

DEVELOPMENT CONTROL COMMITTEE – 22 June 2004

In accordance with the provisions of Section 100D of the Local Government Act 1972, BACKGROUND PAPERS are the contents of the files whose registration numbers are quoted at the head of each report, but this does not include material which is confidential or exempt (as defined in Sections 100A and D of that Act, respectively).

REPORT OF THE PLANNING SERVICES MANAGER

1. Planning Applications

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When moving that a site visit be held, Members will be expected to consider and propose one or more of the following reasons:

1. The issues of fact raised by the Planning Services Manager's report or offered in explanation at the Committee meeting require further clarification by a demonstration of condition of site.
2. Further issues of principle, other than those specified in the report of the Planning Services Manager, arise from a Member's personal knowledge of circumstances on the ground that lead to the need for clarification that may be achieved by a site visit.
3. Implications that may be demonstrated on site arise for consistency of decision making in other similar cases.

22/06/2004

Item 1.1**Reg. No.** 92004 0537**Applicant:**

Mrs L Haynes
 The Pastures
 Rosliston Road, Walton On Trent
 Swadlincote
 Derbyshire

Agent:

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 Ernest Bailey Community Centre, New Street
 Matlock
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Proposal: Use of land for siting of three gypsy caravans and associated facility sheds at Land To The North Of Rosliston Road Walton-on-Trent Swadlincote

Ward: Seales

Valid Date: 30/04/2004

Site Description

The site is part of a field measuring 24.4 metres by 82.9 metres and the red edged site area includes part of the adjoining field so that a visibility splay can be accommodated. The site is located within the open countryside close to the edge of the village of Walton on Trent. A length of hedgerow has been removed along the front boundary of the site to create an access and the site is separated from the surrounding field by a post and rail fence and from the adjacent field to the west by a hedgerow.

Proposal

The application is a retrospective submission for the siting of gypsy caravans including a chalet style static caravan and associated facility sheds along with retention and alterations to the existing access.

Applicants' supporting information

The Applicant has submitted various documents in support of the application including reports on Secondary Education for Traveller Young People in Derbyshire, a report from the Commission for Racial Equality on Gypsies and Travellers, a letter from a Highway Consultant, a report from the ODPM on Travellers and the Homelessness Act and a letter from the Derbyshire Gypsy Liaison Group who are acting as an Agent on behalf of the Applicant. The main conclusions of these documents are detailed below:-

Secondary Education – Traveller Young People – Derbyshire

Gypsy families often express a range of concerns about their children receiving secondary education and the Traveller Education Service is aware of a number of Traveller children of secondary school age who are not receiving an education and who therefore miss out on opportunities. Connexions are working towards a strategy to offer advice and support and practical solutions for schooling for Traveller families.

Commission for Racial Equality – Gypsies and Travellers: A strategy for the CRE 2004-2007

The CRE have examined the main areas where Gypsies and Travellers have experienced problems and have produced a strategy to deal with the problems. The report looks at problems encountered in the following areas:

- Population and population records
- Race relations and public attitudes
- Accommodation
- Education
- Employment
- Health; and
- Criminal justice

The main subject area relevant to this application is accommodation and the following extracts are the most relevant details:-

'Gypsies and Travellers who prefer to live in caravans or mobile homes in Britain today face a critical shortage of suitable provision. They pay a heavy price for this, in deteriorating relations with others in the community, poor health, interrupted education for their children, difficulties getting a job or setting up and running a business, routine harassment and endless dealings with local authorities and the police.'

'Gypsies and Travellers needs are rarely considered properly by local authorities when drawing up policies on planning, housing and homelessness, community cohesion and social exclusion and including these in their race equality schemes. This can be further compounded by the different approaches that departments within a single authority take, where, for example, one is responsible for site provision and management and another for enforcing planning regulations and eviction.

'Gypsies and Travellers point to the planning system as one of the most important questions for them. Where they do acquire sites of their own, they find it difficult to obtain planning permission. Research by ACERT in 1997 showed that, whereas 80% of all planning applications were accepted 90% of Gypsy and Traveller applications were initially rejected. As a result some Gypsies and Travellers, certain that their applications will be initially be turned down, set up sites before obtaining - or even applying for - planning permission. Inevitably this leads to tensions with others in the community, especially when a planning refusal is followed by costly legal action - costly for both the Council and Gypsies and Travellers - and enforcement of the planning decision.'

'Under section 175(2) of the Housing Act 1996, a person is homeless if they have accommodation but it consists of a movable structure and there is no place where they are

entitled or permitted to place it to live in. This means that Travellers on unauthorised sites are homeless.'

'The last ten years have seen a gradual increase in the number of private sites but with the supply of public sites at a near standstill, total provision is well below the needs of the growing Gypsy and Traveller population.

ODPM - Travellers and the Homelessness Act

This document outlines a survey which was carried out assessing local authorities with unauthorised encampments of Travellers in their areas and how this issue is dealt with in their Homelessness Strategies. The ODPM Homelessness Code of Guidance for local authorities makes it clear that where a local authority has Travellers living in an unauthorised encampment it must consider whether a pitch in an authorised site is available and if not what other form of suitable accommodation is available.

The findings of the survey were that many local authorities did not specifically address the issue of Traveller homelessness in their strategies.

Highway Consultant Report

Based on the Appeal Inspectors comments it seems to me that had the visibility at the site access been acceptable, the appeal would have been allowed as 'the character and appearance would be balanced by other material considerations.' Therefore the Inspectors decision to dismiss the appeal was tipped by the visibility issue. Having visited the site on several occasions, I can see why the Inspector reached the decision, and agreed with the County Council's recommendations regarding the original application.

