



# PLANNING STATEMENT AND JUSTIFICATION REPORT

FOR THE USE OF LAND FOR TWO GYPSY CARAVAN PITCHES FOR  
RESIDENTIAL PURPOSES INCLUDING A SEMI-DETACHED DAY/UTILITY  
ROOM, TWO PARKING SPACES PER PITCH TOGETHER WITH THE  
RELOCATION OF THE EXISTING ACCESS (PARTIALLY RETROSPECTIVE),  
INTERNAL ACCESS DRIVE, TURNING AREA AND ADDITIONAL  
LANDSCAPING / ECOLOGICAL ENHANCEMENTS

**LAND ADJACENT TO CRYNANT VILLA, CRYNANT, NEATH, SA10 8PT**

15<sup>th</sup> December 2020



*Left – Scan of proposed site plan from Drawing 02f*

*Below – Photograph of the application site taken in August 2020*



## Application for Full Planning Permission Town and Country Planning Act 1990

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**HAYSTON DEVELOPMENTS & PLANNING LTD** is making an application on behalf of Mr Thomas Wall and Mr Jeremiah Connors for the following planning permission:

- **Proposal:** The use of land for two Gypsy caravan pitches for residential purposes including a semi-detached day/utility room, two parking spaces per pitch together with the relocation of the existing access (partially retrospective), internal access drive, turning area and additional landscaping / ecological enhancements
- **Site location:** Land adjacent to Crynant Villa, Crynant, Neath SA10 8PT.
- **Type of Planning Permission:** Full
- **National and Local Planning Policy & Guidance:** Planning Policy Wales Edition 10, Circular 005/2018 (Planning for Gypsy, Traveller and Showpeople Sites) June 2018, The Housing (Wales) Act 2014, Designing Gypsy Traveller Sites Guidance May 2015, LDP Policy SC1, GT1, GT2. EN2/2 and TAN 15. The Well-being of Future Generations (Wales) Act 2015 and recent Welsh Government Guidance for those supporting Gypsy and Traveller Communities: Covid Virus (10<sup>th</sup> June 2020).

### 1.0 INTRODUCTION

1.1 The following documents support this planning application

- **Planning Statement and Justification Report** (this document)**Application Form** and associated certificate of ownership
- **Drawing 00d** – Expanded Location Plan at Scale A3 @ 1:2500
- **Drawing 01c** –Location Plans at Scales A3 @ 1:2500 and 1:500 respectively
- **Drawing 02f** - Block /Site Plan at Scales A3 @ 1:250
- **Drawing 03d** – Floor Plan and Elevations of Utility/Day Room at Scale A3 @ 1:50 and 1:100 respectively
- **Bollard Lighting Datasheet**
- **External Lighting Data Sheet (Tamlight Lighting)**
- **Appendix A** - The applicant's details and Gypsy Status (**PRIVATE & CONFIDENTIAL**)
- **Appendix B** – Preliminary Ecological Appraisal, October 2020, Elite Ecology
- **Appendix C** – Flood Consequences Assessment, October 2020, Francis

- **Appendix D 2** – Appeal decision APP/Y1138/3222285
- **Appendix D3** – Appeal decisions App/Y6930/A/17/3188952 and 3188919
- **Planning Fee:** £460-00 (Based on Size of Day room)

1.2 This report is prepared in accordance with the requirements of Policies contained within the *Local Development Plan for Neath and Port Talbot* and the *Welsh Government Development Management Manual* (05<sup>th</sup> May 2017).

PLEASE NOTE APPENDIX A IS MARKED AS PRIVATE AND CONFIDENTIAL AND NOT FOR THE PUBLIC DOMAIN. IF THIS REPORT IS MADE AVAILABLE ON THE WEBSITE THIS INFORMATION SHOULD BE REDACTED

## 2.0 THE APPLICATION SITE AND PLANNING BACKGROUND

2.1 The land in the client's ownership extends to 0.182 ha and is located immediately to the south of Crynant Villa, otherwise known as 14 Ynyswen Terrace, lying to the north of the village of Crynant. It is rectangular in shape and slopes gently from west to east. It flanks the north western side of the A4019 and originally had an existing field access point onto the main road located in the north eastern corner adjacent to the boundary with Crynant Villa. Land surrounding to the south is in agricultural use whilst Ynyswen Farm is used for the storage and sale of caravans.



*Aerial photograph of the proposed application site (source: Google Maps)*

2.2 The applicants purchased the site in 2019. At the time of purchase the site was surrounded by a post and wire fence with a field access on to the main road, A4108, located in the north eastern corner. To make the site secure they erected a timber vertical panel fence around the perimeter of the site and re-sited the access point to the south eastern corner. These works attracted the attention of the LPA who served a Temporary Stop Notice Ref E2020/0182) on 7<sup>th</sup> August 2020 requiring all works to cease and the new access not to be used as no planning permission had been granted. The LPA subsequently applied to the High Court on 17<sup>th</sup> August 2020 for an injunction to prevent any further works to take place or use of the site for residential purposes in breach of planning control. A temporary injunction was granted by the Court for a period expiring on 26<sup>th</sup> February 2021. Since that date no further works have been undertaken by the applicants and this practice has now been engaged to represent the clients.

### 3.0 THE FAMILY MEMBER DETAILS AND GYPSY STATUS

3.1 A private and confidential report on the family members personal details and Gypsy status is contained in **Appendix A**. **Under the General Data Protection Act 2018 these details should not be available for publication or public scrutiny.**

3.2 In summary, the report confirms the two-family groups are directly related and belong to long-established Romani /Irish Gypsy families with strong connections in South Wales and particularly in the Swansea area. Both have enjoyed a traditional Gypsy lifestyle living in caravans for the majority of their lives on numerous authorised and unauthorised sites. For the reasons explained in **Appendix A** both families are currently homeless and living in temporary overcrowded sites.

3.3 In the interests of the health and welfare the two families wish to return to a traditional culture living in caravans in a safe and tranquil environment close to other family members in the Swansea area. The reasons why the application site was purchased are fully explained in **Appendix A**. There are no alternative available private or public pitches available within the county to accommodate the family's needs.

