

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO: Planning Committee 5 October 2011
AUTHOR/S: Executive Director (Operational Services) / Corporate Manager (Planning and New Communities)

S/1561/09/F - WILLINGHAM
Continued Use of Land for One Gypsy Pitch (Comprising 2 Caravans) - The Stables
Schole Road Willingham
for Mr D Bibby

Recommendation: Temporary Approval

Date for Determination: 21 December 2009

Notes: This application has been reported to the Planning Committee for determination because the recommendation of approval is contrary to that of the Parish Council.

Site and Proposal

1. The site lies to the east side of the village of Willingham, and is outside of the village framework, as identified within the South Cambridgeshire Local Development Framework 2007. The site measures approximately 32m by 26m excluding the access, and is set back from Schole Road, which is a Public Bridleway. Access is achieved to the east side of the site along the existing access track. The land between the site and Schole Road is also within the applicant's ownership.
2. The site is enclosed by 1.8m high panel fencing on all sides, with the vehicle entrance the only open aspect of the site. At the time of the site visit, there were two mobile homes on the site. There is good planting around the site, particularly screening views from Priest Lane to the north. The site lies behind the applicant's lawful site, which fronts Schole Road.
3. The full application, validated on 26 October 2009, seeks permanent consent for the continued use of the site as a single pitch for the siting of two mobile homes. The applicant does state in their accompanying Planning Statement that a permanent permission would be preferable, although it is understood a temporary consent is likely to be the best outcome due to the status of the Gypsy and Traveller DPD.

Planning History

4. A planning application (S/0999/93/F) for land fronting Schole Road granted temporary consent for Mr Bibby for two mobile homes. A subsequent application (S/0263/94/F) was refused but allowed at appeal to make the use permanent subject to a personal condition.
5. A previous application (S/0856/04/F) for four mobile homes on the current application site was refused. This was on grounds of a lack of evidence showing the applicant is from the travelling community, impact upon the open countryside, and the cumulative effect on the rural character of the area. In dismissing the subsequent appeal, the Inspector stated the development would be harmful to the character of the area. It

was considered that other land in the applicant's ownership should be looked at for future development. No highway safety concerns were noted.

6. Application **S/1578/08/F** seeking permission for the siting of four gypsy mobile homes was refused on the site, on grounds of the impact upon local infrastructure and the impact upon the landscape character of the area.
7. Members should be aware of a recent appeal decision relating to a site at 3 Cadwin Field, Willingham (**S/1919/08/F**) directly to the south of the site. An application for temporary consent was refused by Members at the February Planning Committee, but allowed at appeal. The Inspector noted the need for sites in the District and stated that planning permission should only be for a temporary consent to enable a proper evaluation of all potential sites identified through the Development Plan Document process.

Planning Policy

8. Paragraph 71 of **PPS3 Housing** states that where local planning authorities cannot demonstrate an up-to-date five year supply of deliverable sites they should consider favourably applications for housing having regard to policies in the PPS.
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. This will be achieved by a thorough assessment of needs and the identification of sites by local authorities in Development Plan Documents. Each local authority should have a realistic criteria-based policy to assess other sites that come forward as planning applications. Paragraph 44 of the Circular advises that local planning authorities should take account of a number of factors before refusing a planning application for a Gypsy and Traveller site. This includes an assessment of need, the number of unauthorised encampments, the numbers and outcomes of planning applications and appeals, occupancy of public sites, the status of authorised sites and the bi-annual Caravan Count.
10. Paragraphs 45 and 46 provide advice on the desirability of temporary planning permissions. Where there is unmet need but no available, alternative gypsy and traveller site provision in an area but there is a reasonable expectation that new sites are likely to become available at the end of that period in the area, which will meet that need, local planning authorities should give consideration to granting a temporary permission. Such circumstances may arise in a case where a local planning authority is preparing its site allocations DPD. In such circumstances, local planning authorities are expected to give substantial weight to the unmet need in considering whether a temporary planning permission is justified. The fact that temporary permission has been granted on this basis should not be regarded as setting a precedent for the determination of any future applications for full permission for the use of the land as a caravan site.
11. **Accommodation for Gypsies and Travellers and Travelling Showpeople in the East of England - A Revision to the Regional Spatial Strategy for the East of England. July 2009 (RSS)**
H3 Provision for Gypsies and Travellers
12. **South Cambridgeshire Local Development Framework Core Strategy 2007**
ST/5 Minor Rural Centres

