

2.4 REFERENCE NO - 18/501667/FULL		
APPLICATION PROPOSAL Application to extend the time limit to submit a site development scheme required by condition 4 of the planning permission granted on a ground A appeal against notice ref 17/500054/CHANGE		
ADDRESS New Acres Spade Lane Hartlip Kent ME9 7TT		
RECOMMENDATION Grant subject to conditions		
SUMMARY OF REASONS FOR RECOMMENDATION The proposal would enable the temporary permission granted at the site to run its course, and the Council is likely to be in a more robust position to consider refusal of permission for this wholly unacceptable site at that point.		
REASON FOR REFERRAL TO COMMITTEE Recommendation is contrary to the written view of a Ward Member		
WARD Hartlip, Newington And Upchurch	PARISH/TOWN COUNCIL Hartlip	APPLICANT Messrs S, M And P Maughan And Others Listed AGENT Heine Planning Consultancy
DECISION DUE DATE 11/06/18		PUBLICITY EXPIRY DATE 25/05/18

Planning History

16/506942/FULL

Proposed private traveller site comprising 8 pitches, each with a mobile home, touring caravan and utility room together with access road
Refused Decision Date: 15.11.2016

SW/13/1485

Change of use of the land to a residential gypsy caravan site comprising two pitches, including the laying of hardstanding, new access, associated access track and amenity block
Refused Decision Date: 25.03.2014

Appeal History:

17/500019/REF

Linked Planning and Enforcement Appeal 17/500018/ENF - Proposed private traveller site comprising 8 pitches, each with a mobile home, touring caravan and utility room together with access road
Part Allowed/Part Dismissed Decision Date: 15.12.2017

14/500042/REF

Change of use of the land to a residential gypsy caravan site comprising two pitches, including the laying of hardstanding, new access, associated access track and amenity block
Dismissed Decision Date: 28.10.2014



DESCRIPTION OF SITE

- 1.1 The site lies outside the built up area of Hartlip, close to the Borough Boundary with Medway. The site is flat, and lies in a stretch of agricultural and former agricultural land running from the A2 to the north to Mereborough Lane in the south. There are a number of dwellings scattered in the vicinity, with one opposite the site and a number to the rear, fronting South Bush Lane.
- 1.2 The site is subdivided into 8 plots, and is occupied by a number of caravans, both static and touring, and each plot is surrounded at present by a mix of close boarded fencing and post and rail fencing. Hardstanding has been laid in almost each plot.

2. PROPOSAL

- 2.1 This site is the subject of a temporary planning permission granted on appeal in December 2017. The appeal decision is attached at Appendix A to this report.
- 2.2 Condition (4) of the permission reads as follows:

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 28 days of the date of failure to meet any one of the requirements set out in (i) to (iv) below:

i) within 3 months of the date of this decision a scheme, hereafter referred to as the Site Development Scheme, shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for its implementation. The Site Development Scheme shall include details of: alterations to the site access in line with the details submitted with planning application Ref. SW/13/1485; the internal layout of the site, including the siting of caravans; areas for vehicular access and turning and manoeuvring; proposed and existing external lighting on the boundary of and within the site; the means of foul and surface water drainage or disposal; areas of hardstanding; fencing and other means of enclosure; hard and soft landscaping including details of species, plant sizes and proposed numbers and densities; and details of the condition of the land before the development took place and the works necessary to restore the land to that condition, or some other state as agreed with the local planning authority, and the time period within which the restoration works must be undertaken,

ii) within 6 months of the date of this decision the Site Development Scheme shall have been approved by the local planning authority or, if the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted Site Development Scheme shall have been approved by the Secretary of State.

iv) the approved scheme shall have been carried out and completed in accordance with the approved timetable, and works comprised in the scheme shall be thereafter retained for the duration of the development.

- 2.3 The Council challenged the appeal decision in the High Court. In the mistaken belief that the requirements of the temporary planning permission were on hold until such time as a judgement was handed down by the the High Court, the applicants did not submit the details required by the above condition within the specified time limit.
- 2.4 This application was subsequently submitted, seeking to extend the time limit for compliance with the condition.

3. POLICY AND CONSIDERATIONS

- 3.1 The National Planning Policy Framework (NPPF) and National Planning Practice Guidance (NPPG) generally support the provision of gypsy and traveller sites at appropriate locations within the countryside, recognising that it is not normally possible to provide such sites within the designated built up areas. They also aim to minimise harm to visual and residential amenity. Planning Policy for Traveller Sites (PPTS) sets out government policy in relation to the provision of sites such as this.
- 3.2 Policies DM10 (gypsy and traveller sites), DM14 (general criteria), DM26 (rural lanes) of the adopted Swale Borough Local Plan 2017 are relevant.

4. LOCAL REPRESENTATIONS

- 4.1 Councillor Wright objects to the application and comments as follows:

I object to this application .Quite clearly the inspector who in my view made the wrong decision in granting a temporary 3 year term was specific about having a site development scheme in place after 3 months.

Yet again development has occurred despite quite clear instructions from the planning inspector that this was a requirement

This mirrors the entry to the site despite a High Court injunction.

Continued work on the site despite a high court injunction and planning application /appeals/Guidance instructing applicants not to develop prior to determination

There is certainly more human rights and laws given to this part of the community over the settled community who generally follow the letter of the law.No wonder there is anger when one part of the community is treated more favorably than another section .

If rules are broken then there must be a cost and in this case the rules say they must leave the site as per the inspectors decision.

It is my view that whatever the site development scheme is it will probably be not kept to as before. The development scheme will not mitigate the landscape and visibility issues from public vantage points.

