



PLANNING & DEVELOPMENT COMMITTEE

5 MARCH 2020

REPORT OF: DIRECTOR PROSPERITY AND DEVELOPMENT

PURPOSE OF THE REPORT

Members are asked to determine the planning application outlined below:

APPLICATION NO: 19/1272/10 (GH)
APPLICANT: Miss D Jones
DEVELOPMENT: Retention of change of land from vacant to a one family traveller site. (retrospective resubmission)
LOCATION: ROSE ROW, PENDERYN ROAD, HIRWAUN, ABERDARE, CF44 9SQ
DATE REGISTERED: 06/01/2020
ELECTORAL DIVISION: Rhigos

RECOMMENDATION: REFUSE

REASONS:

The proposed development would intensify the use of a substandard lane that lacks adequate vision splays, a turning area, suitable carriageway width, passing bays and adequate structural integrity, which would be to the detriment of highway safety and the free flow of traffic on the A4059. Consequently, it is considered that the application does not comply with Policies AW5 and NSA12 of the Rhondda Cynon Taf Local Development Plan.

The Local Planning Authority has balanced this against other material considerations that would weigh in favour of the proposal, including the lack of available alternative sites, the personal circumstances of the Applicant and legislation pertaining to equality, human rights and the best interests of the child. However, the LPA maintains its view that the threat to public safety, by virtue of the identified highway safety concerns, represents a significant wider risk and is not outweighed by such matters.

REASON APPLICATION REPORTED TO COMMITTEE

The Director of Prosperity and Development considers that the nature of the proposal warrants the involvement of the Planning and Development Committee.

APPLICATION DETAILS

Full retrospective planning consent is sought for the change of use of a field to a Traveller site for one family, at Rose Row Caravan, Penderyn Road, Hirwaun.

The development consists of the siting of a touring caravan, a mobile home and a timber structure to provide toilet facilities and a dayroom. In addition, a septic tank has been installed and all of the ground within the fenced enclosure has been laid with hard core for the purposes of parking.

A separate timber boundary fence has been constructed to the southern and western boundary, upon which a series of external lights have been attached above ground level. The site is gated and has access from a track leading to Penderyn Road.

The application is accompanied by a planning statement which outlines the Applicant's background as a Traveller in addition to discussing the merits of the case and the planning policy background.

Members will recall that this matter was previously determined at Committee in March 2019 as planning application 18/1388/10, where it was resolved to refuse the development. Subsequently, the decision of the Authority was appealed and a hearing took place last July.

During the hearing it became apparent that the Appellant had submitted a site location plan different to that which accompanied application 18/1388/10, which omitted to include the access lane within the red line boundary. Furthermore the hearing was advised that the Appellant did not own the lane, although Certificate A of the application form had been completed.

The validity of the application and appeal were therefore questioned and the Inspector advised that although the hearing would progress to its conclusion, several hours having already passed, he would have to take advice on whether the Planning Inspectorate would be able to issue a decision. However, prior to any decision or view from the Inspectorate, the appeal was withdrawn by the Appellant in August 2019.

The application has now been resubmitted with no change to the scope of the development for which consent is sought. In addition the Applicant's representative has completed Certificate D and provided details of the press notice which was published in the Western Mail on 16th December 2019.

This meets the requirements of the Development Management Procedure (Wales) Order 2012, as amended, since the ownership of the lane could not be established. The current application therefore became valid as of 6th January 2020.

SITE APPRAISAL

The application property is an enclosed field, located outside the settlement boundary to the north of Hirwaun, and comprises a surface area of approximately 880m².

There is a single access track to the site, which is gained from the A4059 Penderyn Road to the west, and which provides an access to adjoining fields. At the end of the track the route becomes a bridleway HIR/38/1 and continues past Bryn Maerdy Barn to the north-west.

Previously gated and enclosed by a wire fence, hedge and mature vegetation, the field has been laid with hardcore and partly laid out as described above, such that at the time of the initial site visit it accommodated two caravans and a day block. A separate timber fence has been erected inside the western and southern boundary.

Although the field has been previously described as being used for stabling horses or storage, aerial photography, available from 2001 onwards, demonstrates that the site appeared to be mostly unmaintained and overgrown until approximately 2017.

