House of Commons Hansard Debate - 22 Nov 2005 : Column 1487

Travellers (Middlewich)

Ann Winterton (Congleton) (Con): The issue of Gypsies and Travellers and their need for accommodation is highly topical, and I am grateful to the House for the opportunity to raise the matter on the Floor of the House and to seek some much-needed clarification from the Government. There are two matters that concern Congleton borough council: first, demand for additional caravan sites for Gypsies in terms of their location and size; and, secondly, the stationing of caravans belonging to Gypsies and Travellers within the curtilages of the residential properties that they have purchased. At the moment, the second issue appears to be located only in one part of the borough—Middlewich.

Middlewich has approximately 30 houses owned by Gypsy families with multiple caravans compacted in their garden areas. The adopted Congleton borough local plan contains policies that relate to Gypsy caravan sites, and there are a number of criteria against which planning applications will be judged. A number of permissions have been granted for small sites, but recently there have been incidences of illegal encampments, notably at Cranage. The latter would provide enough material for another debate, but I want to focus this evening on the second issue that appears to be peculiar to Middlewich, which historically has had a number of Gypsies among its population.

An increasing number of Middlewich residents have raised concerns about various domestic operations and activities undertaken by Gypsy families more recently settled in the town. Specifically, residents query whether those families are in breach of planning legislation by hard surfacing the whole or a major part of their gardens; by installing elaborate decorative railings; by keeping and using one or more caravans in their gardens; and by installing shower and lavatory blocks and electricity points in the gardens to facilitate living in the caravans.

For the past two years, the CW10 residents action group has been trying to establish why our local authority allows mini-caravan sites in the cartilage of dwelling houses without the need for planning permission, licence conditions such as those for health and safety, or enforcement, which are the normal requirement for any land where the intensification of use has occurred—that is, where a material change of use has taken place.

The council has considered the issues and two barristers, each specialising in Gypsy-related planning law, have been consulted. Their advice is that caravans do not need planning permission if they are ancillary or incidental to the use of a dwelling house. What is incidental

varies according to the particular facts of each case, and to ascertain those facts, the proper approach is to investigate and judge each case on its merits, taking into account, first, the degree to which each caravan is functionally connected with and subordinate to the use of the dwelling house. For example, to what extent do those who sleep in the caravans use facilities in the house? Do the caravans provide independent living accommodation or are their occupants dependent on facilities in the house, too?

Secondly, the relative scale of accommodation available in both the dwelling house and the caravan must be taken into account. For example, caravans providing sleeping accommodation for a small overflow of family members may well have a subordinate, functional link to the main house, but may not where the caravans provide more accommodation than the house itself. Thirdly, account must be taken of the relative size of the dwelling house, its garden and the caravan. The larger the first two and the smaller the latter, the more likely it is that a subordinate, functional link exists. Fourthly, the relationship between the occupants must be taken into account. Extended family groups are more likely to share functional links.

To help to decide whether caravans are incidental or require planning permission, enforcement officers would need to ask each family questions along the following lines. Who lives in the house? Who lives in the caravan? What is the relationship between those people? What size of rooms and what kind of facilities exist in the house and caravan, and who uses what? How are utilities such as electricity, gas, water and waste shared? Are any payments shared? Is rent paid? What are the family's intentions for the proposed use of the caravans, including time scales?

The borough council considers that hard surfacing of part or all of the garden will generally be permitted development and that the erection of decorative railings will follow normal permitted development rules that apply to all means of enclosure. Likewise, the construction of shower and lavatory blocks might require planning permission, or might be permitted development, depending on the usual spatial allowances that apply to all residential properties.

Congleton borough council's stance has been that multiple caravans sited in the gardens of houses are permitted development because they are incidental to the enjoyment of the dwelling house and occupied by extended family members.

Mr. Peter Bone (Wellingborough) (Con): The situation that my hon. Friend is describing reflects exactly what is happening in part of my constituency in Rushden. Several caravans form part of something that is,

in my view, a permanent structure, and local residents are incensed that planning action is not being taken.

