

Item No: 7

Reference: B/08/00984

Parish: Newton

Location: Lilleyfield, Sackers Green

Proposal: Continued use of agricultural land for the siting of a mobile home for use as a residential pitch by a single gypsy family

Applicant: Mr Street

Case Officer: Graham Chamberlain

Date for Determination: 29/08/08

This application is reported to committee as it raises a number of important planning policy issues and to assess the impact of the development and local amenities. A panel of Members inspected the site on 24 September 2008.

THE SITE

1. The site is located at Sackers Green, a small hamlet between Newton, Little Cornard and Great Cornard. Sackers Green comprises of a few residential properties organised around a cross road. Lilleyfields is located along Rotton Row, a narrow country lane linking Sackers Green with the golf course at Newton; it is a no through road.
2. The mobile home at Lilleyfields is located within a small complex of agricultural buildings and is accessed directly off Rotton Row.

THE PROPOSAL

3. The application is for the continued use of the agricultural land for the siting of a mobile home for use as a residential pitch by a single gypsy family. The family in this case is the applicant (Mr Street), his wife and their son. The applicants have been on site since 2005.

RELEVANT HISTORY

4. In 2006 an application was made for the temporary siting of a mobile home for a period of five years (B/06/00111). This application was made by the landowner (not the current applicant Mr Street). It related to an agricultural workers unit. The application was refused and subsequent enforcement action was authorised and an Enforcement Notice served. This application has no bearing on the current application for Gypsy and Traveller Accommodation, they are separate issues.

Other History

5. B/92/00600 - Erection of two agricultural buildings for housing livestock - Granted (these are the two buildings erected on site)
6. B/04/02233 – Change of use from livestock housing to storage of building materials – Withdrawn.

NATIONAL GUIDANCE

7. **PPS 1:** Delivering Sustainable Development
Circular 01/2006 Planning for Gypsy and Traveller Caravan Sites
Circular 3/99 Planning requirement in respect of the Use of Non-Mains Sewerage incorporating Septic Tanks in New Development

PLANNING POLICIES

8. The Development Plan comprises the East of England Plan, adopted 2008, saved policies in the Suffolk Structure Plan, adopted 2001, and the Babergh Local Plan (Alteration No. 2) adopted 2006. The following policies are relevant to this proposal:

East of England Plan, 2008

- **H3:** Provision for Gypsies and Travellers

Babergh Local Plan (Alteration No.2) 2006

- **CR01:** Countryside
- **CN01:** Maintaining Local Distinctiveness
- **HS42:** Gypsy and Traveller Sites
- **EN18:** Sewerage and Sewerage Disposal

The relevant documents can be viewed via the internet. Please see Page 4 for details.

OBSERVATIONS

9. Newton Parish Council – Object to the application
- The property is outside the Built up Area Boundary (BUAB)
 - There is no case for residential development in the countryside and no evidence that the unit will accommodate key personnel employed in agriculture
 - The application could set a precedent
 - The outcome of the Regional Spatial Strategy single issue revision should be taken into consideration
 - Policy HS42 needs to be reviewed in light of the RSS, any site allocation should be via the LDF in consultation with the community.
10. Great Cornard Parish Council – Recommends approval
11. LHA – To be reported.
12. Gypsy Liaison Officer – Recommends approval if there is an unmet need as Babergh as no authorised sites, consequently the applicant has not alternative.
13. BDC Strategic Housing Team – The Council has undertaken a Gypsy and Traveller accommodation needs assessment which identified a need for one permanent pitch within the district, and between 8-12 transit pitches by 2010. Babergh's Gypsy and Traveller Steering Group is undertaking liaison with the local Gypsy and Traveller community in order to identify their housing needs in more detail. The outcome of the Regional Spatial Strategy Single Issue Review for Gypsy and Traveller Accommodation is also awaited, and these may bring forward a further need for additional permanent sites within the district.

14. One issue that does appear to need addressing is that a number of Gypsy and Traveller families are residing on unauthorized sites, as in this case, because they are unable to access any authorised sites.
15. The current information on need would support the provision of a small single pitch site like this. Clearly it will need to comply with relevant planning policies, but should this be the case and permission is granted it will help the Council deliver its requirements for such accommodation and assist the local Gypsy and Traveller community.