13. **South Cambridgeshire Local Development Framework Development Control Policies 2007**
DP/1 Sustainable Development
DP/2 Design of New Development
DP/3 Development Criteria
DP/7 Development Frameworks
NE/4 Landscape Character Areas
NE/10 Foul Drainage
14. **District Design Guide SPD** - Adopted March 2010
15. **South Cambridgeshire Local Plan 2004 (Saved Policies)**
CNF6 Chesterton Fen
16. **Gypsy and Traveller DPD (GTDPD)**
17. The site has been excluded as an option from the GTDPD. The Issues and Options 2 Consultation July 2009 states that a number of services in the area are at full capacity, and the site would have wider landscape impacts when viewed from the north and east. In view of the pending revocation of the RSS, the Council is now awaiting the outcome of an updated Gypsy and Traveller Accommodation Needs Assessment (GTAA) that is currently in preparation by the County Council and revised government guidance on planning for the needs of Gypsies and Travellers. This assessment will assist in identifying what level of local provision should be planned for in South Cambridgeshire; this will then form the basis for further consultation.
18. The Council's **Race Equality Scheme 2008-2011** recognises Gypsies and Travellers as the largest ethnic minority in the district (around 1% of the population). The Scheme gives priority to actions relating to travellers.
19. **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.
20. **Circular 05/2005**
 Advises that planning obligations must 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

21. **Willingham Parish Council** recommends refusal of the application. They note the previous reasons for refusal still apply, and the infrastructure implications are more serious than originally envisaged. Granting permission is considered to prejudice the consultation process of the GTDPD, and the site is now illegal.
22. The **Local Highways Authority** notes no significant adverse effect upon the public highway should result from this proposal.
23. No comments have been received from County Council Education Team, Willingham Primary School, and the Council's Planning Policy Team, Landscape Officer and Travellers Liaison Officer.

Representations

24. None were received.

Planning Comments

25. Having regard to the Council's determination of the previous planning application and the definition of Gypsies and Travellers as set out in paragraph 15 of ODPM Circular 01/2006, the applicant and the other site occupants are considered to be Gypsies for the purposes of planning policy. The application therefore falls to be considered against planning policies regarding Gypsy and Traveller sites.
26. I consider that the main issues in this case are the extent to which the application accords with the provisions of the development plan; the general need for, and availability of, additional gypsy sites; the site occupants' personal needs and circumstances; the case for a temporary permission; and Human Rights Issues.

The Development Plan

27. The requirement of RSS Policy H3 to significantly meet demand and provide at least 69 additional (permanent) pitches in the district by 2011 will not be met. However, while RSS Policy H3 remains part of the development plan, the Secretary of State's intention to revoke this and Circular 01/2006, which underpins it, is clearly a material consideration to be taken into account.
28. Since the loss of Policy HG23 from the 2004 Local Plan, the development plan does not contain any specific criteria-based policies against which to assess the impact of proposals for gypsy sites. While saved policy CNF6 allocates land for use as gypsy sites at Chesterton Fen, a number of previous appeal decisions have ruled out the possibility that there is still land that is suitable, available and affordable.
29. The Council therefore primarily relies upon the general principles policies DP/1 - DP/3, although these need to be utilised in accordance with the advice in Circular 01/2006 and numerous appeal decisions that gypsy sites are often located in the countryside and that issues of sustainability should be seen in the round with a more relaxed approach be taken given gypsies' normal lifestyle.
30. The principal concern in this case is the impact on the character and appearance of the area. The site lies in the Bedfordshire and Cambridgeshire Claylands Landscape Character Area as defined in Policy NE/4, although the District Design Guide SPD classifies the area as 'Fen Edge'. The area is characterised by a generally low-lying, open landscape with large agricultural fields and long-distant views. The land is not otherwise designated or protected. While parts of the site are visible from the public bridleway of Schole Road that passes the site, it is generally well screened by the lawful development and the hedgerows in the vicinity. The site does not detract significantly from the enjoyment of those who may use the bridleway. Nonetheless, the relatively isolated nature of the site means the mobile homes are partially visible in the landscape, and as a result, would cause some harm.
31. The application seeks a permanent consent, although the applicant has noted that a temporary consent would be acceptable if necessary. Given the status of the GTDPD and the impact upon the landscape, it is not considered appropriate to put the site forward for a permanent consent. Therefore a temporary consent is to be duly considered. Members should be aware of Circular 01/2006 described above, which

states a temporary consent would not set any precedent for the determination of a full application in the future.

