

<b>2.7 REFERENCE NO - 19/505263/FULL</b>			
<b>APPLICATION PROPOSAL</b>			
Retrospective application for siting of a portacabin for residential use of the site by a gypsy/traveller, in association with existing smallholding and equine facilities.			
<b>ADDRESS</b> Kaynes Farm Breach Lane Upchurch Kent ME9 7PE			
<b>RECOMMENDATION</b> – That planning permission is Granted for a temporary period of five years, subject to receipt of the appropriate SAMMS payment.			
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b>			
The site is in a location where residential use would not normally be permitted. However the Council considers on the grounds of the applicant's personal circumstances, age and status as a cultural Gypsy who has now permanently ceased to travel, that it is reasonable to allow a temporary and personal permission, taking into account the lack of policy provision within the current local plan for persons who identify under such need. Refusal of this application may lead to a roadside existence and therefore the granting of a temporary and personal permission is considered reasonable in this instance.			
<b>REASON FOR REFERRAL TO COMMITTEE</b>			
Call in by Cllr Palmer and Parish Council objection			
<b>WARD</b> Hartlip, Newington And Upchurch	<b>PARISH/TOWN</b> Upchurch	<b>COUNCIL</b>	<b>APPLICANT</b> Mr James Hills <b>AGENT</b> Architectural Designs
<b>DECISION DUE DATE</b> 18/12/19		<b>PUBLICITY EXPIRY DATE</b> 29/11/21	
<b>RELEVANT PLANNING HISTORY</b>			
<b>App No.</b>	<b>Description</b>	<b>Decision</b>	<b>Date</b>
18/503381/FULL	Retrospective application for stationing of a mobile home.	Refused	17.10.2018
SW/13/0964	PP granted for four loose boxes, barn, tack room, ménage, muck heap and one horse trailer.	Application permitted	27.09.2013
SW/11/0653	Change of use for keeping and grazing of horses, and erection of 1.2m high fence	Application permitted	23.08.2011
SW/07/0687	Change of use to vehicle parking with associated access road and landscaping	Refused	08.08.2007
SW/04/0920	Retrospective PP granted for new gateway	Application permitted	10.09.2004
SW/03/0462	Erection of agricultural storage barn and improvements to access	Refused	06.06.2003

## 1. DESCRIPTION OF SITE

- 1.1 The application site is situated on the west side of Breach Lane, immediately to the north of the railway line. The site is broadly rectangular in shape and measures 63m north to south and has a depth of approx.. 70m. The site forms part of a larger holding of approx. 1.5 Hectares which extends to the west adjacent to the railway line.
- 1.2 To the front of the site and adjacent to Breach Lane is a portacabin which is occupied by the applicant as his living accommodation, and a small metal/wood building with Heras fencing around it which appears to serve as a chicken coop and run. A collection of buildings / structures run along the southern boundary with the railway line, incorporating a U-shaped timber stable block, a storage container / outbuilding, and a slightly larger structure (both labelled as “piggery” on the submitted block plans).
- 1.3 Vehicle access from Breach Lane is reached from the northern part of the frontage with space to pull a car off the highway and access the site via a metal 5-bar gate. There is some reasonable hedgerow planting along the frontage, and more established planting along the boundary with the railway line. The wider holding is mostly open grass land but has recently been subdivided by a 1.8m high close boarded timber fence.
- 1.4 In terms of surrounding development, on the opposite side (east) of Breach Lane there is a motor repair garage comprising of a large industrial building set back from the road side with a hardstanding and associated parking area to the front forecourt. There is overspill car parking along this section of Breach Lane. The site is bounded by the railway line to the south, beyond which is a line of housing fronting the A2. However this is not visible from the site due to the raised railway embankment. To the north, with the exception of a neighbouring stable block to the northwest, the area is predominantly open countryside.
- 1.5 The settlement boundary of Newington is approx 0.75km to the east.

