

PLANNING COMMITTEE – 10 MARCH 2016

DEFERRED ITEM

Report of the Head of Planning

DEFERRED ITEMS

Reports shown in previous Minutes as being deferred from that Meeting

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| DEF ITEM I REFERENCE NO - 15/503580/FULL | | | |
| APPLICATION PROPOSAL | | | |
| Stationing of one residential caravan, as amended by revised site location plan received 11 June 2015, and by details contained in revised Noise Impact Assessment by Acoustics Plus ref: 103005.ad.Issue 2 dated 18 November 2015 including revised site layout drawing PBA2 REV.A). | | | |
| ADDRESS Land North Of Homestall Road Doddington Kent ME9 0LB | | | |
| RECOMMENDATION – Refusal - SUBJECT TO: Expiry of public consultation period (closing date 15 March 2016) | | | |
| WARD Teynham & Lynsted | PARISH/TOWN COUNCIL Norton And Buckland | APPLICANT Mr Patrick Nolan AGENT Philip Brown Associates | |
| DECISION DUE DATE 18/12/15 | PUBLICITY EXPIRY DATE 15/03/15 | | |
| RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites): | | | |
| App No | Proposal | Decision | Date |
| NK/9/69/99/9795 | Stationing of caravan | Approved by KCC on a personal basis until 31/8/1969 | 29/9/1968 |
| NK/9/68/99A/9795 | Renewal of temporary permission for one further year | Refused on rural policy grounds | 28/1/1970 |
| Enforcement Notice served 3/4/1970 | Stationing of residential caravan | Appeal allowed on technical grounds | 10/11/1970 |
| NK/9/69/99B/9795 | Renewal of permission | Granted for three years | 8/5/1972 |
| SW/75/388 | Renewal of permission | Granted on personal basis for three years | 20/6/1975 |
| SW/78/415 | Renewal of permission | Granted on personal basis for three years | 31/5/1978 |
| SW/81/623 | Renewal of permission | Granted on personal basis for three years | 11/6/1981 |
| SW/84/605 | Renewal of permission | Granted on personal basis for three years | 30/8/1984 |

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|------------|-----------------------|------------------------------------|-----------|
| SW/87/1677 | Renewal of permission | Granted on lifetime personal basis | 10/2/1988 |
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1.0 DESCRIPTION OF SITE

- 1.01 This application relates to a small triangular site measuring 0.15ha alongside the southern boundary of the M2 motorway between Sittingbourne and Faversham. The site thus lies just within the Kent Downs Area of Outstanding Natural Beauty but well away from any local services or amenities.
- 1.02 The longest, northern, boundary of the site is with the M2 (approximately 100m) with other boundaries to deciduous woodland, one area of which includes a large highway drainage pond. Access to the site is via a narrow but well constructed short spur road off Homestall Road, at the point where the road itself has been re-built to pass under the motorway, and where it is unusually wide.
- 1.03 The site was comprehensively cleared of all above ground structures, vegetation or signs of previous occupation by the current applicant in late 2014, and some hardcore was laid over part of the site. This laying of hardcore triggered the service of a Temporary Stop Notice in October 2014 since when no further work has taken place. The site now appears as a largely flat, barren, empty piece of land with only a variety of drain covers, cesspit holes and a water tap visible. The site is thus unoccupied and the application is not retrospective.
- 1.04 The site lies at a level below that of the motorway at a point where the motorway is climbing steeply westwards out of the Newnham Valley. However, the site is not prominent from the motorway and can only be seen when travelling westwards as a fleeting glance due to intervening vegetation. Due to the woodland on other sides, the site is not prominent from Homestall Road either, although the spur road provides a clue to the fact that access is provided to some unseen premises.
- 1.05 The remnants of occupation still visible on site stem from its peculiar planning history which is itemised above. Essentially this relates to occupation of the site by a man who appears to have lived generally in caravans, was described in 1970 as somewhat nomadic, and who had been employed by the Forestry Commission, then by the District Council as a refuse collector until 1967, and then by the County Council in a highway related capacity. He also dealt in scrap metal in a small way. It also appears that the man had previously been involved in the construction of the motorway and, in or around 1962, he stationed a caravan on this left over patch of land during motorway construction. He managed to acquire the land from the Ministry of Transport in 1969.
- 1.06 When occupation of the site came to light, the County Council granted temporary personal planning permission in 1968 for stationing of a caravan on the site to allow time for the occupant to find another site. This permission included a planning condition specifically requiring the use to cease and the site to be cleared by 31 August 1969. When the site was not cleared, the County Council took enforcement action in 1970. An appeal was lodged and the Inspector recommended that, however well screened the site was “the stationing of a residential caravan on the appeal site comparatively isolated from existing development and from health and other necessary services is undesirable”. The Minister of Housing and Local Government determining the appeal considered evidence on how long the caravan had been stationed there and concluded that, having stationing the caravan on the site in 1962 the site has already acquired existing use rights, and that planning permission was

not in fact required by virtue of immunity from enforcement action. However, because at that time a site licence required a grant of planning permission, the 1968 planning application had been necessary. He ruled that although KCC had been entitled to impose planning conditions, it had been wrong for KCC to impose a condition requiring the existing immune use to cease in 1969, as that took away existing use rights; and that that planning permission had been invalid.

- 1.07 Notwithstanding acceptance of the Inspector's conclusions on planning merits, a new temporary planning permission was granted by the Minister in 1970, running until 30 April 1971. According to the above arguments, the temporary permission did not then require cessation of the use, it merely authorised it for a temporary period sufficient to allow a site licence to be granted
- 1.08 Following this decision, and in explicit recognition of the existing use rights of the land and of the occupant's personal circumstances, a series of subsequent decisions by the former District Council, and then by this Council, allowed that individual to continue to stay on the site in recognition of his personal circumstances. Importantly, these permissions did not require cessation of the use at the end of the periods involved. By 1988, the site had become known locally as the site where the hermit lived, as the occupant was very quiet and solitary after the death of his wife, and few knew that the site was occupied. In 1988 the Council finally granted a lifetime personal permission on compassionate grounds, but with a condition requiring the site to be cleared and the use to cease when the original occupant no longer lived there. A full review of the site history for this application now suggests that this restriction appears to have been an error, but one that has never so far been challenged.
- 1.09 The site was at that time partly wooded and occupied by the occupant's caravan and a series of small shed type buildings that he had erected over time. The individual concerned eventually left the site, I understand initially to be cared for in a nursing home, before dying a few years ago. The current site owners and applicant are not related to the original occupant but the site is now owned by the applicant's grandmother, and after a false start the correct application papers have now been served on her by the applicant.
- 1.11 Members will recall that this application was extensively debated at the meetings on 5 November 2015 and 14 January 2016. After a long debate at the 5 November meeting involving votes both to approve and to refuse the application, both of which were lost, the Committee resolved:

"That application 15/503580/FULL be deferred to allow officers to liaise with the applicants about the suitability of the proposed bunding and acoustic fencing and on whether the number of caravans proposed could be lowered. "

- 1.12 After that meeting, I discussed Members' concerns with the applicant and sought further information regarding the proposal. The application was formally amended to just one caravan, and more details of the specification for acoustic fencing to address noise from the M2 motorway were submitted. Local Parish Councils and residents were notified of the changes to the application. It was on this amended basis that the application was re-presented for Members' consideration in January this year.
- 1.13 By the January meeting the application description read as;

"Stationing of one residential caravan, as amended by revised site location plan received 11 June 2015, and by details contained in revised Noise Impact Assessment

by Acoustics Plus ref: 103005.ad.Issue 2 dated 18 November 2015 including revised site layout drawing PBA2 REV.A)."

