

3.2 REFERENCE NO - 15/509545/FULL			
APPLICATION PROPOSAL			
Removal of condition 1 of SW/10/1446 (Application to vary condition 1 of planning permission SW/05/1316 (personal & temporary condition) to make the planning permission permanent or vary the condition for a further temporary permission for 4 years.			
ADDRESS Hill Top 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 adversely affect the natural beauty of the Kent Downs Area of Outstanding Natural Beauty, will result in an unsustainable pattern of development, and will adversely affect highway safety in a manner contrary to national and local planning policies, factors which outweigh the need to provide gypsy and traveller sites and the personal circumstances on the applicant and his family.			
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 John Howard AGENT Philip Brown Associates	
DECISION DUE DATE 08/01/16	PUBLICITY EXPIRY DATE 24/05/16		
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
YEAR/App No	Proposal	Decision	Date
2011			
SW/10/1446/CCA	Application for compliance with conditions 7 (site development scheme) and 9 (maintenance) of planning permission granted by appeal decision dated 23 February 2012	Refused	27/07/2012
Enforcement Notice served 15/08/2011	Use as a caravan site and for keeping horses, and erection of w.c., fencing and hard-surfacing and new access	3 appeals allowed on ground (g) only with new two year period for compliance. So:- EN confirmed but overridden by temporary permission above issued on same date	23/02/2012

<i>Reasons: Impact on AONB, highway safety</i>			
2010			
SW/10/1446	Application to vary condition 1 of planning permission SW/05/1316 (personal & temporary condition)	Refused Appeal allowed; non-personal permission for 4 years	04/02/2011 23/02/2012
<i>Reasons: Impact on AONB, highway safety</i>			
2007			
Enforcement Notice served 06/03/2007	Use as a caravan site and for keeping horses, and erection of w.c., fencing and hard-surfacing and new access	Appeal allowed; personal permission for 3 years	15/11/2007
2005			
SW/05/1316	Use of land for one mobile home and one tourer for gypsy family.	Refused Appeal allowed; personal permission for 3 years	05/01/2007 15/11/2007
<i>Reasons: Impact on AONB, Lack of gypsy evidence, highway safety</i>			

1.0 DESCRIPTION OF SITE

- 1.01 The site is a small, relatively level and hard surfaced area at the top of a field running down the side of the Newnham Valley. The lower part of the field also owned by the applicant was granted planning permission for keeping horses on appeal in 2007 although this is subject to a separate enforcement notice served in 2011 alleging non-compliance with the terms of that enforcement notice appeal (not appealed), effectively ending that permission.
- 1.02 Whilst the site is not visible from the east as it is below the level of the adjoining land, it is very prominent across the valley from the west. From the M2 travelling eastwards, and the overbridge to the west, and from other public vantage points, the site is prominent and, the laurel hedging planted to screen the caravan now on it gives the site an intrusive appearance. Because of its contours, the site is difficult to landscape from this point of view as any planting has to be on lower ground, so not having any impact unless quite tall. The laurel bushes were planted along the western side of the hard-surfaced area at the time of a 2007 appeal hearing and these have now grown significantly. Unfortunately they appear quite alien to their surroundings and in fact do little to limit the long distance landscape impact of the site from high ground to the west.

- 1.03 The site access onto Elverland Lane has very limited visibility to the left/east (uphill) and there do not appear to have been any improvements to the visibility at the site entrance since the previous appeal hearings. The site access, hard standing, fencing, laurel hedging and use of the site have a distinct impact on the character of the lane.

Planning history

- 1.04 In November 2005 a retrospective application for “Use of land for one mobile home and one tourer for gypsy family” was made to the Council (SW/05/1316). This was refused in January 2007 on grounds of visual intrusion, landscape impact, remoteness, the applicant’s apparent lack of gypsy status, and lack of safe access due to poor visibility at the site entrance. This was immediately appealed, as was an enforcement notice against the use of land as a caravan site and for keeping horses which had been served shortly thereafter. This notice required cessation of use of the site as a caravan site and removal of associated physical works and access; but not removal of a stable type building pre-dating the applicant’s ownership of the site. All appeals were heard via an informal hearing held on 16 October 2007.
- 1.05 The Inspector’s decision (15 November 2007 and appended to this report) is a complicated one which essentially grants a permanent permission for keeping horses (subject to conditions) but grants only a temporary and personal permission for use as a caravan site, due to the Council’s then uncertain gypsy and traveller site policy position, and on personal grounds.
- 1.06 The Inspector simplified the terms of the enforcement notice to refer simply to an alleged change of use as a caravan site and for keeping horses (paragraph 4) and then granted planning permission for that use on Appeal A (para 31) with 12 conditions (para 32). These conditions do not limit the duration of the approved horse keeping, but limit other commercial uses (4), lighting (5), numbers of horses to be kept (8), the holding of shows (9), burning of manure (10), external storage (11) and field subdivision (12). Condition (6) also requires the submission and approval of certain details including drainage, manure storage, landscaping and modification of the access to serve post caravan site use of the site for keeping horses. These details were never approved and this, combined with the 2011 enforcement notice essentially means that this permission no longer exists, at least not in relation to the current application site where the other planning permission (based on application SW/05/1316) was the one implemented.
- 1.07 The second Appeal B decision (paragraph 33) granted a separate permission solely for the use of land for one mobile home and one tourer for a Gypsy family, with six conditions, based on the appeal against refusal of application SW/05/1316. Conditions (1) to (3) provided for only a personal and temporary permission. Conditions (4) to (6) related to no commercial use, no lighting and to drainage matters. It was only for variation of condition (1) of this permission that approval was sought in 2010 (personal and temporary use of the land for two caravans); not for keeping the related caravans or physical works (condition 2) although both are highly interrelated.
- 1.08 It is worth reviewing the reasoning behind the Inspector’s 2007 decision (what I will refer to as the first Inspector’s decision). This decision was issued after a hearing held the day after the original GTAA figures for Swale were published, and when the Council (quite understandably) had no plans or timetable to respond to them.
- 1.09 The Inspector heard new evidence and accepted the then appellant’s gypsy status.

- 1.10 The Inspector examined the site's suitability as a caravan site where he recorded that being in the AONB was not necessarily a reason for refusal (para 13), but that it was necessary to demonstrate that the objectives of the designation will not be compromised. He saw this as a particularly high test, as planning policy is intended to protect landscape character and natural beauty. He noted that the site was visible from close to its entrance and from more distant views, two of which provided wide views of the essence of this dry valley landscape, and in which the site appeared alien and incongruous (para 14) despite the new laurel hedging - which was not seen as in keeping with the natural qualities of this landscape (para 16). The access was also seen as intrusive (para 15). The Inspector concluded that the site was harmful to the landscape and undermined the objective of AONB designation (para 17).
- 1.11 On sustainability, the Inspector felt that the site was relatively remote and some distance from services, but that this on its own was not sufficient to rule it out as an acceptable site (para 18). However, the Inspector found the access lacking in adequate visibility to the east, where it cannot be improved, and said that there would have to be "a pressing need for this site to be used as a Gypsy site to outweigh the highway objection" (para 19).
- 1.12 In terms of the need for sites, the Inspector saw this as a "fundamental material consideration" (para 20) and noted the need to see more sites provided. He considered there was at that time a significant unmet need, and that there was a pressing need for more sites to be brought forward as a matter of urgency in Swale, and that this had been known for some time (para 22). He criticised the Council, unfairly in my view, for pursuing the adoption of its Local Plan which did not incorporate the then new Circular's (01/2006) site allocations policy requirement – even though the long process for production of the Plan (by then well advanced) had started long before the new Circular was published.
- 1.13 He then considered whether there might be a case for a temporary permission and stated that this type of permission could be granted without any implied commitment or precedent for the determination of future applications (para 23).
- 1.14 The Inspector then considered the personal circumstances of the case which included the appellant's son's (Billy) forthcoming spine operation and on-going full time education, which he gave weight to (para 24). He concluded that both matters would only be assisted by having a settled base, and that it was not acceptable to have the family return to the road whilst these issues were on-going. He held that the educational needs of Billy were a cogent reason to allow the family to remain on the site for the next two years (para 25) and that those personal circumstances weighed heavily in support of a period of stability and temporary continuation of the use (para 26).
- 1.15 In conclusion, the Inspector was satisfied that the site was inappropriate for a permanent Gypsy site given, in particular, the impact on the landscape of the AONB despite the clear case of general need for more Gypsy sites. He also made clear that the risk to highway safety was real, but acceptable in the short term (para 26). However, he felt that the competing tensions could at that time be met by granting a two year temporary permission, although a three year permission would not be inconsistent with the objectives of national guidance (para 27). He had concluded by emphasising that the site was unacceptable as a permanent Gypsy site because of its landscape impact, relative remoteness and access (para 28). He granted a three year temporary and personal permission which authorised use of the site until November 2010.

- 1.16 In 2010 the original appellant applied to remove condition (1) of the appeal decision (Appeal B above) to remove the personal and temporary limit on the planning permission. This application SW/10/1446 was submitted in November 2010 but refused by the Council in February 2011. After an attempt by the Council to negotiate a voluntary vacation of the site with the appellant a further enforcement notice was served in August 2011 (with a 12 month compliance period) after the appellant appealed the February 2011 planning refusal. The enforcement notice was appealed in three names (the appellant and his two sons) and a combined hearing for all four appeals was held on 11 January 2012. The fee for the enforcement appeals was not paid so the enforcement notice appeals proceeded only on grounds (f) and (g). Ground (f) appeals were dismissed but ground (g) appeals succeeded as follows.
- 1.17 The complicated result of that hearing, issued on 23 February 2012 (decision appended to this report), was that the enforcement notice was confirmed with a longer (two year) period for compliance, whilst the planning appeal was granted with a four year temporary permission, which was not personal to the appellant. This decision (that of the second Inspector) bears further careful analysis, especially as it forms the basis for the current application, which is to remove condition (1) of that decision to make the use permanent, or at least longer.
- 1.18 The second Inspector considered the appellants to be gypsies with no clear alternative site to go to should they have to leave the application site (paragraph 4). He noted the then PPS3 (pre- NPPF and PPTS) requirement for a 5 year supply of sites and was told that as the 2007 GTAA had not been updated the future pitch need was not known – the Council's current 2013 GTAA was published after this decision was made. The Inspector was faced with a need for 62 pitches to 2011 which had not been provided, and with further pitches likely to be needed in the 2011 to 2016 period with a new GTAA to be carried out. Pitch allocations were expected in either a Core Strategy or DPD (para 6).
- 1.19 In relation to the AONB the Inspector noted (para 10) that the laurel hedging had grown to become a more effective screen since 2007, but that some previous hard surfacing evident from Elverland Lane had been removed and the caravan re-positioned behind the stable building, reducing the site's visual impact on the lane (para 11), but not removing any impact entirely. Overall, he saw the site as visible in the wider landscape, with the caravans being out of keeping with traditional rural buildings and the laurel hedge not being a natural feature of this landscape. He concluded (as the first Inspector had) that the development was "harmful to the landscape and undermines the objective of AONB designation, as it fails to conserve or enhance the natural beauty of the landscape". He gave this matter substantial weight as an objection to the proposal (para 12).
- 1.20 In terms of sustainability, the Inspector concluded that any likely allocations of new sites would be in more sustainable locations, and that this was a considerable objection to the proposal; albeit that until adequate pitch numbers had been reached the benefit of not seeing the appellants moving temporarily to a more unsatisfactory location meant that this objection could be set aside over the short term (para 12).
- 1.21 In relation to highway safety (para 14) the Inspector concluded that the access remained substandard, particularly with regard to visibility to the left, and that the use of the site would be likely to generate more movements than a non-residential use. This he afforded considerable weight to; but less so over a temporary period.
- 1.22 On site supply, the evidence at that time was that the Council had not provided all the pitches required to 2011 nor did it have a forward looking five year supply, meaning

