


Your Ref: 2020/1111/S73
Our Ref: SV/MCR/

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Planning Department
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BY EMAIL & POST
24 February 2021

Dear Mr Bell

**SECTION 73 APPLICATION TO VARY CONDITION 1 AND 2 OF PLANNING APPEAL
APP/N2739/C/14/2227549/50/51/52/53/54 TO ALLOW THE CONTINUATION OF THE USE
OF THE LAND AS A GYPSY CARAVAN SITE, INCLUDING THE RETENTION OF CARAVANS,
HARDSTANDING, LIGHTING, OUTBUILDINGS AND CHATELS INCLUDING SHEDS AND A
LORRY/TRAILER BODY WITHOUT THE BENEFIT OF PLANNING PERMISSION GRANTED BY
APPEAL ON 21 JANUARY 2016 AT LAND TO THE NORTH OF BORDER FARM, HILLAM LANE,
HILLAM, LEEDS, WEST YORKSHIRE**

I write on behalf of my client, Hillam Parish Council ("HPC"), to submit representations to the above Section 73 application.

In the first instance, you should be aware that I consider the detailed and supporting information accompanying the planning application to be inadequate for you to arrive at a robust recommendation, and indeed to properly determine the proposals. Unless this is rectified I consider there is no alternative other than to refuse the planning permission.

Notwithstanding and having assessed the available information, the proposed development is contrary to a number of important planning policies and guidance within the Development Plan, and government policy. I believe that this conflict with policy has not been outweighed by material considerations and that planning permission should therefore be refused. My rationale and reasoning, along with detailed consideration of the issues, is set out for your convenience below under several sub-headings.

Proposal

This application seeks approval for the variation of conditions 1 and 2 to the extant planning permission on the site. These conditions read as follows:

01. The use hereby permitted shall be for a limited period of five years from the date of this Appeal Decision. At the end of this period the use hereby permitted shall cease, all static and touring caravans, other structures, sheds, portable buildings, lorry bodies, LPG tanks, materials, vehicles and equipment brought on to or erected on the land and works undertaken in connection with the use including the laying of hard-standings and internal driveways and tracks shall be removed and the land shall be restored to pasture land being its condition before the development took place.

02. The site shall not be occupied by anyone other than:

Thomas Smith Cannon, Violet Cannon, Thomas Peter Cannon, Maria Cannon, Margaret Violet Cannon, Maria Cizzar Cannon, Thomas James Cannon and any dependent children of those named above.

The conditions attached to the extant planning permissions stem from three decisions. Firstly, those attached to the original permission for the site (SDC Ref: 2011/0712/COU) which granted temporary permission for the use of the land for site 2 caravans, 2 touring caravans and outbuildings.

Those conditions were replaced by those attached to the original planning permission issued by the Secretary of State on 30th July 2014 (SDC Ref: 2011/0712/COU, PINS: APP/N2739/12/A/2176525), and lastly two replacement conditions (condition numbers 1 and 2) attached to the permission by virtue of an Enforcement Notice and subsequent appeal, to amend within decision issued in 2016 (SDC Ref: 2014/1142/EAP, PINs Refs: APP/N2739/C/14/2227549/50/51/52/53/54).

Whilst the planning history is complex, the effect of granting planning permission for the current proposal would be to establish the permanent use of the site as a residential caravan site for occupation on an unrestricted basis. It is important to note that all other planning conditions would remain attached to the land by virtue of the planning permissions in place and that these controls would still be enforceable through normal channels.

The application package is limited to the application forms and a copy of the 2016 appeal decision for the site. There is no covering letter, Planning Statement or other outline of the applicant's case in support of the proposal. The following has therefore been provided without the benefit of the applicant's case on a number of important matters. If this information is forthcoming during the course of the planning application, I reserve the right to make further comments in response to those additional submissions.

Planning History

The site has an extensive planning history which I do not propose to rehearse in full here.

In this case, the relevant considerations relate to the reasoning and rationale behind the various decisions to grant a temporary planning permission on a restricted basis to a number of specific individuals, rather than permanent permission to occupy the site on an unrestricted basis. The following is therefore pertinent.

Firstly, in November 2010, the Council served an Enforcement Notice relating to the use of the site as a gypsy caravan site. An appeal against this enforcement notice was allowed on 5th August 2010 and deemed planning permission granted for the proposal from this date. A condition attached to this permission stipulated that the consent was for a temporary period of 12 months, that ended on 5th August 2011.