However, as its name would suggest the site once accommodated a row of cottages and the Rose Arms public house. Correspondence relating to a previous application both refused by the LPA and dismissed on appeal (02/1110/13), suggests that the cottages were occupied until circa 1947. Subsequently, all buildings were demolished.

The closest neighbouring properties are located 81m to the west, 61m to the south and 127m to the north-east.

PLANNING HISTORY

The most recent or relevant applications on record with this site are as follows:

- 18/1388/10:** Retention to change use of land from storage yard to a one family traveller site including stationing of one mobile home, one touring caravan, toilet block/dayroom, foul drainage and parking/lighting. Decision: Refused, 11/03/2019
- 02/1110/13:** Outline permission for bungalow and garage. Decision: Refused, 06/09/2002
- 51/87/0383:** Proposed Bungalow. Decision: Refused, 03/09/1987
- 51/84/0112:** Proposed Bungalow. Decision: Refused, 17/10/1984
- 51/79/0026:** Residential Development. Decision: Refused, 08/06/1979

Furthermore the adjoining land to the south, between the site and the railway line and sharing the same access was subject to the following application:

14/0077/10: Detached dwelling house. Decision: Refused, 18/03/2014

PUBLICITY

The application has been advertised by direct notification to twenty-seven individual properties and notices were erected on site.

Sixteen letters of objection have been received raising concerns which can be summarised as follows:

Highway safety

- The vehicular access to the site from the main road has always been considered unsuitable which has resulted in various applications being rejected.
- There is virtually no available parking space in the immediate area and no room for visitors.
- The A4059 Penderyn Road is very busy and dangerous and will get busier, especially if the cemetery expands.
- The access is very dangerous to both users of the lane and the traffic on Penderyn Road.
- Visibility around the site is poor due to the hump in the railway bridge, which should concern the safety of the five children living on the site.
- The lane is a public right of way and has not been used as a regular lorry access to the farm, as previously stated, since the gate leads onto a field.
- The right of way was not used by the farmer to get to his fields as there is a further access a couple of hundred yards away which is easier to use.
- Vehicles do not observe the speed limits in the vicinity of the site.
- There have been two serious accidents on that section of road, one of which was a vehicle turning into the lane from the A4059. The vehicle was hit with such force that it ended up in the ditch at the side of the road.

Scope of the application

- Although the application is for a one family Traveller site, there are currently three caravans and a large building occupying the site, together with a commercial vehicle with a ladder in its rear.
- Prior to the arrival of the commercial vehicle there were four caravans on the site, which raises the question of how many people constitute a family.
- Recently four caravans have been on site.
- There have been more caravans on the site than the application is for.
- The Traveller site would probably grow in size.
- At the time of writing there are four caravans on site and have been for some months. There is considerable traffic to and from the site and a number of commercial type

vehicles are frequently parked on the site, or in the lane obstructing the right of way and bridleway.

- There must be more than one family living on the site as there appear to be four or five caravans there.
- In recent weeks there have been additional vehicles and caravans on site, which may be an indication of things to come if planning permission is granted

Residential amenity

- In the summer loud music can be heard coming from the site which, if the wind is in the right direction, is so loud that the words can be made out.
- The presence of the site has already caused noise nuisance from loud music and generators, and air pollution to neighbours due to the burning of materials on site.
- There has been burning of waste materials during the evening causing nasty smells.

Visual Impact

- The site is an eyesore and has a negative impact on the natural beauty that the local community and visitors enjoy.
- A Traveller site in full view of the road detracts from the tourism generated by visitors to the Brecon Beacons National Park.
- The site is not in keeping with the surrounding environment and is unsightly.

Other issues

- It would be reasonable to expect further planning applications to expand the site onto the surrounding land.
- There seem to be different rules for some, where planning requires specific materials to be used, yet this site can be set up in the countryside before a planning application is made.
- If we were to consider moving house the value of our property would be affected and there are other properties even closer.
- Users of the right of way are faced with barking dogs, and the smaller dogs get under the fence to run at you, especially if you have a dog of your own.
- There is no evidence to suggest that any traveller family has historically resided on the site.
- The application seems to be based on the fact that children's human rights outweigh any policy considerations, for access to education and healthcare facilities. These rights could be met by an existing site at Beddau or a site inside settlement limits with safe highway access. Alternatively the children's needs could be met by applying for housing association accommodation within Hirwaun if there are strong links to the area.

