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## Appeal Decision

Hearing held on 31 March 2022

Site visit made on 31 March 2022

by **Timothy C King BA (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12 August 2022

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**Appeal Ref: APP/V2255/W/19/3220060**

**St Thomas Yard, Holywell Lane, Upchurch, Kent ME9 7HP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Messrs P and T Delaney against the decision of Swale Borough Council.
  - The application Ref 17/503860/FULL, dated 24 July 2017, was refused by notice dated 2 January 2019.
  - The development proposed is described as 'Change of use of land for the stationing of caravans for residential occupation with associated hardstanding, steps to the mobile homes, fencing, utility building, cesspools and new access without compliance with Condition 1 of the 2002 appeal decision (personal condition) for one mobile home and one touring van;  
Condition 1 of the 2004 decision which restricted the number of caravans on the land to 2 mobile homes and one touring caravan;  
Condition 4 of the 2002 appeal decision which restricted the number of vehicles on the land to those incidental to the use of the site by one family only;  
Condition 6 of the 2002 appeal decision which prevented the external storage of materials of any kind (to include vehicles or trailers) other than Mr Friend's trotting cart and would preclude the external storage of domestic paraphernalia including bins, seating, children's play houses/swings etc, works trailers, washing lines etc.'
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### Decision

1. The appeal is allowed and planning permission is granted for the change of use of land for the stationing of 3 no. mobile homes and 3 no. touring caravans for residential occupation with associated utility building, hardstanding, steps to mobile homes, fencing, cesspools and new access (retrospective) at St Thomas Yard, Holywell Lane, Upchurch, Kent ME9 7HP, in accordance with the terms of the application Ref 17/503860/FULL, dated 24 July 2017, subject to the conditions in the attached Schedule.

### Preliminary Matters

2. At the Hearing both main parties agreed that the description of the development, as set out on the Council's decision notice was a more concisely worded representation of the development involved than that on the application form. Accordingly, in granting planning permission, I have used this description as it better focusses on the development itself.
3. At the Hearing it was confirmed that the Delaneys have lived at the site, or rather within the wider Greenacres site, for a number of years. It is not disputed that they satisfy the PPTS definition of gypsies and travellers. They

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claim they are in need of a site which they can use as a settled base, and retrospective planning permission is sought.

### **Background**

4. The site, set in the open countryside, once formed part of a larger site known as Greenacres which, following a successful appeal in 2002, was granted planning permission for a change of use from grazing land to residential use comprising one mobile home, touring caravan, utility room, store, toilet, poultry shed and feed store. The permission was subject to several conditions; one of which made the permission personal to the appellant's husband, Robert Friend, and his dependents. A subsequent planning permission (ref 04/1049) varied the above consent to allow for an additional static caravan.
5. Following subsequent planning permissions granted the original site was sub-divided into three distinct and demarcated pieces of land, known today as 'Greenacres', an adjoining site 'The Orchard' and 'St Thomas Yard' immediately beyond.
6. By way of planning permission 15/505703/FULL, granted in 2016, Greenacres now enjoys planning permission for a total of 3 mobile homes and a second utility block. The Orchard, through planning permissions 16/503808/FULL and 18/505468/FULL, granted in 2018 and 2019, respectively has permission for 4 static caravans and 2 tourers, with a dayroom and utility block.
7. The current appeal, which relates only to the St Thomas Yard site, follows the refusal of the application which was made retrospectively. The site which, due to fencing erected, is now physically demarcated from The Orchard, was originally reached by way of the access point serving the Orchard but in 2015, following a new, independent vehicular access created from Holywell Lane, the Council issued an enforcement notice against this development.
8. The notice required that the land be restored to its original condition, effectively closing the access. At appeal the Inspector commented that the entrance is wide, is located at the point where the embankment is at its highest, and detracts from the area's character and appearance. Although noting the presence of other access points along Holywell Lane, she considered these as less obtrusive. Accordingly, she dismissed the appeal and upheld the notice. However, the said access remains and, when questioned on this point, the Council witness at the Hearing indicated that any consequent legal action had been delayed pending the outcome of the current appeal.

