



Appeal Decision

Hearing held on 5 January 2016

Site visit made on 5 January 2016

by **S J Papworth DipArch(Glos) RIBA**

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

Decision date: 10 February 2016

Appeal Ref: APP/V2255/W/15/3131746

The Old Bindery, Butcher's Field, Almshouse Road, Throwley Forstal, Kent ME13 0PJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Nelson Scamp against the decision of Swale Borough Council.
 - The application Ref 14/505965, dated 23 November 2014, was approved by notice dated 21 April 2015 and planning permission was granted subject to conditions.
 - The development permitted is the material change of use of land to a mixed use as a caravan site for the stationing of caravans used residentially, use for horse keeping and use of a building as stables, as originally approved by appeal decision (APP/V2255/C/11/2151258) dated 28 November 2011, without complying with conditions 1 (temporary permission), 2 (clearance of site) and 5 (site development scheme) of the appeal decision.
 - The conditions in dispute are as follows:-
 - Number 1); 'The use hereby permitted shall be carried out only by Mr Nelson Scamp and shall be for a limited period, being the period of 2 years from the date of this decision, or the period during which the premises are occupied by Mr Nelson Scamp, whichever is the shorter'.
Reason; 'In recognition of the personal circumstances of the applicant'
 - Number 2); 'When the land ceases to be occupied by Mr Nelson Scamp, or at the end of 2 years from the date of this decision, whichever shall occur first, the use hereby permitted shall cease and all caravans, structures, materials and equipment brought onto it in connection with the use shall be removed. At that time any laurel, photinia or eucalyptus or coniferous plants on the land shall also be removed.'
Reason; 'In the interests of the amenities of the area.'
 - Number 5); 'The use hereby permitted shall be carried out only in strict accordance with the scheme for internal layout of the site (the scheme) approved by the Council on 7 June 2013 under the requirements of condition 5 of appeal decision APP/V2255/C/11/2151258 dated 28 November 2011. The requirements of the scheme shall be adhered to in full including repositioning, or removal, of the mobile home currently stationed outside the area hatched black (the area known as the yard area) on the 1:1,000 scale A4 size plan labelled Plan 2 submitted with the application, and the removal of the foundations and filling in of the foundation holes of the mobile home to restore the land to its condition prior to the excavation of the foundations. No residential use of the land, no stationing of any caravan or mobile home, and no stationing, parking or storage of any vehicle, equipment or article or item related to the residential occupation of the site shall be carried on other than within the area hatched black (the yard area) on the 1:1,000 scale A4 size plan labelled Plan 2 submitted with the application.'
Reason; 'In the interests of the amenities of the area.'
-

Appeal Decision APP/V2255/W/15/3131746

Decision

1. I allow the appeal and vary the planning permission Ref:14/505965 for the material change of use of land to a mixed use as a caravan site for the stationing of caravans used residentially, use for horse keeping and use of a building as stables, as originally approved by appeal decision (APP/V2255/C/11/2151258) dated 28 November 2011 at The Old Bindery, Butcher's Field, Almshouse Road, Throwley Forstal, Kent ME13 0PJ, granted on 21 April 2015 by Swale Borough Council, by deleting conditions 1), 2) and 5) and substituting for them the following conditions, including restating the undisputed conditions:
 - 1) The use hereby permitted shall be carried out only by Mr Nelson Scamp and shall be for a limited period, being the period of 2 years from the date of this Appeal Decision, or the period during which the premises are occupied by Mr Nelson Scamp, whichever is the shorter.
 - 2) When the land ceases to be occupied by Mr Nelson Scamp, or at the end of 2 years from the date of this Appeal Decision, whichever shall occur first, the use hereby permitted shall cease and all caravans, structures, materials and equipment brought onto it in connection with the use shall be removed. At that time any laurel, photinia or eucalyptus or coniferous plants on the land shall also be removed.
 - 3) Other than the bow-topped, vardo caravan that was on the land on 30 November 2011, no more than 2 caravans as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, as amended, of which no more than one shall be a static caravan, shall be stationed on the site at any time.
 - 4) No commercial activities shall take place on the land, including the storage of vehicles, plant, products or waste. No vehicle over 3.5t shall be stationed, parked or stored on the land.