Six further letters of comments or support, including one each from the Applicant and her Father, have been received highlighting the following matters:

- Current need for Gypsy and Traveller pitches in Wales outstrips provision.
- Miss Jones' need appears not to have been acknowledged despite the Council stating that its Gypsy and Traveller Accommodation Assessment (GTAA) would be regularly reviewed.
- Despite the duty for Local Authorities to provide pitches under the Housing Act (Wales) 2014, private sites are coming forward, at no cost to Councils, which are often the preferred choice, although land availability is limited.
- The Council has a positive duty to work with families to develop sites and overcome obstacles. So far as the objection from Highways is concerned it has been suggested that this could be addressed by a reduction in speed limit, appropriate signage, or white lining to prevent overtaking.
- Other material considerations, such as the rights of the family, children's rights and equalities legislation should be taken into account. In this case the five children are settled and two attend a local school. If they were forced to leave the site and adopt a roadside existence it would be extremely detrimental to their wellbeing.
- The Applicant's family have previously used the access lane, as well as the individual who kept horses, for 25 years, and have stayed in the lane on numerous occasions.
- If the Applicant and her children had to go back on the road, without sanitation, water and electricity, it would put them in danger.*
- Miss Jones is a regular customer, is well-mannered and respectful. Her children are well-behaved and cause no community problems.
- The Applicant and her family do no harm to the village and the children are settled and attend school. As a single parent with 5 children she should be allowed to remain.
- The tradition of Traveller families living on Penderyn Road should be maintained.
- Any safety issues could be resolved if there was a genuine will to do so.
- Life can be difficult enough without being further complicated by intransigence or intolerance.
- The traveller site, between Rhigos Road and Penderyn Road existed from the earlier part of the 20th Century, until it was closed in the 1970s.
- Highways improvements could be made to improve safety, which would also make access to the Cemetery safer.

*In this respect additional personal information, regarding medical matters, has been provided to the LPA to justify the application and signify that a travelling life would not be appropriate.

These matters are considered within the body of the report below.

CONSULTATION

Highways and Transportation

An objection is raised on highway safety grounds.

Dwr Cymru Welsh Water

No objection since a septic tank facility is proposed.

Drainage

The location of the site has not been identified as an area of known surface water flooding and as such, any drainage would come under Building Regulations Part H. From a flood risk perspective, there are no objections.

National Grid – Cadent

There are gas and electricity transmission lines in the vicinity of the site.

Natural Resources Wales

No objection - the applicant is responsible for securing a permit and consent for the septic tank.

Public Health and Protection

No objection.

South Wales Police

Consideration should be given to the implementation of a management plan, to include the storage and collection of refuse; and that any consent is conditioned to limit the size of the site to one mobile home, one touring caravan, two associated vehicles and non-habitable trailers

Western Power Distribution

A service connection or alteration will require the consent of WPD

Countryside – Public Rights of Way Officer

Any consent should be conditioned to ensure access to Bridleway No.38 is protected and maintained at all times.

RCT Waste Services

The bin collection point should be on the main road, there being no alternatives.

RCT Housing Strategy

The Common Housing Register is where Gypsy & Traveller applications are recorded as awaiting to be housed. None of the current listed applications require pitches in the Hirwaun area and the Register identifies demand solely in Beddau.

There is one vacant pitch at the Beddau site currently under refurbishment. There is no current knowledge of pitches available on private sites as the owners are under no obligation to keep the Council informed.

At present there are three applications waiting for pitches, but with plot 4 at Beddau being made available shortly, this will reduce the shortfall to two.

No other consultation responses have been received within the statutory period.

POLICY CONTEXT

Rhondda Cynon Taf Local Development Plan

The application site lies outside the settlement boundary for Hirwaun

Policy CS1 - in the northern strategy area the emphasis will be on promoting residential development in locations, which support and reinforce the Principal Towns and Key Settlements.

Policy AW2 - the policy stipulates that development proposals will only be permitted in sustainable locations

Policy AW5 - sets out criteria for new development in relation to amenity and accessibility.

Policy AW6 - requires development to involve a high quality design and to make a positive contribution to place making, including landscaping.

