
Offham Downs	567027 158277	12.09.2007	TM/04/00281/FL
-------------------------	----------------------	-------------------	-----------------------

Proposal:	Continued use of land for siting of 1 mobile home for permanent residential occupation including installation of septic tank
Location:	The Horseshoes Sandy Lane West Malling Kent ME19 6TG
Applicant:	Mr And Mrs T Harber

1. Description:

- 1.1 The proposal is to use the site for a private gypsy caravan site. A personal permission is sought.
- 1.2 The application is retrospective and the development as applied for in the application includes the siting of two residential caravans, the installation of foul drainage and also the residential use of a stable block (as a storage and utility room). The northern sector of the site is grazing land used by a pony.
- 1.3 Earlier this year, a new single mobile home was brought onto the site in place of the 2 previous caravans.
- 1.4 The applicants were invited to submit a case of 'very special circumstances' in February 2004. In May 2004, the following statements were made (summarised):
 - Applicants are traditional ethnic Romany Gypsies
 - They are statutory Gypsies
 - Bi-annual count demonstrates a need for further sites for gypsies
 - Chronic paucity of unauthorised (*sic*) sites
 - Gypsies are forced to reside in unsuitable conventional dwellings
 - If the family have to leave the site, there is an impact of more roadside evictions needed
 - Circular 1/94 has a manifest failure to meet land use requirements of gypsies
 - Educational and health needs of gypsies
 - Lack of real harm save for inappropriateness and a limited loss of openness
 - EU convention of Human Rights affords protection to national minorities including these gypsies.

- 1.5 In October 2004, the agent submitted an appeal decision from Maidstone District (dated August 1993) in which the Inspector accepted Mr Harber as a gypsy.
- 1.6 In November 2004, additional information was submitted by the agents as follows:
- The occupation of the Housing Association house in East Malling for 5 years prior to moving onto the application site was 'enforced residence' in a house
 - They moved into the house due to a lack of lawful accommodation for gypsies in the area and to ensure their children would receive their entitlement to education which 'is routinely denied to traveller children who lack a stable place to live.'
 - Refusal of planning permission would disrupt unnecessarily the education of traveller children
 - Mr Harber, being unable to cope with house dwelling, would for many months of the year during this period live at Gravesend Caravan Site with his mother
 - The plot numbers and sizes at Gravesend Caravan site have been reduced in number.
 - Since 1992, the applicants have made considerable attempts to find alternative accommodation suitable to their cultural needs
 - The site at Sandy Lane was chosen because it was already owned by the family for the grazing of horses and was close to West Malling Primary school and Mrs Harber's elderly mother.
 - A personal planning permission would be acceptable such that only they and their offspring could reside on the site.

2. The Site:

- 2.1 The site lies outside the settlement confines of West Malling, within the MGB.
- 2.2 The site measures approx. 0.2ha (0.5ac) with average dimensions of 35m (115 feet) by 55m (180 feet) and is sited on the outside of a sharp corner in Sandy Lane. The access to the site has been widened by the addition of a brick rubble base.
- 2.3 The boundary to Sandy Lane is a bank with mature hedgerow. To the north is a residential property beyond a mature hedgerow. New hedgerows have been planted on the southern and western boundaries.
- 2.4 A PROW runs approx. 25m (82 feet) to the south of the site.

3. Planning History:

- 3.1 TM/02/01505/FL Approved 30.10.2002
Construction of double stable
- 3.2 ENF487 Issued 15.07.1992
Notice alleging material change of use from agriculture to mixed use of agriculture and caravan site.
- 3.3 TM/90/469, Refused 23.05.1990
Outline application for one single storey four bedroom dwelling and garage
- 3.4 TM/75/363 Approved 27.02.1976
Erection of 5 Portable Dog Kennels

