

TONBRIDGE & MALLING BOROUGH COUNCIL

COUNCIL

29 October 2019

Report of the Director of Planning, Housing and Environmental Health

Part 1- Public

Matters For Decision

1 PLANNING APPLICATION TM/18/01240/FL – WOODFORD, OLD LANE, IGHTHAM

Summary

Permanent planning permission is sought for the residential occupation of this site by a single Traveller family along with associated variations to other conditions imposed previously at appeal to allow for an increase in the number of caravans sited on the land. The application was reported to the Area 2 Planning Committee given the planning history of the site on 03 July and 14 August 2019 (on the latter occasion accompanied by a Part 2 report from the Director of Central Services and Monitoring Officer). Members of the Area 2 Planning Committee resolved not to accept the recommendation that planning permission be granted on a permanent basis but rather that a further temporary planning permission (for a period of 7 years) be granted. As such, in accordance with the Constitution, this application is being reported to Council for a decision.

1.1 Introduction

- 1.1.1 The reports to APC2 of 03 July and 14 August 2019, including the Part 2 report and associated appendices, are attached in full and set out in detail the reasoning behind and recommendation of the Director of Planning, Housing and Environmental Health. This report should be read in conjunction with those papers.
- 1.1.2 For the purposes of taking this decision, the Constitution provides that the same rules apply both to applications determined by an Area Planning Committee and where the matter is referred to full Council. Rule 16.1 of the Council and Committee Procedure Rules (Constitution: Part 4, p29) provides that the public speaking rules apply to planning applications being considered by the Council when it has 'resolved itself into a committee of the full council'. As such, the procedure rules relating to Planning Committees are to be applied in this instance.

1.2 Legal Implications

- 1.2.1 Prior to determining this application, Members are requested to note the Monitoring Officer's legal advice contained within the Part 2 report to members of Area 2 Planning Committee dated 14 August 2019. Again, to be read in conjunction with the associated papers appended to this report.

(a) Determination of Planning Applications

- 1.2.2 Planning applications must be determined in accordance with the development plan, unless material considerations indicate otherwise (see s.70 (2) Town & Country Planning Act 1990 and s.38 (6) Planning and Compulsory Purchase Act 2004). For TMBC, the development plan is currently the Local Development Framework adopted in 2007. The National Planning Policy Framework ("NPPF"), Planning Practice Guidance ("PPG") and Planning Policy for Traveller Sites ("PPTS") are important material considerations.
- 1.2.3 Paragraph 11(c) of the NPPF requires that planning authorities approve development proposals which accord with the development plan "without delay".
- 1.2.4 The key matter for consideration in this case centres on the legal and policy considerations relevant to the decision of APC2 to resolve to grant a (7 year) temporary planning permission rather than a permission that would allow the family to reside on the site on a permanent basis. The justification put forward by APC2 in support of the further temporary period was on the basis that circumstances may have changed in 7 years' time that would mean permanent occupation may no longer be necessary. This was on two bases: (i) That the personal circumstances of the family may have changed and (ii) that the Council will have adopted a new Local Plan which contains policies for Gypsy and Traveller sites.
- 1.2.5 The Planning Practice Guidance (the "PPG") is clear in respect of when it is reasonable and justifiable to grant temporary planning permissions, as follows:

Under section 72 of the Town and Country Planning Act 1990 the local planning authority may grant planning permission for a specified temporary period only. Circumstances where a temporary permission may be appropriate include where a trial run is needed in order to assess the effect of the development on the area or where it is expected that the planning circumstances will change in a particular way at the end of that period.

A temporary planning permission may also be appropriate to enable the temporary use of vacant land or buildings prior to any longer-term proposals coming forward (a 'meanwhile use').

It will rarely be justifiable to grant a second temporary permission (except in cases where changing circumstances provide a clear rationale, such as temporary classrooms and other school facilities). Further permissions can normally be granted permanently or refused if there is clear justification for doing so.

