

<b>2.8 REFERENCE NO - 21/504836/FULL</b>		
<b>APPLICATION PROPOSAL</b>		
Change of use of land to provide two additional pitches on an existing Gypsy site. The proposed development to include two static caravans, two touring caravans, four parking spaces, associated hardstanding and infrastructure. (Works started)		
<b>ADDRESS</b> Keycol Farm Keycol Hill Bobbing Sittingbourne Kent ME9 8NA		
<b>RECOMMENDATION</b> – Grant subject to securing a S106 agreement or other appropriate means to secure the appropriate SAMMS payment.		
<b>SUMMARY OF REASONS FOR RECOMMENDATION:</b>		
The application is considered to meet the requirements of the local plan policies as set out below.		
<b>REASON FOR REFERRAL TO COMMITTEE</b>		
Newington Parish Council have raised an objection to the application on the grounds that the site is unsustainable.		
<b>WARD</b> Hartlip, Newington And Upchurch	<b>PARISH/TOWN COUNCIL</b> Newington	<b>APPLICANT</b> Mr & Mrs Smith <b>AGENT</b> BFSGC
<b>DECISION DUE DATE</b> 01/12/21		<b>PUBLICITY EXPIRY DATE</b> 29/11/21

**RELEVANT PLANNING HISTORY**

SW/89/0007 - Change of use of building to Class B1 Business Use with Ancillary Office Accommodation - Refused  
Decision Date: 29.03.1989

15/500330/FUL - Change of use of land to a gypsy site comprising the stationing of one mobile home and two touring caravans, erection of a day room, associated parking space and hard-standing and the formation of an earth bund around the site (Retrospective) – Approval  
Decision Date: 30.07.2015

15/506823/SUB - Submission of Details Pursuant to Condition 5: Parking \_ Condition 6: Landscaping under reference 15/500330/FUL - Approved  
Decision Date: 22.09.2015

17/506345/FULL - Demolition of pole barn attached to northern elevation and conversion of a former agricultural building into two dwellings with associated access and parking and as amended by drawing number 21187 PL06 Rev received 28.02.2018 - Refused  
Decision Date: 04.04.2018

**APPEAL HISTORY**

18/500099/REF - Demolition of pole barn attached to northern elevation and conversion of a former agricultural building into two dwellings with associated access and parking and as amended by drawing number 21187 PL06 Rev received 28.02.2018. Dismiss or Dismiss -Notice Upheld/Varied  
Decision Date: 14.12.2018

**1. DESCRIPTION OF SITE**

1.1 The application site is a plot of land to the rear of an existing gypsy site. The adjoining plot of land contains a mobile home, a smaller caravan and an outbuilding. A residential property, Crock Cottage, lies to the west of the proposed new pitches. Owing to a difference in land levels and to recent ground levelling works which have been undertaken on the site, the site sits below the level of the neighbouring site serving Crock Cottage. The site is partly enclosed by land banks and fencing along the western and northern sides of the plot. The site is located at the end of an unmade access track which leads onto Keycol Hill (A2).

1.2 The site is located on the outskirts of Newington village, and it lies immediately behind a line of residential properties in a predominantly rural location outside of the built-up area boundary.

## 2. PROPOSAL

2.1 This application seeks partial retrospective planning permission for an extension to the existing gypsy caravan site to allow for the creation of two new pitches and for stationing of two static caravans and two touring caravans for residential use by a gypsy/traveller family. As part of the proposed works, four parking spaces will be created, together with an associated area of hardstanding and other hard and soft landscaping works.

2.2 An existing access track leading to Keycol Hill (A2) provides the main access to the site. Land levelling works have already been undertaken on the site but the rest of the proposed works have not yet been undertaken at the time of the site visit.

## 3. PLANNING CONSTRAINTS

- Area of Archaeological Potential,
- SSSI Impact Risk Zone,
- Great Crested Newt Risk Zone

## 4. POLICY AND CONSIDERATIONS

4.1 The national policy position comprises the National Planning Policy Framework (NPPF) and Planning Policy for Traveller Sites (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 paragraph 8 of the NPPF 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....:

- **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;
- **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
- **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 79 and 80) states;

79. 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.
80. 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 building; or e) the design is of exceptional quality, in that it:
- is truly outstanding, 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.

