

# **EASTERN AREA PLANNING COMMITTEE**

## **MINUTES OF THE MEETING HELD ON WEDNESDAY, 28 AUGUST 2019**

**Councillors Present:** Peter Argyle, Jeremy Cottam, Alan Law (Chairman), Tony Linden (Substitute) (In place of Joanne Stewart), Royce Longton, Ross Mackinnon (Substitute) (In place of Andrew Williamson), Alan Macro, Geoff Mayes and Graham Pask

**Also Present:** Sharon Armour (Solicitor), Michael Butler (Principal Planning Officer), Stephen Chard (Principal Policy Officer), Gareth Dowding (Senior Engineer), Bryan Lyttle (Planning & Transport Policy Manager) and David Pearson (Development Control Team Leader)

**Apologies for inability to attend the meeting:** Councillor Joanne Stewart and Councillor Andrew Williamson

### **PART I**

#### **16. Minutes**

The Minutes of the meeting held on 7 August 2019 were approved as a true and correct record and signed by the Chairman, subject to the following amendments:

**Item 14(1) – 19/00344/COMIND – Stonehams Farm, Long Lane, Tilehurst**

**Member Questions to Officers, second paragraph, third sentence:**

He was of the understanding that all **non**-residential developments required an ‘excellent’ rating for BREEAM.

**Debate, second paragraph, second sentence:**

Visibility along **the single track section of Long Lane** was poor and often reached the stage where several vehicles had to attempt to pass each other at the same time.

**Item 14(3) – 19/01171/FULD – Blacknest Farm, Brimpton Common**

**Member Questions to Officers, third paragraph, second sentence:**

Mr Pearson stated that they were almost identical and the former application was refused under **delegated** powers.

Comment was also made on the conditions for the following item:

**Item 14(2) – 19/00772/RESMAJ – Land adjacent to Primrose Croft, Reading Road, Burghfield Common**

Reference was made in the debate, which then formed part of the Committee’s resolution, for approval of this application to be subject to the receipt of satisfactorily amended plans for plot 4. However, David Pearson (Development Control Team Leader) clarified that it had not been necessary to add this as a condition as the applicant’s agent submitted amended plans for plot 4 the day after the Committee.

#### **17. Declarations of Interest**

There were no declarations of interest received.

#### **18. Schedule of Planning Applications**

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### **(1) Application No. & Parish: 19/00031/FUL - Land west of Hill Place, Bath Road, Woolhampton**

The Committee considered a report (Agenda Item 4(1)) concerning Planning Application 19/00031/FUL in respect of a retrospective application for the erection of two day rooms, two mobile homes and two touring caravans for occupation by gypsies/travellers. The application also sought retrospective approval of new access onto the highway and hardstanding, and the erection of fencing.

Michael Butler, Principal Planning Officer, introduced the report and highlighted the following points:

- The application had been due to be considered at the Committee on 17 July 2019, but was deferred as a result of concerns over Sustainable Drainage Systems (SuDS). Detailed submissions had since been provided relating to SuDS and appropriate conditions had been formed on this point should approval be granted.
- The southern boundary of the site abutted a railway line and Network Rail had been consulted. Network Rail had no objections subject to the proposed revised wording of condition 13 (land stability). It had also been confirmed with Network Rail that if, in future, any land stability issues which might arise from the raised site should impact upon Network Rail land, the landowner would be held liable and not the Council.
- Mr Butler clarified that no domestic permitted development rights applied to mobile homes as they were termed caravans and not dwellings per se. As such no condition was required to remove such rights as they did not exist on the site.
- The Officer recommendation to grant planning permission was very much 'on balance'. It was rare to recommend approval for a retrospective application which was outside a defined settlement boundary, however the application was recommended for conditional approval as it was considered to provide an exceptional case.

In accordance with the Council's Constitution, Mr Jack Lovell, Parish Council representative, Mr Tony Renouf, objector, and Mr Brian Woods, agent, addressed the Committee on this application.

