

OFFICER: Lee Walton (01935) 462324

APPL.NO: 07/01853/FUL APPLICATION TYPE: Full Application

PARISH: Curry Mallet WARD: ISLEMOOR

DESCRIPTION: The use of land as a site for a mobile home to accommodate travelling family and the erection of two timber buildings to provide bedroom and composting toilet (GR 331127/121697)

LOCATION: Crimson Hill, Top Road, Curry Mallet, Taunton, Somerset TA3 6AW

APPLICANT: R Davies & J Carson

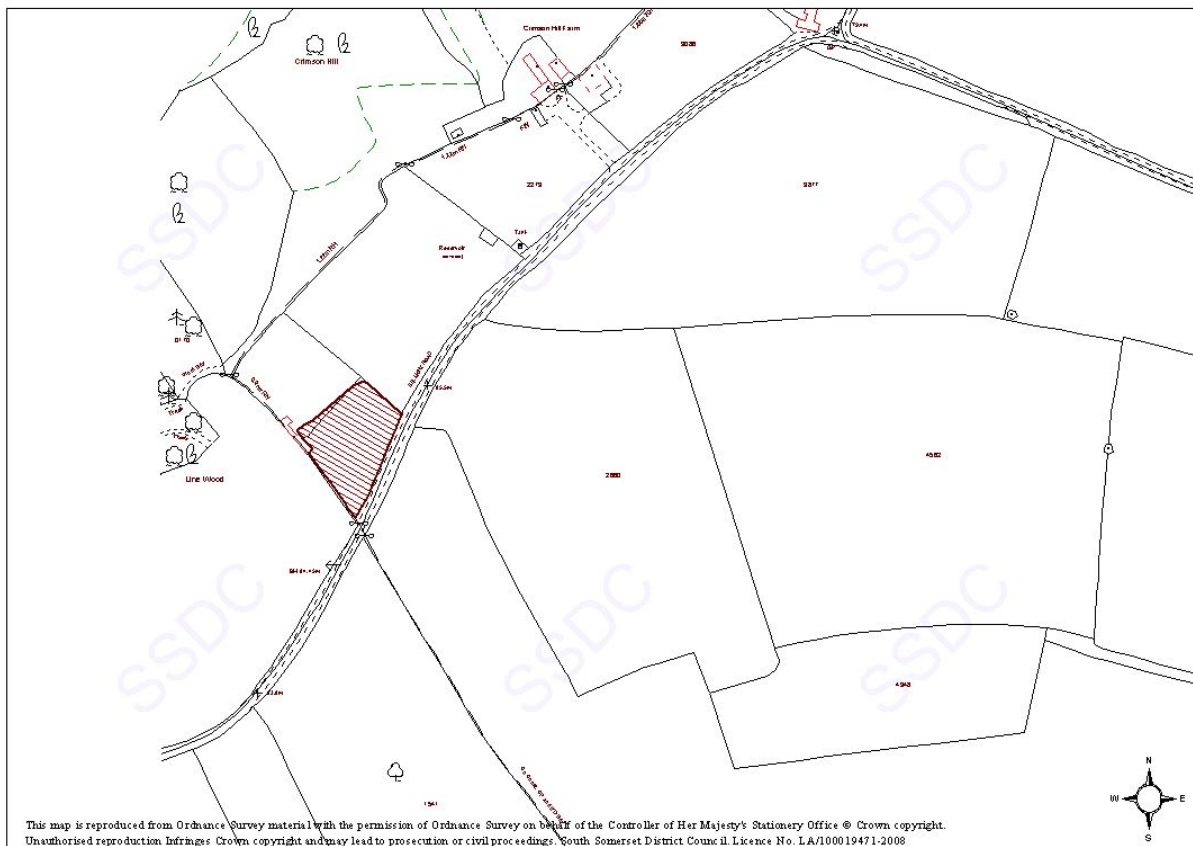
AGENT: Community Law Partnership, 19 Corporation Street, Birmingham B4 6RP

DATE ACCEPTED: 11 July 2007

Reasons for Referral

The site lies in the countryside with particular public interests in the proposal.

Location



The location is part of the wider countryside setting beyond any development area. The nearest settlement is Hatch Beauchamp about 1.6kms away. Access to the Taunton-Ilminster, and Wrantage - Curry Rivel roads offers access to centres with enhanced services and facilities.

The site is found on the north side of the lane, a quiet narrow rural lane with hedgerows to either side, a glimpse of the southern levels is achieved from field entrances. The nearest neighbouring residential dwelling is a couple of hundred metres to the east of the applicant's proposed location for their residential compound.

