

Application No: 2009/189	Application Type: Full
Proposal: Retention and use of building as a dwelling by a Gypsy/ Traveller family , in association with the use of land for keeping of animals (Retrospective)	Location: Cobland View, Rooley Moor Road, Stacksteads.
Report of: Planning Unit Manager	Status: For Publication
Report to: Development Control Committee	Date: 5 October 2009
Applicant: Mr David Simpson	Determination Expiry Date: 31 August 2009
Agent: Hartley Planning & Development Assocs	

REASON FOR REPORTING **Tick Box**

Outside Officer Scheme of Delegation

Member Call-In

Name of Member: Cllr C Lamb
Reason for Call-In: It would be useful for the Committee to pay a site visit to view the past history and what has already been done to the site. Also some residents are afraid to object to the proposal as their names and addresses will be kept in a public file.

More than 3 objections received

Other (please state):

HUMAN RIGHTS

The relevant provisions of the Human Rights Act 1998 and the European Convention on Human Rights have been taken into account in the preparation of this report, particularly the implications arising from the following rights:-

Article 8

The right to respect for private and family life, home and correspondence.

Article 1 of Protocol 1

The right of peaceful enjoyment of possessions and protection of property.

BACKGROUND & UPDATE

At the meeting on 3rd August 2009, Members considered the attached report and resolved to defer the application with a view to seek further details/clarification of information from the applicant concerning description of the proposed development, type of the buildings/structures including caravans available on the site, length of time the applicants have been on the site, water drainage and sanitation, need for proper sites and facilities for travelling people and the current stage of the enforcement proceedings.

Since the deferral of the application on 3rd August 2009, the agent for the applicant, Mr. Hartley, has provided the following additional information:

- The animals are kept in various sheds and structures. If the structures have to be removed then this will raise issues of animal welfare, particularly in winter if they are left outside.
- The application relates to the flat roofed structure and caravan attached to it at the rear (the dwelling). This provides three bedrooms.
- The applicants have 5 children and expecting a sixth. They need to be able to keep the mobile caravan in order to provide sufficient sleeping accommodation for the family. The caravan is located alongside the dwelling.
- Much of the site was formerly part of the scrap yard while the rest forms part of agricultural land. The family has access to approximately 6 acres. The applicants have already seeded the steep embankments to ensure that they blend better into the landscape.
- The north-westerly part of the site contains overflow vehicles from the scrap yard. The applicants are willing to clear the area of all such vehicles and other materials but would request that their own vehicles can be parked there.
- The attached site plan has been amended to form part of the application. The plan shows those buildings and structures which are to remain on the site for the duration of any planning approval.
- From the amended site plan, it will be evident that the structures relate, in the main to living accommodation and for accommodation for horses, dogs and chickens. Most of the van bodies that used to occupy the site have been cleared away.
- The dwelling is drained to an existing septic tank which was in situ when the applicants moved onto the site and was used in connection with the existing adjoining caravan when it was lived in by Mr. Kyme.
- The dwelling in which the applicants are living has the benefit of mains water.

Clarification of information:

Proposed development

The application seeks permission for the retention and change of use of the building to dwelling in association with use of land for keeping of animals. The permission is sought on a temporary basis for three years. The building referred to in the proposal has been formed by linking a portable structure to a caravan and is located in the easterly corner of the site. The site plan showing the application area, marked as

edged red, includes the siting of the building, a caravan, three van backs and a block of three stables with the intervening land used for the keeping of horses.

In the Design and Access Statement, the applicant points out that the proposed dwelling is used in connection with the keeping of animals on part of the site. The remainder of the site is used for keeping sheep, pigs and some horses. The various shelters on the site are not fixed to the ground and are periodically moved within the site. According to the applicant, this aspect of the application does not require planning permission as the land has always been used for the keeping of animals including horses. However, the presence of moveable structures on land does represent a particular kind of land use. In this instance the applicant is claiming the use of for the keeping of animals, however, this is not the same as an agricultural use. For example, the horses being kept are not for agricultural purposes, namely ploughing the land and it is not clear whether the other animals are being bred or reared for sale. As such, it is considered that a change of use has occurred which requires planning permission.

Nevertheless, some of the structures on the site do not appear to be as mobile and frequently moved as is suggested by the agent. In particular, the stabling, chicken shed and fencing. It is considered that the structures which are not moved around the site and/or which are attached to the ground so that they cannot be easily moved require planning permission. In addition, there is the area of hardstanding used as parking, storage and an access road. This is considered to constitute development and as such require planning permission.

It should also be noted that the clearance of the scrap yard offered by the applicant is required as part of the Enforcement Notice shortly to come into effect on the site which includes the seeded embankment. The application site did not form part of the scrap yard in 2001 when it was still open countryside, as shown on the 2001 aerial photos.

