

PLANNING COMMITTEE – 2 MARCH 2017

PART 3

Report of the Head of Planning

PART 3

Applications for which **REFUSAL** is recommended

3.1 REFERENCE NO - 16/505471/FULL			
APPLICATION PROPOSAL			
Application for the removal of condition 1 of SW/09/1142 (One caravan for traveller family) - to allow for the permanent permission of one caravan for traveller family.			
ADDRESS The Meads Farm Elverland Lane Ospringe Kent ME13 0SP			
RECOMMENDATION – Refuse			
SUMMARY OF REASONS FOR RECOMMENDATION/REASONS FOR REFUSAL			
The use of the site as a caravan site for residential use will result in an unsustainable pattern of development, contrary to national and local planning policies. The need to provide gypsy and traveller sites and the personal circumstances on the applicant and their family do not outweigh the harm caused through the unsustainable location of the site.			
REASON FOR REFERRAL TO COMMITTEE			
To allow Members to consider future policy for gypsy and traveller sites in this area which has seen a number of temporary planning permissions.			
WARD East Downs	PARISH/TOWN COUNCIL Ospringe	APPLICANT Mr And Mrs Eli Smith	
DECISION DUE DATE 31/08/16	PUBLICITY EXPIRY DATE 12/08/16		
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
SW/12/0096	Variation of condition 1 of SW/09/1142 to allow permanent permission for one caravan for a Romany family	Granted for four years	28/05/2012
SW/09/1142	One caravan for traveler family	Granted temporary permission until 01/03/2012	08/02/2010
SW/08/0216	Siting of caravan for an agricultural worker	Withdrawn	15/05/2008
SW/05/0387	Erection of stable, new site entrance and keeping of horses.	Approved	18/05/2005

1.0 DESCRIPTION OF SITE

- 1.01 The application site relates to an irregular shaped plot of land of around 1.6 hectares in total, which slopes down from Elverland Lane towards a woodland immediately to the rear of the site. The northern section of the site closest to Elverland Lane site is laid to rough grassland, the central area is part in use as a paddock, and the southern end is in residential use, with a static caravan and a touring caravan sited on this land. A stable building and smaller building of agricultural form appearance are also sited on the land.
- 1.02 The land has an open appearance from Elverland Lane, with planting and landscaping generally used to define field and site boundaries. On the roadside, the land is enclosed by a post and rail fence and low metal five bar gates. Although the land slopes down, the woodland to the rear forms an impressive backdrop to the landscape. The access into the site snakes along the western boundary, and is informal in appearance consisting of loose stone tracks and a central grassed verge.
- 1.03 The site falls within the Kent Downs AONB and within highly attractive isolated countryside. The site connects to local roads and lanes which link Faversham to many rural communities, but it is located in a remote location well away from any local services or amenities. The built settlements of Faversham and Teynham are approx. 5kms from the site (using local roads).
- 1.04 Elverland Lane is designated as a rural lane. Due to the topography of the site and some intermediate trees, the caravans are not readily visible from the lane.

2.0 PROPOSAL

- 2.01 This application seeks permission to remove condition 1 of planning permission SW/09/1142. This condition granted permission for residential use of the site for a temporary period, which was further extended under application SW/12/0096 to allow residential use of the site until 28 May 2016. Effectively this application is retrospective, given that both temporary permissions have now expired.
- 2.02 The terms of the temporary planning permissions previously issued were to limit the number of units to 1 x static caravan and 1 x touring caravan, and that the site could only be occupied by persons of Gypsy / Traveller status. Such terms could be carried forward under the current application, if deemed acceptable.
- 2.03 Members should note from the planning history that a separate and permanent permission exists for the stable building and access permitted under SW/05/0387, and which has been built.
- 2.04 The applicants have submitted some confidential personal information during the course of the application process, which can be best summarised as follows:
- A letter from a specialist speech and language unit at The Malling School, East Malling, where their youngest son (aged 12 years) attends.
 - Letters from Kings College Hospital, London, and from Newton Place Surgery, Faversham in respect of Mr Smith.
- 2.05 Mrs Smith has also stated that this site is her home that she has lived on for 10 years. If permission was not granted, she would go back on the road but would not stop far away as she has horses and other animals on the site.

3.0 PLANNING CONSTRAINTS

Kent Downs Area of Outstanding Natural Beauty

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

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

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

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

- To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. For example, where there are groups of smaller settlements, development in one village may support services in a village nearby. Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as:
 - the essential need for a rural worker to live permanently at or near their place of work in the countryside; or
 - where such development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets; or

- where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting; or
- the exceptional quality or innovative nature of the design of the dwelling. Such a design should:
 - be truly outstanding or innovative, helping to raise standards of design more generally in rural areas;
 - reflect the highest standards in architecture;
 - significantly enhance its immediate setting; and
 - be sensitive to the defining characteristics of the local area.

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

The planning system should contribute to and enhance the natural and local environment by:

- protecting and enhancing valued landscapes, geological conservation interests and soils;
- recognising the wider benefits of ecosystem services;
- minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the Government's commitment to halt the overall decline in biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;
- preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water or noise pollution or land instability; and
- remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.

