

PLANNING AND HIGHWAYS REGULATORY

COMMITTEE

4TH MARCH 2013

Petition regarding Camping and Caravanning activities Gibraltar Farm, Lindeth Road, Silverdale. Report of Head of Regeneration and Planning

PURPOSE OF REPORT

To report to the Committee the results of investigations into alleged unauthorised camping and caravanning activities at Gibraltar Farm, which were a direct instruction from Council on 14th September 2011, and to make recommendations on how to secure resolutions to the harmful effects of the "intensification" of activity on this site.

Key Decision		Non-Key Decision	<input checked="" type="checkbox"/>	Referral from Cabinet Member	
Date Included in Forward Plan					
This report is public					

RECOMMENDATIONS

- (1) That an enforcement notice be served against the construction of hard standings which result in the siting of caravans on a seasonal basis with a compliance requirement to remove the hard standings from the area to the north of the main access track.
- (2) That an enforcement notice be served against the use of the tent camping field as extended with a requirement to cease using the area extending into the fields beyond to the north of the access track.
- (3) That an order be sought under paragraph 13 of the first schedule of the Caravan Sites and Control of Development Act 1960 to remove camping and caravanning rights from exempted organisations in relation to all the land at Gibraltar Farm.
- (4) That the Head of Health and Housing be asked to use the representations made in this case about noise nuisance to consider as objections to any future applications for Temporary Events Licences at Gibraltar Farm.

1. Background

1.1 At its meeting on 14th September 2011 Council considered a petition from local residents in Silverdale which complained about errors made by the Regeneration and

Planning Service in the issuing of a Certificate of Lawfulness for a touring caravan site at Gibraltar Farm. The petition also made allegations that other breaches of planning control were occurring relating to camping and caravanning activities on the site, and asked the Council to ensure that its officers continued to investigate those complaints even though the site owners had successfully rebutted the Council's efforts to correct the error relating to Lawful Use.

1.2 Council resolved that :-

- a) The Heads of Regeneration and Planning and Health and Housing be instructed to conduct a detailed investigation into the allegations of unlawful activity at Gibraltar Farm contained in the petition documentation, and, in consultation with the Head of Governance to consider the expediency case for enforcement or other regulatory action under the Planning Acts and other associated legislation, having regard to the impacts on the landscape and amenities of the Arnside/Silverdale AONB, the amenities of local residents, and any other material considerations.*
- b) That reports be prepared for Cabinet or the relevant regulatory committee as appropriate outlining the conclusions of those investigations to enable Members to consider recommendations on how to proceed.*
- c) That presentation of a report to Cabinet or the relevant regulatory committee be implemented before December 2011. (A report updating Members of the Planning and Highways Regulatory Committee was presented to the December meeting).*
- d) That Council officers preparing the report be required to consult with the organisers of the petition during their preparation of the report.*
- e) That a copy of the report be provided to the organisers of the petition in order for them to be able to supply written observations on the report when it is considered by Cabinet or the relevant regulatory committee.*

1.3 Following an update report in December 2011 the Head of Regeneration and Planning reviewed the evidence surrounding the case, together with new evidence submitted by objectors over the Winter of 2011/12. Since then he has also sought the advice of an independent Planning Consultant with particular expertise in planning enforcement law to review his findings. There are complaints from the Petition Group that the investigation has taken too long. Members are asked to note that following the reduction in the number of Senior Planning staff in this service it has been necessary for the Service Head to conduct this investigation himself because of its very specialist nature in terms of planning law and the pressure on other senior staff from major planning appeals and the preparation of the Local Plan during 2012.

1.4 The Petition Group's complaints are understandable, but during the same period the Service Head has also had to prepare evidence for the Heysham/M6 Link Examination and the National Grid Strategic Route Options consultations, along with his new role as a member of the council's Management Team. Criticism of timescales taken does not properly appreciate this position, which ultimately resulted in Cabinet agreeing to the creation of a new Senior Planning Officer post to support the Service Head in July 2012. This is a highly complex case in planning law and has the potential to be challenged at appeal. It is important to properly take time to assess the planning issues very carefully before acting.

