

3.2 REFERENCE NO - 14/500144/FULL			
APPLICATION PROPOSAL Change of use of land to use as an extension to existing caravan site to form a total of 6 no. caravan pitches, each containing two caravans of which no more than one will be a static caravan/mobile home, including the laying of hard standing and erection of two amenity buildings			
ADDRESS Edentop Sheppey Way Bobbing Kent ME9 8QP			
RECOMMENDATION REFUSE subject to the views of Kent Highway Services			
SUMMARY OF REASONS FOR RECOMMENDATION The proposal would harm the setting of the grade II listed building adjacent to the site, would harm the character and appearance of the countryside, the visual amenities of the area, would lead to the erosion and piecemeal development of the local important countryside gap, and would cause harm to the setting of the crematorium opposite the site.			
REASON FOR REFERRAL TO COMMITTEE Decision of the Head of Planning Services			
WARD Grove Ward	PARISH/TOWN Bobbing	COUNCIL	APPLICANT Mr Robert Beck AGENT Mr Philip Brown
DECISION DUE DATE 23/01/15	PUBLICITY EXPIRY DATE 23/01/15	OFFICER SITE VISIT DATE 2/7/15	
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
SW/07/1243	Erection of 1 residential dwelling.	Refused	2007
SW/09/0972	Change of use of land to use as a residential caravan site for one gypsy family with two caravans (including one static caravan), erection of amenity block and laying of hardstanding.	Refused Appeal Allowed	2010 2011

MAIN REPORT

1.0 DESCRIPTION OF SITE

The application site lies outside of any defined built up area boundary and within the countryside. The site lies 1.3km from the Petrol Filling Station, restaurants and hotel on the outskirts of Bobbing, 0.9km from Bobbing Primary School and 1.4km from the doctors surgery within Iwade village. A grade II listed residential dwelling lies to the east of the application site and there are various outbuildings associated with this property that run along the boundary between the two sites. The Garden of England Crematorium and Memorial Gardens lie directly opposite the application site on the north side of Sheppey Way, consisting of low buildings set in grounds behind high entrance gates and front boundary walls. The site is mostly surrounded by open fields. However, residential properties are scattered along this part of Sheppey Way and these are interspersed with large agricultural/commercial buildings.

The application site has been used as a small holding and has a lawful use as agriculture. There is a large barn immediately to the east of the application site. This building and the land to the south and west are owned by the applicant. This additional land and the adjacent barn are currently used by the applicant for the keeping of horses in association with his horse trading business.

The site currently contains two caravans, one of which is static, an amenity block and associated hardstanding, all of which was allowed on appeal by the Planning Inspector in 2010.

2.0 PROPOSAL

- 2.01 The planning application now being considered is for the change of use of part of an agricultural field to use as an extension to an existing residential caravan site in order to provide accommodation for a total of six gypsy families.
- 2.02 It is proposed that each of the six households would have two caravans, of which no more than one would be a static caravan/mobile home. In addition, the proposal involves the erection of two pairs of semi-detached amenity buildings – which will be in addition to that which is existing, and previously approved, on the site. Associated hardstanding for the stationing caravans and for the parking and manoeuvring of vehicles is proposed as part of this application. This includes the provision of an access road, with turning facilities to allow a refuse vehicle or emergency services vehicles to enter and leave the site in a forward gear.

3.0 SUMMARY INFORMATION

	Existing	Proposed	Change (+/-)
Site Area (ha)	0.14	0.98	0
Parking Spaces	2	6	+5
No. of Residential Units	1	6	+5

4.0 PLANNING CONSTRAINTS

- 4.01 The site lies outside the built up area of Sittingbourne, and within an Important Local Countryside Gap.

5.0 POLICY AND OTHER CONSIDERATIONS

5.01 National Planning Policy Framework (NPPF)

- 5.02 The NPPF was released on 27th March 2012 with immediate effect, however, para 214 states *“that for 12 months from this publication date, decision-makers may continue to give full weight to relevant policies adopted since 2004 even if there is a limited degree of conflict with this Framework.”*
- 5.03 The 12 month period noted above has expired. As such, it was necessary for a review of the consistency between the policies contained within the Swale Borough Local Plan 2008 and the NPPF. This has been carried out in the form of a report agreed by the Local Development Framework Panel on 12 December 2012. All policies cited below – other than H4 – are considered to accord with the NPPF for the purposes of determining this application and as such, these policies can still be afforded significant weight in the decision-making process.
- 5.04 As above: policy H4 is not considered to be NPPF-compliant, but will ultimately be superseded by a new Core Strategy policy to reinforce NPPF compliance and in particular, the Council will need to allocate sites via a Gypsy & Traveller Site Allocation development plan document and Gypsy & Traveller Assessment. The report to LDF Panel (as at 5.27 below) notes that *“in the interim, development proposals which do not have overwhelming material considerations to indicate refusal have been granted temporary planning permission, pending preparation of these documents.”*

5.05 National Policy

5.06 National Policy on Gypsy and Traveller sites is set out in the National Planning Policy Framework and the Planning Policy for Traveller Sites (PPTS). The requirement in both documents is very clear, in that the Council should now set pitch targets which address the likely need for pitches over the plan period. Furthermore, the Council has been required, since 2013, to maintain a rolling five year supply of sites that are in suitable locations and available immediately.

5.07 The PPTS was a considerable change in national policy, prior to which national policy was set out in Circular 01/2006 where the original intention was for regionally set pitch targets to be met.

