

REPORT FOR STRATEGIC PLANNING COMMITTEE

Date of Meeting	11 February 2015
Application Number	14/11256/VAR
Site Address	The Poplars Residential Park, Poplar Tree Lane, Southwick BA14 9NB
Proposal	Variation of Condition 1 of planning permission W/12/00537/FUL to state the site shall not be occupied by any persons other than gypsies and travellers
Applicant	Mr L Cash
Parish Council	SOUTHWICK
Ward	SOUTHWICK
Grid Ref	382273 154598
Type of application	Full Planning
Case Officer	Matthew Perks

Reason for the application being considered by Committee

This application is brought to Committee at the request of Councillor Prickett for consideration since the Parish Council object to the removal of the family-specific condition attached to the approval given by the Inspector on earlier appeal. The application is before the Strategic Committee as it would, if approved, increase the number of pitches available for travellers.

1. Purpose of Report

To assess the merits of the proposal and to recommend that planning permission be granted for the variation of the occupancy condition to allow the site to be occupied by any gypsy or traveller(s).

2. Report Summary

The key issue to consider is allowing the use for general traveller occupation of the site in terms of applicable policy criteria and the related delivery of Gypsy and Traveller sites under the adopted Core Strategy.

Neighbourhood Responses: 4 letters of objection were received.

Southwick Parish Council - Objects to the proposals for the reasons cited within section 7 below.

3. Site Description

The application site is a rectangular parcel of land situated on the north-western side of Frome Road to the east of the junction with Poplar Tree Lane. The land falls in the open countryside without any special statutory designation, some 1.2km from Southwick Village Policy Limits. Access to the site is off of Poplar Tree Lane, approximately 50m from the intersection between the Lane and the A361 Trowbridge to Frome road.

4. Planning History

The applications that relate to the use of the site for gypsy and traveller purposes are set out below.

W/12/00537/FUL: Erection of mobile home, utility dayroom and siting of one touring caravan: Refused, but granted permission on appeal: 08.03.2013

W/13/00722/FUL: Extension of hardstanding: Permission 25.04.2014

14/07284/FUL: Change of use of agricultural land to extend an existing Gypsy and Traveller site to accommodate two additional pitches and associated landscaping. Erection of two additional day rooms and retrospective permission for entrance gate and walls: Refused 24.10.2014

5. The Proposal

The application is for a variation of condition 2 of the permission granted under Appeal for Application W/12/00537/FUL to allow for general Gypsy and Traveller use. The current condition reads as follows:

2. The occupation of the site hereby permitted shall be carried on only by the Mr Laurence (Lawrence) Cash and Mrs Theresa Cash and their resident dependants. Should the land cease to be occupied by these persons the use hereby permitted shall cease and all caravans, structures, materials and equipment brought on to or erected on the land, or works undertaken to it in connection with the use, shall be removed and the land shall be restored to its condition before the development took place.

If permission were to be granted, this would be replaced by the condition set out as No. 1 in the recommendation below and reads as follows:

The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1 to Planning Policy for Traveller Sites (DCLG 2012).

No other changes are proposed to the development on site.

6. Planning Policy

Wiltshire Core Strategy

Core Policies 1 & 2 Settlement and Delivery Strategies

Core Policy C47: Meeting the needs of Gypsies and Travellers - read in conjunction with the Wiltshire Gypsy and Traveller Accommodation Assessment (GTAA)

National guidance

National Planning Policy Framework, 2012

Planning Policy for Traveller Sites: (PPfTS) DCLG, March 2012

Planning Practice Guidance

The Government's stated aim in the PPfTS, 2012 is to ensure fair and equal treatment for travellers, in a way that facilitates the traditional and nomadic way of life of travellers while respecting the interests of the settled community.

7. Consultations

Southwick Parish Council

The parish advises that at the appeal hearing, the Planning Inspector decided that, based on the evidence presented, the personal needs of the Cash family were so great that permission was granted in their sole favour. This permission should not be extended to all gypsies and travellers.

Wiltshire Council Highways

The Officer notes that the proposed change of condition would not result in additional pitches and so no significant highway impact would result; therefore there are no highway objections to raise.