2.0 Enforcement Investigations

2.1 When investigating alleged breaches of planning control it is necessary to consider firstly whether there is a breach of planning control. Whilst all development needs planning permission, some development can be carried out under Permitted Development Rights (there is a deemed permission and an application for planning permission does not need to be made to the Council). If there is a breach the council must establish whether with the passage of time it has become lawful (ie immune from enforcement action by the local planning authority). Only when the authority is clear on these facts and there is a breach against which action can be taken can it consider secondly whether it is expedient to take enforcement action. Clear evidence of harm which must be defendable at appeal has to be identified. It is not sufficient to take enforcement action simply because a development should have had planning permission.

2.2 It is important that the council always maintains its impartiality when investigating enforcement matters. Planning enforcement by its very nature often brings the private interest of one party into conflict with the interests of another. The council's duty is to act in the public interest and not simply to support the interests of either party in dispute. It should be noted that in this instance both the Petition Group and the landowners have accused the council in writing of acting in a biased manner. Both accusations are completely unjust and without basis. Because of the allegations however it has been important to stress for the record that the council's assessments in this matter will consider only the public interest.

2.3 After the council meeting on 14th September 2011 the Petition Group also asked council officers to consider whether there is merit in trying to reach a negotiated settlement with the landowners to try and achieve a resolution to the amenity impacts which they allege are harming the living conditions of local residents and the amenities of the Arnside/Silverdale AONB.

2.4 Following a detailed assessment of the various aspects of the mixed land uses on the site officers reached the conclusion that there have been breaches of planning control which it would be expedient to take action against. Equally it is important that steps are taken to encourage the landowners not to cause further breaches to occur in the future. There are two ways which the council could seek to enforce against existing breaches and secure restraint of future land uses in this instances. They could:

- a) Take enforcement action; or
- b) Negotiate with the owners to enter into an agreement under Section 106 of the Town and Country Planning Act 1990 to voluntarily correct breaches and restrict the level of activity on the site.

3.0 The existing uses at Gibraltar Farm

3.1 The area under consideration comprises all of the land associated with Gibraltar Farm, between Lindeth Road to the east, the coastline to the west, Jack Scout to the south and the houses on Shore Road to the north.

3.2 It comprises of a mixture of uses:-

- The agricultural unit and main farm buildings,
- The farm dwelling,
- A touring caravan site (subject of the Lawful Use Certificate),
- A camping field adjacent to it
- There are also areas of woodland within the planning unit.

A plan of those uses and their current extent is attached to this report. Appendix 1

3.3 In addition to the touring caravan site and the camping field, areas of the agricultural unit (open fields) are used regularly under Permitted Development Rights for caravanning. There is also a yearly event in the form of a camping rally for motorcyclists held on the farm land. These activities are undertaken under separate Permitted Development Rights which allow the farm land to host temporary activities in this way.

4.0 Alleged Breaches of Planning Control

4.1 In evaluating this case officers have investigated concerns raised by local residents about what they see as "intensification" in activities since a change of ownership on the farm.

4.2 Intensification, in the sense of an increase in one or more activities in a mixed or composite use, may bring about a change of use. But this does not automatically mean that there has been a material change of use that amounts to development. There has to be a fundamental change in the character of the composite use (such as one part becoming more dominant than another), for a change of use to occur

4.3 It is clear from examining the written and photographic evidence (particularly aerial photographs) that the level of activity on the site related to camping and caravanning has increased in recent years. Some degree of that has been intensification of the existing mix of uses ie more tents using the camping field, or more touring caravans using the touring caravan site. However these changes do not lead to a need for planning permission unless the level of intensification changes the character of the planning unit as a whole, perhaps by extending onto other fields and altering the balance between exclusive agricultural use and mixed use with camping activities.

4.4 Intensification in activity can be a material planning consideration in terms of its impact on the case for expediency for enforcement action if other changes in the character of the site subsequently result in a need for planning permission. In this case it would be proper for Members to consider the overall impact of change on the site, whether caused by factors needing planning permission, or the exercise of rights which are currently argued to be in use.

4.5 The current mix of uses on the farm (a composite use) developed from a small rural diversification project but there were no calls for intervention by the local authority as it grew beyond an initial limited planning permission for a small number of touring caravan pitches, because the local community appears to have been tolerant and supportive of the activities undertaken up to a point in time. A change in ownership (even between generations in a family as in this case) often leads to changes in business activity and this can erode the relationship of trust between a business and the community in which it sits. This appears to be what has given rise to a change in the attitude of some members of the local community to the use in this case since around 2005.

4.6 To enable Members to properly assess the different elements of the composite use and the question of breaches of control, or increased use of permitted development rights each element of the use will be considered in detail.

