



<b>Case reference</b>	NA-ABS-047 & NA-ABS-048
<b>Application details</b>	NA-ABS-047 (Aberdeenshire Council Ref: APP/2018/3027) Full Planning Permission for Change of use of agricultural land to form 9 stance caravan park touring gypsy/travellers site, formation of road and erection of boundary fencing, walls, gates, pump station and amenity blocks (part retrospective); and NA-ABS-048 (Aberdeenshire Council Ref: APP/2018/3028) Retrospective Change of Use of agricultural land to form 10 stance private permanent caravan, formation of road, erection of boundary fencing, walls, gates and education facility
<b>Site address</b>	Land South West of Eskview Farm, St Cyrus, Montrose, DD10 0AG
<b>Applicant</b>	NA-ABS-047 (Aberdeenshire Council Ref: APP/2018/3027) : North Esk Investments Ltd NA-ABS-048 (Aberdeenshire Council Ref: APP/2018/3028) : Mr Jim Reid (Agent for both applications : Seath Planning Consultancy)
<b>Local Authority Area</b>	Aberdeenshire Council
<b>Reason(s) for notification</b>	Category 2 (objection by Government Agency) (SEPA)
<b>Representations</b>	NA-ABS-047 : 80 – (50 Support, 30 Object) and NA-ABS-048: 49 - (20 Support, 29 Object)
<b>Date notified to Ministers</b>	5 August 2019
<b>Date of recommendation</b>	30 August 2019
<b>Decision / recommendation</b>	Call-in

### Description of Proposal and Site:

- The applications are for retrospective change of use of agricultural land to form a 9-stance touring caravan park and a 10-stance permanent caravan park for a gypsy/traveller site.
- The 3.31ha site, around 2km south-west of St Cyrus, Montrose, forms part of a low-lying strip of coastal land bound by sand dunes and marshland forming part of the St Cyrus National Nature Reserve to the northeast (with the North Sea beyond); the estuary of the River North Esk to the south; and a steeply sloping brae (tending to cliffs further to the north) forming its north-western edge.
- The site itself is prime agricultural land, a designated Coastal Zone and functional flood plain which is subject to medium to high risk of fluvial and tidal flooding (1 in 200 year envelope) and a combination of both. A small watercourse flows down an embankment towards the site and around its northern edge. The north-west of the site is within the St Cyrus and Kinnaber Links Site of Special Scientific Interest (SSSI). See Annex A for location plans and images.
- The site has been raised, creating a platform on which the gypsy/traveller site stands.
- The site has an extensive planning history, set out in Annex B. In summary, works started in 2013 without planning permission and there have been planning applications, enforcement notices, interdicts and appeals since. Scottish Ministers called-in the application in August 2016 and refused planning permission in September 2017 on flooding grounds. Enforcement action is on hold pending the outcome of the current applications.

- There are a number of proposed changes to the development since the 2016 application including: additional land within the site boundary, a revision to drainage arrangements, to visibility splays, and the provision of technical reports.
- The proposals are inextricably linked and can be considered in unison.

## **EIA Development**

- The proposed development is considered to fall within column 1 part 12 (e) Permanent camp sites and caravan sites of Schedule 2 of the Environmental Impact Assessment (Scotland) Regulations 2011. Aberdeenshire Council carried out an EIA screening opinion and determined that an EIA is not required.

