

APPLICATION REPORT – 22/00989/FUL

Validation Date: 15 September 2022

Ward: Euxton

Type of Application: Full Planning

Proposal: Section 73 application to remove condition no.3 (permission tied to named parties and dwelling) of planning permission ref. 09/00177/COU (Retrospective application for the change of use of land used as residential curtilage and an additional area of agricultural land to a mixed use of the land for residential curtilage, agricultural land and the storage of 20 touring caravans)

Location: Park View Runshaw Lane Euxton Chorley PR7 6HD

Case Officer: Mike Halsall

Applicant: Mr & Mrs Mawdesley

Agent: Mr Richard Elliott, MacMarshalls Ltd

Consultation expiry: 27 October 2022

Decision due by: 10 February 2023 (Extension of time agreed)

RECOMMENDATION

1. It is recommended that planning permission is granted, subject to conditions.

SITE DESCRIPTION

2. The application site is located in the Green Belt on land to the rear of a residential dwelling, Park View, which is located on the northern side of Runshaw Lane in Euxton. Vehicular site access is gained via Titebarn Lane, located to the east of the site. There are further dwellings located to the south west of the site, forming a row of ribbon development along Runshaw Lane, with Park View being the end property to the east, with farm buildings at the western end. The site perimeter is mostly lined with trees and surrounded by open agricultural land.
3. The site is roughly triangular shaped, tapering off towards its northern end, and consists mostly of maintained grassland with hardstanding for vehicular and pedestrian access to the stored caravans. Whilst the extant planning permission contains no restrictions on where the caravans can be stored at the site, they are currently stationed on sections of hardstanding on the eastern and northern part of the site, with the south western corner, located directly behind neighbouring dwellings on Runshaw Lane, being free of caravans and put to open grassland/lawn.
4. Planning appeal ref. APP/D2329/C/04/1150042 established that 10 caravans can lawfully be stored at the site as the use of land had become lawfully established and was, therefore, immune from enforcement action.
5. Planning permission was granted by the Council's Planning Committee in September 2009 (ref 09/00177/COU), against officer recommendation, for the change of use of land used as residential curtilage and an additional area of agricultural land to a mixed use of the land for residential curtilage, agricultural land and the storage of 20 touring caravans.

6. The committee report for the above planning application was clear that the proposal related to 20 caravans in addition to the 10 which can be lawfully stored at the site. Up to 30 caravans can, therefore, be lawfully stored at the site by virtue of the extant planning permission and the planning appeal decision.

DESCRIPTION OF PROPOSED DEVELOPMENT

7. The application seeks planning permission under Section 73 of the Town and Country Planning Act 1990 to remove condition no.3 of planning permission ref. 09/00177/COU, which reads as follows:

'The permission hereby granted for the storage of 20 additional touring caravans on the site shall only enure for the benefit of Mr and Mrs Mawdesley and shall cease if Park View and/or any of the land associated with the property is sold or transferred.'

Reason: The application was permitted on the basis of the individual 'very special circumstances' forwarded by the applicant Mrs A Mawdesley, to define the permission and in accordance with Policy No. DC1 of the Chorley Borough Local Plan Review.'

REPRESENTATIONS

8. Two representations have been received in objection to the proposal, raising the following issues:
- Concerned that if the naming clause is removed then it could potentially lead to a third party being involved of the property was to be sold or inherited
 - Fear of further development of the site, e.g. for housing
 - Unlikely other potential future owners would be as respectful and mindful of their neighbours as the current owners
 - As there is no restriction on where the caravans can be stored, future owners may store them directly behind the dwellings on Runshaw Lane, resulting in loss of privacy, fire risk, potential increase in criminal activity, noise and disturbance
 - Green Belt harm
 - Not aware of any changes to the very special circumstances which supported the original application
9. Eighty-six representations have been received in support of the proposal, raising the following points:
- There is shortage of such facilities in the area
 - Caravan owners would be forced to sell their caravans without the site remaining in use, some report that they are not allowed to keep caravans at their home address or do not have sufficient space for such
 - The approval of the application would allow the site to continue in its current use should the current owners retire or leave the property
 - Owners of caravans has increased in recent years with storage facilities not increasing proportionately
 - The sites situation is unique, and the Very Special Circumstances still remain
 - In the subsequent 13 years since 2009, there have been no new caravan storage facilities established in the Chorley area that could accept the 20 displaced caravans of the site has to close to comply with condition 3
10. With regards to some of the above comments, it is worth noting that this proposal does not relate to whether the site can continue to operate as a caravan storage facility, but rather whether it continues to operate with or without condition no.3 being attached.

