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## Appeal Decision

Hearing held on 13 December 2016

Site visit made on 14 December 2016

by **S J Papworth DipArch(Glos) RIBA**

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

**Decision date: 21 February 2017**

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**Appeal Ref: APP/V2255/W/16/3153750**

**The Peartree, Greyhound Road, Minster-on-Sea, Kent ME12 3SP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
  - The appeal is made by Mr David Kerbey against the decision of Swale Borough Council.
  - The application Ref 15/502237/FULL, dated 11 March 2015, was approved on 5 January 2016 and planning permission was granted subject to conditions.
  - The development permitted is change of use of land to use as residential caravan site for one gypsy family with two caravans, including no more than one static mobile home, erection of utility room and laying of hardstanding.
  - The condition in dispute is No 1 which states that: The use hereby permitted shall be for a limited period being the period of one year from the date of this decision. At the end of this period the use hereby permitted shall cease, all caravans, buildings, structures, materials and equipment brought on to, or erected on the land, or works undertaken to it in connection with the use shall be removed, and the land restored to its condition before the development took place..
  - The reason given for the condition is: As permission has only been granted in recognition of the particular circumstances of the case, having regard to the lack of alternative, available sites elsewhere within the Borough, in accordance with DCLG Planning Policy for Traveller Sites.
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### Decision

1. I allow the appeal and vary planning permission Ref 15/502237/FULL for change of use of land to use as residential caravan site for one gypsy family with two caravans, including no more than one static mobile home, erection of utility room and laying of hardstanding at The Peartree, Greyhound Road, Minster-on-Sea, Kent ME12 3SP granted on 5 January 2016 by Swale Borough Council, by deleting conditions 1) and 6) and varying condition 8).

### Main Issues

2. These are;
    - The effect of the proposal on the character and appearance of the Lower Road area of Sheppey.
    - The effect of the proposal on the aims of sustainable development, with particular regard to access to services and facilities for day-to-day living.
    - The weight to be attached to other considerations, including the supply of sites generally, the personal circumstances of the appellant and the availability of alternative sites for him.
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## **Reasons**

### *Preliminary Matters*

3. The site is among a group of traveller sites on Greyhound Road, and a single Hearing addressed similar applications from the occupiers of three of the sites; this one at The Peartree, one at The Hawthorns and one at Blackthorn Lodge. Another site at Woodlands Lodge was referred to as being the subject of an appeal in 2013, and that Decision will be considered as part of the main issues in the present appeal.
4. Whilst a joint Hearing was appropriate in view of the common issues, the appellants being represented by the same agent and by both the Council and the appellants having submitted joint Appeal Statements, it is appropriate to issue three separate Appeal Decisions in order that each should stand-alone as a document. There are however passages common to all three Decisions.
5. The hearing in the Council offices took place over much of Tuesday 13 December and in view of the failing light it was agreed that the site inspection should take place the following day. At that inspection each site was visited along with the respective occupiers, and the appellant's agent then drove myself and the Council Officer on a tour of possible viewpoints, shops, schools and other facilities mentioned in evidence, as well as recent housing development to the west. At the request of District Councillors and a representative of the Parish Council, notice was taken of the traffic conditions at the entry onto the main road, although this was not a matter of objection from the Council. The Hearing remained open for discussion throughout.
6. The original application was for the variation or removal of condition 7) of planning permission SW/11/1414 granted on 26 June 2012 which was for the change of use of land to use as residential caravan site for one gypsy family with two caravans, including no more than one static mobile home, erection of utility room and laying of hardstanding, and sought the temporary permission of 4 years be extended or removed. The four year period expired on 26 June 2016. The Council granted permission on 5 January 2016 for a further 1 year period, effectively another 6 months or so, secured by condition 1) as set out in the bullet points to the heading above, and it is this grant of permission that is appealed. The permission granted in 2016 included 7 of the 9 other conditions attached to the 2012 permission.
7. It was confirmed at the Hearing that the occupiers of the site continue to satisfy the definition of a gypsy or traveller as set out in the August 2015 version of Planning Policy for Traveller Sites, a situation that existed at the time of the Council's grant of the one year permission in January 2016.

