

**NORTH HERTFORDSHIRE DISTRICT COUNCIL**

**PLANNING CONTROL COMMITTEE**

**Meeting held in Spirella Ballroom, Letchworth Garden City on  
Wednesday 18 January 2017 at 7.30p.m.**

**EXTRACT FROM MINUTES**

**PRESENT:** *Councillors: David Barnard (Chairman), Fiona Hill (Vice-Chairman), John Bishop, Paul Clark, Bill Davidson, Jean Green, Lorna Kercher, Ian Mantle, Alan Millard, M.R.M. Muir, Harry Spencer-Smith and Michael Weeks.*

**IN ATTENDANCE:** *Simon Ellis (Development and Conservation Manager), Tom Rea (Area Planning Officer), Nurainatta Katevu (Property and Planning Lawyer) and Hilary Dineen (Committee and Member Services Officer).*

**ALSO PRESENT:** *At the commencement of the meeting Councillor Tony Hunter and approximately 47 members of the public including 5 registered speakers.*

**72. 16/02460/1 - LAND AT JUNCTION OF POTTERSHEATH ROAD AND DANESBURY PARK ROAD, WELWYN**

Retrospective application for change of use of land to use as a residential caravan site for two gypsy families, each with two caravans including no more than one static mobile home, erection of two utility buildings, additional hardstanding, associated parking spaces, erection of entrance gates, timber fence and ancillary works (as amended by plan no. 3 and site layout plan received 7/12/16)

The Area Planning Officer informed Members that he had one update to the report in that he had received an email from the occupier of 14 Woodlands Park Homes stating that they had no objection to the proposal.

The Area Planning Officer introduced the report of the Development and Conservation Manager, supported by a visual presentation.

The Area Planning Officer informed Members that the application site was adjoined by a former quarry site, beyond which was a mobile home site with approximately 42 static mobile homes and that there were a number of existing residential properties opposite the site.

He drew attention to the existing site at Pulmore Water, which was the only Gypsy and Traveller site in the District and indicated the area that was being proposed as a new Traveller site in the Local Plan. This site had temporary planning permission for 6 pitches, which was granted in 2012 and expired 7 March 2017. The central area of Pulmore Water site was currently occupied by a number of static caravans which were in private rented use, the other areas on the site were currently occupied by Travellers.

Although the Pulmore Water site was indicated as a Traveller site in the new Local Plan, the expiration of the current planning permission would leave a gap in the provision until the Local Plan was adopted.

The Area Planning Officer advised that due to the above there was an under provision in the District which would add weight to the argument to grant temporary permission at the Pottersheath Road site.

He advised that, in his opinion, it was better to recognise the shortfall in Gypsy and Traveller accommodation in the District and grant restricted temporary planning permission, personal to the applicant, until adequate provision was made in the emerging Local Plan.

The report clearly stated that the application was inappropriate development in, and would cause harm to the Green Belt and therefore granting of planning permission was not justified. However, this was a balancing exercise and he believed that there was a case for granting temporary permission. He asked that Members consider the planning balance and support his recommendation.

Parish Councillor Helena Gregory. Codicote Parish Council, speaking in objection to the application, thanked the Chairman for the opportunity to address the Committee.

She informed Members that the Planning Officer had stated that it was incumbent on decision makers to judge retrospective planning applications on the same basis as a prospective application, you have to ignore that the applicant had decided to circumvent all planning legislation and had proceeded to build in the Green Belt. You must imagine the site as it was, lightly wooded and sustaining light impact agricultural use and must ask yourselves whether the area, in the Green Belt suitable for development. You must also ignore that what had already been built bore no relation to the site plan submitted with the application and that the recent planting of shrubs intended to screen and soften the impact of the two metre high fence was a mix of laurel and leylandii, which were two of the most contentious species of hedging.

Parish Councillor Gregory advised that the Planning Officer had stated that, when considering a retrospective planning application, the decision taken should not judge it any more harshly because it had already taken place. The Officer acknowledged that the development had a significantly adverse impact on openness and failed to assist in safeguarding the countryside from encroachment.