4.4 In relation to conserving and enhancing the natural environment the NPPF, at paragraph 174, states;

174. 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)**

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

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

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

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

- 4.6 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)

4.7 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)

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

“Applications should be assessed and determined in accordance with 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”

“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 via its adopted Local Plan and based on past completions and outstanding permissions the Council is now operating a Local Plan Inspector approved post-PPTS windfall based approach to site provision, which I will refer to below.

- 4.9 The definition of gypsies and travellers was amended in the re-issued PPTS (2015) 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 show people or circus people travelling together as such.”

- 4.10 The implications for this change in definition affected the issue with regard to defining need, as set out below.

#### **Bearing Fruits 2031: The Swale Borough Local Plan 2017: as adopted 26 July 2017**

- 4.11 The Council’s Gypsy and Traveller Accommodation Assessment (GTAA) published in 2013 originally suggested a pitch target of 82 pitches to 2031. The revised PPTS (2015) changed the planning definition of a gypsy and traveller, and therefore changed the number of pitches that needed to be identified. Evidence to the Local Plan Examination In Public (EIPs) in 2015 and 2017 was that the Council had re-interrogated the original GTAA data to determine the appropriate level of pitch provision based on the new 2015 PPTS revised definition of gypsies and travellers. The data revealed that for all but unauthorised sites some two-thirds of households surveyed for the GTAA either never travel or travel not more than once a year. Overall, only 31% of respondents travel a few times a year, and 55% never travel, meaning that in Swale the gypsy and traveller population is quite settled, slightly more so than elsewhere in the country. Many current site occupants no longer meet the new PPTS definition of having a nomadic habit of life
- 4.12 Accordingly, the need for pitches in Swale was re-evaluated, resulting in a reduced estimate of pitch need from 82 pitches down to 61 pitches over the Plan period to 2031; this being the most generous (highest) of the possible reduced pitch number scenarios considered. As a result of this analysis the future need for new pitches throughout the Local Plan period is based on a figure of 61 pitches to 2031, leaving (at the time of the Local Plan EIP) a need per year of less than one pitch, meaning that no formal pitch allocations were needed, and future site provision could reasonably be expected to be catered for via windfall planning applications. Draft Local Plan Policy DM10 was then revised to deal with these windfall applications. Accordingly, a Part 2 Local Plan was/is not required as the Inspector confirmed that the Council’s approach to this matter was well reasoned and pragmatic and she also accepted that the Council’s approach would result in a Plan that will be effective and consistent with national policy.
- 4.13 The commentary on Issue 7 in the Inspector’s final report of June 2017 at paragraphs 85 to 91 confirms this line of thinking. The Inspector’s support for the Council’s approach to pitch requirements is re-affirmed in paragraph 90. At that time 51 permanent pitches had been approved by the Council since the GTAA was commissioned and the remaining pitch supply need to 2031 was just 0.2 pitches per annum. Despite formal objections, the Inspector discounted any concerns about site supply by referring to this very small remaining need (over the full plan period) and adding that the early review of the Plan (required for other reasons) would deal with any concern about the five year supply

situation. This means that the Council's adopted plan was found sound based upon a post-PPTS methodology which has been approved by the Local Plan Inspector, and essentially means that we are working to a different methodology to that of maintaining a 5 year supply of sites, as we are working on a windfall basis.

- 4.14 The Local Plan has now been adopted, and thus the position has been formalised. The key adopted plan policy to deal with windfall planning applications for new sites now is DM 10 (Gypsy and Traveller sites). Policy DM10 of the adopted Local Plan 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.
- 4.15 In more general terms the new Local Plan also contains the usual range of policies aimed at sustainable development and protecting the natural and built environment. Policy ST3 seeks to direct development to sustainable locations by ranking settlements in order of service provisions. Starting with main urban centres and dropping through other and rural centres, the policy seeks to prevent development outside built-up area boundaries or in the open countryside unless supported by national policy and where that development can demonstrate that it would contribute to protecting and, where appropriate, enhancing the intrinsic value, landscape setting, tranquillity and beauty of the countryside, its buildings and the vitality of rural communities. The location of the current application is outside any urban or built-up area and at the very lowest 6th tier of development locations is a matter I will refer to below.

