

SCHEDULE A: Applications with Recommendation

12/0990

Item No: 12

Date of Committee: 19/04/2013

Appn Ref No:
12/0990

Applicant:
Mr Jim Devers

Parish:
Arthuret

Date of Receipt:
05/12/2012

Agent:
Talking Travellers

Ward:
Longtown & Rockcliffe

Location:

Woodlands View, Sandysike, Longtown, Carlisle,
CA6 5SR

Proposal: Variation Of Condition 2 Of Previously Approved Application 09/0886 To Allow The Occupation Of Two Plots By The Applicants & Their Families (Retrospective)

REPORT

Case Officer: Richard Maunsell

1. Recommendation

- 1.1 It is recommended that this application is approved with conditions.

2. Main Issues

- 2.1 Whether The Principle Of The Variation Of The Condition Is Acceptable
2.2 Availability Of Alternative Accommodation

3. Application Details

The Site

- 3.1 This application seeks Full Planning Permission for the variation of an occupancy condition at a private Gypsy and Traveller site at Woodlands View, Sandysike, Longtown. The application site, which measures approximately 36 metres in width by 70 metres in depth is located immediately adjacent to, and to the north of, the County highway leading from Sandysike to Arthuret Parish Church and ultimately to Longtown, and is 800 metres to the east of the junction with the A7. To the east and west of the site are commercial units with open countryside to the south and a

wooded area to the north. The land is designated as being a Primary Employment Area within the Carlisle District Local Plan 2001-2016.

Background

- 3.2 The site was previously a woodland protected by Tree Preservation Orders (TPOs) 226 and 67. The trees were felled in 2007 by the previous owner and further development took place to provide hardstandings, formation of an earth bank and siting of static caravans together with several utility buildings. A fence was also erected adjacent to the front boundary on the inside of the existing hedge.
- 3.3 On 1st February 2010, the then site owner Mr MacDonald, was successfully prosecuted at Carlisle Magistrate's Court for clearing woodland protected by the TPO. Mr MacDonald admitted breaching the order and was fined, as was the contractor who carried out the work.
- 3.4 In 2010, planning permission was refused for the change of use of land from former woodland to caravan site for stationing of caravans for single extended gypsy-traveller family with associated development (hard standing, cess pool, two utility sheds) for the following reasons:

“There is no proven general need for additional Gypsy sites in the area and the applicant's circumstances appear to be such that it cannot be concluded that occupation of the current site outweighs the potential to occupy alternative sites. The site of the proposed development is located within an area of sporadic development unrelated to any existing settlement. In this location the proposal would be unduly conspicuous, consolidating the existing development to the detriment of the rural character of the area. The proposal would thus be contrary to Policy H14 of the Carlisle and District Local Plan 2001-20016 which seeks to ensure proposals for Gypsies and Travellers stem from an identified need and ensure that there would be no adverse impact on the local landscape.

In order to accommodate the proposed development, an extensive area of trees and their remaining stumps have been removed, which is protected by Tree Preservation Order No.226 and is subject to a Restocking Notice served by the Forestry Commission. The irrevocable loss of such a significant area of protected woodland would be detrimental to the landscape character of the surrounding area and result in the loss of a natural area and significant landscape feature. As such the proposal is contrary to the objectives of criteria 1 and 2 of Policy EC1 (Primary Employment Area - relating to Sandysike), the objectives of Policy CP1 (Landscape Character), Policy CP3 (Trees and Hedges on Development Sites), and criterion 6 of Policy CP5 (Design) of the Carlisle District Local Plan 2001-2016.”

- 3.5 Following the Council's decision, the applicant lodged an appeal with the Planning Inspectorate. The Inspector acknowledged that in relation to the final report of the Cumbria Gypsy and Traveller Accommodation Assessment (2008) [GTAA], the numerical provision of pitches in the District up to 2012 had met the specified requirement; however, he opined that the situation

gave rise to some concern of a need for further short term provision, whether as a product of under-estimation in the GTAA or by household growth for the period 2012–2016. Overall, the Inspector found that the circumstances were sufficient to set aside, on a temporary basis, the conflict with Local Plan policies. For these reasons, the appeal was allowed and temporary planning permission granted for the use.

