

East Peckham **567084 148311** **11 July 2008** **TM/08/01695/FL**
East Peckham And
Golden Green

Proposal: Retrospective application for change of use of land to residential for a long-stay caravan site for one gypsy family and stationing of touring caravan
Location: Land At Pinkham Lane East Peckham Tonbridge Kent
Applicant: Mr J Fuller

1. Description:

- 1.1 The application is retrospective for the retention of the existing mobile home and associated structures on the site. There is one mobile home stationed on the site and currently no touring caravan. Although not applied for, the existing structures, hard standing and fencing around the site are also to be retained. In addition adjoining land is also being used as a garden in association with the site. The application has been submitted on the basis of the site being occupied by one family.
- 1.2 A short statement has been submitted in support of the application, further information is provided in respect of the use of floatation devices which can be fitted to a mobile home at times of flood.

2. Reason for reporting to Committee:

- 2.1 Controversial locally and need for consideration of enforcement action.

3. The Site:

- 3.1 The site lies outside the settlement confines of East Peckham, within the Metropolitan Green Belt. It is therefore within the open countryside. The site is also sited within a flood plain and categorised as Flood Zone 3 which is the highest risk zone.
- 3.2 To the south east of the site is a Site of Nature Conservation Interest. A public right of way runs past the site.
- 3.3 Pinkham Lane is an unmade road and has a rural character. The public right of way leads to the river Medway. There are a number of residential properties along Pinkham Lane which vary in size and character.
- 3.4 There are a number of buildings on the site in connection with the change of use of the land being considered. These include the mobile home, a utility/storage area comprised of two stables/timber structures and a further structure for animals lies to the front of the site. The site is surrounded on three sides by a close

boarded fence over two metres in height with large gates along the front boundary adjoining the public right of way. The whole of this part of the site is hardsurfaced with tarmac.

- 3.5 The 'blue land' identified in the planning application as being in the control of the applicant is being used as a garden in association with the mobile home. This area is grassed and fenced off with post and rail fencing. It has a residential character with children's play equipment.

4. Planning History:

TM/57/10242/OLD Refuse 23 October 1957

Outline application for two detached bungalows and garages.

TM/57/10743/OLD Refuse 8 April 1957

Outline application for dwellings for week end and holiday purposes.

TM/59/11151/OLD Refuse 28 May 1959

Outline application for one cottage, glass house and cold frames in connection with nursery.

TM/00/00670/FL Refuse 20 June 2000

Appeal Dismissed 06 November 2000
Change of use to residential and stationing of one mobile home for Gypsies.

TM/01/00125/FL Grant with Conditions 08 November 2001

Provision of Stables

TM/01/01764/FL Declines to determine 26 July 2001

Use of land for stationing of a touring caravan for use by Gypsies from April to September each year.

- 4.1 There are two extant enforcement notices on this land. These relate to:

- The change of use of agricultural land to land used for the stationing of a caravan; and
- The importation of stone chippings to form a parking area and the importation of builders' rubble to form a bund around this parking area.

5. Consultees:

5.1 PC: The Parish Council objects to this planning application and submits the following reasons as our grounds for objection:

- Inappropriate and unsuitable use of the land.
- The land never in the past to the knowledge of the Parish Council been given approval for the stationing of a mobile home.
- The proposal is considered to be adverse development within the Green Belt.
- The proposed development would be on the floodplain in an area already at risk from flooding.
- It is believed that there are no public sewer/disposal facilities close by.
- The Parish Council believes that the land has always been in agricultural use until sold off in pieces by a former landowner. The Parish Council does not recall a change of use for the land being approved.
- The adverse effect the development would have on the openness of the surrounding area.
- The adverse effect the development would have on the character and appearance of the area.
- It is believed that the applicant and his family permanently resided at 3 Nettlestead Court, Paddock Wood. It is understood that the property is still in the ownership of the planning applicant who has rented it out.

5.2 EA: Objects to this application because the proposed development falls into a flood risk vulnerability category that is inappropriate to the Flood Zone in which the application site is located. We recommend that the application should be refused planning permission on this basis.

Reason: Planning Policy Statement 25 (PPS25) classifies development types according to their vulnerability to flood risk and gives guidance on which developments are appropriate in each Flood Zone. PPS25 requires decision-makers to ensure that as part of the Sequential Test, development sites are appropriate to the type of development or land use proposed.

In this case, the application site lies within Flood Zone 3b defined by Planning Policy Statement 25 as having a high probability of flooding. The development type in the proposed application is classified as highly vulnerable in accordance

with table D.2 of PPS25. Tables D.1 and D.3 of PPS25 make clear that this type of development is not compatible with this Flood Zone and should not therefore be permitted.