Will not be a sustainable site that blends in well with the local community but overwhelms it and the local services.

All the reasons the district council has given to challenge this site

- 4.2 Three objections to the application have been received, summarised as follows:

- Frankly the applicant has flouted the law again. they have had long enough and therefore should not be allowed to extend the time limit;
- How many times are the applicants able to appeal against planning permission refusal and to defy the decision of refusal ?
- How long will it take before the authorities take action to remove the occupants and return this area to its status as grade 1 agricultural land ?
- As a Hartlip resident, I strongly object to this application extension as there are already an abnormal number of such sites in our vicinity and as my memory recalls, that most of them go through the same routine and end up staying put whether permission is granted or not. "New Acres"8 plots applied for but from recent observation looks to be at least double that number of caravans, mobile homes, vans etc. thriving and well established.
- The loss of agricultural land which should be protected as such.
- Significant and demonstrable harm on the landscape.
- The occupancy of an open site for Gypsies or Travellers now affects a strategic gap between Medway and Swale.
- Nearby homes have been noted with "For Sale" notices posted. (The likely result of the lands new use ?)
- Spade Lane is very narrow and with more vans and trucks utilising it, would make it more accident liable;
- The Travellers have not adhered to any rulings from the court or council. They continue to develop the land inappropriately which is not in keeping with the green space/agricultural land it is meant for.
- The area is now totally disfigured for an open countryside space.

5. CONSULTATIONS

5.1 The **Environment Agency** do not raise objection

5.2 **KCC Highways and Transportation** do not wish to comment

5.3 **Medway Council** do not object.

5.4 **Hartlip Parish Council** objects to the application and comments as follows:

"It should be stressed that this application is not a minor application so far as the residents of Hartlip are concerned. This site is already in breach of the temporary planning permission granted at appeal and therefore should be enforced as such. This would be in accordance with the law and national policies.

If the Council feels that one section of the community should have different rules to everyone else then in the next local plan it should regularise the situation by allowing every citizen to have the same rights.

The area is being totally disfigured by this temporary permission (which is being challenged in the High Court). Work continues without permission and is totally inappropriate for an open countryside location.

This is also retrospective which also fails new government tests.

In this case, the applicants have ignored every Planning Committee decision, Inspector's decisions and court rulings.

The applicants were given a very generous three months to submit a site development plan and HPC sees no reason why they should be given an extension and therefore objects to this application.

The applicants are being advised by an agent who has operated in this area of work for over twenty years and should therefore be totally conversant with the law.”

6. BACKGROUND PAPERS AND PLANS

Application and appeal papers and correspondence for applications SW/13/1485 and 16/506942/FULL

7. APPRAISAL

- 7.1 The key issues for Members to consider here are the implications of allowing a further period of time in which the applicants can submit a site development scheme, and the implications of refusing permission.
- 7.2 In terms of the merits of approving the application, it would be likely to bring about an improvement to the appearance of the site, and remedy the harm to highway safety and convenience that the current access gives rise to. It would also allow for the continuation of the temporary permission. This can be seen as both a positive and a negative.
- 7.3 Clearly, as my Officers argued at the appeal hearing, and as this Council has consistently set out, the use of the site, the caravans and associated development within it, all cause significant demonstrable harm to the visual amenities of the area, the character and appearance of the streetscene and the countryside. This view was shared by the Planning Inspector. The approval of this application would potentially allow the applicants to remain on site until December 2020. This would of course mean that the harm to visual amenity would continue until that point. This weighs against the approval of the application.
- 7.4 The appeal decision granted a three year temporary planning permission in order for the Council to properly address unmet need for pitches within the Borough and to produce a reliable and useable supply of alternative sites for gypsies/travellers. This work is currently ongoing with, as some Members may be aware, a new GTAA having been prepared. The Local Plan Panel and Officers in Spatial Planning Policy are considering how best to address the need for pitches within Swale, including a call for sites, additional public sites and continuing with a criteria based policy in the upcoming review of the Local Plan.
- 7.5 If this application is refused, it follows that a further enforcement notice, dealing with the use of the site and the development within it, should be served. My principal concern with this is that at this stage in the preparation of the Council's Gypsy/Traveller Policy

going forward, it is difficult to predict the outcome of an appeal. The Council has had mixed results on appeals in the past few years, with some Inspectors finding that the Council has an appropriate 5 year supply of available pitches, and others finding, as with the appeal decision here, the Council cannot demonstrate such a supply and that there is no alternative sites for the occupiers in the event that permission is refused. In such circumstances, other than where any planning harm is exceptional (for example, to the AONB or to the setting of listed buildings) Inspectors will grant temporary planning permission.

7.6 The refusal of this application may be considered premature in the sense that the Council is part way through assessing and making provision for need for pitches within the Borough. If the Council cannot demonstrate a five year supply of pitches, it is highly likely that any appeal would be allowed, and a further temporary planning permission would be granted, in all likelihood extending it beyond the length of the current permission. This would in my view be counterproductive. It is likely in my view that at the end of the temporary permission, the Council will be better placed to defend the refusal of permanent permission and the service of an enforcement notice requiring the cessation of the use than it is at present.

7.7 As such, whilst it is in my view unsatisfactory, I recommend that this application is approved.

8. CONCLUSION

8.1 On the basis that refusal of this application may well lead to a further grant of temporary planning permission for an extended period of occupation of the site, with consequent harm to the character and appearance of the area, I recommend that this application is approved.

9. RECOMMENDATION

GRANT Subject to the following conditions:

CONDITIONS to include

- 1) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1: Glossary of Planning Policy for Traveller Sites (or its equivalent in replacement national policy).