- 3.6 Since the grant of temporary planning permission, the applicant and his extended family have vacated the site. Of the 4 pitches, 2 are currently vacant and the remaining 2 pitches are occupied by Mr Devers Snr and his son. Mr Devers is the father-in-law of Mr MacDonald and purchased the sites to be closer to their daughter and grand daughter. It is stated in the applicant's Supporting Statement that over the last 12 months, the Devers have solely maintained the site.

The Proposal

- 3.7 When the Planning Inspector granted temporary planning consent, he imposed conditions and one of which was a personal condition restricting the occupancy of the pitches. The condition reads:

“The use hereby permitted shall be carried on only by Mr George MacDonald, Mrs Natalie MacDonald, Mr John MacDonald, Mrs Isobel MacDonald, Mrs Martha MacDonald, Mr Stewart Miller, Mrs Mary Miller and their resident dependants, and shall be for a limited period being the period of 5 years from the date of this decision, or the period during which the premises are occupied by them, whichever is the shorter.”

- 3.8 The applicant seeks consent for the variation of the condition to allow himself and his son to occupy the pitches and thus regularise the current situation.

4. Summary of Representations

- 4.1 This application has been advertised by means of a site notice and direct notification to the occupiers of 14 of the neighbouring premises. Six letters of objection have been received and the main issues raised are summarised as follows:

1. the original applicants were granted temporary permission for 5 years on welfare grounds. They have since left the site and moved back to Scotland and put the land up for sale on the internet. It is obvious that welfare is no longer an issue and that they no longer require the site for accommodation. There is no need for this traveller site, as enough spaces are available elsewhere;
2. if the original applicants no longer require this site as a residence, then there is no reason why they should not be made to put this land back to its former state; i.e. removal of caravans and hardcore along with replanting of trees as per the restocking notice served by the forestry commission;
3. the application is retrospective and this is another case of the traveller

- community being allowed to sidestep the planning system;
4. the premises have ceased to be occupied and sold which contravenes the appeal decision requiring the site to be vacated and the site restored in this situation.

5. Summary of Consultation Responses

Arthuret Parish Council: - the application is not supported. The conditions for permission for the use of the site were specifically for the named family who, it is understood, have now vacated and sold the site. Carlisle District has traveller sites that could accommodate the family. There was a 5 year period given to the original applicants with conditions - these have not been carried out i.e. replanting of the woodland.

6. Officer's Report

Assessment

- 6.1 The relevant planning policy against which the application is required to be assessed is Policy H14 of the Carlisle District Local Plan 2001-2016. The National Planning Policy Framework (NPPF) which was adopted on 27th March 2012 is also a material planning consideration in the determination of this application. The proposal raises the following planning issue.
 1. The Principle Of The Variation Of The Condition
- 6.2 Section 54a of the Town and Country Planning Act 1990/Section 38(6) of the Planning and Compulsory Purchase Act 2004, requires that an application for planning permission is determined in accordance with the provisions of the Development Plan unless material considerations (including Government Policy as expressed through Planning Policy Guidance Notes or Planning Policy Statements) indicate otherwise.
- 6.3 At a general level, Government advice is contained in Communities and Local Government documents "Planning policy for traveller sites" (PPTS) which should be read in conjunction with the NPPF. Consideration also needs to be made with regard to Circular 11/95 "The use of planning conditions" and to the Human Rights Act 1998 and the Race Relations (Amendment) Act 2000.
- 6.4 Specific advice is contained in the PPTS which seeks, amongst other things, to create sustainable communities where gypsies have fair access to suitable accommodation from which travellers can access education, health, welfare and employment infrastructure. It advises that Local Plans must identify and update annually, a supply of specific deliverable sites sufficient to provide five years worth of sites against locally set targets. In the absence of any local set and up to date targets, the GTAA is the most recent documents and the figures within should be used to consider this application.
- 6.5 Applications for Traveller sites are determined in accordance with Carlisle District Local Plan Policy H14: Gypsies and Travellers and the national Planning Policy for Traveller Sites. The Local Plan is currently under review

and as such a revised Traveller Policy will be consulted on this Summer as part of the Preferred Options consultation (Regulation 18 of The Town and Country Planning (Local Planning) (England) Regulations 2012). The new policy will be based on the provisions of the national PPTS and any identified evidence of need for the District.

