

PLANNING COMMITTEE – 26 April 2018**DEFERRED ITEM**

Report of the Head of Planning

DEFERRED ITEMS

Reports shown in previous Minutes as being deferred from that Meeting

REFERENCE NO - 17/502338/FULL			
APPLICATION PROPOSAL Variation of conditions 2 ,3 ,4 and 5 of planning permission SW/13/0137 Change of use for gypsy and traveller site to incorporate previous site approvals, increase number of pitches, relocate and enlarge communal facility building. Includes parking, lighting, fencing and landscape buffer. Condition 3 - to increase the total number of permanent caravan pitches to 40 with a dayroom on seven of the pitches; each pitch to have not more than one static caravans/mobile homes with space for car parking, and a touring caravan, as amended by drawing 2549/PL/Sk05 Revision D.			
ADDRESS Brotherhood Wood, Gate Hill Dunkirk Faversham Kent ME13 9LN			
RECOMMENDATION – Grant subject to conditions			
SUMMARY OF REASONS FOR RECOMMENDATION/REASONS FOR REFUSAL The scheme addresses criticisms of the approved scheme for this site and provides an opportunity to improve the quality of the pitches on the site.			
REASON FOR REFERRAL TO COMMITTEE Deferred from Planning Committee on 5th March 2018			
WARD Boughton And Courtenay		PARISH/TOWN Dunkirk	COUNCIL APPLICANT Mr Joseph Robb AGENT Philip Brown Associates
DECISION DUE DATE 22/08/17		PUBLICITY EXPIRY DATE 02/02/18	
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
SW/13/0137	Change of use for gypsy and traveller site to incorporate previous site approvals, increase number of pitches, relocate and enlarge communal facility building. Includes parking, lighting, fencing and landscape buffer.	Approved	16/04/2013
SW/11/1271	The use of land for the stationing of caravans for residential purposes for 7 no. gypsy pitches and 2 no. transit pitches together with the formation of additional hard standing, utility/dayrooms ancillary to that use.	Approved	19/12/2011
SW/11/0163	Application for variation of condition 13	Approved	04/04/2011

	(restriction on storage) of planning permission SW/10/1362.		
SW/10/1362	The use of land for the stationing of caravans for residential purposes for 4 gypsy pitches (2 single pitches, 1 double pitch) together with the formation of additional hard standing, utility/dayrooms ancillary to that use and the retention of an existing stable block.	Approved	13/12/2010
SW/10/0599	The use of land for the stationing of caravans for residential purposes for 4 gypsy pitches (2 single pitches, 1 double pitch) together with the formation of additional hard standing, utility/dayrooms ancillary to that use and the retention of an existing stable block.	Refused	04/08/2010
SW/07/0950	Change of use for siting two twin residential caravans and two touring caravans, and erection of stables.	Approved	12/10/2007
SW/97/0923	Retention of mobile home	Approved	02/03/1998
SW/86/1053	Renewal of temporary permission SW/81/444 for use of land for fencing yard for making palings stakes hurdles including logging and stacking of pulpwood/timber	Approved	11/11/1986

1.0 INTRODUCTION

- 1.01 This matter was debated at the 5th March 2018 meeting at which Councillor Bowles, the Dunkirk Parish Council and the applicant's agent spoke. The minutes recorded the debate as follows;

"The Chairman moved the officer recommendation to approve the application and this was seconded by the Vice-Chairman.

A Ward Member (not a member of the Planning Committee) spoke against the application and stated that the applicant had consistently failed to develop on the site in accordance with conditions. He raised concern with the loss of trees on the site, and that the application could set a precedent as there were blocks of woodland up for sale. He considered the report was not consistent with other applications, as it stated that this application site was sustainable, being close to Dunkirk Village Hall.

A second Ward Member did not support the application. He stated that the applicant had not abided by previous conditions but the site had not had enforcement action. Members raised points which included: woodland could not be treated like this; action was needed, enough was enough; and there was a lack of enforcement action on the site.

In response to comments, the Area Planning Officer explained that the application was to re-plan within the existing site plan, not to expand the site or remove any

more trees. Members were being asked to approve the layout. He explained the background to the site, and stated that the application would enable the site to be regularised and fit for purpose.

On being put to the vote the motion to approve the application was lost. At this point the Head of Planning Services used his delegated powers to 'call-in' the application.

Resolved: That as the Planning Committee was minded to make a decision that would be contrary to officer recommendation and contrary to planning policy and/or guidance, determination of the application be deferred to a future meeting of the Committee."

- 1.02 This report attempts to address points raised by Members at the 5th March meeting and to set out the argument for approval of the application concisely, and with additional background information for Members' benefit. The original report is attached as an appendix to this item.

