

Forest Heath District Council

**DEVELOPMENT
CONTROL COMMITTEE**

1 MARCH 2017

DEV/FH/17/009

Report of the Acting Head of Planning

**PLANNING APPLICATION DC/16/1758/FUL – LAND NORTH OF LODGE FARM,
SKELTONS DROVE, BECK ROW**

Synopsis:

Application under the Town and Country Planning Act 1990 and the Planning (Listed Buildings and Conservation Areas) Act 1990 and associated matters.

CONTACT OFFICER

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Committee Report

Date	07/10/2016	Expiry Date:	06/01/2017
Registered:		EOT:	08/03/2017
Case Officer:	Charles Judson	Recommendation:	Refuse
Parish:	Beck Row	Ward:	Eriswell and The Rows

Proposal: Planning Application DC/16/1758/FUL - Change of use of land to provide 10 pitches for traveller families (each pitch to include 1 mobile home, 1 travelling van and 1 day room)

Site: Land North of Lodge Farm, Skeltons Drove, Beck Row

Applicant: Mr R Oakley

Section A – Background and Summary:

1. The application was deferred from consideration at the Development Control Committee meeting on 1st February 2017. Members resolved that they were 'minded to approve' the planning application contrary to the officer recommendation of refusal.
2. The previous Officer report for the 1st February 2017 meeting of the Development Control Committee is included as Working Paper 1 to this report. Members are directed to this paper in relation to site description, details of development, details of consultation responses received etc.
3. Officers updated members verbally at the Development Control Committee that a further representation had been received from a local resident regarding the un-adopted road that led to the site. Members were also advised that with regard to the Officers recommendation set out in Working Paper 1, reference to an 'unmade track' should be amended to read "un-adopted road".
4. This report sets out the updates from the written papers presented to the meeting of development Control Committee on 1st February and includes a risk assessment of Members minded-to decision to approve.
5. The Officer recommendation, which is set out at the end of this report remains that planning permission should be refused.
6. Since the Committee meeting on 1st February no further information has been submitted by the applicants.

Section B – General Information:

Proposal:

7. Please refer to Working Paper 1, paragraphs 1-2 for a description of the application proposals.

Application Supporting Material:

8. Please refer to Working Paper 1, paragraph 3 for details of the drawings and technical information submitted with the planning application.

Site Details:

9. Please refer to Working Paper 1, paragraph 4 for a description of the application site.

Planning History:

10. Please refer to Working Paper 1, paragraph 5 for details of relevant planning history.

Consultation:

11. Please refer to Working Paper 1, paragraphs 6 - 16 for details of consultation responses received.
12. Since the Development Control Committee on 1st February comments have been received from the Planning Policy Team and these are attached to this report as Working Paper 2. These comments set out the planning policy context and should be read in conjunction with paragraphs 20 – 25 of Working Paper 1.
13. Officers have also been contacted by the Mildenhall Internal Drainage Board who confirmed that they are the owners of Skeltons Drove and have requested that the applicants are made aware of this.
14. Any further consultation responses received will be reported verbally to the meeting.

Representations:

15. Please refer to Working Paper 1, paragraphs 17 – 19 for details of representations received. Members should also refer to the additional representations received after the committee report to the 1st February meeting was prepared. Members will recall that one further letter of representation was received and was reported verbally to the Committee and thus is not included within Working Paper 1. This made the following points:

- Requesting that Skeltons Drove is adopted to ensure it is

appropriately maintained to cater for development and to protect existing users rights of access from Mr and Mrs Dale of 66B The Street (Skeltons Drove), Beck Row.

Policies:

16. Please refer to Working Paper 1, paragraphs 20 – 25 and Working Paper 2 for details of relevant planning policies and considerations.

Officer Comment:

17. Please refer to Working Paper 1, paragraphs 26 – 59 for details of the Officers assessment of the application proposals.