### *Policy Background*

8. The Development Plan for the area consists of the saved policies of the Swale Borough Local Plan 2008 and Policy E1 on general development control criteria requires development to be well sited, appropriate in scale, design and appearance with a high standard of landscaping, and have safe pedestrian and vehicular access. The site is in the countryside where Policy E6 seeks to protect the quality, character and amenity of the area. Development will not be permitted outside rural settlements unless related to an exceptional need

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- for a rural location. Policies E9 and E19 seek the protection of landscape and high quality design. Safe access to development is the subject of Policy T1.
9. Specific to the provision of gypsy and traveller sites, Policy H4 sets criteria for sites, but seeks a genuine connection with the locality for anyone wanting to set-up a site, in addition to be able to prove traveller status. The Council accept that the policy was criticised by the Local Plan Inspector at the time, and that greater weight should be given to the more recent publication of Planning Policy for Traveller Sites. Whilst Policy H4 is still part of the Development Plan, and benefits from the provisions of section 38(6) of the Planning and Compulsory Purchase Act 2004, the Council's acceptance of its limitations is acknowledged.
  10. There is emerging policy in '*Bearing Fruits 2031: The Swale Borough Local Plan, Proposed Modifications, June 2016*'. The Local Plan Inspector's interim findings contain at paragraphs 11 to 14 in Part 3 a commentary on the process being undertaken by the Council, having mind to the revised definition of a gypsy or traveller introduced in the August 2015 revision to Planning Policy for Traveller Sites. The original need for 85 pitches was found to have reduced to 61, of which 51 had been completed or had permission granted. The Inspector considered the proposal that the remaining 10 be provided through windfall planning applications to be a well-reasoned and pragmatic solution to ensure that the Plan aligns with up-to-date national policy.
  11. On that basis it is not proposed to allocate sites, but to test windfall applications against criteria in Policy DM10 of the draft Local Plan which includes consideration of integration between communities; the effect on local communities, character and appearance, landscape and local services; the health of occupiers; the need for landscaping; access and parking. The appellant made representation as to the weight to be attached to the Inspector's interim findings, which will be considered in the planning balance.
  12. The Council has published the Supplementary Planning Document '*Swale Landscape Character and Biodiversity Appraisal*' which identifies the area where the site is as being within the central Sheppey Farmlands character area, described as being of moderate sensitivity and in poor condition.
  13. Planning Policy for Traveller Sites of August 2015 is the most recent statement of Government policy with regard to such site provision and the introduction states the Government's overarching aim 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.
  14. Decisions on traveller sites should also have regard to the policies in the National Planning Policy Framework so far as relevant, and this document states the presumption in favour of sustainable development and sets out the three dimensions of such development. The core planning principles include conserving and enhancing the natural environment; actively managing patterns of growth to make the fullest possible use of public transport, walking and cycling; and focusing significant development in locations which are or can be made sustainable.
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#### *Character and Appearance*

15. The site is part of a distinct and closely linked group of similar sites along Greyhound Road leading south from Lower Road, the A2500. It is outside the settlement boundary to the west and is, in policy terms, in the open countryside. There is open agricultural land to the north of the main road and the flat land reaching to the Swale to the south, but that land south of the road is not devoid of other development, there being linear built form leading away from the road to the west of the site, a disused public house and car park to the east, and further east more concentrated development around the bend and hill at Brambledown and at the entry to Elmley Road.
16. It is clear from a series of aerial views supplied by the Council that the site was once wooded and the various temporary permissions granted have resulted in the present more open aspect. It is less clear what would be expected pursuant to the condition requiring the land to be restored to its condition before the development took place, or what control might have prevented some removal of trees under the original use, presumably agricultural.
17. As mentioned previously, another site at Woodlands Lodge was the subject of an appeal in 2013. That site is adjacent to and between The Peartree and Blackthorn Lodge, and The Hawthorns is further to the north and nearer the main road, with intervening sites not considered here. The Inspector's Decision (Ref: APP/V2255/C/13/2208507, 28 October 2014) concerned enforcement action, but he considered a deemed planning application under Ground (a) and the effect on the character and appearance of the area. He found views of that site to be limited in extent to the immediate locality given the presence of trees around the edge of the site, although the structures and hardstanding would be visible from Greyhound Road given the wide access.
18. The analysis holds true to an extent for the current appeal site, although being on the straight part of Greyhound Road the nearby view is less open, Greyhound Road is a *cul-de-sac* and there is no public right of way. The previous Inspector accepted that the use of landscaping could soften the appearance of that site and over time mitigate, to an extent, the visual harm, but he considered that it would not remove it entirely. It is agreed now that compared with what appears to be the previous condition of the land, there has been some harm caused to the appeal site, but this is limited and to a substantial degree, capable of being further mitigated by landscaping.
19. More distant view-points are limited as found in 2013, and from the slightly raised locations along Lower Road to the east and west the sites, including The Peartree, are largely subsumed into other development or filtered by vegetation. Higher level views are available from Elm Lane to the north, but from there the sites do not stand out and are again largely subsumed into the flat land leading down to the Swale, the eye being drawn to the attractive estuarial landscape and distant features. Having mind to the findings of the '*Swale Landscape Character and Biodiversity Appraisal*' that the site lies within an area of moderate sensitivity that is in poor condition, the effect on the wider area is limited.
20. Another consideration in this and the next main issue is the change being brought about by the continued development of Thistle Hill on the far side of Scocles Road to the west. This is bringing the appearance of the built-up area closer to the appeal site, rendering it less clearly in open countryside and more

