

PLANNING COMMITTEE – 14 JANUARY 2016

DEFERRED ITEM

Report of the Head of Planning

DEFERRED ITEMS

Reports shown in previous Minutes as being deferred from that Meeting

DEF ITEM 1 REFERENCE NO - 15/503580/FULL		
APPLICATION PROPOSAL Stationing of one residential caravan, as amended by revised site location plan received 11 June 2015, and by details contained in revised Noise Impact Assessment by Acoustics Plus ref: 103005.ad.Issue2 dated 18 November 2015 including revised site layout drawing PBA2 (REV.A) .		
ADDRESS Land North Of Homestall Road Doddington Kent ME9 0LB		
RECOMMENDATION – Approve for reasons relating to the established use of the site		
WARD Teynham & Lynsted	PARISH/TOWN COUNCIL Norton Buckland And Stone	APPLICANT Mr Patrick Nolan AGENT Philip Brown Associates
DECISION DUE DATE 18/12/15	PUBLICITY EXPIRY DATE 07/12/15	
FOR RELEVANT PLANNING HISTORY PLEASE SEE ORIGINAL REPORT (ATTACHED)		

1.0 INTRODUCTION

1.01 Members will recall that this application was extensively debated at the meeting on 5 November 2015. At that time the application description read as follows;

“Change of use of land to use as a residential caravan site for two gypsy/traveler households, including stationing of three caravans, laying of hardstanding, as amended by revised site location plan received 11 June 2015, and by email dated 13 October 2015 deleting erection of amenity building from the application.”

1.02 The submitted drawing showed that the site would be occupied by a single mobile home and two touring caravans. The amenity building shown on the drawing had already been deleted from the description of the application.

1.03 After a long debate involving votes both to approve and to refuse the application, both of which were lost, the Committee resolved:

“That application 15/503580/FULL be deferred to allow officers to liaise with the applicants about the suitability of the proposed bunding and acoustic fencing and on whether the number of caravans proposed could be lowered.”

1.04 Since the meeting, I have discussed Members’ concerns with the applicant and sought further information regarding the proposal. The application has now been formally amended to just one caravan, and more details of the specification for acoustic fencing to address noise from the M2 motorway have been submitted. Local

Parish Councils and residents have been notified of the changes to the application. It is on this amended basis that the application is re-presented for Members' consideration.

- 1.05 Members will note that the previous full report is appended to this item, and that the matters of fact, planning history, planning policy and local representations are included there. This report refers only to the application in its amended form and for the above matters this report should be read in conjunction with the previous report.

2.0 PROPOSAL

- 2.01 In its current form the application proposes the stationing of one caravan on this remote rural site beside the M2. This caravan would be specified as insulated against external noise. The application also proposes hardsurfacing of the site, the erection of a 4m high acoustic fence, and landscape planting around the site boundaries.

- 2.02 The key new material with this application is an updated Noise Impact Assessment report which includes the revised site layout drawing. From this report I draw the following key points;

- Only one caravan (mobile home) is now proposed, rather than three caravans as previously proposed
- The site will be levelled to approximately 2.5m below the level of the motorway and a 4m high acoustic fence installed
- It is NOT now proposed that the site will be lowered and the fence erected upon an earth bund
- The acoustic fencing will only be on the motorway side of the site and will return into the site at either end to form noise "wings" to prevent a line of sight to traffic on the motorway
- Planting will be carried out around the site boundaries and beyond the fence's "wings"
- The fabric of the caravan to be installed should be capable of noise reduction of 35dB (according to the relevant British Standard for Park Homes) but suitably insulated glazing/ventilators will also be required to ensure that this level of noise reduction is achieved
- The caravan likely to meet these noise reduction levels will be an attractive mobile home style caravan with a pitched roof, a high standard of appearance and sufficient insulation to be suitable for all year round occupation.
- Such caravans are commonly known as chalets or park homes but they are caravans (or mobile homes) in planning law terms i.e. they are transported in not more than two halves and meet the dimensions of the caravan regulations

3.0 REPRESENTATIONS

- 3.01 On receipt of the amended Noise Impact Assessment I re-notified local Parish Councils (Norton and Newnham) and local residents about the amendments to the application. I received the following further representations;

- 1 Three jointly sent comments from a number of local residents suggesting that;
 - The water tap on the site is not connected to the mains
 - Foul drainage proposals are unclear

- The submitted application form, application description, Design and Access Statement, and drawings are ambiguous or inadequate and should be revised
- That the site is separated from the highway by a 1m wide margin
- That cross-sectional drawings should be provided
- The Kent Downs AONB Management Unit should be consulted
- Parking on site should be the subject of a fresh planning application
- Documents relating to other matters should be shown on this application file

Members received a lengthy statement covering these points shortly before the previous meeting.

- 2 One letter querying what the reduction in the number of caravans from three to one means for the determination of the application
 - 3 A letter arguing that the proposal will be harmful to the AONB and contrary to planning policies, and arguing that the development is not justified and should not be approved. The letter also suggests that the long term use of the site has been abandoned with the caravan removed from the site many years ago
 - 4 Two letters suggesting that the writer would have expected to be consulted on the application.
 - 5 One letter suggesting that no-one has lived on the site for many years, that there has been a recent increase in permanent and non-permanent homes in this area, including a very recent unauthorised caravan encampment nearby
- 3.02 The former owner of the site has written to say that he purchased the land from the original owner in 2003, that there was a caravan on the site which was occupied from 1967 with Council Tax paid on it, and that he paid Council Tax on the site throughout his whole period of his ownership that ended in 2014 when the site was sold to the applicant's grandmother.
- 3.03 Members will note that previous representations are included in the earlier report although these were submitted in relation to the application as first submitted.

4.0 BACKGROUND PAPERS AND PLANS

- 4.01 Papers for application 15/503580/FULL and other applications mentioned in the original report.

5.0 APPRAISAL

- 5.01 In my previous report I noted that this application has brought to light the very peculiar and long running planning status of this land. I noted that it was established in 1970 by the then Minister of Housing and Local Government that the land had an existing use right for stationing of a caravan. Planning permission was then not needed for that use other than as a vehicle for obtaining the necessary site licence. This is explicit in the Council's own Planning Committee reports from 1975 and 1978. This situation seems to have persisted right up until the latest planning permission granted in 1988. That personal permission has now run its course and the applicant seeks a new permission on behalf of his family and the land-owner who is his grandmother.
- 5.02 Members have already considered the unusual planning history of the site and I have explained that the site was confirmed in 1970 as having an Established Use for

stationing of a caravan dating back to 1962 or 1963. I also explained at the previous meeting that whilst some local residents had raised the suggestion that that use had since been abandoned following the re-location to a care home and subsequent death of the former owner, I could not see any case for abandonment being demonstrated here.

