

application be referred to him for determination. The request by the DCLG is in response to a request by a third party for the application to be called in.

PLANNING HISTORY

1.5 In 2011 the council refused planning permission (10/02082/FUL) for the change of use of agricultural land to a site for one family of travelling showpeople, the current applicants. At that time the family lived in car park of a social club and comprised three adults and two children. Whilst acknowledging a shortage of travelling showpeople's sites in the York area and the needs of the applicants' family for a suitable site, the application was refused due to harm to the Green Belt and impact on the attractive rural character of the area.

1.6 At the subsequent appeal the inspector found, among other things, that:

- The use of the land, including the stationing of caravans, was inappropriate development in the Green Belt and would be harmful to its openness, to which he attributed substantial weight;
- The loss of openness as a result of the proposal would be considerable, to which he attached significant weight;
- The proposal would be harmful to the purposes of the Green Belt (moderate weight) and harmful to the character and appearance of the area (moderate weight).

1.7 The inspector weighed this harm against the factors in favour of the proposal, which were:

- The need for sites generally (significant weight);
- The appellants' need for a site (significant weight);
- The lack of alternative sites (significant weight);
- The educational and medical needs of the appellants (moderate weight); and
- The location of the site (some weight).

1.8 He concluded that the case was finely balanced with the factors against the proposal being broadly in balance with those in favour. He found that the substantial harm to Green Belt objectives was such that the other considerations did not amount to very special circumstances that would justify the grant of permanent planning permission. However, given the lack of alternative sites at that time and the potential for sites to be brought forward in the longer term through the development plan process, a temporary consent would be appropriate, subject to conditions. He therefore allowed the appeal. The consent was limited to five years only and made personal to the family of the appellants.

1.9 Other conditions were attached to ensure that harm to the area would be minimised. These conditions addressed the number of vehicles/amount of equipment on site, the number of caravans on site, restrictions on outside storage, landscaping, lighting, surfacing and provision of appropriate coverings for equipment storage.

1.10 In 2015 condition 9 of the planning permission was varied (15/01113/FUL) to allow the approved living showman's caravan, which was approximately 12.2m long, to be replaced by a chalet-style caravan not exceeding 18.19m long. Consent for the change did not extend the period of planning permission for the use of the land as a site for travelling showpeople.

1.11 The 5-year period of consent expired in June 2016, hence the current application. The applicants were initially seeking permanent planning permission but are now seeking temporary permission pending publication of the emerging local plan.

2.0 POLICY CONTEXT

2.1 Development Plan Allocation:

Contaminated Land
City Boundary York City Boundary 0001

2.2 Policies – City of York Development Control Draft Local Plan (2005):

GB1 - Development in the Green Belt
H16 - Residential sites for gypsies/travellers.

2.3 Policies - City of York Local Plan Publication Draft (2014):

GB1 – Development in the Green Belt
H6 - Gypsy, Roma, Traveller and Travelling Showpeople Sites.

3.0 CONSULTATIONS

INTERNAL

Planning and Environmental Management (Forward Planning)

3.1 No policy objection. The site should be treated as falling within the general extent of the Green Belt so the case for very special circumstances needs to be considered. The evidence base for the emerging Local Plan supports the principle of the allocation of this site for travelling showpeople. The Preferred Sites consultation (2016) includes the site as being suitable for travelling showpeople to

allow for future expansion of the same family which should be a consideration in the determination of this application.

Planning and Environmental Management (Landscape)

3.2 It is not necessary to provide more planting along the boundary with the tree-lined drive to Brinkworth Hall. It is part of the landscape character and original design that the drive passes through fields of openness on either side. The approved planting plan has been implemented correctly and appears to be establishing well. There have been a few failures, and a small quantity of plants are showing less vigour, but the overall success rate is as one would expect. The two groups of Silver Birch along the edge of the application site will be more effective during the summer months and as they mature. If it is considered necessary to add more planting it should comprise evergreen shrubs such as Laurel or Yew to sit in the landscape amongst incidental planting, rather than create a regular boundary or screen. This could be secured by a planning condition.

EXTERNAL

Elvington Parish Council

3.3 The Planning Inspector's decision should be upheld. Would expect CYC to oppose this application and to enforce the Planning Inspector's decision and ensure that the site is returned to its Green Belt status.

Elvington Church of England Primary School

3.4 The family should be allowed to continue living at Elvington Stables. Mr and Mrs Peel have twin daughters at the school. It would be in the children's best interests to be able to remain at the school as a settled and stable education with a supportive school is critical to their well-being.

