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**Report to:** Planning Committee

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**Date of Meeting:** 21 January 2021

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**Subject:** Planning Application Ref: 20/00214/FULL - Change of Use of Woodland to Permanent Gypsy/Traveller Site (2 No Households) and Siting of 2 No Static Caravans and 4 No Touring Caravans With Related Infrastructure (Retrospective) - Renewal Of Permission For A Further 2 Years - Cow Wood, Forestmill, Clackmannanshire

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**Report by:** Grant Baxter, Principal Planner

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## **1.0 Purpose**

- 1.1. To provide an assessment of the above noted planning application against the provisions of the Local Development Plan and other material considerations, and provide a recommendation on the application.

## **2.0 Recommendations**

- 2.1. It is recommended that the application is approved for a temporary period of just one year from the date of this Planning Committee and subject to the conditions as set out below:

### Conditions

1. This permission shall cease on 31st January 2022. By that date, the use of the site as a permanent gypsy/traveller site, shall cease, all caravans shall be removed from the site and it shall be returned to forestry use. Unless, by that time, planning permission has been granted for continued use of the site for this development.
2. The site shall only be occupied by a maximum of two families who are declared Gypsy/Traveller households.
3. Within three months of the date of this permission, the following additional information shall have been submitted to and approved in writing by the Council:
  - a) A schedule of native tree and hedge planting along the site's western and northern boundaries, and arrangements and timing of planting and future maintenance.
  - b) Details of proposed water supply, foul and surface water drainage arrangements and timing of installation. If a public supply is not to

be used, details must include details of a private water supply which is adequate and potable and complies with the requirements of The Water Intended for Human Consumption (Private Supplies) (Scotland) Regulations 2017.

- c) Once approved, the development shall be carried out in accordance with such approved details, unless otherwise approved in writing by the Council.
4. All plant, machinery and equipment installed or operated within the site shall be so enclosed and/or attached that noise therefrom does not, at any time, increase the background levels as measured in accordance with British Standard BS4142:2014, at any nearby residential property.
5. In so far as not required for access, the site shall be enclosed along its boundaries with a post and wire fence in accordance with a specification and details to be submitted to and approved by the Council, as planning authority.

#### Reasons

1. The application does not fully comply with the Local Development Plan and this time period is considered suitable in order to meet the housing needs of the applicant and his family, whilst allowing screen planting to mature and the Council to monitor the use and visual amenity of the site.
2. In order to protect the visual amenity of the site and its immediately surrounding area and prevent against over-development, in recognition of the needs of Gypsy/Travellers.
3. In order to ensure the submission and approval of precise details in connection with the proposed development and their implementation on the site.
4. In the interests of residential amenity.
5. To ensure that the area to which the change of use hereby permitted relates is physically and sufficiently demarcated.

## **2.2 Reasons for Decision**

1. In 2017, it was concluded that the proposals complied with certain provisions of the LDP, but that they were not fully policy compliant. Key policy tests on Gypsy/Traveller accommodation and development in the countryside, as set out in Policies SC3 and SC23, in respect of visual amenity and provision of suitable infrastructure, were not entirely satisfied.

2. As such, temporary planning consent was granted in 2017 for a period of 3 years. This was considered to strike a suitable balance in order to meet the immediate housing needs of the applicant's family, whilst allowing time to address outstanding matters in relation to screen planting and installation of utilities required to make the site suitable for permanent habitation. This temporary period would allow for consideration of the suitability of permanent planning permission at the end of a trial period. Cognisance could also be

taken of any other material planning considerations that arose during the three year period.

3. The three year period expired on 30<sup>th</sup> September 2020, and this current application, seeking a further extension of the temporary planning permission for a further 2 years was submitted shortly before that expiry date. The application is accompanied by a supporting Planning and Design Statement, prepared by a planning consultant on behalf of the applicants. This acknowledges that an application for permanent planning permission would be premature given matters in relation to landscaping/planting and provision of utilities (as set out in planning conditions) have not been adequately addressed to date. The statement sets out reasons as to why these matters have not yet been addressed and also includes updated details of planting and foul drainage proposals, and considers that a further 2 years is required to address all issues before a permanent consent is sought.

4. It is acknowledged that the applicants have faced a number of challenges in addressing the planning conditions, which have been outwith their control, but equally that these do not fully justify or explain the lack of progress. The site is the main home for the applicant families, but without appropriate screen planting, and in particular without basic amenities, such as electricity, foul drainage and drinking water, its suitability for permanent habitation, in accordance with planning policies, remains in doubt.

5. It is considered that an additional period of 2 years may only serve to further delay actions to address outstanding planning requirements, but equally that refusal of the application would fail to acknowledge challenges the applicants have faced and deny them the opportunity to address matters appropriately.

6. An additional period of one year (from the date of this Planning Committee meeting) would provide the applicants with appropriate time to address previous planning conditions, and for the Planning Committee to review progress at the end of that period, should the applicants wish to make a further planning application at the end of that period.

7. This approach is considered to comply with the provisions of the adopted development plan and takes account of material considerations.

### **Approved Plans**

- 5164.D.01B - Location Plan
- -- - Location of Outstanding Works
- -- - Plans 2 & 3 & Fence Details

## **3.0 Considerations**

### **3.1. Background**

3.2. This is a further application seeking to extend a temporary planning permission granted in September 2017 for the retrospective change of use of an area of woodland to a permanent gypsy/traveller site. The permission

comprised the site being split into two halves, each being a separate pitch for a household, and each containing a static caravan and two touring caravans, with related infrastructure. The two separate households are from the same family, and the site was first occupied in January 2017, with the original application being submitted retrospectively in June 2017.

- 3.3. The site is rectangular, measuring approximately 50m by 26m and abuts the east side of the minor unclassified road from Forestmill to Sheardale, approximately 700m south of its junction with the B9140 road. It lies close to the northern edge of Cow Wood, and in very close proximity to an overhead power line that runs east-west through the woodland. The site and adjoining land under the powerline were clear felled, creating a linear area of cleared woodland along the northern edge of Cow Wood. The applicant's land ownership runs for several hundred metres east of the application site alongside the powerline corridor.
- 3.4. The site has an access off the minor road it abuts and is surfaced in compacted stones (Type 1). It contains static and touring caravan and has a backdrop of woodland to the south, cleared woodland under the powerline to the north and woodland and agricultural land on the opposite side of the road, to the west.
- 3.5. The nearest houses are Meeks Park (400m to the southeast), Cairnsmuir (600m to the east) and Easter Sheardale Cottages (700m north).
- 3.6. In September 2017, the Planning Committee agreed with the officer's recommendation that planning permission be granted, not permanently, but for a period of three years. The reasons for this were set out in the officer's report as follows:
  - 3.6.1. Elements of the proposals comply with certain provisions of the LDP, but there remain areas of policy conflict. The proposals would not result in significant adverse effects on the wider landscape or appropriate levels of residential amenity but do detract from the appearance, amenity and character of immediate area. As such, they only partially comply with the key policy test on Gypsy/Traveller accommodation, as set out in Policy SC3 of the Local Development Plan.
  - 3.6.2. The application does not fully meet the tests set out in the LDP in respect of developments in the countryside, however, the housing needs of a Gypsy/Traveller family are material considerations that are of relevance in this case.
  - 3.6.3. Whilst not fully in accordance with such policy provisions, there are areas of policy support, such that a clear case for refusal of the application and subsequent enforcement action is not at this stage fully justified.
  - 3.6.4. Matters in relation to the suitability of the access arrangements, installation of appropriate services and amenities, compliance with other non-planning regulations and implementation and establishment of screen planting remain unresolved, and to some extent can themselves only be progressed following a grant of planning permission. A temporary planning permission, lasting a suitable period of time will allow progress with these issues to be made, and the success of the site in respect of road safety, provision of services and

visual impact can be fully reviewed if a permanent permission is sought at the end of the temporary period.