### **The updated GTAA and Five year supply position**

- 4.16 An updated GTAA was produced in 2018. This set a revised requirement for 51 new pitches during the period 2019-2038, and identified that the area of greatest need was from expansion of existing families within the Borough. To date, a further 24 pitches have been granted planning permission, equating to 47% of the identified need. Existing permissions run well ahead of the GTAA need if spread evenly over the need period in the GTAA. Members should also note that this is a minimum and should not be treated as a ceiling figure. Based on the approach endorsed via the local plan examination, the Council considers that on the basis of past trends, this need can continue to be met from windfall proposals. Moreover, it indicates that by proper engagement with the Council, appropriate sites can be found in sustainable and acceptable locations in Swale (outside of the AONB or other designated area) without an appeal, meaning that there is a high probability of being able to find an acceptable alternative site with minimal delay.
- 4.17 This “windfall” approach remains as endorsed by the local plan inspector who accepted that the Council did not need to allocate potential sites in a development plan document. Rather, the Council’s open and positive attitude to the provision of private traveller sites meant that the Council was encouraged to adopt a “windfall” based approach to private site provision, testing sites according to Policy DM10 criteria. This effectively means that the issue of the 5 year site supply raised in PPTS has been superseded at a local level by the windfall based approach, and by policy DM10 of the adopted Local Plan. In other words, the relevance of the 5 year supply position is now very limited in Swale, where site provision has been running ahead of site supply based on the overall Plan period target. The Council has confirmed in many relevant appeal hearings that at Swale we see that target simply as a target, not as a ceiling, and that we continue to approve sites in appropriate circumstances. As such, the following statements can be made in relation to the 5 year supply:
1. The 5 year supply requirement suggested in PPTS is out-of-date in relation to the adopted Development Plan policy currently applying in Swale.
  2. Policy DM10 is both more recent and more relevant; it should carry more weight than the PPTS 5 year supply requirement.
  3. The proposal should most properly be judged against the criteria set out in policy DM10.
  4. Even if there was to be an argument that PPTS was more relevant than policy DM10, that only comes into play in relation to the question of a possible temporary planning permission.



5. This approach has been accepted by Planning Inspectors in cases since adoption of the Local Plan, including that at Hill Top Farm (2018) and at Blind Mary's Lane (2020) which is the most recent relevant case in Swale.
  6. The latter decision in (5) above specifically comments on site supply in Swale being different from the national picture – see paragraph 19 in particular.
- 4.18 So, whilst a five year supply of allocated sites is not the most important factor now, for completeness I now provide the latest information.
- Current 5 year pitch need = 9
  - Current annual pitch need = 1.8
  - Current supply of pitches = 3
  - Current site supply = 1.7 year supply
- 4.19 As an aid to interpretation the Council's own supply situation the following calculation is more useful:
- Overall pitch requirement from 2018 to 2038 (from 2018 GTAA) = 51 pitches
  - Pitch requirement 2018 to 2038 per year (51 divided by 20) = 2.55
  - Pitches required on average over the three years from 2018 to 2021 (3 multiplied by 2.55) = 7.65
  - Number of permanent pitches actually granted planning permission from 2018 to 2021 = 24
  - Number of years "supply requirement" approved from 2018 to 2021 (24 divided by 3) = 8 per year supply already approved in first three years
- 4.20 Essentially, the supply of sites is still running well above what might notionally be needed. In other words, in the three years since the GTAA figures were published 8 pitches should have been approved to meet average demand. Instead 24 pitches have been approved. Even taking the very worst case scenario where the GTAA suggest that up to 30 pitches might be needed in the first five years, more than half of this need has been met in just three years. In simple terms the Council's windfall approach to site provision is working and many families now have secure futures.
- 4.21 I would add that in relation to the Government's bi-annual count of gypsy and traveller sites to show unmet need for sites;
- The number of authorised sites in Swale is substantial and has been increasing rapidly.
  - These sites are not overcrowded.
  - The number of so-called unauthorised sites includes illegally occupied sites that have formally been refused planning permission at appeal but have not been vacated; as well as a small number of very long established lawful sites that have no planning permission, but which are not at risk of enforcement action or eviction.
- 4.22 Finally, the Government's Chief Planner announced on 31 August 2015 (the same day PPTS was re-issued) a policy that from that date on all applications and appeals that involve intentional unauthorised development this fact can be a material planning consideration.
5. **LOCAL REPRESENTATIONS**
- 5.1 Three representations on the application have been received, objecting to the proposal on the following grounds:

- The site is considered to be an unsuitable location
- The existing track is in a bad state of repair and it cannot take the current volume of traffic from visiting trucks, motorbikes and other large vehicles, which will get worse if the current application is approved.

