

NORTH AND EAST PLANS PANEL

THURSDAY, 27TH JULY, 2023

PRESENT: Councillor J Akhtar in the Chair

Councillors B Anderson, D Jenkins,
R Jones, J McKenna, M Millar, N Sharpe
and R. Stephenson

SITE VISIT

The site visit was attended by Cllrs Akhtar, Anderson, Jones, McKenna and Millar.

18 Appeals Against Refusal of Inspection of Documents

There were no appeals against refusal of inspection of documents.

19 Exempt Information - Possible Exclusion of the Press and Public

There were no exempt items.

20 Late Items

There were no late items.

21 Declaration of Interests

Cllr Stephenson informed the Panel that on arrival at the Civic Hall he had realised that one of the people speaking in objection to the application was a family friend. He informed The Chair that he had not spoken to the person about the application before the meeting, and was approaching the application with an open mind.

22 Apologies for Absence

There were no apologies for absence.

23 Minutes - 29th June 2023

RESOLVED – That the minutes of the meeting held on 29th June 2023 be approved as a correct record.

24 22/04416/FU - Retrospective planning application for use of land for residential purposes including the siting of one static caravan and one touring caravan on land at Sandgate Stables, Sandgate Terrace, Kippax

The report of the Chief Planning Officer presented a retrospective planning application for use of land for residential purposes including the siting of one static caravan and one touring caravan on land at Sandgate Stables, Sandgate Terrace, Kippax.

The presenting officer provided the following information to the Panel:

- The application was brought to Plans Panel at the request of the Ward Councillors Lewis, Harland, and former councillor Midgley. They objected to the scheme as the land was part of a wider allotment site and was protected greenspace as set out in the Kippax Neighbourhood Plan GE1 and through policy GS1 of the Site Allocation Plan (SAP). It was their view that the proposal was not suitable for the site and the application had not met the threshold of very special circumstances required when determining applications which would otherwise be regarded as inappropriate development due to being located within protected greenspace. It was also the view of the Ward Councillors that the proposal would have an impact on residential amenity and lead to loss of allotment land when there is demand for allotments in the area – as evidenced by the waiting list.
- It was noted that the site had a hedge buffer to the east, south and west and that residential properties were to the south on Sandgate Terrace.
- The site was contrary to policies related to greenspace and for this reason the applicant had set out very special circumstances for his application, relating to family life and most particularly the needs of the children involved.
- Members were advised of a site to the west of the application site which had been the subject of an appeal for a similar development. Members were informed that the family situation on the appeal site was different to the application site, as the family on the appeal site were living on a pitch on another site which had permanent planning permission and the children did not have links to the local schools.
- It was noted that the situation at the application site was different due to the very special circumstances put forward by the applicant which were:
 - The family had been living roadside prior to moving onto the site. This was not permitted by Government and the family had no alternative site options available.
 - Two of the children were attending the local primary school.
- The proposals for the scheme were contrary to GE1 of the Kippax Neighbourhood Plan, GS1 of the SAP and G6 of the Core Strategy. It was noted that the proposal could only be moved forward due to the very special circumstances set out.
- Conditions had been set for the scheme which included:
 - Temporary permission 3 years
 - Personal to the applicant, spouse, and dependents.
 - Returning the land to its original state following cessation of the permitted use and this would include the removal of the hardstanding and gravel path.
- It was acknowledged that the Council currently have two sites, Cottingley Springs and Kidacre Park, with all pitches full. It was noted that the Council does not have a five-year supply for deliverable sites. Information from the Leeds GATE who had been assisting the family, said they knew of families in a similar situation to that of the applicant and there was a three-year waiting list for pitches on a site.

- Members were shown plans for additions to the site which included a bin store, cycle store and the movement of the gate.
- In response to questions from Members during the site visit the following information was provided:
 - The electric point had been connected by Northern Grid and supplied electricity to the static caravan.
 - The gravel access path and hardstanding had been put in in Autumn 2020. As noted, it was proposed that a condition would be added to ensure this was removed and the land would be returned to its original state following cessation of the temporary permitted use.
- An additional condition was to be added for the applicant to submit a site plan setting out the uses of each section of land.

