

2.4 REFERENCE NO - 16/503808/FULL			
APPLICATION PROPOSAL Removal of conditions 1 and 4 of planning permission SW/01/0561 (decided at appeal ref APP/V2235/A/01/1071677) to enable residential use of the site by any gypsy or traveller, and parking of a work vehicle of not more than 3.5 tons; and variation of condition 2 to allow stationing of more than one static caravan and one touring caravan.			
ADDRESS The Orchard Holywell Lane Upchurch Kent ME9 7HP			
RECOMMENDATION Grant, subject to receipt of an updated block plan and further comments from the Parish Council.			
SUMMARY OF REASONS FOR RECOMMENDATION The site already has permission for use as a residential gypsy or traveller site. Amending the conditions attached to the original permission would not seriously affect the nature of the existing use or the character or appearance of the wider countryside, or give rise to any significant amenity impacts.			
REASON FOR REFERRAL TO COMMITTEE Parish Council objection.			
WARD Hartlip, Newington And Upchurch	PARISH/TOWN COUNCIL Upchurch	APPLICANT Mr Miles Cash AGENT BFSGC	
DECISION DUE DATE 28/06/16	PUBLICITY EXPIRY DATE 08/06/17		
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
SW/01/0561	Permission granted at appeal for change of use from grazing to residential use by gypsy traveller family.	Allowed at appeal	04.01.2002
A personal permission was granted at appeal for use of the land by a gypsy/traveller family, with condition 1 of the appeal decision restricting occupation to Mr Bob Friend and his family only. The land has subsequently been sold and divided, as set out in the detailed history at 1.03 of the main report.			

1.0 DESCRIPTION OF SITE

- 1.01 The application site is a roughly rectangular parcel of land situated in the countryside to the east of Upchurch, and currently in use as a residential gypsy/traveller site known as The Orchard. The site lies off Holywell Lane but is largely screened in views from the highway by sloping land levels, roadside hedgerow planting, and a gate erected to the front of the site. There are a number of public footpaths within the area, in particular ZR23 (which runs SE-NW) and ZR24 (which runs NE-SW) but these are separated from the application site on all sides by the neighbouring properties. The wider area is generally verdant.
- 1.02 In total the site extends to roughly 100m deep and a maximum of 40m wide. It is divided up into three distinct sections: the front third is laid to hard standing and houses four static caravans, two touring caravans, and two timber sheds/storage

buildings, as well as parking / turning space. The middle third comprises compacted earth. The rear third of the site is laid to lawn. A narrow band of orchard planting separates the front and middle sections, and a laurel hedge has been planted along the southern boundary, inside the fence line. A close-boarded fence separates the site from the land to the south (St Thomas Yard), and a mixture of close-boarded and post-and-rail fencing runs along the boundary with Greenacres to the north.

1.03 The planning history of the site is somewhat convoluted and intrinsically tied to the history of neighbouring plots:

- Greenacres, to the north, is owned and occupied by Mr Friend and family, having been granted permission at appeal under application SW/01/0561 (PINS ref. 1071677). Condition 1 of that permission restricted occupancy of Greenacres (which at the time encompassed the sites now known as The Orchard and St Thomas Yard) to Mr Friend and his family only.
- Planning permission SW/04/1049 amended condition 2 of the appeal decision (under S.73 of the Act) to permit a total of two residential caravans and one touring caravan.
- The site was then notionally subdivided, albeit with limited physical structures to indicate the division, with the northern area being occupied by Mr Friend and his family and the southern area occupied by Mr Friend's sister and her children, all still within the auspice of "Greenacres."
- It is my understanding that at some stage in the late 2000's the sister vacated her part of the site for personal reasons, and sold the land to a third party. Mr Friend secured his site (Greenacres) from the remainder of the land, as he was unrelated to the new occupants. (Mr Friend was granted planning permission in 2016 under ref. 15/505703/FULL for the stationing of two static caravans and one touring caravan on his site – this was to accommodate an elderly relative in addition to the existing household.)
- St Thomas Yard is another part of the original Greenacres site which lies to the south of the current application site, is occupied by Mr Delaney and family, and is the subject of a current application to regularise their occupation of the land (ref. 17/503860/FULL) in breach of condition 1 of SW/01/0601. Members may also recall this particular site as the one against which the Council won an appeal against the insertion of a new vehicle entrance by way of substantially excavating the roadside verge;
- A further site known as Hedgerows lies to the south beyond St Thomas Yard and is occupied by Mr Hedges, having been granted consent by application SW/12/1472.
- The Paddock is a separate site further to the south along Holywell Lane, beyond a couple of residential bungalows, and occupied by the Dennard and Millen families. This site has a completely separate planning history.