Ann Winterton: My hon. Friend describes the reason for the debate, and I am sure that the Minister has heard his comments.

A planning application or site licence are not required for such caravans, and the number of caravans allowed in a single curtilage cannot be limited. However, the CW10 residents action group has found that siting multiple caravans in the gardens of houses is a material change of use and not permitted development. Putting a dwelling in the curtilage of another dwelling is always a material change of use and, in turn, cannot be incidental to the enjoyment of the dwelling house, so surely planning permission is required. Furthermore, the same group believes that an extended family member includes three generations of the same family—grandparents, parents and their children—but not other independent family units, such as aunts, uncles, cousins and so on.

My constituents and I would be grateful to receive clarification from the Minister on a considerable number of questions, not least whether caravans are assessed for council tax purposes as additional facilities. On enforcement, paragraph 29 of circular 01/94—Gypsy sites and planning—states:

> "Some kinds of activity will not fall within the definition of 'development' in section 55 of the 1990 Act, and will not therefore require planning permission. Any gypsy living in a dwellinghouse will not require planning permission to use a caravan within the curtilage of the dwellinghouse, provided that the purpose is incidental to the enjoyment of the dwellinghouse as such. A caravan within the curtilage of a dwellinghouse may have a number of ancillary uses for which planning permission would not be required. For example, it could be used for additional living accommodation, provided that it remained part of the same planning unit as the dwellinghouse and the unit remained in single family occupation."

Is the above definition for a single caravan, or an unlimited number of caravans, being permitted to be stationed in the garden of a house without the need for planning permission? When would that definition no longer apply so that planning permission would have to be sought by the occupants of the dwelling house? To what extent would the usage of caravans in the gardens of a property fall under the definition of being incidental to the enjoyment of the dwelling house? When would the usage of the caravans fall outside that definition? Furthermore, would the intensification of caravans in the garden of a house be classified as incidental to the enjoyment of the dwelling house?

Paragraph 29 of circular 01/94 says:

> "A caravan within the curtilage of a dwellinghouse may have a number of ancillary uses for which planning permission would not be required."

Under the above definition, what would the usage of the caravan be if classified as ancillary use? What would its usage be when it falls outside that definition? Are there any time limitations for caravans to be stationed in the gardens of a house under the definition of incidental to the enjoyment of a dwelling house? What about the impact on neighbouring properties?

If the primary use of the dwelling house remains residential and within one planning unit, would it be possible for more than one caravan to be sited without the need for planning permission? Furthermore, would caravans stationed in the garden of an unoccupied house be incidental to the enjoyment of that dwelling house? If so, are there any time limitations without the need of planning consent? When would such cases require planning consent?

Under the Town and Country Planning (General Permitted Development) Order 1995—the GDPO—when would the stationing of caravans in the curtilage of a dwelling house fall within the definition of permitted development? Would the number of caravans and extent of use have any bearing on that definition? Also, under the same GDPO, when would the stationing of caravans in the garden of a house fall within the definition of material change of use, and would the number of caravans and extent of use have any bearing on that definition?

When would provisions on the health and safety of the occupants of the caravans, the dwelling house and their neighbours come into effect if multiple caravans, cars and vans are compacted into the curtilage of a single dwelling house? Who would be ultimately responsible for ensuring that those checks are carried out?

When would the following extract from the Office of the Deputy Prime Minister's "Planning Guide for Householders" apply to the stationing of caravans in a single residential curtilage? The following are examples of when one would need to apply for planning permission:

> "If you want to divide off part of your house for use as a separate home (for example, a self-contained flat or bed-sit) or use a building or caravan in your garden as a separate residence for someone else";

or

> "If you want to make additions or extensions to a flat or maisonette (including those converted from houses)."