4.7 The farm dwelling. There are no issues raised about the farm dwelling.

4.8 The agricultural unit. There are no specific complaints about the agricultural activities on the farm apart from those which arise from the use of agricultural permitted

development rights being suspected of having links with the tourism uses. The improvement of farm tracks including one between the fields on the coastline and the receded area of salt marsh, has caused concerns that the works are intended to facilitate tourism access to the coastal path. The landowner states that these are normal agricultural operations for the maintenance of farm tracks and there is no hard evidence to dispute this. The main area of complaint in relation to the areas of agricultural land is directed at the use of camping and caravanning Permitted Development Rights

4.9 Temporary camping and caravanning There are three sets of Permitted Development Rights which the owners rely on to facilitate temporary camping and caravanning on the agricultural land. These are found in Town and County Planning (General Permitted Development) Order 1995 as amended:

Part 4 Temporary Buildings and Uses - This permits use of land for any purpose for not more than 28 days in total in any calendar year (with exclusions). One of these exclusions is as a caravan site (as defined in the Order), but this still allows the open farm land to be used of temporary camping activities such as the Biker Rally.

Part 5 Caravan Sites – Use of land as a caravan site under a range of definitions which include recreational activities by names exempted organisations ie the Camping and Caravanning Club and meetings organised by exempted organisations. It should also be noted that there is a permitted development right to carry out any development required by the conditions of a site licence.

Part 27 Use by members of certain recreational organisations - This allows a list of organisations such as the Scouts and Girl Guides, and the Camping and Caravanning Club to use land temporarily for the purposes of recreation or instruction and to place tents on land for the purposes of the use.

The overall essence of the controls relates to the “temporary nature of these uses”. Agriculture has to remain the primary use of the land, so if a field were set aside solely for these activities a material change of use would occur.

4.10 The touring caravan site. There is no doubt that the council's failure to impose restrictions and define “lawfulness” precisely was the cause of a considerable loss of faith in the local authority by the Petition Group. However when considering the planning unit as a whole, with its various composite parts, an increase in numbers of touring caravans wholly within the confines of this site (as shown on the plan) would not necessarily have amounted to a change of use needing planning permission in any case. The key question is whether the changes affect the character of the planning unit as a whole. This view is also supported by the council's consultant.

4.11 Where it is considered development has occurred is with the construction of hard standings. This results in a change from touring caravans coming and going on the site, to the granting of seasonal leases enabling caravans to stay in situ throughout the spring and summer and into early Autumn. In other words a change in the character of land to a more “static” form of caravan site. This change of character is different from the lawful use which was granted for the touring site and is more harmful in terms of visual impact facilitated by the construction of hard standings ability to encourage seasonal pitches to keep caravans stationary on the site for most of the year.

4.12 The Tent Camping Area. This area has a significant amount of evidence relating to it both from aerial photographs and questionnaires submitted by the owners but completed

by persons who have camped on the site over the years. In addition to the standard questions about usage many respondents volunteer additional narrative which adds credibility to the evidence. Your officers view is that there is clear evidence that the camping field (to the south of the access track, as shown on the plan), has been used for camping for many years.

4.13 However there are questions over the use of an area which has more recently been subdivided from a field north of the main access track for tenting purposes. In addition to this creeping encroachment into other fields there is the difficult question of whether this is an exclusive use or an intermittent one with the land returning to agricultural use over the winter months. The owners position is that the camping use is exclusive and that no winter grazing or cropping takes place at all. The aerial photographic evidence shows one occasion of sheep grazing on the land in 2000, and the objectors have supplied evidence of monies being claimed for agricultural use from the Rural Payments Agency. Whether or not there is an intermittent use with agriculture, it is very clear that the camping field has not been used for caravanning.

4.14 In the context of the Petition Groups complaints there is concern that the level of intensification of caravan usage on the site could encroach onto the camping field. Discussions with the owners however have resulted in reassurances that there is no intention to begin the use of this field for caravanning whether static or touring.