CONSULTATIONS

11. Euxton Parish Council: Have responded in objection to the application, stating the following:

'The 2009 application was granted in green belt because of "very special circumstances". No indication has been given that the circumstances have remained "very special" and may be directly related to the current occupier. If conditions are changed in the application whereby the site is sold to another occupier, then green belt land will be used for inappropriate activity. Additionally, the site has been storing more than 30 caravans, seen on Google maps.'

PLANNING CONSIDERATIONS

Section 73 applications

12. Section 73 of the 1990 Act provides that developers can make "applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted". Where a developer makes a Section 73 application the Local Planning Authority is only permitted to consider the question of the conditions attached to the planning permission. If the application is granted then the developer has two planning permissions, either one of which could be implemented and developed out. If the application is refused the developer still has the benefit of the original planning permission. The key point is that an amendment must be able to be facilitated through the variation or deletion of a condition.

The original proposal

13. Green Belt planning policy has not significantly changed since the approval of planning application ref. 09/00177/COU, which is now as follows, at Chapter 13 of the National Planning Policy Framework (The Framework):

137. The Government attaches great importance to Green Belts. 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.

138. Green Belt serves five purposes:

- a) *to check the unrestricted sprawl of large built-up areas;*
- b) *to prevent neighbouring towns merging into one another;*
- c) *to assist in safeguarding the countryside from encroachment;*
- d) *to preserve the setting and special character of historic towns; and*
- e) *to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.*

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

148. 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, is clearly outweighed by other considerations.

149. A local planning authority should regard the construction of new buildings as inappropriate in Green Belt. Exceptions to this are:

- a) *buildings for agriculture and forestry;*
- b) *the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it;*
- c) *the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building;*
- d) *the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;*

e) *limited infilling in villages;*
f) *limited affordable housing for local community needs under policies set out in the development plan (including policies for rural exception sites); and*
g) *limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would:*
– *not have a greater impact on the openness of the Green Belt than the existing development; or*
– *not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.'*

14. The outside storing of caravans is a use of land which does not fall within any of the exceptions of the Framework and is, therefore, inappropriate development in the Green Belt and harmful by definition.
15. Whilst caravans are not considered to be 'buildings' in planning terms, they have a physical presence through their mass and volume, and this has been introduced across the site, which was previously largely open and free from built development. Caravans will come and go from the site, given the nature of the storage operations. The development, therefore, harms the openness of the Green Belt by a transient impact of both localised (within the site) and wider (from outside the site) visual and spatial impacts. It cannot, therefore, be reasonably concluded that the development preserves the openness of the Green Belt. It is also considered that the caravans result in encroachment of the countryside by introducing a physical presence to a once largely open site and the development, therefore, conflicts with one of the purposes of including land in the Green Belt. This view is consistent with a recent planning application which was refused by the Council (ref.21/01278/FUL) with a subsequent appeal to the Planning Inspectorate being dismissed (ref. APP/D2320/W/22/3293597).
16. Inappropriate development should only be approved in very special circumstances. 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, is clearly outweighed by other considerations.
17. Planning permission ref. 09/00177/COU was granted based upon the following very special circumstances which were identified in the committee report and determined by the Council's planning committee to outweigh the harm to the Green Belt and other harm. The circumstances below have been taken from the committee report for the aforementioned application:
 - Caravan storage has taken place on this site for 22 years without any traffic incidents
 - The land to be developed is within the residential curtilage of the property
 - The site will be configured to minimise visibility of the caravans to public view
 - Within a 400m radius of the site, there are other developments that do not fall within the scope of PPG2
 - A sand quarry is due to open nearby that will violate the openness of the Green Belt although the applicant accepts that quarrying can only take place where the raw material is located
 - The Land Design statement rebuts the argument that the development will be a major visual intrusion
 - A site audit of 66 caravans previously stored at Park View shows that 42 were from Chorley, 20 from Leyland and 4 from the surrounding area. Of these 66, 17 are still on site (this figure includes the 10 that can be lawfully stored), 22 have been sold, 13 have been moved to other storage sites out of the area and 9 are now being stored on private driveways
 - In caravan storage terms, this is a small-scale facility, but it would still provide a facility for the caravanning public of Chorley and would go some way to replace a lost facility
 - Caravans stored on secure sites are safer, at less risk from crime

18. In approving the application, the Council considered it necessary to attach condition no.3 which ties the planning permission to the applicants, Mr and Mrs Mawdesley. The Planning Committee delegated the imposition of planning conditions to the Corporate Director (Business) in consultation with the Chair.