- 6.6 The Local Plan is under pinned by an extensive evidence base. The current Cumbria Gypsy Traveller Accommodation Needs Assessment (GTAA) details the level of need for the District up to 2016. In 2008, this indicated that there was a need for 65 pitches in the District. As the lifetime of the new Local Plan will be looking towards the next 15-20 years, a new Gypsy Traveller Accommodation Needs Assessment will be carried out on a County wide level. The study has been commissioned and the draft report is expected in May with the final report available in July this year.
- 6.7 Since the appeal, permanent planning consent has been granted for 3 pitches (which previously had temporary planning consent) and which are occupied. Further planning permission has also been granted for 15 pitches at Ghyll Bank House, 10 of which are restricted to occupation by gypsies and travellers.
- 6.8 Members should also be aware that following an appeal against the refusal of planning permission by the Council for a Gypsy pitch at Washbeck Paddock, Scotby, permanent planning consent has been granted by the Planning Inspectorate. The combined existing and planned provision therefore equates to 70 gypsy and traveller pitches in the District.
- 6.9 It is important for Members to note that in granting this application, the consent would not extend the duration of the temporary consent imposed by the Planning Inspectorate in issuing the decision.

2. Availability Of Alternative Accommodation

- 6.10 Members deferred consideration of this application at a previous meeting of this Committee to allow Officers the opportunity to investigate the availability of any alternative accommodation should the application be refused.
- 6.11 Additional information has been received from the applicant's agent which states that the applicants' homes are chalets rather than caravans and therefore take up more space and will be more difficult to move and place on local sites. It is stated that there are also 4 horses that will require stabling and grazing land. Members should note that the chalets fall within the definition of a caravan under the Caravan Act 1960.
- 6.12 There is currently 1 pitch available at Harker and 4 pitches available at Hadrian's Camp. In respect of Harker, the applicants are not currently on the waiting list and would need to be considered against the assessment criteria. Furthermore, the applicants would require 2 pitches and the site would not be able to accommodate the chalets.
- 6.13 In considering the site at Hadrian's Camp, it is stated that the 4 pitches are

available for “luxury” chalets which does not apply to the applicants' chalets as they do not fall within this category. In addition, there would be no space for the applicants' vehicles and there is no guarantee that the applicants would be given the plots. The provision of the plots is at the discretion of the site owner. It is also stated that the applicants' have invested all their money into the application site in terms of purchasing the plots and additional improvements and they would find it difficult to afford the rent required on a private site.

- 6.14 Although the numerical provision until 2012 has been established, the provision until 2016 remains uncertain due to the time scale when the pitches that have consent are implemented together with potential future need which may be identified by the GTAA. Whilst planning permissions are in place, the development of these sites will take time. There is currently a waiting list for the Council owned site at Low Harker. Were Members to look unfavourably at this application, the provision of alternative sites is a material planning consideration. Alternative accommodation to that provided by this site would have to be suitable, available, affordable and acceptable. It is difficult to estimate the waiting list time for Low Harker, and there would probably be difficulty in finding 2 separate pitches for the applicants on this one site. Members should be aware that although a temporary consent exists on the site, these pitches cannot be taken into account which comparing with requirement of the GTAA.
- 6.15 Although planning policies are in place for the continued provision of gypsy and traveller sites, subject to consideration against the relevant criteria, there is a shortage of sites against the requirement of 65 that should be provided by 2016. Whilst these figures are about to be reviewed and provide an up to date evidence base, these are the most recent figures that demonstrate that there is a shortage of provision within the District.

3. Human Rights

- 6.16 In the absence of immediately available sites in the Carlisle area there would be a possibility that some at least of the site occupiers would run the risk of 'returning to the roadside'. In considering the point in the appeal, the Inspector concluded that this is a matter which adds potentially to the impact upon the occupants' ECHR Article 8 rights, whilst at the same time itinerant camping has ramifications for the public interest. He found that this is an issue which weighs materially in support of the application.