5.07 The Council, in my view, responded positively and quickly to that change. The LDF Panel immediately recognised, and supported, the commissioning of a new Gypsy and Traveller Accommodation Assessment (GTAA), which was completed in June 2014 and identified a need for 82 pitches to be provided (adjusted down from 85 pitches in reflection of those sites granted consent whilst the document was under preparation).

5.09 From this the Council will also produce a Development Plan Document setting out deliverable sites to meet this need. However it is anticipated that this will take at least three years to become formal policy, as it relies upon successful adoption of the draft Local Plan, entitled "*Bearing Fruits*," which is unlikely to be formally agreed until at least early 2017.

510 Local Policy

i) *The Swale Borough Local Plan 2008*

5.11 SBLP policy E1 sets out standards applicable to all development, saying that it should be well sited appropriate in scale, design and appearance with a high standard of landscaping, and have safe pedestrian and vehicular access whilst avoiding unacceptable consequences in highway terms.

5.12 SBLP Policy E6 seeks to protect the quality, character and amenity of the countryside, and states that development will not be permitted outside rural settlements in the interests of countryside conservation, unless related to an exceptional need for a rural location.

5.13 SBLP Policy H4 explains the Borough Council will only grant planning permission for the use of land for the stationing of homes for persons who can clearly demonstrate that they are gypsies or travelling showpersons with a genuine connection with the locality of the proposed site, in accordance with 1 and 2 below.

1. For proposals involving the establishment of public or privately owned residential gypsy or travelling showpersons sites:
 - a) there will be a proven need in the Borough for the site and for the size proposed;
 - b) the site will be located close to local services and facilities;
 - c) there will be no more than four caravans;
 - d) the site will be located close to the primary or secondary road networks;
 - e) in the case of a greenfield site there is no suitable site available on previously developed land in the locality;
 - f) the site is not designated for its wildlife, historic or landscape importance;

- g) the site should be served, or capable of being served, by mains water supply and a satisfactory means of sewage disposal and refuse collection;
 - h) there is no conflict with pedestrian or highway safety;
 - i) screening and landscaping will be provided to minimise adverse impacts;
 - j) no industrial, retail, commercial, or storage activities will take place on the site.
 - k) use of the site will not give rise to significant adverse impacts upon residential amenity, or agricultural or commercial use, of surrounding areas; and
 - l) the land will not be in a designated flood risk area.
2. Additionally to 1, for proposals for short term stopping places:
- m) there will be a planning condition to ensure that the length of stay for each caravan will be no longer than 28 days with no return to the site within 3 months.”
- 5.14 However, policy H4 has largely been superseded by *Planning Policy for Traveller Sites*.
- 5.15 SBLP Policies E6, E14, E19 and T3 aim to protect the character and general amenity of the countryside; to have special regard to the setting or any architectural or historic features of nearby Listed buildings; require development proposals to be well designed in general; and ensure that appropriate parking space is provided.
- 5.16 The site lies within an Important Local Countryside Gap, where SBLP policy E7 aims to restrict development that would result in the merging of settlements (in this case Bobbing and Sittingbourne) or result in piecemeal erosion of the countryside.
- ii) *Bearing Fruits 2031*
- 5.17 The Council’s Draft Core Strategy has now been replaced by the emerging draft Local Plan, entitled *Bearing Fruits 2031*, which is at draft publication stage and therefore carries some weight in the determination of applications.
- 5.18 Policy DM10 of the emerging Local Plan aims to provide pitches for gypsies and travellers as part of new residential developments, stating:
- “For housing proposals between 50 and 149 dwellings, one pitch shall be provided for gypsies and travellers. For 150 dwellings and above (or 200 dwellings on previously developed urban sites), unless a commuted sum has been agreed with the Council, 1% of the total number of dwellings proposed shall be serviced and made available to gypsies and travellers as pitches and/or bespoke accommodation, either for sale or rent, as appropriate, and up to a maximum of 10 pitches on any one allocation. Where identified, pitches may also be required to meet an affordable housing need.”*
- 5.19 The policy also notes that sites may need to be granted permission individually in order to meet the five-year supply, and this will be subject to certain general criteria, and also compliance with draft policies DM9 and ST3.

- 5.20 Draft policy DM9 requires applications for affordable housing / gypsy and traveller pitches within rural areas to demonstrate that:
- The site is well located to local service centres and villages, with access to day-to-day services;
 - There will be no significant impact upon character and amenity of the countryside; and
 - The need for the scheme is clearly demonstrated and justified by the applicant.
- 5.21 Policy ST3 sets out a settlement hierarchy for when considering proposals for new development, stating that outside of the defined built up areas *“permission will be granted for appropriate development involving...accommodation for gypsies and travellers that cannot be met at housing allocations or within or adjacent locations within”* the identified Borough centres, rural service centres, or other villages with built up area boundaries.