Although the Design and Access Statement as originally submitted with the application make it clear that planning permission is sought only for that part of the site which contains the building/dwelling, the applicant's agent has since stated that in fact the red edge site intentionally included the land adjoining the dwelling for use of the land for storing moveable structures and for retrospective permission for the immovable items. Whilst it is considered that the use of land for the keeping of animals might not be inappropriate in the Countryside, the impact of the scattered structures and wagon backs, fencing and hardstanding has an unacceptable impact on the intrinsic character of the Countryside.

Enforcement Notice

The Enforcement Notice requiring the cessation of the unauthorised change of use of land from countryside to residential use and removal of structures consisting of portable buildings, caravans, sheds, wagon backs and the storage of vehicles, vehicle parts and scrap metal, was issued on 9th February 2009. The Notice was to take effect on 11th March 2009 unless an appeal had been lodged against it beforehand. The site area identified in the notice is same as that the application site. An appeal against the enforcement notice was lodged with the Planning Inspectorate on 31st March 2009. However, at the request of the applicant, the appeal was withdrawn on 2nd May 2009 which is the same day the Enforcement Notice came into force. The Notice requires

the cessation of the portable building/caravan for residential use and removal of the buildings, caravans, sheds, wagon backs, vehicles, vehicle parts, scrap metal, fencing materials etc from the site within 6 months from the Notice becoming effective, the 2nd November 2009 and the removal of hard surfacing including reinstatement of land levels and carrying out landscaping works within 9 months of Notice becoming effective, 2nd February 2010.

In the light of the finding that the development would have an unacceptable impact on the character of the countryside, the Enforcement Notice should be left to run.

Committee Report

The report sent to the August Committee should be revised in accordance with the following wording:

Paragraph 6

Saved Joint Lancashire Structure Plan Policy 29 – Sites for Gypsy and Traveller Families.

Paragraph 7

LCC – GTAA 2007

The accommodation needs of gypsies and travellers have to be considered through Gypsy and Traveller Accommodation Assessments which feed directly into the Development Plan process. A sub-regional assessment for Lancashire was undertaken in 2007. This assessment did not identify a need for Gypsy sites in Rosendale.

4NW Partial Regional Spatial Strategy for the North-West Review 2009

4NW is currently undertaking a Partial Review of RSS (Regional Spatial Strategy) that specifically addresses provision for Gypsies and Travellers as required by Circular 01/2006. Draft RSS Policy L6 of the partial review proposes that sites for 10 permanent pitches and 5 temporary pitches be identified in Rosendale for the period 2007-16. RSS requirements, including possible exceptions sites, will be considered as part of the Council's Site Allocations DPD due for consultation in 2011. In view of the fact the document is only for consultation purposes it can only be afforded limited weight in determining this planning application.

Therefore it is prudent to consider the suitability of the application property in the context of the criteria set out in Circular 01/2006 and Saved Policy 29 of the Joint Lancashire Structure Plan (JLSP) for the provision of Gypsies and Travellers needs.

Draft Policy L6 - Partial Review of RSS

4NW are currently undertaking a Partial Review of the North West Regional Spatial Strategy (RSS). Draft Policy L6 addresses the accommodation needs of Gypsies and Travellers. It proposes that 10 permanent pitches and 5 transit pitches be provided in this Borough during the period 2010-2016. The application site would count towards the provision of permanent sites.

The consultation period ends on 19th October. Concern has been expressed, together with a number of other Boroughs in the Region, at the number of pitches proposed in the Draft Policy, on the basis that this level of provision is not justified by the background research. Having regard to the GTAA, the RSS policy at present carries limited weight for development control purposes. Issues raised during the consultation will be discussed at the Examination in Public in March with the Secretary of State coming to a final decision in June 2010.

In view of the concerns with regard to the allocations within RSS Draft Policy L6, to afford significant weight to this policy in the determination of the application would be premature. The assessment of the application should therefore be based on Saved Policy 29 of the Joint Lancashire Structure Plan and Circular 01/2006.

Recommendation

Since the application was last before the Committee, further information has been received and a revised policy position taken. In the light of these, the balance of considerations now leads Officers to recommend that the application be refused on the following grounds:

1. The proposal would, by reason of its size, siting and appearance, not represent good quality, carefully sited or sensitive development which would detrimentally affect the intrinsic character of the Countryside which should be protected for its own sake. As such, the proposed development would be contrary to PPS1, PPS7, Regional Spatial Strategy Policies DP1-7 and EM1 and the following Saved Policies of the adopted Rossendale District Local Plan DS5, DC1 & DC4.