5.03 Planning law is clear that there are four relevant tests for abandonment which are;

- Physical condition
- Period of non-use
- Whether there has been any intervening use, and
- The owner's intentions.

Bearing in mind that mere vacancy is not an indication of abandonment, I could see no evidence to point to a case of abandonment here. I had understood that the remains of the dilapidated caravan and other buildings remained on the site until late 2014; the period of non-use is far less than the sort of period (perhaps up to 40 years) that has previously been held not to define an abandonment; there has not been any intervening use; and there was no evidence that the original owner (now dead), the subsequent owner (who did not clear the caravan from the site over several years), or the current owner/applicant (who cleared the site in preparation for re-occupation) ever intended to give up the established use of the land.

5.04 Since then, local residents have made substantial efforts to evidence their belief that there has been a significant break in the long term use of the site sufficient for the use to be considered abandoned, especially under the second and fourth of the four above criteria. This evidence was fully set out in a statement they sent direct to Members and I withdrew my report to the December meeting to fully consider this and other evidence.

5.05 The evidence of local residents is that;

- By 1988 the original caravan was so altered or derelict that the Council's Housing Officer considered that what was on the site no longer constituted a caravan
- The original owner had by then lost his use rights
- Local people remember the caravan and sheds being derelict as least as far back as the 1990s
- No further caravan site licences were issued
- Any other sheds or structures became derelict
- The original owner left the site in 1988 and sold the site in 2003, he did not intend to return
- The presence of a residential caravan had ceased no later than 1998 and the site has subsequently been cleared
- No subsequent other use was made of the site other than as woodland
- The second owner left the site as it was
- He did not occupy, repair or replace any caravan or shed
- He did not rent the site for stationing a residential caravan
- The second owner's intentions were to build a house on the site
- The second owner's intentions are not clear
- The 2007 aerial photograph mentioned by the applicant shows shed roofs but does not indicate continuity of use of any caravan
- There was little left on the site before it was sold and cleared in 2014

- It should be for the applicants to demonstrate the continuity of use which should be an objective test, not a subjective test, based on the owner's actions not just his stated intentions
- The case is different from summaries of other cases where abandonment was not found to have occurred and these related to dwellings
- The case for continuity of existing use rights is weak
- The Council should determine the current application without reference to existing use rights

5.06 The second owner of the site lives locally and to ensure proper consideration of the matter of abandonment I have spoken directly with him about his ownership of the land and his intentions. The previous owner of the site says that;

- He knew the original owner of the site and that he and his own father visited him at the site whilst he was alive. He knows that the original owner had been employed in construction of the M2 and that the application site was used as a works compound for the M2 where he occupied a caravan initially as a night watchman
- This same caravan then stayed on the site albeit added to and altered. It had two built-in agas, a kitchen extension along part of one side with a brick chimney, and it had eventually been "boxed-in" but the original caravan construction still existed inside and was weathertight until at least 2012
- The second owner says that the original owner left the site for Kiln Court around 1998-2000 but returned for a short time before going back to Kiln Court. He was sharp of mind but increasingly immobile towards the end of his life
- He purchased the land from the original owner whilst he was still alive
- His evidence is that on purchase of the site in 2003 the caravan was still intact, along with tractors, sheds, a generator and cesspit. He removed the tractors and portable equipment to prevent theft, but he did not demolish any sheds or remove the caravan
- He mowed and maintained the land with aspirations for living on it perhaps in a log cabin
- He paid Council Tax throughout his ownership of the site as he did not want to lose the right to live there
- He made informal enquiries of the Council's Planning Office about residential development but was advised that planning permission was unlikely to be forthcoming
- He very occasionally stayed in the caravan overnight but the site was prone to theft of metals and equipment which he tried to prevent, but over the years, the constant trouble with theft by trespassers and regular requests by travellers to buy the site eventually wore him down and he sold it in 2014 to the current owner – it was never "for sale" but he had many and frequent requests to sell
- Towards the end of his ownership the caravan was being gradually stripped of its metal content by theft but he is sure that it was habitable until around 2012
- When the site was sold the caravan was still there albeit only the chassis which had a brick base, two wheels, a kitchen extension, and a chimney, and there were at least 5 sheds, two of which were larger than the caravan itself
- On the Ordnance Survey base map of the site he was immediately able to identify the position of the caravan with its extension in the position I had understood it to have been from a visit in 1988. He identified the other shapes on the map as sheds. These shapes accord with positions where structures or a caravan can be seen on aerial photographs, making it is possible to link the existence of the caravan and sheds to the aerial photography evidence

- 5.07 Members will note from above that this second owner of the site has also written a letter confirming some of these facts.
- 5.08 I have attempted to verify the evidence of Council Tax being paid throughout his ownership of the site (2003 to 2014) with reference to our own Council Tax records. These confirm that the caravan was there in 2004, and that the owner paid reduced rate Council Tax from December 2003 until January 2014 because he thought that if he removed the caravan it might not be possible to get planning permission to replace it. The owner's information that the caravan had no roof by July 2013 was confirmed by a site visit from a Council Tax Inspector in November 2013. He found that the structure of the caravan had all but gone although its remains and the chimney were evident, along with a number of derelict outbuildings.
- 5.09 Verbal evidence from the applicant is that he removed the remains of the caravan from the site in 2014.
- 5.10 I have also examined the Council's own aerial photography records for the site for the years 1999, 2003, 2008 and 2012. These clearly show indicate that the caravan was in place in 1999 and 2003. The 2008 photograph shows the site partly obscured by tree cover making clear conclusions difficult, and the clearer 2012 photograph appears to show the position of the caravan overgrown but with the kitchen extension remaining. These photographs also show that a number of outbuildings remained on the site until at least 2012. The earlier aerial photograph records support the evidence of the former owner and the later ones are not sufficiently clear to be able to conclude that his evidence is wrong. Naturally, the aerial photographs do not give a clear impression of the condition of the caravan or any buildings, and do not confirm occupation.
- 5.11 Whilst the evidence of local residents has clearly been carefully researched, and they have applied themselves to the correct legal tests, there is other documented evidence that runs counter to their conclusions, not least the 2003 aerial photograph showing the caravan in place up to five years after they believe it was no longer there. Council Tax records also indicate that the caravan was still there in 2004; they point to a clear intention to retain the caravan; and they suggest that the caravan was essentially still there in 2013, albeit without a roof.
- 5.12 In a case such as this where evidence may be needed to establish the position for planning purposes the appropriate test of the evidence is that of "the balance of probabilities". It is also usual to assume that the owner of the land has the most relevant evidence but that other evidence which may be contrary might be found to be more persuasive. Commonly, documentary evidence is preferred to recollections as these can often be found to be in conflict with each other. In my view the independent evidence from Council Tax and aerial photography records both made well before this application was submitted are entirely consistent with the recent comments of the former owner and so add significantly to the weight to be attributed to his recollections.
- 5.13 Accordingly, I have found that whilst local residents have made significant efforts to be accurate in their findings, the combination of detailed evidence from the former owner, from independently documented evidence of his intentions, and evidence from the Council's own aerial photograph and Council Tax records, make a more powerful case to argue that the use of the site was not abandoned during his ownership of the site. Using the four tests for abandonment I conclude that;
- Physical condition;