#### **Parish Council Representation**

Mr Lovell in addressing the Committee raised the following points:

- Woolhampton Parish Council strongly opposed the application.
- The erection of pitches followed by a retrospective planning application should not be tolerated. The correct, lawful process should be followed.
- The site was greenfield land and outside the defined settlement boundary.
- The requirement for West Berkshire Council to provide pitches was not relevant.
- The Parish questioned whether a more standard application on greenfield land outside of the settlement boundary would be granted. They did not feel this would be the case.
- There was no evidence that alternative and more suitable sites had been sought.
- Gypsy/traveller status was not originally claimed by the applicant. The report stated that this point had been rectified, but the Parish questioned how this had been confirmed by Planning Officers. Rigorous checks were needed.

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- The Parish did not feel that the requirements of Policy TS3 (detailed planning considerations for traveller sites) of the Housing Site Allocations Development Plan Document (HSA DPD) were being sufficiently covered. There had been no detailed assessment of the suitability of the site.
- The rights of the settled community needed to be considered.
- The application should be refused or at the very least deferred until the applicant's true position was understood. If it was approved then it should be for a time limited period.

### **Member Questions to the Parish**

Members questioned the Parish Council's views on the status of the applicant. Did they not believe the applicant was a gypsy/traveller? Mr Lovell advised that the local understanding in the village did not align with this, other than for one individual living on the site.

Councillor Graham Pask referred to an accepted neighbouring rural exception site for affordable housing which was located on a greenfield site outside of any recognised settlement, and queried the Parish Council view on that. Mr Lovell commented that this was a completely different consideration to this application.

### **Objector Representation**

Mr Renouf in addressing the Committee raised the following points:

- The already developed site was out of keeping with the rural community. Its visual impact was of concern and the impact of the exterior fencing would only be mitigated by painting the fence green. No planting was initially possible.
- The two day rooms were proposed to house utilities, but these utilities would be provided within the mobile homes meaning there was no need for the day rooms. It was felt that multi-occupancy of the site was inevitable.
- It was questioned whether conditions would be enforced.
- The hardstanding beyond the western boundary meant there was a risk of further expansion. Approval of this application would set a precedent.

### **Member Questions to the Objector**

In response to Member queries, Mr Renouf explained that the site overlooked the railway line and was not overly close to it. There was no awareness of the infill material used beyond the western boundary.

Councillor Alan Law explained that he would be asking officers to respond to the queries put by the objector where appropriate.

### **Agent Representation**

Mr Woods in addressing the Committee raised the following points:

- No objections had been raised by a number of consultees including highways and the Environment Agency. There was no flood risk and no objection on the grounds of noise impact.
- The site did not sit within a Greenbelt or AONB designation.
- The site adjoined an existing rural exception site for affordable housing.
- It was right that the application was recommended for approval. West Berkshire Council had a policy requirement to meet the need for gypsy and traveller sites.

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- In response to the concern raised of setting a precedent on the site, Mr Woods pointed out that this would be controlled by condition two – limitation of development. If this was breached then enforcement action could be taken. Likewise, the potential for future expansion could be controlled by the Local Planning Authority.
- A Ministerial Statement, issued in 2015, concerned intentional unauthorised development becoming a material planning consideration if this was found to be the case. He felt this was directly aimed at the traveling community. However, an exceptional case could be made in particular cases. This Statement had not been updated, as anticipated, in the two National Planning Policy Frameworks which had since followed.
- On being out of the settlement boundary, Mr Woods pointed out that gypsy/traveller sites were generally in the countryside.
- The required gypsy and traveller status information had been provided to Planning Officers and the necessary tests had been passed.
- Good practice guidance for such developments recognised the need for day rooms.

### **Member Questions to the Agent**

Councillor Jeremy Cottam queried the infill material used to raise the site levels. Mr Woods was not able to confirm precise details, but did confirm that 'clean' compacted infill had been used and supplied by a reputable supplier of such materials. The supplier had been issued with the necessary tickets to operate from the Environment Agency. Mr Woods also made the point that adherence with the land stability condition of approval required certain site material tests to be passed.