REPRESENTATIONS

16. No third party representations received

PLANNING CONSIDERATIONS

The Principle of the Proposed Development

17. Policy CR01 of the Local Plan sets out what type of development is generally acceptable in the countryside; it does not refer to rural exceptions for Gypsy and Traveller Sites.
18. National advice on the location of Gypsy and Traveller sites is given in Circular 01/2006. At Paragraph 54, it states that 'rural settings, where not subject to special planning constraints, are acceptable in principle.' The site is not subject to any special planning constraint such as a landscape designation or green belt. Therefore the siting of a mobile home for occupation by a traveller or gypsy is acceptable in principle subject to adherence with the relevant policies in the development plan, notably Policy HS42 which directly relates to this application. The applicant does not need to demonstrate that he is employed in agriculture.

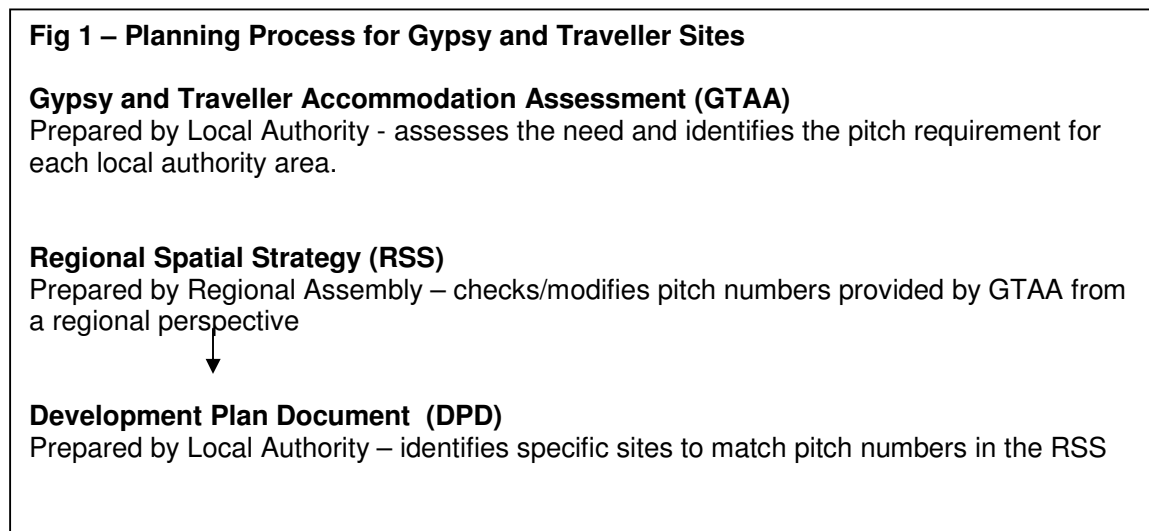
Gypsy and Traveller Status

19. When assessing an application for a Gypsy and Traveller site, it is important to assess whether the potential resident(s) meets the planning definition of a Gypsy or Traveller as set out in Paragraph 15 of Circular 01/2006 (and Para 3.142 of the Local Plan).
20. The definition of a Gypsy or Traveller is:-

'Persons of nomadic habit of life whatever their race or origin, including such persons who on the grounds only of their own or their family's or dependents educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling show people or circus people travelling together as such.'
21. The applicant has provided a statement which demonstrates that he meets the above criteria (the details are contained in a letter sent on the 26th September which can be viewed by arrangement with the case officer).
22. It is clear that Mr Street has been a person of a nomadic habit of life from childhood; he is not able to live in a house as he would feel trapped/claustrophobic. This is not untypical of many people who have lived in caravans for most or all of their lives.
23. Mr Street was also identified as a gypsy (in planning terms) by an Planning Inspector who granted Mr Street a personal permission at a site in Great Horkesley, (Ref APPA1530/A/1084463). This site was in Colchester Borough and Mr Street did not own the site and was forced to leave at short notice.

Evidence of Local Need

24. There are two mechanisms for identifying and quantifying the need for Gypsy and Traveller sites in a given area.
25. The Local Authority should investigate and quantify the need across their area, and individual applicants must have a genuine need to live in that area as it is the responsibility of Gypsy's and Travellers to respect the planning system (Paragraph 18 Circular 01/2006).
26. The process for identifying and quantifying the need is set out in Circular 01/2006 and is a requirement of the Housing Act 2004 and is set out in Fig 1 below.



