

<b>3.3 REFERENCE NO - 16/507020/FULL</b>			
<b>APPLICATION PROPOSAL</b>			
Permission is sought for change of use of land to a residential caravan site, for two Romani Gypsy families. The site to contain two static caravans, two touring caravans, hardstanding and associated residential parking, a water treatment plant and a new highway access. (Part retrospective).			
<b>ADDRESS</b> The Retreat Elverland Lane Ospringe Kent ME13 0SP			
<b>RECOMMENDATION</b> - Refuse			
<b>SUMMARY OF REASONS FOR RECOMMENDATION/REASONS FOR REFUSAL</b>			
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 the character of a rural lane 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 her family.			
<b>REASON FOR REFERRAL TO COMMITTEE</b>			
To allow Members to consider future policy for gypsy and traveller sites in this area which has seen a number of temporary planning permissions.			
<b>WARD</b> East Downs	<b>PARISH/TOWN COUNCIL</b> Ospringe	<b>APPLICANT</b> Mrs Annie Gibbs <b>AGENT</b> BFSGC	
<b>DECISION DUE DATE</b> 18/11/16	<b>PUBLICITY EXPIRY DATE</b> 04/11/16		
<b>RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):</b>			
<b>App No</b>	<b>Proposal</b>	<b>Decision</b>	<b>Date</b>
15/510499/FULL	Permission is sought for change of use of land to a residential caravan site, for two Romani Gypsy families. The site to contain two static caravans, two touring caravans, parking for four vehicles with associated hardstanding, and septic tanks/water treatment plants as required. This application is part retrospective.	Refused	12/04/2016  Appeal submitted late and turned away on 17/08/2016
Enforcement Notice and Stop Notice issued	Without planning permission, the material change of use of the Land to land used as a caravan site for the stationing of caravans/mobile homes, and the laying of hard-surfacing materials to facilitate the use. Six months period for compliance.	Appeal on Ground (g) lodged but not yet determined	24/12/2015

**1.0 DESCRIPTION OF SITE**

1.01 This application relates to an arbitrarily defined small part of a steeply sloping wider orchard situated within an attractive dry valley within the Kent Downs Area of Outstanding Natural Beauty. The site has no direct vehicular access and had no planning history prior to 2015. The wider site is adjacent to Newnham Valley Road which links Faversham to many rural communities, but it is located in a remote location

well away from any local services or amenities. Faversham station is 6km away. Access to the wider site in the applicant's ownership has always only been via an entrance within the junction of Newnham Valley Road and Elverland Lane, with the site having no other access to Elverland Lane. The actual application site fronts the narrow and steep Elverland Lane which runs off Newnham Valley Road where it forms a sunken, tree lined and attractive lane, in the manner of many lanes across the Kent Downs AONB. This lane is significantly lower than the site levels at the proposed new access point. Here, trees cling to the roadside bank with exposed roots creating a picturesque character to the lane.

- 1.02 Access to the wider field was via a simple field gate situated within the junction between Elverland Lane and Newnham Valley Road, where emerging drivers cannot be seen by traffic turning left into Elverland Lane, and who cannot see approaching traffic due to a complete lack of visibility splays at the site entrance. The original simple metal five bar gate has since been replaced by tall solid timber gates which stand out as an alien feature in this rural location.
- 1.03 The wider site was occupied unlawfully by the applicant and her family on the weekend of 12/13 December 2015 with two mobile homes and two touring caravans. The Council served an Enforcement Notice on 24 December 2015 requiring removal of the caravans. The applicant's appeal against the Notice on Ground (g) only was originally scheduled for an appeal hearing in September 2016, but shortly before that date this was changed to a written representations procedure with a new start date; and a decision from the Planning Inspectorate is still awaited. On the same day (24 December 2015) the Council also served a Stop Notice preventing further hardsurfacing works on the site.
- 1.04 A retrospective planning application (15/510499/FULL) for occupation of the wider site as gypsy and traveller site was submitted on 14 December 2015 but was refused by the Council on 12 April 2016 for the following two 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 and to saved policies E1, E9 and RC7 of the Swale Borough Local Plan 2008. The Council has taken account of the position in terms of the supply of gypsy and traveller sites, the health issues of the applicant and her 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. 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 proposal will result in an increase in use of the existing sub-standard access, lacking in sufficient visibility sightlines and close to an existing junction, which would be to the detriment of highway safety and contrary to saved policy T1 of the Swale Borough Local Plan 2008.*

- 1.05 This decision was appealed (APP/V2255/W/16/3150092), but the appeal was submitted late and turned away by PINS on 17 August 2016. This application seeks a new decision on an amended scheme for a smaller site involving the creation of a new access point onto Elverland Lane.
- 1.06 When the site was first occupied the caravans they were sited at the lowest point of the wider field, closest to Newnham Valley Road. More recently, some have been moved higher up the field closer to the current application site. In addition, long lengths of green net screening have been installed along the Newnham Valley Road and Elverland Lane boundaries of the site. These appear to be there to create privacy within the site, but appear intrusive and out of character with the area.