## **Consultations**

- Scottish Environmental Protection Agency (SEPA) object on the grounds that development may place buildings and person at flood risk, which is contrary to Scottish Planning Policy (SPP). The site lies within the 1:200 year plus climate change flood plain. The proposed use of caravans and of a school classroom are identified as most vulnerable uses in SPP, which requires such developments to be outwith the 1:1000 year plus climate change flood plain. SEPA note that the land raising carried out on site is also contrary to SPP including no provision of compensatory floodplain storage. SEPA have considered the changes and mitigation proposed and remain of the view that there is a significant risk of flooding from the River North Esk and that there may also be a risk from future coastal flooding which has not been fully investigated by the consultant. SEPA consider that the flood inundation maps produced by the consultant significantly underestimate the true flood risk at the site. An appropriate climate change allowance added to the existing still water tide levels show flood levels above the minimum ground level. SEPA make reference to previous flood events in the locality of the site (2002, 2012, 2013, and 2015) and the substantial risk to people and property– those occupying the site, roads users in particular emergency services, and neighbouring residents. A flood risk contingency plan has been developed but SEPA state the site is not in a flood warning area and this does not reduce the risk of flooding on site.
- SEPA also object on the grounds that the applicant has failed to demonstrate an environmentally acceptable drainage solution. SEPA note that the current drainage solution is significantly different. With a population equivalent of 130, the new drainage proposals are for a private treatment works with a discharge to the River North Esk. SEPA's approach to discharges of this scale is for them to be adopted by Scottish Water. However, no applications under the Controlled Activities Regulations have been received by SEPA for the proposed discharge. The proposed emission point is within close proximity to the St Cyrus and Kinnaber Links SSSI and the St Cyrus National Nature Reserve. Given the absence of information, SEPA cannot advise on the potential ability to consent the foul drainage proposal.
- Aberdeenshire Infrastructure Services (Flood Risk and Coastal Protection) object on the basis that it is contrary to Flooding Policy in the Aberdeenshire Local Development Plan 2017 (LDP) as development should avoid areas of medium to high flood risk.
- Aberdeenshire Infrastructure Services (Environmental Health) object due to insufficient information on the use of a private water supply that is in place as opposed to utilisation of a Scottish Water supply.
- While Scottish Natural Heritage (SNH) has not objected, they have advised that there are natural heritage interests of national importance which will be affected by the proposal. The bund which has been constructed to enclose the site, without planning consent, in their view has an impact on the designated features of the SSSI. SNH advise that should

permission be granted, a condition would be necessary for the bund to be removed, or other restoration measures, to be agreed with SNH, put in place. This position has not changed since SNH produced a report on the original planning application in 2017. SNH state that as the current applications are retrospective, whether planning permission for the development is granted or not, the applicant is required by enforcement to implement the submitted restoration strategy for the area affecting the SSSI.

- The Scottish Government's Flood Protection Team have been consulted and they consider that the case raises issues of national significance as the proposal is contrary to all the relevant guidelines in relation to flooding set out in SPP and would set an extremely unhelpful precedent for new development on the floodplain. They recommend that the applications should be called in by Scottish Ministers to determine.

## **Representations**

- 129 representations have been made to Aberdeenshire Council, 70 in support and 59 in opposition.
- Grounds of support are summarised below:
  - The residents have been in-situ for some time and making them move, would have a significant impact on the families;
  - Aberdeenshire Council have a responsibility to provide sites for Gypsy/Travellers;
  - The area is being treated with respect and is always clean and tidy;
  - Low levels of noise and traffic are associated with the development; and,
  - The site would benefit those struggling to find a permanent address and would avoid the need to utilise roadside lay-bys.
- Grounds of objection are summarised below:
  - The focus should be on finding a safe, risk free site that avoids flood risk and is not contrary to policy;
  - Restoration should be taking place in accordance with Scottish Ministers previous decision;
  - Implications on neighbouring tourism business; and,
  - Detrimental visual impact of the development on the local landscape and the setting of the Category B listed viaduct.
- Following notification, Scottish Ministers received 10 items of correspondence from MSPs and from the public requesting the applications to be called-in for their own determination, asking why enforcement has been ignored and for Ministers to explain the courses of action available.

## **Assessment**

### Current planning applications

1. The applications have been notified to Scottish Ministers as Aberdeenshire Council are minded to grant planning consent against the advice of SEPA.
2. These applications follow refusal of planning permission by Scottish Ministers in 2016 on flood risk grounds.
3. SEPA still object to the current applications. The Council's Flood Risk and Coastal Protection Team continue to object and the Scottish Government Flood Risk Management Team are of the view that the proposed development remains contrary to all of the relevant guidelines in relation to flooding as set in SPP.