When would the following extract taken directly from a letter to the CW10 residents action group from a planning policy adviser at the Office of the Deputy Prime Minister apply in connection to multiple caravans stationed in the garden of a house? I quote:

> "Each local planning authority has to take a view on whether any particular activity amounts to 'development' within the meaning of section 55 of the main Act. There are two types of development—'operational', such as building or engineering work, and 'material change of use of land'. A boat or vehicle would be a chattel rather than a building or a structure, so could only be considered as development if it represented a material change of use of land (eg, if someone set up a commercial boat-repair business in what was supposed to be his back garden).
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> Similarly, a caravan, as defined under section 29(1) of the Caravan Sites and Control of Development Act 1960, as modified by section 13(1)(b) of the Caravan Sites Act 1968 is not a building. However, if someone started using one as a self-contained dwelling within the curtilage of a dwellinghouse the local planning authority would require a planning application for change of use of land. Putting one dwelling into the curtilage of another is always a material change of use".

Will the Minister please specify a rule of thumb when determining who will fall under the definition of extended family used in planning guidelines? Moreover, when would that definition no longer apply in respect of a family member? Finally, when would permanent occupation of caravans require planning consent within a single residential curtilage, and when would permanent occupation not require planning consent?

Given the complexity of planning law and that to judge the facts and degree of each case would involve significant intrusion into the lives of the families concerned, it might be appropriate for the Government to be invited to consider changes to planning legislation to clarify the issues. One suggestion from Congleton borough council is that a limit be imposed on the number of caravans permitted to be kept within the residential curtilage of a property to no more than one, whether occupied temporarily, permanently or not at all. Above that limit, planning permission would be required, and it would be clear to all where the distinction lay. It would then be a matter for the local planning authority, when required to determine an application for more than one caravan, to balance the merits of each case in the light of the development plan and any other material considerations.

I would appreciate the Minister's clarification of those important issues, which are of understandable concern to the residents of Middlewich. There seems to be one rule for one group of people, but my constituents want equity among all local residents, and they want planning regulations to be unequivocal in application. I have gone into considerable detail about the matter, and I am happy for the Minister to write to me if he cannot respond to all the points that I have made in this short debate.

The Parliamentary Under-Secretary of State, Office of the Deputy Prime Minister (Jim Fitzpatrick): I congratulate the hon. Member for Congleton (Ann Winterton) on securing this debate and I hope to provide the clarification that she seeks. However, she posed some detailed questions about the legislation, which I accept were entirely appropriate, and I therefore undertake to write to her to ensure that in due course we cover all the points that she made.

We recognise the difficult problems that can arise when trying to find suitable accommodation for Gypsies and Travellers, and the hon. Lady will acknowledge that we take these issues seriously. We have been working hard and we will continue to work hard to find solutions to try to alleviate the distress to everyone concerned. The hon. Lady asked a number of detailed questions about the location of caravans in back gardens, and I shall attempt to answer them as fully as possible. However, as I said, I shall write to her in due course, because I do not think that I will cover every point that she made.

The hon. Lady asked to what extent the usage of a caravan would fall outside the definition of being

> "incidental to enjoyment of the dwelling house".

A caravan is not a building. Stationing one on land is not itself "operational development" that requires planning permission, although associated works such as the provision of infrastructure and hygiene facilities may well be. Under planning law, householders can park caravans in their gardens or driveways indefinitely, provided that no material change of use of land occurs. However, in certain circumstances, the placing of a caravan on land may change the principal use of that land, which would amount to development in the form of a material change of use of land. It is for that reason that the use of land for an occupied caravan generally requires planning permission.

The hon. Lady asked whether adding extra caravans would still be incidental. A householder is entitled to use caravans as extra accommodation without planning permission, provided that the occupants continue to use the house, for example, the kitchen or bathroom. If, on the other hand, a caravan is there for another purpose not incidental to

the enjoyment of the main dwelling, known as the dwelling house—for example, it is inhabited quite separately from, and independently of, the dwelling house—planning permission for change of use of the land would, generally speaking, be required. As it would result in the creation of a new planning unit, such permission may well not be granted in a residential area. If a caravan was being used in connection with a commercial purpose, the local planning authority may decide that an unauthorised change of use of land had occurred, for which planning permission should be sought.