27. The Local Authority, individually or in combination with other local authorities, is required to undertake a Gypsy and Traveller Accommodation Assessment. This assessment will quantify the need (in terms of number of pitches) of Gypsy's and Traveller's in the Local Authority Area.
28. This information is then reported to the Regional Assembly who will check/modify the pitch numbers provided by GTAA's from a regional perspective. The Regional Spatial Strategy will specify the pitch number for each Local Authority.
29. Following the allocation of pitch numbers, the Local Authority should prepare a Development Plan Document (a DPD) identifying specific sites to match the pitch numbers in the RSS.
30. Babergh District Council has undertaken a Gypsy and Traveler Accommodation Assessment (May 2007) which identified a need for one permanent pitch within the district, and between 8-12 transit pitches by 2010. Babergh's Gypsy and Traveler Steering Group is undertaking liaison with the local Gypsy and Traveller community in order to identify their housing needs in more detail and confirm the accuracy of the GTAA.
31. The East of England Plan has not allocated pitch numbers for each local authority yet. This will be decided following the outcome of the Regional Spatial Strategy Single Issue Review for Gypsy and Traveler Accommodation in November 2008. The draft policy allocated Babergh 15 permanent pitches.

32. The pitch allocation for Babergh is therefore currently unknown; this makes the identification of sites and strategic planning difficult in the interim.
33. What is however clear is that Babergh District has no authorised pitches. Consequently there is an unmet need even if the minimum figure of one pitch identified in the GTAA is used as the baseline.
34. Mr Street has a genuine need. He has lived in the Suffolk/Essex area most of his life and worked in the area dealing in scrap and haulage with many clients in the Stour Valley area. Mr Street has developed a local network which is important to his business, it is therefore necessary for him to stay in the area, Newton being relatively central. Mr Street therefore has a genuine need and connection to the area; this should be seen in the context of the GTAA which has identified an unmet need in pitch provision.

Location and Sustainability

35. In the context of this application 'sustainability' needs to be assessed in terms of access to services and travel choices and any social impacts (as set out in Paragraph 64 of Circular 01/2006).
36. Sackers Green has no facilities, Newton, the nearest village, has a public house but is identified as an unsustainable village. Little Cornard has no facilities. Little Cornard and Sackers Green have no Built up Area Boundary (BUAB). Great Cornard is 2.2km from the site (straight line). Great Cornard is identified as part of the Sudbury settlement area and is defined as 'sustainable'. It has a number of recreational, retail and other facilities. Sudbury Town Centre is 4.5km (straight line) from the site and has all of the necessary facilities (such as doctors, shops, public transport connections).
37. The site is not within a comfortable walking distance of any key facility but is a relatively short drive. The applicant will not have a range of travel choices and will be dependent on private vehicles for access to work and facilities. However, the relative proximity of Sudbury ensures that the site can not be considered significantly unsustainable, although there may be more appropriate locations.
38. In terms of social impacts, the site is small with only one pitch proposed. It will not therefore result in an increase in population which could overwhelm services or result in difficulties by way of co-existence with the settled community. The applicant has been established in the area so will have easier access to GPs and will have integrated some way into the local community. It must be noted that there has been no letters or representation against this application. The provision of a settled base will reduce long distance travelling, which will go some way to mitigating for the lack of services within walking distance. The social impact of a pitch in this location is considered acceptable.
39. A potential Gypsy and Traveller site should be assessed in the same way as a rural exceptions site would be. Firstly, the local need has to be established; then a sequential approach is taken towards identifying a number of sites focusing on suitability and deliverability. Once sites are identified they should be assessed against the planning merits and prioritised. This is a strategic plan led approach which is encouraged in Circular 01/2006 which indicates that allocated sites should be assessed for the suitability and availability before windfall sites when identifying sites for Gypsies and Travellers.
40. Such an approach would lead to the most appropriate sites being allocated in the Site Allocations DPD. Allocated sites would also be assessed via Sustainability Appraisal (SA) for their social, environmental and economic impacts as set out in Paragraph 65 of Circular 01/2006. An SA can not be undertaken within the timeframe of a planning application.

41. This application site has come forward because it is available. It may be that a better site could be made available elsewhere. Such an assessment would however take place as part of the evidence base for the Site Allocations DPD.
42. It may be that the current site is put forward as a potential site and indeed it may even be allocated via the Site Allocations DPD. It is however premature to accept the site as a permanent solution prior to the adoption of the DPD.
43. The applicant has not undertaken a sequential assessment and it has not been undertaken as part of the assessment of this application. This is one of the reasons why the application has been recommended for a temporary permission, which is discussed in more detail below. The issue here being that the Council has no authorised sites, has not prepared the Site Allocation DPD and there is an unmet need which has not been quantified in the East of England Plan. Therefore allocated sites cannot be considered first as they do not exist.

