

## SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

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**REPORT TO:** Planning Committee

3 August 2011

**AUTHOR/S:** Executive Director (Operational Services)  
Corporate Manager (Planning and New Communities)

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### **S/1631/10 - SWAVESEY**

**Continued and permanent use of land as gypsy caravan site (8 pitches) at  
Scotland Drove Park, Rose And Crown Road  
for W Fuller and Others**

**Recommendation: Approve for a further temporary period of three years**

**Date for Determination: 18 November 2010**

**Notes: This Application has been reported to the Planning Committee for re-determination following the Planning Committee's resolution to approve the application subject to conditions.**

#### **Background**

1. This application was first considered at the May Planning Committee meeting when " the Committee granted permanent planning permission being satisfied that the site was now an appropriate site in land use terms, subject to conditions set out in the report from the Corporate manager (planning and New Communities) ... and an additional condition being imposed requiring contributions towards open space and community infrastructure" (Planning Committee minute 217)
2. The possibility of imposing such a condition had not been raised with the applicant while the application was being determined. Neither was it raised as an issue as part of the consultation process. In view of this, the case officer has since written to the applicant's agent seeking confirmation that the need for the contributions is both reasonable and appropriate.
3. The agent has replied suggesting that the payment is inappropriate for a number of reasons. These are set out in a letter dated 10 June 2011, which is appended to this report and a further confidential letter dated 19 July 2011. This second letter contains detailed information on the families' financial circumstances and is available as a restricted electronic appendix.
4. The Committee is therefore requested to reconsider the matter and whether the proposed condition should be imposed. If not, the Committee needs to consider whether permanent planning permission should still be granted.

#### **Relevant Planning History**

5. The site was originally developed without planning permission in 2002. An enforcement notice (which still remains extant) was issued on 17 September 2002 requiring the use of the site to cease. Separate planning applications for each plot were refused on 22 November 2002 and were dismissed at appeal

on 2 July 2004 (following a successful legal challenge against an earlier inspector's decision in 2003). The inspector accepted there was a need for such a site, but concluded this was outweighed by the harm to highway safety and to the character and appearance of the area. He considered there was no case for a temporary consent given the identified harm

6. Despite this decision, the site remained occupied and a further planning application for the eight pitches was submitted in March 2007 (ref: **S/0601/07**). The Planning Committee considered the application at its meeting in July 2007 when it was resolved that temporary planning permission should be granted. This was subject to various conditions designed to overcome the problems highlighted in the earlier appeal. These included limiting the number of caravans on each plot to no more than five; implementation of an agreed landscaping scheme; suitable provision for foul water drainage; works designed to improve highway safety; and a restriction on external lighting.
7. Occupation was restricted to persons defined as gypsies and was for a temporary period only, expiring 1 September 2010. The reason for granting temporary planning permission was to reflect the advice in government guidance pending the preparation of a Gypsy and Traveller Development Plan Document.
8. The Committee resolved to grant permanent planning permission at its meeting on 6 May 2011.

#### **Relevant Planning Policy**

9. **ODPM Circular 01/2006 Planning for Gypsy and Traveller Caravan Sites** aims to increase the number of gypsy and traveller sites in appropriate locations. The only reference to the availability of community facilities is in paragraph 54, which advises that sites "should avoid placing an undue pressure on the local infrastructure". Paragraph 58 advises that "personal circumstances" are a consideration when considering planning applications.
10. **South Cambridgeshire Local Development Framework Development Control Policies 2007**  
**DP/4** Infrastructure and New Developments  
**SF/10** Outdoor Play Space, Informal Open Space and New Developments  
**SF/11** Open Space Standards
11. **Open Space in New Developments SPD** - adopted January 2009
12. **Community Facilities Audit** - Approved as Council Policy November 2009  
**Recreation Study Annex 1: Village Results**. June 2005
13. **Gypsy and Traveller DPD Issues and Options 2, July 2009 (GTDPD)**  
The GTDPD does not contain guidance relevant to the imposition of the condition.
14. **Circular 11/95 (The use of Conditions in Planning Permissions)**  
Advises that planning conditions should be necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable in all other respects.