The applicant then submitted a further application proposing replacement of conditions 1 and 2 of that deemed planning permission. The District Council granted conditional planning permission for that proposal. The conditions restricted the occupants of the site and 'life' of the planning permission to a temporary period. The applicant submitted an appeal against the conditions attached to that approval.

The appeal on the site was allowed by the then Secretary of State, following on from a Hearing which was held during the course of 2012. The Inspector who presided over that Hearing, provided a detailed report into their findings at the Hearing alongside their recommendation to dismiss the appeal. The Secretary of State's own decision letter provides his review of the Inspectors findings and formally dismiss the appeal.

Of critical relevance is the Inspectors reasoning in allowing the appeal against the Enforcement Notice (PINS Ref: APP/N2739/C/14/2227549/50/51/52/53/54). Key quotes are reproduced below

31. The fact that there is no alternative site that the appellants could go to weighs significantly in favour of the grant of the temporary permission sought by them.

....

33. I was referred to Inspector Dignan's Appeal Decision dated 2 December 2014 when he determined an appeal against an Enforcement Notice relating to non Green Belt land off Linwith Lane, Carlton, Selby. He granted a five year conditional planning permission for a residential caravan site to be occupied by gypsies.

34. He explained in his Appeal Decision that in order to grant a five year temporary permission there must be a reasonable prospect of alternative sites coming forward by the end of the temporary period. He found that requirement was met because the

Council were proactively seeking additional sites so as to meet the needs set out in the Gypsy and Traveller Accommodation Assessment. I agree with that assessment.

....

46. I consider that it is in the best interests of these children to remain on the site until such time as an alternative lawful pitch becomes available that they can relocate to. Clearly, it cannot be in the best interests of the children to continue their homelessness and force them to live on the roadside. Council Officers attending the Hearing also agreed with this assessment.

The children were then Bernadette Cannon (then aged 12) and the two young children of Margaret Violet Cannon (then 1 year, and 7 months).

In balancing the benefits against harm the Inspector attached substantial weight to the following harms:

- a) that results from the continued use of Ten Acres as a gypsy caravan site because this is inappropriate development in the Green Belt.*
- b) Arising from the loss of openness which results from the continued use of Ten Acres as a gypsy caravan site.*
- c) Arising from the conflict which the use of Ten Acres as a gypsy caravan site causes because of its encroachment into the surrounding open countryside.*
- d) Caused to the character and appearance of the open countryside by the use of Ten Acres as a gypsy caravan site.*

Against, the grant of a full unrestricted, permanent planning permission, were:

- a) Need - Unmet need for traveller sites in the District, but which was insufficient in isolation to justify harm to the Green Belt,
- b) Personal circumstances – particularly the health issues of Thomas Smith Cannon, his wife Violet Cannon and his daughter-in-law Maria Cannon,
- c) Education – Specifically, the opportunity for Bernadette Cannon to continue her education at the High School.

In conclusion the Inspector stated:

“I consider that a temporary permission for five years strikes an appropriate and fair balance and is proportionate in all the circumstances.”

Also of key relevance in the determination of this proposal are the Secretary of States review of the Inspectors reasoning and recommendation, and their final conclusion to dismiss the appeal.

19 Overall, the Secretary of State acknowledges that the council is working to address this issue, but agrees with the Inspector that the level of unmet need and the absence of a five year supply of sites should be afforded significant weight in favour of the proposal.

26 Overall, the Secretary of State notes the Inspector's considerations on the importance of a settled base. He considers that given Mr Cannon's daughter will have completed her primary education by summer 2014, and the other young child on the site will be of pre-school age, less weight than that given by the Inspector should be attached to the importance of a settled base at this particular site location for the purposes of the children's education.

27 Accordingly, he affords moderate weight to the appellants personal circumstances.

In concluding, the Secretary of State makes the following point:

37 However, like the inspector, he does not consider these, in themselves, are sufficient to clearly outweigh the harm to the green belt and other harms so as to justify permanent permission. He considers that, even when combined with the personal circumstances of the appellant and the best interests of the children, which he considers are a primary consideration, the Very Special Circumstances necessary to justify the development do not arise and therefore permanent permission is not justified.

The full copies of the decision letters are attached for completeness, however the above extracts have been highlighted as pertinent to the matters currently before the District Council.