2.0 MATTERS RAISED BY MEMBERS

- 2.01 The planning history of the site is one of approvals which have not all been implemented in accordance with the approved drawings or conditions imposed. To that extent there have been enforcement issues. These have included;

1. the site not being laid out in accordance with the current approved layout
2. the number of caravans exceeding the current permitted number
3. compliance with planning conditions of the current planning permission
4. questions of the occupancy of caravans, and
5. questions over the use of the communal building within the site

Other matters have also been raised in relation to the site's surroundings, including;

6. felling of trees to extend the site to its current size
7. burning and smoke in the area
8. cutting down of trees protected by a Tree Preservation Order (TPO)
9. an extension of the site at the south western corner, and
10. the site is not sustainable, as officers confirmed in relation to permanent housing proposed nearby

- 2.02 Enforcement action is discretionary and should not be taken lightly, or simply because it can be. Ideally, matters can be resolved in other ways, voluntarily, via negotiation, or by the submission of a retrospective planning application. If those avenues fail, strong and effective enforcement action can be justified. It is worth noting the current position in relation to the above numbered matters;

- In relation to point 6 above; the trees that were felled in or around 2010 were not protected at that time. Subsequently, the Council granted planning permission for the site to be extended across the felled area. That felling did not represent a breach of planning control. The Council took the precaution of serving a very wide ranging group TPO after this episode of felling, but that TPO does not affect any part of the current application site. No trees are threatened by the current application.
- In relation to point 8; this has happened close to the site, but not within it and this is being treated as a separate matter. The Council has acted decisively

here and has obtained a High Court Injunction, and will consider taking the matter to prosecution if that injunction is breached.

- In relation to point 7 I have seen no evidence that this is a planning related matter other than in relation to possible burning of illegally felled trees; see above note.
- In relation to points 4 and 5 above the Council has surveyed the site and gathered evidence about its use. Subsequently the Council has taken formal enforcement action.
- Point 9 does not relate to the application site itself, but to adjacent land. Again, the Council has also taken formal enforcement action, but that does not affect the merits of the current application.
- Councillor Bowles suggested (point 10 above) that the site is not sustainable as this was suggested by officers when recommending refusal of permanent new housing nearby recently. This is a misleading comparison. Permanent housing is not promoted in rural locations, but gypsy and traveller sites are most commonly found outside built up areas. To that extent the question of sustainability is relative and, in this case, the site is close to services such as the village hall, petrol filling station and shop, and it has good transport links to other amenities or facilities including being located on a bus route. Accordingly, the site scores well in terms of sustainability compared to the general locations of gypsy and traveller sites, and it is not appropriate to draw comparisons with locations of permanent housing.
- Finally, in relation to points 1, 2 and 3 above, officers have sought to negotiate with the applicant to achieve compliance with the approved development, which are matters controlled by planning conditions. The applicant has made some efforts to respond to the concerns of officers regarding landscaping, by removing laurel plants and retaining open fences to the western site boundary. However, despite numerous requests, the site layout and number of caravans thereon have never accorded with the 2013 approved scheme. The applicant has explained that although he has invested heavily in the site, the site levels (which slope gently down to the north) have made it impossible to set out the site as approved. Whilst I don't fully understand why this might be so, it is clear that the applicant feels that there is some difficulty here.

Accordingly, whilst straightforward enforcement action would have been possible, the circumstances have indicated that it might be preferable for the applicant to seek approval for a layout that he can implement. This application is the result and has come about due to pressure from officers on the applicant to either adhere to the approved scheme or face enforcement action.

Approval of this application would present the opportunity for the Council to seek compliance with the new scheme. Refusal would leave the Council free to take enforcement action in respect of the approved scheme, having first considered whether it is expedient to do so via consideration of the current application as an alternative.

- 2.03 The analysis above indicates that the majority of enforcement matters, or matters raised by Members, are either not related to this application site, or are being tackled already by appropriate mechanisms. These should not affect the consideration of this application. This application does not seek to authorise any of the above matters, or to override any action we are already taking, or have taken. Those matters that are not already subject to legal action are essentially the substance of the current application. This application proposes a different site layout which has not yet been considered or developed. It is not a retrospective application. All proposed pitches have space for

mobile and touring caravans, and many more pitches have dayrooms than in the 2013 approved layout. There is an increase in overall pitch and caravan numbers, but this is all within existing site boundaries, and approval of this application will not authorise any site expansion or loss of protected trees.

3.0 WHETHER TO TAKE ENFORCEMENT ACTION AGAINST NON-COMPLIANCE WITH THE EXTANT PERMISSON OR TO APPROVE THE CURRENT APPLICATION

- 3.01 The currently approved site layout and caravan numbers were approved in 2013. At that time the Government advice in “Planning policy for traveller sites” (PPTS) had been published in March 2012 and contained the following definition of “gypsies and travellers”;

*“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 **or permanently**, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.” (my **emboldening**)*

The 2013 approved site layout envisaged removal of three previously approved double pitches which provided space for two caravans and dayrooms, and the provision of 22 single pitches with space only for a mobile home, parking of one vehicle, a storage shed and a washing line. It also proposed seven large double pitches and a communal building for use by site residents including toilets, showers and recreation rooms. The logic behind this was that whilst private site provision was the preferred method of meeting pitch demand, there were gypsies or travellers unable to afford to buy their own site, and these smaller pitches could be rented. The lack of space for a touring caravan or day room on the smaller pitches was not seen as a problem because continuation of a nomadic habit of life was not required to meet the above PPTS definition, and the day room provision on smaller pitches was met by the large communal building within the site.

