#### 2.5 REFERENCE NO - 18/504650/FULL

#### **PROPOSAL**

Siting for One Additional Mobile Home

ADDRESS Patch Of Heaven Bell Farm Lane Minster-on-sea Kent ME12 4JB

#### **RECOMMENDATION**

Delegate to the Head of Planning to grant planning permission subject to securing an additional SAMMS payment and subject to appropriate safeguarding conditions as set out in the report, with further delegation to the Head of Planning to negotiate the precise wording of conditions, including adding or amending such conditions as may be consequently necessary and appropriate.

## **APPLICATION TYPE** Minor Gypsy and Traveller Sites

#### **REASON FOR REFERRAL TO COMMITTEE**

Minster-on-Sea Parish Council objection

**CASE OFFICER** Guy Martin

WARD Sheppey East	PARISH/TOWN COUNCIL	APPLICANT Mr J Clake	
	Minster-on-Sea Parish Council		

DATE REGISTERED TARGET DATE

08.10.18 03.12.18

#### **BACKGROUND PAPERS AND INFORMATION:**

Documents referenced in report are as follows: -

Planning Statement

All drawings submitted:

Site Location Plan (uploaded 07.12.23)

The full suite of documents submitted pursuant to the above application are available via the link below: -

https://pa.midkent.gov.uk/online-

applications/applicationDetails.do?activeTab=documents&keyVal=PEJ2RQTY0XJ00

#### 1. SITE LOCATION AND DESCRIPTION

- 1.1 The site is located within the countryside on the southern side of Bell Farm Lane, comprising of an L shaped plot of land. Bell Farm Lane is characterised by a mixture of gypsy sites, holiday chalets and dwellings. The site itself includes 2 previously approved caravans and a mobile home which is the subject of this application.
- 1.2 The site lies adjacent to a public right of way which runs along Bell Farm Lane. The majority of the site is also within a Coastal Change Management Area with the front of the site lying within Erosion Zone 1, and the majority of the remainder of the site lying in Erosion Zone 2 as defined by policy DM23 of the Local Plan. A narrow margin at the site frontage also lies in a Site Of Special Scientific Interest Sheppey Cliffs & Foreshore.

#### 2. PLANNING HISTORY

- 2.1 **SW/05/0149** Planning permission granted on 18/05/2005 for Removal of two caravans and replace with one new caravan for residential occupation by a gypsy family.
- 2.2 **SW/10/1440** Planning permission granted on 04/02/2011 for Variation of condition (5) of planning permission SW/05/0149 to allow second caravan.

## 3.0 PROPOSED DEVELOPMENT

- 3.1 The application is for the siting for one additional mobile home. The site currently benefits from planning permission for two caravans with the proposal adding an additional mobile home which is currently on site, located to the north of the existing caravans. The principle of the use of the site as a gypsy/traveller site was established through the grant of the permanent planning permission in 2005.
- 3.2 The occupant of the mobile home, Mr Clark, has lived on the site all of his life and is a member of the family to whom planning permission was granted in 2005.

#### 4.0 CONSULTATION

- 4.1 Two rounds of consultation have been undertaken, during which letters were sent to neighbouring occupiers and a notice was displayed at the application site. Full details of representations are available online.
- 4.2 No representations were received from neighbours.
- 4.3 Minster-on-Sea Parish Council have commented on the application on three occasions, the first of these set out that they supported the application and made the following comments:

Comment	Report reference/
Support subject to the following conditions:	See Conditions
(i) for occupation of the site to be restricted to one gypsy family and (ii) for no more than two caravans / mobile homes to be stationed within the site at any one time.	
That Swale Borough Council has a five- year supply of sites in the borough and that gypsy and travellers should be directed to sustainable deliverable sites.	See paragraph 7.5

4.4 The second set of comments from Minster-on-Sea Parish Council objected to the application, raising the following points:

Comment	Report reference/
That the information submitted is confusing with the plan showing 6 caravans / mobile homes whereas there are 4	' ' '

О	Over-intensive development of the site not					
in	keeping	with	the	original	planning	See paragraph 7.10
р	ermission.					

