

Item Number: 9
Application No: 16/00750/FUL
Parish: Gate Helmsley Parish Council
Appn. Type: Full Application
Applicant: Mr Jobie Tyers
Proposal: Erection of travellers' amenity building and retention of mobile home, caravan and shed
Location: Land At Croft Farm The Lane Gate Helmsley

Registration Date:
8/13 Wk Expiry Date: 28 June 2016
Overall Expiry Date: 19 June 2016
Case Officer: Tim Goodall **Ext:** 332

CONSULTATIONS:

Parish Council	Object
Highways North Yorkshire	No objection
Caravan (Housing)	No objection in principle

Neighbour responses: Bill Wrigglesworth, Ellie Corbett, Leanne Chamberlain, M Weatherall, DM Dickinson, Trevor John Wright, Amanda Dodds, Laura Davis, L Baldwin, ME Chamberlain, J Ducker, P Ducker, D O'Hara, Ian Lightfoot, Daniel Slattery, Noel Bickerdike, Mr David Fletcher,

SITE:

The application site is an existing paddock located off the public highway north of Gate Helmsley. The paddock is roughly rectangular in shape, heading south east from the public highway. At the entrance from the public highway there is a close board fence and a entrance gate set back from the highway edge. There is an area of gravelled hardstanding with a mobile home and a caravan. There is also a timber shed.

The site is located within the York Green Belt outside of the development limit of Gate Helmsley which is approximately 300 metres to the south west. Upper Helmsley lies approximately 1 kilometre to the north.

PROPOSAL:

Planning permission is sought for the erection of a travellers' amenity building and the retention of a mobile home, a caravan and a shed.

The proposed amenity building would be 9.0 metres wide and 8.0 metres deep. The building would have a dual pitched roof and be 5.3 metres in height. Internally there would be a sitting area, dining area, kitchen, bathroom and a utility room.

The mobile home is 3.7 metres wide and 11.2 metres in length. The shed is approximately 2.0 metres high and of timber construction with a shallow dual pitched roof.

CONSULTATION RESPONSES:

There have been 15 letters of support for the application, 14 of which are a standard text with the supporters signature and address. Of the letters of support, 14 are from residents in Gate Helmsley and 1 from Upper Helmsley.

Further to the letters, one of the signatories wrote to advise they were unaware of the proposed travellers amenity building described above and would object to this element of the scheme.

There was 1 letter of objection from a resident concerned over the levels of noise created by a generator on site, over the travellers amenity building and that this mobile home could be the thin end of the wedge for more mobile homes on the site.

The Council's Environmental Health Officer has no objection in principle to the application as the site is tidy and well managed and as such would fulfil the requirements under the Caravans and Control of Development Act 1960, if planning permission is granted.

North Yorkshire County Council Highways Authority have no objection.

The objections to the planning application relate to material planning considerations. As the application is recommended for refusal, under the Council's scheme of officer delegation it is brought to Committee for Members to consider and determine.

HISTORY:

3/47/47/FA - Siting of static caravan for residential purposes at Croft Farm, Gate Helmsley - Approved 19.03.1990 with the following conditions:

- 1. The static caravan hereby approved for residential purposes shall be removed and the land restored to its former condition at or before 6 March 1992 unless an extension of the period shall first have been approved by the Local Planning Authority.*

Reason: To enable the Local Planning Authority to retain control over the development.

- 2. This permission shall operate only for the benefit of Mr & Mrs G Bickerdike and in respect of the premises as at present existing. The use hereby approved shall be terminated at such time as the above named shall cease to occupy the premises.*

Reason: The development for which personal permission is hereby granted would not be acceptable save in respect of use by the above named.

02/00848/FUL - Change of use of land and buildings to equestrian use, replacement parking area together with erection of building for storage of hay and straw - Refused 17.01.2003 for the following reasons:

- 1. The proposed development would be contrary to Policy GB2, GB3 and AG11 of the Ryedale Local Plan and would, therefore, be contrary to the inclusion of this site in the York Green Belt which seeks to retain the essentially open character of this land.*
- 2. The proposed development would be unduly conspicuous in the open landscape and would be detrimental to the visual amenity of the locality by the introduction of buildings and structures which would introduce alien features into this open landscape and would, therefore, be detrimental to the visual amenity of the locality.*

04/00038/FUL - Change of use of land and buildings to equestrian use, formation of parking area and installation of timber shiplap cladding to front of existing building (revised details to refusal 02/00848/FUL dated 16.01.2003) - Approved 26.04.2004

POLICY:

National Planning Policy

National Planning Policy Framework (NPPF)
National Planning Practice Guidance (NPPG)