## 2. PROPOSAL

- 2.1 This application seeks retrospective planning permission for the stationing of a portacabin for residential use for a cultural traveller in association with use of the wider site as a smallholding including a piggery and equestrian use (which already benefits from permission under Ref: SW/11/0653).
- 2.2 The occupant lives in the portacabin, measuring roughly 12m x 4m, positioned in the south-eastern corner of the site. The original stable block is retained and a smaller outbuilding immediately adjacent to the stable block is currently in use as the piggery.
- 2.3 The application follows a previous refusal at the site, planning reference 18/503381/FULL dated 17<sup>th</sup> October 2018. However this decision was made solely on the basis that there was no justification for a residential unit based on the needs of the smallholding. The application did not include any case based on Gypsy / Traveller needs. The application was refused on the following grounds:

*1) The application fails to demonstrate a functional agricultural need for a dwelling on the site. The stationing of a static caravan for residential use would therefore be harmful to the character, appearance, and wider amenity value of the countryside*

*in a manner contrary to the aims of policies ST1, ST3, CP3 and DM12 of the adopted Swale Borough Local Plan 2017; and the advice of paragraphs 11, 12, 79 of the National Planning Policy Framework.*

- 2.4 This current application has now been made on the basis of both the agricultural need for a residential unit and the gypsy/traveller status of the applicant. In respect of the latter, the application includes information that the applicant comes from a Gypsy / Traveller background, and has travelled most of his life mainly seeking employment on farms in the local and wider Kent area. He married another Traveller and his adult daughter has married into another Traveller family. He has ceased travelling mainly due to age and would like to be more settled.
- 2.5 In respect of the agricultural need, the smallholding operates with some 80 pigs, 20+ geese, 50+ chicken and 10 ducks, as well as stables. The application states that with 4-5 pigs farrowing at any one time and constant supervision of both the equine horses and livestock required, there is a need for a residential unit. Around 200 pigs have been bred and sold in 15 months prior to submission of the application. The application also states that prior to living on the site (November 2017), it was subject to crime and break-ins, and that tools, equipment and livestock were stolen.

### **3. PLANNING CONSTRAINTS**

- 3.1 Located in the countryside outside of the build-up area boundaries.

### **4. POLICY AND CONSIDERATIONS**

#### National Planning Policy Framework

- 4.1 I consider the relevant paragraphs of the NPPF to be as follows –
- 4.2 Paragraph 8 defines the three strands of sustainable development, incorporating economic, social and environmental objectives.
- 4.3 Paragraph 11 sets a presumption in favour of sustainable development. For decision taking, it states that development should be approved if in accordance with an up to date development plan. Where there are no relevant development plan policies or those most important for determining an application are out of date, permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the NPPF as a whole.
- 4.4 Paragraphs 61 and 62 set out that to determine the minimum number of homes required, policies should be informed by housing needs assessments, and the size, type and tenure of housing needed for different groups should be assessed and reflected in planning policies – including travellers.
- 4.5 Paragraph 78 states that 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.

- 4.6 Paragraph 79 states that 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.
- 4.7 In relation to conserving and enhancing the natural environment, paragraph 174 of the NPPF states that decisions should protect and enhance valued landscapes and recognise the intrinsic character and beauty of the countryside.

Planning Policy for Traveller Sites – Department for Communities and Local Government (2015)

- 4.8 The PPTS sets out that the 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)
- 4.9 Policy C of the PPTS states : *Sites in rural areas and the countryside - 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.*
- 4.10 Policy F of the PPTS states: *Mixed use traveller Sites – Local planning authorities should consider, wherever possible, including traveller sites suitable for mixed residential and business uses, having regard to the safety and amenity of the occupants and neighbouring residents. Local planning authorities should consider the scope for identifying separate sites for residential and for business purposes in close proximity to one another if mixed sites are not practical.*
- 4.11 Paragraph 23 states, *“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.”*
- 4.12 Paragraph 24 states: *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*
- 4.13 Paragraph 25 states: *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.*
- 4.14 Paragraph 26 states: *When considering applications, local planning authorities should attach weight to the following matters:*
- a) *effective use of previously developed (brownfield), untidy or derelict land*
  - b) *sites being well planned or soft landscaped in such a way as to positively enhance the environment and increase its openness*