3.4 The family's lifestyle falls within the definition of Gypsies in paragraph 2 of the Welsh Assembly Government Circular 005/2018 - Planning for Gypsy, Traveller and Showpeople Sites. They are:

- a) Persons of a nomadic habit of life whatever their race or origin, including -  
(i) "Persons who, on grounds only of their own or families or dependent's educational or health needs or old age, have ceased to travel temporarily or permanently, and  
(ii) Members of an organised group of travelling show people or circus people (whether or not travelling together as such); and*
- b) All other persons with a cultural tradition of nomadism or of living in a mobile home.*

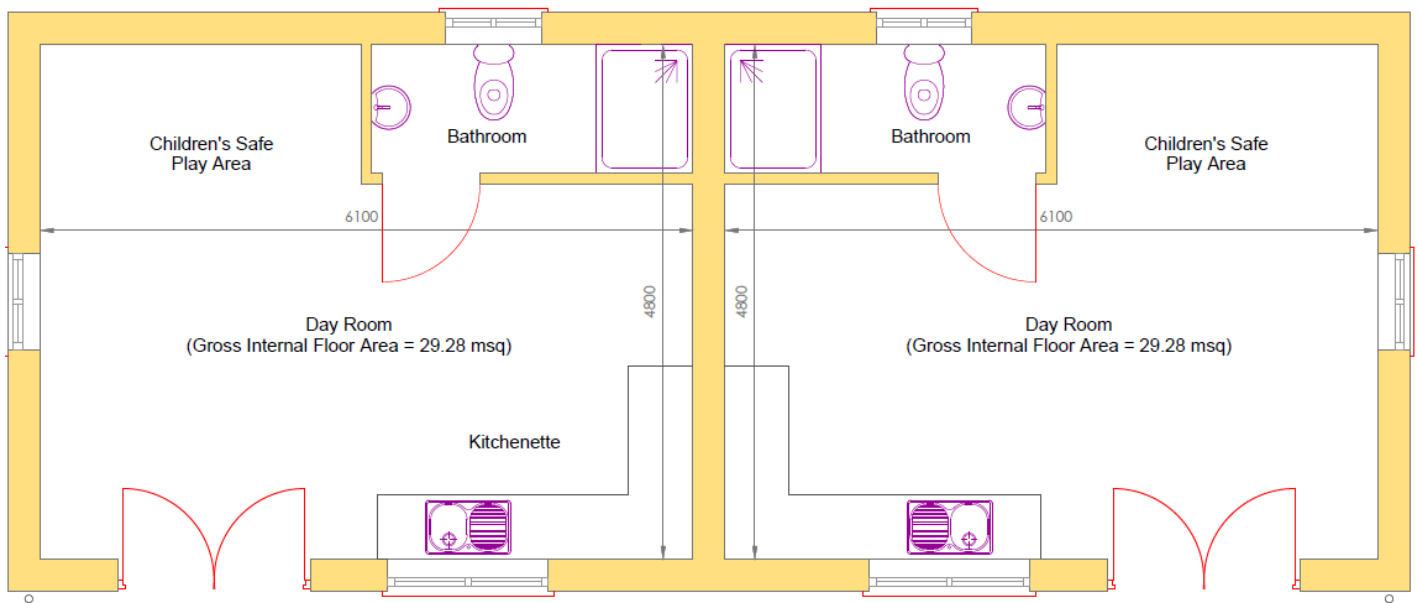
#### 4.0 THE PROPOSAL

4.1 The application comprises of several components the details of which are shown on drawings 02f and 03d and summarised below:

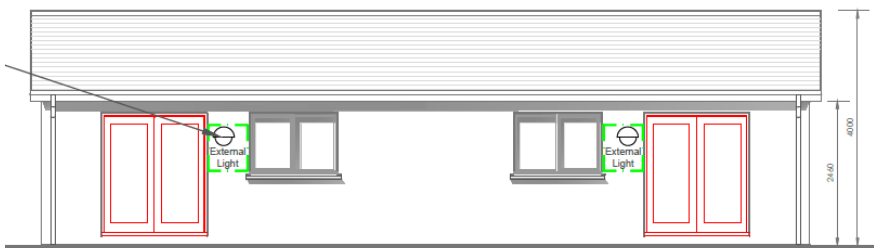
- a) The subdivision of the rear portion of the application site to create two Gypsy pitches each containing one static residential caravan.
- b) Both pitches will share a semi-detached free-standing utility/day room complex each measuring 6.8m x 5.3m x 2.5m high to the eaves and 4mm to the ridge, on a concrete base, and will be constructed in blockwork with a painted cement render under a slate pitched roof.
- c) The retention of the recently constructed vertical overlapping timber boarded perimeter fence varying in height from 1m along the frontage to 1.8m elsewhere. However, this is clearly permitted development, as a means of enclosure.
- d) The retention of the new 4.5m wide vehicular access located in the south eastern corner. This access point will lead to a 4m wide private access drive constructed in compacted hardcore with the first 5m, including the verge crossing, will be finished in tarmac or other similar materials with any gates opening inwards. The access drive will lead to a vehicular turning area and two parking spaces per pitch.
- e) The caravans and day/utility rooms will be provided with soakaways for rainwater and foul water will be disposed via the public foul water sewer which crosses the site in a north east/south west direction. The line of the sewer will be protected by a buffer zone as shown on Drawing 02f.
- f) A comprehensive site enhancement and landscaping / ecological scheme is proposed, mainly in the front section of the application site, as recommended in the section 5 of the Ecology Appraisal contained in **Appendix B**.



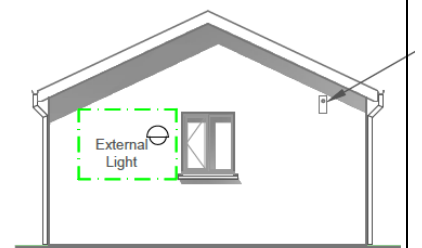
*Scan of Drawing 02f showing the proposed site plan*



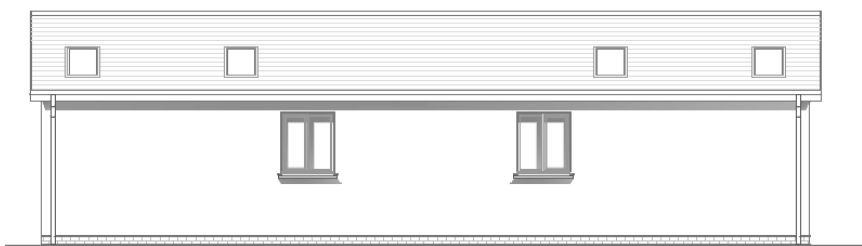
*Scan of Drawing 03d showing the proposed floor plan of the utility / day rooms*



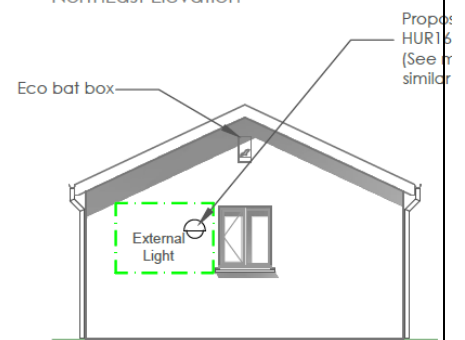
NorthWest Elevation



NorthEast Elevation



SouthEast Elevation



SouthWest Elevation

*Above Scan of Drawing 03d showing the proposed elevations of the utility / day rooms*

*Below – Photos of the site and entrance area and frontage on the site to the road*



## 5.0 NATIONAL PLANNING CONTEXT

5.1 National advice on Gypsy and Travellers is contained in Circular 005/2018 published in June 2018 and Paragraph 2 refers to Section 108 of the Housing (Wales) Act 2014 where Gypsies and Travellers are defined as:

- a) *Persons of a nomadic habit of life, whatever their race or origin, including -*
  - (i) *“Persons who, on grounds only of their own or families or dependent’s educational or health needs or old age, have ceased to travel temporarily or permanently, and*
  - (ii) *Members of an organised group of travelling show people or circus people (whether or not travelling together as such); and*
- b) *All other persons with a cultural tradition of nomadism or of living in a mobile home.*

Section 101 of this Act also placed a duty upon local authorities to ensure that the accommodation needs of Gypsies, Travellers and Showpeople are accurately assessed and the identified need for pitches is met. This requirement is also contained in the Circular requiring Local Authorities to assess the accommodation needs of not only Gypsies and Traveller’s but Showpeople residing in any county and make provision on either public or private sites.