15. **Circular 05/2005**

Advises that planning obligations must be relevant to planning, necessary, directly related to the proposed development to be permitted, fairly and reasonably related in scale and kind and reasonable in all other respects.

**Consultations**

16. None of those who were consulted or responded to the application raised the issue of infrastructure provision or contributions when the application was first considered. The County Council did not seek contributions towards education provision within the village.

**Planning Comments**

17. The payment of contributions will ultimately be secured by way of a legal agreement. In line with the advice in Circular 05/2005, the key considerations are that the planning obligations must be relevant to planning, necessary, directly related to the proposed development to be permitted, fairly and reasonably related in scale and kind and reasonable in all other respects.
- Relevant to Planning
18. The need for contributions follows the requirements of Policies DP/4, SF/10 and SF/11.
- Necessary
19. The relevant development policies and the documents set out in paragraphs 11 and 12 above explain why the contributions are sought. Policy DP/4 states that planning permission will only be granted for proposals that have made suitable arrangements for the improvement or provision of infrastructure necessary to make the scheme acceptable in planning terms. The policy goes to say that contributions may be necessary for matters such as public open space, sport and recreation facilities and other community facilities such as community centres and youth facilities.
20. SF/10 states that all residential developments will be required to contribute towards outdoor playspace and informal open space to meet the additional need generated by the development in accordance with defined standards set out in Policy SF/11. Thus there is a need for all sections of the community to contribute to the cost of all, or that part of, additional infrastructure provision, which would not have been necessary but for their development,
21. The South Cambridgeshire District Council Recreation Study June 2005 (Annex 1 Village Results) identifies there is a shortfall of both sports provision and play space within the village and a need to upgrade the children's play area. The basis for calculating open space contributions is set out in the Council's 'Open Space in New Developments' SPD adopted in 2009.
22. The Community Facilities Audit was approved as Council policy in November 2009. The Council is using an informal standard of 111 square metres per 1000 heads of population for developer contributions towards community

- facilities in South Cambridgeshire, in advance of a Planning Obligations Supplementary Planning Document being formally adopted.
23. The occupation of the site is clearly a residential development and, as a matter of principle, is therefore required to contribute to both open space and community facilities.
- Directly related to the proposed development
24. The site occupants are being asked to contribute to the cost of all, or that part of, additional infrastructure provision, which would not have been necessary but for their development. It is therefore directly related to the proposed development. The planning permission relates to the site as a whole. The contribution to be paid is therefore required as a single sum and it would ultimately be for the occupants to decide how the payment would be split between them.
- Fairly and reasonably related in scale and kind
25. Both the SPD and the Community Facilities Audit seek contributions based on occupancy rates. This is in turn based on the number of bedrooms. Where the number of “dwellings” is not specified, the Council will assume a minimum of 30 dwellings per hectare.
26. In this case, we are not talking about dwellings in the conventional sense, but occupation as a result of a number of caravans. The intention is to limit the planning permission (as before) to a maximum of 5 caravans per plot and indeed some of the plots already have, or have had, this number of caravans on them. While it is impossible to be prescriptive in this case as to what level of occupancy could be achieved on each plot, the SPD assumes that an average occupancy rate of 3.32 persons is likely to arise from a four-bedroom dwelling. This is the maximum basis on which contributions will be sought. As each of the eight plots has the capacity to well exceed this occupancy rate – and many already do – this seems as a minimum, to be a fair and reasonable basis on which to seek contributions.
27. As such, a contribution of £34,071.17 towards open space provision and £5,630.72 towards the provision of community facilities is required. This equates to a total of approximately £4963 per plot.
28. It should be noted that no contribution towards the provision of refuse bins is necessary as these have already been provided on the site.
- Reasonable in all other respects
29. While the families’ needs are not additional to the community, they have only occupied the site lawfully since August 2007 (the application was submitted shortly before and approved a month after the LDF policies were adopted). The permission was also a temporary one and was therefore expected to cease at some point in the future. In such cases, no contributions would have been sought and that would remain the case if the site had been granted a further temporary planning permission.
30. Because the original recommendation of officers was for a further temporary planning permission, the potential need for contributions was not