- 3.02 However, in August 2015 the Government re-issued PPTS with a new definition of “gypsies and travellers”. This removed the option to have ceased travelling permanently by deleting the words I have emboldened in the above definition. The new definition is as follows;

“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 such.”

The new definition removed those who have permanently ceased to travel from the definition, leaving only those who travel or who might have only temporarily ceased to travel. Accordingly, it is now seen as important that traveller sites have scope for a caravan in which the occupants can continue to travel to seek work. In other words a site containing simply a mobile home that can only be moved by lorry will not provide an easy means for families to travel to seek work and retain their gypsy and traveller status. Accordingly, space for a touring caravan on a pitch is now more important but the approved single pitches here do not provide that. Since the 2015 change of definition it has therefore been possible to criticise the currently approved site layout as being unsuitable for gypsies and travellers. It has in fact now become commonplace for appellants on unsuitable and unsustainable sites which the Council

has refused planning permission and/or taken enforcement action against to argue at appeal that the Brotherhood Woodyard site does not meet the needs of gypsies or travellers. This then translates into an argument that the site's contribution to pitch supply should be discounted; and therefore that the Council's pitch provision is less than we suggest.

- 3.03 The background to this is that Council's latest Gypsy and traveller accommodation assessment (GTAA) published in 2013 suggested a pitch target of 85 pitches for Swale to 2031. The 2015 revised PPTS changed the planning definition of a gypsy and traveller (see above), and therefore changed the number of pitches that needed to be identified. Evidence to the Local Plan's Examinations In Public (EIP) in 2015 and 2017 was that the Council had re-interrogated the original GTAA data to determine the appropriate level of pitch provision based on the new 2015 PPTS revised definition of gypsies and travellers. The data revealed 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.
- 3.04 Accordingly, the need for pitches in Swale was re-evaluated, resulting in a reduced estimate of pitch need from 85 pitches down to 61 pitches over the Local Plan period to 2031; this being the most generous (highest) of the possible reduced pitch number scenarios considered. As a result of this analysis the future need for new pitches throughout the Local Plan period was revised down to a figure of 61 pitches to 2031, leaving (at the time of the Local Plan EIP) a need per year of less than one pitch, meaning that no formal pitch allocations were needed, and future site provision could reasonably be expected to be catered for via windfall planning applications. This approach has in fact lead to the approval of 63 permanent pitches since 2013 (almost all without an appeal) and the Council has therefore been able to claim that it has already more than met the need for pitches to 2031, that it has a five year supply of sites as required by PPTS, and that an unsuitable site elsewhere is not necessary to meet pitch need. However, 19 of these 63 pitches are on the current application site at Brotherhood Woodyard based on the 2013 planning permission. This amounts to almost one third of the Council's entire supply of new pitches.
- 3.05 This significant contribution to site supply from the current application site has made it helpful to their case for appellants elsewhere to argue that the 2013 approved single pitches at Brotherhood Woodyard do not meet the requirements of those who meet the new 2015 PPTS definition of gypsies or travellers. This has lead some Planning Inspectors to deduct the 19 single pitches approved in 2013 from the Council's claimed supply of sites, leaving an outstanding pitch need to 2031. In one case the Inspector then also went on (wrongly) to assume that the Council did not even have a five year supply of sites, and he granted a temporary planning permission on that basis. This conclusion refers to the appeal decision at Spade Lane, Hartlip where the Inspector concluded as follows (December 2017);

"22. A specific ongoing issue was raised however concerning one of the larger sites in the Borough, Brotherhood Woodyard, where permission for 19 pitches was granted in the relevant period. It seems that the site layout was not in accordance with the permission, and there were allegations that the occupants of the pitches, which exceeded the 19 permitted, did not meet the PPTS definition. The response to a Planning Contravention Notice issued last year stated that all of the relevant pitches are now occupied by travellers, but there remains the outstanding issue of its suitability for travellers actively pursuing a nomadic way of life. In essence, the site is currently dominated by

static caravans with no room for touring caravans and no day rooms. The Council has opened an enforcement case and there is currently negotiation on a revised planning application, which seeks to increase the number of pitches.

“23. It seems to me that the Council is being pro-active and is well advanced in its approach to resolving the planning issues at Brotherhood Woodyard. However, the site makes up a large proportion of the identified need, and the evidence I heard suggests that there must be considerable doubt that the site is at present genuinely meeting the identified needs of travellers who meet the PPTS Annex 1 definition. In the light of this I consider that it would be reasonable and appropriate to take a precautionary approach and disregard the contribution made by this site to meeting the identified need. This leaves a substantial shortfall over the full plan period and, on the balance of probability, in the 5 year supply, as discussed further below. These are matters which carry significant weight in favour of the appeal.”

