

<b>2.7 REFERENCE NO - 15/505252/FULL</b>			
<b>APPLICATION PROPOSAL</b> Variation of conditions 1 and 2 of APP/V2255/C/11/2167577 - to remove reference to "a limited period being the period of 4 years from the date of this decision" from condition 1; and "or at the end of 4 years" from condition 2.			
<b>ADDRESS</b> Horseshoe Farm Elverland Lane Ospringe Kent ME13 0SP			
<b>RECOMMENDATION – Grant further temporary permission SUBJECT TO: amendment to description of application to refer to the current planning permission.</b>			
<b>REASON FOR REFERRAL TO COMMITTEE</b> Contrary to local representations			
<b>WARD</b> East Downs Ward	<b>PARISH/TOWN COUNCIL</b> Ospringe	<b>APPLICANT</b> Mr Alfred Willet <b>AGENT</b> Philip Brown Associates	
<b>DECISION DUE DATE</b> 20/08/15	<b>PUBLICITY EXPIRY DATE</b> 24/07/15		
<b>RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):</b>			
<b>App No</b>	<b>Proposal</b>	<b>Decision</b>	<b>Date</b>
	Enforcement Notice Appeal Decision	Allowed	10/08/2012
SW/13/0743	Replacement of appeal decision	Approved	27/09/2013

**1.0 DESCRIPTION OF SITE/SITE HISTORY**

- 1.01 This site is the top end of an open field (a former orchard) which lies on the side of the Newnham Valley just south of the M2. It therefore lies within the Kent Downs Area of Outstanding Natural Beauty. The field, which has been divided up, is dominated by two tall lines of conifers, one along its northern boundary adjacent to Elverland Lane, the other down the middle of the field.
- 1.02 The application site is a small part of the field where the boundary steps in to create a relatively narrow area between the southern boundary and the southern line of conifers. From some directions, the boundary planting and the line of conifers screen the site quite well. However, the site lies on a sharp double bend in the single-track and steep Elverland Lane, and the site entrance is a direct continuation of the lane’s alignment when approaching the double bend from the east. The site is therefore prominent from that direction.
- 1.03 The site is also extremely prominent from the M2 when travelling east as it is directly in front as the motorway bears left and down across the valley. Views across the countryside from the M2 as a whole are generally limited, but both as one dips into the valley, and from the overbridge at this point, the site is in direct view and very prominent.
- 1.04 Lying high on the side of the valley its western boundary is well below its general level, and accordingly offers poor scope for screening by new planting. There is therefore a long distance view across the valley into the site which is available to many people daily.

- 1.05 The site can also be readily seen from to the south from a public footpath, from where the caravans present an intrusive appearance
- 1.06 The site's previous planning history includes the refusal of planning permission for stables in 1996, when the site was known as Jarvis Downs. This refusal, following well voiced local concern about the highway and landscape implications of the proposal, was based on harm to the character and visual amenities of the Area of Outstanding Natural Beauty, the impact of groundworks given the steep gradient of the site, and lack of regard to the Council's guidelines for such developments.
- 1.07 Despite this refusal, a makeshift stable type building exists on the site, and has been therefore for some years.
- 1.08 Since then, the current application site was included within the site of an enforcement notice served in September 2002 relating to the occupation principally of the lower end of the overall field by caravans. This was a very blatant attempt at occupying the site by persons who were not gypsies, but who were well known to the Police, and which they were very keen to put a stop to.
- 1.09 When the enforcement notice took effect, the site was vacated. However, the occupants later returned and submitted a planning application to station one mobile home and one caravan on the same lower part of the field which they had previously occupied. This application (SW/04/0574) was refused in June 2004.
- 1.10 The enforcement notice has now been superseded over most of the field by temporary planning permissions for gypsy sites both here and at the very bottom of the field on a site known as Meads Farm.
- 1.11 A 2004 planning application for use of the site as a caravan site (SW/04/0422) was submitted at the same time that the applicant first stationed a mobile home on the site, in breach of the then established enforcement notice. This application was refused by the Council and an enforcement notice served in 2011.
- 1.12 The enforcement notice appeal was allowed on August 2012, see decision letter at Appendix 1 to this item. The appeal decision granted a personal and temporary planning permission for occupation of the site as a private gypsy site and for keeping horses until 10 August 2016. It also required (by condition 9) a scheme of site layout to be submitted within 3 months of the decision. This was not done and the permission granted by the appeal decision lapsed. The 2013 planning application SW/13/0743 sought to regain the benefit of the appeal decision and this was approved by Members in the same terms and to the same end date of 10 August 2016 by decision dated 27 September 2013.
- 1.12 Conditions of that decision included the following;

Condition 1;

The residential use hereby permitted shall be carried on only by Alfred Willett and his resident dependants, and shall be for a limited period until 10 August 2016 only, or the period during which the premises are occupied by them, whichever is the shorter.

Grounds: In recognition of the personal circumstances of Alfred Willett and the 10 August 2012 appeal decision which sought to balance personal circumstances, harm to the Kent Downs Area of Outstanding Natural Beauty and the policy process for provision of private gypsy sites.

Condition 2;

When the premises cease to be occupied Alfred Willett and his dependants, or on 10 August 2016, whichever shall first occur, the residential use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment brought on to the land, or works undertaken to it in connection with that use shall be removed and the land restored to its condition before the residential use took place

Grounds: In recognition of the terms of the 10 August 2012 appeal decision which sought to balance personal circumstances, harm to the Kent Downs Area of Outstanding Natural Beauty and the policy process for provision of private gypsy sites.

- 1.13 This permission therefore supersedes the appeal decision which had lapsed, although the applicant has incorrectly applied to vary the conditions of the appeal decision. I have sought the applicant's agreement to describe the application as to vary conditions 1 and 2 of the 2013 planning permission, and hope to have this ahead of the meeting..

