

Application Number 11/19/0386

Full Application Change of use of land for stationing of 3 no caravans for residential purposes for 3no gypsy pitches together with the use of the existing stable building as a dayroom ancillary to that use.

Address Smithfield Stables Moss Lane Oswaldtwistle BB1 2FE

Determination by: 04.12.2019

Applicant: Mr E Smith

Agent: Green Planning Studio Limited

The application has been brought to Planning Committee at the request of Cllr Higgins on the grounds of the impact on the Greenbelt and that development has gone ahead on this site without permission.

Application Site

The application site is located in Green Belt to the south east of Knuzden, with Oswaldtwistle being the nearest settlement to the site. The application site is set alongside Moss Lane to the west of the site and includes an 'L' shaped block of stables which have been constructed towards the site frontage. The M65 motorway lies to the east of the site. Access to the site is from Moss Lane which is a minor road which runs alongside the western boundary of the site.

The hardstanding in the centre of the site is currently occupied by two large static caravans, four touring caravans and associated cars, vans and horse boxes.

Proposal

Retrospective planning permission is sought to change the use of the land for stationing of 3 no caravans for residential purposes for 3no gypsy pitches together with the use of existing stable building as a dayroom ancillary to that use.

The stable (which benefits from having planning permission for use as a stable) is already built and includes a tack room and a covered midden, at each end of the 'L' shape which will be converted to living accommodation to provide a kitchen and bathroom and a living area. These would be to support the proposed pitches on the site. There would be windows and doors inserted to provide daylight to the day room.

Full details of the caravans haven't been submitted, although their location is noted on the Site Layout; there are three proposed mobile homes shows on the plan, and three touring caravans. No elevations have been provided.

Consultations:

Public consultation: No comments have been received during the 21 day statutory notification period.

LCC Highways: No objection to the application on highway grounds

HBC Environmental Health: No comments to make in relation to the application

HBC Ecologist: No comments have been received during the 21 day statutory notification period.

Relevant Planning History

11/17/0381 Proposed erection of field shelter Approved

11/14/0415 Erection of hay store and construction of stable yard and ménage Approved

11/13/0148 Change of use of land to a mixed use for the keeping of horses and as a residential caravan for one Gypsy family including part retention of earth mound. Refused and appeal dismissed by Secretary of State

11/06/0244 Erection of stable block and covered midden Approved.

Relevant Policies

Development Plan

Hyndburn Core Strategy

- Policy BD1 The Balanced Development Strategy
- Policy H3 Gypsy and Traveller Provision
- Policy Env2 Natural Environment Enhancement
- Policy Env3 Landscape Character
- Policy Env6 High Quality Design
- Policy Env7 Environmental Amenity
- Policy RA1 Amount and Distribution of Housing in Rural Areas

Development Management Development Plan Document (DMDPD)

- Policy GC1 Presumption in favour of sustainable development
- Policy DM15 Gypsy and Traveller sites
- Policy DM17 Trees Woodlands and Hedgerows
- Policy DM18 Protection and Enhancement of the Natural Environment
- Policy EM26 Design Quality and Materials
- Policy DM29 Environmental Amenity

- Policy DM31 Waste Management in all New Development
- Policy DM32 Sustainable Transport, Traffic and Highway Safety
- Policy DM34 Development in the Green Belt and Countryside Area

Material considerations

- Planning Policy for Traveller Sites (PPTS) Department for Communities and Local Government 2015
- National Planning Policy Framework (NPPF)
- National Planning Practice Guidance (NPPG)
- Regulation 18 Consultation Draft of the Core Strategy Review
- DCLG Chief Planner letter dated 31st August 2015 re Green Belt protection and unauthorised development
- Gypsy and Traveller Accommodation Assessment – Hyndburn Borough Council 2019
- Gypsy and Traveller Policy and Site Options Consultation Paper

Observations

Background

In 2014 (planning application 11/14/0415) a stable yard, ménage and hay store was approved on the site. This has been implemented except the ménage has not been constructed. It is noted that this application was for 1no pitch, not the 3no pitches that are proposed as part of this application.

The applicant also made an application for residential use on this site (11/13/0148) which was for 'Change of use of land to a mixed use for the keeping of horses and as a residential caravan for one Gypsy family including part retention of earth mound'. The application was refused and then appealed.

Although the appeal was recommended for approval by the Inspector, the recommendation was recovered by the Secretary of State who dismissed the appeal. These actions were later found to be unlawful at the Moore and Coates v Secretary of State for Communities and Local Government and London Borough of Bromley and Dartford Borough Council and Equality and Human Rights Commission [2015] EWHC 44 (Admin) Court of Appeal.

Although the decision of the Secretary of State, to call in all applications by travellers for sites in the Green Belt, was held to be unlawful (for a number of reasons) in the case of Moore and Coates v SSCLG, the decision of the Secretary of State to refuse the Smithfield application (and reverse the decision of the Inspectorate granting a temporary permission) was held to be lawful in the High Court. This decision was upheld by the Court of Appeal.