Councillor Pask followed this by querying whether the infill materials had come from a licensed site. Mr Woods advised that the supplier was only permitted to procure materials from a licensed site. This would be put to the test as part of adhering to the land stability condition.

In response to a question from Councillor Pask, Mr Woods confirmed that this was a case of intentional unauthorised occupation.

Councillor Pask next queried the justification for the day rooms. He had observed that the smart static caravans had kitchens and he queried the need for the day rooms. Mr Woods explained that it was common practice for gypsy and traveller sites to have day rooms as there was a strong preference for gypsies and travellers to have their cooking facilities separate to the living space. Mobile homes were provided with kitchens as standard.

Mr Woods confirmed the day rooms would be a daytime space and not used for sleeping in. He also clarified that the day rooms had not been built.

Councillor Pask turned to drainage. He queried if the drainage of the day rooms would be connected to the existing drainage system. Mr Woods confirmed this would be the case. If permission was granted, conditions in relation to SuDS and land stability would be adhered to.

Councillor Pask queried whether drainage works would be completed in time and would meet with the requirements of Network Rail, i.e. that no soakaways, attenuation ponds or other drainage infrastructure would be within five metres of the boundary to the railway land. Mr Woods confirmed this point. Surface water and drainage would be directed away from the railway line.

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In response to a question from Councillor Ross Mackinnon, Mr Woods confirmed his view that the Ministerial Statement was directed at constraining the gypsy and traveller community. He repeated that this had not been reviewed in the 2018 or 2019 versions of the National Planning Policy Framework (NPPF). Councillor Law commented that while guidelines and statements were not always updated in subsequent legislation, they could still be applicable.

Councillor Geoff Mayes noted that mains water infrastructure crossed the site and queried its location. Mr Woods could not confirm this point but clarified that it was beneath the raised area of the site.

In response to a query from Councillor Law, Mr Woods explained that the site was first occupied early this year.

### **Ward Member Representation**

Councillor Graham Pask, in addressing the Committee as Ward Member, raised the following points:

- The application had been submitted in February 2019. He only became Ward Member for the area in May 2019.
- There was a need for local authorities to provide sites for gypsies and travellers as otherwise, land could become intentionally occupied without authorisation, and retrospective applications would follow. Gypsies and travellers were therefore within their rights to occupy land legitimately.
- The site had many positives including good access and public transport links. There were however concerns, one of which was the close proximity of the site to the railway line.
- While Network Rail had not lodged an objection, this was based on compliance with a number of conditions that had to be met within a tight timeframe, i.e. land stability. The results of the land survey and samples needed to be cleared before the site could be occupied. Drainage was a concern and details needed to be provided for assurance on this point.
- Councillor Pask commented that the applicants were good citizens and had been paying Council Tax for the site since the end of last year. However, the application was not for a personal permission and therefore there could be an issue with subsequent occupiers of the site (as was the case for any application).
- The landfill/infill used for the affordable housing rural exception site would have a trail of justification certificates. He questioned if this trail existed for this site and how this could be enforced.

### **Member Questions to Officers**

Councillor Cottam sought to understand the building regulations and requirements for infill and land raising. Bryan Lyttle (Planning and Transport Policy Manager) explained that only land raising applied for this application. The materials used were licensed by the Environment Agency and they held a record of this. However, for some small sites such as this, with a small requirement for materials, the Environment Agency requirement might not apply as it would not amount to minerals and waste activity. Mr Lyttle gave his understanding that the land raising materials were likely from construction/demolition waste, post being processed, from a local supplier such as J. Mould.

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Councillor Pask then sought confirmation that the land raising material was 'clean'. Mr Lyttle could not confirm the material used in this instance. If J Mould was the supplier then the material would be 'clean'.

David Pearson (Development Control Team Leader) clarified that the debate around land raising material was not a material planning consideration and not a determining factor for the application. The material(s) used was a matter for other relevant agencies. However, the act of land raising did require planning permission. Approval effectively legitimised the land raising and materials used.

