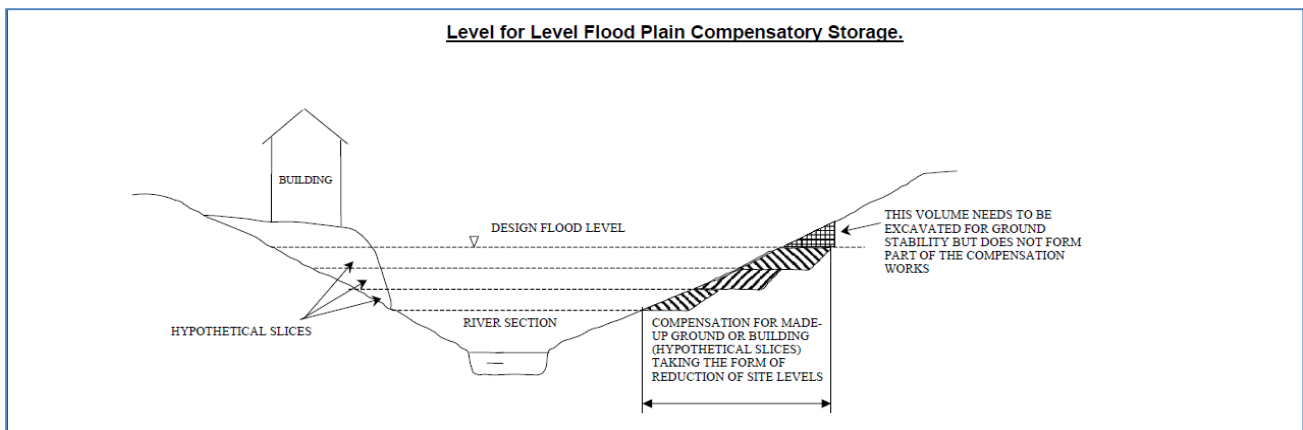
In terms of whether the development can go ahead without increasing flood risk elsewhere, the County's Council Flood Team's concerns could be dealt with as part of the submission of the construction and landscape environmental management plans that would be required to address biodiversity concerns, as mentioned previously in this report. It is considered the applicant should be able to include a sustainable drainage system in these plans and such a system should be compatible with creating or maintaining wet woodland habitat in the buffer zones that are shown on the amended plans. Therefore, the issue of surface water run off could be addressed through planning conditions and this was also considered to be the case in the determination of the previously refused application for a very similar development on this site.

The Environment Agency's concerns might also be dealt with by a planning condition because the Agency have now narrowed down their concerns to whether the engineering works to lift the pitches for the mobile homes would reduce capacity for water storage within a flood plain. With reference to the extract of the amended plans shown previously in this report and shown below, for ease of reference, the specific issue concerning the Environment Agency arises from the increase in ground levels shown by the continuous black line above

the existing ground levels shown by the dashed black line. In summary, the made up ground above the dotted black line on the diagram below would effectively reduce the storage capacity of the land in a flood event; the land below the dotted line on the diagram below would be dug out to increase the storage capacity of the land in a flood event.



On the basis of the applicant's calculations, the 'cut and fill' operations partially illustrated by the above diagram would increase the storage capacity of the land by around 1,000m<sup>3</sup>. The Environment Agency do not agree that this approach addresses the issues and say that the applicant needs to show how flood compensation measures match up 'level for level'. The diagram below illustrates what the Environment Agency mean by level for level flood plain compensatory storage, and it is clear the applicant's scheme does not achieve level for level compensatory storage. It is also clear that the nature of the land in the applicant's control means it is highly unlikely that a level for level compensatory scheme could be achieved. Therefore, the Environment Agency's concerns are unlikely to be addressed by a planning condition requiring approval of details of an appropriate compensatory scheme.



This is a significant issue because the Environment Agency advice is that any loss of flood storage must be compensated for by the reduction in level of nearby ground, such that the same volume is available at every flood level before and after the works and it can freely fill and drain. In other words, in order to mirror the existing situation for a particular flood, each stage (or level) is provided with the same storage volume, cut and fill must equate on a level for level basis, i.e. at each level (say at 0.2 metre vertical intervals for example) the excavated and filled volumes are equal. The timing at which the storage effect comes into operation is significant. If this volume is reduced for any stage of a flood then the lost storage results in

flood waters being diverted elsewhere, leading to third party detriment. The Environment Agency go on to say that the detriment caused by a small encroachment may not be significant, or even measurable, when taken in isolation but the cumulative effect of many such encroachments will be significant.