The submission states that this dismissal is being currently appealed to the Supreme Court, however the agent has since confirmed this is not the case and an appeal has not been made. In order to appeal this decision, leave needs to be granted and then an appeal

brought to the Supreme Court. Due to the time that has passed Officers do not believe the applicant is within the timeframe to make such an appeal. Officers therefore need to rely on the dismissal of the planning appeal by the Secretary of State as the final decision on that planning application (11/14/0415). The Secretary of State disagreed with the Inspector that the material considerations advanced by the appellants in favour of the proposal, considered individually or in combination, did not clearly outweigh the harm that would be caused by the development by reason of inappropriateness [in the Green Belt] to justify a 3 year temporary planning permission.

Key issues for consideration

In determining this application there are a number of key issues that require consideration:

- 1) Principle of the development
- 2) Openness of the Green Belt
- 3) Very Special Circumstances (VSC)
- 4) Other matters

1. Principle of development

Planning law requires that planning applications should be determined in accordance with the policies of the development plan unless material considerations indicate otherwise. In Hyndburn the development plan comprises the Hyndburn Core Strategy, the Development Management DPD and the “saved” policies of the 1996 Local Plan.

In addition to the relevant policies of the development plan, there are a number of national planning documents that are material and should be taken into consideration, in particular the Planning Policy for Traveller Sites (PPTS) and National Planning Policy Framework (NPPF). PPTS sets out the approach that Government expects local planning authorities to take when determining planning applications for the development of gypsy and traveller sites.

When considering planning applications for sites for Gypsies and Travellers it is necessary to consider whether the families occupying the site should be considered to be Gypsies or Travellers in accordance with the definition within the PPTS:

‘Persons of nomadic habit of life whatever the race or origin, including such persons who on grounds only of their own or their family’s dependants’ educational or health needs or old age have ceased to travel temporarily, but excluding members of an organised group of travelling Show people or circus people travelling together as such’.

Originally no information was provided with the application in relation to the lifestyle of the applicant and his family. However after requesting further information it has now been confirmed that the occupants of the site do in fact meet with the definition of Gypsies and Travellers.

The application site is located in the Green Belt, as such the key development plan policies relating to the principle of the development proposed are:

- BD1: The Balanced Development Strategy (Core Strategy 2012)
- H3: Gypsy and Traveller Provision (Core Strategy 2012)
- DM15: Gypsy and Traveller Sites (DM DPD 2018)
- DM34: Development in the Green Belt and Countryside Area (DM DPD 2018)

Policy BD1: The Balanced Development Strategy

The proposed development is located in the Green Belt which forms part of the 'rural area' in Hyndburn. Paragraph c) of Policy BD1 states that:

'development within the rural area will be limited to that supporting farm diversification and promoting leisure and recreational facilities whilst retaining landscape character'.

The proposed development is not considered to comprise farm diversification or promote leisure and recreational facilities in the Borough.

Officers consider the proposal does not comply with the provisions of Core Strategy Policy BD1.

Policy H3: Gypsy and Traveller Provision

Policy H3 currently forms the strategic policy in the development plan for Gypsy and Travellers in the Borough. It states that:

'Adequate provision will be made in the Borough for Gypsies, Travellers and Travelling Showpeople by:

- *Protecting the existing site in Altham for the use of Travelling Showpeople;*
- *Protecting existing permanent sites which are authorised for Gypsy and Traveller use;*
- *Identifying land at Sankey House Farm to meet future needs'.*

The Council is in the process of reviewing its Core Strategy and Policy H3 will therefore be replaced with an updated strategic policy on Gypsy and Traveller matters (see below for further information, see section titled 'emerging development plan policy').

As Policy H3 stipulates a period up to 2016, it is accepted that little weight can be given to the consideration of compliance with this policy in the planning balance.

Policy DM15: Gypsy and Traveller Sites

Policy DM15 provides the criteria based policy in the Local Plan required by Planning Policy for Traveller Sites (PPTS). It states that:

- '1. *The Core Strategy identifies sufficient land to meet the needs of Gypsies and Travellers until at least 2018. Sufficient land will be identified, in suitable locations, to meet the needs for the remainder of the Plan period in the Council's Site Allocations DPD.*

2. *All development proposals for traveller sites will be assessed in accordance with 'Planning Policy for Traveller Sites' and will be expected to:*
 - a. *be located within a reasonable distance from services such as a school, bus stop, local shop and health services;*
 - b. *be located in accessible locations with good access to public transport provision; and*
 - c. *cause no unacceptable harm to:*
 - i. *highway safety;*
 - ii. *visual amenity;*
 - iii. *residential amenity;*
 - iv. *the biodiversity or geodiversity of the area;*
 - v. *the character or appearance of a conservation area; or*
 - vi. *heritage assets and their setting.*

Officers have also assessed points 2a, 2b and 2c for the benefit of the doubt below:

- a. *Be located within a reasonable distance from services such as school, bus stops, local shop and health services;*

It is accepted that the site is sustainably located, although it is highlighted that for the first 100m of road there are no road lights and footpath;

Distance to the nearest Bus Stop – 450 m

Distance to the nearest school – 450 m

Distance to local shop – 800m,

Accessibility to nearest GP – 0.9 miles = 1448.4m

- b. *Be located in accessible locations with good access to public transport provision,*

As noted above the site is sustainably located 450m from a bus stop.

