

<b>2.3 REFERENCE NO - 22/501431/FULL</b>		
<b>APPLICATION PROPOSAL</b> Siting of 1 no. additional mobile home at existing traveller's site (retrospective).		
<b>ADDRESS</b> Graces Place Homestall Road Doddington Kent ME9 0HF		
<b>RECOMMENDATION</b> Grant		
<b>REASON FOR REFERRAL TO COMMITTEE</b> Parish Council Objection		
<b>WARD</b> East Downs	<b>PARISH/TOWN COUNCIL</b> Doddington	<b>APPLICANT</b> Mr Smith <b>AGENT</b> Target Carbon Management
<b>DECISION DUE DATE</b> 18/05/22	<b>PUBLICITY EXPIRY DATE</b> 02/05/22	

### Planning History

17/500185/ENF

Appeal against Enforcement Notice - Non-compliance with condition (1) of planning permission SW/06/0126 - Change of use to residential for one gypsy family for one mobile, one tourer, one shed.

Appeal Allowed and Notice Quashed  
Five year temporary permission to

Decision Date: 18.07.2018  
18.07.2023

16/503982/FULL

Retrospective application for change of use to residential - for one gypsy family, comprising one mobile home, one touring caravan and one utility shed.

Refused

Decision Date: 06.03.2017

Appeal Allowed

Decision Date: 18.07.2018

Five year temporary permission to

18.07.2023

SW/06/0126

Change of use to residential for one gypsy family for one mobile, one tourer, one shed.

Approved

Decision Date: 28.07.2011

Three year temporary permission to

28.07.2014

## **1. DESCRIPTION OF SITE**

1.1 This site is a small piece of open land mid-way along Homestall Road, a designated rural lane which runs parallel to, and just north of the M2, between Lynsted Lane and Newnham Valley. The site is broadly rectangular with its narrow end to the highway, and is generally bounded by tree lines. It is not near any built up area, but lies directly opposite a pair of cottages, which are otherwise quite isolated. The nearest settlement of any size is Newnham which is 1.6km away as the crow flies (with the M2 in between) but 2.8km by the shortest road route. Shops in Teynham are 5.3km by most convenient road route albeit a shorter route can be taken via narrow lanes. Faversham station and town centre are 7.5km away.

1.2 In July 2011 an application was approved on a personal basis for a three year period on the basis of the Council's recognition of the personal circumstances of the three children

then living on the site. The permission was a temporary and personal permission for one mobile home and one touring caravan even though it was clear at that time that the site was not seen as suitable for a permanent or temporary gypsy and traveller permission due to its extreme isolation and remoteness from services and facilities. The temporary permission was intended to allow time for the family to find an alternative site without undue disruption to the children's education.

- 1.3 That permission expired in July 2014 and an application was then submitted to renew the permission in 2016. By 2016 the site occupants were almost all different from those that the temporary permission granted in 2011 had related to. The Council refused the 2016 application on the basis that the site was unacceptable due to its isolated position far from amenities and facilities. The refusal was appealed and the Planning Inspector agreed that the site was unsuitable as a permanent gypsy and traveller site due to its remoteness and harm caused to the character of the area. The appellants at that time acknowledged that, with the exception of Luke Smith who did meet the PPTS definition of a gypsy or traveller and needed a permanent base at that time to see his son, that they did not meet the PPTS definition. However, the inspector considered evidence to the effect that the Council's Local Plan does not make provision for persons who do not meet the PPTS definition, but who have a cultural aversion to living in conventional bricks and mortar. In the light of the forthcoming review of the Local Plan in which this omission could be addressed, the Inspector granted a temporary personal permission for a period of five years which will end on 26<sup>th</sup> July 2023.

