



*St Edmundsbury*  
BOROUGH COUNCIL

**DEV/SE/16/07**

# **Development Control Committee**

## **7 January 2016**

**Planning Appeal-Application Reference**

**DC/14/1667/FUL**

**Land South of Rougham Hill, Bury St Edmunds**

**Case Officers:** Christine Flittner/Gareth Durrant  
**Recommendation:** Please refer to recommendation at end of this report

**Parish:** Bury St Edmunds Town  
**Ward:** Southgate

**Proposal:** Change of use of woodland to Gypsy/Traveller site consisting of five pitches

**Site:** Land South of Rougham Hill, Bury St Edmunds

**Applicant:** Mr Kevin Delaney

**Recommendation:**

It is recommended that the Committee considers the options and the recommendation contained in this report.

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## **Background**

1. This report updates members on the progress made in relation to the Council's Statement of Case concerning the Rougham Hill appeal. The appeal was confirmed as valid by the Planning Inspectorate on 27 October 2015. The deadline for the submission of the Council's Statement of Case is 12 January 2016
2. The application for change of use of woodland to a gypsy/traveller site consisting of five pitches was refused at the SEBC Development Control committee meeting on 5 February 2015. The Committee Report and minutes are attached as Working Papers 1 and 2.

## **Reasons for Refusal**

3. There are two reasons for refusal as set out below;
  1. The applicant has failed to demonstrate to the satisfaction of the Local Planning Authority that the proposed change of use of woodland to a permanent, five pitch Gypsy and Traveller site would not be prejudicial to the delivery of the South East Bury Strategic Site. In the absence of such information, and given the requirement for a masterplan for the whole site to be adopted prior to the determination of any planning applications, the Local Planning Authority is of the opinion that the development of the site in the manner proposed would be premature. The proposal is therefore contrary to the aims and objectives of Policies BV7 of the Bury St Edmunds Vision 2031 and CS11 of the St Edmundsbury Core Strategy, 2010 which seek to deliver strategic growth through the masterplan approach.
  2. The development of the site would result in the loss of a significant number of plantation oak trees. The loss of canopy cover cannot be mitigated within the site and given the limited detail within the submission, regarding the location of the trees to be retained and removed, the applicant has failed to demonstrate to the satisfaction of the Local Planning Authority that the proposed change of use would not be detrimental to the character and quality of the local landscape and public access to it. As a result the proposal is contrary to the aims and objectives of Policies NE3 of the Replacement St Edmundsbury Borough Local Plan, 2006 and DM13 of the Joint Development Management Policies ( Version proposed for adoption) 2015 and policy CS2 (D) of the Core Strategy 2010.

## **Changes relating to the policy position**

4. Since the refusal of the application the Masterplan for the South-East Bury strategic site has been adopted as non-statutory planning guidance by Full Council (22 September 2015 – see Minutes attached as Working Paper 3). This adoption was subject to the reinstatement of the site of the proposed Gypsy and Traveller site. The site was removed from an earlier draft version of the document. The adoption of the Masterplan represents a material change in circumstances. It places the application site/proposal in a different policy context from the time the planning application was considered by the Development Control Committee. Extracts from the Masterplan are attached as Working Paper 4.
5. The consequences of the change in circumstances are set out below for consideration.
6. Reason for refusal No.1 falls away completely because it is based on prematurity prior to the adoption of the Masterplan. The Masterplan has been adopted as set out in para 4 above and identifies the woodland site as a 'potential' site for Gypsies and Travellers (in conformity with the adopted Concept Statement).
7. Reason for refusal No.2 requires fresh consideration in the light of the Masterplan taken as a whole. This consideration applies irrespective the inclusion within the Masterplan of the woodland site as a 'potential' site for Gypsies and Traveller accommodation.
8. The wider Masterplan development will provide many hectares of new planting, landscaping and publicly accessible land and will lead to net gains in biodiversity; therefore it is reasonable to conclude that the principle policy objections within refusal reason 2 have been substantially overcome. The outline planning application for the masterplan site has been received and is valid;