Explanation: The Environment Agency's flood risk mapping classifies this site as lying in flood zone 3b, which denotes areas of functional floodplain. Our records show that the area has been subject to flooding in 1960, 1963, 1968 and 2000.

Table D2 of PPS25 classifies the proposed use of the land to site a mobile home for permanent residential use as 'Highly Vulnerable'. Table D3 instructs that highly vulnerable development should not be permitted in the functional floodplain.

While we have not received a formal Flood Risk Assessment, information on the proposed use of floatation devices to reduce the risk of flooding has been received. In this case the use of such a device would not be appropriate to justify this proposal.

Our main concerns would be that although the risk of material damage to the mobile home would be reduced, the property will be completely inaccessible for the duration of the flood event. The occupiers of the caravan at the time flooding occurs could be surrounded by deep floodwaters and require rescue by boat or helicopter. It is considered that this represents an unnecessary and unacceptable risk to life.

There is no information on the velocity of floodwaters that the anchoring device would be able to withstand. A further concern would be that in fast flowing water the mobile home could break free and float downstream, potentially causing an obstruction and exacerbating flooding elsewhere.

We must therefore object to this application on the grounds that the type of development is not compatible with the level of flood risk, that the proposal would not be sufficiently safe, and that it has the potential to increase flood risk elsewhere.

- 5.3 KCC (Highways): Pinkham Lane is a private street not the responsibility of the Highways Authority. It is recommended that the applicant provide a suitable level of off street parking. No objections.
- 5.4 DHH: I note the proposal to place stables on the site. Can the applicant be required to provide details of how they propose to dispose of waste produced? If possible, a condition should be added prohibiting the burning of waste on site.

Tonbridge and Malling operates a two wheeled bin and green box recycling refuse collection service from the boundary of the property. Bins/box should be stored within the boundary of the property and placed at the nearest point to the public highway on the relevant collection day.

If planning consent is granted for the land to be used as a caravan site for permanent residential occupation then a caravan site licence under the Caravan Sites and Control of Development Act 1960 will be required. An application form for a caravan site licence may be obtained from the Environmental Health and Housing Service. Conditions will be attached to the licence to protect the health and safety of the site users and visitors. The mobile home should have proper sanitary accommodation and should not be in such a state or so overcrowded as to be prejudicial to the health and safety of the occupants.

5.5 Private Reps: Departure Press and Site Notice 7/2S/17R/2X. Objections have been received on the following grounds:

- The site has already been developed and occupied without consent.
- A flood risk assessment has not been submitted.
- The site is at serious risk of flooding.
- Residents of neighbouring properties had to be rescued in 2000.
- Development of the site affects and reduces the capacity of the flood plain therefore affecting adjacent properties.
- The site is in the MGB, which is being eroded.
- Development of the site will add to existing flooding problems in the village.
- Increase in traffic on Pinkham Lane.
- There is already a long stay caravan site within a mile of East Peckham, why is a further site needed.
- Planning permission of a similar nature has previously been refused three times on this site.
- Touring caravans on the site are not acceptable?
- Where do planning applications stop in Pinkham Lane.
- A high perimeter fence has been erected.
- Pinkham Lane is a public right of way to the river.
- If this permission is approved a further application will be submitted to build a house.
- The approval would set a precedent.

- The site is on the Medway floodplain.
- The need for a floatation device proves the site is not acceptable for this form of development.
- This has been repeated all too often, where houses have then been approved.
- Impact of further development on the locality.
- Inappropriate development in the MGB and there is no case of very special circumstances.
- Development should not be allowed in the Green Belt due to the nature of the occupants.
- An enforcement notice to remove a hardstanding is still valid on this site.
- How can the same development of a mobile home be considered years later.
- Adverse impact on the openness of the Green Belt.
- Before the unauthorised development this was an open field that added to the rural character of the locality.
- The last appeal Inspector saw no reason to set aside constraints on developing in the Green Belt just to facilitate one proposal, the same must apply to this application.
- The development will obstruct the flow of flood waters.
- Have services to the site obtained all the relevant consents.
- The stables on the site also do not have the benefit of planning permission.

6. Determining Issues:

- 6.1 The main determining issues that relate to this development are the principle of the development within the Green Belt and the impact of the development upon the character of the countryside, the issue of flood risk and the potential risk to loss of life due to its siting within a high risk flooding area, and the issues surrounding gypsies and the provision of sites.

Planning Policies:

- 6.2 National Policy is PPG2 (Green Belts), PPS25 (Development and Flood Risk) and Circular 01/06 (Planning for Gypsy and Traveller Caravan Sites).