It is quite clear to me that the caravan was not in pristine original condition even when the original owner last lived in it. It had been on the site for many years during his occupation and he seems to have added to and adapted it as he saw fit. I accept that the Council's own Housing Officer did not consider it a caravan in 1988, but this report triggered a specific visit to the site by Planning staff at that time who were satisfied that what was there was a caravan albeit added to. A further planning permission was then granted on that basis.

It is also quite clear to me that the caravan will have deteriorated further since the original owner left the site, probably both through natural decline but also by theft of parts. However, the 2003 aerial photograph does appear to show the caravan roof intact, and original parts of the caravan do appear to have remained on the site right up until 2014 when they were removed by the current applicant. The Council's own Council Tax Inspector recognised the remains as that of a caravan in late 2013. Ancillary sheds also remained albeit they were derelict by the end of 2014, but their roofs show up clearly on 2012 aerial photographs. Doubtless, local residents will have had no reason to pry into the precise remains of what was on the site immediately prior to its clearance and their understanding of its physical condition may not be entirely full or accurate. It is also important to note that the site is off the public highway and cannot easily be seen clearly, unless a special effort is made.

Notwithstanding all this, the established use in question here is the stationing of a caravan, not in what condition the caravan is. If the use is for the stationing of a caravan, this can mean any caravan, and the condition of any particular caravan is not critical. Commonly caravans are changed on such sites and such sites are often empty of any caravan for periods when the caravan might be elsewhere. Breaks in stationing of a caravan do not automatically mean that the established use right will have been lost as the caravan may return. As I have mentioned above mere vacancy is not an indication of abandonment once a use becomes established. Uses can also be dormant but not lost for long periods in some circumstances if the site remains capable of supporting them.

In the case of a use of land the use does not have to be continuous once established provided the site remains capable of that use and the periods of non-use are not so long as to point to abandonment or to a nil use of land. In this case the site quite patently did remain capable of such use without changes being made to it that would have prevented the established use continuing.

- Period of non-use

Local residents focus on the period that they believe the caravan not to have been occupied, or habitable. They are clear that the original owner left the site in the 1990s and that no-one has lived there since. The documentary evidence does not dispute this understanding. However, the established use in question here is not the occupation of any caravan itself, it is the use of the land for stationing of a caravan and the question is how long that may have ceased for, if at all. This is far less clear, as vacancy of the caravan is not the same as it not being there.

The documentary evidence shows that a caravan, or parts of a caravan, remained on the site until 2013. Verbal evidence shows no reason to suspect that the original caravan was deliberately removed (short of theft of its parts) from the site at any time before late 2014.

The second owner's evidence is that the caravan was there when he purchased the site and that it remained there throughout his ownership. Local residents dispute this but confirm that he did not do anything substantial to the site. Accordingly, whilst the caravan may not have been in good condition, habitable, or immediately recognisable as a caravan for some years, that does not necessarily equate to a long break in use of the site for the stationing of a caravan.

Ultimately, there appears to have been no time before October 2014 when the caravan was not there on the site in some form or other.

- Whether there has been any intervening use, and

It is common ground between all parties that the site has not been put to any new use since the original owner left the site. Local residents suggest that the only other use might have been as woodland. However, there were trees on the site when the original owner lived there and having trees on it does not indicate to me that the site was used as woodland. I consider that the principle use of the site at that time was for the stationing of a caravan and that any trees on the site did not amount to a use of the site as woodland.

- The owner's intentions.

This issue is perhaps the most easily contested part of the situation. The original owner is dead and the current owner only purchased the site in October 2014, with the intention of living there in a caravan or caravans, hence this planning application.

What does seem clear to me is that the original owner only left the site when he was unable to continue living there. There is no indication that he wished to leave the site or that he wished the established use to cease. Indeed he appears to have knowingly sold the site to the second owner, and I cannot presume that he did so in order to see the use cease. He knew who he was selling the land to and if his intentions can be interpreted from that they seem to be to see the established use continue.

It is therefore the second owner's intentions that must be examined. From my meeting with him, I am clear that his intention was to keep the caravan there and possibly to replace it, or to build a house. Local residents refer to a letter on our files suggesting that the second owner wanted to build a house on the site; but they do not say who the letter was from or why it was written. The letter was in fact written by a professional agent seeking to value an adjacent piece of land on behalf of the then national Highways Agency. It is this valuer who refers to the intentions of the second owner to build a residential dwelling upon it. The letter is not written by or on behalf of that second owner, and he says he was not aware of the letter until I showed it to him recently. He says that the letter is not a true reflection of his intentions for the site, albeit that they did include erecting a log cabin. Such log cabins can also of course legally be considered as caravans depending on their form of construction.

Documentary evidence from well before the time of this application supports the second owner's recent evidence that Council Tax was paid throughout his ownership of the site and that he had made it clear that the reason for this was because he did not want to lose the established right to station a caravan there.

I accept that the intentions test should be objective, not subjective, but there seems to be no reason to see the second owner's actions as in conflict with his own words. He might have done more to facilitate the continuity of the established use, but he did

not do anything to prevent it, which might now be seen to cut across his subjective view.