The hon. Lady also asked whether there were any time limits relating to the stationing of caravans, and whether it is possible for more than one caravan to be sited without the need for planning permission. As I stated previously, caravans can be stationed indefinitely in someone's garden or driveway, provided that no material change to the use of land occurs. There is no legally defined limit on the number of caravans that can be stationed in gardens before planning permission is required. However, if so many caravans were stationed in the garden of a house that they ceased to be incidental to the principal use of that land, the local planning authority could require a planning application, or take enforcement action against the unauthorised change of land use.

Mr. Alan Meale (Mansfield) (Lab): Can my hon. Friend deal with a point relating to the advice that the hon. Member for Congleton (Ann Winterton) mentioned in connection with extended families and their use of caravans? As we know, many Gypsies and Travellers have a wide family base and their extended family is much wider than the norm. I hope that my hon. Friend will clarify the situation and give us the Government's view of what is and is not legal in planning terms.

Jim Fitzpatrick: I shall respond to my hon. Friend's intervention when I deal with extended families later. I hope to provide some clarification of the points raised by the hon. Member for Congleton and by my hon. Friend.

The hon. Lady invited the Government to set a limit on the number of caravans permitted to be kept within the curtilage of a property, and urged that no more than one caravan should be permitted, whether occupied temporarily, permanently or not at all. The Government's view is that the limit of one caravan would be a disproportionate burden on local authorities, which would have to deal with large numbers of planning applications, and a disproportionate burden on all those who enjoy using caravans, whether from the Gypsy and Traveller or settled communities. The current law allows flexibility for local authorities to determine the merits of any case as to whether the stationing of a caravan or caravans constitutes development requiring planning permission.

Mr. Bone: Has any research been done on how many houses have more than one caravan?

Jim Fitzpatrick: The hon. Gentleman makes a reasonable point. I will refer later to the review being undertaken. Given the strength of feeling and the problems caused by multiple parking, officials in the Department will want to consider the question as part of the review.

Ann Winterton: The issue is not just multiple parking; it is multiple living.

Jim Fitzpatrick: The hon. Lady made that very clear in her contribution. I apologise for not acknowledging that.

The hon. Lady asked whether a caravan would need planning permission if it were stationed in the curtilage of an unoccupied dwelling house. The answer would depend on the circumstances in each particular case. For example, it would not be reasonable to require planning permission if the house was unoccupied while the owners were away on holiday and had left a caravan in the back garden. However, if a caravan was being used as the sole residence of a family and was stationed in the garden of an unoccupied house that was not used at all by the family, the local authority might consider this to be a material change of use of land, as the caravan was not ancillary to the enjoyment of the main dwelling house.

The hon. Lady asks what uses might be considered ancillary. Examples could include uses such as storage, home office, additional sleeping accommodation and garden shed. In respect of the question that she asked about council tax, it is for the valuation office or the local authority to determine whether there has been a change in the value of the house resulting from additional development, which would alter its council tax banding.

The hon. Lady quotes from the "Planning Guide for Householders", an explanatory guide that gives examples showing when planning permission is needed. In answer to her question, and as that booklet states:

> "Planning permission is needed to place a caravan in your garden as a separate residence for someone else".

A separate residence is clearly not ancillary to the use of the main dwelling house.

In relation to the responsibility for health and safety issues for caravans in gardens, in the first instance it would be for the environmental health officer of the local authority to assess whether there were any health and

safety issues caused by use of caravans within a tight space surrounding a dwelling house. The environmental health officer is under a duty to contact other relevant agencies, including the local fire authority, if he or she believes that they need to be aware of the concentration of caravans. Local residents who are concerned should therefore contact their environmental health officer in the first instance. Finally, the term "extended family" is not a legal one, and it must be given its ordinary, everyday meaning. The question whether a person is covered by the term is a question of fact that needs to be determined by looking at the particular circumstances of the case.