Reason: In recognition of the terms of the application and because uncontrolled use of the land would be unacceptably harmful to the amenities of the area..

- 2) The use hereby permitted shall be for a limited period being the period of 3 years from 15th December 2017. At the end of this period the use hereby permitted shall cease, all caravans, structures, materials and equipment brought onto, or erected on the land, or works undertaken to it in connection with the use shall be removed, and the land restored to its condition before the development took place.

Reason: In accordance with the permission granted on appeal.

- 3) There shall be no more than 8 pitches on the site and on each of the 8 pitches hereby approved no more than 2 caravans, as defined in the Caravan Sites and Control of

Development Act 1960 and the Caravan Sites Act 1968, shall be stationed at any time, of which no more than 1 caravan shall be a static caravan.

Reason: In the interests of the amenities of the area.

- 4) 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 28 days of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
- i) within 3 months of the date of this decision a scheme, hereafter referred to as the Site Development Scheme, shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for its implementation. The Site Development Scheme shall include details of: alterations to the site access in line with the details submitted with planning application Ref. SW/13/1485; the internal layout of the site, including the siting of caravans; areas for vehicular access and turning and manoeuvring; proposed and existing external lighting on the boundary of and within the site; the means of foul and surface water drainage or disposal; areas of hardstanding; fencing and other means of enclosure; hard and soft landscaping including details of species, plant sizes and proposed numbers and densities; and details of the condition of the land before the development took place and the works necessary to restore the land to that condition, or some other state as agreed with the local planning authority, and the time period within which the restoration works must be undertaken,
 - ii) within 6 months of the date of this decision the Site Development Scheme shall have been approved by the local planning authority or, if the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted Site Development Scheme shall have been approved by the Secretary of State.
 - iv) the approved scheme shall have been carried out and completed in accordance with the approved timetable, and works comprised in the scheme shall be thereafter retained for the duration of the development.

Reason: In the interests of the visual amenities of the area.

- 5) No more than one commercial vehicle per pitch shall be kept on the land for use by the occupiers of the caravans hereby permitted, and it shall not exceed 3.5 tonnes in weight.

Reason: In the interests of the visual amenities of the area.

- 6) No commercial activities shall take place on the land, including the storage of materials.

Reason: In the interests of the visual amenities of the area.

The Council's approach to the application

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), July 2018 the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and creative way by offering a pre-application advice service, where possible, suggesting solutions to secure a successful outcome and as appropriate, updating applicants / agents of any issues that may arise in the processing of their application.

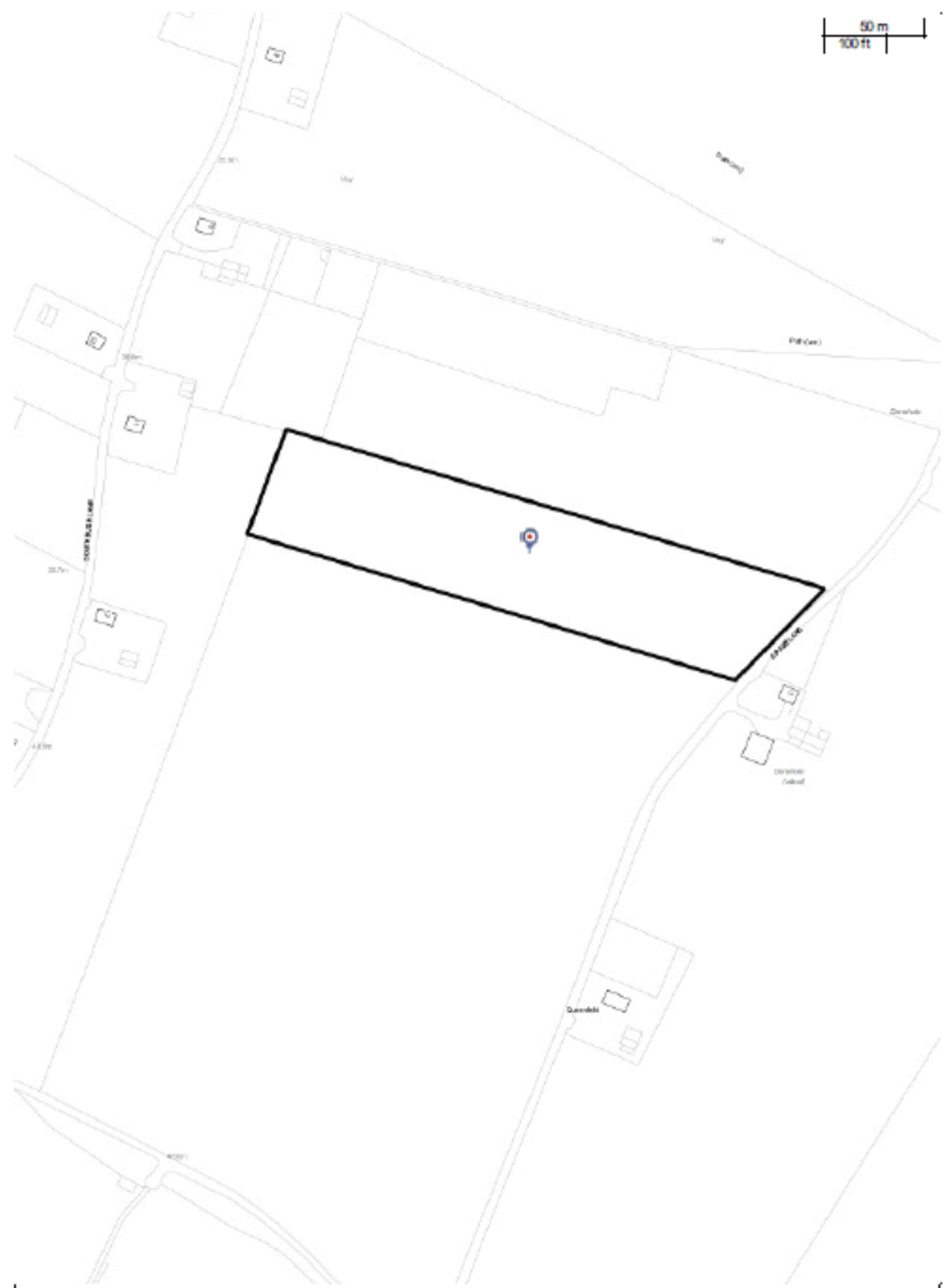
In this instance:

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

If your decision includes conditions, there is a separate application process to discharge them. You can apply online at, or download forms from, www.planningportal.co.uk (search for 'discharge of conditions').

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.



 **New Acres Spade Lane Hartlip Kent ME9 7TT**
Scale: 1:2500
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The Planning Inspectorate

Appeal Decisions

Hearing Held on 31 October 2017

Site visit made on 31 October 2017

by **Paul Dignan MSc PhD**

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

Decision date: 15 December 2017

Appeal A: APP/V2255/C/16/3165246

Appeal B: APP/V2255/C/16/3165247

Appeal C: APP/V2255/C/16/3165248

Appeal D: APP/V2255/C/16/3165249

Appeal E: APP/V2255/C/16/3165250

Appeal F: APP/V2255/C/16/3165251

Appeal G: APP/V2255/C/16/3165252

Appeal H: APP/V2255/C/16/3165253

Land on the west side of Spade Lane, Hartlip, Kent ME9 7TT.

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr S Maughan, Mr F Mongen, Miss J Doran, Mr J Mahoney, Mr J O'Driscoll, Mr P McCarthy, Mr M Maughan and Mr P Maughan against an enforcement notice issued by Swale Borough Council.
- The enforcement notice was issued on 15 November 2016.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land from agriculture to use as a residential traveller site (caravan site) comprising eight pitches with associated hardstanding, together with an access road.
- The requirements of the notice are: (i) Cease the use of any part of the Land as a residential caravan site, including the stationing of any mobile homes or caravans in connection with that use; (ii) Remove from the Land all caravans, mobile homes, vehicles and other equipment brought onto the land in connection with the unauthorised use; (iii) Remove the post and rail fencing from the site located on the boundary of each plot; (iv) Remove the access road and all other hardstanding from the site; and (v) Reseed the resultant cleared areas from compliance with (iv) above with grass.
- The period for compliance with the requirements is 12 months.
- Appeals A and B are proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended and the application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered. Appeals C to H are proceeding on grounds (f) and (g) only.

Appeal I: APP/V2255/W/16/3165245

Land at Spade Lane, Hartlip, Kent ME9 7TT.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr S Maughan against the decision of Swale Borough Council.
- The application Ref. 16/506942/FULL was refused by notice dated 15 November 2016.
- The development proposed is: Proposed private traveller site comprising 8 pitches, each with a mobile home, touring caravan and utility room together with access road.

<https://www.gov.uk/planning-inspectorate>

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Decisions

Appeals A and B

1. It is directed that the enforcement notice be corrected by the substitution of the plan annexed to this decision for the plan attached to the enforcement notice. Subject to this correction the appeal is allowed and the enforcement notice is quashed. Planning permission is granted, for a limited period of 3 years, on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the development already carried out, namely the material change of use of the land from agriculture to use as a residential traveller site (caravan site) comprising eight pitches with associated hardstanding, together with an access road on the land shown edged and hatched black on the plan annexed to this decision, subject to the conditions set out in the Schedule of Conditions attached to this decision.

Appeals C to H

2. Since the enforcement notice is quashed, I take no further action on these appeals.

Appeal I

3. The appeal is dismissed.

Preliminary matters

4. The appeals concern a piece of former pasture land in the countryside about 800m south of the A2 between the settlements of Rainham and Newington. The land is Grade 1 agricultural land and as such stands to be considered as best and most versatile agricultural land for National Planning Policy Framework (NPPF) purposes.
5. The land the subject of the planning application comprises a strip of 8 residential pitches with an access road running along the northern edge. The map annexed to the enforcement notice covers a larger area, showing additional land extending further to the south, as far as Meresborough Lane. As I understand it, one of the appellants owns the narrow paddock adjoining the pitches to the south, but none of the appellants have interests in the land further south. It was agreed at the hearing that it would be appropriate to amend the annexed map to show only the land occupied by the pitches and access road and the narrow adjoining paddock as being subject to the enforcement notice. This can be done without prejudice to any of the parties.
6. The amended enforcement notice land was the subject of an application for 2 traveller pitches in November 2013. That application was dismissed at appeal¹ in September 2014. In that case the proposed pitches were to be sited close to Spade Lane, with the highway access roughly mid-way along the road frontage.

Appeals A and B ground (a) and Appeal I

7. An appeal on ground (a) is that planning permission should be granted in respect of any breach of planning control which may be constituted by the matters stated in the notice. The appeals are accompanied by deemed planning applications. Appeal I also seeks planning permission for the development of

¹ Appeal Ref. APP/V2255/A/14/2220447

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some of the land the subject of the notice. The main difference between the development the subject of the deemed planning applications and the development for which planning permission was refused is the inclusion of 8 utility buildings (each 6.8m long, 3.7m wide with a ridge height of 3.4m).