Main Issue

2. This is whether the conditions pass the tests in the National Planning Policy Framework, having regard to advice in the web-based Planning Practice Guidance, the planning history of the site, the character and appearance of the area, the supply of gypsy sites, and the personal circumstances of the appellant.

Reasons

Planning History and Preliminary Findings

3. In order to consider the conditions attached to the grant of temporary permission by the Council, it is necessary to consider the findings of previous Inspectors with regard to the use and development of this site, which clearly informed the Council's consideration of the situation when deciding to grant the permission that is now being appealed.
4. APP/V2255/C/09/2108942 and APP/V2255/A/09/2106094 24 February 2010 concerned an enforcement notice and a refusal of planning permission for the residential use of a caravan stationed on land, stationing of a touring caravan with associated hardstanding and landscaping. The Inspector referred to a mobile home positioned to the east of the workshop, which she found

Appeal Decision APP/V2255/W/15/3131746

acceptable as such, as it was clearly visible but the intrusion was muted by its location relative to the workshop, its colouring and its restricted size. She however found harm likely through permanent occupation and attendant domestic items that would become established. She acknowledged that if the appeal were dismissed the mobile home would be able to stay. The location of the site was described as remote from services. It was concluded that the harm was such that permission should not be granted for even a limited period, whilst allowing for personal circumstances and the lack of availability of sites, and that the site was not suitable as a gypsy caravan site. The appeal was dismissed.

5. *APP/V2255/C/11/2151258 28 November 2011* concerned an enforcement notice, and in respect of the deemed planning application the Inspector described the proposal as a material change of use of the land to a mixed use of land for use as a caravan sites for the stationing of caravans used residentially, use for horse keeping and the use of a building as stables. He found harm similar to that which the 2010 Inspector feared, through domestic items and ornamental planting in relation to a new, larger, mobile home. He considered a proposal for a revised site layout and concluded that un-met need, lack of alternatives, and the uncertainty of the Plan-making process at that time were sufficient to grant a three-year temporary and personal permission, having concluded previously that there was no justification for a permanent permission. Conditions were attached which included one similar to the disputed condition 1) of the present permission, a site restoration requirement similar to disputed condition 2) and a condition requiring a site layout to secure the movement of the mobile home into the yard, similar in its aims to the disputed condition 5).
6. *APP/V2255/A/12/2183060 4 April 2013* concerned an appeal against the Council's refusal to approve details submitted pursuant to the above condition 5). The main issue was whether the details submitted would protect the character and appearance of the Kent Downs Area of Outstanding Natural Beauty and the setting of the Throwley Forstal Conservation Area, considerations which had prompted the 2010 Inspector to dismiss the appeal and the 2011 Inspector to attach condition 5). This third Inspector concluded that the submitted details would not protect these designated areas as there would be on-going and unacceptable harm, but he did mention that it would be unreasonable to expect indigenous planting at the boundary in a temporary permission. He described the situation as being an *impasse* and urged the parties to take account of his findings whether favourable to them or not. He acknowledged local support for the appellant and for the steps he had taken to improve the appearance of the site.
7. Subsequently a scheme was submitted which the Council found acceptable and a letter dated 7 June 2013 was sent to the appellant setting out the work to be done and the timescale. It is clear that this work has not been carried out, and the dates mentioned have passed.
8. *14/505965/Full 21 April 2015* This is the permission that is now being appealed against and the Council explained at the Hearing the reasoning behind the amended wording of condition 5). The intentions of all three of the disputed conditions can be traced back through the previous appeal decisions. The application that led to this grant of permission clearly sought in the accompanying letter the ability to retain the mobile home in the original

Appeal Decision APP/V2255/W/15/3131746

position, effectively seeking not to have condition 5) attached, and set out the reasoning why the relocation was not considered practicable. It was argued that a personal permission was applicable, but that there was no need for the permission to be temporary in addition. As can be seen from the bullet points in the heading to this Decision, the permission granted was both temporary and personal, and required the relocation of the mobile home.