4.5 Minster-on-Sea Parish Council responded to the second consultation, maintaining an objection, raising the following points:

Comment	Report reference/
The development is over intensive.	See paragraph 7.10
The site is not a recognised Gypsy and Traveller Site	See paragraph 2.1

## 5. <u>REPRESENTATIONS</u>

- 5.1 **Environment Agency** The application would have a low environmental risk. An informative is provided regarding drainage options.
- 5.2 **KCC Highways** The proposal does not meet their criteria to warrant involvement from the Highways Authority.
- 5.3 KCC Public Rights of Way No comment.
- 5.4 **Natural England** No objection subject to securing appropriate mitigation for recreational pressure impacts on habitat sites (European sites).
- 5.5 **SBC Environmental Health** No adverse comments.

## 6.0 <u>DEVELOPMENT PLAN POLICIES</u>

6.1 Bearing Fruits 2031: The Swale Borough Local Plan 2017

**ST1** Delivering sustainable development

**ST3** The Swale Settlement Strategy

**ST6** The Isle of Sheppey area strategy

**CP4** Requiring good design

**DM6** Managing transport demand and impact

**DM7** Vehicle parking

**DM10** Gypsy and traveller sites

**DM14** General development criteria

DM22 The coast

**DM24** Conserving and enhancing valued landscapes

**DM23** Coastal change management

**DM28** Biodiversity and geological conservation

6.2 Local Plan policy DM10 is most relevant and is a criteria-based policy for consideration of the acceptability of sites for use as Gypsy / Traveller accommodation. The Local Plan does not contain any site allocations for Gypsy / Traveller sites.

## The National Planning Policy Framework (NPPF)

- 6.3 The national policy position comprises the National Planning Policy Framework (NPPF) and Planning Policy for Traveller Sites (PPTS). Together they provide national guidance for Local Planning Authorities on plan making and determining planning applications for gypsy and traveller sites. A presumption in favour of sustainable development runs throughout both documents and this presumption is an important part of both the plan-making process and in determining planning applications. In addition, there is a requirement in both documents that makes clear that Councils should set pitch targets which address the likely need for pitches over the plan period and maintain a rolling five year supply of sites which are in suitable locations and available immediately.
- 6.4 Paragraph 11 of the NPPF 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.
- 6.5 Paragraph 63 sets 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.

## Planning Policy for Traveller Sites (PPTS) – Department for Communities and Local Government 2023

- 6.6 Paragraph 3 states "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."
- 6.7 Paragraph 4 sets out (inter-alia) that LPA's should make their own assessment of need for the purposes of planning, that private traveller site provision should be promoted, that the number of traveller sites in appropriate locations should be increased, that travellers should have access to schools, healthcare and employment infrastructure, and that LPA's should have due regard for the protection of local amenity and the local environment.
- 6.8 Paragraph 10 states that Local Plans should identify and update annually a 5 year supply of Gypsy and Traveller sites against locally set targets.
- 6.9 Paragraph 14 states 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."
- 6.10 Paragraph 25 states that LPA's should consider the following issues 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"
- c) "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."
- 6.11 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 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)."

# The Swale Borough Council Gypsy and Traveller Accommodation Assessment 2023 (GTAA)

- 6.12 The GTAA comprises the latest available evidence to identify the accommodation needs of Gypsies and Travellers across the Borough. The GTAA identifies the forecast pitch requirements for Gypsies and Travellers that meet the definition in the PPTS. The Councils GTAA published December 2023 has identified an overall need for 114 additional Gypsy and Traveller pitches across Swale Borough over the period 2022/23 to 2037/38, with 80 in the five-year period 2022/23 to 2026/27 and 34 in the longer-term 2027/28 to 2037/38).
- 6.13 The report advises that the Council should consider the following to help meet identified residential pitch need. Firstly, regularising of sites that are not permanently authorised. Secondly, additional pitch provision through the use of existing sites.