Retained Policies of the revoked Yorkshire and Humber Regional Spatial Strategy (RSS)

Policy Y1 - York sub area policy
Policy YH9 - Green Belts

Ryedale Plan - Local Plan Strategy

Policy SP1 - General Location of Development and Settlement Hierarchy
Policy SP2 - Delivery and Distribution of New Housing
Policy SP4 - Type and Mix of New Housing
Policy SP5 - Sites for Gypsies and Travellers and Travelling Showpeople
Policy SP9 - The Land-Based and Rural Economy
Policy SP16 - Design
Policy SP19 - Presumption in Favour of Sustainable Development
Policy SP20 - Generic Development Management Issues

APPRAISAL:

- i. Impact of the development on the openness of the York Green Belt
- ii. Gypsy and Travelling community policy considerations
- iii. Neighbour Amenity
- iv. Legal Duties and constraints
- v. Conclusion

i. Principle of Development

The application site lies within the York Green Belt. Policy SP1 states that proposals for development within the Green Belt will be assessed against national policy. Policies SP1 and SP2 of the Ryedale Plan - Local Plan Strategy state that new housing should normally be directed to the existing settlements within the district. Paragraph 87 of the NPPF states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 88 of the NPPF goes on to say that when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, any other harm, is clearly outweighed by other considerations. The construction of new buildings within the Green Belt should be regarded as inappropriate. Exceptions to this are:

- *Buildings for agriculture and forestry;*
- *provision of appropriate facilities for outdoor sport, outdoor recreation and for cemeteries, as long as it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it;*

- *the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building;*
- *the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;*
- *limited infilling in villages, and limited affordable housing for local community needs under policies set out in the Local Plan; or*
- *limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development.*

The proposed development is residential and therefore does not fall within the first two of the above criteria. In terms of the third and fourth criteria for exceptions, the buildings are not extensions and given the considerable passage of time that has elapsed since a caravan was previously on the site in the early 1990s they are not considered to be replacements. As the site lies without an existing village development limit and at no point adjoins the development limit of Gate Helmsley it can not constitute infill development.

Planning history shows there to have been a caravan on the site in the early 1990s under a personal planning permission that lasted for two years. The remainder of the site does have planning permission for use a paddock. The previous caravan is considered to have been a temporary structure with a relatively low impact. The siting of four buildings for residential and amenity purposes by their very nature are considered to have a greater impact on the openness of the York Green Belt than the existing grassed paddock that makes up the south east section of the site. The principle of this form of development within the Green Belt is therefore considered to conflict with national planning policy set out in the National Planning Policy Framework and Policies SP1 and SP2 of the Ryedale Plan - Local Plan Strategy subject to detailed consideration of planning policies relating to the gypsy and travelling community.

ii. Gypsy and Travelling community policy considerations

The agent for the applicant has confirmed that the applicant, his wife and three children (aged 14, 18 and 19 as of July 2016) are from the Gypsy and Travelling community. The applicant is not from the area, but his wife was born and raised within the Gypsy and Travelling community in Malton.

While it is considered that the principle of residential development and new buildings contrary to national and local planning policies would normally constitute inappropriate development within the Green Belt, National Planning Policy and Guidance and Policy SP5 (sites for Gypsies and Travellers and Travelling Showpeople) of the Ryedale Plan - Local Plan Strategy must be considered.

The NPPF should be read in conjunction with the Government's planning policy for traveller sites. Local planning authorities taking decisions on traveller sites should also have regard to the policies in the NPPF so far as relevant. In August 2015, the Department for Communities and Local Government published the government's '*Planning policy for traveller sites*'. The policy sets out the Government's aims with respect of travellers sites. These include:

- that local planning authorities should make their own assessment of need for the purposes of planning*
- to ensure that local planning authorities, working collaboratively, develop fair and effective strategies to meet need through the identification of land for sites*
- to encourage local planning authorities to plan for sites over a reasonable timescale*
- that plan-making and decision-taking should protect Green Belt from inappropriate development*
- to promote more private traveller site provision while recognising that there will always be those travellers who cannot provide their own sites*

- f. that plan-making and decision-taking should aim to reduce the number of unauthorised developments and encampments and make enforcement more effective*
- g. for local planning authorities to ensure that their Local Plan includes fair, realistic and inclusive policies*
- h. to increase the number of travellers sites in appropriate locations with planning permission, to address under provision and maintain an appropriate level of supply*
- i. to reduce tensions between settled and traveller communities in plan-making and planning decisions*
- j. to enable provision of suitable accommodation from which travellers can access education, health, welfare and employment infrastructure*
- k. for local planning authorities to have due regard to the protection of local amenity and local environment*

Policy E of the document states Traveller sites in the Green Belt are inappropriate development. Subject to the best interests of the child, personal circumstances and unmet need are unlikely to outweigh clear harm to the Green Belt and any other harm so as to establish very special circumstances.