3.6.5. Taking account of the development plan and material considerations, therefore, a temporary planning permission for a period of three years would strike a suitable balance in order to meet the housing needs of the applicant and his family, whilst allowing screen planting to mature and the Council to monitor the use and visual amenity of the site.

3.7. The temporary planning permission was granted subject to the following conditions and reasons (Condition 5 was added by the Planning Committee):

#### Conditions

1. This permission shall cease on 30 September 2020. By that date, the use of the site as a permanent gypsy/traveller site, shall cease, all caravans shall be removed from the site and it shall be returned to forestry use. Unless, by that time, planning permission has been granted for continued use of the site for this development.

2. The site shall only be occupied by a maximum of two families who are declared Gypsy/Traveller households.

3. Within three months of the date of this permission, the following additional information shall have been submitted to and approved in writing by the Council:

a) A schedule of native tree and hedge planting along the site's western and northern boundaries, and arrangements and timing of planting and future maintenance.

b) Details of proposed water supply, foul and surface water drainage arrangements and timing of installation.

Once approved, the development shall be carried out in accordance with such approved details, unless otherwise approved in writing by the Council.

4. All plant, machinery and equipment installed or operated within the site shall be so enclosed and/or attached that noise therefrom does not, at any time, increase the background levels as measured in accordance with British Standard BS4142:2014, at any nearby residential property.

5. In so far as not required for access, the site will be enclosed along its boundaries with a post and wire fence in accordance with a specification and details to be submitted to and approved by the Council, as planning authority.

#### Reasons

1. The application does not fully comply with the Local Development Plan and this time period is considered suitable in order to meet the housing needs of the applicant and his family, whilst allowing screen planting to mature and the Council to monitor the use and visual amenity of the site.

2. In order to protect the visual amenity of the site and its immediately surrounding area and prevent against over-development, in recognition of the

needs of Gypsy/Travellers.

3. In order to ensure the submission and approval of precise details in connection with the proposed development and their implementation on the site.

4. In the interests of residential amenity.

5. To ensure that the area to which the change of use hereby permitted relates is physically and sufficiently demarcated.

### **3.8. Planning Assessment**

3.9. The planning conditions were applied to the temporary permission, not only to require provision of outstanding details of the site, but also so that assessment of a future application for a permanent or extended temporary permission could review “performance” against the requirements of the conditions, given the development was not considered to be fully policy compliant. In this regard, the following summary in respect of the planning conditions is provided:

3.9.1. Condition 1: This application for an extension of the temporary permission was submitted one day prior to the expiry of the period set out in Condition 1.

3.9.2. Condition 2: As far as the Planning Service is aware, the site has been occupied in accordance with this condition.

3.9.3. Condition 3a: Details of native tree and hedge planting were approved on 26 April 2018 (seven months after the planning permission). The approved planting has not been completed on site to date.

3.9.4. Condition 3b: The site does not yet have drinking water or foul sewerage services. Drinking water is transported to the site and held in a bowser. Foul water arrangements are only those contained in caravans and a portable toilet, which are periodically emptied and with waste water disposed of off site. The site is covered in compacted stone which allows surface water to drain.

3.9.5. Condition 4. The Council’s Environmental Health Service has no record of any noise complaints emanating from machinery operated on the site, however one objector has referred to audible generator noise in mornings and at night.

3.9.6. Condition 5. Details of post and wire fencing for the site boundaries were approved on 26 April 2018. Most, but not all fencing has been erected on site.

3.10. The planning application has been accompanied by a Planning Report and Design Statement prepared by the applicant’s agent, the key elements of which can be summarised as follows:

3.10.1. The report confirms that the site is owned and occupied by the related Stewart and MacDonald families, who are part of the gypsy/traveller community. The family are settled at the site and wish to remain there as their permanent home to access health and education services.

- 3.10.2. The report notes that conditions 3 and 5 have not been fully complied with, but that the applicants wish to provide the facilities required by the planning conditions and request a further 2 years in order to achieve this, before seeking permanent consent.
- 3.10.3. In respect of Condition 3a, the report acknowledges that the approved native planting scheme to the north and west boundaries of the site has not been carried out, but there is no specific justification given for this. Reference is made to a wayleave in relation to a powerline that passes over the site that would allow the line operator to fell trees beneath it. Mention is also made of natural regeneration that has provided some screening to the site over the last 3 years. The application is accompanied by a revised planting scheme for mixed deciduous planting on the western (roadside) boundary and beech hedging to the northern boundary, which the agent advises could be made a condition of any planning permission. This scheme is considered to be acceptable.
- 3.10.4. In respect of Condition 3b, the report advises that domestic waste is uplifted from the site by the Council.
- 3.10.5. Electricity is provided by an onsite generator. The applicant had made arrangements for a grid connection via a pole mounted line running from the south alongside the road. The applicant has however been unable to achieve the required wayleave from a third party landowner to allow this line to be installed. There are no details of an alternative solution.
- 3.10.6. A water supply connection has been planned, in the form of a pipe from Easter Sheardale, to the north. This has not yet been achieved, with the COVID 19 lockdown cited as a reason for this. The applicants are now investigating a private on-site borehole as an option.
- 3.10.7. No permanent drainage system has been installed. Portable toilets are in place and emptied on a regular basis under contract from the supplier. The lack of a water supply is a barrier to installation of a drainage system. A package treatment plant would also require a mains power supply, which is yet to be provided. A septic tank option is now being investigated, and details of this are submitted with the application. Surface water drainage is provided by permeable surfaces.
- 3.10.8. In respect of Condition 5, the agent advises that fencing has been erected on all but the northern site boundary, with this to be completed after a septic tank is installed.
- 3.10.9. The report cites the illness and sad passing away of Mr Alexander Stewart in April 2020 as a major setback to the family that has contributed to the outstanding matters above not having been addressed. Mr Stewart was the head of the family and the project manager for addressing the planning conditions and achieving utility connections.
- 3.10.10. The report notes that from time to time, the number of touring caravans on the site has exceeded four in total, with extended family members visiting. During summer months, there may be no touring caravans on site, with the family travelling during this time.

- 3.10.11. The report concludes that due to a number of circumstances outwith the applicants' control, full compliance with planning conditions has not been achieved, and therefore a further period of 2 years is required and requested to address all outstanding points. The agent does not consider that the recommendation of an additional one year is sufficient time for the applicants to address all matters, particularly taking account of ongoing COVID19 restrictions.
- 3.10.12. Finally, the report summarises matters that the agent considers should be taken into account in decision making, including the development plan, Scottish Planning Policy and equalities and human rights legislation. The key provisions of these are set out in this report.
- 3.11. Consultations
- 3.12. Roads: Presumption against residential development in a rural area. Safety concern regarding increased vehicle movements and pedestrian activity on this de-restricted section of rural road. *Comment: Notwithstanding the concerns about the principle of the development, a reasonable degree of visibility appears to be available at the site access which is onto a straight section of a quiet minor rural road. There are no footways in the vicinity of the site. Granting of temporary approval allowed the use of the access to be monitored for an initial period, and then reconsidered at a future date in light of any issues. Roads have not reported any issues or incidents in connection with the site access.*
- 3.13. Environmental Health: Recommend refusal based on no information having been provided since the original consent on water supply and toilet/washing facilities. The relevant site licence for a residential mobile homes or touring caravans has not been applied for. If approval is granted, conditions on water supply details, noise levels of plant and machinery and hours of demolition/construction. Licences should also be sought. *Comment: Any consent should be conditioned as advised by Environmental Health. Licences should also be sought by the applicant separately from planning consent.*
- 3.14. SEPA: No objections. There is no indication of a watercourse for soakaway run off from a septic tank to discharge to. A septic tank and soakaway will require consent via Building Standards. *Comment: The proposed septic tank drainage arrangements will require a Building Warrant.*
- 3.15. Scottish Water: No objections. There is sufficient capacity in the Turret Water Treatment Works to provide a water supply. There is no waste water infrastructure in the vicinity. *Comment: SW have previously confirmed that an application for water connection had been made to them, and that the water main lies 350m from the site, but that any application would only be processed if planning permission is granted.*
- 3.16. Dollar Community Council: Neither object to nor support the application. Full (permanent) planning permission should not be granted if previous conditions have not been addressed.
- 3.17. Representations



