

<b>DECISION DATE</b> 6 January 2009	<b>APPLICATION NO.</b> 08/01287/RCN A5	<b>PLANNING COMMITTEE:</b> 12 January 2009
<b>DEVELOPMENT PROPOSED</b>  REMOVAL OF CONDITION 5 ON APPLICATION NO. 99/01002/FUL AND CONDITION 4 ON APPLICATION NO. 05/00382/CU TO ALLOW OCCUPATION BY PEOPLE WHO ARE NOT GYPSIES OR TRAVELLERS		<b>SITE ADDRESS</b>  OXCLIFFE NEW FARM OXCLIFFE ROAD HEATON WITH OXCLIFFE MORECAMBE LANCASHIRE LA3 3EF
<b>APPLICANT:</b>  Mr Corbey & Mrs Scott (For And On Behalf Of All Residents) 1 Oxcliffe New Farm Oxcliffe Road Heysham Morecambe Lancashire LA3 3EF		<b>AGENT:</b>

#### **REASON FOR DELAY**

Awaiting consultation replies.

#### **PARISH NOTIFICATION**

**Heaton-with-Oxcliffe Parish Council** - Observations not received within statutory time period.

#### **LAND USE ALLOCATION/DEPARTURE**

Countryside Area.

#### **STATUTORY CONSULTATIONS**

**Environmental Health** - No objections, but they point out that if permission is granted a new site licence will be required.

**Strategic Housing** - Observations awaited.

#### **OTHER OBSERVATIONS RECEIVED**

The sister in law of a former occupier (deceased) of a caravan at Oxcliffe New Farm, has written to say that she has been told by the site owner that it can only be sold to gypsies or travellers. However she has found that another caravan on the site is being advertised through a local estate agent with no mention of this restriction. She asks that the present occupancy condition be removed.

The agent acting for the site owner, who has submitted a separate application (08/01303/RCN - see report), has written to argue that the present proposal is invalid as the letter notifying him of the proposal was unsigned. This has been discussed with the City Council's Legal Service and it has been concluded that the application is still valid.

Any other representations received will be reported orally at Committee.

## **REPORT**

### **INTRODUCTION**

This is the first of two related applications. This one has been submitted on behalf of residents of Oxcliffe New Farm Gypsy site; the second (Ref: 08/01303/RCN) has been made by the landowner. Both are effectively identical, in that they ask for the restriction limiting occupation to bona fide gypsies and travellers to be removed. As submitted, the present proposal included the open field at the southern end of the site which has never had consent for caravan use, but the site plan has now been corrected to show only the authorised site to which the occupation restriction refers. The present application shows this as part of the site.

It has been suggested to the present applicants that their submission could be withdrawn, and the fee refunded, but both they and the site owner wish to see a decision reached on the basis of their own proposal.

Oxcliffe New Farm currently has consent for 19 static caravans. A visit earlier this year revealed 21, plus a few touring ones. A further inspection on 24 November 2008, in association with the current application, revealed the following:

- Static caravans: 23, including one on the open land at the end of the site which does not have consent for any
- Touring caravans: 3, all on the open land at the end of the site
- Motor caravans: 1

The presence of the extra static caravans is not immediately apparent from a casual inspection as the site owner has numbered them irregularly (e.g. 1, 2, 3, 4, 4A). In addition the rear part of Oxcliffe New Farm is sometimes referred to as The Pastures; though for practical purposes it is part of the same site.

### **SITE HISTORY AND THE PRESENT APPLICATION**

Consent for a gypsy caravan site at Oxcliffe New Farm was originally granted on appeal in 1985. The permission granted then was for 10 caravans but it was a temporary one, made personal to the site owner by imposition of a planning condition. Consent was renewed on a number of occasions. Following a further appeal against the temporary condition the Secretary of State granted permanent permission in 1999. Again the terms of the consent limited the site to gypsy use only. Permission for a further 8 gypsy pitches on a southern extension of the site was granted in 2005.

The purpose of a restriction of this kind is not to segregate gypsies from the community as a whole. It is to ensure an adequate stock of gypsy sites within the District. Gypsies (and Irish travellers, who form a separate community) frequently have difficulty obtaining land suitable for their requirements and local planning authorities are required to make appropriate provision for their needs.

This application has arisen from recent events which have occurred as a result of the present site owner selling plots to persons of non gypsy or traveller descent, and those persons failing to properly protect themselves by purchasing homes without undertaking Land Charges Searches. Purchase of a house involves a search procedure which should identify any restrictions on the use or occupation of the property. It is clear that most if not all of the people living in caravans at Oxcliffe New Farm, many of

whom are retired, had no idea that they were buying a plot on a gypsy site. They were misled both by the site owner and estate agents who failed to bring this to the purchaser's attention.

The occupiers have submitted a statement in support of their application, a copy of which appears at the end of this report. It says that they are happily settled at Oxcliffe New Farm and have no desire to move. It argues that in practice it will be impossible for them to sell their caravans to gypsies, and that they are effectively worthless.