Policy H of the document states that planning applications must be determined in accordance with the development plan, unless material considerations indicate otherwise. Local planning authorities should consider the personal circumstances of the applicant. However, Policy H re-iterates that subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances.

The aforementioned considerations are dealt with in turn below.

Personal Circumstances and the Best Interests of the Child

The applicant's agent advised that they left their previous site elsewhere in Yorkshire due to a family feud at the site. They advised that the applicant has three children, which are living on the site. One of these children is under the age of 18. Prior to occupying the site, the agent understood that the applicant was travelling rather than at a fixed abode. A welfare assessment was carried out by the Council's Environmental Health Officer in July 2016. The assessment confirmed that the child was currently being home schooled, having previously been at a school in York. The assessing officer noted that there was a strong possibility of the applicant's father in law moving onto the site shortly. He is currently in hospital and may require care once he has left.

As of July 2016, a 14 year old child would have a minimum of 2 years full time education remaining. While the child is being home educated, the applicant has indicated this is due to the uncertainty surrounding the planning issues. At this point, consideration should be given to the various options available in terms of making a planning decision in this instance.

A grant of planning permission would allow the child to enter the school system for the remainder of their education. A temporary planning permission of two years would provide the same level of certainty. A further option however would be to refuse planning permission. Given the retrospective nature of part of the proposal, a refusal of planning permission necessitates a further consideration of whether it would be expedient to take enforcement action to rectify what would remain as a breach of planning control.

Members are advised that if the latter option is pursued, then unless the existing caravan and mobile home are removed the service of an enforcement notice would be necessary to remedy the breach of planning control. Given the applicant's youngest child is required to be in full time education until the age of 16, providing a degree of certainty until this time is considered to be in the child's best interests. As such, an enforcement notice providing an extended period for compliance could be considered to be appropriate in this eventuality.

Given the clear and demonstrable harm to the openness of the Green Belt by this development, the service of an enforcement notice rather than the granting of a temporary planning permission is considered to be a more effective route to ensure the breach of planning control can be dealt with whilst taking into account the best interests of the child. A refusal of planning permission and the service of an enforcement notice with an extended period for compliance would also acknowledge the personal circumstances of the applicant, allowing them time to secure a pitch (or house) elsewhere.

Unmet Need

Policy SP5 safeguards Ryedale's existing Gypsy and Traveller site at Tara Park near Malton. The 2007/08 Gypsy and Traveller Accommodation Assessment for the North Yorkshire Sub Region showed a requirement of 22 pitches. As of 2008 there were 13 pitches at Tara Park, resulting in a capacity shortfall of 9 pitches. The assessment also projected need from 2008-2015 resulting in new household formations of 4. However, it was also estimated that 8 pitch holders would move into housing between 2008 and 2015. Furthermore, planning permission was granted in 2013 (ref 12/01224/FUL) for an additional 7 pitches at Tara Park. This permission has now been implemented. In conclusion this has resulted in a current surplus of 2 pitches in the district as of 2015. This study expired in 2015 and the Council is now progressing an updated assessment.

While it is recognised the Assessment is now out of date, (it is only by one year) it does indicate a surplus of two pitches. While the Council is progressing an updated assessment, it is necessary to make a decision on the evidence available at this moment on time. On this basis, it is concluded that unmet need does not in this instance constitute a very special circumstance to allow the granting of planning permission for inappropriate development in the Green Belt.

iii. Neighbour Amenity

To accord with Policy SP20, new development will not have a material adverse impact on the amenity of present and future occupants, the users or occupants of neighbouring land and buildings or the wider community by virtue of its design, use, location and proximity to neighbouring land uses.

Concerns have been raised over the siting of a generator for power at the application site. While the site is in the open countryside, there is fixed boundary treatment in the form of hedges and fences in the directions of the nearest dwellings, providing for some level of sound mitigation. The nearest dwellings are approximately 300 metres from the site across fields. If planning permission was granted, conditions could be added requiring further details of the electricity generator and/or additional acoustic boundary treatment to further reduce any noise pollution. If the generator were to result in noise levels creating a statutory nuisance, the Council's Environmental Health Officers are able to take action through other legislation.

iv. Legal duties and constraints

HUMAN RIGHTS

By virtue of section 6 of the Human Rights Act 1998, the council is not allowed to act in a way that is incompatible with a right set out in the European Convention on Human Rights. The Authority must therefore show that it has properly considered the rights and freedoms of the owner, Mr Jobie Tyers and his family.