## **Supplementary Planning Documents (SPD)**

- 6.14 Swale Landscape Character and Biodiversity Appraisal
- 6.15 Swale Car Parking Standards

### Other relevant legislation and Court Judgements

- 6.16 The Human Rights Act 1998 Article 8: Respect for your private and family life, and home
- 6.17 The Equality Act 2010
- 6.18 In Smith v Secretary of State for Housing, Levelling Up and Communities [2022], the Court of Appeal ruled that the PPTS definition in 2015, which excluded Gypsies and Travellers who had permanently ceased to travel due to old age or illness from the PPTS definition, was unjustified and discriminatory. The Court determined that this discriminated against the ethnic and cultural identity of Gypsies who, as a result of age, illness or disability, are no longer able to travel. The PPTS definition was amended in 2023 as a result of this judgement.

#### 7.0 ASSESSMENT

7.1 This application is reported to the Committee because Minster-on-Sea Parish Council has objected to the proposal. Considering these comments and the proposal that has been submitted, the committee is recommended to carefully consider the following main points:

The Principle of Development
Impact upon the Landscape
Supply of G&T sites in the Borough
Residential Amenity
Highways and Access
Impact upon Special Protection Area (SPA)
Impact upon Coastal Change Management Area

#### **Principle**

- 7.2 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 sets out that the starting point for decision making is the development plan unless material considerations indicate otherwise.
- 7.3 The National Planning Policy Framework provides the national policy context for the proposed development and is a material consideration of considerable weight in the determination of the application. The NPPF states that any proposed development that accords with an up-to-date local plan should be approved without delay. At the heart of the NPPF is a presumption in favour of sustainable development and for decision-taking this means approving development that accords with the development plan. The PPTS is also a significant material consideration, representing the national policy position on Gypsy and Traveller sites.
- 7.4 The site falls within open countryside and as such development within this location is generally restricted. However, Gypsy and Traveller sites are invariably found in rural locations. Key issues with such sites generally relate to visual impact and sustainability objectives. Policy DM10 of the Local Plan sets out the circumstances under which Gypsy and Traveller sites will be acceptable, and requires such development to comply with criteria listed in the policy. The extent to which the application meets the criteria is set out in the sections below.
- 7.5 The GTAA identifies a significant need for 114 Gypsy and Traveller Sites in the Borough, with an immediate need over a 5 year period for 80 sites. The Council can only currently identify a 1.3 year supply of Gypsy sites. The significant need and shortfall in site provision are also highly material in the consideration of this application.

#### **Location of development**

7.6 Policy DM10 (1) sets out that proposals should accord with the settlement strategy under policy ST3 unless (inter-alia) the proposal is for an extension to or stationing of additional caravans at an existing site. The proposal would station an additional caravan at an existing site and meets this criteria. The existing site was found to be suitably located by the Council in granting permission in 2005.

#### **Gypsy status**

7.7 The principle of the use of the site as a gypsy/traveller site was established through the grant of the permanent planning permission in 2005. John Clarke is the son of the original applicants, and it is considered that the applicant is a Gypsy.

## That the development can achieve an integrated co-existence between all communities

7.8 The site occupants have lived in this location for many years and seek permission to allow a family member to have his own caravan and pitch. The site is in a location with other properties present.

## Scale and impact on character of area

- 7.9 Criteria 4 of Policy DM10 states that Gypsy and Traveller sites should be of a scale 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.
- 7.10 The proposal would add an additional caravan to the site ensuring that the site would remain modest and discreet in scale and appearance.