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

Planning Policy for Traveller Sites (PPTS)

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

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

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

- a. that local planning authorities should make their own assessment of need for the purposes of planning*
- b. to ensure that local planning authorities, working collaboratively, develop fair and effective strategies to meet need through the identification of land for sites*
- c. to encourage local planning authorities to plan for sites over a reasonable timescale*
- d. that plan-making and decision-taking should protect Green Belt from inappropriate development*
- e. to promote more private traveller site provision while recognising that there will always be those travellers who cannot provide their own sites*

- f. *that plan-making and decision-taking should aim to reduce the number of unauthorised developments and encampments and make enforcement more effective*
- g. *for local planning authorities to ensure that their Local Plan includes fair, realistic and inclusive policies*
- h. *to increase the number of traveller sites in appropriate locations with planning permission, to address under provision and maintain an appropriate level of supply*
- i. *to reduce tensions between settled and traveller communities in plan-making and planning decisions*
- j. *to enable provision of suitable accommodation from which travellers can access education, health, welfare and employment infrastructure*
- k. *for local planning authorities to have due regard to the protection of local amenity and local environment.” (para 4 PPTS)*

4.07 In terms of plan making the PPTS advice is that;

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

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

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

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

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

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

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

- a) *the existing level of local provision and need for sites*
- b) *the availability (or lack) of alternative accommodation for the applicants*

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

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

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

“If a local planning authority cannot demonstrate an up-to-date 5 year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary permission. The exception to this is where the proposal is on land designated as Green Belt; sites protected under the Birds and Habitats Directives and / or sites designated as Sites of Special Scientific Interest; Local Green Space, an Area of Outstanding Natural Beauty, or within a National Park (or the Broads).” (para 27 PPTS). I 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 affected the issue with regard to defining need and this matter is the subject to some very recent changes regarding the Council’s emerging Local Plan, which are referred to 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 was incorporated within the draft Bearing Fruits Swale Borough Local Plan: Part 1 alongside a policy introducing provision for pitches on certain major development sites. An additional net 47 permanent pitches (some with personal use conditions) had also been approved up to March 2015, reducing the outstanding need to 35 pitches over the Plan period. Further permanent permissions have since been granted. A further number of pitches enjoy temporary permissions.

- 4.11 Shortly after publication of the GTAA in 2013 the Council began work on Part 2 of the Swale Borough Local Plan which was intended to deal with site allocations for Gypsy and Traveller pitch provision only. This process began with a call for sites between September and December 2013, and the publication of an issues and options paper which was subject to public consultation (this finished on 25 April 2014). The Local Plan was subject to examination in November 2015 and the latest position on this is referred to below.

Saved Policies of Swale Borough Local Plan 2008

- 4.12 Saved 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 saved 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 saved 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. Saved 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 Saved policy E19 (Achieving High Quality Design and Distinctiveness) requires development proposals to be well designed.
- 4.16 Saved policy RC7 (Rural Lanes) seeks to protect the physical features and character of rural lanes, of which Elverland Lane is one.
- 4.17 Saved policy H4 explains that the Borough Council will only grant planning permission for the use of land for the stationing of homes for persons who can clearly demonstrate that they are gypsies or travelling showpersons with a genuine connection with the locality of the proposed site, in accordance with 1 and 2 below.
1. For proposals involving the establishment of public or privately owned residential gypsy or travelling showpersons sites:
 - a) there will be a proven need in the Borough for the site and for the size proposed;
 - b) the site will be located close to local services and facilities;
 - c) there will be no more than four caravans;
 - d) the site will be located close to the primary or secondary road networks
 - e) in the case of a greenfield site there is no suitable site available on previously developed land in the locality;
 - f) the site is not designated for its wildlife, historic or landscape importance;

- g) the site should be served, or capable of being served, by mains water supply and a satisfactory means of sewage disposal and refuse collection;
- h) there is no conflict with pedestrian or highway safety;
- i) screening and landscaping will be provided to minimise adverse impacts;
- j) no industrial, retail, commercial, or storage activities will take place on the site.
- k) use of the site will not give rise to significant adverse impacts upon residential amenity, or agricultural or commercial use, of surrounding areas; and
- l) the land will not be in a designated flood risk area.

2. Additionally to 1, for proposals for short term stopping places:

- m) there will be a planning condition to ensure that the length of stay for each caravan will be no longer than 28 days with no return to the site within 3 months.

4.18 This policy was criticised by the 2008 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.

4.19 Saved policy T1 (Providing Safe Access to New Development) states;

“The Borough Council will not permit development proposals that;

1. *generate volumes of traffic in excess of the capacity of the highway network, and/or result in a decrease in safety on the highway network, unless these issues can be addressed by environmentally acceptable improvements to the highway network that have been agreed by the Borough Council and the appropriate Highway Authority in accordance with Policy T2; and*
2. *lead to the formation of a new access, or the intensification of any access, onto a primary or secondary road or route, unless it can be created in a location that it acceptable to the Borough Council, or where an access can be improved to an acceptable standard and achieve a high standard of safety through design.*

Where appropriate, the Borough Council will require the submission of a comprehensive Transport Assessment and Travel Plan with a planning application.”