Informatives

1. The applicant is advised to enter into pre-application discussions with the planning officer with a view to submitting a fresh application with a revised scheme seeking permission for the retention of the building as dwelling encompassing a significantly reduced curtilage
2. The Enforcement Notice is in force and its requirement to remove amongst other things structures, wagon backs and caravans must still be complied with by 2nd November 2009.

APPLICATION DETAILS

1. SITE

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- 1.1 The application site, approximately 0.25 hectares of levelled land containing a dwelling, cabins, van bodies, stables, kennels etc, is located on the northerly side of Rooley Moor Road, Stacksteads. The site known as Cobland View, adjoins an existing scrap yard to the north-east and open countryside to the south, east and west. To the west, the land rises upwards sharply to form a high embankment to the site.
- 1.2 The dwelling which has been created by linking a portable building to a caravan is located in the easterly corner of the site. Some of the shelters/sheds are not fixed to the ground.
- 1.3 Access to the site is gained via an access road from Rooley Moor Road. According to the information provided in the application, the application site was part of the adjoining scrap yard and that this access was used to gain access to it.

2. RELEVANT PLANNING HISTORY

2008/0138 – Change of use of building to dwelling (Retrospective) – Refused

3. THE PROPOSAL

- 3.1 The application has been submitted in retrospect and seeks permission for the retention of the dwelling. According to the information provided in the application, the dwelling is used by the applicant and his family in connection with the keeping of animals including sheep, pigs horses etc on part of the site.
- 3.2 The application has been submitted on the grounds that the dwelling is required to provide accommodation to the applicant and his family who are members of the gypsy and traveller community. In support of the application, the applicant points out:
 - The family including 5 children has been brought up in a traveller family and has continued to live a travelling lifestyle. Over the past 10 years, the family has stayed on sites in Dublin, York, Rossendale, Appleby etc.
 - Two of the children are registered on the Lancashire County Council data base for the Lanc. Gypsy, Roma and Traveler Achievement Service (GRTAS). As such they are being educated under the Traveler Education Service in association with County Elective Home Education Service. One child is currently being treated in a hospital in Liverpool.
 - In the absence of a facility for gypsies and travellers accommodation in the Borough, the family has had to find sites wherever they were available including at Landgate, Shawforth and at Wallbank, Whitworth.
 - The family, having a traveller culture, is definitely not looking for a council house. The site at Cobland View seemed ideal for the family, being tucked away from others.
 - A refusal of permission would place the family in the unfortunate position of having to find illegal sites in the Borough. This would be at a time when two of their children are being supervised under the Elective

Home Education Service, another child is under the supervision of a hospital and Mrs. Simpson is expecting a baby.

4. Consultation Responses

LCC (Highways) – No highway comments

RBC (Environmental Health) – No comments/objections.

5. Notification Responses

Site notices were posted on 26 May 2009 and the relevant neighbours notified by letter on 21 May 2009 to accord with the General Development Procedure Order. The site notice has been posted to go above and beyond the regulatory requirement to ensure a high level of Community engagement to accord with PPS1.

No comments have been received to date.

6. POLICY CONTEXT

National

PPS1 – Delivering Sustainable Development

PPS3 - Housing

PPS7 - Sustainable Development in Rural Areas

ODPM Circular 01/2006 - Planning for Gypsy and Travellers

Regional Spatial Strategy for the NW of England (2008)

DP1-9 - Spatial Principles

RDF2 - Rural Areas

RT2 - Managing Travel Demand

EM1 - Environmental Assets

RSS Partial Review Policy on Gypsy's and Travellers – The Policy is currently subject to a 12 week public consultation commencing on 27th July and sets out the number of pitches required for each Local Planning Authority based on Gypsy and Traveller Area Assessments. It also contains criteria for consideration of applications. When approved it would replace the Joint Lancashire Structure plan Policy 29.

Sub-regional

Joint Lancashire Structure Plan Policy 29 – Sites for Gypsy and Traveller Families.

Local

Rossendale District Local Plan (1995)

Policy DS5 - Development Outside the Urban Boundary & Green Belt

Policy DC1 – Development Criteria

Other Material Planning Considerations

LCC Landscape Strategy for Lancashire

LCC Parking Standards

7. Planning Issues

This application is a re-submission of the previous application (2008/0138) for the retention of a dwelling at Cobland View, Rooley Moor Road. Stacksteads. The application was submitted following investigation by Council's enforcement officers and was refused permission on the grounds:

- a) Inappropriate development in the Countryside
- b) Contrary to Policy 12 of the Joint Lancashire Structure Plan and Interim Housing Policy Statement (December 2007).

The application has been submitted on the basis of the gypsy/traveller status and seeks permission for the retention of the dwelling currently occupied by the applicant and his family who claim to be members of the gypsy/traveller family. In support of the application, the applicant has provided information with regard to the family's background history and way of life.