*c) promoting opportunities for healthy lifestyles, such as ensuring adequate landscaping and play areas for children*

*d) not enclosing a site with so much hard landscaping, high walls or fences, that the impression may be given that the site and its occupants are deliberately isolated from the rest of the community*

4.15 Paragraph 27 states: *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 planning permission.*

4.16 Paragraph 28 states: *Local planning authorities should consider how they could overcome planning objections to particular proposals using planning conditions or planning obligations including:*

*a) limiting which parts of a site may be used for any business operations, in order to minimise the visual impact and limit the effect of noise*

*b) specifying the number of days the site can be occupied by more than the allowed number of caravans (which permits visitors and allows attendance at family or community events)*

*c) limiting the maximum number of days for which caravans might be permitted to stay on a transit site.*

4.17 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.”*

4.18 This is important in the context of the application under consideration. The application has been made on the basis that the applicant has ceased travelling due to age. The above definition no longer applies to a Gypsy / Traveller that has permanently ceased travelling. However the NPPF (para 62) requires planning policies to meet a range of different housing needs for different groups, which would include Gypsies who have permanently ceased to travel. This is considered in more detail below.

#### The SBC Gypsy and Traveller Accommodation Assessment 2018 (GTAA)

4.19 The GTAA comprises the latest available evidence to identify the needs of Gypsies and Travellers in the Borough. The GTAA identifies the forecast pitch requirements for Gypsies and Travellers that meet the definition in the PPTS, but also provides an analysis of need for those who do not meet the PPTS definition but still identify as cultural Gypsies and Travellers. The GTAA identifies that in the period to 2037/38, there is evidence of a cultural need for 68 additional pitches, 51 of which would be for travellers that meet the PPTS definition.

- 4.20 This data therefore provides evidence of need for 17 additional pitches for households who do not meet the PPTS definition but still identify as Gypsies or Travellers.

The Swale Borough Local Plan – Bearing Fruits 2031

- 4.21 The Council's current Local Plan was formally adopted in July 2017, almost two years after the latest iteration of PPTS. At that time the Local Plan Inspector 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.
- 4.22 Since adoption of the Local Plan, an updated Gypsy and Traveller Accommodation Assessment has been produced – as set out above. This identified a revised cultural need during the period 2017-2038 for 68 new pitches, of which 51 would meet the PPTS need. To date, 28 pitches have been granted planning permission, equating to 55% of the identified PPTS need, and based on the criteria-based approach under Policy DM10.
- 4.23 However, whilst the adopted local plan makes provision under Policy DM10 for Gypsies and Travellers that fall under the PPTS definition, this policy does not cover those cultural Gypsies and Travellers who no longer travel and do not meet the PPTS definition - and which applies to the applicant in this instance. The local plan does not cater for this need.
- 4.24 Other relevant local plan policies are ST3 (Swale Settlement Strategy), ST5 (Sittingbourne Area Strategy), CP3 (delivering a wide choice of homes), DM6 (transport), DM7 (Parking), DM14 (general development criteria), DM24 (landscapes), DM28 (biodiversity), DM31 (agricultural land).
- 4.25 The Human Rights Act 1998 Article 8: Respect for your private and family life, and home
- 4.26 The Equality Act 2010

## **5. LOCAL REPRESENTATIONS**

- 5.1 Call in request received from Councillor Palmer
- 5.2 Hartlip Parish Council- Objection (28.11.2019)