### Aberdeenshire Council Position

4. Aberdeenshire Council's Planning officials recommended that the current applications be refused as they are contrary to the LDP. While accepting that there is an identified need

and that there are social and economic benefits to the Gypsy/Traveller community, in this instance, it has not been demonstrated that the development would provide a secure environment in light of the susceptibility of the site to flood nor can it be properly serviced (foul water drainage). Furthermore the proposal could have inherent risks for flooding onto other adjacent land. In reaching a recommendation to refuse, account was taken of the material changes to the development proposals since refusal by Scottish Ministers in 2017. This includes additional land in the applications site boundary, revisions to drainage arrangements, provision of additional information on visibility splays and vehicle swept paths within the site, impact on nearby watercourse and residential properties; new pumping station and general surfacing arrangements and provision of technical reports - including a Flood Risk and Drainage Appraisal, North Esk Community Resilience Plan, Landscape and Visual Report, A Restoration Strategy for the St Cyrus and Kinnaber SSSI, Geotechnical Review on Stability of the Slope, Heritage Statement assessing the impact on the listed viaduct and additional planting/landscaping details.

5. On 27 June 2019 following consultation with the Kincardine and Mearns Area Committee, the Full Aberdeenshire Council (voted 46 in favour and 17 against) were minded to grant permission subject to conditions and a section 75 relating to healthcare contributions. The reason was because of the overriding need for touring and permanent halting sites for travellers in Aberdeenshire, and the Council's duties in terms of Section 149 of the Equality Act, 2010, to advance equality of opportunity between those who share a protected characteristic and persons who do not share it, and to foster good relations between those who share a protected characteristic and persons who do not share it. While Members recognise the applications still present a flood risk, Members do not accept, on the basis of historical information and projected flood levels, that this equates to a substantial risk to life. Members state that they have applied weight to the extensive mitigation measures that have been put in place by the applicant, including the establishment of a Flood Resilience Group and a flood resilience and evacuation plan. As a result, they are satisfied that the flood risk can be managed through the range of mitigation measures that have been put in place by the applicant. In respect of the foul drainage, the Council is satisfied that this could be adequately controlled by condition.

#### Previous 2016 planning application

6. Cognisance must be given to the findings of the Scottish Ministers in reaching their previous decision to refuse planning permission, and whether any of the changes or mitigation made through these current applications, resolve the concerns from that time. Scottish Ministers refused planning permission in 2017 because they considered that the development conflicted with the provisions of the development plan, and also with national policies on flooding.
7. The committee reports consider the material changes to the development proposals since refusal by Scottish Ministers in 2017 and note that efforts have been made to amend the development to make it more acceptable. In terms of the representations received on the applications it is noted that there are more in support than in opposition. However SEPA, the Scottish Government Flood Team, and the Council's own flood team still object to the development.
8. The applicants consider their updated FRA demonstrates that the severity of the flood risk has been overstated by SEPA and that the current applications avoid danger to life and property. Planning Statements in support of the development consider the feasibility and difficulties of identifying an alternative site for the development as opposed to managing and mitigating flood risk on the site.