In exercise of their powers the Local Planning Authority needs to be mindful of these issues but if planning decisions are made following the correct procedure, taking all material considerations into account and in the public interest, then there is no conflict with the Human Rights Act.

Article 8 of the convention states that “*Everyone has the right to respect for his private and family life, his home and his correspondence*”, and continues: “*There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others*”.

Article 8 is a qualified right and an interference with it can be justified if this is necessary in a democratic society for the protection of the rights and freedoms of others and is proportionate. Upholding planning policy and protecting the environment are relevant to this. Members must reach their own view on the degree of hardship involved in a refusal of planning permission (as to which see the information presented in this report on the needs and personal circumstances of the occupants) and on whether the interference with the Article 8 rights involved with the refusal of planning permission would be necessary and proportionate

Article 1 of the first protocol to the convention states that every person is “*entitled to the peaceful enjoyment of his possessions*” (“Possessions” includes rights over land) and that “*No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law*”. But the rights of the state to “*enforce such laws as it deems necessary to control the use of property in accordance with the general interest*” are expressly preserved.

Article 14 states that the enjoyment of rights under the convention is to be secured “*without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status*”.

Article 3.1 of the United Nations Convention on the Rights of the Child provides: “*In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration*”. As a matter of law, this means that in all decisions concerning children, their best interests must be of primary importance. That principle applies to planning decisions.

Where site residents are children, consideration of their convention rights must be in the context of article 3 of the United Nations Convention, which requires a child's best interests to be a primary consideration. However, the inherent primacy of those interests does not mean that they can never be outweighed by the cumulative effect of other considerations.

The Local Planning Authority has taken into consideration the Human Rights Act and balanced this with consideration of National Planning Policy with respect to development in the Green Belt. The planning decision has taken into account the personal circumstances of the applicant and his family, including the best interests of the child.

DISABILITY AND RACE

Direct discrimination occurs if a person is treated less favourably than another person would be because of a protected characteristic under section 13 of the Equality Act 2010 . Indirect discrimination occurs where a provision, criterion or practice that is applied to all puts persons who share a protected characteristic at a particular disadvantage when compared with persons who do not share it and the provision, criterion or practice cannot be shown to be a proportionate means of achieving a legitimate aim under section 19 the Equality Act 2010 .

“Protected characteristics” include race.

The site residents are travellers . They should be regarded as being a racial group and sharing the protected characteristic of belonging to that group.

In considering the merits of this planning application, the committee will need to consider whether refusal of the planning application would place persons who are travellers at a particular disadvantage compared with persons who are not travellers. If such a particular disadvantage would arise, the committee will need to consider whether choosing that option would be a proportionate means of achieving a legitimate aim. If the option would not be a proportionate means of achieving a legitimate aim, it would not be lawful to choose that option.

PUBLIC SECTOR EQUALITY DUTY

In exercising its functions, including its functions as a local planning authority, the council must have due regard to the need to:

Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010;

Advance equality of opportunity between people who share a protected characteristic and those who do not; and

Foster good relations between people who share a protected characteristic and those who do not (section 149(1) of the Equality Act 2010)

Having due regard for enhancing equality involves removing or minimising disadvantages suffered by people due to their protected characteristics and taking steps to meet the needs of people from protected groups where these are different from the needs of other people. (section 149(3) of the Equality Act 2010)

Fostering good relations means tackling prejudice and promoting understanding between people from different groups. (section 149(5) of the Equality Act 2010) Complying with the duty may involve treating some people more favourably than others. (section 149(6) of the Equality Act 2010)

If the Council fails to have “due regard” to the matters identified above, it would fail to comply with its statutory duty. In applying the policies and other considerations that are material to this application, the committee will need to consider whether applying any of those policies or other considerations has a disproportionate and negative impact on a racial group. If there is such an impact, the committee will need to decide whether that impact can be justified by, for example, the adverse impact of the development.

v. Conclusion

In conclusion, this planning application is considered to conflict with both national and local planning policy, taking into account material considerations and is recommended to Members for refusal for the following reason.

RECOMMENDATION: Refusal

- 1 The retention of the mobile home, caravan and shed and the proposed travellers' amenity building constitute inappropriate development resulting in an unacceptable impact on the openness of the York Green Belt, contrary to the NPPF, CLG's Planning Policy for Travellers Sites (2015) and Policy SP1 of the Ryedale Plan - Local Plan Strategy and there are considered to be no other material policy considerations or very special circumstances of sufficient weight to warrant a departure from adopted policy.
- 2 Background Papers:

Adopted Ryedale Local Plan 2002
Local Plan Strategy 2013

National Planning Policy Framework
Responses from consultees and interested parties