Planning Policy

The development plan for the purposes of determining this application is the 'saved' policies of the Selby District Local Plan and the adopted policies of the Selby Core Strategy Local Plan.

The application site is identified in the Selby District Local Plan Policies Map as falling within the Open Countryside and Green Belt.

The emerging PLANSelby, Local Plan is not at an advanced stage of preparation. The Preferred Options version of the plan is currently undergoing a period of public consultation the result of which will be reported to the Council in due course. Whilst, the policies contained within the Preferred Options document are unlikely to have been fully examined prior to the determination of this application, they provide critical information about the Council's proposed strategy for meeting the needs of travellers in the District.

Also of relevance, in relation to the emerging plan, is that the Council have completed an extensive 'Call for Sites' exercise. The results of this exercise are available on the Council's website. The application site has not been promoted through the plan preparation process, nor has the applicant made any attempt to promote any alternative site within the District as part of this process.

As part of the preparation of the emerging plan the Council have also undertaken a Gypsy Traveller Accommodation Assessment ("GTAA") which provides pertinent data with regard existing facilities and forecasts for the need for new facilities.

In addition, the Ministry of Housing, Communities and Local Government ("MHCLG") issued Planning Policy for Traveller Sites ("PPTS") in March 2012. This was updated in August 2015 and represents specific guidance with regard the development of traveller sites throughout England. The document should be read in conjunction with the National planning Policy Framework ("NPPF").

The development plan and NPPF provides that planning decisions should apply a presumption in favour of sustainable development when determining planning applications, and states that applications for proposals that accord with an up-to-date development plan should be approved without delay. The NPPF goes on to provide that the development plan is the starting point for decision-making, adding that where a planning application conflicts with an up-to-date development plan it should not usually be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.

Issues

The primary issue in relation to the determination of this proposal is the sites location within the Open Countryside and Green Belt, and consideration of the application against policy SP11 of the adopted Core Strategy alongside the personal circumstances and specific needs of the applicant and their family. In addition, the proposal raises questions of prematurity, visual impact and any changes that may have occurred since many of these matters were last considered in relation the proposal, and that require consideration against the relevant policies of the Local Plan.

I consider each of these issues in turn below.

Site Location in the Open Countryside

The site is located outside of development limits in the open countryside.

Policy SP2 of the Core Strategy directs all new development to the Market Towns and Designated Service Villages ("DSVs"), restricting development in secondary villages and the

open countryside. Whilst policy SP2 states that limited amounts of development *may* be absorbed *inside* the Development Limits of Secondary Villages, such development must also be demonstrated to enhance or maintain the vitality of rural communities *and* conform to the provisions of policy SP4 and policy SP10 of the Core Strategy. Last in the sequence of development preference is the open countryside.

Criterion c) of policy SP2 provides that development in the open countryside will be limited to the replacement or extension of existing buildings, the re-use of buildings preferably for employment purposes. In addition, the policy allows for well-designed new buildings of an appropriate scale, which would contribute toward and improve the local economy and where they will enhance or maintain the vitality of rural communities, in accordance with Policy SP13; or meet rural affordable housing need (which meets the provisions of Policy SP10), or other special circumstances.

As described above, the application site is located on land that is outside of the defined Development Limits of the relevant settlements. These settlement boundaries were established through a thorough and detailed consideration of the then emerging development plan, and the opportunity to amend these boundaries is currently underway within the current emerging development plan.

There is no existing permanent building or structure on the site to be reused, replaced, or extended. Consequently, the proposal can only be considered against the latter portion of the policy which provides for '*well-designed new buildings of appropriate scale*'. The proposal must also be demonstrated to contribute to the local economy as well as maintain the vitality of the local community.

The site will remain as a large, contemporary developed area in the open countryside. The vehicles and caravans that already occupy the site are visible from a substantial distance and, whilst some planting and fencing could be added to the site, there is no indication that this would significantly alter the visibility of these features. Similarly, there is no evidence that the design of the proposal is either 'well designed' or 'appropriate' in this rural location.

For the purposes of this policy the 'appropriateness' of the application proposals is mainly a visual assessment of the scheme and its appearance in the context of the surrounding area. There are several key viewpoints within the surrounding area that will need to be assessed as part of the consideration of the application. For ease of reference, I have set these viewpoints out on the attached plan.