Contained in the supporting statement was some very emotive rhetoric. Hertfordshire County Council Children and Families Department confirmed that children of traveler families were finding it consistently challenging to secure appropriate accommodation suitable for their needs and cultural requirements and that, without the support of their community, social isolation could lead to deterioration of mental health. Yet these two families elected to leave their extended family in an established community and with an impressive degree of alacrity established a new community.

Parish Councillor Gregory informed Members that Philp Brown, speaking on behalf of the Connors family, stated that decision makers must keep the interests of the children in the forefront of their mind, particularly in this case, as the only alternative would be to live on the road side and that there was along standing failure by the Council to meet the personal needs of the Connors family to provide a site where they could live together as a traditional extended family group. However, the Planning Officer stated that, in respect of the already established Pulmore Water site, it had been identified that a number of pitches on that site were occupied by non-gypsy and travelling households. If there was such availability in North Herts, but the available pitches were being sub-let to migrant workers, why could this family not be accommodated on this established site, in keeping with the identification of the land. Local knowledge indicated that the occupation of this site by migrant workers was seasonal and that this time of year they were not resident, so there would be ample provision.

The Planning Officer may advise that the Pulmore Water site was the subject of a Planning Inspectorate temporary planning permission and that the pitches were due to be vacated, however this was the very site identified in the emerging Local Plan for a further six pitches and Codicote Parish Council had recently been notified by NHDC Planning Department that the immediate intention was to submit a further planning application for this site.

In respect of the application site at Pottersheath Road, Philip Brown had stated that, given the absence of a five year supply of deliverable land for gypsy sites, the application site was likely to be a prime candidate for the application of the emerging Local Plan. The fact was that the numbers had already been decided and sites allocated, which did not include this site.

The Campaign for the Protection of Rural England (CPRE) stated that NHDC had made additional pitch provision in its emerging Local Plan, which should be given due weight. The application site was not included in the provision and the Green Belt Policy should therefore take precedence.

Parish Councillor Gregory concluded by stating that the Planning Officer's recommendation was for a three year period of occupation, in order to bring some stability to the children's life and education. How unsettling would it be to know that in three years time you must uproot your children, it would be far better for the families to be settled now on a site where they could plan a future and put down roots, in the certainty that they could remain there.

Mr Jeremy Pike, speaking in objection to the application, thanked the Chairman for the opportunity to address the Committee and advised that there were five further points to bear in mind.

This was an existing breach of planning control, which the Councillors should give weight to, particularly as there was a High Court Injunction relating to this site which was sought by this Council in 2013. The applicant's were in breach of this injunction and it was not in the public interest for this Council to allow an injunction of this nature to be flouted. This detail was not mentioned in the Committee report and no explanation had been given as to why the view about development on this site had changed. This change of opinion brought the planning system into disrepute and undermined public confidence in Local Government decision making.

From 2015 it has been Government Policy to require Council's to take into account that there had been intentional unlawful occupation of a site when considering a planning application. The Government stated at that time that they were very concerned about the intentional occupation in the Green Belt. The intentional and unlawful occupation of this site in the Green Belt since 2015 was a material consideration that should be given considerable weight. If the Council ignored this matter or did not give weight to it, others may well try the same approach resulting in a lack of confidence in the planning system and in local government.

The Secretary of State had stated that he was extremely concerned about this sort of intentional and unlawful development in the Green Belt, therefore the Council should consider whether or not to refer this application to be called-in by the Secretary of State.

This site had an important function in preserving the openness of the countryside being outside of any settlement boundary or allocation and the Government Planning Policy regarding traveler sites stated that there should be very strict control over traveler sites in the countryside which were away from settlements or allocations. This was not addressed in the report, but should be given weight to.

The built structures and hard standing on the site, visible in the photographs included in the presentation, clearly caused harm to the countryside and to the openness of the area.