4.15 The woodland areas. These areas (shown on the plan) which abut the touring caravan site and the camping field have conflicting pieces of evidence relating to them. The owners case suggests that these have been areas used for camping in the past and that those activities have more recently been abandoned. The Petition Group dispute that these areas have ever been used for camping although it seems to be generally accepted that the paths through them have been used to gain access from the caravan and camping activities to the shoreline. When considering what the likelihood of past land use has been one has to look at the physical conditions in the woodland areas. They are predominantly uneven and rocky with paths through them and the occasional glade area. Whilst it is likely that individual campers would have enjoyed secluded pitches in the small glades over the years, these areas are very small in number in relation to the woodland as a whole. Your officers conclude that any camping use in the woodland would have been an intermittent or *de minimis* use within the woodland, as would the recreational access through to the shore. The owners assurance that camping no longer takes place in the woodland does not change the planning position as the primary use of this component of the planning unit would still have been as woodland anyway and it would not be conceded that there was a lawful camping use in that area any way.

4.16 After considering the allegations and carrying out investigations officers have concluded that breaches of planning control have occurred in two areas.

- The extension of the tent camping use since 2009 into an area of agricultural land to the north of the access track.
- The siting on the touring caravan site of caravans for longer periods during the season made possible by the unauthorised construction of hard standings. This amounts to a change in the character of the touring caravan site use which was certified as lawful in the disputed Lawful Use Certificate case of 2010.

4.17 Other aspects of intensification, alleged to be breaches of control, have been found to be associated with the claimed use of Permitted Development Rights on the agricultural land. If the Council wanted to curtail these they will have to consider options relating to

removal of those rights, or intervening in some of the exemptions under other legislation which entitle the rights to be used. There is also an argument that suggests that the existence of unlawful activities (the breaches in paragraph 4.16) within the planning unit means that the use of Permitted Development Rights is precluded by Article 3 of the General Permitted Development Order 1995. This specifically precludes the use of deemed permissions where an existing use is unlawful.

5.0 The basis for assessing whether it is expedient to take enforcement action.

5.1 The Act does not make it mandatory to take enforcement action when the local planning authority has found breaches of planning control. Rather it says it **may** issue an enforcement notice if it is expedient "having regard to the provisions of the development plan and to any other material considerations." (s172(1). Members must therefore consider these requirements very carefully, starting with the relevant provisions of the Development Plan.

5.2 The Lancaster District Local Development Framework Core Strategy in Policy E1 outlines that the Council will safeguard and enhance the districts environmental capital by applying national and regional planning policies and: protecting and enhancing nature conservation sites, urban green spaces, allotments, landscapes of national importance, listed buildings, conservation areas and archaeological sites.

5.3 In Policy ER6 the Core Strategy also states that the Council will promote and enhance tourism in the district by: In the Districts countryside, encouraging agricultural diversification to create quiet recreation and small scale sensitively designed visitor attractions and accommodation in the districts countryside, promoting new walking and cycling routes including long-distance routes and linkages to national networks.

5.4 Saved Policy E3 of the Lancaster District Local Plan states that development both within and adjacent to the Forest of Bowland or Arnside/Silverdale Areas of Outstanding Natural Beauty or the Yorkshire Dales National Park which would either directly or indirectly have a significant adverse effect upon their character or harm the landscape quality, nature conservation interests or features of geological importance will not be permitted.

5.5 Saved Policy E21 states that proposals for business and tourism uses which form part of an agricultural unit will be permitted where the proposed use makes a positive contribution to the viability of the farm holding and remains subsidiary to the main farming enterprise; and the development would not result in significant adverse impact on the character of the area or lead to an unacceptable increase in traffic. Wherever possible the proposed use should use existing buildings within the main agricultural unit.

5.6 Saved Policy TO5 states that within the Arnside/Silverdale and Forest of Bowland Areas of Outstanding Natural Beauty, proposals for new static or touring caravan sites or the extension of existing sites will not be permitted. The accompanying text however explains where modest exceptions might be made such as modest increases within existing site boundaries, or through minor extensions which do not result in harm.

5.7 The National Planning Policy Framework guides local planning authorities on how the government expects planning policy to be applied. It should be noted that this is a new framework, only introduced in March 2012, so there has been a change in national planning policies during the course of this investigation. Specifically, in relation to enforcement the NPPF says:

“207 Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary and local planning authorities should act proportionately in responding to suspected breaches of planning control.”

When judging the issue of expediency the council has to balance policies which aim to protect the landscape and character of AONB's with those encouraging enterprise and rural business uses relating to tourism. In short it can only be expedient to take enforcement action if the breach of control would not otherwise be entitled to receive planning permission because the activity causes material harm to one or more interests of acknowledged importance in planning terms.