## 6. CONSULTATIONS

### 6.1 **Newington Parish Council** - Objection raised to the application on the following grounds:

- The site is unsustainable.
- The application is the latest in a series of planning applications and proposals for housing development on the site
- It is regrettable that the application is being made retrospectively.

6.2 **Kent County Council Highways and Transportation** – Did not initially comment on the application. Verbal comments subsequently provided confirming that the increase in the number of vehicles along the access track would not warrant a refusal due to the number of individuals already using the access, which serves vehicles parked to the rear of the nearby residential properties along the A2, Crook Cottage and the existing caravan pitch. In addition, given that the future occupants of the new pitches already live on the existing pitch, the number of new vehicle movements are unlikely to significantly increase.

6.3 **Environmental Health Team** – No objection

6.4 **Gypsy Council** – No comments received

6.5 **Kent County Council Archaeology Team** – No comments received

6.6 **Natural England** – No objection, subject to the appropriate financial contribution being secured to mitigate against the potential harm to the SPA.

6.7 **Kent County Council Minerals and Waste** - No objection

## 7. BACKGROUND PAPERS AND PLANS

7.1 Please refer to the existing and proposed plans provided by the applicant.

## 8. APPRAISAL

### Principle of Development

8.1 Policy ST3 of the Swale Local Plan 2017 sets out the settlement strategy within the borough. The policy states that development will not be permitted on countryside land which falls outside of the defined built-up area boundaries unless the development proposal is supported by national policy and the development would contribute to protecting and enhancing the intrinsic value, landscape setting, tranquillity and beauty of the countryside, its buildings, and the vitality of rural communities.

- 8.2 As set out above at point 4.14, Policy DM10 of the Swale Local Plan 2017 relates to the retention of sites for gypsies and travellers. The policy states that existing sites which have planning permission for permanent occupation by gypsies and travellers will be safeguarded. At Part B, the policy states that Council will grant planning permission for sites for Gypsies, Travellers and Travelling Show People where it can be demonstrated that proposals are in accordance with Policy ST3, unless the site is either a) a particular site is required under exceptional mitigating and/or personal circumstances that cause no harm to the locality; b) required to meet an affordable housing need either via a rural exception site in accordance with Policy DM 9; or c) the proposal is for an extension to, or stationing of, additional caravans at an existing site.
- 8.3 In this case, whilst it is acknowledged that the site lies in the countryside, outside the built-up area boundary of Newington, and that the principle of development is not normally acceptable in this location, the proposal relates to an extension to an existing gypsy traveller site. As such, it constitutes an exception to the usual criteria that must be met under Policy ST3. In light of this, the development of this site is acceptable as a matter of principle, as long as the applicant can demonstrate that the proposal meets a list of 12 criteria (set out at point 4.16 above), including, at point 2, the ability to demonstrate that they have previously led, currently lead or intend to return to a nomadic lifestyle in accordance with Annex 1 of Planning Policy for Traveller Sites (2015).

#### Personal Circumstances of the applicants and their family

- 8.4 With regards to the gypsy status of the applicants, as detailed at point 4.10 above, the PPTS definition of gypsies and travellers is *“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’ education or health needs or old age, have ceased to travel temporarily, but excluding members of an organised group of travelling show people or circus people living together as such”*.
- 8.5 In the current case, the agent for the applicant has provided a statement confirming that the applicant and the proposed residents of the future pitches (his son and daughter) are members of the Gypsy Traveller community and that they have Gypsy Status for planning purposes. I am advised that the occupants of the existing mobile home on the site, Mr and Mrs Smith, have four children who reside on the site with them. The statement provided indicates that the status of Mr Smith as a gypsy was previously assessed and accepted in 2015 when consent was granted for the current pitch. Mr Smith is understood to travel 3-4 times a year for work purposes or to visit other Romany families and that the family always keep a touring caravan available for such uses. The statement confirms that as a family they regularly take part in cultural events relating to the Romany Gypsy community and attend horse fairs such as Stow on the Wold (which is run by the Smith family). The family moved to Keycol Farm 6-7 years ago when they had no other place to live. Their daughter has since had triplets and is in need of her own pitch owing to a lack of space for her young children. Their son is also in need of his own pitch as he has reached adulthood.
- 8.6 The expansion of the site to accommodate further pitches for family members as children reach adulthood and need their own accommodation is recognised in the GTAA as the main source of need in the Borough. This is clearly the case here and in particular