*Although the site in this application falls within the Parish Of Upchurch, Hartlip Parish Council (HPC) wishes to object to it in the strongest possible terms as it does affect a number of residents living on Hartlip Hill. Those residents have had to put up with a large amount of anti-social behaviour during recent months with an excessive number of bonfires on site and trial bikes being ridden across the site.*

*A new dwelling would not be acceptable in this open countryside location so a portacabin of very poor design and visual amenity should not either. The visual amenities of the countryside should be protected and HPC does not consider the 'business/crime' case which has been put forward to be an overriding justification for*

*a poor quality form of development that is harmful to the appearance and character of the countryside. This is a very weak application which should be rejected.*

5.3 Two separate neighbour consultations were undertaken, the first on 28<sup>th</sup> October 2019 and a second on 15<sup>th</sup> November 2021. A site notice was also displayed at the site on 4<sup>th</sup> November 2021 with an expiry date of 25<sup>th</sup> November 2021.

5.4 In response to the public consultation the Council received five letters. Of these, three letters were in support of the application and two respondents objected to the application.

5.5 Reasons in support (summarised):

- Age of applicant in his 80's/still working/should be allowed some comfort
- The site is surrounded by a railway line, a motor repair workshop and horse stables.
- There is no one affected residentially.
- Been a resident on site for two years
- Area maintained and trees growing – good for the environment

5.6 Reason for objection (summarised):

- Noise – due to motor bikes
- Fires – close to the railway
- Tipping of household waste

## 6. CONSULTATIONS

6.1 Upchurch Parish Council – Objection (22.11.2019) updated (06.01.2020)

*Following a site visit, Upchurch Parish Council objects to this application. The Parish Council does not feel that the justification for a residential portacabin being sited on this land for the reasons of business and crime problem has been met. The visual impact on the open countryside is unwarranted and the visual amenities of the countryside should be protected.*

*Neighbours have complained about bonfires and material being brought to site and burnt, as well as repeated nuisance from trial/quad bikes.*

6.2 Natural England – No objection, subject to SAMMS Payment and Appropriate Assessment (18.11.2021)

6.3 Rural Planning Ltd consultant - *The application submissions include a number of copied pig movement sheets which suggest a relatively small degree of activity between 2017 and 2019, and receipts for the purchase of 35 or so various poultry in October/November 2018 only. There is nothing submitted to support the higher level of activity described in paras 1.16 to 1.21 of the Planning Statement (dated October 2019).*

*As previously, there are no supporting financial accounts or budgets. Any production would appear to have been no more than a part-time venture, and insufficient to meet the usual tests of essential agricultural need for on-site accommodation.*

*My advice therefore remains as summarised in my letter dated 08 October 2018. The personal circumstances referred to in support of the proposal are*



*outside my advisory remit.(06.10.2021)*

- 6.4 KCC Highways – Does not warrant involvement from the highway authority (28.10.2021). However, the site access was discussed with the case officer on 17<sup>th</sup> December 2021, who agreed that the application would be acceptable on highway safety grounds subject to the removal of the fence panel located on the left hand side of the entrance to ensure that sufficient visibility can be maintained.
- 6.5 Environmental Health Manager – No adverse comments or observations to make (21.12.2021)

## **7. BACKGROUND PAPERS AND PLANS**

- 7.1 Location plan, Plans and elevations 19/14843, Block Plan 19/1842

## **8. APPRAISAL**

### Principle of development

- 8.1 The site is located in the countryside and approximately 0.63km to the west of the built up area boundary of Newington and 0.80km to the north of Hartlip, and therefore falls within the lowest, least acceptable tiers of the settlement hierarchy (Tiers 4 & 5), as set out under policy ST3 of the Local Plan (2017). The site falls within open countryside, and as such, residential development within this location is not generally supported. However, Policy DM12 does make provision for rural worker dwellings in the countryside, where there is robust justification and a clear essential need. Policy DM10 of the Local Plan sets out the circumstances under which Gypsy and Traveller sites will be acceptable.
- 8.2 In this instance, the applicant has submitted the application on the grounds of both agricultural need and his Gypsy / Traveller status. These matters are considered further below.