In summary, viewpoint 1 provides a clear view of the application site from a layby on the A162, to the west. Whilst there are large infrastructure features (Powerlines and Eggborough Power Station) also visible, these are features that have a historic relationship with energy generation and transmission uses in the area, and the role that the area plays in the national supply of electricity. It is notable that there are very few domestic features within this view.

In relation to viewpoint 2, again this is a long-distance view of the site with limited intervening vegetation and topography between the application site and the viewpoint.

Viewpoint 3 is taken from the public right of way between Betteras Hill Road and Hillam Lane (Route Code: 35.37/3/1). This is an important route for local walkers and connects into a wider network of paths and rights of way in the surrounding area. The site is clearly visible and has no clear relationship with any other feature in the landscape.

Viewpoints 4 and 5 are both closer to the application site and provide short distance views of the site from the Hillam Lane. This is representative of the views of the site for the road users and demonstrates the likely ineffectiveness of the landscaping proposed to screen the visual impacts of the site. Hillam Lane is at a slightly elevated position in relation the site and provides road users with a clear view into, around and over the application site.

In conclusion on this issue, when viewed from the above viewpoints, the proposed structures and vehicles on the site will be easily visible in the local and wider area. There is little comfort that even an extensive landscaping and mitigation scheme has the potential to adequately address the visual impact of the proposal. Consequently, I conclude that the proposal is inappropriate in the open countryside and appears as an alien and incongruous feature in the local area. As such, the proposals to make this harm permanent cannot reasonably be considered to be 'well designed' for the purposes of this policy.

Having reviewed the application package, it is clear that the applicant has made no meaningful attempt to provide any case or evidence with regard either the contribution that it makes to the vitality of the rural community, or it's compliance with policies SP4 and SP10.

Having reviewed these policies myself, SP4 relates to the management of residential uses *in* settlements and is not of relevance. Policy SP10 relates to the rural exception sites, and whilst the proposal is not specifically for 'residential' development, the approach to the assessment of 'exceptions' is of use.

Policy SP10 makes it clear that such exceptions will only be acceptable; 'within' or 'on the edge of' Designated Service Villages and Secondary Villages where they are small scale and represent 'affordable housing'. The scheme currently before the Council is in the open countryside and proposes open market accommodation, rather than any form of development which is discounted. It therefore fails the preliminary requirements of the policy, however the three criteria within the policy must also be met.

The proposal fails the first criterion due it its location outside, and remote from, the defined development limits of an identified settlement.

The second criterion relates to the proposals ability to meet a local need, identified by a survey. In this regard the applicant appears to consider the scheme will meet the needs identified in the 2018 Gypsy and Traveller Accommodation Assessment ("GTAA"). The detail

of this assessment is considered later in this letter; however, I consider that the proposal fails to meet the requirements of this criterion.

The last of the criteria requires that the proposal be sympathetic to the form, character and landscape of the village, as well as according with normal development control criteria. I have already considered the appearance of the proposal under policy SP2 of the Core Strategy Local Plan, where I conclude that the proposal is inappropriate in the open countryside and will remain an alien and incongruous feature in the local area. There is no indication that the scheme would be appropriate or sympathetic to the form and character of neighbouring settlements and therefore the requirements of this criterion and policy SP10 have not been met.

In summary, given the location of the site and the very limited information submitted in support of the application, the proposal is clearly contrary to Policy SP2A(c) and SP10 of the Core Strategy. The applicant has not provided a case with regard material considerations that may be considered to outweigh the adopted development plan and therefore there is no ability to outweigh the clear conflict with the adopted development plan policy.

Green Belt

The application site is located within the adopted Green Belt. Core Strategy policy SP3: Green Belt, and the NPPF provide that planning permission will not be granted for inappropriate development in these locations unless the applicant has demonstrated that Very Special Circumstances exist to justify why permission should be granted. NPPF confirms that these Very Special Circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, *and* any other harm resulting from the proposal, is clearly outweighed by these considerations.

In balancing the consideration of Very Special Circumstances against these harms paragraph 144 of NPPF provides that 'substantial weight' needs to be attached to *any* harm to the Green Belt. The applicant makes no attempt to identify any circumstances that could be considered 'very special' for the purposes of Green Belt policy. However previous submissions to the applications and appeals that have been reviewed in the Planning History section of this letter indicate that an unmet need and the personal circumstances of the occupants have been issues that the applicant has sought to rely upon in the past.

