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File No: CHE/18/00152/FUL
Plot No: 2/1292

ITEM 1

Full Application for a Traveller site with 3 pitches at Land To Rear Of Mayfields, Hady Lane, Hady, Derbyshire, S41 0DE for Mr J Cash.

Local Plan: Open Countryside & other open space
Ward: St Leonards

1.0 **CONSULTATIONS**

Ward Members	Letters of objection from councillors Sarvent and Huckle
Planning Strategy Team	Comments received – see report
Environmental Services	Comments received – see report
Design Services	No comments
Environment Agency	No comments
Yorkshire Water	No comments
Derbyshire Constabulary	No comments
DCC Strategic Planning	Comments received – see report
DCC Highways	No objection
Coal Authority	No objection
Neighbours/Site Notice	Two letters of objection

2.0 **THE SITE**

2.1 The site the subject of the application is land to the rear of Mayfields, on Hady Lane in the St Leonards area of Chesterfield. The site is designated as open countryside within the Local Plan, measures approximately 0.10 hectares in area and is currently used as a paddock. The site is rectangular in footprint and is situated on a relatively flat gradient. The site is covered by gravel, with timber fences and areas of foliage forming the boundaries. Access to the site is via a track leading from Hady Lane, to the North East corner of the site. A recreation ground is situated to the North of the site, a travellers site is situated to the East of the site, and open fields are situated to the South and West of the site.





3.0 **RELEVANT PLANNING HISTORY**

3.1 CHE/14/00269/FUL – Family Traveller site with 2 pitches and associated facilities at former garage site off Hady Lane. Conditional Approval 07.10.2014.

3.2 The Council resolved on 15th October 2012 that:

- Planning Committee note the continued unauthorised occupation and consequential operational development of land to the West of the Garage Site and that due to the new information received and changed circumstances that enforcement action is warranted as the long term residential occupation of the land is unacceptable.
- That appropriate investigations be made with housing officers into finding an alternative site which the travellers could relocate to and which could provide a temporary or long term solution to address the risks to the safety of the travellers arising from the occupation of the former landfill site.
- Planning Committee further resolve that if the occupants of the unauthorised development do not engage positively with the Council in the next 6 months to be appropriately relocated then enforcement action including injunctive proceedings, if required, are authorised to remove them from the existing site on Hady Lane.

3.3 CHE/12/00052/COU – *Retention of Family traveller site with 2 pitches and associated facilities. REFUSED PERMISSION 15.05.2012.*

The decision was made at Planning Committee on the 14th May 2012 and was refused for the following reasons:

1. *In the opinion of the Local Planning Authority it is considered that insufficient information has been submitted to demonstrate that the site can be adequately serviced with sewerage and therefore to assess the development against saved policies HSN8 (b) and EVR12 of the Replacement Chesterfield Borough Local Plan.*
2. *A land contamination assessment has not been carried out by any party in respect of the development applied for and it is considered by the Local Planning Authority that one is*

necessary to be able to determine the suitability or otherwise of the location for the development applied for and to assess it against saved policies EVR15 and EVR23 of the Replacement Chesterfield Borough Local Plan and the National Planning Policy Framework.

3.4 CHE/11/00405/FUL Use of field for paddocks and erection of storage timber sheds - resubmission of CHE/10/00464/FUL. GRANTED 10.08.2011

3.5 CHE/10/00464/FUL Use of field for paddocks and erection of storage sheds to hold horse feeds and riding equipment, paddock area and sheds to be used for ponies. REFUSED 18.10.2010

4.0 **THE PROPOSAL**

4.1 A full planning application has been made for a Traveller site with 3 pitches. The site is proposed to be divided into three to accommodate these plans, with a static caravan and touring caravan situated on each pitch. No buildings or other operational developments are proposed on the site. The static caravans are proposed to be located along the Eastern side of the site, with the tourer caravans situated along the Western side of the site. Bin storage is proposed to the North East corner of the site, and vehicle parking would be provided within each pitch.

4.2 The Design & Access Statement indicates that the 3 pitches will all be occupied by persons falling within the definition of gypsies and travellers as set out in the annexe to Planning Policy For Traveller sites 2015. Additional screen planting and fencing is proposed to supplement the trees and hedgerows already around the site, and access would be via the existing track leading from Hady Lane. The plans indicate that a track would run across the Northern and Western edges of the site to allow for vehicular access to each pitch.

4.3 The application is supported by a Phase II report prepared by T J Booth Associates and dated July 2018 the aim of which is to review and provide technical comment with respect to the assessment detailed within the report and any associated recommendations.

4.4 The phase II report refers to site investigation works comprising 3 shallow boreholes (BH3 – BH5) to depths between 3.1m and 4.3m below ground level undertaken in 2015. This data was augmented by findings of two similar boreholes (BH1 & BH2) previously drilled on adjacent land in 2013. Made ground was proven to depths between 2.1 and 3.7m, overlying shallow bedrock, with rockhead present at between 2.4m and 4.2m depth. A horizon of stiff clay was present in BH1 – BH3 underlying the made ground. One soil sample per borehole was analysed for a range of contaminants. Each borehole was fitted with a ground gas monitoring installation and a gas monitoring programme of 6 visits over a 3-month period was undertaken.