In light of this advice, and if level for level storage compensation cannot be achieved on site, the difference between recommending approval for this application or refusing planning permission is then down to whether it is appropriate to consider the impacts of the proposed encroachment into the flood plain by the made up ground 'in isolation' and whether the encroachment would have a significant impact on flood risk elsewhere. In this respect, raising the ground levels on the application site, as proposed, would displace water that could move downstream faster and increase flood risk elsewhere but the amount of water displaced would be equivalent to the absolute minimum amount of encroachment into the flood plain required to facilitate the proposed development.

On balance, it is considered unlikely that the limited amount of displaced water arising from the encroachment into the flood plain on the application site would give rise to a measurable impact downstream taking into account the River Erewash would be the principal channel for excess water and this river flows westward from the site below the edge of the outskirts of industrial premises and then on into open countryside. In these terms, it is considered that there is only a limited risk of displaced water affecting private property immediately downstream of the application site. Similarly, the relatively undeveloped nature of the land either side of the River Erewash for some considerable distance downstream means that there would be a very limited risk that the proposed development would give rise to cumulative effects downstream of the site. This is because of the limited likelihood of further encroachments into the functional floodplain between the edge of Pinxton and the next settlement along the River Erewash, which is Ironville in Amber Valley. Notably, Amber Valley Borough Council have no objections to this application and have not made any further observations on this application in respect of flood risk.

Therefore, whilst a recommendation for approval of this application would be contrary to the Environment Agency's recommendation that level for level compensation should be achieved, it is considered that the proposed development would not significantly increase flood risk elsewhere in real terms and on this basis, the current application would pass the second part of the Exception Test. Moreover, whilst the Environment Agency is a statutory consultee, the responsibility for managing flood risk remains with the Council and in this case, there are also exceptional circumstances that warrant accepting the proposed development would pass the Exception Test when the increased risk of flooding elsewhere would lead to a minimal risk of harm. In this case, the benefits of meeting a clearly identified need for pitches for showmen in the absence of a five year supply and in the absence of alternative sites would demonstrably and significantly outweigh and offset the potential adverse impacts of a minimal encroachment into the floodplain that would be unlikely to significantly increase flood risk downstream of the application site.

## **Conclusions**

In conclusion, planning conditions can be used to address most of the main concerns that arise from the proposals to provide showman's winter quarters on land that might be

contaminated and have stability issues, and on land within a functional flood plain and land that has particular nature conservation interest. Planning conditions can also be used to provide an appropriate right of way through the site to replace an existing footpath. However, it is acknowledged that any approval of this application rests on an application of the Exception Test that differs from the Environment Agency's recommendations in respect of a requirement for level for level compensation.

For the reasons set out above, it is considered there are valid planning reasons to consider the current application passes the Exception Test and there is no doubt the proposed development would pass the Sequential Test. Therefore, it is not considered that the constraints on developing the site are insurmountable and that the potential for increased flood risk elsewhere is relevant but not sufficient to warrant refusal of an application that is acceptable, or can be made acceptable in planning terms in all other respects. Furthermore, the significant benefits of granting permission for this application, including the benefits to the showman community in obtaining accommodation on a site closely linked to existing showman sites in a sustainable location, are considered to offset and outweigh the limited adverse impacts of doing so; especially when taking into account the absence of alternative sites and the absence of a five year supply of traveller's sites in the District.

Accordingly, the current application is recommend for conditional approval.

### **Other Matters**

Listed Building: N/A

Conservation Area: N/A

Crime and Disorder: Derbyshire Constabulary have no objections to the current application.

Equalities: The above report adequately covers the Council's responsibilities to respect the rights of the showman community.

Access for Disabled: The pitches proposed in this access will be provided with level access.

SSSI Impacts: N/A

Human Rights: The relevant provisions of the Human Rights Act, including the qualified right to the peaceful enjoyment of private property, are adequately covered in the above report.

### **RECOMMENDATION**

**The current application be APPROVED subject to the following conditions provided in précis form and subject to members granting delegated authority to the Joint Assistant Director / Planning Manager to formulate the precise wording for these conditions:**

- **Development to commence within 3 years**
- **Development to be completed in accordance with amended plans.**
- **No development to take place until the submission and approval of:**
  - (i) **coal mining survey and remediation works if required;**
  - (ii) **land contamination survey and remediation works if required;**
  - (iii) **construction environmental management plan**
  - (iv) **landscape environmental management plan**
  - (v) **precise details of relocated right of way including surfacing materials**
  - (vi) **Flood Risk Assessment including Emergency and Evacuation Plan**