

**13. FULL APPLICATION - USE AS RESIDENTIAL ACCOMMODATION OF CARAVAN SITED AT BUSHEY HEATH FARM, BUSHEY HEATH FARM, TIDESWELL MOOR, TIDESWELL (NP/DDD/0515/0416, P.10591, 414620 / 378500, 21/07/2015/AM)**

**APPLICANT: MR RODERICK BARAONA**

**Site and Surroundings**

Bushey Heath Farm (sometimes spelt “Bushy”) is located in a relatively remote location to the north side of Pittlemere Lane on Tideswell Moor, approximately 2km to the north of Tideswell and north of the A623. The property is in open countryside for the purposes of the development plan.

The property comprises a traditional farm house and range of stone barns which are individually grade II listed buildings. To the side and rear of these buildings are more modern portal framed buildings and a small-scale wind turbine.

The application site comprises land to front (south) of the listed barns and east of the farmhouse upon which a static caravan has been sited, together with an area of land to the front of the caravan bounded by a fence. There is no separate access or parking area to the caravan. Access is from Pittlemere Lane and shared with Bushey Heath Farm. The nearest neighbouring property is Forest Lane Farm, approximately 360m to the east.

**Proposal**

This application seeks planning permission for the change of use of the application site to allow the caravan which is currently on the site to be occupied as residential accommodation.

This application follows an application for the siting of a permanent residential caravan on the same site which was refused planning permission by the Authority earlier this year.

Officers have sought to clarify the proposed development with the applicant and his agent. Permission is sought to allow the use of the caravan to be occupied as residential accommodation, but the applicant seeks the flexibility to let the accommodation for periodic residential lettings, short term holiday lets and for use by employees and family in connection with activities at Bushey Heath Farm.

Therefore it is considered that the application is properly described as the proposed change of use of the land for the siting of a residential caravan.

**RECOMMENDATION:**

**That the application be REFUSED for the following reason.**

- 1. The proposed development would have an adverse visual impact and harm the setting of the grade II listed farmhouse and barn at Bushey Heath Farm. The proposed permanent residential caravan is not required to achieve conservation or enhancement or to meet the essential functional need of a rural enterprise. In the absence of overriding justification it is considered that any approval of the proposed development would represent wholly unsustainable development contrary to Core Strategy policies GSP1, GSP3, DS1, HC1, and L3, saved Local Plan policies LC4 and LC6 and the National Planning Policy Framework.**

## **Key Issues**

- Whether the principle of the proposed development is in accordance with the development plan and the National Planning Policy Framework.
- Whether the proposed development would have an adverse visual impact or harm the setting of nearby listed buildings.

## **History**

2013: Application for a lawful development certificate (existing use) NP/DDD/0713/0595: The application sought a Certificate for “Use as a residential caravan as defined in the Caravan Sites Act 1968 - section 13, used continuously for long term residence for farm workers and family, used as short term residence for visitors staying as holiday makers and that the area marked in red, outside, had been used as a garden area for caravan occupants.

The above application as refused for the following reasons:

1. *Having considered the evidence supplied by the Applicant, evidence from third parties and its own records, the Authority is not satisfied that the Applicant has shown, on the balance of probabilities, that the land shown edged red on the attached plan has been used for the purposes outlined in the application for a continuous period of ten years prior to the date of the application.*
2. *It is considered that the submitted evidence does not demonstrate that the use of the caravan for the purposes described in the application, was in existence at the time the application was submitted, in accordance with S.191(4) of the Town & Country Planning Act 1990 (as amended).*

2014: Appeal against the above decision (APP/M9496/X/13/2205578). The appeal was dismissed. The Inspector agreed with the Authority that the evidence submitted was not sufficient to demonstrate on the balance of probability that the caravan has been in continuous occupation for residential purposes for a period of ten years. A copy of the appeal decision letter is attached for information.