9. From the above, it is clear that harm to the Area of Outstanding Natural Beauty has been consistently identified by the Council and that view has been consistently upheld at appeal. The 2010 Inspector was considering a restricted site footprint with no room for mitigation. Although the mobile home then on the site was broadly acceptable as it stood, the likelihood of harmful items through its permanent use was determinative in her findings against the proposal. The 2011 Inspector considered a larger site and a proposal to move the then new, larger mobile home, into the yard. He found that acceptable, but only as a temporary measure while the policy situation was resolved. Inspectors do not generally suggest schemes, and the evidence here is that it was the appellant who suggested moving the mobile home. The Inspector clearly took this offer at face value and that was sufficient to allow him to grant the temporary personal permission. The 2013 Inspector could not remove or vary the condition, but again found harm and that the scheme presented did not do enough to overcome it. The Council's most recent grant of permission is wholly consistent with the previous three appeal findings.

The Conditions

10. It was clarified that the objection to condition 1) was not with regard to this being a personal permission, but to the reference to a time limit in addition, the appellant considering making the permission personal only would be sufficient safeguard against permanent use. For that reason the objection to condition 2) was over the 2 year temporary nature of the permission. The objection to condition 5) centred on the practicality of relocating the mobile home due to its size and the effect relocation would have on the operation and accessibility of the site.
11. The Framework sets out at paragraph 203 the principle that otherwise unacceptable development could be made acceptable through the use of conditions. Paragraph 206 states that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. These six tests are reiterated in the web-based Planning Practice Guidance (Paragraph: 003 Reference ID: 21a-003-20140306) and the succeeding paragraph sets out key questions to be answered in respect of each of the tests, under the general statement that the six tests must all be satisfied each time a decision to grant planning permission subject to conditions is made.
12. Before looking in more depth at the situation, it is appropriate to consider briefly how the disputed conditions sit with the key questions posed in the Planning Practice Guidance;
 - *Necessary. Will it be appropriate to refuse planning permission without the requirements imposed by the condition? A condition must not be imposed unless there is a definite planning reason for it, ie it is needed to make the development acceptable in planning terms. If a condition is wider in scope*

Appeal Decision APP/V2255/W/15/3131746

than is necessary to achieve the desired objective it will fail the test of necessity. The effect of the present situation on the character and appearance of the Area of Outstanding Natural Beauty and the adjoining conservation area will be considered further in this Decision, as will the effect on these considerations were condition 5) to be complied with, in order to test its necessity. The need for a temporary permission in addition to a personal one will be considered.

- *Relevant to Planning. Does the condition relate to planning objectives and is it within the scope of the permission to which it is to be attached? A condition must not be used to control matters that are subject to specific control elsewhere in planning legislation (for example, advertisement control, listed building consents, or tree preservation). Specific controls outside planning legislation may provide an alternative means of managing certain matters (for example, works on public highways often require highways' consent). This matter can be answered now; the conditions do relate to the planning objectives of protecting a designated landscape and a designated heritage asset. There are no other relevant controls available.*
- *Relevant to the development to be permitted. Does the condition fairly and reasonably relate to the development to be permitted? It is not sufficient that a condition is related to planning objectives: it must also be justified by the nature or impact of the development permitted. A condition cannot be imposed in order to remedy a pre-existing problem or issue not created by the proposed development. The impacts of the development will be considered further, but to the extent that this consideration is different from necessity and reasonableness, the conditions are relevant to an application for a caravan in an Area of Outstanding Natural Beauty and adjacent to a conservation area. It is clear that the personal circumstances of the appellant are relevant.*
- *Enforceable. Would it be practicably possible to enforce the condition? Unenforceable conditions include those for which it would, in practice, be impossible to detect a contravention or remedy any breach of the condition, or those concerned with matters over which the applicant has no control. This matter can be answered now; the evidence is that the appellant suggested condition 5), or at least the location for the mobile home, as mitigation. Whilst there has clearly been a problem and delay in enforcing the condition that is not to say that it is unenforceable; contravention is readily detectable, and the works required are under the control of the appellant.*
- *Precise. Is the condition written in a way that makes it clear to the applicant and others what must be done to comply with it? Poorly worded conditions are those that do not clearly state what is required and when must not be used. This matter can be answered now; whilst the wording of the Council's condition 5) differs from that used by the Inspector in 2011, the intent is clear and there is sufficient reference to other documents to make the requirements clear. The findings of the 2013 Inspector were clear also as to what was required to discharge the previous condition 5).*
- *Reasonable in all other respects. Is the condition reasonable? Conditions which place unjustifiable and disproportionate burdens on an applicant will fail the test of reasonableness. Unreasonable conditions cannot be used to*