Swale Landscape Character and Biodiversity Appraisal SPD 2011

4.20 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

4.21 The Council's Publication version of the draft Local Plan, entitled *Bearing Fruits 2031*, was published in December 2014 and underwent examination in November 2015. The Local Plan Inspector's relevant interim findings are set out below.

4.22 Policy CP 3 of the draft Local Plan aimed to provide pitches for gypsies and travellers as part of new residential developments. Policy DM10 set out criteria for assessing windfall gypsy site applications. These policies are now being significantly revised or abandoned as appropriate according to the Council's re-assessment of site need in the

light of the changes to PPTS and local progress on site supply. This is discussed below. Draft policy DM10 will now be a criteria based policy for assessing windfall planning applications and this includes the following points. It seeks to retain existing permanent sites, and favours expansion of existing sites. Further criteria for approval are exceptional mitigating or personal circumstances where there is no overriding harm to the locality or the need for affordable housing. Beyond these points the policy suggests that new sites should;

- be for applicants who have previously led a nomadic lifestyle, or those who can show why they have stopped travelling, or show intentions for future travelling
- provide opportunity to integrate with communities
- be of an appropriate scale without landscape harm or overloading services
- accommodate living and working
- cause no significant harm to occupants or others
- cause no harm to AONB, other national or local landscape or biodiversity designations
- provide landscaping to enhance the environment in a way that increases openness
- provide for health lifestyles
- be safe from flooding
- have safe and convenient access and parking
- provide transit or visitor pitches where appropriate

Site Assessment

- 4.23 The Council's February 2014 Gypsy and Traveller Site Allocations: Issues and Options consultations document recommended 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, a site assessment exercise has been carried out in relation to this site and I have taken this into account in considering this application. The 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.
- 4.24 The assessment starts with Stage 1: Availability. The applicant is in occupation of the site. Here the site scores green. This means that the site should proceed to Stage 2.
- 4.25 Stage 2: Suitability/Constraints. The site is not in a flood risk zone (assessment green); it is in an AONB and the position of the caravans are at the base of a slope, against a woodland backdrop, and screened from the road. I consider the landscape impact to be amber (capable of mitigation); it has no unacceptable impact on biodiversity (green); no dominating effect on settlements on its own but there are already three private gypsy sites nearby on temporary permissions. These sites indicate sustained pressure for sites here which taken together will have a significant effect on such a sparsely populated and otherwise unspoilt area (amber); no adverse impacts on heritage/archaeology (green); is not known to be contaminated (green); will not be subject to unacceptable noise or disturbance (green); does not have a dangerous access (based on comments from Kent Highways under previous applications on the site) (green); but is remote and not within walking distance to any significant facilities at approx. 5km from Faversham and Teynham (red). This red score means that it is not a site considered to be suitable as a permanent site, and that the site should not proceed

to Stage 3 and will not be a candidate site for any future allocations policy (if such a policy were now to be produced).

- 4.26 The arrangements for production of Part 2 of the new Local Plan included consultation upon a preferred options document in summer 2014. The future of and need for Part 2 of the Local Plan was expected to be dependent upon the successful adoption of Part 1 of the Local Plan. It was intended that should the Local Plan Inspector find problems with Part 1 of the Local Plan, Officers were 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. The latest position on this issue is referred to below.

Five year supply position

- 4.27 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. 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.
- 4.28 The GTAA (2013) set 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 were approved in Swale, almost exclusively without an appeal, of which 33 pitches had been implemented. Evidence presented to the recent Local Plan examination (November 2015) 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. These mostly comprised extensions to, or more intensive use of, existing sites and were awaiting occupation. Since then six more wholly new permanent sites (comprising eight (8) pitches) were approved in 2015/2016 including two fresh pitches on a large mixed use development site at Faversham. A further two (2) pitches as an extension to an existing well located site were approved in November 2016, with another wholly new pitch (previously approved only on a temporary basis) was approved in December 2016. This provision of 58 permanent pitches (47 in 2013 to 2015 plus eight (8) in 2015/2016 and three (3) further pitches in 2016/2017) is a very considerable achievement and indicates the Council's positive attitude to such development in the right location. As at July 2016, monitoring shows that 41 new permanent pitches have been implemented with 13 pitches yet to have their permission implemented. Based on these figures the Council has already met two thirds of the original pitch target to 2031 and the number of pitches completed exceeds any residual requirement for the five year period. The Council is able to demonstrate a five year supply and has in fact exceeded a 10 year supply of pitches. However, the situation has since changed considerably.

