

**Ward: Great Busby**  
Parish: Osmotherley & Swainby  
**10**

Committee Date : 22 December 2022  
Officer dealing : Aisling O'Driscoll  
Target Date: 14 June 2021  
Date of extension of time (if agreed):

**21/01011/MRC**

**Variation of Conditions attached to Planning Appeal Application Reference Number: APP/G2713/W/20/3252056-Application for removal of Condition 1 relating to planning appeal APP/G2713/W/16/3164515 (Hambleton application 16/00262/FUL) - Retrospective application for the use of land as a private gypsy site for one family.**

**At: Rosies Ranch Busby Lane Great Busby North Yorkshire**  
**For: Mr J Stephenson.**

## **1.0 Site, Context and Proposal**

- 1.1 The site is in a rural location lying close to the east end of the very small settlement of Great Busby, where there is a collection of buildings and two houses around Busby Grange Farm. The site is fenced from the neighbouring field of which it appears to have previously formed part. It is set back from the road and accessed by a 60metre track from a pre-existing access from Busby Lane.
- 1.2 The application is for the removal of condition 1 of the Inspectors decision which granted temporary use of the site as a private gypsy site for one family. The temporary permission expired in August 2019.
- 1.3 The matter has been considered twice at appeal and both times a temporary permission was granted owing to the personal circumstances of the applicant and family and the degree of harm caused to the character and appearance of the countryside.

## **2.0 Relevant Planning History**

- 2.1 16/00262/FUL - Retrospective application for the use of land as a private gypsy site for one family – Refused and allowed at appeal for two years.
- 2.2 19/02559/MRC - Application for removal of Condition 1 relating to planning appeal APP/G2713/W/16/3164515 (Hambleton application 16/00262/FUL) - Retrospective application for the use of land as a private gypsy site for one family. Refused and allowed at appeal for 2 Years.

## **3.0 Relevant Planning Policies**

- 3.1 As set out in paragraph 2 of the NPPF planning law requires that applications for planning permission be determined in accordance with the Development Plan unless material considerations indicate otherwise. The law is set out at Section 38(6) of the Planning and Compulsory Purchase Act 2004 and Section 70(2) of the Town and Country Planning Act 1990.

Local Plan Policy S1: Sustainable Development Principles  
Local Plan Policy S2: Strategic Priorities and Requirements  
Local Plan Policy S5: Development in the Countryside

Local Plan Policy E1: Design  
Local Plan Policy E2: Amenity  
Local Plan Policy E3: The Natural Environment  
Local Plan Policy E4: Green Infrastructure  
Local Plan Policy E6: Nationally Protected Landscapes  
Local Plan Policy E7: Hambleton's Landscapes  
Local Plan Policy HG4: Housing Exceptions  
Local Plan Policy HG6: Gypsies and Travellers, and Travelling Showpeople  
Local Plan Policy RM1: Water Quality, Supply and Foul Drainage  
Local Plan Policy RM2: Flood Risk  
Local Plan Policy RM3: Surface Water and Drainage Management  
Local Plan Policy IC2: Transport and Accessibility  
National Planning Policy Framework  
Gypsy and Traveller Accommodation Assessment 2008  
National Planning Policy Framework

## **4.0 Representations**

### **4.1 Parish Council – Objects for the following reasons:**

1. The cabin and its associated domestic paraphernalia are unsightly and inappropriate for the location in open countryside. The site is prominent on the approach to Great Busby and spoils the rural character of the village and surrounding countryside. Allowing the development to become permanent would be contrary to the Council's proposed new policy HG6 which requires gypsy sites outside settlements not to have a detrimental impact on the landscape character of the area.
2. The development is particularly inappropriate given its location so close to the boundary of the National Park. It harms the setting of the National Park for visitors and residents alike.
3. Statements in the application that the impact of retaining the development has been much moderated are simply not true. The bright external lighting is still there, still causing problems for traffic driving up to Busby at night, a stable block has been built without planning permission and an additional unauthorised caravan has been on site for a period. Vehicles, dog kennels and play equipment are spread across the site. Instead of moderating the impact of the development, all this domestic 'clutter' brings a suburban feel which is out of keeping in the middle of a farmed landscape.
4. Rosie's Ranch is close to large agricultural buildings and a fertiliser storage tank at Dromonby Bridge Farm. The sheds are used to house cattle and it is not appropriate for there to be a permanent residential home so close by. We understand that government guidance is that there should be at least 400 metres between a new dwelling and the closest agricultural livestock building but the cabin is much closer – less than 200 metres.
5. Rosie's Ranch is close to the derelict and dangerous old farm buildings at Busby Grange which contain asbestos - it is not a suitable location for a family with children.

