

3.2 REFERENCE NO - 17/505019/FULL		
APPLICATION PROPOSAL		
Retrospective application for Change of use of land to a mixed use site, to continue the equestrian use and add residential use for three Romani Gypsy families. Site to contain three static caravans, three touring caravans, parking for 6 vehicles with associated development		
ADDRESS Ridgedale Riding School Halstow Lane Upchurch Sittingbourne Kent ME9 7AB		
RECOMMENDATION Refuse		
SUMMARY OF REASONS FOR RECOMMENDATION		
In light of the Council's current 5 year supply position the proposal is considered to be unacceptable by virtue of the established harm to the countryside that this proposal causes. This harm would not be outweighed by any personal circumstances of the applicant.		
In addition, the development gives rise to the need for SAMMS payments, which have not been received.		
REASON FOR REFERRAL TO COMMITTEE		
Called in by Ward Cllr Alan Horton		
WARD Hartlip, Newington And Upchurch	PARISH/TOWN COUNCIL Upchurch	APPLICANT Mr & Mrs Ball AGENT BFSGC
DECISION DUE DATE 29/11/17	PUBLICITY EXPIRY DATE 14/11/17	

Planning History

15/508116/FULL: Removal of condition (7a) imposed under appeal Ref: 2169572 to allow permanent occupation of 3 mobile homes for gypsy family. Refused: 27.11.2015

SW/11/1027: Removal of condition (7) of planning permission SW/08/0710 to allow permanent occupation of 3 mobile homes for gypsy family. An appeal (ref. 2169572) against non-determination was submitted by the applicant, and the planning committee agreed that a further temporary permission would have been granted if the application had been determined. The appeal was allowed in as much as a further temporary PP was granted for 5 years.

SW/08/0710: Change of use to residential . Stationing of 3 mobile homes for a gypsy family. Temporary planning permission for a period of 3 years was granted on 23.04.2009.

SW/07/1319: Stationing of 3 mobile homes for a gypsy family. Change of use to residential. Erection of a utility room. Refused 07.01.2008

1. DESCRIPTION OF SITE

- 1.1 Ridgedale Stables is a currently unauthorised gypsy / traveller site situated on Halstow Lane, to the west of Lower Halstow and to the east of Upchurch. The site lies opposite Lower Halstow Cricket Club.
- 1.2 The site comprises three static caravans, each placed on elevated plinths due to the flood zone within which the site is located. This means that the caravans are elevated approximately 1.85m above ground level and as a result the finished floor levels of the static caravans are a minimum of 6.85m AOD. Aside from this the site includes three touring caravans and space for the parking of 6 vehicles.
- 1.3 The site is heavily screened along the southern boundary and much of the western boundary by planting.
- 1.4 Two public footpaths cross the site: ZR32 diagonally crosses the site in a broadly north / south orientation whilst ZR35 runs approximately east / west through the site.
- 1.5 The site also includes stables and associated equestrian related features. These are shown on the site location plan within land edged blue, i.e. other land also owned by the applicant. However, this use of the site is established and does not require any further consent from the Council in its own right.

2. PROPOSAL

- 2.1 This application seeks planning permission to allow the permanent residential use of the existing caravans on the site by a gypsy family. The site has in the past benefitted from temporary planning for occupation by a gypsy family, however, this permission expired on 6th August 2017.
- 2.2 Due to the retrospective nature of the application the gypsy family are currently occupying the site. The site layout, which is described in more detail in paragraphs 1.1 to 1.5 above is unaltered in relation to the current proposal being considered.

3. PLANNING CONSTRAINTS

- 3.1 Environment Agency Flood Zone 2.
- 3.2 Environment Agency Flood Zone 3.

4. POLICY AND CONSIDERATIONS

- 4.1 The national policy position in relation to gypsy and traveller applications comprises the National Planning Policy Framework 2019 (NPPF) and Planning Policy for Traveller Sites 2015 (PPTS). 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.

- 4.2 I consider that the following extracts from NPPF paragraph 8 are particularly pertinent:

Achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives):

*a) **an economic objective** – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;*

*b) **a social objective** – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being; and*

*c) **an environmental objective** – to contribute to protecting and enhancing our natural, built and historic environment; including making effective use of land, helping to improve biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.*

- 4.3 In relation to rural housing the NPPF (at paragraph 78) states;

To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Planning policies should identify opportunities for villages to grow and thrive, especially where this will support local services. Where there are groups of smaller settlements, development in one village may support services in a village nearby.