5.2 Circular 005/2018 advises that where a need for additional pitches has been identified through a GTAA a sequential test needs to be undertaken to assess the availability of suitable sites within or adjacent to existing settlements (paragraph 38). However, this does not preclude consideration of other sites away from existing settlements being put forward by members of the gypsy community as paragraph 39 states *‘Sites in the countryside, away from existing settlements, can be considered for Gypsy and Traveller sites if there is a lack of suitable sustainable locations within or adjacent to existing settlement boundaries. In assessing the suitability of such sites, local authorities should be realistic about the availability, or likely availability, of alternatives to the car in accessing local services. Over rigid application of national or development plan policies that seek a reduction in car borne travel in order to effectively block proposals for any Gypsy and Traveller Site in a countryside location would be inappropriate. Sites should be considered in context and in relation to the local infrastructure, population size and density to ensure they are in proportion to local settled communities’.*

National and Welsh Government Advice on Covid 19 (Issued on 10<sup>th</sup> June 2020).

5.3 The global pandemic, COVID-19, obviously also has had an immediate (and will have a long-term impact) to how we live. Obviously, groups of people living together (i.e. residential homes and Gypsies and Traveller sites) are more vulnerable and have already been disproportionately affected. There is no doubt that the provision of future public sites and existing sites require consideration attention by authorities, especially as many existing sites are overcrowded. It therefore goes without saying that the need for lower density pitches (with adequate living accommodation and utilities) will be required more than ever.

Because of the above the Government has produced guidance on mitigating the impacts on gypsy /traveller communities. This is obviously being updated as needed and you will have the latest versions, however, we attach guidance we have obtained ourselves just for information. The letter by Lord Greenhalgh, Communities Minister, written to local authority chief executives to highlight this situation indicates *“Social-distancing or self-isolation may be*

*particularly challenging for members of these communities due to often confined and communal households, and restricted living conditions on many sites. In addition, we know that some families lack basic amenities including running water, adequate sanitation, and refuse disposal facilities, all of which are essential to limit the spread of the virus and keeping people safe.....”.*

In respect to this particular private site, where such sites are available (and do not cause any planning harm) it is considered they clearly need to be supported. This site provides a safe home for two family units close to other relatives in the Swansea area. Whilst it is appreciated that the Authority is attempting to deliver public traveller sites in LDP policy GT 1 however, the COVID pandemic has clearly changed the outlook in respect of what densities are acceptable in terms of social distancing measures and the need to avoid shared sanitary facilities. The application site will provide a safe and tranquil environment for the two applicant's family members.

## **6.0 CURRENT PLANNING POLICY**

6.1 Section 38 of the Planning and Compulsory Purchase Act 2004 requires that planning application decisions should be made in accordance with the development plan unless material considerations indicate otherwise. In this case the statutory development plan is the Neath and Port Talbot Local Development Plan adopted in January 2016 to cover the period 2011 to 2026. As the applicant's and associated families lifestyle falls within the definition of Gypsies and Travellers in Welsh Assembly Government Circular 30/2007 - Planning for Gypsy and Traveller Caravan Sites and Section 108 of the Wales Housing Act, the relevant policy is Policy GT2 -Gypsy, Traveller and Travelling Showpeople site. Also, of relevance is the Gypsy and Traveller Accommodation Assessment 2016 (GTAA).

### **6.2 THE GYPSY AND TRAVELLER ACCOMMODATION ASSESSMENT**

Sections 101 to 103 of the Housing (Wales) Act 2014 which requires local authorities to assess the accommodation needs of Gypsy and Travellers within their area and that where there is an identified need sufficient site(s) should be allocated within the Council's LDP to address that need. Section 108 of the Wales Housing Act 2014 sets out that Gypsies and Travellers – means persons of a nomadic habit of life, whatever their race or origin, including persons who, on grounds only of their own or their family's or dependant's educational or health needs or old age, have ceased to travel temporarily or permanently, and members of an organised group of travelling show people or circus people (whether or not travelling together as such), and all other persons with a cultural tradition of nomadism or of living in a mobile home.

6.3 Part 3 of the Housing (Wales) Act 2014 required Local Housing Authority's to carry out a new assessment of the accommodation needs of gypsies and travellers residing in or resorting to its area during 2015. The Authority undertook its own assessment, and a final report was published in February 2016. The resultant document, Gypsy and Traveller Accommodation Assessment (GTAA) concluded the county has an established Traveller and Gypsy community of 56 pitches on 3 sites. Following the findings of the previous 2012 GTAA the Local Development Plan (LDP) for the County Borough made further provisions for an extra 11 pitches at the existing Cae Garw site near Margam to accommodate the identified short to medium term need of 4 pitches for the period 2012 – 2017 and 7 pitches for the period 2018 – 2022. Due to the statistical inaccuracies associated with predicting the longer term needs of the Gypsy and Traveller community, who by their very nature have nomadic lifestyles, it was the

Council's view that the remaining need for 9 pitches would be reviewed as part of the LDP's Monitoring Framework and addressed by the Plan's Annual Monitoring Report (AMR) – this was subsequently endorsed by the Inspectors in their binding report.

6.4 Using the Welsh Government guidance 'Undertaking Gypsy and Traveller Accommodation Assessments' the 2016 GTAA was undertaken in-house by the Authority's Housing Strategy and Planning Policy Sections with input from the Estates' section of the Authority to collect the primary data for the study through interviews / questionnaires. The Study identified no need (an oversupply of 3 pitches) in the short term (2016 – 2021) with 4 pitches required on public residential sites towards the end of the LDP period (2022 – 2026). This need takes into account the supply resulting from the 11 pitches that received planning permission in February 2015 and the two pitches on the Briton Ferry site that were brought back into use. The study concluded the need for pitches would be assessed through the Annual Monitoring Report. There is no indication of where the further public pitches will be located, when planning permission will be applied for or whether funding will be available for the delivery of the additional pitches over the plan period. There is a degree of uncertainty about the Council's future intentions to deliver these extra pitches over the plan period or to cater for an unforeseen need arising from the Gypsy community.