However matters have now moved forward as the occupiers of the site have secured the neighbouring field and hedgerow. The hedgerow has been trimmed to improve matters, although visibility still remains substandard to the left, when leaving the site.

In order to determine the appropriate design speed of approaching traffic, I undertook a speed survey at the site on Monday 19th January 2004. As agreed I remained on site for a period of three hours (between 10:06 and 13:06), during which time I recorded the speeds of 50 free-flowing vehicles travelling in either direction.

The weather conditions were overcast but predominantly dry. There were several short periods of "spitting" but the level of precipitation was insufficient to be identified as rainfall in my opinion. The road was damp throughout the survey with little sign of any surface spray.

The survey was undertaken using a hand held speed meter, which was calibrated before and after the recordings. The results obtained identify the 85th Percentile Speed as 36 mph (57.74 kph) Westbound and 38 mph (60.95 kph) Eastbound. Although the road and weather conditions were not actually wet as such, I have not applied the wet weather design speed, as required by the national standards.

Based on the y-distances specified in Table 7/1 of TD42/95 'geometric Design of major Minor Priority Junctions' it is apparent that the appropriate visibility splays for the observed design speeds extend to 90m to the east (60 kph) and 120m to the west (70 kph). Due to the damp, but not wet conditions during the survey, it may be considered appropriate to deduct perhaps 1 or 2

kph off the observed speeds to replicate wet-weather conditions, rather than the full 4 kph which would be appropriate had the road surface been dry. If this reduction were applied, the visibility requirement to the west would fall within the 60 kph threshold, and the appropriate visibility splay would reduce to 90m.

It was noted that the 85th percentile speed eastbound along Rosliston Road is higher, where drivers are leaving a 30 mph limit, than that on the westbound movement where the vehicles are travelling along a derestricted route.

Within its submissions to the Inspectorate, Derbyshire County Council identified an x-distance (set back from the carriageway edge) of 2m as being appropriate at the site access. Based on the relatively low volume of traffic on Rosliston Road and at the site access, I agree this is an acceptable dimension.

Photographs have been submitted which illustrate the proposed visibility at the site access, which accords with the requirements based on the observed 85th percentile speeds and the 2.0m x-distance. Due to the alignment of Rosliston Road as it enters Walton on Trent, it is apparent that both the 120m and 90m y distances are readily achievable.

At present in the vicinity of the site access, the hedgerow is approximately 1300mm tall. It would be possible to trim the hedge further to reduce its height to no more than 1m above ground, in accordance with the maximum height specified by Derbyshire County Council in its submissions to the Inspectorate.

It would also be possible to remove the hedge and plant a replacement using the same species along the back edge of the visibility splay. Alternatively the existing hedge could be trimmed to retain a degree of screening until a replacement hedge planted at the rear of the visibility splay had matured, at which time the existing hedgerow could be removed.

In summary, following the acquisition of the adjoining field and the undertaking of the access assessment, it is clear that the appropriate level of visibility along Rosliston Road could now be provided within land controlled by the occupier of the site and/ or the Highway Authority.

Letter from Derbyshire Gypsy Liaison Group

The original planning application/ enforcement gave a permission to reside on the land for 1 year as the most detrimental factor on the site was the Highways report and that the access and visibility was a danger. We have enclosed the report from the highways consultant that has solved these problems.

The Planning Inspector in his appeal decision stated that 'this site has some advantages and the harm to the character and appearance of the area would in my estimation be balanced by other material considerations were that the only objection to the development. However, the risk to traffic posed by the development because of the seriously inadequate visibility at the site access is sufficient to lead me, on balance, to the conclusion that permission for the development should be refused.'

Based on the Inspectors comments, it appears to me that had the visibility at the site access been acceptable, the appeal would have been allowed as the character and appearance would be balanced by other material considerations. Therefore, the Inspectors decision to dismiss the appeal was tipped by the visibility issue.

A photo of the chalet (which is classed as a mobile home) and is 42 feet by 14 feet is enclosed, when placed behind this chalet the other caravans are not then visible from the road.

The family is willing to follow any form of landscaping that the local authority would wish. There is still very much a shortfall for specific Gypsy and Traveller accommodation and we hope that this application will receive a hearing with the following information in mind.

Like many Romany Gypsy families the family would not be happy in conventional housing and it is very much the culture to remain mobile.

Due to the lack of sites and the lack of land for sites within a more residential area it is not unusual for land to be sought within open countryside areas. This site is not within the Green Belt.

The DETR 1/94 Gypsy sites and planning guidelines were brought into being after the disastrous 1994 Criminal Justice Act became law and swept away the 1968 Caravan Sites Act. Councils do not now need to look at providing for Gypsy families. This circular is the government's way of wanting and encouraging Gypsy people to provide for themselves, however private sites provision since the circular has been slow because both councils and Inspectors are refusing large numbers of applications and appeals. Planning permission being granted for private sites by local authorities and Inspectors on appeal is inadequate to meet the need and the policy is not working.

90% of all family applications are turned down and there is great difficulty in getting sites passed at this stage in the planning process.

Before coming to a decision the local authority must ask itself if it has done an assessment of need for Gypsy/ Travelling families. The amendments to the Homelessness Act 2002 must be taken into account and the fact that families are deemed homeless if they have not got a place to park their caravans which is legal.

The new 3 year strategy which has just been launched by the CRE, states:-

'lack of adequate accommodation' is consistently and increasingly identified as the most significant issue for Gypsies and Travellers in Britain today. It is inextricably linked to and impacts upon race relations, health and education experience and relations with local authorities.'

'Over the past 10 years, there has been a significant decline in public site provision. As a result it is estimated that over the next 5 years, there will be a need for between 3000 and 5500 additional residential pitches (permanent and transit).'

The CRE wants to see changes over the next 3 years to ensure equality.