4. Other Matters

- 6.17 The principle of development, albeit for a temporary period, has been established on the site. This was partly based on the needs of the applicants at the time of the application. Similarly, the current applicant has submitted supporting information in relation to his personal circumstances which in brief, can be summarised as follows:
- the applicants have been living on the site since 2011;
 - the children are registered at Longtown Primary School;

- the elder children are due to begin secondary school in Brampton next summer;
 - the families are registered with local doctors and the applicant and his wife have health issues and require regular visits.
- 6.18 It is unusual for children of Gypsy and Traveller families to formally continue their education into secondary school, as is the case in this instance. Planning case law prescribes that the consideration of health and access to settled education are material planning considerations and in this instance, are relevant in the determination of this application.
- 6.19 A further issue relating to the initial development of this site was the loss of woodland. In granting the temporary planning consent, the Inspector imposed a condition requiring that upon cessation of the use of the site, that the land should be restored in accordance with details to be agreed by the Council.
- 6.20 Approval of this application does not override this requirement and Paragraph 4 of Circular 11/95: Use Of Conditions In Planning Permission advises that following the variation or removal of planning conditions the original planning permission will continue to subsist and, therefore, it is pertinent to impose a condition that highlights the need to comply with the remaining conditions attached to the "Full" permission.

Conclusion

- 6.21 In overall terms, the proposal reasonably complies with other criteria of the Policy H14 of the Local Plan. The need for further Gypsy sites within Carlisle is not clear cut where current provision meets GTAA numbers for 2012, but there are some doubts about the accuracy of its assessment and a more likely need to make some additional provision for the years 2012 – 2016. Approval of this application would allow an opportunity for updating the GTAA figures for reasons discussed earlier to provide a more robust basis for considering long term need for a site such as this one.
- 6.22 More particularly, the personal needs of the applicant weighs in favour of the continued occupation of the site. The need for the application site as an element of long term provision in the area is insufficient to over-ride the harm to the area's environment which is required to be planted with trees and restored upon cessation of the use of the land.
- 6.23 Refusal of the application would result in an interference with the occupiers' Article 8 ECHR Rights to respect for their private and family life and their home. For these reasons, it is considered that the variation of the planning condition is acceptable and the application is recommended for approval.

7. Planning History

- 7.1 In 1988, planning permission was refused for a new vehicle storage building.

- 7.2 Planning consent was refused in 2006 for the formation of a storage yard and buildings for building material and roofing product.
- 7.3 In 2007, planning permission was refused for a revised application for the formation of a storage yard and buildings for building material and roofing product.
- 7.4 Planning consent was refused later in 2007 for a revised application for the formation of a storage yard and buildings for building material and roofing product.
- 7.5 A revised application for the formation of a storage yard and buildings for building material and roofing product was submitted in 2007 but was withdrawn prior to determination.
- 7.6 An application to discharge condition 8 (foul drainage; surface water drainage; external lighting; boundary treatments; internal layout of the site - to show siting of caravans, plots, hardstanding, access roads, parking, amenity areas; restoration of site to pre-development condition at the end of 5 years; timetable for implementation) of previously approved permission 09/0886 was refused in 2011.
- 7.7 In 2009, planning permission was refused for the change of use of land from former woodland to caravan site for stationing of caravans for single extended gypsy/ traveller family with associated development including hard standings, cess pools and 2 utility sheds. Following a subsequent appeal in 2010, temporary planning permission was granted until 2016.
- 7.8 An application to discharge of condition 8 (foul and surface water drainage; external lighting; boundary treatments; internal site layout; and site restoration together with timetable for implementation) of previously approved planning application 09/0886 is currently being considered under application 12/0999.

8. Recommendation: Grant Permission

1. The approved documents for this Planning Permission comprise:
 1. the Planning Application Form received 5th December 2012;
 2. the Location Plan received 5th December 2012 (Drawing no. 01);
 3. the Supporting Statement received from Talking Travellers dated 29th November 2012;
 4. the Notice of Decision; and
 5. any such variation as may subsequently be approved in writing by the Local Planning Authority.

Reason: To define the permission.

2. The use hereby permitted shall be carried on only by Mr George MacDonald, Mrs Natalie MacDonald, Mr Stewart Miller, Mrs Mary Miller, Mr James

Devers Snr, Mrs Rose Devers, Mr James Devers, Mrs Cherie Devers and their resident dependants, and shall be for a limited period being the period until 21st March 2016, or the period during which the premises are occupied by them, whichever is the shorter.