The site is set back behind the hedge with a copse proposed to give additional screening of the residential compound. The land drops away to the north with a tree screen defining this boundary - the residential element is hard up against the site's western boundary aligned with a field hedge. Generally the site is inconspicuous off site and the preferred landscape location within the applicant's land.

Proposal

The proposal seeks a travellers' site and is not a retrospective application but made in accordance with planning procedures. Pre-application advice was sought from the relevant council officers.

Planning History

06/00275/FUL - Application to change existing access. Approved.
05/00318/FUL - Construction of new access. Withdrawn.

Planning Policy

National Planning Guidance

National guidance on planning, gypsy and traveller sites is contained in circular 01/06. The circular advises on location aspects of gypsy and traveller site provision and on dealing with planning applications. Particular regard will need to be had to the advice and guidance set out in Circular 01/06 (Gypsy and Traveller Caravan Sites).

PPS7 gives advice regarding development in the open countryside. Most notably those sections regarding sustainable rural communities and countryside protection.

Local Development Plan Framework

Somerset & Exmoor National Park Joint Structure Plan Review
STR1 Sustainable Development
STR6 Development Outside Towns, Rural Centres and Villages
Policy 36 Sites for Gypsies and Travelling People
Policy 49 Transport Requirements of New Development
Policy - Landscape Character

South Somerset Local Plan

HG11 Long Term Residential Sites

Policy HG11 contains a policy specifically to address the provisions of 'long term' sites for gypsies and travellers who reside in the District. This confirms that a permission can be considered where the proposals will not harm the residential amenities or character of the area, create no serious highway problems and where the site is reasonably well related to schools and other community facilities. Such proposals will also need to ensure on-site provision for:-

- A refuse collection point
- Access to a drinking water supply
- A satisfactory means of sewerage disposal/ management
- Hardstanding for vehicles and ancillary parking, and
- A defined safe play area for children.

ST3 Development Areas

ST5 General Principles of Development

ST6 Quality of Development

EC3 - Landscape Character

Consultations

Curry Mallet Parish Council - Questions the category of person? The Council note the applicants' wish for a settled way of life and that their family had been resident for eight years in one abode. If minded to approve propose conditions to include the two named applicants and no further extension of the site.

Beercrocombe Parish Council - Objection. The applicants describe themselves as a travelling family. However, they are not itinerant living for the past 8 years at Slough Green Park, and now wish to move to another domicile to continue a settled way of life. The applicants are seeking preferential treatment by describing themselves as travellers. If travellers then there are established sites to which they could go.

Hatch Beauchamp Parish Council - Conditions: Not be a precedent, no expansion, personal. 5 years temporary permission to be reviewed. A clear and tidy site.

Taunton Deane - No comments.

Community Liaison Officer - Full Support. Pre-applications have been held.

Environmental Protection - No observations - compost toilet tried and tested.

County Highway Authority -No objection subject to visibility splay being conditioned as per earlier permission for new field access. The site is considered to be within a reasonable distance of a settlement providing local services and facilities.

Area Engineer -No comment

Environment Agency - If the borehole in question is to be used for drinking water, the local environmental health team should be contacted and they will test the water to see if it is fit for consumption.

Representations

A site notice was posted for general interest. There have been 21 responses received. These raise the following concerns:

- No water supply
- visual amenity
- agricultural land
- lead to further development on site
- impact on tourism
- loss of seclusion
- detrimental to character of the area
- unsatisfactory sewerage and disposal.

Applicant's Case

Our travelling life began when we were teenagers, for many years we lived on the road travelling with a horse and wagon, making money by fruit picking for local farmers. By 1994 we moved to mainland Europe where we continued to travel around Spain, France, Portugal and the Czech Republic, earning our living with a performing puppet show.

Our children have been in full time education in Somerset since 1998.

Throughout the summer season (May to October) we make our living by travelling to shows, festivals and outside events supplying them with mobile shower units and site crew. The shower units and any other business related machinery are stored on a rented yard; we do not intend to use Crimson Hill as storage for these units. We also have a small herd of sheep and make cider.

We have owned the land at Crimson Hill for nearly three years and in that time we feel we have treated the land with respect. Since buying the land we have done a lot of work to improve it, we have put in a new gate, repaired fencing and disposed of a lot of rotting piles of timber, old baths etc left from the previous owner.

Prior to completing this planning application we have had meetings with officers of the South Somerset's District Council to ask for advice and guidance on our planning application, namely the community liaison officer, a policy planner, landscape architect and development controller. All have visited the site.

We plan to live in a mobile home that is timber framed and resembles a log cabin and would be compatible with the surrounding area.