- 3.06 Notwithstanding the fact that the Council is seeking to have this decision quashed by the High Court, it has been referred to on behalf of appellants elsewhere, including those at Ospringe in the Kent Downs AONB (in an appeal at The Retreat, Newnham Valley, January 2018) who have suggested that;

“4.16 The LPA has granted planning permission for a site near Dunkirk (Brotherhood Wood, Gate Hill, Dunkirk, Faversham) for Mr Joseph Robb, with a substantial number of plots (“no more than twenty nine (29) permanent single pitches across the overall site area, incorporating the pitches previously approved by planning permissions SW/10/1362, SW/11/0163 and SW/11/1271, on which no more than an absolute overall maximum of thirty six (36) caravans”) and the LPA are relying of that site to meet a large part of the unmet need for the Swale District. We are not confident that the pitches can be relied upon to meet the unmet need.

4.17 The design of the pitches on the site is not uniform, and some of the pitches are smaller than others. Recently the development control committee were objecting to new provision on the basis that pitches were not a minimum of 500 square meters. Some of the pitches on the Brotherhood Wood, Gate Hill site are closer to 200 square meters, which would indicate that they would be more appropriate as transit pitches, or Park Homes style pitches, and not suitable provision to be counted against the unmet need for permanent pitches within Swale BC. The Inspector considered this in the previous Blind Mary’s Lane Appeal decision (2222135). Besides which, it has been indicated that much of the site is already occupied by overseas Romani which could well add to the 2013 GTAA assessment of need for 35 pitches to 2017.”

- 3.07 In this case the Inspector was appraised of the (then) very recent site survey with the police and immigration service and helpfully concluded (January 2018) that;

“27. The appellant notes the recent conclusions of the examining Inspector but considers that the local need for gypsy and traveller sites has not been satisfied on the ground and there remains unmet need. In particular a recent appeal decision at Spade Lane, Hartlip is referred, to together with the Council’s formal Count of Caravans undertaken in July 2017. In the former, the Inspector concluded that there was considerable doubt over whether the site at Brotherhood Woodyard in the parish of Dunkirk would deliver the 19 pitches allowed or that these would be suitable for gypsies and travellers that met the

Annex 1 definition in the PPTS. However, at the Hearing the Council explained that there had been very recently a multi-agency intervention at the site concerning enforcement issues which the Council is pressing to resolve. Following further discussions with the landowner the Council says that the extent and availability of pitches on this site would be resolved in the outstanding planning application. On the basis of the written and oral evidence put to me I am satisfied that there is not now significant doubt over the deliverability of the pitches on the Brotherhood Woodyard site.”

Nevertheless, the same Inspector expressed caution regarding the availability of alternative sites and, whilst he dismissed the appeal at The Retreat, he granted a temporary and personal planning permission on the nearby Meadows Farm site.

- 3.08 I remain concerned that the approved site layout can be seen as out-of-date. Whilst it was compliant with the 2012 version of PPTS, we will continue to face criticism that the approved site layout at Brotherhood Woodyard fails to meet the needs of gypsies and travellers, and hear arguments that it should be discounted from the Council's pitch supply figures, undermining our ability to control which new or unauthorised sites are and are not approved. Even the helpful intervention by the Chairman of Dunkirk Parish Council at a recent appeal hearing to confirm that the situation at Brotherhood Woodyard is an enforcement rather than a supply issue has not completely settled the matter in our favour.
- 3.09 The question therefore arises regarding what the advantage would be of refusing the current application. Although she is no supporter of the possible increase in authorised pitches that approval of this application will provide (to the detriment of her clients' chances elsewhere), even the main objector to the current application who is a planning consultant representing sites at appeal elsewhere, has said in relation to the current application (**my emboldening**);

*3. I note that planning permission is now sought to for 40 residential pitches and what appear to be 7 transit plots. **It is an improvement on what is currently provided in so far as there is space for statics and tourers and some plots have day rooms.** But the layout is unimaginative and provides no sense of community. It is clearly designed to cram as many plots onto the land as possible. None of the plots are large enough for a full sized twin unit caravan. Only 7 of the residential pitches have an individual day room-the design of which is not provided but it looks rather like a portacabin. The remaining 33 plots show only a small static (32 x10ft), touring van, parking space and small storage shed and space for a washing line. They have no amenity buildings contrary to DCLG guidance issued in 2008. Although this guidance has been revoked it has not yet been replaced and is still widely referred to as it is the only government guidance we have. At Para 7.17 the DCLG guidance states that it is essential for an amenity building to be provided on each pitch. The storage sheds are in the 6m separation zone between caravans so will have to be built from non combustible materials. The occupants of these plots will be expected to use the bathroom facilities in the Amenity Hall-which is some trek across the site especially for those with young children. There are no footpaths across the site. Those accessing the facilities in the Amenity Hall will have to follow the roadways around the site. This arrangement is totally contrary to DCLG guidance for Gypsy Traveller sites. As you will be aware, most Traveller do not choose to have or use bathroom facilities in their caravans. These plots will have no where to meet visitors / officials that is not in their caravans. Day rooms provide somewhere to meet and greet visitors where no one is sleeping*

The full text of this objection can be found in the original report attached to this item.