### *Agricultural need*

- 8.3 The applicant operates a smallholding from the wider land parcel and has presented a case within the application that the smallholding requires a constant on-site presence. The case sets out that the applicant has introduced some 80 pigs, 20+ geese, 50+ chicken and 10 ducks, that over 200 pigs were sold in the 15 months prior to submission of the application in 2019, and that an agreement had been made with a local butcher to supply pigs on a weekly basis. Approx 50 Turkeys are reared for the Christmas period. The statement highlights that revenue from the smallholding makes the business a viable and self-sufficient enterprise, and that the provision of a residential unit would enable further development of the business. The statement also highlights concerns over previous break-ins and security issues at the site, and the need for an on-site presence to supervise the livestock and equine horses, including 4-5 pigs farrowing at any one time.
- 8.4 This information provided does not differ from what was originally submitted under the previous application Ref: 18/503381/FULL dated 01/10/2019, and which was refused on the basis that it failed to demonstrate a functional agricultural need for a dwelling on site.

Having once again considered the information submitted as part of this application, and following consultation with the council's rural consultant, it remains the case that the supporting information does not demonstrate the business to be at a viable level, or that there is an essential need for a constant on-site presence. On this basis, I do not consider that the case made for a dwelling under agricultural need complies with Policy DM12, and that this cannot be supported on such grounds.

*Gypsy / Traveller status*

- 8.5 The application is also made on the grounds that the applicant is a gypsy/traveller. It includes details of his Gypsy heritage and historic travelling, which appears to relate largely to working on farms in the local and wider Kent area. The information sets out that the applicant had recently split up from his wife (from another recognised local Traveller family) and moved to the site from another Traveller site in Medway following this break-up. Representations have been made that the applicant ran a second-hand shop in Rainham for many years. The applicant has stated that although this business was in his name, it was run by a friend and then his cousin, and that the applicant only helped out occasionally. Overall, I am satisfied from the information provided that the applicant is a cultural Gypsy.
- 8.6 However, the application makes clear that the applicant no longer follows a travelling lifestyle, due primarily to his age (he was 77 when the application was submitted and will now be around 80 years). Whilst he is still regarded as a cultural Gypsy, he does not meet the PPTS definition of a Gypsy, which states:

*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.*

- 8.7 Policy DM10 of the local plan applies to applicants who comply with the PPTS definition, and as such is of limited weight in the consideration of this application. The applicant falls within a group that is identified in the GTAA (see paras 4.19 and 4.20) as in housing need, but are not currently catered for under Policy DM10 or elsewhere in the current local plan. This is a similar circumstance to a site at Grace's Place, Homestall Road, Doddington, which was subject to an appeal following refusal of permission under 16/503982, and where the applicants had permanently ceased travelling due to old age, ill health and infirmity. Paragraph 27 of the Inspector's appeal decision dated 18 July 2018 stated –

*The 24 households subtracted from the 2013 GTAA assessment of need when the definition of gypsies and travellers changed in 2015 are households no less in need of accommodation. These people will be caught by the recently introduced duty in the Housing Act 1985 for Councils to consider the needs of people residing in or resorting to their district in respect of caravan sites and houseboats. The Local Plan Inspector indicated that those needs would be best addressed as part of the early review of the Local Plan. The principal occupiers of the appeal site fall within this group. They are ethnic gypsies and travellers who, I heard, have a cultural aversion to living in conventional bricks and mortar. As yet there appears to be no assessment of need for this group and no provision made for them.*

The appeal, decision here granted a five year temporary planning permission (which is due to expire in July 2023) in the expectation that an early review of the Local Plan would address the housing needs of such people, and inform a review of that permission. The review of the Local Plan is yet to be re-published and at this moment the Council still has no policy for this group of non-PPTS gypsies and travellers in response to the above appeal decision.