## **2.0 PROPOSAL**

- 2.01 The current application is for a relatively small part of the wider field, said to represent 0.0634ha, and for this to be hard surfaced to an extent large enough to station two static caravans, two tourers, and provide room for four parking spaces; leaving the surrounding orchard undeveloped. The proposal also includes the provision of a water treatment plant (position not shown) and a new highway access to Elverland Lane. The proposal does not represent the current position of all caravans stationed within the wider site as these were generally at the foot of the slope alongside Newnham Valley Road using the original access point. The application form confirms that an area for waste and recycling will be provided within the site.
- 2.02 When originally submitted (September 2016) the application was supported by a Design and Access Statement which confirms, in summary, that;
- The new access point, and that visibility in either direction is “reasonably good”
  - The site belongs to the applicant
  - The site is in mixed used for stationing mobile homes and as an orchard
  - The site is in the AONB but that there are other gypsy sites nearby which are more prominent
  - Impact (visual or otherwise) on the AONB is minimal; the site is small and would not be prominent
  - Screening around the site can be improved; further planting can be undertaken
  - Elsewhere, personal circumstances have overridden significant environmental harm to justify a personal planning permission – this should apply to this application
  - The need for gypsy sites should outweigh any harm
  - Article 8 of the Human Rights Act requires respect for family and private life
  - Article 3 of the UNCRC requires a child’s best interests to be a primary consideration
  - The applicant’s personal circumstances include;

- They are a member of the gypsy traveller community who are entitled to respect for their traditional way of life
- A personal permission would be accepted
- It is important that the family has a stable place to live to access healthcare so a consistent health care plan can be maintained, and for access to education
- The Human Rights Act is engaged in terms of respect for private and family life, and there should be no interference by a public authority except as in accordance with the law for the protection of the rights and freedoms of others
- The site is said to be sustainable, and that utility services could be made available
- The site is close to a bus route and not far from shops and facilities at Faversham over 3 miles away
- The site has good safe access
- The site is affordable at no cost to the public
- PPTS promotes more private traveller site provision and is in favour of sustainable development
- Approval of this site will reduce need elsewhere
- A temporary permission should be a significant material consideration where the LPA is unable to demonstrate a five year supply of sites  
NOTE: This is a reference to the pre-2015 version of PPTS and is out of date in relation to a site within an AONB
- Very Special Circumstances “(VSC’s)” are quoted as material considerations as follows;
  - Lack of available sites and undersupply in the district and the South-East of England
  - The need for the family to access healthcare and education
  - Lack of a five year site supply
  - The fact that the applicants are Romani Gypsies
- The site is not a risk of flooding
- Croydon Council is invited to grant permanent planning permission  
NOTE: This is clearly an error.

- 2.03 Later (in October 2016) a series of additional documents were submitted relating to Health and Education (all marked confidential) and relating to Horse Fairs, Drives and Events. The last document is not marked confidential and provides details of events that the applicants have attended in recent years including Peterborough Show Horse Fair, Red Lee Show Day, Hyde Park Easter Drive, Stow Horse Fair, Appleby, Epsom Derby, Kent Horse Fair, Barnet Horse Fair, Hull Fair, Scarborough Horse Fair and of stays at different camps not listed when working away on the roads. The purpose of this information is said to be to confirm that the applicant’s family qualify for Gypsy Status.
- 2.04 The confidential documents provide details of well known and generic gypsy education, health and life expectancy issues, and of the persons expected to occupy this site. These include two children (one of primary school age; one below school age). They also include details of health care issues for one adult and the applicant’s school age grandson, including behavioural and mental health problems requiring special education, along with details of prescribed medications for two adults. Also included are details of a recent exploratory medical test for another adult.
- 2.05 The applicant’s grandson attends school in Faversham and medical establishments at Canterbury and Medway. Letters from health and education bodies outline the child’s issues and needs, and suggest that he does not react well to change.

2.06 In January 2017, further personal information was sent to the Council, which I have treated as confidential. These comprise a letter from the primary school that the applicant's grandson attends (dated 11 January 2017), a letter from an NHS Consultant Community Paediatrician (dated 08 January 2017) regarding the grandson's mental health issues, and a letter from an NHS Primary Mental Health Worker (dated 03 May 2016) which also sets out the grandson's educational situation and his contacts with children's mental health services. These letters;

- Confirm the date that the grandson started at the school
- Ask that the grandson's educational and emotional need are considered in relation to his housing situation
- Explain the grandson's progress at school
- Explain that he has complex mental health needs but is otherwise physically well
- One letter says that with the stability of his current housing situation there has been a significant improvement in the grandson's behaviour and emotional health
- Express concern that if the family has to move, the grandson may not be able to continue at the same school, which could be extremely detrimental to his progress
- One letter says that there has been no improvement in the grandson's behaviour
- Explain that the grandson greatly worries about changes or new situations, such as having to leave their current site

### 3.0 PLANNING CONSTRAINTS

Area of Outstanding Natural Beauty KENT DOWNS

Potential Archaeological Importance

### 4.0 POLICY AND OTHER CONSIDERATIONS

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

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

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

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

- an economic role – contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places

and at the right time to support growth and innovation; and by identifying and coordinating development requirements, including the provision of infrastructure;

- a social role – supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community’s needs and support its health, social and cultural well-being; and
- an environmental role – contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy.”

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

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

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

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

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

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

### Planning Policy for Traveller Sites (PPTS)

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

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

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

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

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

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

- a) promote peaceful and integrated co-existence between the site and the local community*
- b) promote, in collaboration with commissioners of health services, access to appropriate health services*
- c) ensure that children can attend school on a regular basis*
- d) provide a settled base that reduces the need for long-distance travelling and possible environmental damage caused by unauthorised encampment*
- e) provide for proper consideration of the effect of local environmental quality (such as noise and air quality) on the health and well-being of any travellers that may locate there or on others as a result of new development*
- f) avoid placing undue pressure on local infrastructure and services*
- g) do not locate sites in areas at high risk of flooding, including functional floodplains, given the particular vulnerability of caravans*

*h) reflect the extent to which traditional lifestyles (whereby some travellers live and work from the same location thereby omitting many travel to work journeys) can contribute to sustainability.” (para 13 PPTS)*

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

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

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

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

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

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

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

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

*“If a local planning authority cannot demonstrate an up-to-date 5 year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary permission. The exception to this is where the proposal is on land designated as Green Belt; sites protected under the Birds and Habitats Directives and / or sites designated as Sites of Special Scientific Interest; Local Green Space, an Area of Outstanding Natural Beauty, or within a National Park (or the Broads).” (para 27 PPTS).* I note that the last sentence above was added to this paragraph in the 2015 re-issue of PPTS.