6.0 LOCAL REPRESENTATIONS AND CONSULTATIONS

Twenty one letters of objection have been received. The comments contained therein may be summarised as follows:

- Proposal is too close to the Crematorium
- The site is neglected and unsightly – an eyesore
- There is a lack of landscaping
- Unauthorised business activity on site
- The site has been unoccupied for three years
- The applicant has not complied with previous planning conditions
- The proposal is out of character/harmful to the rural views of the area
- The proposal is detrimental to the strategic and countryside gap between Medway and Sittingbourne, and, Bobbing and Iwade.
- The development is unnecessary – there are other available gypsy pitches in the Borough
- There is a potential for sub-letting of the caravans on site – contrary to the Planning Inspector’s comments on previous application.
- Overdevelopment of Bobbing area
- Potential increase in anti-social behaviour
- Incorrect neighbour consultation dates
- Incorrect address of the application site
- No council tax record for the site
- Decrease in value of local properties
- Proposal is a further detraction from the original use of the keeping and grazing of horses
- Unauthorised gas/water connection to the site

Bobbing Parish Council raise objections to the proposals which can be summarised as follows:

- The proposal is contrary to the Planning Inspector’s conditions in allowing the appeal. Namely, that 10% of the site is occupied and the current application will increase this to 33% of the land being developed - the Inspector stated that 90% would be retained as grazing land.
- Increase in traffic/noise and light goods vehicles considered inappropriate adjacent to the crematorium

- Greater visual impact – site can be seen from the road
- Other gypsy sites/pitches are available in Faversham, Dunkirk and Upchurch
- Inappropriate/overdevelopment of site – A greenfield site where, ordinarily, six affordable homes would be resisted
- Further development reduces amount of land for keeping of horses
- Current caravan on site considered to be unoccupied, therefore, site should be reverted back to original state
- Proposal is out of character with the surrounding neighbourhood
- Potential that ‘established’ homes on the site, will mean travellers doing less travelling

A letter was received by Gordon Henderson MP for Sittingbourne and Sheppey. He raises an objection to the proposal for the following reasons:

- Caravans on this site would ruin the aesthetically pleasing rural surroundings
- The site is opposite the entrance to the Garden of England Crematorium, which would conflict with the sensitive state of constituents when visiting for the funeral of loved ones
- The site would also have an effect on the number of vehicles going in and out of the crematorium every hour between 9am and 5pm, Monday to Friday
- The applicant is not a resident of Swale and has no connection with the area
- This is an extension of planning permission granted on appeal following refusal by Swale Borough Council in 2009. It is my understanding that the site has never been used for the purpose for which permission was granted and increasing its usage at this stage would be an abuse of the planning system.

7.0 BACKGROUND PAPERS AND PLANS

7.01 Application papers and drawings relating to planning reference 14/500144/FULL.

8.0 APPRAISAL

8.01 The key issues for Members to consider here are the principle of development, the impact of the development on the character and appearance of the countryside and on the important local countryside gap, on visual amenity, on residential amenity, on the setting of the listed building, on the setting of the adjacent crematorium, and on highway safety and convenience. Further to these, Members must have regard to the contents of the NPPF and PPTS, and in particular, whether the inability of the Council to demonstrate of a five year supply of available gypsy/traveller sites is a material consideration which should warrant the approval of the scheme.

Principle of Development

8.02 The site is located in the countryside, outside the built up area of Sittingbourne/Bobbing and outside the built up area of Iwade, where development would normally be unacceptable as a matter of principle. However, gypsy/traveller sites are a form and type of development which are considered acceptable in such locations, subject to detailed matters relating to siting and design.

Members will note from the Corporate Policy Assessment, attached at Appendix B, that the site lies in a comparatively sustainable location, and that it is not within a flood risk zone, or a nationally designated area, such as an AONB. I consider below whether the development would have an acceptable impact on the setting of the listed building, the setting of the crematorium, the character and appearance of the countryside and

on the undeveloped character of the important countryside gap. Subject to these matters, the proposed use of the site is in my opinion acceptable as a matter of principle.

Visual Amenity, Character and Appearance of the Countryside and Important Local Countryside Gap

8.03 The proposed development would be set back from Sheppey Way by approximately 30m and in line with the existing caravans and amenity block on the site. There is vegetation at a height of approximately 3.5m that runs along the boundary with Sheppey Way to the northwest of the existing caravans, and proposed caravans' location. This provides a certain amount of screening for the application site and, it is noted that the current caravans on site are fairly well screened, albeit that views into the site are still available at the access point and at various points along Sheppey Way. In my opinion, even with additional screening, the proposed development would be comparatively prominent and whilst I recognise that gypsy/traveller caravans are not uncommon in the countryside, development on the scale proposed would in my view appear obtrusive in an area characterised by sporadic development. Whilst the siting of the proposed caravans and utility blocks towards the centre of the site help to reduce this impact, it would nonetheless remain markedly at odds with the surrounding area, such that, in my view, due to the scale of development proposed, harm to the character and appearance of the countryside would occur.

8.04 In allowing the appeal for development of the site with two caravans, the Inspector gave thorough consideration to the impact of that (comparatively minor) development on the character and appearance of the countryside and on the important local countryside gap. Paragraphs 14-17 of the appeal decision (attached as Appendix A) to this report set out the detailed reasoning of the Inspector. In particular, he states the following:

Para 14 – *“...the gap between Bobbing and Iwade is narrow and...the pockets of urban and suburban development embedded within it make it especially fragile.”*

Para 15 – *“...I consider it important that, given its significance as maintaining open land in the Iwade-Bobbing Gap, the appeal site maintains its attractive rural appearance... I am firmly of the opinion that this can be best achieved by ensuring that the greater part of the land is kept open and maintained in a positive countryside use.”*

Para 17 – *“Provision of the amenity block, laying out of hardstanding and siting two caravans would take up no more than 10% of the whole appeal site. The remainder would be left as wholly appropriate grazing land in the countryside.....Overall, I conclude on this point that the presence of a static and touring caravan on this land, to supervise the keeping of this particular group of horses in the countryside and providing mobile residential accommodation for the purposes of horse trading, is the best method of keeping a valuable tract of open countryside in the narrow gap between the settlements of Bobbing and Iwade in good economic order and enhancing its appearance.”*

8.05 Indeed, the Inspector made the planning permission granted personal to the applicants, on the strength of the equestrian intentions of the applicant relating to the paddock area, part of which forms the site for the development now proposed.

