

Your Ref : CB/15/03850/FULL

Our Ref : AJM / A154833

2nd December 2016

Cllr. Matthews,
Chairman,
Development Management Committee,
Central Bedfordshire Council,
Priory House,
Monks Walk,
Chicksands,
Shefford,
Beds
SG17 5TQ

Dear Cllr. Matthews,

Development Management Committee 7th December 2016

Item No 8 : proposed traveller site at Eversholt Beeches, Watling Street, Caddington LU6 3QP (Ref : CB/15/03850/FULL) and

Item No 9 : retention of traveller site at Eversholt Beeches, Watling Street, Caddington LU6 3QP (Ref : CB/116/04420/FULL)

You will recall we wrote to you on 15th July 2016 informing you that we act for a number of residents living in the area around the application sites and had been instructed to review the Committee Report on their behalf.

I have reviewed both reports on behalf of my clients and have the following comments to make on their behalf. I would be grateful if you could draw the matters outlined below to the Committee and take account of them in the determination of the proposal.

1) Officer report

I am afraid that the report for item 8 is identical to the one previously prepared by your officers while the second report for item 9 has the same flaws. The same criticisms therefore apply. I am also concerned that while all other consultation responses are reported verbatim, our response has been condensed into two small paragraphs which do not reflect some of the fundamental points we have sought to communicate.

I am afraid the report appears to be fundamentally flawed in that it fails to apply Green Belt policy and the other significant policy constraints relevant to the proposal. Paragraphs 87 and 88 of the National Planning Policy Framework clearly set out how inappropriate development in the Green Belt such as traveller sites should be considered. These require a four step process as follows :

1. Identify and assess the harm to the Green Belt and any other harm caused by the development
2. Identify any other considerations or countervailing factors which support the development
3. Balance these considerations against the harm caused by the development
4. Only if the harm is clearly outweighed by other considerations do very special circumstances exist

The officer report fails to carry out this exercise. The policy summary of the Framework fails to outline these four steps on page 49; policy comments from the Local Plans Team take the shortfall of traveller pitches as their starting point rather than the fundamental Green Belt constraints; much reference is made to the 2014 Gypsy and Traveller Local Plan to which no weight should be given as it has been withdrawn.

Most significantly, the report is muddled in that it confuses very special circumstances with other considerations. The two main factors in support of the proposal (the shortfall in traveller pitches and the applicant's personal circumstances) are regarded as very special circumstances in their own right which they are not. Very special circumstances only apply if the totality of other considerations outweighs the harm.

We had reason to challenge an appeal inspector's decision where a similar error was made in the High Court in *SB Herba Foods Ltd v SOS* 2008. The judicial review was successful and the appeal decision was quashed – I attach a copy of the judgement for your consideration. Our view would be that the Committee report in its current form would be vulnerable to legal challenge for the same reasons.

This matter is critical to the determination of the proposal which has a complex policy background. Based on the information in the report, our view is that the correct approach to the proposal in summary should be as follows :

Harm

- ***Harm to the Green Belt*** is significant. A field which is currently open land will be lost to development harming the openness of the Green Belt and compromising two of the main purposes of the Green Belt by encouraging sprawl and encroachment into the countryside. The application site includes a small part of the field parcel but the reality is that all of the field will be lost as is the case with the existing site.
- ***Impacts on the visual appearance and landscape character of the Chilterns AONB*** are significantly adverse with clear views into the site from elevated positions in medium to long distance views. Traveller sites of themselves are visually unattractive. Landscape mitigation amounts to little more than thickening existing hedges which is inadequate. The report seems to rely on landscape conditions to address this adverse impact but this will be ineffectual.
- ***The highways objection*** refers to the construction of an unauthorised access having already taken place directly into the application site. This would be harmful to highway safety as it indicates the applicant intends to use the land as a separate site not an extension – this is not picked up in the report.

Other considerations

- ***Shortfall of traveller pitches*** : central government policy and guidance and numerous recent ministerial statements have confirmed that a shortage of land supply will rarely if ever be sufficient to outweigh releasing open land in the Green Belt for development. There is nothing in this case which indicates a different approach should be taken. The two appeal decisions referred to (in Arlesey and Hatch) are not directly applicable as they are not in the Green Belt. The Council will have the opportunity to address the current shortfall in the emerging Local Plan.
- ***Personal circumstances*** : Government policy on travellers (PPTC 2015) clearly states that personal circumstances are unlikely to outweigh Green Belt considerations. It is quite normal for travellers to put forward the educational and health needs of children or the elderly to support their proposals but, as is the case with the settled community, proposals must be assessed objectively with regard to policy considerations. While it would be inappropriate for the details of individual children to be discussed in public, there are no details in the report of what the applicant's personal circumstances case is. It is impossible therefore for the Committee to determine what weight to attach to it. The applicant makes reference to the Human Rights which his children are of course entitled to. However, Schedule 1, Part 1, Article 8 : Private And Family Life and Part II, First Protocol, Article 1 : Protection Of Property are both qualified by the State's right to control matters in the public interest which is the primary function of the planning system.
- ***Undergrounding of electricity cables*** : no weight should be given to this as it is likely to be prohibitively expensive and the applicant has produced no evidence that the statutory undertaker responsible will agree.

Balancing exercise

The harm to the openness of the Green Belt is significant as a significant portion of open greenfield land will be lost to development and two of the main purposes of the Green Belt are being compromised. Landscape impacts are significantly adverse and there is the danger of a separate highway access being constructed on the A5 which is a busy road with fast moving traffic. No weight should be attached to undergrounding electricity cables as this will not happen. Landscape mitigation offered is ineffectual and imprecise. There is some weight to the shortfall in traveller pitches but Government policy is quite clear that Green Belt sites are not the correct locations to make up the shortfall through individual applications. It is impossible to ascertain what weight to give to the applicant's personal circumstances case given the lack of details in the report. Again, Government policy clearly states that this will normally be insufficient to outweigh Green Belt concerns.

Very special circumstances

Our view is that, based on the information in the report, the inappropriate development proposed creates significant harm to the openness of the Green Belt and creates other harm (adverse landscape impact and highways). This is not outweighed by the two main significant countervailing factors put forward by the applicant. Very special circumstances do not therefore apply and the application should be refused.

2) Retention of existing site (item 9)

Under the rules of condition precedent, it appears that the existing traveller site is currently unauthorised due to the occupants' failure to comply with conditions attached to their original planning permission. This means that the Council is required to look at the proposal afresh and determine if planning permission should be granted again or if enforcement action should be initiated given that the applicants are not immune under the ten year rule.

This certainly has a direct bearing on item 8 which is not an extension to an authorised site (which the report implies) but should be considered in isolation. Our view is that there is adequate room within the existing site covered by item 9 for all the applicant's family members and there is no need to encroach into open, greenfield, Green Belt land.

3) Restriction of commercial activities

Although recommended as conditions in both reports, this is largely worthless as I understand commercial activities have been carried out by the applicants on the existing site for several years with the Council not enforcing the matter. It can therefore be assumed that commercial activity will continue on both the existing and proposed site. This is a significant material consideration which weighs against both applications.

We would be grateful if these points could be considered by the Committee in the determination of both applications.

Yours sincerely,



Al Morrow BA Hons, MRTPI
Director
PHILLIPS PLANNING SERVICES LTD.