### **Main Issues**

9. These are whether the proposal represents an acceptable form of development having regard to the following matters:
  - national policy, and the objectives of the development plan in respect of gypsy and traveller accommodation; and
  - the effect on the character and appearance of the area, having regard to the site's degree of visibility from surrounding land, any cumulative effects arising from the development, and also the positioning and scale of the access point from Holywell Lane.

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## Reasons

### *Policy matters*

10. National policy is contained in the government's Planning Policy for Traveller Sites, 2015 (PPTS) which states that applications should be assessed and determined in accordance with the presumption in favour of sustainable development. In addition, Councils should very strictly limit new traveller site developments in the open countryside that is away from existing settlements.
11. Policy H of the PPTS says that Councils should, amongst other things, consider the level of need for additional gypsy and traveller accommodation and the availability of alternative accommodation.
12. The Swale Borough Local Plan (LP), adopted in 2017, seeks the provision of a minimum of 61 gypsy and traveller pitches over the plan period to 2031. The LP does not allocate any pitches but instead relies on a windfall based approach using the criteria in policy DM 10. It is common ground between the parties that the Inspector for the LP's examination did not consider it was necessary for a policy to allocate sites, based on the need evidence from the GTAA (2013) used at the time of the examination in public.
13. Policy DM10 indicates that for land in the open countryside, outside the built-up area boundaries, says that the Council will grant planning permission for gypsy & traveller sites where, amongst other things, it is demonstrated that there are exceptional mitigating and/or personal circumstances where it has been demonstrated that a particular site is required to meet their needs and where there is no overriding harm to the locality, or the proposal is for an extension to, or stationing of, additional caravans at an existing site. A further requirement is that the development should be of a scale appropriate to meet the accommodation need identified and not introduce a scale of development that singularly or cumulatively dominates the nearest settlement or causes significant harm to the character of an area or its landscape.
14. In updating the 2013 GTAA an ARC 4 Gypsy, Traveller and Travelling Showpeople Accommodation Assessment was published in November 2018, based on fieldwork carried out in January to March 2018. This confirmed an immediate need for at least 30 pitches in Swale within the first five years. The GTAA identified a total pitch need to 2037/38 of 76 pitches, of which 59 would be to persons meeting the definition within the PPTS, and a residual pitch requirement (taking into account the expected turnover on pitches on Council sites) to 2037/38 of 68 pitches.
15. The above figures do not take into account the Brotherhood Woodyard site, mentioned by both main parties, where controversy exists as to whether or not it is suitable for gypsies/travellers and, consequently, whether it should contribute to the supply. This could potentially provide 40 additional pitches. In this connection the Council cites previous appeal decision letters, all from 2018, and relating to different sites within the borough, where the respective Inspectors have commented on this matter; one saying that there is not now significant doubt as to the deliverability of the pitches on the Brotherhood Woodyard site. Nonetheless, the latest representations from the Council, dated 25 March 2022, still refer to 'considerable debate' as to whether the site should be included. Some four years after the said appeal decisions, the Council's comments are still not unequivocal on this matter.

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16. In September 2019, in response to the appeal, the Council's initial representations indicated that it could demonstrate a 5 year supply of deliverable sites. Subsequently, its Supplementary Statement dated 25 March 2022, indicated that the Council had so far approved over 58% of pitches needed for the entire GTAA period (2037/38) through its windfall policy and, should this approval rate continue, up to 150 pitches would have been approved by the expiry of the period. However, this is not guaranteed and the Council now accepts that it has only a 3.5 year land supply.
17. Accordingly, a signed Statement of Common Ground (SOCG), produced at the Hearing, showed an agreement between the main parties that a 5 year supply of viable gypsy sites cannot currently be demonstrated.
18. The unmet need for gypsy & traveller sites within the borough is a matter to which I ascribe considerable weight.