2015: Planning permission refused for the siting of a permanent residential caravan at Bushey Heath Farm NP/DDD/1114/1120 for the following reason:

1. *The proposed development would have an adverse visual impact and harm the setting of the grade II listed farmhouse and barn at Bushey Heath Farm. The proposed permanent residential caravan is not required to achieve conservation or enhancement or to meet the essential functional need of a rural enterprise. In the absence of overriding justification it is considered that any approval of the proposed development would represent wholly unsustainable development contrary to Core Strategy policies GSP1, GSP3, DS1, HC1 and L3, saved Local Plan policies LC4 and LC6 and the National Planning Policy Framework.*

## **Consultations**

Highway Authority - No objection subject to all use remaining ancillary to Bushey Heath Farm.

District Council - No response to date.

Parish Council - No objection.

## **Representations**

No representations have been received to date.

## **Main Policies**

Relevant Core Strategy policies: GSP1, GSP3, DS1, HC1, HC2 and L3

Relevant Local Plan policies: LC4, LC6, LH1

## **National Planning Policy Framework**

National policies in the National Planning Policy Framework (the Framework) and local policies in the Development Plan set out a consistent approach to new housing development in the National Park. Paragraph 54 of the Framework states that in rural areas, local planning authorities should be responsive to local circumstances and plan housing development to reflect local needs, particularly for affordable housing, including through rural exception sites where appropriate.

Paragraph 55 of the Framework says that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances (such as meeting the essential need for a rural worker to live at or near their place of work in the countryside or where development would represent the optimal viable use of a heritage asset).

Core Strategy policy HC1 reflects the priorities set out in national policies and the development strategy for new housing in the National Park set out in Core Strategy policy DS1 because HC1 states that provision will not be made for housing solely to meet open market demand and prioritises the delivery of affordable housing to meet local needs within named settlements.

Core Strategy policy HC1 also sets out the exceptional circumstances where new housing can be accepted in open countryside which closely reflects those set out in paragraph 55 of the Framework. These exceptional circumstances are where a new house would be for key workers in agriculture, forestry or other rural enterprises (in accordance with Core Strategy policy HC2), where the conversion of an existing building is required to achieve the conservation and enhancement of a valued vernacular or listed building or where the conversion of an existing building would be for affordable housing to meet local need.

Paragraph 115 of the Framework says that great weight should be given to conserving landscape and scenic beauty in National Parks and that the conservation of wildlife and cultural heritage are important considerations and should be given great weight in National Parks.

Paragraph 132 of the Framework says that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to its conservation. Significance can be harmed or lost through alteration or development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification.

The Authority's housing policies are supported by a wider range of design and conservation policies including GSP1 of the Core Strategy which states all policies should be read in combination. GSP1 also says all development in the National Park shall be consistent with the National Park's legal purposes and duty and where national park purposes can be secured, opportunities must be taken to contribute to the sustainable development of the area.

Core Strategy policy L3 requires all development to conserve and enhance the National Park's cultural heritage and states that other than in exceptional circumstances, development which will have a harmful impact will not be permitted.

Policy GSP3 of the Core Strategy and Policies LC4 are also directly to the current application because they seek to safeguard the amenities of properties affected by development proposals, and set out criteria to assess design, siting and landscaping. Policies LT11 and LT18 of the Local Plan require new development to be provided with adequate access and parking provision but also say that access and parking provision should not impact negatively on the environmental quality of the National Park.

## **Assessment**

### **Planning history**

There is a static caravan sited on the application site. The planning history relating to the site is an important consideration in this case. There is evidence on the planning file that a caravan has been sited on this land for a significant period of time. The static caravan currently sited on the land does not appear to be occupied for any particular purpose and it therefore appears that the land is currently used for the storage of the caravan.

Whether or not there is any lawful use of the land for either the storage of or residential use of a caravan on the land is particularly relevant for the understanding and consideration of the current proposal and it is a point upon which there is substantial disagreement between Officers and the applicant and his agent.