The latest position on site provision

- 4.29 The revised PPTS (2015) has resulted in considerable uncertainty as it changed the planning definition of a traveller and gypsy, and therefore what number of required pitches need to be identified. Evidence to the recent Local Plan examination was that the Council has re-interrogated the GTAA data to determine the appropriate level of pitch provision based on the new 2015 PPTS revised definition of gypsies and travellers. The data revealed that for all but unauthorised sites some two-thirds of households surveyed for the GTAA either never travel or travel not more than once a year. Overall, only 31% of respondents travel a few times a year, and 55% never travel, meaning that in Swale the gypsy and traveller population is quite settled, slightly more

so than elsewhere in the country. Many of the borough's Gypsy/Traveller population no longer meet the new PPTS definition of having a nomadic habit of life

- 4.30 Accordingly, the need for pitches in Swale has been re-evaluated, resulting in a reduced estimate of pitch need of 61 pitches over the Plan period to 2031; this being the most generous of the possible reduced pitch numbers scenarios considered. Of these, 58 pitches have already been granted permanent planning permission meaning that the outstanding need is three (3) pitches to 2031. The Council considers that on the basis of past trends this need could easily be met from windfall proposals. Moreover it indicates that by proper engagement with the Council, appropriate sites can be found in sustainable and acceptable locations in Swale (generally outside of the AONB or other designated area) without an appeal, meaning that there is a high probability of being able to find an acceptable alternative site with minimal delay.
- 4.31 As a result of this analysis, the Council is suggesting through Main Modifications to its draft Local Plan (published in June 2016) that the future need be based on a figure of 61 pitches, leaving a need per year of less than one pitch and, that no formal pitch allocations will be needed. Policy DM10 has been revised to deal with these windfall applications and the element of policy CP3 on pitch allocations is to be removed from the Plan. Accordingly, a Part 2 Local Plan would not be required.
- 4.32 The Local Plan Inspector's third interim report (March 2016) fully supports the Council's proposed position regarding gypsy and traveller site provision, accepting that the remaining need for sites can be managed by windfall applications and without a Part 2 Local Plan. The Inspector also accepts that the Council should revise draft Plan policies to reflect progress on site provision whereupon the Plan will be effective and consistent with national policy. In June 2016 the Council published Main Modifications to the draft Local Plan to confirm these intentions and these were considered at the resumption of the Local Plan EIP in January 2017. Finally, a new appeal decision at Bredgar dated 6 February 2017 (based on data available in September 2016) has confirmed that "*...in view of the now significantly reduced level of need combined with the reasonably substantial increase in the number of permitted sites, many of which have now been implemented, overall I consider that that the Council has now demonstrated that it does have a five year supply of deliverable sites. On this basis there is no apparent need for further sites in the short term and in the longer term any outstanding need that might be established would be likely to be dealt with through the provisions of the emerging development plan*".
- 4.33 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 includes policies SD1, SD2, SD3, SD7, SD8 and LLC1 of the Plan, which refer to the need to conserve and enhance the natural beauty, tranquillity and remoteness of the AONB being the prime purpose of the designation, with new development respecting the area's character, quality and distinctiveness, with development that runs counter to the primary purpose of the AONB, or its distinctive landform, special characteristics or qualities being opposed.

5.0 LOCAL REPRESENTATIONS

- 5.01 Thirteen letters of objection have been received on the following summarised grounds:
- The site is in an AONB and is detrimental to the area, which the council has a duty to preserve
 - The site is not in a sustainable location

- The Council no longer has a shortfall of Gypsy sites, and the need issue which formed the basis for the temporary permission no longer exists
- The applicants have not produced any evidence to demonstrate that they lead a nomadic lifestyle
- The site is remote and not close to any local services
- The council should take enforcement action to remove this site and others in the locality
- It would set a precedent for other applications if permitted
- Access onto the lane is dangerous
- The lane is single track with poor visibility
- The harm to the AONB outweighs any argument of need for sites.
- No pedestrian routes exist for the occupants
- The application is not supported under the NPPF or the PPTS

6.0 CONSULTATIONS

- 6.01 Ospringe Parish Council has been consistently and strongly opposed to the grant of permission for all the sites in the Elverland Lane area, and this remains the case; there is also strong local opposition from residents. They say that their views have not changed and they see no reason for the permanent permission to be granted.
- 6.02 They say that the original four year temporary permission was given on the understanding that it made a valid compromise between the need for gypsy traveller accommodation and Swale BC's then incomplete gypsy traveller allocation. It is their understanding that under part 2 of Swale's emerging local plan there are now sufficient gypsy and traveller pitches available within the borough and therefore there is no need to grant any temporary or permanent permission for gypsy and traveller sites outside of those allocated pitches, particularly in an Area of Outstanding Natural Beauty.
- 6.03 Newnham Parish Council say that the original four year temporary permission was given on the understanding that it made a valid compromise between the need for gypsy traveller accommodation and Swale Borough Council's then incomplete gypsy traveller allocation. It is also their understanding that under Part 2 of Swale's emerging Local Plan there are now sufficient gypsy and traveller pitches available within the borough and therefore there is no need to grant any temporary or permanent permission for gypsy and traveller site outside of these allocated pitches, particularly in an area of outstanding natural beauty.
- 6.04 Kent Highways and Transportation say that it would appear that this development proposal does not meet the criteria to warrant involvement from the Highway Authority in accordance with the current consultation protocol arrangements. They suggest that if there are any material highway safety concerns that you consider should be brought to the attention of the HA, then please contact us again with your specific concerns for our consideration.