Appeal Decision APP/V2255/W/15/3131746

make development that is unacceptable in planning terms acceptable. This will be considered in further depth having regard to the effects and the personal circumstances of the appellant.

Four of the tests therefore; relevance to planning, relevance to the development, enforceability and precision are found to be satisfied in all three conditions. There is a need to look further at necessity and reasonableness.

Character and Appearance

13. The Inspector writing in 2011 identified the main issue in the deemed planning application as *"the suitability of the site as a gypsy and traveller site with regard to the effect on the AONB and Conservation Area and its sustainability and whether any harm is outweighed by other considerations"* and that remains the main point of consideration in testing the necessity of the conditions. The Council's reasons for the conditions are as stated in the bullet point headings above, *"in the interests of the amenities of the area"* and *"in recognition of the personal circumstances of the applicant"*.
14. The site is within the Kent Downs Area of Outstanding Natural Beauty and adjoins the Throwley Forstal Conservation Area, the boundary of which runs along the western boundary of the appeal site between Almshouse Road and the public footpath to the south. Saved Local Plan Policy E1 contains general criteria for all development proposals including responding to the positive characteristics of the site and locality, and protecting and enhancing the natural and built environment. Policy E6 on the countryside sets out the limited circumstances whereby development will be permitted, including being a site for gypsies in accordance with Policy H4. The quality and character of the landscape is to be protected as set out in Policy E9, with the long-term conservation and enhancement of the Kent Downs Area of Outstanding Natural Beauty being a priority over other planning considerations. Policy E15 seeks the preservation or enhancement of the settings of conservation areas. With regard to Policy H4 on gypsy and traveller sites, referred to in Policy E6, the Officers Report which resulted in the appeal permission set out the reasons why only limited weight can now be afforded the policy and those reasons appear correct. In that connection, the 2015 Planning Policy for Traveller Sites sets out at Policy H the considerations for decision makers.
15. The Framework states at paragraph 115 that great weight should be given to conserving landscape and scenic beauty in Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to landscape and scenic beauty; the conservation of wildlife and cultural heritage are important considerations in these areas.
16. There is emerging policy in the Swale Borough Local Plan Part 1 '*Bearing Fruits 2031*' with the Publication Version dated December 2014. Policy DM10 on gypsy and traveller sites has criteria for assessing windfall sites. It appears that it is no longer intended to allocate sites and emerging Policy CP3 will not be continued with. Gypsy and traveller sites are intended to be provided on application through Policy DM10, and the Council explained at the Hearing the view that to avoid the Area of Outstanding Natural Beauty and an area of landscape value along the Swale, the A2 corridor was a likely suitable area.
17. Looking first at the effect on the character and appearance of the area, the findings of three previous Inspectors carry significant weight as the designation

Appeal Decision APP/V2255/W/15/3131746

of the Area of Outstanding Natural Beauty and the conservation area have not changed. But, this must be tested in the light of the present situation, as there have been some changes to the surroundings.