Policy AW10 - supports development proposals which are not detrimental to public health or the environment.

Policy AW15 - proposals for the use of land for the stationing of caravans occupied by Gypsies, Travellers and Travelling Show People will be permitted where it can be demonstrated that the proposed development:

1. Cannot be accommodated on the site allocated by Policy SSA 26.
2. Is reasonably related to local services.
3. Where possible, is located on previously developed land.
4. Includes sufficient space for parking and manoeuvring of all vehicles associated with the occupiers of the site curtilage.
5. Is provided with adequate on-site services for water supply; power; drainage; sewage disposal; and waste disposal facilities.
6. Does not adversely affect surface or ground water resources.

Policy NSA12 – development in the Northern Strategy Area will be permitted within the defined settlement boundaries where it can be demonstrated that it would not adversely affect the highway network.

Policy SSA26 - land is allocated at Beddau Caravan Park for the provision of Gypsy and Traveller accommodation for the whole of the County Borough

Supplementary Planning Guidance

- Design and Placemaking
- Access, Circulation and Parking Requirements

National Guidance

In the determination of planning applications, regard should also be given to the requirements of National Planning Policy which are not duplicated in the Local Development Plan, particularly where National Planning Policy provides a more up to date and comprehensive policy on certain topics.

The Welsh Government published Planning Policy Wales 10 on 5th December 2018, and the document aims to incorporate the objectives of the Well-being of Future Generations (Wales) Act into Town & Country Planning.

It is considered that although the proposal for the site has been brought forward in a manner consistent with the five ways of working, it does not meet all seven well-being of future generations goals, where this can be related to the highway safety aspect of the proposed development. For example, the goal for *A Wales of cohesive communities* aims to achieve safe and well-connected communities. Similarly, the goal for *A healthier Wales* emphasises choices that benefit future health.

PPW10 also requires development proposals to be assessed against national sustainable placemaking outcomes and in this regard the proposed development is considered to be partly consistent with the key principles and requirements set down in Chapter 2 People and Places: Achieving Well-being Through Placemaking.

Nevertheless, it is also recognised that the development is one where the guidance within Welsh Government Circular 005/2018 – Planning for Gypsy, Traveller and Showpeople Sites is of specific relevance, particularly in respect of site sustainability and wider material considerations. Hence these matters are considered further below.

Other policy guidance considered:

- PPW Technical Advice Note 12: Design
- PPW Technical Advice Note 18: Transport
- Manual for Streets
- Welsh Government Circular 005/2018 Planning for Gypsy, Traveller and Showpeople Sites June 2018
- Welsh Government Enabling Gypsies, Roma and Travellers Plan June 2018

REASONS FOR REACHING THE RECOMMENDATION

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that, if regard is to be had to the development plan for the purposes of any determination to be made under the Planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise.

Furthermore, applications that are not in accordance with relevant policies in the plan should not be allowed, unless material considerations justify the grant of planning permission.

Main Issues:

Principle of the proposed development

The proposal seeks consent for a mobile home and touring caravan, with a toilet block/dayroom and other ancillary works, on a parcel of undesignated, brownfield land, just outside the defined settlement boundary.

The site once accommodated a small terrace of cottages and a public house, and is in close proximity to the Key Settlement of Hirwaun, which is a sustainable location as defined by LDP Policy AW2.

Within the centre of Hirwaun there are a number of facilities and amenities, although the safeguarded routes for the rail line to Tower Colliery (Policy NSA 22.1) and the cycle route to Hirwaun Industrial Estate (Policy NSA 23.3) run between the settlement boundary and the proposed site.

In addition to the national planning policy requirements set out in Planning Policy Wales and applicable Technical Advice Notes that may be relevant to the consideration of a new dwelling in the countryside, Welsh Government Circular 005/2018 – Planning for Gypsy, Traveller and Showpeople Sites - requires the LPA to give due regard to additional criteria.

Firstly, paragraph 12 of the Circular considers that approved private sites have the potential to release pitches on local authority sites for those Gypsies and Travellers most in need of public provision; thus local authority pitches are available to those who are unable to buy and develop their own sites.