7.0 BACKGROUND PAPERS AND PLANS

- 7.01 Application papers for application 16/505471/FULL

8.0 APPRAISAL

- 8.01 In my opinion, the main considerations in this matter are the degree of conformity with policy towards development in the countryside and matters of sustainability; the visual impact of the site and impact of the development on the objectives of designation of the

Area of Outstanding Natural Beauty; the Council's current position regarding the supply of gypsy and traveller sites; whether a permanent permission should be granted and if not, whether a temporary permission is appropriate. If I do not conclude that the other merits of the application warrant the grant of a permanent or temporary permission I believe that it would be proper to go on to consider whether the applicant's personal circumstances are sufficient to warrant the granting of a permanent or temporary planning permission and then, whether a refusal of permission would constitute an infringement of the applicant's human rights.

- 8.02 My starting point for consideration of this application is the provisions of the saved policies of the Swale Borough Local Plan 2008 and the Council's published site assessment criteria for gypsy and traveller sites. Saved policies E6, E9 and RC7 seek to resist development in the countryside and to protect valued landscapes and rural lanes. In my opinion, there is no doubt that the location of the site is not generally suitable for residential development or use as a caravan site, being located in open countryside, well outside any defined settlement designated as suitable for residential development. Saved policy E6 seeks to protect the wider countryside from development except in specific exceptional circumstances. It follows that the granting of planning permission for the proposal would seriously undermine the effectiveness of local rural settlement policy and would have adverse implications for the intrinsic value and character of the countryside, unless it satisfies at least one of the exceptions that justify a departure from the development plan.
- 8.03 The site lies in open countryside and on an attractive rural lane, where established policy at local and national level is to restrict non-essential development. At NPPF para 115 it is made clear that in AONBs great weight should be given to conserving the landscape and scenic beauty. The objectives of AONB designation are to conserve and enhance the natural beauty of the area. This is therefore a key policy test here, which is closely linked with visual impact. PPTS (2015) at para 25 states that local planning authorities "should very strictly limit new traveller site development in open countryside this is away from existing settlements", meaning that such a site is no longer acceptable in principle. In my view this reference has three purposes which are to minimise visual harm to the countryside, ensure sites are not isolated from the settled community and, to ensure sites are sustainably located.
- 8.04 The weight to be given to AONB landscape protection remains a strong national policy. The site falls within particularly attractive isolated countryside and would normally be a significant barrier to development. However, in this instance, there are matters which reduce the landscape harm of the proposal which need to be considered. Firstly, the mobile units are located against the backdrop of a woodland and sited well away from the roadside – and due to site topography there is very little, if any, visual impact arising from the caravans. Secondly, the site access serves the stable building and is a lawful access, being permitted in 2005. In my opinion and for the above reasons, it would very difficult to construe an argument that the existing development causes significant detriment to the landscape, notwithstanding the high level protection afforded to the AONB. The site is discreet and well kept.
- 8.05 Overall, I consider that the landscape impact of this site is minimal, and that there would not be sufficient grounds to warrant a refusal of planning permission on such grounds alone, despite the site being located within the AONB. However the use does add to the stock of residential units in the AONB with associated activity and this would have some impact upon the remoteness and tranquillity of the AONB, despite it being well screened. This would result in some conflict with policy DM24 of the emerging plan.

- 8.06 Elverland Lane is designated as a rural lane to which saved policy RC7 applies. This specifies that development proposals should have particular regard to, amongst other things, the landscape importance of such lanes. The lane is distinctly rural in character and evocative of the essence of the AONB, making an important contribution to the character of the area. It is particularly attractive in its own right by reason of its narrow carriageway and long stretches of unbroken roadside vegetation. The existing access does puncture through this enclosed lane but, as specified earlier, this is a lawful access that would not be removed if residential use of the site were to cease. The use does generate additional traffic on the lane, but I consider such traffic movements from one site would be limited and would be insufficient to cause any harm to the rural character of the lane.
- 8.07 In terms of location, the site is very remote from services and sited within open countryside where journeys will almost always require the use of a car, due to travelling distances and the lack of any real alternatives (walking / cycling long distances on unlit rural lanes is not considered to be a realistic feasible option). This site is some 5-6km from Faversham, which is the nearest settlement with reasonable educational, health and social facilities. Nor is the site well located for integration with any local community. There are few facilities close to the site and any access to amenities will involve the use of private transport. Saved policy SH1 of the adopted Local Plan identifies a settlement hierarchy for the Borough where various levels of development might be appropriate. This isolated location is not one where there is ready access to amenities. It thus fails to meet the second stage of the Council's published site assessment criteria.
- 8.08 In this regard the nature of the site is far more remotely located than one at Spade Lane close to the Medway conurbation that was subject of an appeal decision regarding a proposed gypsy or traveller site in October 2014. In that case (APP/V/2255/C/14/2220447) the Inspector considered whether the use of that site close to a major population centre with a wide range of facilities as a gypsy or traveller site constituted sustainable development. He noted that locational sustainability depends on a range of factors which are neither constant nor easy to measure with confidence. Nevertheless, he concluded that the site was "in a location where the overwhelming majority of journeys to shops, to school, to the doctor or to most other facilities and services would be undertaken by car." He added that "The distances involved, the absence of any public transport in easy reach, the character of the lanes along which people would travel, and the unattractiveness at night, in winter or in bad weather of any short cuts provided by local PROWs, would obviate journeys on foot other than for the fittest and/or most enthusiastic of walkers." His conclusion was that the sustainability benefits of the proposed development were minimal and more than outweighed by significant and demonstrable disadvantages. I consider that similar conclusions apply with even greater force here where the site is far further from amenities and where the roads and lanes in question are also without footpaths or street lighting.
- 8.09 If further evidence were needed, there have been three recent appeal decisions relating to private gypsy and traveller sites in Elverland Lane close to the current application site in 2007, 2011 and 2012. In the 2007 appeal decision at the site then known as Tootsie Farm, now Hill Top Farm, the Inspector commented that;