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



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

The implications for this change in definition has affected the issue with regard to defining need and this matter is the subject to some very recent changes regarding the Council’s emerging Local Plan, which are referred to below.

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

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

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

- 4.15 Saved policy E19 (Achieving High Quality Design and Distinctiveness) requires development proposals to be well designed.
- 4.16 Saved policy RC7 (Rural Lanes) seeks to protect the physical features and character of rural lanes, of which Elverland Lane is one.
- 4.17 Saved policy H4 explains the Borough Council will only grant planning permission for the use of land for the stationing of homes for persons who can clearly demonstrate that they are gypsies or travelling showpersons with a genuine connection with the locality of the proposed site, in accordance with 1 and 2 below.
1. For proposals involving the establishment of public or privately owned residential gypsy or travelling showpersons sites:
    - a) there will be a proven need in the Borough for the site and for the size proposed;
    - b) the site will be located close to local services and facilities;
    - c) there will be no more than four caravans;
    - d) the site will be located close to the primary or secondary road networks
    - e) in the case of a greenfield site there is no suitable site available on previously developed land in the locality;
    - f) the site is not designated for its wildlife, historic or landscape importance;
    - g) the site should be served, or capable of being served, by mains water supply and a satisfactory means of sewage disposal and refuse collection;
    - h) there is no conflict with pedestrian or highway safety;
    - i) screening and landscaping will be provided to minimise adverse impacts;
    - j) no industrial, retail, commercial, or storage activities will take place on the site.
    - k) use of the site will not give rise to significant adverse impacts upon residential amenity, or agricultural or commercial use, of surrounding areas; and
    - l) the land will not be in a designated flood risk area.
  2. Additionally to 1, for proposals for short term stopping places:
    - m) there will be a planning condition to ensure that the length of stay for each caravan will be no longer than 28 days with no return to the site within 3 months.
- 4.18 This policy was criticised by the 2008 Local Plan Inspector who saw it, as a criteria based rather than site allocations policy, as inconsistent with the then Circular 01/2006 - which itself has since been superseded by PPTS and its emphasis of a five year supply of sites - and the policy can only be of limited significance to this application.
- 4.19 Saved policy T1 (Providing Safe Access to New Development) states;
- “The Borough Council will not permit development proposals that;*
1. *generate volumes of traffic in excess of the capacity of the highway network, and/or result in a decrease in safety on the highway network, unless these issues can be addressed by environmentally acceptable improvements to the highway network that have been agreed by the Borough Council and the appropriate Highway Authority in accordance with Policy T2; and*
  2. *lead to the formation of a new access, or the intensification of any access, onto a primary or secondary road or route, unless it can be created in a location that it acceptable to the Borough Council, or where an access can be improved to an acceptable standard and achieve a high standard of safety through design.*

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

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

- 4.20 This site is within the Doddington and Newnham Dry Valleys landscape character areas as defined in the March 2011 Swale Landscape Character and Biodiversity Appraisal, areas which are seen as of high and moderate sensitivity respectively and in good condition.

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

- 4.21 The Council's Publication version of the draft Local Plan, entitled *Bearing Fruits 2031*, was published in December 2014 and underwent examination in November 2015. The Local Plan Inspector's relevant interim findings are set out below.
- 4.22 Policy CP 3 of the draft Local Plan aimed to provide pitches for gypsies and travellers as part of new residential developments. Policy DM10 set out criteria for assessing windfall gypsy site applications. These policies are now being significantly revised or abandoned as appropriate according to the Council's re-assessment of site need in the light of the changes to PPTS and local progress on site supply. This is discussed below. Draft policy DM10 will now be a criteria based policy for assessing windfall planning applications and this includes the following points. It seeks to retain existing permanent sites, and favours expansion of existing sites. Further criteria for approval are exceptional mitigating or personal circumstances where there is no overriding harm to the locality or the need for affordable housing. Beyond these points the policy suggests that new sites should;
- be for applicants who have previously led a nomadic lifestyle, or those who can show why they have stopped travelling, or show intentions for future travelling
  - provide opportunity to integrate with communities
  - be of an appropriate scale without landscape harm or overloading services
  - accommodate living and working
  - cause no significant harm to occupants or others
  - cause no harm to AONB, other national or local landscape or biodiversity designations
  - provide landscaping to enhance the environment in a way that increases openness
  - provide for health lifestyles
  - be safe from flooding
  - have safe and convenient access and parking
  - provide transit or visitor pitches where appropriate

### **Site Assessment**

- 4.23 The Council's February 2014 Gypsy and Traveller Site Allocations: Issues and Options consultations document recommended a new methodology for how to assess site suitability for determining whether or not to allocate a site. Although this was primarily intended to rank potential site allocations, it was agreed by Members of the LDF Panel in June 2014 to be used as a material consideration in planning applications. Even though this is normally done in relation to the potential suitability of a fresh site, a site assessment exercise has been carried out in relation to this site and I have taken this into account in considering this application. The assessment is a Red/Amber/Green

staged approach to site suitability, with any site scoring Red in any stage not being progressed to the next stage.

