

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	ML	11/10/2019
Planning Development Manager authorisation:	TF	14/10/2019
Admin checks / despatch completed	CC	15/10/2019
Technician Final Checks/ Scanned / LC Notified / UU Emails:	CD	15/10/2019

Application: 18/02003/FUL **Town / Parish:** Weeley Parish Council

Applicant: Mr T Buckley

Address: Bucklands Gutteridge Hall Lane Weeley

Development: Variation of Condition 1 of application 17/00507/FUL.

1. Town / Parish Council

Weeley Parish Council

Weeley Parish Council objects to this application. The site is outside the development boundary and this application would set a precedent for development in what is a rural location.

It is to be hoped that the planning authority remain consistent in their approach; the 2017 decision notice clearly states that

"Permanent permission would not be granted in this location and the temporary consent has only been granted due to the personal circumstances advanced by the applicant"

There can be no justifiable reason for granting this application.

2. Consultation Responses

Environmental Protection

I have reviewed the application and have no comments to make.

ECC Highways Dept

The Highway Authority does not object to the proposals as submitted.

3. Planning History

17/00507/FUL	Change of use to one gypsy pitch comprising one mobile home, one touring caravan, one day room and associated works.	Approved	10.08.2017
17/01371/DISCON	Discharge of condition 6 (landscaping scheme and refuse storage) of planning permission 17/00507/FUL.	Approved	23.08.2017
18/00313/FUL	Proposed 2 No. stables and tack room, and change of use of land from agricultural to paddock.	Approved	25.05.2018

4. Relevant Policies / Government Guidance

NPPF National Planning Policy Framework February 2019

National Planning Practice Guidance

Tendring District Local Plan 2007

QL1 Spatial Strategy

QL9 Design of New Development

QL10 Designing New Development to Meet Functional Needs

QL11 Environmental Impacts and Compatibility of Uses

HG22 Gypsy Caravan Sites

EN1 Landscape Character

TR1A Development Affecting Highways

TR7 Vehicle Parking at New Development

Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017)

SP1 Presumption in Favour of Sustainable Development

SP2 Spatial Strategy for North Essex

SP6 Place Shaping Principles

SPL1 Managing Growth

SPL3 Sustainable Design

LP9 Traveller Sites

PPL3 The Rural Landscape

CP1 Sustainable Transport and Accessibility

Status of the Local Plan

The 'development plan' for Tendring is the 2007 'adopted' Local Plan. Paragraph 213 of the NPPF (2019) allows local planning authorities to give due weight to adopted albeit outdated policies according to their degree of consistency with the policies in the NPPF. Paragraph 48 of the NPPF also allows weight to be given to policies in emerging plans according to their stage of preparation, the extent to which there are unresolved objections to relevant policies and the degree of consistency with national policy. As of 16th June 2017, the emerging Local Plan for Tendring is the Tendring District Local Plan 2013-2033 and Beyond Publication Draft.

Section 1 of the Local Plan (which sets out the strategy for growth across North Essex including Tendring, Colchester and Braintree) was examined in January and May 2018 and the Inspector's initial findings were published in June 2018. They raise concerns, very specifically, about the three 'Garden Communities' proposed in north Essex along the A120 designed to deliver longer-term

sustainable growth in the latter half of the plan period and beyond 2033. Further work is required to address the Inspector's concerns and the North Essex Authorities are considering how best to proceed.

With more work required to demonstrate the soundness of the Local Plan, its policies cannot yet carry the full weight of adopted policy, however they can carry some weight in the determination of planning applications. The examination of Section 2 of the Local Plan will progress once matters in relation to Section 1 have been resolved. Where emerging policies are particularly relevant to a planning application and can be given some weight in line with the principles set out in paragraph 48 of the NPPF, they will be considered and, where appropriate, referred to in decision notices. In general terms however, more weight will be given to policies in the NPPF and the adopted Local Plan.

In relation to housing supply:

The NPPF requires Councils to boost significantly the supply of housing to meet objectively assessed future housing needs in full. In any one year, Councils must be able to identify five years' worth of deliverable housing land against their projected housing requirements (plus an appropriate buffer to ensure choice and competition in the market for land, account for any fluctuations in the market or to improve the prospect of achieving the planned supply). If this is not possible, or housing delivery over the previous three years has been substantially below (less than 75%) the housing requirement, paragraph 11 d) of the NPPF requires applications for housing development needing to be assessed on their merits, whether sites are allocated for development in the Local Plan or not. At the time of this decision, the supply of deliverable housing sites that the Council can demonstrate falls below 5 years and so the NPPF says that planning permission should be granted for development unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework as a whole. Determining planning applications therefore entails weighing up the various material considerations. The housing land supply shortfall is relatively modest when calculated using the standard method prescribed by the NPPF. In addition, the actual need for housing was found to be much less than the figure produced by the standard method when tested at the recent Examination In Public of the Local plan. Therefore, the justification for reducing the weight attributed to Local Plan policies is reduced as is the weight to be given to the delivery of new housing to help with the deficit.