- 3.10 Dunkirk Parish Council continues to raise objection to the proposed site layout (referring to Mrs Heine's above objection) as follows;

"The latest plan shows 40 'pitches', each with a day room the same size as a static, and SEVEN transit caravan pitches. The D&A states the statics do not need dayrooms (as you might expect when looking at PPTS guidance) as there is a large two storey community building. This has not been completed to the 2013 drawings and there are only a few toilets for the whole site, and occupants would need to use them overnight and walk across the site alone.

DPC would quote an online comment from Mrs. Heine's objection:

"The community building does not remove the necessity for individual day rooms on a Gypsy site. I challenge any one to demonstrate how this arrangement would be acceptable for a residential Gypsy Traveller site. I doubt very much the community building is being used as such. It is woefully lacking in toilets etc. to serve this number of residents/ transit pitches".

Every static is shown as 32' x 10'. Statics of this size would be two bedrooms, clearly insufficient for most family needs. Research would suggest 4 people only - Two adults and two same sex children.

Shelley Rouse, whilst working for SBC, has written a report pointing out the problems as she sees them:

"The current consent (SW/13/0137) provides an appropriate balance between enabling a variety of accommodation to be catered for, and making best use of available space. In my opinion, the consented layout is at the limit of what is permissible and appropriate in terms of the number of smaller size single pitches. The number of single small size pitches consented, to my mind, is balanced by the variety of other larger pitches which have their own amenity buildings, sufficient transit pitches and a new modern communal building.

Clearly this is overdevelopment and should be refused."

These comments relate to an earlier iteration of the current planning application.

- 3.11 There are no other statutory objections to the application.

4.0 BACKGROUND PAPERS AND PLANS

- 4.01 Application papers and correspondence for application 17/502338/FULL
- 4.02 Application papers and correspondence for applications SW/86/1053, SW/97/0923, SW/07/0950, SW/10/0599, SW/10/1362, SW/11/0163, SW/11/1271 and SW/13/0137

5.0 APPRAISAL

Issues raised by objectors

- 5.01 In the original report I summarised issues raised by Dunkirk Parish Council, Kent Wildlife Trust and the planning agent objector including the *following numbered points 1 to 29* which I responded to as follows, and I repeat these points here now. These cover many of the planning issues with the application.

1. *This is a retrospective application following intentional unauthorised development*
In relation to this point I have said above that this comment may have been fair in relation to the application as first submitted. However, the changes to the application now show it as an application for something that has not yet been developed. Thus what is now due for determination is not retrospective, even though it might help to overcome the current unauthorised nature of the site layout.
2. *The site is in a rural location where development is not normally permitted*
Members will be aware that development is not normally permitted in rural areas. However, policy DM10 provides for gypsy and traveller sites in rural areas as an exception to that norm.
3. *Approval would be contrary to adopted Local Plan policies ST3, DM10 and DM24*
These policies seek to promote sustainable patterns of development, acceptable gypsy and traveller sites, and to protect valued landscapes. The site is close to a service centre, Dunkirk Village Hall, and has good road access. It meets all relevant criteria of policy DM10 and is already approved for this use. Although within a protected landscape the site is surrounded by extensive woodland, the site is not proposed to be enlarged, and I can see no additional harm to landscape arising from this proposal.
4. *Loss of ancient woodland*
As I have already stated, the site boundaries are not being extended in this application. I am aware that trees covered by a TPO have recently been felled nearby, and that the work has been done at the south-western corner of the site to extend it. None of these matters are part of this application and should not affect its determination.
5. *Site not operating as a Gypsy and Traveller site, but is occupied by migrant workers*
Recent investigations have supported these allegations and that issue is now the subject of ongoing investigation and enforcement action. This application is not to vary the terms of the occupancy condition on the site, and the current occupation of the site should not affect determination of this application.
6. *The communal building is not suitable or being used as such*
Recent investigations have supported this allegation and that issue is now the subject of ongoing investigation and enforcement action. This application is not to vary the terms of use of the communal building, and the current use of the site should not affect determination of this application.
7. *Not suitable as a Gypsy and Traveller site, and does not provide space for touring caravans*
This comment may have been fair in relation to the application as first submitted. However, the changes to the application based on Officer advice mean that all pitches now have room for a touring caravan to allow occupants to maintain a nomadic habit of life. These changes have, to my mind, overcome this initial criticism.
8. *There is no demand from Irish Travellers for this site*
Recent planning appeal hearings have heard evidence of an unmet need in Swale for gypsy and traveller pitches despite the Council having approved more pitches than the GTAA revised need figure required. This figure has always been seen as a target rather than a ceiling and given that PPTS and the GTAA do not differentiate between different ethnic groups (nor would this planning permission) I find it hypocritical of those who argue that there is no need for more pitches. Accordingly, this scheme

could meet additional demand for a well located and affordable site, and the Council should not be distracted by the applicant's ethnicity.