- 4.4 Paragraph 79 continues:

Planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more of the following circumstances apply:

a) there is an essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work in the countryside;

b) the development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets;

c) the development would re-use redundant or disused buildings and enhance its immediate setting;

d) the development would involve the subdivision of an existing residential dwelling;
or

e) the design is of exceptional quality, in that it:

- *is truly outstanding or innovative, reflecting the highest standards in architecture, and would help to raise standards of design more generally in rural areas; and*
- *would significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area.*

- 4.5 In relation to conserving and enhancing the natural environment the NPPF, at paragraph 170, states;

Planning policies and decisions should contribute to and enhance the natural and local environment by:

- a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan);*
- b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland;*
- c) maintaining the character of the undeveloped coast, while improving public access to it where appropriate;*
- d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;*
- e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air and water quality, taking into account relevant information such as river basin management plans; and*
- f) remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.*

Planning Policy for Traveller Sites (PPTS)

- 4.6 The PPTS was originally published in March 2012 but it was re-issued in August 2015 with minor changes. Its main aims 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)*

4.7 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)*

4.8 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)

4.9 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.

- 4.10 Finally, the definition of gypsies and travellers was 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 such.”

- 4.11 The Council responded positively and quickly to the changes in the national policy position in respect of Gypsy and Traveller accommodation, adopting a GTAA and carrying out additional work on the (then emerging) Local Plan.

Swale Landscape Character and Biodiversity Appraisal SPD 2011

- 4.12 The site and surrounding area are identified within the Swale Landscape and Biodiversity Appraisal Supplementary Planning Document (SPD) as falling within the Upchurch and Lower Halstow Fruit Belt, where the document advises that the condition of the area is moderate with a moderate sensitivity. The guidelines in this area are aimed at conserving existing landscapes and restoring elements to develop the existing structure.

Bearing Fruits 2031: The Swale Borough Local Plan 2017

- 4.13 The Local Plan was adopted in 2017 following a formal review and adoption process. The key adopted policy to deal with windfall planning applications for new sites is DM10 (Gypsy and Traveller sites), which states:

Part A: Retention of sites for Gypsies and Travellers

Existing permanent sites and those granted permanent planning permission will be safeguarded for use by Gypsies and Travellers, unless it is demonstrated the site is no longer suitable for such use.

Part B: Gypsy and Traveller sites

The Council will grant planning permission for sites for Gypsies, Travellers and Travelling Show People, where it is demonstrated that proposals:

1. *Are in accordance with Policy ST3 by reference to the deliverability of potential or existing sites at each settlement tier(s) above that proposed by the application, unless:*
 - a. *there are exceptional mitigating and/or personal circumstances where the applicant has demonstrated that a particular site is*

- required to meet their needs and where there is no overriding harm to the locality; or*
- b. where required to meet an affordable housing need either via a rural exception site in accordance with Policy DM9 or specific allocation; or*
 - c. the proposal is for an extension to, or stationing of, additional caravans at an existing site.*
- 2. Can establish that the applicants have previously led a nomadic lifestyle, the reasons for ceasing a nomadic lifestyle and/or an intention to return to a nomadic lifestyle in accordance with Annex 1 of Planning Policy for Traveller Sites (2015);*
 - 3. Can achieve an integrated co-existence between all communities;*
 - 4. Are of a scale appropriate to meet the accommodation need identified and not introduce a scale of development 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;*
 - 5. Can, where appropriate, accommodate living and working in the same location, either through a mixed use site or on land nearby, whilst having regard to the safety and amenity of occupants and neighbouring residents;*
 - 6. Cause no significant harm to the health and wellbeing of occupants or others by noise, disturbance, vibration, air quality or other circumstances;*
 - 7. Cause no significant harm to the Area of Outstanding Natural Beauty, national/local landscape or biodiversity designations and other natural or built environment that cannot be adequately mitigated;*
 - 8. Provide landscaping to enhance the environment in a way that increases openness and avoids exclusion and isolation from the rest of the community;*
 - 9. Provide for healthy lifestyles through open space, amenity areas for each pitch and play areas;*
 - 10. Would be safe from flooding by meeting both the exceptions and sequential tests in accordance with national policy and Policy DM22;*
 - 11. Achieve safe and convenient parking and pedestrian and/or vehicular access without unacceptable impact on highway safety; and*
 - 12. Where appropriate, include visitor or transit pitches and/or sufficient areas for future expansion. Planning conditions may be used to limit the length of time that caravans can stop at transit sites and on visitor pitches.*
- 4.14 Other relevant adopted Local Plan policies are:
- **ST3** (The Swale settlement strategy). This seeks to guide development to sustainable locations. In this regard urban centres are preferred with sites in open countryside outside any built-up area and with poorest access to services being least favoured. Here, new development will not be permitted unless it has an intrinsic reason for being there and it will protect and/or enhance the countryside.
 - **DM23** (Coastal Change Management Areas). This policy sets out that permission will be granted for development proposals subject to it being demonstrated that there