4.5 In brief, the report concludes:

- Shallow soil materials contain elevated levels of contaminants that would render the site unsuitable for a residential end use, and:
- Ground gas protection measures in accordance with CS2 would be required for development at the site due to a gas risk associated with methane and carbon dioxide within shallow soils.

5.0 **CONSIDERATIONS**

PLANNING POLICY

5.1 Planning policy for Gypsy and Traveller sites is set out in the adopted Core Strategy (2013) policy CS12 (Sites for Travellers) and in the National Planning Policy for Traveller Sites (August 2015). Although the Core Strategy policy pre-dates the publication of the revised national policy it is considered to be up-to-date and in conformity with national planning policy and full weight can be accorded to it.

5.2 The council also has an up to date Gypsy and Traveller Accommodation Assessment (GTAA) (the Derbyshire, Peak District National Park Authority and East Staffordshire Gypsy and Traveller Accommodation Assessment 2014). This sets out a requirement for Chesterfield to identify sites for two additional pitches (over and above those already with permission). Despite undertaking a call for sites and recent

consultation on potential sites, the council has been unable to identify suitable sites and therefore cannot demonstrate a five year supply of suitable and deliverable sites for gypsy and traveller pitches to meet the identified need. The current application, if approved, would meet the outstanding requirement.

- 5.3 The unmet need for Gypsy and Traveller pitches in the borough is a material planning consideration in determining this application.
- 5.4 Bolsover and North East Derbyshire Districts have written to Chesterfield Borough under the Duty to Co-operate, asking for assistance in meeting their own requirements. This is a matter to be addressed through the Local Plan preparation process and is not a material consideration relevant to the determination of the current application.
- 5.5 As well as the local and national planning policies, this application will also still need to be determined having regard to other policies in the plan, in particular the requirements of policies CS1 and CS2 relating to the location of development.
- 5.6 Principle of Development
CS1/CS2. Local and National Planning Policy require sites to be 'reasonably' accessible to community service and facilities in particular health and school provision. Although not set out in the Core Strategy as a hard and fast rule, 800 metres to a centre is usually considered as an indicator.
- 5.7 However this requirement is applied with more flexibility for Gypsy and Traveller sites than required for bricks and mortar accommodation in the Core Strategy, in that it does not rule out sites that are more than 800m from a centre where these sites are otherwise accessible to community services and facilities. This is to take into account the fact that the potential supply of available land for a Traveller allocation is likely to be significantly limited relative to that for bricks and mortar housing and that applying the '800m of a centre' restriction on suitability to such a limited supply, would potentially rule out sites that are in all other respects in accordance with planning policy and could make an

important contribution towards addressing inequalities in the Travelling communities health and wellbeing. In such cases accessibility is considered 'Good' where centres, primary school and GP services are within 15mins by foot, bike or public transport and secondary school within 20mins by foot, bike or public transport. This is set out in the council's published methodology for its Land Availability Assessment.

- 5.8 The site is not within 800metres walking distance of a centre (the nearest is Hasland, approximately 1.5km away), but is within cycling distance. Hospital and primary school provision (Hady Primary) is within walking distance. Buses (no.80, approximately hourly) links Hady Lane to Chesterfield Town Centre and further services are available on the A632. The accessibility must be balanced with the lack of otherwise suitable sites and of a five year supply of sites. On balance it is considered that the location is an acceptable compromise between accessibility and availability of alternative sites.
- 5.9 The application site meets the tests regarding the principles of location set out in CS1 and criteria a) to g) of policy CS2.
- 5.10 The site meets the tests set out in the National Planning Policy for Traveller Sites (Aug. 2015) for sites. The site is accessible to health and education services, would provide a settled base (reducing the risk of unauthorised encampment), not place undue pressure on infrastructure and services (being small in size) and not be in an area at risk of flooding. The applicant has indicated that no business activity would be undertaken on site (NPPTS para 13 h) and, if approved, this could be secured by condition.
- 5.11 Combined with the existing site granted planning permission under reference CHE/14/00269/FUL, the current application would result in a total of five pitches in this location. This would still be considered a small, family site under the GTAA (which recommends a maximum of 15 pitches on a site).
- 5.12 The site is within land allocated under saved RCBLP policy EVR2 – Open Countryside and Other Open Land. This is considered to be 'other protected green spaces' as set out in CS12. It is considered that due to the previous use as landfill, the scale and location on the edge of a settlement

and the potential to secure suitable screening through conditions, the proposal is likely to have an acceptable impact on the function and purpose of the open countryside. It is considered that it will not harm the open character of that area of land.

- 5.13 Core Strategy Policy CS8 requires the matters of land contamination and land instability to be addressed. Core Strategy Policy CS7 requires sustainable drainage, unless it can be demonstrated that it is not suitable in the location. Core Strategy Policy CS12 requires adequate servicing with drinking water and sewerage disposal facilities and Core Strategy Policy CS18 requires adequate safe vehicle access and parking. A scheme of landscaping should also seek to ensure a 'net gain' in biodiversity under Policy CS9. All these matters are dealt with in more detail below.
- 5.14 In conclusion it is considered that the principle of the proposed development would accord with the council's spatial strategy (CS1 and CS2) and local and national strategy for gypsy and traveller sites (CS12 and the NPPTS), and would meet an identified need. Policy EVR2 pre-dates the NPPF and it is for the Local Planning Authority to determine the weight to be given to it on a case by case basis. On balance less weight is given to policy EVR2 in this case given the lack of a five year supply of suitable and deliverable gypsy and traveller sites, combined with the level of impact on openness however if approved, it is accepted that the application would need to be considered as a departure from the adopted Local Plan. There are concerns over ground conditions and the safety of occupiers and ability to service the site which require detailed consideration and which are assessed in more depth below.