- c. *The development should not cause unacceptable harm to:*

- i) *Highway safety:*

Other relevant policies which are considered in relation to traffic and highway safety are CS Env7, DMPD DM32 and the relevant provisions of the NPPF. These all have similar aims of this policy and provide the basis of how traffic and highway safety should be assessed.

The Highways Authority (HA) have considered the proposal and have no objection.

Therefore in the absence of an objection from the statutory consultee in relation to highway safety officers are satisfied that the development is acceptable in this regard and that this element of DMDPD Policy DM15 is satisfied.

ii) *Visual amenity:*

Other relevant policies which are considered in relation to visual amenity are CS Env2, CS Env6, CS Env7, DMDPD DM26 and DMDPD DM34 and the provisions of the NPPF and PPTS.

There is also public footpath which runs to the east of the site. Therefore views taken of the surrounding areas from these vantage points are important to the consideration of the impact the development would have on visual amenity.

Visual amenity is discussed later on in the report in relation to the impact of the development on the visual amenity element of the openness of the Green Belt. It is for the reasons set out in that section of the report that it is not considered that the development satisfies this element of DMDPD DM15.

iii) *Residential amenity:*

Other relevant policies which are considered when looking at the impact of the development on residential amenity are CS Policy Env7 and DMDPD DM 29.

The proposed development is considered sufficiently distant from other nearby residential properties not to impact on residential amenity by virtue of increased noise or disturbance, or overlooking/loss of privacy.

Following the consultation with Environmental Health Officers, no objection to the change of use have been received.

Therefore officers are satisfied that the development is acceptable in this regard and that this element of DMDPD Policy DM15 is satisfied.

iv) *The biodiversity or geodiversity of the area:*

Other relevant policies which are considered when looking at the impact on biodiversity of a development are CS Env1, CS Env2, DMDPD DM17, DMDPD DM18 and DMDPD DM19

The applicant has not submitted any information in relation to biodiversity and no comments have been received from the Council's Ecology advisor. However Officers accept that substantial planting has taken place at the site and that the development is unlikely to have a significantly detrimental impact on biodiversity in the immediate area.

v) The character or appearance of a conservation area, or vi) Heritage assets and their settings.

The site is not located within conservation area or within the setting of a listed building and as such Officers consider that this element of DMDPD Policy DM15 is satisfied.

Policy DM15 point 2 also requires that “all development proposals for traveller sites will be assessed in accordance with “Planning Policy for Traveller Sites”. The extent to which the proposal satisfies PPTS is considered later in this report.

Conclusion: Officers accept that 2a, 2b and 2c OF DMDPD Policy DM15 are satisfied in terms of the proposed development.

Point 3 of Policy DM15 states:

3. *Applications for new Gypsy and Travellers pitches will not be supported if there are sufficient vacant pitches on allocated or existing sites elsewhere in the Borough’.*

The applicant asserts that there is a need for Gypsy and Traveller sites in Hyndburn and that there are no alternative sites for them to live on in the area in his cover letter submitted with the planning application.

Table 7.11 (on p66) of the recently completed Gypsy and Traveller Accommodation Assessment (GTAA) does identify a 5-year pitch shortfall of 18 pitches and it goes on to state that an expected turnover of 2 pitches on the Council site over the next 5 years leaves a residual 5 year pitch need of 16 pitches.

The current Gypsy and Traveller Policy and Site Options Consultation Paper sets out a proposed sequential approach to pitch provision in the Borough. The Council believes that information set out in Stages 1 and 2 of the consultation paper evidences that the 5 year pitch requirement is satisfied in the following way:

1. Planning permission 11/17/0537 on land to the rear of Milton St, Oswaldtwistle provides 5 pitches;
2. Pitches with approved planning permission, but unused, on 3 existing sites (Priv6, Priv7 and Priv10) provide a further potential 13 pitches.

In total therefore, The Council understands that 18 pitches are available now. As such it is considered that there no pitch shortfall when measured against the 5 year supply in the GTAA.

Conclusion: Officers consider the up-to-date position is that there sufficient vacant pitches on allocated or existing sites elsewhere in the Borough, therefore this proposal is no supported in this regard.