- 5.14 Applying the relevant balance of probability test, I conclude that the caravan remained on the site until at least 2003, that it was never completely removed until 2014 but that by 2012 it has significantly deteriorated; and that the owner intended to keep it or another caravan there. Having discussed the case with the Head of Legal Services it is clear in law that established use rights are not easy to abandon and have a great capacity to survive. I believe that a very high degree of certainty needs to be applied before the notion of abandonment can be accepted. According to my findings above I do not consider that the application of any of the four tests of abandonment can be met with a clear conclusion that the use had been abandoned at any time. Accordingly, as a high level of certainty is not present my view is that it is more likely than not that the established use of the site has not been abandoned, meaning that it must persist in law and the Council must deal with the current application on that basis.
- 5.15 If the Council were to decide that the established use had been abandoned this would in my view be unsafe and could lead to the Council possibly having to defend a decision that the facts do not support, with obvious potential costs and time implications. Such proceedings do not take account of the strength of local feeling or the current policy context, or indeed possible implications that might be perceived for the determination of any other planning application, or indeed the Council's reputation. They are decided on fact and on the balance of probability. In my view the evidence to support the suggestion of abandonment is not only weak, it is absent and is not sufficient to be relied upon. I advise Members to conclude that the established use of the site for the stationing of a caravan has not been abandoned.
- 5.16 Thus, I suggest that this application should be dealt with on the basis that the application proposes the continuation of the Established Use of the site in similar terms but with a modern refinement of acoustic fencing and an acoustically sound caravan.
- 5.17 I previously made it clear to Members that it would be highly unusual to grant planning permission for this use at this location in the current policy context and I would not ordinarily expect to recommend so. However, I also made it clear that the right to use the site exists and has done since the 1960s, and that the granting of planning permission has been necessary due to the vagaries of the legislation. In so doing I suggested that it would be prudent to secure some form of noise mitigation in respect of the current noise levels from traffic on the M2 having regard to up-to-date noise standards. Hence the suggestion of an acoustic barrier was mine, not that of the applicant. Nevertheless, the applicant has been co-operative both in responding to Members' request to reduce the number of caravans, and in providing noise evidence and a report specifying suitable noise treatment both of the site and of the proposed caravan.
- 5.18 The caravan itself will need to be high quality caravan/mobile home and will be of the kind usually thought of as a Park Home and suitable for year round occupation. In meeting the industry British Standard for Park Homes this will provide suitable noise insulation. Acoustic window and ventilation systems will help to achieve acceptable internal noise levels. I have recommended a suitable condition below.
- 5.19 As far as acoustic fencing is concerned, whereas previously the height and extent of the fencing was not known (I had recommended that these details, be required by a planning condition) it is now clear that a 4m high fence is proposed along the

motorway and turning in at the ends. It is also now clear that the fence will not be set on top of an earth bund. Although the site is within the Kent Downs AONB the motorway itself is the AONB boundary so the fence will effectively run along that boundary. The site is set well below motorway level (about 2m) so the fence, which will be set behind the existing tree line, will not appear dominant from that side. From the other side the site is well off the public highway and very well screened by existing woodland. I do not consider that any reasonable objection to the fencing in this position can be sustained on visual or landscape grounds . In any case the alternative is to permit the Established Use to continue without providing any noise attenuation between the motorway and the open parts of the site. This would seem to me to be undesirable.

- 5.20 Accordingly, it seems to me reasonable for the Council to recognise this planning application as one that seeks to permit continuation of the existing use of the site sufficient for the applicant to obtain the necessary site licence to avoid being in breach of that legislation. The benefit of granting planning permission is the ability of the Council to regulate the use of the site in the public interest. In this regard I consider that conditions to control the specification of the caravan, to require acoustic screening and to require adequate drainage and landscaping arrangements, as well as limiting the number of caravans on the site, would be beneficial.
- 5.21 I do not recommend a condition restricting occupancy of the site to any individual or group or individuals as such conditions would restrict the existing use rights that the site has, and I do not believe that it matters who occupies the site. I do though, believe that by granting planning permission the Council will be providing a settled base for a family who currently have no fixed home and who can only benefit both in the short and long terms from having a fixed base with access to health and education facilities. To that extent I have not felt it necessary to come to a firm conclusion on the applicant's gypsy status, or that of his dependants, nor am I recommending that planning permission be granted for any reason based on the supply of or need for gypsy and traveller sites in the Borough.

6.0 RECOMMENDATION – GRANT Subject to conditions (see below):

- 6.01 Members will note that this recommendation is based on the continuation of the Established use of the site without reference to supporting evidence of the applicant's personal circumstances or gypsy status. However, these factors will still be important in the situation where a refusal of planning permission is being contemplated. Accordingly, whilst I see no need to dwell on these matters where I am recommending approval of the application as below for the reasons set out above, if members were of a mind to refuse planning permission based on those factors it will still be necessary to consider whether the applicant has gypsy status or other personal circumstances, and to what degree these might override other material considerations sufficient to indicate that a permanent or temporary planning permission should be granted. It will also be necessary to consider whether the grant planning permission without the proposed acoustic fence.
- 6.02 Accordingly, in the event that Members do not accept my recommendation, I recommend that the application be deferred to enable me to report the application back to Members for a decision to be made in the light of these other issues.

CONDITIONS

1. The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which permission is granted.

Reasons: In pursuance of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. No more than one caravan or mobile home, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, shall be stationed on the site at any time.

Reasons: In the interests of the amenities of the area

3. No caravan shall be sited on the land unless it meets or exceeds the performance standard BS 3632:2005 – Residential Park Homes – Specification, and includes

window systems with acoustic through frame or through wall ventilators which provide an internal noise reduction level of at least 32dB compared to outside noise levels at the site.

Reasons: In the interests of the amenities of the residents of the site.

4. Prior to the siting of any caravan on the land a scheme for the means of foul water drainage of the site shall be submitted for the written approval of the Local Planning Authority and the said scheme shall include a timetable for its implementation. The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Reasons: In the interests of safeguarding ground water quality and to ensure that these details are approved before any caravans are stationed on the land

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

Reasons: In the interests of the amenities of the area

6. 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.

Reasons: In the interests of the amenities of the area

7. Prior to the siting of any caravan on the land a scheme for the means of landscaping of the site shall be submitted for the written approval of the Local Planning Authority and the said scheme shall include a timetable for its implementation. These details shall include existing trees, shrubs and other features, planting schedules of plants, noting species (which shall be native species and of a type that will encourage and enhance wildlife and biodiversity), plant sizes and numbers where appropriate, means of enclosure, hard surfacing materials, and an implementation programme. The approved scheme shall be carried out and completed in accordance with the approved timetable.

Reasons: In the interests of the amenities of the area and to ensure that these details are approved before any caravan is stationed on the land

8. At the same time as the Landscaping Scheme required by condition 7 above is submitted to the Local Planning Authority there shall be submitted a schedule of maintenance for a period of five years of the proposed planting beginning at the date of implementation as required by that condition; the schedule to make provision for the replacement, in the same position, of any tree, hedge or shrub that is removed, uprooted or destroyed or dies or, in the opinion of the Local Planning Authority, becomes seriously damaged or defective, with another of the same species and size as that originally planted. The maintenance shall be carried out in accordance with the approved schedule.