- 3.18. There were no notifiable neighbours to this application, however as there is adjoining land with no premises, a Neighbour Notification advertisement was published in the Alloa Advertiser on 14<sup>th</sup> October 2020.
- 3.19. A total of 3No. representations have been made by the following parties:
- Stephen Outhwaite, Meeks Park, Forestmill
  - George Drysdale, 9 Livingstone Way, Clackmannan
  - J. Drysdale, Forestmill Farm, by Forestmill
  - Scottish Forestry, Upper Battleby, Redgorton, Perth
- 3.20. On the following grounds:
- The application was granted subject to a number of conditions and these have not been fully complied with. *Comment: A summary in the context of planning conditions is provided in this report of handling.*
  - Landscaping/planting has not been carried out. *Comment: This has been noted.*
  - A wayleave for electricity connection was permitted by a nearby landowner due to Mr Stewart's poor health, but consent was later withdrawn due to issues caused by a third party landowner who was carrying out unauthorised development on adjoining land, and threatening to bring several families onto their site. *Comment: The Council as Planning Authority has no locus in respect of private wayleaves. Issues in relation to adjoining land are not material to determination of this application, however are being monitored by the Planning Service.*
  - Noise from generators on site can be heard at night and in early morning. *Comment: Environmental Health have no record of noise complaints, but this point has now been raised with them.*
  - Notwithstanding the death of Mr Stewart, the family have had over 3 years to address planning conditions.
  - Comments in respect of anti-social behaviour emanating from the site. *Comment: This is not a material planning consideration, but Police Scotland are aware of issues in this regard.*
  - The site is not suitable for caravans and should be returned to forestry. *Comment: Planning permission was granted on a temporary basis in order to assess the suitability of the site for permanent development.*
  - There are regularly more than the permitted number of caravans on the site. *Comment: It has been observed that the number of touring caravans on the site can be above or below four at certain times. Whilst the development description refers to four touring caravans, it would not necessarily be deemed a breach of planning control for the number of touring caravans to increase above four for short periods of time. At the*

*time of writing this report, the number of caravans on site does not appear to exceed that described in the development.*

- The proposal is contrary to Policy SC3 of the adopted LDP. *Comment: Assessment of the proposal against LDP policies is set out in this Report of Handling.*
- Approval of woodland removal for development is contrary to Scottish Government woodland removal policy and as such the application should be rejected. *Comment: The site was previously part of a larger plantation woodland (presumably planted for future timber harvesting). The trees were removed by the operator of the power line that passes overhead, not by the applicant.*

### 3.21. Planning Policy Assessment

3.22. The application must be determined in accordance with the development plan unless material considerations indicate otherwise. The Clackmannanshire Local Development Plan, adopted August 2015 (LDP) comprises the development plan.

3.23. The main relevant policy provisions of the LDP are as follows:

- Policy SC3 – Gypsies, Travellers and Travelling Show People
- Policy SC20 – Water and Drainage Infrastructure and Capacity
- Policy SC23 – Development in the Countryside – General Principles
- Policy EA4 – Landscape Quality

3.24. Policy SC3 identifies considerations to be taken into account for private Gypsy/Traveller sites, with encouragement given to use of authorised sites in the first instance, and support for private sites only given where certain criteria, including other relevant policies of the LDP, can be met.

3.25. The key provisions of other policies are set out below, however Policy SC3 also requires the development to be sensitively located and designed to avoid significant adverse effects, offer appropriate standards of amenity and access to local services.

3.26. Policy SC20 seeks to ensure that developments are served by suitable water and drainage infrastructure, and proposes SUDs for all new development.

3.27. Policy SC23 sets out general principles for development in the countryside. It directs new developments to existing settlements unless specific criteria can be met, such as demonstrating the need for a countryside location, appropriateness of scale, design and character and adequacy of infrastructure. If these are met, the policy supports developments adjacent to existing groups/clusters or via conversion of suitable buildings.

3.28. Policy SC24 derives from SC23 and is specific to residential development, setting out additional criteria for assessing residential development. In this case, the residential element of the proposal are the caravans, and none of the criteria of the policy are specific to this type of development, unless it is

temporary accommodation in connection with a new rural business, which is not the case here.

- 3.29. Overall, whilst elements of the proposals comply with certain provisions of the LDP, it was originally concluded in 2017 that there were also significant areas of policy conflict, suggesting that the proposals did not fully comply with the provisions of the development plan, and hence temporary consent was granted.
- 3.30. There are a number of material considerations that are relevant to this proposal which include:
- The Planning Aid Scotland’s publication “Gypsy/Travellers and the Scottish Planning System – A Guide for Local Authorities” (The PAS Guide).
  - The Secretary of State’s Advisory Committee on Scotland’s Travelling People – Guidance Note on Site Provision for Travelling People (ACSTP), Final Report 2000 - adopted by Scottish Executive( SE) as policy.
  - Human Rights and Equality Legislation – Public Sector Equality Duty (PSED)
  - Personal circumstances of the applicant.
  - Compliance with other legislation.
- 3.31. Taking account of these considerations, the following conclusions can be drawn:
- 3.32. The Council has adopted a policy for consideration of private Gypsy/Traveller sites, as required by the SPP. As noted above, there are areas of both compliance and conflict with the policy.
- 3.33. The personal circumstances of the applicant are not normally of relevance in determining planning applications. The PAS Guide suggest that due to the inequalities that gypsy/travellers face, it may be the case that personal circumstances should be given weight in determining applications, but only if there is conflict with the development plan. In this case, the personal circumstances that have been brought to our attention are the education of children living at the site and the need for access to healthcare, and the ill health and passing away of the head of the family, Mr Alexander Stewart, within the last year.
- 3.34. Article 8 of the European Convention on Human Rights (ECHR) is concerned with the right to private and family life, and public authorities are required to consider carefully the proportionality of their actions in decision making which may affect Gypsy/Travellers family or home life. This requires a balance of social need with the protection of the environment. In respect of Article 14 of the ECHR, concerning prohibition of discrimination, there is a positive obligation to facilitate the Gypsy/Traveller way of life, and again, a balance must be struck, taking account of the facts of the case. It should also be noted that the UN Convention on the Rights of the Child (UNCRC) is also a

material consideration. When considering Gypsy/Traveller applications, there is a duty on the Council to consider the impact that decision-making will have on any children affected by the outcome of that decision.