6.5 The Gypsy community is generally self-reliant and reluctant to speak to authority representatives as they are very private persons. They do recognise they represent a small proportion of the overall County population; however, they do have accommodation needs with new family 'households' being created due to the age profile of their community or for family circumstances. From this practice practical knowledge of the Gypsy community in South Wales the population is not neutral in that new 'family households' are formed at a relatively young age with a consequent demand for additional pitches being required. This fact does not appear to be recognised in the GTAA.

6.6 The supporting text in the GTAA suggests there is an aspiration within the Gypsy Traveller community for private sites and the council will work with and support Traveller households to identify and develop viable private sites to address any identified unmet need in accordance with adopted LDP Policy framework. The applicants trust this will be the case in determining this application which has identified an urgent need for the two pitches, demonstrated by the lack of alternative private or public sites in the county and has brought forward this site close to the settlement of Crynant as a viable solution for their accommodation needs.

**6.7 It is evident that any unmet need for additional pitches will, over the next few years, only be satisfied by the provision of private sites brought forward by the gypsy community.** The current proposal is for the applicants to establish the site as their home as they cannot be accommodated on any other private authorised site within the County. The current policy is insufficiently flexible to cater for any unexpected demand for new pitches arising from the indigenous Gypsy community. Significant weight should be given to the lack of alternative sites within the county.

6.8 In the event of planning applications being submitted by either public or private sector parties, where a need has been identified, Policy GT 2 is criteria-based against which such applications will be assessed.

### **Policy GT 2 – Proposals for new Gypsy, Traveller and Traveller Sites**

Sites and/or pitches to accommodate Gypsies and Travellers residing in, or resorting to, the County Borough will only be permitted where all the following criteria, where relevant, are satisfied:

1. Sites will be allowed outside settlement limits only when it has been demonstrated that there are no suitable sites or pitches available within:
  - (a) The allocated Gypsy Site at Cae Garw (GT1), or within other existing authorised Gypsy and Traveller sites in Neath Port Talbot; or
  - (b) Within existing settlement limits.
2. The site is in a sustainable location within reasonable distance of community facilities (including education) and transport links including walking and cycling routes,
3. The site has or would have a good standard of utilities including water supply, power, drainage, sewage disposal, waste disposal (storage and collection) and safe play areas for children,
4. The site will not be detrimental to residential amenity or the environment,
5. The site can accommodate home-based business uses where required without detrimentally affecting the amenity and character of the area,
6. The site can accommodate a safe and convenient access to the highway network and would not compromise highway safety and can provide an appropriate layout, in terms of pitches, parking and manoeuvring of vehicles, amenity buildings, hard standings and open spaces.

### **ANALYSIS OF THE CRITERIA IN POLICY GT 2**

6.10 The GTAA (2016) identified there was no need for any additional pitches in the short term (2016 to 2021) in fact, it concludes there is an oversupply of 3 pitches, with 4 pitches required on public sites between 2022 and 2026. Policy GT 1 indicates that any additional pitches will be accommodated on the council run Cae Garw site where there is already a waiting list for pitches. The Council cannot demonstrate or identify where any unforeseen unmet demand will be located or when they can be delivered as required under the Wales (Housing) Act and Circular 005/2018 which is a significant material consideration in any planning decision for Gypsy accommodation sites.

6.11 Policy GT 2 sets out the criteria for assessing such planning applications through the development management process. Criteria 1 states new sites will be allowed outside settlement limits only where it has been demonstrated there are no suitable sites or pitches available within (a) existing authorised sites (Cae Garw) or (b) within existing settlements. The applicants are fully aware there are currently no public pitches available and there is a waiting list for either vacated sites or any new sites which may be made available after 2022. Furthermore, there are certainly no public or private authorised sites available within existing settlements. For this reason, attention is drawn to paragraphs 38 and 39 of Circular 005/2018 which post-dates both the current LDP and the 2016 GTNA and is the most up to date national policy guidance. This application site is in a countryside location, just outside the settlement boundary of Crynant with a cluster of development close by, consistent with national planning policy, the adopted LDP advocates strict control in such areas, although the provision of Gypsy and Traveller accommodation is cited as an exception to such strict control by the provision of criteria in Policy

GT 2. Such exceptions are consistent with the advice in section 39 of Circular 005/2018 which gives preference to new sites in sustainable locations close to existing settlements whilst Paragraph 39 does not preclude sites in the countryside away from existing settlements.

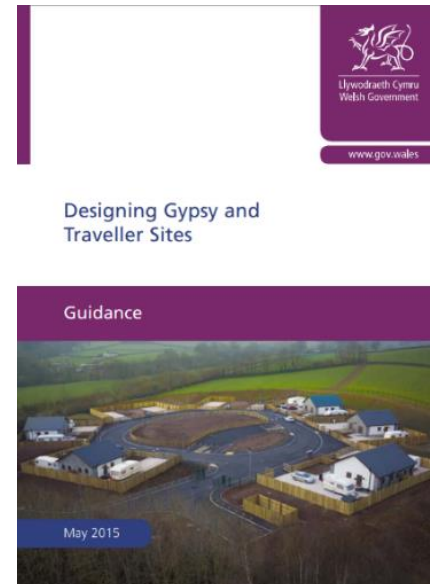
6.12 Considering the above, Criteria 2 recognises that new sites can be permitted if it is located in a sustainable location within reasonable distance of community facilities and transport links. Whilst the term 'reasonable' is not defined the application site is adjacent to an existing residential development, a commercial caravan storage and sales premises and a cluster of residential properties, Ynyswen Terrace, a short distance to the north of the sustainable community of Crynant. Within Crynant, which is classified as a large local centre in the LDP, where there are shops and services available to cater for most everyday needs of residents and there is a primary school for the applicant's children to attend. There are bus stops in the vicinity allowing access into Neath where there are alternative modes of transport to larger towns along the M4 corridor. Circular 005/2018 advises over-rigid application of development plan policies that seek a reduction in car borne travel would not be appropriate as they could be used to effectively block proposals for Gypsy sites in rural areas outside of recognised settlement boundaries. The application site is therefore sustainable located with good access to facilities.



*Photograph of nearby Caravan Park at Ynyswen Terrace, which shows numerous caravans sited in a special landscape*

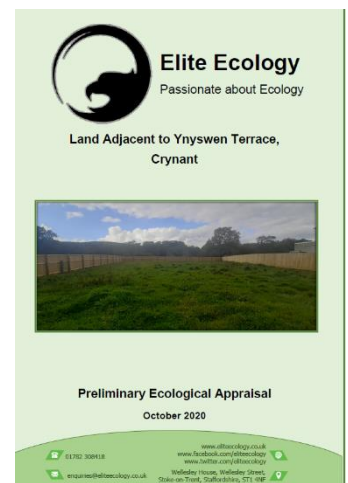
6.13 The applicants have reached agreement with Western Power Distribution and Welsh Water to supply the site with electricity and water. The proposal includes a connection to the main public sewer which crosses the site and surface water will be disposed via soakaways. Domestic waste will be placed in the appropriate coloured bags and left at the site access for collection. Both Mr Wall and Mr Connors business's take place off site with no need to store any related materials other than their works vehicles.