32. The Inspector, in determining application S/0856/04/F, noted the vegetation in the vicinity, but noted the site would be visible from Schole Road and from further afield, particularly during winter months. This vegetation has matured in the meantime, with the view from Priest Lane in particular being much reduced, especially in the summer months. The lawful plot to the east is much more prominent in views from Priest Lane. While the advice in Circular 01/2006 is that gypsy and traveller sites can be located in the countryside, officers are not persuaded, particularly in the absence of meaningful existing planting, that the use of the site with its inherent domestic paraphernalia would not be contrary to Policies DP/2, DP/3 and NE/4 that seek to preserve or enhance the character and appearance of the local area and countryside and to protect landscape character.

The General Need for, and Availability of, Additional Gypsy Sites

33. In South Cambridgeshire, the number of caravans with either permanent or temporary planning permission has remained relatively static between January 2009 and January 2011. The number of caravans (11 in total) without any form of planning permission has also remained unchanged. For some considerable time now, the two public sites at Milton and Whaddon have remained full with waiting lists of at least a year for Milton and considerably longer at Whaddon. The results of the latest January 2011 bi-annual count identified 126 caravans on sites with temporary planning permission and the count continues to show there remains a shortage of permanent gypsy sites in the district. The results of the current GTAA are awaited before an accurate up-to-date assessment of current needs can be made.
34. In the most recent appeal decision involving a Traveller family at Cottenham, the inspector found there remains a “substantial unmet general need for additional pitches in the district” and that this “attracts significant weight” in the decision-making process. While there may be some dispute as to whether the demand is “substantial”, it is the fact that unmet need is a material consideration that weighs in favour of this proposal. In coming to a decision the Inspector gave considerable weight to the personal circumstances of the applicants and weighed them against the harm from the proposal before coming to the conclusion to permit the proposal. The key issues in that case were the applicants' poor health and the lack of any alternative accommodation.

The Site Occupants' Personal Needs and Circumstances

35. The applicant's mother and his son occupy the two mobile homes. The former is of pensionable age and living on her own, whilst the latter has a wife and young daughter not yet of school age. The son and his wife have been registered with the village surgery for 21 and 14 years respectively. The application does not put any pressure on the local school, and it is noted they have not commented upon the scheme.
36. The family are all considered to have local connections. In accordance with the advice in Circular 01/2006, this is a consideration that carries some weight. The family have occupied the site for a number of years (albeit unlawfully in part), and the son has lived at the Stables since 1990, and also attended the local schools.

Permanent Permission

37. Officers consider that the continued use of the site continues to be harmful to the existing distinctive landscape character. This could be ameliorated by suitable planting, although this would be at a cost that the applicant may not be willing to spend given the temporary nature of this recommendation. To this end the proposal is contrary to Policies DP/2, DP/3 and NE/4. The site is in a generally sustainable location and would continue to assist the family with its health needs. Nonetheless, officers believe that a permanent permission would be inappropriate. While the lingering requirements of Policy H3; the lack of suitable alternative sites; and the families' general needs carries some weight in favour of the proposal, the occupants' circumstances are not so pressing as to outweigh the perceived harm.