The covering letter written by the agent and submitted in support of the previous application states that the recent lawful development certificate application and subsequent appeal has established that the "*Authority accepts that this residential caravan and associated curtilage has been lawfully and permanently sited at Bushey Heath Farm since July 1992*". The letter goes on to state that the lawful development certificate application only failed "*because the applicant could not show, on the balance of probability, that such residential occupation had been "continuous and unbroken" over a 10 year period.*"

The covering letter written by the agent in support of the current application again asserts that the Authority's Officers have accepted that that a residential caravan has been sited at Bushey Heath Farm since July 1982 and that the Authority is not able to take enforcement action against the siting of the caravan because the caravan has been sited on the land since 1982 and used for a combination of residential uses during that period.

Officers agree that the evidence does indicate that a caravan has been sited on the land for a significant period of time. However, Officers disagree with the applicant and his agent that this means that there is any lawful use of the land 'for the siting of a caravan'. In coming to this conclusion Officers have sought advice from the Authority's Legal team and this advice has been incorporated into this report.

The key issue in determining whether or not any use of land is lawful is whether that use has been taking place continuously and unbroken over a 10 year period. As the Inspector confirmed in the 2014 appeal decision, it is the use of the caravan that determines whether any material change of use of land has occurred. The siting of a caravan on land is not itself a use of the land, it is the purpose for which the caravan is occupied (for example as a dwelling, or office or any other purpose). If an unoccupied caravan remains on land then the use of the land is for the storage of a caravan.

The determinations under the lawful development certificate application, and the subsequent appeal, were that the evidence did not demonstrate that the use of the land for the siting of a residential caravan (or any other use) was lawful. It could not be demonstrated that this use had been taking place continuously and unbroken over a 10 year period. For that reason the Authority refused the application for a lawful development certificate and for the same reason the Inspector agreed with the Authority and dismissed the subsequent appeal.

Therefore Officers consider that the assertion that the siting of a caravan on the application site is lawful is not correct. The Inspector's appeal decision is a very strong material consideration in this respect and there is no further evidence to indicate that there is any lawful use for the siting of a caravan for any particular purpose or for the storage of a caravan on the land. It is therefore considered that no weight is given to the agent's assertion that the proposed use is actually lawful.

The fact that a caravan has been on the land for a significant period of time and the fact that the Authority has never sought to take enforcement action against any alleged breach of planning control is capable of being a material consideration. However, it is considered that this should be given limited weight because it has only become apparent following the Authority's refusal of the application for a lawful development certificate and the subsequent dismissed appeal that the application site does not benefit from any lawful use for occupation of a caravan for any particular purpose of for the storage of a caravan on the land.

#### Principle of proposed development

The application site clearly lies in open countryside and outside of any designated settlement. In common with national policy within the Framework, the Authority's housing policies do not permit new homes in isolated locations such as this unless there are special circumstances.

The application seeks the change of use of the application site for the permanent siting of a residential caravan. The applicant wishes to have flexibility to use the caravan for residential lettings, short term holiday lets and for occupation by employees and family. The submitted application therefore does not propose that occupancy of the caravan be restricted for any individual or specific purpose. Therefore the occupation of the proposed dwelling would be unrestricted and available to meet general market demand rather than any functional need or local need for affordable housing.

The submitted application does not include any evidence to demonstrate that the proposed dwelling is required to meet the essential functional need of a rural enterprise based at Bushey Heath Farm or why any such need could not be met by the existing accommodation within the farmhouse or the barns converted to holiday accommodation at the farmstead (CS policy HC2).

The special circumstances in which permission could be granted for the current application are set out in Core Strategy (CS) policy HC1C. In this case, the proposal is for the change of use of the application site for the siting of a permanent residential caravan and not the conversion of a valued vernacular or listed building as envisaged by HC1C(II). There is no evidence to demonstrate that the proposed development is required to facilitate the conservation or enhancement of such a building.