- 1.14 At that January meeting my recommendation was informed by further information about the history of the site, including that from the previous owner, and from Council Tax and aerial photograph records. My recommendation was that planning permission should be granted based on my view that the established use of the site had not been abandoned. I recommended that Members noted that this recommendation was based on the continuation of the established use of the site, without reference to supporting evidence of the applicant's personal circumstances or gypsy status. However, I made it clear that these factors could still be important in the situation where a refusal of planning permission was being contemplated. Accordingly, whilst I saw no need to dwell on those matters in recommending approval of the application for reasons relating to the established use of the site. I said that if Members were of a mind to refuse planning permission based on those factors it will still be necessary to consider whether the applicant has gypsy status or other personal circumstances, and to what degree these might override other material considerations sufficient to indicate that a permanent or temporary planning permission should be granted. I said that it would also be necessary to consider whether the grant planning permission without the proposed acoustic fence.
- 1.15 Accordingly, in the event that Members did not accept my then recommendation, I recommended that the application be deferred to enable me to report the application back to Members for a decision to be made in the light of these other issues. Members voted not to accept the recommendation to approve the application, and consideration of the application was deferred so that gypsy status and personal considerations could be considered. I then sought further information for the agent so that the Council had a full picture of the issues involved when determining the application. This information is reported below.

2.0 PROPOSAL

- 2.01 This application has been amended or added to since its submission as follows.
- Firstly, the correct ownership certificate has been served on the applicant's grandmother
 - Secondly, it has been confirmed that neither the applicant nor his grandmother own the small piece of woodland adjacent to the site, as originally shown edged blue on the site location plan. A new site location plan has been submitted
 - Thirdly, the proposal to erect a permanent amenity building measuring 7m x 5m built of brick, tile and uPVC windows has been deleted from the application
 - Fourthly, a Noise Impact Assessment report has been submitted (and amended)
 - Fifthly, a quotation for noise reduction fencing has been submitted
 - Sixthly, details of the applicant's and his grandmother's personal and health circumstances have been submitted.
 - The application has been amended to propose just one caravan, and the erection of a 4m high acoustic fence alongside the motorway.
 - Further details of the applicant's gypsy status and personal circumstances have also since been received
- 2.02 The application as initially submitted is supported by a number of documents from which I draw the following information;

- No alteration to access are proposed
- Drainage will be provided by an on-site treatment plant
- Parking for 2 cars and one light goods vehicle will be provided
- New planting is envisaged
- There remains a need for 35 gypsy or traveller pitches in Swale
- The site would not individually or cumulatively be of a scale out of keeping with Painters Forstal
- No business use is proposed
- The site is not at risk from flooding
- Whilst the site is within the AONB it is of a small scale and set against the motorway which itself is not sympathetic to the AONB
- The site has been used as a caravan site for many years, and occupied until at least 2007
- The site would be occupied by the applicant, his wife and infant son, and by his grandmother
- The proposed site occupants currently have no lawful site to stay on, but have received numerous notices requiring them to move on. Two example notices have been provided to me
- The applicant works by building, landscaping and by distributing leaflets door to door and moves from one place to another.
- The applicant and his wife have never had a settled base. They now have a one year old child who has missed some inoculations due to moving around, and is unable to register with a GP
- The applicant's grandmother has significant health issues and was recently in hospital. She depends on the applicant and is in need of a settled base where she can have access to appropriate healthcare and facilities for bathing and washing clothes. Living on the roadside is compounding her health problems

2.03 New material in support of this application was contained in an updated Noise Impact Assessment report which includes the revised site layout drawing. From this report I draw the following key points;

- Only one caravan (mobile home) is now proposed, rather than three caravans as previously proposed
- The site will be levelled to approximately 2.5m below the level of the motorway and a 4m high acoustic fence installed
- It is NOT now proposed that the site will be lowered and the fence erected upon an earth bund
- The acoustic fencing will only be on the motorway side of the site and will return into the site at either end to form noise "wings" to prevent a line of sight to traffic on the motorway
- Planting will be carried out around the site boundaries and beyond the fence's "wings"
- The fabric of the caravan to be installed should be capable of noise reduction of 35dB (according to the relevant British Standard for Park Homes) but suitably insulated glazing/ventilators will also be required to ensure that this level of noise reduction is achieved
- The caravan likely to meet these noise reduction levels will be an attractive mobile home style caravan with a pitched roof, a high standard of appearance and sufficient insulation to be suitable for all year round occupation.

- Such caravans are commonly known as chalets or park homes but they are caravans (or mobile homes) in planning law terms i.e. they are transported in not more than two halves and meet the dimensions of the caravan regulations
- 2.04 In its current form the application proposes the stationing of one caravan on this remote rural site beside the M2. This caravan would be specified as insulated against external noise. The application also proposes hardsurfacing of the site, the erection of a 4m high acoustic fence, and landscape planting around the site boundaries.
- 2.05 The latest information about the gypsy status and personal circumstances of the applicant and his family is;
- The applicant's grandmother is dependent upon him and his wife for help and support
 - The applicant and his wife have a son who is 18 months old
 - The appellant's grandmother is over 70 years of age and has numerous medical issues dating back to 2002, is not able to eat properly, and was recently in hospital
 - The applicant and his wife, and his grandmother, are Irish Travellers by descent
 - They have travelled all their lives and do not intend to give up their travelling lifestyle. However, they wish to have as settled base to return to with adequate facilities and access to health care
 - The applicant makes his living from gardening work and has to move from area to area to find work, normally in Kent, around Faversham, Canterbury and Maidstone
 - The applicant and his dependants currently live in two caravans stationed in a lay-by near to Faversham but they move every few days, from one roadside location to another; Previously they lived in Tesco's car park and on an industrial estate
 - They cannot register with a GP without a settled site
 - They survive by having a generator for electricity and by collecting water from the nearest garage
- 2.06 The public consultation on the latest gypsy status information extends until 15 March and any decision on the application should await the expiry of this period.

3.0 PLANNING CONSTRAINTS

Area of Outstanding Natural Beauty KENT DOWNS

Area of Outstanding Natural Beauty Maidstone AONB directive

MOD Thurnham MOD Safeguarding Directive Thurnham

MOD Thurnham MOD Safeguarding Directive Thurnham

Thurnham Exclusion Zone Thurnham, Kent

Thurnham Exclusion Zone Thurnham, Kent

Thurnham Wind Station Thurnham WIND SAFEGUARDING

4.0 POLICY AND OTHER CONSIDERATIONS

National Planning Policy Framework (NPPF) and Planning Policy for Traveller Sites (PPTS) (Re-issued)

4.01 The national policy position comprises the National Planning Policy Framework (NPPF) and Planning Policy for Traveller Sites (PPTS). Both documents were released in 2012 but the PPTS was re-issued in August 2015 with amendments. Together they provide national guidance for Local Planning Authorities on plan making and determining planning applications for Gypsy and Traveller sites. A presumption in favour of sustainable development runs throughout both documents and this presumption is an important part of both the plan-making process and in determining planning applications. In addition there is a requirement in both documents that makes clear that Councils should set pitch targets which address the likely need for pitches over the plan period and maintain a rolling five year supply of sites which are in suitable locations and available immediately.

