

3.4 REFERENCE NO - 16/503982/FULL			
APPLICATION PROPOSAL Retrospective application for change of use to residential - for one gypsy family, comprising one mobile home, one touring caravan and one utility shed.			
ADDRESS Graces Place Homestall Road Doddington Kent ME9 0HF			
RECOMMENDATION - Refuse			
SUMMARY OF REASONS FOR RECOMMENDATION/REASONS FOR REFUSAL The use of the site as a caravan site for residential use will result in an unsustainable pattern of development in a manner contrary to national and local planning policies, which outweighs the need to provide gypsy and traveller sites and the personal circumstances on the applicant and her 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 Ward	PARISH/TOWN COUNCIL Doddington	APPLICANT Mrs Sybil Smith AGENT Veritas Architectural Services	
DECISION DUE DATE 09/03/17	PUBLICITY EXPIRY DATE 05/07/16		
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
SW/06/0126	Change of use to residential for one gypsy family for one mobile, one tourer, one shed	Approved for 3 years on personal grounds	28/07/2011
Approved to allow children's education/personal needs to be accommodated			

1.0 DESCRIPTION OF SITE

- 1.01 The site is mid-way along Homestall Road, which runs parallel to, and just north of the M2, between Lynsted Lane and Newnham Valley. The site is broadly rectangular with its narrow end to the highway, and is generally bounded by tree lines. It is not near any built up area, but lies directly opposite a pair of cottages, which are otherwise quite isolated. The nearest settlement of any size is Newnham which is 1.6km away as the crow flies (with the M2 in between) but 2.8km by the shortest road route. Shops in Teynham are 5.3km by most convenient road route albeit a shorter route can be taken via narrow lanes. Faversham station and town centre is 7.5km away.
- 1.02 The site is said to be 0.1ha, and has a cesspool. However, it has no mains gas or electricity; these are provided by gas cylinders, and a generator. Originally the site had no water supply and relied on large above ground water tanks. Water supply in this area is by private mains and after trying unsuccessfully to obtain a connection the site owner secured a water supply by means on an on-site borehole.

- 1.03 The access to the site is on a tight double bend, and visibility to the west on exiting the site is poor. However, in the previous application it was determined that it would be possible to secure adequate visibility splays within the site ownership and highway boundaries.
- 1.04 Previous formal planning history of the site is limited to the service of an enforcement notice regarding the stationing a large soil grading machine in July 2004. This resulted in the grading machine being removed from the site.
- 1.05 However, of most significance is planning application SW/06/0126 from the current site owner (a relative of the current applicant) who was at that time living on the site, latterly with a partner and three children who, in 2011, were aged 13, 10 and 3 years old. Although the parents were considered to have a nomadic habit of life, the application was only approved in July 2011 on a personal basis for a three year period on the basis of the Council's recognition of the personal circumstances of the three children then living on the site; two of whom were in full time education. The youngest child was then at nursery and was suspected of being autistic, finding change difficult to cope with. In combination, the needs of the children persuaded the Council to grant a temporary and personal permission for one mobile home and one touring caravan even though it was clear then that the site was not seen as suitable for a permanent or temporary permission due to its extreme isolation and remoteness from services and facilities. This temporary permission was intended to allow time for the family to find an alternative site without undue disruption to education or nursery care for the children.
- 1.06 A condition requiring early removal of prominent fencing at the site entrance was complied with, but I have not been contacted by the applicant or site owner regarding assistance in finding any alternative site to move to.
- 1.07 This permission expired in July 2014 and no attempt to renew the permission was made until I approached the current site occupants; the result of which is the current retrospective planning application. The current site occupants are now almost all different from those that the temporary planning permission related to; a matter which I will clarify below.