- 1.4 The Inspector placed the following conditions on the permission:

*1) The use hereby permitted shall be carried on only by the following: Jacob Smith, Sybil Smith, Dennis Doughty and Luke Smith and their resident dependants, and shall be for a limited period being the period of five years from the date of this decision, or the period during which the premises are occupied by them, whichever is the shorter.*

*2) When the premises cease to be occupied those named in condition (1) above, or at the end of five years, whichever shall first occur, the use hereby permitted shall cease and all caravans, 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.*

*3) No more than two caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended (of which no more than one shall be a static caravan) shall be stationed on the site at any time.*

*4) The site shall be used for residential purposes only and shall not be used for any business, industrial or commercial use. No open storage of plant, products or waste shall take place on the land and no vehicle over 3.5 tonnes shall be stationed, parked or stored on the land.*

*5) 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.*

*6) The area between the carriageway edge and a line drawn between a point 2m back from the carriageway edge in the centre of the access and a point on the nearside carriageway edge 30m to the west of the centreline of the access shall, at all times, be kept clear of any tree, plant or other obstruction over 1.05m above carriageway level.*

- 1.5 The mobile home with temporary permission sits towards the front corner of the site and has been clad in timber with a shed added to extend the accommodation. It remains a mobile home but with the appearance of a timber building. A storage building and shed sit further into the site. A second mobile home now sits in the rear corner of the site and is the subject of this application.

## **2. PROPOSAL**

- 2.1 The application seeks retrospective planning permission for the siting of an additional mobile home in the rear corner of the site measuring approximately 15.9m x 6.6m.
- 2.2 The application is accompanied by a Design and Access Statement/Planning Statement which states that the additional caravan is required to enable the site owner to reside on the site to take care of his mother Sybil Smith who is elderly and registered disabled. I understand from the applicant Mr John Smith that Dennis Doughty who was listed on the 2016 personal permission has since died, that Luke Smith has moved off the site, and that Jacob Smith (Mr Smith's son and one of the children originally living on the site) travels extensively for work thus meaning Sybil no longer has a support network around her.
- 2.3 The Statement relies heavily on gypsy and traveller planning policies although the previous Inspector determined that the site was not suitable as a gypsy and traveller site due to its remoteness. I take from the Statement the following sentences:

*This Planning Statement forms part of an application for the stationing of one additional mobile home, on land habituated by only one other traveller's mobile home. The existing mobile home is occupied by a senior member of the family who needs care. The additional mobile home will be habituated by her son (the applicant) who is her registered carer.*

*The site comprises a plot of land in a rural location approximately 0.3ha.*

*The main issues in this case are:-*

*The proposed development would contribute towards meeting the need for gypsy sites in the Borough and as planning provision is still to be resolved, significant weight must be given in the decision making process to this;*

*Although not within a development boundary, it is sustainably located;*

*The proposed introduction of the development does not introduce any materially visually harmful development and the site is will be well screened and therefore would not cause harm to visual amenity;*

*The development would not have an adverse impact upon the residential amenity of the closest neighbours;*

*There is sufficient space for parking and turning facilities and there would be no harm to highway safety.*

*The development would go some way to meeting the identified need for further gypsy sites. The Council currently has a lack of suitable alternative sites in the short to medium term.*

*The proposal complies with Local Plan policies and the guidance contained within the NPPF and planning policy for traveller sites 2015.*

### 3. PLANNING CONSTRAINTS

None

### 4. POLICY AND CONSIDERATIONS

#### 4.1 Development Plan: Bearing Fruits 2031: The Swale Borough Local Plan 2017 policies;

ST1 (Delivering sustainable development)  
 ST3 (The Swale Settlement Strategy)  
 CP3 (Delivering a wide choice of high quality homes)  
 CP4 (Requiring good design)  
 DM6 (Managing transport demand and impact)  
 DM7 (Vehicle Parking)  
 DM10 (Gypsy and Traveller sites)  
 DM14 (General development criteria)  
 DM26 (Rural Lanes)

#### **National Planning Policy Framework (NPPF) and Planning Policy for Traveller Sites (PPTS)**

#### 4.2 The national policy position comprises the National Planning Policy Framework (NPPF) and Planning Policy for Traveller Sites (PPTS). Both documents were released in 2012 but the PPTS was re-issued in August 2015 and the NPPF in 2021 with amendments. 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.