Reason: But for the special circumstances of the applicants permission would not be forthcoming in accordance with Policy H14 of the Carlisle District Local Plan 2001-2016.

3. The development shall be carried out in accordance with the remaining conditions attached to the "Full" permission approved under application 09/0886.

Reason: For the avoidance of doubt.

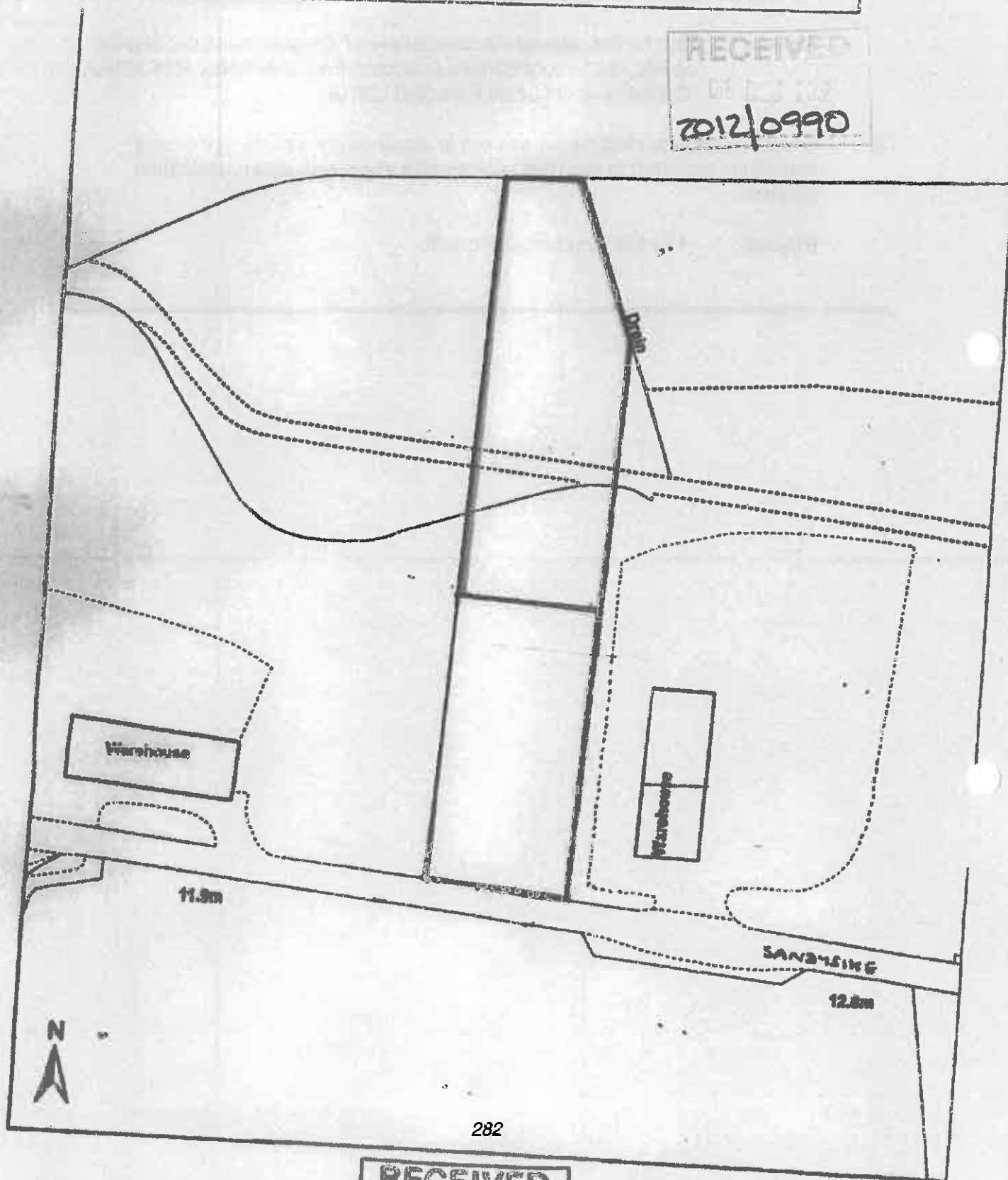
Land north side Sandysike, Longtown, Carlisle CA6 5SY
Mr George MacDonald