2.0 PROPOSAL

- 2.01 The current application is for the stationing of one mobile home, one touring caravan, and a small flat roofed timber clad utility shed (approx 4m x 4m). The original mobile home has been clad in timber and a shed added to it to extend the accommodation. It remains a mobile home but with the appearance of a wooden building. The application is entirely retrospective and the mobile home and utility shed were present on the site at the time of my visit in August 2016. The site also includes a number of other structures principally children's play equipment and an open fronted store (car port type structure).
- 2.02 The application as submitted consisted simply of the application form and three drawings; a site location plan (drawing 001), a site plan showing the laying out of the site (and showing a far larger shed as "existing" in the rear corner of the site) (drawing 002), and a drawing of the utility shed (drawing 003). There was no evidence or gypsy status or personal circumstances. I have sought such information before coming to any conclusion on the merits of the application.
- 2.03 I contacted the agent on 1 June 2016 with a series of questions as follows;

"I am dealing with your application on the basis that it is for a private gypsy or traveller site and seek your clarification of certain matters in order to come to a fair and balanced recommendation. I am familiar with the recent changes to the PPTS national guidance on gypsy and traveller sites.

To assist me, I would be grateful if you could answer the following questions as fully as possible;

- 1. Can you please confirm the intended occupants of the site with their name, sex, age and details of any special circumstances in terms of education, health or disability that they may have?*
- 2. Can you provide any evidence that any of the above people satisfy the newly amended definition of a gypsy or traveller as set out in Annex 1 to the PPTS of August 2015? As part of this, can you please explain the employment status of the occupants and, if employed, what their employment consists of. Can you specifically confirm to what extent they may have a nomadic habit of life?*
- 3. Can you please confirm how long the site occupants have lived on the application site, and where they stayed before moving onto the site?*
- 4. Please confirm what, if any, land or property other than the application site is owned by any of the people named above? Please confirm whether any of this property is of a residential property such as a house, or mobile home stationed elsewhere?*
- 5. Please confirm that if a temporary or permanent planning permission were to be issued whether you would consider a personal planning permission to be justified, and if so why?*

I look forward to hearing from you within the next fourteen days."

2.04 At the end of June I received an initial response to my queries (letter dated 27 June 2016) confirming the site occupants as;

- Sybil Smith (aged 69 years) suffering from Spondylitis (and living on the site since September 2010)
- Dennis Doughty (81 years) (living on the site since September 2010), and
- Jacob Smith (18 years) – the original child aged 13 years in 2011 (living on the site since January 2005, when he moved there with his parents).
- None of the above are said to have any fixed address before moving to the site, nor do they own any other property or site.
MY NOTE: Previous (application) information was that Jacob had lived with his mother in a house in Newnham before moving to the site. Neither parent, nor the other original children, now appear to live at the site following a break-up of the parent's relationship.
- The site is owned by John Smith (original occupant and father of Jacob) - whom formal Notice of the application has been served on.
- A temporary permission was argued on the basis on temporary cessation of travelling due to Sybil's health issues.

2.05 In relation to gypsy status I was informed that Sybil Smith has previously led a nomadic habit of life as a fruit picker and field labourer but that this has been temporarily suspended due to her illness. Dennis Doughty is said to have been a manager of a traveller site at Snowdon and is well known as a traveller. However, he has suspended his travelling to take care of Sybil. Spondylitis was said to be a condition that can improve and that both Sybil and Dennis intend to return to travelling, although the timescale for this is uncertain.

2.06 I then asked;

“Thank you for your response to my earlier questions. Can I ask now;

1. *For any information about Jacob Smith’s gypsy status or personal circumstances (if any).*
2. *Can you clarify Jacob’s family relationship to Sybil Smith and/or Dennis Doughty (if any) or to the land owner John Smith. Do the three current site occupants form one family unit now?*
3. *Can you clarify who Jacob’s parents are or who he lived on the site with (aged from 7 years) from 2005 to 2010, and where those people live now?*
4. *If there is any reason why any of the information provided so far (and to be provided under 1 to 3 above) cannot be made public?*
5. *What arrangements should I make to visit the site and understand its current configuration/pattern of use?*
6. *Are you able to provide any independent corroboration of any medical/health issues which we can if necessary treat confidentially?”*

2.07 In response I was provided with information on a confidential basis regarding Jacob’s continued vocational training; that he is living with his grandmother and step-grandfather as a family unit whilst studying; and about his parent’s circumstances, which are as I had understood them (see above).

2.08 I met the agent on site on 26 August 2016 to discuss outstanding matters (Sybil was there at the time) and asked him to prepare a statement to explain the site occupants’ gypsy status and health issues which could be made public. I also discussed original planning conditions and which, if any, be appropriate to imposed on any new planning permission.