## **2.0 PROPOSAL**

- 2.01 This application seeks to remove or vary conditions 1 and 2 as set out above in order to make the permission personal and permanent. He seeks removal of any reference to a time limit in either condition. The applicant states that the latest GTAA demonstrates a need to provide an additional 35 residential gypsy and traveller pitches in Swale, and that Part 2 of the emerging Local Plan has not progressed beyond the Issues and Options stage, meaning that is unlikely that any alternative sites will be brought forward until after the expiry of the current temporary permission.
- 2.02 The applicant suggests that because he has now lived on the application site for over 10 years and has already integrated with other residents of Elverland Land this provides exceptional mitigating circumstances which, in the absence of alternative sites, demonstrate that this site is required to meet the needs of this traveller. Members may wish to note that the only residents of land along Elverland Lane are themselves on sites only approved on temporary permissions for gypsies and travellers.
- 2.03 The applicant further argues that the site is small and does not dominate the area, overburden local services, suffer from any environmental problem or flood risk. He adds that access to the site is safe, that it contains adequate parking and amenity space, and that the applicant does not need working space.
- 2.04 In terms of the impact of the site on the AONB the applicant suggests that the development is small in scale, set away from Elverland Lane and seen against a backdrop of woodland. He notes that the appeal Inspector saw limited impact on the landscape from near views and that other views were distant and where the caravans were below the skyline. Since then, an alien earth bund has been removed from the site (this removal was part of the approved site development scheme) and the touring caravan is now sited less prominently.
- 2.05 Finally, the applicant suggests that whilst caravans do not blend with the landscape they are found on farms and they have been present on this site over many years, meaning that the proposed permanent use will not result in any material harm to the landscape character of this part of the AONB. He asks that he be allowed to stay on the site as it would be unfair to prolong the uncertainty over his future home.

## **3.0 PLANNING CONSTRAINTS**

Area of Outstanding Natural Beauty KENT DOWNS

Area of Outstanding Natural Beauty Maidstone AONB directive

Enforcement Notice ENF/02/033

Enforcement Notice ENF/11/035

Enforcement Notice ENF/11/036

Enforcement Notice ENF/11/036

Enforcement Notice ENF/11/035

Enforcement Notice ENF/02/033

#### **4.0 POLICY AND OTHER CONSIDERATIONS**

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

4.01 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.

4.02 Whilst regard has been paid to all of the guidance as set out within the NPPF, 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.”

4.03 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.

4.04 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.

4.05 The NPPF prioritises the safeguarding of AONBs at paragraph 115.

#### **Planning Policy for Traveller Sites (PPTS)**

4.06 The PPTS was originally published in March 2012 but it was re-issued in August 2015 with minor changes. Whilst regard has been paid to all of the guidance as set out within the PPTS, 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)

4.07 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)*

4.08 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)*

4.09 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).* Members might like to 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).* Members might like to 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 5year 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).* Members might like to note that the last sentence above was added to this paragraph in the 2015 re-issue of 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.”*

The implications for this change in definition has clouded the issue with regard to defining need. At this stage, given that the application relates to a single pitch, it is advised that the Council should consider the application in the context of the existing GTAA as set out below.

- 4.10 The Council has 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 is 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) have also been approved up to March 2015, reducing the outstanding need to 35 pitches over the Plan period. A further number of pitches enjoy temporary permissions, including the current application site.
- 4.11 Shortly after publication of the GTAA in 2013 the Council began work on Part 2 of the Swale Borough Local Plan which will 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<sup>th</sup> April 2014).

#### **Saved Policies of Swale Borough Local Plan 2008**

- 4.12 Policy E1 (General Development Control Criteria) sets out standards applicable to all development, saying that it should be well sited appropriate in scale, design and appearance with a high standard of landscaping, and have safe pedestrian and vehicular access whilst avoiding unacceptable consequences in highway terms.
- 4.13 This site lies in an isolated position within the countryside where policy E6 (The Countryside) seeks to protect the quality, character and amenity of the countryside, and states that development will not be permitted outside rural settlements in the interests of countryside conservation, unless related to an exceptional need for a rural location.
- 4.14 Within Areas of Outstanding Natural Beauty policy E9 (Protecting the Quality and Character of the Borough's Landscape) gives priority to the long term protection and enhancement of the quality of the landscape, whilst having regard to the economic and social well being of their communities. Policy E9 seeks to protect the quality, character and amenity value of the wider landscape of the Borough. Within the countryside it expects development to be informed by local landscape character and quality, consider guidelines in the Council's landscape character and assessment, safeguard distinctive landscape elements, remove detracting features and minimise adverse impacts on landscape character. Protection of AONBs is a high priority in the NPPF and they are now afforded recognition in the PPTs, see below.
- 4.15 Policy E19 (Achieving High Quality Design and Distinctiveness) requires development proposals to be well designed.
- 4.16 Policy RC7 (Rural Lanes) seeks to protect the physical features and character of rural lanes, of which Elverland Lane is one.



- 4.17 Policy H4 explains the Borough Council will only grant planning permission for the use of land for the stationing of homes for persons who can clearly demonstrate that they are gypsies or travelling showpersons with a genuine connection with the locality of the proposed site, in accordance with 1 and 2 below.
1. For proposals involving the establishment of public or privately owned residential gypsy or travelling showpersons sites:
    - a) there will be a proven need in the Borough for the site and for the size proposed;
    - b) the site will be located close to local services and facilities;
    - c) there will be no more than four caravans;
    - d) the site will be located close to the primary or secondary road networks
    - e) in the case of a greenfield site there is no suitable site available on previously developed land in the locality;
    - f) the site is not designated for its wildlife, historic or landscape importance;
    - g) the site should be served, or capable of being served, by mains water supply and a satisfactory means of sewage disposal and refuse collection;
    - h) there is no conflict with pedestrian or highway safety;
    - i) screening and landscaping will be provided to minimise adverse impacts;
    - j) no industrial, retail, commercial, or storage activities will take place on the site.
    - k) use of the site will not give rise to significant adverse impacts upon residential amenity, or agricultural or commercial use, of surrounding areas; and
    - l) the land will not be in a designated flood risk area.
  2. Additionally to 1, for proposals for short term stopping places:
    - m) there will be a planning condition to ensure that the length of stay for each caravan will be no longer than 28 days with no return to the site within 3 months.”

- 4.18 This policy was criticised by the Local Plan Inspector who saw it, as a criteria based rather than site allocations policy, as inconsistent with the then Circular 01/2006 - which itself has since been superseded by PPTS and its emphasis of a five year supply of sites - and the policy can only be of limited significance to this application.

#### **Swale Landscape Character and Biodiversity Appraisal SPD 2011**

- 4.19 This site is divided between the Doddington and Newnham Dry Valleys and the Faversham and Ospringe Fruit Belt landscape character areas as defined in the March 2011 Swale Landscape Character and Biodiversity Appraisal, areas which are seen as of high and moderate sensitivity respectively and in good condition.