Councillor Mackinnon referred to the suggestion made that some of the 14 conditions might not be enforceable and sought clarity on that. Mr Pearson explained that enforcement action was not statutory. The Government advice for local authorities was to consider if it was expedient to use enforcement powers or seek a separate agreement. Many breaches of conditions were reported and investigated, and enforcement powers would be used if considered expedient to do so to correct an issue, but this would not be in all cases.

Mr Pearson did however feel that the conditions for this application were sound and enforceable, and could be added to. Failure to adhere to conditions could result in a breach of conditions notice being issued and ultimately this could go to the magistrate's court for resolution.

Councillor Mayes queried the existence of trees between the red line of the site and the railway line, and any protection afforded to them. Mr Butler explained there were existing trees that were positioned external to the red line. There was some concern with regard to the impact on the roots of the trees, but the trees were not considered of particular quality or subject to a Tree Preservation Order (TPO). Mr Butler also clarified that Network Rail owned the land beyond the site boundary.

Councillor Macro queried visibility/overlooking of the site. While it was shielded from the road, it could be observed from the railway line. He asked whether it could be overlooked from the canal, the cycle path and the AONB.

Mr Butler felt it highly unlikely that the site could be viewed from the AONB. Mr Pearson added that it was not possible currently to observe the site from the canal due to the dense foliage, but it could be possible during the winter months.

Councillor Macro's next question related to the Planning Policy for Traveller Sites (PPTS). Paragraph 25 of the PPTS stated that new developments should be limited in the open countryside and not adjoin other developments. Mr Lyttle explained that the PPTS predated the HSA DPD which was the policy consideration for this application.

Councillor Macro followed this by querying the status of the Ministerial Statement when it had been followed by two revisions to the NPPF. Mr Lyttle clarified that this was a statement of intent from the Government and carried less weight than the NPPF and the Council's policies. Mr Pearson added that the Planning Inspectorate was still referring to the Statement and remained a material consideration, but agreed with Mr Lyttle's point that it carried less weight.

Councillor Pask referred to condition 13 – land stability. Adherence to this condition involved a site investigation and questioned therefore whether the land raising material was a factor to consider. Mr Pearson referred to the earlier points made on use of clean material. Network Rail had been consulted on land stability and they raised no concerns subject to conditions.

Councillor Law queried the sites allocated in West Berkshire for gypsy and traveller pitches. Mr Lyttle explained that the necessary number of sites/pitches were allocated in

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both West Berkshire Council's Gypsy and Traveller Accommodation Assessment (GTAA) and the HSA DPD but they had not come forward for development. Therefore the five year land supply for gypsy and traveller pitches was not currently being met. Mr Pearson added that a Planning Inspector had previously and would again take into account whether or not the five year land supply was being met in determining a potential appeal.

### **Debate**

Councillor Pask stated that the Council was required to provide gypsy and traveller sites, and appropriate sites had been allocated but had not come forward for development.

This application was a clear case of intentional unauthorised occupation and this point had been confirmed by the agent. The retrospective application had followed.

The neighbouring site was a rural exception site and had been developed to fulfil a need for affordable housing in the area.

Approval of this application was recommended by officers to fulfil another exception/policy requirement. This retrospective application would fulfil a housing need, but this needed to be balanced against the intentional occupation point.

Councillor Tony Linden made the point that applicants should not be penalised for submitting retrospective applications and this should not be a consideration in determining planning applications. Councillor Macro felt that the Ministerial Statement did not align with that point.

Councillor Macro then referred to Policy CS7 of the Core Strategy which stated that applications from gypsies and travellers should not materially harm the character of the area. In his view, the land raising made it visually intrusive from the railway line.

Councillor Cottam felt that concern remained on land stability and that the materials used for land raising were unconfirmed. However, this would be mitigated by proposed condition 13. On balance, Councillor Cottam agreed with and proposed acceptance of the Officers' recommendation to grant conditional planning permission. This was seconded by Councillor Linden.

The potential for additional conditions was discussed. In considering the points discussed during the meeting, Mr Pearson suggested an additional condition to ensure that the use of the day rooms was incidental to each pitch and not used for overnight accommodation. The additional condition was agreed by the proposer and seconder.