- 4.24 The assessment starts with Stage 1: Availability. The applicant is in occupation of the site. Here the site scores green. This means that the site should proceed to Stage 2.
- 4.25 Stage 2: Suitability/Constraints. The site is not in a flood risk zone (assessment green); it is in an AONB and is part of a former traditional orchard, now in need of restoration, but the application site now is moved up the field from the main Newnham Valley Road and will be very prominent in public consciousness, especially with the proposed new entrance onto Elverland Lane. The recent occupation of the lower part of the field in which the application site lies has been extremely visually intrusive (boundaries feature predominantly deciduous hedging so for long periods of the year the caravans and vehicles etc. are plainly seen) and harmful to the aims of designation of the AONB. Whilst the caravans were originally sited only at the bottom of the site, they are prominent even here, and the proposed siting higher up the site will be even more prominent (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 three private gypsy sites nearby on temporary permissions (one on adjacent land and two others across the otherwise unpopulated Elverland Lane). These sites indicate sustained pressure for sites here which taken together will have a significant effect on such a sparsely populated and otherwise unspoilt area (amber); no adverse impacts on heritage/archaeology (green); is not known to be contaminated (green); will not be subject to unacceptable noise or disturbance (green); has dangerous access which the highway authority have raised formal objection to in the previous application, but now a new access to the side road is proposed – this will no doubt be less unsafe although the provision of necessary 66m overall visibility splays will have a significant impact on the character of the rural lane by removal of trees, along with extensive and intrusive engineering works to provide a level access given that the site is significantly above the level of the land at the proposed access point (green); and is remote and not within walking distance to any significant facilities at 5.5km from Bysingwood School and 6km from Faversham station (red). The red scores mean that it is not a site considered to be suitable as a permanent site, and that the site should not proceed to Stage 3 and will not be a candidate site for any future allocations policy (if such a policy were now to be produced).
- 4.26 The arrangements for production of Part 2 of the new Local Plan included consultation upon a preferred options document in summer 2014. The future of and need for Part 2 of the Local Plan was expected to be dependent upon the successful adoption of Part 1 of the Local Plan. It was intended that should the Local Plan Inspector find problems with Part 1 of the Local Plan, Officers were likely to suggest that all pitch provision matters be deferred to Part 2 to enable Part 2 of the Local Plan to progress independently of Part 1. The latest position on this issue is referred to below.

#### **Five year supply position**

- 4.27 The PPTS has since 2012 introduced a need for Council's to maintain a rolling five year supply of sites which are in suitable locations and available immediately. The Council put measures into place to deal with the PPTS requirements very quickly, but have only recently started down the route of trying to maintain a rolling five year supply.
- 4.28 The GTAA (2013) set a target of 85 pitches to be provided by the year 2031, with a suggested provision of 35 pitches in the first five years (to 2018). Three pitches were approved during the course of the GTAA's production so the final target was in fact 82 pitches. Since the publication of the GTAA and up to the end of March 2015 a total of

47 permanent pitches were approved in Swale, almost exclusively without an appeal, of which 33 pitches had been implemented. Evidence presented to the recent Local Plan examination (November 2015) shows that at the end of March 2015 the need for pitches identified from the GTAA thus stood at 82 pitches minus the 33 permanent pitches approved and implemented, including the personal permissions granted in the interim. This reduced the need to 49 pitches. These mostly comprised extensions to, or more intensive use of, existing sites and were awaiting occupation. Since then six more wholly new permanent sites (comprising eight (8) pitches) were approved in 2015/2016 including two fresh pitches on a large mixed use development site at Faversham. A further two (2) pitches as an extension to an existing well located site were approved in November 2016, with another wholly new pitch (previously approved only on a temporary basis) was approved in December 2016. This provision of 58 permanent pitches (47 in 2013 to 2015 plus eight (8) in 2015/2016 and three (3) further pitches in 2016/2017) is a very considerable achievement and indicates the Council's positive attitude to such development in the right location. As at July 2016, monitoring shows that 41 new permanent pitches have been implemented with 13 pitches yet to have their permission implemented. Based on these figures the Council has already met two thirds of the original pitch target to 2031 and the number of pitches completed exceeds any residual requirement for the five year period. The Council is able to demonstrate a five year supply and has in fact exceeded a 10 year supply of pitches. However, the situation has since changed considerably.

#### **The latest position on site provision**

- 4.29 The revised PPTS (2015) has resulted in considerable uncertainty as it changed the planning definition of a traveller and gypsy, and therefore what number of required pitches need to be identified. Evidence to the recent Local Plan examination was that the Council has re-interrogated the GTAA data to determine the appropriate level of pitch provision based on the new 2015 PPTS revised definition of gypsies and travellers. The data revealed that for all but unauthorised sites some two-thirds of households surveyed for the GTAA either never travel or travel not more than once a year. Overall, only 31% of respondents travel a few times a year, and 55% never travel, meaning that in Swale the gypsy and traveller population is quite settled, slightly more so than elsewhere in the country. Many of the borough's Gypsy/Traveller population no longer meet the new PPTS definition of having a nomadic habit of life
- 4.30 Accordingly, the need for pitches in Swale has been re-evaluated, resulting in a reduced estimate of pitch need of 61 pitches over the Plan period to 2031; this being the most generous of the possible reduced pitch numbers scenarios considered. Of these, 58 pitches have already been granted permanent planning permission meaning that the outstanding need is three (3) pitches to 2031. The Council considers that on the basis of past trends this need could easily be met from windfall proposals. Moreover it indicates that by proper engagement with the Council, appropriate sites can be found in sustainable and acceptable locations in Swale (generally outside of the AONB or other designated area) without an appeal, meaning that there is a high probability of being able to find an acceptable alternative site with minimal delay.
- 4.31 As a result of this analysis, the Council is suggesting through Main Modifications to its draft Local Plan (published in June 2016) that the future need be based on a figure of 61 pitches, leaving a need per year of less than one pitch and, that no formal pitch allocations will be needed. Policy DM10 has been revised to deal with these windfall applications and the element of policy CP3 on pitch allocations is to be removed from the Plan. Accordingly, a Part 2 Local Plan would not be required.