Design and Appearance (Including. Neighbour Effect)

- 5.15 The number of people likely to see the site is high given its proximity to the access track into the wider open space and the presence of the route of a proposed footpath through it. However vantage points of the site are limited in number and views from other parts of the open space and Hady Lane are restricted by existing vegetation with the exception of the playing fields to the north which are within 50m of the site.

The closest dwellings with views are those on the west side of Hady Lane to the south east of the application site. Views are also possible from the dwellings on the southern extent of High View Close to the north and also from dwellings on Hady Lane. Given the existing restricted visibility of the site and the feasibility of further soft landscape screening, the use and associated vehicles and caravans would not be visually intrusive and would have an insignificant impact outside of the application site. Any adverse effect would be negligible and not sufficient to conclude that a conflict exists with policy EVR2, Core Strategy policy CS12 and the NPPF.

- 5.16 It is acknowledged that to completely screen the development would give a visual sense of isolation of the site from the nearby settled community. Planting would need to ensure an effective visual screen between the proposed footpath and the area of the proposed development where caravans would be located. However, the site is already isolated to a greater degree visually and screening would not be at odds with the existing visual qualities of the wider open land within which the application site sits. Furthermore given the context, the provision of a bolstering of boundary vegetation with hedgerow planting around the site would not conflict with national Planning Policy for Traveller Sites which seeks to prevent sites being enclosed with so much hard landscaping, high walls or fences, that the impression may be given that the site and its occupants are deliberately isolated from the rest of the community
- 5.17 Having regard to the physical separation of the application from the nearest neighbours, it is not considered that the proposals would result in any significant adverse impact on neighbouring properties. The proposals would result in no issues with regards to overlooking, overshadowing or any overbearing impact. The development proposed is low level and will be largely screened and which can be supplemented with additional planting and which will not appear out of place in this location.

Environmental Services

- 5.18 The Environmental Services Officer was consulted on the application and the following comments were made:

I advised rejection of the earlier proposal for this application site on the grounds that there were no measures to protect buried services from the gas released from the former landfill. The revised scheme appears to address this by laying a gas membrane across the whole of the development site, and then raising the ground to allow services to be laid in the protected area. This will rely on the area of the membrane being completely sealed (failure to do so will allow gases to ingress), and the material of the membrane being fully impervious over an extended period of time. Any laid services will have to be placed in durable ducting (ie HDPE or similar), as an additional precaution. The suitability of such membrane materials falls outside my area of expertise.

I am also concerned about the stability of the land. As part of the decay of waste within the landfill (giving rise to landfill gases), the volume of the waste within the landfill site will reduce. This will cause the land to subside over time. This has the potential to disrupt the proposed membrane, and may also adversely affect laid surfaces. The potential for subsidence, again, falls outside my area of expertise.

I advise (in their role as the waste authority) that Derbyshire County Council be asked for their definitive advice on this matter.

DCC Strategic Planning

5.19 DCC Strategic Planning have been consulted as required on this application and they made the following comments:

This has been a long running and complex case for the County Council to deal with and essentially comprises the provision of three Gypsy and Traveller pitches adjoining the site of a closed landfill site. The landfill site is owned by Derbyshire County Council and monitored regularly and is known to be continuing to emit various levels of CH₄ (methane) and CO₂ (Carbon Dioxide). The landfill site closed in 1979 and prior to that accepted a range of wastes, including household waste and non-hazardous commercial waste. Although this proposal is for the establishment of Traveller pitches (static caravans) rather than built residential dwellings, the County Council is concerned that works to

establish the site (hardstandings, servicing etc) could disturb the existing ground and allow methane gas to escape and accumulate at potentially dangerous levels around the Traveller site, particularly in voids that might become established below the surface, especially as servicing is proposed to be provided to the site below ground level. The applicant has submitted a Soil Chemical Testing and Gas Monitoring Report, which provides the results of testing on the site and confirms that CH₄ and CO₂ gases were present on the site. The report concludes that the levels of CH₄ and CO₂ are however within safe levels. The report also provides the results of soil testing that has been carried out on the site. The results indicate that the upper soil profile of the application site comprises minor contamination with arsenic, lead and benzene above contamination thresholds suitable for residential end uses. As a consequence, as the site is situated on top of an historic landfill and the proximity of the landfill cap to the existing ground level, the applicant proposes a tailored remediation solution to ensure that the site is safe for Traveller use, which would provide for the site to be built up above ground level by 500mm to allow for 100mm of sand blinding and gas membrane beneath the site – excavated in to the existing made ground above the shale cap, 400 mm of inert fill and approximately 100mm of suitable landscaping / finish stone.