is not an increased risk to life nor property and that the proposal comprises essential infrastructure; or an agricultural building; or water compatible development.

- **DM24** (Conserving and enhancing valued landscapes). This policy seeks to protect and enhance non-designated landscapes.
- **DM26** (Rural lanes). This aim of this policy is to conserve the character of rural lanes which includes Halstow Lane (off which Ridgedale Stables is accessed).

Five year supply position

4.15 The Council undertook a new GTAA following adoption of the Local Plan, and this was completed in November 2018. The assessment covers the period 2017/18 to 2037/38, and identifies a PPTS definition-compliant need of 30 pitches in the short-term 5 year period, and a further 29 pitches to 2037/38. With reference to the cultural need also set out within the assessment, and since the revised definition of who is considered a traveller, it has been commonplace within GTAA methodology to calculate a cultural need (i.e. for all those who identify as gypsies and travellers) and then extract a PPTS need (i.e. for those who meet the revised definition) from it. Footnote 25 of the NPPF clearly sets out that the need to provide for travellers (as set out in paragraph 61) is for the definition as set out within the PPTS. As such, within the context of planning for pitches, the cultural need does not add to the Council's need.

4.16 Based on the GTAA, and taking into account the Council's current supply position, the following can be said:

current 5 year pitch need = 13.75;
 current annual pitch need = 2.75;
 current supply of pitches = 16;
 current 5 year supply = 5.8 year supply.

4.17 The Council can therefore **currently** demonstrate a 5 year supply of deliverable sites.

5. LOCAL REPRESENTATIONS

5.1 I have received 51 template letters of support for the application, signed individually by 51 separate people / businesses. The letter states the following:

"I would like to express my support for the planning application submitted by Mr & Mrs Ball.

There is a shortage of Gypsy Traveller sites Swale [sic] and in the UK as a whole, and this type of private provision is a good way forward and much needed.

I request Swale Borough Council to look favourably on this planning application and grant planning permission."

5.2 I have received a further comment which neither objects to nor supports the application but makes the following points:

- If a previous application on the site for a dwelling had been approved then this site would have a very different character;
- The amount of caravans / mobile homes in the surrounding area has undoubtedly had an impact upon the landscape and character of the village;
- Does not wish to see the family evicted from this site and a new strategy to re-balance the community should be produced;
- *“perhaps opposing every single housing application over the last 30 years around the village didn't necessarily protect the village from development after all - it just gave us the wrong sort’.*

5.3 I have also received a letter from the Local Footpath Officer for the Ramblers which states: *“The map provided with the application does not show the two footpaths, ZR 32 & ZR35, both of which run through the property. ZR32 runs across the established sand school and across the grass in front of the caravans. ZR 32 is often used by walkers. Both footpaths are on the current definitive map for the parish of Upchurch.”*

6. CONSULTATIONS

6.1 **Upchurch Parish Council** *“continues to object to this application on the same grounds it did on the 27th October 2015.*

The application still impacts on the appearance and amenity of the country side as it did when it was refused in 2015.

In particular that the site exceeds the current temporary permission and we believe there have been enforcement notices served.

The site has had previous applications for a permanent dwellings turned down.

None of the issues concerning flooding have been addressed since the decision made in 2012.

The development is likely to make the public footpaths through the development unusable in the future.