#### Impact on character and appearance of area

- 8.8 The site is located within the countryside and within an undesignated landscape. It is also on land previously approved for, '*Change of use for keeping and grazing of horses, and erection of 1.2m high fence*'. (Ref: SW/11/0653). The site and surrounding area is rural in character, albeit that this is partially diluted by a large vehicle repair building immediately to the east side of Breach Lane, and by the railway line and embankment to the south. Nonetheless, the prevailing character of the land on the west side of Breach Lane is of small scale field parcels and paddocks within a generally open landscape.
- 8.9 The portacabin the subject of this application is located adjacent to Breach Lane and behind an existing boundary hedge, which offers reasonable screening from Breach Lane. There do not appear to be any significant views of the site from the local footpath network. Aside from limited views of the portacabin through the hedge, the main visual impact arises from the recently constructed fencing around the site, which consists of 1.8m high fence panels. This is a relatively prominent and detracting feature within the landscape. However, I note that the main area of fencing to the side and rear of the plot is under 2 metres in height and represents permitted development, and does not in itself require planning permission.
- 8.10 Situated against the western site boundary parallel to the railway line are a U-shaped timber stable block, a storage container / outbuilding, and a slightly larger outbuilding (both labelled as "piggery" on the submitted block plans). The portacabin lies within close proximity of this corner of the site which is the less obtrusive area and is therefore seen with these buildings together with the adjacent vehicle repair garage, and not as a stand-alone structure within an open area of countryside. Moreover, this section of Breach Lane where the development is located, also experiences a number of parked vehicles either side of the lane, and which appear to relate to the vehicle repair garage.
- 8.11 Despite the reasonably well screened position of the portacabin, I consider that its location, form and generally poor appearance does cause harm to the generally open and undeveloped rural character and appearance of the area, albeit this is visually limited from Breach Lane. The development would also result in an isolated home in the countryside, contrary to paragraph 79 of the NPPF.
- 8.12 A close boarded fence has also been erected between the highway and the entrance gates to the site. I consider that this is also a detracting feature and it will be noted from the section below that this also causes highways visibility problems. Unlike the fencing elsewhere within the plot, this section of fence requires planning permission as it is over 1 metre in height and adjacent to Breach Lane. If permission is granted, I would recommend that a planning condition is imposed to require removal of the fence and replacement with a more appropriate fence or soft landscaping – whilst maintaining adequate visibility.

- 8.13 The site falls outside of any settlement boundary. However it is located a short distance from the A2, which in turn provides access by foot to Newington and also access to bus services. The development would be contrary to Policy ST3 of the Local Plan as it would result in the development of a residential unit in the countryside and in the least acceptable tier under this policy. However, the broad location of the site is within reasonable distance to access services, when considered against the indicative map in the supporting text to Policy ST3. When taken in the context of a site for Gypsy / Traveller accommodation, which inevitably tend to be in rural areas, I do not consider this location to be inherently remote or unsustainable.
- 8.14 Overall, I consider that the development does cause harm to the rural character and appearance of the area, and is within an area where residential development is generally resisted under Policy ST3 of the Local Plan, albeit that the visual impact of the development is limited and there are services / facilities available within a reasonable distance.