- 3.35. Should planning permission be granted, the site will require to be licensed. As part of this new regime, model standard conditions will apply, in relation to a number of site issues, including drinking and waste water, sanitary and washing facilities, refuse and waste disposal. The applicant has not progressed with site licencing and this has been compounded by the failure to achieve water and drainage connections.
- 3.36. The PAS Guide indicates that temporary planning permissions can create uncertainty and should be avoided where possible, however, are not ruled out where the balance between the potential planning harm of the development and other material circumstances is unresolved. This was considered to be the case in respect of the original application, and the applicant now requests an extension to that temporary period to allow planning requirements to be fulfilled.
- 3.37. It was previously considered that a temporary planning permission for a period of three years would strike a suitable balance between meeting the housing needs of the applicant and his family in the medium term, allowing screen planting to mature, utilities to be installed and the Council to monitor the use and visual amenity of the site.
- 3.38. Taking account of visual amenity issues, the site benefits from some natural screening afforded by the mature woodland that lies immediately to the south. There is no guarantee that this will remain in the long term as it is plantation woodland that could be felled at a later date and is not in the applicant's control. The site is open on all other sides however is only visible at relatively close proximity on approach along the minor road it is served off. There are no long distance public views of the site and it is not in an area designated for landscape or natural heritage importance. The local visual amenity of the site could be significantly enhanced by native tree/hedge planting as has been conditioned but not implemented. Natural regeneration has softened the visual impact of the site somewhat.
- 3.39. Granting of planning permission on a temporary basis was meant to allow such planting to be implemented and its success reviewed as part of a future application to renew a temporary permission. There is no clear reason for the approved planting not having been implemented since consent was granted in September 2017. The agent has proposed a revised (and acceptable) alternative planting scheme, but its success can only be judged if it is implemented, and there must be concerns about whether this would take place as proposed, given the failure to implement the original scheme.
- 3.40. The site lies in an area of forestry with other nearby land in agricultural use, and the nearest houses over 400m away. One objector has referred to night and morning noise from generators on site causing disturbance, although Environmental Health have no record of such concerns to date. Mention is made of anti-social behaviour and other issues related to alleged activities on neighbouring land. The requirement for generators on site is a direct consequence of the applicant's inability to achieve a power connection from the grid. There does not appear to be any current proposal to overcome this

constraint, and therefore the applicants may be restricted to the use of generators for electricity indefinitely. This would be a concern, not just in respect of potential noise disturbance, but also about the long-term suitability of the site in the context of Policy SC3.

- 3.41. The site is served by Council domestic waste collection service, but there is as yet no on-site drainage system or water supply. The COVID 19 restrictions have been cited by the agent as a reason for a proposed water connection not progressing, however, consent was in place for 2.5 years before these became a factor. An on-site borehole now being investigated. A package sewage treatment plant was also originally proposed, but due to the need for a power supply, this cannot progress and a septic tank/soakaway solution is now being considered. There is currently no building warrant application for a septic tank/soakaway.
- 3.42. Whilst it is acknowledged that the applicants have encountered significant challenges in achieving utilities connections for the site, not least the death of the head of the family 8 months ago, it is also clear that matters could, and perhaps should, have progressed more quickly in the 2.5 year period preceding this and the COVID 19 restrictions, with regard to installing these important amenities. It is not fully clear as to why so little progress has been made since the grant of planning consent in September 2017, particularly bearing in mind that the applicants owned and occupied the site for several months prior to this date. These amenities were set out as requirements of planning conditions, and relate to criteria set out in Policy SC3, regarding the suitability of sites for private gypsy/traveller occupation.
- 3.43. The Council requires to take a balanced view on the future likelihood and timescale for achieving such connections and also addressing other related matters such as site licencing. The unforeseen issues the applicant has encountered have undoubtedly contributed to delays, but these are not solely responsible for the lack of progress. An extension of temporary planning permission for a further 2 years may provide sufficient time for all of these issues to be addressed, but equally may only serve to further delay their implementation. A shorter time period of 12 months may strike an appropriate balance between providing the applicants more time to address matters, but not unreasonably extend a temporary situation, if in fact these utilities cannot be installed to make this a suitable permanent living environment envisaged by Policy SC3.
- 3.44. Whilst the applicant's agent has indicated that one year is not considered sufficient, it should be borne in mind that this would be from the date of decision (i.e. the date of this Planning Committee meeting), and not from 30<sup>th</sup> September 2020, when the original consent expired, so an additional 4 month period has already been permitted.
- 3.45. It is important that in the additional temporary period matters are expedited in respect of not only provision of planting and amenities but also seeking building warrant for drainage infrastructure and the appropriate licencing through Environmental Health.
- 3.46. It is clear that national and local planning policy and other material considerations do not support protracted temporary planning permissions for private gypsy/traveller sites, particularly where these sites are not capable of

providing the amenities and standard of living required by planning and other regulations. Granting consent for a further 2 years would not fully reflect the reasons for the Council's original planning decision to grant temporary planning permission in 2017. Equally, refusal of the application would not fully reflect some of the challenges the applicants had faced in the previous three years or fully consider human rights legislation such as the fact that the site is currently the applicant's home, despite its current lack of amenities.

- 3.47. A one year consent would fully acknowledge the human rights and equalities legislation that are important material considerations in this case, as well as properly reflect local and national planning policies. It would allow the applicants time to address planting and utility connection issues without unnecessarily prolonging uncertainty for the them, neighbours and other third parties. This time period can also provide for the applicant to progress with other consents and licencing arrangements. The applicants would have the opportunity to have a further application for permanent development considered thereafter, and in light of how issues had been addressed and considering the long-term suitability of the site for habitation.

#### 4. Resource Implications

##### 4.1 Financial Details

- 4.2 The full financial implications of the recommendations are set out in the report. This includes a reference to full life cycle costs where appropriate.

Yes

- 4.2 Finance have been consulted and have agreed the financial implications as set out in the report.

Yes

##### 4.3 Staffing

#### 5.0 Exempt Reports

- 5.1 Is this report exempt? Yes  (please detail the reasons for exemption below) No

#### 6.0 Declarations

The recommendations contained within this report support or implement our Corporate Priorities and Council Policies.

- (1) **Our Priorities** (Please double click on the check box )

Clackmannanshire will be attractive to businesses and people and ensure fair opportunities for all

Our families; children and your people will have the best possible start in life

Women and girls will be confident and aspirational and achieve their full potential

Our communities will be resilient and empowered so that they can thrive and flourish

(2) **Council Policies** (Please detail)

**8.0 Equalities Impact**

8.1 Have you undertaken the required equalities impact assessment to ensure that no groups are adversely affected by the recommendations?  
Yes  No

**9.0 Legality**

9.1 It has been confirmed that in adopting the recommendations contained in this report, the Council is acting within its legal powers. Yes

**10.0 Appendices**

10.1 Please list any appendices attached to this report. If there are no appendices, please state "none".

Report of Handling on Planning Application 17/00149/FULL – considered by the Planning Committee on 14<sup>th</sup> September 2017.


**11.0 Background Papers**

11.1 Have you used other documents to compile your report? (All documents must be kept available by the author for public inspection for four years from the date of meeting at which the report is considered)  
Yes  (please list the documents below) No

**Author(s)**

NAME	DESIGNATION	TEL NO / EXTENSION
Grant Baxter	Principal Planner	2615

**Approved by**

NAME	DESIGNATION	SIGNATURE
Emma Fyvie	Service Manager	
Allan Finlayson	Team Leader	

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**Report to:** Planning Committee

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**Date of Meeting:** 14 September 2017

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**Subject:** Planning Application Ref: 17/00149/FULL - Change of Use of Woodland to Permanent Gypsy/Traveller Site (2 No Households) and Siting of 2 No Static Caravans and 4 No Touring Caravans With Related Infrastructure (Retrospective) - Cow Wood, Forestmill, Clackmannanshire

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**Report by:** Grant Baxter, Principal Planner

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## 1.0 Purpose

- 1.1. To provide an assessment of the above noted planning application against the provisions of the Local Development Plan and other material considerations, and provide a recommendation on the application.

## 2.0 Recommendations

- 2.1. It is recommended that the application is approved for a temporary period of 3 years, and also subject to other conditions as set out below:

### Conditions

1. This permission shall cease on 30 September 2020. By that date, the use of the site as a permanent gypsy/traveller site, shall cease, all caravans shall be removed from the site and it shall be returned to forestry use. Unless, by that time, planning permission has been granted for continued use of the site for this development.
2. The site shall only be occupied by a maximum of two families who are declared Gypsy/Traveller households.
3. Within three months of the date of this permission, the following additional information shall have been submitted to and approved in writing by the Council:
  1. A schedule of native tree and hedge planting along the site's western and northern boundaries, and arrangements and timing of planting and future maintenance.