4.02 Whilst regard has been paid to all of the guidance as set out within the NPPF, consider that the following extracts from paragraph 7 are particularly pertinent:

“There are three dimensions to sustainable development: economic, social and environmental. These dimensions give rise to the need for the planning system to perform a number of roles:

- an economic role – contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation; and by identifying and coordinating development requirements, including the provision of infrastructure;
- a social role – supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community’s needs and support its health, social and cultural well-being; and
- an environmental role – contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy.”

4.03 In relation to rural housing the NPPF (at paragraph 55) states;

- To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. For example, where there are groups of smaller settlements, development in one village may support services in a village nearby. Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as:
 - the essential need for a rural worker to live permanently at or near their place of work in the countryside; or
 - where such development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets; or
 - where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting; or
 - the exceptional quality or innovative nature of the design of the dwelling. Such a design should:

- be truly outstanding or innovative, helping to raise standards of design more generally in rural areas;
- reflect the highest standards in architecture;
- significantly enhance its immediate setting; and
- be sensitive to the defining characteristics of the local area.

4.04 In relation to conserving and enhancing the natural environment the NPPF, at paragraph 109, states;

The planning system should contribute to and enhance the natural and local environment by:

- protecting and enhancing valued landscapes, geological conservation interests and soils;
- recognising the wider benefits of ecosystem services;
- minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the Government's commitment to halt the overall decline in biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;
- preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water or noise pollution or land instability; and
- remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.

4.05 The NPPF prioritises the safeguarding of AONBs at paragraph 115.

Planning Policy for Traveller Sites (PPTS)

4.06 The PPTS was originally published in March 2012 but it was re-issued in August 2015 with minor changes. Whilst regard has been paid to all of the guidance as set out within the PPTS, its main aims now are:

“The Government’s overarching aim is to ensure fair and equal treatment for travellers, in a way that facilitates the traditional and nomadic way of life of travellers while respecting the interests of the settled community.” (para 3 PPTS)

To help achieve this, Government’s aims in respect of traveller sites are:

- a. that local planning authorities should make their own assessment of need for the purposes of planning*
- b. to ensure that local planning authorities, working collaboratively, develop fair and effective strategies to meet need through the identification of land for sites*
- c. to encourage local planning authorities to plan for sites over a reasonable timescale*
- d. that plan-making and decision-taking should protect Green Belt from inappropriate development*
- e. to promote more private traveller site provision while recognising that there will always be those travellers who cannot provide their own sites*
- f. that plan-making and decision-taking should aim to reduce the number of unauthorised developments and encampments and make enforcement more effective*
- g. for local planning authorities to ensure that their Local Plan includes fair, realistic and inclusive policies*

- h. to increase the number of traveller sites in appropriate locations with planning permission, to address under provision and maintain an appropriate level of supply*
- i. to reduce tensions between settled and traveller communities in plan-making and planning decisions*
- j. to enable provision of suitable accommodation from which travellers can access education, health, welfare and employment infrastructure*
- k. for local planning authorities to have due regard to the protection of local amenity and local environment.” (para 4 PPTS)*

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

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

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

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

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

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

“Applications should be assessed and determined in accordance with the presumption in favour of sustainable development and the application of specific policies in the National Planning Policy Framework and this planning policy for traveller sites.” (para 23 PPTS)

“Local planning authorities should consider the following issues amongst other relevant matters when considering planning applications for traveller sites:

- a) the existing level of local provision and need for sites*
- b) the availability (or lack) of alternative accommodation for the applicants*
- c) other personal circumstances of the applicant*
- d) that the locally specific criteria used to guide the allocation of sites in plans or which form the policy where there is no identified need for pitches/plots should be used to assess applications that may come forward on unallocated sites*

e) *that they should determine applications for sites from any travellers and not just those with local connections*

“However, as paragraph 16 [relating to Green Belts] makes clear, subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances.” (para 24 PPTS). Members might like to note that the mini paragraph above was added in the 2015 re-issue of PPTS

“Local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. Local planning authorities should ensure that sites in rural areas respect the scale of, and do not dominate the nearest settled community, and avoid placing an undue pressure on the local infrastructure.” (para 25 PPTS). Members might like to note that the word “very” was added to this paragraph in the 2015 re-issue of PPTS.

“If a local planning authority cannot demonstrate an up-to-date 5year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary permission. The exception to this is where the proposal is on land designated as Green Belt; sites protected under the Birds and Habitats Directives and / or sites designated as Sites of Special Scientific Interest; Local Green Space, an Area of Outstanding Natural Beauty, or within a National Park (or the Broads).” (para 27 PPTS). Members might like to note that the last sentence above was added to this paragraph in the 2015 re-issue of PPTS.

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

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

The implications for this change in definition has clouded the issue with regard to defining need. At this stage, given that the application relates to a single pitch, it is advised that the Council should consider the application in the context of the existing GTAA as set out below.

- 4.10 The Council has responded positively and quickly to the changes in the national policy position in respect of Gypsy and Traveller accommodation. The Local Development Framework Panel quickly supported the commissioning of a new Gypsy and Traveller Accommodation Assessment (GTAA), which was completed in June 2013 and identified a need for 82 pitches to be provided during the plan period (adjusted down from 85 pitches in reflection of those sites granted permanent permission whilst the document was under preparation). This need figure is incorporated within the draft Bearing Fruits Swale Borough Local Plan: Part 1 alongside a policy introducing provision for pitches on certain major development sites. An additional net 47 permanent pitches (some with personal use conditions) have also been approved up to March 2015, reducing the outstanding need to 35 pitches over the Plan period. A further number of pitches enjoy temporary permissions.

- 4.11 Shortly after publication of the GTAA in 2013 the Council began work on Part 2 of the Swale Borough Local Plan which will deal with site allocations for Gypsy and Traveller pitch provision only. This process began with a call for sites between September and December 2013, and the publication of an issues and options paper which was subject to public consultation (this finished on 25th April 2014).

Saved Policies of Swale Borough Local Plan 2008

- 4.12 Policy E1 (General Development Control Criteria) 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.
- 4.13 This site lies in an isolated position within the countryside where policy E6 (The Countryside) 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.
- 4.14 Within Areas of Outstanding Natural Beauty policy E9 (Protecting the Quality and Character of the Borough's Landscape) gives priority to the long term protection and enhancement of the quality of the landscape, whilst having regard to the economic and social well being of their communities. Policy E9 seeks to protect the quality, character and amenity value of the wider landscape of the Borough. Within the countryside it expects development to be informed by local landscape character and quality, consider guidelines in the Council's landscape character and assessment, safeguard distinctive landscape elements, remove detracting features and minimise adverse impacts on landscape character. Protection of AONBs is a high priority in the NPPF and they are now afforded recognition in the PPTS, see below.
- 4.15 Policy E19 (Achieving High Quality Design and Distinctiveness) requires development proposals to be well designed.
- 4.16 Policy RC7 (Rural Lanes) seeks to protect the physical features and character of rural lanes, of which Homestall Road is one.
- 4.17 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.”

4.18 This policy was criticised by the Local Plan Inspector who saw it, as a criteria based rather than site allocations policy, as inconsistent with the then Circular 01/2006 - which itself has since been superseded by PPTS and its emphasis of a five year supply of sites - and the policy can only be of limited significance to this application.