'Measurable steps towards adequate provision of private and public, residential and transit sites as well as other suitable alternatives to unauthorised encampment.'

On the subject of education you may not be aware but Gypsy/ Traveller children are the group most at risk of failure in the education system there is a definite need for safe base family sites.

We hope that you look at this application with all this in mind and pass this much needed site.

Planning History

The gypsies moved onto the site in 2002 and submitted a retrospective planning application which was refused for the following reason:

'The siting of the caravans in the location proposed would result in vehicles emerging onto the classified highway on the inside of a bend where visibility is substandard to the detriment of highway safety. Therefore the site does not have adequate provision for vehicular access and will cause road safety problems. As such the site does not comply with the highways/ access requirements of Housing Policy 15 of the Local Plan and Housing Policy 8 of the Structure Plan.'

An Enforcement Notice was served and the Applicant appealed against both the refusal of planning permission and the Enforcement Notice. The appeals were dismissed, the Inspector considered that the main issues for determination were the effect of the development upon the character and appearance of its surroundings, its effect in terms of highway safety and convenience and whether there were any circumstances surrounding the appeal sufficient to outweigh any harm associated with the first two issues. The Inspector concluded that *'the site has some advantages and the harm to the character and appearance of the area would be balanced by other material considerations were that the only objection to the development. However the risk to traffic posed by the development because of the seriously inadequate visibility at the site access is sufficient to lead me, on balance, to the conclusion that permission for the development should be refused.'*

The Inspector varied the Enforcement Notice to require the Applicant to vacate the site by 10th June 2004.

Responses to Consultations

The County Highway Authority has no objections subject to conditions.

The Head of Environmental Health has no objections but comments that the Environment Agency would normally require that sewage is disposed of to a package treatment plant rather than a septic tank as proposed. The Environment Agency has been consulted.

Responses to Publicity

Three letters of representation have been received raising the following issues:

- The process should have ended following the planning inspectorate's decision and the only right of appeal is to the High Court.
- The Highway Consultant's report was only carried out for a three hour period at the quietest part of the day with the Consultant standing in the road with a speed gun, this has resulted in an unbalanced set of figures. Traffic is much heavier in the morning and evening with school and commuter traffic. Such a short period of monitoring is unrealistic on such an important safety issue.
- The Consultant was also on site between 5 and 6pm but has not submitted this traffic movement or speed information, this information would have shown a huge increase in both volume and speed.
- The photographs supplied were taken in January and the hedgerow and verge have grown since then. The reduction in height of the hedge has increased the severe impact of the

various caravans and buildings which remain unsightly in such a country setting which is outside the village envelope.

- Trade waste in the form of tree cuttings is being brought onto the site daily and no one knows what happens to it and how it is disposed of.
- The planning application form has not been completed fully.
- Concerns over whom will monitor the hedge height and condition and the layout of the site.
- A hedgerow replacement notice was served and requires the hedgerow at the front of the site to be replaced by 1st April 2005, this would prevent access to the site.
- If approved this planning application could set a precedent.
- Due to the opening in the hedge/ alterations to the access the road appears to be crumbling away which is unsafe.

Structure/Local Plan Policies

The relevant policies are:

Joint Structure Plan: General Development Strategy Policy 3 and Housing Policy 8.

Local Plan: Housing Policy 15

Emerging Local Plan: Policy H11

Circular 1/94

Planning Considerations

The main issues central to the determination of this application are:

- The previous history of the site and the highway safety implications of the current proposal
- The suitability of the site in meeting the criteria set out in the policies for gypsy sites.

Planning Assessment

The previous application for the site was refused on highway safety grounds as the access was considered to be substandard in terms of visibility and the County Highway Authority objected to the scheme. The Inspector dismissed the appeal on the grounds of the risk to traffic posed by the development due to the seriously inadequate visibility at the site access. The current application includes a report from a Highway Consultant who has carried out a speed survey at the site and established vehicle speeds, the submission also includes additional land and proposes an improved visibility splay to the east. Visibility of 2m x 90m to the east and 2m x 120m to the west can now be provided and the County Highway Authority has no objections to the revised scheme.

Importantly, the appeal Inspector assessed the issues of the effect of the development upon the character and appearance of its surroundings and other material circumstances surrounding the appeal. His conclusion was that any harm to the character and appearance of the area would be balanced by other material considerations were that the only objection to the development. The Inspector considered that as the site is screened from the village to the west by a hedge and trees and from easterly and northerly directions by higher land, that the impact of the development on the character and appearance of its surroundings was acceptable. The highway visibility issue led the Inspector to conclude, on balance, that permission should be refused. As stated above the Applicant has addressed this issue and provided improved visibility, the Highway Authority no longer object to the scheme.

The intentions of Circular 1/94 are stated to be, a) to provide that the planning system recognises the need for accommodation consistent with gypsies' nomadic lifestyle, b) to reflect the importance of the plan-led nature of the planning system in relation to gypsy site provision. Location criteria suggested at para. 14 are that sites be situated outside existing settlements, but within reasonable distance of local facilities and services such as shops, schools and hospitals. Sites on the outskirts of built-up areas may be appropriate provided that care is taken to avoid encroachment on the open countryside. Housing Policy 15 of the Local Plan, Housing Policy 8 of the Structure Plan and Policy H11 of the Emerging Local Plan lay down criteria for assessing planning applications for gypsy caravan sites. The Local Plan policies seek to ensure that sites are permitted where they are: in an area frequented by gypsies, satisfactorily located in relation to other development, acceptable in environmental terms, reasonably accessible to community services and facilities, capable of sympathetic assimilation into their surroundings and adequately provided for in terms of vehicular and pedestrian access. The Structure Plan policy has many of the same criteria but in addition requires that the provision of sites should relate to the scale of demand and in terms of highway requirements states that access should be good without causing traffic or road safety problems.