The development caused harm to the Green Belt and to the openness of the Green Belt and that harm was considerable. The Planning Inspector, in a recent appeal decision relating to an application for a single dwelling at Windmill Cottage, not far from this application site, found that it would cause significant harm to the openness of the Green Belt and that matter weighed significantly against the proposal and he found, in this case that very special circumstances had not been demonstrated. There was no reason to take a different view with this application site which contained more structures. This appeal Inspector also found this site to be an unsustainable location which contrasts with the case officer's report on this case in a very similar location whereby he concludes the site to be sustainable.

The report suggested that the application site was previously developed land, it was in fact an agricultural site on which the Council granted a lawful development certificate in 2013 for reasons that it was for use in connection with the agricultural site.

There was a need for very special circumstances to be demonstrated in order to outweigh the harm to the Green Belt and any other harm caused. It may be that there was a lack of a five year supply of land, but the Government Policy, as at August 2015, was that a lack of supply did not carry significant weight when making decisions about sites in the Green Belt. Given the nature of this proposal and the history of planning contravention on the site, this matter shouldn't carry any weight at all.

Whilst the report suggested that there would be an impact on children, Government policy suggested that unmet need was unlikely to constitute very special circumstances in the Green Belt and therefore this was something the Councillors should not give weight to.

The Property and Planning Solicitor advised that, in relation to the injunction, mentioned by Mr Pike, when this application came to the Council advice was sought from a QC who advised that the injunction had no bearing on this particular application. Therefore Members should ignore comments about that injunction when considering the application.

Members sought clarification regarding the advice given about the comments in relation to the injunction, specifically, why would the Council spend money getting an injunction only to advise that it should be ignored for this application.

The Property and Planning Solicitor advised that her understanding of the 2013 injunction was that it related to a different situation in that buildings were being erected on the site without permission and without clarification of exactly what was being constructed, therefore the injunction was sought, which was specific to that particular person. This application was different in that an application had been received, albeit that work had been carried out prior to receiving a grant of planning permission. Advice from Counsel was that injunctions needed to be specific to a situation and a person, this injunction would not stand as it was for a completely different situation and for different persons.

The Chairman thanked Parish Councillor Gregory and Mr Pike for their presentations.

Councillor Steve Hemingway, Councillor Advocate speaking in objection to the application, thanked the Chairman for the opportunity to address the Committee.

Councillor Hemingway stated that some excellent technical reasons for refusal of this application had been made by the previous speakers.

He wished to address the question of whether or not deficiencies in the current Local Plan constituted very special circumstances under Paragraph 88 of the National Planning Policy Framework.

The policies which form part of the Local Plan were a matter for the Planning Policy Department and to argue that a shortfall in traveler pitches was a reason to allow this outrageous retrospective application was weak.

The only way to get an independent view on whether the circumstances put forward constituted very special circumstances was to refuse the application, following which the applicant would either remove the buildings or would appeal. If the applicant appealed, a planning inspector would review the circumstances around this development, which would be harmful to the Green Belt, and make a judgment as to whether they constituted very special circumstances.

Everybody seems to agree that that the development would be harmful to the Green Belt.

The application was for temporary permission, granting this would store up problems in the future including likely difficulties with enforcement in three years time, the possibility that additional static caravans appear on the site and granting permission would encourage an extension of this type of development in the area.

Councillor Hemingway concluded by stating that there were alternative provisions available, some not far away from this site and urged Members to refuse the application, if only to allow a higher decision making body to review the circumstances.

Councillor Jane Gray, Councillor Advocate speaking in objection to the application, thanked the Chairman for the opportunity to address the Committee.

Councillor Gray advised that she had previously been the Ward Member for a long time and therefore knew the area well. She stated that speakers had already made some compelling arguments for refusal.

The consultees mentioned in the report were singing with one voice and it was incumbent on Members to listen to those consultees when they talk about inappropriate development in the Green Belt and the lack of very special circumstances.

She noted Hertfordshire County Council's comment that they had known the family for many years and they were unlikely to be a problem. This may well be the case, but she had never heard of this reason being used as a reason for granting planning permission.

The concept of viewing the application as if it were prospective rather than retrospective was difficult and involved considering the site as if the unauthorised development had not taken place but this was the only way as the alternative would be to say that the development was already there and therefore there was no choice. This application must be considered as if the families were not occupying the site and the children's interests had not been established at the site.