The applicant's case for justifying the removal of condition no.3

19. The applicant's case for justifying the removal of planning condition no.3, as set out in their submitted Supporting Statement and subsequent correspondence from the applicant's agent, is summarised below:
- The condition does not meet the six tests (paragraph 55 of the Framework), i.e. necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and unambiguous.
 - In deciding to grant planning permission, the Council took into account all of the very special circumstances advanced to justify the storage of the additional caravans and considered the use acceptable having regards to them.
 - There is no change to the considerations other than the use has now been occurring for over 35 years, it is a very well-established business. Furthermore, there has been a surge in caravan ownership since the Covid pandemic and an increase in the need for secure storage facilities. Demand has grown significantly. Additionally, there have been no additional caravan storage sites opened in the area since permission was granted.
 - If the condition was removed it would result in no change to the use of the site, or how that use functions. There would be no effect on the openness of the Green Belt, no effect on visual amenity, no adverse impact on neighbour amenity, and no impact on highway safety. Equally as significantly, there is an existing and continuing lawful use for the siting of ten caravans that can be owned and/or operated by any individual, group or organisation. This significantly decreases the necessity for the additional 20 that were approved to be tied to Mr & Mrs Mawdesley.
 - It is not considered relevant to planning or relevant to the development permitted for the condition to state that the use should enure only for Mr & Mrs Mawdesley. The owner(s) of the site makes no difference to the use in land use planning terms. For the same reasons, it is also not considered pertinent to the permission to require the use to cease if Mr & Mrs Mawdesley sold their house or any other part of their land. The requirement does not fairly and reasonably relate to the development permitted.
 - The condition is clearly unreasonable insofar it is unduly restrictive, and onerous. It places an unnecessary and unreasonable burden on Mr & Mrs Mawdesley, which effectively ties them to their property, and does not enable them to sell or transfer any part of it unless the use of the land for the storage of the additional 20 caravans ceases. It is unreasonable to do this in any event, but particularly so in this case when it is clear that the use would be acceptable without such a condition. As described previously when commenting on the necessity of the condition, it is unreasonable to impose the condition which effectively ties Mr & Mrs Mawdesley to 20 of the caravans on site, when there is no restriction in respect of the other 10 over the site.
 - Importantly, since the previous decision there have been several caravan storage units closed in the area and no new business have been established. There is currently a high demand for storage and all of the current occupiers live within a five mile radius. Should for any reason the applicants be required to sell or transfer any part of Park View (including the house or any other element not covered by the permission) the storage of 20 caravans would be required to cease. This would mean that 20 local people would have to either sell their caravans or find alternative storage provision, most likely outside of the Borough. It would also support a case for providing a new storage facility somewhere else, which would make no sense given this use is and has been causing no issues for such a long period of time.
 - This condition was not requested by Members when recommending approval, it was subsequently imposed by the Corporate Director and the Acting Chair of planning that evening Cllr. Michael Devaney. This can be verified by Mrs Mawdesley who attended and spoke at the meeting, and is also referenced in the committee minutes. There was

no discussion by Members in relation to the imposition of this type of condition, or the reasons for it. They recommended approval without it.

- In a letter of representation received by the Council from Rural Futures Ltd, in which they provided their support to the application for a number of reasons, they stated that: “The closure of the site will require Mrs Mawdesley to either seek employment elsewhere or begin claiming benefits”. However, this was not one of the very special circumstances advanced by the applicant. It is necessary to stress that it was not one of the very special circumstances as identified in the committee report. It was referred to in a separate paragraph, correctly being referred to as being contained within a letter of support.
- In resolving to grant planning permission Members considered that very special circumstances were advanced to outweigh the finding of inappropriateness. Those very special circumstances still exist, and condition no.3 has been demonstrated not to meet the tests as set out in national planning policy and guidance.
- Should this condition remain, it will result in the loss of 20 caravan storage pitches that have and continue to provide a vital service to caravan owners within the Borough. The facility has existed for over 35 years and the pitches have been in constant demand ever since. The applicants have a waiting list, and can fill any vacant pitch within hours.
- The applicant has also provided a list of caravan sites within the Borough that are all at capacity or have closed.