Impact on the landscape and countryside

44. The mobile home is located within a small complex of agricultural buildings approved in 1992. The buildings, access, hardstanding and anything else associated with these buildings would therefore be existence whether the mobile home was stationed there or not.
45. The applicant is not the land owner so they are out of his control. Therefore the residential use, and the impact of the mobile home, need to be assessed in isolation from what else is found on site, for example, if a business was being run from the site, this would be a separate planning issue.
46. As those Members who visited the site will recall, the mobile home, in its current location, is not visible from the public realm.
47. The only evidence of the site from the public realm is the access track which would still be there to service the agricultural buildings even if the mobile home was not located on the site. There is significant screening between the mobile home and the public realm. The residential use would not appear incongruous.
48. The use would be contained within the farm building complex, so domestic paraphernalia would not encroach into the countryside. At the time of writing this report the applicant has been asked to supply a block plan so that a planning condition could be imposed restricting the siting of the mobile home and the number of mobile homes (i.e. pitches) to one. This could include a touring caravan, however it would not be permitted for anyone to live in it permanently as this could constitute a second pitch.
49. The mobile home and residential use will not harm the setting of the countryside, be unreasonably intrusive or visible or dominate the scale of the area.

Highways impact and parking

50. Rotton Row is a no through road. The applicant will have to turn right when exiting the site to join the wider highway network. This was not a reason for refusing the 2006 application for a mobile home on the site for an agricultural worker. It should also be noted that the Local Highway Authority did not object to this application.
51. It must also be noted that the access already exists and there is good visibility. The increase in traffic from the siting of a mobile home for the applicant and his family will not significantly increase the vehicular movements. Paragraph 66 of Circular 01/2006 states that, *'proposals should not be rejected if they would only give rise to modest additional daily vehicle movements and/or impact on minor roads'*.

52. Noise and disturbance from highway movements on residential amenity is a material consideration. The applicant has stated that a business is not run from the site, were this situation to change a new application may be required. Therefore, for the purposes of this assessment, reasonable vehicular movements associated with a domestic use would not harm the amenity of nearby residents.
53. There is adequate off road parking for the applicant's vehicles. This will neither prejudice highway safety (by the vehicles having to park on the road) or amenity via visual clutter in the countryside.
54. The site is also located in close proximity to main roads. The A134 passes through Newton. This road connects Sudbury and Colchester and Ipswich via the A1071. The site is therefore will related to the highway network, even though the immediate access would be via a narrow country lane.

Drainage and Utility Services

55. The application form indicates that foul sewage would be disposed of to a sealed septic tank and that the applicants are not proposing to connect the caravan to an existing drainage system. At the time of writing this report further details have been requested and any additional information will be reported to the meeting.
56. Circular 03/99 sets out how non mains sewerage should be dealt with. The preference is always for discharge to a public sewer, if it can be demonstrated why this is not possible a treatment plant is the next preferred solution.
57. A septic tank is the least preferred option because it is unsustainable, it would rely on a third party emptying it and could have other impacts as set out in Paragraph 6 of the Circular for example pollution of the water environment and overloading.
58. If a septic tank is proposed, the applicant needs to undertake an assessment against the potential issues set out in Paragraph 6 of the Circular. The applicant has not undertaken this assessment. Paragraph 7 of the Circular states that permission should not normally be granted if there would be an adverse impact on the issues identified in Paragraph 6. As the impact is not known and no justification has not been submitted, the application could be refused in the absence of these details. Further details have been requested and members will be updated at the meeting.
59. The other utilities (fresh water and electricity) are already available.

Balancing exercise and human rights

60. Paragraph 70 of Circular 01/2006 states that the human rights of the applicant should be considered as part of a Local Authorities decision. The consequences of refusing or approving a permission or taking enforcement action on the individuals concerned should be weighed up against the impact.
61. Article 8 of the Human Rights Convention gives the right to 'respect for private and family life, home and correspondence'. In this case the important issue is the right to respect of home.
62. If this application was to be refused the applicant and his family would, in effect, lose their home. The Local Authority therefore needs to balance the impact/harm against this right to home.
63. The adverse issues in this case are that the site has not been allocated or considered for allocation in a Site Allocations DPD and the applicant proposes a septic tank. The

site is also not particularly sustainable in that there are limited travel options and no facilities within a comfortable walking distance.