Despite this requirement to view the application as if it were prospective, Members were being asked to give way on the inappropriateness of this development for the sake of these children's interests, which intellectually are not supposed to be taken into account.

The children's interests were of course important, but they would surely be better served without a temporary permission hanging over them for three years. It would be better for them if they were housed elsewhere and it should be noted that the family took the, perhaps rash, decision to leave their previous site and did so entirely at their own risk.

Councillor Gray concluded by advising that Section 77 of the 1990 Town and Country Planning Act enabled the Council to refer this to the Secretary of State for call-in, in this case by reason of the scale or nature or location. Officers may not think that the effect of this development was significant enough on the openness of the Green Belt, but granting permission would give the wrong message to the community and the District as a whole, as it would set a precedent, which would be referred to as justification for other developments.

The Chairman thanked Councillors Steve Hemingway and Jane Gray for their presentations.

Mr Philip Brown, the Applicant's Agent, speaking in support of the application, thanked the Chairman for the opportunity to address the Committee.

Mr Brown advised Members that the report set out clearly the decision making process and that the concept of very special circumstances was something to be considered after the balancing exercise had been undertaken. The balance being that, on one side was the harm to the Green Belt and on the other side the benefits of the scheme. At the end of the balancing exercise there would either be a set of very special circumstances or not.

The benefits of the scheme that add up to outweigh the harm caused did not have to be very special in themselves, but could be a cumulative effect of the benefits.

He did not dispute that this application was inappropriate development in the Green Belt, but this did not, of itself, prevent planning permission being granted.

This development replaced existing structures associated with the former poultry farm, which included a mobile home and therefore only had a marginal effect on openness. This was a small scale development in a location between Danesbury Park and the A1 that would not encroach significantly into open countryside.

The site was relatively well screened and more planting was proposed to provide further screening and settle the development into its surroundings and be in keeping with Danesbury Park.

In respect of other matters to consider, there were no highway objections, the site was not at risk from flooding and the development would not affect any nearby properties. The issues regarding noise and contamination had been investigated and do not provide a bar to development.

The harm caused was by reason of inappropriateness, some limited harm to openness and some limited harm by reason of encroachment into the countryside.

On the other side of the balance, unmet need had been identified in North Herts for Gypsy sites and the County Council had confirmed that the applicant's had put their names on waiting lists for public pitches, but there was little possibility of getting alternative accommodation. Welwyn Hatfield Council had confirmed that there were no suitable sites to accommodate these families in its area.

These families had strong local connections, with the children attending local schools and Welwyn Hatfield Council raised no objection to this families needs being met on the application site.

It had been suggested that the families had made themselves homeless by leaving Four Oaks. They left Four Oaks because of a dispute on the site, which made it dangerous for them to remain. They went from Four Oaks to travelling around the roadside before finally having to reluctantly come onto the application site prior to the determination of their application. It defied logic that someone would leave an authorised site and disrupt their children to go travelling on the roadside, if they were able to stay there. The family left because they had to and now could not return, even if they wished to, as it was fully occupied.

The Council sought to rely on Pulmore Water to meet unmet need for the future. At the moment this was only a temporary site and was not an allocated site in a Local Plan nor been through an examination in public. It was in the Green Belt, just like the application site, but it was full. There were no occupancy conditions to limit occupancy to gypsies and travellers on the majority of the Pulmore Water site and much of it was occupied by non travelers. Therefore the suggestion that pitches could be made available by displacing non travellers was false.

The Committee report set out the personal circumstances of the site residents. A previous speaker stated that the needs of the children did not have to be taken into account, this was incorrect as the needs of the children was enshrined in the Human Rights Act and must be taken into account as a primary consideration when making a decision regarding their future.

The occupation of the application site had allowed the provision of secure accommodation of a high standard, rather than being on the roadside. The children could live and play there in secure and safe surroundings and residing on the property had enabled them to maintain regular attendance at school. It was a testament to that applicant that, despite travelling on the roadside, they had done their best to keep their children in school, as they realised that education is the future and of the four children residing at the site, three were in school.