We have been living on a caravan site in Taunton for the last 8 years that we are now being evicted from which is devastating and could have huge implications on our children's education and our livelihood.

Consideration

The applicants are not gypsies but claim traveller status. Circular 01/06 (Planning For Gypsy and Traveller Caravan Sites) offers a definition for 'gypsies and travellers':

'Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependant's educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of any organised group of travelling show people or circus people travelling together as such.'

From the evidence presented the applicants' involvement in travelling commenced in their teens. Officers are mindful of the support from the Council's Community Liaison Officer and of the definition given in circular 01/06. Members have to consider the applicant's traveller status. In accordance with the definition the applicants' stopped travelling for health reasons (their child's) and to take up educational opportunities. If they are considered to have stopped travelling permanently then this is not the basis for undermining the applicants' case. The one area to focus minds is the period of time during which the applicants were on the road and perhaps the circumstances that saw them take to the road, for instance whether they were brought up by parents who travelled, or the length of time as well as the reasons for stopping.

The applicants' began to travel in their teens (now in their late 30s) and this continued when they moved to Europe returning in 1998 when they took up residence at a caravan site at Taunton. Their move back to Somerset involved health issues and the stability of educational provision has continued their presence at one site. The applicant's case is summarised above. Basically, they have travelled for about half of their adult lives.

Members should note that reference to alternative site provision or the lack of supporting evidence to show this to have been sought is, of course, not critical to the proposal's outcome which is considered in terms of the site's suitability in accordance with the exceptions policy HG11 and the wider policy objectives of the local plan.

Sustainable Location

The site is within the countryside away from service centres, within an area where the highways network is noticeably more rural in character, although relatively close to main roads.

The County Highways' Officer raises no objection to the proposal and states that the location is reasonably located. Hatch Beauchamp is about 1.6kms with the faster roads - Wrantage to Curry Rivel, and Taunton to Ilminster roads a little further. Occupants of the site have only a short journey before accessing these faster roads and therefore access to services and facilities further a field.

Landscaping

The site is set back from the road with relationship to boundaries, the lie of the land, the hedgerows and the proposed screening - the planting of trees between road and the residential compound, all makes the site far less noticeable off site.

County Highways have requested that the previous permission's condition for visibility splays is enacted on the site as part of the current permission. On reflection a relatively quiet lane the works to the hedgerow is considered need not be encouraged, which would clearly draw more attention to the site than perhaps is necessary.

Policy HG11

This requires also that the site includes facilities for refuse, drinking water supply, means of disposal for sewerage, hard-standing for parking and defined safe play area for children. Of these the access to drinkable water is noted. The Environment Agency have not raised objection but have noted that it will be for Environmental Protection to test the water as to whether it is drinkable. A planning condition is proposed requiring a drinkable water supply to be provided ahead of occupation of the site. In this way this particular concern for which there is no definitive answer at this time enables the LPA to retain control over the development.

Personal Circumstances

Details have been submitted as part of the application. This shows that education is a central theme at this time that health is not central to this location and that the applicant's business involves seasonal travel supplying shows, festivals and other outside events with mobile shower units and site crew. Arguably the type of business described is similarly undertaken by many static businesses.

What appears central to the application are the circumstances - the itinerant way of life of the applicants before they moved to their current address.

Legal Considerations

When deciding this application, the Committee has to have regard to relevant material planning considerations and these considerations will include (but not necessarily be limited to) the development plan policies referred to elsewhere in this report; policy guidance from central government; and the traveller status of the applicant and other persons occupying the application site, and their personal circumstances. The human rights of both the applicant, other occupiers of the site and third parties who may be affected by the Council's decision on this application also need to be considered.

As indicated, the Development Plan (comprising the adopted County Structure Plan and the adopted Local Plan) is an important material planning consideration to be taken into account by the Committee. Development Plan policies relevant to "gypsies and travellers" may be relevant to this application but only if the applicant and other occupiers of the site are "gypsies or travellers" as statutorily defined.

Therefore, the first thing that the Committee has to do is to decide whether the applicant and other occupiers of the application site are indeed "travellers" for planning purposes. If they are not, then this application falls to be determined without reference to the relevant Development Plan exceptions policy and any other planning policy guidance on gypsies and travellers. The application would then have to be considered as simply development taking place in the open countryside and Development Plan policies for such development would be applicable.

However, even if the applicant and other occupiers are not travellers under planning law, there may be other material considerations, such as their personal circumstances, which might lead the Committee to decide that the statutory presumption in favour of the Development Plan should be overridden in this case. That statutory presumption is now to be found in Section 38(6) of the Planning and Compensation Act 2004 which says that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts (as will be the case with all planning applications), the determination must be made in accordance with the plan unless material considerations indicate otherwise.