Wiltshire Council Spatial Planning

The Officer notes that Section 38(6) of the Planning & Compulsory Purchase Act, 2004 (as amended) and Section 70(2) of the Town & Country Planning Act 1990 (as amended) prescribe that planning applications are determined in accordance with the provisions of the development plan unless material considerations dictate otherwise. The application relates only to the planning merits (or otherwise) of removing the condition associated with the permitted use of the site. "As such, it can be argued that the provisions of the development plan are not necessarily invoked through the consideration of this application, as there are no proposed material changes to the scope and form of the existing permitted development."

The effect of removing the condition would be to allow for general use of the site by members of the Gypsy and Traveller community, rather than just the named parties. The proposal has no bearing on the physical impact of what has been permitted and it is only a matter of judgement if the condition goes beyond what is necessary in order to control the permitted use of the site.

8. Publicity

The following is a summary of the objections received:

- Discussions with applicant's son confirm family "all desperately wanted to live on the site together. Inference was that having lost so much on another site refusal everything now depended on this site;
- Appears changes to the planning are now for a business proposition, to rent out pitches, which will create more massive and disruptive issues. Object to the variation of condition;
- Site history leads to the perception that the owners wish to develop the site rather than live there themselves;
- Error in section 7 of form, site is visible from public road;
- At no stage does covering letter comment on why this change is needed;
- Reason for the appeal being granted was to allow the owners the opportunity to create a stable home environment for themselves and their dependants. No case or reason has been made for the change.
- Vital that all the documents relating to this appeal are considered;
- Appeal case was based on the accommodation needs of the family;

- Application is ". Latest episode in a series of actions by the Applicant designed to extend and intensify the use of land in his ownership";
- Less than two years since permission was granted on appeal, when applicant agreed with the terms under which consent would be granted;
- Site has been occupied contrary to the condition;
- even during the appeal hearing itself "...the applicant was observed, shortly prior to the Inspector's site visit, loading several adult males..." and removing them "...apparently in a blatant act of subterfuge.";
- In 2014 Applicant attempted to have his land approved for use as a Proposed Certificated Camp site through the Caravanning & Camping Club without success;
- Committee subsequently refused application 14/07284/FUL for tripling of size/number of occupants;
- Proposals suggest representations made to the Appeal hearing that development of this site was "...an exercise in property speculation, and the Applicant is merely a developer with no long or even medium term aim to occupy as his original application claimed."
- No indication of how condition is to be changed or is intention to remove it in entirety which is wholly unacceptable;
- If intention is to enable the Applicant to continue to share the currently permitted site with immediate family who may not be dependant, then this should be stated.
- Failure to suggest an alternative clause implies existing consent would no longer be limited to those with gypsy status.
- Incomplete reference in supporting document to previous report on application 14/07284/FUL. approval was only acceptable in principle subject to appropriate conditions which included Condition 1;
- Applicant's personal circumstances carried great weight in the Inspector's decision;
- After 15 unsuccessful years searching for an appropriate site "...I am incredulous that the Applicant now seems to have found another site to move on to.";
- Agent states that "personal use condition was offered up at appeal by the appellant's agent without any authorisation from his clients" but this was not the case. Agent consulted fully with Mr & Mrs Cash;
- Application relates is Condition 1. Over the last two years since the appeal Applicant, or others occupying the site, "... have persistently remained in breach, not only of Condition 1, but also of Condition 2 limiting the number of caravans to 3 and Condition 4 relating to a prohibition on the burning materials on open ground and of commercial activities and storage of materials on the site. Furthermore, the removal of the hardstanding material required by the Appeal decision at Para. 70, whilst commenced, was not completed and now even more hard surfacing material has been deposited in the field. These breaches must be remedied also."

9. Planning Considerations

Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise

Planning application W/12/00537/FUL was considered under the West Wiltshire District Plan in particular including policy CF12 (Gypsy Caravan Sites) read in conjunction with the NPPF; The Planning Policy for Traveller Sites (2012) and the then emerging Core Strategy.

The Core Strategy has in the interim been adopted, and policy CF12 of the former district plan is no longer relevant.

The use of the land as a gypsy/traveller site has been established by virtue of the Inspector's decision, albeit that he decided at the time to impose a condition to the effect that the permission should apply only to Mr & Mrs Cash and dependant family members, giving

weight inter alia to their personal circumstances. The current application proposes amending the condition to allow for general traveller use. No other changes are proposed.

With specific regard to the “5 Tests” for Planning conditions under Government Planning Practice Guidance (6 March 2014) it is inter alia stated that:

- A condition must not be imposed unless there is a definite planning reason for it, i.e. it is needed to make the development acceptable in planning terms; and
- If a condition is wider in scope than is necessary to achieve the desired objective it will fail the test of necessity.