Reasons: In the interests of the amenities of the area and to ensure that these details are approved before any caravan is stationed on the land

9. Prior to the siting of any caravan on the land a 4m high acoustic fence to a specification equivalent to or exceeding the noise reduction properties of Jakoustic Barrier System fencing by Jackson Fencing shall be erected on the line shown on approved drawing PBA2 (REV.A) (including provision for wrapping the acoustic fence within the site boundary). Thereafter the acoustic fence shall be maintained in good repair at all times to ensure that its expected noise reduction levels continue to be achieved at all times.

Reasons: In the interests of the amenities of the residents of the site.

Council's approach to the 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.

APPENDIX 1

Planning Committee Report – 5 November 2015

ITEM 2.4

2.4 REFERENCE NO - 15/503580/FULL			
APPLICATION PROPOSAL			
Change of use of land to use as a residential caravan site for two gypsy/traveler households, including stationing of three caravans, laying of hardstanding, as amended by revised site location plan received 11 June 2015, and by email dated 13 October 2015 deleting erection of amenity building from the application.			
ADDRESS Land North Of Homestall Road Doddington Kent ME9 0LB			
RECOMMENDATION – Approve for reasons relating to the established use of the site			
WARD Teynham & Lynsted	PARISH/TOWN COUNCIL Norton And Buckland	APPLICANT Mr Patrick Nolan AGENT Philip Brown Associates	
DECISION DUE DATE 19/06/15	PUBLICITY EXPIRY DATE 09/06/15		
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
NK/9/69/99/9795	Stationing of caravan	Approved by KCC on a personal basis until 31/8/1969	29/9/1968
NK/9/68/99A/9795	Renewal of temporary permission for one further year	Refused on rural policy grounds	28/1/1970
Enforcement Notice served 3/4/1970	Stationing of residential caravan	Appeal allowed on technical grounds	10/11/1970
NK/9/69/99B/9795	Renewal of permission	Granted for three years	8/5/1972
SW/75/388	Renewal of permission	Granted on personal basis for three years	20/6/1975
SW/78/415	Renewal of permission	Granted on personal basis for three years	31/5/1978
SW/81/623	Renewal of permission	Granted on personal basis for three years	11/6/1981
SW/84/605	Renewal of permission	Granted on personal basis for three years	30/8/1984
SW/87/1677	Renewal of permission	Granted on lifetime personal basis	10/2/1988

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1.0 DESCRIPTION OF SITE

- 1.01 This application relates to a small triangular site measuring 0.15ha alongside the southern boundary of the M2 motorway between Sittingbourne and Faversham. The site thus lies just within the Kent Downs Area of Outstanding Natural Beauty but well away from any local services or amenities.
- 1.02 The longest, northern, boundary of the site is with the M2 (approximately 100m) with other boundaries to deciduous woodland, one area of which includes a large highway drainage pond. Access to the site is via a narrow but well constructed short spur road off Homestall Road, at the point where the road itself has been re-built to pass under the motorway, and where it is unusually wide.
- 1.03 The site was comprehensively cleared of all above ground structures, vegetation or signs of previous occupation by the current applicant in late 2014, and some hardcore was laid over part of the site. This laying of hardcore triggered the service of a Temporary Stop Notice in October 2014 since when no further work has taken place. The site now appears as a largely flat, barren, empty piece of land with only a variety of drain covers, cesspit holes and a water tap visible. The site is thus unoccupied and the application is not retrospective.
- 1.04 The site lies at a level below that of the motorway at a point where the motorway is climbing steeply westwards out of the Newnham Valley. However, the site is not prominent from the motorway and can only be seen when travelling westwards as a fleeting glance due to intervening vegetation. Due to the woodland on other sides, the site is not prominent from Homestall Road either, although the spur road provides a clue to the fact that access is provided to some unseen premises.
- 1.05 The remnants of occupation still visible on site stem from its peculiar planning history which is itemised above. Essentially this relates to occupation of the site by a man who appears to have lived generally in caravans, was described in 1970 as somewhat nomadic, and who had been employed by the Forestry Commission, then by the District Council as a refuse collector until 1967, and then by the County Council in a highway related capacity. He also dealt in scrap metal in a small way. It also appears that the man had previously been involved in the construction of the motorway and, in or around 1962, he stationed a caravan on this left over patch of land during motorway construction. He managed to acquire the land from the Ministry of Transport in 1969.
- 1.06 When occupation of the site came to light, the County Council granted temporary personal planning permission in 1968 for stationing of a caravan on the site to allow time for the occupant to find another site. This permission included a planning condition specifically requiring the use to cease and the site to be cleared by 31 August 1969. When the site was not cleared, the County Council took enforcement action in 1970. An appeal was lodged and the Inspector recommended that, however well screened the site was “the stationing of a residential caravan on the appeal site comparatively isolated from existing development and from health and other necessary services is undesirable”. The Minister of Housing and Local Government determining the appeal considered evidence on how long the caravan had been stationed there and concluded that, having stationing the caravan on the site in 1962

the site has already acquired existing use rights, and that planning permission was not

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in fact required by virtue of immunity from enforcement action. However, because at that time a site licence required a grant of planning permission, the 1968 planning application had been necessary. He ruled that although KCC had been entitled to impose planning conditions, it had been wrong for KCC to impose a condition requiring the existing immune use to cease in 1969, as that took away existing use rights; and that that planning permission had been invalid.

- 1.07 Notwithstanding acceptance of the Inspector's conclusions on planning merits, a new temporary planning permission was granted by the Minister in 1970, running until 30 April 1971. According to the above arguments, the temporary permission did not then require cessation of the use, it merely authorised it for a temporary period sufficient to allow a site licence to be granted
- 1.08 Following this decision, and in explicit recognition of the existing use rights of the land and of the occupant's personal circumstances, a series of subsequent decisions by the former District Council, and then by this Council, allowed that individual to continue to stay on the site in recognition of his personal circumstances. Importantly, these permissions did not require cessation of the use at the end of the periods involved. By 1988, the site had become known locally as the site where the hermit lived, as the occupant was very quiet and solitary after the death of his wife, and few knew that the site was occupied. In 1988 the Council finally granted a lifetime personal permission on compassionate grounds, but with a condition requiring the site to be cleared and the use to cease when the original occupant no longer lived there. A full review of the site history for this application now suggests that this restriction appears to have been an error, but one that has never so far been challenged.
- 1.09 The site was at that time partly wooded and occupied by the occupant's caravan and a series of small shed type buildings that he had erected over time. The individual concerned eventually left the site, I understand initially to be cared for in a nursing home, before dying a few years ago. No-one appears to have occupied the caravan or site in the meantime, although I would imagine that the caravan itself was very dilapidated by this time and the site very run-down. The current site owners and applicant are not related to the original occupant but I understand that the site was purchased by the applicant's grandmother in October 2014.
- 1.10 The site is now owned by the applicant's grandmother, and after a false start the correct application papers have now been served on her by the applicant.