If the decision-maker concludes that the applicants have the status of a traveller as a matter of planning law and policy, he should then give it whatever relevance or weight is accorded to it in the Local Plan when having regard to that plan and any other material considerations under [Section 38(6) Planning and Compensation Act 2004: presumption in favour of the development plan] and [Section 70(2) of the Town and Country Planning Act 1990: requirement to have regard to the development plan, if relevant, and any other material considerations].

If the decision-maker concludes that the applicants do not have the status of traveller as a matter of planning law and policy, he may still have regard to their personal circumstances to the extent that he considers them relevant and of weight when considering material considerations, in addition to the development plan, under those provisions.

Human Rights

In deciding this application, the Committee must also consider whether any planning harm caused by the development in question is outweighed by the damage and interference with the applicant's human rights and the human rights of other occupiers of the site. Additionally, the Committee must consider the human rights of others (such as local residents) who may be affected by the development and any grant of planning permission.

For the purpose of considering Article 8 rights, any decision-maker (such as the Committee) has a duty to carry out an overt and structured assessment of the proportionality of the interference with human rights resulting from the action it proposes by asking itself a series of connected but discrete questions. To this end, the Committee must identify the (perhaps competing) interests that will be interfered with, carry out a balancing exercise of such interests to ensure the proportionality of the interference, decide the matter before it in the light of that balancing exercise and give reasons for its decision, with those reasons being minuted.

Conclusion

The applicants have identified an itinerant travellers way of life, which came to an end in 1998 when the applicants sought health and a stable education for their children. On balance the recommendation is to APPROVE the application.

RECOMMENDATION:

Application Permitted with Conditions

JUSTIFICATION

01. The proposed development is considered by reason of the applicant's status, the location of the site and limited harm to the countryside to be in accordance with relevant local plan policies ST6, EC3 and HG11 of the South Somerset Local Plan 2006.

01. No development shall take place until the applicant has undertaken work that identifies and provides a source of drinkable water on site. Evidence for this shall be submitted to and the agreed in writing by the Local Planning Authority.

Reason: In the interests of providing a drinkable water supply in accordance with policy HG11 of the South Somerset Local Plan 2006.

02. Permission is personal to the applicants Rebeka Davies and James Carson and to their dependents and to no other persons.

Reason: In the interests of the openness of the countryside, the site's location and the recognised status of the applicants in accordance with policy HG11, EC3, ST3, ST5 and ST6 of the South Somerset Local Plan 2006.

03. When the land ceases to be occupied by the named persons in condition 2 (above) and children the use hereby permitted shall cease and all caravans, structures, materials and equipment brought on to the land in connection with the use shall be removed. Within 1 month of that time the land shall be restored to its condition as an orchard before the use commenced.

Reason: In the interests of openness of the countryside and visual amenity in accordance with policies ST5 and ST6 of the South Somerset Local Plan 2006.

04. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no structures shall be erected other than those expressly authorised by this permission.

Reason: In the interests of countryside openness in accordance with policies ST3, EC3 and ST6 of the South Somerset Local Plan 2006.

05. There shall be no business undertaken from the site and no storage of items related to the occupant's businesses.

Reason: In the interests of the openness of the countryside in accordance with policies ST3 and ST6 of the South Somerset Local Plan 2006.

06. No more than one caravan as defined in the Caravan Sites Act 1968 and Social Landlords (Permissible Additional Purposes) (England) Order 2006 (Definition of Caravan) (Amendment) (England) Order 2006, shall be stationed on the site at any time.

Reason: In the interests of visual amenity in accordance with policy ST5 and ST6 of the South Somerset Local Plan 2006.

07. Landscaping shall be in accordance with the approved drawing (landscape treatment). The scheme of planting shall be implemented in its entirety during the first season (October to March inclusive) following the decision. Any tree, shrub or hedge plant (including replacement plants) removed, uprooted, destroyed, or be caused to die, or become seriously damaged or defective, within 5 years of planting, shall be replaced by the occupants with species of the same type, size and in the same location as those removed, in the first available planting season following removal.

Reason: In the interests of visual amenity in accordance with policies ST5 and ST6 of the South Somerset Local Plan 2006.

08. No mobile home/ caravan shall be stationed on the site other than within the area shown on the approved drawing.

Reason: In the interests of visual amenity in accordance with policies ST5 and ST6 of the South Somerset Local Plan 2006.

09. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To accord with the provisions of section 91(1) of the Town and Country Planning Act 1990.