- 8.06 In my opinion, the use now proposed would amount to a substantial development which would result in encroachment or piecemeal erosion of land and its rural open and undeveloped character, contrary to Policy E7 of the Swale Borough Local Plan 2008.
- 8.07 The existing caravans and utility building are partially visible from Quinton Road, to the southwest. However, this is at a distance of approximately 180m which significantly limits the presence of these structures within the landscape. Nonetheless, the presence of an additional 12 caravans, together with utility blocks, would give the impression of the consolidation of development within the important local countryside gap, and whilst from this distance there arguably would not be significant harm to the character of the countryside, in my view, the undeveloped nature of the gap would be compromised.
- 8.08 Given the above, I am firmly of the view that the proposed development would harm the character and appearance of the countryside, and would harm the open and undeveloped nature of the important local countryside gap, contrary to Policies E1, E6, E7 and E19 of the Swale Borough Local Plan 2008.

Residential Amenity

- 8.09 The proposed development would be located a reasonable distance from adjacent dwellings such that harm to residential amenity is unlikely. Whilst there would be an inevitable increase in activity at the site, including vehicle movements to and from the site, I am not convinced that the impact of this would be so harmful as to amount to a reason for refusing planning permission. The access to the site is itself located some distance from Uppertoos, and is separated from it by landscaping and outbuildings. I do not envisage significant noise and disturbance arising in this regard.

Setting of Listed Building

- 8.10 'Uppertoos' is the adjacent grade II listed residential building immediately to the north-east of the site. The application site is divided from this building by the large agricultural barn to the east of the siting of the existing and proposed caravans, dense vegetation runs along the boundary between the two sites and a collection of outbuildings within the curtilage of 'Uppertoos'. The main listed building is also approximately 27m from the siting of the proposed caravans. The Planning Inspector in his report on the previously allowed planning application, considered the setting and the impact of the proposal upon the listed building. He found that the siting of the caravans on Edentop would have: *'no appreciable impact on the setting of the listed building and its special interest.'*
- 8.11 He considered the existing structures on the site of 'Uppertoos' and the brick-built detached garage building – being much closer to the application site than the listed building, and that the garage may be viewed from the application site. He noted that there is *'dense evergreen vegetation, most of it on the owners of 'Uppertoos' land, screens the main house and the principal element of the listing very effectively from the appeal site'*.
- 8.12 I am mindful though that the previous application, and the associated appeal, sought permission for two caravans only. Whilst the 6 additional static caravans, together with 6 touring caravan pitches, utility buildings and hardstanding proposed here would be located further from the curtilage of the listed building, it would clearly be larger in scale

than the approved development and the mitigating factors identified by the Inspector are in my view somewhat less effective.

- 8.13 As set out above, the landscape setting of the listed building is of significance because of the historic and functional relationship between the farmhouse and its farmland, and it is relatively well preserved. The development of a significant area of the adjacent agricultural land, with structures that, whilst one might expect to see in the countryside, would necessarily not be of traditional materials or vernacular design, would cause some harm to the setting of the listed building.
- 8.14 Recent case law reiterates that Local Planning Authorities have a statutory duty to have regard to the impact of development on designated heritage assets, and that this duty is to be given substantial weight in the decision making process. In this case, I have identified harm to the listed building which is, in my opinion, not capable of being adequately mitigated. The NPPF sets out that, in such circumstances, Local Planning Authorities should give consideration as to whether there are any public benefits which outweigh the harm caused. I consider this below, with regard to the provision of gypsy/traveller sites within the Borough. However – as set out above, I conclude that the proposed development would cause harm to the setting of the listed building, contrary to Policies E1, E14 and E19 of the Swale Borough Local Plan 2008.

Crematorium

- 8.15 A further issue raised by local representations received is the impact of the proposals upon the neighbouring crematorium, known as the Garden of England Crematorium.
- 8.16 The main issues raised relate to the visual and harmful impact of the proposals upon the crematorium. Letters received from local residents, the local MP and the Parish Council state, that the proposed development will conflict with the sensitive state of constituents when visiting for the funeral of loved ones, cause an increase in traffic and noise in the area, and, that the introduction of light goods vehicles on the application site are considered inappropriate adjacent to the crematorium.
- 8.17 The Inspector gave this matter careful consideration in determining the appeal, and states at paragraphs 18 & 19 that:

“The case made on behalf of the Garden of England Crematorium essentially relates to the harmful visual impact of the present unauthorised caravan/portaloos upon the countryside gap, and especially on the immediate surroundings of the crematorium. I agree that this contrasts adversely with the carefully designed layout of the crematorium, intended to sooth the worries of its visitors at stressful times. If that were the planning proposal before me then I would concur that, if this were to remain in its present form, the rural setting for the crematorium would have been impaired. However, that is not what is proposed.

The main impact of the appeal site upon the setting of the crematorium is the grass field set behind the hedgerow onto Sheppey Way, upon which horses normally graze in significant numbers. This in itself can be considered an attractive rural setting to the crematorium which a limited residential presence could well assist to maintain in good heart. I consider that if that residential use and its attendant operational development were properly screened by indigenous planting then a wholly rural setting to the crematorium, to the benefit of visitors, could be maintained and enhanced.”

