
URGENT ITEM OF BUSINESS

Alleged Unauthorised Development

Wateringbury

09/00294/UNAUTU

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Wateringbury

Location: Land Adjoining The Pavilion Known As Drayhorse Meadow
Fields Lane Wateringbury Maidstone Kent

1. Purpose of Report:

- 1.1 To report the unauthorised change of use of land from land used for grazing horses to a residential caravan site.
- 1.2 This is an item of urgent business that has been accepted as such by the Chairman, and notified to the Chief Executive, in accordance with the Council's Constitution. The reason for urgency is that the breach of planning control has occurred since the main Agenda for this meeting was published, and in view of the seriousness of the breach and the consequential impact upon the Green Belt.

2. The Site:

- 2.1 The site lies on open land to the south of the A26 Tonbridge Road and to the east of Wateringbury village. To the south of the site lies the River Medway and the Medway Valley Railway line. The site is accessed off Fields Lane along a trackway

3. History:

- 3.1 There is a long planning history for the site and below is a selection of the most relevant applications:
 - TM/09/01878/FL - Retrospective Application: Change of use to residential, stationing of five mobile homes and one touring caravan – Invalid.
 - TM/08/03109/FL – Residential log cabin to monitor the keeping and breeding of shire horses – Refused 2 December 2009.
 - TM/07/03095/FL – Temporary dwelling for a period of three years relating to the keeping and breeding of Shire Horses – Refused 27 December 2007.
 - TM/05/02434/FL – Change of use and retention of equestrian related ancillary timber building plus retention of two CCTV 3m high poles - Grant with Conditions 13 February 2006.
 - TM/03/00561/FL Construction of timber barn for storage also positioning of 2CCTV poles (Retrospective) - Refused 28 April 2003; Appeal dismissed 17 December 2003.

- TM/01/00340/FL Block of 5 Stables and hay store - Grant with Conditions - 17 April 2001.
- Enforcement Notice with regard to the erection of a timber extension to create a barn for storage purposes on eastern end of existing block of five stables. Issued 24 July 2003; Appeal Dismissed 17 December 2003.

4. Alleged Unauthorised Development:

- 4.1 The unauthorised change of use that has taken place is from land used for grazing of horses to a residential caravan site.

5. Determining Issues:

- 5.1 Over the weekend of 25 and 26 July 2009 a family of travellers moved on to the site. Officers visited the site on 27 July in order to ascertain the identity of the occupiers, their origins and intentions and to make an assessment of any Human Rights issues. As a result of that investigation, I can advise Members that the family comprises a mother and her four adult children, although at this time one of the children is not on site. The family owns the site and wishes to stay on site for the rest of their lives. There are currently no people under 18 on the site on a permanent basis but it is understood that children under 18 (i.e. the owner's grandchildren) will visit at weekends and holidays. The family had lived on a site in Gravesend until the children had grown up. I understand that the children went travelling and the mother moved into a built accommodation. The children have moved from site to site either for work reasons or because they needed to move on from unauthorised sites. At this time there are four touring caravans and a double unit mobile home on the site. There are also related cars and a mobile snack bar on the land.
- 5.2 A retrospective application for planning permission was received by the Borough Council on the Monday following occupation of the site. This application is currently invalid for a number of technical reasons, but the development for which planning permission is sought is a change of use to a residential caravan site, stationing of five mobile homes and one touring caravan. Members will note the description of the retrospective planning application differs from the development which has taken place to date. A layout plan submitted as part of the proposal shows these units spaced out across the site whereas currently the units are comparatively closely spaced.
- 5.3 The site comprises about 0.8ha of open land which has most recently been used for the grazing of horses. There is a small complex of stables and similar buildings immediately to the north of (but outside) the current site as defined by the planning application, but other than that, there are no permanent structures on the site. There is currently no reliable evidence of any change of use of the stable buildings.

- 5.4 The site is located 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."