"I am also not convinced that this is a particularly sustainable location for a Gypsy site. I appreciate that Billy seems to have coped with school in Faversham on his bike and proposes to use bike and train to go to college in Canterbury. While it meets the current needs of the family it is in a relatively remote and sparsely populated location some distance from services which in the main are to be found in Faversham. However, I do

not consider it so unsuitable a location as to rule it out were that the only area of concern.”

Nevertheless in January 2012 (pre PPTS), a different Inspector commenting on the same site said that;

*“As to **sustainability** the evidence strongly suggests that there are more sustainable locations for G&T development than the appeal site, which in effect adds to the scatter of residential development in the open countryside. There is no reason to doubt that the eventual allocation of sites to meet G&T pitch needs, whether within the Borough or within this area of Kent as part of a joint effort by a group of local authorities complying with their duty to cooperate, will be in more sustainable locations and circumstances than the appeal site. This has considerable weight as an objection to the grant of a permanent permission for the appeal use. On the other hand, until adequate pitch provision is made elsewhere account should be taken of the advantages of providing, even on a temporary basis, for those who lack alternative accommodation and would therefore otherwise be moving between potentially more unsatisfactory temporary locations. This point is referred to in paragraph 64 of ODPM Circular 1/2006, and in this case I consider it to balance harm to sustainability objectives in the short term.”*

Finally, at Horseshoe Farm, also higher up Elverland Lane (above the current application site) an Inspector in May 2012 (post PPTS 2012) stated that;

“19. Paragraph 11 of the PPTS requires traveller sites to be sustainable economically, socially and environmentally. The appeal site is remote from all services and facilities and is not well located in relation to any settlement so as to foster social inclusion. It is isolated, in a sparsely populated area and there is environmental harm as identified above. Although there are two other gypsy sites nearby, they are not lawful.

20. A positive factor is that the Applicant has his horse keeping and breeding business based on the land on which he lives which reduces daily travel. There are also the recognised benefits arising from having a permanent base, such as being able to access health services more readily and reducing any need to move around on unauthorised sites. But those are benefits which arise in the provision of any permanent site and do not outweigh the disbenefits arising from the isolated location in this case.”

- 8.10 On the basis of this consistent view from recent Planning Inspectors, and bearing in mind the results of the Council’s own site assessment criteria (see above) I consider that this location is too remote from services and amenities to be acceptable as a permanent gypsy or traveller site. I consider that the limited remaining need for sites in the Borough can more properly be met in far more suitable locations and that use of this site fails to meet the environmental role necessary to be considered sustainable development in terms of the NPPF definition.
- 8.11 In this context, I consider that a strong case would again need to be made for a decision to favour a permanent use of this site. The approach being brought forward through the emerging Local plan does not require a separate site allocations DPD to allocate gypsy and traveller sites. The Council has made very significant progress on site provision. A new GTAA has been completed and all but a few sites from the entire site supply need identified up until 2031 have been provided. The Local Plan Inspector has very recently agreed that the remaining site need can be managed by windfall applications. I accept that this site is capable of being a windfall application but this would be judged against the new criteria based policy DM10. I have already discussed how this site falls well short of the Council’s current site assessment criteria which

would have been used to allocate sites under DM10 as originally drafted. It is therefore no surprise to find that the site fails to meet the criteria of DM10 as proposed to be modified. In particular the site fails on the following points;

- The remote location of the site fails the sustainability criteria of DM10 as it falls within category 6 of policy ST3 being in open countryside and not protecting the intrinsic value or beauty of the countryside
- Its isolation does not achieve integration between communities

8.12 Taking the above factors into account, I would conclude that the policy harm arising from this development relates to the unsustainable and isolated location of the site, together with harm to the intrinsic value, tranquillity and beauty of the countryside and AONB by virtue of placing residential development within such a rural location. However I do not consider the development causes any unacceptable landscape harm to the AONB, or harm to the character of the rural lane due to its discreet location and lack of visual impact.

Whether a temporary permission might be appropriate if a permanent permission is not.

8.13 Planning permission was originally granted for the applicants to occupy this site on a temporary basis, and was subsequently extended in 2012. On both occasions, the policy position was somewhat different as was the need for sites within the Borough – with a much greater identified need in the past which weighed significantly in favour of a temporary permission.