Swale Landscape Character and Biodiversity Appraisal SPD 2011

4.19 This site is within the Doddington and Newnham Dry Valleys landscape character areas as defined in the March 2011 Swale Landscape Character and Biodiversity Appraisal, areas which are seen as of high and moderate sensitivity respectively and in good condition.

Bearing Fruits 2031: 2014 Publication version of the Swale Borough Local Plan: Part 1

- 4.20 The Council's Publication version of the draft Local Plan, entitled *Bearing Fruits 2031*, was published in December 2014 and is shortly due for examination.
- 4.21 Policy CP 3 of the draft Local Plan aims to provide pitches for gypsies and travellers as part of new residential developments. Policy DM10 sets out criteria for assessing windfall gypsy site applications

Site Assessment

- 4.22 The Council's February 2014 Gypsy and Traveller Site Allocations: Issues and Options consultations document recommends a new methodology for how to assess site suitability for determining whether or not to allocate a site. Although this was primarily intended to rank potential site allocations, it was agreed by Members of the LDF Panel in June 2014 to be used as a material consideration in planning applications. Even though this is normally done in relation to the potential suitability of a fresh site I have considered this in formulating this recommendation to be sure that the recommendation is up-to-date. This assessment is a Red/Amber/Green staged approach to site suitability, with any site scoring Red in any stage not being progressed to the next stage.
- 4.23 The assessment starts with Stage 1: Availability. The site owner is in occupation of the site. Here the site scores green. This means that the site should proceed to Stage 2.
- 4.24 Stage 2: Suitability/Constraints. The site is not in a flood risk zone (assessment green); it is in an AONB but is very well concealed, hard by the M2 embankment and landscaping is possible (amber); it has very limited landscape impact (amber); it has no unacceptable impact on biodiversity (green); no dominating effect on settlements (green); no adverse impacts on heritage/archaeology (green); is not known to be contaminated (green); will not be subject to unacceptable noise or disturbance if

properly planned (amber); has adequate access (green); but is remote and not within walking distance to any significant facilities (red). The red score means that the site should not proceed to Stage 3 and will not be a candidate site for a future allocations policy. It is not a site considered to be suitable for allocation as a permanent site. I have attached the site assessment scoring sheet as an appendix to this item.

- 4.25 The proposed timetable for Part 2 of the new Local Plan included production and consultation upon a preferred options document in Summer 2014 (now completed). The adoption of Part 2 of the Local Plan is currently dependent upon the successful adoption of Part 1 of the Local Plan. Should the Local Plan Inspector find problems with Part 1 of the Local Plan, Officers are likely to suggest that all pitch provision matters be deferred to Part 2 to enable Part 2 of the Local Plan to progress independently of Part 1.

Five year supply position

- 4.26 The PPTS has since 2012 introduced a need for Council's to maintain a rolling five year supply of sites which are in suitable locations and available immediately. This is a relatively new requirement for Council's and the Council could only start attempting to meet this requirement following the commissioning and publication of the GTAA which provided the need figure and a base date. As such, the Council put measures into place to deal with the PPTS requirements very quickly, but have only recently started down the route of trying to maintain a rolling five year supply.
- 4.27 The GTAA sets out a target of 85 pitches to be provided by the year 2031, with a suggested provision of 35 pitches in the first five years (to 2018). Three pitches were approved during the course of the GTAA's production so the final target was in fact 82 pitches. Since the publication of the GTAA and up to the end of March 2015 a total of 47 permanent pitches were approved in Swale almost exclusively without an appeal, of which 33 pitches had been implemented. Evidence presented to the recent Local Plan examination shows that at the end of March 2015 the need for pitches identified from the GTAA thus stood at 82 pitches minus the 33 permanent pitches approved and implemented, including the personal permissions granted in the interim. This reduced the need to 49 pitches which, at an annualised rate of 4.6 pitches per year (23 pitches over five years) indicated that the Council has already provided a surplus of supply of 0.8 pitches over the full five year requirement. This is calculated by taking the two year annualised requirement of 9.2 pitches from the completions so far to show a current surplus of 23.8 implemented pitches over the two year requirement and already a surplus of 0.8 approved permanent pitches over the five year need after just two years. In addition to this there are a further 13 approved but unimplemented permanent pitches as at the end of March 2015, an overall surplus of 14 pitches. These mostly comprise extensions to, or more intensive use of, existing sites and are awaiting occupation. Since then six more wholly new permanent sites have been approved including two fresh pitches on a large mixed use development site at Faversham. This is a very considerable achievement and indicates the Council's positive attitude to such development in the right location.

The latest position of site provision

- 4.28 Evidence to the recent Local Plan examination was that the Council has re-interrogated the GTAA data to determine the appropriate level of pitch provision based on the new 2015 PPTS revised definition of gypsies and travellers. The data reveals that for all but unauthorised sites some two-thirds of households surveyed for the GTAA either never travel or travel not more than once a year. Overall, only 31% of respondents travel a few times a year, and 55% never travel, meaning that in Swale

the gypsy and traveller population is quite settled, slightly more so than elsewhere in the country. Many current site occupants no longer meet the new PPTS definition of having a nomadic habit of life

- 4.28 Accordingly, the need for pitches in Swale has been re-evaluated, resulting in a reduced estimate of pitch need of 61 pitches over the Plan period to 2031. Of these over 51 have already been granted permanent planning permission meaning that the outstanding need is less than 10 pitches to 2031. The Council considers that on the basis of past trends this need could easily be met from windfall proposals.
- 4.30 As a result of this analysis, the Council is suggesting through main modifications to its draft Local Plan that the future need be based on a figure of 61 pitches, leaving a need per year of less than one pitch and, that no formal pitch allocations will be needed. Policy DM10 would be revised to deal with these windfall applications and policy CP3 would be removed from the Plan. Accordingly, a Part 2 Local Plan would not be required. We await the Local Plan Inspector's endorsement of its approach.
- 4.31 However, irrespective of the question of the five year supply, the question of whether any approved and unoccupied sites are available to individual appellants is also normally taken in to account by Inspectors. Here, the evidence suggest that they may consider that sites approved as expansions of existing site are not readily available to appellants facing loss of their existing temporary site. This appears to confirm their decisions where the question of availability of alternative sites is crucial to their decision.
- 4.32 To conclude on this subject, it seems that there is no reason to see approved but unimplemented pitches as other than as part of a five year supply. Nor should potential ethnic grouping issues rule them out of consideration where this applies. However, there appears to be a question in Inspector's minds regarding whether such sites should be afforded full weight in relation to the prospects of them being suitable for a particular appellant, and whether they will wish to, or be able to, occupy such a site for reasons of ethnicity, or availability for other than families of the current site owners.
- 4.33 The revised PPTS (2015) has resulted in considerable uncertainty as it changes the planning definition of a traveller and gypsy, and therefore what number of required pitches need to be identified. The Council has addressed this by re-interrogating the GTAA data and presenting a number of options for the way forward to the Inspector at the recent Bearing Fruits Local Plan Examination. At the time of writing the Inspector has yet to confirm which option is appropriate and in the mean time it is considered appropriate to continue to consider applications in the context of the GTAA as originally drafted.
- 4.30 At a more local level the Council is a contributor to the Kent Downs AONB management unit which has recently published its second revision to the Kent Downs AONB Management Plan (2014 – 2019). This included policies SD1, SD2, SD3, SD8 and LLC1 of the Plan, which refer to the need to conserve and enhance the natural beauty of the AONB being the prime purpose of the designation, with new development respecting the area's character, quality and distinctiveness, with development that runs counter to the primary purpose of the AONB, or its distinctive landform, special characteristics or qualities being opposed.
- 4.31 The other significant issue here is the suitability of the site in terms of noise impact. The NPPG gives the following advice;
- When is noise relevant to planning?*
- Noise needs to be considered when new developments may create additional noise and when new developments would be sensitive to the prevailing acoustic*

environment. When preparing local or neighbourhood plans, or taking decisions about new development, there may also be opportunities to consider improvements to the acoustic environment.