4. Consultees:

- 4.1 PC: Objects for reasons summarised: in Green Belt so presumption against residential development; therefore no need for a septic tank; stables are being used in breach of planning consent; risk of ultimate permanent residential dwelling. Sets undesirable precedent; if planning permission is granted, should not include being passed to the offspring and should be restricted to the caravans and should not metamorphose into a conventional house.
- 4.2 EA: Drainage should be to mains drainage in the vicinity or to a package treatment plant in preference to a septic tank.
- 4.3 KCC (Highways) No objections.
- 4.4 DHH: The site will require a site licence.
- 4.5 Private Reps: Departure Press + Site Notice + (8/0S/3R/0X). Two objections have been received making the following comments:
- Planning permission should be applied before the use commences
 - Will increase traffic using 'Quiet Lanes' in the locality
 - Access is on a very dangerous bend, particularly when vehicles are being towed
 - Turning is being carried out in neighbouring driveways, causing damage
 - Refuse is not being collected.
 - Risk of other gypsies using the site in addition to the current family
 - Contrary to policies of KSP and approved Local Plan

5. Determining Issues:

- 5.1 National Policy is PPG2 (Green Belts) and Circular 01/06 (Planning for Gypsy and Traveller Caravan Sites).
- 5.2 Policy HP9 of the KMSPP relates to the provision of gypsy accommodation. Proposals are expected to comply with all other strategic policies, including protection of the environment, countryside and MGB.
- 5.3 Reference should also be made to policies P6/11 of the Tonbridge and Malling Borough Local Plan 1998 and CP21 of the Tonbridge and Malling Local Development Framework Core Strategy. P6/11 states that proposals for the accommodation of gypsies will not be permitted unless it can be demonstrated that the occupants are gypsies and there are no overriding landscape, agricultural conservation, highway or amenity objections to the site. Policy CP21 states that permission will be granted if all of the requirements listed under this policy are met. One of these requirements is that there is an identified need that cannot reasonably be met on an existing or planned site. The other requirements relate to site specific issues such as impact upon rural and residential amenity, accessibility to the site, and the sites being accessible to local shops, schools and other community facilities. This policy also states that there will be a presumption against the development of gypsy accommodation in the Green Belt unless there are very special circumstances.
- 5.4 The main determining issues that relate to this development remains the principle of the development within the Green Belt and the impact of the development upon the character of the countryside.
- 5.5 The site is within the Green Belt where Government guidance contained within PPG 2 applies. It is stated at paragraph 3.12 of PPG 2:

"The statutory definition of development includes engineering and other operations, and the making of any material change in the use of land. The carrying out of such operations and the making of material changes in the use of land are inappropriate development unless they maintain openness and do not conflict with the purposes of including land in the Green Belt"

- 5.6 Paragraph 1.5 of PPG 2 defines the purposes of including land within the Green Belt, one such being to assist in safeguarding the countryside from encroachment. The development does harm the openness of the Green Belt, with the introduction of the two caravans, associated structures, the extensive hard standing, tree clearance and the erection of close boarded fencing around the perimeter of the site and is a significant encroachment into the countryside. As such, the development is, in my opinion, inappropriate development within the Green Belt.

- 5.7 PPG 2 states at paragraph 3.1 that there is a general presumption against allowing inappropriate development which should not be permitted, except in very special circumstances. As with all 'inappropriate development in the MGB, a strong case of very special circumstances is required to justify the grant of planning permission.
- 5.8 Policies SS2 of the Kent and Medway Structure Plan 2006 and CP3 of the Tonbridge and Malling Local Development Framework Core Strategy state that proposals within the Green Belt will be considered against National Green Belt policy.
- 5.9 As inappropriate development, there is an onus on the applicant to demonstrate that 'very special circumstances' exist such as to outweigh the strong policy objection to this proposal. I believe that any consideration of potential "very special circumstances" needs to concentrate on the personal circumstances of the applicants and their family.
- 5.10 The applicant's agent has submitted a very detailed statement in support of this development, which is available for inspection prior to the meeting and summarised above.
- 5.11 Initially, the agent submitted no information concerning his clients' personal circumstances and/or gypsy status. An appeal decision from Maidstone DC relating to Mr Harber's gypsy status has been submitted. That in itself did not contain any of the information on which the Inspector came to his conclusion on the Gypsy status.
- 5.12 The applicants have recently been interviewed as part of a Human Rights Audit which elicited information as to the health, ages and educational status of the children. There were said to be no special social service needs but all the children suffer from asthma.
- 5.13 In terms of personal circumstances, the applicant now has 3 children living within this site (ages 15, 12 and 9). The children attend Maidstone Girls Grammar School, the Malling School East Malling and West Malling Primary School respectively.
- 5.14 In response to the cited 'very special circumstances', there has not been adequate information submitted as to whether the applicants meet the statutory definition of gypsies, particularly as regards current nomadic habits.
- 5.15 I would advise Members that normal educational needs of Gypsy Children could not reasonably be described as justification for inappropriate development in the MGB. The eldest daughter attends Maidstone Grammar and I do not consider that the application site has particularly unique accessibility characteristics for attendance at that school.

