

Recommendation Report for Planning Permission

REF NO: BN/49/20/PL

LOCATION: The Cottage Piggeries
Church Lane
Barnham
PO22 0DB

PROPOSAL: Continuance of use without compliance with condition 2 imposed under BN/6/20/PL relating to occupation of mobile home, new dwelling & 1 bedroom annexe above garage.

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION

This is an application under Section 73 of the Town and Country Planning Act 1990 (determination of applications to develop land without compliance with conditions previously attached). This sets out that:

"(2) On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and

(a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and

(b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application."

The condition in question is as follows:

(2) The mobile home, new dwelling and 1 bedroom annexe above the garage shall be occupied together by a single gypsy or traveller family unit (as defined by Annex 1 to the Government's Planning Policy for Traveller's sites) and there shall be no subdivision of the site or occupation of either the mobile home, annexe or dwelling by persons unrelated to each other. REASON: To maintain an adequate provision of Gypsy and Traveller sites in the District and to prevent a material intensification of the use of the existing substandard access onto Church Lane in accordance with Arun Local Plan policies T SP1 & H SP5, the National Planning Policy Framework and the Planning Policy for Traveller's sites.

	The applicant's argument is that it is not possible to bring a new caravan into the site by road and that the owners of Sandon on the Church Lane frontage will not allow a caravan to be craned over their house therefore there is no way to bring a caravan into the site.	
SITE AREA	0.1153 hectares.	
TOPOGRAPHY	Predominantly flat but the site is lower than the adjoining garden to the adjacent new build dwelling and there is a retaining wall between the location of the new dwelling and said garden beyond. The height difference here varies but is at most 1m.	
TREES	None on the parts of the site affected by new development. Some trees immediately on the other side of the southwestern boundary with Birch House and in the very western corner.	
BOUNDARY TREATMENT	2m high fencing all along north-eastern boundary. Mature trees and 2m high fencing all along south-western boundary. 2m high fencing all along the north western boundary. Retaining wall plus planting to the southeast.	
SITE CHARACTERISTICS	Existing mobile home (measuring approximately 13m long x 7m deep x 3.8m high & comprising 2 bedrooms) occupied by a gypsy family. Existing flat roofed double garage building (formerly an agricultural storage building). Two further outbuildings used as ancillary residential accommodation and a timber dog kennel building. Vehicular access into Church Lane to the south east. This access has limited visibility, is single width and also immediately slopes up from the road.	
CHARACTER OF LOCALITY	Rural location with open fields beyond the rear boundary. Church Lane has a mixture of detached properties of various styles and designs, some of which are quite grand in appearance. To the north east is an equestrian business with existing old dilapidated timber storage buildings backing onto the shared boundary. To the south west is private rear garden associated with Birch House. To the south east is a new build residential dwelling and curtilage also in the control of the applicant. The site access also passes close to the flank of Sandon, a neighbouring bungalow.	

RELEVANT SITE HISTORY

BN/6/20/PL	Partial demolition of existing structures, 1 No.new dwelling (1.5 storey) with separate 1.5-storey double garage, existing mobile home to be replaced with new, smaller mobile home (resubmission following BN/47/19/PL). This application is a Departure from the Development Plan.	ApproveConditionally 21-04-20
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BN/47/19/PL	Partial demolition of existing structures. New dwelling (1.5 storey) with separate single storey double garage. Existing mobile home to be replaced with new, smaller mobile home - This application is a Departure from the Development Plan.	ApproveConditionally 25-10-19
BN/19/18/PL	Erection of 1 No. dwelling & separate single storey double garage. This application is a Departure from the Development Plan.	ApproveConditionally 08-08-18
BN/22/11/	Proposed siting of a static caravan for residential occupation (this application is a Departure from the Development Plan)	ApproveConditionally 29-02-12
BN/59/04/	Development of site for 2 no. five bedroom houses with integral garages and access to Church Lane. (This application is a Departure from the Development Plan)	Refused 31-01-05 Appeal: Dismissed 02-09-05

The site benefits from permission for occupation of a mobile home by a gypsy or traveller family (BN/22/11 & BN/22/14/PL). The land to the southeast was formerly associated with this site but has recently been given permission for the erection of a new separate dwelling with garage and gardens (BN/18/18/PL & BN/12/19/PL).