How to determine the noise impact?

Local planning authorities' plan-making and decision taking should take account of the acoustic environment and in doing so consider:

- whether or not a significant adverse effect is occurring or likely to occur;*
- whether or not an adverse effect is occurring or likely to occur; and*
- whether or not a good standard of amenity can be achieved.*

In line with the Explanatory Note of the Noise Policy Statement for England, this would include identifying whether the overall effect of the noise exposure (including the impact during the construction phase wherever applicable) is, or would be, above or below the significant observed adverse effect level and the lowest observed adverse effect level for the given situation. As noise is a complex technical issue, it may be appropriate to seek experienced specialist assistance when applying this policy.

Observed Effect Levels

- Significant observed adverse effect level: This is the level of noise exposure above which significant adverse effects on health and quality of life occur.*
- Lowest observed adverse effect level: this is the level of noise exposure above which adverse effects on health and quality of life can be detected.*
- No observed effect level: this is the level of noise exposure below which no effect at all on health or quality of life can be detected.*

How to recognise when noise could be a concern?

- At the lowest extreme, when noise is not noticeable, there is by definition no effect. As the noise exposure increases, it will cross the no observed effect level as it becomes noticeable. However, the noise has no adverse effect so long as the exposure is such that it does not cause any change in behaviour or attitude. The noise can slightly affect the acoustic character of an area but not to the extent there is a perceived change in quality of life. If the noise exposure is at this level no specific measures are required to manage the acoustic environment.*
- As the exposure increases further, it crosses the lowest observed adverse effect level boundary above which the noise starts to cause small changes in behaviour and attitude, for example, having to turn up the volume on the television or needing to speak more loudly to be heard. The noise therefore starts to have an adverse effect and consideration needs to be given to mitigating and minimising those effects (taking account of the economic and social benefits being derived from the activity causing the noise).*
- Increasing noise exposure will at some point cause the significant observed adverse effect level boundary to be crossed. Above this level the noise causes a material change in behaviour such as keeping windows closed for most of the time or avoiding certain activities during periods when the noise is present. If the exposure is above this level the planning process should be used to avoid this effect occurring, by use of appropriate mitigation such as by altering the design and layout. Such*

decisions must be made taking account of the economic and social benefit of the activity causing the noise, but it is undesirable for such exposure to be caused.

- *At the highest extreme, noise exposure would cause extensive and sustained changes in behaviour without an ability to mitigate the effect of noise. The impacts on health and quality of life are such that regardless of the benefits of the activity causing the noise, this situation should be prevented from occurring.*
- *This table summarises the noise exposure hierarchy, based on the likely average response.*

| <i>Perception</i> | <i>Examples of Outcomes</i> | <i>Increasing Effect Level</i> | <i>Action</i> |
|-------------------------------------|---|--|---|
| <i>Not noticeable</i> | <i>No Effect</i> | <i>No Observed Effect</i> | <i>No specific measures required</i> |
| <i>Noticeable and not intrusive</i> | <i>Noise can be heard, but does not cause any change in behaviour or attitude. Can slightly affect the acoustic character of the area but not such that there is a perceived change in the quality of life.</i> | <i>No Observed Adverse Effect</i> | <i>No specific measures required</i> |
| | | <i>Lowest Observed Adverse Effect Level</i> | |
| <i>Noticeable and intrusive</i> | <i>Noise can be heard and causes small changes in behaviour and/or attitude, e.g. turning up volume of television; speaking more loudly; where there is no alternative ventilation, having to close windows for some of the time because of the noise. Potential for some reported sleep disturbance. Affects the acoustic character of the area such that there is a perceived change in the quality of life.</i> | <i>Observed Adverse Effect</i> | <i>Mitigate and reduce to a minimum</i> |
| | | <i>Significant Observed Adverse Effect Level</i> | |
| <i>Noticeable and disruptive</i> | <i>The noise causes a material change in behaviour and/or attitude, e.g. avoiding certain activities during periods of intrusion; where there is no alternative ventilation, having to keep windows closed most of the time because of the noise. Potential for sleep disturbance resulting in difficulty in getting to sleep, premature awakening and difficulty in getting back to sleep. Quality of life diminished due to change in acoustic character of the area.</i> | <i>Significant Observed Adverse Effect</i> | <i>Avoid</i> |

| | | | |
|---------------------------------------|--|---|-----------------------|
| <p>Noticeable and very disruptive</p> | <p><i>Extensive and regular changes in behaviour and/or an inability to mitigate effect of noise leading to psychological stress or physiological effects, e.g. regular sleep deprivation/awakening; loss of appetite, significant, medically definable harm, e.g. auditory and non-auditory</i></p> | <p><i>Unacceptable Adverse Effect</i></p> | <p><i>Prevent</i></p> |
|---------------------------------------|--|---|-----------------------|

How can the adverse effects of noise be mitigated?

This will depend on the type of development being considered and the character of the proposed location. In general, for noise making developments, there are four broad types of mitigation:

- *engineering: reducing the noise generated at source and/or containing the noise generated;*
- *layout: where possible, optimising the distance between the source and noise-sensitive receptors and/or incorporating good design to minimise noise transmission through the use of screening by natural or purpose built barriers, or other buildings;*
- *using planning conditions/obligations to restrict activities allowed on the site at certain times and/or specifying permissible noise levels differentiating as appropriate between different times of day, such as evenings and late at night, and;*
- *mitigating the impact on areas likely to be affected by noise including through noise insulation when the impact is on a building.*

For noise sensitive developments mitigation measures can include avoiding noisy locations; designing the development to reduce the impact of noise from the local environment; including noise barriers; and, optimising the sound insulation provided by the building envelope. Care should be taken when considering mitigation to ensure the envisaged measures do not make for an unsatisfactory development (see the guidance on design for more information).

Are there further considerations relating to mitigating the impact of noise on residential developments?

Yes – the noise impact may be partially off-set if the residents of those dwellings have access to:

- *a relatively quiet facade (containing windows to habitable rooms) as part of their dwelling, and/or;*
- *a relatively quiet external amenity space for their sole use, (e.g. a garden or balcony). Although the existence of a garden or balcony is generally desirable, the intended benefits will be reduced with increasing noise exposure and could be such that significant adverse effects occur, and/or;*
- *a relatively quiet, protected, nearby external amenity space for sole use by a limited group of residents as part of the amenity of their dwellings, and/or;*
- *a relatively quiet, protected, external publically accessible amenity space (e.g. a public park or a local green space designated because of its tranquillity) that is nearby (e.g. within a 5 minutes walking distance).*

5.0 LOCAL REPRESENTATIONS

5.01 Swale Footpaths Group notes that there is no footpath issue but that the site is close to the M2 and ask if the site is suitable for occupation.