Section C – Risk Assessment:

18. The main purpose of this report is to inform Members of the risks associated with the 'of mind' resolution to approve planning permission for this development proposal, given that an approval of planning permission would be contrary to Officer recommendation.
19. As set out in the Background section of this report, Members deferred their consideration of this planning application from 1st February 2017 meeting of Development Control Committee. Members were 'of mind' to approve the planning application for the reasons of;
20. The close proximity of the site to other traveller sites;
21. The lack of harm associated with the development; and
22. The support from the Parish Council.
23. The remainder of this report discusses the Officers reasons for refusal before discussing the potential implications of an approval of planning permission.

Section D – Discussion of Reasons for Refusal

Reason for Refusal 1 – Need:

24. Paragraph 4(a) of Planning Policy for Traveller Sites (PPfTS) states that local planning authorities should make their own assessment of need for the purpose of planning. This is further emphasised at paragraph 7(c) where it is stated that local planning authorities should use a robust evidence base to establish accommodation needs to make planning decisions. Paragraph 11 states that where there is no identified need, criteria-based policies should be included in development plans to provide a basis for decisions in case applications nevertheless come forward. As the application is for new development in the Countryside where paragraph 25 of PPfTS states that new development should be strictly limited, Officers consider it appropriate to only allow development where

there is an identified need. This is emphasised in Policy CS8 of the Core Strategy 2010 which states that proposals for Gypsy and Traveller Sites will be considered with reference to, inter alia, whether the proposal meets identified needs.

25. To assess current and future need for Gypsy and Traveller accommodation in the District the Gypsy and Traveller Accommodation Assessment (2016) (GTAA) has been produced. This identifies that there is no known need for any additional pitches in the District up to 2036. Consequently no site allocations are proposed in the emerging Site Allocations Local Plan. However, as not all gypsy and traveller households in the District were able to be interviewed the GTAA calculates that there may be an 'unknown' need for 8 additional pitches through new household formation using a growth rate of 1.5%. Core Strategy policy CS8 sets out a criterion based approach to addressing additional proposed needs where applications for gypsy and traveller sites do come forward and where they meet the definition.
26. To understand the applicants need and to establish whether the application belongs to the unknown need identified in the GTAA or whether the need has arisen from elsewhere the applicant was asked to provide details of the current accommodation arrangements of the intended occupants and details of why they now seek alternative accommodation.
27. Information submitted with the application states that four of the intended families currently reside within the District whilst six reside outside of the District. On this basis the need could be in part 'unknown' (in that the intended occupants who reside in the District were not interviewed) and in part be 'new' (arising from outside of the study area).
28. The application advises that the proposed pitches are required for three reasons: i) to provide access to education, ii) to provide access to healthcare and, iii) to accommodate a desire for the families to live together on a private site that they control. Officers consider that in determining whether a need exists, regard should be had to the existing accommodation arrangements of the intended occupants. If it can be adequately demonstrated that the applicants existing accommodation arrangements do not meet their needs then Officers accept that a need exists.
29. It is accepted by Officers that the current accommodation arrangements do not enable the families to live on a private site that they control as the families are dispersed on a number of sites across different authorities. Whilst this would likely have some positive benefits for the families, no information has been provided to evidence why living on one site is necessary. Furthermore, no information has been provided to demonstrate that the proposal would provide better access to education or healthcare than their existing accommodation arrangements. Whilst a number of the intended occupants are stated to be in temporary pitches no detail has been provided of how long these permissions exist for, the reasons for their temporary nature and whether efforts have been

undertaken to make them permanent. It has also not been identified how the proposal would improve access to education or healthcare those families currently residing in permanent pitches. It is therefore considered that insufficient information has been provided to demonstrate that there is a need for 10 new pitches other than due to a desire for the families to live together on a single site that they control.