8. Having regard to the reasons given for issuing the notice and for refusing planning permission I consider that the main issues in these appeals are the effect of the development on the character and appearance of the rural area, the loss of best and most versatile agricultural land, the effect on highway safety, and whether there are other material considerations in favour of, or opposed to the appeals, and if so, the weight that I should attach.

Planning Policy

9. Over the course of the appeals the emerging Swale Borough Local Plan 2017 – "Bearing Fruits 2031" (SBLP) was under examination. The Examining Inspector's Report, which found the plan to be sound, subject to a commitment to early review, was published in June 2017, and the plan was formally adopted by the Council in July 2017. The previous Local Plan (The Swale Borough Local Plan 2008) was therefore superseded.
10. Relevant SBLP policies include Policy ST3, which seeks to direct new development to suitable settlements, using a tiered approach. In the open countryside it aims to restrict development to that supported by national planning policy and able to demonstrate that it would contribute to protecting or enhancing the intrinsic value, landscape setting, tranquillity and beauty of the countryside. Policy ST3 is to be read in conjunction with Policy DM10 when considering gypsy and traveller provision. Applications for new sites must consider the availability of sites at each tier of settlement category before a site in the next lower tier is considered. This policy is consistent with the locational criteria set out in Planning Policy for Traveller Sites (PPTS) which advises that 'authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or areas allocated for development'. Whilst this policy guidance does not present an absolute restriction on the location of new gypsy and traveller sites in the countryside, the general thrust of the policy goes against such development in spatially isolated locations. Policy DM10 safeguards existing traveller sites and sets out criteria against which applications for traveller sites will be assessed. Amongst other things it expects proposals to demonstrate that they are not of a scale that singly or cumulatively dominates the nearest settlement or causes significant harm to the character of an area, its landscape or the capacity of local services, and can achieve safe vehicular access. Policy DM24 is also relevant in that it seeks to minimise adverse landscape impacts. Where significant adverse landscape impacts remain after mitigation, the social and economic benefits of a proposal must significantly and demonstrably outweigh the harm to the landscape character and value of the area.
11. In respect of development involving best and most versatile agricultural land (BMV), NPPF paragraph 112 indicates that economic and other benefits of BMV should be taken into account, and where significant development is demonstrated to be necessary, areas of poorer quality land should be preferred.

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Character and appearance

12. The appeal site is within a relatively flat roughly rectangular block of countryside bounded by the A2, Spade Lane to the east, South Bush Lane to the west, and Meresborough Lane to the south. It was undeveloped grazing land prior to the appeals development. As I understand it, the block was gifted in parcels to returning servicemen after the first World War, who were permitted to build houses on the South Bush Lane side. South Bush Lane now has sporadic housing along both sides, while residential development on the Spade Lane side is infrequent and confined to the eastern side of the lane. There are some larger developments alongside the A2, including a large cold store and car dealers, but Spade, South Bush and Meresborough Lanes are narrow single track country lanes with a rural character. Hedgerows along the lanes are thin or sporadic, allowing frequent open views across the block of countryside, which itself is generally open. The prevailing character in the vicinity of the appeal site is distinctly rural.
13. The appeal development is highly visible from a number of public viewpoints in the surrounding area, including a public footpath running across the block to the north. It extends away from Spade Lane for a distance of about 240m, almost all the way across the block to South Bush Lane, and is visually prominent and discordant. It appears as an incongruous and urbanising feature in what is an otherwise relatively undeveloped rural landscape. Completion of the development as proposed would see additional structures and paraphernalia that would increase its prominence. The site as it stands is starkly discordant in this rural setting and I could see little scope for satisfactorily integrating or assimilating it into the landscape. The significant planting that would be required to effectively screen the site would itself appear incongruous and out of keeping with the open rural character, notwithstanding that it would serve only to hide the development and would thus be contrary to good practice in any case.
14. The Inspector in the 2014 appeal was dealing with a much smaller and quite compact development which included significant landscaping, but he considered that that development would represent "a significant scale of development that would radically change the character of the appeal site. It would introduce a distinct urbanising element that would be alien and incongruous within the landscape and would be prominent from a number of viewpoints around the site, particularly in the winter months." The extent of harm to local character that results from this appeal development is considerably greater, due to the larger scale and the unsympathetic layout. The significant harm that it causes to the landscape and character of the area conflicts with SWLP Policies ST3, DM10 and DM24.

Loss of agricultural land

15. The development involves the loss of an area of land BMV in the highest category. The NPPF indicates that the economic and other benefits lost must weigh in the balance against the development. The appellant has suggested that there is no shortage of BMV in the area, but the relevance of that relates to the availability of lower quality land since BMV is a national resource. Apparently some 70% of farmed land in the Borough is BMV, the non-BMV land being largely confined to the Kent Downs AONB to the south and the Isle of Sheppey, with their attendant development issues. This suggests that there

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would be some difficulty at least in locating suitable non-BMV land for development of this type, reducing the weight that should be afforded to the loss of a finite resource. This is tempered however by the lack of any evidence that alternative sites were considered.