#### **Bearing Fruits 2031: 2014 Publication version of the Swale Borough Local Plan: Part 1**

- 4.20 The Council's Publication version of the draft Local Plan, entitled *Bearing Fruits 2031*, was published in December 2014 and is shortly due for examination.
- 4.21 Policy CP 3 of the draft Local Plan aims to provide pitches for gypsies and travellers as part of new residential developments. Policy DM10 sets out criteria for assessing windfall gypsy site applications

### Site Assessment

- 4.22 The Council's February 2014 Gypsy and Traveller Site Allocations: Issues and Options consultations document recommends a new methodology for how to assess site suitability for determining whether or not to allocate a site. Although this was primarily intended to rank potential site allocations, it was agreed by Members of the LDF Panel in June 2014 to be used as a material consideration in planning applications. Even though this is normally done in relation to the potential suitability of a fresh site, given that its publication post-dates the appeal decision on this site I have considered this in formulating this recommendation to be sure that the recommendation is up-to-date. This assessment is a Red/Amber/Green staged approach to site suitability, with any site scoring Red in any stage not being progressed to the next stage.
- 4.23 The assessment starts with Stage 1: Availability. The site owner is in occupation of the site. Here the site scores green. This means that the site should proceed to Stage 2.
- 4.24 Stage 2: Suitability/Constraints. The site is not in a flood risk zone (assessment green); it is in an AONB and has a previously recognised unacceptable impact on the reasons for designation of the area (red); it has unacceptable landscape impact (red); it has no unacceptable impact on biodiversity (green); no dominating effect on settlements (green); no adverse impacts on heritage/archaeology (green); is not known to be contaminated (green); will not be subject to noise or disturbance (green); has adequate access (green); but is remote and not within walking distance to any significant facilities (red). The red scores mean that the site should not proceed to Stage 3 and will not be a candidate site for a future allocations policy. It is not a site considered to be suitable as a permanent site.
- 4.25 The proposed timetable for Part 2 of the new Local Plan included production and consultation upon a preferred options document in Summer 2014 (now completed). The adoption of Part 2 of the Local Plan is currently dependent upon the successful adoption of Part 1 of the Local Plan. Should the Examination Inspector find problems with Part 1 of the Local Plan, Officers are likely to suggest that all pitch provision matters be deferred to Part 2 to enable Part 2 of the Local Plan to progress independently of Part 1.

### Five year supply position

- 4.26 The PPTS has since 2012 introduced a need for Council's to maintain a rolling five year supply of sites which are in suitable locations and available immediately. This is a relatively new requirement for Council's and the Council could only start attempting to meet this requirement following the commissioning and publication of the GTAA which provided the need figure and a base date. As such, the Council put measures into place to deal with the PPTS requirements very quickly, but have only recently started down the route of trying to maintain a rolling five year supply.
- 4.27 The GTAA sets out a target of 85 pitches to be provided by the year 2031, with a suggested provision of 35 pitches in the first five years (to 2018). Three pitches were approved during the course of the GTAA's production so the final target was in fact 82 pitches. Since the publication of the GTAA and up to the end of March 2015 a total of 47 permanent pitches have been approved in Swale almost exclusively without an appeal, of which 33 pitches had been implemented. Evidence to be presented to the Local Plan examination later this year shows that at the end of March 2015 the need for pitches identified from the GTAA thus stood at 82 pitches

minus the 33 permanent pitches approved and implemented, including the personal permissions granted in the interim. This reduced the need to 49 pitches which, at an annualised rate of 4.6 pitches per year (23 pitches over five years) indicated that the Council has already provided a surplus of supply of 0.8 pitches over the full five year requirement. This is calculated by taking the two year annualised requirement of 9.2 pitches from the completions so far to show a current surplus of 23.8 implemented pitches over the two year requirement and already a surplus of 0.8 approved permanent pitches over the five year need after just two years. In addition to this there are a further 13 approved but unimplemented permanent pitches as at the end of March 2015, an overall surplus of 14 pitches. These mostly comprise extensions to, or more intensive use of, existing sites and are awaiting occupation. Since then two more wholly new permanent sites have been approved at Eastchurch and Newington. Planning permission for a further two fresh pitches is awaiting only the completion of a Section 106 Agreement on a large mixed use development site at Faversham. This is a very considerable achievement and indicates the Council's positive attitude to such development in the right location. Furthermore, the likelihood of significant pitch provision as part of major new mixed use developments is a key feature of the emerging Local Plan and we will shortly see if that policy forms part of the final Plan.

- 4.28 However, irrespective of the question of the five year supply, the question of whether any approved and unoccupied sites are available to individual appellants is also normally taken in to account by Inspectors. Here, the evidence suggest that they may consider that sites approved as expansions of existing site are not readily available to appellants facing loss of their existing temporary site. This appears to confirm their decisions where the question of availability of alternative sites is crucial to their decision.
- 4.29 To conclude on this subject, it seems that there is no reason to see approved but unimplemented pitches as other than as part of a five year supply. Nor should potential ethnic grouping issues rule them out of consideration where this applies. However, there appears to be a question in Inspector's minds regarding whether such sites should be afforded full weight in relation to the prospects of them being suitable for a particular appellant, and whether they will wish to, or be able to, occupy such a site for reasons of ethnicity, or availability for other than families of the current site owners. I will deal with this question below.
- 4.30 At a more local level the Council is a contributor to the Kent Downs AONB management unit which has recently published its second revision to the Kent Downs AONB Management Plan (2014 – 2019). This included policies SD1, SD2, SD3, SD8 and LLC1 of the Plan, which refer to the need to conserve and enhance the natural beauty of the AONB being the prime purpose of the designation, with new development respecting the area's character, quality and distinctiveness, with development that runs counter to the primary purpose of the AONB, or its distinctive landform, special characteristics or qualities being opposed.