2.09 On 5 September I received further information, which I have also been asked to treat confidentially. It confirms maintenance of a visibility splay to the west of the entrance (as per condition (9) of the original 2011 planning permission); confirms on site drainage arrangements (by cess pit); suggests that the site’s remoteness should be weighed against the occupants’ personal circumstances and newer innovations in internet services such as online shopping which reduce the need for site occupants to travel from the site. Finally, the dimensions of the mobile home are confirmed as meaning that (even as extended) it remains within the legal definition of a caravan i.e.it does not exceed 20m in length or 6.8m in width as per the definition in Section 2 of The Caravan Sites Act 1968 and Social Landlords (Permissible Additional Purposes) (England) Order 2006 (Definition of Caravan) (Amendment) (England) Order 2006.

2.10 Attached to that message was a further letter (again confidentiality was requested) re-affirming and expanding upon many of the points in the letter of 27 June but (in summary) confirming that Sybil Smith’s Spondylitis causes her severe back pain; and confirming that Jacob’s parents no longer live on the site, with Sybil and Dennis moving there from a house they lived in when not travelling to look after Jacob whilst he was still a minor. Thus they have given up their permanent home to allow Jacob to continue his education; and if planning permission is not granted the site occupants would have no immediate place to live.

2.11 Lastly, I have also more recently (10 October 2016) been sent a letter from Sybil’s doctor confirming her medical condition, along with evidence of her receiving Disability Living Allowance for the last few years (again, in confidence). This information makes it clear that Sybil has limited mobility.

3.0 PLANNING CONSTRAINTS

Enforcement Notice

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.”

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, but as stated above this site does not lie within the Kent Downs AONB as this runs to the south of the M2 motorway, whilst this site is just north of the motorway.

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 the Borough's countryside saved policy E9 (Protecting the Quality and Character of the Borough's Landscape) 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.
- 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 Homestall Road 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 Lynsted Enclosed Farmlands landscape character areas as defined in the March 2011 Swale Landscape Character and Biodiversity Appraisal, areas which are seen as in poor condition and with low sensitivity. I do not consider that landscape impact is a significant potential objection to development here.

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 appellant 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 not in an AONB or with significant landscape impact (green); 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 within the AONB on temporary permissions (and a further nearby new site with a current enforcement notice against it) and there is local concern over the number of such sites locally. A current planning application for this new private site nearby indicates 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 access which the highway authority considers can be safely arranged (green); but is very remote and not within walking distance to any significant facilities (red). The red score means that it is not a site considered to be suitable as a permanent site, and that the site should not proceed to Stage 3 and will not be a candidate site for any future allocations policy (if such a policy were now to be produced).

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

Five year supply position

- 4.27 The PPTS has since 2012 introduced a need for Council's to maintain a rolling five year supply of sites which are in suitable locations and available immediately. The Council put measures into place to deal with the PPTS requirements very quickly, but have only recently started down the route of trying to maintain a rolling five year supply.
- 4.28 The GTAA (2013) set a target of 85 pitches to be provided by the year 2031, with a suggested provision of 35 pitches in the first five years (to 2018). Three pitches were approved during the course of the GTAA's production so the final target was in fact 82 pitches. Since the publication of the GTAA and up to the end of March 2015 a total of 47 permanent pitches were approved in Swale, almost exclusively without an appeal, of which 33 pitches had been implemented. Evidence presented to the recent Local Plan examination (November 2015) shows that at the end of March 2015 the need for pitches identified from the GTAA thus stood at 82 pitches minus the 33 permanent pitches approved and implemented, including the personal permissions granted in the interim. This reduced the need to 49 pitches. These mostly comprised extensions to, or more intensive use of, existing sites and were awaiting occupation. Since then six more wholly new permanent sites (comprising eight (8) pitches) were approved in 2015/2016 including two fresh pitches on a large mixed use development site at Faversham. A further two (2) pitches as an extension to an existing well located site were approved in November 2016, with another wholly new pitch (previously approved only on a temporary basis) was approved in December 2016. This provision of 58 permanent pitches (47 in 2013 to 2015 plus eight (8) in 2015/2016 and three (3) further pitches in 2016/2017) is a very considerable achievement and indicates the Council's positive attitude to such development in the right location. As at July 2016, monitoring shows that 41 new permanent pitches have been implemented with 13 pitches yet to have their permission implemented. Based on these figures the Council has already met two thirds of the original pitch target to 2031 and the number of pitches completed exceeds any residual requirement for the five year period. The Council is able to demonstrate a five year supply and has in fact exceeded a 10 year supply of pitches. However, the situation has since changed considerably.