- 5.5 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 caravans and associated paraphernalia and represents a significant encroachment into the countryside. Notwithstanding the policies that apply to the provision of gypsy and traveller accommodation (which I refer to below), I am therefore of the opinion that the development constitutes inappropriate development within the Green Belt.
- 5.6 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.
- 5.7 Policy CP3 of the Tonbridge and Malling Core Strategy 2007 states that proposals within the Green Belt will be considered against National Green Belt policy. Policy CP14 of the Tonbridge and Malling Core Strategy 2007 seeks to restrict development in the countryside generally, identifying certain categories which may be acceptable in principle; none of those categories applies in this instance.
- 5.8 Reference must also be made to policy CP20 of the Tonbridge and Malling Borough Core Strategy 2007, which relates specifically to the provision of sites for gypsies, travellers and travelling showpeople. Policy CP20 states that provision will be made (either through the LDF process or through specific planning permissions) for the number of plots specified in the South East Plan on sites that meet certain criteria, as set out in the policy. One of these requirements is that there is an identified need that cannot reasonably be met on an existing or planned site. Another requirement is that residential or rural amenity should not be prejudiced as a result of visual intrusion or other factors. The other requirements relate to site specific issues such as accessibility to the site, and the site's being accessible to local shops, schools and other community facilities. This policy states that there will be a presumption against the development of gypsy accommodation in the Green Belt unless there are very special circumstances.
- 5.9 Government advice concerning Planning for Gypsy and Traveller Caravan Sites is set out in Circular 01/2006. The Circular states that consideration should be given to the matter of granting temporary planning permission for this type of development in

light of an existing unmet need for additional gypsy sites in the Borough and is a material consideration. It states at paragraph 12 that its main intentions are:

“a) Create and support sustainable respectful and inclusive communities where gypsies and travellers have fair access to suitable accommodation, education, health and welfare provision, where there is mutual respect and consideration between all communities for the rights and responsibilities of each community and individual and where there is respect between individuals and communities towards the environments in which they live and work;

b) to reduce the number of unauthorised encampments and developments....

*c) to increase significantly the number of gypsy and traveller sites in **appropriate locations** (my emphasis) with planning permission in order to address under provision over the next 3-5 years;*

d) to recognise, protect and facilitate the traditional travelling way of life of gypsies and travellers whilst respecting the interests of the settled community;

e) to underline the importance of assessing needs at regional and sub-regional level and for local authorities to develop strategies to ensure that needs are dealt with fairly and effectively;

f) to identify and make provision for the resultant land and accommodation requirements;

g) to ensure DPDs include fair, realistic and inclusive policies and to ensure identified need is dealt with fairly and effectively;

*h) to promote more private gypsy and traveller site provision in **appropriate locations** (my emphasis) through the planning system, while recognising that there will always be those who cannot provide their own sites; and*

i) to help avoid gypsies and travellers becoming homeless through eviction from unauthorised sites without an alternative to move to.”

5.10 The Borough Council has undertaken a Gypsy and Traveller Accommodation Assessment (GTAA) survey jointly with Ashford, Maidstone and Tunbridge Wells Borough Councils. This has served to inform the regional position on such accommodation. Whilst level of required position for gypsy/travellers has not yet been finalised at the regional level and cannot be until the partial review of the Regional Spatial Strategy has been completed, on the basis of the GTAA findings the identified need is in the order of 10 units over the next 5 years within Tonbridge and Malling Borough. We await the outturn of the partial review of the SE Plan which is currently the subject of consultation. The preferred option of the Regional Planning Body (SEERA) is that 18 pitches would be the provision figure for the Borough. The Council has taken a position of objecting to that figure, instead promoting an option which would mean 12 pitches; much closer to the GTAA. The GTAA figure includes

the currently unauthorised facilities in the Borough plus the growth expected from existing facilities and incomers to the Borough. The occupants at Drayhorse Meadow are recent incomers to the Borough following the GTAA. So, although they were not specifically identified as needing accommodation at that time, the survey did anticipate that there would be a number of people in similar situations.