5. Officer Appraisal (including Site Description and Proposal)

Site Description

The site comprises a small parcel of land on the southern side of Gutteridge Hall Lane and is in use as a single travellers pitch. To the rear of the pitch is a grazing area and stables used by the occupier of the travellers pitch.

The site is modest in size with a frontage of 40m and depth of 45m. It has a substantial hedge to the road/ditch, with a vehicular access at the eastern end of the site. The applicant has erected a fencing along with some hedge planting and other shrubs which screens the site in views along the lane.

There are residential properties to the west, and a single dwelling on the north side of Gutteridge Hall Lane, with another well-established traveller site further to the east on Gutteridge Hall Lane - allowed on Appeal - which is closer to Weeley village and railway station.

The surrounding land is in agricultural use, mostly grazing. The site is not subject to any other designations and is within Flood Zone 1.

Proposal

This application seeks permission to remove condition 1 of planning permission 17/00507/FUL to allow for permanent planning permission for use as a 1 no. pitch Gypsy / Traveller site for the applicant and his family.

Appraisal

Policy Considerations

Saved Policy HG22 concerns the siting of traveller pitches. As part of the temporary permission the officer's report confirmed that the site meets the majority of the criteria stated apart from the section relating to connection to mains services and the accessibility to nearby facilities.

In respect of these points firstly it is noted that the site is situated approximately 650m from the nearest bus stop and in close proximity to the nearby school and facilities within Weeley. It is also evident that a train station is located within walking distance of the site.

Consequently, the site is considered to be in a sustainable location with 'reasonable access to key facilities' as stated in both the saved policy HG22 and emerging policy LP9.

In regard to the issue relating to connection to mains services, it is clear that this is not feasible and as part of the temporary permission details of a treatment plant were agreed and approved.

The officer concludes within the previous temporary permission report that the site is situated in a 'reasonably sustainable location and the development meets the 3 arms of sustainable development as noted within the NPPF'. As stated above the location of the site is such that it allows for the occupants to have access to nearby facilities and services and due to the landscaping and screening installed the visual impact of the pitch upon the rural area is not significantly harmful.

Having regard to the Government's Planning Policy for Traveller's Sites (PPTS) document the following is concluded;

Need

The most recent GTAA (Tending Gypsy and Traveller Accommodation Assessment) identifies unmet need from 2017-2033 of 2 pitches for 'known' travellers, 2 pitches for 'unknown' travellers and 3 pitches for those who do not meet the planning definition.

The applicant argues that due to the approach and methodology of the assessment the need identified is considered to represent an underestimate of the need. It is also noted that the applicant and his family were not considered as a 'known' need within the calculations.

There is clearly an evident need for a permanent pitch in this location given that the children attend the local school. Further it must be noted that there are current applications under consideration to change the use of several traveller's pitches throughout the district to private housing, thereby potentially losing these current pitches.

That aside, whether the Council has met their need or not is not a barrier to the grant of planning permission. Paragraph 11 of PPTS states that where there is no identified need, criteria-based policies should be included to provide a basis for decisions in case applications which nevertheless come forward.

Alternative Sites

The applicant has reviewed other pitches throughout the district and it is evident that they are private pitches not subject to any legal agreements which would enable the Council to compel the site owners to accept residents of the Council's choosing. Further case law (Brown Case) has been provided which states 'in seeking to determine the availability of alternative sites for residential gypsy use, there is no requirement in planning policy, or case law, for an applicant to prove that no other sites are available or that particular needs could not be met from another site. Indeed such a level of proof would be practically impossible'.

A further issue to consider in this respect is the cultural differences between traveller groups. Several of the alternative sites are owned by Irish Travellers whom, due to cultural differences, do not live in tandem with Romany Travellers.

Therefore matters turn to the relevant personal circumstances of the applicant and his family.

Personal Circumstances/Best Interests of the Children

The applicant's children attend the nearby St Andrews School and Pre-school. Therefore as a matter of law, the Council must consider the best interests of the children as a primary consideration.

A recent case has been referred to by the applicant (Guildford Borough Council v Cooper & Ors), here it was held that: 'the children have to take centre stage...the Council should seek to take that course which causes least harm to the children'.

The same applies in this case. The children are well settled in school, and it is in their best interests for this to continue with the certainty of a permanent secure base. This is a consideration that as a matter of law should be afforded significant weight.