Derbyshire County Council, as owners of the former landfill site, have fundamental concerns that the site is not suitable or safe for the proposed use, not least because of the levels of methane that are still emitting from the site and that the soil is also contaminated. However, the County Council does not have the technical expertise to fully assess whether the applicant's Soil Chemical Testing and Gas Monitoring Report and the proposed means of mitigation to establish the proposed use are robust. The County Council is therefore investigating the need to seek independent expertise advice on this matter to inform its position conclusively on the planning application.

- 5.20 As a result of both DCC Strategic Planning and the Councils own Environmental Health Officer confirming their view that they have a lack in the technical expertise to fully assess the application, Wardell Armstrong LLP have been appointed by

the Council to give an independent opinion on the application.

Wardell Armstrong LLP

5.21 Wardell Armstrong LLP were instructed to provide expert evidence and assessment of the applicant's Soil Chemical Testing and Gas Monitoring Report and the proposed means of mitigation to establish the proposed use are robust. The comments from Wardell Armstrong presents a technical review of the Environmental Phase II Letter Report (the 'Phase II report') and are as follows:

Introduction

5.22 The Phase II report was prepared by T J Booth Associates and dated July 2018 the aim of which is to review to provide technical comment with respect to the assessment detailed within the report and any associated recommendations.

Summary of T J Booth Associates Phase II Report

5.23 Site investigation works comprising 3 shallow boreholes (BH3 – BH5) to depths between 3.1m and 4.3m below ground level were undertaken in 2015. This data was augmented by findings of two similar boreholes (BH1 & BH2) previously drilled on adjacent land in 2013. Made ground was proven to depths between 2.1 and 3.7m, overlying shallow bedrock, with rockhead present at between 2.4m and 4.2m depth. A horizon of stiff clay was present in BH1 – BH3 underlying the made ground. One soil sample per borehole was analysed for a range of contaminants. Each borehole was fitted with a ground gas monitoring installation and a gas monitoring programme of 6 visits over a 3-month period was undertaken.

5.24 In brief, the report concludes:

- Shallow soil materials contain elevated levels of contaminants that would render the site unsuitable for a residential end use, and:
- Ground gas protection measures in accordance with CS2 would be required for development at the site due to a gas risk associated with methane and carbon dioxide within shallow soils.

5.25 The report recommends a remedial solution involving building up the site levels with imported fill materials and the inclusion of either a basal gas membrane across the site area or beneath individual hard standings for the proposed static caravans. Service ducts are to be routed through the imported fill materials.

Technical Comment Regarding Scope and Details of Investigation

5.26 Only three soil samples have been analysed from the site; although the schedule of analysis appears appropriate it is not considered that the number of samples is sufficient to provide a robust characterisation of the contaminative properties of the soil materials beneath the site. The depths of the analysed samples are not stated although it is assumed they are from the uppermost soil horizons. Given the reported ground conditions at the site (i.e. the presence of made ground) it is considered that analysis of additional soil samples may have been beneficial in the characterisation of the site.

5.27 Two ground gas sources of moderate to high generation potential are in very close proximity to the site, namely two coal mine shafts and the closed landfill site. Due to the small site area the number of gas monitoring wells it is considered to provide adequate coverage for initial gas risk assessment, however, the gas monitoring programme itself is potentially insufficient.

5.28 Both BS 8576:2013 'Guidance on investigations for ground gas – Permanent gases and Volatile Organic Compounds (VOCs)' and CIRIA C665 'Assessing risks posed by hazardous ground gases to buildings' indicate that a 12-month period of monitoring with up to fortnightly readings may be appropriate in such a scenario. Although the results collected to date over the 3-month period appear reasonably consistent, this data may not reflect any seasonal variations or periodic anomalies in the gas regime and it cannot be reliably concluded that worst-case conditions have been captured.

5.29 This is especially relevant given the results to date, with significant methane and carbon dioxide concentrations being

detected in conjunction with heavily depleted oxygen concentrations. Furthermore, the more recent results from the boreholes within the site do not display a well-defined correlation between atmospheric pressure and gas concentrations. In many instances the higher gas concentrations were recorded in conjunction with high atmospheric pressure which may indicate a relatively complex gas regime in and around the site.

- 5.30 Considering the age of the adjacent landfill it is likely that non-methane volatile organic compound (VOC) emissions will by now be negligible. Given the uncertainty regarding the accepted waste types and their very close proximity it may have been prudent to undertake vapour monitoring to demonstrate the absence of a non-methane VOC hazard at the site.

Technical Comment Regarding Risk Assessment

- 5.31 The report has identified a risk to human health associated with elevated concentrations of the heavy metals arsenic and lead within shallow soils. Whilst remedial measures have been recommended it is considered that the small number of samples tested is unlikely to permit a reliable quantification of the risk and therefore the suitability of the recommended remedial measures cannot be confirmed. The potential risk identified from benzene contamination is based upon a single result at the limit of detection of the analytical technique and it is not considered reliable to conclude that a significant risk is present on the basis of this result alone.

- 5.32 The gas risk assessment has identified a CS2 classification as defined in BS 8576:2013 which is considered appropriate given the currently available data. As discussed above, however, the monitoring programme may not have been of sufficient duration or frequency to permit a robust assessment. In accordance with BS 8576:2013 Annex F it can be determined that for the recorded methane concentrations, an increase in flow rate to 2.5l/hr would result in an increase to a CS3 situation. It is recognised that the flow rates recorded so far have been reasonably consistent but given the limited dataset it is considered that such a scenario cannot currently be ruled out entirely.