- 6.3 Policy HP9 of the Kent and Medway Structure Plan 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. Policy SS2 relates to Green Belts whereas policy HP5 relates to acceptable development within the countryside and identifies new housing outside established urban areas as unacceptable and policy NR10 that relates to flood risk. This policy outlines that development in flood risk areas will not be permitted if it would be subject to an unacceptable risk of flooding.
- 6.4 The relevant policies in the Tonbridge and Malling Local Development Framework Core Strategy are CP3, CP10, CP14 and CP20. Policies CP3 and CP14 relate to the restrictions in the Green Belt and in the countryside and identify the types of development that may be appropriate. The need to provide a case of very special circumstances is also outlined and states that all new development without this justification or listed as appropriate will be refused.
- 6.5 Policy CP10 identifies that development should be sited in areas at a low risk of flooding and those sited within a higher risk area should provide not only a flood risk assessment but also a safe means of escape and be designed to mitigate the effects of flooding.
- 6.6 Policy CP20 which relates to gypsies and site provision 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.

Green Belt and Impact on the Countryside:

- 6.7 The site is within the Green Belt where Government guidance contained within PPG 2 applies. 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 a mobile home and associated structures, the hard standing, use of land as residential garden and the erection of close boarded fencing around the perimeter of the site. This is therefore a significant encroachment into the countryside and as such, the development is, in my opinion, inappropriate development within the Green Belt.
- 6.8 Circular 01/2006: Planning for Gypsy and Traveller Caravan Sites also confirms the importance of Green Belt policies and the protection of the environment from inappropriate development. It states “ there is a general presumption against inappropriate development within Green Belts. New gypsy and traveller sites in

the Green Belt are normally inappropriate development, as defined in PPG2. National planning policy on Green Belts applies equally to applications for planning permission from gypsies and travellers, and the settled population. Alternatives should be explored before Green Belt locations are considered.”

- 6.9 PPG 2 also 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. 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.
- 6.10 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. Consideration of potential “very special circumstances” can include the personal circumstances of the applicants and their family.
- 6.11 The applicant’s agent has submitted a short statement in support of this development and 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. The applicant’s eldest child is in pre-school in East Peckham and the reason offered for occupying this site is due to it being owned by Mr Fuller’s father. It was also stated that their last address was 3 Nettlestead Court in Paddock Wood (which is still in the applicant’s ownership) and prior to that his father’s sites in the Maidstone area that have now been sold. It has also been stated that Mr Fuller travels for short periods in caravans in connection with his employment as a Farrier.
- 6.12 The change of use in question relates to the stationing of a large mobile home and the residential use of ancillary buildings and a stable block on a permanent basis, with additional land used as a residential garden. The development by definition 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.

Considerations in respect of Gypsy Site Provision:

- 6.13 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.

- 6.14 Works have already taken place on site, which includes the stationing of a mobile home and other associated structures. The site has been hard surfaced and a two metre high perimeter fence and gates have been erected. Adjoining land is also being used as residential garden. The mobile home and the site, due to its position is visible from the Public Right Of Way along Pinkham Lane and thus is also detrimental to the landscape and its setting.
- 6.15 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 and is fully disclosed in the event of a search being made. The applicants cannot therefore claim that they were not aware of the presence of the notice and should have fully appraised themselves of the implications of breaching this notice. They have therefore chosen the route of unauthorised occupation and retrospective application.
- 6.16 There is no evidence submitted that the applicants have searched for plots on authorised sites. The family is not registered with the KCC Gypsy liaison officer and does not consider a Council site to be acceptable. There is also no information submitted in respect of his father's current site and whether this is suitable for additional accommodation. Members will also note that in terms of local ties, before moving to a house in Paddock Wood, the family originally resided on a site in Maidstone and have family ties in the wider area.
- 6.17 Policy CP20 of the Core Strategy 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.
- 6.18 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.
- 6.19 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, 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.
- 6.20 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. For a variety of reasons it was not possible to submit the scheme for the recent bidding round. However, 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.

- 6.21 The outcomes of two recent appeals within the borough relating to gypsy development are also relevant to this case. These two appeals have been allowed for gypsy caravan sites. In these cases temporary permissions were granted as the Inspectors were not satisfied that all the work done thus far in assessing and seeking to accommodate the need for gypsy caravan site accommodation would bear fruit in the next few years. It therefore appears that unless a site suffers from clear and overwhelming site specific problems then it is likely that permission would be given on appeal even if the site is in the Green Belt.
- 6.22 The recent appeal decisions made with regard to two sites elsewhere in the Borough indicate a crucial element in the judgement exercised in appeal decisions. The provisions of Circular 01/2006 make it clear that Local Planning Authorities should consider positively granting temporary planning permissions while the adequate provision of a supply of gypsy sites is ensured. Given the assessment set out in the above paragraph and the decisions to grant temporary permission in these cases, and also given the position with regard to the Coldharbour project, consideration must be given to the appropriateness of the grant of temporary permission. I will return to this point below.