- 1.2.6 There is no basis in policy or law for the Council to adopt a “wait and see” approach to planning applications, nor to grant temporary permissions in order to facilitate some future prospective (and by no means certain) “change” in relevant circumstances.
- 1.2.7 The Council in its function as Local Planning Authority has submitted its Local Plan to the Secretary of State for examination. Whilst no date has been set for the examination as yet, the Council, in submitting the Plan, has confirmed that it believes it to be a sound and reasoned approach to meeting identified needs (including evidenced needs for Traveller accommodation) over the plan period. In drafting the Plan, the decision was taken to address identified need for Traveller pitches on a case by case, criteria based approach rather than through the allocation of specific sites. It is not possible at this stage of the process to simply decide that approach is no longer palatable and suggest that sites should be found to allocate for such purposes. Notwithstanding the fact that it is not feasible at this stage to use the time between submission of the Local Plan and the examination dates to fundamentally change elements of the Plan, Members must also be aware that no sites were forthcoming for such purposes when the “Call for Sites” exercise was undertaken and there remains no indication of any that could be used for such purposes that would be available, suitable or indeed deliverable. To suggest otherwise is pure supposition and decision making cannot be formulated on such a basis.
- 1.2.8 The fact therefore remains that the Council has an identified, extant and current unmet need for permanent gypsy/ traveller pitches that will not be addressed in a manner anticipated by the previous inspector in granting the temporary planning permission at this site.
- 1.2.9 Members are aware that relevant decisions made by the Secretary of State via the Planning Inspectorate are important material considerations. Whilst they do not create precedents in every case, they must be given due weight in the decision making process to ensure consistency in decision making. The key decision in this respect is the permanent permission granted at The Spinney, Wrotham Heath. The Inspector in that case made it very clear that the Council’s position concerning unmet need in that case formed a key part of the very special circumstances. The decision letter is reproduced in full as an annex to this report.
- 1.2.10 Similarly, it would be entirely unreasonable to seek to time limit residential occupation of the site until the children residing there reached the age of 18 (for example). The appended reports quite correctly explain that the best interests of any children residing on the site are a primary consideration in this case. However, that is not to say that it is the only consideration. It should be made clear that even in the event that no children resided on this site, the recommendation would remain as it stands given the position concerning unmet need given the assessment and conclusions given in this regard.

1.3 Financial and Value for Money Considerations

- 1.3.1 An award of costs against the Council by the Planning Inspectorate would be for the expense incurred by the Applicant in lodging and pursuing a planning appeal. The applicant has already engaged professional planning agents and these would likely take such an appeal forward. Legal representation may also be instructed to assist in preparing and making their appeal case.
- 1.3.2 There would in addition be further costs to the Council in terms of its own officer time and resourcing up to and including the appearance at any appeal hearing or inquiry.

1.4 Risk Assessment

- 1.4.1 The risk of an award of costs by the Planning Inspectorate presents a reputational risk because it would indicate that the Inspectorate considered the Council had behaved in an unreasonable manner.
- 1.4.2 Members' attention is also drawn to the previous advice of the Monitoring Officer in the Part 2 report.

1.5 Equality Impact Assessment

- 1.5.1 The Council's statutory duties under s.149 Equality Act 2010 are directly engaged in this matter, as the applicants share a protected characteristic. The Council must have due regard to the need to promote equality of opportunity between those persons who have a protected characteristic and those who do not. The Council must also have due regard to the need to eliminate discrimination, harassment, victimisation or any other conduct that is prohibited by law.
- 1.5.2 The appellant's rights to respect for private and family life under Article 8 of the European Convention of Human Rights are also engaged.
- 1.5.3 More detailed legal advice on these issues is set out in the Monitoring Officer's Part 2 report.

1.6 Recommendation

- 1.6.1 **Grant planning permission** subject to the following conditions:

Conditions:

1. The residential use hereby permitted shall be carried on only by [REDACTED] and their resident dependants

Reason: In order to preserve the open function and nature of the Green Belt and in the interests of amenity.

2. In the event that the site ceases to be occupied by those named in Condition 1) above, the use hereby permitted shall cease and all caravans and associated buildings or structures brought on to the land, or works undertaken to it in

connection with the use, shall be removed and the land restored to its condition before the development took place.

Reason: In order to preserve the open function and nature of the Green Belt and in the interests of amenity.

3. No more than three caravans (of which no more than 1 shall be a static caravan) as defined by the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, shall be stationed on the site at any one time and no further caravans shall be placed at any time anywhere within the site.

Reason: In order to preserve the open function and nature of the Green Belt and in the interests of amenity.

4. Prior to the installation of any means of foul or surface water disposal system, a scheme shall be submitted to the Local Planning Authority for approval. The approved scheme shall be implemented within two months of the date of the approval.

Reason: In order to prevent pollution of controlled waters.

5. No external lighting shall be erected within the site without the prior written approval of the Local Planning Authority.

Reason: In the interests of rural and visual amenity

6. The existing screen hedging shown on the approved plan shall be retained at a minimum height of 2.5m.

Reason: Pursuant to Section 197 of the Town and Country Planning Act 1990 and to protect the appearance and character of the site and locality.

7. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any re-enactment thereof, no fences, walls, gates or other means of enclosure shall be erected within any part of the application site.

Reason: In order to preserve the open function and nature of the Green Belt and in the interests of amenity

8. Prior to the stationing of any more than one touring caravan on this site as hereby approved, details of the layout of the site detailing the siting of the caravans shall be submitted to and approved by the Local Planning Authority. The development shall thereafter be undertaken in accordance with the approved details.

Reason: In order to preserve the open function and nature of the Green Belt and in the interests of amenity

Informative:

1. The applicant is reminded that the use hereby approved does not afford any permitted development rights and that any built development or engineering operations in connection with the use would require planning permission from the Local Planning Authority.

Background papers:

contact: Emma Keefe

Reports to the Area 2 Planning Committee of the
Director of Planning, Housing and Environmental
Health and the Director of Central Services and
Monitoring Officer