

RYEDALE DISTRICT COUNCIL

PLANNING COMMITTEE - 31 AUGUST 2016

Report of the Head of Planning & Housing

Siting of a mobile home, two caravans and a shed and the creation of an area of hardstanding at land at Croft Farm, The Lane, Gate Helmsley

Purpose of the Report

To advise Members of alleged breaches of planning control and recommend an appropriate course of action.

1. SITE LOCATION

1.1 The application site is an existing paddock located off the public highway north of Gate Helmsley. 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.

2. BREACHES OF PLANNING CONTROL

2.1 The breaches of planning control comprises:

Without planning permission, the material change of use of the land from a paddock with associate hardstanding to domestic use with the siting of a mobile home, two caravans and a timber shed, with an enlarged area of hardstanding.

These are described below.

2.2 Change of Use

The site is land with planning permission for equestrian use and an associated parking area that is now in domestic use by the Tyers family. Two caravans and a mobile home have been sited on the land. A timber shed has also been erected. The area of car parking has been extended and gravelled over.

3. WHAT BREACHES HAVE OCCURRED

3.1 The site was investigated by the Council's Enforcement Officer after complaints had been received that a caravan had been moved onto the site without planning permission. The owner of the site visited Ryedale Council offices after the Council's Managing Development team did not register the address as there was no planning permission for a dwelling at the site.

3.2 Following this discussion a meeting was arranged with the owner and the Enforcement Officer at the site on 28th January 2016. The owner explained that he had been advised by a third party that there was planning permission for residential use on the site. It transpired that this was based on a temporary planning permission granted in 1990 for residential use, that had since expired.

During the site visit it was evident that the mobile home, a caravan, the shed and the hardstanding were already in situ. The owner was advised that while he did have the right to submit a retrospective planning application, this may not necessarily be granted. The planning enforcement process was explained and a follow up letter was hand delivered on 17th February 2016 stating the breaches of planning control should be remedied within 2 months.

- 3.3 A retrospective planning application was received by the Council on 15th April 2016, Reference 16/00750/FUL and validated on 3rd May 2016. The planning application was due to be determined at Planning Committee on 2nd August 2016. Officers had recommended refusal for the following reason:

*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.*

- 3.4 Prior to the Planning Committee, the planning application was withdrawn at the applicant's request.

- 3.5 A further site visit was undertaken by Council Officers on 16th August 2016. The mobile home, shed and hardstanding were still in situ. There were found to be 2 caravans on the site. The development at the site therefore remains unauthorised.

#### 4. HISTORY

- 4.1 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.*

- 4.2 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.*

4.3 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

## 5. PLANNING POLICY CONTEXT

5.1 The relevant planning policy considerations are:

### National Planning Policy

National Planning Policy Framework (NPPF)  
National Planning Practice Guidance (NPPG)  
Planning Policy For Traveller Sites, Communities and Local Government

### 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

## 6. APPRAISAL

### Impact on the York Green Belt

6.1 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 states 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 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.*

6.2 The unauthorised 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 passage of time 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.

6.3 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 building and the siting of the three existing buildings for residential 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 unauthorised development within the York Green Belt is therefore considered to conflict with the National Planning Policy Framework and Policies SP 1 and SP 2 of the Ryedale Plan - Local Plan Strategy subject to detailed consideration of planning policies relating to the gypsy and travelling community.

#### Gypsy and Travelling community policy considerations

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

6.5 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.

6.6 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*

- d. *that plan-making and decision-taking should protect Green Belt from inappropriate development*
- e. *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*

6.7 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.

6.8 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. These considerations are dealt with in turn.

#### Personal Circumstances and the Best Interests of the Child

6.9 The owner's agent advised that they left their previous site elsewhere in Yorkshire due to a family feud at the site. They advised that the owner 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 owner 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 owner's father in law moving onto the site shortly. He is currently in hospital and may require care once he has left.

6.10 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.

6.11 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 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.

- 6.12 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 is considered to be appropriate.
- 6.13 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 while taking into account the best interests of the child. The 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

- 6.14 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.
- 6.15 While it is recognised the Assessment is now out of date, it is only by one year and 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 hold back from taking formal enforcement action in the Green Belt.

