

Performance and Finance Scrutiny Committee
15 April 2020
Withy Patch – New Monks Farm Development: Proposal for relocation of gypsy and traveller site and service provision
Report by Director of Communities and Director of Law and Assurance

Introduction

1. This report provides an account of the actions taken and the process for decisions relating to the plans to relocate the Gypsy and Traveller site in the Adur District known as Withy Patch and in response to the proposals within a planning consent for a significant development at New Monks Farm Lancing.
2. It provides additional information to enable the proposal to be considered in the context of the broader responsibilities of the Council as well as those owed to individuals and to groups within the community served by the site.
3. The proposal arises in the context of a significant housing development planned for land in the area of Lancing south of the A27 and adjacent to Shoreham Airport. This was the subject of a very lengthy and contentious planning application considered by the District Council. The Development plans also led to a number of associated financial arrangements for contributions to public services ('section 106') linked to the proposed development. The developer is The Community Stadium Limited (TCSL).
4. One feature of the proposal was its impact on the site held by the County Council on the northern edge of the development site and used as a site for the accommodation of gypsies and travellers. In response to a request related to the development by TCSL the County Council examined the option to transfer the Withy Patch site to the developer. The was entirely dependent upon continuing to meet the need for the services provided on the site and a proposal was made for the gypsy and traveller site and services to be relocated in a different part of the planned development site to enable this.
5. The County Council took part in negotiating these proposals, assessing their impact on those individuals and communities affected, considering the measures available to ensure any adverse impacts were avoided or mitigated and ensuring the fullest engagement with those affected to ensure that their views were considered and their interests protected. The approach to the consultation and engagement work is summarised in Appendix 1.

The site

6. The site accommodates 12 homes for gypsies and travellers, including a resident site manager employed by the County Council, and forms one of a

number of sites which make up the County-wide service provision to meet the needs of the gypsy and traveller communities. The site in this location emerged from its historic use when it formed a lay-by on the immediately adjacent A27. Its highway use was later formally ended through 'stopping up' powers and it continued its use as a long-term site following acquisition by the County Council. This explains its unusual linear lay out which is in contrast to the squarer or rounder sites elsewhere which more fully accord with design principles for communal space associated with such sites.

7. The current site is not ideal in terms of access, noise, air and contaminant pollution owing to the immediate proximity of the A27. It has also not been possible to ensure preferred service arrangements due to the constraints of the site. Drainage and sewage arrangements have for some time presented issues for the residents and for the Council in maintaining the adequacy of the site's facilities and in planning investment to improve facilities.

The planning process and impact assessment

8. The development of the adjacent land was the subject of a planning application dealt with by Adur District Council. As the planning application made clear its proposed impact on the Withy Patch site the current residents of the site were made fully aware of the proposals and were engaged in the consultation related to the planning application by the developers at a very early stage. That engagement has been maintained throughout the process initially led by the developer as part of the planning process.
9. The views and representations of the residents were considered within the planning application process and included the following concerns:
 - Air pollution and traffic impact
 - The proposed layout of the new site could affect privacy
 - Reduced plot sizes due to increased number of plots
 - The length of the construction work
 - Access / Egress to the new site
 - Proximity to the airport - noise / pollution
 - Flooding and drainage
 - Access to schools and GP facilities
 - Impact on overall health of residents and quality of life.

These were responded to by the developer during the planning process and through the extensive public and stakeholder consultation the planning process necessitated and through the impact assessments prepared for the planning process. All were then addressed within the consideration of the planning authority.

10. The Developer undertook extensive engagement direct with the residents in order to understand and respond to the concerns being raised. The County Council's Gypsy and Traveller team were involved in these arrangements and followed the process, participating in some of the meetings to be sure that the interests of the residents were safeguarded within the planning process.
11. The planning process also led to the development of impact assessments relating to various environmental issues. These were specific to the

development but also relevant to the interests of the residents of the site – both during and following the lengthy construction process. These impact assessments were published and fully considered as part of the open planning process undertaken by the District Council and through its various statutory phases. There has been no identified need for the County Council to undertake any separate or additional environmental impact assessment as no evidence has been proposed to suggest an adverse impact from the relocation of the site. In particular environmental impact showed increased traffic levels but an overall reduction in expected air pollution due to the reduction in diesel vehicle numbers and increased engine efficiency in new vehicles.