#### Gypsy/Traveller sites position

9. It is understood that Aberdeenshire Council has been working towards identifying areas of land with the potential to be developed as sites for Gypsy/Travellers and four sites have been identified under the Aberdeenshire Local Development Plan at Blackdog, Ellon, Thainstone and in Kincardine and Mearns at the settlement of Chapelton of Elsick. However, these sites will not be delivered in the short-term. There are currently no established Gypsy/Traveller sites in the Kincardine and Mearns area of Aberdeenshire. Aberdeenshire Council has only the one permanent seasonal site at Greenbanks in Banff. Aberdeen City Council has one permanent all year round site at Clinterty. There is also a site located within the Angus Council area at St. Christophers in Montrose, approximately 5km to the south of the application site. This is a fully serviced permanent Gypsy/Traveller site which it is understood always operates to full capacity with many of those on the site residing there for many years/long term. Since the time of the previous 2016 application, one other halting site has been established at 'Aikey Brae' near New Deer which is for 10 stances, with a seasonal site (6 months) approved near Boyndie for a 15 pitch site. It is accepted that in light of the number of unauthorised encampments that have occurred in Aberdeenshire (2015 – 2018) there is a proven and established need for the provision of sites, particularly for those of a stopover/touring site nature.

### Conclusion

10. SPP states the planning system should promote “Flood avoidance: by safeguarding flood storage and conveying capacity and locating development away from the function flood plains and medium to high risk areas.” Para 256 also says that to achieve this the planning system should prevent development which would have a significant probability of being affected by flooding or would increase the probability of flooding elsewhere. Piecemeal reduction of the functional floodplain should be avoided given the cumulative effects of reducing storage capacity.
11. In conclusion, the development site is located within the undeveloped/sparsely developed floodplain in the Medium to High Risk of flooding category in SPP and has a history of flooding. The significant concerns expressed by SEPA, the Scottish Government’s Flood Team, and the Council’s own flood team remain despite the changes proposed since the previous application refused by Ministers in 2017. The development is contrary to policy, being a vulnerable use on a flood plain, and insufficient justification has been provided for departing from national planning policy on flood risk in this instance. Given the potential for risk to life and property, this case raises issues of importance that require consideration at a national level.

### **Decision/Recommendation:**

- It is therefore recommended that the applications are called in.