There are environmental issues both with sewage and mains drainage for this site that have not been addressed.

There is no requirement or need for Upchurch to increase its already high number of travellers sites as Swale is ahead of meeting its quota to 2031 and it is felt this site will not be fully sustainable.”

I have received a further objection from **Upchurch Parish Council** which repeats a number of the above points and also states:

“- The landscaping is not of a permanent nature and could be cut down, the laurel actually draws attention to the development.

- The landscaping is unattractive.

- *Halstow Lane continues to be urbanised due to the number of Gypsy and Traveller sites and barn conversions which have been permitted.*
- *This proposal would further erode the gap between the two different villages of Upchurch and Lower Halstow.*
- *The rural landscape is disappearing and the proposal further worsens the Assessment of the Landscape Character”*

6.2 Lower Halstow Parish Council *“object to the above application for the following reasons:*

- *The proposed development is outside of the built up boundary;*
- *The applicants have previously been refused and are now applying for retrospective permission in defiance of the planning regulations;*
- *The line of sight on exiting is inadequate;*
- *The site is unsuitable for permanent residential use by virtue of the impact of such development upon the character, appearance and amenity of the countryside;*
- *The site is at risk of tidal and fluvial flooding.”*

Lower Halstow Parish Council have sent a second letter which states that their objection to this application and the reasons for doing so (as set out above) remain valid.

6.3 Environment Agency raises no objection to the application but note that the site lies within the 1 in 200 year plus climate change events, but suitable mitigation has been provided through raising of the finished floor levels. This will take the finished floor levels outside of the 1 in 200 year plus climate change flood level. It is also noted that no details in respect of foul drainage have been supplied.

6.4 Environmental Protection Team Leader raises no objection.

6.5 KCC Public Rights of Way (PROW) Officer initially objected on the basis that the application had not referred to the PROW that cross the site. Following this, details of the PROW were provided and the PROW Officer subsequently removed the objection.

6.6 KCC Highways & Transportation state that the proposal does not meet the criteria to warrant the involvement from the Highway Authority.

6.7 Swale Footpaths Group set out that *“two public footpaths (ZR 32 and ZR35) cross the site. Neither is shown on the location plan or the block plan. Neither should be obstructed. Please draw the legal position to the applicant's notice.”*

7. BACKGROUND PAPERS AND PLANS

7.1 The application is supported by a Design and Access (D&A) Statement, an Education and Health Appendix and a Flood Risk Assessment.

- 7.2 The D&A Statement describes the layout of the site and sets out that it is not out of scale with the nearest settled community. The impact on the landscape is discussed and the D&A Statement comments that *“The site is small scale and reasonably well screened from roadside views. Views of the site would not be prominent or obtrusive in the wider landscape, views are limited and mostly with the back drop of the existing development. As there is also land available on site with potential for additional landscaping if needed the proposed development would not cause unacceptable harm to the character or appearance of this part of the countryside.”*
- 7.3 The D&A Statement goes onto say that *“The view points into the site are mainly short range, and the proposed static caravans would be well below the skyline adjacent to the existing established hedgerows and trees. It is often said that caravans don’t blend into the landscape, however I would say that due to their scale, and the fact that caravans are very much a part of the countryside, and an established type of accommodation found to be acceptable in connection with agriculture, also touring caravans ancillary to stables are seen as acceptable in the open countryside, and caravans on farms are not unusual, so it has to be said that caravans of themselves are not an alien feature in the countryside.”*
- 7.4 The D&A Statement also points out that *“It is important that this family has a stable place to live, and they have been living on site for many years without an available alternative site.”* In addition it is stated that *“It is important that the family has a stable place to live so they can access healthcare and education.”*
- 7.5 Further information in the form of a Health and Education Statement has been provided which sets out the medical conditions that affect various members of the family and the education status of the children that are living on the site.