- 4.32 The Local Plan Inspector's third interim report (March 2016) fully supports the Council's proposed position regarding gypsy and traveller site provision, accepting that the remaining need for sites can be managed by windfall applications and without a Part 2 Local Plan. The Inspector also accepts that the Council should revise draft Plan policies to reflect progress on site provision whereupon the Plan will be effective and consistent with national policy. In June 2016 the Council published Main Modifications to the draft Local Plan to confirm these intentions and these were considered at the resumption of the Local Plan EIP in January 2017. Finally, a new appeal decision at Bredgar dated 6 February 2017 (based on data available in September 2016) has confirmed that "*...in view of the now significantly reduced level of need combined with the reasonably substantial increase in the number of permitted sites, many of which have now been implemented, overall I consider that that the Council has now demonstrated that it does have a five year supply of deliverable sites. On this basis there is no apparent need for further sites in the short term and in the longer term any outstanding need that might be established would be likely to be dealt with through the provisions of the emerging development plan*".
- 4.33 At a more local level the Council is a contributor to the Kent Downs AONB management unit which has recently published its second revision to the Kent Downs AONB Management Plan (2014 – 2019). This includes policies SD1, SD2, SD3, SD8 and LLC1 of the Plan, which refer to the need to conserve and enhance the natural beauty of the AONB being the prime purpose of the designation, with new development respecting the area's character, quality and distinctiveness, with development that runs counter to the primary purpose of the AONB, or its distinctive landform, special characteristics or qualities being opposed.
- 4.34 Finally, the Government's Chief Planner announced on 31 August 2015 (the same day PPTS was re-issued) a policy that from that date in all applications and appeals that involve intentional unauthorised development, this fact can be a material planning consideration. In this case the site was occupied over a weekend without prior notice and without the necessary planning permission. The site had previously been owned by a different gypsy family who had not carried out any unauthorised development on the site. However, after work was carried out (7 December 2015) and it was revealed that the current appellant had recently purchased the land (27 November 2015) the Council immediately wrote to the applicant at her registered address to make clear the planning situation on the site and to discourage any unauthorised development. This letter was sent on 8 December 2015. Notwithstanding that letter the site was occupied by the applicant and her family over the weekend of 12/13 December 2015.

## 5.0 LOCAL REPRESENTATIONS

- 5.01 I have received sixteen letters of objection to the application from the wider local area despite it being thinly populated. These object to the application on the following summarised grounds;
- Is this application in addition to the site already there or in place of it?
  - If it is to replace it how does it differ from the previous application?
  - The current use of the site exceeds even what is being proposed
  - Simply moving the site a few yards up the hill will not make any difference, in fact it will make it worse; the large caravans will still be visible all the time, all year through the thinly spread trees, from a route that people use for recreation and leisure including cyclists and tourists – the caravans cannot be successfully screened on this site

- If this application is refused can we expect other applications for other small parts of the wider site as the site is clearly large enough for far more caravans
- The new application is akin to the previous refusal which has not yet been enforced; this should now be done with the Council's costs reimbursed
- The occupation of the site and submission of this application is making a laughing stock of the Council's Planning Committee and is an insult to local residents
- The site is isolated from any social, health, educational or other amenities, and within the Kent Downs AONB. The occupants have not even tried to involve themselves in the local community and have ignored rules others have to live by
- Are there adequate amenities to facilitate the development?
- Nothing of substance has changed since the previous refusal
- The development remains contrary to the policies of the Local Plan
- There has been no additional investment in infrastructure
- Extra traffic on an already busy road near a sharp bend with no pavements or street lighting creating even more risk for pedestrians and drivers
- A new access onto a designated rural lane, Elverland Lane, will be detrimental to the bank and hedgerows there, and to highway safety
- A new access will lead to subdivision of the site
- The Council should genuinely consider the rights of established residents
- There are already an imposing number of temporary sites here on former agricultural land
- Brownfield land would be more suitable and the applicants should be encouraged to find a site with suitable amenities
- The proposed buildings and their materials are not in keeping with the AONB
- If this is approved they will eventually build a bungalow
- If the occupants have stopped travelling they cannot still be travellers. The applicants have been on this site since December 2015 and have not demonstrated any travelling habit – their gypsy status must be in question
- If approved this development will open the floodgates to further sites nearby
- Rubbish piled up in the orchard and in lanes nearby since the applicants occupied the site
- One writer contends that the Council's negative EIA Screening Opinion is wrong
- The Government has said that LPAs should very strictly limit new traveller development in open countryside and that there should be question of an exception within the AONB
- The Council has already met its obligations to provide sufficient gypsy and traveller sites. There is now no requirement for temporary or permanent permissions on unsuitable sites such as this one
- The applicants have occupied the site illegally and should be evicted before the application is considered
- The reference to Croydon Council in the Design and Access Statement is noted

5.02 I have also received one letter of support for the application on the following summarised grounds;

- Many objections are from people jumping on the band wagon because of what they have heard about gypsies through the media
- Many are uneducated about gypsy culture
- There are far worse looking sites with shabby caravans unconcealed by greenery or fencing nearby
- People should find out about what aspects constitute traveller status and remember that gypsies are Kent's largest minority group