The latest position on site provision

- 4.29 The revised PPTS (2015) has resulted in considerable uncertainty as it changed the planning definition of a traveller and gypsy, and therefore what number of required pitches needs 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 (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*".

5.0 LOCAL REPRESENTATIONS

- 5.01 I have received three letters of objection from residents of a wide local area, including from as far away as The Street in Newnham, on the following summarised grounds;
- The site distracts from an area of natural beauty
NOTE: The site does not lie in an AONB; this is south of the M2
 - The original temporary permission was granted because of the needs of the children, but they moved out shortly after it was granted
 - There has been unauthorised construction on the site, making the caravan look like a log cabin
 - Permission has been refused elsewhere for more homes in the countryside and this application should also be refused
 - The site is particularly remote and not within walking distance of any significant facilities.
 - It will not support integration with the local community
 - The site adversely impacts on the designated rural lane

6.0 CONSULTATIONS

6.01 Doddington Parish Council has objected to the application on the following grounds;

- Not a suitable site as within the Area of Outstanding Natural Beauty
NOTE: The site does not lie in an AONB; this is south of the M2
- "It is a random site"
- There are sufficient gypsy and traveller sites in the emerging Local Plan
- The site is remote from local services and amenities
- The site would compromise highway safety
- The site would adversely affect the residential amenities of adjacent properties.

6.02 Kent County Council's Gypsy and Traveller Unit do not have any comments to make on the application.

6.03 Kent Highways and Transportation do not comment on the application. I have asked them to consider the Parish Council's highway concerns, but they have responded with their 2011 advice saying that as vehicles will be moving slowly (25 to 30 mph) past the site due to the nearby sharp bend, a sightline of 30m in distance would be adequate, which is within site limits, and that the set-back could be reduced from 2.4m to 2.0m in this instance. They suggested a 2.0m x 30m sightline would achieve adequate road safety.

NOTE: A sight line of 2.0m x 30 was required by condition (9) of the 2011 planning permission. As such I see no reason to see a highway safety danger arising from this application.

6.04 The Council's Environmental Health Manager has no comments to make on the application.

7.0 BACKGROUND PAPERS AND PLANS

7.01 Application papers for application 16/503982/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 suitability of the site's location and its access to services; whether the applicant or site occupants is/are a gypsy and such policies are engaged; if so, the Council's progress on 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. However, PPTS, at paragraph 54, states that sites in rural areas where not subject to special planning constraints are acceptable in principle. The site is on level ground in an extensively cultivated area. It does not have significant impact on long distance views, but its entrance is to some extent harmful to the character of otherwise largely

undeveloped Homestall Lane, which is recognised as a rural lane protected by saved policy RC7 of the adopted Local Plan.

- 8.03 The site is also very remote from services, and does not provide a convenient location for access to educational, health or social facilities. The site is not served by mains water. 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.
- 8.04 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. He noted (October 2014) 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.
- 8.05 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 appeal site in 2007, 2011 and 2012. In the 2007 appeal decision at the site then known as Tootsie Farm (now called Hill Top Farm) the Inspector commented that;

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

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

*"As to **sustainability** the evidence strongly suggests that there are more sustainable locations for G&T development than the appeal site, which in effect adds to the scatter of residential development in the open countryside. There is no reason to doubt that the eventual allocation of sites to meet G&T pitch needs, whether within the Borough or within this area of Kent as part of a joint effort by a group of local authorities complying*

with their duty to cooperate, will be in more sustainable locations and circumstances than the appeal site. This has considerable weight as an objection to the grant of a permanent permission for the appeal use. On the other hand, until adequate pitch provision is made elsewhere account should be taken of the advantages of providing, even on a temporary basis, for those who lack alternative accommodation and would therefore otherwise be moving between potentially more unsatisfactory temporary locations. This point is referred to in paragraph 64 of ODPM Circular 1/2006, and in this case I consider it to balance harm to sustainability objectives in the short term.”