The land stability condition was discussed. Councillor Cottam stated that this should involve a detailed study of land raising materials by a qualified expert. Mr Butler noted this point, but considered that the existing wording of the condition was sufficient to achieve this. The condition would not be discharged until the requested detail was provided and proved satisfactory.

Councillor Mackinnon was concerned that conditions might not be followed when considering that a retrospective application had been submitted.

**RESOLVED that** the Head of Development and Planning be authorised to grant planning permission subject to the following conditions:

### **Conditions**

#### **Plans**

1. The development must remain in accordance with the as approved plans - JOO3121-CD01-REV A, JOO3121-CD02-REV A, JOO3121-CD03-REV C, and JOO-CD04.

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Reason: To clarify the permission in accord with the advice in the DMPO of 2015.

### **Limitation of development**

2. At no time shall more than 2 mobile homes, 2 touring units and 2 day rooms be located on the application site.

Reason: The Council considers that any increase in the number of caravans/ mobile homes/ day rooms on the site may amount to an over-development. This would be contrary to policy CS7 of the WBCS of 2006 to 2026.

### **Landscapes**

3. Within 3 months of the grant of this permission, the applicant shall ensure that the development is completed in accord with the revised block plan number CD03-Rev C. In addition within 1 month of the date of this permission a landscaping plan for the western buffer shall be submitted to the LPA for consideration. On approval such a plan shall be planted out to the satisfaction of the LPA within the next available planting season.

Reason: To enhance the visual aspects of the site in accord with policy CS19 in the WBCS of 2006 to 2026.

### **Access gates**

4. Within two months of the date of this permission the access gates where vehicles enter or leave the site, shall open away from the adjoining highway and be set back a distance of at least 5 metres from the edge of the highway.

Reason: In the interest of road safety and to ensure that vehicles can be driven off the highway before the gates are opened. This condition is imposed in accordance with the National Planning Policy Framework, and Policy CS13 of the West Berkshire Core Strategy (2006-2026).

### **Surfacing**

5. Within two months of the date of this permission, details of the surfacing arrangements for the vehicular access to the highway must be submitted to and approved in writing by the Local Planning Authority. Such details shall ensure that bonded material is used across the entire width of the access for a distance of 3 metres measured back from the carriageway edge. Thereafter [within one month of the approval of the details], the surfacing arrangements shall be constructed in accordance with the approved details.

Reason: To avoid migration of loose material onto the highway in the interest of road safety. This condition is imposed in accordance with the National Planning Policy Framework, and Policy CS13 of the West Berkshire Core Strategy (2006-2026).

### **Occupation**

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6. The site hereby permitted shall not be occupied at any time other than by Gypsies and Travellers as defined in Annex 1 of Planning Policy for Traveller Sites /MHCLG].

Reason: Residential use of this site has only been allowed to cater for the specific needs of the Gypsy and Traveller Community in accordance with Policy CS7 in the West Berkshire Core Strategy (2006 to 2026).

### **No commercial use**

7. No commercial use or activities shall take place within the application site at any time, including the storage of any materials. In addition, no vehicle over 3.5 tonnes shall be stationed, parked or stored on the application site.

Reason: To protect the amenity of adjacent dwellings; to introduce B2/ B8 uses or other commercial uses, next to these dwellings would be harmful to their amenity and not in accord with the advice in the NPPF 2019.

### **Lighting**

8. No external lighting shall be installed on the site at any time unless a planning application for that purpose is submitted to and approved in writing by the Council. Once approved, the lighting must be erected in accordance with the approved details and thereafter maintained in accordance with them.

Reason: The site lies in the rural area where additional lighting would be harmful, in accord with the advice in para 180 of the NPPF.

### **Noise**

9. A scheme for protecting the occupiers of the two mobile homes from noise from traffic on the adjacent roads and from noise and vibration from the railway lines shall be submitted to the local planning authority within 3 months of date of this permission. Any works which form part of the scheme approved by the authority, shall be completed within 6 months of date of this permission, unless an alternative period is agreed in writing by the authority.