1.04 It must be stressed that St Thomas Yard and the unlawful access have no relation to the current application site other than previously being part of Greenacres. The Orchard benefits from its own dedicated access which has been in situ since the site was originally set up by Mr Friend and his sister.

2.0 PROPOSAL

2.01 This application seeks to:

- Vary condition 1 of SW/01/0561 to allow occupation by any gypsy or traveller (rather than personal restriction to Mr Friend only);
- Vary condition 2 of SW/01/0561 to allow more than one static caravan and one tourer to be stationed on the site; and
- Variation of condition 4 of SW/01/0561 to allow a work vehicle to be parked on the site (rather than residential vehicles only).

2.02 Variation of condition 1 would allow the applicant – Mr Cash and his family – to lawfully occupy the site now that Mr Friend’s sister has vacated and sold the land on.

2.03 Variation of condition 2 would regularise the number of caravans currently stationed on the site, which amount to four static caravans and two tourers.

2.04 Variation of condition 4 would enable the applicant to park his work vehicle (a small flat-bed truck) on the site, as the condition currently restricts them to *“no vehicles other than those required for purposes ordinarily incidental to the use of the site as a residential caravan site for one family.”* I have discussed this with the applicant and he would be happy to accept the Council’s standard condition restricting them to stationing vehicles of not more than 3.5 tonnes.

3.0 SUMMARY INFORMATION

	Proposed
Site area	Approx. 4000sqm / 0.9 acres / 0.4ha.
No. of static caravans	4
No. of touring caravans	2

4.0 PLANNING CONSTRAINTS

4.01 None.

5.0 POLICY AND OTHER CONSIDERATIONS

National Planning Policy Framework (NPPF) and Planning Policy for Traveller Sites (PPTS) (Re-issued)

5.01 The national policy position comprises the National Planning Policy Framework (NPPF) and Planning Policy for Traveller Sites (PPTS). Both documents were released in 2012 but the PPTS was re-issued in August 2015 with amendments. Together they provide national guidance for Local Planning Authorities on plan making and determining planning applications for Gypsy and Traveller sites. A presumption in favour of sustainable development runs throughout both documents and this presumption is an important part of both the plan-making process and in determining planning applications. In addition there is a requirement in both documents that makes clear that Councils should set pitch targets which address the likely need for pitches over the plan period and maintain a rolling five year supply of sites which are in suitable locations and available immediately.

5.02 I consider that the following extracts from paragraph 7 are particularly pertinent:

“There are three dimensions to sustainable development: economic, social and environmental. These dimensions give rise to the need for the planning system to perform a number of roles:

- *an economic role – contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation; and by identifying and coordinating development requirements, including the provision of infrastructure;*
- *a social role – supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community’s needs and support its health, social and cultural well-being; and*
- *an environmental role – contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy.”*

5.03 In relation to rural housing the NPPF (at paragraph 55) states;

- *To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. For example, where there are groups of smaller settlements, development in one village may support services in a village nearby. Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as:*
 - *the essential need for a rural worker to live permanently at or near their place of work in the countryside; or*
 - *where such development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets; or*
 - *where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting; or*
 - *the exceptional quality or innovative nature of the design of the dwelling. Such a design should:*
 - *be truly outstanding or innovative, helping to raise standards of design more generally in rural areas;*
 - *reflect the highest standards in architecture;*
 - *significantly enhance its immediate setting; and*
 - *be sensitive to the defining characteristics of the local area.*