## **6.0 CONSULTATIONS**

- 6.01 The Kent Downs AONB management unit has written objecting to the application noting that under PPTS guidance LPAs should very strictly limit traveller development in open countryside away from existing settlements or outside areas allocated in the development plan; and that there should be no exception to granting a temporary consent given the AONB designation. They add that paragraph 115 of the NPPF specifies that great weight should be given to conserving the landscape and scenic beauty in AONBs which have the highest status of protection in relation to landscape and scenic beauty. They suggest that whilst there is a presumption in favour of sustainable development in the NPPF planning permission should not be granted where adverse impacts of development significantly and demonstrably outweigh the benefits, and they suggest that the AONB designation overrides the benefits here. Reference is then made to saved policy E9 of the adopted Local plan and to policies of the AONB Management Plan, which is a further significant material consideration.
- 6.02 In terms of landscape impact the site is said to be located within the Mid Kent Downs Landscape Character Area within which the Kent Downs AONB Landscape Design handbook advises that one of the overall landscape character objectives is to maintain the remote quality of the countryside and to control urban fringe pressures. It is noted that this area is a remote one comprising a mix of woodland, arable fields and orchards and that, despite a number of scattered dwellings and the M2, the area retains its rural character. The AONB unit considers that stationing caravans here will detract from the landscape character of the locality and fail to conserve the natural beauty of the Kent Downs AONB, weakening and disregarding the primary purpose of AONB designation which is the conservation and enhancement of natural beauty contrary to policies SD1, SD2, SD3, SD8 and LLC1 of the AONB management plan, saved policy E9 and the aims of paragraph 115 of the NPPF.
- 6.03 Kent Highways and Transportation have not raised objection to the application but in response to my question have confirmed that 33m x 2.0m x 1.05m height visibility splays would be adequate to maintain highway safety at the proposed new access point in view of the low traffic speeds expected here.
- 6.04 Neither Ospringe, Newnham or Doddington Parish Councils, nor the County Archaeological Officer have responded to our consultation.

## **7.0 BACKGROUND PAPERS AND PLANS**

- 7.01 Application papers for application 16/507020/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; the Council's current position regarding the supply of gypsy and traveller sites; whether a permanent permission should be granted and if not, whether a temporary permission is appropriate. If I do not conclude that the other merits of the application warrant the grant of a permanent or temporary permission I believe that it would be proper to go on to consider whether the applicant's personal circumstances are sufficient to warrant the granting of a permanent or temporary planning permission and then, whether a refusal of permission would constitute an infringement of the applicant's human rights.



- 8.02 My starting point for consideration of this application is the provisions of the saved policies of the Swale Borough Local Plan 2008 and the Council's published site assessment criteria for gypsy and traveller sites. Saved policies E6, E9 and RC7 seek to resist development in the countryside and to protect valued landscapes and rural lanes. There is no doubt that the site is not generally suitable for residential development or use as a caravan site as it is located in open countryside, well outside any defined settlement designated as suitable for residential development, and that saved policy E6 seeks to protect the wider countryside from development except in specific exceptional circumstances. It follows that the granting of planning permission for the proposal would seriously undermine the effectiveness of local rural settlement policy and thus have adverse implications for the character of the countryside, unless it satisfies at least one of the exceptions that justify a departure from the development plan.
- 8.03 The site lies in open countryside and on an attractive rural lane, where established policy at local and national level is to restrict non-essential development. At NPPF para 115 it is made clear that in AONBs great weight should be given to conserving the landscape and scenic beauty. The objectives of AONB designation are to conserve and enhance the natural beauty of the area. This is therefore 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.
- 8.04 The weight to be given to AONB landscape protection remains a strong national policy. Occupation of the appeal site would have a significant landscape impact that would be a clear reason for refusal of planning permission as supported by saved policy E9. The site could be further landscaped but this would not reduce its impact significantly, unless it is to be hidden completely in a manner contrary to good planning practice and to paragraph 26 of PPTS. Recent erection of green netting along the roadsides at the site has not served to lessen its impact, and if this is necessary to provide adequate privacy for the applicant, it points to an unsuitability of the site for her family.
- 8.05 The idea that conserving the landscape and natural beauty of the AONB by introducing incompatible development and then attempting to screen it is the wrong approach. Furthermore, this approach would be directly contrary to PPTS guidance which seeks greater openness and can only serve to raise the sense of social exclusion of the site occupants; hiding them away from the world.
- 8.06 The NPPF seeks to protect Areas of Outstanding Natural Beauty, and PPTS states that sites in open countryside away from settlements should be very\* strictly controlled (\* very was introduced into this sentence in August 2015). In my view this policy has three purposes which are to minimise visual harm to the countryside, ensure sites are not isolated from the settled community and, to ensure sites are sustainably located.
- 8.07 Overall, I consider that the landscape impact of this site is overriding and that further landscaping is not the solution to any objection on landscape grounds, sufficient to warrant a refusal of planning permission.
- 8.08 Elverland Lane is designated as a rural lane to which saved policy RC7 applies. This specifies that development proposals should have particular regard to, amongst other things, the landscape importance of such lanes. The lane is distinctly rural in character and evocative of the essence of the AONB, making an important contribution to the character of the area. It is particularly attractive in its own right by reason of its narrow

carriageway and long stretches of unbroken roadside vegetation including at the proposed new access point, where the lane is characterised by high banks.

- 8.09 The new site access will require a minimum of 33m of roadside bank on either side to be kept clear of any obstructions over 1.05m in height, creating a new and artificial element to this most traditional and evocative of sunken lanes. The proposal to use this site for stationing caravans with a new access, which would necessarily involve cutting through the steep and wooded roadside banks with old roots protruding therefrom, would be a substantial engineering operation significantly harming the ancient and secluded character of the lane to the extent that a refusal of planning permission on grounds of being contrary to saved policy RC7 is sustainable. The need to maintain the sightlines clear of obstructions in the long term will also mean long lasting damage to the valued intimate character of the lane.
- 8.10 The site is also very remote from services (6km from Faversham station and 5.5km by road from Bysingwood School), and does not provide a convenient location for access to educational, health or social facilities. Nor is the site well located 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 adopted Local Plan identifies a settlement hierarchy for the Borough where various levels of development might be appropriate. This isolated location is not one where there is ready access to amenities. It thus fails to meet the second stage of the Council's published site assessment criteria.
- 8.11 In this regard the nature of the site is far more remotely located than one at Spade Lane close to the Medway conurbation that was subject of an appeal decision regarding a proposed gypsy or traveller site in October 2014. In that case (APP/V/2255/C/14/2220447) the Inspector considered whether the use of that site close to a major population centre with a wide range of facilities as a gypsy or traveller site constituted sustainable development. He noted that locational sustainability depends on a range of factors which are neither constant nor easy to measure with confidence. Nevertheless, he concluded that the site was "in a location where the overwhelming majority of journeys to shops, to school, to the doctor or to most other facilities and services would be undertaken by car." He added that "The distances involved, the absence of any public transport in easy reach, the character of the lanes along which people would travel, and the unattractiveness at night, in winter or in bad weather of any short cuts provided by local PROWs, would obviate journeys on foot other than for the fittest and/or most enthusiastic of walkers." His conclusion was that the sustainability benefits of the proposed development were minimal and more than outweighed by significant and demonstrable disadvantages. I consider that similar conclusion apply with even greater force here where the site is far further from amenities and where the roads and lanes in question are also without footpaths or street lighting.
- 8.12 If further evidence were needed, there have been three recent appeal decisions relating to private gypsy and traveller sites in Elverland Lane close to the current application site in 2007, 2011 and 2012. In the 2007 appeal decision at the site then known as Tootsie Farm, now Hill Top Farm (immediately uphill adjacent to this site) the Inspector commented that;