Plan 1: LOCATION PLAN
Scale 1:1250



RECEIVED

2012/0990



Scale: 1:1,250

RECEIVED

14 OCT 2009

09/0880

Planning & Housing Services
Civic Centre
Carlisle
CA3 8QG

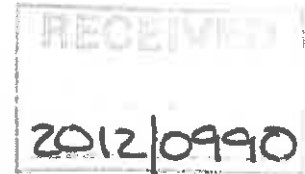




TALKING TRAVELLERS

Tel: 07857374323

29/11/2012



To Whom it may concern

Re: variation to condition of planning permission

Ref no: 11/0445

We are writing on behalf of the Devers' family who are living on the Woodlands View Traveller site at Sandysyke, Longtown.

We have been supporting the Devers since 30/01/12 when they came to us regarding concerns about their situation on the site.

Mr James Devers Snr and Mrs Rose Devers and their son Mr James Devers Jnr and his wife Mrs Cherie Devers have been living on the site since 31st December 2011.

The Devers are the parents & the brother of Natalie McDonald who is married to George MacDonald.

Following family disagreements between the McDonald families, the Devers were given the opportunity to buy two plots on the site by and from George and Jim McDonald. The plots in question were plot B and plot D which had been used by Jim McDonald and his family and Mrs Martha McDonald. The Devers chose to purchase the plots as they could then be closer to their daughter and grandchildren.

Since moving in on 31st December 2011, Mr & Mrs Devers Jnr's children have been registered at Longtown Primary School and have an excellent attendance record and are doing very well in school. The two elder boys are due to leave the primary school next summer and move into secondary education. Mr & Mrs Devers has sought advice and support from Children's Services and intend to send their children to the secondary school in Brampton. I have attached an email from Lesley Asbridge, Equality Learning Officer for Gypsy, Traveller and Roma children, Children's Services.

The families are registered with local Doctors, Mr Devers Snr and Mrs R Devers have health issues which require regular visits to the Drs for repeat medication etc.

The families have made many friends in the local area and regularly attend church in Carlisle.

Over the last 12 months the Devers have solely maintained the site as Mr Miller and his family have pulled off and Mr McDonald and his family have been away for several months.

Work undertaken by the Devers include:

- Installation of a fire alarm system for the whole site and continued liaison with the fire service since its installation.
- Percolation tests have been arranged and carried out in order to address planning conditions and consultation regarding replanting of woodland has also taken place.
- Hard core has been put down on the shared roadway after permission was sought from the planning department.
- Installation of lighting and CCTV
- Entrance to the site has been gated to ensure security on the site
- Improvements on plots B & D which have added to the general appearance.
- The site is spotlessly clean and is well maintained, whenever possible the Devers have sought out advice and guidance and have been happy and willing to work with the local authority in relation to their home and their families.

The main issues faced by the families that would be alleviated if they were named on the licence agreement concern Council Tax and Water Rates.

The site is covered by one rateable value, which residents from each plot have contributed a quarter of the cost to. However since Mr Miller and the McDonalds left the site the Devers families have found themselves left with bills for the whole site rather than their own plots. The Devers have attempted, through Talking Travellers (then Cumbria Travellers), to pay their rates, however as the site is seen as a whole rather than separate plots and the name on the current licence does not include the Devers we have found it impossible to gain an agreement from the rates department about how they could make their contribution to the rates. This is an area which causes the family stress and we would continue to seek a way in which the family could pay their proportion of the rates. It is hoped that a variation to the licence would help towards getting each plot rated separately.

The Devers have been working closely with the water board and are negotiating separate water meters on each plot or as with the rates, looking for some way in which they could pay their share of the water bills.

A further issue of particular concern to the Devers is that the variation will give both security of tenure and a general feeling of safety for themselves on the site.

We would therefore ask that the following names are removed from the site licence:

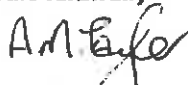
Jim McDonald & Martha MacDonald

and are replaced by:

Mr & Mrs Jim Devers Snr and Mr & Mrs Jim Devers Jnr

If you require any further information please don't hesitate to let me know.

Yours faithfully


Anne Taylor

Talking Travellers