Showmen's Guild of Great Britain

3.5 Mr and Mrs Peel are Travelling Showpeople and are full and operating members of The Showmen's Guild of Great Britain. They travel from fair to fair operating their showmen's equipment. Mr and Mrs Peel do stay away at fairgrounds at times during the season in order to fulfil their working requirements.

Neighbour Notification and Publicity

3.6 16 objections have been received raising the following planning issues:

- The applicants are in breach of planning regulations because their planning permission has expired;

- The site should have reverted to open land after expiry of the planning permission;
- The travelling community should not receive special treatment;
- Loss of Green Belt land;
- The use is inappropriate development in the Green Belt for which there are no very special circumstances;
- Draft allocation as a travellers site should have no bearing on the planning application;
- Alterations to the Green Belt should only be made through the local plan process;
- The applicants no longer qualify as travelling showpeople because they no longer have a nomadic lifestyle;
- The use should be located on brownfield land;
- The equipment should be stored at a proper storage facility;
- The site is inappropriate for use as a travellers site;
- The use, caravans and equipment are not in keeping with the rural character of the area;
- The site is untidy/unsightly;
- Better screening should be provided;
- The elderly dependent relative does not reside at the site;
- Unauthorised persons frequently reside at the site;
- The site is used for storage by unauthorised third parties;
- Access from the public highway is unsafe;
- Further development would increase the risk of flooding.

3.7 11 letters of support have been received, raising the following issues:

- The applicants are bona fide travelling showpeople;
- They cause no harm to their neighbours;
- They benefit and diversify the village community;
- They are part of the school and village community;
- Refusal would have a negative impact on the children's education/life chances;
- There is a shortage of suitable sites for travellers/showpeople;
- There are no other suitable sites in Elvington;
- If planning permission were refused the applicants would become homeless and CYC would have to provide them with accommodation;
- Green Belt land has to be used for housing because there is not enough brownfield land;
- The site is in a good location for a travellers/showpeople site;
- Only a small part of the paddock is used as a showpeople site;
- Consent would have little or no detrimental impact on the local area/environment;
- The use is not intrusive;

- The site is well kept and equipment is covered when not being used or maintained;
- The site is not in an area of natural beauty;
- The area is already partly built-up/industrial;
- Approval would satisfy a housing need;
- The use provides work/employment.

4.0 APPRAISAL

4.1 KEY ISSUES

- Impact on the Green Belt
- Character and appearance
- Neighbour amenity
- Flood risk and drainage
- Traveller status of the applicants
- The planning balance

POLICY CONTEXT

4.2 Section 38(6) of the Planning and Compensation Act requires that determinations be made in accordance with the development plan unless material considerations indicate otherwise. This is a statutory requirement and is the starting point for consideration of the planning application. The development plan for York comprises the saved policies of the Regional Spatial Strategy (RSS) relating to the general extent of the York Green Belt, saved in 2013. These policies are YH9(C) and Y1 (C1 and C2) and the key diagram insofar as it illustrates the general extent of the Green Belt. It is for the local plan process to identify the precise boundaries of the Green Belt around York but the application site lies within the general extent of the Green Belt as shown on the Key Diagram of the RSS.

4.3 In order to properly undertake the balancing exercise required by s.38(6) the local planning authority must consider whether there are any other material considerations. The most relevant of these is national planning policy in the NPPF.

4.4 Paragraph 7 of the National Planning Policy Framework says planning should contribute to the achievement of sustainable development by balancing its economic, social and environmental roles. Footnote 9 of paragraph 14 contains restrictions where this presumption in favour of sustainable development does not apply, including land designated as Green Belt. Paragraph 17 lists twelve core planning principles that the Government consider should underpin plan-making and decision-taking, such as seeking high quality design and protecting Green Belt.

4.5 Paragraph 4 of the NPPF states that Local planning authorities taking decisions on travellers sites should also have regard to the policies in Planning

Policy for Traveller Sites (August 2015). Policy E states that traveller sites (temporary or permanent) in the Green Belt are inappropriate development and should not be approved except in very special circumstances. Subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances (paragraph 16).