## **Landscape Impacts**

- 7.11 The National Planning Policy Framework states amongst other matters that, planning policies and decision should contribute to and enhance the natural and local environment by (inter-alia) protecting and enhancing valued landscapes.
- 7.12 Policy DM24 of the Swale Local Plan states that the value, character, amenity and tranquility of the Borough's landscapes will be protected, enhanced and, where appropriate, managed. The site is not located in a designated landscape, in these instances policy DM24 states:
  - "Non-designated landscapes will be protected and enhanced and planning permission will be granted subject to:
  - 1. the minimisation and mitigation of adverse landscape impacts; and
  - 2. when significant adverse impacts remain, that the social and or economic benefits of the proposal significantly and demonstrably outweigh the harm to the landscape character and value of the area."
- 7.13 As set out within the Swale Landscape Character and Biodiversity Appraisal the site is located within the Clay Farmland Type and Warden Farmlands Character Area. The key characteristics of this area comprises of London Clay ridges and outcrops elevated above the low lying marshlands to the south with arable farming representing the dominant land use. The landscape comprises of steeply wooded cliffs with sandy beaches below and small to medium-scale fields with narrow enclosed lands and a mixed land use comprising of arable production and urban fringe activities such as horse pasture, playing fields and holiday parks.
- 7.14 The proposal would add a single additional caravan to the existing gypsy site set back from Bell Farm Lane at a distance of approximately 50m. A 2m close boarded

fence surrounds the plot located to the front of the site and whilst the additional caravan is visible from the lane it is not out of character with other sites located along this road, ensuring that the landscape character of the site would be retained meeting the requirements of national and local planning policies.

## Impact on amenities of occupants and neighbours

- 7.15 Policy DM14 of the Local Plan requires amongst other matters that development proposals will cause no significant harm to amenity. Criteria 6 of policy DM10 states that the site should cause no significant harm to occupants or others through noise, disturbance, air quality of other circumstances.
- 7.16 The proposal would add an additional caravan to the existing gypsy site. The closest neighbouring properties to the site, Willow Farm and Nore View lie either side of the site however the impact of one additional caravan on the site which is modest in scale is not considered to have any significant additional adverse impact upon the amenities of these neighbours than the existing caravans, ensuring that the proposal would meet the requirements of policies DM10 (6) and DM14 of the Local Plan.

#### Access and parking

- 7.17 The NPPF states that: "Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe."
- 7.18 Criteria 11 of Policy DM10 states that sites should provide safe parking and access without unacceptable impacts on highways safety.
- 7.19 The proposal would use the existing access onto the site. Whilst the proposal would result in an additional mobile home on the site, this would be to house an existing occupant of the site which would mean that additional traffic movements would be unlikely to occur. There is sufficient parking on site to accommodate the additional pitch ensuring that the requirements of policy DM10 would be met.

## **Biodiversity and Impacts upon the SPA**

- 7.20 The NPPF states amongst other matters that planning decisions should contribute to and enhance the natural and local environment by minimising impacts on and providing net gains for biodiversity.
- 7.21 Policy DM28 states that development proposals will conserve, enhance and extend biodiversity, provide for net gains in biodiversity where possible, minimise any adverse impacts and compensate where impacts cannot be mitigated.
- 7.22 The northern 2m of the access and the land to the north of the site (outside of the application site) comprises of a Site of Special Scientific Interest. Policy DM28 of the Local Plan states that within nationally designated sites (of which a SSSI is one) development will only be permitted where it is not likely to have an adverse impact unless the benefits outweigh any harm. In this case the one mobile home is located approximately 50m from the SSSI within the existing site and would therefore not have an adverse impact upon biodiversity.
- 7.23 An Appropriate Assessment is set out below. Since 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 £328.27 per pitch. A fee equating to £328.27 will be sought prior to the grant of planning permission.