Highway safety

16. This matter concerns the adequacy of visibility splays at the site entrance. The Highway Authority puts the design speed (85th percentile) at 30mph, and this is not disputed. The appropriate visibility splay at the site entrance is 2.4m by 45m, by reference to Manual for Streets 2. This can be achieved to the south on land within the appellants' ownership. However, to the north towards the A2 the visibility splay falls short of 45m and it crosses private land, the adjoining field, over which the appellants have no control. At present the field boundary along the highway is a post and wire fence through which oncoming traffic can be seen from about 25-30 m, but there is some vegetation inside the fenceline, blackthorn and a field maple, which would significantly reduce visibility as it grows, to the extent that use of the existing entrance would become prejudicial to highway safety, in my view. Without vegetation control on this adjoining land, which cannot be secured, the development would be potentially harmful to highway safety and thus contrary to SBLP Policy DM10.
17. The 2013 planning application addressed this matter by proposing that access to the site be taken from about mid-way along the site frontage, and this was considered acceptable by the Highway Authority, the requisite visibility splays being achievable on land controlled by the appellant. The appellants in this case have argued that the highway safety issue could be resolved by conditioning any planning permission to secure this alternative access to the site with appropriate visibility splays.
18. It was not disputed that safe highway access in this way could be achieved by condition, but the Council and other objectors consider that it would not be possible to amend the site layout at this stage. I disagree. The primary nature of the breach of planning control, and the basis of the planning application, is the change of use of the land. The existing boundary treatment along the road frontage is post and wire fencing with recently planted hedging behind. Changes to this, combined with closure of the existing access and changes to the internal layout, can be controlled by condition and would have negligible, if any, effects on the character and appearance of the area, or any other planning matters save for highway safety. The *Wheatcroft*² judgement was raised, but I consider that no parties interests would be realistically or genuinely prejudiced by my considering the appeals on the basis of an access that has already been considered by the Council recently, and that has been open to public consultation, albeit in the context of the 2013 application. It does not, in my view, change the development so much that those who should be consulted have been deprived of a proper opportunity to be consulted.
19. I am satisfied therefore that the harm to highway safety due to the present access, and the conflict with SBLP Policy DM10, can be overcome by condition.

² Bernard Wheatcroft v Secretary of State for the Environment [1982] P & CR 233

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Other considerations

The need for, and provision of, traveller sites and the availability of alternative sites

20. PPTS requires local planning authorities to make their own assessment of need for the purposes of planning, to set pitch targets for travellers which address the likely needs, and to identify a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against their locally set targets. The Council's current position is that it has met the need identified in its *Update Paper on GTAA and policy implications* (GTAA Update), which re-evaluated the need for traveller pitches established in the 2013 *Gypsy, Traveller and Travelling Showpeople Accommodation Assessment: Swale* (2013 GTAA) in the light of the new definition of traveller in the 2015 version of PPTS. The GTAA Update used re-analysis of the 2013 GTAA data rather than new survey work, and has been criticised accordingly. However, criticism of the Update Paper was considered by the Local Plan Inspector during the recent examination. She found that the Council's evidence update, which included the GTAA Update and a 2014/15 *Update of Gypsy and Traveller Land Supply*, provided a well-reasoned and pragmatic solution to ensure that the plan aligns with up to date policy on Gypsy and Traveller Sites. At that time the GTAA Update established need was for 61 pitches to 2030/31. The Council's position at the hearing was that 63 pitches have now been granted planning permission, of which 56 have been implemented, with the other 7 still capable of being delivered and therefore counting towards supply. In short, it has met its identified need.
21. I acknowledge that there are difficulties that inevitably arise where the identified need is claimed to be met so early in the plan period, including household formation and in-migration in the remaining plan period, but I do not propose to rehearse the criticisms of the GTAA Update here. Those criticisms have been considered in the recent Local Plan examination, and the Council has in any case already commissioned a new assessment of need, with survey work expected to commence this winter.
22. A specific ongoing issue was raised however concerning one of the larger sites in the Borough, Brotherhood Woodyard, where permission for 19 pitches was granted in the relevant period. It seems that the site layout was not in accordance with the permission, and there were allegations that the occupants of the pitches, which exceeded the 19 permitted, did not meet the PPTS definition. The response to a Planning Contravention Notice issued last year stated that all of the relevant pitches are now occupied by travellers, but there remains the outstanding issue of its suitability for travellers actively pursuing a nomadic way of life. In essence, the site is currently dominated by static caravans with no room for touring caravans and no day rooms. The Council has opened an enforcement case and there is currently negotiation on a revised planning application, which seeks to increase the number of pitches.
23. It seems to me that the Council is being pro-active and is well advanced in its approach to resolving the planning issues at Brotherhood Woodyard. However, the site makes up a large proportion of the identified need, and the evidence I heard suggests that there must be considerable doubt that the site is at present genuinely meeting the identified needs of travellers who meet the PPTS Annex 1 definition. In the light of this I consider that it would be reasonable

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reluctant to establish relationships with health professionals because of the possibility of having to move on, and they attribute some of their health problems to the lack of a settled base. The older children on the site appear to have had very unsettled education, but 3 of the younger children are attending primary school at present, 2 locally, and 2 others are below school age. Some of the older children wish to attend college or further education.

29. Poor access for travellers to health and education is one of the problems that PPTS seeks to address through the provision of settled bases that reduce the need for long-distance travelling, enable access to appropriate health services and that allow children to attend school on a regular basis. Ms Clarke's view is that the lack of a settled base has contributed to the appellant's health problems and poor education outcomes. She also emphasised the value of support within large family groups. Living arrangements whereby extended families live together and provide mutual support is characteristic of the traveller way of life, and in this respect the development would be consistent with the Government's aim of facilitating travellers' traditional and nomadic way of life.
30. In view of the situation regarding alternative sites, it is very likely that on leaving the site some or all of the current occupiers would have to resort to a roadside existence. Roadside camping can have adverse environmental impacts and is known to create disharmony between the travelling and settled community. Furthermore, in addition to the general health problems associated with roadside living, which are well documented, the education prospects of the children living on the site could be seriously compromised. These are all matters to which I attach significant weight.