4.6 Although there is no formally adopted local plan the City of York Draft Local Plan Incorporating the Fourth Set of Changes was approved for Development Management purposes in April 2005. Whilst it does not form part of the statutory development plan for the purposes of s.38(6) its policies are considered to be capable of being material considerations in the determination of planning applications, where policies relevant to the application are consistent with those in the NPPF. The most relevant Draft 2005 policies are H16 (Residential Sites for Gypsies/Travellers) and GB1 (Development in the Green Belt).

4.7 The emerging Local Plan is progressing and the 2016 consultation on Preferred Sites ended on 12 September 2016. The main draft policies that cover matters raised by this application are GB1 (Development in the Green Belt) and H6 (Gypsy, Roma, Traveller and Travelling Showpeople Sites). The evidence base that underpins the emerging policies is a material consideration in the determination of planning applications. National planning policy and guidance require local planning authorities to identify a supply of suitable travelling showpeople sites to meet their locally set targets. City of York Council has identified the need in York for a total of seven plots over the plan period. The Stables, Elvington (site SP1) was assessed as being a suitable travelling showpeople site. It was subsequently included as an allocation in the Local Plan for up to three plots to allow for future expansion for the same family.

4.8 Paragraph 216 of the Framework states that decision-takers may give weight to relevant policies in emerging plans according to: the stage of preparation of the emerging plan; the extent to which there are unresolved objections; and the degree of consistency with policies in the Framework. The plan is at an early stage in the statutory process and there is a high level of objection to Elvington Stables being allocated as a site for travelling showpeople. Therefore the weight that can be given to the emerging plan and the allocation of the site for showpeople is very limited.

4.9 Policy E of Planning Policy for Traveller Sites is clear that if a local planning authority wishes to change the Green Belt boundary to meet a specific need for a traveller site it should do so only through the plan-making process and not in response to a planning application.

THE APPLICATION SITE

4.10 'The Stables' occupies approximately 1.6 hectares. It mainly comprises two paddocks edged by mature woodland with vehicular access from Elvington Lane.

The application site is a relatively small, defined, part of the holding. It mainly comprises the access, a former stable block and an area of hardstanding. Access is from Elvington Lane through a tree belt protected by TPO.

4.11 The site is in the Green Belt and outside any settlement limit. It is occupied by the applicants (Mr & Mrs Peel), their children and Mrs Peel Senior, who is a dependent. Together they comprise a traditional travelling showman's family with strong business and family links to York. They are members of the Showmen's Guild of Great Britain and attend fairs and other local events in and around York.

4.12 The caravans, other vehicles and equipment used in connection with the applicants' business are parked on the hardstanding or stored within the stable block.

ASSESSMENT OF HARM TO THE GREEN BELT

4.13 The Framework makes clear at section 9 that the fundamental aim of green belt policy is to prevent urban sprawl by keeping land permanently open (paragraph 79). Paragraphs 89 and 90 of the Framework specify the types of development that are 'not inappropriate' in the Green Belt. All other development is inappropriate and, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 79 also states that the essential characteristics of green belts are their openness and their permanence.

4.14 The application proposal does not fall within any of the categories of appropriate development in paragraphs 89 or 90. It therefore constitutes inappropriate development for the purposes of paragraph 88 of the Framework and by definition causes harm to the Green Belt which must be given substantial weight. When considering planning applications local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. Very special circumstances will not exist unless the harm to the Green Belt by reason of inappropriateness and any other harm is clearly outweighed by other considerations. Whether there are such other considerations, amounting to very special circumstances, is assessed from paragraph 4.26 of this report.

CHARACTER AND APPEARANCE

4.15 The site lies in an attractive rural enclave between Airfield Industrial Estate to the west and Laveracks Industrial Estate to the east. This section of Elvington Lane is bounded on both sides by a tree belt and has an attractive rural character although, as noted by the appeal inspector, the rural character is severely diluted by the two industrial areas. Public views into the site are extremely limited, confined solely to fleeting glimpses, mainly during the cooler months, from Elvington Lane through the tree belt.

NEIGHBOUR AMENITY

4.16 The site is easily visible at all times of the year from an attractive, Chestnut-lined, private drive to the south-west of the site between Elvington Lane and Brinkworth Hall. These trees are protected by TPO. Whilst the drive is not a public highway it makes a significant contribution to the character and appearance of the area. The drive is the main access to a Brinkworth Hall and a small group of converted dwellings within its grounds. The appeal inspector considered the impact of the use as a showpersons site and concluded that it would not significantly impair the living conditions of the neighbouring occupiers. He acknowledged that some views would be changed but that those changes would not equate to harm to living conditions. The chalet-style mobile home approved by the council in 2015 is significantly larger than the showman's caravan it replaced but, despite its larger size and in the context of the other caravans and vehicles on the site, it has not changed the living conditions of the neighbouring occupiers as assessed by the inspector.