Policy DM34: Development in the Green Belt and Countryside Areas

Paragraph 1 of Policy DM34 relates to new building in the Green Belt. It states that:

- '1. The erection of new buildings in the Green Belt will be permitted where:*
- a. there is a need for occupation by agricultural or forestry workers (in accordance with Development Management Guidance Note 9); or*
 - b. the development comprises limited infilling in villages ; or*
 - c. the development involves limited infilling or the redevelopment of a previously developed site and there is no greater impact on the openness of the Green Belt, and the purpose of including land within it, than the existing development; or*
 - d. the building will replace an existing building with a residential use and would not result in a material increase in the volume of the original building (outside the scope of paragraph 3 below)'.*

In particular the application should be assessed in relation to whether it satisfies criteria 1c, (criteria's a b and d clearly do not apply).

In order to be compliant with policy (point c) the development should meet the definition of 'limited infilling' set out in footnote 121 of the DM DPD or the redevelopment of a previously developed site and **also** demonstrate that there is no greater impact on the openness of the Green Belt. Planning Practice Guidance has recently been updated to provide advice on considering openness and confirms that decision makers should take into account both visual and spatial aspects (<https://www.gov.uk/guidance/green-belt> paragraph 1). The stables and hardstanding benefit from having planning permission (notwithstanding that these uses are considered appropriate in the Green Belt) and as such this is considered to be the redevelopment of a previously developed site. However it also needs to be considered that there is no greater impact on the openness of the Green Belt, and the purpose of including land within it, as a result of the development. This is not considered the case as noted later in this report.

Conclusion: The development fails to meet with the provisions of Part 1 of Policy DM34. (Note: As the first part of Policy DM34 is not considered to be met by this development, the second part doesn't need to be considered).

Point 4 of Policy DM34 is also relevant as the application includes the conversion of the existing stables on the site to provide residential accommodation in the form of kitchen and bathroom and dayroom facilities. This is set out as below:

'The conversion of existing buildings for residential use both in the Green Belt and the Countryside Area will be permitted where a traditional building exists of permanent and substantial construction, as demonstrated by a structural survey (no more than 50% re build excluding the roof), and is capable of being converted without substantial extensions (over and above those set out in paragraph 3 above)'.

Conclusion: A structural survey has not been submitted with the application which demonstrates this can be done. As such technically the policy cannot be complied with in this regard. However in the interests of reasonableness Officers consider that the stable is of substantial construction and accept that the likelihood is that this element of the policy for the stable conversion can be met.

Emerging Development Plan Policy on Gypsy and Travellers

The Council is currently underway with a review of its Core Strategy. There have been two public consultations under Regulation 18 stage (Preparation) of the Core Strategy Review relevant to gypsy and traveller policy. Due to the early stage in preparation of the Core Strategy Review only very limited weight can be attributed at this stage:

- Feb. - April 2019 - a new draft strategic policy for Gypsy and Traveller and Travelling Showpeople Provision, Policy CS11, was first introduced;
- Dec. 2019 – Jan. 2020 – an updated draft strategic policy approach following publication of the latest Gypsy and Traveller Accommodation Assessment (July 2019) – further details below.

The current draft policy consultation (ended 27th January 2020) proposes the following sequential policy approach to help meet the need for new pitches over the full plan period:

1. Allocate and safeguard all existing authorised traveller sites
2. Ensure all pitches on authorised traveller sites are fully utilised
3. Identify additional new traveller sites either through expansion of existing authorised sites or identification of new sites
4. If pitches are still required, consider regularising existing unauthorised traveller sites.

The consultation paper sets out a number of site options for new traveller sites under step 3, discussed earlier in this report which could more than meet the need for pitches over the coming plan period.

Conclusion: The direction of this policy emerging is that the Council is not presently considering regularising existing unauthorised traveller sites.

The Council intends to complete its Publication Plan (under Regulation 19) later in 2020.

DM DPD Policy Map

The Development Management DPD Policy Map also identifies the northern part of the site as being located in a Coal Authority High Risk Area which would appear to cover (in part) the area where the caravans are proposed to be sited. As such DM DPD Policy DM24 applies.

Paragraph 2 of Policy DM24 states that:

'Development proposals in areas where there is evidence of underground mineral working (including Coal Authority Development High Risk areas) or land instability will be expected to be accompanied by appropriate geo-technical reports (or a Coal Mining Risk Assessment) that demonstrate that the proposed development is safe and stable or can be made so. Prior to the commencement of development (or in accordance with an alternative programme agreed), any necessary remediation, treatment or mitigation works shall be carried out to make the site safe and stable and to protect public safety'

As such it is necessary to consider the impact of the development in this regard. The Coal Authority have responded to the consultation and state the application site is within the defined Development High Risk Area. However, they confirm that the nature of development is listed as exempt from Version 5, 2019 of The Coal Authority's Resources for Local Planning Authorities.