2.0 PROPOSAL

- 2.01 This application has been amended or added to since its submission as follows.
- Firstly, the correct ownership certificate has been served on the applicant's grandmother
 - Secondly, it has been confirmed that neither the applicant nor his grandmother own the small piece of woodland adjacent to the site, as originally shown edged blue on the site location plan. A new site location plan has been submitted
 - Thirdly, the proposal to erect a permanent amenity building measuring 7m x 5m built of brick, tile and uPVC windows has been deleted from the application

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- Fourthly, a Noise Impact Assessment report has been submitted
- Fifthly, a quotation for noise reduction fencing has been submitted
- Sixthly, details of the applicant's and his grandmother's personal and health circumstances have been submitted

2.02 As the application now stands, it proposes the change of use of the site for one mobile home and two touring caravans for two gypsy or traveller households, and the laying of hardstanding.

2.03 The application is supported by a number of documents from which I draw the following information;

- No alteration to access are proposed
- Drainage will be provided by an on-site treatment plant
- Parking for 2 cars and one light goods vehicle will be provided
- New planting is envisaged
- There remains a need for 35 gypsy or traveller pitches in Swale
- The site would not individually or cumulatively be of a scale out of keeping with Painters Forstal
- No business use is proposed
- The site is not at risk from flooding
- Whilst the site is within the AONB it is of a small scale and set against the motorway which itself is not sympathetic to the AONB
- The site has been used as a caravan site for many years, and occupied until at least 2007
- The site would be occupied by the applicant, his wife and infant son, and by his grandmother
- The proposed site occupants currently have no lawful site to stay on, but have received numerous notices requiring them to move on. Two example notices have been provided to me
- The applicant works by building, landscaping and by distributing leaflets door to door and moves from one place to another.
- The applicant and his wife have never had a settled base. They now have a one year old child who has missed some inoculations due to moving around, and is unable to register with a GP
- The applicant's grandmother has significant health issues and was recently in hospital. She depends on the applicant and is in need of a settled base where she can have access to appropriate healthcare and facilities for bathing and washing clothes. Living on the roadside is compounding her health problems
- Noise reduction fencing might cost in the region of £13,000 to erect professionally, but the applicant would do much of the labour himself with relatives helping to reduce costs
- A professional noise quotation submitted on behalf of the applicant prices 200m of 2.4m tall highway acoustic fencing at £45,000
- A Noise Impact Assessment report prepared for the applicant. This suggests that;
 - only the mobile home would be occupied with the two touring caravans merely stored on the site.

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- that site levels will be lowered and the spoil used to create a mound alongside the motorway with an acoustic fence erected on top
- acoustic (double glazed) fenestration and ventilation for any occupied caravan will be required to protect acceptable noise levels
- the fencing must prevent any line of sight between any caravan and any M2 traffic, and the mound and fencing should wrap around the site

3.0 PLANNING CONSTRAINTS

Area of Outstanding Natural Beauty KENT DOWNS

Area of Outstanding Natural Beauty Maidstone AONB directive

MOD Thurnham MOD Safeguarding Directive Thurnham

MOD Thurnham MOD Safeguarding Directive Thurnham

Thurnham Exclusion Zone Thurnham, Kent

Thurnham Exclusion Zone Thurnham, Kent

Thurnham Wind Station tHURNHAM WIND SAFEGUARDING

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

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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;

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- 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:

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- 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

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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 25th April 2014).

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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 Homestall Road 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;

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- 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 within the Doddington and Newnham Dry Valleys 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 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.

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- 4.24 Stage 2: Suitability/Constraints. The site is not in a flood risk zone (assessment green); it is in an AONB but is very well concealed, hard by the M2 embankment and landscaping is possible (amber); it has very limited landscape impact (amber); 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 unacceptable noise or disturbance if properly planned (amber); has adequate access (green); but is remote and not within walking distance to any significant facilities (red). The red score means 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 for allocation 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 four more wholly new permanent sites have been approved.

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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.
- 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.
- 4.31 The other significant issue here is the suitability of the site in terms of noise impact. The NPPG gives the following advice;

When is noise relevant to planning?

Noise needs to be considered when new developments may create additional noise and when new developments would be sensitive to the prevailing acoustic environment. When preparing local or neighbourhood plans, or taking decisions about new development, there may also be opportunities to consider improvements to the acoustic environment.

How to determine the noise impact?

Local planning authorities' plan-making and decision taking should take account of the acoustic environment and in doing so consider:

- *whether or not a significant adverse effect is occurring or likely to occur;*

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- *whether or not an adverse effect is occurring or likely to occur; and*
- *whether or not a good standard of amenity can be achieved.*

In line with the Explanatory Note of the Noise Policy Statement for England, this would include identifying whether the overall effect of the noise exposure (including the impact during the construction phase wherever applicable) is, or would be, above or below the significant observed adverse effect level and the lowest observed adverse effect level for the given situation. As noise is a complex technical issue, it may be appropriate to seek experienced specialist assistance when applying this policy.

Observed Effect Levels

- *Significant observed adverse effect level: This is the level of noise exposure above which significant adverse effects on health and quality of life occur.*
- *Lowest observed adverse effect level: this is the level of noise exposure above which adverse effects on health and quality of life can be detected.*
- *No observed effect level: this is the level of noise exposure below which no effect at all on health or quality of life can be detected.*

How to recognise when noise could be a concern?