FLOOD RISK AND DRAINAGE

4.17 The National Planning Policy Framework (NPPF) sets out the Government's policy on development and flood risk. Its aims are to ensure that flood risk is taken into account at all stages in the planning process to avoid inappropriate development in areas at risk of flooding, and to direct development away from areas of highest risk. The development is in low risk Flood Zone 1 and should not suffer from river flooding. After planning permission for the site was approved in 2012 drainage details were submitted and approved by the local planning authority. The current planning application would not require any alterations to the approved drainage regime.

TRAVELLER STATUS OF THE APPLICANTS

4.18 Some objectors argue that the applicants no longer have a travelling lifestyle and therefore planning policy relating to travellers does not apply to them. The glossary to the national Planning Policy for Traveller Sites (August 2015) defines travelling showpeople as, in essence:

Members of a group organised for the purposes of holding fairs, circuses or shows including such persons who on the grounds of their own or their family's or dependants' more localised pattern of trading, educational or health needs or old age have ceased to travel temporarily but excluding Gypsies and Travellers.

4.19 The applicants are members of the Showmen's Guild of Great Britain. They operate their business mainly in the York area but attend fairs and other events further afield at various times during the year. Whilst the applicants appear to have a fairly settled lifestyle, in part due to their children's attendance at Elvington Church

of England Primary School and family health needs, officers are satisfied that the family continue to meet the definition of travelling showpeople in planning policy guidance.

HUMAN RIGHTS

4.20 Article 8 of the European Convention on Human Rights provides a right to respect for, among other things, one's home life and family. The proposal and officers' recommendation to approve do not impact on those rights. However, should Members be minded to refuse the application it would be necessary to consider the impact on the applicants' Article 8 rights and whether refusal is necessary and proportionate in all the circumstances.

OTHER MATTERS RAISED BY OBJECTORS

4.21 The application would have no material impact on access, traffic or highway safety.

4.22 Some objectors argue that the site is untidy/unsightly. Certainly the site has a utilitarian appearance due to the nature of the use. But officers do not consider that it is unsightly, untidy or badly managed. The appearance of the site is as one would expect of a site for travelling showpeople.

4.23 The landscaping carried out by the applicants does not screen the site from Brinkworth Hall but it was never intended to. The planting breaks up views of the caravans and equipment while maintaining the area's attractive open character. National planning policy in Planning Policy for Traveller Sites states, at paragraph 26, that when considering applications, local planning authorities should attach weight to, among other things:

- sites being well planned or soft landscaped in such a way as to positively enhance the environment and increase its openness;
- not enclosing a site with so much hard landscaping, high walls or fences, that the impression may be given that the site and its occupants are deliberately isolated from the rest of the community.

4.24 Officers consider that the approved landscaping complies with this national planning guidance.

4.25 The applicants have stated that they have never stored any other person's equipment and that they would accept a planning condition allowing only their equipment to be brought onto the site.

THE PLANNING BALANCE

4.26 Planning policy dictates that substantial weight should be given to any harm to the Green Belt and that inappropriate development should not be permitted unless very special circumstances exist. Very special circumstances will not exist unless the harm to the Green Belt by reason of inappropriateness and any other harm is clearly outweighed by other considerations.

4.27 The 2011 appeal inspector found that despite the proposed use as a showpeople's site being harmful to the Green Belt there were a number of factors in favour of the proposal. These factors weighed against the harm to the Green Belt. They were

- The need for sites generally;
- The appellants' need for a site;
- The lack of alternative sites;
- The educational and medical needs of the appellants; and
- The location of the site.

4.28 He concluded that, given the lack of alternatives sites at that time and the potential for sites to be brought forward in the longer term through the development plan process, a temporary consent would be appropriate. He therefore allowed the appeal and granted consent for five years. This rationale for granting temporary consent applies equally to the current application (with even greater weight in favour of approval because the appellants now have a third child). The development plan process has not, to date, progressed to the point at which allocations carry significant weight in the determination of planning applications particularly where, as in this case, the draft allocation as a travelling showpeople's site has raised significant objections. National planning policy states that, subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances. In the current case the interests of the applicants' children is a very significant consideration. A settled lifestyle is critical to their well-being and they attend the local school. Nevertheless, officers consider that their interests would be adequately protected, in the short term at least, by the grant of a further temporary consent. Officers consider that consent for a further three years would allow enough time for a permanent site to be allocated through the local plan process, i.e. in accordance with national planning policy.