## **5.0 LOCAL REPRESENTATIONS**

- 5.01 I have received three letters of objection to this application from local residents who have consistently opposed the use of this site. They argue the following summarised points;
- The site is within the Kent Downs AONB and the use does nothing to conserve or enhance the natural beauty of the AONB, especially as it is sited on the side of a valley

- The site is remote and does not meet the Council's criteria for sustainable gypsy sites
- The site was subject to an enforcement notice in 2004 when the applicant moved onto the land but the Council failed to take any action at that time
- The 2012 Inspector found the site unsuitable as a gypsy caravan site
- Only temporary permission was granted
- The application is premature over a year as the applicant is meant to be using the four years to find an alternative site, not attempting to make this site permanent
- The site should be vacated and the land returned to its natural state
- The Planning Inspector stated that the site is not suitable as a permanent gypsy caravan site
- If approved, this application will open the floodgates to the other two sites within the area who would be in a strong position to seek permanent permission
- If approved, the site could be subdivided and sold off in plots for other mobile homes
- The site should be cleared in August 2016

## **6.0 CONSULTATIONS**

6.01 Newnham Parish Council objects to the application on the following grounds;

- The occupied and developed the site without planning permission
- Only a four year permission was granted after enforcement action was taken
- The Inspector made it clear that there is no justification for development which erodes the natural beauty of the AONB, and this development does not conserve or enhance the natural beauty of the area
- The Inspector recognised the applicant's personal circumstances when the Council could not show a five year supply of sites, but she concluded that a permanent permission was not justified
- The site does not meet the requirements of Local Plan policies SP1, SP2, E1, E9 or H4, or of emerging Plan policy DM10 and the relevant site assessment
- The site is totally unacceptable as a permanent gypsy site
- The applicant has made no attempt to relocate or to find another site that would be suitable for permanent permission

6.02 The Kent Downs AONB Management Unit has written to say that the application should be tested against the aims of AONB designation; to conserve or enhance natural beauty. They say that they have visited the site which is within a particularly attractive, un developed and remote part of Swale where one of the objectives of policy is to maintain the remote quality of the countryside and control urban fringe pressures. This application to make the site permanent would detract from the landscape character of the locality and fail to conserve and enhance the natural beauty of the AONB contrary to policies SD1, SD3, SD8 and LLC1 of the Kent Downs AONB Management Plan which has been adopted by all local authorities in Kent and is a material planning consideration as shown in appeal decisions. The Unit therefore objects to the application.

## **7.0 BACKGROUND PAPERS AND PLANS**

7.01 Application papers and correspondence for application 15/505252/FULL  
Application papers and correspondence for application SW/13/0743

Appeal decision ref: APP/V2255/C/11/2167577 dated 10 August 2012

Application papers and correspondence for application SW/10/0422

Appeal decision ref: APP/V2255/C/07/2040928 and A/07/2035766 dated 15 November 2007

Appeal decision ref: APP/V2255/A/11/2157005 and C/11/21597290, 2159721 and 2159722 dated 23 February 2012

## **8.0 APPRAISAL**

- 8.01 I believe that the main considerations in this matter are the recent appeal decision, as reaffirmed by the current 2013 permission, and whether circumstances have changed so significantly since that date so as to indicate a different outcome now. I consider that there has been a significant change in relevant considerations since September 2013 with a very strong growth in the number of permanent permitted pitches, and the evolution of the policy approach to gypsy and traveller sites. The re-issued PPTS has also changed matters in relation to temporary permissions in the AONB.
- 8.02 The Council has commissioned a new GTAA since the appeal decision was issued in 2012 and this has shown a substantial future need for sites. This need is being addressed and much has already been achieved. It is clear that the Council is substantially above trend in the supply of sites and that there is a small but significant number of approved but unimplemented permanent pitches in existence. However, these pitches are expansions of existing sites, and Inspectors have not generally considered them to be genuinely available to those being faced with losing their own site. Other sites remain on temporary permissions pending resolution of the site allocations issue.
- 8.03 This situation may improve still further with new sites coming forward on new major development sites or, if that policy is not supported at Local Plan stage, by other new allocations. The situation is very positive but not yet completely resolved. However, there is not yet a set of currently genuinely available sites for this applicant to relocate to. Whether there will be within the lifetime of the current temporary permission on this site is another question, and the answer to that question also appears to be no. This suggests that more time than initially thought is required to see the future of the applicant resolved.
- 8.04 Nevertheless, the 2012 Inspector found the current application site to be remote and to cause harm to the AONB and I welcome that conclusion. Appeal decisions in 2007 and 2012 on the nearby site formerly known as Tootsie Farm on Elverland Lane have described the location as in a relatively remote and sparsely populated location some distance from services and unacceptable as a permanent Gypsy site. Considerable weight was also placed by on the fact that there was no reason to doubt that the eventual allocations of sites will be in more sustainable locations and circumstances in terms of an objection to permanent use.
- 8.05 I see no need to divert from these conclusions now and I note that the AONB Unit themselves have presented clear evidence that indicates a need not to grant a permanent permission here. The applicant has noted that the Inspector found limited harm to the rural character of the area from occupation of the site, but that it failed to conserve or enhance the Kent Downs AONB. Nevertheless she also concluded that it was not a sustainable site but that only due to uncertainty over gypsy pitch provision, with the possibility of a site allocations DPD not being likely until 2015, was the applicant granted time to vacate the site. Her decision was to allow a year beyond the anticipated allocation of sites for the applicant to relocate to a new site. This original expected date has now been missed and it is this that primarily informs my judgement on how to determine this application.

- 8.06 Now, the re-issued PPTS appears to have stated clearly that personal circumstances or unmet need is not likely to outweigh harm to AONBs, or point to a temporary permission.
- 8.07 Nor do I accept that the applicant's argument that his own unauthorised occupation of the site and the Council's reasonable attitude to deferring action until the policy situation became clearer is any cause for granting him a preferential permanent planning permission now. That was clearly not the intention behind the 2012 appeal Inspector's decision. I have seen no evidence that the applicant does not continue to live alone, or that any dependants including children are affected by this decision
- 8.08 Hence, whilst policy matters are now different from when I recommended refusal of any permission for this site in 2011, they are more consistent with when the temporary permission was granted on appeal. The recent redaction of Government support for temporary permission on AONBs weighs heavily against any extension of the permission on this site. As such, in my view there are now far stronger grounds to refuse the application outright and hope to see the site cleared by next August. However, the expected programme for alternative sites has been delayed beyond the Inspector's expectations. Given the lack of a clear alternative site for this applicant by then, I consider that the right and fair decision now is for the Council to extend the current temporary planning permission by a further year in terms reflecting those of the appeal decision. To that end I recommend that the Council extends the current temporary permission to a date one year on from the current end date to allow the Local Plan process to evolve and for alternative site allocations to be made. This will replicate the balance of considerations in the appeal decision, a determination which I consider will be very favourable to the applicant given the very different site supply and policy situation now compared to that in 2012. At that time a four year permission was given in anticipation of progress on site provision, a process which has moved forward in the sense that the GTAA has now been carried out, and that a DPD is to be produced, but not quite to the timetable envisaged in 2012.