- 5.11 The Borough Council and KCC are currently pursuing opportunities for the positive provision of gypsy and traveller sites and a planning application has recently been submitted for a new site at Coldharbour, Aylesford, to provide a total of 18 pitches.
- 5.12 This project has also been submitted to the Housing and Communities Agency for the current funding bidding round for gypsy site provision. On the assumption that this project is successful and is implemented, it could provide accommodation for the occupiers of the site the subject of this report. That provision would be outside the Green Belt and would follow policy criteria set out in Core Strategy policy CP 20.
- 5.13 The current site can clearly be seen from the Wateringbury Recreation Ground, from the residential area on the eastern side of the village from adjoining open land, from the public right of way and in landscape views from across the Medway Valley. The current use forms a highly visually intrusive feature within the open countryside. The use is inappropriate development in the Green Belt and harmful to its openness. The use has a marked intrusion on the landscape from the south side of the Medway Valley. In that respect the village of Wateringbury is relatively well contained and defined by a tree belt. The stable building that adjoins the site appears as a low and dark coloured feature whereas the caravans in contrast form a prominent and intrusive feature. Indeed, if the units were to be laid out in accordance with the submitted plans, it is considered that this impact would be increased.
- 5.14 In considering whether it is appropriate to take enforcement action, the Local Planning Authority (LPA) must take a view as to whether there are matters either within the nature of the site or the specific needs of the current occupiers which are likely to sufficiently overcome the harm that this development causes to the openness of the Green Belt and whether those matters constitute "very special circumstances".
- 5.15 As the site is occupied by adults with no serious health issues, and there are no resident school-aged children, there is no site-specific case, in my opinion, for these persons being on this particular unauthorised site in the Green Belt.
- 5.16 It is also material to consider the particular circumstances that have led the current occupants of Drayhorse Meadow to move onto the site and where they have lived previously. The owner, Mrs Ann Medhurst, is known to have been living in a private residence in Ingoldsby Road in Gravesham until 31 October 2007 and it is understood that she chose to leave that dwellinghouse. Furthermore, Mrs Medhurst's adult children chose to leave a site in Gravesend to move on to this unauthorised site at Drayhorse Meadow. The decision which led Mrs Medhurst and her adult children to firstly buy the application site (on 23.06.2009) and then make arrangements to

move on to the site (25/26.07.09) would have taken significant planning and financial investment, while the site was in the Green Belt and had no lawful use as a Gypsy caravan site.

- 5.17 It could be considered that the effect of any decision by the Borough Council to take enforcement action to remove the use would interfere with the owner's/occupiers' right to occupy their home. However, it is well established that whether that interference amounts to a breach/violation of human rights depends upon whether it is proportionate to the interests of the community that would be protected. It is clear that the owners/occupiers' homes would be lost. However, it is relevant to take into account that their current homes have come into being as a result of a direct breach of planning control that must have involved a conscious decision sustained over a period of time. The use causes clear harm to Green Belt objectives, planning policy protecting the countryside, and to the interests of the community as a whole whose importance is acknowledged in adopted Development Plans and long established planning policy. I consider that the weight of these material considerations is such that enforcement action is proportionate to the interference with the owners/occupiers' human rights under Article 8. I therefore conclude that the action recommended in this report would not represent a violation of Article 8 of the European Convention on Human Rights.
- 5.18 The Council has a general duty under Section 71 of the Race Relations Act 1976 in carrying out its functions to have due regard to the need to eliminate unlawful discrimination and to promote equality of opportunity and good relations between persons of different racial groups. In connection with this duty, the Commission for Racial Equality has issued a Code of Guidance dated 2002. The Code directs attention to any unavoidable adverse impact on relations between different racial groups and to whether such impact can be justified by the importance of the particular function.
- 5.19 In connection with this duty, it is acknowledged that Mrs Medhurst and her family, as Gypsies, are members of a racial group. The Council's function in protecting the countryside is not discriminatory against racial groups. Any impact on Mrs Medhurst and her family is justifiable on the grounds of protecting the Metropolitan Green Belt and the countryside generally.
- 5.20 Members will be aware that there are a number of other sites within the Borough that are currently being occupied unlawfully by gypsies or travellers and where planning applications currently lie undetermined. In those cases, officers have not considered it expedient, at this stage, to recommend commencement of enforcement proceedings. I am of the opinion that this case distinguishes itself from those other cases by virtue of the extent and nature of the impact that the unauthorised development has on the character, appearance and openness of the Green Belt and the intrusion in the landscape.