In relation to LDP Policy AW15, which is the criteria based policy for the use of land for the stationing of caravans occupied by Gypsies and Travellers, the matter of private ownership outweighs criteria 1. Otherwise the applicant would be required to evidence why the development could not be accommodated at the Beddau site identified by Policy SSA26; although the Applicant's supporting statement has previously justified this.

The proposal is also compliant with the other requirements of Policy AW15 in respect of its proximity to local services and due to the fact that the site is brownfield land. There is also sufficient space on site for parking and manoeuvring of associated vehicles, and the site can be provided with adequate on site services for water, power and waste disposal. There would therefore be no objection in relation to Policy AW15.

Secondly, paragraph 39 of the Circular states that sites in the countryside, away from existing settlements, can be considered for Gypsy and Traveller sites if there is a lack of suitable sustainable locations within or adjacent to existing settlement boundaries. In

assessing the suitability of such sites, local authorities should be realistic about the availability, or likely availability, of alternatives to the car in accessing local services.

Furthermore, the Circular notes that over-rigid application of national or development plan policies that seek a reduction in car borne travel, in order to effectively block proposals for any Gypsy and Traveller Site in a countryside location, would be inappropriate. Sites should be considered in context and in relation to the local infrastructure, population size and density to ensure they are in proportion to local settled communities.

Given that no alternative sites have been identified within the settlement boundary, interpretation of the Circular indicates that an objection based upon the requirements of LDP Policy AW2, which stipulate the criteria for a sustainable location, should be afforded minimal material weight.

Nonetheless, whilst the development is considered to be in general accordance with both Policies AW15 and AW2, Policy NSA12, against which residential proposals within or adjacent to settlement boundaries should be considered, requires development not to adversely affect the highway network. As noted further below, an objection has been received from the Highways and Transportation Section, on the basis of detriment to highway safety.

Previous planning applications at this and a neighbouring site, both proposing use of the same site access onto Penderyn Road as the current application, have been refused. The reasons for refusal, which included unacceptable harm to highway safety, have been twice upheld at appeal.

Consequently, whilst concerns in respect of the sustainability and location of the site may be put to one side, the inadequate highway access means the proposal would be contrary to criteria 2 of Policy NSA12.

Therefore whilst the *principle* of the development may be compliant with Welsh Government guidance and planning policy in all other respects, on balance and in light of the highway safety issue, the development is considered to be unacceptable.

Impact on the character and appearance of the area

The consultation response from the Brecon Beacons National Park Authority to the previous application noted that due to the nature of the surrounding topography and the location of the development, the Authority did not consider that there would be any detriment to the special qualities of the National Park landscape; albeit that this did not represent an assessment of the potential visual impact on the countryside outside of the National Park boundary

In this regard there is some concern about the visibility of the site from the highway and its visual impact; and on account of its location in open countryside and outside the settlement boundary the LPA gives greater weight to this matter.

Google street view images from 2011 show the site as undeveloped and devoid of any structures other than what appears to be a stock-proof fence and field gate, whilst similar images from 2017 capture the timber fence that was erected before any caravans or habitable structures were developed.

Although the site still benefits from some natural cover, by way of vegetation and mature trees, this was not sufficient, particularly at the time of the two midwinter site visits, to effectively screen the development. In addition, much of this screening is outside of the site boundary and therefore not within the control of the Applicant.

The reason that this is considered to be important is demonstrated by the change in appearance since 2011 and that the character of the land north of the railway line varies strongly compared with that within the settlement boundary to the south. There is a degree of visual intrusion caused by the fence, lighting, formal gate and cluster of caravans and vehicles, which, being of a domestic rather than agricultural quality, create a noticeable, discordant contrast.

However, note has been taken of Annex B to Circular 005/2018 which states that "Landscaping and planting with appropriate trees and shrubs can help sites blend into their surroundings, give structure and privacy, and maintain visual amenity. Enclosing a site with too much hard landscaping, high walls or fences can not only give the impression of deliberately isolating the site and its occupants from the rest of the community but could also be visually intrusive – both situations should be avoided."

Although this advice is given in the context of the development and design of new site by a local authority, the principles are still relevant. Furthermore, during a site visit to Rose Row during the summer, following the formal part of the hearing, it was noted that the remaining vegetation helped to limit the visual impact of the site.