9. The site layout is not fit for purpose having regard to 2008 Government design guidelines

As the discussion above has made clear, the 2008 site design guidelines have now been abandoned. There is no current advice. Nevertheless, the 2013 approved scheme took those guidelines into account. The current scheme continues that approach but is an improvement on the 2013 scheme in the following respects;

- The single pitches are now larger in size
- Some single pitches have dayrooms, and
- Each single pitch now has room to accommodate a touring caravan.

10. Sites ought not to have more than 15 pitches

This advice relates to the now abandoned design guidance, but it was never a formal limit. In any case the site is currently approved for 29 pitches and that permission will not be lost even if this scheme is refused.

11. The community building does not remove the need for individual day rooms on each pitch

This criticism may have been fair in relation to the application as submitted which I considered unacceptable. Now, however, the larger pitches all have dayrooms as in the 2013 approved scheme. Many gypsy and traveller sites do not have day rooms despite the Council never opposing them. They are just not always sought. Nor do other sites have a substantial communal building for meeting, leisure, laundry, showers and toilets that this site has.

12. Not all pitches have day rooms. There are no details of day rooms

The seven larger pitches and six single pitches are now shown with dayrooms and details of the larger dayrooms have now been provided.

13. Details provided for day rooms show some larger than a static caravan

The larger dayrooms come in two sizes and contain sitting, kitchen and bathroom facilities. Both sizes are smaller than the current legal definition of a caravan.

14. Each pitch should have space for two caravans, one of which is a mobile

The amendments to the application now overcome this initial criticism.

15. There is only space for mobiles of up to 30sq m which will provide less space than housing standards require

Caravan legislation specifies the size of caravans. This permission will not specify the size of any caravan and there is no reason to suspect that the caravans will be inadequate. In any case a number of pitches also have dayrooms and there is a large communal building for other needs.

16. The layout does not show parking spaces

The amended layout scheme shows at least one parking space on each pitch, more on the larger pitches.

17. The layout is unimaginative, cramped and represents overdevelopment of the site

The layout includes a variety of pitch orientation, includes cul-de-sacs as per previous design guidance, and many pitches back onto woodland. A central green amenity area, play area and communal building offer a variety of opportunities for recreation.

18. *The layout does not provide individual pitches which count towards the local need*
The pitches are clearly identified as self-contained with spaces for caravans, parking, washing and storage. They should all be seen as individual pitches.
19. *The site has been extended into nearby woodland*
The site layout as proposed does not extend the approved site boundaries in to the woodland. Any clearance of woodland is a separate matter.
20. *Is the site the same size?*
Yes, the approved site boundaries have not been extended in this application
21. *Lack of enforcement action on the site*
The Council has responded to local allegations both by way of Planning Contravention Notices in 2016 and more recent investigations. This matter should not affect determination of this application.
22. *Cutting down of trees covered by a TPO on the site and nearby*
This matter is wholly irrelevant to the merits of this application and should not affect determination of this application.
23. *The Council now has the chance to correct previous errors*
The 2013 approved scheme has been subject to criticism. Those criticisms often concerned the small size of the single pitches which did not include space for touring caravans. That planning permission was issued before the 2015 re-issue of PPTS which changed the planning definition of gypsies and travellers to exclude those who no longer travel. Previously, even those who had previously travelled would have been included and thus not to have a touring caravan was not critical. This scheme now addresses the new PPTS guidance and provides the opportunity for all occupants of the site to travel and accord with the current PPTS definition. Accordingly, whilst I do not see the 2013 approval as an error, this application allows the site situation to catch up with the changes to PPTS.
24. *The Council has a five year supply of sites and this development is unnecessary*
Recent planning appeal hearings have heard evidence of an unmet need in Swale for gypsy and traveller pitches despite the Council having approved more pitches than the GTAA revised need figure required. This figure has always been seen as a target rather than a ceiling and the simple fact that a figure has been reached does not mean that otherwise acceptable development should be prevented.
25. *The Council is not required to meet site demand*
The Council is required to meet the need for pitches. Demand may well be higher, but an otherwise acceptable scheme should not be rejected just because it meets demand.
26. *The site has been found not to suit Romany gypsy need*
The site has not been developed nor specifically proposed for Romany gypsies. However, In Swale we have both Romany and Irish gypsies. The site has been found suitable for gypsy and traveller occupation and the ethnicity of the applicant should not be a reason to refuse planning permission.
27. *The applicant has knowingly undertaken this development without planning permission*
This is not a fair criticism of the application in its current form.