that there was then a clear unmet need for sites. This meant that favourable consideration should be given to an application for housing giving weight to unmet need. The Inspector then considered how a temporary permission might sit with the unmet need issue, and he concluded that substantial weight should be afforded to the need where a temporary permission is envisaged; and he concluded on that basis that a temporary permission would be appropriate (paras 17, 18 and 21). This was prior to the latest guidance in PPTS (2015) regarding temporary permissions in AONBs.

- 1.23 The personal circumstances of the appellants included one occupant needing a back operation, another having a young child, and one of the appellants needing a settled base to comply with his prison release licence; but these were not deemed to add significant weight to the decision, or to be so compelling that a personal planning occupancy condition was necessary (para 19).
- 1.24 In the overall planning balance (para 20) the second Inspector gave substantial weight to the harm to the AONB, and considerable weight to objections on sustainability and highway safety. Against this, he attached considerable weight to the need for additional pitches and the personal circumstances of the appellants, with the harm outweighing the need for pitches and personal circumstances other than on a temporary basis. He decided that a four year temporary permission should be granted, which would not be a precedent to a permanent consent (para 21), to allow adoption of a DPD by 2014 and a further 18 months to allow for a planning application. The planning permission granted ran from 23 February 2012 to 23 February 2016 and effectively superseded the extension of the compliance period on the related enforcement notice appeals, as that only ran for two years.
- 1.25 It seems that the current applicant purchased the site from the successful appellants in September 2012, shortly after the appeal decision granting temporary permission was issued in February of that year.

2.0 PROPOSAL

- 2.01 The current application, originally submitted well ahead of the end date of the latest temporary permission, is essentially to renew/extend the temporary permission either permanently or temporarily (for another four years) by the current owners who purchased the site under the temporary planning permission. The application is supported simply by a site plan (not showing any adjoining land edged blue to indicate that it is in the applicant's ownership) and a letter from the agent which states, in summary, that;

- The requirements of condition (7) of the 2012 appeal decision have been discharged.

NOTE: the submission was in fact refused on 26 July 2012 and remains outstanding

- No changes to any of the appeal conditions other than condition (1) (the four year time limit) are sought
- The applicant is Mr John Howard who solely owns the land (see below for more on this)
- Mr Howard lives with his wife Sarah and their two children Annabel (7 years) and Darcy (5 years, now 6 years)
- The applicant and his family are Romany gypsies who continue to have a nomadic habit of life during school holidays, whilst ensuring that the children attend Ospringe Primary School, and they have no intention of abandoning a travelling lifestyle

- Mt Howard also owns seven acres of land where he keeps seven horses which he buys and sells at horse fairs throughout 6-8 weeks a year
- At other times Mr Howard will be laying tarmac and trading in vehicles – presumably travelling from the site daily
- The latest GTAA sees a need for a further 35 pitches in Swale, especially for small rural sites
- The Local Plan is not likely to bring forward new sites until after expiry of the temporary planning permission
- The site could contribute towards pitch supply
- The site has been occupied for over 10 years and this “provides exceptional mitigating circumstances” in the absence of alternatives to meet the family’s needs
- The Council has not brought forward any alternative sites
- The applicant has already integrated with other sites in Elverland Lane, and these sites do not dominate Painters Forstal, but comply with criteria in draft Local Plan policy DM10
- Although in the AONB, the site is small and well screened from Elverland Lane, yet the Inspector considered it visible in the wider landscape and the caravans to be out of keeping with traditional rural building forms
- However, it is argued that viewpoints are distant and that the site is below the skyline, screened by a mature hedgerow
- The site will not materially harm the landscape character of the area or compromise the objectives of AONB designation

2.02 Since submission of the application I have asked for information about the site occupants, and any particular personal or medical issue that they might suffer from. No new information was revealed.

2.03 Latterly, local residents submitted to me Land Registry details indicating that the applicant is not the sole land owner, and that at the time of purchase of the site and adjoining land (jointly with an Anne Howard) he had a permanent address (terraced house) in the Medway Towns which he (or another John Howard) jointly owns with Anne Howard, and which was purchased in 1983. I put this information to the agent and he has since confirmed that the applicant is the joint owner of the application site with his mother Ann Howard, and that he has now served formal notice of the application on his mother (September 2016) at the address in the Medway Towns. This regularises the legal status of the application.

3.0 PLANNING CONSTRAINTS

Area of Outstanding Natural Beauty KENT DOWNS

Enforcement Notice ENF/07/016

Enforcement Notice ENF/11/023

Enforcement Notice ENF/11/024

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 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.”

This emphasis on sustainable development post-dates the previous appeal decisions on this site, even though both previous Inspectors had already raised doubts over the sustainability of the site.

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 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 housing 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. This is the figure referred to by the agent in his covering letter and is based on data and need figures from as long ago as March 2015. 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 (most relevant bit in **bold**);

“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 it has previously been recognised by two Inspectors as having a negative impact on the natural beauty of the area and compromising the objective of AONB designation (red); it has very harmful landscape impact (red); it has no unacceptable impact on biodiversity (green); no dominating effect on settlements on its own but there are already two other private gypsy sites nearby on temporary permissions on the otherwise unpopulated Elverland Lane. Furthermore, a recent planning application for a further private site on adjoining land was recently refused by the Council, and that application has now been resubmitted since the original appeal was submitted too late. If another appeal is lodged (the site is currently also subject to a Ground (g) enforcement notice appeal) this will 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); has dangerous access which the highway authority have raised formal objection to and which previous Inspectors have found to be unacceptable (red); and is remote and not within walking distance to any significant facilities at 6km from Faversham station, 4.6km to Ospringe School and 4.5km to Eastling School (red). This significant number of red scores 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 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 (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 included policies SD1, SD2, SD3, SD8 and LLC1 of the Plan, which refer to the need to conserve and enhance the natural beauty of the AONB being the prime purpose of the designation, with new development respecting the area's character, quality and distinctiveness, with development that runs counter to the primary purpose of the AONB, or its distinctive landform, special characteristics or qualities being opposed.

5.0 LOCAL REPRESENTATIONS

- 5.01 I have received 33 letters of objection to this application from the wider local area despite it being thinly populated. These object to the application on the following summarised grounds;
- If the children living at the site are attending school regularly the occupants cannot have a nomadic habit of life

- Nor does attendance at horse fairs demonstrate a nomadic habit of life as many members of the settled community attend such fairs
- Why do the applicants need a permanent site if they have a travelling lifestyle
- The application should not be determined on gypsy policy grounds, in which case it is contrary to many Local Plan policies including saved policies E1 and E9, draft policies ST1 and DM24, and paragraphs 13, 16, 24, 25 and 27 of PPTS
- It also fails the tests in draft policy DM10 for harming the AONB, failing to show integration with communities, dominating the settled community, and having non-native landscaping
- The site is clearly visible from multiple viewpoints and detracts very obviously from what is a lovely wood/field setting. The caravans are out of character with the surroundings
- Previous factors in favour of the site have been removed as the Council has now satisfied most of the outstanding pitch need, and because any remaining need can be met over the plan period meaning such unsuitable sites need no longer be tolerated
- Permanent permission has twice been refused here on appeal
- The site has changed hands just after the latest appeal decision and the applicant must have been aware of the temporary nature of the permission
- The reasons for the previous approvals no longer exist and the careful balancing decision of the Inspector needs to be re-assessed
- There is now no presumption in favour of a temporary permission in an AONB if site supply is short
- Only personal circumstances can possibly justify a planning permission now but PPTS says that these are unlikely to constitute very special circumstances BUT these, including educational need, did not override the harm identified in the latest appeal decision on this site
- It is highly unlikely that a third appeal would be successful
- More reasonably, an extended period of compliance (six months) to re-locate should be allowed
- Approval would set a dangerous precedent, as witnessed by recent unauthorised occupation of an adjoining site
- The horses being in foal should not lend weight to approval of the application
- The Council has so far failed to make sure that the land was returned to grazing land as the Inspector decided, this should be done now to avoid any more public money being spent
- The Council should not even been considering the application but may have been pressurised into finding sites
- There are often not water or sewage facilities at such sites, making them unsuitable for human habitation
- We support the comments of the Kent Downs AONB Unit
- Road access can be dangerous and has not always been approved
- The cumulative impact of so many sites so close together will encourage the development of an enormous encampment

6.0 CONSULTATIONS

- 6.01 Ospringe Parish Council remains opposed to the application and only wishes to see a temporary permission if the appellant would be likely to secure permanent permission on appeal. They do not see any exceptional mitigating circumstances to approve the application, nor do they agree that the development does no material harm to the AONB. They understand that site supply is now sufficient and that there is no need to grant temporary or permanent permission here.