5.02 I have received several local representations, seven from individual addresses plus a set of five similar representations sent in together all with the same format. These make the following summarised points;

- The site lies in the Kent Downs AONB which the Council has a duty to protect; caravans do not protect this nature
- The site is high on the side of the valley, and whilst currently screened, the woods are deciduous and the woodland may be subject to coppicing
- The Council has refused permission for stables nearby due to adverse impact on the AONB – this will have more impact
- The applicants have shown complete disregard for the AONB by clearing the site with bulldozers
- Trees have been illegally cleared and badgers may have been disturbed
- The site is not in a sustainable location with no nearby amenities, schools or public transport, and close to other sites that have been found to be unsuitably located
- No proper access, the junction is unsafe
- Would affect views from the footpath
- The site is alongside the M2 and extremely noisy, with a risk of air pollution
- With only a low fence in place, children could get onto the motorway and possibly cause a fatal accident
- Would put other land at risk from urbanisation
- Nearby houses are historic and listed
- No site notice was displayed for the required period (NOTE: A site notice was in fact displayed for the required period close to the site)
- The application is contrary to Government guidance
- The site is not agricultural land, but a woodland with nature conservation significance
- We do not want to have more bad behaviour

5.03 On receipt of the amended Noise Impact Assessment I re-notified local Parish Councils (Norton and Newnham) and local residents about the amendments to the application. I received the following further representations;

- Three jointly sent comments from a number of local residents suggesting that;
 - The water tap on the site is not connected to the mains
 - Foul drainage proposals are unclear
 - The submitted application form, application description, Design and Access Statement, and drawings are ambiguous or inadequate and should be revised
 - That the site is separated from the highway by a 1m wide margin
 - That cross-sectional drawings should be provided
 - The Kent Downs AONB Management Unit should be consulted
 - Parking on site should be the subject of a fresh planning application
 - Documents relating to other matters should be shown on this application file

Members received a lengthy statement covering these points shortly before the previous meeting.

- One letter querying what the reduction in the number of caravans from three to one means for the determination of the application

- A letter arguing that the proposal will be harmful to the AONB and contrary to planning policies, and arguing that the development is not justified and should not be approved. The letter also suggests that the long term use of the site has been abandoned with the caravan removed from the site many years ago
- Two letters suggesting that the writer would have expected to be consulted on the application.
- One letter suggesting that no-one has lived on the site for many years, that there has been a recent increase in permanent and non-permanent homes in this area, including a very recent unauthorised caravan encampment nearby

5.04 Local re-consultations on the appellant's most recent gypsy status and personal data, allied to anonymous local action to raise awareness of this and other applications for private gypsy sites close to this site, have resulted in a number of further representations from a wide area. These representations (twenty one in number) relate mainly to issues already reported above with emphasis on the impact of the development on the AONB. They also include comments relating to no functional need to live on the site having been demonstrated, confusion over what is being proposed, concern over water and sewerage provision, recent fly-tipping close to the site, effect on the conservation area at Newnham, precedent for others nearby sites to be approved. One writer objects to the proposed acoustic fence as being completely out of keeping with the locality.

5.05 As the publicity period regarding new gypsy status information extends until 15 March I will update members at the meeting and seeking authority for issuing the decision notice once the publicity period has expired.

6.0 CONSULTATIONS

6.01 Newnham Parish Council opposes the application on grounds similar to those raised in local representations above. They add that the site fails the current site assessment test; that there is no vehicular access to the site; that there are no 2m fences or sewage treatment on the site; and that the site does not meet policy criteria for such a site.

6.02 Norton Parish Council did not initially comment on the application. However, very shortly before the January meeting they held a meeting (on 6 January) and have written expressing serious reservations about the application in relation to the proposed 4m high acoustic fence which they consider intrusive, and with concern about how any further development of the site could or would be monitored.

6.03 Kent Highway Services do not comment on the application

6.04 The Environmental Health Manager originally requested a noise report and has considered the applicant's Noise Impact Assessment report. He notes that noise levels across the site exceed recommended levels so that mitigation is required. He notes the recommendations of the report for acoustic fencing and extra sound insulation and accepts that these measures could be effective if carried out as suggested. His one concern is whether the mitigation measures will be effective if the caravans are not permanently sited.

7.0 BACKGROUND PAPERS AND PLANS

7.01 Papers for application 15/503580/FULL and other applications mentioned above.

8.0 APPRAISAL

- 8.01 This application has brought to light the very peculiar planning status of this land. It was established in 1970 that the land had an existing right for stationing of a caravan. Planning permission was not needed other than as a vehicle for obtaining a necessary site licence. This situation seems to have then persisted right up until the latest planning permission granted in 1988. That personal permission has now run its course and new owners seek a new permission.
- 8.02 Without doubt it would be highly unusual to grant planning permission for this use at this rural location in the current policy context and I would not normally expect to recommend so. However, I had made it clear to Members that a benefit of granting planning permission is the ability of the Council to regulate the use of the site in the public interest, including a condition to require acoustic screening and to require adequate drainage and landscaping arrangements, as well as limiting the number of caravans on the site.
- 8.03 Members did not accept that recommendation, and the clear implication is that the Council will instead determine this application purely in relation to policies that apply to the site at this time. As such, my starting point for consideration of this application is the provisions of the saved policies of the Swale Borough Local Plan 2008 and the Council's published site assessment criteria for gypsy and traveller sites. Policies E6, E9 and RC7 seek to resist development in the countryside and to protect valued landscapes and rural lanes. There is no doubt that the site is not generally suitable for residential development or use as a caravan site as it is located in open countryside, well outside any defined settlement designated as suitable for residential development, and that saved policy E6 seeks to protect the wider countryside from development except in specific exceptional circumstances. It follows that the granting of planning permission for the proposal would seriously undermine the effectiveness of local rural settlement policy and thus have adverse implications for the character of the countryside, unless they satisfy at least one of the exceptions that justify a departure from the development plan.
- 8.04 Homestall Road is classified as a rural lane but given the way in which this site is set back away from the lane with intervening trees, its prominence in relation to users of the road is limited, and the site is really only noticeable if one is looking for it. Despite the aims of the policy being clear, I do not consider that the proposal to use this site for one caravan would so significantly harm its character that a refusal of planning permission on grounds of being contrary to saved policy RC7 is sustainable. Nor do I consider that the 4m tall acoustic fence will, in reality, be particularly prominent in views from the road.
- 8.05 The weight to be given to AONB landscape protection remains a strong national policy. Were this site to have a significant landscape impact that would be a clear reason for refusal of planning permission as supported by saved policy E9. However, for the reasons set out above, the site is not particularly prominent, being set down below motorway level and screened by a copse of trees in separate ownership. The site could be further landscaped but this would not reduce its impact significantly, unless it were to be hidden completely.
- 8.06 That is the normal background to a decision here, but on the basis of the applicant's evidence it is clear to me that he and his dependents do have gypsy status, and therefore that this application carries with it the need to consider other advice relating to policy for gypsy and traveller sites. The Council's own 2008 policy H4 seeks to