5.04 In relation to conserving and enhancing the natural environment the NPPF, at paragraph 109, states;

- The planning system should contribute to and enhance the natural and local environment by:*
- *protecting and enhancing valued landscapes, geological conservation interests and soils;*
 - *recognising the wider benefits of ecosystem services;*
 - *minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the Government’s commitment to halt the*

- overall decline in biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;*
- *preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water or noise pollution or land instability; and*
 - *remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate. .*

Planning Policy for Traveller Sites (PPTS)

- 5.05 The PPTS was originally published in March 2012 but it was re-issued in August 2015 with minor changes. Its main aims now are:

“The Government’s overarching aim is to ensure fair and equal treatment for travellers, in a way that facilitates the traditional and nomadic way of life of travellers while respecting the interests of the settled community.” (para 3 PPTS)

To help achieve this, Government’s aims in respect of traveller sites are:

- a. that local planning authorities should make their own assessment of need for the purposes of planning*
- b. to ensure that local planning authorities, working collaboratively, develop fair and effective strategies to meet need through the identification of land for sites*
- c. to encourage local planning authorities to plan for sites over a reasonable timescale*
- d. that plan-making and decision-taking should protect Green Belt from inappropriate development*
- e. to promote more private traveller site provision while recognising that there will always be those travellers who cannot provide their own sites*
- f. that plan-making and decision-taking should aim to reduce the number of unauthorised developments and encampments and make enforcement more effective*
- g. for local planning authorities to ensure that their Local Plan includes fair, realistic and inclusive policies*
- h. to increase the number of traveller sites in appropriate locations with planning permission, to address under provision and maintain an appropriate level of supply*
- i. to reduce tensions between settled and traveller communities in plan-making and planning decisions*
- j. to enable provision of suitable accommodation from which travellers can access education, health, welfare and employment infrastructure*
- k. for local planning authorities to have due regard to the protection of local amenity and local environment.” (para 4 PPTS)*

- 5.06 In terms of plan making the PPTS advice is that;

“Local planning authorities should ensure that traveller sites are sustainable economically, socially and environmentally. Local planning authorities should, therefore, ensure that their policies:

- a) promote peaceful and integrated co-existence between the site and the local community*

- b) *promote, in collaboration with commissioners of health services, access to appropriate health services*
- c) *ensure that children can attend school on a regular basis*
- d) *provide a settled base that reduces the need for long-distance travelling and possible environmental damage caused by unauthorised encampment*
- e) *provide for proper consideration of the effect of local environmental quality (such as noise and air quality) on the health and well-being of any travellers that may locate there or on others as a result of new development*
- f) *avoid placing undue pressure on local infrastructure and services*
- g) *do not locate sites in areas at high risk of flooding, including functional floodplains, given the particular vulnerability of caravans*
- h) *reflect the extent to which traditional lifestyles (whereby some travellers live and work from the same location thereby omitting many travel to work journeys) can contribute to sustainability.” (para 13 PPTS)*

5.07 For sites in rural areas and the countryside the PPTS advice is that;

“When assessing the suitability of sites in rural or semi-rural settings, local planning authorities should ensure that the scale of such sites does not dominate the nearest settled community.” (para 14 PPTS)

5.08 In relation to the determination of planning applications the PPTS says that;

“Applications should be assessed and determined in accordance with the presumption in favour of sustainable development and the application of specific policies in the National Planning Policy Framework and this planning policy for traveller sites.” (para 23 PPTS)

“Local planning authorities should consider the following issues amongst other relevant matters when considering planning applications for traveller sites:

- a) *the existing level of local provision and need for sites*
- b) *the availability (or lack) of alternative accommodation for the applicants*
- c) *other personal circumstances of the applicant*
- d) *that the locally specific criteria used to guide the allocation of sites in plans or which form the policy where there is no identified need for pitches/plots should be used to assess applications that may come forward on unallocated sites*
- e) *that they should determine applications for sites from any travellers and not just those with local connections”*

“However, as paragraph 16 [relating to Green Belts] makes clear, subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances.” (para 24 PPTS). I note that the mini paragraph above was added in the 2015 re-issue of PPTS.