- 6.02 The Parish Council has responded to the applicant's information regarding their gypsy status, noting that what is important is not their birth or cultural background but whether they have a nomadic habit of life. They say that the information provided does not demonstrate that the applicant and his family have a nomadic habit of life nor is there any supporting evidence to back up the limited claims. Finally, they note that the applicant purchased the site with only a temporary permission which was at best speculative, but that horses could still be kept at the site even if residential permission is denied.
- 6.03 The Kent Downs AONB Unit has written opposing the application on the following summarised grounds;
- The site lies within the Kent Downs AONB and the application should be tested against the purpose of designation, to conserve and enhance natural beauty
 - The site lies in a particularly attractive, undeveloped and remote part of Swale within the Mid Kent Downs Landscape Character Area where their Landscape Design handbook advises that one of the overall objectives is to maintain the remote quality of the countryside and control urban fringe pressures
 - They consider that permanent use for the stationing of a residential caravan and associated activities detracts from the landscape character of the locality failing to conserve the natural beauty of the AONB
 - The application is contrary to policies SD1, SD3, SD8 and LLC1 of the current AONB Management Plan which is a material consideration which should attract considerable weight
 - The application is also contrary to draft Local Plan policy DM24 which requires development to conserve and enhance the special qualities and distinctive character of the AONB, and to para 115 of NPPF which provides that great weight should be given to conserving landscape and scenic beauty in AONBs
 - They refer to the 2012 appeal decision on this site where the Inspector found harm to the AONB and they consider that this remains the case and that a permanent permission would be "wholly inappropriate"
- 6.04 The Environment Agency does not raise objection to the application even though the site lies within a groundwater source protection zone as they consider there is a low risk of pollution.
- 6.05 Kent Highways and Transportation recommend refusal of the application on highway grounds because the site has insufficient frontage within the applicant's control to the south-east to enable an access to be satisfactorily laid out incorporating visibility splays which are essential in the interests of highway safety. They note that these same concerns were acknowledged in the 2007 and 2012 appeal decisions on this site.

7.0 BACKGROUND PAPERS AND PLANS

- 7.01 Application papers for application 16/509545/FULL

8.0 APPRAISAL

- 8.01 I believe that the main considerations in this matter are the degree of congruence with policy towards development in the countryside; visual impact of the site; the impact of the development on the objectives of designation of the Area of Outstanding Natural Beauty; highway safety; 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 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 the 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.
- 8.03 In this respect, the site remains high on the valley side within the Newnham Valley. Despite, and perhaps partly because of, the growth of laurel bushes the site remains quite clearly visible for the other side of the valley, from the M2 and from the public road overbridge to the west. These are all points that the first appeal Inspector viewed the site from. His conclusion (at paragraph 14 of his letter) was that "the mobile home is prominently situated towards the top of the valley side and appears alien and incongruous in the landscape". At para 16 he noted the laurel hedge, but recognised that the long distance viewpoints were elevated and that "the hedge would need to be some height to effective", and even then it would not be "in keeping with the natural qualities of this landscape". He also found (at para 15) that the mobile home in a fenced off area of a field complete with domestic artefacts, and the formalised tarmac bellmouth access were intrusive. His overall conclusion on landscape impact (at para 17) was that "the development is harmful to the landscape and undermines the objective of AONB designation. It fails to conserve or enhance the natural beauty of the landscape"
- 8.04 In the later appeal decision, when the laurel hedging had grown into the inappropriate hedge that the first Inspector saw as likely to be harmful to the natural qualities of the landscape, the second Inspector noted changes within the site aimed at reducing the site's visual impact from the lane but still concluded that the site was visible in the wider landscape, with the caravans being out of keeping with traditional rural buildings and the laurel hedge not being a natural feature of this landscape. He concluded (as the first Inspector had) that the development was "harmful to the landscape and undermines the objective of AONB designation, as it fails to conserve or enhance the natural beauty of the landscape". He gave this matter substantial weight as an objection to the proposal (para 12).
- 8.05 I share the Inspectors' earlier conclusion that this site is harmful to the objectives of AONB designation, and conclude that it is contrary to established planning policy and the aims of the NPPF and PPTS. Accordingly, I remain convinced that this site has a harmful impact on the AONB and that this matter should be afforded great weight in the decision making process. Ultimately, I am satisfied that this site is not acceptable on a permanent basis for this reason.
- 8.06 In terms of highway safety, the current objection from Kent Highways and Transportation reaffirms the unsuitability of the site access and the consistency of the position from the time of the previous appeal hearings. The first Inspector concluded (para 19) that although the lane is lightly trafficked and serves only local needs the 10m visibility splay available to the east is unacceptably substandard, particularly on a narrow lane where approaching vehicles will not be on the far side of the carriageway.

He also noted that there was no scope for vehicles leaving the site to edge forward without encroaching onto the carriageway. Finally, he noted that a family gypsy site is likely to generate significantly more traffic than the previous agricultural use of the access or use for keeping horses. The second Inspector echoed those concerns, saying (para 14) that the access remained substandard, particularly with regard to visibility to the left, and that the use of the site would be likely to generate more movements than a non-residential use. This he afforded considerable weight to; but less so over a temporary period.

- 8.07 I am not aware of any improvements to the access since the most recent appeal decision, I can only conclude that the safety aspects of this site, bearing in mind the family's need for transport including regular school day traffic, will create a substantial threat to safety at this very poor access. This reinforces to my concern over the suitability of the site, especially in the longer term. I conclude that this site is not acceptable on a permanent basis for this reason.
- 8.08 The site is also very remote from services, 4.5km to the nearest school and 6km from facilities in Faversham, and does not provide a convenient location for access to educational, health or social facilities. Nor is the site well located both for integration with any local community, or for a sustainable form of development. 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 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.
- 8.09 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 with a wide range of facilities as a gypsy or traveller site constituted sustainable development. The Inspector there (October 2014) noted that locational sustainability depends on a range of factors. 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 a similar conclusion applies 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, and where the site has significant landscape and highway objections.
- 8.10 If further evidence were needed, the two appeal decisions on this site both point to the unsuitable location of this site in relation to access to amenities. The first appeal Inspector said (para 18);

"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), the second Inspector (at para 13) 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.”*

In addition, at Horseshoe Farm, Elverland Lane (opposite the current application site) an Inspector in May 2012 (post original PPTS) 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 Appellant has his horse keeping and breeding business based on the land on which he lives which reduces daily travel. There are also the recognised benefits arising from having a permanent base, such as being able to access health services more readily and reducing any need to move around on unauthorised sites. But those are benefits which arise in the provision of any permanent site and do not outweigh the disbenefits arising from the isolated location in this case.”

- 8.11 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 and is being 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. I also note that the question of sustainability is central to NPPF which has been published since both appeal decisions and which, to my mind, means that this issue assumes far greater significance than at the time of either appeal decision at this site. I am satisfied that this unsustainable location is now a major obstacle to seeing this site as acceptable on a permanent basis.
- 8.12 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 Council’s policy position is now far different from that at the time of the appeal decisions. Whilst the Council has not produced a site allocations DPD for gypsy and traveller sites it has made very

significant progress on site provision since the 2012 appeal decision. 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 site policy and supply situation could hardly be more different from that at the time of the previous appeal decisions on this site, and 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
- It causes harm to the objective of designation of the AONB
- The site landscaping does not and could not reasonably increase openness
- Does not provide safe access

8.13 Accordingly, I see no justification for a permanent planning permission here. Both previous Inspectors have so concluded, but both have decided that a temporary planning permission was justified, one on personal grounds. At that time Government advice was that local planning authorities should consider favourably planning applications for housing where a five year supply was lacking. PPTS 2012 continued that theme saying that the lack of a five year site supply should be a significant material consideration in relation to a potential temporary permission. 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 longer a case for granting temporary permissions pending Local Plan policy production. 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.

8.14 The temporary planning permission granted on appeal at this site was in my view primarily in recognition of the educational need evident at that time, and latterly the strong need for sites. The proposed occupants of the site now are the applicant and his partner, and their two school age children. No unusual circumstances over and beyond attending school have been advanced. These facts in themselves do not in my view constitute special circumstances to outweigh what is now a very small need for sites, and not one that should be met in a location such as this one.

8.15 I note that the second appeal Inspector did not give weight to more significant personal circumstances than this in setting out the length of the temporary permission he granted on this site in 2007. Accordingly, I do not consider that the applicant's current

circumstances amount to a factor which ought to weigh in favour the grant of permanent, temporary or personal planning permission to live on this site.

- 8.16 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 any particular home. There is nothing to suggest that the applicant's 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 Ospringe School which itself is not within the AONB. A site nearer to that school would also be far closer to the wider amenities of Faversham itself and in a location which the Council would be more likely to approve. Paragraph 70 of Circular 1/2006 states that the obligation on public authorities to act compatibly with the European Convention on Human Rights does not give gypsies and travellers a right to establish sites in contravention of planning control. 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.
- 8.17 Finally, I have had regard to the advice in paragraphs 71 and 72 of Circular 01/2006 concerning the Council's duties to actively seek to eliminate unlawful discrimination and to promote equality of opportunity and good race relations in all they do. I do not consider that those duties support the grant of permission in the present case.

9.0 CONCLUSION

- 9.01 This site is prominent within the Kent Downs AONB and has unacceptable access arrangements. Whilst 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 share the view of the appeal Inspectors that the use of this site is harmful to the AONB, that it does not have safe access, and that the site is too poorly related to services and amenities to be acceptable as a permanent gypsy site.
- 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 site would be acceptable in principle, and significantly less harmful to the landscape than the appeal site. The policy position and site supply could not be more different than that which applied at the time of the previous appeal hearings.
- 9.03 Appeal decisions have not yet indicated that the local need for new sites is so great as to override serious environmental constraints, apart from two cases (including the temporary permission on this site) when they were combined with special personal grounds. I have considered the applicant's personal circumstances, but have concluded that there is nothing to suggest that this 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 previously identified serious objections to the use of this site as a private gypsy site in terms of harm to the landscape character and to the objectives of designation of the AONB, to highway safety and to sustainability, I believe that the balance remains strongly against permission being granted on this site. The need to maintain safe access, and the fact that the landscape is not conserved by introducing incompatible development and then attempting to screen it with planting, as has been attempted here, are to my mind powerful arguments against even a temporary permission on this site. The previous Inspectors only granted a temporary permission in explicit recognition of the severity of harm to the AONB and highway

safety from use of this site as a caravan site, and at a time when the need for sites was strong. Site need is far from strong now.

- 9.05 I have considered whether a temporary planning permission is appropriate in this case, and explained why I do not believe that it is. I have also considered the personal circumstances of the applicant and his family but have not found them to warrant a permanent, temporary or personal planning permission. I do not believe that there would be a disproportionate interference with the applicant's human rights if planning permission were refused, especially if a reasonably generous period were allowed for him to vacate the site. I consider that such an approach would balance the rights of the applicant with those of the wider community. Accordingly, I recommend that planning permission is refused.