**Annex A – Images, Site Context and View of Site**



*Figure 1 - Wider Site Context (zoom earth)*

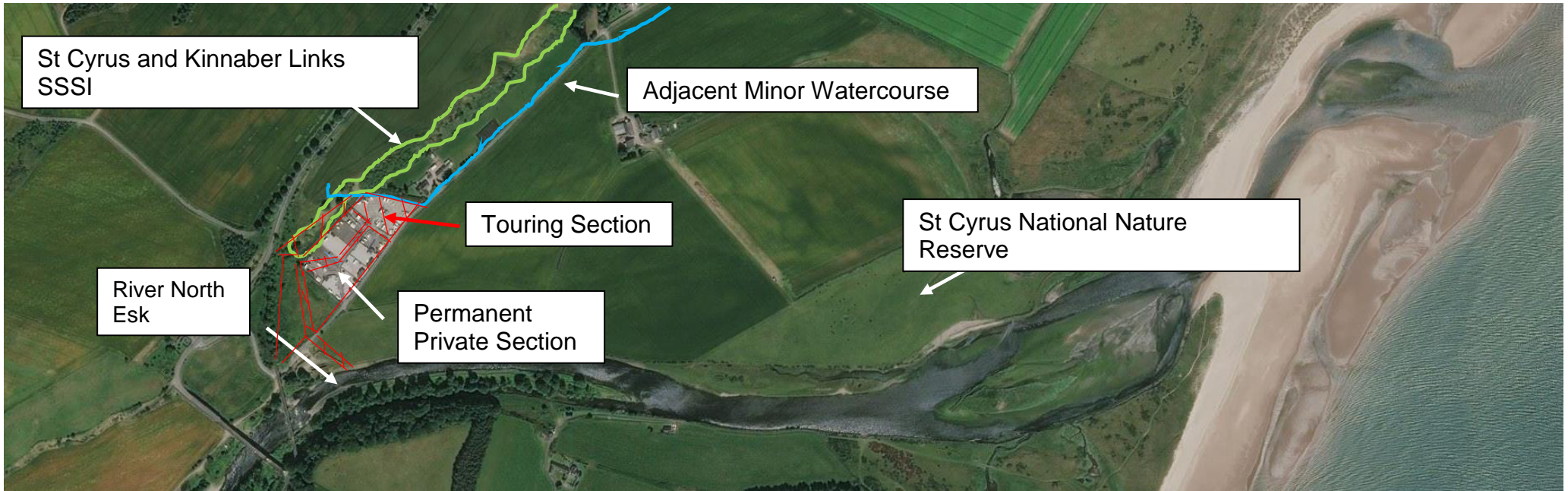


Figure 2 - Site Context (zoom.earth) Red hatching is boundary of application APP/2018/3027/ NA-ABS-047. Solid red line is boundary of application APP/2018/3028/NA-ABS-048.



Figure 3 - View of Site (sourced from the applicants landscape and visual impact assessment)



*Figure 4 - View of Site incorporating River North Esk (sourced from the applicants landscape and visual impact assessment)*



## Annex B - Planning History

There is an extensive planning history for this site which is summarised below:

- In September 2013 work started on-site without planning permission. Aberdeenshire Council issued a Temporary Stop Notice in respect of the work but work on-site carried on nonetheless. Two retrospective planning applications were submitted in September and November 2013. These sought planning permission for the establishment of a permanent caravan stance site in the south-western part of the overall site, and for a touring site in the north-eastern part. These applications were due to be determined by the Council under powers delegated to officers, but both applications were withdrawn before decisions were taken on them.
- In September 2014 two further applications for planning permission at the site were made to the Council. These applications were refused for a number of reasons - including flooding - by the Aberdeenshire Full Council in April 2015. No appeals were made against the refusals of planning permission.
- In October 2015, three subsequent enforcement notices became effective with a 6 month timescale to remove all works. The notices were appealed and the reporter sided two of the notices to allow for the consideration of a new application and the third was nullified due to ambiguity around actions to be taken by the applicant.
- In November 2015, a new planning application was submitted to Aberdeenshire Council and contained two distinct elements to the development – a touring section and a permanent section. The outcome of this application was that in April 2016, contrary to officer recommendation, Members were minded to grant planning permission subject to conditions. In doing so, members commented that the reason they were minded to grant permission, in light of a number concerns, including flooding - was because of the 'over-riding need for touring and halting sites for travellers in Aberdeenshire and the Council's duties in terms of Section 149 of the Equality Act, 2010'.
- As Scottish Environmental Protection Agency (SEPA) objected to the application on flooding grounds, the application was notified to Scottish Ministers in June 2016. In August 2016, Scottish Ministers called-in the application for their own determination, given the potential flood risk to life and property. This was followed by recalls of the outstanding enforcement notice appeals to be considered in parallel.
- In September 2017, Scottish Ministers refused planning permission for the application as it conflicted with national policy on flooding as set out in Scottish Planning Policy (SPP), and in the Local Development Plan. While noting the significant benefit of providing an identified need for accommodation for Gypsies/Travellers within the Aberdeenshire Area - Scottish Ministers considered that this did not outweigh the risks to the occupants from flooding.
- In respect of the enforcement notice appeals, the time for compliance was extended until 31 July 2018 as this co-ordinated with the end of the school year. On 28 June 2018, Aberdeenshire Council agreed to approve an additional 6 months extension to the enforcement notices as they had noted progress was being made with a new planning application for the site and there had been efforts to seek alternative sites which the residents could potentially move to.
- On 17 December 2018, the current planning applications were submitted to Aberdeenshire Council. The enforcement notices to address the previous refusal of permission were put hold pending the conclusion of these applications.

- On 27 June 2019, Aberdeenshire Council voted that they were minded to grant planning permission for both of the current applications. Members again reasoned that they were minded to approve permission because of the overriding need for touring and permanent halting sites for travellers in Aberdeenshire and the Council's duties in terms of Section 149 of the Equality Act, 2010.
- As SEPA has objected to the applications, they have been notified to Scottish Ministers and are currently under consideration.