Reason for Refusal 2 – Compliance with definition:

30. To establish whether it is appropriate to apply planning policies which relate to Gypsies and Travellers it is necessary to establish that the intended occupants of the site comply with the definition of Gypsy and Traveller in PPfTS. This definition is provided in paragraph 30 of Working Paper 1. This definition was amended in 2015 when PPfTS was revised. Annex 1 paragraph 2 of PPfTS identifies that in determining whether persons are Gypsies and Travellers consideration should be given to the following issues amongst other relevant matters:
- Whether they previously led a nomadic habit of life
 - The reasons for ceasing their nomadic habit of life
 - The intention of living a nomadic habit of life in the future.
31. Whilst it is accepted that the application is not for a personal permission, to evidence that there is a need for the development it is considered that the applicant must demonstrate that those who require the site meet the relevant definition of Gypsy and Traveller.
32. The intended occupants are understood to come from a 'travelling' background however this does not mean that they therefore comply with the relevant definition which was revised in 2015. Officers expect the applicant to demonstrate through their application how the intended occupants have previously led a nomadic habit of life, when and why they stopped travelling and whether they intend to travel again in the future and in what circumstances. This would demonstrate compliance with the definition.
33. Information submitted with the application is considered vague and generalised and does not provide Officers with sufficient comfort that all intended occupants would comply with this definition. To evidence how they have previously led a nomadic habit of life, the applicant highlights that some of the older members of the family are unable to read and write due to moving around following work and not attending school. To identify the circumstances when the families will return to a nomadic habit of life the applicant confirms this will be "as and when possible". It is not considered that such statements provide sufficient precision to enable comfort that the intended occupants would comply with the relevant definition.

Reason for Refusal 3 – Noise:

34. Policy DM2 of the Joint Development Management Policies Document 2015 requires development to, inter alia, not adversely affect residential

amenity. Advice from Public Health and Housing identifies that the site would be subject to noise from adjacent airfields being located within the 72dB noise contour. Mobile homes offer limited noise attenuation and residents of the site would suffer from an adverse impact on amenity.

35. Members are advised to determine whether they consider the proposal would have an adverse impact on the amenity of future residents of the site. If it is considered that the development would have an adverse impact Members must consider whether there are material considerations to justify this adverse impact.

Reason for Refusal 4 – Character and Appearance:

36. The site is located within the open countryside and is in agricultural use. The application would result in the change of use of the application site to residential and allow for the construction of permanent day rooms, hardstanding, the stationing of vehicles and mobile homes, the introduction of domestic paraphernalia and associated hard landscaping which Officers consider would have a detrimental impact on the impact of the immediate area contrary to development plan objectives and the NPPF. Officers accept that the development would be read in conjunction with the Bomb Dump to the north of the site and that appropriate landscaping could help to mitigate some harm, however given the open flat landscape to the south, west and east it is considered that the proposal would introduce development incongruous to the predominantly agricultural landscape detrimental to the character and appearance of the area..

37. Members are advised to determine whether they consider the proposal would have an adverse impact on the character and appearance of the area. If it is considered that the development would have an adverse impact Members must consider whether there are material considerations to justify this adverse impact.

Reason for Refusal 5 – Distance from Services:

38. The site is a distance of 1.42km from access on to The Street nearby to which are a range of services and facilities including a post office (2.1km), primary school (2.5km) and bus services. The NPPF and the development plan encourage development to be in locations which allow access to services and facilities without residents relying on the private car to encourage the use of more sustainable transport modes. Officers consider that the distance to these services should be considered in the context of the nature of Skeltons Drove which is an unadopted road without street lighting or dedicated pedestrian facilities for its entire length. Given the nature and length of this road Officers consider it likely that residents would be dependant on the private car to access day to day facilities.

39. Members are advised to determine whether they consider the proposal would be in a sustainable location. If it is considered that the development would not be in a sustainable location Members must consider whether there are material considerations to justify the impact of

this.

Section F – Implications of granting planning permission:

40. Planning law requires that decisions on planning applications must be taken in accordance with the development plan unless there are material considerations that indicate otherwise. Officers are of the view that the application does not comply with the development plan and there are not material considerations to justify a departure.

41. Members identified that they were minded to approve the application on the grounds of:

- The close proximity of the site to other traveller sites;
- The lack of harm associated with the development; and
- The support from the Parish Council.