5.0 CONCLUSION

5.1 The proposals constitute inappropriate development in the Green Belt. Planning policy dictates that substantial weight should be given to any harm to the Green Belt and that inappropriate development should not be permitted unless the potential harm to the Green Belt by reason of inappropriateness and any other harm is clearly outweighed by other considerations. Officers consider that the applicants' need for a site and the lack of alternative sites constitute very special circumstances

in support of the grant of planning permission for a further three years and accords with national planning policy in the NPPF and Planning Policy for Traveller Sites.

6.0 RECOMMENDATION:

Delegated authority be given to the Assistant Director for Planning and Public Protection to

(i) Refer the application to the Secretary of State for Communities and Local Government under the requirements of section 77 of the Town and Country Planning Act 1990 and, should the application not be called in by the Secretary of State, then

(ii) APPROVE the application subject to the following conditions:

1 The development hereby permitted shall be occupied only by Mr James Peel, Mrs Emma Peel, Mrs Peel Senior and resident dependants and shall be for a limited period until 31 March 2020, or the period during which the premises are occupied by them, whichever is the shorter.

Reason: To protect the openness of the Green Belt.

2 When the premises cease to be occupied by Mr James Peel, Mrs Emma Peel, Mrs Peel Senior and resident dependants or on 31 March 2020, whichever shall first occur, the use hereby permitted shall cease, all caravans, materials and equipment brought on to the premises in connection with the use shall be removed and the land restored to its former condition in accordance with a scheme of work submitted to and approved in writing by the local planning authority.

Reason: To protect the openness of the Green Belt and the character and appearance of the area.

3 The development hereby permitted shall be carried out in accordance with the approved location and block plan numbered 10042-4 Rev.D.

Reason: For the avoidance of doubt and to ensure that the development is carried out only as approved by the Local Planning Authority.

4 No more than three caravans (a twin-unit mobile home not exceeding 18.29m long, a living tourer caravan and one touring caravan), only two of which shall be used for human habitation whilst on site, shall be stationed on the site at any time.

Reason: To ensure that visual harm to the area is minimised.

5 The area used for the storage of vehicles and fairground equipment, apart
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from the caravans at condition 4 above, shall be confined to the area shown hatched on the approved location and block plan numbered 10042-4 Rev.D.

Reason: To ensure that visual harm to the area is minimised.

6 No vehicles, plant, machinery, goods or equipment shall be stored or deposited upon the site to a height exceeding 5 metres above existing ground level.

Reason: To ensure that visual harm to the area is minimised.

7 No barrier or gate to the vehicular access shall be erected within 20m of the rear of the footway on Elvington Lane abutting the site, and no barrier or gate shall open towards the public highway.

Reason: In the interests of highway safety.

8 No equipment, machinery or vehicles shall be stored at the site, or brought onto the site for maintenance or repair, other than equipment, machinery and vehicles used by Mr James Peel, Mrs Emma Peel and their resident dependants.

Reason: To ensure that visual harm to the area is minimised.

9 No maintenance of equipment involving the use of power tools shall take place outside the hours of 0700 to 1800 and not at any time on Sundays and Bank or Public Holidays.

Reason: To protect the amenities of nearby residential occupiers.

10 No musical sound systems or public address systems shall be tested or used on the site.

Reason: To protect the amenities of nearby residential occupiers.

11 The development shall be carried out in accordance with the detailed landscaping proposals shown on drawing 931/PL6 dated 27 June 2011 approved under approval of details application AOD/11/00199 dated 11 October 2011. Any trees or plants which, during the lifetime of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of a similar size and species, unless the Local Planning Authority agrees alternatives in writing.

7.0 INFORMATIVES:

Notes to Applicant

1. STATEMENT OF THE COUNCIL'S POSITIVE AND PROACTIVE APPROACH

In considering the application, the local planning authority implemented the requirements set out within the National Planning Policy Framework (paragraphs 186 and 187) by seeking solutions to problems identified during the processing of the application. In order to achieve an acceptable outcome the local planning authority limited consent to three years only, sought further information from the applicants and attached appropriate planning conditions in accordance with the proposals.

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