#### 4.3 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."*

4.4 In relation to rural housing the NPPF (at paragraphs 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 dwelling; 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.*

4.5 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)**

4.6 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).*

4.7 In terms of plan making the PPTS advice is that;

*“Local planning authorities should ensure that traveller sites are sustainable economically, socially and environmentally. Local planning authorities should, therefore, ensure that their policies:*

- a) promote peaceful and integrated co-existence between the site and the local community*
- b) promote, in collaboration with commissioners of health services, access to appropriate health services*
- c) ensure that children can attend school on a regular basis*
- d) provide a settled base that reduces the need for long-distance travelling and possible environmental damage caused by unauthorised encampment*
- e) provide for proper consideration of the effect of local environmental quality (such as noise and air quality) on the health and well-being of any travellers that may locate there or on others as a result of new development*
- f) avoid placing undue pressure on local infrastructure and services*
- g) do not locate sites in areas at high risk of flooding, including functional floodplains, given the particular vulnerability of caravans*
- h) reflect the extent to which traditional lifestyles (whereby some travellers live and work from the same location thereby omitting many travel to work journeys) can contribute to sustainability.” (para 13 PPTS).*

4.8 For sites in rural areas and the countryside the PPTS advice is that;

*“When assessing the suitability of sites in rural or semi-rural settings, local planning authorities should ensure that the scale of such sites does not dominate the nearest settled community.” (para 14 PPTS).*

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

*“Applications should be assessed and determined in accordance with 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 the last sentence above was added to this paragraph in the 2015 re-issue of PPTS. I further note that the Council now has a far more than 5 year supply of sites via its newly 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.*



- 4.10 The definition of gypsies and travellers has been amended in the re-issued PPTS to remove the words “or permanently” from after the word “temporarily” in the following definition;

*“Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family’s or dependants’ educational or health needs or old age have ceased to travel temporarily, but excluding members of an organised group of travelling show people or circus people travelling together as such.”*

The implications for this change in definition affected the issue with regard to defining need.

- 4.11 Shortly after publication of the GTAA in 2013 the Council began work on Part 2 of the revised Swale Borough Local Plan which was intended to deal with site allocations for Gypsy and Traveller pitch provision only. This process began with a call for sites between September and December 2013, and the publication of an issues and options paper which was subject to public consultation (this finished on 25 April 2014). The Local Plan was subject to examination in November 2015, found to be sound with a 5.4 year supply of housing sites and no need for a Part 2 plan, and the new Local Plan was formally adopted by the Council on 26 July 2017, confirming its status and creating a new clear and certain policy position. This means that the Council is now working to 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.

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

- 4.12 The Council's 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's Examinations 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
- 4.13 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.

- 4.14 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.
- 4.15 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.”*
- 4.16 In more general terms the 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.

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

- 4.17 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 applicants being able to find an acceptable alternative site with minimal delay.

4.18 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).
6. The latter decision in (5) above specifically comments on site supply in Swale being different from the national picture.

4.19 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

4.20 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

4.21 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.

4.22 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.

4.23 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 No local representations have been received.

## **6. CONSULTATIONS**

6.1 Doddington Parish Council comment (attaching a copy of the 2018 appeals decision letter) as follows:

*“Councillors have considered the application.*

*Concern was raised that this is another retrospective planning application for the site, the use of which was allowed on appeal for unique circumstances and was conditioned to a single static caravan and one other caravan for 5 years from the 26th June 2018 after which the site is to be restored to its original state, so by the 25th*

*June 2023, This application clearly breaches the conditions of use in the permission both in terms of the caravans specified and further seeks to undermine the time limit by failing to recognise the temporary and time limited nature of the existing permission.*

*The applicants would have been fully aware of the existing permission and planning system when siting the additional static caravan and then submitting this retrospective application.*

*Councillors are concerned that all Swale residents are bound by planning rules and regulations, this must equally apply to members of the travelling community as well as the settled community.*

*Doddington Parish Council objects to this application.”*

Members should note that the dates referred to by the Parish Council above relate to the date of the hearing, not of the Inspector's decision and start date of the temporary permission, which was 18<sup>th</sup> July 2018.

