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## Appeal Decision

Site visit made on 25 January 2016

by **Katie Peerless DipArch RIBA**

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

**Decision date: 17 February 2016**

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**Appeal Ref: APP/V2255/C/15/3095228**

**2 Greenacres, Holywell Lane, Upchurch, Sittingbourne, Kent ME9 7HP**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Mr P Delaney against an enforcement notice issued by Swale Borough Council.
  - The enforcement notice, 15/500491/OPDEV was issued on 18 May 2015.
  - The breach of planning control as alleged in the notice is the creation of a new entrance on to Holywell Lane, the approximate position of which is highlighted in yellow on the plan attached to the enforcement notice.
  - The requirements of the notice are (i) Restore the land to its original condition using clean soils and materials, a condition similar to the land on either side of the new entrance.
  - The period for compliance with the requirements is two months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. I consider the main issues on the appeal on ground (a) and the deemed planning application are the effect of the development on the character and appearance of the surrounding countryside.

### Site and surroundings

3. The appeal site forms the entrance to a plot of land presently occupied as an unauthorised residential site for gypsies. It is situated in open countryside and served by Holywell Lane, a narrow road designated as a Rural Lane in the adopted Swale Borough Local Plan 2008 (LP).
4. The site included within the red line on the enforcement notice plan does not reflect the fact that the part of the site accessed by the new entrance has been separated from the remainder of the land, which has another entrance further along Holywell Lane to the north. I am, however, told that both the gypsy plots that now exist are unauthorised and the Council has submitted details of an application for planning permission<sup>1</sup> for this use, covering the whole of the 'red line' site, which was refused on 16 June 2015.

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<sup>1</sup> Ref: 14/500247/FULL

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### Reasons

5. The development that has been carried out has removed a substantial section of the embankment forming the sides of the lane, which, together with the vegetation that grows on it, creates a pleasant, green enclosure that is typical of this designated rural lane. The entrance is wide and is located at a point where the embankment is at highest, meaning that the works have left an unattractive and prominent scar which, in my view, detracts from the character and appearance of the surroundings.
6. The appellant has given no explanation of why another access and driveway is necessary at this point. Although it seems clear that the entrance has been created to allow access to the unauthorised residential site, this is not a reason, in my opinion, to accept the harm that has been caused. Unless and until the use is granted planning permission or becomes lawful, the harm caused to the rural location and the loss of a significant section of the embankment is not outweighed by any identified need for the development, which is contrary to LP policy RC7 which seeks to protect the character of rural lanes. It also conflict with LP policies E1(3), which also seeks to protect the positive characteristics and features of the site, and E6 which limits development in the countryside.
7. The LP is under review and the emerging Local Plan 'Bearing Fruits 2031' which, due to its state of progression, can be accorded some weight, contains policies DM26 and DM14 which carry forward the aims and objectives of the corresponding adopted policies. The development is therefore also contrary to these policies.
8. I accept that new planting could reduce the impact of the cutting and soften the harsh appearance of the entrance but without any justification for the entrance, this does not alter my view that the development does not accord with the development plan.
9. It is also the case that there are other access points along Holywell Lane, but they are less obtrusive and do not damage the character of the surroundings to the extent caused by the appeal development. I conclude that they do not set any precedent for allowing this example.

### Conclusions

10. For the reasons given above, I conclude that the appeal should be dismissed.

*Katie Peerless*

**Inspector**