8.14 This was in line with previous Government advice in the past that local planning authorities should consider favourably planning applications for housing where a five year supply was lacking. PPTS 2012 continued that theme, stating that the lack of a five year site supply should be a significant material consideration in relation to a potential temporary permission.

8.15 However, PPTS 2015 has re-written this advice, now saying that the exception to this advice is where a site lies in a designated area such as an AONB. My conclusion now is that the Government's intention is to safeguard AONBs from temporary site development (presumably when a site is not acceptable on a permanent basis) even where site supply might be lacking. In this conclusion I am supported by the findings of a very recent appeal Inspector regarding site at Bredgar (February 2017) where he found that *“the PPTS has been amended such that where a five year supply of deliverable sites cannot be demonstrated, this cannot be a significant material consideration when considering applications...where the land is within an AONB”*. As a result, I consider that the tide has now firmly turned against the possibility of a further temporary planning permission here. There is in my view no case for granting temporary permissions pending policy production and the possibility of sites being allocated. Nor is there a shortage of site supply here. I have already concluded that the site is not suitable for a permanent permission. I have now also concluded that there is no case for a temporary permission based on waiting for emerging policy and a specific site allocations DPD, or on the basis of a lack of site supply.

8.16 In taking this approach, it is difficult not to have sympathy for the applicants. They have occupied the site for around 10 years and have benefited from two temporary planning permissions. However the same circumstances that lead the Council to grant temporary planning permission in the past no longer hold the same degree of weight. The position on site need is very much different today (see paras 4.27-4.32 above) – and in any case the latest PPTS advice does not give significant weight to lack of a 5 year site supply for proposals on land within the AONB.

The applicants' own circumstances.

- 8.17 The Council has made relevant enquiries regarding personal circumstances during the course of this application. The applicants have submitted a number of documents and details, and previous applications have also been used to resource information. I have had regard to this information in the following sections.

Gypsy status.

- 8.18 The applicants have previously submitted details of their Gypsy status under the previous applications, and there is no dispute that he has followed a Gypsy lifestyle. The applicants have two children who attend college / school in the wider area (see below) and the applicants have also submitted information relating to on-going health issues, confirmed by letters from Kings College Hospital and the local medical surgery, which would no doubt restrict a nomadic lifestyle at present. In my opinion, the applicants would fall under the definition of a gypsy / traveller under the PPTS.

Health and Education issues.

- 8.19 The applicants have set out health issues with supporting evidence from the local medical surgery and Kings College hospital. In addition, the applicant has confirmed that an older son attends college and a younger son attends a specialist school in East Malling.
- 8.20 The revised PPTS now makes it very clear that personal circumstances are unlikely to clearly outweigh harm to the AONB sufficient to grant a temporary permission, even where the supply of sites is inadequate. The exception here is where the best interests of a child might indicate otherwise (see Article 3 of the United Nations Convention on the Rights of the Child (UNCRC)). It is quite clear to me that in taking a decision which affects children the decision maker should understand and take proper account of the best interests of the child involved. This issue also relates to Article 8 of the European Convention on Human Rights (Right to a Private and Family Life). On the one hand, a permanent permission would provide a settled base for the family, and particularly their children – whilst a temporary permission would provide shorter-term certainty. On the other hand, there are no obvious reasons why such a base can only be provided from the site subject to this application – particularly as the youngest son is schooled from well outside the Borough. It is therefore not clear to me how the best interests of the family and particularly the children can only be served by settling on this remote site.
- 8.21 Even taking the best interests of the children involved here to have a settled base, I ask whether this can be outweighed by any combination of other factors. I find that the combination of significant factors including the impact of the development on policies to protect the countryside and AONB, and the remote location and lack of accessibility to vital social, health and educational, facilities; create powerful counter arguments for the need for a settled base to be met on this site. That is not to say that the need cannot or should not be met elsewhere in the Borough (or beyond) where all these factors might not be present.
- 8.22 National policy is not to grant temporary planning permissions in an AONB and, given that the Council will not be allocating the application site or any other sites for the foreseeable future, the applicants will be best served by finding an alternative permanent site elsewhere sooner rather than later. There seems to me to be no benefit in extending the applicants' current occupation of the appeal site as this will simply drag out the inevitability of relocation.

- 8.23 The applicants' evidence of a need to live on the site for personal, health, or educational reasons is understood. Having considered whether a personal permission might be appropriate I can find insufficient reason to grant one, and I consider that a decision not to grant a personal permission is proportionate to the interference with the applicants' human rights and the Council's need to consider the best interests of the child as a primary consideration.