*Character and appearance*

19. By way of the Swale Landscape and Biodiversity Appraisal Supplementary Planning Document (SPD) the appeal site falls within the Upchurch and Lower Halstow Fruit Belt. A key characteristic of this designated area is an undulating landscape with some long views both northwards and southwards. The Upchurch area also has a fragmented structure of mature hedgerows with pasture and arable fields. The SPD seeks to conserve such landscape as does policy DM 24 of the Swale Local Plan (LP), which also seeks to enhance the landscape where possible. In this regard, though, the Council's case report says that landscape impact is not a significant objection to this development.
20. Although in 2018 the Council granted planning permission (16/503808/FULL) to allow for additional caravans, both static and tourers on The Orchards, the Council witness at the Hearing drew a distinction to the planning position at the appeal site in that no new access was being created and the bank to The Orchard site is well screened. In contrast, he described the appeal site as a locational high point. That said the Council's Reason for Refusal indicates that the site is "...reasonably well screened from views from Holywell Lane". Instead, the Council's primary concerns appear to arise from the consideration that the site is located between two public footpaths which both climb from Holywell Lane, allowing for "far reaching views of the site from public vantage points"
21. Immediately to the south of the appeal site, but at a lower land level than St Thomas Yard is a small area of land known as 'Hedgerows', accommodating two mobile homes, with a tourer caravan present at the time of my site visit. I understand that this site enjoys planning permission, granted in 2013. A footpath (PROW ZR23) is accessed from Holywell Lane at a point just beyond this site, and then climbs upwards where it converges with a second footpath (PROW ZR24). This footpath also starts from Holywell Lane, just beyond the northern boundary of Greenacres. At my site visit I walked up ZR23 where I had long views, across a number of fields, over which there are a number of buildings sporadically sited, mainly agricultural, but with a splattering of residential development, which also includes mobile homes. Looking back down eastwards to the Hedgerows and the appeal site, both are visible from the higher ground. Crossing over to ZR24, there are wide views across the River Thames and, in descending this footpath, there are clear views

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- southwards towards Greenacres with the footpath, at its lowest stretch, running parallel to this site.
22. The Council's first Reason for Refusal refers to a degradation of the previously unspoiled rural character. However, the series of planning permissions granted since 2002 have established these sites, one of which, Hedgerows, is particularly visible from PROW ZR23 whereas the appeal development appears more of an add-on to the development at The Orchard and Greenacres sites and, in fact, was part of the previously larger Greenacres site, before its subdivision. Accordingly, it is a brownfield site, for which PPTS paragraph 26(a) says should be ascribed weight when considering applications. Taken together, the sites form a pocket of traveller development, and this might form the basis of the cumulative argument although my observations showed that the rural character of the wider surrounding area remains largely intact.
23. In creating the site entrance a significant amount of earth forming the side embankment on this stretch of Holywell Lane has been removed. In this regard the previous Inspector, in dismissing the appeal and upholding the enforcement notice requiring for the land to be restored to its previous condition, commented that the works have left an unattractive and prominent scar which detracts from the character and appearance of the surroundings.
24. In her decision letter, from February 2016, the Inspector mentions that her understanding was that both sites (St Thomas Yard and The Orchard) were, at the time, unauthorised. With her remit limited only to the new access created she commented that, although planting could reduce the impact of the cutting and soften the entrance's harsh appearance, there was no justification for the development.
25. Turning to the site's splayed access, it is flanked by 2m high close-boarded, timber fencing and winds upwards to the site. This is the sole vehicular access point into the site. The fencing, which has been treated, sits below the embankment, over which another section of fencing, that screens the site itself, winds round onto Holywell Lane and runs along the top of the embankment to The Orchard's site entrance. However, this fencing is screened by a line of trees and general foliage, and is not readily visible from Holywell Lane.
26. Over six years have elapsed since the appeal decision on the access, during which time new vegetation has taken hold around the entrance to the site. At my site visit I observed that this has ameliorated the harshness of the development that would have been apparent when first carried out. This has enabled it to now integrate better into its contextual setting.
27. Similar close-boarded fencing is present on the opposite side of Holywell Lane. The Inspector, in her decision letter, did mention other access points along Holywell Lane which she considered were less obtrusive. The entrance to Greenacres is relatively discreet, but the access point to The Orchard is similarly flanked by wooden fencing and, from my observations, I am satisfied that there are visual comparisons. Accordingly, I consider that, over time, the harm that was initially apparent has now been tempered and the character of the rural lane has not been compromised.
28. Although there would be some degree of harm to the character of the landscape I consider that, in the setting I have described, this would be