8. APPRAISAL

- 8.1 The applicant’s submissions are supported by a statement in respect of the gypsy status of the applicant. Officers are satisfied that the applicant is a gypsy meeting the PPTS definition. I have no evidence before me or reason to challenge the applicant’s status.
- 8.2 At the outset I consider it vital to provide Members with additional information in respect of what I believe to be the extremely relevant planning history of this site as listed at the beginning of this report.
- 8.3 A planning application was firstly submitted under ref SW/07/1319 for the stationing of 3 residential mobile homes for a gypsy family and the erection of a utility room in the northern part of the site. This application was refused due to flood risk as the position of the proposed caravans and utility block was within the flood zone.
- 8.4 Subsequently, an application was submitted under ref SW/08/0710 for the stationing of the caravans towards the southern end of the site on raised plinths to take them above the flood risk level, this is the position in which they remain to this day. Although visual harm was identified, due to the unmet need for gypsy pitches in the

Borough at this time, on balance it was determined that temporary permission for a period of 3 years should be granted, this was controlled by condition 7.

- 8.5 Further to the above applications, SW/11/1027 sought to remove condition 7 at the end of that three year period, and to make the permission permanent. An appeal for non-determination was submitted against the Council in respect of the application, however officers still put a report to planning committee recommending that (if an appeal had not been submitted), a further temporary permission be granted. In terms of the visual impact, the committee report noted:

"The site is undoubtedly exposed - the caravans are located to the front of the site, and have been raised above the level of the land in order to mitigate against the site being in an area at risk of flooding. This has given them, in my opinion, undue prominence in the streetscene and the surrounding area. In my opinion the caravans are prominent, obtrusive and harmful to the character and appearance of the area. Whilst relocating the caravans further into the site, and further from the road, would mitigate against their harmful visual impact, this would not be possible, as the risk of flooding increases the closer to the estuary one goes.

The area least at risk of flooding is that where the caravans are currently located. Landscaping could mitigate this harm to a degree, but not to such a degree that permanent planning permission should, in my view, be granted. Any such landscaping would draw the eye to the site, in what is, a very open, albeit fragmented, landscape. This would in my view serve only to emphasise the harm caused by the development.

This site is not in my view suitable for a permanent planning permission. It is located in an area at risk of flooding, and as a consequence, the caravans on it are raised above the ground and located in the most prominent and visually harmful position on the site. However - as the recent appeal decision at Tootsie Farm sets out very clearly, there is still an unmet need for gypsy/traveller pitches within Swale, and this remains an important material consideration when applications are being determined. As the Council is still not meeting requirements in terms of addressing need, providing an allocations DPD, or a rolling five year supply of deliverable sites, and as the adoption of the Core Strategy remains some years away, I conclude, as the Inspector did on the Tootsie Farm appeal, that this outweighs the harm caused by the site to such a degree that temporary planning permission should be granted.

As such I recommend that Members resolve that, had an appeal against non-determination not been submitted planning permission would have been granted for a further temporary period of 4 years. "

- 8.6 The subsequent appeal was allowed by the Inspector and temporary permission for a period of 5 years was granted. The Inspector also dealt with the issue of the visual impact of this proposal and stated the following:

Paragraph 16: "the mobile homes are seen clearly and prominently, due to their proximity to the road. Their visual impact is further exacerbated by the raised plinths,

and by the unsympathetic, spread-out layout, which maximises visibility...Consequently, I find that the development appears as an intrusive and incongruous feature, at odds with the surrounding landscape."

Paragraph 22 goes on to state that *"the continued use of the appeal site as now proposed would cause substantial damage to the character and appearance of the countryside, including harm to the area's landscape, amenity value, environmental quality and openness...this harm could not be overcome by means of planting or other screening..."*