5.33 Despite the gas monitoring programme having detected methane concentrations of up to 27.7% no assessment has been made with respect to an explosive hazard. This is of relevance in terms of the remedial design, which may allow subsurface gas accumulations within service ducts, particularly if no basal gas membrane is established beneath the imported fill material.

Technical Comment Regarding Remediation Statement

5.34 Although not explicitly stated, it is assumed that one purpose of the proposed imported fill is to act as a cover system to prevent contact with the underlying soils and exposure to any contamination hazards. No discussion is provided to demonstrate how the specified fill material and thickness of the cover layer will mitigate any of the associated risks. Notwithstanding the above it is accepted that the coarse nature of the proposed 6F2 fill material will inhibit the degree of natural soil mixing.

5.35 The report has concluded that gas protective measures will be required for the proposed development, however no demonstration of how the specified measures will satisfy the required gas protection score as detailed in BS 8485: 2015 is provided. In particular, no product specifications for the gas resistant membrane are provided. The report also recommends that any casing surrounding the proposed static caravans are provided with air vents. No specification is provided, however, with respect to the minimum area of ventilation that will ensure a sufficient volume flow-through rate to provide an effective gas dispersal layer.

5.36 The report makes reference to the requirement for validation of the works “including proof/photos of the installation and finishes”. It is unclear whether this includes the installation of the proposed gas resistant membrane and/or imported fill materials. The remediation plan does specify that the membrane should be installed in accordance with best practice / manufacturer’s instructions, however no specific verification approach in line with CIRIA C735 is provided.

5.37 The gas protection measures outlined in the remediation statement appear to be focused on mitigating the risks associated with gas toxicity hazards. No demonstration of

how the proposed development will be protected from any explosive hazard associated with methane is provided. The proposed coarse granular fill and service ducting may permit the accumulation of methane in explosive concentrations within the development platform. It is therefore considered that the specification of a gas resistant membrane below the concrete slabs alone may not be appropriate.

Conclusions

5.38

The preceding technical review has identified potential deficiencies in the assessment of contamination risk and the specified remediation strategy to mitigate those risks. The main issues can be summarised as follows:

- Risks associated with potentially contaminated soils are assessed based upon a small and potentially insufficient number of soil analyses;
- The ground gas monitoring programme undertaken to date is considered insufficient to provide a robust dataset for risk assessment purposes;
- No VOC vapour monitoring has been undertaken to demonstrate the absence of significant concentrations of these compounds, and:
- No assessment of explosive risk arising from hazardous methane concentrations has been undertaken.

5.39

Recommendations

Wardell Armstrong LLP comment that although the number of soil analyses may be insufficient to robustly quantify contamination risks, if the proposed remediation strategy can be demonstrated to be sufficiently protective in terms of mitigation, additional sampling and analysis may not be required. Additional gas monitoring should be undertaken to increase the gas regime data set and to provide confidence that worst case conditions have been captured. Ideally a 12-month programme would be undertaken although this could potentially incorporate the existing data. High frequency recording using continuous monitoring devices could also be considered as an alternative to a lengthy traditional monitoring programme. Any additional environmental monitoring should include a provision for VOC vapour monitoring to determine any VOC hazards.

Response from TJ Booth Associates

5.40

* Regarding soil analysis – made ground was encountered and although sampling is limited, contaminants have already been noted. Due to the mixed nature of the ground, it is unlikely an overall characterisation of the soil can be found. Given the site restraints, and the fact that excavating the shale cap was not an option, as well as prior approval being given on the adjacent site to build up the ground over the shale cap rather than excavate in it; building up the ground surface was seen as an opportunity to block pathways to potential sources of soil contamination.

*Ground gas analysis – we can always undertake more gas monitoring, however, the method would need prior approval by the checking agents before being undertaken. One solution for their client may be for us to obtain historic borehole data from Derbyshire Council as they have boreholes around the Application Site. This information could be sought under freedom of information. C665 allows the use of historic information as part of the dataset.

*VOC analysis – While you have noted that due to the age of the landfill VOCs present a low risk, you have also suggested that testing of these may need to be undertaken due to the unknown types of waste disposed of. We concur that the risk is low, but contrary to not knowing what types of wastes are present – we have the original landfill agreement which indicates that VOC content of the fill was originally very low, with the age of the landfill being a further reducing factor. We suggest that no VOC testing is required.

Further Comments from Wardell Armstrong

5.41

We have reviewed the additional information sent by TJ Booth Associates and make the following broad comments:

- They have addressed some (but not all) of the points raised within our review.
- They are ultimately seeking to negotiate planning permission with any further works that would take significant time (i.e. extended gas monitoring) being conditioned as part of that permission. This is an understandable approach as it gives some certainty of the scheme to their client.
- The concern over this approach is whether or not there are any potential risks of such severity for which a remedial solution is not achievable, resulting in a scenario where permission has been granted for a development that cannot be safely realised. Our initial opinion, based on current info,

is that this is unlikely to be the case (i.e. there are likely to be technical solutions to realise the development).