- *At the lowest extreme, when noise is not noticeable, there is by definition no effect. As the noise exposure increases, it will cross the no observed effect level as it becomes noticeable. However, the noise has no adverse effect so long as the exposure is such that it does not cause any change in behaviour or attitude. The noise can slightly affect the acoustic character of an area but not to the extent there is a perceived change in quality of life. If the noise exposure is at this level no specific measures are required to manage the acoustic environment.*
 - *As the exposure increases further, it crosses the lowest observed adverse effect level boundary above which the noise starts to cause small changes in behaviour and attitude, for example, having to turn up the volume on the television or needing to speak more loudly to be heard. The noise therefore starts to have an adverse effect and consideration needs to be given to mitigating and minimising those effects (taking account of the economic and social benefits being derived from the activity causing the noise).*
 - *Increasing noise exposure will at some point cause the significant observed adverse effect level boundary to be crossed. Above this level the noise causes a material change in behaviour such as keeping windows closed for most of the time or avoiding certain activities during periods when the noise is present. If the exposure is above this level the planning process should be used to avoid this effect occurring, by use of appropriate mitigation such as by altering the design and layout. Such decisions must be made taking account of the economic and social benefit of the activity causing the noise, but it is undesirable for such exposure to be caused.*

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- *At the highest extreme, noise exposure would cause extensive and sustained changes in behaviour without an ability to mitigate the effect of noise. The impacts on health and quality of life are such that regardless of the benefits of the activity causing the noise, this situation should be prevented from occurring.*
- *This table summarises the noise exposure hierarchy, based on the likely average response.*

<i>Perception</i>	<i>Examples of Outcomes</i>	<i>Increasing Effect Level</i>	<i>Action</i>
<i>Not noticeable</i>	<i>No Effect</i>	<i>No Observed Effect</i>	<i>No specific measures required</i>
<i>Noticeable and not intrusive</i>	<i>Noise can be heard, but does not cause any change in behaviour or attitude. Can slightly affect the acoustic character of the area but not such that there is a perceived change in the quality of life.</i>	<i>No Observed Adverse Effect</i>	<i>No specific measures required</i>
		<i>Lowest Observed Adverse Effect Level</i>	
<i>Noticeable and intrusive</i>	<i>Noise can be heard and causes small changes in behaviour and/or attitude, e.g. turning up volume of television; speaking more loudly; where there is no alternative ventilation, having to close windows for some of the time because of the noise. Potential for some reported sleep disturbance. Affects the acoustic character of the area such that there is a perceived change in the quality of life.</i>	<i>Observed Adverse Effect</i>	<i>Mitigate and reduce to a minimum</i>
		<i>Significant Observed Adverse Effect Level</i>	
<i>Noticeable and disruptive</i>	<i>The noise causes a material change in behaviour and/or attitude, e.g. avoiding certain activities during periods of intrusion; where there is no alternative ventilation, having to keep windows closed most of the time because of the noise. Potential for sleep disturbance resulting in difficulty in getting to sleep, premature awakening and difficulty in getting back to sleep. Quality of life diminished due to change in acoustic character of the area.</i>	<i>Significant Observed Adverse Effect</i>	<i>Avoid</i>

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<p>Noticeable and very disruptive</p>	<p><i>Extensive and regular changes in behaviour and/or an inability to mitigate effect of noise leading to psychological stress or physiological effects, e.g. regular sleep deprivation/awakening; loss of appetite, significant, medically definable harm, e.g. auditory and non-auditory</i></p>	<p>Unacceptable Adverse Effect</p>	<p>Prevent</p>
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How can the adverse effects of noise be mitigated?

This will depend on the type of development being considered and the character of the proposed location. In general, for noise making developments, there are four broad types of mitigation:

- *engineering: reducing the noise generated at source and/or containing the noise generated;*
- *layout: where possible, optimising the distance between the source and noise-sensitive receptors and/or incorporating good design to minimise noise transmission through the use of screening by natural or purpose built barriers, or other buildings;*
- *using planning conditions/obligations to restrict activities allowed on the site at certain times and/or specifying permissible noise levels differentiating as appropriate between different times of day, such as evenings and late at night, and;*
- *mitigating the impact on areas likely to be affected by noise including through noise insulation when the impact is on a building.*

For noise sensitive developments mitigation measures can include avoiding noisy locations; designing the development to reduce the impact of noise from the local environment; including noise barriers; and, optimising the sound insulation provided by the building envelope. Care should be taken when considering mitigation to ensure the envisaged measures do not make for an unsatisfactory development (see the guidance on design for more information).

Are there further considerations relating to mitigating the impact of noise on residential developments?

Yes – the noise impact may be partially off-set if the residents of those dwellings have access to:

- *a relatively quiet facade (containing windows to habitable rooms) as part of their dwelling, and/or;*
- *a relatively quiet external amenity space for their sole use, (e.g. a garden or balcony). Although the existence of a garden or balcony is generally desirable, the intended benefits will be reduced with increasing noise exposure and could be such that significant adverse effects occur, and/or;*
- *a relatively quiet, protected, nearby external amenity space for sole use by a limited group of residents as part of the amenity of their dwellings, and/or;*

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- *a relatively quiet, protected, external publically accessible amenity space (e.g. a public park or a local green space designated because of its tranquillity) that is nearby (e.g. within a 5 minutes walking distance).*

6.0 LOCAL REPRESENTATIONS

6.01 Swale Footpaths Group notes that there is no footpath issue but that the site is close to the M2 and ask if the site is suitable for occupation.

6.02 I have received several local representations, six from individual addresses plus a set of five similar representations sent in together all with the same format. These make the following summarised points;

- The site lies in the Kent Downs AONB which the Council has a duty to protect; caravans do not protect this nature
- The site is high on the side of the valley, and whilst currently screened, the woods are deciduous and the woodland may be subject to coppicing
- The Council has refused permission for stables nearby due to adverse impact on the AONB – this will have more impact
- The applicants have shown complete disregard for the AONB by clearing the site with bulldozers
- Trees have been illegally cleared and badgers may have been disturbed
- The site is not in a sustainable location with no nearby amenities, schools or public transport, and close to other sites that have been found to be unsuitably located
- No proper access, the junction is unsafe
- Would affect views from the footpath
- The site is alongside the M2 and extremely noisy, with a risk of air pollution
- With only a low fence in place, children could get onto the motorway and possibly cause a fatal accident
- This would represent an intensive use of the site which would be for two pitches
- Would put other land at risk from urbanisation
- Nearby houses are historic and listed
- No permanent utility block should be permitted
- No site notice was displayed for the required period (NOTE: A site notice was in fact displayed for the required period close to the site)
- The application is contrary to Government guidance
- The site is not agricultural land, but a woodland with nature conservation significance
- We do not want to have more bad behaviour

7.0 CONSULTATIONS

7.01 Newnham Parish Council opposes the application on grounds similar to those raised in local representations above. They add that the site fails the current site assessment test; that there is no vehicular access to the site; that there are no 2m fences or sewage treatment on the site; and that the site does not meet policy criteria for such a site.