- 8.18 It is clear from the above, that the Inspector gave some weight to the impact of development on the site on visitors to the crematorium, and that he again gave substantial weight to the use of the current application site (and the adjoining land) for the keeping of horses. The development now proposed would, as I have set out above, amount to prominent and visually harmful development. In my opinion, it would contrast markedly with the rural and peaceful surroundings of the crematorium and would cause some harm to the tranquil nature that visitors to that facility might reasonably expect. In my opinion, this is capable of amounting to a reason for refusal, being contrary to criterion 8 of Policy E1 (causing harm to a nearby sensitive use) – the proposal would amount to a jarring development, which would materially harm the setting of the crematorium.

Highway Safety and Convenience

- 8.19 The access, from Sheppey Way, into the application site was established several years ago with planning permission granted for it in 1982 (SW/82/0425). There is an existing entrance driveway at the north-eastern end of the site frontage and there are wide highway verges either side. It is noted that, the Local Planning Authority raised no objection to the use of this access when planning permission was granted on appeal for the existing gypsy caravan site.
- 8.20 I recognise that this proposal would give rise to an intensification of the use of the access. I am awaiting the comments of Kent Highway Services on the proposal and will update Members at the Meeting.

Supply of available gypsy/traveller sites

- 8.21 As set out above, the Council is unable to demonstrate a five year supply of available gypsy/traveller sites. I am mindful that a further 5 pitches would amount to a significant provision of gypsy/traveller sites, and would address a good proportion of the remaining need in the Borough up to 2031.
- 8.22 This is a significant material consideration which weighs in favour of the grant of planning permission, and Members must have regard to it.
- 8.23 However – this has to be weighed against the harm I have identified above. In my opinion, the proposal would harm the setting of the grade II listed building adjacent to the site, would harm the character and appearance of the countryside, the visual amenities of the area, would lead to the erosion and piecemeal development of the local important countryside gap, and would cause harm to the setting of the crematorium opposite the site. In granting personal planning permission for the two caravans allowed on appeal, the Inspector gave very substantial weight to the fact that the remainder of the wider site, including all of the current application site, would be retained in equestrian use, which he considered would protect the setting of the listed building, the setting of the crematorium, and the undeveloped and rural character of what he called a “flimsy” gap between Bobbing and Iwade.
- 8.24 I do not consider that the grant of a personal permission for two caravans (and associated development) weighs in favour of the large scale expansion of the site now proposed, and I do not consider that the provision of six additional gypsy/traveller pitches within the Borough is sufficient to outweigh the harm that I have identified.

8.25 The PPTS requires Local Planning Authorities to consider the grant of temporary planning permission for otherwise unacceptable sites, where a five year supply of sites cannot be identified, and where there remains unmet need for pitches. In this instance, I do not consider the grant of temporary permission to be appropriate. Such a decision might have been appropriate were a refusal of permission likely to result in families losing their homes and having to live by the roadside or in unauthorised developments elsewhere. However – this is a speculative application, and no details have been provided to demonstrate that the failure to provide these pitches would lead to immediate harm to the applicants or to any other parties in this respect. As such, I do not consider the grant of temporary permission to be appropriate here.

9.0 CONCLUSION

9.01 The proposed development would cause demonstrable planning harm as set out above. I have considered whether this harm would be outweighed by the provision of additional pitches within the Borough, in order to address the unmet need for gypsy/traveller accommodation and at a time where the Council is unable to demonstrate a five year supply of available pitches. I have concluded that it would not, and accordingly I recommend that planning permission is refused.

10.0 RECOMMENDATION – REFUSE for the following reasons:

1. The proposed development, by virtue of its scale, design and location would give rise to harm to the character and appearance of the countryside and the visual amenities of the area, and would amount to substantial development which would erode the openness and rural character of the important local countryside gap. The proposed development would therefore be contrary to Policies E1, E6, E7 and E19 of the Swale Borough Local Plan 2008.
2. The proposed development, by virtue of its scale, design and location would amount to development which would harm the setting of the adjacent crematorium, harmful to the amenities of visitors to this facility, and contrary to Policy E1 of the Swale Borough Local Plan 2008.
3. The proposed development, by virtue of its scale, design and location would harm the setting of the adjacent grade II listed building, contrary to Policies E1, E14 and E19 of the Swale Borough Local Plan 2008.

The Council's approach to this application:

In accordance with paragraphs 186 and 187 of the National Planning Policy Framework (NPPF), the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and proactive manner by:

Offering pre-application advice.

Where possible, suggesting solutions to secure a successful outcome. As appropriate, updating applicants/agents of any issues that may arise in the processing of their application.

In this instance:

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.

Case Officer: Artemis Christophi-Turner

APPENDIX A

by Ian Currie BA MPhil MRICS MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 1 February 2011

Appeal Ref: APP/V2255/A/10/2129278

Land adjacent to Upper Toes, otherwise known as Eden Top, Sheppey Way, Bobbing, Sittingbourne, Kent, ME9 8QP

- 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 Mr Robert Beck against the decision of Swale Borough Council.
- The application (Ref:- SW/09/0972), dated 12 October 2009, was refused by notice dated 8 March 2010.
- The development proposed is change of use of land to use as a residential caravan site for one gypsy family with two caravans (including one static caravan), erection of amenity block and laying of hardstanding.