5.8 Paragraph 115 states that great weight should be given to conserving landscape and scenic beauty in National Parks, the Broads, and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to landscape and scenic beauty. This is followed by paragraphs describing levels of harm to be avoided and mitigation measures.

5.9 Paragraph 14 describes the presumption in favour of development which complies with the development plan and does not have over riding adverse effects. Paragraph 28 supports economic growth in rural areas supporting sustainable development. Support is clear for sustainable rural tourism which respects the character of the countryside and supports the retention and development of local services and community facilities. It is balancing these potentially competing requirements that go to the heart of this case.

5.10 The emerging Development Management DPD is a material consideration which, since the Council decision on 12th September 2012 to approve the Draft Local Plan for the purposes of public consultation, should be given limited weight. Policy EC2.3 of the Draft Lancaster District Development Management DPD, states that the Council will support proposals in rural areas which seek to diversify the rural economy, particularly where it is demonstrated that significant economic benefit exists from diversification of the farm holding. Development in rural areas would not be supported if it is likely to adversely affect an internationally designated wildlife site either directly or indirectly through for example increasing risk of disturbance through visitor pressure. Policy EC3.3 specifically relates to caravan sites, chalets and log cabins. The policy makes it clear that within the Arnside/Silverdale and the Forest of Bowland Areas of Outstanding Natural Beauty proposals for new static or touring caravans sites or the extension of existing sites will not be permitted.

5.11 In summary the decision on “expediency” requires a careful balance between the need to protect the special landscape in the Arnside/Silverdale AONB from harm against the counter balancing argument in favour of supporting sustainable tourism and rural business growth. In addition material weight must be given to the impact of any breaches of control or permitted development usage which could be causing harm to site-specific considerations such as residential amenity and highway safety.

6.0 Enforcement and expediency considerations.

The touring Caravan Site.

6.1 Because of significant changes in level and the nature of the land form and woodland screening a significant part of the area of the touring site on which caravans now stay

without moving is well screened from wider views. Not unless one comes close to the site or walks across it are the caravans visible, and certainly the areas tucked into the woodland, have little effect on the nearest houses.

6.2 To the north of the access track on an open elevated area known as "the hill" (shown on the plan) the stationing of caravans is visible in the wider landscape, from the coastal path and from wider views in the area. Whilst an increasing number of touring caravans remain sited for longer periods on seasonal pitches, they are not static caravans, a term which relates to larger models.

6.3 The commentary to saved policy TO5 of the Lancaster District Local Plan acknowledges that static caravans being usually larger and permanent than touring caravans have a worse visual impact than touring caravans but also accepts that modest increases in the number of vans on a site will occasionally be acceptable where linked to better landscaping or improvements to on site facilities where such increases within existing boundaries or minor extensions will not harm the surrounding countryside or neighbouring properties.

6.4 Taking this policy as a guide, your officers take the view that the less visible part of the site could continue to be used for stationing caravans all year if seasonal pitches were removed from "the hill" area and were only used for touring pitches without any hard standings or electricity hook-ups during the holiday season only.

6.5 In this case the change in character of the site which could be acceptable, namely the change from touring caravans to seasonal pitches, could be mitigated if the reciprocal benefit were a reduction in the unauthorised seasonal pitches on the hill and other concessions in terms of control throughout the planning unit.

6.6 One point of dispute which could be difficult to resolve relates to the construction of stone hard standings. Modern caravanning desires better drained pitches for caravans to stand on, but their rectangular nature and regularity can appear as a discordant feature in a rural landscape. The hard standings are constructed using stone chippings somewhat like the many random areas of chipped stone which protrude through the grasslands of this limestone landscape and there has recently been difficulty in convincing a Planning Inspector of the seriously detrimental effect on visual amenity of stone hard standings elsewhere in the AONB, albeit in a village setting. Nevertheless it is strongly felt that hard standings in the visually exposed setting of the hill have a different impact than those screened between the woodland and the raised land. They give rise to longer periods of stay and it is felt that for this reason they should be removed.

6.7 Your officers conclude that there has been a breach of planning control against which it would be expedient to enforce against and this is the construction of hard standings which leads to more seasonal pitches on the site. If Members agree, then the rectifying of the breach could be achieved by either agreement with the owners through a Section 106 agreement, or by the service of an Enforcement Notice which "under enforces" to remove the unacceptable hard standings from the hill.