6. There is a strong feeling among residents that it is not right that this family should have come onto the land without permission, carried out unauthorised works to set up home and taken advantage of the planning system to get temporary permission for residential use in an inappropriate location. The family have now had ample opportunity to find more suitable long-term accommodation. The fact that they have not done this despite many housing options being available in the Stokesley area should not be used as a reason for making a harmful development permanent. Granting Rosie's Ranch a permanent permission will encourage other families in the area to do the same.

7. There is also a wider concern that granting this permission would jeopardise the prospects for long term improvement of the area around Busby Grange which is now in a state of chronic dereliction. It is important to the village that there should not be piecemeal development which might prevent a proper restoration of the whole area. A number of derelict buildings are in urgent need of demolition and a suitable use will eventually have to be found for the whole area, a determination in which local people should have a primary say. A permanent gypsy site on the boundary may deter such development. Although the applicant's need for security and permanence for his family is recognised, the interests of the wider community must not be forgotten.

#### 4.2 Representations:

– Four objections have been received on the following grounds:

- Not a suitable location.
- Spoils the character and appearance of the area and the setting of the National Park
- The harm still outweighs any support for the development.
- The circumstances of the site in terms of planning have not changed since the temporary grant of permission.
- The established additional need identified in the needs assessment should not justify this development in an inappropriate location and not otherwise supported by policy.
- If approved this would set precedent for further inappropriate development in the countryside.
- Harmful to tourism in the area.
- Bright lights are intrusive at night.
- Surely this is not a healthy environment in which to bring up children.
- Refusal would not result in the applicant moving onto the road as there are available sites at Seamer.

#### 5.0 Analysis

5.1 The main issue to consider in this case is whether the condition is still relevant and necessary. The existing two year permission for the occupation of the site will expire on the 22 December 2022. The removal of the condition would result in a permanent permission for use of land as a private gypsy site for one family.

5.2 Application 16/00262/FUL (Retrospective application for the use of land as a private gypsy site for one family) was refused on 24.06.2016. An Appeal was made to the

Planning Inspectorate who granted a temporary permission by imposing conditions as follows:

“1) The use hereby permitted shall be for a limited period being the period of two (2) years from the date of this decision.”

And

“2) The occupation of the site hereby permitted shall be carried on only by Mr Jonathan Stephenson and his resident dependants only. When the land ceases to be occupied by Mr Jonathan Stephenson and his resident dependants, or at the end of 2 years, whichever shall first occur, the use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment 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, in accordance with a scheme and timetable of works that shall first have been submitted to and approved in writing by the local planning authority.”

- 5.2 In weighing up the planning balance the Inspector identified significant adverse visual harm to the character and appearance of the site and surrounding countryside which was afforded very substantial weight. Weight at varying levels was given to the contribution of the pitch to the Gypsy and Traveller Accommodation Assessment (GTAA), the personal circumstances of the applicant and his family, Public Sector Equality Duty and human rights considerations. The Inspector found that the adverse effects that arise from the development significantly and demonstrably outweigh any benefits arising for a settled base. The Inspector goes on to say: “therefore on this occasion, a permanent planning permission should not be granted for the development.”
- 5.3 It is clear from the inspectors report that it was considered that a permanent pitch at this site was unacceptable. In allowing a temporary permission the Inspector outlined that the harm could be mitigated by a conditional grant of planning permission because it would be limited in duration.
- 5.4 The Inspector noted that “the site’s residential use is visually intrusive because of its edge of settlement location”. The inspector goes on to state that “the caravans are perceived as alien features and a blot on the landscape. To some extent, existing and additional soft landscape could screen caravans in views of the site, but I consider that the development has an unacceptable urbanising effect”. As a result, the inspector did not therefore impose any landscaping conditions as soft landscaping could not overcome the unacceptable impact of the development in this location.
- 5.5 In the appeal following the appeal to remove the time limiting condition set in the aforementioned application the Inspector again allowed the development granting permission for a further two year period. The Inspector’s view in terms of the landscape impact of the development was largely in line with the previous Inspector and concluded that the proposals conflict with the landscape and natural environment requirements of policy within the Local Development Framework, which formed the Development Plan at the time.