#### Residential Amenity

- 8.15 The application site is 92m from the closest neighbouring properties to the south which are located on the northern side of the A2 (London Road). Given this distance and the intervening railway embankment, I do not consider that the proposed residential use would cause any undue disturbance to local residents. I acknowledge that in 2019, a number of concerns were raised which related to elevated noise, tipping and burning of waste. However such matters would normally be dealt with under other legislation, and are not directly associated with this application for a residential unit on the site.
- 8.16 The site is remote from any residential dwellings to the north and separated from those to the south by the raised railway embankment. I therefore have no serious concerns in respect of potential amenity impacts for existing residents specifically in relation to loss of light, outlook, sense of enclosure or loss of privacy. For these reasons, I am satisfied that the proposal is acceptable on amenity grounds

#### Highways

- 8.17 The site benefits from an existing access and an area for vehicles to pull off the highway in front of the gates to avoid blocking traffic. These were granted under the previous permissions for the site, on which Kent Highways provided comments, and I therefore have no serious concerns. The site has a large area of space for parking and turning of vehicles.
- 8.18 In terms of visibility upon entering/exiting the site and potential impact upon highway safety, a close boarded fence has been erected on the left hand side of the site entrance which currently obscures visibility which is otherwise good in both directions. I have also assessed the visual impact of the fence to be harmful in the section above. In my opinion, this section of fencing should be removed and replaced with more appropriate boundary treatment and in a manner that would maintain appropriate visibility for drivers. A suitably worded condition has been added for this purpose.

## Other Matters

- 8.19 This application will result in a net increase in residential accommodation on the site. Impacts to the SPA and Ramsar sites may occur from increased recreational disturbance. Due to the scale of the development there is no scope to provide on-site mitigation and therefore off site mitigation is required by means of developer contributions at the rate of £253.83 per dwelling. The agent has provided written confirmation that the applicant would be willing to pay this mitigation fee.

## 9. FINAL BALANCING / CONCLUSION

- 9.1 The site is located within the countryside and in a location where such development would not normally be permitted. Whilst the portacabin is reasonably well screened from the roadside, the site is generally open and the development does cause harm to the rural character of the area. In my opinion, this generally is not an acceptable location for residential development.
- 9.2 The applicant's case on agricultural need grounds is not accepted. However, I accept that the applicant is a cultural Gypsy, although he has ceased travelling and does not meet the PPTS definition, and in turn also does not meet the requirements of Policy DM10 of the Local Plan. The GTAA identifies a need for additional pitches to accommodate cultural Gypsies who no longer travel, and this need is not presently met in the current local plan.
- 9.3 Taking the above into account, the personal circumstances of the applicant (and particularly his age), and the need for the council to consider, over the longer term and through the local plan review, how the identified non-PPTS need can be addressed, I consider that the balance is in favour of permitting the application - but on the basis of a temporary and personal permission only.

## 10. RECOMMENDATION

- 10.1 That, subject to receipt of a SAMMS payment, planning permission is GRANTED Subject to the following conditions:

### CONDITIONS

- (1) This permission shall extend to a maximum of five years or for the lifetime of the applicant, Mr James Hills only, whichever is the shorter. When the premises cease to be occupied by the applicant, or at the end of the five year period hereby provided for, the portacabin/mobile and any buildings, structures, materials and equipment brought on to the land, or works undertaken to it in connection with the use, shall be removed and the land restored to its condition before the development took place.

Reason: In recognition of the terms of the application, and in the interests of the character and appearance and amenities of the area.

- (2) The development hereby approved shall be carried out in accordance with drawing title number(s): Location plan, Plans and elevations 19/14843, Block Plan 19/1842

Reason: For the avoidance of doubt, and in the interests of proper planning.

- (3) No more than one caravan or mobile home (and for the avoidance of doubt the portacabin currently stationed on the site is to be considered for the purposes of this condition as a mobile home) shall be stationed on the site at any one time.

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) The caravan or mobile home shall only be positioned in the location shown on the Block Plan drawing 19/1842.

Reason: In the interest of visual amenity.

- (5) The site shall only be used for residential purposes and as small holding and equestrian facilities only and not for any industrial or commercial use. In this regard no open storage of plant, products or waste may take place on the land, no vehicle over 3.5 tonnes shall be kept on the site and no more than one maximum 3.5 tonne vehicle shall be stationed, parked or stored on the land.

Reason: In the interest of residential amenity of the area.