Intentional unauthorised development

31. It is now government planning policy that intentional unauthorised development is a material consideration that should be weighed in the determination of planning applications and appeals. There can be little doubt that the appeals development falls into this category. Before the appellants started to prepare the site for occupation the Council sought an injunction to prevent anticipated unauthorised development. The injunction was granted and a copy attached to the gate. The appellants claim not to have seen it, but it was brought to their attention by the Council shortly after they started to develop the site. Since then I understand that further injunctions intended to prevent further development or site occupation have been ignored, and contempt proceeding brought successfully. There is currently a High Court injunction which allows for the conclusion of the planning appeal, requiring the site to be cleared and vacated within 2 months in the absence of a grant of planning permission. Even while this injunction has been in place it appears that there has been further development of the site, including the installation of pipework and septic tanks. Clearly this policy applies to the present development, and accordingly this must weigh against the appeal.

Planning balance

32. At the onset of considering the issues in the planning balance I have borne in mind the duty placed on me within the Public Sector Equality Duty. I have also considered the best interests of the children as a primary consideration.

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33. The development is significantly at odds with the character of the local landscape and countryside, contrary to the development plan, and it results in the loss of BMV. I attach very substantial weight to this harm, and further moderate weight against the development arises from its unauthorised nature.
34. On the other side of the balance there are a number of factors that weigh in favour of planning permission. These include the unmet need for sites in the Borough, and indeed further afield, the Council's failure to demonstrate a 5-year supply of deliverable sites, the lack of any alternative site, and the personal circumstances of the site occupants, including the interests of the resident children which would be best served by enabling them to have a settled base. These carry substantial weight, particularly since a consequence of refusing planning permission is that those living at the appeal site would become homeless. However, I consider that these matters do not outweigh the harm identified and that a permanent planning permission should not be granted.
35. In the context of a temporary permission the overall harm is time-limited and therefore considerably less, and PPTS advises that the absence of a 5 year supply of deliverable sites, as is the case here, should be a significant material consideration when considering applications for a grant of temporary planning permission. There is a high likelihood that circumstances in the Borough will change in the next few years. There is a planning application for Brotherhood Woodyard which seems likely to deliver at least some traveller pitches, and there is the existing situation regarding needs assessment. The local plan Examining Inspector found the GTAA Update to be adequate to move forward on, but only with the comfort of an early review. The situation is likely to be clarified and brought up to date with the programmed needs assessment already commissioned and due to commence. Amongst other things the needs of the site occupants will obviously be taken into account. I consider therefore that there is a reasonable likelihood of alternative sites becoming available in the foreseeable future, and in these circumstances I consider that the balancing of harm and benefits falls firmly in favour of a grant of planning permission for a limited period of 3 years, after which the need and supply situation should be up to date and available for consideration in the early review of the local plan. Restricting permission to a temporary period would still represent an interference with the rights of the occupants under the Human Rights Act 1998. However, taking into account all material considerations, I am satisfied that this interference is necessary and proportionate in the circumstances.

Separate conclusion on Appeal I

36. The difference between Appeals A and B, the enforcement notice appeals, and Appeal I, the appeal against the refusal of planning permission, is the inclusion of 8 utility buildings in the planning application proposal. The erection of the proposed buildings would add significantly to the extent of operational development on the site, which in turn would significantly increase the level of harm to the character and appearance of the area. I consider that this further harm would tip the balance against a grant of temporary planning permission. It is open to me to make a split decision, permitting the temporary change of use and refusing permission for the utility buildings. However, since I will grant permission on the deemed planning application for the development the subject

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of the enforcement notice, rather than granting 2 separate permissions I consider it appropriate to dismiss the planning application appeal, Appeal I.

Conditions

37. In view of the material considerations relevant to these appeals it is necessary to restrict future occupation of the site to gypsies and travellers. The personal circumstances of the occupants have contributed to my conclusions, but they are not so exceptional as to warrant the imposition of a personal condition. The permission is for a temporary period of 3 years and a condition shall be imposed to reflect this and to ensure removal of the caravans and other items, and to secure the restoration of the site, at the end of the period. In the interests of the character and appearance of the site and surrounding area, of highway safety, and to safeguard residential and visual amenity, I shall impose a condition requiring the submission of a Site Development Scheme, covering the internal layout of the site, including alterations to the site access as discussed above, the position of the caravans, the extent of internal fencing, hardstanding, parking and amenity areas, external lighting, surface water and foul sewage disposal, landscaping and boundary treatments, including details of all trees to be retained on the site and measures for their protection, and a scheme for restoration of the site. For clarity, it was brought to my attention at the hearing that at least part of the site is in a designated groundwater protection zone where septic tanks may not be an appropriate foul sewage disposal solution, so this matter will need to be addressed in the Site Development Scheme. I shall also limit the number of pitches and the number of caravans on each pitch, preclude commercial activity and regulate the keeping of commercial vehicles on the site in the interests of local character and amenity.

Overall conclusions

38. For the reason set out above, and having considered all other matters raised, I conclude that Appeals A and B should succeed and that planning permission, for a limited period of 3 years, should be granted on the deemed planning application. Appeal I is dismissed.

Appeals A-H grounds (f) and (g)

39. As a result of the grant of planning permission the enforcement notice is quashed and the appeals on these grounds require no further action.

