

# **PLANNING COMMITTEE**

**Date: 17 January 2018**

**Afternoon**

## **Schedule of Committee Updates/Additional Representations**

**Note: The following schedule represents a summary of the additional representations received following the publication of the agenda and received up to midday on the day before the Committee meeting where they raise new and relevant material planning considerations.**

## SCHEDULE OF COMMITTEE UPDATES

**172552 - PROPOSED TWO ADDITIONAL MOBILE HOMES, TWO TOURING CARAVANS AND THE CONSTRUCTION OF A DAY ROOM, ASSOCIATED HARD STANDING DRAINAGE AND RE - ALIGNED ACCESS TRACK. AT ASHGROVE CROFT, MARDEN, HEREFORD, HR1 3HA**

**For: Mr Harry Smith, Ashgrove Croft, Marden, Hereford, Herefordshire, HR1 3HA**

### ADDITIONAL REPRESENTATIONS

- 1.1 Five further representations raising objection to the application and commenting on the Committee Report have been received, two from Marches Planning on behalf of The Vault Community Group and three from individuals (one of which is anonymous).
- 1.2 Marches Planning on behalf of The Vault Community Group comment as follows:

I have reviewed your committee report on this application on behalf of The Vault Community Group and note that while you have addressed some of the errors I drew attention to in my email of 4th December 2017, there remains a substantive flaw, which undermines the reasoning behind your recommendation of approval.

This is your assertion at (inter alia) paragraphs 1.2, 6.1, 6.2, 6.21, 6.40 and 6.45 that the current lawful use of the site is as a “one family gypsy caravan site.” This is incorrect.

You refer at paragraph 6.1 to the 2005 permission (CW2005/2579/F) in which the application description was a “one family gypsy site.”

The 2005 permission was superseded by the 2006 permission and is irrelevant to the current planning status of the land. As you will be aware, a variation of condition permission (as the 2006 permission was) is an entirely new planning permission. The land is occupied by Mr and Mrs Smith, to whom the 2006 permission solely enures, and not by Mr and Mrs Jones who had the benefit of the 2005 permission. The 2006 permission did not contain any reference to a gypsy site.

In any event, the permission for the use of the land enures only for the benefit of Mr and Mrs Smith, excluding the operation of S.75 (1) of the Town and Country Planning Act 1990. When Mr and Mrs Smith (and only Mr and Mrs Smith) cease to use the land for the purposes set out in the decision notice, the permission will lapse and the use revert to agriculture. The permission did not allow a change of use of the land to a gypsy site, only the temporary (unspecified) use of the land by Mr and Mrs Smith.

The decision notice fails to say what use or development was permitted and nor does it say for what purpose the mobile home may be sited. The mere siting of a caravan does not in itself constitute either use or development and requires further description. However, even a flawed decision notice that has not been revoked or quashed by the courts will stand (R (Noble) v. Thanet DC [2006] Env. L.R. 8).

You advise that the officer reports relating to the 2005 and 2006 applications indicated that the “special circumstances” that justified the granting of these permissions contrary to policy were the gypsy status of the applicants. Those decisions were made 12 years ago, prior to the introduction of the current Planning Policy for Travellers Sites (PPTS), which contains a more restricted definition of gypsies and travellers. It is clear from the 2006 officer report cited in your committee report that Mr and Mrs Smith merely aspired to traveller status (they hoped to take up travelling “when circumstances allow greater travel to horse fairs”) and thus would not have fulfilled the PPTS definition had it been in place at the time.

Given that you are incorrect to say that the lawful use of the site is as a gypsy site, the PPTS requiring planning authorities to very strictly limit new gypsy sites in the open countryside, away from settlements or on unallocated sites applies, indicating the application should be refused.

I have the following further comments:

You refer at paragraphs 6.46 to “the Council’s shortfall in the provision of Gypsy and Traveller sites” but do not provide any evidence that there is a shortfall. Notwithstanding that the Travellers Sites DPD is yet to be adopted, the July GTAA provides the most up to date information about the provision of gypsy and traveller sites and demonstrates that gypsy and traveller accommodation needs will be met and that there are currently seven vacant pitches within the county.

At paragraph 6.6 of your report you refer to paragraph 49 of the NPPF which advises that policies for the supply of housing are deemed to be out of date because there is a shortfall in Herefordshire Council five year housing land supply. I am not sure why you consider this to be relevant in light of the ministerial statement HLWS197 of July 2015, which said as follows:

*Following a recent High Court Judgment (Wenman –v- Secretary of State ...), we are today making a technical adjustment to paragraphs 49 and 159 of the National Planning Policy Framework.*

*Paragraph 49*

*From today, those persons who fall within the definition of ‘traveller’ under the Planning Policy for Traveller Sites, cannot rely on the lack of a five year supply of deliverable housing sites under the National Planning Policy Framework to show that relevant policies for the supply of housing are not up-to-date. Such persons should have the lack of a five year supply of deliverable traveller sites considered in accordance with Planning Policy for Traveller Sites.*

*Paragraph 159*

*Planning Policy for Traveller Sites sets out how ‘travellers’ (as defined in Annex A of that document) accommodation needs should also be assessed. Those who do not fall under that definition should have their accommodation needs addressed under the provisions of the National Planning Policy Framework.*

The applicant and proposed residents do not meet the PPTS definition and so fall under paragraph 159. However, as the Marden NDP has been adopted and allocates sites for housing development, it is up to date because Herefordshire Council can demonstrate a housing land supply in excess of three years. (Ministerial statement HCWS346 December 2016).