Gypsies and Travellers have a clear status within the planning system with applications having to be assessed against specific guidance. The Housing Act 2004, CLG Circular 01/2006 and "Local authorities and Gypsies and Travellers: a guide to responsibilities and powers" (CLG 2007) set out the government's approach. Planning advice on travelling showpeople is given in DoE Circular 22/91.

The accommodation needs of gypsies and travellers have to be considered through Gypsy and Traveller accommodation Assessments which feed directly into the Development plan process. A sub-regional assessment for Lancashire was undertaken in 2007 on behalf of the North West Regional Assembly. This assessment did identify a need for sites in Rossendale. Research undertaken for the Showmen's Guild in 2007 indicated that 3 Travelling Showpeople households wished to find sites in Rossendale Borough.

4NW is currently undertaking a Partial Review of RSS (Regional Spatial Strategy) that specifically addresses provision for gypsies and travellers as required by Circular 01/2006. Interim Draft Policy L6 proposes that sites for 10 permanent pitches and 5 temporary pitches be identified in Rosendale for the period 2007-16. RSS requirements, including possible exceptions sites, will be considered as part of the Council's Site Allocations DPD due for consultation in 2011.

In view of the Partial Review of RSS requiring the allocation of the permanent/temporary pitches for gypsies and travellers, it is prudent to consider the suitability of the application property in context with the criteria set out in Circular 01/2006 and Policy 29 of the Joint Lancashire Structure Plan (JLSP) for the provision of Gypsies and Travellers needs. Any permission granted for this site would count towards the overall pitch requirement.

Circular 01/2006 paragraph 12 emphasises the importance of the planning system supporting the delivery of a greater number of sites for gypsies and travellers. This is seen as having benefits in reducing inequalities, minimising

illegal encampments and promoting better community relations. Paragraph 54 of the Circular goes on to state:

- Sites on the outskirts of built-up areas may be appropriate.
- Sites may also be found in rural or semi-rural settings.
- Rural settings, where not subject to special planning constraints, are acceptable in principle.

Policy 29 of JLSP states:

Where a local need has been established, Gypsy sites will be located having regard to:

- the location of services and facilities including schools and;
- accessibility from primary and other main routes;
- environmental and sustainability considerations, including the regeneration of brownfield sites.

Wherever possible sites should be suitable for mixed residential and business uses in accordance with the needs of Gypsy and Traveller families.

Sites should not be located in the Green Belt.

The application dwelling is situated within an area of land outside the urban area that has been levelled and which contains various structures including cabins, van bodies, stables, kennels etc. It adjoins an existing scrap yard/recycling centre and it appears that the land previously was part of the scrap yard. Due to its position in relation to the existing scrap yard/recycling centre, the application site could be considered as a mixed use site. Furthermore, the site is located close to schools on Fearn Moss and shops and other facilities in Stacksteads.

The application site is surrounded by the rising land to the west and north-west and as such its views are hidden from the area to the west and north-west. To the east and north-east, the site adjoins the existing scrap yard/recycling centre. Due to its location in relation to the surrounding land, it is considered that the proposed dwelling has little detrimental impact on the visual amenity or character of the area. Furthermore, the site is accessed from Rooley Moor Road via a gated access road which due to its position and levels, is concealed from views from the surrounding land. The highway Authority is satisfied with the access arrangements and has raised no objection to the proposal.

The applicant has provided sufficient information to prove that he and his family belong to the Gypsy and Travellers family and that they have lived a gypsy style life. A letter from Julie Whiteside, LCC Gypsy, Roma and Traveller Achievement Service makes it clear that the applicant and his family have until recently lived in trailers and moved around from place to place, often living illegally on the roadside and therefore having no fixed address. It goes on to say that although the family still upholds its strong cultural beliefs and values, it

has decided to have a more settled lifestyle so that their children could have a better education and that family can gain greater access to other services.

Summary Reason for Approval

I am satisfied that the information provided in the application accords with the advice given in DoE Circulars and national policies. There is a lack of designated alternative sites available. The site is appropriate for Gypsy/Traveller use in line with national and development plan policy. It is therefore recommended that a temporary approval be granted for the retention of the dwelling to be used by a family of a Gypsy and Travellers status.

Recommendation Approve

Conditions/Reasons

1. The use hereby permitted shall be for a limited period being the period of 3 years from the date of this permission. At the end of this period the use hereby permitted shall cease and all structures, equipment and materials brought on the land for the purposes of such use shall be removed and the land restored in accordance with a scheme previously submitted to and approved in writing by the Local Planning Authority.

Reason: Partial Review of RSS indicates Rossendale will need to provide 10 permanent and 5 transit gypsy and traveller sites. A temporary permission of 3 years is considered as appropriate length of time to enable the suitability of all sites including the application site to be appraised as part of the Council's Site Allocations DPD.

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