“Local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. Local planning authorities should ensure that sites in rural areas respect the scale of, and do not dominate the nearest settled community, and avoid placing an undue pressure on the local infrastructure.” (para 25 PPTS). I note that the word “very” was added to this paragraph in the 2015 re-issue of PPTS.

“If a local planning authority cannot demonstrate an up-to-date 5 year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary permission. The exception to this is where the proposal is on land designated as Green Belt; sites protected under the Birds and Habitats Directives and / or sites designated as Sites of Special Scientific Interest; Local Green Space, an Area of Outstanding Natural Beauty, or within a National Park (or the Broads).” (para 27 PPTS).

Finally, the definition of gypsies and travellers has been amended in the re-issued PPTS to remove the words “or permanently” from after the word “temporarily” in the following definition;

“Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family’s or dependants’ educational or health needs or old age have ceased to travel temporarily, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.”

- 5.09 The Council responded positively and quickly to the changes in the national policy position in respect of Gypsy and Traveller accommodation. The Local Development Framework Panel quickly supported the commissioning of a new Gypsy and Traveller Accommodation Assessment (GTAA), which was completed in June 2013 and identified a need for 82 pitches to be provided during the plan period (adjusted down from 85 pitches in reflection of those sites granted permanent permission whilst the document was under preparation). This need figure was incorporated within the draft Bearing Fruits Swale Borough Local Plan: Part 1 alongside a policy introducing provision for pitches on certain major development sites. An additional net 47 permanent pitches (some with personal use conditions) had also been approved up to March 2015, reducing the outstanding need to 35 pitches over the Plan period. Further permanent permissions have since been granted. A further number of pitches enjoy temporary permissions.
- 5.10 Shortly after publication of the GTAA in 2013 the Council began work on Part 2 of the Swale Borough Local Plan which was intended to deal with site allocations for Gypsy and Traveller pitch provision only. This process began with a call for sites between September and December 2013, and the publication of an issues and options paper which was subject to public consultation (this finished on 25 April 2014). The Local Plan was subject to examination in November 2015 and the latest position on this is referred to below.

Swale Landscape Character and Biodiversity Appraisal SPD 2011

- 5.11 The site and surrounding area are identified within the Swale Landscape and Biodiversity Appraisal Supplementary Planning Document (SPD) as falling within the Upchurch and Lower Halstow fruit belt area where the document advises opportunities should be sought to create features to restore a strong landscape structure with tree and hedge planting, and the overall aim should be towards conservation of the landscape. I do not consider that landscape impact is a significant potential objection to development here.

Bearing Fruits 2031: The Swale Borough Local Plan 2017 adopted 26 July 2017

- 5.12 The Council's GTAAs published in 2013 and suggested a pitch target of 85 pitches to 2031. The revised PPTS (2015) changed the planning definition of a gypsy and traveller, and therefore changed the number of pitches that needed to be identified. Evidence to the Local Plan's Examinations In Public (EIP) in 2015 and 2017 was that the Council had re-interrogated the original GTAA data to determine the appropriate level of pitch provision based on the new 2015 PPTS revised definition of gypsies and travellers. The data revealed that for all but unauthorised sites some two-thirds of households surveyed for the GTAA either never travel or travel not more than once a year. Overall, only 31% of respondents travel a few times a year, and 55% never travel, meaning that in Swale the gypsy and traveller population is quite settled, slightly more so than elsewhere in the country. Many current site occupants no longer meet the new PPTS definition of having a nomadic habit of life
- 5.13 Accordingly, the need for pitches in Swale was re-evaluated, resulting in a reduced estimate of pitch need from 85 pitches down to 61 pitches over the Plan period to 2031; this being the most generous (highest) of the possible reduced pitch number scenarios considered. As a result of this analysis the future need for new pitches throughout the Local Plan period is based on a figure of 61 pitches to 2031, leaving (at the time of the Local Plan EIP) a need per year of less than one pitch, meaning that no formal pitch allocations will be needed, and future site provision could reasonably be expected to be catered for via windfall planning applications. Draft Local Plan Policy DM10 was then revised to deal with these windfall applications. The Inspector confirmed that the Council's approach to this matter was well reasoned and pragmatic and she also accepted that the Council's approach would result in a Plan that will be effective and consistent with national policy.
- 5.14 The Local Plan has now been adopted, and thus the position has been formalised. The key adopted plan policy to deal with windfall planning applications for new sites now is DM 10 (Gypsy and Traveller sites). Policy DM10 of the adopted Local Plan states:

Part A: Retention of sites for Gypsies and Travellers

Existing permanent sites and those granted permanent planning permission will be safeguarded for use by Gypsies and Travellers, unless it is demonstrated the site is no longer suitable for such use.

Part B: Gypsy and Traveller sites

The Council will grant planning permission for sites for Gypsies, Travellers and Travelling Show People, where it is demonstrated that proposals:

1. *Are in accordance with Policy ST3 by reference to the deliverability of potential or existing sites at each settlement tier(s) above that proposed by the application, unless:*
 - a. *there are exceptional mitigating and/or personal circumstances where the applicant has demonstrated that a particular site is required to meet their needs and where there is no overriding harm to the locality; or*
 - b. *where required to meet an affordable housing need either via a rural exception site in accordance with Policy DM9 or specific allocation; or*
 - c. *the proposal is for an extension to, or stationing of, additional caravans at an existing site.*

2. *Can establish that the applicants have previously led a nomadic lifestyle, the reasons for ceasing a nomadic lifestyle and/or an intention to return to a nomadic lifestyle in accordance with Annex 1 of Planning Policy for Traveller Sites (2015);*
3. *Can achieve an integrated co-existence between all communities;*
4. *Are of a scale appropriate to meet the accommodation need identified and not introduce a scale of development that singly or cumulatively dominates the nearest settlement or causes significant harm to the character of an area, its landscape, or the capacity of local services;*
5. *Can, where appropriate, accommodate living and working in the same location, either through a mixed use site or on land nearby, whilst having regard to the safety and amenity of occupants and neighbouring residents;*
6. *Cause no significant harm to the health and wellbeing of occupants or others by noise, disturbance, vibration, air quality or other circumstances;*
7. *Cause no significant harm to the Area of Outstanding Natural Beauty, national/local landscape or biodiversity designations and other natural or built environment that cannot be adequately mitigated;*
8. *Provide landscaping to enhance the environment in a way that increases openness and avoids exclusion and isolation from the rest of the community;*
9. *Provide for healthy lifestyles through open space, amenity areas for each pitch and play areas;*
10. *Would be safe from flooding by meeting both the exceptions and sequential tests in accordance with national policy and Policy DM22;*
11. *Achieve safe and convenient parking and pedestrian and/or vehicular access without unacceptable impact on highway safety; and*
12. *Where appropriate, include visitor or transit pitches and/or sufficient areas for future expansion. Planning conditions may be used to limit the length of time that caravans can stop at transit sites and on visitor pitches.*

Five year supply position

- 5.15 The revised pitch requirement to 2031 that was accepted by the Local Plan Inspector amounted to 61 pitches. In the Council's Hearing Statement submitted in January 2018 the total number of pitches approved since 2013 with permanent planning permission was 63. This figure has now changed.
- 5.16 In February 2018 an appeal decision granted a permanent personal planning permission for two pitches at Windmill Farm, Yaugher Lane, Hartlip. In May 2018 the Council approved a revised site layout for 40 pitches at Brotherhood Woodyard (BW), Dunkirk resulting in a net pitch increase of 11 pitches (each with a static and touring caravan). Finally, in June 2018 the Council approved a brand new twin pitch site at London Road, Newington. The result of this is that 15 further pitches have been approved in 2018, taking the overall supply since 2013 to 78 pitches, 17 above the agreed need.
- 5.17 Of these, 21 pitches have not been implemented including one at Breach Farm Paddocks (previously classed as implemented), 11 at BW, and two at Newington. Total completions stand at 57 including the 2013 permission for 19 additional pitches at BW, or 38 without those 19 pitches which have been disputed at recent appeals. For the sake of caution (and to replicate the approach taken by the Spade Lane Inspector) I have worked out the five year supply figures with and without assuming implementation of the 2013 planning permission at the BW site.