2. Details of proposed water supply, foul and surface water drainage arrangements and timing of installation.

Once approved, the development shall be carried out in accordance with such approved details, unless otherwise approved in writing by the Council.

4. All plant, machinery and equipment installed or operated within the site shall be so enclosed and/or attached that noise therefrom does not, at any time, increase the background levels as measured in accordance with British Standard BS4142:2014, at any nearby residential property.

#### Reasons

1. The application does not fully comply with the Local Development Plan and this time period is considered suitable in order to meet the housing needs of the applicant and his family, whilst allowing screen planting to mature and the Council to monitor the use and visual amenity of the site.
2. In order to protect the visual amenity of the site and its immediately surrounding area and prevent against over-development, in recognition of the needs of Gypsy/Travellers.
3. In order to ensure the submission and approval of precise details in connection with the proposed development and their implementation on the site.
4. In the interests of residential amenity.

## **2.2 Reasons for Decision**

1. Elements of the proposals comply with certain provisions of the LDP, but there remain areas of policy conflict. The proposals would not result in significant adverse effects on the wider landscape or appropriate levels of residential amenity but do detract from the appearance, amenity and character of immediate area. As such, they only partially comply with the key policy test on Gypsy/Traveller accommodation, as set out in Policy SC3 of the Local Development Plan.
2. The application does not fully meet the tests set out in the LDP in respect of developments in the countryside, however, the housing needs of a Gypsy/Traveller family are material considerations that are of relevance in this case.
3. Whilst not fully in accordance with such policy provisions, there are areas of policy support, such that a clear case for refusal of the application and subsequent enforcement action is not at this stage fully justified.
4. Matters in relation to the suitability of the access arrangements, installation of appropriate services and amenities, compliance with other non-planning regulations and implementation and establishment of screen planting remain unresolved, and to some extent can themselves only be progressed following a grant of planning permission. A temporary planning permission, lasting a suitable period of time will allow progress with these issues to be made, and the success of the site in respect of road safety, provision of services and

visual impact can be fully reviewed if a permanent permission is sought at the end of the temporary period.

5. Taking account of the development plan and material considerations, therefore, a temporary planning permission for a period of three years would strike a suitable balance in order to meet the housing needs of the applicant and his family, whilst allowing screen planting to mature and the Council to monitor the use and visual amenity of the site.

Approved Plans

5164.D.01B - Location Plan

### **3.0 Considerations**

#### **3.1. Background**

3.2. This is a retrospective application for the change of use of an area of woodland to a permanent gypsy/traveller site. The site is split into two halves, each being a separate pitch for a household, and each containing a static caravan and two touring caravans, with related infrastructure. The two separate households are from the same family, and the site was first occupied in January 2017.

3.3. The site is rectangular, measuring approximately 50m by 26m and abuts the east side of the minor unclassified road from Forestmill to Sheardale, approximately 700m south of its junction with the B9140 road. It lies close to the northern edge of Cow Wood, and in very close proximity to an overhead power line that runs east-west through the woodland. The site and adjoining land under the powerline were clear felled within the last 2 years, creating a linear area of cleared woodland along the northern edge of Cow Wood. The applicant's land ownership runs for several hundred metres east of the application site alongside the powerline corridor.

3.4. The site has an access off the minor road it abuts and is surfaced in compacted stones (Type 1). It contains the static and touring caravans referred to in the application description. It has a backdrop of woodland to the south, cleared woodland under the powerline to the north and woodland and agricultural land on the opposite side of the road, to the west.

3.5. The nearest houses are Meeks Park (400m to the southeast), Cairnsmuir (600m to the east) and Easter Sheardale Cottages (700m north).

#### **3.6. Consultations**

3.7. Roads: Presumption against residential development in a rural area. Safety concern regarding increased vehicle movements and pedestrian activity on this de-restricted section of rural road. *Comment: Notwithstanding the concerns about the principle of the development, a reasonable degree of visibility appears to be available at the site access which is onto a straight section of a quiet minor rural road. There are no footways in the vicinity of the site. Granting of temporary approval may allow the use of the access to be monitored for an initial period, and then reconsidered at a future date in light of any issues.*

- 3.8. Environmental Health: Objection based on lack of details of private water supply arrangements, toilet /washing and foul drainage arrangements. The site will require to be licenced under the Housing (Scotland) Act 2014, and comply with the standards set out in the related regulations. *Comment: The applicant's agent has confirmed that a public water supply connection is being sought, and if not possible then a private source will be investigated e.g. borehole, however Environmental Health are still concerned that no definite arrangements for water supply are in place and reiterate the need for compliance with model standard conditions. Scottish Water have now advised that a water supply connection is available, albeit the water main is 350m from the site. If planning permission is granted, the site will require a Licence which would be administered by the Council's Environmental Health Service. This will cover such matters as water supply. A planning condition can also require these details.*
- 3.9. SEPA: No objections. Details of SUDs shown are appropriate. Foul drainage arrangements via septic tank or package plant would be acceptable subject to confirmation of ground conditions being suitable. *Comment: The principle of the drainage arrangements are acceptable but final details will be required and will also require a Building Warrant. If planning permission is granted, the site will require a Licence which would be administered by the Council's Environmental Health Service. This will cover such matters as drainage arrangements.*
- 3.10. Scottish Water: There is sufficient capacity in the Turret Water Treatment Works, however further investigations will be required as part of a formal application, if planning permission is granted. There is no waste water infrastructure in the vicinity. *Comment: SW have confirmed that an application for water connection has been made to them, and that the water main lies 350m from the site, but that the application will only be processed if planning permission is granted.*
- 3.11. Representations:
- 3.12. There were no notifiable neighbours to this application, however as there is adjoining land with no premises, a Neighbour Notification advertisement was published in the Alloa Advertiser on 14<sup>th</sup> June 2017.
- 3.13. A total of 6No. representations have been made by the following parties:
- SP Energy Networks
  - Patrick Leavey, c/o Port Hamilton, 69 Morrison Street, Edinburgh
  - Colliers International, (on behalf of a local proprietors and farmers), 1 Exchange Crescent, Conference Square, Edinburgh
  - Margery Milligan, 22 Brucefield Crescent, Clackmannan
  - Stuart & Emma Earley, Meeks Park, Forestmill
  - Mrs C Wright, Wester Gartgreenie, Forestmill
- 3.14. On the following grounds:

- 3.14.1 SP Energy initially objected on the basis of possible interference with overhead apparatus next to the site, however following a site visit has concluded that there are no safety concerns and withdrawn the objection.
- 3.14.2 This is a retrospective application, with caravans and portaloos having been present on the site for several months. *Comment: The application is retrospective and follows submission and withdrawal of an earlier application by another agent which did not fully reflect the applicant's overall proposals. The Council's Enforcement Charter allows for retrospective applications to be made in most circumstances where development has been undertaken without prior approval, in order that they can be fully assessed before any decisions about possible enforcement action are taken.*
- 3.14.3 The site and surrounding woodland are important for wildlife and have been subject to tree felling and other development activity that may affect the local wildlife, including bats and red squirrels. *Comment: The site and adjoining woodland have no specific natural heritage designation and are plantation woodland where protected species, such as red squirrels are known to be present. Scottish Natural Heritage are not a statutory consultees in this case, however have advised informally that they have no specific locus in respect of this application, but would be a consultee on any felling licence application for the adjacent woodland.*
- 3.14.4 Allegations regarding night time noise and activity and other human activity in the woodlands adjoining the site affecting residential amenity for neighbouring properties. *Comment: This is not specifically a planning matter, however any allegations of criminal or anti-social behaviour should be reported to the Police.*
- 3.14.5 Gypsy/Traveller sites should be identified through the development plan and not via individual applications. *Comment: The Scottish Planning Policy indicates the Council should have a policy for assessing applications for private Gypsy/Traveller sites, but not necessarily that it identifies specific sites in the LDP.*
- 3.14.6 Existing Gypsy/Traveller sites are provided by Clackmannanshire Council and insufficient evidence has been submitted as to why these aren't suitable for the applicants. *Comment: The availability of space at the Council-run Westhough site is not material in considering an application for a small privately owned site with related business proposals. It must be examined on its own merits in relation to relevant LDP policy.*
- 3.14.7 There is another private gypsy/traveller site nearby at Gartlove, and no need for another one here. *Comment: The current application must be assessed on its own merits, and is unconnected to any previously approved sites.*
- 3.14.8 The site is in open countryside, detracts from the visual amenity and character of the area and is not sensitively designed nor does it fit with the landscape, and does not meet the Council's Placemaking policy. It has little connectivity to local amenities. As such the application is contrary to LDP Policy SC3. *Comment: The development design is somewhat limited by its nature i.e. caravans, however as such must be sensitively located and not have a significant adverse effect on the landscape. The site benefits from a woodland backdrop to the south but is open on all other sides. It is not visible in distant views or from adjacent houses, but only from the minor road passing it at*

*relatively close proximity. The negative visual impact of the site is limited to its immediate context, rather than from further afield. It is noted that the site is over 4km from the nearest amenities and that there are no footpaths nor public transport links serving it.*

- 3.14.9 The site is not allocated in the LDP for residential development. There is no demonstrable need for a countryside location for the development and therefore it does not comply with Policies SC23 and SC24 of the LDP, in relation to developments in the countryside. *Comment: The proposal is for a specific development type, and not simply a “residential development”, but one that may be more suitable to a rural location, provided other criteria of Policy SC23 can be met. Policy SC24 does not specifically apply to this development.*
- 3.14.10 No details of the proposed water supply arrangements have been submitted, and no safe private supply is available at the site. *Comment: An application to connect to the public water supply has been made. Scottish Water have indicated that there may be capacity in the water network to serve the development, but that the application will only be processed if planning permission is granted. A planning condition can require final details of water supply to be submitted.*
- 3.4.11 Concern about septic tank soakaway affecting adjoining land and watercourses and flooding concerns. *Comment: SEPA have no objection to the proposed foul drainage arrangements, but these would be subject to final approval, including the need for a building warrant. . A planning condition can require final details of drainage arrangements to be submitted.*
- 3.14.12 Road safety concerns about more traffic using this narrow country road and manoeuvring in and out of the site. *Comment: The Council’s Roads Service do not support the application in principle, however it is noted that the access is onto a lightly trafficked rural road and a reasonable degree of visibility can be achieved at the access.*
- 3.14.13 The supporting statement refers to the applicant’s health issues, however the site is unsuitable for someone with health problems as it is remote and mobile phone and poor wi-fi signal. *Comment: Whilst availability of wi-fi and mobile phone signal are not material planning considerations, the availability of access to local amenities is a consideration under Policy SC3. The site is considered somewhat remote from local services.*
- 3.14.14 There has been a significant amount of litter deposited along the road leading to the site since the caravans arrived on it, however this may be a coincidence. *Comment: This is not a material planning consideration and there is no evidence to suggest that this issue is related to the development.*
- 3.14.15 Human rights should be universal and people of different ethnic backgrounds should not have preferential treatment in the planning process. *Comment: Article 8 of the European Convention on Human Rights (ECHR) is concerned with the right to private and family life, and public authorities are required to consider carefully the proportionality of their actions in decision making which may affect Gypsy/Travellers family or home life. In respect of Article 14 of the ECHR, there is a positive obligation to facilitate the Gypsy/Traveller way of life, and again, a balance must be struck, taking account of the facts of the case.*

3.14.16 Granting planning permission could set a precedent for other similar developments elsewhere in Clackmannanshire. *Comment: Each planning application must be assessed on its own individual merits, the site and immediately surrounding area has been the subject of unauthorised developments and activities in recent years and whilst approval of this application may give rise to concern that other similar proposals may come forward, this should not be a factor in determining this application.*

### 3.15. Supporting Statement

3.16. The applicant's agent has submitted a statement in support of the application, the key elements of which can be summarised as follows:

3.16.1. The Government recognises the need for sufficient land to be allocated to meet the needs and demands of Gypsy/Travellers.

3.16.2. Unrelated families living together is not common and this is why the applicant and his family do not wish to live at the Council-run site at Westhaugh. The family have travelled throughout Scotland, often using unauthorised sites, for many years and now wish to make a home on their own privately owned site.

3.16.3. The site is split into two pitches; one for Mr Stewart, his wife and family members, and the other for Mr Stewart's daughter and her family. The site is a base from where senior family members can travel for work and to get medical treatment and younger family members (3 of school age) can attend school. The Rights of the Child, in respect of their having a home and access to education must be considerations in the Council's decision making.

3.16.4. The site is cleared woodland with no specific natural heritage or landscape designation. It has a woodland backdrop and is in a remote location on a lightly trafficked road. The site is not visible from the nearest houses and would not impact on privacy and amenity. The site can be safely accessed by vehicles. As such the proposals comply with the LDP and Scottish Planning Policy (SPP).

3.16.5. The Equality Act 2010 introduced the Public Sector Equality Duty (PSED). As an ethnic minority, Gypsy/Travellers still face a shortage of sites to meet their needs and the Council must take the PSED and European Convention on Human Rights into account in its decision making.

3.16.6. The applicant is content to comply with planning conditions in respect of the provision of facilities on the site e.g. water & drainage, should permission be granted, but cannot risk investment in these whilst no planning permission is in place.

3.16.7. There is a proven need for the development, the site can be fully serviced, there are no alternative sites available to meet the applicant's needs and the proposal complies with the development plan.

### 3.17. Planning Assessment

3.18. The application must be determined in accordance with the development plan unless material considerations indicate otherwise. The Clackmannanshire

Local Development Plan, adopted August 2015 (LDP) comprises the development plan.

3.19. The main relevant policy provisions of the LDP are as follows:

3.19.1 Policy SC3 – Gypsies, Travellers and Travelling Show People

3.19.2 Policy SC20 – Water and Drainage Infrastructure and Capacity

3.19.3 Policy SC23 – Development in the Countryside – General Principles

3.19.4 Policy EA4 – Landscape Quality

3.20. Policy SC3 identifies considerations to be taken into account for private Gypsy/Traveller sites, with encouragement given to use of authorised sites in the first instance, and support for private sites only given where certain criteria, including other relevant policies of the LDP, can be met.

3.21. Assessment against other policies is set out below, however Policy SC3 also requires the development to be sensitively located and designed to avoid significant adverse effects, offer appropriate standards of amenity and access to local services.

3.22. Policy SC20 seeks to ensure that developments are served by suitable water and drainage infrastructure, and proposes SUDs for all new development.

3.23. Policy SC23 sets out general principles for development in the countryside. It directs new developments to existing settlements unless specific criteria can be met, such as demonstrating the need for a countryside location, appropriateness of scale, design and character and adequacy of infrastructure. If these are met, the policy supports developments adjacent to existing groups/clusters or via conversion of suitable buildings.

3.24. Policy SC24 derives from SC23 and is specific to residential development, setting out additional criteria for assessing residential development. In this case, the residential element of the proposal are the caravans, and none of the criteria of the policy are specific to this type of development, unless it is temporary accommodation in connection with a new rural business, which is not the case here.