Temporary Permission

38. Circular 11/95 advises against a temporary condition unless the applicant proposes temporary development, or where a trial run is needed to assess the effect of the development on the area (paragraph 109). The imposition of conditions, including a temporary use, would not make the use any more acceptable. The degree of harm would be the same as if permanent permission had been granted. The advice in Circular 11/95 is not only to be read alongside that in paragraphs 45 and 46 of Circular 01/2006, but also it is clearly embraced within it.
39. At the same time, regard must be paid to paragraphs 45 and 46 of Circular 01/2006. As there is unmet need but no available, alternative gypsy and traveller site provision in the area, where there is a reasonable expectation that new sites are likely to become available which will meet that need, local planning authorities should give consideration to granting a temporary permission. The GTAA and the consequent consultation process will aim to provide the additional sites that are found to be required.
40. In such circumstances, local planning authorities are expected to give "substantial weight" to the unmet need in considering whether a temporary planning permission is justified. There is also some additional weight to be attached to the personal accommodation needs of the applicants.
41. Officers therefore conclude that a further temporary planning permission is an appropriate course of action. In considering the recent Cottenham appeal, the Inspector noted that the new GTAA is expected this spring. After that the Council will go on to develop its site allocations DPD that will involve public consultation. Following public consultation and the adoption of the DPD there will also have to be planning applications in relation to the allocated sites and they will take a little time to develop. In these circumstances the Inspector considered that 5 years is a realistic timeframe to enable sufficient sites to come forward.
42. There is every possibility that an effective consultation and site selection process could be achieved in a much shorter time and the latest work on taking forward the DPD suggests that it could be adopted by the end of 2013. Following on from this, there may be a requirement for certain sites to obtain planning permission. In this context, officers consider that a further three-year consent in this case would be appropriate. This should be subject to conditions that restrict occupation to Gypsies and Travellers, limit the number of caravans and business use on the site, and control external lighting. At the end of this period, the process will have progressed, and the suitability of sites within the GTDPD will be assessed. The site can then be

considered again against the policies of the time, particularly as the site is not within the GTDPD.

Human Rights Issues

43. Refusal of permanent planning permission would lead to interference with the applicant's rights under Article 8 of the European Convention on Human Rights. This must, however, be balanced against the protection of the public interest in seeking to ensure needs arising from a development can be properly met, or that they do not prejudice the needs of others. These are part of the rights and freedoms of others within Article 8 (2). There is no lesser or alternative action that could be taken to secure the public interest, especially as the harm is considered to be significant. Refusal of permanent planning permission would therefore be proportionate and justified within Article 8 (2).

Decision/Recommendation

44. Approve subject to the following conditions
1. **The site shall not be occupied by any persons other than gypsies and travellers as defined in paragraph 15 of ODPM Circular 01/2006 Planning for Gypsy and Traveller Caravan Sites.**
(Reason: The site lies in the countryside where residential development will normally be resisted by Policy DP/7 of the adopted Local Development Framework 2007).
 2. **The use hereby permitted shall be for a limited period being the period of 3 years from the date of this decision. At the end of this period the use hereby permitted shall cease, all materials and equipment brought on to the land in connection with the use shall be removed, and the land restored in accordance with a scheme previously submitted to and approved in writing by the local planning authority.**
(Reason: In accordance with the advice in Circular 01/2006 Planning for Gypsy and Traveller Caravan Sites, the Council is preparing a Gypsy and Traveller Development Plan document, and on a without prejudice basis to a permanent consent on this site, a time limited consent will enable the Local Planning Authority to properly assess the needs of gypsies and travellers within the district)
 3. **No more than two residential caravans as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 shall be stationed on the pitch at any one time and the number of pitches shall not exceed 1.**
(Reason: To minimise the impact of the development on the surrounding area in accordance with Policies DP/2 and DP/3 of the adopted Local Development Framework 2007.
 4. **No commercial activities shall take place on the land, including the external storage of materials.**
(Reason: To protect the visual amenity of the area in accordance with Policies DP/2 and DP/3 of the adopted Local Development Framework 2007.)
 5. **No vehicle over 3.5 tonnes shall be stationed, parked or stored on any part of the site.**
(Reason: To protect the visual amenity of the area in accordance with Policies DP/2 and DP/3 of the adopted Local Development Framework 2007.)

- 6. No external lighting shall be provided or installed within the site other than in accordance with a scheme which has been submitted to and approved in writing by the Local Planning Authority.
(Reason - To minimise the effects of light pollution on the surrounding area in accordance with Policy NE/14 of the adopted Local Development Framework 2007.)**

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

- Accommodation for Gypsies and Travellers and Travelling Showpeople in the East of England – A Revision to the Spatial Strategy for the East of England. July 2009
 - South Cambridgeshire Local Development Framework 2007
 - South Cambridgeshire Local Plan 2004
- Planning application S/1561/09/F, S/1578/08/F, S/0856/04/F, S/0999/03/F, S/0263/94/F and S/1919/08/F.
 - CLG Count of Gypsy and Traveller Caravans

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