- 5.6 The Inspector gave weight to the family circumstances of the applicant including proximity to suitable schooling. Weight was also given to the then emerging Local Plan process and an expectation that the adoption of the emerging Local Plan may enable a suitable site to be identified. On this basis the Inspector granted a further two year permission.
- 5.7 The applicant argues that “the site now pretty much entirely screened by tree and hedge planting on all sides” however during the site visit in winter months the site was highly visible from both Busby Lane and on the approach from the north. This was exacerbated by the construction on the site of pole mounted flood lighting which was visible in long distance views from the north and from Busby Lane. Historic photos on the file and from Google maps street view show the evolution of the site from rural open countryside to domestic. No improvement is identified between the 2016 photos and the site visit in 2020. On the contrary the site has become more developed with the introduction of stone walling the subject of a separate enforcement notice), formalised landscaped driveway, completed decking along with various residential paraphernalia such as a swing set and washing line.
- 5.8 The Inspector also discussed the potential pressure for additional ancillary facilities such as a day room which would further increase the impact on the landscape. It is clear, therefore, that the impact of the development could not be mitigated by the implementation of a landscaping scheme as the issue related more to the principle of new residential development in this countryside location.
- 5.9 Pertinent to this application are Policies HG6 Gypsies, Travellers and Travelling Showpeople and S3 Spatial Distribution.
- 5.10 Policy S3 states that Great Busby is considered a small village within this settlement hierarchy. Policy HG6 indicates that proposals for new sites for gypsies, travellers or travelling showpeople who meet the “Planning Policy for Traveller Sites’ Aug 2015) definition for a Traveller [...] will be supported where: [...] c. where the site is located outside the existing built form of a settlement identified in the settlement hierarchy, it has been demonstrated that the proposal: [...] iii. would not have a detrimental impact, individually or cumulatively with other existing and/ or permitted development, on the landscape character of the area. The proposal for a permanent site in this location would therefore be contrary to Policy HG6 of the Emerging Local Plan.
- 5.11 It is considered therefore that the removal of the condition would result a permanent development that would have a significant adverse impact on the character and appearance of the site and surrounding countryside.
- 5.12 Planning Practice Guidance indicates that “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. There is no presumption that a temporary grant of planning permission will then be granted permanently”.
- 5.13 The anticipated change in planning circumstances has come about in the form of the Emerging Local Plan as discussed above, however, the proposal for a permanent site in this location is still considered to have significant adverse visual

harm to the character and appearance of the site and surrounding countryside. The Planning Inspector granted temporary permission indicating that “a short period of time will allow Mr Stephenson time to find affordable suitable alternative accommodation without causing considerable hardship”. No evidence has been submitted to show what measures the applicant has employed to find an alternative site. This site has been discounted from the Pitch Availability study owing to the identified harm to the character of the countryside.

- 5.14 Hambleton commissioned a new Gypsy and Travellers, and Travelling Showpeoples’ Accommodation Assessment (GTAA) in 2020. The study evidences the accommodation needs of Gypsies and Travellers in Hambleton from 2020-2035 broken down into sections of five years. This assessment indicated a need for 47 pitches in the first 5 years with a need of a further 18 units through to 2035.
- 5.15 To help Hambleton identify where these pitches might be provided a second study was commissioned; a Pitch Delivery Assessment. This document assessed all the existing sites in Hambleton to understand if they were suitable for modest expansion or intensification to meet the future needs of the families already living there, and whether the site owners were willing to do so. It concluded that Hambleton’s need for additional pitches could be met without the requirement for new sites. It was intended that further work on this would be carried out following adoption of the Local Plan. This work has been shelved owing to Local Government reorganisation and the development of Local Plan for North Yorkshire.
- 5.16 The identified need for sites is now considerably higher than that considered at the time of the last appeal associated with this site and this is considered material to the determination of this application.
- 5.17 However, this particular site was discounted from the site assessment in the absence of a permanent permission and the commentary in the Inspectors reports about the level of harm to the character of the surrounding countryside.
- 5.18 Whilst the allocation process has not been commenced the requirements of policy HG6 prevail. The difficulty that now transpires is that it is not clear how the identified housing requirements of the applicant would be catered for, given the identified need set out in the GTAA. The applicant’s housing needs, should be given significant weight in the decision making process.
- 5.19 At the time of the earlier appeals the needs of the applicant’s family in terms of local services and schools was given significant scrutiny. The applicant has been requested, through the course of this application to update this matter.
- 5.20 It is clear from correspondence that the applicant’s daughter’s condition has continued to decline over time and her needs have increased. It is understood that his daughter whilst having significant medical requirements is happy and settled in the current location. In a supporting statement from her Doctor, it is stated that his daughter is settled, she is developmentally progressing and thriving in this environment and that the change would be detrimental to her and extremely distressing.
- 5.21 It is considered that in this case the requirements of ‘the best interest of the child’ must be considered in the determination of the application. Article 3 of the UN

Convention on the Rights of the Child (UNCRC) states: “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration.”

5.22 The UNCRC incorporates provisions aimed at supporting the child’s needs for safety, health, wellbeing, family relationships, physical, psychological and emotional development, identity, freedom of expression, privacy and agency to form their own views and have them heard. Put simply, the best interests of the child are whatever is best for that individual child.

5.23 It is considered that the best interests of the applicant’s daughter weigh significantly in the favour of the application in this case.