Mr Brown stated that, if there were no alternative sites in Welwyn and no alternative sites at Pulmore Water, the only alternative, if planning permission is not granted, would be to go back to travelling on the roadside with all the problems that would cause.

It was clear that, despite the progress made in emerging Local Plans, the woeful shortage of accommodation had built up over a considerable period of time. Land should have been allocated as long ago as 1994, as detailed in Circular 1, this was repeated in 2006. It was now 2017 and there was still no land allocated for Gypsy sites in this area. Because this Council had relied on Pulmore Water, it was acknowledged that allocation would take place in the Green Belt. However the need was greater than the proposed provision of a few pitches on Pulmore Water.

Mr Brown concluded by stating that, although planning policy on traveler sites say that, subject to the best interest of the child, personal circumstances and unmet need are unlikely to outweigh harm to the Green Belt, this did not mean that they never would and did not mean that there were not other factors which would tip the balance. In this case the other factors that helped to tip the balance included the lack of alternative sites, personal circumstances and the failure of the development plan.

Members asked whether the family had resided on the previous site legally and sought clarification regarding the statement that the family was forced to leave their previous site and whether they chose to leave.

Mr Brown confirmed that they resided on a site and because of pressure for accommodation on that site, they were effectively forced off and the spaces that they vacated had now been filled. They left the site because it was dangerous for them to stay. The traditional way that gypsies and travelers resolved disputes was to move away from each other. This family chose to leave the site peacefully rather than invite trouble.

The Chairman thanked Mr Brown for his presentation.

The Area Planning Officer, in response to the presentations, informed Members that Officers had given regard to the injunction served on the site. They sought legal advice and were advised that the Authority should determine the planning application prior to considering any further action.

The reference made by Mr Pike to the Planning Policy statement regarding unauthorised development was acknowledged and accepted by Officers and Members may wish to give regard to this when considering the application. It should be noted however that the Council did receive the application just prior to the occupation of the site by the applicants.

The Area Planning Officer acknowledged the comment made that the application site was in open countryside, but considered that it was contained by existing road infrastructure and was adjacent to the development in Danesbury Park Road.

In respect of the advice contained in Policy 25 of the Planning Policy for Traveller Sites, the report confirmed that this development was harmful to the Green Belt therefore only temporary planning permission was relevant. The report clearly identified that permanent planning permission would not be appropriate.

The Area Planning Officer noted the comment regarding the Windmill Cottage appeal decision, however it was established practice that each planning application be considered on its own merits, whilst having regard to all material planning considerations. In that particular instance there had been no previous development on site. The site being considered had previous development and was supported by very special circumstances and there were the interests of the children to consider. The sustainability comments made by the Inspector regarding the Windmill Cottage site were understood, but that site was more than 300 metres further away from shops and was only accessed through a narrow country lane, whereas the application site could access shops via footpaths down Cannonsfield Road.

The site was not within zones 2 or 3 of the Environment Agency flood zone, the surfacing material used on the site was porous gravel and there were very few structures on the site leading to the opinion that there was unlikely to be any surface water.

Members referred to the case in St Albans, mentioned in the report, where the balancing of considerations had been regarding Human Rights and Green Belt issues and asked how much weight had been given to the decision made in that case when making the recommendations.

They queried how many sites had been granted temporary permission and how difficult it was to stop them becoming permanent.

The Area Planning Officer advised that the St Albans case was mentioned as part of a submission made by the Campaign for Rural England. He confirmed that making the decision was a balancing act and that, in his opinion it was about proportionality. In this case there were families living on the site and this was about those families losing their homes. He was unsure whether there were people living on the St Albans site.

In terms of enforcement, he had no experience regarding temporary sites in North Herts, but the Council had enforcement powers to deal with these matters including the power to issue breach of condition notices and take action if necessary

The Development and Conservation Manager advised that the Council had enforcement powers and those powers were the same now, as the site did not have planning permission, as they would be in three years time. The complexities of the enforcement process, including the right to appeal against an enforcement notice were available now, if Members resolved not to grant planning permission and would exist in three years, if Members resolved to grant temporary planning permission and that permission expired. The issue of how difficult it would be to enforce would be there whatever the circumstances.