*DC/15/2483/OUT - Land South Rougham Hill, Rougham Hill, Bury St Edmunds*

*Proposal - Outline Planning Application (Means of Access) to be considered) on to Rougham Hill and Sicklesmere Road) to include up to 1250 dwellings (Use Class C3); local centre comprising retail floor space (A1, A2, A3, A4 and A5), a community hall (D2), land for a primary school (D1), and car parking: a relief road, vehicular access and associated works including bridge over the river Lark: sustainable transport links: open space (including children's play areas): sustainable drainage (SuDS): sports playing fields: allotments and associated ancillary works*

9. The planning application site area excludes the Woodland site (the appeal site) and includes no specific provision for Gypsy and Traveller accommodation.
10. The adoption of the Masterplan and the proposed development to be delivered as a result will be capable of providing mitigation (beyond the application site) for the impact of the five pitch traveller site on the character and quality of the local landscape and public access to it. The updated comments of the Ecology and Landscape officer are as follows;

*The recently submitted outline planning application DC/15/2483/OUT reflects the approved masterplan for the south east of Bury St Edmunds. The proposed structural landscaping and open space is shown in drawing 34073-LEA84F - 3 Landscape and Open Space Parameter Plan. This shows new woodland and tree buffers in the immediate vicinity of the proposed gypsy/traveller site that would, adequately compensate the loss of the woodland which is proposed. The main concern would be that this is outside of the applicant's control. However given that an outline application for the strategic growth area has now been submitted we have reasonable certainty that the masterplan and proposals in the outline application will be delivered.*

*The requirement for the remaining woodland to be managed still remains in particular the northern section of the woodland adjacent to the Public Right of Way.*

11. Since the planning application was refused Policy NE3 of the Local Plan has been superseded by policy DM13 of the Joint Development Management Policies (Landscape Features) which was also quoted in the refusal reason.
12. Planning Policy for Travellers Sites was revised following public consultation and re-published, by the Government, in August 2015. The revised PPTS requires (inter alia) that applications for a permanent site (including caravan sites) by persons who do not travel will be considered in the same way as an application from the settled population, as opposed to being considered under policies relating to travellers. The guidance places greater focus on consideration of the nomadic habit of life of the applicant, in terms of whether they previously led a nomadic habit of life; the reasons for ceasing their nomadic habit of life and whether there is an intention of living a nomadic habit of life in the future.
13. Since the publication of this guidance the agent representing the family has provided information to the Council and the Planning Inspectorate to confirm that within the family the men, in particular, have led and continue to lead a nomadic life in order to work and earn a living and have no intention of ceasing to travel. The traveller status of the family has not

been a matter of dispute and was dealt with at paras 56 and 57 of the committee report attached as Working Paper 1. The report states that the applicant seeks a permanent site for his family as maintaining a nomadic way of life is increasingly difficult concerning access to employment and continuity of health care and education. Whilst the adult men of the family still pursue a traditional travelling lifestyle in relation to employment the women and children require access to education and healthcare which requires a settled base.

14. The Planning Inspector will consider the appeal based on the up to date policy position, so taking into account the adopted Joint Development Management Policies, the adopted Masterplan and the revised Planning Policies for Traveller Sites.

15. At the time the application was considered by the Development Control Committee it was suggested that a number of conditions should be imposed and these can be found in full at para 106 of Working Paper 1. Those conditions which are recommended to minimise/mitigate impact on the landscape and summarised below;

- (a) details of mature trees on the site and the measures for their protection and retention;
- (b) an assessment of the trees to be removed for their potential to house bats;
- (c) implementation of mitigation measures as set out in the ecological report submitted as part of the application;
- (d) a management plan for hedgerows and mature trees retained adjacent to the PRoW to mitigate the loss of tree canopy cover from within the site.

16. The conditions listed at para 106 of the original Committee Report (Working Paper 1), have been forwarded to the Planning Inspectorate as part of the appeal papers.