- 5.18 If the five year supply is now calculated on the basis of the **last monitoring year**, the maths is as follows:
- GTAA target to 2031 = 61
 - Completions to May 2018 = 38 (excluding BW, but including two pitches at Windmill Farm and discounting one pitch at Breach Farm Paddocks)
 - Residual Requirement = 23 (61 minus 38)
 - 5 yr requirement $[(23/14 \text{ years}) \times 5] = 8.21$ pitches
 - Annual need $[6.57/5] = 1.64$
 - Total 5 yr supply = 8
 - Land supply in yrs $(8/1.64) = \underline{\mathbf{4.88 \text{ years}}}$
- 5.19 If supply is being calculated “live”, we should include the whole of the recent approval at Brotherhood Woodyard (BW) in supply (a net increase of 30 pitches), rather than the existing 19 pitches (assumed not to be delivered or suitable for gypsies and travellers with caravans in the wrong place, possibly occupied by non-gypsies/travellers, and with no space for tourers), and the following updates are required:
- Need should come down by one pitch, reflecting the approval at Windmill Farm of two pitches, but the removal of Breach Farm Paddocks.
 - The supply of sites should be increased by 32 (30 at Brotherhood Woodyard, and two at Newington) from 8 to 40.
- 5.20 The maths is then as follows:
- GTAA target to 2030/31 = 61
 - Completions to May 2018 = 38 (excluding BW, but including two pitches at Windmill Farm and discounting one pitch at Breach Farm Paddocks)
 - Residual Requirement = 23 (61 minus 38)
 - 5 yr requirement $[(23/13) \times 5] = 8.85$ pitches
 - Annual need $[8.85/5] = 1.77$
 - Total 5 yr supply = 40
 - Land supply in yrs $(40/1.77) = \underline{\mathbf{22.6 \text{ years}}}$
- 5.21 In other words the Council can show almost 5yrs supply, or well in excess of 5yrs supply, either way the numbers are calculated, even if the 2013 approval at BW is deleted from the figures as per the logic of the Spade Lane decision.
- 5.22 If you assume the 2013 permission at BW was implemented, 19 is added to the end of year completions figure and live figure (57) and deducted from the live supply (now 21). And then recalculate – still well over 5 years in either case.
- 5.23 Finally, the Government’s Chief Planner announced on 31 August 2015 (the same day PPTS was re-issued) a policy that from that date all applications and appeals that involve intentional unauthorised development this fact can be a material planning consideration. In this case the site was originally occupied without the necessary planning permission, and after the temporary planning permission was granted the site was occupied by the current appellant who is not one of those people that the personal permission authorised, without further approval. Nor was the site vacated when the temporary planning permission expired; even though the occupants had made no attempt to seek a further planning permission. These facts should weigh against the appellant in this case.

6.0 LOCAL REPRESENTATIONS

- 6.01 Swale Footpaths group notes the nearby public footpaths but don't consider they would be affected.

7.0 CONSULTATIONS

- 7.01 Upchurch Parish Council originally commented that;

“they have no objections to condition 1 being removed as we are mindful that Mr Friend does not wish to be associated with this site. The members do however have concerns regarding the removal of condition 4 as there have already been enforcement issues with the unauthorised access that was made at the site. It is felt that the site should have no reason to require vehicles other than those used for residential purposes to be parked on the land.”