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minimised. As such, with limited undue visual intrusion, I consider that the development is not significantly harmful to the surrounding rural character. Accordingly, I find that the objectives and requirements of LP policy DM 10 and DM24 would not be compromised. Further, I am also satisfied that the advice in PPTS paragraph 25 is here met.

### **Other considerations**

#### *Personal circumstances*

29. As mentioned, the appellants have local connections, not least with Miley Cash who owns the adjoining site. He is the brother of Kathleen Delaney who is married to Thomas Delaney snr. They are the parents of the appellants, Paddy Delaney and Thomas Delaney jnr. All currently live at the site along with their dependents in the 3 mobile homes.
30. In total, there are 11 persons resident, 3 of which are children who attend local schools. A settled base would be in the best interests of the children, securing access to medical facilities and education which are difficult to achieve by the roadside without a fixed address. The best interests of the children, that is the need to safeguard and promote their welfare, are a primary consideration, particularly as their education would be likely to be interrupted if the family were forced to move from the site. Further, the accessibility to health care that a settled base secures is a benefit to the family as a whole.
31. Given the absence of available gypsy sites in the borough it is hardly surprising that no viable alternative accommodation has been suggested that might be suitable. Indeed, I have received no details as to the existence of any such accommodation. In this connection it was held in the judgement of *South Cambridgeshire DC v SSCLG & Brown* [2008] EWCA Civ 1010 that in seeking to determine the availability of alternative sites for residential Gypsy use, there is no requirement in planning policy, or case law, for an applicant to prove that no other sites are available or that particular needs could not be met from another site. The lack of alternative sites is therefore a consideration that weighs in favour of the appellants.
32. It is clear that the shortfall of gypsy and traveller sites is significant. Accommodation by way of a settled base, rather than a roadside existence, can only be beneficial, and I consider that the development provides suitable accommodation consistent with this. The best interests of the child must be afforded substantial weight.

#### *Other representations*

33. In reaching my decision I have had regard to the objections to the development put forward by Upchurch Parish Council. The Parish Council has commented that the sub-division of the parcel of land has caused a proliferation of travellers in the area which is already overburdened by traveller sites. As mentioned, the original Greenacres parcel of land has been subdivided to form three distinct sites and more caravans are now permitted than were first granted permission in 2002. The small adjacent site, Hedgerows, also has planning permission for two static caravans but I have seen no evidence, either from that supplied to the Hearing or from my wider site visit observations, that the surrounding area is 'overburdened' by traveller sites. Although within the envelope of the original Greenacres site I am

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effectively treating the development as an extension to that of the existing permitted Greenacres and Orchard caravan sites.

34. In this context I am satisfied that the development accords with the advice in PPTS paragraph 14.

#### **Planning Balance**

35. The proposal would contribute to meeting the identified local need for gypsy and traveller accommodation. The appellants have also demonstrated that their families' personal circumstances are such that a settled base would be in the best interests of the children present and beneficial to the family as a whole. The appeal site is their home and there is no alternative accommodation available. These are matters to which I afford significant weight.
36. I am satisfied that the development is of a scale appropriate to meet the accommodation need identified, and its location would not, either singularly or cumulatively, cause significant harm to the character of the area or its landscape. This is consistent with the advice in PPTS paragraphs 14 and 25. Further, LP Policy DM 24 says that non-designated landscapes such as this will be protected and enhanced and planning permission will be granted subject to the minimisation and mitigation of adverse landscape impacts.
37. In its setting, as mentioned, I do not find that significant adverse effects have resulted from the development. In this regard, the Council's case report, notwithstanding the wording of the first refusal reason, says that landscape impact is not a significant objection to this development.
38. Further, mitigation can be achieved through suitable landscaping, both to the rear of the site, where the development is visible from PROW ZR23, around the side of the access point off Holywell Lane which, since its creation, has better integrated into its setting. The landscape has not been enhanced by the development, but as this is a relatively small-scale development, adding on to the Orchard and Greenacres sites, the harm arising can be mitigated to some degree.
39. I find that the development is in accordance with the national PPTS and, in the circumstances, is not in material conflict with Policies DM 10, DM 24, DM 26 and CP 4 of the Swale development plan, nor its SPD. Neither is it in conflict with paragraphs 8, 79, 80 and 174 of the National Planning Policy Framework (July 2021)