Therefore it is considered that, in principle, the proposed development would be contrary to CS policy HC1 and the Framework which both seek to preclude new residential development in the countryside other than in exceptional circumstances.

#### Visual impact and impact upon the setting of nearby listed buildings

The application site is located to the front (south) of the group of buildings which make up the farmstead. The application site and the static caravan currently sited on the land are visually prominent from Pittlemere Lane by virtue of the relatively close proximity to the lane and lack of any screening between the application site and the lane. It is considered that the static caravan currently stored on the land has an adverse visual impact by virtue of its form, design, colouring and materials which do not reflect the adjacent buildings at the farmstead or that of traditional buildings found more generally in the National Park.

In views from the lane, the application site and the static caravan are seen in the context of, and in close proximity to, the grade II listed farmhouse and barn. For these reasons and for the

reasons given above it is considered that the existing static caravan has a harmful impact on the setting of the listed farmhouse and barn.

The submitted application includes photographs of the existing caravan and the submitted block plan shows a proposed static caravan. The application therefore appears to seek the retention of the existing caravan. However, it is important to note that if permission was granted for the proposed use of the land then the applicant would be entitled to replace the existing caravan with a new caravan provided that the replacement fell within the definition of a 'Twin-unit caravan' set out in the Caravan Sites Act 1968 s.13. A new caravan could potentially be larger and have an even greater impact than the existing static caravan, particularly given the legal definition of a caravan, which could allow structures such as timber lodges or park homes.

It is considered that approval of the current application would perpetuate the adverse visual impact of the caravan upon the local area contrary to Core Strategy policy GSP3 and saved Local Plan policy LC4 and the harm to the setting of the listed farmhouse and barn contrary to Core Strategy policy L3 and Local Plan policy LC6. Planning conditions requiring the caravan to be finished a specific colour or require a scheme of planting to be carried out would not sufficiently mitigate the harm identified.

The harm to the setting of the listed buildings that has been identified in this case would be less than substantial, however in this case there are no overriding public benefits which outweigh the harm identified. In these circumstances national and local policies and guidance make clear that great weight must be attached to the importance of conserving the visual amenity of the National Park and the setting of listed buildings and this must weigh heavily against the proposed development.

#### Other Issues

In this case, there is no concern that the proposed development would have any adverse impact upon nature conservation interests or any archaeological interest.

The proposed development would share access with the existing farmstead. Access visibility is considered to be sufficient because adequate visibility splays are achievable. There is adequate parking within the existing yard to accommodate the proposed development. A planning condition could be imposed to require details of parking and turning space to be submitted and retained throughout the lifetime of the development. Therefore it is considered that the proposal would not harm highway safety or the amenity of road users.

Given the distance and orientation of the site in relation to the existing buildings within the farmstead and neighbouring properties, there are no concerns in this case that the development would harm the amenity, security or privacy of any neighbouring property or land use.

#### Conclusion

In this case, there are no concerns that the proposed development would be un-neighbourly primarily because of the significant distance from the nearest neighbouring property. The development would be served by a safe access and adequate parking. The proposed development would not harm any protected species, or their habitat.

However, these factors do not outweigh or override the fundamental objection to the proposed development on the grounds that the proposed permanent residential caravan conflicts with local and national planning policies which seek to restrict new residential development in the open countryside. Furthermore, the proposed development would result in an adverse visual impact and harm the setting of the grade II listed farmhouse and barn at Bushey Heath Farm.

In this case no exceptional circumstances have been put forward to justify the proposed development and therefore the proposal would represent unsustainable development contrary to

CS policies GSP1, GSP3, HC1 and L3, LP policies LC4 and LC6 and the National Planning Policy Framework.

**Human Rights**

Any human rights issues have been considered and addressed in the preparation of this report.

List of Background Papers (not previously published)

Nil