10.0 RECOMMENDATION –REFUSE for the following reasons:

REASONS

- (1) Notwithstanding the Council's appreciation of the need for it to respond positively to the accommodation needs of gypsies and travellers, and the guidance in DCLG's Planning Policy for Traveller Sites (2015), the Council considers that this site is unacceptable as a gypsy or traveller site. The site is isolated in open countryside away from any social, health, educational or other amenities, and lies within the Kent Downs Area of Outstanding Natural Beauty and the siting of caravans and the associated hardsurfacing creates an alien and intrusive appearance to the site which harms the natural beauty, character and appearance of the area. The proposal to use the site for the stationing of caravans compromises the objectives of designation of the Area of Outstanding Natural Beauty which are the conservation and enhancement of the area's natural beauty, and is contrary to the advice in paragraph 12 of the NPPF, paragraphs 4, 23, 25 and 27 of the PPTS, to saved policies E1, E9 and RC7 of the Swale Borough Local Plan 2008, and to policies SD1, SD2, SD3, SD8 and LLC1 of the AONB Management Plan 2014 to 2019, which refer to the need to conserve and enhance the natural beauty of the AONB being the prime purpose of the designation. The Council has taken account of the position in terms of the supply of gypsy and traveller sites, the personal circumstances of the applicant and his family, and considered whether a permanent or temporary planning permission should be granted. Despite appreciating the personal circumstances of the applicant's 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 applicant's family, and the very substantial harm that occupation of the site causes to planning policy for the appropriate location of gypsy or traveller sites in terms of access to services and amenities, or on the character and appearance of the area, and on highway safety. In taking account of all these factors the Council's considers that this proposal does not represent sustainable development, and that planning permission should be refused.
- (2) The access to the site lacks sufficient visibility to allow for its safe use, and adequate visibility splays cannot be provided on land within the applicant's control. As such, use of the access represents a danger to highway safety in a manner contrary to saved policies E1 and T1 of the Swale Borough Local Plan 2008.

The Council's approach to this application:

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

Offering pre-application advice.

Where possible, suggesting solutions to secure a successful outcome.

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

In this instance:

The application was considered to be fundamentally contrary to the provisions of the Development Plan and the NPPF, and there were not considered to be any solutions to resolve this conflict.

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



Appeal Decisions

Hearing held and site visit made on 11 January 2012

by **V F Ammoun BSc DipTP MRTPI FRGS**

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

Decision date: 23 February 2012

Four appeals relating to land at Tootsie Farm, Elverland Lane, Eastling, Faversham, ME13 0SP

- Appeal A is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted; appeals B, C, and D are made under section 174 of the Act as amended by the Planning and Compensation Act 1991 against an enforcement notice.
- Appeal A and appeal B are made by Mr Wayne Willett Snr; appeal C is made by Mr Wayne Willett Jnr; and appeal D by Mr William Willett, all against decisions by the Swale Borough Council.
- The Council's reference is ENF/11/024.

Appeal A – ref APP/V2255/A/11/2157005 – the condition appeal

- The application Ref SW/10/1446, dated 06/11/2010, was refused by notice dated 4th February 2011.
- The application sought planning permission for *Use of land for one mobile home and one tourer for a Gypsy family* without complying with a condition attached to planning permission Ref SW/05/1316, dated 7 October 2005, granted on appeal on 15 November 2007 under reference APP/V2255/A/07/2035766.
- The condition in dispute is No 1 which states that: *The use hereby permitted shall be carried on only by Wayne Willett and his resident dependants, and shall be for a limited period being the period of 3 years from the date of this decision, or the period during which the land is occupied by them, whichever is the shorter.*

Summary of Decision: Temporary planning permission is granted as set out in the Formal Decision.

Appeals B, C, and D – refs APP/V2255/C/11/2159720, 2159721, and 2159722 – the enforcement notice appeals

- The notice was issued on 15 August 2011.
- The breach of planning control is the failure to comply with the requirements of conditions No 1 and 2 imposed upon the grant of planning permission on appeal for *Use of land for one mobile home and one tourer for a Gypsy family* (Council reference SW/05/1316, appeal reference APP/V2255/A/07/2035766) on 15 November 2007.
- Condition No 1 states that *The use hereby permitted shall be carried on only by Wayne Willett and his resident dependants, and shall be for a limited period being the period of 3 years from the date of this decision, or the period during which the land is occupied by them, whichever is the shorter.* Condition No 2 states that *When the land ceases to be occupied for the use hereby permitted by Wayne Willett and his dependants, or at the end of 3 years from the date of this decision, whichever shall first occur, the use hereby permitted shall cease and all caravans, structures, fences, materials and equipment brought onto, or erected on, the land, or works undertaken to it in connection with the use, shall be removed and the land shall be restored to its previous*

www.planningportal.gov.uk/planninginspectorate

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condition before the development took place.

- The requirements of the notice are (a) *Cease the use of the land for the stationing of any mobile homes or caravans; and (b) Remove from the land all mobile homes, caravans, structures, fences, materials and equipment as required by Condition 2 of APP/V2255/A/07/2035766.*
- The period for compliance with these requirements is 12 months.
- The appeals are proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Summary of Decisions: The enforcement notice is upheld with an extended period for compliance, as set out in the Formal Decision.

Preliminary Matters

1. As pointed out at the Hearing, the breach of control, *that the site is still occupied by caravans, structures, fences, etc in breach of Conditions 1) and 2) of APP/V2255/A/07/2035766* has been put under Notice heading "Reasons for issuing this notice" when it should have been under the heading "The breach of planning control alleged". The main parties accepted that this defect could be disregarded as all concerned had known what was being enforced against, and no one would be prejudiced thereby.
2. The appeal A against refusal of planning permission seeks to continue use of the land as a Gypsy caravan site beyond the three year period allowed on appeal on 15 November 2007. The appeals B, C and D were against an enforcement notice requiring that the use cease because the three year period had been exceeded. Because the prescribed fees were not paid for appeals B, C and D the deemed application cannot be considered. It follows that the enforcement notice will be upheld¹. The merits of continued use will, however, be dealt with by way of appeal A, which if successful has the effect under S180 of the Act of superseding the notice to the extent of such a permission.
3. Parish Council and interested persons' representations relied in part² upon the terms of the 2007 appeal decision to establish that consent should not be renewed. In particular it was pointed out that certain personal circumstances previously taken into account had now altered with the passage of time, and therefore no further extension of occupation should be allowed. The 2007 decision is indeed a material consideration, but as explained at the Hearing, the present appeals must be decided on the individual planning merits of the cases and evidence put forward in the light of present circumstances and policy.

Agreed and background matters

4. The Appellant occupiers are Romany Gypsies who live in two caravans on the site, which was previously part of a larger field. They have an association or connection with the Borough. There are no suitable, acceptable and affordable alternative pitches for them in the Borough that are known to the Council.
5. Planning Policy Statement 3 (PPS3) requires a five year rolling supply of sites for all residential purposes. As a 2007 study of need to 2011 has not been

¹ Subject to any modifications made due to the appeals on grounds (f) and (g).

² Other objections raised, including the substantial evidence put forward by the Kent Downs AONB Unit, have been taken into account but are not referred to separately where they support the Council's case.

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updated, the Council does not know what provision is needed for the five years to 2016 and so does not claim to have a five year rolling supply of pitches.

6. The 2007 study indicated a need for 62 additional pitches to 2011. This number was not provided. It is acknowledged that natural growth of the Gypsy and Traveller (G&T) population will generate need for pitches from 2011 to 2016. The Council has granted permanent planning permissions for pitches, is seeking to identify further pitches, has applied a scoring system to various existing or possible pitches, will carry out the necessary survey needed to establish G&T pitch needs (and other housing needs) and will allocate land to meet any remaining needs either in its Core Strategy (CR) or in a Development Plan Document (DPD).
7. The appeal site is in the countryside and within the Kent Downs Area of Outstanding Natural Beauty (AONB). In 2007 an Inspector found that the development harmed the AONB, had inadequate visibility at the site access, and lacked sustainability. He granted a temporary permission that would expire when, on the evidence then before him, there was a prospect that alternative pitches would be available to meet the acknowledged shortfall in pitches.

The main issue – the planning appeal

8. Within the AONB policy E9 of the Swale Borough Local Plan 2008 gives priority to the conservation and enhancement of natural beauty, reflecting well established national policy. As it is agreed that the site occupiers are Gypsies, it follows that policies addressing the national shortfall of residential caravan pitches for Gypsies and Travellers (G&T) will be relevant to this appeal. Local Plan policy H4 is concerned with G&T pitch provision, but its supporting text states that where there is a conflict with the terms of national policy in ODPM Circular 1/2006 the Circular should prevail³, and I shall proceed on that basis.
9. From my inspection of the site and area, and from consideration of the representations including those made at the Hearing and the agreed and background matters above, I have concluded that the main issue in the planning appeal is whether any harms to the purposes of the AONB, to sustainability objectives, and to the safety and convenience of highway users are outweighed by the need to provide additional pitches for Gypsies and Travellers (G&T) and the personal circumstances of the site occupiers.

Consideration

10. As to the **effect upon the AONB**, the area for which continued residential G&T caravan site use is sought is approximately rectangular with longer eastern and western sides. It is in part screened by a long established field hedgerow to the east, and a laurel hedge to the west. The latter hedge has grown to become a more effective screen since the temporary planning permission was granted.
11. The site is open to direct and short range views from Elverland Lane through the southern boundary site access, which opened onto a hard surfaced front yard on which have been sited a caravan and a shed, as shown in an August 2011 photograph. The hard surface has now been largely taken up and replaced with earth, and the caravan and shed removed from the front yard.

³ For reasons set out in the Local Plan, in summary that the plan policy had not taken into account earlier already extant national policy.

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Views from the Lane towards the rear or northern yard on which caravans are now situated are partly obstructed by a lawful barn/stable building. This is an improvement upon the 2007 situation, and could be required by planning conditions imposed upon any approval. The entrance to the site and views into it from Elverland Lane nevertheless remains less rural in character than would be the case were there no more than an agricultural or the lawful horse keeping use.