12. The proposed new location for the gypsy and traveller site is further away from the noise and air pollution from the A27 and is marginally closer to the site of Shoreham Airport. There is no expectation of increased traffic affecting the new location. Some minor adjustment to helicopter movements is proposed by the airport to further reduce noise disruption and this forms part of the planning conditions. This followed a flight assessment as part of the planning process.

Development Agreement and site re-provision

13. The developer was also directly engaged with the County Council in connection with the impact of the planning proposal on the gypsy and traveller site and prepared a proposal for the relocation of the site within the development. Plans were drawn up for a new site and the County Council was involved in setting the specification to meet the requirements for core site services, to meet the needs and expectations of the current residents and to secure improvements to service provision where possible. The core requirement was that the new site would not lead to any detriment to the residents or loss in their quality of life and that where possible this would be improved. Both the developer and the County Council maintained the full involvement of site residents and their representatives through these plans.
14. In addition the District Council's Accommodation Needs Assessment for gypsy and traveller provision, published in September 2013, identified a need for four more pitches within its area and this additional provision – to enhance the overall availability of sites for the gypsy and traveller community within the County was an additional requirement of the developer's proposal
15. The specification and the negotiations with the developer led to the following elements of the site re-provision being specified and settled.
 - Pitch number increased overall
 - Pitch size and layout larger where feasible
 - Services to include improved utility supply and choice
 - Facilities including improved toilet and shower provision.
 - Drainage and mains supply for waste water
 - Communal space available
 - Lighting and power for communal area
16. The location of the new site was also considered in terms of the community's requirements. The proposed site is no nearer and no further from the settled

community compared with the current site and has no reduction in access to schools, health facilities or other services. Access to the A27 is also not affected.

Consultation and engagement with the community

17. A range of approaches was taken to maintain and draw upon close engagement with the residents of the Withy Patch site. They are a group of individuals and families with different needs and expectations and so their interests were considered in that context as well as that of a distinctive community group whose interests in terms of Human Rights and non-discrimination were to the forefront of the decisions to be made.
18. A number of specific issues raised by the residents were addressed through this engagement and in discussions with the developers. Much of the engagement was undertaken direct by the developers and the County Council also maintained direct contact with the residents to ensure that their views were being responded to. The detail is set out in Appendix 1.
19. Regular communication was maintained through letters and personal visits. Residents were also encouraged to maintain telephone contact with the gypsy and traveller team in the event of any additional issues needing to be addressed between meetings.
20. The conclusion of this process led to an agreement by the County Council to move towards a development agreement with the developer TCSL.
21. Some elements remained outstanding but continue to be the subject of engagement with the residents and the developers. Of particular concern are the final plot sizes and layouts – which will be finalised as part of the final design planning and, again, in consultation with residents. All costs associated with the eventual move will be met by TCSL and facilitated by the County Council. This includes the movement of caravans, including disconnecting from utilities, reconnecting and levelling of caravans, and the movement of any personal items. Details such as the relocation of sheds and other specific materials will be discussed with each resident. New fencing and planting for plots will be provided and so these will not need to be moved.

Fees and charges

22. Site rental is determined by the County Council by reference to the facilities provided, by reference to the rentals charged for similar sites across the County and within the constraints of the legislation. Rent charges for the new site have yet to be determined but the charges will be reviewed to take account of any improvements to amenities – which is the approach taken whenever sites benefit from improvements. Improvements to this particular site are overdue. The specific rent levels will be set in consultation with the residents following the move.
23. The electrical supply costs for the new communal lighting to be installed by the developer will be funded by the County Council not by the residents as it

is for the benefit of the entire site. The Council will also fund the site office and the running of the communal area.

Equality Impact Assessment -Public Sector Equality Duty

24. The County Council maintains guidance for officers and decision-makers on the preparation of proposals which may have an impact on those with protected characteristics and therefore the Council's public sector equality duty. Such impact assessment is a continuous process throughout the development of any proposal rather than a form filling exercise once the proposal has been completed. The guidance explains the expectations arising from the public sector equality duty in relation to those with protected characteristics and the factors to be considered when preparing plans which are likely to have an impact on such groups and their position in the community and as beneficiaries of public services.
25. The gypsy and traveller community is recognised as an ethnic minority group whose rights and interests are protected by the equality duty.
26. The following elements informed the process of assessment and evaluation of the proposals emerging for the re-provision of the site and services at Withy Patch –
 - The need to understand and record the impact of the planned move upon the community more broadly and on the current site residents
 - The need to assess the impact on the relations between the group and the settled community
 - The need to avoid or mitigate any negative impacts identified.
 - The need as far as possible to enhance or improve relations between the site residents and the settled community