- exclude sites that are not well related to services and amenities, or are designated for landscape value, both of which apply here. However, that policy is of little weight having been left in the Local Plan almost by default, and when Circular 1/2006 was to be preferred. That Circular has now been superseded by PPTS (it too having since been revised) and it is this that will be the principal policy that should be looked to, along with the wider NPPF and the Council's own published site assessment criteria.
- 8.07 The NPPF seeks to protect Areas of Outstanding Natural Beauty and PPTS states that sites in open countryside away from settlements should be very* strictly controlled (* very was introduced into this sentence in August 2015). In my view this policy has three purposes which are to minimise visual harm to the countryside, ensure sites are not isolated from the settled community and, to ensure sites are sustainably located.
- 8.08 The idea that conserving the landscape and natural beauty of the AONB by introducing incompatible development and then attempting to screen it is the wrong approach. Furthermore, this approach is directly contrary to PPTS guidance which seeks greater openness and can only serve to raise the sense of social exclusion of the site occupants; hiding them away from the world. It is also true that in this case the PPTS demand for greater openness is in direct conflict with preserving the natural beauty of the AONB. However, in this case the site is not especially prominent in the landscape and further landscaping may not be critical to its impact.
- 8.09 The proposed acoustic fence has drawn sharp criticism. I have already said that I do not consider it unacceptably prominent on this site. However, without it, the noise climate on the site would arguably be unacceptable for long term habitation. As such, I do not consider that refusal on grounds of intrusion of the fence is the right reaction to this proposal, but the need for the fence adds weight to the impact of the site on the AONB, which overall I suggest is limited rather than severe.
- 8.10 Overall, I do not believe that the landscape impact of this site, with or without the acoustic fence, is overriding or that further landscaping is the solution to any objection on landscape grounds. I do not believe that this aspect of the site is sufficient, on its own, to warrant a refusal of planning permission, but in such a location where development is restricted to protect the natural beauty of the area at a national level, I can accept that any harm however small can be seen as a contributory factor to a refusal of planning permission.
- 8.11 Notwithstanding this matter, the site seems to me to be poorly located both for integration with any local community, or for a sustainable form of development. There are few facilities close to the site and any access to amenities will involve the use of private transport. Saved policy SH1 of the Local Plan identifies a settlement hierarchy for the Borough where various levels of development might be appropriate. This isolated location is not one where there is ready access to amenities. It thus fails to meet the second stage of the Council's published site assessment criteria.
- 8.12 In this regard the nature of the site is far more remotely located than one at Spade Lane close to the Medway conurbation that was subject of an appeal decision regarding a proposed gypsy or traveller site in October 2014. In that case (APP/V/2255/C/14/2220447) the Inspector considered whether the use of that site close to a major population centre with a wide range of facilities as a gypsy or traveller site constituted sustainable development. He noted that locational sustainability depends on a range of factors which are neither constant nor easy to measure with confidence. Nevertheless, he concluded that the site was "in a location where the overwhelming majority of journeys to shops, to school, to the doctor or to most other facilities and services would be undertaken by car." He added that "The distances

involved, the absence of any public transport in easy reach, the character of the lanes along which people would travel, and the unattractiveness at night, in winter or in bad weather of any short cuts provided by local PROWs, would obviate journeys on foot other than for the fittest and/or most enthusiastic of walkers. His conclusion was that the sustainability benefits of the proposed development were minimal and more than outweighed by significant and demonstrable disadvantages. I consider that similar conclusion apply with even greater force here where the site is far further from amenities and where the roads and lanes in question are also without footpaths or street lighting.

- 8.13 If further evidence were needed, there have been three recent appeal decisions relating to private gypsy and traveller sites in Elverland Lane close to the current application site in 2007, 2011 and 2012. In the 2007 appeal decision as the site then known as Tootsie Farm the Inspector commented that;

“I am also not convinced that this is a particularly sustainable location for a Gypsy site. I appreciate that Billy seems to have coped with school in Faversham on his bike and proposes to use bike and train to go to college in Canterbury. While it meets the current needs of the family it is in a relatively remote and sparsely populated location some distance from services which in the main are to be found in Faversham. However, I do not consider it so unsuitable a location as to rule it out were that the only area of concern.”

Nevertheless in January 2012 (pre PPTS), a different Inspector commenting on the same site said that;

*“As to **sustainability** the evidence strongly suggests that there are more sustainable locations for G&T development than the appeal site, which in effect adds to the scatter of residential development in the open countryside. There is no reason to doubt that the eventual allocation of sites to meet G&T pitch needs, whether within the Borough or within this area of Kent as part of a joint effort by a group of local authorities complying with their duty to cooperate, will be in more sustainable locations and circumstances than the appeal site. This has considerable weight as an objection to the grant of a permanent permission for the appeal use. On the other hand, until adequate pitch provision is made elsewhere account should be taken of the advantages of providing, even on a temporary basis, for those who lack alternative accommodation and would therefore otherwise be moving between potentially more unsatisfactory temporary locations. This point is referred to in paragraph 64 of ODPM Circular 1/2006, and in this case I consider it to balance harm to sustainability objectives in the short term.”*

Finally, at Horseshoe Farm, Elverland Lane (opposite Tootsie Farm) an Inspector in May 2012 (post original PPTS) stated that;

“19. Paragraph 11 of the PPTS requires traveller sites to be sustainable economically, socially and environmentally. The appeal site is remote from all services and facilities and is not well located in relation to any settlement so as to foster social inclusion. It is isolated, in a sparsely populated area and there is environmental harm as identified above. Although there are two other gypsy sites nearby, they are not lawful.

20. A positive factor is that the Appellant has his horse keeping and breeding business based on the land on which he lives which reduces daily travel. There are also the recognised benefits arising from having a permanent base, such as being able to access health services more readily and reducing any need to move around on unauthorised sites. But those are benefits which arise in the provision of any

permanent site and do not outweigh the disbenefits arising from the isolated location in this case.”

- 8.14 On the basis of this consistent view from recent Planning Inspectors, and bearing in mind the results of the Council's own site assessment criteria (see above) I consider that this location is too remote from services and amenities to be acceptable as a permanent gypsy or traveller site. I suggest that the limited remaining need for sites can more properly be met in far more suitable locations. I consider that the proposal fails to meet the environmental role necessary to be considered sustainable development in terms of the NPPF definition.
- 8.15 The extent of need for gypsy sites locally and the 5 year site supply issue
- 8.16 The key issue in this respect is the Council's need to demonstrate a five year supply of available and appropriate sites sufficient to meet the need within the Borough. The PPTS sets out very clearly that Local Planning Authorities should have regard to, amongst other things, the existing level of local provision and need for sites, and the availability (or lack) of alternative accommodation for the applicant.
- 8.17 The current position with site supply is that the Council has commissioned a GTAA which now provides an up-to-date assessment of the need for pitches up until the year 2031. This has quantified local future need, but a very significant number of sites have since been approved. In fact over 5 years supply of sites have been approved within the first two years with more approved subsequently. The Council's supply of sites is now running above trend meaning that the release of sites such as this one is completely unnecessary. More significantly, the remaining need for sites is small, and subject to the Local Plan Inspector accepting the Council's re-assessment of site need on the light of the revised PPTS very small, such that the need to see this site developed is minimal.
- 8.18 The applicant's own circumstances
- 8.19 The applicant has a child, and an elderly relative in poor health, both of whom would benefit from a settled base. The health information submitted does not indicate any unusual or critical health issues with the child or the grandmother. The applicant has been asked to explain his personal need and he has done so. However, the information provided is not sufficient to show any particular reason to live on this isolated site. On the contrary, a more accessible site would no doubt benefit them in terms of access to health and other services.
- 8.20 The balance between the above issues
- 8.21 I have reviewed the application on its own merits I find that it is very remote with limited impact on the natural beauty of the Kent Downs AONB, and not a site where a permanent planning permission ought to be granted on the basis of current policies. Nor is the need for sites so overwhelming that such an unsuitable site should be approved. Finally I do not consider that the applicant's personal circumstances so significant to suggest that a personal planning permission should be granted.
- 8.22 Whether a temporary permission might be appropriate if a permanent permission is not.
- 8.23 Decisions to refuse planning permission need to reflect a proper assessment of planning policies and other material considerations, and for the Council to present sound, justifiable and defensible planning reasons for refusal related to the likely impact of the proposed development. The revised PPTS (2015) explicitly states that

“If a local planning authority cannot demonstrate an up-to-date 5year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary permission. The exception to this is where the proposal is on land designated as Green Belt; sites protected under the Birds and Habitats Directives and / or sites designated as Sites of Special Scientific Interest; Local Green Space, an Area of Outstanding Natural Beauty, or within a National Park (or the Broads).” (para 27 PPTS).