As noted by the Spatial Planning Officer the proposal has no implications in terms of the additional physical impact of the change of use and development that has already been permitted. The key consideration is therefore whether or not the site is suited to general gypsy/traveller use irrespective of any special circumstances that apply to the current occupants.

In considering the Parish and neighbour objection to varying the condition, it should be noted that the Planning Policy for Traveller Sites (2012) Par 21 states that applications for traveller sites should be assessed and determined in accordance with the presumption in favour of sustainable development and the application of specific policies in the NPPF. In the Wiltshire Core Strategy, Core Policy 47 (Meeting the needs of Gypsies and Travellers) now has relevance, replacing the old WWDP CF12 (Gypsy Caravan Sites). The locational criteria that apply to Gypsy and Traveller sites under CP47 are:

- i. No significant barriers to development exist in terms of flooding, poor drainage, poor ground stability or proximity to other hazardous land or installation where conventional housing would not be suitable*
- ii. It is served by a safe and convenient vehicular and pedestrian access. The proposal should not result in significant hazard to other road users*
- iii. The site can be properly serviced and is supplied with essential services, such as water, power, sewerage and drainage, and waste disposal.*
- iv. The site must also be large enough to provide adequate vehicle parking, including circulation space, along with residential amenity and play areas*
- v. It is located in or near to existing settlements within reasonable distance of a range of local services and community facilities, in particular schools and essential health services.*
- vi. It will not have an unacceptable impact on the character and appearance of the landscape and the amenity of neighbouring properties, and is sensitively designed to mitigate any impact on its surroundings.*
- vii. Adequate levels of privacy should be provided for occupiers*
- viii. Development of the site should be appropriate to the scale and character of its surroundings and existing nearby settlements, and*
- ix. The site should not compromise a nationally or internationally recognised designation nor have the potential for adverse effects on river quality, biodiversity or archaeology.*

These criteria are broadly similar to the Criteria that previously applied under WWDP Policy CF12, viz:

A Potential nuisance to adjoining land uses, in particular, residential areas;

B Encroachment into open countryside;

C The needs and safety of future occupants & their children;

D Highway safety, access, pedestrian safety, the impact of traffic on local roads & access to public transport;

E Availability and adequacy of infrastructure e.g. electricity, drinking water, sewerage or on-site treatment or storage of effluent;

F The proximity of local services and facilities e.g. shops, refuse collection, hospitals, medical services & schools;
G The need to protect the best and most versatile agricultural land;
H Potential flood risk and any unacceptable increased flood risk to other riparian owners arising from the development.

The Inspector, in coming to his decision, cumulatively considered the policy criteria as well as the personal circumstances of the applicants and concluded inter alia that: “...the development has not and would not, if it continued, cause material harm to the rural landscape or highway safety, subject to the imposition of appropriate conditions. On this basis I conclude that the development would not infringe any of the development plan policies of relevance, with the exception of Policy C1 of the DP, which I have found to now be inconsistent with the national advice on gypsy and traveller sites contained in the PPTS.” (Note: These were the old WWDP Policies, and Policy C1 related to development in the Open Countryside and did not include Gypsy and Traveller sites in allowable forms of development. The Inspector found this to be inconsistent with National Policy, which does allow for such sites outside of the confines of Development Limits.)

Thus, whilst acknowledging that the Inspector’s decision gave significant weight at the time to the personal circumstances of the applicants and that that was a contributory factor towards the appeal decision, the site which accommodates 1 pitch in a locality which the Inspector found to be in accordance with policy criteria, is considered to be acceptable when evaluated under Core Policy 47. The Condition specifically restricting the use to named persons is therefore not needed to make the development acceptable in planning terms, where varying it to provide for general traveller use would not have any new material impact in terms of the location or surrounds.

With regard to the provision of Gypsy and Traveller pitches, the Spatial Planning team has reached a point where a new Gypsy and Traveller Accommodation Assessment (GTAA) has been prepared in accordance with the commitment in the Wiltshire Core Strategy. This will guide pitch requirements in Core Policy 47 to be included in the yet-to-be-prepared Gypsy and Traveller Development Plan Document. The GTAA covers a 15 year period 2014-2029. and concludes that overall there is a requirement for 90 traveller pitches between 2014 and 2029; and 7 additional plots for travelling showpeople. The Gypsy and Traveller DPD will allocate sites for travellers but is still under preparation. As matters stand therefore no adopted policy taking into account the GTAA findings is in place. The Core Strategy however remains the starting point in determining new proposals and the requirements included in Core Policy 47 remain relevant. However, the GTAA is recognised as new data that is a material consideration in determining planning applications for traveller sites.