The proposal constitutes inappropriate development in the Green Belt, that it will reduce openness and encroach into the countryside. I note that the applicant makes no assessment on this matter, and I therefore reserve the right to comment further on this matter if there is a claim that the proposal is appropriate development. On this basis there is therefore no need to consider the application against the exceptions set out within paragraph 145 and 146 of NPPF.

The assessment of need carried out on behalf of the Council in 2018 which identified a requirement for the provision of up to 44 permanent pitches in the period 2018 -33. It is clear that the Core Strategy policy SP11 provides that the Council will ensure an adequate supply of traveller sites and that a 5 year supply of deliverable sites and broad locations for growth will be provided in the Site Allocations Local Plan.

On the face of it, there is therefore an identified, unmet need and an absence of a five-year supply of deliverable land for new sites, and that these are all matters which should carry weight in favour of the proposed development. These matters may be considered material considerations as well as circumstances which could be considered 'very special', and I consider each in turn below.

In relation to need, PPTS states that unmet need (such as a lack of a 5-year supply) is unlikely, alone, to outweigh harm to the Green Belt to establish Very Special Circumstances. This is an important principle to understand from the outset.

However, having reviewed the Council's latest assessment of need for gypsy/traveller sites within the district, the study was prepared to ensure a robust evidence base to assess the housing needs of the travelling community for the period 2018 -33. The study was commissioned to ensure that the needs and requirements of this community were fully understood and met in the drafting of the emerging Local Plan. The intention of the Council is clearly to ensure that the requirements of policy SP11 of the Core Strategy are fully met.

The need for gypsy and traveller accommodation identified within the GTAA for the 15-year period between 2018-33. Whilst the applicant states that the GTAA identifies a requirement for the District Council to have currently identified a total of 44 pitches, this appears to be a misinterpretation of the conclusions. For this period the document identifies a need for an additional 8 pitches within the district. The GTAA provides that 5 of these pitches are required in the period 2018-23, with the remaining 3 required in the period 2028-33.

Since the publication of the GTAA there have been several important developments in relation to the supply of suitable accommodation. Firstly, the existing traveller site at Great North Road, Newthorpe has received a temporary consent to 12th June 2025 (SDC Ref: 2019/0030/COU) to extend the current facility to accommodate a further 12 pitches. The permission is subject to several conditions requiring the submission and approval of detailed matters. These conditions are the subject of a current application (SDC ref: 2020/1149/DCO) to discharge these requirements which is currently awaiting determination. (Check and update as required before submission). There is no indication that this facility is undeliverable or will otherwise fail to contribute to meeting needs identified in the GTAA.

Whilst the permission is temporary in nature the officers report to Committee, dated 29th April 2020, at paragraph 6.4 makes it clear that the limited nature of the permission was justified whilst the Council sought to consider and establish their preferred approach to

meeting the needs of Gypsies and Travellers in a comprehensive and 'plan led' manner. In short, the permission was only temporary because the Council wanted to consider all options before supporting the permanent development of this site to meet needs.

With the above in mind, the likely delivery of this temporary facility needs to be appreciated in light of the Council's very recent identification of the site in the emerging Preferred Option Local Plan, as an allocated site for Gypsy/Traveller accommodation. It is clear that the Council have now completed their considerations of the most appropriate and sustainable method by which to meet identified needs and have arrived at a site allocation and criteria-based policy. Page 218 of the emerging Preferred Options Consultation document identifies the Newthorpe site as suitable for removal from the Green Belt and the provision of 12 pitches, each containing 2 caravans and an amenity building. The effect is that the temporary provision on the site would become supported as a permanent facility by the Council.

In addition, the temporary permission and proposed allocation at Great North Road, Newthorpe, a further source of provision has been granted permission at Broach Lane, Kellington (SDC Ref: 2018/1299/FUL). This permission was granted conditional planning consent on 29th May 2020, and proposes the provision of 8 pitches and the erection of associated amenity blocks. This provision was not included within the available supply considered within the GTAA, and therefore needs to be assessed as contributing to meeting the need identified in that report.