28. There are already too many caravans on the site, and the site does not have a site licence because of this

This is an enforcement issue, which can be tackled once this application is determined and the approved number of caravans on the site is clear and not subject to possible change. Approval of this application will afford the applicant the opportunity to alter the current site layout and seek site licence.

29. The scheme is contrary to Officer advice provide when the application was first submitted

I have already made it very clear that the Officers were not content with the application when it was first submitted. However, the applicant has listened to these concerns and amended the layout shown. The improvements have been referred to above, and it is the scheme in its amended form that I will be considering below.

6.0 DISCUSSION

6.01 At the 5th March meeting Members spoke mainly of matters not related to the merits of the current application and, having voted not to approve it, I intervened to call the application in for further advice. I have set out above the way in which planning policy has shifted since the 2013 approval, and how the approved site layout is now being criticised. I do not doubt that even if this scheme is approved others will continue to criticise it. However, in my view, the main plank of the recent criticisms will be overcome by approval of the proposed layout allied to recent enforcement actions. As the proposal does not involve any extension of the site boundaries I see no reason to refuse the application and I see difficulty arguing at appeal that these matters are relevant to the decision. Nor do I consider that an argument based on non-compliance with conditions of previous planning permissions would be upheld at appeal. To argue so would, I believe, leave the Council very exposed to the risk of paying the appellant's legal and/or professional costs.

6.02 On the other hand, the scheme before the Council now is similar to that which has already been approved save for three main differences;

- All pitches now have space for a touring caravan
- More day rooms are included
- The total number of pitches has risen from 29 to 40 (plus the touring pitches)

The first two of these changes are in the application's favour, whilst the third has very few adverse consequences. The site will remain well screened by protected trees and the increase in the number of pitches will not be obvious. Crucially, the increase in pitch numbers does not involve encroachment into undeveloped areas. It also includes seven larger double pitches (which the 2013 scheme included) and does not therefore dilute the quality of variety of pitch sizes that the 2013 scheme provides for. I sense that approval of the scheme will not suit those that oppose it being treated as part of the Council's legitimate pitch supply figures, and I do not think we should be distracted by these motives.

6.03 I have considered whether any matters raised by Members, by the planning agent objector, or by the Parish Council could amount to a defensible reason for refusal of the application. I have not found this to be so, but I do find that approval of a scheme which overcomes existing criticisms may help to strengthen the Council's position elsewhere. The Council's pitch supply position is always under intense scrutiny at planning appeals, and the shortcomings of the 2013 approved layout have provided an opportunity to undermine the Council's progress on pitch supply. This significant progress on pitch supply is something that the Council should be commended. It does

not mean that any increase in pitch numbers here is required, but nor does it mean that acceptance of an increase in pitch numbers should automatically be rejected. At appeals the Council has consistently argued that the GTAA pitch requirements are a target, not a ceiling, and this approach has been well received by Inspectors. Approval of this scheme will be clear evidence of that approach in action, and that it is working, as accepted by the Local Plan Inspector. It will justify the approach of pitch provision via windfall planning applications, without the need for gypsy and traveller site allocations.

7.0 CONCLUSION

- 7.01 Although I can appreciate unease from the Parish Council about increasing the number of pitches at this site, I do not foresee any real negative impact on the amenities of the area arising therefrom. On the contrary, the site layout should be better suited to use by the gypsy and traveller community, and help to resolve the current concern over occupation of the site and ease pressure for sites elsewhere.

8.0 RECOMMENDATION – GRANT Subject to the following conditions:

CONDITIONS

- (1) The development to which this permission relates must be begun not later than the expiration of one year beginning with the date on which the permission is granted.

Reason: In pursuance of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- (2) The development shall be carried out in accordance with drawing 2549/PL/Sk05 Revision D.

Reason: For the avoidance of doubt.

- (3) There should be no more than forty (40) permanent pitches across the overall site area on which no more than an absolute overall maximum of eighty (80) caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, shall be stationed at any time, of which no more than forty (40) shall be residential mobile homes.

Reason: In accordance with the terms of the application and in the interests of the amenities of the area.

- (4) There shall be no more than one (1) mobile home stationed on any pitch and each pitch shall be provided with space to station a touring caravan.

Reason: In accordance with the terms of the application and in the interests of the amenities of the area.

- (5) No touring caravan may be used other than in an ancillary role to the static caravan on that pitch, and no such touring caravan shall not be occupied by a separate household.

Reason: In accordance with the terms of the application and in the interests of the amenities of the area.

- (6) Each pitch shall be provided with space to park at least one car as shown on drawing 2549/PL/Sk05 Revision D. This space shall not be obstructed by anything which prevents access to it by a car.

Reason: To ensure adequate car parking provision is made on the site.

- (7) No person or group of persons, and no caravan, shall occupy any of the transit pitches marked with a “V” on drawing 2549/PL/Sk05 Revision D for a single period exceeding 3 months. No more than one caravan shall be sited on any transit pitch at any time.