18. It is apparent that the vegetation along the roadside has matured further from that seen previously, and it is the fact that sight of the mobile home is not readily available from the road in passing. Local people have written in support of the way the appellant has tidied the site and praise the planting that has been carried out. However, it is clear from the planning history that this domestic style of planting is one of the previous objections to the development and named species are to be removed on cessation of the use as part of the remediation under Condition 2). The domestic nature of the planting extends the appearance of residential occupancy and hence the extent of the village into what was the countryside, and this is only slightly mitigated by the presence of dwellings opposite. Without the vegetation the gable end of the mobile home would be visible, with the decking and any paraphernalia associated with the use extending the harmful effect further into the open countryside. Whether it is the mobile home if visible, or the planting that is visible, this encroachment is harmful to the character and appearance of the countryside and undermines the natural beauty of the Kent Downs Area of Outstanding Natural Beauty.
19. In views from the footpath to the south-east the present mobile home is clearly visible as a large building with PVCu windows, a pitched roof and decking in front. Any sense that the structure is visually subsumed within the workshop building behind as described by the Inspector in 2010 for a previous smaller mobile home, does not apply now and the structure appears stark and intrusive in the rural landscape. The recently planted conifer hedging could well obscure the view in time, but would itself bring domestic-style planting further into the countryside, adding to encroachment, lessening the natural beauty and more firmly establishing this inappropriate and harmful residential development and the activity that would be associated with it.
20. There has been change in the vicinity of this footpath, firstly with the diversion of the path to separate it from the access to a newly-built house, and secondly in the form of that house which replaces what the Council describe as a poor quality structure. The Council state that effort was put into making sure the approved building responded to the vernacular style of the area, but it appears that the new building is more evident in the landscape than the previous one, and represents an element of encroachment of substantial built form into the land south of the appeal site.
21. There are also three other mobile homes in the area, but they are all to the further, west side of the village. One is justified by an agreed forestry use; another in providing a temporary dwelling while building work progresses, although there appears doubt over whether the work is progressing; and the third has been moved away from a listed building but without permission. In view of the location and circumstances of these cases, little weight can be attached to their existence either as a change to the circumstances of the appeal site or as precedents.
22. Making due allowance for the changes that have been highlighted, the conclusion remains as found by previous Inspectors, and by the Council most recently, that the stationing and use of the mobile home causes harm to the

Appeal Decision APP/V2255/W/15/3131746

character and appearance of the Kent Downs Area of Outstanding Natural Beauty, and adversely affects the countryside setting of the Throwley Forstal Conservation Area. Whilst the harm caused would be somewhat less than previously, the grant of a permanent permission for the mobile home in this position would make the harm permanent and consolidate this inappropriate use in the rural location.

23. The level of harm to the setting of the conservation area is 'less than substantial', a differentiation required between paragraphs 133 and 134 of the Framework. In this case the latter applies and this states that this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use. This matter will be concluded on later in this Decision.
24. Attention has been drawn to the findings of a previous Inspector on a site not far away on Ashford Road, Bradlesmere (APP/V2255/A/14/2219020) in early 2015. She found great harm to the Area of Outstanding Natural Beauty but factored in the best interest of children. In line with advice in Planning Policy for Traveller Sites, this is a reasonable balance to strike, but is one that does not apply in the present case.
25. It is appropriate now to consider the effect of moving the mobile home as required under Condition 5). The Inspector writing in 2011 found that harm would remain to the Area of Outstanding Natural Beauty and the conservation area even then, concluding that a permanent permission was not justified. On the basis of the movement of the large mobile home that still appears a correct analysis of the situation. The ridge-line would likely protrude above the lower parts of the storage barns in views from the footpath. It is accepted that the harm from the present siting would be removed but the workshop would still occupy much of the width, only that much further back, and it is unclear to what extent domestic paraphernalia would be hidden.
26. The appellant also points to shortcomings in the resulting layout of the yard, notwithstanding that it was he who had suggested the move. The present mobile home could be placed somewhat differently than was pegged out at the site inspection, allowing access to both the barn containing the bow-top caravan and the workshops, but the space left by the touring caravan would severely restrict movement for vehicles and horseboxes in particular. These are operational shortcomings but lead to the conclusion that the view from the road, at the entrance to the conservation area, would be of a cluttered and unattractive yard.
27. Another aspect seemingly not before the 2011 or 2013 Inspectors is the view expressed by the occupiers of the adjoining dwelling, Forstal Cottage. They are supportive of the appellant staying on the land and consider that conditions 1) and 2) are unnecessary and unfair. However, they are *'vehemently opposed to the implementation of condition 5) on the grounds that it will detract from their privacy'*.
28. For these reasons, in addition to the harm being too much to allow the mobile home to stay in its present location as a permanent permission, the harm if moved does not diminish sufficiently to allow the mobile home to be placed in the yard as a permanent permission.
29. There is a balance to be struck here, but it is concluded that the difference in the magnitude of harm caused by leaving the mobile home where it is, as