Appeal Ref: APP/V2255/C/10/2129639

Land adjacent to Upper Toes, otherwise known as Eden Top, Sheppey Way, Bobbing, Sittingbourne, Kent, ME9 8QP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Robert Beck against an enforcement notice issued by Swale Borough Council.
- The Council's reference is ENF/10/018.
- The notice was issued on 5 May 2010.
- The breach of planning control as alleged in the notice is without planning permission, a mobile home has been located on the Land. Planning permission was refused by the Council for the use of the Land as a residential caravan site for one gypsy caravan with two caravans (including one static caravan), the erection of an amenity block and the laying of hardstanding on 8 March 2010. A copy of the refusal of planning permission was attached to the notice.
- The requirements of the notice are:-
 - (i) cease the use of the Land for the stationing of any mobile homes/caravans;
 - (ii) remove the caravan from the land.
- The period for compliance with the requirements is 3 calendar months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.

Decision on Section 78 Appeal Reference APP/V2255/A/10/2129278

1. I allow the appeal, and grant planning permission for change of use of land to use as a residential caravan site for one gypsy family with two caravans (including one static caravan), erection of amenity block and laying of hardstanding on land adjacent to Upper Toes, otherwise known as Eden Top, Sheppey Way, Bobbing, Sittingbourne, Kent, ME9 8QP, in accordance with the terms of the application, Ref:- SW/09/0972, dated 12 October 2009, and the drawings submitted therewith (OS Sitemap to a scale of 1:2,500, site layout

<http://www.planning-inspectorate.gov.uk>

APPENDIX A

Appeal Decisions APP/V2255/A/10/2129278, APP/V2255/C/10/2129639

plan to a scale of 1:500, and four drawings to a scale of 1:50 showing plans and elevations of a proposed amenity block), subject to the following conditions:-

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The site shall not be occupied by any persons other than gypsies and travellers as defined in paragraph 15 of ODPM Circular 01/2006.
- 3) The occupation of the site hereby permitted shall be carried on only by Mr Robert Beck and his resident dependants.
- 4) When the land ceases to be occupied by Mr Robert Beck and his resident dependants, the use hereby permitted shall cease and all caravans, structures, materials and equipment brought on to the land in connection with the use, including the amenity block hereby approved, shall be removed. Within six months of that time, the land shall be restored in accordance with a scheme previously submitted to and approved in writing by the local planning authority.
- 5) No more than two caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, (of which no more than one shall be a static caravan or mobile home) shall be stationed on the site at any time.
- 6) Any caravans positioned on the site shall be capable of being lawfully moved on the public highway without division into separate parts.
- 7) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site other than one horse box with a gross laden weight not exceeding 7.5 tonnes. All parking of vehicles, commercial or otherwise, shall take place on the proposed gravel hardstanding shown on the 1:500 site layout plan, unless otherwise agreed in writing with the local planning authority.
- 8) No commercial activities shall take place on the land, including the storage of materials, other than the keeping of horses.
- 9) The erection of the amenity block hereby approved shall not take place until samples of the materials, to be used in the construction of the external surfaces of the building, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 10) No development shall take place until there has been submitted to, and approved in writing by, the local planning authority, a scheme of landscaping, including in particular a substantial shelter belt of indigenous trees and shrubs to the north-west and south west of the caravans, amenity block and hardstanding, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development.
- 11) All planting, seeding or turfing, comprised in the approved details of landscaping, shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants, which, within a period of 5 years from the completion of the development, die, are removed, or become seriously damaged or diseased, shall be

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replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.

- 12) 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 with, the local planning authority.
- 13) No development shall take place until full details of surface water drainage have been submitted to and approved in writing by the local planning authority. The approved details shall show, amongst other things, that any surface water draining to a watercourse shall be attenuated for the 1:100 year return storm. The approved details shall be implemented in full prior to the occupation of the site.

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- 2. I dismiss the appeal and uphold the enforcement notice. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matters

- 3. My visit to the appeal site and its surroundings was carried out as an integral part of the hearing proceedings, with discussion proceeding on the site and adjoining land as well as at the hearing venue.
- 4. The section 174 appeal is said to have been made under ground (a) and that there is a deemed application for planning permission, following the submission of a fee for the planning application that is the subject of the section 78 appeal. However, it is apparent from the first sentence of the allegation in the enforcement notice ["a mobile home has been located on the Land"] that this bears little relationship to planning application SW/09/0972 ["use as a residential caravan site for one gypsy family with two caravans (including one static caravan), erection of amenity block and laying of hardstanding"]. Accordingly, the enforcement notice appeal will be treated as if it has been made on ground (g) only.

The Section 78 Appeal – Main Issues:

- 5. There is a specific policy in the Swale Borough Local Plan, adopted in February 2008, (Policy H4) for the provision of accommodation for gypsies and travelling showpersons. This policy says that the Borough Council will only grant planning permission for the use of land for the stationing of homes for persons who can clearly demonstrate that they are gypsies or travelling showpersons with a genuine connection with the locality of the proposed site, subject to various criteria. However, the reasons given for refusal by the local planning authority make no reference to this policy.
- 6. Instead, the two reasons for refusal refer back to a previous decision of the Council to refuse planning permission for permanent residential development and the inconsistency with this decision of granting planning permission for a site for travellers in the countryside, contrary to general policies on development criteria (E1) and design quality (E19) as well as a more specific Policy on the separation of settlements by means of strategic and local countryside gaps (E7). This is despite the concession, in the second reason for

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refusal, that there is an unmet need for the provision of gypsy traveller sites within the Borough.

7. As a consequence, I consider that the first main issue in the section 78 appeal is whether the proposed gypsy caravan site would constitute an unacceptable and alien form of development in a strategic/local countryside gap. The second main issue, following on from the representations on behalf of The Garden of England Crematorium, supported in the letter dated 24 June 2010 from Mr Gordon Henderson, the MP for Sittingbourne and Sheppey, is the visual impact of the proposed traveller site on those premises. The third main issue, raised principally by the owners of 'Upper Toes', is whether the proposed caravan site preserves or enhances the setting of that listed building.