#### **Coastal Change Management Area**

- 7.24 The site lies within a Coastal Change Management Area (CCMA) with erosion zone 1 extending across a small section of the front portion of the site, comprising of the access to the site. The majority of the remainder of the site and the mobile home proposed under this application lies within erosion zone 2.
- 7.25 Policy DM23 states that "Within the Coastal Change Management Area (CCMA), as defined on the Proposals Map, planning permission will be granted for development proposals subject to:
  - 1. It being demonstrated that the proposal will not result in an increased risk to life, nor a significant increase in risk to property."
- 7.26 Policy DM23 goes onto state that proposals within Erosion Zone 2 may additionally be permitted where they comprise the subdivision of properties, including residential subdivision. In addition to this the policy also states that planning permission will be granted subject to "Proposals within Erosion Zones 1 and 2, submitting a Coastal Erosion Vulnerability Assessment showing the development will be safe throughout its planned lifetime and will not increase risk to life or property elsewhere without the need for new or improved coastal defences."
- 7.27 In this case a Coastal Erosion Vulnerability Assessment has not been submitted with the application. However, via condition, the location of the mobile home can be secured to ensure that it is continued to be placed outside of Erosion Zone 1. In addition, mobile homes are by their very nature temporary structures and crucially, the applicant was already residing on the site as a family member prior to the submission of this application. As such, the scheme would not give rise to an increased risk to life in that regard. In addition, the Environment Agency were consulted on the application and commented that it is of low environmental risk. As a result, it is considered that the lack of a Coastal Erosion Vulnerability Assessment does not render the scheme unacceptable in this instance and as the proposal effectively falls under a residential subdivision of the site it is concluded that the application accords with policy DM23 of the Local Plan. It is however recommended that due to the weight that has been given to the applicant already residing on the site in the assessment of the application against the requirement to provide a Coastal Erosion Vulnerability Assessment, and in light of the previous decisions on this site, that the permission is restricted to a personal one for the applicant (and his immediate family). On this basis there is no need for a wider condition restricting the occupation of the unit to a gypsy / traveller (as it has already been accepted that the applicant is a gypsy).

#### Conclusion

- 7.28 The proposal would represent an increase of one additional pitch within an existing site which would not have an adverse impact upon the streetscene, landscape, local amenities, highway safety, biodiversity or the Coastal Change Management Area.
- 7.29 The Council cannot demonstrate a 5-year supply of Gypsy and Traveller sites. The current supply figure is 1.3 years and as such the shortfall is significant. In addition, the latest GTAA demonstrates a significant need for sites, particularly for 80 pitches

- in the next 5 years. The provision of 1 unit would make a modest contribution to the identified need for sites and is given significant weight.
- 7.30 On the basis of the above, it is recommended that planning permission be granted, subject to the conditions below and securing the additional SAMMS payment for the additional pitch.

#### **CONDITIONS**

(1) The development hereby permitted shall be carried out in accordance with the following approved drawing: Site Location Plan.

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

(2) The occupation of the caravan/mobile home hereby approved shall be restricted to the applicant and their immediate family.

Reason: In accordance with the historic permissions granted and the location of the site within the Coastal Change Management Area.

- (3) No more than three caravans/mobile homes (as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, as amended) 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 caravans/mobile home shall only be positioned in the location shown on the Site Location Plan.
  - Reason: In the interest of visual amenity and due to the location of the site within the Coastal Change Management Area.
- (5) The site shall only be used for residential purposes 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 and no vehicle over 3.5 tonnes shall be kept on the site.

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

(6) 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 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 dwellings are occupied.

Based on the correspondence with Natural England (via the NKEPG), it is concluded 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 will be 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.

It can be noted that the required mitigation works will be carried out by Bird Wise, the brand name of the North Kent Strategic Access Management and Monitoring Scheme (SAMMS) Board, which itself is a partnership of local authorities, developers and environmental organisations, including SBC, KCC, Medway Council, Canterbury Council, the RSPB, Kent Wildlife Trust, and others (<a href="https://birdwise.org.uk/">https://birdwise.org.uk/</a>).

### The Council's approach to the application

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), 2023 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 preapplication 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.