5.21 For the above reasons I believe that it is expedient to issue an Enforcement Notice to seek the removal of all residential caravans from the site and I have, in coming to my recommendation, taken into account any issues that arise under the Human Rights Act 1998.

6. Recommendation:

6.1 An Enforcement Notice **be issued** as set out below and copies **be served** on all parties with a relevant interest in the land.

The Notice to take effect not less than 28 days from the date of service, subject to:

- The concurrence of the Chief Solicitor, he being authorised to amend the wording of the Enforcement Notice as may be necessary.
- In the event of an appeal against the Notice, the Secretary of State and the appellant to be advised that the Local Planning Authority is not prepared to grant planning permission for the development the subject of the Enforcement Notice.

Breach of Planning Control Alleged:

Without planning permission the unauthorised change of use of land from land used for the grazing of horses to a residential caravan site.

Reasons For Issuing The Notice

It would appear to the Authority that the above breach of planning control has occurred within the last ten years.

The site lies within the Metropolitan Green Belt. Planning Policy Guidance Note 2: Green Belts sets out national planning policy for Green Belts. It states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Green Belts help to protect the countryside by maintaining the openness and assist in moving towards more sustainable patterns of urban development. The general policies controlling development in the countryside apply with equal force in Green Belts but there is, in addition, a general presumption against inappropriate development within them. Inappropriate development is, by definition, harmful to the Green Belt.

The development harms the openness of the Green Belt, with the introduction of the caravans and associated paraphernalia and represents a significant encroachment into the countryside. The local planning authority is therefore of the opinion that the development constitutes inappropriate development within the Green Belt.

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.

Policy CP3 of the Tonbridge and Malling Core Strategy 2007 reaffirms the national planning policy at a strategic and local level.

Policy CP14 of the Tonbridge and Malling Core Strategy 2007 seeks to restrict development in the countryside generally, identifying certain categories which may be acceptable in principle; none of those categories applies in this instance. Within the Green Belt, inappropriate development which is otherwise acceptable within the terms of CP14, will still need to be justified by very special circumstances.

Policy CP20 of the Tonbridge and Malling Local Development Framework Core Strategy 2007 relates specifically to the provision of sites for gypsies, travellers and travelling showpeople. This policy states that there will be a presumption against the development of gypsy accommodation in the Green Belt unless there are very special circumstances.

The current site can clearly be seen from the Wateringbury Recreation Ground, from the residential area on the eastern side of the village, from adjoining open land, from the public right of way and in landscape views from across the Medway Valley. The current use forms a highly visually intrusive feature within the open countryside. The use is inappropriate development in the Green Belt, and harmful to its openness. The use has a marked intrusion on the landscape from the south side of the Medway valley.

The local planning authority considers that the development is inappropriate in the Green Belt and is therefore, by definition, harmful. The local planning authority further considers that there are no very special circumstances in this case that would overcome the stated harm.

The local planning authority has considered the expediency of taking enforcement action in the context of whether such action may interfere with the owners' right to occupy their home. However, it is well established that whether that interference amounts to a breach/violation of human rights depends upon whether it is proportionate to the interests of the community that would be protected. The local planning authority considers that the weight of these material considerations is such that enforcement action is proportionate to the interference with the applicant's human rights under Article 8, and therefore concludes that the service of this enforcement notice would not represent a violation of Article 8 of the European Convention on Human Rights.

Requirement

To cease the use of the site as a residential caravan site and to permanently remove all caravans from the land.

Period For Compliance

One calendar month from the date the notice takes effect.

Contact: Richard Edmonds