The Section 78 Appeal – Reasons

Site and Surroundings

8. Sheppey Way was the original A249 main road linking the Isle of Sheppey to the mainland by means of a lifting bridge over the Swale. It now serves as the principal route between the settlement of Bobbing to the west and the rather larger village of Iwade to the east, both lying a short distance to the west of the much larger town of Sittingbourne.
9. The appeal site is on the south side of Sheppey Way, rather closer to Bobbing than Iwade. Most of it is laid out to grass and, although there were no animals present at the time of my inspection, the bulk of the land is clearly used for equestrian purposes. A substantial corrugated iron barn, predating its purchase by the appellants, has been divided into areas put to a number of horse-related activities. One part is subdivided into four stables/loose boxes, another is used for storage of hay, while a third area provides shelter for horse-drawn vehicles, two of them restored wooden carts of some age. It is adjoined in the open by a longstanding manège. It is also adjacent to the touring caravan and freestanding portable toilet, which are the subject of the enforcement notice appeal. Access to this part of the site is by means of a long drive running alongside the hedge separating the appeal site from the listed building, 'Upper Toes', to the east. There is a reasonably consistent hedge, incorporating some attractive mature trees, along most of the Sheppey Way frontage to the site.
10. Opposite is The Garden of Kent Crematorium, low buildings set in attractive grounds behind high entrance gates and front boundary walls. There is further sporadic housing development to its west. Because of its past history as a major road, there are significant pockets of development fronting Sheppey Way between Bobbing and Iwade, including pairs of semi-detached houses dating from the inter-war period, a substantial factory/warehouse and scrapyards/car breaking premises. The current A249 is a dual carriageway running in a cutting a short distance to the south. At the time of my visit to the site in mid-winter, the appeal site could be readily seen from a bridge carrying a minor road over this cutting through a row of bare trees.

Impact on countryside in general which lies in Strategic Gap

11. As mentioned at paragraph 6 above, three policies from the adopted Local Plan were cited in the two reasons for refusal. Policy E1 is a set of general development criteria requiring proposals to accord with the plan's policies and proposals and other planning guidance and generally to maintain high standards and protect amenity. Policy E19 seeks to achieve high quality design

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by, amongst other things, providing development that is appropriate to its context and ensuring the long-term maintenance of buildings, spaces and features. It seems to me that it is the third policy, Policy E7, "The Separation of Settlements", that is the most appropriate policy to relate to this case from the application of the criteria set out in Policy E1. Moreover, it is the best amplification available of the need to assess context and maintain spaces and features as required by Policy E19. Therefore, it is set out in full below.

12. It says:- *"In order to retain the individual character and setting of settlements, the following countryside gaps are defined on the Proposals Map:-*
- (i) *that part of the Strategic Gap between Maidstone and the Medway Towns falling in Swale;*
 - (ii) *that part of the Strategic Gap between the urban areas of the Medway Towns and Sittingbourne north of the M2 falling in Swale; and*
 - (iii) *the important local countryside gaps.*
- Within these gaps the Borough Council will not grant planning permission for development, including changes of land use, which would either:-*
- (a) *result in the merging of settlements; or*
 - (b) *result in encroachment or piecemeal erosion of land or its rural open and undeveloped character; or*
 - (c) *prejudice the Council's strategy for the redevelopment of urban sites."*

13. The appeal site does not lie within the Strategic Gap between Maidstone and the Medway Towns, but it does fall squarely within the equivalent gap between the Medway Towns and Sittingbourne. It is also within one of the important local countryside gaps identified on the Local Plan Proposals Map, that separating Sittingbourne from the villages to its west and separating the settlements of Bobbing and Iwade from each other. I heard no evidence from the Council that this development could be said to prejudice the Council's strategy for the redevelopment of urban sites. Therefore, the question remains:- Would this particular proposed gypsy caravan site harm the effectiveness of the strategic gap between the Medway Towns and Sittingbourne and the countryside gap between Iwade and Bobbing to the west of Sittingbourne by giving rise to the merging of settlements and/or the piecemeal erosion of rural open and undeveloped land contrary to adopted Local Plan Policy E7?

14. It is difficult to make a case that the wide strategic gap between Sittingbourne and the Medway Towns would be greatly affected by this small-scale development. However, the gap between Bobbing and Iwade is narrow and, as paragraph 10 above indicates, the pockets of urban and suburban development embedded within it make it especially fragile. Taking that into account, what is firstly abundantly clear to me is that the previous decision to refuse permanent residential development, giving rise to piecemeal erosion of rural undeveloped land, upon which the Council places so much reliance for refusing this proposal for a gypsy caravan site, was the correct one. It would have extended a small parcel of residential development further west into one of the few remaining significant tracts of unspoiled open countryside between Iwade and Bobbing. However, it does not automatically follow that a site for a traveller family is equally unacceptable, if it can be demonstrated that this particular form of development can assist in maintaining rural openness on a sensitive site.

15. The permanent built form of proposed development in this proposal is intended to a modest amenity block, shown on the submitted drawings to be some 7.5m

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surroundings of the crematorium. I agree that this contrasts adversely with the carefully designed layout of the crematorium, intended to sooth the worries of its visitors at stressful times. If that were the planning proposal before me then I would concur that, if this were to remain in its present form, the rural setting for the crematorium would have been impaired. However, that is not what is proposed.