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as an edge-of-town site. The consequence of this is to reduce further the limited visual harm that would occur.

21. It is appropriate to consider the cumulative effect, having mind to the Decisions being issued at the same time for the other two sites at The Hawthorns and Blackthorn Lodge, and the possibility that these would affect consideration of other sites in the group. There is visual benefit in a grouping, avoiding sporadic development and visually isolated individual sites. The single entry onto Lower Road is visually appropriate and not unlike other entries in the vicinity, and Greyhound Road has the character and appearance of a rural lane
22. To conclude on this issue, whilst the passage of over 4 years of temporary permissions has resulted in the site becoming a part of the character and appearance of the area over that time, the use of the land, the stationing of the mobile home and the other structures has resulted in some limited harm in nearby views. That is mitigated in long views to a considerable extent by the vegetation and there is scope for further works. With those provisions the proposal accords with national policy and Development Plan Policies E1, E6, E9 and E10.

#### *Accessibility to Local Services*

23. This matter again was considered by the Inspector in the 2013 appeal, and he made reference to the policies of the Planning Policy for Traveller Sites extant at that time. One of the changes introduced in 2015 was to paragraph 25 in Policy H on determining planning application for traveller sites. This now reads *'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'*, the alteration being the addition of the word 'very' in the first sentence. The Inspector concluded that the site was remote and located away from a settlement with adequate and sufficient amenities.
24. The site inspection of the current case included an extensive tour of the nearest settlement and its facilities, and they do not appear to have changed significantly from those referred to in the Woodlands Lodge case. The main road is not inviting to walk along, but there is a public right of way across fields towards the school and shops.
25. It is pertinent to consider the changes being brought about by the continued development at Thistle Hill. Whilst much is built-out and the Council state a high degree of pre-sales, and whilst the community centre and school are in place, the provision of the planned shops appears to have stalled. That would provide a ready access for the site, and a level of integration with the new settled community. It is clear that there is development to the north of the proposed central site for the shops still to commence and that may provide the critical mass of demand necessary to bring about the provision.
26. It was asserted at the Hearing that the traveller lifestyle is likely to involve the use of private transport in any event, and that journeys would often combine shopping and the school run with other needs to make use of such transport for work, where the use of public transport, even if available, would not be appropriate. Certainly the traveller lifestyle is based on the need to travel in

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search of work, but there would be times when work is found closer to home and requiring only day-trips. Such a pattern of work would allow those other journeys to be undertaken at the same time, but would require of necessity, private transport. That aspect of the lifestyle is accepted in paragraph 13 h) of Planning Policy for Traveller Sites which states that some travellers live and work from the same location thereby omitting many travel to work journeys, which can contribute to sustainability.

27. As accepted by the Inspector on the Woodlands Lodge appeal, a settled base has given the occupiers of the appeal site access to healthcare and the same would be true of education for a family living here. The personal circumstances of the appellant will be considered next, but the site is not so remote as to make it unduly difficult to gain ready access to facilities, and Planning Policy for Traveller Sites does provide at Policy C for sites in rural areas.
28. That allowance for rural sites is provided that they do not dominate the nearest settled community. As with consideration on the visual effect, it is necessary to consider a possible cumulative effect, as the Greyhound Road area consists of a number of traveller sites. However, the layout is not sprawling, but is well contained and does not appear to have any adverse effect on the settled community of Brambledown or Minster, either in visual or numerical terms. It is sufficiently removed to avoid dominating the community, whilst being close enough so as not to appear truly isolated.
29. In conclusion on this issue, the site is outside the settlement boundary, but less remote than at the time of an appeal Decision at Woodlands Lodge, due to the progress being made with the Thistle Hill expansion. In the balance between a desirable social inclusion and the operational needs of a traveller site for a countryside location, the situation of Greyhound Road is appropriate and acceptable, in accordance with emerging Policy DM10 and national policies.

