

09. COTTAGE GARDEN, BEADS HALL LANE, PILGRIMS HATCH, ESSEX, CM15 9PQ

CONSTRUCTION OF DETACHED TWO-STOREY DWELLING AND DOUBLE GARAGE TO REPLACE STATIC CARAVAN

APPLICATION NO: 14/01069/FUL

WARD	Pilgrims Hatch	ZONING	
PARISH		8/13 WEEK	08/12/2014
CASE OFFICER	Caroline McCaffrey	DATE	
		01277 312620	

POLICIES NPPF NPPG CP1, GB1, GB2.

DRAWING NO(s): 080 P03, 010 P03,

UPDATE

This application was considered by the Committee on 6 January 2015 (Appendix B) and again on 3 March 2015 (Appendix C). The full text of the reports presented to those Committees is appended to this report. Briefly, those reports concluded that the proposed dwelling would be inappropriate development in the Green Belt that would detract from openness and be harmful to the character and appearance of the area. Consideration was given to the applicant's personal circumstances, especially as regards the specific needs of his daughter; however it was concluded that these matters were not sufficient clearly to outweigh the harm to the Green Belt and the other harm. Therefore the very special circumstances needed to justify inappropriate development did not exist.

The Committee did not accept the officer recommendation and resolved that subject to the prior completion of an agreement under Section 106 of the Town and Country Planning Act 1990 and the Housing Act 1985 permission should be granted for the construction of a permanent dwelling with such adaptations as the Head of Planning in consultation with Environmental Health considered appropriate and necessary.

The agreement was considered necessary to ensure that :-

- a) The dwelling was occupied by the applicant, William Eastwood, and his daughter Lisa Marie with accommodation, as necessary, for qualified carers and family members of Mr Eastwood who may visit from time to time. The dwelling was constructed to ensure that it met the needs of Lisa Marie in accordance with her care plan. Details to be agreed by the Council.
- b) No other residential permission would be sought on the site.

- c) Upon the occupation of the dwelling the appeals in respect of the mobile home would be withdrawn and the mobile home removed from the site.
- d) The site was not disposed of during the lifetime of Lisa Marie or a period of 50 years.
- e) Any disposal of the site within 50 years must be for special needs housing.

The Council's solicitor prepared a draft agreement and this was sent to the applicant's representatives in March and again in May 2015. There was a change in representation as Professor Thomas Acton represented the Appellant at the Committee meetings but Ms. Erica Whittingsteel has subsequently been instructed.

The drawings submitted to the Council have been reviewed by an occupational therapist instructed by the Council and also by a medical health professional acting on behalf of Lisa Marie. Amendments have been made to those drawings based on the recommendation of Lisa Marie's occupational therapist.

On 22 July 2015 the planning appeals in respect of the mobile home (as referred to in the draft agreement) were determined. Both appeals were allowed and, as a result, the site now has permission for use as a residential caravan site. The permission in respect of the S78 (planning application) appeal was granted in the terms of the application and is limited to two years. However the permission granted under the S 174 (enforcement notice) appeal was not subject to the same restraint and has no time limit. The full text of the decisions is attached to this report.

The S 174 permission is subject to a number of conditions which are set out in the decision. Those conditions most relevant to this report:-

- i) Limit occupancy to gypsies and travellers
- ii) Limit occupancy specifically to Mr W Eastwood and his daughter Lisa-Marie.
- iii) Require that on the cessation of the use by Mr Eastwood and his daughter the use shall cease and caravans and associated structures shall be removed from the land.

The Inspector gave weight to the needs of the applicant's disabled daughter, having regard to the High Court decision *AZ-v- Secretary of State for Communities and Local Government and South Gloucestershire District Council* [2012] EWHC 3660 Admin. In that case the High Court made an order anonymising the party. This is consistent with the procedure adopted at the Committee meetings to consider the circumstances of Mr. Eastwood's daughter in private.

The Inspector also gave weight to the decision of the Committee, including the reports to Committee, as a material consideration since the appeal hearing. In dealing with a planning application Section 70(2) Town and Country Planning Act 1990, as amended by the Localism Act 2011, requires the Local Planning Authority to have regard to

- (a) the provisions of the development plan, so far as material to the application,
- (b) any local finance considerations, so far as material to the application, and
- (c) any other material considerations.