## **9.0 Recommendation**

- 9.01 This site is prominent within the Kent Downs AONB and has unacceptable landscape impact. It is not, in my view, at all suitable for a permanent permission and to that extent the obvious reaction to this application is to refuse permission. However, in the light of lack of policy progress on creating a set of genuinely available alternative sites for this applicant to relocate to I conclude that the right decision is to allow a little more time to establish alternatives and to encourage the applicant and others in his position to engage with looking to relocate to such a site.
- 9.02 As many of the relevant circumstances have continued between the appeal decision date and now, and as the Council has not yet reached the point where alternative sites are identified, I consider that the only reasonable option open to the Council is to grant a new permission to reflect the aims of the appeal decision.

- 10.0 RECOMMENDATION** – GRANT a short extension of the current temporary permission subject to the following conditions, which are repeated from the current position in all material respects apart from the end date.:

## **CONDITIONS**

1. The residential use hereby permitted shall be carried on only by Alfred Willett and his resident dependants, and shall be for a limited period until 10 August 2017 only, or the period during which the premises are occupied by them, whichever is the shorter.

Reason: In recognition of the personal circumstances of Alfred Willett and the 10 August 2012 appeal decision which sought to balance personal circumstances, harm to the Kent Downs Area of Outstanding Natural Beauty and the policy process for provision of private gypsy sites.

2. When the premises cease to be occupied by Alfred Willett and his dependants, or on 10 August 2017, whichever shall first occur, the residential use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment brought on to the land, or works undertaken to it in connection with that use shall be removed and the land restored to its condition before the residential use took place

Reason: In recognition of the terms of the 10 August 2012 appeal decision which sought to balance personal circumstances, harm to the Kent Downs Area of Outstanding Natural Beauty and the policy process for provision of private gypsy sites.

3. In connection with the residential use hereby permitted, no more than two caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than one shall be a static caravan) shall be stationed on the site at any 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 Kent Downs Area of Outstanding Natural Beauty.

4. Other than in connection with agriculture and the keeping and breeding of horses, no commercial activities and no open storage of plant, products or waste shall take place on the land and no vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.

Reason: Because an uncontrolled use of the land would be unacceptably detrimental to the character and amenities of the Kent Downs Area of Outstanding Natural Beauty.

5. The horse keeping use hereby approved includes the keeping and breeding of horses. There shall be no keeping of horses at livery and no commercial use as a riding school or riding stable.

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 Kent Downs Area of Outstanding Natural Beauty.

6. In connection with the horse keeping use hereby approved, no external storage of materials or items of any kind including jumps, caravans, mobile homes, vehicles or trailers shall be kept on the site other than one trailer for the storage of manure and one horse trailer.

Reason: Because an uncontrolled use of the land would be unacceptably detrimental to the character and amenities of the Kent Downs Area of Outstanding Natural Beauty.

7. No more than one horse or pony per acre of grazing land shall be kept on the site and the land used for horse keeping shall not be subdivided other than by electric rope of a type approved by the local planning authority.

Reason: Because an uncontrolled use of the land would be unacceptably detrimental to the character and amenities of the Kent Downs Area of Outstanding Natural Beauty.

8. No burning of straw or manure shall take place on the site.

Reason: Because an uncontrolled use of the land would be unacceptably detrimental to the character and amenities of the Kent Downs Area of Outstanding Natural Beauty.

9. The site shall at all times be maintained in accordance with those details comprised in the "site layout plan" drawing as submitted with application SW/13/0743 apart from the installation of new concrete or tarmacadam at the site entrance. No new hardstanding (including that new concrete or tarmacadam shown on the submitted site layout plan), lighting, screen fencing, or planting shall be installed or carried out within the site.

Reason: In the interests of the conserving the character and appearance of the Kent Downs Area of Outstanding Natural Beauty.

10. The method of horse manure storage and disposal from the site shall be carried on in accordance with the details set out on page 2 of the letter dated 3 June 2013 from Philip Brown Associates Ltd as submitted with planning application SW/13/0743.

Reason: In the interests of the conserving the character and appearance of the Kent Downs Area of Outstanding Natural Beauty.

**Council's approach to this application**

The Council recognises the advice in paragraphs 186 and 187 of the National Planning Policy Framework (NPPF) and seeks to work with applicants in a positive and proactive manner by offering a pre-application advice service; having a duty planner service; and seeking to find solutions to any obstacles to approval of applications having due regard to the responses to consultation, where it can reasonably be expected that amendments to an application will result in an approval without resulting in a significant change to the nature of the application and the application can then be amended and determined in accordance with statutory timescales.

In this case, the application was approved as an extension to the timescale envisaged by the intentions of the 2012 appeal decision having regard to current planning policies and the personal circumstances of the applicant..

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.



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## Appeal Decision

Hearing held on 3 & 4 May 2012

Site visit made on 4 May 2012

by **Bridget M Campbell BA(Hons) MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 10 August 2012

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**Appeal Ref: APP/V2255/C/11/2167577**

**Horseshoe Farm, Elverland Lane, Ospringe, Kent ME13 0SP**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr A Willett against an enforcement notice issued by Swale Borough Council.
- The Council's reference is ENF/11/0035 – Case 16033.
- The notice was issued on 22 November 2011.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the Land to land used as a caravan site for the stationing of caravans/mobile homes used residentially and land used for the keeping of horses.
- The requirements of the notice are to:
  - (i) Cease the use of any part of the Land as a caravan site for the stationing of any mobile homes or caravans, or for the keeping of horses; and
  - (ii) Remove any caravans/mobile homes and any horses from the Land, and remove any structures, fencing, materials and equipment brought on to or erected on the site including any works undertaken in connection with the use of the site for stationing mobile homes or caravans or for the keeping of horses.
  - (iii) Restore the Land to its previous condition.
- The period for compliance with the requirements is 12 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (d), (f) and (g).

**Summary of Decision: The appeal is allowed, the notice is quashed and planning permission granted subject to conditions set out below in the Formal Decision.**

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### The appeal on ground (d)

1. The ground of appeal is that at the time the notice was issued no action could be taken against the alleged breach of planning control. The land is in mixed use for residential purposes involving the use of a mobile home and for the keeping of horses – the notice attacks that mixed use and not operational development.