- 19. The main impact of the appeal site upon the setting of the crematorium is the grass field set behind the hedgerow onto Sheppey Way, upon which horses normally graze in significant numbers. This in itself can be considered an attractive rural setting to the crematorium which a limited residential presence could well assist to maintain in good heart. I consider that if that residential use and its attendant operational development were properly screened by indigenous planting then a wholly rural setting to the crematorium, to the benefit of its visitors, could be maintained and enhanced.

Impact on Listed Building

- 20. In determining this appeal, I have borne in mind the duty imposed by section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA). This requires me to have special regard to the desirability of preserving the listed building, 'Upper Toes', or its setting, or any features of special architectural or historic interest it possesses.
- 21. 'Upper Toes' is designated as a Grade II Listed House. Its timber frame is said by English Heritage to date from the sixteenth century and it was clad in red brick and tile hung at first floor level in the eighteenth century and provided with a plain tile roof.
- 22. This main house is set well to the east of the boundary with the appeal site. There are semi-derelict wooden barn-type structures west of the main house and forward of it and a recently-built brick garage with a hipped tiled roof, designed to blend in with the materials employed in the main house, is sited behind the timber structures. Both of these are much closer to the appeal site and the garage can be seen from it. I appreciate that the restoration of the listed building has been a labour of love by its owners. However, dense evergreen vegetation, most of it on the owners of 'Upper Toes' land, screens the main house and the principal element of the listing very effectively from the appeal site. On that basis, I am forced to the conclusion that the proposals, the subject of this appeal, have no appreciable impact on the setting of the listed building and its special interest. Accordingly, the section 78 appeal succeeds on this point, after taking my special duties imposed by section 66 of the LBCA into account.

Conditions

- 23. The conditions attached to the planning permission to be granted are largely based on those proposed in the report on this matter to Swale's Planning Committee of 4 March 2010. The first condition, requiring development to be commenced within three years, is standard to most permissions. Conditions 2, 5 and 6, concerning the status of the appellant as a gypsy, and restricting the numbers and status of caravans/mobile homes, to two, essentially conditions 5 and 6 of the committee report, recognise gypsy status and provide protection to the countryside. My personal conditions, 3 and 4, go further, indicating that a permanent approval to Mr Beck arises from his strong economic links to horses and that this particular need for a residential presence in the countryside is an overriding reason for granting permission to him. If the

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leaves the site, all of the approved development, including the hardstanding and amenity block, should go too.

24. Conditions restricting commercial use and size of vehicles, 7 and 8, further stress the importance of equestrianism, allowing for the keeping of horses but also permitting the parking of a single 7.5 tonne motorised horse box, which is necessary for the appellant's business. This larger vehicle should be capable of being screened from the outside world by additional landscaping. Condition 7 also requires all parking to be confined to the hardstanding area, in line with condition 9 of the committee report. Condition 9 of this decision requires approval of the materials of the amenity building, which are not shown on the submitted building. Conditions 12 and 13 of this decision, on lighting and surface water drainage, are the same as 9 and 10 of the report and are imposed for the same reasons, to minimise the potential for light pollution in the countryside and to counteract the possibility of flooding. At my decision conditions 11 and 12, I have used the landscaping conditions of former Circular 1/85 because of their flexibility and simplicity, but I have emphasised the need for screening of the new development in the countryside gap by indigenous species around the periphery of the developed area of the site.

Other matters

25. Various other matters were adduced at the hearing as to why the appeal should be dismissed. The fact that the planning application was rejected by a wide majority of the members of the Committee, despite officers' recommendation for approval, was said to be a particularly important consideration, bearing in mind the impending introduction of the Localism Bill to Parliament. The announcement of the Secretary of State that Regional Spatial Strategies were no longer to be considered part of the development plan, the description by the Secretary of State that ODPM Circular 01/2006 was 'flawed' and would be replaced, and loss of residential property values were also considered important matters to take into account. However, the presence or absence of Regional Spatial Strategy for the South East policies, at the time that the decision was made, played no part in my reasoning overall in a situation where there was a current policy (H4) on gypsy site provision in the adopted Local Plan. Moreover, in connection with the reasons given for refusal, especially the site's location in countryside/strategic gaps identified in the adopted Local Plan, it needs to be stressed that the appellant's strong connections to rural activities was a key issue in determining the outcome of this appeal in his favour, despite powerful opposition to the development, both in the locality, including from Bobbing Parish Council, and among members of the Borough Council.

The Appeal against the Enforcement Notice on Ground (g)

26. It is uncertain whether the touring caravan and associated 'portaloo' currently placed on the land have ever been collectively occupied residentially. The appellant contended at the hearing that they have. Local residents asserted that the touring caravan had never been occupied as living accommodation by the appellant. What was not at issue was that, at the time of the hearing, the touring caravan was not occupied for residential purposes. As success on the section 78 appeal does not, on this occasion, grant planning permission for the development that is the subject of the section 174 appeal, and no appeal has been lodged on ground (f), the requirements of the enforcement notice, there seems to me no good reason why the existing touring caravan cannot be

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removed within three months of the date that this notice takes effect as nobody is currently living there. Accordingly, the appeal on ground (g) fails.

Conclusions

27. For the reasons given above, I conclude that the section 78 appeal should succeed and planning permission will be granted subject to conditions. To a large extent, following on from this the enforcement notice appeal does not fall to be considered, but it is dismissed overall for the reasons set out in the preceding paragraph.

Ian Currie

Inspector

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