In terms of the development plan criteria, the site is in an area frequented by gypsies. No specific information has been submitted demonstrating that the need cannot be met on an existing site although various relevant reports/ strategies were submitted and are reported above, private Gypsy sites in appropriate locations are generally encouraged by government policy. The site is close to the village of Walton on Trent which although it has been determined not to be a sustainable settlement, is nevertheless of a reasonable size with several local services and facilities. The site is separated from nearby dwellings by a field width but is considered to be well related to the village and its facilities. As stated above the site is generally sympathetically assimilated into its surroundings although it is considered that further planting and landscaping could be carried out behind the revised visibility line to screen the site more effectively from the road. The creation of the revised visibility will not have a significant adverse impact on the appearance of the site.

In conclusion, the highway issues have now been addressed and the proposal is considered to comply with the relevant development plan criteria.

Recommendation

GRANT permission subject to the following conditions:

1. Within one month of the date of this decision the access shall be laid out in accordance with the application, surfaced in a solid, bound material (i.e. not loose chippings) for the first 5m into the site from the highway boundary and provided with 2m x 90m visibility sightlines to the east and 2m x 120m visibility sightlines to the west, the area forward of the sightlines being maintained in perpetuity free of any obstruction exceeding 1m in height relative to road level.

Reason: In the interests of highway safety.

2. Space shall be provided within the site curtilage for the parking and turning of three vehicles and maintained thereafter free of any impediment to its designated use.

Reason: In the interests of highway safety and to ensure that adequate parking provision exists within the site.

3. No development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development.

Reason: In the interests of the appearance of the area.

4. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

Reason: In the interests of the appearance of the area.

5. A scheme for the disposal of foul water shall be submitted to the Local Planning Authority, within one month of this decision. The scheme shall be carried out in conformity with the details which have been agreed within two months of the Council's letter of agreement.

Reason: In the interests of pollution control.

Informatives:

In connection with condition 3 above, the landscaping scheme shall include details of a native species hedge to be planted behind the revised visibility line.

To contact the Area Engineer South, Trent Valley Area, Derbyshire County Council, Director of Environmental Services, County Hall, Matlock, Derbyshire (Tel. 01629 580000 ext 7595) at least six weeks before the commencement date of the proposed works in order to arrange the necessary supervision of works on the highway crossing.

The proposed development lies within a coal mining area. In the circumstances Applicants should take account of any coal mining related hazards to stability in their proposals. Developers must also seek permission from the Authority before undertaking any operations that involves entry into any coal or mines of coal, including coal mine shafts and adits and the implementation of site investigations or other works. Property specific summary information on any past, current and proposed surface and underground coal mining activity to affect the development can be obtained from the Coal Authority. The Coal Authority Mining Reports Service can be contacted on 0845 762 6848 or at www.coal.gov.uk.

22/06/2004

Item 1.2**Reg. No.** 92004 0538**Applicant:**

T Mobile (UK) Ltd
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Hertfordshire
AL10 9BW

Agent:

Stappard Howes Associates
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Univ. Of Warwick Science Park
Sir William Lyons Road
Coventry
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Proposal: The erection of a 20 metre high monopole, 6 antennae, 2 transmission dishes, 1 equipment cabin and ancillary development at Land At The Depot Doles Lane Findern Derby

Ward: Willington/Findern

Valid Date: 29/04/2004

Site Description

The site comprises part of the former 2WW munitions store that is used by the landowner for agricultural purposes. The site is some 160 metres from the nearest dwelling on Doles Lane; other dwellings are a minimum of 190 metres, most are over 200 metres from the site. Buildings and trees surround the site; some of the trees are about 15.5 metres tall. The bunkers are about 4.5 metres high. There is an existing hard surfaced access to the site from Doles Lane.

Proposal

The proposal is as described above, but has had its siting amended to move it about 10 metres closer to the nearest dwelling (160 metres compared to 170 metres in the originally submitted scheme).

Applicants' supporting information

The application is accompanied by a signed declaration that the site and equipment are in full compliance with the ICNIRP public exposure guidelines. A calculation has been submitted to show that the level of non-ionising radiation at the nearest dwelling would be some 940 times below the level where the public would be at some risk from such radiation.

The mast is required to provide 2nd and 3rd generation mobile telephone services to the Findern area. The cells for these services are much smaller than for the first generation phone, hence the need to provide additional sites. A statement of government advice when considering the proposals for telecommunications development also accompanies the application.

The application also states that alternative sites have been examined in the locality but that the proposed site is the one that offers reasonable coverage whilst the site provides substantial screening to the dwellings that are closest to the site. The site is therefore proposed because it minimises the visual impact of the development without compromising the technical efficiency of the system.

The alternatives that were examined were electricity pylons east of Findern (no electricity supply available) All Saints Church and Wood Grow Horticulture (did not want to accommodate the equipment) Findern Garage (insufficient screening and was considered to be too close to housing) and land west of Findern was not available to the operators as the land is required for housing development by its owners.

Planning History

There is no planning history regarding the provision of a mast at the site but there have been two recent applications on this part of the farm for the change of use of an existing building to holiday accommodation and the provision of a fishing lake. Both were refused permission on highway grounds and the last application is the subject of an appeal to the planning inspectorate.

Responses to Consultations

Findern Parish Council objects to the development for the following reasons:

- a) There has been no prior consultation with the Parish Council as envisaged in Government advice, this is a serious omission.
- b) The address is spelt incorrectly both on the form and the application drawings representing a somewhat fundamental error.
- c) The size and appearance of the building is not in keeping with its surroundings
- d) The external alterations are not in character with the existing buildings.
- e) There would be an increase in noise and disturbance from the extra traffic.
- f) The access would be from a blind bend and is unsafe for all road users.