The requirement comes from Article 3(1) of the UN Convention on the Rights of the Child (UNCRC) and is considered by the European Court of Human Rights to be part and parcel of the consideration of Article 8 rights in any case where a decision of a public body will affect children. In the UK law this translates into the statutory duty in Section 11 Children Act 2004.

It is also clear that as a matter of law, the Public Sector Equality Duty must be applied rigorously by the Council to the facts of this application.

Legal Obligations - RAMS

Following Natural England's recent advice and the introduction of Zones of Influences around all European Designated Sites (i.e. Ramsar, Special Protection Areas and Special Area of Conservation). Within Zones of Influences (which the site falls within) Natural England are requesting financial contributions to mitigate against any recreational impact from new dwellings.

Legal advice has been sought in relation to the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) which supports the view that Tendring District Council can seek financial contributions in accordance with the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). A Habitat Regulations Assessment has therefore been undertaken to confirm that the mitigation will be the RAMS level contribution as recommended by Natural England. It is therefore considered that this contribution is sufficient to mitigate against any adverse impact the proposal may have on European Designated Sites. The contribution is secured by legal agreement. There is therefore certainty that the development would not adversely affect the integrity of European Designated Sites in accordance with policies EN6 and EN11a of the Saved Tendring District Local Plan 2007, Policy PPL4 of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft and Regulation 63 of the Conservation of Habitat and Species Regulations 2017.

Conclusions

The site is not within exposed open countryside, is well screened by existing vegetation and is in close proximity to local services. The site is also well maintained, kept tidy and the occupants are respectful to local residents.

The personal circumstances of the applicants (i.e. that they have two young children in the adjacent school) and the lack of firm weight that can be applied to the emerging policy (which states we have met our quota of travellers pitches) means that, on balance, these points hold strong weight in favour of granting a permanent pitch in this location.

Other Considerations

Essex County Council Highways have no objections to this application.

Weeley Parish Council objects to this application. The site is outside the development boundary and this application would set a precedent for development in what is a rural location. It is to be hoped that the planning authority remain consistent in their approach; the 2017 decision notice clearly states that; 'permanent permission would not be granted in this location and the temporary consent has only been granted due to the personal circumstances advanced by the applicant'. There can be no justifiable reason for granting this application.

1 letter of objection has been received outlining the following points;

- temporary permission based solely on the educational needs of the children (this is still the case, both children still attend the local school/pre-school and under case law, the PSED and Human Rights are entitled to a secure permanent base for educational purposes).
- harm to the countryside/poor sustainability credentials (the site is well screened by landscaping and roadside hedges and does not adversely harm the rural character of the lane or the wider countryside, furthermore the site is situated in a sustainable location in close proximity to the local school and public transport links).
- additional traffic (ECC-Highways do not object and level of movements associated with a single pitch is not considered to be excessive. Further conditions restricting commercial vehicles on the site will be re-applied).
- right of access through the site to land beyond (the land to the rear is in use by the applicant as paddock land and contains stables).

6. Recommendation

Approval

7. Conditions

- 1 This permission shall be personal to the applicant, Mr T. Buckley and his dependents and shall not endure for the benefit of the land.

Reason - The development hereby permitted is granted solely in recognition of the situation and circumstances of Mr T. Buckley.

- 2 This permission does not authorise use of the land as a caravan site by any persons other than gypsies and travellers, as defined in Annex 1 of DCLG - Planning policy for traveller sites - August 2015.

Reason - The development hereby permitted is granted solely in recognition of the situation and circumstances of Mr T. Buckley.

- 3 There shall be no more than 1 pitch on the site hereby approved no more than two caravans shall be stationed at any time, of which only one caravan shall be a residential mobile home as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968

Reason - In order to define the terms of the development and for the avoidance of doubt and in the interests of proper planning.

- 4 No commercial activities shall take place on the land, including the storage of materials.

In the interest of the appearance of the area and highway safety on the adjacent highway.

- 5 No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.

Reason - In the interest of the appearance of the area and highway safety on the adjacent highway.

- 6 Other than low-level domestic lighting, the site shall not be floodlit or artificially illuminated in any way.

Reason - In order to avoid dazzle and distraction to road users and in the interests of the amenity of the area and to avoid light pollution.

8. Informatives

Positive and Proactive Statement

The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

Legal Agreement Informative - Recreational Impact Mitigation

This application is the subject of a legal agreement and this decision should only be read in conjunction with this agreement. The agreement addresses the following issues: mitigation against any recreational impact from residential developments in accordance with Regulation 63 of the Conservation of Habitat and Species Regulations 2017.

Are there any letters to be sent to applicant / agent with the decision? If so please specify:	YES	NO
Are there any third parties to be informed of the decision? If so, please specify:	YES	NO