communicated to the applicant at application stage. Nonetheless, the Planning Committee has since resolved that the requirement is necessary in order that the application can be granted permanent planning permission. In considering this and the above tests, officers do not consider that the private provision of this site is any more significant than the development of private housing. While it is accepted there is a shortage of Gypsy sites in the district, this fact alone does not obviate the need for a site to address a shortfall in infrastructure provision, which would not have been necessary but for its development.

31. This is not an issue about when payment will be made as this can be negotiated as part of any agreement.
32. In response to the request for contributions, the occupants have questioned the extent to which payments have been sought previously. It appears there have been three other instances of permanent planning permission being granted since the Open Space SPD and Community Facilities Audit were adopted. None of these sites was asked to make a financial contribution and the occupants at Scotland Drove would be the first. The Committee will also be aware of the application for additional traveller pitches at 4 and 5 Pine Lane, Smithy Fen, which is reported elsewhere on the agenda.
33. The letter dated 19 July on behalf of the site occupants sets out their current financial circumstances in some detail. It concludes that the families living on the site are of very limited means, struggling to pay off existing debts and with limited incomes. They say that none of them can afford to pay a commuted sum payment. They also point out the site has been provided at no cost to the Council and helps the Council meet its requirement to provide sufficient sites in the District. While the information put forward cannot easily be tested, it has been confirmed that are two families that have Council Tax arrears as stated. Against this, the letter fails to acknowledge that a permanent planning permission would provide a significant upturn in value of each plot, all of which are above average in size compared to other traveller plots.
  - Conclusions
34. The Council has not previously sought contributions for Gypsy and Traveller sites. While this would be the first, provided that the Council acts consistently in its approach towards contributions and applies the proper tests, there is no reason in principle why contributions shouldn't be secured.
35. The problem arises, however, in securing a sum that is founded on a proper calculation. The requirements for both open space and community facilities provision are based on occupancy rates which cannot readily be calculated from the number of caravans. Caravans may be both static and for touring purposes and will not therefore necessarily be used to accommodate different people.
36. More significantly is the need to take account of the occupant's personal, and particularly their financial, circumstances. These are capable of being a material consideration and there have been instances at appeal where planning inspectors have taken these into account as part of the overall balancing exercise in deciding whether to grant planning permission. I have no reason to doubt the financial circumstances in this case and as such, consider they should be given appropriate weight.

37. Given the lack of precision in the way contributions are currently calculated for development involving caravans and the families' financial circumstances, officers conclude that there is sufficient evidence to suggest that the 'full' contribution as calculated should not be paid in this case. At the same time, it might be the case that a reduced contribution should be paid, albeit this would require further investigation. There is a danger that to not accept a contribution would set a precedent for future applications.
38. Given there remains a sound basis for contributions, officers conclude that it would be most appropriate if the planning permission for this site be granted for a further temporary period to allow a more robust way of securing contributions to be delivered.
39. It is therefore suggested that planning permission be granted for a further temporary period of three years (as originally recommended) subject to the conditions previously agreed. This would allow a policy to be developed which enables contributions to be more ably secured.

**Recommendation:**

40. Approve for a temporary period of three years subject to the conditions previously agreed, but without the need for contributions to be paid towards open space and community facilities.

**Background Papers:** The following background papers were used in the preparation of this report:

- South Cambridgeshire Local Development Framework 2007
- Circular 01/2006

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