The GTAA further states that the estimated extra provision that is required now and for the plan period to 2029 in the **North and West HMA** (within which this site falls) will be 68 additional pitches to address the needs of all identifiable households. This includes the existing households on unauthorised sites, sites with temporary planning permission, concealed households and growth in household numbers due to new household formation. Broken down into 5-year estimates, **the additional pitch requirement for 2014-19 is 21. As 10 pitches have been permitted since July 2014, the residual requirement in the HMA is for 11 pitches.**

Thus, whilst the proposed variation of condition does not imply the provision of any additional pitch, it would free up a site for general occupation in a locality where the principle of the use has been found to be acceptable.

In order to secure the site for Gypsy and traveller use it is noted that Planning Practice Guidance states, with regard to conditions, that:

“Unless the permission otherwise provides, planning permission runs with the land and it is rarely appropriate to provide otherwise. There may be exceptional occasions where granting planning permission for development that would not normally be permitted on the site could be justified on planning grounds because of who would benefit from the permission. For example, conditions limiting benefits to a particular class of people, such as new residential accommodation in the open countryside for agricultural or forestry workers may be justified on the grounds that an applicant has successfully demonstrated an exceptional need.”

Given that occupation of the site outside of development limits would conform with one of those exceptional circumstances, i.e. a gypsy/traveller site, it is considered that the condition would be appropriately varied to permit occupation only by gypsy and/or travellers:

“The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1: to Planning Policy for Traveller Sites 2012.”

With regard to other neighbour objections, the majority relate to the site history, allegations about motives behind the historical and current proposals on site and issues with the actual use of the site. It is acknowledged that the Inspector gave significant weight as part of his deliberations to the particular issues facing the family and that these, combined with other policy considerations, including lack of sites, led to the permission. However, other matters such as the personal motivation for the purchase or development of the site or indeed whether or not the applicant has managed to make alternative arrangements are not planning policy issues.

Any permission granted would constitute a new decision regarding the use/development of the site. Where the appeal application W/12/00537/FUL has been partially implemented development would be confined to the details approved for that scheme. Any variation from those details would require separate planning permission. However certain conditions relating to caravan numbers, restricting certain activities on site and highway safety would need to be re-stated.

10. Conclusion

Whilst noting the parish and neighbour comments received on the Inspector's decision, it is considered that the site nevertheless accords with Development Plan policy particularly in relation to locational criteria that apply, and that the variation of the condition would contribute towards the general supply of gypsy/traveller site to meet the identified residual 2014-'19 need for 11 additional pitches in the North and West HMA.

RECOMMENDATION

Permission subject to the following conditions:

- 1 The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1 to Planning Policy for Traveller Sites (DCLG 2012).

REASON: Planning permission has only been granted on the basis of provision of a site for occupation by members of the gypsy/traveller community.

- 2 No more than 3 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than 1 shall

be a static caravan) shall be stationed on the land at any time.

REASON: In order to define the terms of this permission and avoid proliferation of caravans at the site.

- 3 No commercial activities shall take place on the land, including the storage of materials, and no burning of materials shall take place on open ground.

REASON: In order to define the terms of the permission and in the interests of neighbouring amenity and the protection of the rural scene.

- 4 No vehicle over 3.5 tonnes shall be stationed, parked or stored on the land.

REASON: To prevent the stationing of commercial vehicles on site and to safeguard the appearance of the countryside and the living conditions of those residing in the locality.

- 5 The visibility splay of 215m at the Poplar Tree Lane and A361 Frome Road junction in a north-easterly direction at a setback distance of 2.4m from the carriageway edge measured along on the centreline of Poplar Tree Lane shall be maintained free from obstruction over a height of 0.9m above the level of the carriageway.

REASON: In the interests of highway safety.

- 6 The development hereby permitted shall be carried out in accordance with the following approved plans:

Site Location Plan received on 9 December 2014.

and in accordance with site layout and development details approved under Application reference W/12/00537/FUL granted on Appeal on 8 March 2013 and the related discharge of conditions.

REASON: For the avoidance of doubt and in the interests of proper planning.