The application now puts the Council in a very difficult position in having to decide whether to insist on retaining occupancy restrictions on the site, or to enable those people who have been misled in this instance to realise an open market benefit from their homes.

## **PLANNING POLICIES**

The following "saved" policies in the Lancaster District Local Plan are particularly relevant to the proposal:

- Policy **H15**, which states that the Council will refuse consent for proposals which would result in the loss of existing gypsy sites unless it can be shown that they are no longer needed, or that alternative provision can be made elsewhere; and,
- Policy **E4**, which requires that development within areas identified as 'Countryside' should be in scale and keeping with the character and natural beauty of the landscape; should be appropriate to their surroundings in terms of siting, scale, design, materials external appearance and landscaping; should not result in a significant adverse effect on nature conservation or geological interests; and should make satisfactory arrangements for access, servicing, cycle and car parking.

## **PLANNING CONSIDERATIONS**

Having had these unfortunate events brought to the Council's attention earlier last year the Committee has already tried to facilitate a compromise position in this case. At its meeting on 30 June last year the Planning Committee considered a report on this site and the one at Hale Carr in Heysham, which is in different ownership, where the issue of sales of gypsy plots had arisen. The report identified a series of potential options to the problem, as follows:

1. Take no action: this would leave the current issues unresolved
2. Invite applications to regularise the position: this would be contrary to current housing and planning policies, and result in a shortfall in the required provision of gypsy sites within the district.
3. Take enforcement action to remove unauthorised occupants from the site; this would probably place the council under an obligation to re-house the occupants, and would be likely to result in a significant amount of adverse publicity for the Council.
4. Under enforce, to enable current occupants to remain on the site, but enforce the terms of the occupancy condition for future occupants: this would provide some security for the present occupants, but at the same time make it clear that continued breaches of the occupancy conditions would be unacceptable.

Members resolved to pursue option 4. This means that no action is being taken against people already living on the sites affected, but that the Council will require any future sales or leases of the plots to be to bona fide gypsies and travellers. The intention was that the Oxcliffe New Farm site will revert to being available for use by gypsies and travellers. This solution was not considered acceptable to the purchasers of the Park Homes because it meant they could not realise open market values for their homes or expect that members of the gypsy or travelling communities could be easily found to pay an equal value for their plots when it came time to sell.

The issue is further complicated by the fact that the site is in the open countryside just beyond the settlement boundary, and in an area where permission for housing of any kind, other than that required for the purposes of agriculture or forestry or "other uses appropriate to the rural area" would not normally be granted. Approval of the present site for general occupation would therefore represent a significant weakening of the Council's normal stance on residential development in the countryside.

There are however a number of material considerations which help to decide what may be an appropriate way forward in this case. The first is the impact of releasing the condition on the appearance of the countryside. The second is the impact on applying both national and local planning policy for the provision of sites for Gypsies and Travellers in Lancaster District.

When considering whether occupancy conditions should be retained (as in the case of agricultural occupancy conditions on rural dwellings) one has to consider whether or not they have outlived their usefulness. There will be no greater impact on the appearance of the countryside arising from the removal of the condition, as the Park Homes are already in place and the site has established itself on the edge of the settlement for a number of years. The usefulness of the condition can only be related to how important it remains to ensure that the site is available to meet the housing needs of the particular social group that it was intended for, and which justified its provision in the first place outside the settlement boundary.

Meeting the needs of the Gypsy and Traveller communities is a specific requirement of national housing policy, and recent work undertaken by the Regional Assembly has examined the level of need and provision in local authority areas in the North West. In Lancaster district this work shows that the level of provision deemed necessary has already been exceeded by the granting of further permissions for private sites.

When considering potential for conflict with national and local policy in relation to gypsy and traveller site provision therefore, there are two important pieces of evidence which suggest that the need for the condition may not outweigh the benefits of generating security and certainty for the victims of this miss selling episode. Firstly where need for pitches has been established provision has matched and exceeded it. Secondly the very act of sale by members of the gypsy and travelling community demonstrates the existence of a surplus of pitches overall.

Arising from these factors not only can a release of the conditions on this site be justified, but the potential to resist further applications for new gypsy and traveller sites outside the settlement boundaries on the basis of exceptional need will have been strengthened by creating vital evidence of a surplus of pitches.

## **HUMAN RIGHTS IMPLICATIONS**

This proposal has to be considered in relation to two sections of the Human Rights Act. These are Article 8 (privacy/family life), and Article 1 of the First Protocol (protection of property). The present application involves accommodation reserved for use by gypsies and travellers, who frequently have difficulty finding sites suitable for their needs. In this context the provisions of Article 8 are particularly relevant. However these have to be balanced against the interests of the existing occupiers of the site. The issues arising do not appear to be of such magnitude that they override the responsibility of the City Council to regulate land use for the benefit of the community as a whole, in accordance with national law.

## **RECOMMENDATIONS**

That **PERMISSION BE GRANTED** subject to the following conditions:

NONE.