12. The site inspection established that, as had been found by the 2007 Inspector, the appeal use was visible in the wider landscape, and I was taken to three sections of public rights of way⁴ from which the site is visible. The caravans are out of keeping with the traditional form of rural building in this area, and the laurel hedge to the west of them is not a feature natural to this particular landscape. I therefore do not differ from the previous Inspector in concluding that the development is harmful to the landscape and undermines the objective of AONB designation, as it fails to conserve or enhance the natural beauty of the landscape. Having regard to the importance to be given to landscape considerations within an AONB, I give this matter substantial weight as an objection to the appeal proposal.
13. 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.
14. The principal concern as to the safety and convenience of **highway users** is the limited visibility at the site access. Though the exact relevant figures were not agreed, I consider it clear that the access remains substandard, in particular visibility to the left. I share the previous Inspector's view that residential use involves a greater number of vehicle movements than is likely for a non-residential keeping of horses. The number of potential if not actual drivers has increased since the previous decision. On the other hand the Lane is lightly travelled, evidently by local traffic, and there is a continuing absence of recorded accidents associated with use of the access. I have concluded that the unsatisfactory access has considerable weight as an objection to a permanent permission, but less weight where a temporary one is concerned.
15. Though the Council emphasised the efforts which it was making and had made to **provide additional G&T pitches** in the Borough, they have not yet provided all the pitches found to be needed up till 2011, and cannot show a five year forward provision for the years 2011-2016. Studies concerned with

⁴ Document 6, which does not take account of any views from persons using the nearby M2 motorway.

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capacity to which I was referred were acknowledged to differ from ones that, as required by PPS3, establish need. Whatever future success may attend the Council's efforts, including the possibility that sites might be found as part of extensions to urban areas and within the ambit of "affordable housing" provision, at the present time there is an unmet need for pitches in the Borough.

16. That weight is to be given to unmet need or shortfall in pitch provision is indicated in Planning Policy Statement 3 (PPS3) which requires local authorities to allocate a five year supply of sites for both the settled and the G&T communities⁵. At paragraph 71 PPS3 states in part that "*Where Local Planning Authorities cannot demonstrate an up-to-date five year supply of deliverable sites, they should consider favourably planning applications for housing...*". Though this is not a requirement to approve any application that is made in such circumstances, nor does it explicitly require a five year supply of G&T caravan pitches as distinct from bricks and mortar housing, it adds weight to the present appeal where there is a shortfall in provision and not the five year forward supply of sites that is specified for bricks and mortar housing. A consultative draft policy entitled *Planning for Traveller Sites – consultation April 2011* is consistent with this. The Consultation explains that current policy is not working and that a new approach is needed, and gives a clear indication of intended policy direction, in particular that G&T policy is to be aligned with that for conventional housing as set out in PPS3.
17. Though the term "*consider favourably*" is not formally defined in PPS3 I consider that to have effect it must imply that weight is to be given to unmet need. By way of comparison, where a temporary permission is envisaged in circumstances where need is due to be met at the end of a defined period, Circular 1/2006 at paragraphs 45 and 46 indicates that substantial weight should be given to unmet need. A temporary permission, however, is one where any consequential harms are necessarily likely to be less than a permanent permission. Also taking into account the rarity with which substantial weight is referred to in planning policy, I have concluded that where a permanent permission is concerned, and there is unmet need, then as acknowledged for the Appellant a less than substantial but still considerable weight should be given to such need.
18. Turning to a possible temporary planning permission the Circular states in paragraphs 45 and 46 that where there is unmet need but this is likely to change as a result of a DPD, "*...local planning authorities are expected to give substantial weight to the unmet need in considering whether a temporary planning permission is justified...*". The recent *Planning for Traveller Sites – consultation April 2011* also deals with this situation, and suggests that "*favourable consideration*" (after an interim period) should be given to the grant of a temporary permission. Though it is not clear at this stage whether the Council will meet pitch needs through a Core Strategy, a DPD, or through the grant of planning permissions following its extensive analysis of possible sites, I consider that on the balance of probability they will in due course have and implement an evidence based strategy for providing sites. A temporary permission could therefore be appropriate in this case, and I shall return to this possibility below.

⁵ A consultative draft *National Planning Policy Framework* referring to housing at paragraph 110 does not suggest a materially different approach.

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19. The **personal circumstances** of the site occupiers include their status as G&T as defined in paragraph 15 of ODPM Circular 01/2006, and the agreed absence of alternative accommodation. Particular matters put forward include that one of the occupiers is to have a back operation and has a young child, and that the Appellant needs a settled abode to comply with the terms of his licence following release from prison. I consider that these particular matters are not so compelling that they add more than some additional weight to the proposal, a point to which I shall return to in considering what whether a personal occupancy condition is appropriate.
20. Having regard to the foregoing and by way of summary **overall assessment**, the harm to the purposes of the AONB attracts substantial weight, and the harms to sustainability and highway matters considerable weights. Against this considerable weight should be attached to the need for additional pitches and associated absence of alternatives, and some weight to the particular personal circumstances referred to. I have concluded on the main issue in this case that the harms referred to are not outweighed by the need to provide additional pitches for Gypsies and Travellers (G&T) and the personal circumstances of the site occupiers.
21. Turning then to whether a condition limiting the use to a temporary period would alter the balance, a limited period of use would reduce the harm to AONB objectives, involve no harm to sustainability objectives while there remained a shortage of pitches, and reduce any harm due to limited visibility at the access. On the other hand the weight to be given to the unmet need for G&T pitches in the Borough and the associated lack of alternative accommodation rises to the substantial as indicated in Circular 1/2006. Such a temporary consent would not be a precedent for further approvals, a point clearly made in the Circular at paragraph 46. A temporary permission and other conditions limiting use of the site would involve some interference in the **human rights** of the Appellant, but having regard to the legitimate community objectives sought by policies for the protection of the countryside and the likelihood of suitable permanent caravan pitch provision being available at the end of the temporary period, I consider that such interference is necessary, would meet the test of proportionality and so would not amount to a violation of human rights. I have concluded that a temporary planning permission should be granted.
22. As to the **length of any temporary permission**, it is not yet determined whether G&T site allocations will be made through the CR that could be ready in 2013 or a DPD that could be adopted by June 2014. The likely date by which need will be met through the statutory planning system is thus uncertain, and it is therefore prudent to assume the later date, with an added 12- 18 months for plan allocations to translate into pitches actually available to G&T for occupation. This suggests that provision is likely to have been made in four years, and that therefore this should be the length of any temporary permission. The Council had suggested a one year period, and supported this by referring to the prospect of additional pitches coming into being through private developments obtaining planning permission. One particular site was being encouraged to come forward, and it had been hoped that the Appellant could relocate there voluntarily. Such provision is particularly uncertain, and at this stage I conclude that it is appropriate to rely upon the four year period referred to.

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23. The parties agreed on most of the **conditions** that would be appropriate if a planning permission were granted. There was no evidence to the contrary, the agreed conditions are commonly found appropriate, and the hearing proceeded on the basis that they would be imposed if permission were given. For the reasons already stated I have concluded that a four year permission should be granted rather than the single year proposed by the Council. Also having regard to the likelihood that any G&T in Swale would be likely to experience the same need for pitches and lack of alternatives, and the limited importance which I attach to the particular personal circumstances in this case, I do not consider that the personal occupancy condition envisaged by both parties can be justified in terms of Circular 11/95 *The Use of Conditions in Planning Permissions*. I shall therefore impose the standard gypsy occupancy condition in place of a personal permission. It was agreed that matters dealt with in a suggested development scheme should be extended to include the siting of caravans and parking, and I shall in consequence include that there be subsequent adherence to this scheme. Having regard to the changes made to the front or southern yard, I also consider that the Council should have the opportunity to control surface material/planting of this altered yard. I shall therefore impose a landscaping condition, though recognising that neither party sought significant further planting⁶.

The appeals on ground (f) against the enforcement notice

24. An appeal on ground (f) seeks that a lesser enforcement notice requirement should be imposed. It was argued that it was excessive to require the removal of all caravans as a caravan had been and might in future be required to serve the established lawful use of the holding for the keeping of horses. I noted, however, that the requirement to remove all caravans is qualified by reference to their having been brought onto the land *in connection with the use* that is being enforced against. The terms of the notice would thus not preclude caravans being brought onto the land for some other use⁷. I have concluded that as phrased in the notice the requirement does not exceed what is necessary to remedy the breach of planning control, and that **the appeal on ground (f) fails**.

The appeals on ground (g) against the enforcement notice

25. An appeal on ground (g) seeks to extend the period for complying with the enforcement notice. The arguments put forward in this regard are essentially those relating to need and the extent of any harms which I have considered earlier in reaching a conclusion that a temporary permission for four years should be granted. Though it is not usual⁸ to extend the compliance period of an enforcement notice beyond 12 months, in the particular circumstances of this case I have concluded that this period is less than is reasonable. The Appellant has suggested that up to two years would be a more reasonable period and I concur. **The appeal on ground (g) succeeds** to that limited extent. The apparent contradiction between a two year compliance period for the enforcement notice and a four year planning permission is in fact resolved

⁶ For completeness I record the presence of some hawthorn bushes planted along the outer edge of the laurel hedge, a matter which could be considered in relation to any new landscaping scheme.

⁷ Though such non residentially used caravans would be liable to new enforcement action if they required but did not have planning permission.

⁸ *Enforcing Planning Control: Good Practice Guide for Local Planning Authorities 1997* states in part that as a rule of thumb the compliance period for an enforcement notice should not normally exceed one year.

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by the operation of S180 of the Act, which has the effect that enforcement notice requirements are superseded to the extent that the use is permitted by the planning permission.

26. I have taken into account all the other matters raised in the representations, including the disagreement as to the merits of the Council's sustainability scoring system for sites, the various stages in the Council's consideration of G&T provision, and the differing views on the merits of Council efforts to secure the Appellant's voluntary departure from the site, but do not find that they are necessary to or alter my conclusions on the appeals.