#### **Conclusion and Conditions**

40. For the above reasons I conclude that the appeal should be allowed and planning permission granted.
41. In terms of conditions I have had regard to those agreed by both main parties and also advice within the planning practice guidance. Although the personal circumstances would justify that the permission be made personal to the appellants and their families I am satisfied that, as any visual harm is limited and is outweighed by my findings on the other factors as discussed, such a condition is unnecessary. Indeed, the Council, in its representations, did not suggest that such a condition be imposed. However, I shall impose a condition limiting occupation to gypsies and travellers, as defined in the PPTS glossary.

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42. In addition to this, in order to safeguard the character and appearance of the area, the number and type of caravans should be specified. For the same reason any external lighting scheme should be submitted for approval, and no commercial activities or parking of vehicles over 3.5 tonnes should take place on the land.
43. A condition requiring the submission of details of an appropriate landscaping scheme is also imposed to provide screening, where considered necessary, as discussed.
44. All these conditions are reasonable and necessary given the circumstances.

*Timothy C King*

INSPECTOR



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#### SCHEDULE OF CONDITIONS

- 1) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1: Glossary of Planning Policy for Traveller Sites (or its equivalent in replacement national policy).
- 2) No more than three static caravans and three touring caravans shall be stationed on the site at any one time.
- 3) No vehicles over 3.5 tonnes shall be stationed, parked or stored on this site.
- 4) No commercial activities shall take place on the land, including the storage of materials.
- 5) No floodlighting, security lighting or other external lighting shall be installed or operated at the site, other than in accordance with details that have first been submitted to and agreed in writing by the local planning authority.
- 6) The use hereby permitted shall cease and any caravans, sheds, structures hard-standings, fences, materials and equipment on the site and connected with the use, together with all ancillary vehicles and equipment, shall be removed within 28 days of any one of the following requirements not being met:
  - (i) within 3 months of the date of this decision there shall have been submitted for the approval of the local planning authority a landscaping scheme comprising full details of both hard and soft landscape works. These details shall include existing trees, shrubs and other features, planting schedules, noting species, plant sizes and numbers where appropriate, means of enclosure, hard surfacing materials, and an implementation programme;
  - (ii) within 11 months of the date of this decision the landscaping scheme shall have been approved by the local planning authority or, if the local planning authority fail to approve such a scheme, or fail to give a decision within the prescribed period an appeal shall have been lodged and accepted as validly made, by the Secretary of State;
  - (iii) if an appeal is made in pursuance of requirement (ii) above, that appeal shall have been approved by the Secretary of State;
  - (iv) all works comprised in the landscaping scheme as approved shall have been implemented and completed within the timetable set out in the approved scheme;

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### **APPEARANCES**

#### **For the Appellant**

Alison Heine            Agent for the appellant  
Patrick Delaney        Appellant  
Thomas Delaney        Appellant

#### **For the Council**

Andrew Byrne          Area Planning Officer, Swale Borough Council  
Jill Peet                Planning Policy Manager

#### **Other Interested Parties**

Gary Rosewell          Upchurch Parish Council  
Kathleen Delaney  
Tom Delaney

#### **Documents produced at the Hearing**

1. Council's notification letters of appeal and the Hearing event.
2. Signed Statement of Common Ground
3. Extract from Swale Landscape and Biodiversity Appraisal