Accordingly, there is no requirement under the risk-based approach that has been agreed with the LPA for a Coal Mining Risk Assessment to be submitted with any planning application or for the Coal Authority to be consulted on this proposal.

Overall conclusion on principal of the development:

Planning law requires that planning applications should be determined in accordance with the policies of the development plan unless there are material considerations that indicate otherwise. Officers believe that the development is not in accordance with the provisions of Hyndburn's Development Plan as a whole on the grounds that it is considered contrary to CS Policy BD1, DMDPD DM15 and DMDMP DM34 and the emerging policy and that substantial weight to this consideration should be given by Members in the planning judgement of this proposal. There is therefore a statutory presumption against the grant of planning permission.

Members should note that it is also necessary to be satisfied that there are no overriding material considerations which outweigh any conflict with the development plan. In this case the material considerations are the National Planning Policy Framework (NPPF) and the Planning Policy for Traveller Sites (PPTS). Each will be considered in turn.

National Planning Policy Framework:

Paragraph 133 of the NPPF states clearly that the government attaches great importance to Green Belts and that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.

Paragraph 143 of the NPPF states that:

'Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances'

It goes onto state in para 144 that

'When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm, to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal is clearly outweighed by other considerations'.

Paragraph 145 and 146 of the NPPF go on to make clear what type of exceptions in relation to built development could be considered appropriate. This development does not fall within any of those exceptions.

As such it is necessary for the applicant to demonstrate that there are Very Special Circumstances to allow this development to proceed. In order for very special circumstances to exist, the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal must be clearly outweighed by other considerations.

Planning Policy for Traveller Sites (PPTS)

Policy E of the PPTS is the relevant part of this document for the consideration of this planning application as it deals with the consideration of Gypsy and Traveller sites in Green Belt. It states in paragraph 16 that:

'Inappropriate development is harmful to the Green Belt and should not be approved, except in very special circumstances. Traveller sites (temporary or permanent) in the Green Belt are inappropriate development. Subject to the best interest of the child, personal circumstances and unmet need are unlikely to clearly outweigh the harm the Green Belt and any other harm so as to establish very special circumstances'.

Before dealing with this principal point, it is necessary to consider any harm to the Green Belt caused by this development, together with any change of use to create a family caravan site to provide 3 no pitches rooms to provide Gypsy residential accommodation, and then to consider whether there are considerations which outweigh this harm in line with the provisions of the PPTS and the NPPF.

Harm caused by the development to the openness of the Green Belt:

Harm to the openness of the Green Belt caused by a development is a key consideration when making decision on planning applications for development in the Green Belt as it is the most important attribute of the Green Belt. As such significant weight should be given to the impact of development on the openness of the Green Belt.

Officers consider that the change of use of this land to create a family caravan site for 3no Gypsy pitches will have an unacceptable impact on the openness of the Green Belt in this location. This section of the report will set out why this conclusion has been reached.

The starting point in terms of national policy is a presumption that inappropriate development in the Green Belt is, by definition, harmful. Decision makers are told to give substantial weight to this 'definitional' harm.

It is now widely accepted that the harm to openness on the Green Belt has both a spatial element (the volumes and scale of buildings) and a visual element.

The agent has not commented within this application on the level of harm caused to the openness of the Green Belt by the proposed development. However he has submitted plans which he shows 3no static caravans being sited and touring caravans. When pressed he refused to submit the elevation drawings of the caravans. Although this wasn't helpful, Officers can estimate that the height of the caravans will be approximately 3m and the floor area would be as shown on the plans.

- Spatial harm to the consideration of openness

The applicant has 3no of the pitches (static and touring caravans) onto the site and the stable block that will be partially converted is existing. There is an area shown on the submitted plans to the south west of the site which is used for parking vehicles on. This is not part of the application, when pressed the agent confirmed they do not want it to be.

The applicant has provided no details of the static caravans to be sited, stating letter that as they will meet the definition within Section 29(1) of the Caravan Sites and Control of Development Act 1960 and Section 13(1) of the Caravan Sites Act 1968, plans and elevations are not required.

Officers consider after seeing the caravans on site, along with the limited submitted information that their inclusion as permanent structures in the Green Belt will have an impact in terms of spatial harm to the openness of the Green Belt. Officers do consider that due to the scale of the caravans on site there is an unacceptable impact on the openness of the Green Belt in terms of spatial harm, which is considered to be moderate. Therefore moderate weight should be attached to this consideration in the planning judgement.

- Visual harm to the consideration of openness

Recent appeal decisions have concluded that there is also a visual harm element to the consideration of the openness of the Green Belt. This is not solely based on the volume of the development but also on the impact it has on the visual consideration of openness.

The site has a Public Right of Way (PROW) to the west of the site and to the southwest of the site.

The installation of the caravans, the touring caravans and the other residential paraphernalia such as play equipment, cars and vans, also adds to the visual harm generated by the proposed development.