Risk of Flooding:

- 6.23 PPS25 (Development and Flood Risk) identifies the types of development that are acceptable within each type of flood zone. The application site is within Zone 3 (b) which is the highest risk zone and therefore subject to the most restrictive policy. PPS25 requires a site specific flood risk assessment for all applications in this zone; no flood risk assessment has been submitted in support of this application.
- 6.24 Caravans and mobile homes are also classed as the most vulnerable uses, which should be sited in the least flood sensitive areas, thus matching vulnerability of land use to flood risk. Consequently highly vulnerable development (caravans) should not be permitted in Zone 3. Development of this site and in particular with a mobile home structure is therefore completely contrary to advice in PPS25.
- 6.25 The Environment Agency therefore objects to this development on flood risk grounds due to the high risk of flooding on this site being situated in Zone 3(b), a functional floodplain, and the highly vulnerable category of the proposed development. The development is contrary to advice in PPS25 and is not the type of development that is compatible with this Flood Zone and therefore should not be permitted. Furthermore the use of floatation devices as proposed, is not appropriate to justify this proposal or sufficient to outweigh the risk.

- 6.26 Consequently, the flood risk at the site can not be safely managed as there is no safe escape route and the site would be inaccessible during a flood event. For these reasons the future occupiers of the mobile home would be placed in danger from flood hazards, being surrounded by deep waters, and would require rescue by boat or helicopter. It is considered by the Environment Agency that this represents an unnecessary and unacceptable risk to life and therefore the application should be refused, and I concur with that assessment.
- 6.27 Policies CP10 of the Core Strategy and NR10 of the Kent and Medway Structure Plan concur with this advice and identify that this site would not be appropriate for most forms of development due to the high flooding risk.

Conclusions:

- 6.28 The application site is therefore at the highest risk of flooding and potential for loss of life, as a result of the flooding. This site is consequently not suitable for any form of development let alone use as a highly vulnerable caravan site. Therefore permission should be refused for this proposal for this reason in its own right as it is contrary to Government advice in respect of development and flooding.
- 6.29 Furthermore planning permission for a similar use of this site has previously been refused and a subsequent appeal dismissed in respect of both Green Belt and flooding issues. This resulted in an enforcement notice being issued for the removal of the caravan that is still valid. The Inspector in this case concluded in respect of flooding that even before the stricter controls identified in PPS25 the site was subject to a serious level of flooding and at sufficient risk to justify a refusal on these grounds, as well as the protection of the Green Belt.
- 6.30 In response to the cited 'very special circumstances', there has been limited information as regards current nomadic habits. The information submitted does not however amount to a sufficient case of "very special circumstances" to overturn established Green Belt and countryside policies.
- 6.31 It is also worth noting 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 and have continued to develop the site. 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 within the Green Belt.
- 6.32 Moreover, this application differs from the two appeal sites referred to above in respect of the serious flooding issue and the fact that both the appeal cases related to applicants which had been on the KCC Caravan Sites Waiting List. So, notwithstanding the conclusion reached by the Inspectors in the two appeals cited above, I do not consider that it would be acceptable to grant even temporary permission in this case given the clear flood risk identified by the Environment Agency.

6.33 I consider that, in light of the foregoing paragraphs, planning permission should not be granted for the development the subject of this application.

7. Recommendation:

7.1 Refuse Planning Permission 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 Core Strategy 2007. The proposed development constitutes inappropriate development and is therefore contrary to policies SS2 and CP3. Moreover, the development is harmful to the openness of the Green Belt and therefore conflicts with the objectives of PPG2.
- 2 The proposal is contrary to policy HP5 of the Kent and Medway Structure Plan 2006 and policy CP14 of the Tonbridge and Malling 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.
- 3 The development is contrary to policy CP20 of the Tonbridge and Malling Core Strategy 2007 for the reason that it is located in the Green Belt and no very special circumstances have been demonstrated.
- 4 The proposal is sited in a Flood Risk Zone 3(b) and is classified as a highly vulnerable form of development. Therefore there is a serious and unacceptable risk to life that can not be satisfactorily mitigated contrary to guidance in PPS25 (Development and Flood Risk), Policy NR10 of the Kent and Medway Structure Plan 2006 and policy CP10 of the Tonbridge and Malling Core Strategy 2007.
- 5 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.

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