Siting caravans in back gardens seems to be one solution Gypsies and Travellers have identified in response to the lack of authorised sites. Some 25 per cent. of all Gypsy and Traveller caravans in England are on unauthorised sites. I understand that Congleton district council is actively investigating whether there has been any breach of planning control with a view to possible enforcement action. The Government take the view that local planning authorities should take appropriate enforcement action if they consider that an unacceptable breach of planning control has occurred, and they have a range of tools at their disposal.

The hon. Lady has concentrated on planning matters in relation to Gypsies and Travellers. However, she has raised the issue of instances of unauthorised encampments in her constituency in the past, and I thought it might be useful if I set out the Government's wider policy towards unauthorised encampments by Gypsies and Travellers. Our aim is to reduce the tensions between Gypsies and Travellers and the settled community, and in some cases unauthorised camping can be dealt with through negotiation. However, in other cases firm and prompt action is necessary: firm action to enforce against encampments in inappropriate places; firm action to provide the right sort of authorised sites, in appropriate locations; and where people are unwilling to respect the rights of others, firm action to enforce against antisocial behaviour and environmental damage. Where persistent and repeated offences occur, action must be relentless in upholding the law.

There are a range of powers for use by private landowners, the police and local authorities to deal with unauthorised encampments and associated problems such as antisocial behaviour. I have every sympathy with those encountering problems over enforcement action, where there has been vandalism and criminal damage. The powers are there—it is a question of using them effectively.

Unauthorised sites can cause many serious problems and distress for local communities. The key to a reduction in both unauthorised camping and the siting of caravans in locations inappropriate for planning reasons is to increase the supply of authorised sites. The Government are committed to

the firm but fair use of enforcement powers against unauthorised sites and antisocial behaviour linked with increasing site provision.

Ann Winterton: It might be worth mentioning that on the illegal encampment at Cranage, I inquired about the costs of some of the statutory duties. For example, the situation cost the police in Cheshire—this figure includes the pension contribution, which one must include—£5,800. That does not include the cost of cleaning up the site, the environmental health officer and all the rest, which is a huge expense on the back of local council tax payers.

Jim Fitzpatrick: The hon. Lady has made some valid points. Options are available to local authorities to claim compensation from those who cause damage. The penalties are quite stiff, and it is a matter of using those enforcement powers to make sure that those who cause the damage and distress ultimately pay for those actions that cause such difficulty for many in the settled community.

Many local authorities have not responded sufficiently on providing sites to meet local needs in their areas in recent years. To be fair, however, some local authorities have done a great deal. Under the Housing Act 2004, local authorities will be required to carry out accommodation needs assessments for Gypsies and Travellers, as they do for the settled community, and also to draw up a Gypsy and Traveller accommodation strategy to ensure that need is met. We will issue guidance on how to carry out accommodation needs assessments in due course, but in the meantime we will seek to facilitate the sharing of good practice between local authorities and other players, and we will do all that we can to help local authorities find a way to share provision.

Local authorities should identify land that could be used for the provision of new public and private sites, which is why it is important to place an obligation on local authorities to identify land as part of their planning process. Under the new draft Gypsy and Traveller planning circular, there is a requirement on local planning authorities to allocate sufficient land for sites, which is effectively a "duty". As part of the new planning process, local authorities will have to identify sites suitable for Gypsies and Travellers as part of their local development framework. The regional planning body will have to assess regional need for Gypsy and Traveller sites based upon local accommodation needs assessments made by local authorities—

The motion having been made after Ten o'clock, and the debate having continued for half an hour, Mr. Deputy Speaker *adjourned the House without Question put, pursuant to the Standing Order.*