- 7.02 I have gone back to them to seek further comments in respect of the revised application description which includes condition 2 (number of caravans) and clarified that, in respect of condition 4, the applicant wants the condition relaxed so he can park his LGV/flatbed truck and would be happy to accept the Council's standard condition preventing vehicles of more than 3.5 tonnes. I've also clarified that the unauthorised access is not associated with this site. I will update Members on their further comments at the meeting.

- 7.03 Kent Highways and Transportation state: *“it would appear that this development proposal does not meet the criteria to warrant involvement from the Highway Authority in accordance with the current consultation protocol arrangements.”*

8.0 BACKGROUND PAPERS AND PLANS

- 8.01 The historic applications noted above are of relevance, and the current application is supported by a site location plan and Design & Access Statement. I have requested a further drawing from the agent to show the layout of the site as existing.

9.0 APPRAISAL

- 9.01 The principle of using this parcel of land as a residential traveller site has been established through the original grant of permission (at appeal) under SW/01/0561. Although the permission was on a personal basis for named individuals the Inspector's decision set out (para.9) *“the principle of the provision of sites for gypsies in this area is acceptable.”*

- 9.02 The Inspector did give significant weight to the personal circumstances of the applicant at the time of the 2001 appeal, but under current planning guidance I consider the site to be acceptable in its own right: it is close to Upchurch with its local shops, school, pub, etc.; is generally well-sited in relation to surrounding development; is well screened by hedgerow and boundary planting (the applicant has additionally planted a number of fruit trees within the site) and does not seriously affect the character and appearance of the wide countryside; and continued residential use of the site would not give rise to significant amenity concerns for neighbouring residents. In that regard I have no serious concerns in respect of amending condition 1 to allow use by any gypsies or travellers instead of being restricted to named individuals.

- 9.03 The Council's supply of traveller sites is set out above, and is a complicated issue which can be summarised as showing that the Council either has a significant over-supply or a slight under supply.
- 9.04 The applicant is looking to station 4 static caravans and 2 tourers on the land in total, which equates to 3 pitches in total (calculated at 1.7 caravans per pitch) or two additional pitches net gain. This would be a small but valuable contribution to the Council's site provision which would take our lower estimate of supply to over 5yrs (see 5.22 above). Where a site is otherwise acceptable the mere fact that pitch need has been met should not be seen as an obstacle to approval. The Council has successfully argued that the pitch need is a target not a ceiling, and this approach has stood us in good stead when opposing unsuitable and unsustainable sites.
- 9.05 Variation of condition 2 to regularise the number of caravans on the site (4 static and 2 tourers) is, in my opinion, acceptable. The site is of sufficient size to comfortably accommodate these caravans while retaining space for parking, turning, amenity, and boundary landscaping. An increase in the number of caravans would not change the nature of the use, i.e. it remains as a residential traveller site, and would not significantly increase the vehicle movements along Holywell Lane to unsustainable levels, in my opinion. The caravans house the applicant's immediate family:
1. Mr Cash, his partner, and two young sons.
 2. Mr Cash's son, Jimmy.
 3. Mr Cash' son Patrick and his partner.
 4. Empty. Used for storage. No plans for it to be occupied.
- 9.06 The site also contains two storage sheds, one of which houses a washing machine, tumble dryer, and general household storage; the other contains a lawnmower, garden equipment, outdoor play equipment, etc. I have no serious concerns about these.
- 9.07 The Parish Council has expressed concern about variation of condition 4 to allow non-residential vehicles to be parked on the site. I discussed this with the applicant, who confirmed that he has a flat-bed truck used in in association with his business laying driveways, and wants to vary the condition so that he is not in breach when coming home from work each day and parking on the site. This, to me, is a reasonable request and I note that his vehicle is not an HGV or very large vehicle that would likely cause damage to or obstruct the lane. The applicant has also confirmed to me that he would be happy to abide by the Council's standard condition restricting him to vehicles of "not more than 3.5 tonnes." I therefore have no serious concerns in respect of this element.