For this reason it is considered that any detriment to the character and appearance of the local area is not sufficient to warrant a recommendation of refusal on these grounds. However, if the application were recommended for approval it is likely that a condition requiring the submission of a landscaping scheme, including measures to soften the impact of the boundary fence, would have been suggested in order for the scheme to comply with the aims of LDP Policy AW6.

Impact on neighbouring occupiers

The benefit of the application site being located within open countryside is that its distance from most other dwellings prevents there being any direct or immediate consequences for the amenity of other residents, either in respect of privacy or harm to outlook.

A number of the objectors highlighted issues of what they considered to be inconsiderate behaviour, such as generator noise, frequent and unacceptably loud music during the summer months and the regular burning of waste on site.

However these matters are not considered to be material considerations for this type of application, in that residential use of the site ought to be compatible with any neighbouring residential uses. Furthermore, the issues are ones that can be controlled by existing public health legislation.

Therefore no objections are raised in this regard.

Highways and accessibility

The Highways and Transportation Section has noted that retrospective planning permission is sought to change the use of land from vacant to a one family Traveller site, consisting primarily of a caravan, a mobile home and a timber dayroom and ablutions structure.

During a site inspection on 7th January 2020 the Section recorded that there were four caravans present, which was of concern given the increase in vehicular movements along the substandard access and that a vehicle towing a slow-moving caravan would likely require both carriageway lanes to access/egress the plot.

In respect of the previous site history it is noted that an outline planning application (02/1110/13) was refused on highway and planning grounds and a subsequent appeal dismissed. A further application for a single dwelling on an adjacent site sharing the same access was also refused on appeal for the same reasons.

Nonetheless, it is noted that the planning statement and later correspondence make reference to a number of suggested improvements, such as signage, speed limit reduction and white lining that would help to mitigate any concerns about the access point.

It is proposed that the site would be served from the same sub-standard lane as those earlier applications, which is also a Public Right of Way (Bridleway No.38) and where vehicular traffic could conflict with pedestrian use, although it is accepted that there are continuous pedestrian links to the site which are satisfactory for safe pedestrian access.

The lane was not designed and built to a standard that would facilitate the type and volume of traffic generated by the proposed development. It is not surfaced and its use would therefore result in vehicles tracking mud and debris onto the A4059 to the detriment of highway safety.

The lane is approximately 3.2m wide with no turning facility to enable all vehicles to enter and leave in forward gear. Therefore its use by emergency service and delivery vehicles would result in vehicular reversing movements onto the A4059 to the detriment of highway safety and free flow of traffic.

The lane forms a substandard junction with Penderyn Road (A4059), which has a speed limit of 50mph. The junction should have minimum radii of 6m with vision splays of 2.4m by 160m. The achievable vision splay to the left is 2.4m by 70m which is well below the standard

required. Any improvements to the vision splays would require third party land and re-profiling of the A4059, which includes that where a humped road bridge spans a railway line.

The Council's Highways and Transportation Section considers that since the proposed caravan site would generate a similar amount of vehicular trips as a residential dwelling, the proposal would intensify the use of a substandard lane lacking adequate vision splays, turning area, carriageway width, passing bays and structural integrity. Consequently the development would be detrimental to the safety of all highway users and the free flow of traffic and contrary to LDP Policy AW5.

Further material considerations

Notwithstanding the matters above, it is incumbent upon the Planning Authority to consider whether there are any other material considerations that should apply in this case, that might outweigh the identified harm to highway safety.

Welsh Government Circular 005/2018 explains that the Housing (Wales) Act (2014) places a legal duty upon local authorities to ensure the accommodation needs of Gypsies and Travellers are assessed and that the identified need for pitches is met. Although the Housing Act is not planning legislation it is relevant to this application since the unavailability of pitches to cope with identified need becomes a material planning concern.

In this regard the Council produced a Gypsy and Traveller Accommodation Assessment 2015-2020. The assessment determined that within this five year period there would be a shortfall of four residential pitches, although the great fluidity of such demand is recognised and could be lesser or greater at the time of enquiry.

Currently, as the response from the Council's Housing Strategy Team notes, there are three Gypsy and Traveller applications on the Common Housing Register, for pitches at Beddau, of which one is expected to be accommodated shortly.

