

BURNLEY BOROUGH COUNCIL

DEVELOPMENT CONTROL COMMITTEE

Date: 20 September 2018

PART 3

Town and Country Planning Act 1990

Planning Appeal by Mr Oathie Sykes

APP/2016/0427 Appeal against the refusal of planning permission for the development of the land as a traveller site, the siting of 5 static caravan pitches and the erection of one new dwelling

Land at Spa Wood Farm Billington Road Burnley

Background

The appeal was made to the Secretary of State against the Council's refusal of planning permission for the use of the land as a traveller site, the siting of 5 static caravan pitches and the erection of a dwelling following the removal of the existing mobile home.

The application was refused by the Council on 27 January 2017 for the following reason:

'The site is in an isolated location within the rural area with poor access. The development of the site in principle would therefore not be in accordance with the NPPF presumption in favour of sustainable development, and is also considered to be inappropriate development contrary to Burnley Local Plan Policies GP1, GP2 and H2. Approval of this application would lead to inappropriate and unsuitable development in the rural area without sufficient justification that would be to the detriment of the locality.'

Appeal Decision – The appeal was allowed and planning permission was granted subject to conditions as set out at the end of this report.

Approximate cost of appeal: £7,100.00

The appeal was dealt with by way of a Hearing held at the Town Hall Burnley on 18 May 2018.

Inspector's Considerations

The Inspector considered the main issues in relation to the traveller site to be:

- whether or not the site is reasonably located in relation to services and facilities;
- whether the proposal is acceptable in highway safety terms and
- any other matters in support of the proposal including, the general need for, and provision of, gypsy and traveller sites in the area.

The main issues in relation to the new dwelling were considered to be:

- whether the development is acceptable, having regard to national and development plan policies in relation to new dwellings in the open countryside
- whether or not the new dwelling is acceptable having regard to highway safety considerations.

Inspector's considerations in respect of the gypsy and traveller site

The site is currently in a lawful use as a traveller site for 6 mobile homes. It is occupied by the Appellant, his wife and his extended family, as well as his adult children and their dependents. The appeal site comprises a rectangular area of land located to the south-west of Burnley town centre, just outside the smaller settlement of Hapton.

Local Plan policy H16 confirms that where there is an identified need for sites. Three proposals for gypsy and traveller sites will be permitted where a number of criteria are satisfied. The Council accepts that it has an identified need for sites and that the appeal site is suitable for its intended use and can provide acceptable living conditions. It is also located relatively close to shops, schools and other facilities both in Hapton and in Burnley town centre which is approximately 1.6 km away. The site is well designed and landscaped and contained by mature boundary planting such that the Inspector was satisfied it causes no material harm to landscape character.

The only contentious issue in relation to the criteria in policy H16 is the question of the suitability of the access road to the site, as raised by a number of local residents and others. The site is accessed via Billington Road which runs off the main road and through an industrial estate before becoming an unmade track running into the rural area beyond. The unmade private track comprises a section of approximately 900 metres which runs to the site entrance and which also serves a handful of other residential developments and farms in the vicinity.

In addition a public footpath route runs along the unmade track which is single width and is rutted and uneven along its surface. Any vehicle travelling along the track must proceed at low speeds due to the uneven surface. The track is located in a wide and open landscape such that any walkers proceeding along its length would have ample notice of vehicles proceeding in either direction along the track and would have the opportunity to step aside on the grass verges which line it.

The mobile homes are permanent structures and the touring caravans are smaller units which would move onto and off the site. The track serves the appeal site and a small number of other agricultural and equestrian uses. As such, it is already used by a handful of properties and of course there is the now lawful established use of the site for 5 gypsy pitches.

Therefore it is evident that the appeal proposal would not materially increase the use of the access road over and above the current level of use. The Inspector noted that the Highways Authority, Lancashire County Council, did not raise any objections to the proposal.

Having regard to all of the above matters, the Inspector was satisfied that the appeal proposal is satisfactory in highway terms and concluded that the gypsy and traveller element of the appeal proposal is in conformity with Local Plan policy H16 given that all of the criteria are satisfied.

The National Planning Policy Framework (the Framework) identifies one of the core principles of the planning system as recognising the intrinsic character and beauty of the countryside. The Framework advises that it should be read in conjunction with the PPTS which explains how gypsy and traveller accommodation needs should be assessed, and sets out relevant policies and criteria for considering such proposals. Policy C of the PPTS advises that the scale of development in rural areas should not dominate the nearest settled community. There is no suggestion that this would be the case here.

Paragraph 25 of the PPTS directs authorities to very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. Two points are relevant here: firstly the proposal would not represent new traveller site development given that there is an established lawful use as a traveller site. Secondly, whilst the site is in the open countryside, the Inspector did not consider it to be remote or 'away from existing settlements'.

The general need for sites

The Framework advises that it should be read in conjunction with the PPTS which explains how gypsy and traveller accommodation needs should be assessed, and sets out relevant policies and criteria for considering such proposals. Policy B of the PPTS requires local planning authorities, in preparing local plans, to set targets which address the likely permanent and transit site accommodation needs of gypsies and travellers in their area. Local planning authorities are encouraged to identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of sites against their locally set targets, whilst protecting local amenity and the environment.