Case officer assessment

20. Regardless of why condition no.3 was attached to the existing planning permission, for it be removed, Members need to be satisfied that the development delivers sufficient benefits to outweigh the harm caused by the development in Green Belt terms, without the condition. This means that very special circumstances still exist without the imposition of condition no.3, which ties the planning permission to the applicants.
21. The applicant has set out that there is a shortage of this kind of facility across the Borough which, should the applicants wish to sell the site or retire, would cease to operate if condition no.3 remains in place. The applicant states, as do many of those who have written in support of the proposal, that there has been a surge in caravan ownership since the Covid pandemic and an increase in the need for secure storage facilities. Further, other facilities have closed since the planning permission was granted and no new facilities have come into use. It is, therefore, considered that very special circumstances exist, without the imposition of condition no.3, to outweigh the harm caused by the development.

Other issues

22. It is not considered that the proposed removal of condition no.3 would result in any other impacts than those identified above, e.g. residential amenity, highway safety or drainage as the assessment of the acceptability of the proposal is limited to the principle of the proposed development in the Green Belt.

CONCLUSION

23. Application ref. 09/00177/COU was approved on the basis of very special circumstances having been demonstrated by the applicant to outweigh the harm to the Green Belt caused by the development. The proposed removal of condition no.3 of the planning permission would not change the associated impacts of the existing approved development. Further, the need for such facilities appears to have increased since the approval of the original planning permission. Very special circumstances are, therefore, considered to exist to outweigh the harm caused by the development. The application is, therefore, recommended for approval.

RELEVANT HISTORY OF THE SITE

Ref: 04/00279/COU **Decision:** REFEUD **Decision Date:** 28 April 2004
Description: Change of Use of land from residential to private leisure and caravan park

Ref: 05/00198/COU **Decision:** REFFPP **Decision Date:** 6 April 2005
Description: Change of Use of land from residential to caravan storage area

Ref: 07/00453/COU **Decision:** REFFPP **Decision Date:** 18 July 2007
Description: Retrospective application for the change of use of residential curtilage and a further parcel of land to enable the storage of 25 additional caravans

Ref: 09/00177/COU **Decision:** PERFPP **Decision Date:** 18 September 2009
Description: Retrospective application for the change of use of land used as residential curtilage and an additional area of agricultural land to a mixed use of the land for residential curtilage, agricultural land and the storage of 20 touring caravans

Ref: 19/00167/CLPUD **Decision:** PERPUD **Decision Date:** 10 June 2019
Description: Application for a certificate of lawfulness for the proposed siting of a mobile home to provide ancillary accommodation and associated hard surfacing.

RELEVANT POLICIES: In accordance with s.38 (6) Planning and Compulsory Purchase Act (2004), the application is to be determined in accordance with the development plan (the Central Lancashire Core Strategy, the Adopted Chorley Local Plan 2012-2026 and adopted Supplementary Planning Guidance), unless material considerations indicate otherwise. Consideration of the proposal has had regard to guidance contained within the National Planning Policy Framework (the Framework) and the development plan. The specific policies/guidance considerations are contained within the body of the report.

Suggested conditions

1. The development hereby permitted shall be carried out in accordance with the approved plans below:

Title	Plan Ref	Received On
Proposed Caravan Storage Park View Runshaw Lane Euxton	N/A	9 March 2009
Proposed Storage for 30 no. Caravans for Mrs A Mawdesley	098/05 A	30 October 2009

Reason: For the avoidance of doubt and in the interests of proper planning

2. The permission hereby granted is for the storage of 20 touring caravans on the site which shall only be stored in the positions highlighted green on the approved site plan received by the Local Planning Authority on 30 October 2009 and dated 5th May 2009 (Drg No. 098/05 A). The permission hereby granted does not include the storage of mobile homes and/or camper vans or any other form of vehicle, boat, trailer or otherwise.

Reason: In order to retain control over these items which are, by their very nature, inclined to be transient.