*Other Considerations and the Planning Balance*

30. The first consideration is the supply of sites in the Swale Borough area. The decision to not allocate sites is based on there being a reduced need, following the revision in 2015 to the definition of a gypsy and traveller, and to there being as a result, more than a five year supply of sites as required by paragraph 10 of Planning Policy for Traveller Sites.
31. The Council did accept however that where a gypsy or traveller who was occupying a site, falls out of the definition on a permanent basis through old age, they were unlikely in practice to seek their removal from the site. This, coupled with the already low turnover of privately provided sites, would limit site availability.
32. The inclusion of 8 new pitches in the 2015/2016 monitoring update at Orchard Park, Oak Lane, should be treated with some caution on the evidence presented to the Hearing, as the new pitches are the result of sub-division of existing pitches and would share the already existing utility buildings. The appellant's assertion that this sharing would not provide for wholly new occupiers, unconnected with the existing families, to be accommodated carries significant weight. As a result, the appellant's view that this is more akin to a house extension to accommodate a growing family than a wholly new house should also be afforded considerable weight.

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33. The appellant says that there will be objections to the resumed Local Plan examination, notwithstanding the Council's view that this matter is settled, and that removing the 8 sites at Orchard Park reduces the supply below the 5 year point. That appears a realistic appraisal.
34. Looking at the particular alternatives open to the appellant, the site at Brotherhood Woodyard at Dunkirk, with its 19 pitches, would appear to offer the possibility of vacancies arising, but the appellant's evidence is that this is occupied by Irish Travellers and that the Romany descended appellant would be most unlikely to settle there. Having mind to the views expressed at the Hearing, this appears a consideration of significant weight.
35. With regard to personal circumstances, the occupiers have access to health care locally at Thistle Hill, the continuity of which could be lost were they to have to leave the site. The presence of other traveller families on Greyhound Road is also a significant consideration when it comes to support.
36. It is appropriate here to consider the objection to the entry onto Lower Road, and the safety of that road. Whilst evidence was brought by Councillors and the Parish Clerk, regarding accidents on the road and at the entry, there is no official data indicating that users of the entry were at fault or even involved, and the Highway Authority raises no objection to the proposal either alone or cumulatively. The entry is on a part of the road subject to the national speed limit, between areas of 40mph, and has good visibility in both directions due to the curve of the road away from the entry. This does not appear a reason to find against the proposal, and the Council's approach is concurred with now. In this respect the proposal accords with Policies E1 and T1.
37. Turning then to the planning balance, there is real doubt over whether the Council can demonstrate a five year supply of sites, which as stated in paragraph 27 of Planning Policy for Traveller Sites is a significant material consideration in the grant of a further temporary permission.
38. However, the grant of a further temporary permission now would be the third on this site and the web-based Planning Practice Guidance states at Paragraph: 014 Reference ID: 21a-014-20140306 that it will rarely be justifiable to grant a second temporary permission – further permissions should normally be granted permanently or refused if there is clear justification for doing so.
39. Considering the findings of the two previous main issues, the visual harm can be mitigated to a considerable degree by the imposition of a landscaping condition, which should include control of hardstanding and site layout. The residual effect would be only in as much as activity and the sites being visible in views filtered, but not blocked, by vegetation secured by condition. Such filtering of views is fully in line with advice in paragraph 26 d) of Planning Policy for Traveller Sites that a site should not be enclosed with so much hard landscaping, high walls or fences, that the impression may be given that the site and its occupants are deliberately isolated from the rest of the community. The location of the site is not so distant from facilities, with the built form of Minster moving closer, as to be considered remote in the terms of paragraph 25 of the national policy document.
40. Further weight in favour of the proposal derives from the Development Plan position with Policy H4, whilst accepted as being out-of-date, is complied with

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in terms of the effect and the occupiers do now have a connection with the locality and the other criteria would have been considered in 2012.