6.14 The site has the capacity to unobtrusively accommodate the two proposed pitches which are large enough to locate a low level mobile static residential caravan, a day/utility room, parking for private vehicles and a touring caravan and provide safe outdoor play space for the children and private amenity space. The layout and design of each pitch reflects the standard layouts in Welsh Government advise for Gypsy developments "Designing Gypsy and Traveller Sites, May 2015". These facilities allow the applicants to have a settled base for their respective families and the touring caravan allows the family members to travel in connection with seeking out work.



6.15 With regards to the impact of the use within the landscape the site is well screened by recently erected timber fencing. Considering the contents of Policy EN 2/2, as the site lies adjacent to the Dulais Valley Special Landscape Area, this is addressed in Section 7 below together with the Ecological Appraisal in **Appendix B**.

6.16 Criteria 4 of Policy GT 2 also requires the proposed development not to have a detrimental impact on residential amenity. The application site lies immediately to the south of Crynant Villa which is a detached two storey property set within a relatively large curtilage. The proposed caravans and day/utility room are located to the south west of this property and as the structures are low level in nature and scale, the impact on residential amenity will be minimal. Two residential and two touring caravans would not appear as alien features in the landscape due the presence of a commercial caravan storage and sales premises at Ynyswen Farm to the south west (see photo on page 11).



## 7.0 OTHER MATERIAL PLANNING CONSIDERATIONS

7.1 Article 8 of the European Convention on Human Rights as enshrined in the Human Rights Act 1998 gives paramount respect and importance to protect private and family life, as well as the public sector duties under the Equality Act 2010. Article 3 (1) of the United Nations Convention on the Rights of the child provides that the best interests of the child shall be a primary consideration in all actions by public authorities concerning children, meaning no other consideration can be inherently more important than the best interests of the child. They must be

afforded an importance or weight as great as any other material consideration prior to examination of the circumstances of the case.

7.2 Both the applicants are committed to ensuring their children and any future children, have access to important medical services and receive an education. This would prove difficult if they do not have a permanent site where they can obtain a post code and have access to such facilities. The applicants have carried out a sequential test of other sites in the County, neighbouring Bridgend, Cardiff and Swansea area and discovered there are no private or public sites currently available and are unlikely to be in the future. Any private sites, with a potential capacity for either intensification or extension, are reserved for the owner's future generations. It has therefore been demonstrated that there is a lack of a supply of sites to meet the unmet demand for new sites, contrary to the requirements in The Wales Housing Act and Circular 005/2018, resulting in the this site being put forward for consideration as there are no alternative sites available. The lack of alternative sites within the current plan period, the personal circumstances of each family, contained in **Appendix A**, and the rights of the children have significant weight to overcome the perceived harm the development would have on this well screened rural site.

7.3 As referred to in **Appendix A** the applicants are currently homeless due to the lack available pitches and overcrowding on sites where they have shared family members pitches on a temporary basis. Under the Wales Housing Act 2014, as the applicants have an interest in the land, they are not entitled to assistance from the Housing Authority nor eligible to be placed on the housing waiting list. Taking into their cultural choices a bricks and mortar property would not be appropriate.

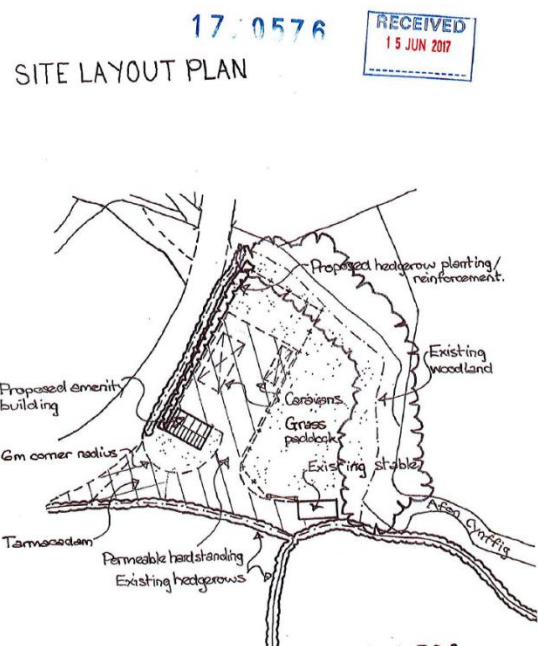
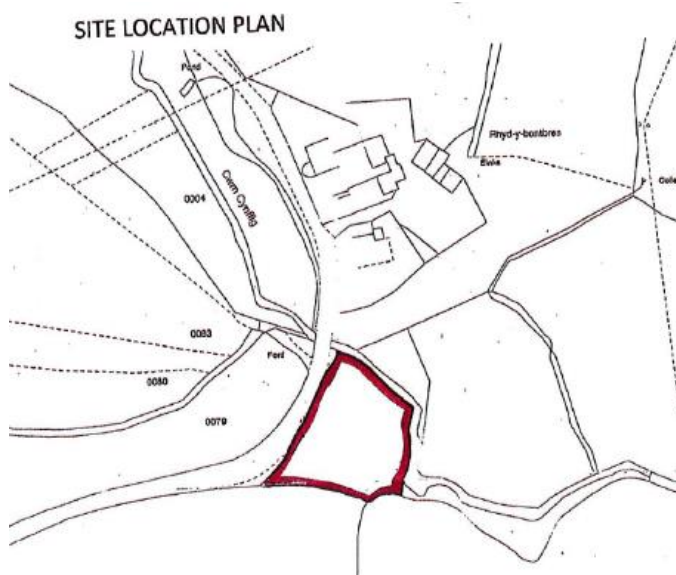
7.4 Section 175 2(B), Part VII of the Housing Act 1996 states '*A person is homeless if he has accommodation but – (b) it consists of a moveable structure, vehicle or vessel designed or adapted for human habitation and there is no place where he is entitled or permitted both to place it and reside in it*'. Section 8 and 14 of the Human Rights Act 1998 promotes the right to respect people's homes and family life that any public authority will not interfere with any such right unless in accordance with Law and that everyone has the enjoyment of these rights and freedoms without being discriminated against. The Equalities Act 2010 states that Public Authorities and the Police must, in the exercise of their functions, have due regard to the need to eliminate unlawful discrimination, advanced equality of opportunity and foster good relations. Both Gypsies and Travellers are recognised as ethnic minorities against whom discrimination is unlawful.

7.5 The Housing (Wales) Act 2014 placed a new general duty on local authorities to provide such sites where there is evidence of a general need within their area and, where such a need is identified, it has become mandatory for a local authority to make land available for a site. However, the GTAA has not identified a need for additional pitches and, as such, no sites are identified in the LDP. Nevertheless, the applicants have identified a genuine and urgent need for a site capable of being occupied by their respective families. Consequently, they have no option other than to put this site forward for consideration as he has a genuine immediate accommodation need which cannot be satisfied through any public authority. Significant weight should be given to their homeless status and the lack of any alternative sites within the county.