There were three objectors to the application in attendance at the meeting.

Resident of Sandgate Terrace provided the following information:

- It was devastating to see the changes of Carters Field allotments over the recent years. She said that this site had gone through changes and unfortunately photos had not been available to show what the site had looked like before.
- It was recognised that this development was temporary, but it was her view that the development was causing detrimental harm to the land. She thought there should be substantial weight given to the designation of the land. As it is at present, it was not presenting as greenspace and in her view was irreparable.
- There are other allotments at this location, the site was not in isolation. It was acknowledged that other allotments had outbuildings, but it was the view that they were not causing destruction to the natural habitat, and they were not dwellings.
- Where the caravan is sited was not where buildings were prior to the previous owner. It was noted that a hardstanding was put in and a building erected, but there was enforcement action, and the building was taken down and a static caravan placed there.
- It was the view and concern of the residents that granting this application had the potential for further developments on other allotments on Carters Field.
- Residents had concerns of who would monitor the site and those residing at the site, even so as to ensure compliance with any planning conditions that might be imposed. It was felt that this would inevitably fall to local residents to 'police'.
- The report had not reflected the emotional harm on the community and the detrimental effect on residents in the area. She also referred to the Inspector's report on a site nearby where a similar application had gone to appeal.

Chairman of the Castleford and District Allotment Federation Ltd provided the following information to Panel Members:

- He referenced the solicitor's letter which had been referenced in the report. It said the Allotment Federation had given a right of way to a strip of land adjacent to Sandgate Terrace. It was noted that the Federation did not own this strip of land and the Land Registry had refused to acknowledge the Federation's ownership of the strip of land. Therefore, the Federation could not grant a right of way.
- The Solicitor's letter had also made mention of the updating or maintenance of the roadway. This indicated that the right of way existed. The Chairman had a copy of the Land Registry document for that plot which did not include that strip of land but did include a half of the path that runs through the centre of the field which is the correct entrance to this strip of land.
- It was noted that Carters Field Allotments had been allotments since 1958 and the previous owners of the allotment had sold surplus produce to the local residents.

In response to questions from Members the following information was provide:

- Cllr Lewis said that the Ward Councillors' objections had been noted in the report. It was noted that the Kippax Neighbourhood Plan was voted for by the residents of Kippax in February 2019. There were compelling arguments why the land was not suitable for such a development. It was his view that how the amenity and management of utilities were not addressed adequately within the report. It was also noted that the outbuildings referenced as historic were not and were listed at paragraph 13 of the report and had been referred for enforcement action.
- It was noted that are 3 primary schools in Kippax, 1 in Allerton Bywater, 1 in Great Preston, 1 in Ledston, 1 in Micklefield and outside the ward in Garforth and Castleford.
- The Allotment Federation have 100 tenants across 4 sites in Kippax and there is a waiting list for these sites. It was the view that there may be a surplus across the area but there was not a surplus in Kippax.
- It was noted that this site had not been brought forward in the SAP for development, it was marketed and sold only as allotment land.
- It was noted that the ownership of the strip of land referred to was still the subject of ongoing investigations and discussions between the Allotment Federation and the Land Registry. The track had always been used as access for Carters Field Allotments. Members were advised that the roadway was an adopted highway and therefore under the jurisdiction of the City Council, but this is distinct from the matter of ownership of the area beneath (subsoil) that is not owned by the City Council.
- The electric point had been put in by the previous owner.

The applicant's Agent attended the meeting and provided the following information to the Panel:

- The applicant had been residing at the site with his wife and four children since June 2022 when he had purchased the land.