41. To sum up, the location of the site, singly or cumulatively with others, appears a reasonable balance between isolation and not dominating the nearest settled community. The site scores well when considered against the criteria in paragraph 26 of Planning Policy for Traveller Sites and given the limitations of the Area of Outstanding Natural Beauty in other parts of the Borough, the location appears entirely suitable for a permanent permission.
42. In view of that finding, there is no need to attach particular weight to the personal circumstances of the appellant, other than that they indicate the experience of many gypsies or travellers. On that basis, whilst it would be essential to attach a condition limiting the occupation of the site to a gypsy or traveller as defined, there would be no necessity to limit it to any particular person.

#### **Conditions**

43. The starting point for this consideration is the conditions attached to the 2016 permission. The Council suggested conditions at the Hearing and these were substantially as conditions 2) to 5) of that permission. As stated in the Formal Decision above, condition 1) that limited the occupation to only a temporary period is removed. It is also appropriate to delete conditions 6) and 8) on access, parking and turning in favour of a new condition seeking a Site Development Scheme that would cover those matters.
44. The provision of such a Site Development Scheme including site layout and hard-standings as well as filtering vegetation, is essential for the reasons set out previously and is reasonable in a permanent permission. Due to the fact that the development and stationing of caravans has already taken place, the condition should provide for sanctions in default, ultimately leading to the removal of the items placed on the land.

#### **Conclusions**

45. The development of the Thistle Hill area of Minster has rendered the site less remote than was considered to be the case in an appeal in 2013, and the visual effects are consequently less apparent. The appeal proposal when taken together with the other two sites and accepting the possibility of the other sites in the group also seeking to establish permanent use, would provide much needed accommodation without causing significant and demonstrable harm once conditions have been accorded with. The site is suitable for permanent traveller occupation and Development Plan policies together with those of the Framework and Planning Policy for Traveller Sites do not indicate that development should be restricted.
46. For the reasons given above it is concluded that the appeal should succeed. The planning permission will be varied by deleting some of the conditions and substituting others.

*S J Papworth*

INSPECTOR

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#### APPEARANCES

##### FOR THE LOCAL PLANNING AUTHORITY:

R McCardle	Senior Planning Officer Swale Borough Council
S Rouse	Senior Policy Officer Swale Borough Council

##### FOR THE APPELLANT:

P Brown	Managing Director Philip Brown Associates
D Kerbey	The Peartree
D Brazil	Blackthorn Lodge
L Smith	The Hawthorns

##### INTERESTED PERSONS:

Cllr T Booth	Sheppey Central Ward Swale Borough Council
Cllr C Beart	Queenborough and Halfway Ward Swale Borough Council
T Codrington	Parish Clerk Minster-on-Sea Parish Council

#### DOCUMENTS

Document	1	Notification letter 14 November 2016 submitted by Council
Document	2	Statement of Common Ground signed and submitted jointly, includes track-change deletions for information
Document	3	'Monitoring Update of Gypsy and Traveller Land Supply 2015/16' submitted by Council
Document	4	Planning Committee Report 16 January 2014 on Orchard Park site
Document	5	Planning Committee Report 13 March 2014 on Orchard Park site
Document	6	Locations for site inspection submitted by Council

#### SCHEDULE OF CONDITIONS

- 1) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1 to the Department for Communities and Local Government 'Planning Policy for Traveller Sites August 2015'.
- 2) No more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended (of which no more than 1 shall be a static caravan) shall be stationed on the site at any time.
- 3) The site shall only be used for residential purposes and it shall not be used for any business, industrial or commercial use. In this regard no open storage of plant, products or waste may take place on the land, no vehicle over 3.5 tonnes and no more than one 3.5 tonne vehicle shall be stationed, parked or stored on the land.

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- 4) No floodlighting, security lighting or other external lighting shall be installed or operated at the site, other than in accordance with details that have first been submitted to and agreed in writing by the Local Planning Authority.
- 5) No building or structure shall be erected or stationed within 8 metres of the adopted drainage ditch.
- 6) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 30 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
  - i) Within 3 months of the date of this decision a scheme for the internal layout of the site, including the siting of caravans, utility building, hardstanding, access roads, parking and amenity areas; tree, hedge and shrub planting and where appropriate earth mounding including details of species, plant sizes and proposed numbers and densities; and vehicle parking or turning space (hereafter referred to as the Site Development Scheme) shall have been submitted for the written approval of the Local Planning Authority and the scheme shall include a timetable for its implementation.
  - ii) If within 11 months of the date of this decision the Local Planning Authority refuse to approve the Scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
  - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted Scheme shall have been approved by the Secretary of State.
  - iv) The approved Scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved Site Development Scheme specified in this condition, that items the subject of the Scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.