Equality and Human Rights issues

- 8.24 It is quite clear that in taking a decision which may affect children the decision maker should understand and take proper account of the best interest of the child involved. Article 8 of the European Convention of Human Rights requires respect for family and private life, and I am also mindful of the entitlement of gypsies and travellers to their traditional way of life which involves living in caravans.
- 8.25 Refusal of the planning permission would have been an infringement of the appellants' rights under the ECHR. Even taking the best interests and the Human Rights of the applicants and their family into account, however, that infringement is, in my view, proportionate and necessary in the public interest to avoid permanent harm to the countryside and landscape, which is supported by the above local and national policies. The Council has supported the family when the supply of sites was short, but they have not sought an alternative site despite it being clear that their permission as only ever temporary, and the Council has made significant provision in the meantime. To that extent I firmly believe that the Council has been more than fair in its approach to their needs, much to the chagrin of the local community. The circumstances are now far different and I am certain that a different approach is now appropriate and proportionate.
- 8.26 I consider that that the combination of significant factors, including the remote location within the AONB and lack of accessibility to vital social, health and educational facilities, now create powerful arguments against the need for a settled base to be met on this site. That is not to say that this need cannot or should not be met elsewhere in the Borough (or beyond) where all these factors might not be present.

The balance between the above issues

- 8.27 The appeal site is in an unsustainable location, very remote from social, health and educational facilities, and is not a site where a permanent planning permission ought to be granted on the basis of current policies. Whilst the site causes little visual impact to the landscape, it does add to development within the AONB with resultant harm to the tranquillity and sense of remoteness of the area.
- 8.28 The personal circumstances relating to health and education needs have been considered. Overall, I find that the harm identified is not outweighed by the applicants' family's personal circumstances. Rather, I conclude that the inappropriate location of the site far away from any amenities, when considered against current PPTS advice and the comparative lack of need for sites in the Borough, all weigh against a further personal or temporary planning permission.
- 8.29 Any refusal of planning permission for someone's place of residence is potentially a breach of their human right to a home. However, this right is to a home, not to a particular site. There is nothing to suggest that the applicants' family's need for a permanent site can be met only on the appeal site or only within the AONB, and in fact there may be equally suitable sites closer to amenities and services in Faversham or

other larger settlements that do not fall within the AONB. Such sites are more likely to be acceptable to the Council. To that extent I do not consider that there would be a disproportionate interference with the applicant's rights under the Convention if permission were refused.

9.0 CONCLUSION

- 9.01 This site falls within the Kent Downs AONB. Whilst the PPTS makes clear that gypsy and traveller sites in rural areas without special planning constraints are acceptable in principle, it does state that sites in open countryside should be very strictly controlled and that sites that compromise the objectives of designation should not be permitted in AONBs. I have concluded that the use of the site has a very limited visual impact upon the AONB landscape, but it would erode to a small degree the sense of remoteness and tranquillity that helps to define such areas. The site falls within isolated open countryside with no access to local services or facilities and no alternative to travel other than by car, and in this respect is unsustainable.
- 9.02 The Council has been working to provide new sites across the Borough, and this has resulted in a substantial number of permanent pitches being approved. There are also substantial suitably located rural areas where a gypsy and traveller caravan sites would be acceptable in principle, and closer to settlements and related services and facilities.
- 9.03 The position regarding site supply is currently one where it is not necessary to consider setting aside serious environmental constraints to meet any deficiency in supply. I have considered the applicants' personal circumstances, but have concluded that there is nothing to suggest that his need can be met only on the appeal site or only within the AONB.
- 9.04 In balancing the competing issues of the need for and potential availability of alternative sites against the serious objections to the use of this site as a private gypsy site in terms of harm to sustainability, I believe that the balance weighs against permission being granted on this site.
- 9.05 I have considered the applicants' gypsy status and the need for sites, but have concluded that site supply is well advanced and as the area is very poorly served by amenities; it would be unsustainably located in contravention of planning policy, and that the site does not score well enough in relation to the Council's gypsy and traveller site assessment criteria to be suitable for a permanent planning permission. I have considered whether a personal or temporary planning permission would be appropriate and have concluded that it would not. I therefore conclude that the proposed development should not be granted planning permission.

10.0 RECOMMENDATION – REFUSE for the following reason.

REASONS

- (1) The application site lies in a remote and unsustainable location far from shops, services, public transport, or other amenities, and the site occupants would be heavily reliant upon private vehicles for transport. In addition, the site is located within the Kent Downs AONB and the activity associated with residential use would erode the sense of remoteness and tranquillity within this designated landscape. The Council has taken account of the position in terms of the supply of gypsy and traveller sites, the health and education issues of the applicants and their family, and considered whether a permanent or temporary planning permission should be granted. Despite appreciating the personal circumstances of the applicants' family, the Council does not consider

that a permanent or temporary planning permission represents an acceptable balance between the need for gypsy and traveller sites in the Borough and the personal circumstances of the applicants' family, and the harm that occupation of the site causes to planning policy for the appropriate location of gypsy or traveller sites in terms of remoteness and access to services and amenities. In taking account of all these factors the Council considers that this proposal does not represent sustainable development, and that planning permission should be refused. The development would therefore be contrary to the provisions of the National Planning Policy Framework; saved policies E1 and E9 of the Swale Borough Local Plan 2008; and Policies ST3, DM10 and DM24 of Bearing Fruits 2031: The Swale Borough Local Plan Proposed Main Modifications Draft June 2016.

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 applicants 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.