for the adult daughter who has triplets. The information provided as to the family's heritage and current lifestyle also indicate that they meet the definition of a cultural gypsy as defined under PPTS definition.

- 8.7 The Council has previously accepted that the family are Gypsy and Travellers in granting permission for the site in 2015. I have no information which contradicts this or the information supplied by the agent. As such, this application can be determined on the basis that the applicants fall within the definition of gypsies/travellers as set out in the PPTS.
- 8.8 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. The Human Rights Act 1998 and Article 8 of the European Convention of Human Rights requires respect for family and private life, and I am mindful of the entitlement of gypsies and travellers to the continuation of their traditional way of life which involves living in caravans. In addition, the best interests of a child are "a primary consideration" (see Supreme Court judgment in *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4), although this is not a trump card to defeat all other harm identified. In this instance, the adult daughter of Mr Smith resides at the site with three young children, and it is clear that the stationing of additional mobile units would allow her to have her own accommodation and provide a better living environment for her children.
- 8.9 I have taken into account the circumstances of the applicant and their family, including the young age of the children living on the site and concluded that the refusal of planning permission here would be an infringement of human rights under the ECHR and the Human Rights Act 1998, and would not be in the best interests of children. Nonetheless, such interference can be in accordance with the law and in pursuance of a well-established and legitimate aim if, for example, any planning harm was significant enough to outweigh such rights and the best interests of children. I shall return to this in my conclusion.

#### Sustainability

- 8.10 Policy DM10 states, at point 3, that any new proposed pitches or extensions to pitches should achieve an integrated co-existence between all communities. As such, the proposed pitches should not be isolated and should be in a sustainable location, where it is possible to integrate within communities. In the current case, the proposed new pitches constitute an extension to an existing gypsy site. Although the site is set back from the road and it lies outside of the built-up area boundary in a fringe rural location, it is located near to a line of existing residential properties that front the A2. The site is also located approximately 0.52 miles from the built confines of Newington and there is a continuous footpath with associated street lighting on the A2 which runs between the site access and the village so any future occupants have a means of accessing the local shops and facilities within the village. The site lies in close proximity to bus stops which also provide public transport local destinations. As a consequence, the site is deemed suitable to provide for the day-to-day needs of future occupants, and in my opinion performs well in sustainability terms compared with many other Gypsy sites. Whilst the comments of the parish council are noted, by virtue of the location of the site and the

presence of other residential properties in the immediate vicinity, the site is not considered to be isolated or considered to lie in an unsustainable location.

### Visual Impact

- 8.11 At point 4, Policy DM10 requires any future pitches to be of a scale which is appropriate to meet the accommodation need identified. In addition, it should not cause significant harm to the character of an area, to its landscape, or to the capacity of local services. In accordance with points 8 and 9, sites should also provide landscaping to enhance the environment in a way that increases openness and avoid exclusion and isolation from the rest of the community. Pitches should also provide for healthy lifestyles through open space and amenity areas for each pitch.
- 8.12 Policy CP4 of the Swale Local Plan 2017 also requires development proposals to be of high-quality design and to be in keeping with the character of the area. It states that particular regard should be paid to the scale, height, materials, detailing, mass, bulk, articulation and site coverage of any future proposals.
- 8.13 In this case, the proposed development site was formerly used for grazing and was a mixture of grassland and scrubland so had a predominantly rural character. However, the site has since been cleared and levelled so much of the vegetation has been removed from the site.
- 8.14 As mentioned above, the proposal relates to the creation of two new pitches to the rear of an existing gypsy caravan site. The scale of the proposed development is considered to be proportionate to the identified need on the site. The two proposed pitches have a combined area of approximately 2815sqm and each will house a static caravan, a touring caravan and two parking spaces. Each pitch will have an associated area of hardstanding and a lawn area. The proposed pitches are evenly spaced and discretely located to the rear of existing residential plots. The statement provided confirms that the proposed new static and touring caravans will meet the statutory definition of a caravan so will be within set maximum dimensions. The hard and soft landscaping works associated with the development will provide suitable areas of private amenity space and provide appropriate accesses and pathways to improve connectivity between the existing and proposed pitches and the access road. The nearest residential property, Crook Cottage, is located on an adjacent plot where the land levels are higher than the proposed development site. As a consequence, whilst the new proposed pitches are positioned in relatively close proximity to the neighbouring property, owing to the site topography, the new proposed static caravans will be sited below the level of the neighbouring plot and partially shielded from view by the landbanks along the western and northern boundaries of the site so the caravans should not appear unduly cramped or overly dominant in the site context.
- 8.15 The proposed plots are set back from the A2 and will not be visible from public vantage points along the road. They are screened from the north due to topography. They are visible across a localised valley from the relatively new housing development at Rooks View. However such views are in seen against other surrounding buildings and the development fronting the A2. As such, they will not appear as standalone additions to an area of open countryside and I note that this is an undesignated landscape. In my