- 8.7 Although the Inspector considered that the unmet need at that time outweighed the harm identified, the Inspector also resisted the opportunity to grant a permanent permission and Members will note the Inspector's support of the Council's concerns in respect of visual amenity.
- 8.8 Further to the above, an application was submitted under 15/508116/FULL to allow for the permanent occupation of 3 mobile homes for a gypsy family. As part of that proposal it was considered that the Council had taken necessary steps in addressing unmet need for gypsy pitches. Therefore, the only remaining consideration centred on the impact of the development upon the character, appearance and amenity of the countryside. However, as referred to above, this point had been fully considered in previous decisions by the Council and the Planning Inspectorate. The conclusion had been reached that the positioning of the caravans and its subsequent impact was unacceptable. As a result of this the application was refused.
- 8.9 The above leads us to the current position where the temporary permission that the occupants of the site previously benefitted from has now expired. Therefore an application, essentially identical to the proposal submitted under 15/508116/FULL has been submitted again for consideration. The applicants were offered the opportunity to amend the scheme, and an alternative position on the site was discussed with officers but after a lengthy period of consideration the applicants decided not to amend the application and to retain the caravans in their current position.
- 8.10 Due to the location of the caravans remaining identical, including their elevated position due to the flood risks associated with the site, I see no reason to come to a different conclusion in respect of the harmful impact upon the countryside. I do note the agent's comments in the Design and Access Statement regarding the planting that exists, and the possibility that more could be provided. In addition to this, I note that the planting upon the site does screen views of the caravans from Halstow Lane to a very large degree. However, I give very significant weight to the Inspector's comments as referred to in paragraph 8.6 above. As such, the planting in this location would not overcome the harm that is caused. In addition to this, policy DM10 of the Local Plan sets out that gypsy sites will *"Provide landscaping to enhance the environment in a way that increases openness and avoids exclusion and isolation from the rest of the community."* In my view, the prominence of the planting in the wider landscape and its configuration on the site conflicts directly with this specific aim of the Local Plan policy.

- 8.11 On the basis of the above considerations, the matter of key importance that is required to be addressed is whether the Council can demonstrate a 5 year supply of pitches, and if it can't whether the harm identified would outweigh any unmet supply.
- 8.12 As set out in paragraphs 4.15 – 4.17 above, the Council is of the view that it can demonstrate a 5.8 year supply of pitches. Therefore, I believe that the considerable harm that this proposal causes to the character and appearance of the countryside should be given significant weight.
- 8.13 The application is supported by an education and health status report which sets out there are three school age children living on the site, at least one of which attends a local school. From the information provided, two of the children have medical conditions. In addition to this, two of the adults on the site have on-going medical issues for which medication is required. As such, I understand the benefits of a permanent site in respect of both the access to education and healthcare.
- 8.14 It is quite clear that in taking a decision which may affect children the decision maker should understand and take proper account of the best interest of the children involved. Article 8 of the European Convention of Human Rights requires respect for family and private life, and I am also mindful of the entitlement of gypsies and travellers to their traditional way of life which involves living in caravans.
- 8.15 Refusal of the planning permission here would be an infringement of the appellant's rights under the ECHR. I have taken into account the circumstances of the applicant and their family, especially the fact that there are school age children living on the site who also suffer from medical conditions. However, I give very significant weight to the harmful visual impact that this site gives rise to and the comments of the Inspector as referred to throughout this report.
- 8.16 I consider that the combination of significant factors, including the above mentioned harm to the countryside, and the previously considered views of both the Council and the Inspector that this is not a suitable site for permanent occupation, creates powerful arguments against the need for a settled base to be met on this site. That is not to say that this need cannot or should not be met elsewhere in the Borough (or beyond) where all these factors might not be present.
- 8.17 In concluding on this matter, even taking the best interests of the children and the Human Rights of the applicants and their family into account, an infringement is, in my view, proportionate and necessary in the public interest to avoid permanent harm to the countryside, which is supported by the above local and national policies.
- 8.18 The site also lies within 6km of the Swale SPA and a contribution is therefore required to mitigate the potential impacts of the development upon that protected area, in accordance with the Council's standing agreement with Natural England. (Natural England has not commented in respect of this application, but their approach is clear and consistent across the board with residential development, and I see no reason to delay the application to await their standing advice response.)

- 8.19 Although I note the requirement to request a contribution to mitigate these potential impacts, this has only been required for minor developments (such as this) in the interim period between the application being received and the time of writing this report. Therefore, understandably, a Section 106/UU was not submitted with the application and I don't consider it appropriate to now request one given the in-principle objection above.
- 8.20 I therefore consider it justifiable to include a reason for refusal on the grounds of potential harm to the objectives of the SPA, and in that regard note the PINS decision (ref. 3188809) for Cromas, Callaways Lane, Newington, which states:

11. The application site is located within around 2.8km of the Medway Estuary and Marshes Special Protection Area and Wetland of International Importance under the Ramsar Convention (hereafter referred to as the "SPA"), which is a European designated site. This is due to the international significance of this area for wintering birds, in particular waders and waterfowl. The evidence before me indicates that there have been marked declines in the number of birds using the SPA, which can be directly linked to those locations with high levels of public access. The proposal is not directly connected with or necessary to the management of the SPA. The Council identifies the potential for bird disturbance within the SPA, arising from the likelihood of increased recreational disturbance (including dog walking) as a consequence of this proposed development.