This work informed the decision to agree to the request for the site by TCSL and the plans for the specification of the new site to be delivered by TCSL, see plans attached as Appendix 2. All of the negotiation with TCSL was supported by the communication and engagement with the residents both as a group but also as individuals. It was important that the following aspects of the proposal were settled to minimise any impact:

- The new site is very close in location to the current site – served by the same local and community facilities and public services
- The new site is larger than the current site
- The new site's facilities for residents are significantly improved in terms of utilities, communal space, drainage, living space and lighting.
- The proximity to the settled community is no different
- Communal amenities, such as drainage and lighting are improved
- Independence is enhanced by the greater choice in power supplier
- The current residents will move together and only when the new site has been completed.

The conclusion of this assessment work was that there would be no notable adverse impacts on the residents as a group and no adverse impacts on their relations with the wider settled community and that the enhanced services and facilities could be seen as a significant opportunity to enhance the quality of life compared with current disparities and constraints on service improvement

options for the current site location. It is proposed that the proposed decision has no notable impact for the Council's public sector equality duty requiring further consideration. The duty will however continue to be considered as the plans are implemented.

Human Rights Impact

27. The County Council takes a similar approach to the assessment and consideration of its duty in relation to the Human Rights of individuals affected by proposals and before they emerge as specific decisions.
28. In relation to this proposal the Council noted the likely impact on the right to respect for private family life and home (Article 8) and the right to freedom from interference with the peaceful enjoyment of property and possessions (Article 1 of the Convention's First Protocol) arising from the changes and disruption to established living arrangements for the individuals.
29. The right to respect for private and family life is commonly referred to as a conditional right rather than an absolute right. It must be taken fully into account and any interference must be both lawful and proportionate to the purpose of any such interference. The right to the free enjoyment of possessions is also conditional on justifiable lawful interference by the state. The information gathered from residents in relation to their wishes and concerns about the new location and new facilities were used to inform the negotiation with TCSL and the specification for the new site and to assess the Human Rights impact.
30. The conclusions of the assessment in the cases of the eleven residents of the site was that these rights were not likely to be adversely impacted by the proposals and that, to the extent that they might be in any individual case, they were proportionate to the outcomes being achieved. This was based on the overall benefits to residents and to the longer term obligations of the County Council in terms of its responsibilities to provide accommodation for the wider gypsy and traveller community and of the District Council in terms of its enhanced securing of accommodation within its accommodation needs assessment plan. These responsibilities owed to the wider gypsy and traveller community now and into the future were seen as significant in this context.
31. There will be some temporary disruption to the living arrangements established over many years, but on the whole the living arrangements will be improved and all personal belongings retained. The residents will incur no cost from the move and the enjoyment of their property will be enhanced by the larger size of the overall site and the significantly improved facilities and amenities. The group of current residents will move together at the same time and continue to live as a community as they do now.
32. The conclusion of the Human Rights impact assessment is therefore that the proposal does not require further consideration in relation to the identified convention rights affected – that any impact will be marginal and in any event justified by notable improvements in quality of life and the achievement of benefits for the wider community of gypsies and travellers longer term.

Land ownership and restrictions

33. The land on which the current site known as Withy Patch is located was acquired by the County Council freehold from the Secretary of State for Transport in 1994 following steps taken by the DfT to end its use as a lay by servicing traffic on the adjacent A27. The conveyance of the land includes a restrictive covenant providing that the land is only used for occupation by gypsy and traveller caravans.
34. The sole beneficiary of the restrictive covenant is the Secretary of State for Transport and this attaches to the land retained by the Department which adjoins the site. It is wrong in law to suggest that site occupants, current or future, are in any sense the 'practical beneficiaries' of the covenant. They acquire no such rights or benefits and cannot enforce or seek compensation in relation to rights benefitting the original land owner.
35. The restrictive covenant does not in any way constrain the right of the County Council to sell or otherwise dispose of the land. The purchaser acquires the land subject to the restrictive covenant and will have a number of options for dealing with its effect on the future use of the property being acquired. The restrictive covenant is therefore of no particular significance in relation to the plans for the disposal of the site.

Accordingly the above information is commended as supplementary information to support and inform the proposals.

March 2020

Appendices

Appendix 1 Additional detail on consultation and resident engagement

Appendix 2a Proposed layout of developed site

Appendix 2b Plans of Withy Patch new site