Responses to Publicity

A petition signed by 22 people has been received and the objections set out in it are as follows:

- a) The mast is inappropriate in its surroundings, it would be visible to people approaching the village. The rural nature of the village should be preserved and not destroyed by pylons, mast and large warehousing.
- b) The properties adjoining the site will be overlooked and there would be a loss of privacy. There is an obligation on the state to protect the rights of people to enjoy their homes free from the fear the developments would adversely affect their wellbeing. (Article 8 of the European Convention of Human Rights)
- c) The access is not suitable and could present a road safety hazard.
- d) There would be both noise and disturbance from extra traffic but also from the structure and associated development.
- e) There is no known need for the structure as no one has difficulty obtaining a signal and Findern is not a black spot to other operators.
- f) No one can state that there is no health risk from mobile phone masts. The Stewart Report in 2000 advocated a precautionary approach to exposure to RF radiation even though this would make provision of masts more expensive.

- g) The petition concludes by stating that its signatories consider that the proposal would have a materially harmful effect on the amenities and safety of the village and its residents and the request is that the Committee refuse the application.

Seventeen other letters of objection have been received that make the following additional objections to those set out above or are made by the Parish Council:

- a) The mast is close to gardens on Wallfields Close where a pylon already exists.
- b) There are other suitable locations such as pylons where the equipment could be sited.
- c) There are other masts in the area and there is surely no need for another one.
- d) Another site further away from children and all residents should be considered.
- e) The London Borough of Waltham Forest has a list of criteria that should be applied in the case that masts are proposed. This includes an exclusion zone around masts, masts being banned from areas where people are stationary in their homes, use of existing structures and high ground. The Willington Power Station site and other high ground should have been considered.
- f) The proposal is only 100 yards away from a dwelling and business use on Bakeacre Lane, and views from windows would be marred indeed ruined.
- g) The owners of the business have to be aware of the health threats to visitors' health as well as that threat to animals kept on the farm.
- h) The site was a wartime depot and it is of local historic interest and that there may be ammunition remaining that could be disturbed.
- i) The publicity for the application was inadequate, individual letters should have been sent to residents. Some people only happened on the site notices by accident.
- j) There would be a loss in the value of property. Up to 25% of the value of an £850,000 property – South Derbyshire District council would be responsible for recompense for the financial loss.

Structure/Local Plan Policies

The relevant policies are:

Joint Structure Plan: None

Local Plan: Community Facilities Policy 4

Emerging Local Plan: Policy C7

Planning Considerations

The main issues central to the determination of this application are:

- The Development Plan.
- The availability of alternative structures
- The location and design of the proposal and its proposed location.
- Material objections raised.

Planning Assessment

The Development Plan makes provision for the expansion of networks provided it is done in a planned way that maximises the opportunities for mast sharing that reduces the need for additional mast sites.

The latest generation of wireless telecommunication requires much smaller cells than was the case previously. This means more masts to serve the same area previously served by one mast. In terms of the objectors' arguments about the ability to receive signals, then that may be the case. The operators would argue that this point is irrelevant as the proposal is to serve the emerging technology.

The next criterion is that the location and design of the proposal are the least visually intrusive of the available options. Whilst there is a mast site on the opposite side of the A38, this is a significant distance from the area the mast is intended to serve. The same could be said for locating a mast at the Willington Power Station.

The proposed site is on what could be described as brown land, there are a significant number of trees available that would screen the majority of the mast from most public vantage points albeit that the top of the mast would always be visible. This is inevitable given the need for a direct line of sight to the masthead.

Objectors have again raised the issues of the actual impact of electromagnetic radiation on health and the perception of such an impact having an adverse impact on the their residential amenity of the area. Government advice is quite clear on the health issue in that the matter is not one that can influence a decision on the planning issues surrounding the determination of a planning application for a mast.

The perception of risk affecting the residential amenity was explored at appeal in respect of a proposed mast at Coton Park. The inspector's conclusions on the issue of perceived risk as summarised in the Committee report on the appeal are set out below:

'The issue of the perceived danger to health was considered carefully by the Inspector. He noted the distances between the proposed structure and the nearest dwellings. He also examined the advice about health issues contained in Government advice and the conclusions of the Stewart report. He also had regard to appeal decisions where the perception of harm to health had been accepted as a material planning consideration.

'He concluded that an insensitive siting of a mast might give rise to anxiety to sections of the community even if that fear is irrational. However, he did not consider that the siting of the mast in this location was insensitive. The emissions from the mast fall well within the guidelines of the ICNIRP (International Commission on Non-Ionising Radiation Protection) and he found that little weight could be given to the health or local concerns about the perception of risk because of the above advice and the design and siting of the installation.'

That mast was at a greater distance from the nearest house as was the child's' play area. The principles however, are the same. The design is not unacceptable and the information provided by the applicant indicates that the likely external levels of electromagnetic radiation are 900 times below the level where the ICNIRP set the level where there may be a risk to human health. The levels within buildings are even lower.

The conclusion on this issue is that the health and perceived health risk are not reasons for refusal that could be sustained at appeal.

Overall, the proposal is considered to be in accord with the above Development Plan policies.

None of the other matters raised through the publicity and consultation process amount to material considerations outweighing the assessment of the main issues set out above.

Recommendation

GRANT permission subject to the following conditions:

1. The development permitted shall be begun before the expiration of five years from the date of this permission.

Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990.

2. In the event that the mast becomes obsolete or is no longer required for the stated purpose, it and its associated structures and fences shall be removed from the land. The land shall then be restored in accordance with a scheme of restoration that shall have received the prior written approval of the Local Planning Authority.