The applicant has already undertaken some landscaping around the site, mainly by planting trees along the north, east and southern boundaries, there is also an earth mound to the south which was approved under 11/14/0415. These trees have now established and matured and restrict views into the site from those directions. However their linear arrangement, in a somewhat unnatural placement does stand out in the countryside as being artificially landscaped and Officers consider they sit uncomfortably in the landscape.

Despite the linear planting of the trees, it is accepted by Officers that the views of the development from the wider area are restricted by the mature trees that have been planted, and the bunding which has been created under a previous application has reduced the visual impact of the development on the Green Belt significantly over the time the trees have taken to mature. The conversion of part of the stable block to create supporting living accommodation will not have an impact on the visual harm element of the openness of the Green Belt as they are internal changes only.

As such Officers accept that the impact of this development in terms of visual harm to the openness of the Green Belt is limited. Therefore limited weight should be attached to this consideration in the planning judgement.

Conclusion:

Officers consider that the proposed development would have a moderate impact on the spatial harm to the consideration of the openness of the Green Belt and a limited impact on the visual consideration of the openness of the Green Belt, which needs to be outweighed by other considerations if this development is to be considered acceptable in line with the provisions of the DMDPD DM15, DMDPD DM34, the NPPF and the PPTS. Officers therefore advise members that the weight to be given overall to the impact of the development on the openness of the Green Belt is substantive.

It is now necessary to consider if there are sufficient VSC put forward by the applicant which outweigh this established harm on the openness of the Green Belt.

Members are reminded that the PPTS advises that *'subject to the best interest of the child, personal circumstances and unmet need are unlikely to clearly outweigh the harm the Green Belt and any other harm so as to establish very special circumstances'*

1. Very Special Circumstances (VSC)

As detailed earlier in this report, the NPPF and the PPTS allow very special circumstances (VSC) of development in the Green Belt to be considered as material planning considerations. The original planning submission did not evidence the 'Very Special Circumstances' put forward by the applicant, apart from stating in the cover letter that:

'The applicant asserts that there are very special circumstances which outweigh the harm to the Green Belt. This includes the lack of alternative sites, the need for Gypsy and Traveller pitches in the district and the personal circumstances of the proposed occupiers'

He also states:

'Please note in regards to making the decision there will be children living on the site and as such any decision taken by the council should be made having considered the best interests of the children on the site. There is an explicit requirement to treat the needs of the children on the site as a primary consideration (UNCRC Article 3, fully set out at para 80-82 of AZ) and, in respect of a decision by the LKPA to safeguard and promote the welfare and well-being of the children (Children's Act 2004, s11(1)).'

- Lack of alternative sites/the need for gypsy and traveller sites in the Borough

The agent has not provided any further information in relation to this. However Officers have considered whether this argument can be supported and whether there is a lack of alternative sites in the Borough. This is considered in full in the earlier part of this report and the conclusion is that Officers consider that there is enough alternative sites within the Borough. The applicant has not provided any information within his submission as to why other sites would not be suitable, and as such it is reasonable for Officers to expect an alternative site would be acceptable to the applicants..

- Personal Circumstances of the proposed occupiers

There was no information provided within the application in relation to the occupiers of the pitches. However after requesting this a confidential submission was made which details who would live permanently on the site. This would be as the site is occupied now: residents would include six adults, two of whom are over sixty and four children between the ages of 2 and 11. The older occupants do highlight some health issues, but these are not supported by medical evidence supporting their need to stay on the site. They do however attend the nearby medical centre in Accrington. The remaining adults argue that they need to be close to their parents in order to provide help in their older years in the future. There are no further medical needs highlighted.

All the occupants, adults and children alike argue that if they cannot stay on the site they will be forced to continually travel with a roadside existence.

- Best interests of the children:

Para 16 of the PPTS is clear in its assertion that VSC are unlikely to outweigh the harm to the openness of the Green Belt and any other harm, unless it impacts on the best interests of the children i.e. personal circumstances and unmet need are unlikely to outweigh the harm on their own. As such the best interest of the children is a key factor in considering this planning application.

The 4no. children are detailed to all be between 2 and 11 years in age and attend the nearby primary school in Oswaldtwistle. It is stated in the information that the children attend the primary school when the *'family are around to do so, but they are currently missing out*

on obtaining a good and continuous education as the family do not have a permanent base’. The applicant states that they require a stable base so that his children do not have their education disrupted, the children are also registered at the same medical centre as the rest of the family.

The applicant is specific that any decision taken by the Council should be made having considered the best interest of the children on the site, and that there is an explicit requirement to treat the needs of the children on the site as the primary consideration (UNCRC Article 3, fully set out at para 80-82 of AZ), and in respect of any decision by the Local Planning Authority to safeguard and promote the welfare and well-being of the children (Children’s Act 2004, s.11 (1)).