- His younger children attend the Kippax Ash Tree Primary School, as he and his wife had wanted the children to be educated in a state school.
- He had purchased the land as he had been unable to get a pitch on another site. Before moving to the site, the applicant and his family had been living roadside, which is now illegal.
- The Council has a shortage in its 5-year supply of Gypsy & Traveller pitches, therefore there were no available and suitable pitches for the applicant and his family.
- Right of access had been confirmed by John Howe and Co Solicitors based in Pudsey.
- There had been enforcement action previously against the steel frame building that was on the site when the applicant purchased the site. The applicant had undertaken to remove the steel frame building, which was replaced with the existing caravan structure.
- The electric point had been fitted by the applicant.
- The applicant pays council tax, and his waste is collected.
- The family are now registered with doctors and dentists in the area.

Responding to questions from Members the Panel were provided with further information:

- The family had resided on a pitch at Cottingley Springs traveller's site. However, there had been issues and the applicant and his wife had not thought it was appropriate to have the children living at this site. Therefore, they had left the site and, not being able secure another pitch on another site, had been living roadside for 6-9 months. The issues had been arguments between families, and there were general reasons for safety. The family would be happy to move to a site but there are only two in Leeds and Cottingley Springs was known to have issues.
- The family had lived roadside in various parts of the Leeds district and the children had been to various schools. An opportunity arose to buy the land and the applicant thought this was an opportunity to settle the family and for the children to be settled into a school.
- When the applicant had been made aware of planning enforcement, he had removed the steel framed structure but retained the hardstanding.
- It was confirmed that the applicant did own the freehold title to the land.
- Whilst living roadside the family had become involved with Leeds GATE who had been assisting them and this was how the agent had got to know of the family, through the Leeds GATE.
- While the two younger children are at a state primary school, the two older children are educated through Leeds GATE. Gypsy Traveller Families prefer for their young children to be state educated and when they reach secondary education age, they are educated through the Leeds GATE in the Leeds area.
- The applicant purchased the land for £16,000 and the deeds were issued through a solicitor. The Gypsy Traveller community prefer to live in caravans rather than in houses.
- After the 3-year temporary permission the family would move onto a site if there was an appropriate site for them.

- The applicant was aware that he would need planning permission, but the family had already moved onto the site, and this was why the application was retrospective. The applicant was aware that the site would need to be returned to its original state once the temporary permission had ceased.
- The electric point had been installed, as before this the electricity had been run off a generator which was noisy.
- It was the intention of the applicant to have 3 horses in the paddock area and for the two areas of grassland to remain as they are. The applicant would be prepared to accept a condition to this effect or provide an undertaking that the two areas of grassland would remain.
- The family have been looking for a pitch on a site but on average only 2 pitches a year become available.

The Area Group Manager recognised that this application was a hard one for the Panel. However, the Panel needed to consider the proposals before them irrespective of the history of this case. It was acknowledged that this did breach planning controls and the start of the development had been without planning permission and was contrary to greenspace policy. It was therefore necessary for Members to determine whether they were satisfied that very special circumstances existed, such as to outweigh the harm and development being contrary to policy if it was granted permission. This was to be the focus of Members' attention in the decision-making process taking place.

In response to questions from Members to officers the following information was provided:

- After the 3-year temporary permission enforcement action would be taken unless the applicant put in for a longer period. The temporary permission is personal to the family only. The site would be restored to its original state and these two points were conditioned. If this was not adhered to an Enforcement Notice could be issued.
- The Enforcement Notice at the cessation of the temporary permission would be served on any owners of the land. It was acknowledged that this would be difficult, but the service would try to serve the notice.
- It was acknowledged that there was a 0.1-hectare ratio per horse in British Horse Society guidance. The officers would check that the size of the proposed paddock was sufficient space for three horses.
- Officers were unable to confirm how the site was banded for council tax.
- Protected characteristics, as noted in the Report, were to be given some consideration in the decision-making process, but so too were the personal circumstances of the applicant and his family in this instance. This was because there was a judgment to be made as to whether it was deemed there were very special circumstances established to a sufficient degree to outweigh any harm from what would otherwise be regarded as inappropriate development.