3.25. Taking account of the provisions of the development plan, the following conclusions are made:

3.25.1. The site benefits from some natural screening afforded by the mature woodland that lies immediately to the south. There is no guarantee that this will remain in the long term as it is plantation woodland that could be felled at a later date and is not in the applicant's control. The site is open on all other sides however is only visible at relatively close proximity on approach along the minor road it is served off. There are no long distance public views of the site and it is not in an area designated for landscape or natural heritage importance. The local visual amenity of the site could be significantly enhanced by native tree/hedge planting. Granting of planning permission on a temporary basis would allow such planting to be implemented and its

success reviewed as part of any future application to renew a temporary permission.

- 3.25.2. The site lies in an area of forestry with other nearby land in agricultural use, and the nearest houses over 400m away. Whilst objectors have made reference to late night disturbance, litter and speeding traffic, there is no evidence that these concerns are attributable to the applicant's site, and no clear evidence that the development would impact negatively on residential amenity in any measurable way. There is no clear view of the site from any nearby house.
- 3.25.3. In respect of services and amenity for residents of the site, the applicants have provided space for the caravans, both static and touring that they require and space for vehicle parking and refuse storage. It is noted that the applicant owns adjoining land to the east, but this does not form part of the application site. Should planning permission be granted, the detailed layout and amenities of the site would be subject to licencing administered by the Environmental Health Service.
- 3.25.4. It is proposed that a septic tank be installed, subject to relevant permissions, and SEPA have indicated that they have no objections in principle to this arrangement. No details have been submitted of a proposed water connection, although an application has been made to Scottish Water for connection to public mains. Scottish Water have advised that capacity exists in the water network to serve the development and the main is 350m from the site. Scottish Water note that this does not guarantee connection, and capacity will be reviewed if planning permission is granted. The applicant is considering a private borehole as an alternative, should a public supply not be possible. There is no available foul connection, but a septic tank is proposed in any event.
- 3.25.5. The site lies 4km from the nearest amenities, including school and shops in Coalsnaughton, with the nearest health centre 5.5km away in Tillicoultry. There are no public transport connections to the site, nor on the B9140 and no footways alongside roads serving the site. The site is therefore considered somewhat remote from the nearest services and amenities, with no practical means to connect to them other than by car. Nevertheless, it should be borne in mind that sites within or closer to existing settlements may themselves fall foul of other criteria of Policy SC3, and few sites are likely to strike an ideal balance between accessibility, retaining local amenity and acceptable visual impact.
- 3.25.6. The Roads Service have recommended refusal based on safety concern regarding increased vehicle movements and pedestrian activity on this de-restricted section of rural road. It is noted, however that a reasonable degree of visibility appears to be available at the site access which is onto a straight section of a quiet minor rural road. Granting of temporary approval may therefore allow the use of the access to be monitored for an initial period, and then reconsidered at a future date in light of any issues.
- 3.25.7. The design of the development is very much limited by its nature i.e. caravans. The location is not considered to be visually prominent, being on a minor road, partially screened, not open to distant views and not visible from



any houses. Closer views of the site from the road passing it show that there is no additional screening beyond the existing woodland backdrop. The site forms an area of felled woodland and the combination of this and the proximity of the caravans to the road, with no other visual softening, has a detrimental impact on the amenity of the immediate surroundings. The area has no natural heritage or landscape designation, and the development is judged to have no significant impact on the character of the wider landscape. Rather, its impacts are localised and when seen from close proximity, the site does detract from visual amenity. It is considered that native screen planting around the site would significantly improve this. A suitably conditioned temporary planning permission would allow a scheme of planting to be approved, implemented and allowed to establish, following which the visual impact of the site could be re-visited should a renewal of temporary planning permission be sought.

- 3.26. Overall, whilst elements of the proposals comply with certain provisions of the LDP, there are also significant areas of policy conflict, suggesting that the proposals do not fully comply with the provisions of the development plan. There are, however, significant material considerations which need to be taken into account.
- 3.27. Other Material Considerations
- 3.28. There are a number of material considerations that are relevant to this proposal which include:
- 3.28.1. The Planning Aid Scotland's publication "Gypsy/Travellers and the Scottish Planning System – A Guide for Local Authorities" (The PAS Guide).
- 3.28.2. The Secretary of State's Advisory Committee on Scotland's Travelling People – Guidance Note on Site Provision for Travelling People (ACSTP), Final Report 2000 - adopted by Scottish Executive( SE) as policy.
- 3.28.3. Human Rights and Equality Legislation – Public Sector Equality Duty (PSED)
- 3.28.4. Personal circumstances of the applicant.
- 3.28.5. Compliance with other legislation.
- 3.28.6. Previous appeal decision on adjacent site.
- 3.28.7. Precedent for other such development
- 3.29. Taking account of these considerations, the following conclusions can be drawn:
- 3.30. The Council has adopted a policy for consideration of private Gypsy/Traveller sites, as required by the SPP. As noted above, there are areas of both compliance and conflict with the policy.
- 3.31. The personal circumstances of the applicant are not normally of relevance in determining planning applications. The PAS Guide suggest that due to the inequalities that gypsy/travellers face, it may be the case that personal circumstances should be given weight in determining applications, but only if there is conflict with the development plan. In this case, the personal

circumstances that have been brought to our attention are the education of children living at the site and the need for access to healthcare. As noted above, the site is somewhat remote from these services, with neither walking nor public transport available as realistic options.

- 3.32. Article 8 of the European Convention on Human Rights (ECHR) is concerned with the right to private and family life, and public authorities are required to consider carefully the proportionality of their actions in decision making which may affect Gypsy/Travellers family or home life. This requires a balance of social need with the protection of the environment. In respect of Article 14 of the ECHR, concerning prohibition of discrimination, there is a positive obligation to facilitate the Gypsy/Traveller way of life, and again, a balance must be struck, taking account of the facts of the case. It should also be noted that the UN Convention on the Rights of the Child (UNCRC) is also a material consideration. When considering Gypsy/Traveller applications, there is a duty on the Council to consider the impact that decision-making will have on any children affected by the outcome of that decision.
- 3.33. Should planning permission be granted, the site will require to be licensed in terms of Part 5 of the Housing (Scotland) Act 2014. As part of this new regime, model standard conditions will apply, in relation to a number of site issues, including drinking and waste water, sanitary and washing facilities, refuse and waste disposal. The grant of planning permission will also allow the application to Scottish Water for a mains water connection to progress. In addition, a building warrant will be required for installation of a septic tank and this will require to be registered with SEPA. Granting of a temporary planning approval will allow sufficient time to allow these other forms of regulation to be complied with, and thereafter, the functioning of the site in relation to these other regulatory requirements can be assessed and reviewed before any permanent approval is granted.
- 3.34. In an appeal decision for a private gypsy/traveller pitch on land at Gartlove, by Clackmannan in 2009, the Reporter noted that, at that time, the Council did not have a development plan policy on gypsy/traveller sites, as required by the then SPP3. The Reporter noted that the ACSTP stated that applications for private sites should be sympathetically considered and also that the site in question was particularly discreet. These were the main reasons for allowing the appeal.
- 3.35. The Council now has a development plan policy to assess private gypsy/traveller sites against, and as noted above there is some compliance and conflict with the development plan provisions in this case. Where there is conflict with development plan policies, the ACSTP would continue to be a material consideration, as it was at the previous planning appeal on the nearby site, and which states that planning permission for private sites should be sympathetically considered.
- 3.36. The PAS Guide indicates that temporary planning permissions can create uncertainty and should be avoided where possible, however, are not ruled out where the balance between the potential planning harm of the development and other material circumstances is unresolved. This appears to be the case in respect of this application.