Officers don’t agree that if this application is refused there would be a prolonged absence of a settled site as the Council is working towards allocation of sites within the Site Allocations DPD, once need is established through the new GTAA.

Article 3 of the United Nations Convention of the Rights of the Child (UNCRC) is clear that no other consideration is inherently more significant than the best interests of the children and when considering Article 8 of the Human Rights Act the rights of those of children must be seen as a primary consideration. Therefore Members are reminded that the best interests of the children is key in the consideration of this application and that Article 3 of the UNCRC and Article 8 of Human Rights Act are relevant material considerations here. Therefore it is agreed that it is in the best interests of the children to have a settled place to live, access to education, health services, play and personal development.

Officers do not consider that this specific site is necessary to gain access to education and Drs, and although they accept a roadside existence may make education more difficult if the family are travelling, they have lived in the area for many years and it is unlikely they would take up a permanent travelling lifestyle again, especially due to the health care needs of the other members of the family noted later in this section of the report.

Officers accept that the occupation of a spacious site in a rural area will provide a better standard of amenity for children than a roadside existence. However, there is no reason to believe that children within the family would be denied access to schools, healthcare or play facilities. It is recognised that providing a safe and settled environment is a key consideration and should be afforded significant weight in the planning balance, however, no over-riding health needs or considerations have been forwarded by the applicant that are sufficient to outweigh the harm arising the Green Belt.

Overall Conclusion:

The applicant has highlighted there are very special circumstances which must be considered in the planning judgement as a whole, not on their own individual merit. The report sets out the weight that Officers attribute to the VSC and the conclusion is that limited weight attached to the need/provision of alternative sites and significant weight attached to the best interests of the children, the very special circumstances put forward by the

applicant do not, overall, clearly outweigh the harm caused to the openness of the Green Belt. Officers therefore conclude the test of very special circumstance is therefore not met.

2. Temporary permission

Local planning authorities have a duty to consider whether or not the addition of planning conditions will make a planning proposal acceptable. Therefore it is necessary for officers to consider whether or not a condition which would restrict the use of the site as a caravan site specifically for this family for a temporary period, whilst another site is identified through the Site Allocations DPD is a reasonable approach.

Despite this officers need to form a view on this matter and provide the following advice to Members. It is concluded that even if the permission were granted temporarily to enable an alternative site to be found, and even though the area would be cleared as a result of this quicker than if the pitches were allowed permanently, this would still not be acceptable in terms of the significant impact the development would have on the openness of the Green Belt. It is not considered that there is a case for VSC put forward which clearly outweighs the impact of the development on the openness of the Green Belt. As such they concluded that a condition allowing a temporary permission is not acceptable.

Conclusion:

For the reasons set out in the report, officers consider that the development is contrary to the adopted Local Development Plan, specifically Policy BD1 of the Core Strategy, and policies DM15 and DM34 of the DMDPD. Officers also consider that there has not been very special circumstances put forward within the application (including the best interest of the children), which clearly outweigh the harm caused to the openness of the Green Belt in spatial and visual terms. Therefore it is considered that Very Special Circumstances do not exist in this case. As such the proposal is also considered contrary to the provisions of the NPPF and the PPTS. Members are reminded that they are only able to consider planning considerations when making their decision, anything which is not a planning consideration should be discounted.

Recommendations:

- i. That Planning Committee refuse the planning application for the following reason:

The proposal constitutes inappropriate development in the Green Belt. The proposal causes harm to openness of the Green Belt. The considerations in favour of development do not clearly outweigh the harm to the Green Belt and any other harm caused by the proposal. As such, the Very Special Circumstance test has not been met. The proposal is contrary to Policy BD1 of the Hyndburn Core Strategy, Policies DM15 and DM34 of the Development Management Development Plan Document and the provisions of the National Planning Policy Framework and the Planning Policy for Traveller Sites.

And, subject to Planning Committee resolving that planning permission is refused;

- ii. That Enforcement Action be commenced to remedy the breach of planning control that has taken place at the site.

Appendix 1. Extract from Planning Policy for Traveller Sites (PPTS) 2015.

Introduction

1. This document sets out the Government's planning policy for traveller¹ sites. It should be read in conjunction with the National Planning Policy Framework. Guidance on the Framework can be found at:
<http://planningguidance.planningportal.gov.uk/>
2. Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise². This policy must be taken into account in the preparation of development plans, and is a material consideration in planning decisions. Local planning authorities preparing plans for and taking decisions on traveller sites should also have regard to the policies in the National Planning Policy Framework so far as relevant.
3. The Government's overarching aim is to ensure fair and equal treatment for travellers, in a way that facilitates the traditional and nomadic way of life of travellers while respecting the interests of the settled community.
4. To help achieve this, Government's aims in respect of traveller sites are:
 - a. that local planning authorities should make their own assessment of need for the purposes of planning
 - b. to ensure that local planning authorities, working collaboratively, develop fair and effective strategies to meet need through the identification of land for sites
 - c. to encourage local planning authorities to plan for sites over a reasonable timescale
 - d. that plan-making and decision-taking should protect Green Belt from inappropriate development
 - e. to promote more private traveller site provision while recognising that there will always be those travellers who cannot provide their own sites
 - f. that plan-making and decision-taking should aim to reduce the number of unauthorised developments and encampments and make enforcement more effective

¹ See Annex 1 for the definition of traveller for the purposes of this statement.