#### *Horse keeping*

2. The Appellant breeds, buys and sells horses and suggests that the use of the land is for grazing. If that were so it would be agriculture as the definition of agriculture for planning purposes includes use of land as grazing land (s336 of the Act). The use of land for agriculture is not development (s55(2)(e)) and so would not require planning permission.
3. Any argument that the land is so used would have been better made under ground (b) – that the use alleged (horse keeping) has not occurred. However, it is appropriate for me to deal with it shortly here.

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4. The horses do not simply graze the land. I heard that they receive hard feed (oats and nuts) and hay all year round. They are also stabled from time to time; in particular I heard that one is kept in a stable and the stallion comes in overnight. In my view horse keeping is an appropriate description of the use which is occurring; it does not fall within the definition of agriculture; and so is not excluded from the meaning of development.
5. The proposition under ground (d) that the keeping of horses has become lawful over time (10 years) so that at the time the notice was issued it was too late to take action has not been made out. The current mixed use was commenced in 2004 by the Appellant. Before that I heard evidence that horses had been kept on the land but as part of an assortment of other activities. Moreover some residents said that when the land was used for "raves" in 2003/4 before the Appellant bought it, there were no horses present. The onus of proof is on the Appellant in appeals on legal grounds. It has not been shown on the balance of probability that at the time the notice was issued it was too late to take action against that part of the mixed use comprising horse keeping.

***Residential use***

6. There is no argument that it was too late to take action against the residential use when the notice was issued.

***Operational development***

7. Operational development is not included in the alleged breach. Any argument that the notice cannot require buildings to be removed is a matter to be dealt with in the appeal on ground (f) that the requirements of the notice are excessive.

***Conclusion on ground (d)***

8. The appeal on ground (d) fails. At the time the notice was issued it was not too late to take action against either of the two activities comprising the mixed use alleged in the notice as the breach of planning control.

***The appeal on ground (a)******The Main issue***

9. The ground of appeal is that planning permission should be granted for the matter alleged, that is the mixed use. In relation to the horse keeping element, the Council has no objection in principle to that use provided that it is controlled by conditions. It thus seeks to bring that use within planning control through the enforcement notice and would expect conditional planning permission to be granted.
10. With regard to the residential use, the Appellant does not argue that a residential caravan site would in general be acceptable in this countryside location. His case is put on the basis that he is a Romany Gypsy and that the site is suitable for a gypsy caravan site. For national and local planning policies relating to gypsies and travellers to apply to this case, the Appellant needs to meet the gypsy and traveller definition set out in Annex 1 of DCLG *Planning policy for traveller sites* (PPTS). The Council, having regard to relevant legal authorities are satisfied that he meets the definition. Having heard relevant evidence at the hearing about his travels in connection with horse breeding and

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trading and for undertaking tree work, I have no reason to reach a different conclusion.

11. The main issue in this case is, therefore, whether the site is suitable for a gypsy caravan site as part of a mixed residential and horse keeping use having regard to national and local policy and if not whether any harm identified is outweighed by other considerations.

**Reasons***Background*

12. The Appellant has occupied the appeal site since 2004. At that time he submitted a planning application for residential use involving the stationing of a mobile home for a gypsy family. The intended occupiers were the Appellant, his wife and their two daughters. However, the couple have since separated and the Appellant currently lives on the site on his own. The application remained undetermined and the site presumably tolerated by the Council until November 2011 when planning permission was refused and the enforcement notice, the subject of this appeal followed. That is some 7 years.

*Suitability of the site – the effect on the rural area*

13. The Appellant's land is mainly pasture. It adjoins the southern side of Elverland Lane which is a quiet and attractive rural lane. Access into the site lies on the outside of a sharp bend in the lane and is distinguished by prominent and inappropriate entrance gates and piers which, I understand, are the subject of separate enforcement action. If a more traditional entrance such as a 5 bar gate were present, then there would be a view directly into the site along the vehicular access when approaching along the lane from an easterly direction.
14. The residential element of the mixed use is not, however, particularly apparent when viewed from this direction due to the distance from the lane along the access, and the screening afforded by the fall of the land and by vegetation to either side of the access. The informality of the access track and the rural nature of the most prominent building, a barn to the side of the access, gives the impression of a use in keeping with the countryside location. Looking from the lane to the north across the Appellant's field, the residential element is again relatively inconspicuous, screened by a wooden fence and a line of mature conifers. From close quarters, therefore, there is limited impact on the rural character and appearance of the area.
15. The site lies within the Kent Downs Area of Outstanding Natural Beauty (AONB) and is located high on the side of the Newnham Valley. I was taken to 3 locations from where the site could be seen in more distant, panoramic views of the landscape. These were from a byway and from a road bridge over the M2 motorway to the west and looking across the valley, and from a public footpath to the south. I also looked at the visibility of the site from the M2 when driving in an easterly direction.
16. Whilst I do not disagree that the site is visible from all of these public vantage points, it is seen at a considerable distance. Furthermore, the structures on the site are not situated within an exposed and open part of the landscape but rather sit below the skyline, within a vegetated setting with a backdrop of mature trees. Even when the woodland is coppiced (as I am told it will be) the

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remaining vegetation would prevent the impression of isolated development in an exposed position. In this respect, it seems to me that the development assimilates far better into the landscape setting than does the neighbouring gypsy site occupied by the Appellant's brother at Tootsie Farm which appears to have been established initially in an open field with little natural screening.

17. I understand that the mobile home has only recently been painted a more subdued colour on its western side which must have helped to reduce the visual impact in distant views. Indeed the contrast is notable as the gable end, which has not been so treated, and the white touring caravan on the site stand out in views from the public footpath. I note that banking, topped by a laurel hedge, has also recently been formed behind the mobile home to provide additional screening. The Council consider that the bank is not an appropriate means of screening the development and I agree that it is, in itself, a significant and alien landform.
18. My overall conclusion in respect of the effect that the mixed use has on the rural area is that it is limited because of the particular intimate setting. It could be presumed that the Council were of a similar view since it has tolerated the site in the AONB for some 7 years whilst taking positive action against the site nearby at Tootsie Farm. Nonetheless, it does introduce a collection of structures into a largely natural and unspoilt landscape and whilst some, for example the barn and stables, are in keeping, the mobile home and touring caravan do give the site a more domesticated character. Whilst there is a very thin scatter of other development throughout the area, this does not provide justification for more which would erode the undeveloped natural appearance of the rural scene. Paragraph 115 of the NPPF says great weight should be given to conserving landscape and scenic beauty in AONBs which have the highest status of protection in relation to landscape and scenic beauty. The development fails to conserve or enhance the natural beauty of the landscape. It conflicts with the objective of the AONB designation and with Development Plan policies concerned with the protection of the landscape.