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7.02 Kent Highway Services do not comment on the application

7.03 The Environmental Health Manager originally requested a noise report and has considered the applicant's Noise Impact Assessment report. He notes that noise levels across the site exceed recommended levels so that mitigation is required. He notes the recommendations of the report for acoustic fencing and extra sound insulation and accepts that these measures could be effective if carried out as suggested. His one concern is whether the mitigation measures will be effective if the caravans are not permanently sited.

8.0 BACKGROUND PAPERS AND PLANS

8.01 Papers for application 15/503580/FULL and other applications mentioned above.

9.0 APPRAISAL

9.01 This application has brought to light the very peculiar planning status of this land. It was established in 1970 that the land had an existing right for stationing of a caravan. Planning permission was not needed other than as a vehicle for obtaining a necessary site licence. This situation seems to have then persisted right up until the latest planning permission granted in 1988. That personal permission has now run its course and new owners seek a new permission.

9.02 Without a doubt it would be highly unusual to grant planning permission for this use at this location in the current policy context and I would not expect to recommend so. However, what is now clear to me is that the right to use the site exists and has done since the 1960s. The granting of planning permission has been necessary due to the vagaries of the legislation and that situation still exists, albeit a Lawful Development Certificate (LDC) now has an equally supporting effect in terms of a site licence. An application for an LDC might be a way to address the current applicant's intention to occupy the site, but he has not known the site long and is not in a good position to support an LDC application with evidence.

9.03 Accordingly, it seems to me reasonable for the Council to recognise his planning application as one that seeks to confirm the existing use rights on the site sufficient for him to obtain the necessary site licence to avoid being in breach of other legislation. The granting of such an application also gives the Council the opportunity to impose planning conditions so long as these do not purport to take away existing use rights. As such, despite all the comments above, and regardless of what would be my very strong reservations about the principle of granting planning permission to establish such a use here so far from amenities and public services, I do not believe that the Council has the right not to grant planning permission.

9.04 The benefit of granting planning permission is the ability of the Council to regulate the use of the site in the public interest. In this regard I consider that conditions to require acoustic screening (which at 2.4m tall would in itself will otherwise require planning permission) and to require adequate drainage and landscaping arrangements, as well as limiting the number of caravans on the site, would be beneficial.

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9.05 I am reluctant to recommend a condition restricting occupancy of the site to any individual or group or individuals as such conditions would restrict the existing use rights that the site has, and I do not believe that it matters who occupies the site. I do though, believe that by granting planning permission the Council will be providing a settled base for a family who currently have no fixed home and who can only benefit both in the short and long terms from having a fixed base with access to health and education facilities. To that extent I have not felt it necessary to come to a firm conclusion on the applicant’s gypsy status, or that of his dependants.

9.06 In view of the comments of the Environmental Health Manager, I am pleased that a planning condition can be imposed to require acoustic treatment both of the site and of any caravan being occupied as, without this, it is clear that the noise environment of the site will pose unacceptable risks to the amenity of any legitimate site occupants. I had very real concerns that it might be unreasonable to require expensive acoustic fencing if a temporary planning permission were to be granted, but as I am now satisfied over the planning status of the site I am content that the investment in fencing etc will be appropriate. I am recommending a suitable condition.

10.0 CONCLUSION

10.01 This site has been occupied for the best part of 50 years without undue detriment to the area. If it were not for the age, and ultimately the death, of the original occupant the site would remain occupied today. The Council would normally have accepted a change in occupier of an established site, and as such the proposal now therefore is not really for a change in the status quo.

10.02 What is important to recognise is that any decision to approve this application should not be seen by anyone as a precedent for the future of any other existing temporary or potential caravan sites nearby. These will continue to be dealt with on their own merits, and as the area is very poorly served by amenities to the extent that they will not score well in relation to site assessment criteria.

11.0 RECOMMENDATION – GRANT Subject to the following conditions:

CONDITIONS

1. The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which permission is granted.

Reasons: In pursuance of Section 91 of the Town and Country Planning Act 1900 as amended by the Planning and Compulsory Purchase Act 2004.

2. No more than one mobile home and two touring caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, shall be stationed at any time, of which only one caravan shall be a residential mobile home.

Reasons: In pursuance of Section 91 of the Town and Country Planning Act 1900 as amended by the Planning and Compulsory Purchase Act 2004.

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3. Prior to the siting of any caravans on the land a scheme for the means of foul water drainage of the site shall be submitted for the written approval of the Local Planning Authority and the said scheme shall include a timetable for its implementation. The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Reasons: In the interests of safeguarding ground water quality and to ensure that these details are approved before any caravans are stationed on the land

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

Reasons: In the interests of the amenities of the area

5. 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.

Reasons: In the interests of the amenities of the area

6. Prior to the siting of any caravans on the land a scheme for the means of landscaping of the site shall be submitted for the written approval of the Local Planning Authority and the said scheme shall include a timetable for its implementation. These details shall include existing trees, shrubs and other features, planting schedules of plants, noting species (which shall be native species and of a type that will encourage and enhance wildlife and biodiversity), plant sizes and numbers where appropriate, means of enclosure, hard surfacing materials, and an implementation programme. The approved scheme shall be carried out and completed in accordance with the approved timetable.

Reasons: In the interests of the amenities of the area and to ensure that these details are approved before any caravans are stationed on the land

7. At the same time as the Landscaping Scheme required by condition 6 above is submitted to the Local Planning Authority there shall be submitted a schedule of maintenance for a period of five years of the proposed planting beginning at the date of implementation as required by that condition; the schedule to make provision for the replacement, in the same position, of any tree, hedge or shrub that is removed, uprooted or destroyed or dies or, in the opinion of the Local Planning Authority, becomes seriously damaged or defective, with another of the same species and size as that originally planted. The maintenance shall be carried out in accordance with the approved schedule.

Reasons: In the interests of the amenities of the area

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8. Prior to the siting of any caravans on the land a scheme for the provision of acoustic treatment of the site boundary with the M2 (including provision for wrapping the acoustic treatment around other site boundaries as necessary), and for the siting and acoustic treatment of any caravans to be used as living accommodation whilst on the site, shall be submitted for the written approval of the Local Planning Authority and the said scheme shall include a timetable for its implementation. The approved scheme shall have been carried out and completed in accordance with the approved timetable and thereafter the acoustic treatment of the site and the siting and specification of any caravan to be used as living accommodation whilst on the site shall maintained in accordance with the approved details, including in relation to any replacement caravan.

Reasons: In the interests of the amenities of the residents of the site and to ensure that these details are approved before any caravans are stationed on the land

Council’s approach to the 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.