A further example of the fluctuation in demand is where the Council had previously sought to expand the Beddau site. This was to meet a need identified at the time, where there was an expectation of an extended family and new household generation. However, the accommodation needs were met elsewhere and the scheme did not progress.

In this case it is noted that although the Council has no record of representation from the Applicant, identifying an accommodation need for her and her family, it is appreciated that a refusal of consent for the Rose Row site could ultimately result in the family having to leave – either to find an alternative location or become transient.

The Circular also advises that the Human Rights Act 1998 (HRA) and the Public Sector Equality Duty (PSED), established by Section 149 of the Equality Act (2010) are germane. The former requires that decisions taken must respect private and family life and the home, and peaceful enjoyment of their possessions. The PSED is relevant because of the protected characteristics of the Applicant.

A further factor, is that the requirements set out within of Article 3 of the United Nations Convention on the Rights of the Child (UNCRC) must be considered. The Article states that the best interests of children must be a primary consideration in making decisions that may affect them. All relevant adults should do what is best for children and when decisions are made, the impact on the child must be considered.

Article 3 applies in this case and it is evident that if the application did not gain consent the outcome would undoubtedly be disruptive to family life and in particular that of the two children who have been supported in their attendance at a local school.

Although, as a national treaty, the UNCRC has not been incorporated directly into domestic law, it has been recognised at Parliamentary level that its principles often guide practice and are often referred to by the courts when interpreting human rights.

Cognizant of these additional material matters, the courts have held that the identified harm to the public interest, i.e. the detriment to highway safety, must be balanced against the rights and personal circumstances of the Applicant. Article 8 of the European Convention on Human Rights states that “Everyone has the right to respect for his private and family life, his home and his correspondence”.

Article 8 also instructs that “There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

In this regard, the LPA and Highway Authority have consistently adopted a position that the site access is inherently unsafe, and this has been well-established via the refusal of planning consent for earlier residential development proposals. Furthermore two such proposals were dismissed at appeal (1099112 and 2224824) partly on the grounds of their effect on highway safety.

No evidence has been presented to establish that the use of the land for a one family Traveller site would generate any fewer vehicular movements than for a dwellinghouse, particularly in catering for the needs of five children and visitors. Indeed, it might be considered that the aforementioned medical conditions, referred to within the supporting statement and correspondence, would require additional help. The representations from objectors note several vehicles being present at the site, and three vehicles were seen within its curtilage at the time the site notices were erected.

Consequently the recommendation to Members, on fine balance, is that the threat to public safety, by virtue of the identified highway safety concerns, should not be outweighed by the personal circumstances of the Applicant and her family; the lack of available alternative sites; or any of the other aforementioned material considerations.

Other matters

The public consultation brought forward further matters, including the scope of the planning application. It is acknowledged that there have been more caravans occupying the site than for which retrospective consent is sought.

Nonetheless, the application has been considered on the basis of what has been submitted, and were it being recommended for approval, a condition would have been put forward, limiting the development to that applied for.

Similarly, there was a concern that granting consent for the current application would result in further applications coming forward, that could lead to an expansion of the site. In addition, it was suggested that the development would affect property values. However, these are not material planning concerns and no weight was apportioned to them in determining the recommendation for refusal.

Community Infrastructure Levy (CIL) Liability

The Community Infrastructure Levy (CIL) was introduced in Rhondda Cynon Taf from 31 December 2014.

The application is for development of a kind that is liable for a charge under the CIL Regulations 2010 (as amended) however, the CIL rate for this type of development as set out in the Charging Schedule is £nil and therefore no CIL is payable.

Conclusion

It is acknowledged that a location outside of the settlement boundary may be justified for the retention of this development. However, the detriment to highway safety means that the proposal is considered to be unacceptable and contrary to LDP Policies AW5 and NSA12.

The LPA considers that that the degree of harm is such that it should not be outweighed by other material matters.

RECOMMENDATION: REFUSE DUE TO THE FOLLOWING:

1. The proposed development would intensify the use of a substandard lane that lacks adequate vision splays, a turning area, suitable carriageway width, passing bays and adequate structural integrity, which would be to the detriment of highway safety and the free flow of traffic on the A4059. Consequently, it is considered that the application does not comply with Policies AW5 and NSA12 of the Rhondda Cynon Taf Local Development Plan.