Tent Camping

6.8 In the context of the Petition Group's complaints there is concern that the level of intensification of caravan usage on the site could encroach onto the camping field. Discussions with the owners however have resulted in reassurances that there is no intention to begin the use of this field for caravanning whether seasonal or touring. The council could respond by serving an enforcement notice against the complete area used for

tent camping, which includes the area extended more recently into a field to the north of the access track. That notice could “under enforce” by requiring the owners to cease using the extended area and accepting that the remainder is acceptable in view of the level of historic use. This would recognise that this part of the site is used for camping only and leave open the possibility of enforcement action if caravanning began to take on that area in the future.

6.9 There are a range of concerns raised by local residents about the harmful effects of the current range of uses. Some relate to the impacts of intensification but the others relate to the act of carrying out of development without permission and the fear that the gradual creep of change if not countered will have an irreversible effect on both the amenities of local residents, and the special landscape quality of the AONB. The next section will deal with the latter.

6.10 If enforcement notices are served and complied with a degree of lawfulness would return to the planning unit meaning that Permitted development rights on the agricultural land could still be used. The council still has to consider therefore how to deal with that aspect of the use.

Petitioners concerns about further development

6.11 Notwithstanding the conclusions reached by officers it is open for Members to consider going further than simply enforcing against the breaches of control. They could consider acting to remove the levels of Permitted Development Rights which allow camping and caravanning to take place on the agricultural land. This would require a commitment to paying compensation however and very careful consideration would have to be given to the financial implications of such an act. There are also approaches which can be taken to challenge the rights of exempted organisations to benefit from permitted development rights and these are referred to later in the report. Both approaches would have to be fully justified.

6.12 If the Council wanted to secure an end to these use rights, and has sound grounds to do so there are two ways to approach the matter in planning terms.

6.13 In the case of the Permitted Development Rights the Council would have to make an Article 4 Direction to remove them and if a direction were confirmed the Council would be liable to pay compensation claims. This could amount to compensating the owners for loss of income from these activities on a yearly basis.

6.14 In the case of the Parts 5 and 27 of the General Permitted Development Order removing Permitted Development Rights and paying compensation remains an option but there is another potential approach. The entitlement to use both parts relies on being licensed by Natural England under other Acts of Parliament. The Council can make representations to Natural England to have a site excluded from the rights given by exception certificates under the Caravan Sites and Control of development Act 1960 if it has grounds to do so and this is an option for the City Council to consider if necessary.

6.15 Having considered the objections to the overall activities on the site it seems that it is not simply the regularity of the use of Permitted Development Rights for camping and caravanning which causes concern, but once again the fears of intensification. There is clear evidence that caravanning activities by exempted organisations on the L shaped field north of the touring caravan site have taken place for many years, however it is the arrival of additional activities such as the biker rally which have raised the profile of the permitted development uses and caused concern. It seems to your officers that the growth in activities

elsewhere within the mixed use have also given rise to understandable concerns that more agricultural land will begin to be used for such uses.

6.16 The councils response needs to take into account any decision it is prepared to make in relation to enforcing against the expanded usage of the caravan site. If the council is prepared to agree to allowing seasonal pitches to remain on part of the planning unit then it seems reasonable to counter balance this by reducing the impact of caravan usage on other parts of the site. To achieve this your officers consider that the time has come to make representations to seek the removal of exemption certificates for the agricultural land.

6.17 The owners tell the Council that the biker rally is facilitated by part use (lawfully) of the tent camping field and overflow activities occurring under Permitted Development Rights on open farm land closer to the coastal paths. In addition to the planning position the rally has required an Events Licence for the live music associated with it, although there is also an entitlement to use a Premises Licence which Gibraltar Farm holds. New provisions have emerged which entitle the Council through its Environmental Health function to object to Temporary Events Licences on noise and disturbance grounds, the site owners can still rely on the Premises Licence to hold events. . .

6.18 To secure an end to the biker rally on the open farm land the Council at this time would have to remove Permitted Development Rights and pay compensation. This would not prevent the area of the tent camping field being used for these purposes however.

7.0 Consultations.

7.1 After examining the evidence and seeking a second opinion from the Council's consultant the findings have been discussed with representatives of the Petition Group, and the landowners and their Planning Consultant. Your officers sought agreement if one could be reached to resolving the issues raised without the need to take formal enforcement action. It might for example be possible to reach a negotiated conclusion by the objectors acknowledging the owners rights to use Lawful Use and Permitted Development Rights for a current level of activity, in return for an agreement under Section 106 to regulate and not to further intensify use without formal agreement with the Council as Local Planning Authority.