Members asked for confirmation as to whether the advice from Counsel supplied by one of the objectors was to be considered as evidence that could be referred to. In respect of the newly erected fence around the application site they asked what the permitted height should be.

The Chairman confirmed that the advice from Counsel had been sent to all Members of the Committee by email in the previous 24 hours.

The Property and Planning Solicitor informed Members that the advice had been supplied by Mr Pike as part of a representation made by him and was referred to as part of his presentation, therefore it could be referred to by Members.

The Area Planning Officer advised that the maximum permitted height of a fence adjacent to a highway was one metre, this was increased to two metres where a fence was set back from the highway. The applicants had sought the advice of Officers and were advised that a fence of up to two metres did not require planning permission.

Members asked whether Woodland Park, adjacent to the application site, was in the Green Belt and, if it was, what were the very special circumstances that enabled permission to be granted for that development. They queried what buildings had previously been on the application site and whether the current static mobile home was far enough away from the neighbouring property.

The Area Planning Officer advised that confirmed that the Woodland Caravan Park was in the Green Belt, but was unable to clarify details of the history, he understood that permission was granted a number of years ago.

In respect of the application site, he confirmed that the site had previously had a lawful development certificate for agricultural use, which included a number of small sheds and a static mobile home. The current static mobile home was close to the fence, but this was not a planning issue, rather was something to be enforced by the Environmental Team.

Members asked for clarification that, if this application were approved, any increase in the number of caravans on the site would be the subject of a further application.



The Area Planning Officer confirmed that any further structures on the site would require further planning permissions and that Condition 3 of the recommendation would restrict the amount to that shown in the site layout.

Members debated the application and made the following comments and observations:

### Planning Regulations

There could not be one set of planning regulations for one element of society and another for the travellers.

Advice had been given to Members that they must consider retrospective applications in the same way as prospective applications, however advice given by Counsel to Mr Pike stated that, under 2015 legislation, unlawful development was a material consideration. The site prior to development had been full of trees, most of which had now been felled and, if the mass felling of trees had been part of a proposal being considered, objections would have been raised.

### Green Belt

The application for development on this land was not an exception to the Green Belt policy and development on this site in the Green Belt should not take place.

### Human Rights Considerations

The arguments made regarding article 8 of the Human Rights Act did not outweigh the Green Belt policy. The applicant had the same rights as everyone else and they made a choice, for whatever reason, to leave their previous site.

It was proposed and seconded that the application be refused planning permission for the following reasons:

- The development was in the Green Belt and would cause harm to the Green Belt;
- The development was inappropriate and caused harm to the openness;
- The applicant had proceeded with development of the land without permission;
- Very special circumstances to outweigh the harm caused had not been demonstrated.

The Development and Conservation Manager advised Members that the injunction mentioned during the debate could not be used as a reason for refusal, it was a tool that could be used in connection with any enforcement action.

The Chairman reminded Members that, if Members decided to refuse the application, all reasons for refusal must be included, as additional reasons could not be included at a later date.

Upon the vote it was:

**RESOLVED:** That planning application 16/02460/1 be **REFUSED** planning permission for the following reason:

The development represents inappropriate development in the Green Belt which causes harm to the Green Belt by reason of inappropriateness and harm to openness. In the opinion of the Local Planning Authority the applicant has not demonstrate sufficient very special circumstances to outweigh this harm. The development is therefore contrary to Policy 2 of the North Hertfordshire District Local Plan No. 2 – with Alterations and paragraphs 88-90 of the National Planning Policy Framework (NPPF).

Proactive Statement

Planning permission has been refused for this development for the clear reasons set out in this decision notice. The Council acted proactively through positive engagement with the applicant in order to overcome several concerns however fundamental objections could not be overcome. The Council has therefore acted proactively in line with the requirements of the Framework (paragraphs 186 and 187) and in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2015.

The Chairman adjourned the meeting for 5 Minutes to allow members of the public to disperse.