Finally, at a site known as Horseshoe Farm, Elverland Lane (opposite Tootsie Farm) 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.”

- 8.06 On the basis of this consistent view from 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 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 the original temporary permission was granted on this site and which, to my mind, means that this issue assumes far greater significance. I am satisfied that this unsustainable location is now a major obstacle to seeing this site as acceptable on a permanent basis.
- 8.07 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 three appeal decisions referred to above. The approach taken by the emerging Local Plan would not require a separate gypsy and traveller site allocations document and the Council has made very significant progress on site provision since publication of PPTS (2012). 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 above appeal decisions, 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 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
- Its isolation does not achieve integration between communities

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

- 8.08 Having said that, in a case where gypsy and traveller site supply might be important it is relevant to consider the applicant's gypsy status. Here, the evidence is limited but not so much that a reasonable conclusion of gypsy status cannot be drawn. I see no reason to dispute the appellant's gypsy status and will consider the remaining matters in this context.
- 8.09 At the time of the previous temporary permission on this site, 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. Given the Council's very significant progress on site provision, as now independently confirmed as meeting the required five years supply by an appeal Inspector in February 2017, my view now is that there is no longer a case for granting temporary permissions pending policy production and the possibility of sites being allocated. I have already concluded that the site is not suitable for a permanent permission. I now also conclude that there is no case for a temporary permission based on waiting for emerging Local Plan policy.
- 8.10 The previous temporary planning permission granted at this site was primarily in recognition of the educational need evident at that time. The proposed occupants of the site now are the applicant and her partner, and an 18 year old. 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.
- 8.11 I have also had regard to the Inspector's comments in the Spade Lane appeal decision (see above) in relation to the granting of a temporary planning permission. 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 appellant's position was not urgent. I consider that many of these factors apply to this case, reinforcing my conclusion that a further temporary planning permission should not be granted here.

The applicant's own circumstances

- 8.12 I have made relevant enquiries regarding personal circumstances of the applicant and others living on the site. The applicant has since submitted a number of documents and details in this regard. The proposed occupants of the site now are the applicant, her partner/carer and her grandson, aged 18. The applicant clearly suffers limited mobility and the grandson is still in part time vocational education. These facts in themselves do not in my view constitute special or very unusual circumstances. Previously, the older children on the site were at school, and an abrupt cessation of use of the site with no obvious alternative site to go to might have created an avoidable hiatus in the children's education. To avoid these consequences at a time when there was a high need for new sites, a temporary planning permission was granted. Now, circumstances have changed. The younger children no longer occupy the site, and the eldest is now aged 18 and only in part time education, and the position on site supply has radically changed. These circumstances are markedly different from before.

- 8.13 The occupant's evidence of a need to live on the site for personal, health, or educational reasons is understood. Having considered whether these factors support a personal planning permission I have to say that I do not think that they do. Accordingly, I conclude that any suggestion of extending the unlawful occupation of this site in recognition of the applicant's circumstances is significantly outweighed by all other factors.
- 8.14 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. 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.
- 8.15 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 remotely located along Homestall Lane unusually far away from amenities and accessible only by private transport, and whilst the current Circular makes clear that gypsy and traveller sites in rural areas without special planning constraints are acceptable in principle, it is so far removed from services that it is unacceptable as a permanent gypsy site.
- 9.02 The Council has been working to examine ways of providing new sites across the Borough, and has now produced solid results in terms of the approval of a very significant majority of the sites required until 2031. There are substantial suitably located rural areas where a gypsy and traveller caravan site would be acceptable in principle, and in significantly less remote and poorly serviced locations than the current application site. The site supply and policy position could not be more different than that which applied when temporary permissions were granted on this site and at appeal for similar sites nearby.
- 9.03 In balancing the competing issues of the need for, and potential availability of, alternative sites against the poor location of this site, I believe that the balance remains strongly against a permanent permission being granted on this site. The need to plan for sustainably sites with adequate access to amenities are to my mind powerful arguments against even a temporary permission on this site.
- 9.04 I have considered the personal circumstances of the applicant and her family. I have not found them to warrant a personal planning permission.

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 far away from any social, health, educational or other amenities, 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, 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 personal circumstances 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. 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.

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 these 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.