7.2 The Land owner and his agent met with your officers on 19th June 2012 to discuss the potential for a Section 106 Agreement. They initially agreed to consider an agreement in principle and have been sent the heads of terms that officers would be prepared to recommend. After a delay a formal response was finally received on 27th August 2012. It became clear from that response that support for a comprehensive agreement to resolve the breaches of planning control and restrain future use had diminished. (See further responses from the land owners following sight of the first draft of this report).

7.3 Having presented their findings to each party your officers have received the following responses:-

The Petition Group

- Accepts the Council's definition of the planning unit.
- The Council's overall approach is insufficiently firm and robust given the policy background which should apply.
- The proposed approach will store up trouble for the future.
- The impact of the use upsets the balance between tourism and the need to protect the AONB.

- There is a major conflict with the policy position in the NPPF (their interpretation).
- Disagree with officers view on compromise by under enforcing in relation to static caravan use. Only touring use should be permitted as per the Lawful Use Certificate.
- The overall number of caravans in the AONB has increased since 1981
- If static pitches are allowed they will be visible from paths and other areas of the AONB such as Jack Scout
- Council is wrong in interpretation of intensification on the touring site.
- All hard standings should be removed.
- Tent camping area has not been used as intensively as suggested.
- Agricultural payments have been received for camping area.
- There remains a risk of further expansion of activities on the site.
- Electrical hook ups are proposed.
- Major concerns remain about rallies and exempted uses and the Council should take action under powers available under exemption legislation.
- Biker rally has caused noise nuisance, especially from loud music.
- Council should commit to undertake regular monitoring and assessment.

7.4 The Petition Group has six main expectations:-

1. That there be no further rallies at Gibraltar Farm
2. That the City Council obtain? Issue/grant? a Lawful Development Certificate in respect of tents, and that this restricts both the area to be used , and the number of pitches.
3. That the Council enforces fully in respect of the change of use to static pitches across the whole touring site.
4. That the Council enforces in respect of any hard standings that have been put in without planning permission.
5. That a condition be imposed banning access to the shore from the site by vehicles or water craft.
6. That a system of monitoring and recording be introduced utilising the ideas the group has given.

7.5 The land owners

- Reassured by statements about the Councils impartiality as concerned about how much influence local objectors seem to have in the decision making process.
- Point out that the majority of uses have the benefit of Lawful Use Certificate or Permitted Development Rights.
- Agree to the principle of agreement to prevent caravanning on tent camping area.
- Permitted Development Rights on agricultural land are lawful rights for owners to use and would not agree to voluntary restriction on them.
- Disagree that Council has control over longer seasonal pitches.
- Would not agree to controls on hill area of touring site. Disabled visitors need access to touring pitches on level area so loss of hill for seasonal pitches adversely affects business.
- Submits recent appeal decision taking in the context of NPPF which supports holiday caravan usage in an AONB with flexible conditions relating to length of stay.
- Overall conclusion is that there is agreement in principle to a S.106 agreement regulating use of tent camping field, but no agreement to regulation of other areas with Lawful Use and Permitted Development Rights.

Members should also be aware that the Regeneration and Planning Service has also received representations from some local residents in support of the land owners position.

8.0 Conclusions

8.1 This is a very complex case which involves land use impacts in the Arnside/Silverdale AONB which do not simply arise from a breach of planning control. There are also impacts which arise from the lawful use of Permitted Development Rights. Members will see that your officers have sought to establish whether there is any common ground which could result in avoiding the need for enforcement action by the land owners entering into of a voluntary agreement under Section 106 of the Town and Country Planning Act to self regulate the existing (and future) uses of the land in a manner acceptable to the planning objectives for the area. It appears that such an agreement will only be possible if the Council agrees to accept seasonal pitches on the hill as well as on the rest of the touring site.

8.2 Despite the pressure being applied by the petition group, and the unwillingness of the landowners to acknowledge the steps the Council could take to restrain the uses the landowners are entitled to exercise, the Council needs to carefully consider the appropriate balances to be applied in this case between the need to protect the landscape and character of the Arnside/Silverdale AONB, and the need to support rural tourism. Although the petition group make strong representations on their interpretation of what the policy position is, there is a lack of objectivity in that interpretation. This is borne out by the recent appeal decision submitted by the landowners which demonstrates that Planning Inspectors using the new NPPF have interpreted tourism uses to be appropriate in an AONB.