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

*distance from services which in the main are to be found in Faversham. However, I do not consider it so unsuitable a location as to rule it out were that the only area of concern.”*

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

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

Finally, at Horseshoe Farm, also higher up Elverland Lane (opposite Tootsie Farm) an Inspector in May 2012 (post PPTS 2012) stated that;

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

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

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

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

- The remote location of the site fails the sustainability criteria of DM10 as it falls within category 6 of policy ST3 being in open countryside and not protecting the intrinsic value or beauty of the countryside
- Its isolation does not achieve integration between communities
- It causes harm to the objective of designation of the AONB, and so would the creation of the proposed new access
- Additional site landscaping would not and could not reasonably increase openness

Accordingly, I see no justification for a permanent planning permission here.

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

- 8.15 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 temporary planning permission here. There is in my view no case for granting temporary permissions pending policy production and the possibility of sites being allocated. Nor is there a shortage of site supply here. I have already concluded that the site is not suitable for a permanent permission. I have now also concluded that there is no case for a temporary permission based on waiting for emerging Local Plan policy, or on the basis of a lack of site supply. I have also had regard to the Inspector's comments in the Spade Lane appeal decision in relation to the granting of a temporary planning permission, which he dismissed. He found that the granting of a temporary permission creates some expectation of future permanence, but he saw no realistic prospect of circumstances there changing in the near future. He noted that the site would still be in open countryside and with poor relationship to services. He also noted that harm is often greatest in early years when landscaping has not had time to establish, and that the applicant's position was not urgent. I consider that many of these factors apply to this case, reinforcing my conclusions above. I do not consider that a temporary planning permission should be granted.

The applicant's own circumstances.

- 8.16 The Council made relevant enquiries regarding personal circumstances when the applicant first occupied the site. The applicant has also submitted a number of documents and details regarding gypsy equality issues, her own family circumstances and her gypsy status with the application. I have had regard to this information in its following comments.

Gypsy status.

- 8.17 The applicant has sent details of her family's attendance at Horse Fairs, Fairs and Events throughout the year, as well as at other unspecified cultural and family events. The applicant explains that the family also continue to travel for work for a significant part of the year, and explains that her family have also stayed at different camps when working way on the roads. This she suggests satisfies the test of gypsy status.

Health issues.

- 8.18 The applicant has also submitted various Education and Health Statements on a confidential basis. These largely rehearse widely known issues about the health and educational issues affecting gypsies and travellers, but also set out some details of the family members' health issues. These relate principally to the applicant's husband who has on-going health issues, and to her grandson of primary school age who has learning and behavioural problems for which he is receiving specialist medical help. Letters from the grandson's school (which he started at in January 2016) and from the NHS to the school along with details of his referral to the CAMHS (Child and Adolescent Mental Health Services) have been provided on a confidential basis. Further information about the applicant's grandson's mental health issues has also been submitted more recently. The applicant's daughter is also being prescribed medication. I appreciate that the applicant's grandson is now in education and does not react well to change, but I see nothing which suggest that his needs can only be met on this site, or that bearing in mind his experience of a nomadic lifestyle before moving to this site, a carefully managed change of permanent location will be to his long-term detriment.
- 8.19 The revised PPTS now makes it very clear that personal circumstances are unlikely to clearly outweigh harm to the AONB sufficient to grant a temporary permission, even where the supply of sites is inadequate. The exception here is where the best interests of a child might indicate otherwise (see Article 3 of the United Nations Convention on the Rights of the Child (UNCRC)). It is quite clear to me that in taking a decision which affects children the decision maker should understand and take proper account of the best interests of the child involved. This issue also relates to Article 8 of the European Convention on Human Rights (Right to a Private and Family Life). I have made enquiries of the applicant and medical and educational (or both) needs relating to her husband, daughter and grandson have been revealed. I have considered these issues fully. They seem to be to be significant and chronic, and I see no reasonable likelihood that they will be overcome in the short term; meaning that a temporary planning permission will not cover the period necessary to see them resolved. I can understand the benefits of a settled site for all these issues, but it is not clear to me how by settling on this remote site, on what must only at best be a temporary basis, the best interests of the family or children will be best served. Moreover, whilst the best interests of the child will always be a primary consideration, this does not mean that identifying their best interests will inevitably lead to a decision in conformity with those interests.
- 8.20 Even taking the best interests of the children involved here to have a settled base (as their parent and grandparents desire) I ask whether this can be outweighed by any combination of other factors, which individually do not outweigh that consideration. I find that the combination of significant factors including the impact of the development on policies to protect the countryside; significant harm to the AONB and on the character of Elverland Lane; the remote location and lack of accessibility to vital social, health and educational, facilities; and the intentional unauthorised development issue; create powerful counter arguments for the need for a settled base to be met on this site. That is not to say that the need cannot or should not be met elsewhere in the Borough (or beyond) where all these factors might not be present.