In the interests of the visual amenity of the area,

3. Before the development is commenced, the precise colour of the mast shall be agreed in writing with the Local Planning Authority, the approved colour shall then be used in the construction of the mast.

In the interests of minimising the visual impact of the proposal.

22/06/2004

Item 1.3**Reg. No.** 92004 0567**Applicant:**

CFord & R Lewis
 90 92, Weston Road
 Aston-on-Trent
 Derby
 DE72 2BA

Agent:

C Ford
 90 Weston Road
 Aston-on-Trent
 Derby
 DE72 2BA

Proposal: Outline application (all matters to be reserved) for the erection of a residential development at 90 92 Weston Road Aston-on-Trent Derby

Ward: Aston

Valid Date: 07/05/2004

Site Description

The site comprises the curtilages of 90 and 92 Weston Road. Both have large L shaped gardens that wrap around the rear garden boundaries of 82 – 88 and 94 – 98 Weston Road. The land was once used as a market garden but has been used as domestic gardens for many years. The site lies within the boundary of the village as defined in the Local Plan.

Proposal

The application is in outline with all matters reserved. Illustrative drawings show two potential access layouts. Each would involve the demolition of one of the existing dwellings on the site.

Site History

Separate applications to develop 90 and 92 were withdrawn earlier this year (9/2003/0403/O & 9/2003/0456/O). The Highway Authority had objected to two separate accesses serving several dwellings each.

Responses to Consultations

The Parish Council objects for the following reasons:

- a) Weston Road already has heavy traffic, making it difficult to cross in safety and the access would be close to a hazardous bend.
- b) Families walking children to and from school and playgroup constantly use the road. The extra danger would be unacceptable.
- c) It is unclear whether there would be footway provision to the new access. If not this would be another safety concern.

- d) There would be loss of privacy and security to neighbours.
- e) It is unclear how many trees would be lost and this is a matter of importance.
- f) There is insufficient detail.

The Highway Authority considers the proposal acceptable from a highway aspect, subject to conditions.

Responses to Publicity

10 letters have been received objecting as follows:

- a) The site is close to a sharp bend where high traffic speeds cause highway dangers. The proposal would increase the risk of accident.
- b) There would be light pollution to neighbours from cars leaving the site and from street lighting.
- c) There has been much development of large gardens in the village with resultant loss of trees and wildlife. There has already been tree felling at the site.
- d) The site is not brownfield because it used to be a market garden.
- e) The number of houses to be built is not known.
- f) An existing footpath would be affected. (Comment: This is the footway along Weston Road and not a definitive right of way).
- g) There would be a detrimental impact on the amenity and privacy of surrounding neighbours.
- h) The village has been overdeveloped and this green space should be protected.
- i) The development would not be in keeping with the existing built form.
- j) There would be loss of wildlife habitat.
- k) There would be easy access to neighbouring properties for intruders.
- l) There would be increased noise.
- m) There would be increased risk of flooding by disruption to drainage from the adjacent fields.
- n) There is inadequate space in local schools.
- o) Other local facilities are overstretched.
- p) There would be no benefit to the village.
- q) There could be increased on-street parking in Weston Road.
- r) There could be a threat to a preserved Ash tree in an adjacent garden.
- s) There would be a precedent for development in the adjoining field.

Structure/Local Plan Policies

The relevant policies are:

Joint Structure Plan: General Development Strategy Policies 1 & 3 and Housing Policy 5.

Local Plan: Housing Policy 5.

Emerging Local Plan: Policies H1 C3 & C5.

Planning Considerations

The main issues central to the determination of this application are:

- The principle.
- Residential amenity.
- Impact on the character of the area.

- Highway safety.
- Trees
- Drainage.
- Health care and education provision.

Planning Assessment

The site lies within the boundary of a serviced settlement as defined in the emerging local plan. There is no evidence that the use of the site as domestic garden is unlawful. Therefore the site would fall within the definition of brownfield land as set out in PPG3. The principle of the proposal is therefore in accord with sustainable development objectives.

The site is capable of being developed in accordance with supplementary planning guidance. Therefore there would be no demonstrable harm to the living conditions of the occupiers of adjoining residential property.

With development of mixed character on three sides of the site the proposal would not be out of keeping with existing pattern of development as a matter of principle. If permission is granted there would be a requirement for a developer to provide detailed design and layout at reserved matters stage. The site currently makes no identifiable contribution to the character of the street scene, nor would development disrupt the grain of the settlement.

On the advice of the Highway Authority there would be no demonstrable harm to highway safety interests.

The majority of the trees on the site do not warrant the making of a Tree Preservation Order. The mature Ash close to the boundary of the site with No 23 Chellaston Lane (subject to a TPO) would be taken into account at reserved matters stage.

It is normal practice for surface water drainage provision to be neutral in its impact on adjoining land. The Highway Authority seeks a condition to secure a positive means of highway surface water drainage.

With regard to education and health care facilities it is unlikely that the thresholds of 5-10 dwellings would be exceeded without implications for the character of the area. An appropriate condition would safeguard the position of the Local Planning Authority.

None of the other matters raised through the publicity and consultation process amount to material considerations outweighing the assessment of the main issues set out above.

Recommendation

GRANT permission subject to the following conditions:

1. (a) Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.
(b) The development hereby permitted shall be begun either before the expiration of five years from the date of this permission or before the expiration of two years from the date of approval of the last of the reserved matters to be approved whichever is the later.

Reason: To conform with Section 92(2) of the Town and Country Planning Act 1990.

2. Approval of the details of the siting, design and external appearance of the building(s) the means of access thereto and the landscaping and means of enclosure of the site shall be obtained from the Local Planning Authority in writing before any development is commenced.