² Sections 19(2)(a) and 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990. In relation to neighbourhood plans, under section 38B and C and paragraph 8(2) of new Schedule 4B to the 2004 Act (inserted by the Localism Act 2011 section 116 and Schedules 9 and 10) the independent examiner will consider whether having regard to national policy is appropriate to make the plan.

- g. for local planning authorities to ensure that their Local Plan includes fair, realistic and inclusive policies
 - h. to increase the number of traveller sites in appropriate locations with planning permission, to address under provision and maintain an appropriate level of supply
 - i. to reduce tensions between settled and traveller communities in plan-making and planning decisions
 - j. to enable provision of suitable accommodation from which travellers can access education, health, welfare and employment infrastructure
 - k. for local planning authorities to have due regard to the protection of local amenity and local environment
5. To benefit those engaged in planning for traveller sites, specific planning policies for traveller sites are clearly set out in this separate document. The Government intends to review this policy when fair and representative practical results of its implementation are clear.
6. The Government still intends to review in the future whether Planning Policy for Traveller Sites should be incorporated within the wider National Planning Policy Framework. This will be considered as part of any wider review of the Framework.

Decision-taking

Policy H: Determining planning applications for traveller sites

22. Planning law requires that applications for planning permission must be determined in accordance with the development plan³, unless material considerations indicate otherwise⁸.
23. Applications should be assessed and determined in accordance with the presumption in favour of sustainable development and the application of specific policies in the National Planning Policy Framework and this planning policy for traveller sites.
24. Local planning authorities should consider the following issues amongst other relevant matters when considering planning applications for traveller sites:
- a) the existing level of local provision and need for sites
 - b) the availability (or lack) of alternative accommodation for the applicants
 - c) other personal circumstances of the applicant

³ Section 38(1) of the Planning and Compulsory Purchase Act 2004: this includes adopted or approved development plan documents i.e. the Local Plan and neighbourhood plans which have been made in relation to the area (and the London Plan). ⁸ Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.

- d) that the locally specific criteria used to guide the allocation of sites in plans or which form the policy where there is no identified need for pitches/plots should be used to assess applications that may come forward on unallocated sites
- e) that they should determine applications for sites from any travellers and not just those with local connections

However, as paragraph 16 makes clear, subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances.

25. Local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. Local planning authorities should ensure that sites in rural areas respect the scale of, and do not dominate, the nearest settled community, and avoid placing an undue pressure on the local infrastructure.
26. When considering applications, local planning authorities should attach weight to the following matters:
 - a) effective use of previously developed (brownfield), untidy or derelict land
 - b) sites being well planned or soft landscaped in such a way as to positively enhance the environment and increase its openness
 - c) promoting opportunities for healthy lifestyles, such as ensuring adequate landscaping and play areas for children
 - d) not enclosing a site with so much hard landscaping, high walls or fences, that the impression may be given that the site and its occupants are deliberately isolated from the rest of the community
27. If a local planning authority cannot demonstrate an up-to-date 5 year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary⁴ planning permission. The exception is where the proposal is on land designated as Green Belt; sites protected under the Birds and Habitats Directives and / or sites designated as Sites of Special Scientific Interest; Local Green Space, an Area of Outstanding Natural Beauty, or within a National Park (or the Broads).
28. Local planning authorities should consider how they could overcome planning objections to particular proposals using planning conditions or planning obligations including:

⁴ There is no presumption that a temporary grant of planning permission should be granted permanently. For further guidance please see: <http://planningguidance.planningportal.gov.uk/blog/guidance/use-of-planning-conditions/whatapproach-should-be-taken-to-imposing-conditions/> (paragraph 14)

- a) limiting which parts of a site may be used for any business operations, in order to minimise the visual impact and limit the effect of noise
- b) specifying the number of days the site can be occupied by more than the allowed number of caravans (which permits visitors and allows attendance at family or community events)
- c) limiting the maximum number of days for which caravans might be permitted to stay on a transit site.

Policy I: Implementation

- 29. The policies in this revised Planning Policy for Traveller Sites apply from the day of publication. This replaces the version published in March 2012.
- 30. The implementation policies set out in the National Planning Policy Framework will apply also to plan-making and decision-taking for traveller sites. In applying those implementation provisions to traveller sites, references in those provisions to policies in the National Planning Policy Framework should, where relevant, be read to include policies in this planning policy for traveller site