## RECENT APPEAL DECISION

7.6 In respect of the personal circumstances of the applicants and the lack of alternative private or public pitches available within the county attention reference is made to two appeal decisions relating to similar circumstances for two pitches on land at Riverside Stables, Tyn Yr Heol Access Road, Pen y Bryn, Pyle, CF33 6RB (Ref App/Y6930/A/17/3188952 and 3188919 - August 2018 **APPENDIX D3**). In determining the appeals the Inspector examined four main issues: -

- 1 Whether the principle of the development is justified in its countryside location.
- 2 The effect of the development on the character and appearance of the area, having particular regard to the designated Special Landscape Area,
- 3 The impact of the development on the openness of the GreenWedge
- 4 Whether any identified harm would be clearly outweighed by very exceptional circumstances.



*Site location and block plans allowed on appeal*

The Inspector accepted the site's countryside location however, noted that Criterion 11 of Policy GT 2 which allows sites outside settlements when it has been demonstrated that there are no suitable sites or pitches available within the allocated site at Cae Garw, within other existing authorised sites in the County or within settlement limits. Following analysis of the evidence, the Inspector considered, in the best interests of the appellant's family, Cae Garw is not suitable and is already at capacity. It was accepted and well-established through cas law that there is no requirement for site proponents to prove non-availability of alternative sites in such cases.

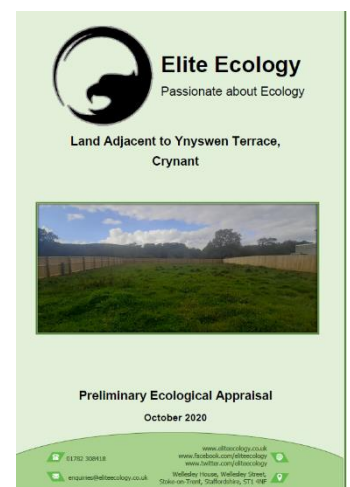
It was accepted that the appellant's way of life inherently relies upon the use of private modes of transport and it is important that the application of policies that seek to reduce car borne travel are not rigidly adhered to.

The Inspector noted the appeal site was close to an area of land used for the storage of caravans, similar to the current application at Crynant. Nevertheless, the development would be harmful to the character and appearance of the immediate environs. However, this was outweighed by the personal circumstances of the appellants as the site would provide the opportunity for the family to enjoy a peaceful and safe existence and allow the children to receive an education. The Inspector concluded the best interests of the children are a primary consideration and that such matters merit substantial weight in the planning balance. Furthermore, the unavailability of any suitable alternatives amounts to very exceptional circumstances that clearly outweigh any harm that would be caused. The appeal was allowed on a permanent basis for persons belonging to the Gypsy community.

This appeal decision raises very similar issues to the current proposal and is a material consideration in the determination of the application.

### **Impact on the Dulais Valley Special Landscape Area**

7.7 In accordance with LDP Policy EN 2/2 the applicants engaged Elite Ecology in association with South East Wales Biodiversity Records Centre (SEWBRc) to undertake an Ecological Assessment of the proposal and assess its impact on the SLA. The appraisal is contained in **Appendix B**. The supporting text of this policy, at paragraph 5.3.11, states *'While development is not precluded within the SLA, these areas will be protected as far as possible from any development that would harm their distinctive features or characteristics.....Applications for developments within these areas will thus have to conform to high standards of design,'* Paragraph 5.5.13 states *'In the case of single buildings, generally these should be located within an existing building curtilage, farm complex or other group of buildings or immediately adjacent to a settlement limit wherever possible.... And the scale, form and design of the proposed development should conserve and where possible enhance the distinctive or characteristic features of the SLA'.*



7.8 The appraisal concludes, in the Executive Summary, this development would not have significant adverse impacts on the features or characteristics of this region because the site is already fenced, is next to an existing property and would not require the destruction of relevant habitats in its completion. Biodiversity net gain can be achieved by fully implementing the proposed site enhancements as detailed in section 5.4 of the appraisal to achieve a 10% net gain on existing at the site. These recommendations have been included on Drawing 02f which detail a comprehensive landscaping and planting scheme. A suitably worded condition on any permission granted would ensure the recommendations are fully implemented on completion of the development. The proposed residential units and day/utility rooms are well designed and low level structures within the landscape and for the above reasons it is concluded the proposal will not have a significant impact on the SLA in accordance with Policy EN2/2.

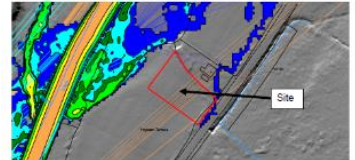
## Flood Risk

7.9 This section of the Justification Report should be read directly in conjunction with the Flood Consequence Assessment Report produced by Francis Sant Limited which is in **Appendix C** together with the information contained in Drawing 00d.

7.10 The application site lies partially (only the access) within a Zone C2, as defined by Development Advice Map (DAM) referred to in Technical Advice Note 15: Development and Flood Risk. The DAM confirms the western part of the site, to be occupied by the residential caravans and utility/day, will remain flood free during the Q100 event but that the eastern part is expected to be at risk during the Q1000 event. The purpose of the FCA is to ensure all parties are aware of the risks to and from the development, and ensure that if practicable, appropriate controls can be incorporated in a planning permission to manage the risks and consequences of any potential flooding.

Francis Sant

Proposed Caravan Pitches and Supporting Infrastructure  
Adjacent to Ynyswen Terrace, Crynant  
Flood Consequence Assessment Report



October 2020  
Final  
Revision B

7.11 Flood proof measures suggested by Francis Sant Ltd are detailed below.

*Although the residential development will be limited to the areas expected to remain flood free in a Q1000 year event, the risk of flooding cannot be removed completely. Flooding can result in the need for expensive repairs. As well as the direct damage caused to a building, flooding can impact in many other, and possibly more stressful, ways. The inconvenience of cleaning up a home and the loss of sentimental valuables can be immeasurable. There are methods, however, to limit and mitigate against the consequence of flood damage in the proposed utility / day room building. The caravans are on higher ground which would further reduce their risk of flooding.*

*Water can enter a building:*

- *Around the edges of closed doors,*
- *Through airbricks,*
- *Backflow through overloaded sewers,*
- *Seepage through walls especially cracks.*
- *Seepage through the ground,*
- *Around cable / services entrance into the building.*

*Dry proofing - Preventing the water from entering the building. In the first instance it is possible to take measures to prevent the ingress of water (dry proof).*

- *There are several propriety barriers available, however, these can be expensive. If desirable, it might be more appropriate to ensure that the walls of the utility / day room building are able to act as barrier themselves. Care should be taken to ensure that the pointing and any external plastering are kept in good order and that all cracks and gaps around cables and ducts entering the building are sealed,*
- *Providing temporary covers to any low air vents. These covers should be removed once the risk of flooding is over. Alternatively, the air vents can be installed at a high level,*