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

- 7.1 All plans and documents relating to application 22/501431/FULL

## **8. APPRAISAL**

- 8.1 Policy ST3 of the Local Plan sets out that “*At locations in the open countryside, outside the built-up area boundaries shown on the Proposals Map, development will not be permitted, unless supported by national planning policy and able to 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.*”
- 8.2 Policy CP4 of the Local Plan requires development to be of a 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 and detailing. In this case, the additional mobile home is located discretely towards the rear of the existing site and is not readily visible from public vantage points along the road. I note that this is an undesignated landscape and in my opinion the visual impacts are limited.
- 8.3 Policy DM14 states that any proposed development should not cause significant harm to the amenities of surrounding uses or areas and due consideration will be given to the impact of the proposal upon neighbouring properties. Any proposal should not result in any unreasonable loss of privacy, or excessive noise or odour pollution. I note that the mobile home is positioned approximately 70m from the nearest residential property (Wellfield Cottage) and as such I have no concerns relating to residential amenity of either the occupant of the mobile home or the occupants of the nearest residential property.
- 8.4 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, proposed pitches should not be isolated and should be in a sustainable location where it is

possible to integrate within communities. The Council in the previous refusals found this not to be the case and so did the Planning Inspectorate however, the Inspector noted the following:

*“32. I have found the appeal site to be unsuitable as a gypsy and traveller site due to the remoteness of its location and harm caused to the character of the area and designated rural lane. Whilst the identified need, especially for those gypsies and travellers who do not meet the PPTS definition, and the personal circumstances of the occupiers of the site weigh in favour of a grant of permission, I do not find this to be of sufficient weight to justify permanent occupation of a site in the most inaccessible category of land in the Borough and where there is damage to a designated rural lane. This is especially so when the Council has shown that sites have been found in more sustainable locations and planning permission granted.*

*33. Whether one applies policies applicable to gypsies and travellers or not, there is conflict with both national planning policies and with the Development Plan for the area. In looking at a permanent permission, the harm identified is overriding and is not outweighed by the other considerations so as to indicate that the proposal should be determined otherwise than in accordance with the Development Plan.*

*34. For a temporary period, however, I believe the balance shifts. Notwithstanding the position in relation to the five year supply, a need on the ground for more gypsy and traveller sites for those who meet the PPTS definition has been identified. Perhaps of greater significance, however, is that in the main the Appellant family group do not meet the PPTS definition although they clearly are ethnic gypsies and travellers by background. Despite the duty to do so, the needs of this ethnic group who fail the PPTS definition have yet to be assessed or addressed even though there is an indication from the 2013 GTAA that there are at least 24 households in need.*

*35. Whilst the Local Plan Inspector indicated that their needs would be best addressed as part of the early review of the Local Plan, the current inequality of housing opportunity for this group of people adds weight to the proposition that a temporary permission might be granted to allow for this situation to be redressed. When considered along with the personal circumstances of the occupiers of this site and the lack of any suitable alternative to which the group could go, the balance tips in favour of the grant of a temporary planning permission. I have no evidence of any substantive progress having been made on the early review of the Plan despite a year having elapsed since adoption and in these circumstances it seems to me that five years would not be an unreasonable period to enable the needs of persons who do not meet the PPTS definition but who nonetheless require caravan pitches to be assessed and addressed and so achieve equality of opportunity for all.*

*36. With regard to Luke who does meet the PPTS definition, there is evidence that he is in need of a base – at least in the short term – and no indication that he has any alternative place to go. It is clearly in the best interests of his child that he has a settled base so that his son has the opportunity to visit him.*

*37. For a temporary period, therefore, the particular circumstances of this case are such that the other material considerations, when taken together, indicate that a decision should be taken otherwise than in accordance with the Development Plan. The harm and identified policy conflict is outweighed by other considerations in the short term.”*