- 5.16 Members are advised that it is not correct for the agent to imply that gypsy children in the County must live in a house before they are accepted at schools. It is perhaps more a case of practical difficulty in securing places when children are moving sites every few days.
- 5.17 There is no evidence submitted of the applicants having searched for plots on authorised sites. The family is not registered with the KCC Gypsy liaison officer. In terms of the Gravesend site, although there were close family ties which would have been a factor in their favour, there is no evidence of a request having been made for a plot on that site.
- 5.18 Members will note that in terms of local ties, before moving to a house in East Malling, the family originally resided on an unauthorised site in Maidstone and have family ties in the Gravesend area.
- 5.19 It should be noted from the planning history that the application site is the subject of a current enforcement notice which is registered as a land charge on the site.
- 5.20 I understand that no formal Land Charge Search was made by or on behalf of the applicants at the time of the purchase. Had this been done, they would have been fully aware of the presence of the notice and should have fully appraised themselves of the implications of breaching the notice.
- 5.21 Members are also advised that the stable block permission granted in 2002 was submitted by the applicant. Members may agree it would be reasonable to assume that it was never genuinely intended to be used to accommodate horses even though it was conditioned for stable use only.
- 5.22 A fundamental issue in this type of case is the European Convention on Human Rights as applied by the Human Rights Act 1998. Article 8 of the European Convention on Human Rights requires that “everyone has the right to respect for his private and family life, his home”. In terms of a refusal of planning permission and any subsequent enforcement action, the Courts have set a test to be applied: whether planning measures taken by a Local Planning Authority are necessary and proportionate, having regard to both the potential harm to the environment and the personal circumstances of the applicants.
- 5.23 The change of use in question relates to the stationing of a large mobile home and the residential use of a stable block on what appears to be a permanent basis. The development harms the openness of the Green Belt and does not assist in safeguarding the countryside from encroachment. Accordingly, the development is thereby defined as “inappropriate” development in the Green Belt.
- 5.24 Works have already taken place on site, which include the stationing of a very large mobile home. The existing access has been widened. Due to the position of the mobile home on an elevated site, it is visible from the access to Sandy Lane

and from the PROW in the vicinity and thus is detrimental to the landscape and its setting.