64. The issues which support this application are that the principle is acceptable, the impact on the landscape and countryside is not harmful, there is no adverse impact with regards to highway safety, and neighbour amenity would be safeguarded.
65. The applicant can not consider alternative authorised sites, as there are none in the district. Furthermore the Council has not prepared the relevant DPD which is scheduled for adoption in 2012. It would therefore be unreasonable to refuse the application because a sequential test has not been undertaken when the applicant is unable to actually adhere to this point.
66. With regards to sustainability, the lack of facilities within walking distance can be mitigated somewhat by the provision of a settled base and the social integration of the applicant. The drainage issues are problematic; the applicant does need to justify the use of a sealed septic tank. Given the small scale nature of the development however and the capital outlay which may be required to provide an adequate drainage solution, the harm caused by the absence of an acceptable drainage system is not sufficient to outweigh the fact that the applicant would be made homeless if the application was refused for this reason.
67. If the applicant was made homeless they would likely have to go back on the road and occupy an unauthorised site. Therefore a refusal would not provide the Streets with a home and would not address the issue of an undersupply of Gypsy and Traveler pitches in the District.

Temporary or Permanent Permission

68. In view of the above, a temporary permission for a period of three years is recommended. This would address the immediate needs of the Streets providing them with a settled home, it would also enable the Local Authority to undertake a full assessment of potential sites and allocate them in a DPD.
69. A temporary permission would also enable the applicant to investigate other drainage solutions, so when/if a reassessment of the site is undertaken in three years time, the applicants would have had a reasonable time to address this issue.
70. Circular 01/2006 in Paragraph 45 states that a temporary permission can be justified where it is expected that the planning circumstances will change in a particular way at the end of the permission. At the end of the three year period the outcome of the RSS review will be known and work will have advanced on the preparation of a Site Allocations DPD. As such these are material considerations which would justify a temporary permission.
71. The temporary permission should also be personnel as this is necessary to meet the immediate needs of Mr Street and his dependents.
72. It must be noted that a temporary permission sets no precedent for a permanent permission (Paragraph 46 Circular 01/2006). Therefore if the issues which have warranted a temporary permission are not addressed by the end of a temporary period, the fact that a temporary permission has been granted does not automatically result in a permanent permission being justified.
73. The Council's legal team has confirmed that the use of a mobile home for residential purposes becomes immune from enforcement after 10 years. The temporary permission would not inadvertently result in this as the use began in 2005.

74. In the light of the above the following table has been produced to summarise the key issues:-

Issue/Criteria set out in Policy HS42 and Circular 01/2006	Key Points
Evidence of Local Need	<ul style="list-style-type: none"> • There is an unmet need for Gypsy and Traveller Pitches as demonstrated in the GTAA • There are no authorised pitches in the district • The Site Allocation DPD has not been prepared
Location and Sustainability (outside a settlement but in reasonable proximity to key services)	<ul style="list-style-type: none"> • The site is outside a settlement • It is not within a comfortable walking distance of any key services but is within reasonable proximity of such services in adjoining villages and towns • The site will provide a settled base which may reduce long distance travelling • The site will enable social inclusion
No adverse impact on residential amenity, flood plan, landscape character, biodiversity and historic features	<ul style="list-style-type: none"> • The hardstanding and access exists as part of a small farm building complex • The site is not within a flood plan • The mobile home would not be visible from the public realm as it is very well screened. • The site is not within a AONB or SLA
The site offers safe access, adequate parking and good access to main road.	<ul style="list-style-type: none"> • Highway issues have not be a reason for refusal in the past • The LHA raised no objection to the 2006 application • There is an existing access with good visibility • The approved activity would be domestic in scale • There is adequate parking • There is good access to main roads (A134, A1071)
Utility services	<ul style="list-style-type: none"> • Water and electrcity are provided • The applicant has not justified the use of a sealed septic tank contrary to guidance in Circular 03/99 and Policy HS42, although further information has been requested.
Open Space	<ul style="list-style-type: none"> • A contribution is not required in this instance as a permanent permission is not recommended.

Conclusion

75. While the proposed drainage arrangements are not entirely satisfactory, the likely harm caused by the absence of an acceptable system is not sufficient to warrant a decision that would render the applicant homeless. In view of the provisions of the Development Plan, so far as they are material to the application, the advice contained in Government Circulars, and other material considerations it is recommended that a temporary permission be granted for three years to enable a long term solution to be identified that will meet the needs of the applicant.

RECOMMENDATION

- (1) Subject to the receipt of additional drainage information the Chief Planning Control Officer be authorised to grant a three year temporary planning permission subject to the following conditions:
- The permission is made personal to the applicant
 - The mobile home to be retained in its current location.
 - The number of mobile homes to one