*Suitability of the site – sustainability considerations*

19. Paragraph 11 of the PPTS requires traveller sites to be sustainable economically, socially and environmentally. The appeal site is remote from all services and facilities and is not well located in relation to any settlement so as to foster social inclusion. It is isolated, in a sparsely populated area and there is environmental harm as identified above. Although there are two other gypsy sites nearby, they are not lawful.
20. A positive factor is that the Appellant has his horse keeping and breeding business based on the land on which he lives which reduces daily travel. There are also the recognised benefits arising from having a permanent base, such as being able to access health services more readily and reducing any need to move around on unauthorised sites. But those are benefits which arise in the provision of any permanent site and do not outweigh the disbenefits arising from the isolated location in this case.

*Other Considerations – need for gypsy and traveller sites*

21. The need for additional gypsy pitches both nationally and within Kent is not in dispute. The Borough of Swale traditionally has one of the largest gypsy and

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- traveller populations within Kent and the South East of England. Public sites have high occupancy levels, low turnover and long waiting lists.
22. The last assessment of need for the area was the North Kent GTAA published in December 2007 with a survey base date of August 2006. That identified a need for 62 new pitches in the Borough for the period 2006-11, one of the highest in Kent. That fed into work on the RSS process, now halted with the intention to abolish. The RSS was to identify pitch allocations for each local authority and, with the option for pitch re-distribution over the region, the panel was recommending a reduced allocation for Swale.
23. The Council's adopted Local Plan 2008 includes a criteria based policy for the consideration of proposals for gypsy sites, policy H4. That remains as part of the Development Plan. Nonetheless, at the time of adoption that policy was recognised as not conforming with national policy in force at the time (Circular 01/2006) and the supporting text indicated that the policy was being reviewed as a matter of urgency and that where there was tension national advice would take precedence.
24. As an interim measure, and ahead of the Core Strategy, the Council has taken some positive steps towards addressing the need for additional pitches although not by producing a site allocations DPD. It published a Corporate Gypsy and Traveller Policy in July 2009. That was followed by a call for sites and a Site Assessment process was adopted and applied to assess the suitability, availability and achievability of a range of potential sites, both to inform the LDF process and as a consistent basis against which to assess planning applications alongside the application of development plan policies.
25. Notwithstanding some progress made in this way towards the provision of sites, the overall target in terms of numbers of pitches required for the Borough has yet to be set and is a matter under consideration in connection with the Council's preparation of its Core Strategy/Local Plan. Prior to the publication of the PPTS, the Council was considering 3 options for the number of pitches required for the period 2006-2031. The first figure (41) was based on capacity/opportunity, the second (112) on need/demand and the third takes option one and adds 3% per annum over 20 years (74).
26. With the recent publication of the PPTS, local authorities are expected to make their own assessment of need and to use a robust evidence base to establish accommodation needs to inform the preparation of local plans and make planning decisions. Paragraph 8 says they should set pitch targets which address the likely permanent and transit site accommodation needs in their area. Whilst the implications of the NPPF and PPTS on the emerging Core Strategy/Local Plan had yet to be formally considered, at the hearing the Council, taking PPTS advice into account, fairly took the second pitch option as the basis for assessing its land supply position (but only for the purposes of this appeal).
27. With that as the base, it says that it only has a two year supply of sites rather than 5 years as required in the PPTS, the shortfall being 12 pitches. To address any shortfall the Council accepts that a separate site allocations DPD might be required following adoption of the Core Strategy/Local Plan which is at an advanced stage and scheduled for adoption at the end of 2013. An anticipated date for adoption of a DPD would be mid-2015.

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28. The assessment of need for pitches takes as its starting point a GTAA which had a base date of 2006, some 6 years hence, and which made an assessment of need only to 2011. It is not up to date and the only way of assessing need beyond that period has been to add 3% for household growth. That does not take into account possible changed circumstances or the need arising from elsewhere – that is other sources than from household growth. Moreover, whilst 62 pitches are required in the first 5 years from 2006-11, only 50 pitches would then be required for the whole of the remaining 19 years from 2012-2031. Using such a dated assessment as the 2007 GTAA does not seem to me to be the “robust evidence base” envisaged by the PPTS on which to assess need.
29. In looking at supply, the Council has included tolerated sites despite such sites having been excluded from the RSS process. The argument is that if the Council has no intention of taking enforcement action then those sites will become lawful over time. The Appellant on the other hand points out that without a planning condition restricting occupation, those sites will not be restricted to occupation by gypsies and travellers and so cannot be relied upon to continue contribute to supply. If these sites were not included the shortfall would increase.
30. This appeal is not the appropriate forum for reviewing the Council’s work on the Core Strategy as there is a separate process for assessing the soundness of emerging policy. Nonetheless, from the above it might be concluded that there is the potential for an up to date and robust assessment of need to result in a higher pitch figure than that arrived at by simply applying 3% compound growth to the 2007 assessment. However, even without any potential increase in the numbers needed and the disagreement concerning the contribution of tolerated sites towards supply, the Council accepts that it has not got a 5 year supply as is now required.
31. Paragraph 25 of the PPTS indicates that the failure to demonstrate a 5 year supply of deliverable sites should be a significant material consideration when considering whether to grant planning permission. Paragraph 28 says that policy only applies to applications made 12 months after the policy comes into force. Nonetheless, the need for more pitches and any shortfall in supply remain factors to be taken into account and I do not see the paragraphs as indicating that rather than considering a temporary period, permission should be refused in the 12 months before that policy comes into effect.
32. With regard to the availability of alternative sites, the Appellant has not looked for an alternative. That is perhaps understandable given that he has had a planning application with the Council for the use of the appeal site since 2004 which remained undetermined for 7 years with no action taken against him. He might have assumed from that that there was no objection to his remaining where he was. The Council says that 7 pitches approved at Brotherhood Wood Yard, Dunkirk meet the definition of deliverable sites in the PPTS. That may be so but there is no indication that any of those are available, affordable, acceptable and suitable to meet the needs of the Appellant.