Reason: Without such a scheme, occupiers of the development are likely to suffer from noise caused by the traffic and rail line to an unacceptable degree. In accordance with the advice in policy OVS6 of the West Berkshire District Local Plan (1991 to 2006).

### **Fencing - colour**

10. Within 2 months of the date of this permission, the external facing elevations of the west and south perimeter boundary fences shall be painted a dark green colour previously agreed in writing by the local planning authority.

Reason: To ensure the visual impact of the new fencing is reduced in accord with the advice in policy CS19 in the WBCS of 2006 to 2026.

### **Suds**

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- 11 Within 3 months of the date of this permission, details of sustainable drainage measures to manage surface water within the site must be submitted to the Local Planning Authority.

These details shall:

- a) Include and be informed by a ground investigation survey which establishes the soil characteristics and groundwater levels to confirm the principles applied are feasible in practice;
- b) Include flood water exceedance routes, both on and off site; Include flow routes such as low flow, overflow and exceedance routes;
- c) Include details of how the SuDS measures will be maintained and managed in perpetuity.

Once approved by the Council, these sustainable drainage measures shall be implemented in accordance with the approved details within a further 3 months of the date of that approval. The sustainable drainage measures shall be maintained in the approved condition thereafter.

Reason: To ensure that surface water will be managed in a sustainable manner; to prevent the increased risk of flooding; to improve and protect water quality, habitat and amenity and ensure future maintenance of the surface water drainage system can be, and is carried out in an appropriate and efficient manner. This condition is applied in accordance with the National Planning Policy Framework, Policy CS16 of the West Berkshire Core Strategy (2006-2026), and Part 4 of Supplementary Planning Document Quality Design (June 2006).

### **Removal of shed.**

12. Within one month of the date of this permission, the unauthorised storage shed on the site shall be removed in its entirety and the site left in a neat and tidy condition.

Reason: To ensure no proliferation of structures on the site other than those permitted by the Council, in accord with policy CS19 in the WBCS of 2006 to 2026.

### **Land stability**

13. Within three months from the date of this grant of approval, a site investigation of the nature and extent of any land instability must be carried out, in accordance with a methodology which shall have previously been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority. If any land instability issues are found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures, within 3 months of the date of approval of the agreed scheme.

Reason: To ensure the site will not impact valued infrastructure in accord with policy CS5 in the WBCS of 2006 to 2026.

### **Drainage**

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- 14. No surface water shall be discharged onto Network Rail land, and no soakaways, attenuation ponds or other drainage infrastructure shall be within 5 metres of the boundary to the adjacent railway land.

Reason: To protect valued infrastructure in accord with policy CS5 in the WBCS of 2006 to 2026.

- 15. The two day rooms hereby permitted shall only be used for purposes ancillary and incidental to the use of the two mobile homes hereby permitted on the site. The day rooms shall not be used as separate residential accommodation nor shall they be used to provide additional sleeping accommodation.

Reason: To ensure no overdevelopment of the site and to restrict new dwellings in the rural areas in accord with policy C1 in the West Berkshire Council Housing Site Allocations DPD 2017.

**Informatives**

Standard NPPF clause, CIL, and no encroachment onto Network Rail Land.

**19. Site Visits**

A date of 11 September 2019 at 5.30pm was agreed for site visits if necessary. This was in advance of the next Eastern Area Planning Committee scheduled for 18 September 2019.

Before closing the meeting, Councillor Alan Law announced that this meeting was David Pearson’s last as lead officer for the Committee after fulfilling this role for 18 years. Bob Dray was taking on this role. On behalf of the Committee, Councillor Law gave thanks to Dave for his professionalism and for the excellent advice he had provided to Members over the years.

Dave explained that an operational decision had been taken for himself and Bob Dray to swap roles. Dave would take on responsibility for householder applications and therefore might still make a ‘guest’ appearance at Committee.

Dave stated that it had been a privilege to work with the Committee and its Members. He admired Members for their commitment in serving their local communities. Dave concluded by saying that he had thoroughly enjoyed his work with the Committee.

*(The meeting commenced at 6.30pm and closed at 8.15pm)*

**CHAIRMAN** .....

**Date of Signature** .....