FORMAL DECISIONS

Appeal A – ref APP/V2255/A/11/2157005 – the condition appeal

27. I allow the appeal and grant planning permission for *Use of land for one mobile home and one touring for a Gypsy family* without compliance with condition number 1 previously imposed on permission Ref SW/05/1316, dated 7 October 2005, granted on appeal on 15 November 2007 under reference APP/V2255/A/07/2035766 but subject to the following new conditions:
- 1) The use hereby permitted shall be for a limited period being the period of four years from the date of this decision. At the end of this period the use hereby permitted shall cease, all caravans, buildings, structures, materials and equipment brought on to, or erected on the land, or works undertaken to it in connection with the use shall be removed, and the land restored to its condition before the development took place.
 - 2) No more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than 1 shall be a static caravan or mobile home) shall be stationed on the site at any time.
 - 3) The site shall not be occupied by any persons other than gypsies and travellers as defined in paragraph 15 of ODPM Circular 01/2006.
 - 4) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
 - 5) No commercial activities shall take place on the land, including the storage of materials.
 - 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.
 - 7) The use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one the requirements set out in (i) to (iv) below:
 - i) within 3 months of the date of this decision a scheme for: (a) the restoration of the site to its condition before the development took place, as required by condition 1 above; (b) the modification of the access to serve the lawful horse keeping use to be implemented

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- when the residential caravan use ceases; (c) the internal layout of the site, including the siting of caravans, hardstanding, access track, parking and amenity areas; (d) the landscaping of the site including indications of what existing landscaping is to be retained and what removed; (hereafter referred to as the site development scheme) shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for its implementation.
- ii) within 11 months of the date of this decision the site development scheme shall have been approved by the local planning authority or, if the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted site development scheme shall have been approved by the Secretary of State.
 - iv) the approved scheme shall have been carried out and completed in accordance with the approved timetable.
- 8) Following the carrying out and completion of the approved scheme referred to in condition 7 above, its terms shall thereafter continue to be adhered to. Without prejudice to the generality of the foregoing, this condition shall apply to the siting of caravans and the parking of vehicles.
 - 9) At the same time as the site development scheme required by condition 7 above is submitted to the local planning authority there shall be submitted a schedule of maintenance for the remaining period of this temporary permission of any proposed planting beginning at the completion of the final phase 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.

Appeals B, C, and D – refs APP/V2255/C/11/2159720, 2159721, and 2159722 – the enforcement notice appeals

28. The appeals are allowed on ground [g], and the enforcement notice is varied by the deletion of 12 months and the substitution of two years as the period for compliance. Subject to this variation the enforcement notice is upheld.

V F Ammoun

INSPECTOR

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& APP/V2255/A/11/2157005

APPEARANCES

FOR THE APPELLANT:

Mrs A Heine BSc MSc MRTPI	Principal, Heine Planning Consultancy.
Mr Wayne Willett (senior)	Appellant.
Mrs Shirley Willet	Wife of Appellant.

FOR THE LOCAL PLANNING AUTHORITY:

Mr Graham Thomas BSc Hons DipTP MRTPI	Area Planning Officer, Swale Borough Council.
Mr Alan Best BA Hons TP MRTPI	Senior Planning Officer, Swale Borough Council.
Mr Peter Hinckesman	Enforcement Team Leader, Swale Borough Council.


INTERESTED PERSONS:

Mrs Mary Smith	Local resident.
Mrs Sue Gunner	Chairman of Newnham Parish Council.
Mr Graham Elvy	Local resident.
Mr Colin Woods	Local resident.

DOCUMENTS provided at the Hearing

- 1 Copies of the two enforcement notices issued on 15 August 2011.
- 2 Plans accompanying the planning application, not previously supplied.
- 3 Plan accompanying application SW/05/1316.
- 4 Appeal decision APP/V2255/c/11/2151258 dated 28 November 2011.
- 5 Count of gypsy caravans, 20 July 2011; last five counts.
- 6 Highway plan annotated to show areas from which site visible.
- 7 Private Gypsy sites in Swale as at December 2011.

APPENDIX 2

	<h2>Appeal Decisions</h2>	<p>The Planning Inspectorate 4/11 Eagle Wing Temple Quay House 2 The Square Temple Quay Bristol BS1 6PN</p>
	<p>Hearing held on 16 October 2007</p>	
	<p>by Andrew D Kirby RD* MA MSc FRTPi</p>	<p>☎ 0117 372 6372 email:enquiries@pins.gsi.gov.uk</p>
	<p>an Inspector appointed by the Secretary of State for Communities and Local Government</p>	<p>Decision date: 15th November 2007</p>

Appeal A Ref: APP/V2255/C/07/2040928

Tootsie Farm, Elverland Lane, Painters Forstal, Faversham, ME13 0RY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Wayne Willett against an enforcement notice issued by Swale Borough Council.
- The Council's reference is GT/ENF/07/016/C:21662/JB.
- The notice was issued on 6 March 2007.
- The breach of planning control as alleged in the notice is:
 - i) the material change of use of the land from agricultural land to land used as a caravan site for the stationing of caravans/mobile homes used residentially, for the keeping of horses, the stationing of an external wc and
 - ii) the erection of close-boarded and post and rail fencing the approximate position of which is identified on the notice plan, laying of hardsurfacing and creation of a new access onto Elverland Lane to facilitate such use.
- The requirements of the notice are:
 - (1) Cease using the land or any part thereof for the stationing of caravans/mobile homes, or for the keeping of horses.
 - (2) Remove from the land all caravans/mobile homes, horses, the external wc, closeboarded and post and rail fencing, hardsurfacing and stop-up the new access by returning the land to its previous condition.
 - (3) Remove from the land all rubbish or debris caused by or associated with compliance with (1) and (2) above.
- The period for compliance with the requirements is 12 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed subject to the enforcement notice being corrected in the terms set out below in the Formal Decision.

Appeal B Ref: APP/V2255/A/07/2035766

Tootsie Farm, Elverland Lane, Painters Forstal, Faversham, ME13 0RY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Wayne Willett against the decision of Swale Borough Council.
- The application Ref SW/05/1316, dated 7 October 2005, was refused by notice dated 5 January 2007.
- The development proposed is use of land for one mobile home and one tourer for Gypsy family.

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

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The terms of the enforcement notice and Appeal A on ground (c)

1. It is not immediately clear, notwithstanding the title "Enforcement Notice – Change of Use" that the allegation refers to that alone and not operational development as well. The allegation has two numbered parts, one relating to change of use and the other to operational development, just as one might anticipate in a composite notice. Moreover, there is no reference to 10 or 4 years in the notice.
2. At the hearing the council confirmed that the notice should refer to 10 years and that they intended the notice to allege only a change of use, the words "to facilitate such use" at the end of the recital of the operational development in the allegation was intended to convey that. Since those works had facilitated the use they could, on the authority of *Murfit v SSE* [1980] JPL 598, be required to be undone through the requirements of the notice. I consider this to be a perfectly legitimate approach where works have been carried out to facilitate and, in effect, form part and parcel of the change of use. But *Murfit* does not extend to works carried out in relation to a different use.
3. Under ground (c) the appellant says there was some hardstanding on the land when he bought it and that there was already an access to Elverland Lane. At the site visit I saw under the gravel some darker material – possibly road planings – that had been worked into the topsoil. It is not clear how far that extends under the gravel. The appellant bought the land some three years ago. At that time there was a barn which had been erected by the previous owner. It is the appellant's case that there was some hardened material forming an access from the roadside field gate to the barn. Certainly the 2003 aerial photograph shows worn ground or light coloured material which supports the view that there was a change in surface in that area. Whether the material I saw on site is what appears in the aerial photograph is difficult to say but there is no evidence to contradict what the appellant says about the condition of the ground before he spread the gravel. As to the access, Mr Woods, a local resident who has no connection with the appellant, remembers there being a five-barred gate in line with the field/road boundary before the appellant bought the land. However, there is no doubt that as part of implementing the change of use alleged the appellant has put down a gravel surface on part and a tarmac surface on the northern part of the land within the residential compound. He has also widened and surfaced the access with tarmac within a set back and bellmouth. In so far as he has carried out works to facilitate the change of use these are matters for ground (f) in the light of how the council intended the notice to be understood and how I intend to correct it.
4. The allegation would be better worded if it simply described the uses being alleged. It is not necessary to refer to enabling works in the allegation. The logic of referring to them only in the steps required to be taken is that it is only their undoing that is material to the notice, as derived from s173(4)(a) – restoring the land to its condition before the breach (the change of use) took place. In addition the allegation includes within the change of use "the stationing of an external wc". A simple allegation of "stationing" does not say anything about the use since items can be stationed on land for a wide range of purposes or uses. In this case it is clearly there as part of the residential caravan site use and needs no separate reference as a use. I intend to correct the allegation as follows:

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"Without planning permission, the material change of use of the Land from agricultural land to land used as a caravan site for the stationing of caravans/mobile homes used residentially and land used for the keeping of horses."

5. I conclude that in the light of a proper construction of the allegation the matters raised by the appellant do not lead to a success on ground (c). To the extent they relate to the older hardstanding and formation of an access they fall to be addressed under ground (f) as excessive requirements.

The s174 appeal on ground (a) and the s78 appeal

6. The planning application relates simply to use of the land as a Gypsy caravan site and the deemed application relates to that and to the use of the land for the keeping of horses. The council take no issue with the principle of the use of the land and the barn that predates the appellant's acquisition for the keeping of horses provided a conditional permission is given. In essence they seek to bring that use under proper planning control through the enforcement notice. Thus regardless of the residential use it would be appropriate to grant planning permission.
7. The residential use raises a number of issues. Firstly whether the appellant is a Gypsy for planning purposes; if so, whether the site is suitable as a single family Gypsy site given its relatively remote location within the countryside which is an AONB and its access; and whether there are other considerations to be weighed in the balance.

Gypsy status

8. The appellant is temporarily absent from the site having been committed to prison but the site continues to be occupied by his two sons Billy and Wayne. Billy is in full time education and Wayne, assisted by his uncle who lives in a mobile home at nearby Horseshoe Farm, continues the horse breeding and trading business as well as trading in tack. The council's case is that they accept there is some measure of income being gained from going to horse fairs but the appellant does not stay away long enough to constitute "travelling". These are more in the nature of business trips and do not constitute a nomadic habit of life. The Circular definition uses the word "only" with reference to the reasons why they may have ceased travelling for educational or other reasons. That Billy is in full time education is not the only reason they no longer travel. Following a lengthy discussion with the planning officer it became clear that the appellant does not do casual work on the way to and from horse fairs or travel for other work. He explained a settled pattern of life, centred on breeding horses and dogs, which did not have as the only reason the educational needs of Billy. This is not enough to satisfy the Circular definition.
9. I am in no doubt that before moving onto the site the appellant fully satisfied the statutory and Circular definitions of a Gypsy for planning purposes. He has lived in caravans in Kent, including on the Church Marshes and Murston Gypsy sites. It is true that he has had a number of relationships with partners who lived in houses but the evidence is that he could never settle in the houses and used them more as addresses and for occasional visits; he did not live in them permanently and always kept a caravan. In the years immediately before

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coming onto the site he lived in caravans all over Kent carrying out tarmacking and block paving but mainly buying and selling horses. As well as the appeal site he has land near Fordwich where he keeps horses. The issue is whether there has been a significant change since coming onto the site for reasons other than allowed for in the Circular definition, such that he can be said to have lost his Gypsy status.