#### Neighbour Amenity

- 6.16 To accord with Policy SP20, 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.
- 6.17 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 a certain level of sound mitigation. The nearest dwellings are approximately 300 metres from the site across fields. Were planning permission to be 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 can take action.

## 6.18 Legal duties and constraints

### HUMAN RIGHTS

- 6.19 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.
- 6.20 The Authority must therefore show that it has properly considered the rights and freedoms of the owner, Mr Jobie Tyers and his family.
- 6.21 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.
- 6.22 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”*.
- 6.23 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
- 6.24 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.
- 6.25 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”*.
- 6.26 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.
- 6.27 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.

- 6.28 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 recommendations have taken into account the personal circumstances of the applicant and his family, including the best interests of the child.

#### DISABILITY AND RACE

- 6.29 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.
- 6.30 The site residents are travellers. They should be regarded as being a racial group and sharing the protected characteristic of belonging to that group.
- 6.31 In considering the merits of this planning application, the committee will need to consider whether taking enforcement action 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

- 6.32 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)
- 6.33 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)
- 6.34 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)
- 6.35 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 decision whether or not to take enforcement action, 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 .

7. WHY IS IT CONSIDERED EXPEDIENT TO SERVE A NOTICE?

- 7.1 The unauthorised development at the site was the subject of a planning application (ref: 16/00750/FUL) that had been recommended for refusal for Members to determine at Planning Committee on 2nd August 2016. The application was withdrawn prior to the meeting at the applicant's request. As such the development remains unauthorised and the next stage is to consider what action can be taken to remedy the breach of planning control.
- 7.2 The options available would be to do nothing and allow the breach to become lawful by dint of the timescale, to negotiate with the owner in an attempt to remedy the breach of planning control or to take formal enforcement action through the service of an enforcement notice.
- 7.3 The do nothing option could leave the Council open to criticism or complaints and would undermine public confidence in the planning system, contrary to paragraph 207 of the NPPF. Negotiations to resolve the breach of planning control have been ongoing prior to the submission of the retrospective planning application with a letter to the owner to advise they cease using the land for residential purposes and remove the caravan, mobile home and shed. In response to this the owner submitted the planning application.
- 7.4 The final option is formal enforcement action in the form of a planning enforcement notice. The NPPF states that enforcement action is discretionary and should be proportionate to the breach of planning control. It is therefore necessary to have a reason to explain the expediency of service an enforcement notice.

7.5 The expediency reason to serve an enforcement notice is outlined below:

1. *The breach of planning control is contrary to contrary to the NPPF, CLG's Planning Policy for Travellers Sites (2015) and Policy SP1 of the Ryedale Plan - Local Plan Strategy in that the mobile home, two caravans, shed and the hardstanding constitute inappropriate development resulting in an unacceptable impact on the openness of the York Green Belt.*

8. STEPS NECESSARY TO REMEDY THE BREACH

8.1 This report seeks authorisation to serve a formal enforcement notice to remedy the breach of planning control. In order to achieve compliance the necessary steps include:

1. Cease the use of the land for residential purposes.
2. Remove from the land the mobile home, the two caravans and the timber shed.
3. Restoration of the land to its former condition, through the removal of the additional car parking area.
4. Cultivate and seed the land to a condition fit for equestrian use.

9. SUGGESTED PERIOD FOR COMPLIANCE

9.1 The suggested period for compliance is 2 (two) years in respect of an Enforcement Notice.

Recommendation

The Council Solicitor be authorised in consultation with the Head of Planning and Housing Services to issue an enforcement notice pursuant to section 172 of the Town and Country Planning Act 1990 (as amended) requiring:

1. Cease the use of the land known as Land at Croft Farm for residential purposes
2. Remove from the land the mobile home, the two caravans and the timber shed
3. Restoration of the land to its former condition, through the removal of the additional car parking area
4. Cultivate and seed the land to a condition fit for equestrian use.

Background Papers

Investigation file 15/00107/UD