In respect of the travelling status of the current applicants, you rely entirely on the uncorroborated statement of the Manager of Social Inclusion and Equalities and not on any evidence. I have submitted in previous objections on behalf to the Vauld

Community Group several planning appeal decisions setting out the level of evidence planning inspectors have required to support such applications. No such evidence has been provided. Furthermore, Mr Straker's letter contradicts the evidence provided by the applicants themselves, which clearly demonstrates a settled lifestyle, including at least two members of the family being in local employment.

I would be grateful if you would address these points in an update to the planning committee and I would suggest that you revise your recommendation in light of the error about the lawful use of the site.

1.3 A further email (dated 15.1.2018) from Marches Planning states:  
*'I spoke to a member of the Local Plan team who advised that although a number of responses to the consultation had been received, none were expected to give rise to amendments to the Travellers Sites DPD or the GTAA.'*

1.4 In summary the other objections raise the following additional points:

- Second report still fails to address the main issues
- The report states that the site is a lawful 1 family gypsy site and this is completely untrue
- 2016 states the permission is for Mr and Mrs Smith only, having regard to their special circumstances – no mention of this being for their family or being a gypsy site
- Cannot assume that the special circumstances were that they say that they are gypsies – not stated in the permission and guidelines for assessing such were not considered
- A change of use is therefore required if this is to become a gypsy site – and all residents need to be assessed to meet the guidelines
- Current breach of the original permission's conditions
- Would be difficult to address the number of conditions recommended and for the Council to enforce these
- One conditions prevents additional caravans until landscaping and drainage have been resolved so what happens to the existing unauthorised caravan?
- Urge Committee to refuse the application as the Report is significantly flawed
- Proposed statics and tourers would not fit on the site, as indicated on the submitted site plan
- There are rules stipulating distances between caravans, which obviously have not been considered
- If not sited as proposed the landscaping and drainage would need to be reviewed again

**P172552 Ashgrove Croft Block Plan Queries**



1.5 An anonymous objector has stated that Planning Committee should be aware of the following, summarised, points:

- Mrs Smith's mother is currently in hospital, but was at Ashgrove Croft over the Christmas period. She has lived in Oxfordshire, where she benefits from a planning permission for a dwelling
- Mrs Smith's mother is to be discharged to a nursing home in Oxfordshire; she requires special care which cannot be provided by Mrs Smith
- There is no intention that Mrs Smith's mother will occupy the application site if permission is granted
- Hamby Smith and his family occupy their own pitch on the same site in Whitchurch, Shropshire as his parents-in-law, having previously lived with his parents-in-law (the pitch may be in his wife's name – a gypsy tradition)
- Gypsy girls do not like to live away from their mothers
- Before his marriage Hamby Smith lived with Mr and Mrs Smith in Shrewsbury and then at Ashgrove Croft – their properties not council
- Hamby Smith has stayed over at Ashgrove Croft on a few occasions and stayed on orchards and hop farms in Herefordshire for the picking season – that is all the travelling he has done
- Hamby Smith does not lead a nomadic life, only travelling between his Shropshire pitch and the application site. He does not pull over in laybys.

1.6 The Manager of Social Inclusion and Equalities has provided further comments in response to points raised by the objections and this has been corroborated by the Gypsy, Roma, Traveller Learning Mentor. In summary the main points are:

- I have no documentary evidence to support my initial comments
- Following a conversation with Mrs Smith to corroborate what I understand to be true, Mrs Smith's mother resides between Ashgrove Croft and Mrs Smith's brother's home in Oxfordshire – they are joint carers
- The family travel over the summer for employment and generally return the beginning of October for the children to start school
- The family keep to traditional travel values and live a traditional traveller lifestyle, i.e. travelling for work
- Hamby Smith and his family travel/visit between Ashgrove Croft and his parents in law. He has been previously unsuccessful in obtaining a LA pitch

- Hamby does travel in spring and summer and would like a permanent base for his young family to access education and health services
- Hamby has been involved with the Council's GRT adult education scheme and has successfully completed courses on this pathway
- Accommodation for Mrs Smith's children and grandchildren are the primary reason for the application
- My support for the application is to ensure good outcomes for the Smith children, as per the Council's corporate equality plan