opinion, the visual impacts are limited, as is any harm to rural character and appearance. Such harm can be further limited through conditions to secure landscaping.

#### Live/work capacity

- 8.16 At point 5, Policy DM10 states that any new proposed pitches should, 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. I note that the 2015 permission included a condition to restrict business use to minimise impacts on the character and amenities of the area, and as such I consider it would be appropriate to impose this condition again.

#### Neighbouring Amenity

- 8.17 At point 6, Policy DM10 states that any new proposed pitches should not result in significant harm to the health and wellbeing of occupants or others by virtue of noise, disturbance, vibration, air quality or other circumstances.
- 8.18 Policy DM14 states that any new proposed developments should not cause significant harm to the amenities of surrounding uses or areas and due consideration will be given to the impact of the proposed development upon neighbouring properties. Any new proposed schemes should not result in significant overshadowing through a loss of daylight or sunlight, in an unreasonable loss of privacy, in an unreasonable loss of outlook or in excessive noise or odour pollution.
- 8.19 With regards to the impact of the proposal upon future occupants, the proposed new pitches are considered to be sited in an appropriate location and they are set back from the existing pitch and other surrounding residential properties and farm buildings so undue harm to future residents is unlikely to occur by virtue of noise, disturbance, etc.
- 8.20 With regards to the potential impact of the proposal upon neighbouring amenity, the new proposed pitches are located approximately 10 metres from the nearest neighbouring property (Crooks Cottage). Due to the distance from the neighbouring plot and to a difference in land levels, the new proposed caravans are unlikely to impact neighbouring access to daylight or sunlight. With regards to neighbouring privacy, although one of the proposed caravans will be sited within 10 metres of the neighbouring property, owing to the sunken nature of the site, the partial screening along the boundary from vegetation and the single-storey nature of the caravans, the proposal is unlikely to impact neighbouring privacy in a negative manner. Further details to strengthen planting along the boundary can also be secured via condition. With regards to the potential impact of the proposal upon neighbouring outlook, whilst the new proposed pitches will be partially visible from the nearest neighbouring plot, due to the site topography and to the single-storey nature of the proposed caravans, the development is unlikely to have an unduly harmful impact upon neighbouring outlook.
- 8.21 In light of the above, the proposal is considered to be acceptable from a neighbouring amenity perspective, subject to further landscaping.

## 8.22 Biodiversity

- 8.23 Point 7 of Policy DM10 states that any new proposed pitches should not cause significant harm to the Area of Outstanding Natural Beauty, to national/local landscape or to biodiversity designations and other natural or built environment that cannot be adequately mitigated.
- 8.24 Policy DM28 of the Swale Local Plan 2017 also states that any new proposed development should conserve, enhance and extend biodiversity, provide for net gains in biodiversity where possible, minimise any adverse impacts and compensate where impacts cannot be mitigated.
- 8.25 The site lies within 6km of the The Medway Estuary and Marshes Special Protection Area (SPA), a European designated site which has been afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations). In accordance with the agreed strategy (SAMMS), it will be necessary for a financial contribution to be secured for the additional two pitches sought. My recommendation is subject to the receipt of such payment.
- 8.26 An Appropriate Assessment is set out at the end of this report.
- 8.27 In respect of on-site biodiversity, I note that the existing site is generally cleared and consider that the additional landscaping secured by condition would add biodiversity value to the existing site.