- 5.25 I therefore consider that there is a strong landscape objection to this proposal.
- 5.26 Members will be aware that policy CP21 of the LDF Core Strategy (expected to be re-numbered as CP20) does allow for the principle of accommodation for Gypsies and Travellers where there is an identified need that cannot be reasonably met on an existing or planned site.
- 5.27 The Borough Council has undertaken a Gypsy and Traveller Accommodation Assessment (GTAA) survey jointly with Ashford, Maidstone and Tunbridge Wells Borough Councils. There are several unauthorised gypsy/traveller sites within the Borough which form part of a pattern of need which has been projected over the next 5 years.
- 5.28 Whilst level of need for gypsy/travellers has not yet been finalised within the Borough and cannot be until the Regional Spatial Strategy is adopted in 2008, on the basis of the GTAA findings, the recognised need is likely to be in the order of 10 units over the next 5 years within Tonbridge and Malling Borough. This includes the currently unauthorised facilities in the Borough plus the growth expected from existing facilities and incomers to the Borough.
- 5.29 The Borough Council and KCC are currently pursuing opportunities for the positive provision of gypsy and traveller's sites and the Strategic Housing Advisory Board and Members have already endorsed funding to investigate the options for enhancing the existing Coldharbour site at Aylesford.
- 5.30 On the assumption that this project is successful and is implemented, this could provide accommodation for the occupiers of the existing unauthorised sites and this provision would be outside the Green Belt.
- 5.31 The majority of the site is the subject of an existing Enforcement Notice but this needs to be re-issued as the planning unit is now a different shape.
- 5.32 In summary, the development is considered to be inappropriate development. The personal circumstances put forward by the applicant's agent do not, in my mind, amount to a case of very special circumstances. Current Government Guidance contained within PPS 3 (and other studies referred to by the applicant's agent) requires Councils to plan for the needs for the gypsy community. An assessment of the needs for gypsies and travellers has been undertaken by the Borough Council. This assessment has revealed that it is likely that in the region of 10 additional units would be required over the next 5 years within the Borough. Plans are in motion to investigate the expansion of the existing gypsy site at Coldharbour in Aylesford, which is not located within the Green Belt and indeed is not as environmentally sensitive as the site the subject of this application. It is also apparent that the applicant has not been proactive in investigating alternative

locations within or outside the Borough, they have resided in breach of an enforcement notice on the site for a number of years and have upgraded their mobile home very recently. Due to these factors, I do not believe that any other very special circumstances exist that should outweigh the principal objection to this inappropriate development.

5.33 In light of the above comments regarding the intended development of the existing gypsy site at Coldharbour, it is considered that whilst there is a need for additional gypsy sites, this could be met in this planned development.

5.34 I consider that, in light of the foregoing paragraphs, planning permission should not be granted for the development the subject of this application and a new enforcement notice should be issued and served.

6. Recommendation:

6.1 **Refuse Planning Permission** as detailed in letters and enclosures dated 07.05.04, 07.10.04, 24.10.04 and plan date stamped 26.01.04, for the following reasons:

- 1 The site lies within the Metropolitan Green Belt where there is a strong presumption against permitting inappropriate development, as defined in PPG2: Green Belts, policy SS2 of the Kent and Medway Structure Plan 2006 and policy CP3 of the Tonbridge and Malling Borough Local Development Framework Core Strategy 2007. The proposed development constitutes inappropriate development and is therefore contrary to policies SS2, CP 3 and also policy P2/16 of the Tonbridge and Malling Borough Local Plan 1998.
- 2 The proposal is contrary to Policy HP5 of the Kent and Medway Structure Plan 2006 and policy CP15 of the Tonbridge and Malling Borough Local Development Framework Core Strategy 2007 which states that development will not normally be permitted in rural Kent, other than at the villages and small rural towns, unless the development falls into one of the special categories listed in policy, none of which applies to the development proposed. For similar reasons, the proposed development is contrary to policy P2/16 of the Tonbridge and Malling Borough Local Plan 1998. (Note: It is expected that policy CP15 of the Core Strategy will be re-numbered to be policy CP14 upon adoption by the Council on 25 September 2007).
- 3 The development is contrary to policy CP 21 of the Tonbridge and Malling Borough Local Development Framework Core Strategy 2007 for the reason that the likely need for additional gypsy sites within the Borough could be met by the proposed expansion of an existing gypsy site in the Borough. (Note: It is expected that policy CP21 of the Core Strategy will be re-numbered to be policy CP20 upon adoption by the Council on 25 September 2007).

- 4 The Local Planning Authority does not consider that there is any justification, in the circumstances of the present application for overriding the planning policy objections.
- 6.2 An Enforcement Notice be issued, the detail of which will be set out in a Supplementary Report.

Contact: Marion Geary