Officers do not consider that these represent sufficient reasons for approving the application.

42. Turning first to the proximity of the site to other gypsy and traveller sites, the application site is approximately 400 metres from two existing gypsy and traveller sites which contain a total of 47 pitches. However, Members are advised that there is no planning policy which requires new gypsy and traveller pitches to be located nearby to existing gypsy and traveller provision. Furthermore, the applicants have not identified that the site has been selected due to its proximity to other gypsy and travellers sites in terms of justifying a need so it is not considered that the sites location relative to existing gypsy and traveller sites is a material consideration which carries weight. On this basis Officers do not consider that the proximity of the site to existing gypsy and traveller sites represents an appropriate reason for approval being not grounded in planning policy and not carrying weight as a material consideration.

43. The second reason for approval, concerning the lack of harm associated with the development is to some extent a subjective issue. However, Officers consider that there is harm associated with the proposal in landscape, residential amenity and transport sustainability terms for the reasons set out in Working Paper 1 and discussed in this report. The extent of the harm on these grounds are a matter of judgement taking account of the relevant facts and the weight which can be given to the impact should form part of the planning balance. Officer consider that in light of the lack of identified need, the harm in terms of landscape, residential amenity and transport sustainability can be given significant weight in the planning balance.

44. The third reason for approval is the support of the Parish Council who has commented that the applicants have made improvements to the area and if this continues it will be an enormous benefit to the village. Officer understand that this part of Skeltons Drove has been subject to fly-tipping

in the past and a residential presence on the application site may deter such activities in the future. Whilst the support of the Parish Council is noted, Officers do not consider that the Parish Councils representation identifies wider benefits to the village which are sufficient to overcome the reasons for refusal identified and accordingly for this reason Officers do not consider that the support of the Parish Council represents a material consideration of sufficient weight to approve the application, bearing in mind the lack of need and harm identified by the Officers.

45. In coming to their decision Members must clearly identify whether they consider the proposal complies with the development plan and their reasons for reaching their decision. If it is decided that the proposal does not comply with the policies of the development plan and they wish to approve the application, the material considerations which justify the departure must be identified. Failure to adequately identify the reasons for a decision would adversely impact on the reputation of the Council.
46. Whilst every application must be considered on its own merit, it is also important for the Council to be consistent in its application of policy when determining applications of a similar nature. Failure to provide clear reasons for the decision could expose the Council to the risk and cost of Judicial Review in the High Court and would impact on the ability for the Council to be consistent for other applications of a similar nature. This would also adversely impact upon the reputation of the Council.
47. If applications are not treated equally, in the event that a similar application is refused the applicant would have the right to seek to recover their appeal costs (in full or part depending on the circumstances) from the Council should the Inspector conclude that the Council has acted unreasonably. This would result in financial and reputational implications for the Council.

Section G - Conclusions:

48. Members should have regard to the attached Working Papers 1 and 2 in reaching their decision. Officers consider that the application raises fundamental issues in the interpretation of policy and Officers are concerned that the earlier Development Control Committee resolution that Members are 'of mind' to approve the application could lead to adverse reputational and financial implications for the Council.
49. In the event that Members grant planning permission, it is recommended that the reasons for the decision are clearly stated and that the following matters should be controlled by conditions:
 - Time limit
 - Plans and documents
 - Occupancy restriction to gypsy and traveller as defined in Annex 1 of PPfTS
 - Limit to 20 caravans of which no more than 10 can be static as defined in the Caravan Sites and Control of Development Act 1960

and the Caravan Sites Act 1968

- Soft landscaping and maintenance plan and details of boundary treatment to be submitted
- Surface water drainage scheme to be submitted
- Materials for day rooms to be submitted
- No vehicles over 3.5 tonnes to be stationed on site
- Unexpected contamination
- Day rooms to be ancillary to use of caravans

Documents:

All background documents including application forms, drawings and other supporting documentation relating to this application can be viewed online.