I note that the last sentence above was added to this paragraph in the 2015 re-issue of PPTS and represents an important shift in policy which is utterly relevant to the determination of this application. The situation when the application was submitted was that where there is a lack of site supply a temporary permission was a significant material consideration. This is not now the case for sites in certain designated areas including AONBs. Nor is there any lack of site supply here. Nevertheless, consideration can still be given to a temporary permission. In so doing one must look to see what benefit or reason it would have.

- 8.24 The revised PPTS now makes it very clear that personal circumstances are unlikely to clearly outweigh harm to the AONB sufficient to grant a temporary permission, even where the supply of sites is inadequate. The exception here is where the best interests of a child might indicate otherwise (see Article 3 of the United Nations Convention on the Rights of the Child (UNCRC)). It is quite clear that in taking a decision which affects children the decision maker should understand and take proper account of the best interests of the child involved. This issue also relates to Article 8 of the European Convention on Human Rights (Right to a Private and Family Life). I have made enquiries of the applicant and no special circumstances relating to his son have been revealed, either in medical or educational terms (although the son will not yet be in formal education). I appreciate that the child involved does not yet have a settled home. However, I do fear that by settling on this remote site adjacent to the motorway, on a temporary basis, that the best interests of the child will not be best served. Moreover, whilst the best interests of the child will always be a primary consideration, this does not mean that identifying their best interests will inevitably lead to a decision in conformity with those interests.
- 8.26 Even taking the best interests of the child here to have a settled base (as his parent's desire) I ask whether this can be outweighed by any combination of other factors, which individually do not outweigh that consideration. I find that the combination of significant factors including the impact of the development on policies to protect the countryside, limited harm to the AONB, and the remote location and lack of accessibility to vital social, health, and in time educational, facilities combined with the very poor noise environment on the site which can only be partly ameliorated by the proposed acoustic fence create powerful counter arguments for the need for a settled base to be met on this site. That is not to say that the need cannot or should not be met elsewhere in the Borough (or beyond) where these all factors might not be present.
- 8.27 A temporary planning permission is a useful device to allow a family time to relocate from an unacceptable site without resorting to roadside living, with the attendant health, welfare and educational challenges that brings. However, in this case the applicant is not occupying the application site and there is no question of upheaval from the site involved, which might otherwise add some weight to the question of a temporary permission.

- 8.27 The applicant's evidence of a need to live on the site for personal, health, or educational reasons is very limited. Having considered why a temporary permission might be appropriate I can find no reason to grant one, and I consider that a decision not to grant a temporary permission is proportionate to the interference with the applicant's human rights and the Council's need to consider the best interests of the child as a primary consideration. I have also had regard to the Inspector's comments in the Spade Lane appeal decision in relation to the granting of a temporary planning permission. He found that the granting of a temporary permission creates some expectation of future permanence, but he saw no realistic prospect of circumstances there changing in the near future. He noted that the site would still be in open countryside and with poor relationship to services. He also noted that harm is often greatest in early years when landscaping has not had time to establish, and that the appellant's position was not urgent. I consider that many of these factors apply to this case, reinforcing my conclusions above. I do not consider that a temporary planning permission should be granted.
- 8.28 Finally, whilst the final cost of the acoustic fence is not entirely clear, it is clear to me that the erection of a 4m tall acoustic fence would be an expensive operation. Were this to be necessary to support long term use of the site, it might be concluded that this would be reasonable. However, in order to allow only temporary use I consider that it would be excessive; but that without the fence the site would not be at all suitable even for temporary occupation. Thus adds to me conclusion that a temporary permission is not appropriate.

9.0 CONCLUSION

- 9.01 This site has a peculiar history including confirmation of established use for stationing a a caravan in 1970. It has since long been occupied as a caravan site under the benefit of personal planning permissions. No-one has lived on the site for some years and it has recently changed hands. I remain concerned that the history of the site may yet be found to be significant, but Members have rejected my recommendation to grant planning permission in order to be able to safeguard the future of the site and I am left with no alternative to considering the position with the exclusion of all references to the site's planning history.
- 9.02 On that basis, the determination of the application should be based on the provisions of the Development Plan and other considerations, and upon whether the proposal constitutes sustainable development. I have concluded that the site is remote from services and amenities, has limited harm to the AONB (partly arising through the need to include a tall acoustic fence to achieve acceptable noise levels on the site), and is not in a location where development should normally be permitted.
- 9.02 I have considered the applicant's gypsy status and the need for sites, but have concluded that site supply is well advanced and as the area is very poorly served by amenities, that limited harm to the AONB would result, and that the site does not score well enough in relation to the Council's gypsy and traveller site assessment criteria to be suitable for a permanent planning permission. I have also considered whether a personal or temporary planning permission would be appropriate and have concluded that it would not. I therefore conclude that the proposed development should not be granted planning permission.

10.0 RECOMMENDATION – REFUSE for the following reason.

REASON

Notwithstanding the Council's appreciation of the need for it to respond positively to the accommodation needs of gypsies and travellers, and the guidance in DCLG's Planning Policy for Traveller Sites (2015), the Council considers that this site is unacceptable as a gypsy or traveller site. The site is isolated in open countryside away from any social, health, educational or other amenities, and lies within the Kent Downs Area of Outstanding Natural Beauty and the siting of caravans and the associated hardsurfacing and acoustic fencing required to achieve adequate noise levels within the site will create an alien and intrusive appearance to the site which harms the character and appearance of the area. The proposal to use the site for the stationing of a caravan compromises the objectives of designation of the Area of Outstanding Natural Beauty which are the conservation and enhancement of the area's natural beauty, and is contrary to the advice in paragraph 12 of the NPPF, paragraphs 4, 23, 25 and 27 of the PPTS and to saved policies E1 and E9 of the Swale Borough Local Plan 2008. The Council has taken account of the position in terms of the supply of gypsy and traveller sites, the health issues of the applicant and his family, and considered whether a permanent or temporary planning permission should be granted. Despite appreciating the personal circumstances of the applicant's family, the Council does not consider that a permanent or temporary planning permission represents an acceptable balance between the need for gypsy and traveller sites in the Borough and the personal circumstances of the applicant's family, and the very substantial harm that occupation of the site causes to planning policy for the appropriate location of gypsy or traveller sites in terms of access to services and amenities, or on the character and appearance of the area. In taking account of all these factors the Council's considers that this proposal does not represent sustainable development, and that planning permission should be refused.

Council's approach to the 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.