## Flooding

- 8.28 Point 10 of Policy DM10 states that any future proposed sites should be safe from flooding by meeting both the exceptions and sequential tests in accordance with national policy and Policy DM22.
- 8.29 The proposed site falls outside of flood zones 2 and 3 and is therefore considered to be at low risk of flooding. However, in view of the hard landscaping works proposed, further details of drainage strategies for the site (including foul and surface water management schemes) are sought via condition.

## Parking/Highways

- 8.30 Point 11 of Policy DM10 states that any new proposals should achieve safe and convenient parking and pedestrian and/or vehicular access without unacceptable impact on highway safety.
- 8.31 Policy DM7 further states that parking requirements in respect of any new proposed developments should be in accordance with Kent County Council vehicle parking standards.
- 8.32 The proposed block plan provided by the applicant indicates that two parking spaces are to be provided per pitch, in accordance with KCC parking requirements, and that associated vehicular access routes are to be created in order to connect the pitches to the existing access track leading on the A2.

- 8.33 The existing access track is an unmade private track leading from the A2 that provides access to the site, a small number of residential properties, and appears to be used by dwellings fronting the A2 for access and parking. It also serves the former farm buildings adjacent to the site. The proposal would have potential to increase the use of this track. An objector has raised concern regarding the effect of further traffic on the condition of the track, although as this is a private track, this is not a matter that carries material planning weight, as upkeep and maintenance are private matters.
- 8.34 The proposal would increase traffic entering and exiting the site from the A2. I note that this was of some concern for KCC Highways in assessing the 2015 application. I note that KCC Highways originally offered no comments in relation to this current application. However following discussions with my officers, they have verbally advised that the likely increase in the number of vehicle movements along the track would not be so significant as to warrant a refusal. The addition of two new pitches would be unlikely to give rise to an unacceptable level of congestion. In addition, the intended future occupiers of the two proposed pitches already live on the existing caravan site, which limits the future number of vehicle movements when compared to the existing arrangement.
- 8.35 It is considered that the vehicles using the track would not be able to travel at high speeds along it owing to its width and general condition. This limits the potential for highway safety issues and the use of the track by occupants of the two proposed pitches is considered to be no more harmful than the existing use of the track by the occupants of nearby properties.

#### Other matters

##### Area of Archaeological Potential

- 8.36 The site lies within an area of archaeological potential. No comments have been received from the KCC Archaeologist. However I note that the site has already been cleared and levelled, and as such any archaeological interest, if it existed, would have been removed. Whilst this approach is clearly unsatisfactory, an archaeological watching brief will not be required, given that excavation works have already been undertaken on the site.

#### Conclusion

- 8.37 The site would provide additional pitches to meet the needs of an existing family on / adjacent to an existing lawful site. The expansion of existing sites for such purposes is identified in the GTAA 2018 as a key area of identified need. Although the site is located within the countryside, it is within an undesignated landscape and I consider that the harm from additional built form is limited due to the relatively well contained nature of the site and its location on the fringe of a cluster of development fronting the A2. I also consider that the site performs reasonably well in sustainability terms for a Gypsy site, being within safe walking distance of Newington and close to the A2 and associated bus stops and services. Other matters such as highways impacts and impacts upon neighbouring amenities are considered to be acceptable. I have concluded that the use of the site and the development would be in keeping with Policy DM10 of the Swale Borough Local Plan 2017, the PPTS and the NPPF.



- 8.38 The proposal would accord with Article 8 of the European Convention of Human Rights in terms of respect for family and private life, and would serve the best interests of children on the site.
- 8.39 On the basis of the above, I consider the scheme to be acceptable and in accordance with the development plan, subject to securing a SAMMS payment for the additional two pitches.
9. **RECOMMENDATION – That Planning Permission is GRANTED Subject to securing a S106 agreement or other appropriate means to secure the appropriate SAMMS payment, and subject to the following conditions:**

**CONDITIONS:**

1. The development hereby approved shall be carried out in accordance with the following approved plans:  
  
LP-02-2021, BP-02-2021  
  
Reason: For the avoidance of doubt, and in the interests of proper planning.
2. 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 an uncontrolled use of the land would be unacceptably detrimental to the character and amenities of the area.
3. No more than two static caravans or mobile homes and two touring caravans shall be stationed on the site outlined in red on the approved plans.  
  