- 5.42 Based on the above, the options going forward are to either have TJ Booth Associates update the report to address those items that can be resolved in the short term (and apply conditions to any permission given), or have TJ Booth Associates resolve all items at this time. Both options can be reasonably justified. As a minimum for the 'short term' report, we would anticipate that it include the items covered by TJ Booth Associates below, state the purpose of the imported fill as a cover system and justify how it will mitigate the risk with reference to appropriate guidance, and also address the potential explosive risk and how this will be mitigated. Details regarding membrane verification etc. should also be confirmed.
- 5.43 The response from Wardell Armstrong is an expert professional opinion which considers the applicants appointed expert opinion and on that basis can be accepted. Wardell Armstrong have indicated that issuing planning permission with any further works that would take significant time being conditioned as part of any approval is an acceptable approach. Wardell Armstrong have stated that based on current information, it is unlikely that there are any potential risks of such severity for which a remedial solution is not achievable. As such, it is considered appropriate to approve the application subject to suitably worded conditions.
- 5.44 It is considered appropriate in the circumstances to impose the following pre-commencement condition in the interests of the safety of the site and which has been agreed with the applicant;
"Further soil analysis, gas monitoring and VOC vapour monitoring shall take place in accordance with a scheme which has previously been submitted to the local planning authority for consideration and subsequently agreed in writing. Full details of the further soil analysis, gas monitoring and VOC vapour monitoring undertaken in accordance with the agreed scheme shall be provided to the local authority and agreed as appropriate prior to the development commencing on site".

DCC Highways

5.45 DCC Highways was consulted on this application and they have commented that the proposal would appear to basically be an extension of a site previously granted planning permission (CHE/14/00269/FUL) for which the Highway Authority recommended conditions and notes for inclusion in any consent. In view of the above, it is recommended that the same conditions and notes are included as follows:

1.The use of the site shall be restricted to occupancy of the mobile homes only and the number shall not exceed three i.e. the touring caravans shall not be occupied on site as a permanent residence and only three touring caravans shall be allowed within the site on a permanent basis.

2.There shall be no business or commercial activities or storage of materials associated with such activities at the site.

3.Space shall be maintained within the site curtilage for the parking and manoeuvring of all vehicles and caravans associated with the site to allow entry and exit in a forward gear.

A note is also recommended concerning a proposed Public Right of Way (Footpath 129) on land adjacent to the site and that the applicant should be aware that the route must remain unobstructed on its lawful alignment at all times and the safety of the public using it must not be prejudiced either during or after development works take place.

5.46 The response from DCC Highways is accepted and it is considered that the suggested conditions are required in the interests of highway safety and to prevent the use of the site from becoming over-developed.

The Coal Authority

5.47 An initial objection was received from the Coal Authority on the basis that no Coal Mining Risk Assessment accompanied the application however the Coal Authority confirm that the

application is now supported by a Coal Mining Risk Assessment, dated 17 September 2018 and prepared by T J Booth Associates. This report has been informed by an appropriate range of sources of information. Having reviewed the available coal mining and geological information, and taking account of the nature of the development (mobile accommodation with no foundations or structures) the Coal Mining Risk Assessment concludes that there is no risk and no further investigations are required. On the basis of the information now submitted, and the professional opinion of the report author set out therein, the Coal Authority withdraws its objection to the planning application.

- 5.48 The initial concerns with regards to coal mining legacy and safety in this respect have been addressed satisfying the statutory consultee.

Community Safety

- 5.49 There is no substantive evidence to support a view that there would be any significant threat to the local community of anti-social behaviour from the occupation of the site by a family of the applicant's ethnicity. The Community Safety Officer and Derbyshire Constabulary have raised no objection to the proposed land use or to the current occupation of the site to the east. There would be no significant concentration of Traveller sites in Hady and this small residential caravan site for three pitches together with the adjacent two pitch family site would respect the scale of and not dominate the nearest settled community.

Representations

- 5.50 As a result of consultation, letters of objection have been received from 2 local residents and from councillors Sarvent and Huckle.

Residents:

- 5.51 The letters of objection raise concerns with regards to safety, stating that the site is not fit for habitation because it is on top of a disused landfill site and that it is actively gassing. It contains hazardous waste, produces leachate and produces methane in excess of the explosive range.

Recommendations for refusal have been made by EHO and DCC.

The letters raise concerns with regards to the adverse impact on the character of the area, stating that the development would be visible within the wider landscape.

The letters raise concerns with regards to traffic, stating that this is a major concern on Hady Lane. Reference is made to the proximity to the Royal Hospital and Hady School. Traffic is frequently brought to a standstill and further development will make matters worse.

Concerns with regards to conditions potentially not being adhered to/ignored and that the Council will not take appropriate action.

Cllr Huckle:

Object in the strongest possible terms for further caravan pitches on land owned by Mr Cash. The site is an actively gassing landfill and has been the subject of two objections from environmental health and Derbyshire county council and these mean that the site should not be used for residential use because there is an unsafe element to the site.

Previous applications for the same type of development have been refused on site and there is no significant change that would make this scheme acceptable. It should be refused on these grounds alone.