Potential additional landscaping and bio-diversity Net Gain.

5.24 The applicant has cited that planting has taken place since the original occupation of the site and that as a result the site has been transformed. Given the available land about the site, there are limited additional opportunities for significant landscape planting to further mitigate the impact of the development.

5.25 There is a requirement in Policy E3 for bio-diversity Net Gain from all development. In this case, it would be reasonable to take an assessment based on the original site, prior to development taking place. The assessment therefore needs to look to the planting that has taken place since the development of the site.

5.26 The original site formed part of an agricultural field, with little in the way of ecological potential, although no formal assessment of this was undertaken in order to establish a formal base line of data against which the assessment of biodiversity net gain should be assessed. It is clear that there has been extensive planting around the site and in officers view, this is sufficient to establish a net gain and as such comply with the policy requirements.

Impact on the Teesmouth and Cleveland Coast SPA (nutrient neutrality)

5.27 On 16th March 2022 Natural England identified that the Teesmouth and Cleveland Coast Special Protection Area is being adversely affected by nutrient pollution. An immediate requirement is not to issue any further planning approvals that would increase the discharge of nutrients into the River Tees catchment. This site falls within said catchment. Since this first announcement, Natural England have created a 'nitrogen calculator' that allows one to compare the nitrogen output from a proposed development relative to the existing use.

5.28 The applicant has argued that as the development was in place prior to the 16 March 2022, the impact of the development in terms of Nutrient contamination into the Tees formed part of the baseline. Officers do not share this view. Given that the permission was only for a temporary period the impact is effectively due to be removed on the 22 December this year. As such the view is taken that the development does not comprise part of the base line and must, as such, demonstrate Nutrient Neutrality. Natural England has been consulted but has not provided their view on this issue.

- 5.29 There are clearly considerations in favour of the development from the perspective of Nutrient Neutrality in terms of the removal of the land from agriculture. Currently, foul water is disposed of via a package treatment plant.
- 5.30 On assessment of the existing situation using the Natural England Nutrient Calculator, the development of the site results in a Nutrient Neutral scenario owing in part to the removal of land from agriculture.
- 5.31 It is considered that the development is compliance with the requirements of Nutrient Neutrality.

#### Planning Balance

- 5.32 The applicant argues that landscaping has been planted that will mitigate the impact of the development on the character of the area. It is considered, however, that in this case the landscaping including the walling, in part, has increased the residential character by emphasising the entrance. Screening of the site through planting does not change the fact that the development is located in the open countryside away from existing settlements. It is therefore considered that there remains a harmful impact on the character and appearance of the countryside and as such a failure to meet the requirements of policy E3.
- 5.33 The matters raised by the Gypsy and Traveller Needs Assessment along with the UN 'Needs of the Child' requirements are considered to carry significant weight in this matter.
- 5.34 It is considered that in this case, the evidence of accommodation need in the district combined with the identified 'needs' of, in this case a vulnerable child, are sufficient to outweigh the identified harm and on this basis the application is recommended for approval.

## 6.0 Recommendation

- 6.1 That subject to any outstanding consultations the application be **Granted**

#### Conditions

1. The occupation of the site hereby permitted shall be carried on only by Mr Jonathan Stephenson and his resident dependants only. When the land ceases to be occupied by Mr Jonathan Stephenson and his resident dependants, the use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment 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, in accordance with a scheme and timetable of works that shall first have been submitted to and approved in writing by the local planning authority.
2. There shall be no more than one (1) pitch on the site and on the pitch hereby approved no more than two (2) caravans whatsoever shall be stationed at any time of which only one (1) caravan shall be a static caravan as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended. 4) The static caravan



shall be sited in accordance with site plan 1:500 at A4 N Ref-GB2. The caravan shall only be positioned in the approved location.

3. No more than one commercial vehicle shall be kept on the land for use by the occupiers of the caravans hereby permitted, and it shall not exceed 3.5 tonnes in weight. No commercial activities shall take place on the land, including the storage of materials.
4. Within 6 months of the date of this permission a detailed landscape and biodiversity Net Gain plan shall be submitted to and approved by the Local Planning Authority. The approved scheme shall be implemented during the first planting season following the approval of the scheme and maintained for the duration of the occupancy of the site.

Reasons:

1. The permission is approved on the basis of the needs of the applicant's family and the specific requirements of the UN 'Interests of the Child'. Given the identified harm to the locality it is considered that in the absence of this justification there would no longer be a reasonable case for the development.
2. In order to protect the character, appearance and amenity of the area and to comply with policy E1 and E2.
3. In order to protect the character, appearance and amenity of the area and to comply with policy E1 and E2.
4. In order to protect the ecology and landscape character of the area and to comply with policy E3.