8.3 What is clear in this case is that there has been a camping and caravanning facility on this site for many years, but that in recent times a new generation of owners are seeking to modernise it and generate a level of growth in the contribution it makes to the business at Gibraltar Farm to a degree which now places it in conflict with aspirations of many local people. What the Council has to decide is whether that level of growth comes into conflict with the counter balancing planning policies which provide a high level of protection for the AONB as a whole. The NPPF and the recent appeal decision submitted by the landowner helpfully steer the Council by demonstrating that an appropriate balance must be struck and that it is simply not a case of protection of the landscape overriding any growth whatsoever. The Council must also take into account that it's not just the scale of facilities which must be considered but also improvements in the quality as visitors needs become ever more fine-tuned to the quality of stay.

8.4 It is understandable that the Petition Group fears that a failure to control further expansion will lead to the landowners feeling encouraged not to have regard to the need to consult the local planning authority before change take takes place. Whilst this is not an enforcement matter it does need to be addressed to avoid further change in the future becoming unnecessarily adversarial.

8.5 Your officers are firmly of the view that there is scope to accept a degree of seasonal pitches on the site even though this does constitute a change in the character of the touring caravan site. They do not accept the landowners argument that seasonal pitches should be allowed on the hill area and recommend an enforcement notice be served against that activity.

8.6 Your officers understand the Petition Groups attitude to hard standings but in the light of a recent appeal decision at in the AONB, and the NPPF's position on supporting a healthy rural economy which includes improving existing tourist facilities it is felt that the provision of hard standings in appropriate materials on part of the site is acceptable and recommend that only those on the more exposed area of the site should be enforced against.

8.7 The tent camping area does need to be defined in some way to avoid misinterpretation of what rights might exist to improve or even extend it. For this reason the Council should take unilateral steps to define and regulate it through an enforcement notice.

8.8 Concerns about increasing rallies and use by exempted organisations could be adequately dealt with if the land owners agree to a Section 106 agreement which defines areas used, frequency, and agrees not to expand onto other areas. If they do not take the opportunity to do so the City Council can still approach Natural England to take steps to remove the exemption rights for camping and caravanning organisations to use the parts of Gibraltar Farm.

8.9 If the steps suggested in 8.8 are not successful Members may also wish to consider an Article 4 direction removing Permitted Development Rights from those areas. A further report would be required in that instance because of the major budget implications relating to compensation. A Cabinet decision to consider these financial implications would also be needed.

8.10 In relation to the use of Permitted Development Rights for camping which facilitate the biker rally it is considered at this stage best to use the emerging changes in legislation relating to events licensing to control this activity. Again if this is not successful the removal of Permitted Development Rights will have to be considered.

8.11 Following on from the above actions and as part of the process your officers will issue a definitive position statement based on this report on what it sees as the appropriate balance between uses on the site, whether lawful, unlawful or permitted development to use as a benchmark for future monitoring of the site to ensure that the landowners are under no illusion about the need to engage fully with the local planning authority before making any material changes to business activities on the site.

RELATIONSHIP TO POLICY FRAMEWORK

The enforcement of planning control is one of the main tools to secure implementation of the Local Development Framework and to safeguard the community from unlawful development which causes material harm.

CONCLUSION OF IMPACT ASSESSMENT

(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)

This issue raises concerns of adverse impacts on the landscape and character of the Arnside/Silverdale AONB, and the amenities of local residents.

FINANCIAL IMPLICATIONS

The actions recommended in the report are likely to lead to planning appeals which will have legal cost implications. If members were to go further and consider the removal of Permitted Development Rights there would be compensation implications to consider, and for this reason should members wish to go further than the report recommends in this regard a further report to Cabinet would be required.

SECTION 151 OFFICER'S COMMENTS

The Section 151 Officer has been consulted and has made no comments

LEGAL IMPLICATIONS

The taking of enforcement action in this case will involve a considerable level of support from the Council's legal officers and if appeals are lodged against enforcement notices, Counsel may need to be instructed.

MONITORING OFFICER'S COMMENTS

The Monitoring Officer has been consulted and has no further comments.

BACKGROUND PAPERS

Petition from local residents reported to council on 14th September 2011. Planning and lawful use applications relating to Gibraltar Farm.

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