BN/9/19/PL sought to replace the existing residential mobile home with a new dwelling and detached garage. It was withdrawn after the Local Planning Authority advised of the conflict with policy H SP5 in respect of the loss of the gypsy/traveller plot.

BN/47/19/PL sought permission for the partial demolition of the existing structures with a new 1.5 storey dwelling, separate single storey double garage and replacement of the mobile home with a smaller mobile home. This was granted with conditions in October 2019. The issue of gypsy/traveller occupancy was resolved through condition 2 to tie the occupation of the replacement mobile home and new dwelling together and restrict to gypsy/traveller occupation.

The applicant submitted BN/105/19/PL to remove this condition but this was withdrawn after the applicant was advised that the Local Planning Authority would only agree to this if the condition were changed to tie the mobile home occupation instead to that of the new build dwelling approved by BN/18/18/PL & BN/12/19/PL.

Application BN/6/20/PL sought to expand on BN/47/19/PL by adding an annex above the garage. This was permitted in April 2020 and the same occupancy condition was applied albeit extended to also cover the annex.

It should also be noted that an earlier application for residential development on this site (BN/59/04/) was

refused due to a Highways objection citing inadequacies of the access point. These would have been overcome by a proposed change to the alignment of Church Lane secured by either a Legal Agreement or Grampian type condition. However, the subsequent appeal was dismissed as the proposal was contrary to countryside policy and the opportunity to improve the access was lost.

REPRESENTATIONS

Barnham and Eastergate Parish Council - object to the above application on the grounds that they believe that approval of the application would lead to the removal of the Gypsy and Traveller Rights that currently exist on the site and that this may mean that the Parish Council have to identify an alternative site for Gypsies and Travellers within the Parish.

The application was accompanied by 4 letters from local residents in support of the proposal. Three of these are on the basis of the significant disruption that will occur on Church Lane should a new caravan be brought onto the site. The fourth was the aforementioned letter from the owners of Sandon.

The application has also attracted a further letter of support from a neighbour again on the basis of the significant impact to Church Lane the last time a caravan was brought onto the site.

COMMENTS ON REPRESENTATIONS RECEIVED:

If this application was approved then the gypsy rights would be lost and Arun District Council would need to find another plot within the district in order to meet its requirements.

CONSULTATIONS

CONSULTATION RESPONSES RECEIVED:

WSCC HIGHWAYS - Detailed comments are available on the website dated 09/06/20 and these conclude that further information is required. A summary of their main points is set out below:

- Historically the Local Highways Authority has supported the site to provide two independent dwelling units, one of which consisted of three elements (a dwelling house, a one bed mobile home and above garage annex accommodation);
- The presence of three independent units of accommodation accessed from Church Lane was accepted on applications BN/47/19 & BN/105/19 given the actual trip rate increase that would have resulted after the removal of the condition;
- Do not consider the trip rate of the annex accommodation to be significantly different whether its occupancy restricted or not;
- However, are concerned that the removal of the condition would not prevent the caravan from being implemented at a later date as it is not unreasonable to conclude that a solution might be found in the future once the occupancy restriction is released;
- This would result in 4 independent dwelling units being permitted on site and this would only be supported with demonstration that the site access point is safe and suitable;
- Seek some clarification over how it will be secured that the replacement caravan will no longer be implemented; and
- The site has plenty of space to allow for independent parking allocations and these could be secured through a planning condition.

COMMENTS ON CONSULTATION RESPONSES:

The application plans still show the proposed caravan and as such, if this application were approved, the caravan could still be implemented. If the applicant had proposed to also vary condition 3 (and provided a new proposed site plan excluding the caravan) then this may have resolved the concerns of WSCC Highways. However, as it stands, the caravan could still in future be implemented and historically WSCC have raised concerns with there being 4 independent dwellings served by the existing access with Church Lane.

POLICY CONTEXT

Designations applicable to site:

Outside the Built Up Area Boundary;
Lidsey Treatment Catchment Area;
Area of Special Control of Adverts;
Mix of Flood Zones 1-3 (the new dwelling is in Zone 1 whilst the garage is in Zone 2); and
CIL Charging Zone 3.