10. At the hearing I was told that in the last year or so the appellant or his children assisted by relatives had been travelling to Appleby for a week or so, Stowe twice for a couple of weeks, the New Forest for a week, Reading, Barnsley and Glasgow for the "King of the Road"; Horsmonden being near at hand and only involving day trips. On all occasions the purpose was to pursue horse trading and thus pursue the main element of their economic livelihood. I have no reason to doubt this evidence which is consistent with the traditional lifestyle of Gypsies who pursue this activity. At the hearing I provided transcripts of the unreported case of *Maidstone BC v SSE & Dunn* [1995] CO/2349/94 which applied *South Hams*, *Greenwich* and other leading cases to the circumstances of Mr Dunn. Mr Dunn satisfied the statutory definition in that while much of his work was landscape gardening locally he travelled to horse fairs to buy and sell horses. There was economic purpose to the travel which involved livelihood as opposed to it being merely a hobby. Bearing that judgment in mind and all the evidence, I am satisfied that in the case of Mr Willett there is no good evidence that, since moving onto the land, he has ceased to satisfy the Circular definition of a Gypsy.

Suitability of the site

11. Adopted Local Plan Policy H12, which deals with Gypsy sites, has not been saved and is thus not material to my decision. I was told that this was because it did not comply with ODPM Circular 01/2006 policy guidance. The Draft Local Plan is at an advanced stage and close to adoption. Policy H4 deals with Gypsies but it, like the old policy, does not approach the issue in the way advocated by C1/06. It is criteria based, having 12 criteria and, in particular, requires applicants to "clearly demonstrate" that they are Gypsies with a "genuine connection with the locality of the proposed site". As well as being unclear as to what constitutes a "genuine connection" it displays a fundamentally misconceived approach to meeting the needs of the Gypsy community, including specific guidance in paragraph 62 of C1/06. While the policy necessarily carries some weight because of its progress to adoption the degree of weight is much less than would have been the case had it reflected national policy. That it does not, is a matter of real concern given its likely adoption some two years after the date of the Circular and as a replacement in similar form for a policy found inappropriate to be saved.
12. I also share the appellant's view that there is some tension between the Structure Plan policy H9 and the Circular although it does little more than set out broad principles or guidelines for the location of sites, such as protection of the countryside, access to services and safe access. Indeed, these are the main criticisms made by the council in this case.
13. The appeal site is in the AONB. While I accept that this is not necessarily a reason for refusal since C1/06 recognises, as with any other form of development, it is necessary to demonstrate that the objectives of the

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designation will not be compromised. Given that such areas have the highest status of protection in relation to landscape and scenic beauty this imposes a particularly high test and planning policy recognises the primary objective of protecting landscape character and natural beauty. In the 2005 Swale Landscape Character Assessment and Guidelines study the site is within and on the edge of the Doddington and Newnham Dry Valleys area. This is characterised as being in "good" condition and with "high" sensitivity. Built development is generally traditional and the aim is to conserve the landscape quality.

14. The site is visible from close by at the entrance and to a lesser extent through the roadside hedgerow. There are three more distant views of significance, all of which provide sweeping views of the wider landscape setting of the appeal site. That from the eastbound carriageway of the M2 is, in part, filtered by trees and, given average motorway speeds, is only experienced for a matter of seconds even by passengers. Knowing where to look and what to look for does influence one's perception and I have been careful not to be influenced unduly by that. However, there are two other viewpoints of particular note. One from an M2 overbridge used by traffic and pedestrians over 1km away and the other from a footpath closer and on the opposite side of the valley. From both the view captures the essence of this sensitive landscape which is characteristic of the northern part of the dip slope dry valleys. It is of the rising ground of a dry valley side with arable land enclosed by hedgerows and woodland. Few buildings are visible and those that are include traditional barns, farmhouse and oast house. That is with the notable exception of two mobile homes. One, at Horseshoe Farm, is the subject of separate negotiations by the council to secure a different location and the other is that on the appeal site. The mobile home with which this appeal is concerned is prominently situated towards the top of the valley side and appears alien and incongruous in this landscape.
15. Of course Gypsies have long been a traditional part of the agricultural landscape of Kent but that traditional working presence is very different to a mobile home in a fenced off area of a field complete with domestic artefacts. While a field gate to full highway standards would involve a set back and some surfacing of the ground, the more formalised tarmac bellmouth that has been created is more intrusive. Moreover, a simple, lightly used agricultural access may not require such a well engineered access. The previous access, it appears, was little more than a gate in the hedgerow.
16. I accept that a laurel hedge has been planted which would in time provide some screening. However the two distant viewpoints are more elevated and the hedge would need to be of some height to be effective. Even though there are some evergreens in the locality on the roadside a laurel hedge of substance would not be in keeping with the natural qualities of this landscape. That there is a motorbike track on the opposite side of the valley does not offset the visual harm caused by the appeal development. In any event the track is operated on a Permitted Development basis, albeit that the scarring on the landscape is permanent.
17. I conclude that the development is harmful to the landscape and undermines the objective of AONB designation. It fails to conserve or enhance the natural beauty of the landscape and is contrary to the development plan, including policy H9.

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18. 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.
19. The highway objection is that assuming a 25mph road speed visibility splays of 33m x 2.4m x 33m would normally be required. To the right there is some 20m available and to the left only 10m. The land to the left is not within the appellant's control. I observed that a traffic mirror has been erected opposite the gate to facilitate visibility but this is not an approved means of overcoming poor visibility. This is a lightly trafficked country lane serving local needs and I accept that the risk to highway safety is low but 10m is an unacceptably substandard vision splay, particularly on a narrow lane of single track width where approaching vehicles will not be on the far side of the carriageway. There is no real scope for vehicles leaving the site to edge forward without encroaching onto the carriageway and I understand the highway officer's reluctance to concede 2m as an 'X' distance. A family Gypsy site is likely to generate significantly more traffic than the previous agricultural use of the access or use for keeping horses. In my view there would have to be a pressing need for this site to be used as a Gypsy site to outweigh the highway objection.

Other considerations

20. A fundamental material consideration is the need for Gypsy sites in the area. The under provision of sites for Gypsies nationally and in Kent is well established. One of the objectives of C1/06 is to increase significantly the number of Gypsy sites in appropriate locations over a period of 3-5 years from its publication. The Circular signals a change of approach to provision which is underpinned by the new development plan system and well structured and researched needs assessments (GTAA's). The council refer to a steady increase in the number of approved sites which they say shows that demand is being very substantially met. I am referred to two recent decisions – Oak Lane, Upchurch and Ashford Road, Badlesmere – where Inspectors found that the need was not so pressing as to be grounds to override other planning considerations.
21. However, I note that at Badlesmere, in February of this year, my colleague commented that while the number of permissions granted was a positive factor there was nothing to show that the permissions granted were keeping pace with, and fulfilling, the need for more sites. She considered there was every indication of a significant unmet need for more Gypsy sites in Kent generally and in Swale in particular. That highly prescient conclusion was made in advance of a proper needs assessment having taken place. At the hearing the appellant provided a note of the South East Plan Review GTAA Stakeholder Workshop on 4 October 2007 at which the results of the four Kent and Medway GTAA's was indicated. The council appeared to be unaware of the GTAA figures. Two options were discussed: Option A, distribution across Kent where accommodation need has been found and Option B, distribution influenced by planning policies (environmental constraints, extent of urbanisation, access to community facilities, Green Belt, etc). In the first five years the need for an

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overall increase in pitches of 50-60% is identified for Kent and Medway as a whole. Swale is identified as needing to provide 62 new pitches under Option A and 25 new pitches under Option B. In the former the number is second only to Sevenoaks and some 30 pitches higher than the next highest district, Maidstone. In the latter scenario Swale ranks fifth in the county, putting it in the upper half of the districts. Clearly this does not represent the final view that will be put to the Regional Assembly nor what the Plan will say but it is convincing evidence of a very real, substantial and pressing need for more sites to be brought forward with urgency in Swale.

22. While I accept that the results of the GTAA survey may not have been available to the council until recently, effective monitoring of need in the past should have provided forewarning. I therefore find it of real concern that the council are in the advanced stage of adopting a Gypsy policy that fails to address this matter and are unable to provide any meaningful timetable for a DPD to deal with Gypsy site provision. The core strategy is not due to be adopted until 2012 and, while the council's planning officer indicated that he hoped that a Gypsy sites DPD would be one of the first to be undertaken, there is no commitment to bring forward or prioritise a Gypsy site DPD, notwithstanding the advice in paragraph 43 of C1/06. I consider my criticism is not unfair since I note that in the Upchurch case in early 2006 my colleague, in reviewing the development plan arrangements commented that the thrust of C1/06 requires that action to follow up the need should be taken in a timely manner and that under provision could be addressed within a three year period. That underpinned his decision to grant a temporary three year planning permission. There is no evidence before me that, over 18 months later, notice has been taken of those comments.
23. Paragraphs 45 and 46 of C1/06 advise that where there is an unmet need and planning circumstances can be expected to change, for example through DPD site allocations, consideration should be given to a temporary planning permission without an implied commitment or precedent for the determination of future applications. This was the rationale behind the Upchurch decision which was not in the AONB. In the Badlesmere decision the Inspector concluded that a temporary planning permission could not be justified given the serious damage caused to the AONB. On the other hand the council seem in no hurry to obtain relocation of the Horseshoe Farm mobile home some three years after a planning application – as yet undetermined – was made. I do not accept that its present location is significantly less damaging than the appeal site. The council stand by their view that if temporary planning permission were to be given for the appeal site there would be no reasonable expectation that allocated sites would be available at the end of the period and paragraph 45 is not met. I fear that they might well be right but I am left with a genuine concern that acceptance of that position will do little to hasten the allocation of sufficient sites through the DPD process.
24. I now turn to the personal circumstances in this case. Wayne is not at school and in the short term at least will continue the horse breeding and trading business in his father's absence. The situation with Billy is quite different. He is waiting for an operation on his spine at the Medway Maritime Hospital. Clearly it is advantageous to have a fixed abode in these circumstances. However, I attach greater weight to his educational needs. Aged 14, until this summer he has been attending The Abbey School in Faversham. He has now been selected

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to attend a special course at Canterbury College which will take his education on to GCSE in core subjects and combine practical training in skills such as brick laying and plumbing. This is a two year course. One of the recognised ways in which the cycle of deprivation encountered by Gypsies can be broken is through education and a settled basis from which to undertake it. Whether Billy makes a success of this opportunity will be for him but, as a matter of common humanity, he should be encouraged and supported in that endeavour. The evidence is that there is no alternative accommodation and that after the existing one year compliance period there would be no alternative to the family returning to the road. Relations with their uncle at Horseshoe Farm are said to be sometimes difficult and in any event that is an unauthorised site in the AONB.