- 8.21 National policy is not to grant temporary planning permission in an AONB and, given that the Council will not be allocating the application site or any other sites for the foreseeable future, the applicant will be best served by finding an alternative permanent site elsewhere sooner rather than later. There seems to me no benefit in extending the applicant's current occupation of the appeal site as this will simply drag out the inevitability of relocation, and result in further harm to the AONB by consolidation of development, the creation of a new permanent access into Elverland Lane, and the possibility of inappropriate tree planting as has happened on the adjacent Tootsie Farm/HillTop Farm site and elsewhere (and which is extremely hard to resolve under planning powers). I note that inappropriate laurel planting and the erection of green netting has recently taken place at the site (possibly to provide privacy and lessen disturbance of the applicant's grandson from passers-by), which confirms my view that its continued occupation will inevitably and perhaps irreversibly adversely affect the natural beauty of the AONB.
- 8.22 The applicant's evidence of a need to live on the site for personal, health, or educational reasons is understood. Having considered whether a personal permission might be appropriate I can find insufficient reason to grant one, and I consider that a decision not to grant a personal permission is proportionate to the interference with the applicant's human rights and the Council's need to consider the best interests of the child as a primary consideration.

#### Equality and Human Rights issues

- 8.23 The submitted Design and Access Statement notes that elsewhere, strongly compelling personal circumstances have carried significant weight along with an identified need for sites and a lack of reasonable alternative sites. The statement refers to the United Nations Convention on the Rights of the Child which requires that a child's best interests be a primary consideration, and to the European Convention on Human Rights that requires respect for family and private life.
- 8.24 The Statement confirms that the applicant has gypsy status for planning purpose and would accept a personal planning permission as it is important that the family has a stable place to live and access education and healthcare. The Human Rights Act is referred to as is the entitlement of gypsies and travellers to their traditional way of life, which involves living in caravans. These issues are said to amount to "Very Special Circumstances" which are material to the planning application.
- 8.25 Finally, the applicant has submitted a number of documents relating more generally to the issue of racial discrimination especially in relation to gypsies both from the UK and the Council of Europe and UNHCR.

#### The balance between the above issues

- 8.26 The appeal site is very remote from social, health and educational facilities, has a significantly harmful impact on the natural beauty of the Kent Downs AONB, not least arising from the proposals to create a new access point onto Elverland Lane, and is not a site where a permanent planning permission ought to be granted on the basis of current policies. Nor is the need for sites now so overwhelming that such an unsuitable site should be approved. When first interviewed on occupying the site the applicant explained that her grandson of primary school age was to enrol in school and that this was the very first piece of land she had ever owned. The Council took time to enquire about any personal or medical issues that the family had and it was revealed that the applicant's husband has some on-going health issues that do not prevent him continuing to work, and that her grandson had learning and behavioural problems that were causing him to see medical professionals.

- 8.27 Having considered these competing factors, along with the harm to the AONB, remoteness of the site from any social, medical or educational facilities, and the Ministerial Statement regarding intentional unauthorised development, I find that the harm identified is not outweighed by the applicant's family's personal circumstances. Rather, I conclude that the severity of the impact of the use of the site on a nationally designated area (AONB) including that arising from the proposed new access to Elverland Lane, the manner of its occupation over a weekend, and the inappropriate location of the site far away from any amenities, allied to the applicant's opportunity to discuss with the Council more appropriate sites for long-term occupation in a more sustainable and suitable location, all weigh against a personal planning permission.
- 8.28 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 schools in Faversham which itself is not within the AONB. A site nearer to these schools 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. 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.

## **9.0 CONCLUSION**

- 9.01 This site is prominent within the Kent Downs AONB and has unacceptable proposed 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.
- 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.
- 9.03 The position regarding site supply is currently one where it is not necessary to consider setting aside serious environmental constraints to meet any deficiency in supply. I have considered the applicant's personal circumstances, but have concluded that there is nothing to suggest that his need can be met only on the appeal site or only within the AONB.
- 9.04 In balancing the competing issues of the need for and potential availability of alternative sites against the serious objections to the use of this site as a private gypsy site in terms of harm to the landscape character and to the objectives of designation of the AONB, and to sustainability, I believe that the balance remains strongly against permission being granted on this site.
- 9.05 I have considered the applicant's gypsy status and the need for sites, but have concluded that site supply is well advanced and as the area is very poorly served by amenities; that significant harm to the AONB and to planning policy would result, and that the site does not score well enough in relation to the Council's gypsy and traveller site assessment criteria to be suitable for a permanent planning permission. I also note that the issue of intentional unauthorised development is engaged here and I give this

some weight. I have considered whether a personal or temporary planning permission would be appropriate and have concluded that it would not. I therefore conclude that the proposed development should not be granted planning permission.

## **10.0 RECOMMENDATION – REFUSE for the following reason.**

### **REASONS**

- (1) 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 would create 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 health issues of the applicant and her 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. 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 site lies within the Kent Downs Area of Outstanding Natural Beauty and the siting of caravans and associated works including the proposal for a new site entrance onto Elverland Lane, and the ongoing need to achieve and then retain adequate sightlines in either direction therefrom, will create an alien and intrusive appearance to the site which detracts from the character and appearance of the lane contrary to area contrary to saved policy RC7 of the Swale Borough Local Plan, and to saved policies E1, E9, and to policies SD1, SD2, SD3, SD8 and LLC1 of the Kent Downs 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.

### **Council's approach to the application.**

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

- Offering pre-application advice.
- Where possible, suggesting solutions to secure a successful outcome.
- As appropriate, updating applicants/agents of any issues that may arise in the



processing of their application.

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

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.  
The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.