- *Erecting a temporary barrier in front of any external doors or installing flood protection doors to the utility / day room,*
- *Installing a valve allowing the sewer system to be shut preventing any back flow.*

*By limiting the development to the land above the Q1000 year event flood line the risk of flooding will be low and installing additional dry proofing measures may be excessive. However, it is possible to limit the damage that the water can cause once in the dayroom building (wetproof). Where appropriate the following could be considered:*

- *Move valuable items to a higher level*
- *Have solid concrete floors. Suspended floors are more difficult to clean and dry underneath*
- *Use water resistant render for walls*
- *Use non water absorbing insulation*
- *Use corrosion resistant fittings such as galvanised or stainless steel*
- *Ensure that the ground floor electrics is on a separate circuit to the rest of the building and that the electric cables are fed from above with the sockets kept high*
- *Use an appropriate damp proof course.*
- *Consider freestanding movable equipment*
- *Install equipment with motors high up from the floor*
- *Install solid internal and external doors effectively sealed*
- *Avoid storage heaters*
- *Ensure boilers are off the ground.*

*A flood response plan should be prepared for the site and regularly maintained. All future occupiers should be made aware of the flood risk and what actions are to be undertaken during an event. It is important to also have as much warning as possible to allow the flood response plan to be followed safely. This can be achieved by registering on the flood warning scheme provided by NRW.*

7.12 National policy advocates that a sequential test be undertaken before planning permission can be granted. This must show that there are no other reasonably available sites at lower risk of flooding (Flood Zone C1 and C2) in the County. Local policy notes that to be considered developable, gypsy sites should be in a suitable location and there should be a reasonable prospect that they are available now. It has been demonstrated above that the applicants have undertaken a sequential test of existing and potential sites which revealed none were available and would not be available within the current plan period to 2022. The application site is limited in size, with higher ground to the west where structures are proposed with only the access point in the eastern part. Importantly, NRW hold no historic flooding information for this site.

7.13 The design and mitigation measures detailed in the FCA will be adopted by the applicants. Whilst the locating caravans within a C1 flood zone represents vulnerable development, the report indicates the proposed traveller pitches would be in an area which is shown to be 'Very Low' to 'Low' risk of flooding from surface water. Ample warning will be given enabling the mobile units to be removed off the site in a very short period of time if necessary.

7.14 This practice is not aware of any recent appeal decisions in Wales whereby the Inspectorate have granted permission for Gypsy sites in areas vulnerable to potential flooding. However, it is necessary to cite a recent appeal decision (August 2019) made by the Secretary of State (DCS Number 100-071-536, Appeal Ref **APP/D0515/C/18/3196061**) in respect of the unauthorised use of land for residential use of touring caravans, storage unit, hardstanding and fencing on a site in Cambridgeshire. A copy of the appeal is in **Appendix D 1**. In this particular case the Authority agreed that it could not identify any sites in Flood Zone 1 and 2 (A and B in Wales) that would be currently available to the appellant, either with or without planning permission. Reference is made to the Governments Planning Practice Guidance (PPG) which refers to the 'Exception Test' as set out in the Framework which would need to be passed if the development were to be classed as 'more vulnerable'. The PPG explains that it is a method to demonstrate and help ensure that flood risk to people and property would be managed satisfactorily, while allowing necessary development to go ahead in situations where suitable sites at lower risk of flooding are not available. However, caravans are classified as 'highly vulnerable' and advice is that such development should not be permitted. The Exception Test is not therefore normally relevant to proposals such as this.

Nevertheless, the appellant submitted an example of a case, determined by the S.o.S in 2009 (**Ref APP/Z2505/V/09/2119176**) where a similar conflict occurred but where it was consequently found that failure to meet policy on the location of development at risk of flooding was just one of a number of material considerations that needed to be weighed in the planning balance. In the case cited, the Exception Test was found to have been met as the benefits of the development were found to outweigh the presumption against it and that it would be safe for its lifetime, without increasing flood risk elsewhere. The Inspector considered that this finding consequently confirms that there can be circumstances where development in Flood Zone 3 (C1 and C2 in Wales) can be permitted.

In granting planning permission, the Inspector concluded the benefits of the proposal in planning terms include the provision of a gypsy site in an area where there is an established need for such development. The provision of even one site would be considerable benefit in an area where it has clearly proved difficult to find suitable alternative locations for traveller development. The appellants have local connections and therefore wishes to stay in the area where other members of his family are also resident. Planning permission for the site would allow the children of the family to have a settled base close to a large village. The Inspector concluded that, whilst there is a policy conflict with respect to location of the site in Flood Zone 3, the actual harm caused by this would be slight. The benefits of the proposal are material considerations sufficient to outweigh any conflict with local and national planning policy.

7.15 In November 2019 an appeal was allowed in Cullompton, Devon (**APP/Y1138/W/3222285 – see Appendix D2**) despite the 'high risk to life' from flooding. The appellant's team argued that the risk associated with the site could be properly mitigated by conditions as accepted by the 2014 Inspector in an earlier approval. Mitigation measures included a timber walkway, an emergency plan and EA alert / warning. The 2019 Inspector concluded "I find that the proposal conflicts with criterion (a) and part of (b) of the policy as the site is at risk of flooding with consequential risk to life and property. Neither has it been demonstrated at this stage that there are no sequentially better sites available for this vulnerable use with less risk of flooding. Notwithstanding this principle against development, the actual risk could be managed by the

requirements of conditions and I am satisfied that the proposal is unlikely to increase the risk of flooding elsewhere and meets criterion (c). Moreover, I will consider the balance with benefits as also set out in criterion (b) in the main planning balance.” On weighing up the material planning considerations (i.e. Planning balance) extracts of the Inspector’s overall conclusions are stated below:

- *“Site lies in Flood zone 3 and is at risk of flooding with a high risk to life and property.....Significant weight has to be given to this adverse effect.*
- *“It is unlikely that the Council can demonstrate an adequate supply of new sites for gypsies and travellers.... Neither can any party show that there is any alternative public or private site available for the appellant to turn to. To my mind it is significant that in the 2012 appeal decision the Inspector concluded that it was likely that alternative sites would come forward within the next five years in the urban extensions. However, I have set out in paragraph 18 above there is still considerable doubt over this delivery despite this current appeal being five years later. Accordingly, I find as the need cannot be met on another site with consent or is so allocated, the proposal accords with criterion (a) of Policy AL/DE/7”.*
- *“the actual risk can be managed to a large degree through steps and actions required by conditions. There is not clear evidence before me to show that the appellant and his parents would not be able to meet these requirements, including the evacuation of the site, now or in the medium term.”*
- *On balance, I find that the weight attached to the flood risk does not override the current unmet need and long-standing lack of alternative sites for the appellant to relocate to. On this basis, although no alternative sites have been put forward that are sequentially better on flood risk, I find that the planning benefits of the proposal outweigh the risk of flooding as recognised in part (a) of Policy COR11.*
- *I will therefore allow the appeal”*