- 3.37. Therefore, a temporary planning permission for a period of three years would, it is felt, strike a suitable balance between meeting the housing needs of the applicant and his family in the medium term, allowing screen planting to mature and the Council to monitor the use and visual amenity of the site, and commence a review of local development plan policy. This approval would be consistent with that taken in the recent decision by the Committee (October 2016) on a similar planning proposal on land west of Gartlove Plantation, near Clackmannan (ref; 16/00159/FULL).
- 3.38. The site and adjoining woodland were sold by a previous owner and since 2013 there have been planning issues, such as importation of materials, formation of private tracks, siting and occupation of caravans and other portable buildings. The Planning Service has sought to address potential breaches of planning control in this area where they have arisen, and indeed, the current application seeks retrospective permission for what is currently an unauthorised development. Whilst each planning application must be considered and determined on its own individual merits, it is appropriate that the Council take account of the potential for planning approval in this case to trigger further developments of a similar nature on adjoining land.
- 3.39. In this regard, the recommendation of approval on a temporary basis takes full account of development plan policies and those material considerations that are specific to this particular development type, i.e. taking account of the applicant's gypsy/traveller status, alongside the planning merits of the site and proposal.
- 3.40. Sustainability Implications
- 3.41. This is a small development in a rural area, and will be mainly served by private transport. It would meet the housing needs of the applicants and conditions can ensure enhanced planting and suitable infrastructure to serve the site.

#### **4.0 Resource Implications**

##### *4.1. Financial Details*

- 4.2. The full financial implications of the recommendations are set out in the report. This includes a reference to full life cycle costs where appropriate. Yes

- 4.3. Finance have been consulted and have agreed the financial implications as set out in the report. Yes

##### *4.4. Staffing*

#### **5.0 Exempt Reports**

- 5.1. Is this report exempt? Yes  (please detail the reasons for exemption below) No

## 7.0 Declarations

The recommendations contained within this report support or implement our Corporate Priorities and Council Policies.

### (1) **Our Priorities** (Please double click on the check box )

- |  |                                     |
|--|-------------------------------------|
| The area has a positive image and attracts people and businesses         | <input type="checkbox"/>            |
| Our communities are more cohesive and inclusive                          | <input type="checkbox"/>            |
| People are better skilled, trained and ready for learning and employment | <input type="checkbox"/>            |
| Our communities are safer  | <input type="checkbox"/>            |
| Vulnerable people and families are supported                             | <input checked="" type="checkbox"/> |
| Substance misuse and its effects are reduced                             | <input type="checkbox"/>            |
| Health is improving and health inequalities are reducing                 | <input type="checkbox"/>            |
| The environment is protected and enhanced for all                        | <input type="checkbox"/>            |
| The Council is effective, efficient and recognised for excellence        | <input type="checkbox"/>            |

### (2) **Council Policies** (Please detail)

## 8.0 Equalities Impact

8.1 Have you undertaken the required equalities impact assessment to ensure that no groups are adversely affected by the recommendations?

Yes  No

## 9.0 Legality

9.1 It has been confirmed that in adopting the recommendations contained in this report, the Council is acting within its legal powers. Yes

## 10.0 Appendices

10.1 Please list any appendices attached to this report. If there are no appendices, please state "none".

None

## 11.0 Background Papers

11.1 Have you used other documents to compile your report? (All documents must be kept available by the author for public inspection for four years from the date of meeting at which the report is considered)

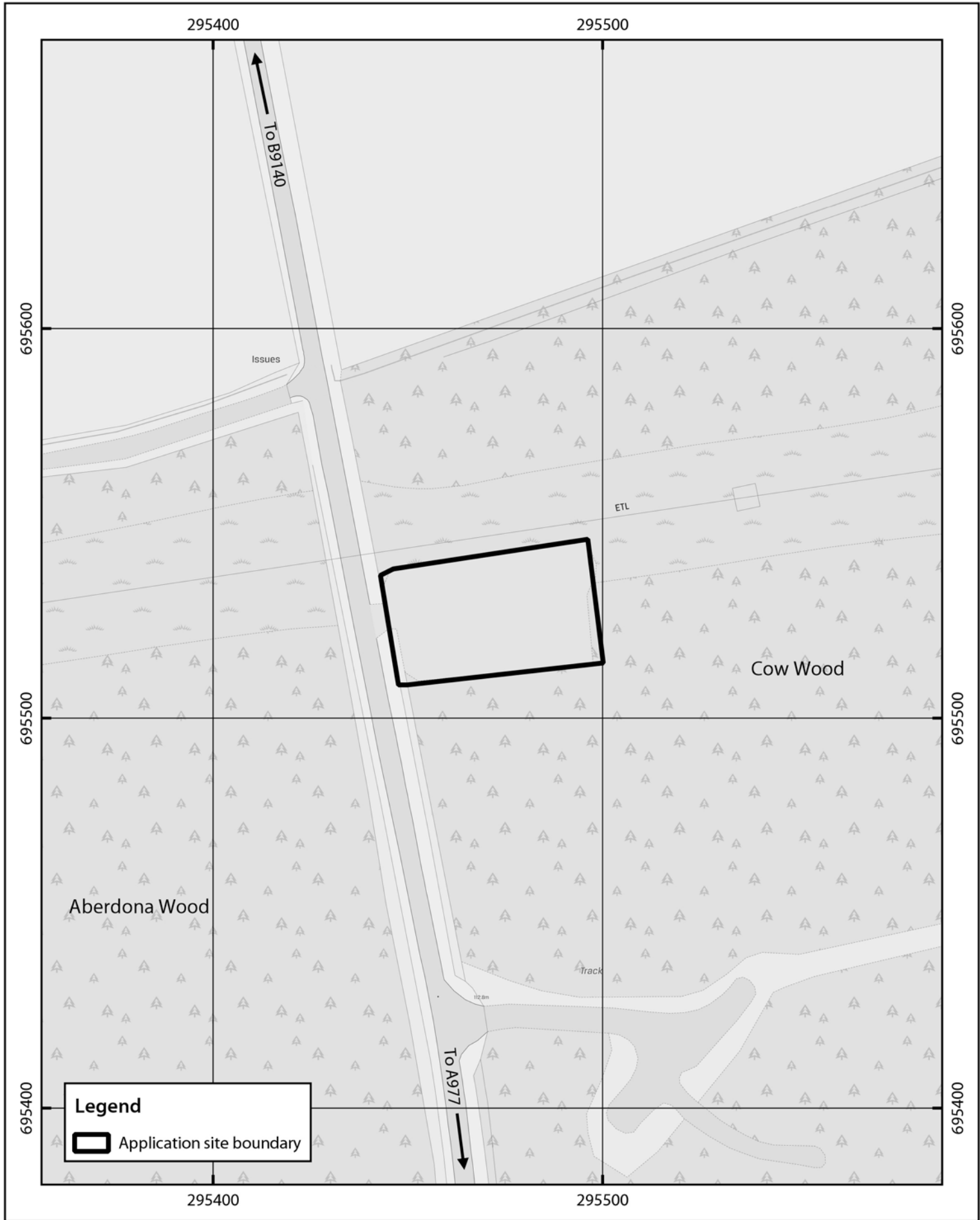
Yes  (please list the documents below) No

**Author(s)**

<b>NAME</b>	<b>DESIGNATION</b>	<b>TEL NO / EXTENSION</b>
Grant Baxter	Principal Planner	2615

**Approved by**

<b>NAME</b>	<b>DESIGNATION</b>	<b>SIGNATURE</b>
Julie Hamilton	Development Services Manager	



**Legend**

 Application site boundary



**20/00214/FULL – Cow Wood, near Forestmill**

Change of Use of Woodland to Permanent Gypsy/Traveller Site (2 No Households) and Siting of 2 No Static Caravans and 4 No Touring Caravans With Related Infrastructure (Retrospective) - Renewal Of Permission For A Further 2 Years

Ward: Clackmannanshire East  
 0 10 20 30 40 50 metres

OS Grid Ref: NS882945

Scale: 1:1,250

Date:  
08 Jan 2021

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