Reason: In recognition of the terms of the application, and because an uncontrolled use of the land would be unacceptably detrimental to the character and amenities of the area.
4. No caravan, static or mobile home shall be stationed within a distance of 10 metres of the west boundary of the site with Crock Cottage.  
  
Reason: In the interest of visual and neighbouring amenity.
5. The site shall only be used for residential purposes and shall not be used for any industrial or commercial use. In this regard, no open storage of plant, products or waste may take place on the land. In addition, no vehicle over 3.5 tonnes shall be stored on the land at any time and no more than two vehicles of up to 3.5 tonnes shall be stationed, parked or stored on the land at any one time.  
  
Reason: In the interest of residential amenity of the area.
7. Prior to the laying of any hard surface on the site or the stationing of any caravan, static or mobile home on the site, full details relating to proposed foul and surface

water drainage serving the approved development shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details prior to first occupation of the site and retained as such thereafter.

Reason: To prevent surface water flooding and the overload of existing drainage systems.

8. Prior to the laying of any hard surface on the site or first occupation of the site, full details of both hard and soft landscape works shall be submitted to and approved in writing by the Local Planning Authority. These details shall include existing trees, shrubs and other features, planting schedules of plants, noting species (which shall be native species and of a type that will encourage wildlife and biodiversity), plant sizes and numbers where appropriate, means of enclosure, hard surfacing materials, and an implementation programme. The scheme shall include additional planting along the eastern and western boundaries of the site. The development shall be carried out in accordance with the approved details. Should any plants die or become diseased within five years of the completion of the approved development, they shall be replaced in the next planting season on a like-for like basis unless otherwise agreed with the Local Planning Authority.

Reason: In the interests of visual and neighbouring amenity.

9. No floodlighting, security lighting or other external lighting shall be installed or operated at the site, other than in accordance with details that have first been submitted to and agreed in writing by the Local Planning Authority.

Reason: In the interests of visual amenity and the residential amenities of occupiers of nearby dwellings.

## **INFORMATIVES**

No fires shall be lit or refuse burned on the site.

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

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), July 2021 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.

## Appropriate Assessment

The site lies within 6km of The Medway Estuary and Marshes Special Protection Area (SPA), a European designated site which has been afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations).

SPAs are protected sites classified for the prevalence of rare and vulnerable birds and for regularly occurring migratory species on the site. Article 4(4) of the Birds Directive (2009/147/EC) requires steps to be taken by the relevant authorities to avoid activities on the site which are likely to result in pollution or in the deterioration or disturbance of bird habitat. Accordingly an appropriate assessment is required to establish the likely impact of the development.

I have consulted with Natural England, who have advised that the proposal is unlikely to have significant effects on these sites, subject to payment of a financial contribution.

In the recent 'People Over Wind v Coillte Teoranta' (ref. C-323/17) ruling by the Court of Justice of the European Union, the Court concluded that, when interpreting article 6(3) of the Habitats Directive, it is not appropriate when determining whether or not a plan or project is likely to have a significant effect on a site and requires an appropriate assessment, to take account of measures intended to avoid or reduce the harmful effects of the plan or project on that site.

However, the proposed development in this case is sufficiently in small scale to avoid having a significant adverse impact upon the SPA. In addition, in this location, off site mitigation is considered to be the most appropriate means to mitigate against the level of harm to the SPA.

When considering any residential development within 6km of the SPA, the Council seek to secure financial contributions to the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring (SAMM) Strategy in accordance with the recommendations of the North Kent Environmental Planning Group (NKEPG). Such strategic mitigation must be in place before the development is occupied. The mitigation measures to be implemented within the SPA from collection of the standard SAMMS tariff (which will be secured prior to the determination of this application) are considered sufficient to mitigate against any adverse effect on the integrity of the SPA. A fee of £253.83 per pitch will be secured from the applicant towards such mitigation prior to determination, subject to a resolution to approve the scheme.