The recently published book “Planning Permission” by the eminent Planning Barrister Richard Harwood OBE QC (Bloomsbury Professional, 2016) has an authoritative legal analysis of material considerations, first as a legal requirement to be taken into account, then the relevant considerations and finally the inter-relationship with other parts of the planning system and other decisions.

The learned author states (page 265) the following, based on a Court of Appeal decision, Dry –v- West Oxfordshire District Council [2010] EWCA Civ 1143:

“If matters change between a council resolution to grant planning permission and the actual issue of the permission then the committee must consider the application if those changes might have affected the decision”.

In the same Chapter (page 320) the author considers the notion of the fallback position’– what could happen on the land if the application is not approved. This is not set out in legislation but may be taken into account. The author states that it is an example of planning decisions reflecting their circumstances

The grant of permanent planning permission for two caravans limited by personal conditions limited to Mr Eastwood and his daughter is a major change in circumstances in the determination of the planning application for the dwelling. No formal decision has been made on that application. The Draft Agreement under the planning and Housing Act has not been completed. The Committee must now consider the application in the light of the changed circumstances.

Matters arising as a result of the grant of permission for the use of the land as a caravan site.

The planning permission

The permission is limited to Mr Eastwood and his daughter only; however it would not prevent the reasonable occupation by carers or members of their family incidentally to their occupation. The personal nature of the permission prevents the caravan from being occupied by any other travellers.

It must be emphasised that the permission is not for a specific caravan or mobile home but for the use of the land as a caravan site. A caravan may be 20m by 6.8m (gross floor area of 136 sq m) by 3.05m in height. This compares with the gross area (including ground and first floor and outside walls) of the house which would 175 sq m. If the caravan currently on the site

was considered to be unsuitable for the specific medical requirements of Lisa Marie an alternative could be brought onto the site.

It is possible that special adaptations could be required that may result in the accommodation being excluded from the legal definition of caravan (for example as regards dimensional limits); however officers consider that taking account of the specific nature of the occupancy of the accommodation a degree of flexibility would be justified.

It is considered therefore that subject to a likely need for an alternative mobile home to that currently on the site the existing permission would enable Mr Eastwood and his daughter to stay on the site living in accommodation that meets their needs.

Implications for the current planning application

At the time the planning application was made there was no permission for a caravan on the site and the applicant faced being made homeless. The dwelling was proposed to provide specially designed accommodation for the applicant's daughter and to provide accommodation for a carer. As a result of the recent permission Mr Eastwood no longer faces homelessness and it is considered that it would be possible to provide suitable accommodation for him in the form of a mobile home.

The advent of the permission changes the context for the determination of the planning application and it is necessary to consider its implications for the assessment of the proposal against Part 9 (Protecting Green Belt Land) of the Framework.

The appeal decision granted permission for a use of land as a caravan site; however caravans are not buildings and therefore the proposed dwelling would not amount to the replacement of a building. Further the stationing of a caravan on the land would not include it within the definition of "previously developed land". Therefore the granting of permission for a caravan site does not move the proposed dwelling into any of the categories of development that may not be inappropriate in the Green Belt.

The lawful use as the land as a caravan site would have implications for openness. It is possible that a caravan could occupy a greater "footprint" than the proposed dwelling; however the limitation on height, and therefore volume, would limit its effect on openness. It should also be noted that being limited to occupation by the applicant and his daughter the permission is finite. There is an expectation that in the future the caravan would be removed from the site thereby restoring its open quality.

Conclusion

In summary, the permission does not change the status of the proposal as inappropriate development that would also harm the Green Belt by detracting from openness.

Officers remain of the view that the personal circumstances of the applicant do not clearly outweigh the harm to the Green Belt and the character and appearance of the area. The recent permission enables the applicant to provide a home on the site for the duration of his and his daughter's needs and it considered that this reduces the weight that can be placed on their personal circumstances.

To date the S106 agreement has not been completed. Taking account of the change in material considerations arising from the appeal decisions officers remain firmly of the view that the planning application should be refused.