Appeal Decision APP/V2255/W/15/3131746

opposed to relocating it is not now as great as concluded by previous Inspectors. As a result the necessity for condition 5) is not clearly demonstrated as being 'in the interests of the amenities of the area'.

Supply of Traveller Sites and Personal Circumstances

30. There does appear to have been some changes from the time of the grant of the 2011 temporary permission based partly on the supply situation. As that has been acknowledged in the Council's grant of permission, there is no need to look at this in great detail. Of relevance however is the change that has occurred since the Council's grant of permission, and in particular the publication of the revised Planning Policy for Traveller Sites in August 2015.
31. The Council had produced a Gypsy and Traveller Accommodation Assessment in early 2013 and the "Update Paper on Gypsy and Traveller Accommodation Assessment and Policy Implications – Post PPTS (August 2015)" details the process that has been carried out since August. Although a previous survey undertaken did not frame questions to deal with the new definition in Annex 1, the Council considers the information available to be sufficient to address at least part of the issue. Paragraph 4.14 states that, when determining need, the Council has erred on the side of caution by including all need from temporary and unauthorised development, until national practice guidance becomes clear, or the matter is resolved during the Local Plan examination hearings. It is concluded by the Council that the need figure can be revised through 'main modifications' of the emerging Local Plan and they suggest four options for future action.
32. A further update was submitted as the Appeal Statement of September 2015 and elaborated on at the Hearing. The appellant points to further delay and the fact that gypsies are only able to buy land where they can, and not necessarily where the Council or they might want. Doubts were cast over aspects of the assessment and how need would be met, with one site at Brotherhood Woodyard stated to have had its occupancy raised but with a layout that no longer suits traveller's needs with doubt over whether there remains room for touring caravans and individual family utility rooms. This matter was raised by two different Inspectors in appeal Decisions of January 2015 (APP/V2255/A/14/2222135 and APP/V2255/A/14/2219020) and the situation appears largely unchanged to the date of the current Hearing. The balancing of inward and outward migration was claimed by the appellant to be unrealistic, and that with an area so close to London and not having Green Belt, it was considered in-migration would likely be more than out-migration.
33. With regard to the supply of traveller sites, there is evidence of good progress being made by the Council, but the changes introduced in August 2015 to the Planning Policy for Traveller Sites have not been fully tested, with the Council's assumptions over a reduction in people meeting the revised definition not being tested at all. At the least there is further delay resulting, and real doubts over some of the other assumptions referred to in the Update Paper that will only be tested later in the Plan-making process. Notwithstanding the conclusions that a permanent permission would be inappropriate, there is sufficient evidence to conclude that the Council's grant of a temporary permission was reasonable, and remains so now.
34. The appellant's case is that if only a temporary permission can be justified, this would be sufficiently provided for by the permission being personal to Mr

Appeal Decision APP/V2255/W/15/3131746

Scamp. His personal circumstances were accorded weight in the 2011 appeal, and no-doubt in the Council's consideration of the application to extend that permission. Further information was provided to the current appeal on the appellant's health. The evidence is of the site being acquired by the appellant from a relative who had made some use of it previously, and he clearly intends being the occupier of the site for as long as he is able. For those reasons it is reasonable that any permission be personal to him.