*Other considerations – personal circumstances*

33. Since the planning application was submitted in 2004, the Appellant has separated and now lives alone although it is his wish to become reconciled with his wife and to live again as a family. A settled base can only assist. It

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provides easier access to health services and to education. The Appellant has strong local connections with the area and it also helps to live on the site where his horse related activities are based, especially when greater supervision is required such as when mares are foaling.

*The balance of considerations and conclusion on ground (a)*

34. I have found limited harmful effect on the rural area but nonetheless a failure to conserve or enhance the natural beauty of the AONB. The development conflicts with Development Plan policies aimed at protecting the quality of the environment and in particular Local Plan policy E9. In addition the site is not in a sustainable location and this is contrary to criterion b of Local Plan policy H4 – a criterion which conforms to up to date national guidance. These are substantial factors which weigh against the grant of permanent planning permission. On the main issue I conclude that the site is not suitable for a gypsy caravan site as part of a mixed residential and horse keeping use having and that the harm identified is not outweighed by the other considerations such as to warrant the grant of a permanent planning permission.
35. The Council has been content to allow the Appellant to remain on the land for 7 years despite the identified harm but now feels compelled to require him to leave. The question is why now? It is not to prevent the use from becoming lawful over the passage of time because there is an earlier enforcement notice which is in force. With considerable uncertainty as to the number of pitches that will be required until the adoption of the Core Strategy/Local Plan; and with the possibility that a site allocations DPD with an anticipated date of 2015 might be required to bring the necessary sites forward; it seems to me that now is not the time to require the Appellant to leave his site without an alternative identified which is suitable and available for him to go to now.
36. In the circumstances of this case I consider the grant of a temporary permission would strike the appropriate balance between the competing considerations in this appeal. A period of 4 years would enable the number of pitches required to be confirmed through the development plan process, give time for future supply to be addressed, possibly by way of a DPD, and give time for sites identified to come forward.

*Conditions*

37. A condition limiting occupation to the Appellant is necessary given that his personal circumstances have weighed in favour of the grant of the temporary permission in this case. To limit the harm to the character and appearance of the area, conditions controlling the residential use in terms of numbers of caravans and layout of the site are required, together with conditions to control any intrusion from the horse keeping use and to prevent any expansion of commercial activity. Whilst I find it necessary to limit the number of horses kept to prevent poaching of grazing land, I shall use the ratio advised in the Council's own guide to the erection of stables and keeping of horses.
38. At the hearing it was suggested that demolition of the two buildings erected by the Appellant in connection with his horse keeping use be required. However, these have been in position well over 4 years as discrete pieces of operational development. The Council could have taken action against them during that period as provided for by the Act. It did not do so and they are thus lawful. Whilst their removal might have been required in the enforcement notice in

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connection with the unauthorised use, by requiring the land to be restored to its condition before the breach took place, since the use is to be allowed, that is no longer the case. I believe it would be unreasonable to require removal now especially given that they are buildings of simple design and entirely in keeping with the use taking place.

**Conclusion**

39. For the reasons given above and taking into account all other matters raised I conclude that the appeal should succeed on ground (a), the enforcement notice will be quashed and temporary planning permission granted. The appeal on grounds (f) and (g) do not therefore need to be considered.

**Formal Decision**

40. The appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the development already carried out, namely the use as a caravan site for the stationing of caravans/mobile homes used residentially and land used for the keeping of horses on land at Horseshoe Farm, Elverland Lane, Ospringe, Kent ME13 OSP, subject to the following conditions:

- 1) The residential use hereby permitted shall be carried on only by Alfred Willett and his resident dependants, and shall be for a limited period being the period of 4 years from the date of this decision, or the period during which the premises are occupied by them, whichever is the shorter.
- 2) When the premises cease to be occupied Alfred Willett and his dependants, or at the end of 4 years, whichever shall first occur, the residential use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment brought on to the land, or works undertaken to it in connection with that use shall be removed and the land restored to its condition before the residential use took place
- 3) In connection with the residential use hereby permitted, no more than two caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than one shall be a static caravan) shall be stationed on the site at any time.
- 4) Other than in connection with agriculture and the keeping and breeding of horses, no commercial activities and no open storage of plant, products or waste shall take place on the land and no vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 5) The horse keeping use hereby approved includes the keeping and breeding of horses. There shall be no keeping of horses at livery and no commercial use as a riding school or riding stable.
- 6) In connection with the horse keeping use hereby approved, no external storage of materials or items of any kind including jumps, caravans, mobile homes, vehicles or trailers shall be kept on the site other than one trailer for the storage of manure and one horse trailer.



**APPENDIX A**

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- 7) No more than one horse or pony per acre of grazing land shall be kept on the site and the land used for horse keeping shall not be subdivided other than by electric rope of a type approved by the local planning authority.
- 8) No burning of straw or manure shall take place on the site.
- 9) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one the requirements set out in (i) to (iv) below:
  - i) within 3 months of the date of this decision a scheme for:
    - a) the layout of the site including the siting of caravans, hardstanding, parking, lighting and landscaping; and
    - b) the means of storage prior to disposal and the method of disposal of waste arising from the animals kept on the site shall have been submitted for the written approval of the local planning authority and the details shall include a timetable for implementation.
  - ii) within 11 months of the date of this decision the scheme shall have been approved by the local planning authority or, if the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
  - iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
  - iv) the approved scheme shall have been carried out and completed in accordance with the approved timetable.
- 10) Subsequent to the implementation of the details required by condition 9, there shall be no change to those details.

*Bridget M Campbell*

Inspector

**APPENDIX A**

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**APPEARANCES**

FOR THE APPELLANT:

Mr P Brown	Managing Director, Philip Brown Associates Limited
Mr A Willett	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr G Thomas	Area Planning Officer
Mr A Best	Principal Planning Officer – Policy Team

INTERESTED PERSONS:

Mr G Elvy	Local Resident
Mr S Fisher	Local Resident
Mrs H Ensing	Local Resident

**DOCUMENTS**

- 1 E mail correspondence with Darren Wilding submitted by the Council
- 2 *The Erection of Stables & Keeping of Horses* Planning and Development Guidelines – Swale BC