1.7 The applicant has made the following comments in respect of the further comments received and in summary these are:

- The situation is complex and changing
- Mrs Smith's mother has lived between Oxford (in a sort of annex) and Ashgrove Croft. She has been back and forth to Ashgrove Croft over the summer
- Mrs Smith's mother is too infirm to live independently and is currently in hospital in Hereford, where her condition is deteriorating
- Much of the responsibility of caring for her mother has fallen to Mrs Smith, as the only daughter in the family
- A care package is needed, and if Mrs Smith lives at Ashgrove Croft, perhaps for respite, carers would come and this would be difficult in the confined space especially with children getting ready for school
- Hamby Smith has been given a temporary pitch at the same site in Shropshire as his parents-in-law, but there are many problems there and he wishes to return to Herefordshire where there is better family support and access to services
- Hamby does more than travel between Ashgrove Croft and the Shropshire site – as previously stated he travels with other families to find work - in the summer and the previous summer for 2 & ½ months around Gloucestershire
- Having a young family means that Hamby is having to develop an economically viable nomadic lifestyle whilst attending to his family's needs.
- Essentially the Smiths are at the centre of a multi-generational family network with a range of health needs and growing children – they need extra space
- Application is only for half the number of pitches previously sought
- Following the Inspector's Report for the CS and modification to CS policy H4 until the DPD is finally adopted applicants for planning permission under this policy '*do not have to provide evidence of need.*'
- Statics have not been purchased yet, so exact size and distances between are not known
- Statics are intended to be used largely as extra bedrooms, so will tend to be on the small size – 6.7m x 3m is at the lower end of the market. Those shown on the drawings are about 8m
- The site will require a licence and requirements of distances between caravans and boundaries will be imposed. The stoned area can accommodate this.
- As caravans are moveable objects it is not usual to have fixed positions. Another permission for a gypsy site (in Bosbury) conditioned that the caravans could not be sited outside of a red hatched area on the approved site plan – this gives extra control, whilst still allowing flexibility.

1.8 In response to the email dated 15.1.2018 from Marches Planning the following responses have been received from the Senior Forward Planning Officer and Team Leader of Strategic Planning:

Senior Forward Planning Officer:

Kevin Singleton [Team Leader of Strategic Planning] spoke to Helen Hamilton last week. He advised her that we have received approximately 50 representations to the plan which we are currently processing in preparation for submitting to the Planning Inspector. The majority of these representations are objections. As we are still going

through these representations it is not possible to say at this stage what minor changes will be recommended prior to the submission of the plan. Furthermore we are not in a position to predict the outcome of the examination process.

As previously advised because we have received objections to both the DPD and the GTAA and therefore little weight can be attached to either document at this stage.

Team Leader of Strategic Planning:

I spoke to Helen Hamilton last week. She asked whether we had published the representations received during the consultation period. I said they had not been published but would be once we had processed them.

I told her that we had received mostly objections from around 50 representors and these were to all aspects of the plan including the GTAA. But I did not tell her there will not be any changes to the plan as a result of the comments received. We are still going through the comments. Any changes will be largely determined by any modifications recommended by the Inspector at the Examination in Public.

## **OFFICER COMMENTS**

- 2.1 With regards the anonymous objection it is considered appropriate to report this to Committee as the author insisted that the points raised should be available to those determining the application and also it is necessary in the interests of transparency. The applicant, Manager of Social Inclusion and Equalities and Gypsy, Roma, Traveller Learning Mentor have provided further clarification with regards the current situation.
- 2.2 In respect of the lawful use of the site, this is as per the Committee Report and the detailed reasoning provided in paragraphs 6.1 and 6.2.
- 2.3 The weight to be afforded to the GTAA and the Travellers' Sites DPD is reconfirmed above at paragraph 1.7.
- 2.4 At section 6.7 of the Report in the final paragraph the beginning of the first sentence should be amended to 'In this instance the development plan document' (underlined word is added).
- 2.5 With regards the lack of 5 year housing supply position, the report merely sets this out for information. At paragraph 6.7 the report states that the gypsy and traveller site provision is recorded and scrutinised separately and it is therefore under the supply of deliverable traveller sites that an application should be assessed. Paragraphs 6.7 and 6.46 set out why it has not been demonstrated that there is a sufficient supply of such sites at the present time. Notwithstanding this, and fundamentally CS policy H4 – Traveller Sites categorically states that '*In the absence of an adopted DPD, or where proposals for sites are brought forward on non-allocated land, proposals will be supported where*' – they comply with the policy's listed criteria. The DPD is not adopted, so the proposal should be supported where it meets policy criteria requirements, which as per the Report, it is considered it does.

## **NO CHANGE TO RECOMMENDATION**

**174094 - ERECTION OF ONE FOUR-BEDROOM FAMILY HOUSE WITH A GARAGE AT LAND AT OFFAS DENE, PROSPECT LANE, DINEDOR, HEREFORDSHIRE,**

**For: Mr Smart per Mr Chris Smart, Offas Dene, Dinedor, Hereford, Herefordshire HR2 6LQ**

**ADDITIONAL REPRESENTATIONS**

Tree Officer:

I do not have any objections to the proposed development.  
There are two trees to be removed but I am satisfied that their loss will be mitigated by the planting of new trees at the North of the site.

Conditions-

C88 G02 – Retention of trees and hedgerows

C90 G04 – Protection of trees/hedgerows that are to be retained

**CHANGE TO RECOMMENDATION**

Planning recommendation to include additional planning conditions 16 and 17 as follows:

*16. C88 G02 – Retention of trees and hedgerows*

*17. C90 G04 – Protection of trees/hedgerows that are to be retained.*