DEVELOPMENT PLAN POLICIES

[Arun Local Plan 2011 - 2031:](#)

HSP5	H SP5 Traveller and Travelling Showpeople accommodation
TSP1	T SP1 Transport and Development

PLANNING POLICY GUIDANCE:

NPPF	National Planning Policy Framework
NPPG	National Planning Practice Guidance

POLICY COMMENTARY

The Development Plan consists of the Arun Local Plan 2011 - 2031, West Sussex County Council's Waste and Minerals Plans and Made Neighbourhood Development Plans.

The policies are published under Regulations 19 and 35 of the Town and Country Planning (Local Planning) (England) Regulations 2012.

There are no relevant Barnham & Eastergate Neighbourhood Development Plan policies.

DEVELOPMENT PLAN AND/OR LEGISLATIVE BACKGROUND

Section 38(6) of the Planning and Compulsory Purchase Act 2004 states:-

"If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."

The proposal is considered to conflict with the relevant Development Plan policies in that it would result in the loss of an existing Gypsy and Traveller residential mobile home pitch and therefore an undersupply of such pitches in the district. This would generate the need for a replacement pitch to be found elsewhere and the applicant has not set out how alternative provision is to be provided. In addition, the removal of the condition would result in a material increase in the number of independent dwellings

taking access from Church Lane and it has not been demonstrated that the Church Lane access has sufficient geometry & visibility to cater for this number of independent dwellings.

OTHER MATERIAL CONSIDERATIONS

It is considered that there are no other material considerations to warrant a decision otherwise than in accordance with the Development Plan and/or legislative background.

CONCLUSIONS

The site benefits from an extant planning permission for the partial demolition of existing structures, one new 1.5 storey dwelling, a separate 1.5-storey double garage with annex accommodation above and the replacement of the existing mobile home with a smaller mobile home. As such, it is not necessary to reassess the principle of residential development on this countryside site and also not relevant to reconsider issues concerning flood risk, design, residential amenity, parking or space standards. Instead these conclusions will focus on the impact associated with removing the conditions, these being in respect of highway safety and the loss of an allocated Gypsy/Traveller pitch.

OCCUPATION OF THE SITE BY GYPSY/TRAVELLERS:

This site is an existing gypsy/traveller site and contributes to the Council's requirement in respect of such pitches. Despite recent call for sites consultations, the Council does not have a surplus of supply and would therefore be reluctant to allow this pitch to be lost.

Part 4 of the Government's Planning Policy for Traveller Sites (PPTS) states that ".. the Government's aims in respect of traveller sites are: (h) to increase the number of traveller sites in appropriate locations with planning permission, to address under provision and maintain an appropriate level of supply".

ALP policy H SP5 "Traveller and Travelling Showpeople accommodation" sets out that provision will be made for 5 private and 9 public gypsy & traveller pitches within the district between 2011 and 2031. It also states that planning permission will not normally be granted for development involving the loss of lawful accommodation for Gypsy and Travellers and Travelling Showpeople unless alternative provision is made to make good any loss.

It should be noted that application BN/9/19/PL sought permission to replace the existing residential mobile home solely with a new dwelling and was withdrawn by the applicant on the grounds of the conflict with policy H SP5 as no alternative provision was proposed. Furthermore, application BN/105/19/PL (to remove the occupancy condition on BN/47/19/PL) was withdrawn after the applicant was advised that the Local Planning Authority would only agree to this if the condition were changed to tie the mobile home occupation instead to that of the new build dwelling approved by BN/18/18/PL & BN/12/19/PL. The applicant should therefore be aware of the Council's position on this matter.

The applicant is now arguing that the condition should be removed because it is impossible to bring a caravan onto the site from Church Lane. Notwithstanding that it has not been fully explored whether it would be possible to bring it in from adjoining land to the north or south, it is not considered that this is persuasive argument. The applicant is within his rights to only part implement application BN/47/19/PL by implementing the dwelling, annex above the garage and other works and not therefore implementing the replacement caravan. This would get around the issue of bringing a caravan onto the site without the need for the removal of the condition and thus allow the gypsy/traveller allocation to remain.