7.16 On researching opinion on Development Control Practice (DCP) online under Section 24.539 Flood Risk the following statement is made:

*“Caravans may be viewed as less of an impedance to flood waters or the capacity of wash land areas than permanent structures would be. However, gypsy sites often have associated structures which may be viewed as restricting flows or capacities. From the point of view of human safety, the ability of caravans to be moved quickly away from threatened land is an advantage that may offset objections, see Windsor & Maidenhead 04/09/1986 DCS No 048-918-512”*

7.17 The circumstances and location of the above allowed developments on appeal are similar, in some respects, to those put forward with this application and are relevant determining factors

## **8.0 CONCLUSION**

8.1 The applicant’s lifestyle and family traditions fall within the statutory definition of Gypsies as defined in Welsh Assembly Government Circular 005/2018 ‘Planning for Gypsy, Traveller and Show People sites and Section 108 of the Wales Housing Act. Both families are currently homeless and have a strong family history and connections within the south Wales and Swansea area. The site was purchased to enable them to continue their Gypsy lifestyle, to move to a safe

and secure site to enable the children to attend school and the families to continue receiving welfare and medical attention.

8.2 The Gypsy and Traveller Accommodation Assessment (GTAA), published in 2016, identified no need (an oversupply of 3 pitches) in the short term (2016 – 2021) with 4 pitches required on public residential sites towards the end of the LDP period (2022 – 2026). This need takes into account the supply resulting from the 11 pitches that received planning permission in February 2015 and the two pitches on the Briton Ferry site that were brought back into use. The study concluded the need for pitches would be assessed through the Annual Monitoring Report. There is no indication of where the further public pitches will be located, when planning permission will be applied for or whether funding will be available for the delivery of the additional pitches over the plan period.

8.3 It has been demonstrated that any unmet need for additional pitches will, over the next few years, only be satisfied by the provision of private sites brought forward by the gypsy community. Without this site, the applicants would effectively be homeless for the reasons explained in **Appendix A.** The current proposal is for the applicants to establish the site as their home as they cannot be accommodated on any other private authorised site within the County. The current policy is insufficiently flexible to cater for any unexpected demand for new pitches arising from the indigenous Gypsy community. Significant weight should be given to the lack of alternative sites within the county.

8.4 To address the unmet need the Council states that applications for Gypsy and Traveller sites will be considered having regard to the outstanding need in accordance with the most recent government guidance. Policy GT 2 is a criteria-based policy against which such applications will be assessed through the development management process. There will be a preference for accommodation needs to be met on allocated sites, which there are none, existing gypsy and traveller sites or on appropriate extensions to those sites or sites within existing settlements. However, Circular 005/2018 advises that sites in the countryside can be treated as exception sites subject to satisfying the criteria in Policy GT 2 and identifying a need that cannot be met elsewhere. There is a preference for such sites to be within a reasonable distance of local services and facilities though more remote sites may be acceptable. Although the term '*reasonable*' is not defined the site is sustainably located close to the large local centre of Crynant where there are a range of retail, commercial and community facilities.

8.5 The criteria in Policy GT 2 are met in that the development proposed is low level and small in scale without causing harm to the surrounding landscape or any nearby properties, has an excellent and safe means of access with on-site parking and turning facilities. The site can unobtrusively accommodate the development providing a spacious and safe layout for each pitch and services are available. The scheme details low level development similar to that at Ynyswen Farm.

8.6 The application site lies within a Special Landscape area however, the Ecological appraisal prepared by Elite Ecology concludes this development would not have significant adverse impacts on the features or characteristics of this region because the site was already fenced, is next to an existing property and would not require the destruction of relevant habitats in its completion. Biodiversity net gain can be achieved by fully implementing the proposed site

enhancements as detailed in section 5.4 of the appraisal to achieve a 10% net gain on existing at the site. These recommendations have been included on Drawing 02f which detail a comprehensive landscaping and planting scheme. A suitably worded condition on any permission granted would ensure the recommendations are fully implemented on completion of the development. The proposed residential units and day/utility rooms are well designed and low level structures within the landscape and for the above reasons it is concluded the proposal will not have a significant impact on the SLA in accordance with Policy EN2/2.

8.7 It must be remembered the traveller appeal allowed at Riverside Stables, Pen Y Bryn Pyle, Bridgend and the LPA planning approval at Caegarw Gypsy and Traveller site at Margam are in special landscape and green wedge areas, but having a need was deemed more important.

8.8 The application site lies partially (only the access) within a Zone C2, as defined by Development Advice Map (DAM) referred to in Technical Advice Note 15: Development and Flood Risk. The DAM confirms the western part of the site, to be occupied by the residential caravans and utility/day, will remain flood free during the Q100 event but that the eastern part is expected to be at risk during the Q1000 event. A Flood Consequences Assessment has been prepared by Francis Sant Ltd who recommend a number of flood mitigation measures which have been incorporated into the proposal and are detailed on Drawing 00d. The purpose of the FCA is to ensure all parties are aware of the risks to and from the development, and ensure that if practicable, appropriate controls can be incorporated in a planning permission to manage the risks and consequences of any potential flooding.

8.9 Article 8 of the European Convention on Human Rights as enshrined in the Human Rights Act 1998 gives paramount respect and importance to protect private and family life, as well as the public sector duties under the Equality Act 2010. Article 3 (1) of the United Nations Convention on the Rights of the child provides that the best interests of the child shall be a primary consideration in all actions by public authorities concerning children, meaning no other consideration can be inherently more important than the best interests of the child. The lack of alternative sites within the current plan period, the personal circumstances of each family, contained in **Appendix A**, and the rights of children and vulnerable people have significant weight to overcome the perceived harm the development would have on this well screened rural site. They must be afforded an importance or weight as great as any other material consideration prior to examination of the circumstances of the case.

8.10 **Appendix A** demonstrates the applicants are currently homeless which has created difficult living conditions for the families and stressful relations between the parents. The development of this site would be a considerable benefit in an area where it has clearly proved difficult to find suitable alternative locations for traveller development. The site is in the applicant's ownership and is readily available for immediate use. Circular 005/2018 and 016/2014 advise that, when there is a proven need for new Gypsy accommodation, where there are no readily available sites identified and it is unlikely that the aspirations of the Authority to make such sites available within the foreseeable future warrants a permanent planning permission provided the criteria in LDP Policy GT 2 are met. Temporary permissions create considerable uncertainty for applicants resulting in a reluctance to invest in developing a site.

The above demonstrates that very special and exceptional circumstances exist that outweigh any perceived harm to the surrounding rural landscape or risk from flooding.

Should you require any further information please do not hesitate to contact Hayston Developments and Planning Ltd.

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**RTPI**

mediation of space · making of place

# Appendices