- No percentage could be placed on what weight Members should give to any of the factors, but it was for Members to use their own judgment in the planning balance.
- Members acknowledged the Inspector's comments from an appeal of a site nearby but had concerns that this may not be in line with current guidance and policies in relation to the Gypsy Traveller Sites.
- It was acknowledged that the Council did not have a 5-year supply for Traveller sites as set out in the SAP. Members were provided with a policy up-date on how this is being considered as part of the Local Plan Review process and what this means in the longer-term.
- Members were informed that the permission was specific to this family for this site. The Enforcement Team would have the responsibility for monitoring compliance with the terms of this planning condition. Timescales for visits to the site could be agreed. It was noted that the Enforcement Team would be reliant to some extent on the residents somewhat to report if there was a breach of controls, but this is as is often the case with planning enforcement matters on sites across the City.
- Members were reminded of an appeal in 2018 at Hollinghurst on a retrospective application for traveller's land which was refused by the Panel but allowed on appeal. On this occasion, once at appeal, the Inspector had said that the weight should have been given to the unmet need and Council's lack of supply of Gypsy Traveller pitches.

The Panels comments included:

- There was insufficient information in relation to why the family had left Cottingley Springs, making themselves intentionally homeless.
- Insufficient information on the steps that would be taken to restore the site to its original condition.
- The word CHOICE had been used on numerous occasions in relation to the applicant which was picked up by the Panel. It was acknowledged that everyone had a right to a family life and everyone had a right to be treated fairly and equally, as is indeed enshrined in the law. However, there were different ways in which this could be approached and achieved.
- The Panel had noted the very special circumstances relating to ensuring education for the children.
- This was a difficult decision especially in light of information provided for the 2018 appeal, in relation to unmet need which was a significant factor that the Panel should take into account.
- More information was required from Leeds GATE who had been assisting the family.

Cllr Stephenson put forward a motion to refuse the application on the grounds that significant weight had been placed on the very special circumstances that the children attended a primary school. However, the applicant had chosen to put himself and his family in this position. There were school places elsewhere. This application was contrary to policy on greenspace and the very special circumstances were not deemed sufficient to outweigh this.

Cllr Anderson seconded the motion. On being put to the vote, this motion was not carried.

Cllr Jenkins put forward a motion to defer the application for more information to be provided in relation to unmet need, issue of choice, advice from Leeds GATE, the school, and if it would affect the children if they were removed and ward members views. Also, the consequences of refusal given the Inspectors comments to a 2018 appeal.

Cllr McKenna seconded the motion. He also requested further information on reason why the family had left Cottingley Springs, and information in relation to the size of the paddock to ensure that the three horses had sufficient space. Also, to look at if the applicant was willing to change part of the green space back to allotment land and how this could be secured.

The Area Group Manger summed up the information requested by the Panel as:

- Returning some of the land back to allotment land.
- Information in relation to the land allowed per horse for grazing.
- Advice from the Leeds GATE, the school and ward members.
- More information in relation to refusal and any consequences.
- More information on unmet need.
- And take legal advice on the scope and context of what weight could be applied to the history of the family and why they left Cottingley Springs and if this is material to the planning application.

On being put to the vote, this was carried.

RESOLVED – To defer for further information as requested by the Plans Panel in relation to:

- Returning some of the land back to allotment land.
- Information in relation to the land allowed per horse for grazing.
- Advice from the Leeds GATE, the school and ward members.
- More information in relation to refusal and any consequences that flow particularly in respect of the children of the applicant.
- More information on unmet need.
- And take legal advice on the scope and context of what weight could be applied to the history of the family and why they had left Cottingley Springs and if this is material to the planning application.

25 Date and Time of Next Meeting

RESOLVED – To note the next meeting of the North and East Plans Panel will be held on Thursday 24th August 2023 at 1.30pm.