- 8.5 As previously stated, Sybil Smith who is registered disabled remains on the site, but her partner Dennis has since died. Luke Smith has moved on from the site and Jacob Smith travels extensively for work. As such, Sybil now has limited support and her son John Smith has moved back to the site to support her and he has sited the additional mobile home on the site for him to reside in.
- 8.6 I remain of the view that this is an unsuitable location for a permanent site, but I note that the previous application was granted temporary planning permission at appeal due to the lack of a strategy to deal with members of the travelling community who don't meet the PPTS definition, but still have an accommodation need away from bricks and mortar. The Council is still working on it's Local Plan Review and a strategy for dealing with the accommodation needs of those in the travelling community who don't meet the PPTS definition. As such, I am inclined to support a temporary planning permission being granted for the additional caravan on personal grounds in line with the original time limited permission to allow John Smith to take care of his mother for the remainder of the approved temporary personal planning permission. By this time, the Council should be in a better policy position regarding this issue.
- 8.7 **Appropriate Assessment under the Conservation of Habitats and Species Regulations 2017.**
- 8.8 This Appropriate Assessment has been undertaken without information provided by the applicant. The application site is located within 6km of The Swale 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).
- 8.9 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.
- 8.10 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. The proposal thus has potential to affect said site's features of interest, and an Appropriate Assessment is required to establish the likely impacts of the development.
- 8.11 In considering the European site interest, Natural England (NE) 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 advises that the proposal is not necessary for the management of the European sites and that subject to a financial contribution to strategic mitigation, the proposal is unlikely to have significant effects on these sites.
- 8.12 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 (NKEPG).

- 8.13 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 (NKEPG) and that such strategic mitigation must be in place before the dwelling is occupied.
- 8.14 In this case however, the Council is looking to only grant a temporary permission for just over a year and as such it would not be suitable in this case to request such a payment. If a permanent or additional temporary permission is sought after 18<sup>th</sup> July 2023 this is something that the Council will reconsider in line with advice from Natural England.

## **9. CONCLUSION**

- 9.1 Overall, whilst this site is unsuitable as a permanent gypsy and traveller site due to its isolated location, I note the Inspector’s previous decision to allow a temporary permission due to the health needs of Sybil Smith and the lack of a Local Plan policy to address the need for sites of those who are ethnic gypsies and travellers but do not meet the PPTS definition. Considering the personal circumstances, I think it appropriate to recommend a temporary permission for the second mobile home to allow Mr Smith to take care of his mother for the remainder of their temporary permission granted by the Planning Inspector.

## **10. RECOMMENDATION - GRANT Subject to the following conditions:**

### **CONDITIONS**

- (1) The additional mobile home shown on drawing P\_101 as “New Static Caravan” shall only be occupied by John Smith and this mobile home shall only be stationed as shown on the site in accordance with drawing P\_101 and for a limited period being until 18<sup>th</sup> July 2023 or the period during which the premises are occupied by him, whichever is the shorter.

Reason: As permission has only been granted in recognition of the special circumstances of the person named in condition (1).

- (2) When the mobile home referred to in condition (1) above ceases to be occupied the person named in condition (1) above, or by 18th July 2023, whichever shall first occur, the use shall cease and the mobile home hereby permitted, and all buildings, structures, materials and equipment brought on to the land, or works undertaken to it in connection with the stationing of the additional mobile home, shall be removed and the land restored to its condition before the development took place.

Reason: In the interests of residential and visual amenity.

- (3) This permission shall only approve the siting of one caravan, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended, at any time.

Reason: In the interests of residential and visual amenity.

- (4) The site shall be used for residential purposes only and shall not be used for any business, industrial or commercial use. No open storage of plant, products or waste shall take place on the land and no vehicle over 3,5 tonnes shall be stationed, parked or stored on the land.

Reason: In the interests of residential and visual amenity.

- (5) 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. The development shall then be completed in accordance with these approved details.

Reason: In the interests of residential and visual amenity.

### **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.