Reason: The application is expressed to be in outline only and the Local Planning Authority has to ensure that the details are satisfactory.

3. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

Reason: In the interests of the appearance of the area.

4. Incidental open spaces, excluding areas of incidental landscaping and highway verges, shall be provided to a standard of 0.8 hectare per 1,000 population on the following basis:

4 bed dwelling - 3.5 persons

3 bed dwelling - 3 persons

2 bed dwelling - 2 persons

1 bed dwelling - 1 person.

Reason: To ensure an adequate standard of provision, in the interests of amenity.

5. There shall be no more than 10 new dwellings erected on the application site.

Reason: 10 new dwellings would result in a net gain of 9 on the site. Any more than this may generate a requirement to contribute towards health care and education facilities and the Local Planning Authority wishes to retain the option to consider the necessity for these in the event of a denser development being proposed.

6. No development shall be commenced until visibility splays have been provided extending from a point 2.4 m back from the carriageway edge along the centre line of the junction, to the extremities of the site frontage abutting the highway in each direction. The land in advance of the splays shall be permanently cleared of all obstructions above ground level. The land shall be constructed as footway prior to the first occupation of any dwelling on the site.

Reason: In the interests of highway safety.

7. No development shall be commenced, excluding condition 1 above, until space has been provided within the curtilage for site accommodation, materials storage, parking and manoeuvring for staff and visitors' vehicles, and lorry parking, loading/unloading and manoeuvring, in accordance with a scheme first submitted to and approved by the Local Planning Authority. The approved facilities shall be maintained available throughout the construction period.

Reason: In the interests of highway safety.

8. The proposed junction shall represent the sole means of access between the site and Weston Road. Subsequent design details for the development shall include a means of access from the proposed Access Road and parking/manoeuvring space in accordance with the dwelling to be retained.

Reason: In the interests of highway safety.

9. The internal layout of the Access Road shall accord with the County Council's Roads in Housing policy document.

Reason: In the interests of highway safety.

10. Unless otherwise agreed the disposal of highway surface water drainage shall be via a positive, gravity-fed system to an approved outfall (public sewer, highway drain or water course sanctioned by the Water Company, Highway Authority or Environment Agency respectively).

Reason: In the interests of highway safety.

22/06/2004

Item 1.4**Reg. No.** 92004 0609**Applicant:**

Malcolm Smith
 16 Cedar Grove
 Linton
 Swadlincote
 Derbyshire
 DE12 6QQ

Agent:

Malcolm Smith
 16 Cedar Grove
 Linton
 Swadlincote
 Derbyshire
 DE126QQ

Proposal: The sale of Koi Carp fish from the dwelling at 16 Cedar Grove Linton Swadlincote

Ward: Linton

Valid Date: 18/05/2004

This application has been brought to the attention of the Committee because the Applicant is an employee of the Council

Site Description

The site is a semi-detached dwelling at the end of a cul de sac in a residential area. The dwelling has a large rear and side garden area and an area of hardstanding to the front.

Proposal

The application is for a change of use to allow sales of koi carp from the dwelling on a small scale at weekends along with Internet sales and delivery via a courier service.

Applicants' supporting information

The Applicant has submitted various health and safety risk assessments, letters from the occupiers of neighbouring dwellings raising no objections and a letter. The letter states that the business would involve selling a few excess koi carp from the house. It would not be a large number with maybe 2 or 3 people per weekend. The fish will also be offered for sale over the Internet and also a courier service will be offered to deliver the fish to customers. If people wanted to come to the house there is ample off road parking available with provision for 6 cars.

Responses to Consultations

The County Highway Authority has no objections in principle but suggest a temporary consent to assess the impact.

Responses to Publicity

None received.

Structure/Local Plan Policies

There are no policies which are directly relevant to this proposal.

Planning Considerations

The main issues central to the determination of this application are impact on the occupiers of neighbouring dwellings in terms of disturbance through visitors and associated traffic movements.

Planning Assessment

The application is for limited sales of koi carp from the dwelling. Direct sales to customers are to be at weekends only and the Applicant has stated that it is envisaged that there will only be two to three customers per weekend. It is considered that if the planning permission were subject to conditions controlling operating hours and ensuring that the use is on an appointments only basis that there should be no significant adverse impact on the amenity of the occupiers of any neighbouring dwellings. The County Highway Authority has suggested a temporary consent and this would enable further assessment of the use to ensure the scale of the operation is not such that it causes disturbance to neighbours.

Recommendation

GRANT permission subject to the following conditions:

1. This permission shall be for a limited period only, expiring on 30th June 2005 on or before which date the use shall be discontinued and the site reinstated to the satisfaction of the Local Planning Authority unless, prior to that date, an application has been made and permission has been granted for an extended period.
2. The use hereby permitted shall not be open to customers outside the following times: 10am to 5pm on Saturdays and 11am to 4pm on Sundays.

Reason: To ensure that the use does not prejudice the enjoyment by neighbouring occupiers of their properties.

3. The use shall operate on an appointments basis only and an appointments diary shall be kept and maintained at the premises for occasional inspection by the Local Planning Authority.

Reason: To ensure that the use does not prejudice the enjoyment by neighbouring occupiers of their properties.

22/06/2004

Item 2.1**Reg. No.** 92004 0455**Applicant:**

Mr Allan Louis Janssens
 38 Houeton Close
 Shelton Lock
 Derby
 DE24 9QH

Agent:

Mr Allan Louis Janssens
 38 Houeton Close
 Shelton Lock
 Derby
 DE24 9QH

Proposal: The siting of a mobile home in connection with the use as a home and pony rescue centre at Land At Miry Lane Foston Derby

Ward: North West

Valid Date: 19/04/2004

Site Description

The site is an area of flat land enclosed by hedges to the north of the A50 off Miry Lane. This part of Miry Lane was closed off when the A50 was constructed. The land in the control of the applicant is some 1.7 hectares.