14. The Habitats Regulations require that permission may only be granted after having ascertained that it will not affect the integrity of the European site. I may give consideration to any conditions or other restrictions which could secure mitigation and so enable it to be ascertained that the proposal would not adversely affect the integrity of the site. This could potentially include a financial contribution secured through a planning obligation to be used for suitable works or management practices. However, whilst Natural England suggest that mitigation could be secured by an appropriate financial contribution to the Thames, Medway and Swale Strategic Access, Management and Monitoring Strategy, there is no method before me of securing such a contribution. Similarly, whilst the Council may not yet have put in place the full measures to achieve mitigation, that is not in itself a reason to absolve the appellant of the need to provide such mitigation.

15. In this case, on the evidence before me, I consider that there is a potential for recreational disturbance to the SPA through additional activity associated with this residential development, which would affect the integrity of this European site. The evidence before me suggests that such activity has the potential to intensify the decline of bird populations within these areas. The lack of any acceptable mitigation means that the proposal would affect the integrity of this European site.

9. CONCLUSION

- 9.1 In respect of reaching a conclusion on this application I refer back to the Inspectors decision and in particular paragraphs 42, 43 and 44 as follows:

42. *“....continued residential use of the appeal site would cause substantial harm to the character and appearance of the countryside, conflicting with the relevant development plan policies. This consideration weighs heavily against extending the existing permission, particularly on a permanent basis. In addition, the site is within a designated area of high flood risk, where vulnerable development should normally be avoided. This reinforces my view that the appeal site is not well suited to residential development. In the light of these considerations, the present use of the site cannot be said to constitute sustainable development.”*

43. *“...it is clear that Mr and Mrs Ball need to be able to provide a settled base for their family, so as to ensure continued access to education and other services, and to provide family stability. The family has no other home to go to, and the Council has not been able to identify any suitable or available alternative sites. At present therefore, the appeal site appears to be their only option. There is also an accepted backlog of unmet need for gypsy and traveller sites, resulting from past under-provision, which reinforces the difficulties of finding and securing any other site. These considerations weigh in favour of extending the existing permission.”*

44. *“However, the latter situation is likely to change when the Council has prepared its proposed new Traveller Sites DPD, which is intended to identify a 5-year supply of sites. At that time, it can reasonably be expected that one or more alternative sites will become available which could meet the appellant’s needs without incurring the environmental harm or flood risks of the present appeal site. Alternatively, that process might lead to the conclusion that, despite its drawbacks, the present appeal site is one of the least objectionable options available. Either way, granting a temporary permission now would allow the position to be reviewed when the outcome of the DPD process is known.”*

9.2 The Council’s 5 year supply is now clearer than when the Inspector made the comments above, which need to be considered alongside the continued harm to the countryside that this proposal causes. Therefore, for the reasons as discussed above I consider that the factors that weighed in favour of granting a temporary permission previously no longer apply. As such, I am of the view that the application is unacceptable and should be refused.

10. RECOMMENDATION - REFUSE for the following reasons:

- 1) The application site is unsuitable for permanent residential use by gypsies and travellers by virtue of the significant harm that the development causes to the character, appearance and amenity of the countryside. The proposal is therefore contrary to policies ST3, DM10, DM14 and DM24 of Bearing Fruits 2031: The Swale Borough Local Plan 2017; paragraph 26 of Planning Policy for Traveller Sites; and paragraph 170 of the National Planning Policy Framework.
- 2) The proposed development will create potential for recreational disturbance to the Swale Special Protection Area. The application submission does not include an appropriate financial contribution to the Thames, Medway and

Swale Strategic Access Management and Monitoring Strategy (SAMMS), or the means of securing such a contribution, and therefore fails to provide adequate mitigation against that potential harm. The development would therefore affect the integrity of this designated European site, and would be contrary to the aims of policies ST1, DM14, and DM28 of the adopted Swale Borough Local Plan 2017; and paragraphs 8, 170, 171, and 175 of the National Planning Policy Framework.

The Council's approach to the application

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), February 2019 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.

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

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.

The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.