The applicant has not provided any other justification as to why the conflict with Policy H SP5 should be dismissed and therefore there is no reason to discount the conflict with this policy.

HIGHWAY SAFETY:

ALP policy T SP1 seeks to ensure development: provides safe access on to the highway network; contributes to highway improvements & promote sustainable transport. In respect of highway safety, it states: "The Council will support transport and development which: explains how the development has been designed to: (i) accommodate the efficient delivery of goods and supplies; (ii) give priority to pedestrian and cycle movements and have access to high quality public transport facilities; (iii) create safe and secure layouts for traffic, cyclists and pedestrians whilst avoiding street clutter."

Para 109 of the NPPF states that: "Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe."

West Sussex Highways have considered the proposal and whilst they do not formally set out an objection, it is clear that historically they have had concerns with the intensification of the access point onto Church Lane and that the previously permitted increase in the number of residential units served by this access has been carefully considered with respect to the level of trip generation. Their current view is that if the condition was removed (and no enforceable proposal put forward to give certainty that a caravan will never be placed on the site) then there would be 4 independent dwellings served by an access that is known to be unsafe. It is noted that the applicant has not put forward any proposals to improve the access configuration and on this basis, despite the lack of a formal objection from WSCC, it has to be concluded that the removal of the condition has the potential to lead to an unacceptable impact on highway safety and as such is in conflict with ALP policy T SP1 and the NPPF.

SUMMARY:

No persuasive argument has been put forward to outweigh the conflict with ALP policy H SP5 and thus justify the removal of the gypsy/traveller occupancy restriction. Furthermore, if the condition were to be removed, it could lead to 4 separate independent units of accommodation accessed from the existing Church Lane access which is known to be unsafe and this would have an unacceptable impact on highway safety. As such, this application should be refused for the following two reasons.

Noting the recent planning history on this site and the applicants continued desire to remove this condition, it is suggested that the applicant either (a) appeal this decision or (b) secure planning permission for a replacement gypsy/traveller pitch elsewhere in the Arun district & then re-apply to remove the condition. In the case of the latter, a legal agreement may also be required to ensure that the replacement pitch is provided ready for occupation.

HUMAN RIGHTS ACT

The Council in making a decision, should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority such as Arun District Council to act in a manner, which is incompatible with the European Convention on Human Rights.

Consideration has been specifically given to Article 8 (Right to respect private and family life), Article 1 of the First Protocol (protection of property). It is not considered that the recommendation for refusal of permission in this case interferes with applicant's right to respect for their private and family life and their home, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of neighbours). The Council is also permitted to control the use of property in accordance with the general interest and the recommendation for refusal is considered to be a proportionate response to the

submitted application based on the considerations set out in this report.

DUTY UNDER THE EQUALITIES ACT 2010

Duty under the Equalities Act 2010

In assessing this proposal the following impacts have been identified upon those people with the following protected characteristics (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation).

The proposal would have a neutral impact on the protected characteristics.

RECOMMENDATION

REFUSE

- 1 The proposed removal of the condition would mean the loss of an existing Gypsy and Traveller site and this would result in an undersupply of such pitches in the district and generate the need for a replacement pitch to be found elsewhere. The applicant has not set out how alternative provision is to be provided or provided any persuasive arguments as to why this designation should be lifted and as such the proposal is in conflict with policy H SP5 of the Arun Local Plan, the National Planning Policy Framework and the associated Planning Policy for Traveller Sites.
- 2 The proposed removal of the condition would also result in there being potentially 4 separate independent units of accommodation accessed from the existing junction with Church Lane and this represents an unacceptable intensification of a currently unsafe access point in conflict with Arun Local Plan policy T SP1 and paragraph 109 of the National Planning Policy Framework.
- 3 **INFORMATIVE:** Statement pursuant to Article 35 of the Town and Country Planning (Development Management Procedure)(England) Order 2015. The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and discussing those with the Applicant. However, the issues are so fundamental to the proposal that it has not been possible to negotiate a satisfactory way forward and due to the harm which has been clearly identified within the reasons for the refusal, approval has not been possible.