In summary therefore, the identified need in the GTAA has been permanently met through the development of the Broach Lane, Kellington site. This is likely to be substantially exceeded if the Councils strategy of allocating the site at Great North Road, Newthorpe is adopted into the emerging PLANSelby. Whilst this is not formally adopted the existing development on the site would be unchanged from its current appearance and given the satisfactory operation of this existing facility I consider it to be likely that the allocation will be formally adopted in its current form.

Secondly, the planning application submission makes no reference to the personal circumstances of the applicant as either a 'Very Special Circumstance' or a material consideration to be taken into account in the determination of the application proposals. As such it does not currently form any part of the applicant's case, although I am aware that in previous proceedings (noted above under the planning history section of this letter) the applicant has provided information with regard the health and educational needs of family members who reside on the application site.

It is unclear exactly which family members currently reside at the application site, however for the purposes of this letter I have assumed that the same family members reside as were there during the 2014 planning appeal considered by the Secretary of State. Given the requirements of condition 2, which restricts the occupancy of the site to specific named

people, it is assumed that the applicant has complied with the requirements of this condition and no additional persons are resident at the site.

It is clear from the Secretary State's reasoning during the 2016 appeal decision that the elder child of Mr Cannon should by now have completed their secondary education, and hopefully has developed an independent career of her choosing. In my opinion no weight can now be attached to the educational needs of this child.

The youngest of the children residing on the site at the time of the Secretary of State's decision was 7 months. This child would now be approximately 5-6 years old and therefore of primary school age. Whilst the child may be in attendance at a local school, there is no strong case to be made that the child's education would suffer significantly as a result of moving from the site to a settled and permanent base. Indeed, if a move were made to the extended facility at Newthorpe, it is quite possible to attend the two nearest Primary Schools to the application site, in Burton Salmon and Monk Fryston.

I'm unclear as to the current situation with regard the health conditions of residents and therefore I cannot satisfactorily address this issue within this letter. If this issue were to be relied upon by the applicant in the determination of this proposal, medical evidence would be required in order to illustrate the specific needs and requirements of that individual.

Having regard to the above, there is very little information available to suggest that a significant case can be made with regard the health or educational needs of the residents of the site in support of the application. On this basis, I attach very limited weight to these issues in reaching my conclusions as to the acceptability of this application proposal.

In conclusion, having regard to all of the above considerations I am firmly of the view that the circumstances I have identified in support of the proposal are insufficient to be considered either 'very special' or to attract sufficient weight to '*clearly outweigh*' the harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal'. It is worthy of note that the conflicts with planning policy noted elsewhere within this letter represent 'other harms' for the purposes of this Green Belt balancing exercise.

As such, Very Special Circumstances for the purposes of Core Strategy policy SP3 and paragraph 144 of NPPF, have not been demonstrated and planning permission should therefore be refused.

Prematurity to an emerging Development Plan

Having regard to the above issues it is clear that the Selby District Core Strategy Local Plan anticipated a number of issues that would be addressed during the preparation of a further development plan document. Whilst this further document was originally anticipated to be the Site Allocations Local Plan, the preparation of this document has now been abandoned in favour of a comprehensive Local Plan.

The emerging Local Plan provides detailed consideration of both need to adjust Green Belt boundaries in specific locations, the preferred location for the development of gypsy/traveller facilities for the plan period, and a criteria-based policy to provide a robust framework for the consideration of proposals that come forward on unallocated sites. The application does not fall within the Preferred Option allocated site, remains within the retained Green Belt boundary and fails to meet the requirements of the criteria based policy (HG13 - gypsy and traveller sites) set out within the emerging Local Plan.

Given the relatively small quantum of need for gypsy and traveller provision the application proposal would provide more than double the anticipated requirements for such facilities (set up within the GTAA) for the entire 20 year plan period (2020 to 2040). As such the application proposals have the potential to substantially undermine the emerging strategy set out within the Preferred Options Local Plan.

Whilst NPPF makes it clear at paragraph 50 that refusal of planning permission on grounds of prematurity will seldom be justified when a draft plan is yet to be submitted for examination, in this case the proposal provides for not only a doubling of the required provision of such accommodation but also undermines a proposed change to the Green Belt boundary in Newthorpe. Consequently, I consider that the proposal has the potential to prejudice the outcome of the emerging Local Plan policies.

In this regard, whilst the guidance within the NPPF is clear that prematurity to an emerging development plan will seldom be justified at this stage, the application proposal has the potential to fundamentally undermine the Council's emerging strategy in relation to gypsy and traveller accommodation. In this circumstance, I consider that a refusal on this ground is justified.