Reason: In accordance with the terms of the application and in the interests of the amenities of the area.

- (8) The static caravans on the permanent pitches (that is those pitches not marked with a “V” on drawing 2549/PL/Sk05 Revision D) shall be sited in accordance with drawing 2549/PL/Sk05 Revision D.

Reason: In accordance with the terms of the application and in the interest of the amenities of the area.

- (9) No caravan on the site shall be occupied by any persons other than by gypsies and travellers as defined in Annex 1: Glossary of Planning Policy for Traveller Sites (August 2015).

Reason In accordance with the terms of the application and in the interest of the amenities of the area.

- (10) The utility/day rooms on individual pitches as shown on drawing 2549/PL/Sk05 Revision D shall be constructed in materials details of which have first been submitted to and approved in writing by the Local Planning Authority.

Reason: In accordance with the terms of the application and in the interest of the amenities of the area.

- (11) Details of the design, internal layout and external materials for all dayrooms and storage sheds not already provided on drawing 2549/PL/Sk05 Revision D shall be submitted to and approved by the Local Planning Authority before these are erected.

Reason: In accordance with the terms of the application and in the interest of the amenities of the area.

- (12) No caravan may be occupied until details required by conditions (7) and (8) above have been approved, and upon approval these dayrooms and/or storage sheds shown on drawing 2549/PL/Sk05 Revision D shall be erected in the position shown on this drawing within three months of the occupation of the respective caravan.

Reason: In accordance with the terms of the application and in the interest of the amenities of the area.

- (13) The site shall only be used for residential purposes, and it shall not be used for any business, industrial or commercial use. In this regard no open storage of plant, products or waste may take place on the land, and no vehicle over 3.5 tonnes shall be stationed, parked or stored on the land.

Reason: In accordance with the terms of the application and in the interest of the amenities of the area.

- (14) Notwithstanding details submitted with the application, no floodlighting, security lighting or other external lighting shall be installed or operated at the site, other than in accordance with details that shall first be submitted to and approved in writing by the Local Planning Authority.

Reason: In the interest of the amenities of the area, and to protect the biodiversity of the surrounding woodland.

- (15) All perimeter fencing to the site (apart from that bordering the footpath to the eastern boundary) shall only be of timber post and rail style. Any solid fencing on the site's southern, western or eastern perimeters shall be removed before occupation of any caravan approved by this planning permission. Thereafter no fencing other than post and rail fencing shall be erected on the site's southern, western or eastern perimeters.

Reason: In the interest of the amenities of the area, and to protect the biodiversity of the surrounding woodland.

- (16) Notwithstanding the details shown on the submitted and approved drawings, no development shall take place until details of both hard and soft landscape works including proposals for the amenity area, children's play area and fencing between pitches, have been submitted to and approved in writing by the Local Planning Authority. These details shall include planting schedules of plants, noting species, plant sizes and numbers where appropriate, and an implementation programme.

Reason: In the interests of the visual amenities of the area.

- (17) All approved landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed in writing with the Local Planning Authority.

Reason: In the interests of the visual amenities of the area.

- (18) Upon completion of the approved landscaping scheme, any trees or shrubs removed, dying, being severely damaged or becoming seriously diseased within five years of planting shall be replaced with trees or shrubs of such size and species as may be agreed in writing with the Local Planning Authority, and within whatever planting season is agreed.

Reason: In the interests of the visual amenities of the area.

- (19) The areas shown as "Amenity Area" and "Children's Play Area" on drawing 2549/PL/Sk05 Revision D shall be retained for such use and no caravan may be stationed on either area at any time.

- (20) No further materials including aggregates or topsoil shall be brought on to the site in connection with the finishing of hard standing areas, unless details of its nature, specification and origin have been submitted to and approved the Local Planning Authority.

Reason: In the interests of the amenities of the area, to prevent localised flooding from any impervious hard standings.

- (21) The communal building within the site (shown as Amenity Hall Existing) on drawing 2549/PL/Sk05 Revision D shall be used only for the management of the site, and for the amenities of residents of the application site. The building shall not be used for residential purposes.

Reason: In the interests of the amenities of the area, and because the site lies in a rural location where new residential use would not normally be permitted.

Council's approach to this application

The Council recognises the advice in paragraphs 186 and 187 of the National Planning Policy Framework (NPPF) and seeks to work with applicants in a positive and proactive manner by offering a pre-application advice service; and seeking to find solutions to any obstacles to approval of applications having due regard to the responses to consultation, where it can reasonably be expected that amendments to an application will result in an approval without resulting in a significant change to the nature of the application and the application can then be amended and determined in accordance with statutory timescales.

In this instance, the application was carefully considered, along with local representations, the content of the application was clarified, and planning permission was granted with suitable conditions to allow development to go ahead without unacceptable consequences for the local environment.

- 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.