- (6) Within three months from the date of this permission, the existing fence panels between the access gate and the public highway shall be removed from the site.

Reason: In the interests of highways safety and visual amenity.

- (7) Within 3 months from the date of this permission, a scheme of hard and soft landscape works shall be submitted to the Local Planning Authority for approval. 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. This shall include a scheme of planting adjacent to the close boarded fence erected on site.
- Any other means of enclosure and hard surfacing areas including for car parking.

Reason: In the interests of the visual amenities of the area and encouraging wildlife and biodiversity.

- (8) All hard and soft landscape works shall be carried out in accordance with the approved details submitted under condition 7) within a period of 3 months following such approval in writing by the local planning authority.

Reason: In the interests of the visual amenities of the area and encouraging wildlife and biodiversity.

- (9) Upon completion of the approved landscaping scheme, any trees or shrubs that are removed, dying, being severely damaged or becoming seriously diseased within five years of planting shall be replaced with trees or shrubs of such size and species as may be agreed in writing with the Local Planning Authority, and within whatever planting season is agreed.

Reason: In the interests of the visual amenities of the area and encouraging wildlife and biodiversity.

- (10) No floodlighting, security lighting or other external lighting shall be installed or operated on the site other than in accordance with details which shall have been previously submitted to and agreed in writing by the local planning authority.

Reason: In the interests of visual amenity and biodiversity

## **APPROPRIATE ASSESSMENT**

### **Appropriate Assessment under the Conservation of Habitats and Species Regulations 2017.**

This Appropriate Assessment (AA) has been undertaken without information provided by the applicant.

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

SPAs are protected sites classified in accordance with Article 4 of the EC Birds Directive. They are classified for rare and vulnerable birds and for regularly occurring migratory species. Article 4(4) of the Birds Directive (2009/147/EC) requires Member States to take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article.

The proposal therefore has potential to affect said site's features of interest, and an Appropriate Assessment is required to establish the likely impacts of the development.

In considering the European site interest, Natural England advises the Council that it should have regard to any potential impacts that the proposal may have. Regulations 63 and 64 of the Habitat Regulations require a Habitat Regulations Assessment. For similar proposals NE also advise that the proposal is not necessary for the management of the European sites and that subject to a financial contribution to strategic mitigation and site remediation satisfactory to the EA, the proposal is unlikely to have significant effects on these sites.

The recent (April 2018) judgement (*People Over Wind v Coillte Teoranta*, ref. C-323/17) handed down by the Court of Justice of the European Union ruled that, when determining the impacts of a development on protected area, "it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site." The development therefore cannot be screened out of the need to provide an Appropriate Assessment solely on the basis of the mitigation measures agreed between Natural England and the North Kent Environmental Planning Group.

However, the proposed development is of a very small scale and, in itself and in combination with other development, would not have an adverse effect on the integrity of the SPA, subject to the conditions set out within the report.

Notwithstanding the above, NE has stipulated that, when considering any residential development within 6km of the SPA, the Council should 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), and that such strategic mitigation must be in place before the dwelling is occupied.

Due to the scale of development there is no scope to provide on site mitigation such as an on-site dog walking area or signage to prevent the primary causes of bird disturbance, which are recreational disturbance including walking, dog walking (particularly off the lead), and predation of birds by cats.

Based on the correspondence with Natural England (via the NKEPG), I conclude that off site mitigation is required.

In this regard, whilst there are likely to be impacts upon the SPA arising from this development, the mitigation measures to be implemented within the SPA from collection of the standard SAMMS tariff (which has been secured prior to the determination of this application) will ensure that these impacts will not be significant or long-term. I therefore consider that, subject to mitigation, there will be no adverse effect on the integrity of the SPA.

### **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.

In this instance:

The application was considered to be fundamentally contrary to the provisions of the Development Plan and the NPPF, and these were not considered to be any solutions to resolve this conflict.

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.  
The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.