Ecology

The development of the proposal requires the permanent removal of the grasses and vegetation that previously occupied the site. Having reviewed the application documentation, there is no assessment of the ecological impact of the proposal. This is notwithstanding the fact that these habitats have been identified as important by DEFRA as supporting a rare species of bird, Corn Bunting.

I am sure that officers will be familiar with the correct approach to be taken in investigating the potential for species protected under the Wildlife and Countryside Act. It is critical that, when considering the development proposal, the planning authority is in possession of relevant surveys and information prior to making any decision. Of course, the survey work should only be requested where there is a reasonable likelihood that such protected species are in existence. In this regard it is well documented that neighbouring sites within the surrounding environs can provide abundant opportunities for these birds.

In order to establish whether a potential development site is likely to be of significance to these birds, it is necessary to check for activity. This is generally undertaken by experienced surveyors using approved methodologies and equipment. The absence of this information makes the situation with regard this application directly analogous with the “Cornwall case” (Regina vs. Cornwall County Council ex parte Jill Hardy; [Sept 2000]) where, to quote from the judge’s summing up of the case:

“Preliminary surveys in the light shafts for roosting bats were undertaken but none were found. The ecological survey stated, however, that it was possible that the open shaft in arsenic works would support bats but more detailed underground surveys were required”.

In this judgement it was held that the local authority cannot grant planning permission until the surveys, which would provide the data for a detailed evaluation of the bat interest and the significance of any impact, have been completed.

Until this information is provided, I consider the determining authority is unable to reach a decision with regard the proposals. It follows therefore that until full information is available with regard the proposal’s potential impact on protected species, any grant of planning permission, including a decision conditional upon the completion of survey work, would be unlawful and open to challenge.

The proposal is therefore contrary to the national policy set out within the NPPF and the provisions of Wildlife and Countryside Act.

Public Rights of Way

I note that a public right of way passed through the site. It appears that the proposed development will physically affect the Public Right of Way permanently, which in turn requires the submission of an application to the Local Planning Authority for a Public Path Order/Diversion Order.

I understand that no such application has been made to North Yorkshire County Council and therefore an application will need to be made under S.257 of the Town and Country Planning Act 1990 as soon as possible. The permanent obstruction of this right of way would be an offence.

Agricultural Land Classification

Having reviewed the Agricultural Land Classification Maps provided by Natural England the application site falls within an area noted as ‘very good’ land quality.

Policy SP18 of the Selby Core Strategy Local Plan requires that the high quality and local distinctiveness of the natural and manmade environment will be sustained through (criterion 9) steering development to areas of least environmental and agricultural quality. The purpose of this policy is to ensure that finite assets such as the availability of 'excellent' and 'very good' quality agricultural land are maintained and protected into the future.

Of the five different classifications of agricultural land the application site falls within the second highest category. Therefore its permanent development for use as a gypsy/traveller site would conflict with the aim of criterion 9 of policy SP18 of the Core Strategy Local Plan.

Conclusion

Having undertaken the above detailed consideration of the proposal against adopted development plan policies that are relevant to the determination of the application, it is clear that the proposal conflicts with key elements of the development plan. The applicant has not identified any material considerations which indicate that any decision other than in accord with the development plan is warranted. Consequently, the Council should refuse planning permission for the proposal in its current form.

Notwithstanding the above, there are clearly features of the proposal which have not been assessed in a full and objective fashion. The lack of these assessments leads me to consider that the application package is incomplete.

Plainly the onus lies with the applicant to demonstrate, through the provision of evidence and information, that the proposal and its effects are assessed fully and the information passed to the Council to ensure that the application is appropriate and justified. The reason for this is to ensure that the level of detrimental impact as a result of the proposed works being approved is reasonable, warranted and, on balance, necessary.

It is axiomatic that any decision to approve planning permission would therefore be based on incomplete information, unsafe and potentially capable of challenge.

I trust that the above is clear however please do not hesitate to contact me if you require any further information or wish me to clarify any of the above issues. I would be grateful if you could inform me if any further information is submitted in support of the proposal and of the Council's determination of this proposal in due course.

Yours sincerely

A large, irregular black redaction box covering the signature and name of the sender.

CUNNANE TOWN PLANNING LLP

A horizontal black redaction bar covering contact information, likely a phone number or email address.