The Conservation of Habitats and Species Regulations 2017

- 9.08 The application site is located within 6km of The Medway Estuary and Marshes Special Protection Area (SPA) which is a European designated sites afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations). SPAs are protected sites classified in accordance with Article 4 of the EC Birds Directive. They are classified for rare and vulnerable birds and for regularly occurring migratory species. Article 4(4) of the Birds Directive (2009/147/EC) requires Member States to take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article.

- 9.09 Residential development within 6km of *any* access point to the SPA has the potential for negative impacts upon that protected area by virtue of increased public access and degradation of special features therein. The HRA carried out by the Council as part of the Local Plan process (at the publication stage in April 2015 and one at the Main Mods stage in June 2016) considered the imposition of a tariff system to mitigate impacts upon the SPA (£301 per dwelling on developments of 10 or more units, as ultimately agreed by the North Kent Environmental Planning Group and Natural England) – these mitigation measures are considered to be ecologically sound.
- 9.10 However, the recent (April 2018) judgement (*People Over Wind v Coillte Teoranta*, ref. C-323/17) handed down by the Court of Justice of the European Union ruled that, when determining the impacts of a development on protected area, “*it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site.*” The development therefore cannot be screened out of the need to provide an Appropriate Assessment (AA) solely on the basis of the agreed mitigation measures (SAMMS), and needs to progress to consideration under an AA.
- 9.11 In this regard, whilst there are likely to be impacts upon the SPA arising from this development, the scale of development (a small residential caravan site on a previously permitted parcel of land) and the mitigation measures to be implemented within the SPA from collection of the standard SAMMS tariff will ensure that these impacts will not be significant or long-term. I therefore consider that, subject to mitigation, there will be no adverse effect on the integrity of the SPA.
- 9.12 It can be noted that the required mitigation works will be carried out by Bird Wise, the brand name of the North Kent Strategic Access Management and Monitoring Scheme (SAMMS) Board, which itself is a partnership of local authorities, developers and environmental organisations, including SBC, KCC, Medway Council, Canterbury Council, the RSPB, Kent Wildlife Trust, and others. (<https://birdwise.org.uk/>)

10.0 CONCLUSION

- 10.01 This application seeks to regularise the applicant’s use of an existing residential traveller site in breach of conditions restricting it to named occupants only; and to regularise the number of caravans and the parking of a work vehicle. These are all acceptable in my opinion, and would not give rise to any serious issues of landscape character harm, local amenity, or highway safety and amenity.
- 10.02 Taking the above into account I recommend that (subject to receipt of further comments from the Parish Council and an updated block plan showing the current site layout) planning permission should be granted.

11.0 RECOMMENDATION – GRANT Subject to the following conditions:

- 1) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1 to the DCLG Planning Policy for Traveller Sites.

Reason: In recognition of the terms of the application, and because an uncontrolled use of the land would be unacceptably detrimental to the character and amenities of the area.

- 2) No more than four static caravans and two touring caravans shall be stationed on the site at any one time.

Reason: In recognition of the terms of the application, and because an uncontrolled use of the land would be unacceptably detrimental to the character and amenities of the area.

- 3) The site shall only be used for residential purposes and it shall not be used for any business, industrial or commercial use. In this regard no open storage of plant, products or waste may take place on the land, no vehicle over 3.5 tonnes and no more than one 3.5 tonne vehicle shall be stationed, parked or stored on the land.

Reason: In recognition of the terms of the application, and because an uncontrolled use of the land would be unacceptably detrimental to the character and amenities of the area.

- 4) No floodlighting, security lighting or other external lighting shall be installed or operated at the site, other than in accordance with details that have first been submitted to and agreed in writing by the Local Planning Authority.

Reason: In the interests of preventing light pollution.

The Council's approach to this application:

In accordance with paragraphs 186 and 187 of the National Planning Policy Framework (NPPF), the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and proactive manner by:

Offering pre-application advice.

Where possible, suggesting solutions to secure a successful outcome.

As appropriate, updating applicants/agents of any issues that may arise in the processing of their application.

In this instance the application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application.

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.

The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.