Conclusions

25. I find the educational needs of Billy to be a cogent reason to allow the family to remain where they are for the next two years. The three matters of planning concern are impact on the AONB, sustainability and highway safety. I am satisfied that this is an inappropriate site for a permanent Gypsy site given, in particular, the impact on the landscape of the AONB which has a high status meriting protection notwithstanding the clear case of general need for more Gypsy sites.
26. As a matter of general principle, it seems to me to be inappropriate to grant planning permission, temporary or permanent, where the objectives of AONB designation will be compromised. In this particular case, however, the council's approach at the nearby Horseshoe Farm has been to accept short term harm to the AONB while they seek to negotiate a permanent solution that would cause no lasting harm to the protection of the landscape. The short term perpetuation of an unsustainable location does not weight heavily in the balance. The risk to highway safety is real but relatively low given the nature of the use of the lane. It weighs strongly against permanent use but less so for short term use. Personal circumstances weigh heavily in support of a period of stability and temporary continuation of the use. On balance I consider that in the particular circumstances of this case the short term harm to the AONB and highway risk is outweighed by the need for short term stability. I emphasise that this conclusion arises from the particular circumstances of this appeal and that this site is unacceptable as a permanent Gypsy site.
27. I have considered whether this is to be done through a temporary planning permission or, exceptionally, an extended compliance period under ground (g). Given that the recent GTAA assessment indicates a higher degree of need than it appears the council anticipated from their own monitoring, an optimistic view would be that priority will now be given to site allocation as recommended by C1/06. Indeed, I am encouraged by the council's planning officer's view that he could find sites to accommodate 62 pitches without the need to trespass into the AONB. As my colleague noted in the Upchurch appeal three years is not an impractical timescale for this. Given the need for urgent action indicated by the GTAA findings it is a reasonable expectation that a responsible council would seek to achieve this. The personal circumstances I have identified justify two years but to grant a temporary planning permission for three years would not be inconsistent with encouraging the achievement of the objectives of national guidance.

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28. In summary I am satisfied that the appellant is a Gypsy for planning purposes; that the site is not suitable as a permanent single family Gypsy site given its landscape impact in the AONB; its relative remoteness and its access. However the other material considerations of the need for more sites in the short term and the personal circumstances that arise are weighty considerations which outweigh the harm in the short term. Finally, Human Rights are clearly engaged when loss of home is involved. Throughout my consideration of these appeals I have had regard to the Act. The refusal to grant a permanent planning permission and the grant of a temporary permission are consistent with its provisions.

Conditions

29. The residential caravan site use will be personal to the appellant and for a temporary period of three years for the reasons given above. It is also appropriate to control commercial activity, the erection of external lighting and the number of caravans and their location within the site because of landscape implications. While it appears that a suitable cesspool arrangement might well be in place a condition to enable suitable arrangements to be made is necessary in the event that what has been provided is unsuitable, because of aquifer considerations. The deemed application permission also incorporates horse keeping as a permanent use of the land. A number of conditions flow from that and in some cases they need to take account of the temporary situation of the residential caravan site use continuing. I consider them necessary if the use is to take place without damage to water resources and the landscape of the AONB. The landscaping scheme need not be extensive but it is an opportunity, in accordance with planning policy, to enhance the landscape of the AONB with marginal planting and to secure the removal of the laurels. Some diminution of the visual impact of the access when residential use ceases would benefit the rural character of the lane. The conditions were discussed at the hearing and the appellant raised no objection to them.

Overall Conclusions

30. As to the s174 appeal I have indicated above the reasons why I consider the allegation should be corrected. I am satisfied that no injustice will be caused by this and I will therefore correct the enforcement notice in order to clarify the terms of the deemed application under section 177(5) of the 1990 Act as amended. I will grant planning permission in accordance with the application deemed to have been made under section 177(5) of the 1990 Act as amended, which will now relate to the corrected allegation and quash the enforcement notice. In the light of this the appeals on grounds (f) and (g) do not need to be considered. The s78 appeal will be allowed.

Formal Decisions

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31. I direct that the enforcement notice be corrected by the deletion of the contents of paragraph 3 of the notice and the substitution of the following:

"Without planning permission, the material change of use of the Land from agricultural land to land used as a caravan site for the stationing of

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caravans/mobile homes used residentially and land used for the keeping of horses.”

32. Subject to this correction I allow the appeal, and direct that the enforcement notice be quashed. I grant planning permission, on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the development already carried out, namely use as a caravan site for the stationing of caravans/mobile homes used residentially and use for the keeping of horses; on land at Tootsie Farm, Elverland Lane, Painters Forstal, Faversham subject to the following conditions:

- 1) The use as a residential caravan site shall be carried on only by Wayne Willett and his resident dependants, and shall be for a limited period being the period of 3 years from the date of this decision, or the period during which the land is occupied by them, whichever is the shorter.
- 2) When the land ceases to be occupied as a residential caravan site by Wayne Willett and his dependants, or at the end of 3 years from the date of this decision, whichever shall first occur, the use as a residential caravan site shall cease and all caravans, structures, fences, materials and equipment brought on to, or erected on, the land, or works undertaken to it in connection with the use, shall be removed and the land shall be restored to its previous condition before the development took place.
- 3) The residential use hereby permitted shall be restricted to the stationing of no more than 2 caravans at any time (of which no more than 1 shall be a static caravan or mobile home) and they shall not be sited other than within the area edged blue on the plan attached to the enforcement notice.
- 4) No commercial activities other than the keeping of horses and no open storage of plant, products or waste (other than provided for in condition 11 below) shall take place on the land and no vehicle over 3.5 tonnes shall be stationed, parked or stored on the land.
- 5) No floodlighting, security lighting or other external lighting shall be installed or operated at the site.
- 6) The uses hereby permitted shall cease and all caravans, structures, fences, equipment and materials brought onto the land for the purposes of such uses shall be removed within 28 days of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
 - i) within 3 months of the date of this decision a scheme for:
 - the means of foul and surface water drainage of the site;
 - the means of disposal of contaminated run-off from the stable building, hardstandings, manure heaps and hay soaking areas;
 - the landscaping for the site; and
 - the modification of the access to serve the horse keeping use to be implemented once the residential caravan site use ceases;(hereafter referred to as the site development scheme) shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for its implementation.
 - ii) within 11 months of the date of this decision the site development scheme shall have been approved by the local planning authority or, if the local planning authority refuse to approve the said scheme, or fail to give a

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- decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
- iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted site development scheme shall have been approved by the Secretary of State.
 - iv) the approved site development scheme shall have been carried out and completed in accordance with the approved timetable.
- 7) If within a period of five years from the date of the planting of any tree, hedge or shrub planted pursuant to condition 6 above that tree, hedge or shrub is removed, uprooted or destroyed or dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree, hedge or shrub of the same species and size as that originally planted shall be planted at the same place.
 - 8) No more than one horse or pony per hectare of grazing land shall be kept on the site.
 - 9) Other than to the extent that permission for a residential caravan site, and uses ancillary thereto, is hereby given the stables and use of the land hereby permitted shall be used solely for the keeping of horses or ponies, and no event or show shall be held within the site.
 - 10) No burning of straw or manure shall take place on the site.
 - 11) Other than to the extent that permission for a residential caravan site, and uses ancillary thereto, is hereby given and with the exception of one trailer for the storage of manure, no materials or items of any kind in connection with the horse keeping use including jumps, caravans, mobile homes, vehicles or trailers shall be kept on the site other than within the barn.
 - 12) Other than to the extent that it arises from and subsists for the duration of the permission for a residential caravan site, no part of the site shall be sub-divided from the whole by means of permanent or temporary fencing or other means of enclosure, except for electric rope of a type approved by the local planning authority.

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33. I allow the appeal, and grant planning permission for use of land for one mobile home and one tourer for a Gypsy family at Tootsie Farm, Elverland Lane, Painters Forstal, Faversham in accordance with the terms of the application, Ref SW/05/1316, dated 7 October 2005, and the plans submitted with it, subject to the following conditions:
- 1) The use hereby permitted shall be carried on only by Wayne Willett and his resident dependants, and shall be for a limited period being the period of 3 years from the date of this decision, or the period during which the land is occupied by them, whichever is the shorter.
 - 2) When the land ceases to be occupied for the use hereby permitted by Wayne Willett and his dependants, or at the end of 3 years from the date of this decision, whichever shall first occur, the use hereby permitted shall cease and all caravans, structures, fences, materials and equipment brought on to, or erected on, the land, or works undertaken to it in connection with

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the use, shall be removed and the land shall be restored to its previous condition before the development took place.

- 3) The residential use hereby permitted shall be restricted to the stationing of no more than 2 caravans at any time (of which no more than 1 shall be a static caravan or mobile home) and they shall not be sited other than within the area edged red on the approved site plan.
- 4) No commercial activities or open storage of plant, products or waste shall take place on the land and no vehicle over 3.5 tonnes shall be stationed, parked or stored on the land.
- 5) No floodlighting, security lighting or other external lighting shall be installed or operated at the site.
- 6) The use hereby permitted shall cease and all caravans, structures, fences, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
 - i) within 3 months of the date of this decision a scheme for the means of foul and surface water drainage of the site (hereafter referred to as the drainage scheme) shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for its implementation.
 - ii) within 11 months of the date of this decision the drainage scheme shall have been approved by the local planning authority or, if the local planning authority refuse to approve the said scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted drainage scheme shall have been approved by the Secretary of State.
 - iv) the approved drainage scheme shall have been carried out and completed in accordance with the approved timetable.

Andrew D Kirby

Inspector

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Appearances

For the Appellant:

Mrs A Heine	Planning Consultant
Ms Mary Willett	Appellant's sister
Mr Wayne Willett	Appellant's son
Mr Billy Willett	Appellant's son

For the Local Planning Authority:

Mr G Thomas	Swale Area Planning Officer
Mr A Millard	Kent Highways Officer

Interested persons:

Mr C Woods	Martlesham, Newnham Valley
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Documents submitted at the Hearing

- 1 Report of GTAA stakeholder workshop
- 2 Statistical and Behaviour Analysis of Kent Unauthorised Encampments 2006
- 3 Revised schedule of Private Gypsy Sites in Swale
- 4 Swale Gypsy count July 2007
- 5 The Erection of Stables and Keeping of Horses policy document
- 6 List of saved policies