Paul Dignan

INSPECTOR

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APPEARANCES

FOR THE APPELLANT:

Alison Heine	Heine Planning Consultancy
Diane Clark	Independent Social Worker
F Mangan	Site occupant
M Maughan	Site occupant
J Mahoney	Site occupant

FOR THE LOCAL PLANNING AUTHORITY:

Rob Bailey	Area Planning Officer
Shelley Rouse	Senior Planning Officer, Policy
Graham Thomas	Area Planning Officer

INTERESTED PERSONS:

Heather Stevens	Kent Legal Services
Phillip Hughes	PHD Planning, representing Hartlip Parish Council and local residents
David Clarke	Landscape consultant, instructed by Mr Hughes
Cllr Gerry Lewin	Ward Councillor, Swale Borough Council
Cllr John Wright	Ward Councillor, Swale Borough Council and Hartlip Parish Council

DOCUMENTS

- 1 Council's site inspection note of 20 October 2017
- 2 Council's updated master list of traveller sites
- 3 Letters of support – appellants
- 4 Extract from Local Plan – Indicative Map of Accessibility to Services
- 5 Statement of Common Ground
- 6 Application plan for 2013 proposal – Ref. SW/13/1485
- 7 Note on need for sites – Alison Heine
- 8 Latest iteration of layout plan for Brotherhood Woodyard planning application (Ref. 17/502338/FULL)
- 9 Submission in respect of current Brotherhood Woodyard planning application – Shelley Rouse
- 10 Comments on Brotherhood Woodyard planning application – Alison Heine

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SCHEDULE OF CONDITIONS

1. The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1: Glossary of Planning Policy for Traveller Sites (or its equivalent in replacement national policy).
2. The use hereby permitted shall be for a limited period being the period of 3 years from the date of this decision. At the end of this period the use hereby permitted shall cease, all caravans, structures, materials and equipment brought onto, or erected on the land, or works undertaken to it in connection with the use shall be removed, and the land restored to its condition before the development took place.
3. There shall be no more than 8 pitches on the site and on each of the 8 pitches hereby approved no more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1958, shall be stationed at any time, of which no more than 1 caravan shall be a static caravan.
4. 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 28 days of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
 - i) within 3 months of the date of this decision a scheme, hereafter referred to as the Site Development Scheme, shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for its implementation. The Site Development Scheme shall include details of: alterations to the site access in line with the details submitted with planning application Ref. SW/13/1485; the internal layout of the site, including the siting of caravans; areas for vehicular access and turning and manoeuvring; proposed and existing external lighting on the boundary of and within the site; the means of foul and surface water drainage or disposal; areas of hardstanding; fencing and other means of enclosure; hard and soft landscaping including details of species, plant sizes and proposed numbers and densities; and details of the condition of the land before the development took place and the works necessary to restore the land to that condition, or some other state as agreed with the local planning authority, and the time period within which the restoration works must be undertaken,
 - ii) within 6 months of the date of this decision the Site Development Scheme shall have been approved by the local planning authority or, if the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted Site Development Scheme shall have been approved by the Secretary of State.
 - iv) the approved scheme shall have been carried out and completed in accordance with the approved timetable, and works comprised in the scheme shall be thereafter retained for the duration of the development.

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5. No more than one commercial vehicle per pitch shall be kept on the land for use by the occupiers of the caravans hereby permitted, and it shall not exceed 3.5 tonnes in weight.
6. No commercial activities shall take place on the land, including the storage of materials.



Enforcement Notice Plan

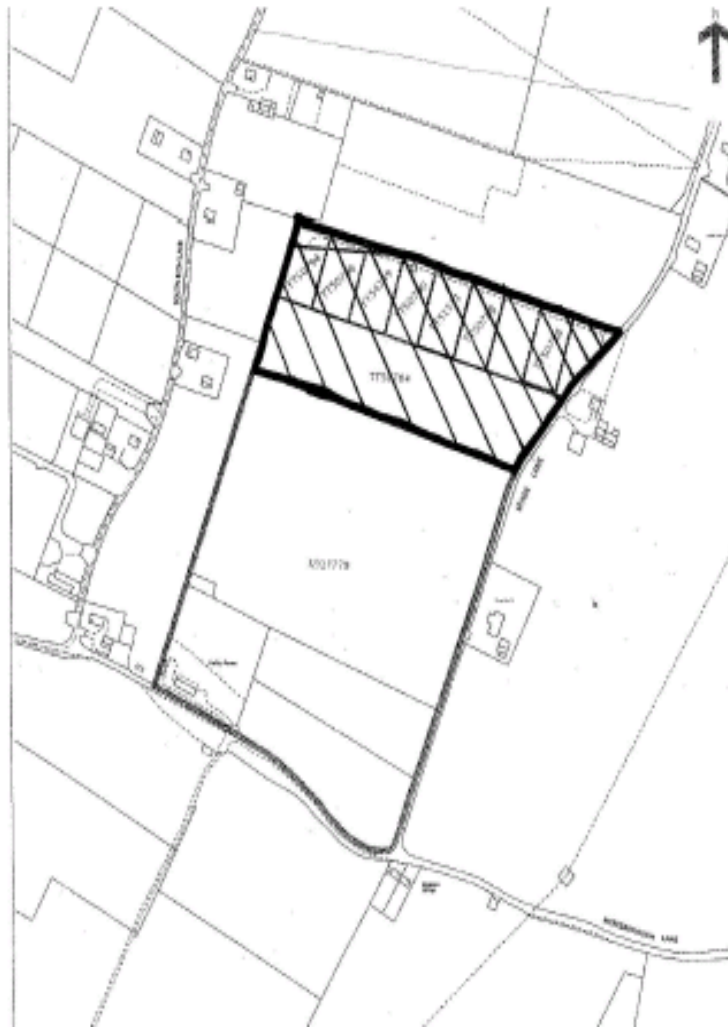
This is the plan referred to in my decision dated: 15 December 2017

by Paul Dignan MSc PhD

Land on the west side of Spade Lane, Hartlip, Kent ME9 7TT

References: APP/V2255/C/16/3165246-53

Scale: No Scale



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