35. The change to the definition of a traveller in Planning Policy for Traveller Sites was discussed at the Hearing, it being noted that the Council had struck-out the reference to agreement on Mr Scamp's gypsy status in the draft Statement of Common Ground. The evidence appears to be that he did comply with the previous definition, and he stated his intention to continue trading in horses and to resume his nomadic lifestyle. The definition no longer provides for a permanent cessation on grounds of old age or ill-health, but the appellant, whilst presently in ill-health, does not appear to be of an age that would preclude travelling and the issues in paragraph 2 of the Annex remain for the new definition. On that basis it cannot be concluded that the appellant has permanently ceased travelling.
36. With regard to the harm to the setting of the conservation area, there are public benefits in avoiding the need for Mr Scamp to resort to roadside living, but that is avoided in the grant of a temporary permission. On the evidence available, it is considered reasonable and necessary to restrict the permission to a temporary one, as granted by the Council, as the time period for a personal permission alone could be substantially longer and too long having mind to the effect on the environment previously identified.

Overall Balance and Conclusions

37. The Council granted a two year permission on 21 April 2015 and this would run to April 2017, which is just over the year from the date of the appeal Hearing. The change to Planning Policy for Traveller Sites after the grant of that permission has clearly resulted in some further work on the Plan-making situation and likely resulting delay. It would be reasonable to recognise this in the grant of permission for an extended period, being two years from the date of this Decision rather than from the date of the Council's Decision. As stated previously, the permission should still be personal to Mr Scamp and the temporary permission would cease if he were to vacate the land and end the use prior to the expiry of the temporary period.
38. On the matter of condition 5) however, and on the balance of the reduced harm through the mobile home remaining in its present position against the increased harm (or reduced benefit) of it being moved, the necessity has been described earlier in this Decision as being 'not clearly demonstrated'. Looking at the reasonableness of requiring the move to be carried out, the works would be for only a relatively short period of time, and would put the appellant to expense and effort that he may well not be in the best position to bear, in his present health. The result would, in addition to causing some harm to the neighbours and the public view near the conservation area, cause difficulties to the appellant in gaining access to his property. In the balance it is concluded that the condition is neither necessary nor reasonable and should be deleted.

Appeal Decision APP/V2255/W/15/3131746

Human Rights

39. Article 8 of the European Convention on Human Rights as enshrined in the Human Rights Act 1998, concerns a right to respect for private and family life.
40. The decision that follows from the reasoning above to grant permission for a temporary period of two years would allow Mr Scamp to remain on the land while other issues on the supply of sites are resolved. This would be a proportionate approach to the legitimate aim of protecting the environment, and granting permission for a limited period would have no greater impact on Mr Scamp than would be necessary to address the wider public interest.

Conclusions

41. Having regard to the circumstances that informed the Council's grant of permission, and those pertaining now, conditions 1) and 2) satisfy the tests in the Framework and as reiterated with questions in the Planning Practice Guidance, although the time periods in each case should start again from the date of this Decision in recognition of delay in the Plan-making process. Condition 5) is not necessary and its imposition would be unreasonable in the time period set by conditions 1) and 2), so that condition 5) should be deleted.
42. For the reasons given above it is concluded that the appeal should succeed. The planning permission will be varied by deleting the disputed conditions, substituting new conditions 1) and 2), and restating the undisputed conditions 3) and 4).

S J Papworth

INSPECTOR

Appeal Decision APP/V2255/W/15/3131746

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Graham Thomas BSc(Hons) DipTP MRTPI	Area Planning Officer Swale Borough Council
Shelly Rouse BSc(Hons) MRTPI	Policy Officer Swale Borough Council

FOR THE APPELLANT:

Alison Heine BSc MSc MRTPI	Heine Planning Consultancy
Nelson Scamp	Appellant
Marianne Hilden	In support of appellant

DOCUMENTS

- | | | |
|----------|---|--|
| Document | 1 | "Update Paper on Gypsy and Traveller Accommodation Assessment and Policy Implications – Post PPTS (August 2015)" submitted by Council |
| Document | 2 | Letter Agent to Council 15 April 2013 with details and programme for site layout scheme, and Council response 7 June 2013, both submitted by Council |
| Document | 3 | Appeal Decision APP/V2255/A/14/222135, 28 January 2015, land at Blind Mary's lane, Bredgar, submitted by appellant. |