Proposal

The mobile home is sited on land between an authorised stable block and the hedge on the side of Miry Lane. It has a green finish to the walls and the roof is painted black.

Applicants' supporting information

The application states that the structure is required on the site to accommodate a person who is involved with an operation called Homeward Bound Horse & Pony Rescue Centre (Hospital Wing). The form refers to landscaping but no details have been submitted. The plan also refers to additional land around the site that the applicant states he hopes to purchase in the future. (Photographs of the mobile home are available for inspection on the file).

Planning History

Permission for the stable block was granted in 2003.

Responses to Consultations

Foston and Scropton Parish Council strongly objects to the development for the following reasons:

- a) The ground available to the operation is not sufficient to support it
- b) There is no provision for the disposal of foul waste from the mobile home
- c) The land is in a terrible state.
- d) The approach to the site is via a narrow unmade road.
- e) There is no mention of the maintenance of the public footpath that passes through the site.
- f) The development is an eyesore that reflects badly on the District and Foston
(Photographs provided by the Parish Council are available for inspection on the file).

The Environmental Health Manager has no objection to the proposal.

Responses to Publicity

Four letters have been received objecting to the development for the following reasons. One of the letters arises from the applicant serving Notice on another landowner who has an interest in the land.

- a) There was no input whatsoever from the other landowner in the decision to site the mobile home on the land.
- b) The land has been ruined by the use; the removal of the charity from the land is required as is the removal of the mobile home. The Council's assistance in this matter is requested. The owner would like to be kept informed of the Committee's decision.
- c) The waste material from the van and use is being discharged to a ditch that is not acceptable.
- d) The development results in a prominent intrusion into the countryside to the detriment of the appearance of the area. It looks like a gypsy site from the A50
- e) The lane is unsuited to the amount of traffic using it.
- f) The whole site can be seen from the roads and portrays a bad image of the district for people travelling through.
- g) The structure should be removed as soon as possible
- h) It is supposed that no action will be taken by the Council to remove the structure, so much for a Council that prides itself for protecting the countryside. It should be removed as soon as possible.

Structure/Local Plan Policies

The relevant policies are:

Joint Structure Plan: General Development Strategy Policy 4 Housing Policy 6

Local Plan: Environment Policy 1, Housing Policy 8

Emerging Local Plan: Policies ENV 7 & 21.

Planning Considerations

The main issues central to the determination of this application are:

- The Development Plan.
- Other material considerations that may dictate that the proposal be determined other than in accord with the plan.

Planning Assessment

The Development Plan requires that if permission is to be granted for development then a location in the countryside should be essential and the dwelling should be necessary for the operation of an established rural enterprise. If permitted development should be so designed and located that its impact on the countryside is minimised.

The caravan was located on the site before permission was sought. The operation is a charity so the usual provisions for the need for the dwelling have to be carefully considered, as there is unlikely to be a financial test that could be applied to establish if the use is likely to be viable.

The operation of a charity for horses would need to be undertaken in an area where there is room for the horses to exercise. The area available to the use is 1.7 hectare (4.2 acres). The amount of land would constrain the number of horses that could be kept on the land. It is understood that horses have been removed from the land although some have now been returned to the site. Although the applicant has referred to other land he hopes to purchase, the land is not in his control and cannot form part of the consideration of this application.

The need for a dwelling on the holding is not justified in this case on the basis that it has not been established that it is necessary for the operation of the charity. Nor is the scale of the use thought to justify a dwelling. If there is a justification to be made, then this could be considered at appeal or through the medium of a fresh application.

The site is prominent, the landscaping required under the permission for the animal shelter have not been submitted and in turn, not planted. The placing of the mobile home on the site has resulted in a prominent intrusion into the countryside that would outweigh any operational need for a dwelling to supervise the site. In these circumstances the recommendation below is considered appropriate.

The comments of the other landowner are noted but the determination of the application must fall within constraints of Development Plan policy rather than the private interests of the landowners. This is a civil matter between the two parties.

The mobile home is on the site without the benefit of planning permission and the necessity for implementing enforcement action is necessary. It is considered appropriate to take action to seek the removal of the mobile home from the land for the reason set out in the recommendation.

None of the other matters raised through the publicity and consultation process amount to material considerations outweighing the assessment of the main issues set out above.

Recommendation

1. REFUSE planning permission for the following reason:

The site lies in the open countryside where the policies of the Joint Derbyshire Structure Plan General Development Strategy Policy 4 and Housing Policy 6, the Adopted South Derbyshire Local Plan Environment Policy 1 and Housing Policy 8 and the emerging replacement South Derbyshire Local Plan policies ENV 7 & 21 require that for development to be acceptable in the countryside it must be essential in the countryside and necessary to the operation of an established rural business. If permitted the development must be so designed and located such that its impact is minimised.

The application is not supported by any information that would confirm that a dwelling is necessary to the operation of the site nor that a dwelling in the countryside is essential. In addition the site occupies a prominent location in the countryside where there is a prominent intrusion into the countryside to the detriment of the rural character of the area. This is contrary to the above Development Plan policies.

2. TO AUTHORISE the Planning Services Manager and the Legal and Member Services Manager to serve enforcement notice on the owners of the site to remove the mobile home from the land, restore the land to pasture and remove such foundations and services that have been installed to facilitate the occupation of the mobile home as a dwelling. A reasonable period for compliance would be 3 months from the date the Notice comes into effect. In the event that the Notice is not complied with, officers are **AUTHORISED** to prosecute the owners to secure compliance with the terms of the enforcement notice.