In addition, on the adjacent garage site, developed by Mr Cash but owned by Chesterfield Borough Council the conditions of the approval have still not been discharged sufficiently. The permissible footpath between land in Mr Cash's and the former garage site is still not able to be accessed and while that may not be a material consideration it is important for wider considerations

Cllr Sarvent:

The application site is totally unsuitable for residential occupancy, being situated on a disused landfill which still produces quantities of methane gas. Concerns were raised during a previous applications to develop this site, the last in 2014, and there have been no changes since then.

Both our own Environmental Health Team and Derbyshire County Council as statutory consultees have recommended refusal on the grounds of contamination, and I would urge

that permission to extend the current site on that land is refused on these grounds.

Comments:

In response to the concerns with regards to safety, TJ Booth Associates and Wardell Armstrong have indicated that issuing planning permission with further works over subsequent months being required by condition as part of any approval is an acceptable approach. Wardell Armstrong have also stated that based on current information, it is unlikely that there are any potential risks of such severity for which a remedial solution is not achievable. As such, it is considered appropriate to approve the application subject to suitable conditions. With regards to the adverse impact on the character of the area, the site is relatively well screened and would not be prominent within the wider landscape. The principle of this form of development on the site is considered to be in accordance with policy. With regards to traffic, it is not considered that these plans would result in any significant additional impact. There have been no objections from DCC Highways, ample parking provision is available and access to the site is considered to be appropriate. With regards to the potential for conditions not being adhered to, this is a speculative point and would become an enforcement matter should this issue arise.

6.0 **HUMAN RIGHTS ACT 1998**

6.1 Under the Human Rights Act 1998, which came into force on 2nd October 2000, an authority must be in a position to show:

- Its action is in accordance with clearly established law
- The objective is sufficiently important to justify the action taken
- The decisions taken are objective and not irrational or arbitrary
- The methods used are no more than are necessary to accomplish the legitimate objective
- The interference impairs as little as possible the right or freedom

- 6.2 The action in considering the application is in accordance with clearly established Planning law and the Council's Delegation scheme. The objective of arriving at a decision is sufficiently important to justify the action taken over the period of the life of the application. The decision taken is objective, based on all planning considerations and is, therefore, not irrational or arbitrary. The methods used are no more than are necessary and required to accomplish the legitimate objective of determining an application.
- 6.3 The interference caused by a refusal, approval or approval with conditions, based solely on planning merits, impairs as little as possible with the qualified rights or freedoms of the applicant, an objector or consideration of the wider Public Interest.
- 6.4 The recommended conditions are considered to be no more than necessary to control details of the development in the interests of amenity and public safety and which interfere as little as possible with the rights of the applicant.
- 6.5 The applicant has a right of appeal against a refusal, non determination of the application and imposition of conditions. Given that the development applied for would not have an unacceptable impact on residential amenity or community safety, it is considered that the Human Rights of the settled community in respect of Articles 8 (Right to respect for private and family life, home and correspondence) and Article 1 of Protocol 1 (Right to peaceful enjoyment of possessions and protection of property) would not be breached.

7.0 STATEMENT OF POSITIVE AND PROACTIVE WORKING WITH APPLICANT

- 7.1 The following is a statement on how the Local Planning Authority (LPA) has adhered to the requirements of the Town and Country Planning (Development Management Procedure) (England) (Amendment No. 2) Order 2012 in respect of decision making in line with paragraphs 186 and 187 of the National Planning Policy Framework (NPPF).

7.2 Given that the proposed development does not conflict with the NPPF or with 'up-to-date' Development Plan policies, it is considered to be 'sustainable development' and there is a presumption on the LPA to seek to approve the application. The LPA has used conditions to deal with outstanding issues with the development and has been sufficiently proactive and positive in proportion to the nature and scale of the development applied for. Pre application advice was provided.

7.3 The applicant / agent and any objector will be provided with copy of this report informing them of the application considerations and recommendation / conclusion.

8.0 CONCLUSION

8.1 The updated plans are considered to be appropriate in principle, and would not have any adverse impact on neighbouring properties, highway safety or the surrounding area. The site is considered to be sufficiently sustainable for the proposed use, and it is acknowledged that further traveller sites are required within the borough. It is considered that this site is appropriate for meeting this requirement.

8.2 In terms of safety, Wardell Armstrong have indicated that issuing planning permission with any further works that would take significant time being conditioned as part of any approval is an acceptable approach. Wardell Armstrong have also stated that based on current information, it is unlikely that there are any potential risks of such severity for which a remedial solution is not achievable. As such, it is considered appropriate to approve the application subject to suitable conditions.

8.3 In terms of the safety of the site, it is considered that a condition should be imposed requiring further soil analysis, gas monitoring and VOC vapour monitoring prior to development commencing. It is also considered that the conditions suggested by DCC Highways should be imposed in the interests of highway safety and to prevent the use of the site from becoming over-intensified.