The Council accepts that it does not currently have a five year supply of gypsy and traveller sites. It is already noted that the emerging LP now relies upon a commitment to produce a Site Allocations DPD in relation to gypsy and traveller site provision. Paragraph 25 of the PPTS provides that where a Council cannot demonstrate an up-to-date five year supply of sites, this should be a significant material consideration when considering applications for the grant of temporary planning permission. In this case,

the Inspector concluded that the Council does not have a five year supply. In the first instance the Appellant is seeking a permanent planning permission. In these circumstances, she considered that the lack of a five year supply and the general unmet need attracts moderate weight in support of a permanent permission.

In relation to the consideration of a permanent planning permission, she found that the proposal would be contrary to LP policies H1 and H2 which seek to control development in the open countryside. However the policies predate the Framework and PPTS and are now somewhat dated. It is noted that PPTS confirms that rural sites should respect the scale of, and not dominate, the nearest settled community as well as avoiding placing an undue pressure on local infrastructure. For all of these reasons The Inspector attached limited weight to the harm by virtue of the contravention of these policies.

The site is in a relatively accessible location with regard to the distance to services. There is also an accepted current general, unmet need for sites, to which she attributed moderate weight. In addition the 2018 LDC and existing use of the site is a significant material consideration. In coming to an overall conclusion she found that the limited harm identified is not outweighed by the other factors in support of the grant of a permanent planning permission in relation to the gypsy and traveller site component of the appeal.

Considerations in respect of the new dwelling

As a new dwelling in the rural area it does not fit within any of the categories listed in Local Plan policy GP2. It is therefore contrary to this policy.

Paragraph 55 of the Framework sets out criteria for the assessment of new houses in rural areas and cautions against allowing isolated new homes in the countryside unless there are special circumstances. The Inspector bore in mind that the Council has accepted that the appeal site constitutes previously developed land and there is the established residential use as a gypsy and traveller site conferred by the 2018 LDC.

The new dwelling would not be isolated and would complement the existing residential use. It would sit within a well-screened site and would cause no material harm to landscape character. She had already concluded that the site is in a relatively accessible location, with local services and facilities nearby. Having regard to all of these matters she was satisfied that the special circumstances required by paragraph 55 are met. Whilst the proposal for a new dwelling is contrary to LP policies she concluded that the proposal would be in conformity with this later national policy.

The appeal proposal in combination would result in 5 mobile homes, 5 touring caravans and one modest new dwelling. There is already an established residential use for 6 mobile homes. The difference in traffic generation terms, between what is already established as lawful and what is proposed, would in the Inspector's view be negligible. As such she concluded that the proposal would be acceptable in highway terms.

Other matters

In respect of the concerns raised about flooding around the small bridge over a

watercourse which sits at the end of Billington Road at the entrance to the countryside, she already concluded that the appeal proposal would not generate materially more traffic than that which is generated by the existing lawful use.

She appreciated that the local plan process is the mechanism by which future gypsy and traveller sites will come forward but that is some time in the future.

The Inspector has assessed the proposal against the current policy framework and light of the existing lawful use and other material considerations.

She has read other concerns about poor levels of water pressure and the ability of existing infrastructure to cope with the proposal. Again, having regard to the existing lawful use I am satisfied that the proposal would not materially increase demands on these services.

Conclusion

Having regard to the above considerations, the Inspector granted planning permission for the development subject to the following conditions:

Gypsy and traveller site

- 1) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1 to the Planning Policy for Traveller Sites.
- 2) There shall be no more than 5 pitches on the site and on each of the 5 pitches hereby approved no more than two caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, shall be stationed at any time of which only one caravan shall be a residential mobile home.
- 3) There shall be no burning of waste or other materials on the site.
- 4) There shall be no external lighting on the site (whether affixed or freestanding) unless details of any such lighting have been previously submitted to and approved in writing by the Local Planning Authority.
- 5) No commercial activities shall take place on the land, including the storage of materials or plant relating to any commercial activity.
- 6) No more than one commercial vehicle per plot shall be kept on the land for use by the occupiers of the caravans hereby permitted, and they shall not exceed 3.5 tonnes in weight.

The new dwelling

- 7) The development in relation to the new dwelling must be begun within two years of the date of this decision.
- 8) The development shall be carried out in accordance with the following approved plans: site location plan, existing site plan, proposed site plan dated January 2017

drawing number 3A, proposed elevations and floor plan dated January 2017 drawing number 4A.

9) No development in relation to the new dwelling shall commence until such time as the structure described on the existing site plan as 'Main dwelling' has been removed in its entirety from the site.

10) No works of demolition or construction in connection with the new dwelling shall take place outside the hours of 0800 hours to 1800 hours Mondays to Fridays inclusive; 0800 hours to 1300 on Saturdays and there shall be no works on Sundays, Public Holidays and Bank Holidays.

11) Prior to the commencement of development on the new dwelling details of the external materials to be used in the external faces of the new dwellings shall be submitted to, and approved in writing by, the Local Planning Authority. Development shall be carried out in accordance with the approved details.

12) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking, re-enacting or modifying that Order), no development within Classes A, B, E or F of Part 1, of Schedule 2 of that Order shall be carried out in relation to the dwelling hereby permitted.

13) No development in relation to the new dwelling hereby permitted shall take place until drainage plans for the disposal of surface water and foul sewage in accordance with paragraph 20 of the Planning Practice Guidance have been submitted to and approved in writing by the Local Planning Authority.