### **Assessment of the updated position and associated risks**

**17. In light of the above the following options exist;**

**That:-**

- (i) **The Committee confirm that provided the mitigation measures recommended through the conditions are put forward to the Inspectorate they no longer intend to pursue the defence of the appeal as both reasons for refusal have been superseded/ overcome and for the appeal to continue via the written representations process rather than at a Hearing; or**

- (ii) The Committee confirm that the defence of reason 1 relating to prematurity should not be pursued, but continue to defend reason 2 as this reason has not been fully mitigated; or**
- (iii) The Committee confirm that neither reasons 1 or 2 have been overcome.**

18. The reasons for refusal set out at para 3 of the report are based on prematurity in policy terms and a failure to demonstrate adequate mitigation for the loss of the woodland site to accommodate the development.

19. The argument in relation to prematurity concerning the adoption of the Masterplan has fallen away as explained above at para 6, therefore it is the view of officers that the defence of refusal reason 1 cannot be sustained. .

20. The second reason for refusal is covered at paras 7 – 10 above and demonstrates that further consideration has been given to the matter of mitigating the landscape impact/loss of woodland of the proposal following the adoption of the Masterplan and submission of the outline planning application. Conditions to mitigate the impact of the proposal within the site were recommended as appropriate and proportionate at the time the planning application was considered in February 2015 and these have been forwarded to the Inspectorate (see para 14 above). Further comments from the Landscape and Ecology officer indicate that landscape buffers to be provided around the site, within the overall Masterplan development, would adequately compensate for the loss of the woodland. The concern that this land is not within the control of the appellant is noted, however it is reasonable to conclude that the strategic development has a high likelihood of being delivered as a result of the submission of the outline planning application.

21. Option (i) is the favoured approach of officers and is the course of action recommended to the Committee for the reasons set out above. If the Committee favour either options (ii) or (iii) this would involve the rejection of the advice of officers in relation to planning policy and mitigation measures. Members will be fully aware that they are not obliged to accept the advice of officers and are entitled to come to a contrary view, however any decision would need to be evidenced by sound planning reasons. If the evidence supporting the reasons to continue to defend the reasons for refusal is not regarded as sufficient to substantiate the argument, this course of action could be viewed as unreasonable by the appellant and costs consequences may follow. It follows that a strong evidential basis would need to be demonstrated for the rejection of the updated positions in relation to reasons for refusal.

22. Officers recommend that the Planning Inspectorate be contacted to request the appeal format is altered to a written representations procedure as the issues involved can be communicated in writing and there are no issues associated with the reasons for refusal that are of a nature to justify an inquisitorial Hearing. This course of action would also minimise the risk

associated with a claim for costs from the appellant associated with preparation for the Hearing.

23. The evidence relating to the appeal submitted by consultees, neighbours and other relevant parties will continue to be presented to the Planning Inspectorate to enable the Inspector to adjudicate on the matter.

24. A further risk associated with the taking of any decision is a potential claim for Judicial Review of the decision. However, officers are content that the material planning issues and the justification for the recommended course of action in this case have been properly considered to date. In terms of the appeal the risks associated with a potential Judicial review now rest with the Secretary of State whom has assumed the role of decision maker.

### **Recommendation:**

**That:-**

**Option (i) set out at paragraph 17 above is pursued and**

**The Committee confirm that, provided the mitigation measures recommended through the suggested conditions are put forward to the Inspectorate, it no longer intends to pursue the defence of the appeal as both reasons for refusal have been superseded/overcome. The Inspectorate should be informed of this decision by 12 January 2016 (deadline for submission of Statement of Case) along with a request for the appeal to continue via the written representations process rather than at a Hearing.**

### **Attached Documents;**

**Working Paper 1 – Committee Report DC/14/1667/FUL**

**Working Paper 2 – Minutes relating to consideration of DC/14/1667/FUL**

**Working Paper 3 – Minutes of Full Council –adoption of Masterplan**

**Working Paper 4 – Extract from Masterplan**

### **Documents:**

All background documents including application forms and some appeal documents, drawings and other supporting documentation relating to this application/appeal can be viewed online;

Application documents:

<https://planning.westsuffolk.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=NBDJKTPDLK900>

Appeal documents:

<https://planning.westsuffolk.gov.uk/online-applications/appealDetails.do?activeTab=documents&keyVal=NX10S2PD02L00>

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