9.0 **RECOMMENDATION**

9.1 That the application be **GRANTED** subject to the following conditions:

Conditions

1. The development hereby approved shall be begun before the expiration of three years from the date of this permission.
2. All external dimensions and elevational treatments shall be as shown on the approved plans, with the exception of any approved non material amendment.
3. Further soil analysis, gas monitoring and VOC vapour monitoring shall take place in accordance with a scheme which has previously been submitted to the local planning authority for consideration and subsequently agreed in writing. Full details of the further soil analysis, gas monitoring and VOC vapour monitoring undertaken in accordance with the agreed scheme shall be provided to the local authority and agreed as appropriate prior to the development commencing on site.
4. The use of the site shall be restricted to occupancy of the mobile homes only and the number shall not exceed three i.e. the touring caravans shall not be occupied on site as a permanent residence and only three touring caravans shall be allowed within the site on a permanent basis.
5. There shall be no business or commercial activities or storage of materials associated with such activities at the site.
6. Space shall be maintained within the site curtilage for the parking and manoeuvring of all vehicles and caravans associated with the site to allow entry and exit in a forward gear.
7. Prior to any occupation of the site commencing a scheme for boundary treatments, means of enclosure and soft landscaping shall be submitted to the Local Planning Authority in writing, and shall include the following:

- (i) Retention of existing perimeter vegetation.
- (ii) Further planting to perimeters and a hedgerow to the northern boundary.
- (iii) Timescales for planting.
- (iv) Proposals for replacement of dead/dying planting and maintenance of boundary screening.
- (v) Protection of existing hedgerows and boundary vegetation during construction.

The occupation of the site shall not commence until a scheme has been approved in writing by the Local Planning Authority. The planting approved under the scheme shall be implemented in accordance with the approved timescales and retained and maintained thereafter.

8. Prior to the first occupation of the site commencing an external lighting scheme shall be submitted to and approved in writing by the Local Planning Authority, and shall contain the following information:
- (i) A plan showing the proposed locations and heights of the luminaires;
 - (ii) Full details of the luminaires to be installed;
 - (iii) A site plan plotting the existing and predicted illuminance levels (Lux) across the site and both horizontal and vertical overspill outside the site boundary;
 - (iv) Details of the measures to be taken for the avoidance of glare;
 - (v) Details of the power source, i.e. mains or generator;
 - (vi) Operating times.
 - (vii) Intensity of illumination and power of light sources
- The External lighting shall not be used on the site other than in accord with the scheme so approved in writing by the Local Planning Authority.

9. The use hereby permitted shall not commence until a scheme for the storage and collection of residential waste has been submitted to and approved in, writing by the Local Planning Authority. The scheme so approved shall be implemented concurrently with the use of the site commencing and shall be retained thereafter.

Reasons for Conditions

1. The condition is imposed in accordance with section 51 of the Planning and Compensation Act 2004.

2. In order to clarify the extent of the planning permission in the light of guidance set out in “Greater Flexibility for planning permissions” by CLG November 2009. In the interests of residential amenities.
3. In the interests of the safety of occupiers of the site.
4. In the interests of highway safety and to prevent the use of the site from becoming over-intensified.
5. In the interests of highway safety and to prevent the use of the site from becoming over-intensified.
6. In the interests of highway safety.
7. In the interests of community safety, cohesion, visual amenity and biodiversity and to accord with policies CS2, CS12, CS9 and CS18 of the Chesterfield Borough Local Plan: Core Strategy (2011-2031), the National Planning Policy Framework and the Planning Policy for Traveller Sites.
8. In the interests of community safety, visual amenity, landscape character and biodiversity and to accord with policies CS2, CS12, CS9 and CS18 of the Chesterfield Borough Local Plan: Core Strategy (2011-2031), the National Planning Policy Framework and the Planning Policy for Traveller Sites.
9. In the interests of amenity and to accord with policies CS2 and CS18 of the Chesterfield Borough Local Plan: Core Strategy (2011-2031), the National Planning Policy Framework and the Planning Policy for Traveller Sites.

Notes

1. If work is carried out other than in complete accordance with the approved plans, the whole development may be rendered unauthorised, as it will not have the benefit of the original planning permission. Any proposed amendments to that which is approved will require the submission of a further application.

2. The proposed development lies within an area that has been defined by The Coal Authority as containing potential hazards arising from coal mining. These hazards can include: mine entries (shafts and adits); shallow coal workings; geological fissures; mine gas and previous surface mining sites. Although such hazards are often not readily visible, they can often be present and problems can occur as a result of development taking place, or can occur at some time in the future.

It is recommended that information outlining how the former mining activities affect the proposed development, along with any mitigation measures required, be submitted alongside any subsequent application for Building Regulations approval.

Any intrusive activities which disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) requires the prior written permission of The Coal Authority. Such activities could include site investigation boreholes, digging of foundations, piling activities, other ground works and any subsequent treatment of coal mine workings and coal mine entries for ground stability purposes. Failure to obtain Coal Authority permission for such activities is trespass, with the potential for court action.

Property specific summary information on coal mining can be obtained from The Coal Authority's Property Search Service on 0845 762 6848 or at www.groundstability.com

3. There is a proposed Public Right of Way (Footpath 129) on land adjacent to the site and the applicant should be aware that the route must remain unobstructed on its lawful alignment at all times and the safety of the public using it must not be prejudiced either during or after development works take place.
 - Please note that the granting of planning permission is not consent to divert or obstruct a public right of way.
 - If it is necessary to temporarily obstruct a right of way to undertake development works then a temporary closure is

obtainable from the County Council. Please contact 01629 533190 for further information and an application form.

- If a right of way is required to be permanently diverted then the Council that determines the planning application (The Planning Authority) has the necessary powers to make a diversion order.