
East Peckham **567084 148311** **26 November 2008** **TM/08/03531/FL**
East Peckham And
Golden Green

Proposal: Retrospective application for change of use to stable yard and retention of two caravans for residential occupation by a single gypsy family with associated works and use of land
Location: Land At Pinkham Lane East Peckham Tonbridge Kent
Applicant: Mr J Fuller

1. Description:

- 1.1 The application was retrospective for the retention of an existing mobile home and associated structures on the site. There was one mobile home stationed on the site and no touring caravan although there is now a touring caravan and no mobile home. 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 This application has also requested a temporary permission for 2 to 3 years having regard to advice on transitional arrangements.
- 1.3 A supporting statement and a Flood Risk Assessment have been submitted in support of the application. The FRA identifies the use of floatation devices which can be fitted to a mobile home at times of flood. It states that these would mitigate the risk of flooding sufficiently in this case. In addition in November 2005 the dam on the Coult stream was built to protect homes in East Peckham and press reports in February 2009 reported that this served its purpose in January and again February when heavy rain fell in the area. It is acknowledged that properties in East Peckham are still at risk of flooding from the River Medway but this risk has been compounded by the Coult Stream and this was the source of flooding in 2002 not the River Medway.
- 1.4 The supporting statement outlines the family's gypsy status and their family connections within this part of Kent. Both Mr and Mrs Fuller were born and raised as gypsies and have generally resided at gypsy sites when not travelling for work. In 2005, they did purchase and move into a conventional house in Paddock Wood but the agent reports that they could not settle and returned to living in caravans in early 2008.
- 1.5 The applicants have 3 young children, one at school and one at pre-school in East Peckham and a baby.

- 1.6 This site was said to be chosen as it was owned by Mrs Fuller's father but due to the problems with this site they are currently looking for other sites to purchase. Consideration of employment issues and permanent accommodation are also addressed followed by a supporting case outlining why this site is suitable for a gypsy family. It also identifies that there are no other suitable Council sites within the locality and there is an under provision in these facilities within this part of Kent.
- 1.7 The agent has advised that *"I am aware that the Council is supporting proposals for the extension of the Coldharbour Lane site, Aylesford and understand that Kent CC intend to take a report to their Members in November to seek approval for this scheme. I have made representations. Whilst the additional provision is clearly welcome, and it is noted that the Council rely on unmet need justify the special circumstances relied on for an exception to policy to permit this development in a Strategic Gap (which is not a local designation for the purposes of C 1/2006), I am concerned at the size of the site proposed (18 pitches) and intention to move all families onto one site. I was also most concerned by the absence of consultation with families on unauthorised developments in the Borough. This is not what families want, it is not what the GTAA recommended and this could lead to potential 'management' problems. I know that some families have been to see Kent CC to discuss their concerns. It is my understanding the existing families on the site will seek to claim 11 of the 18 pitches and have told other families they will not be made welcome. It remains to be seen how Kent CC manage this situation.. In my view there will still be a need for additional site provision in Tonbridge and Malling. I am told by Kent CC that their bid for funding has been accepted which is excellent news. It will however be several months before tenders are awarded and the site is ready for occupation. The Council is asked to consider granting a temporary permission for this site or agree to 'tolerate' it until suitable alternative provision is made available either at Coldharbour Lane Aylesford or elsewhere. I feel that to force parties into an appeal situation will achieve little that could not be reviewed again in 12-24 months time."*

2. Reason for reporting to Committee:

- 2.1 Controversial locally, a departure from the development plan 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 3b 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 on its eastern boundary.

- 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 a caravan, 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 tall double solid 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. 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:

MK/4/57/10242/OLD Refuse 23 October 1957

Outline application for two detached bungalows and garages.

MK/4/57/10743/OLD Refuse 8 April 1957

Outline application for dwellings for week end and holiday purposes.

MK/4/59/11151/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.

TM/08/01695/FL Application withdrawn 27 October 2008

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.

4.1 Members are advised that there was a dismissed planning appeal for this use in 2000. There are two extant enforcement notices on this land which were both upheld on appeal in 2001. 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: Objection on the following grounds:

- Inappropriate, undesirable and unsuitable use of the land.
- Not previously developed land.
- The PC is opposed to the stable yard as well as the two caravans.
- The land had never to the knowledge of the PC been given approval for the stationing of a mobile home.
- Adverse development within the green belt.
- The proposed development would be at risk from flooding.
- No nearby public sewer and disposal facilities.
- The PC believed that the land had been in agricultural use until sold off in pieces by a former landowner and there was no recollection that a change of use for the land was approved.
- The adverse impact the development would have on the openness, character and appearance of the area.
- The planning applicant owns a residential property within the TWBC area.

5.2 KCC (Highways): No objections. Pinkham Lane is a private street not the responsibility of the Highway Authority. The submitted plan suggests that suitable room is available for the parking of vehicles. The site is set back a significant distance from the public highway and therefore should not affect the public highway.

5.3 KCC Public Rights of Way Officer: No comments.

5.4 EA: Objects to this application on the grounds of flood risk.

5.4.1 The Flood Risk Assessment states that no suitable alternative site is available, but does not identify or assess other specific sites. The planning authority should determine the appropriate area over which the sequential test should be carried out, and refuse the application if the development could be located on any other site within this area where the flood risk is lower. Paragraph 4.15 of the PPS25 Practice Guide suggests that the sequential test should be carried out over the whole LPA area.

5.4.2 The type of development proposed is classified by the appropriate government guidance on flood risk, PPS25, as being 'Highly Vulnerable' with regard to flooding. Historical records and flood modelling show that the site is prone to flooding on a regular basis, and would be classified as 'Functional Floodplain' which is the highest risk category for flood mapping.

5.4.3 PPS25 dictates that highly vulnerable development should not be permitted in the functional floodplain or elsewhere in flood zone 3 and the application should therefore be refused.

5.4.4 As the development type is not compatible with the level of risk, it is not appropriate to apply the exception test. However, we would offer the following comments with respect to the safety of this proposal:

5.4.5 Factors which warrant consideration include a comparison of floor levels with predicted flood levels, whether there would be a safe refuge above the flood level, whether the property would be accessible in a flooding event, and whether the development will have an effect on flood risk elsewhere.

5.4.6 The site is subject to flood depths of over 1 metre and high velocities, and floodwaters would pose a danger to all according to the guidance in DEFRA report FD2321/TR2 which assesses the risks to people.

5.4.7 It is proposed that the static caravan be fitted with a floatation device which will prevent it from flooding internally. Such a system may be able to reduce the financial impact of flooding by preventing internal damage to the caravan. However, it would clearly not be safe for occupants to remain inside during flooding, with or without the floatation device.

5.4.8 In a flood event it would be necessary for occupants to leave the site and seek refuge elsewhere. This is not generally acceptable for residential development due to the risk that flooding could occur at any time and a lack of preparedness to evacuate could put lives in danger. Fluvial Flood events can last a considerable

length of time at this location and consequently there would be substantial disruption to the lives of the occupants, as their home would be inaccessible until the floodwaters subsided.

5.4.9 The application would therefore not meet the usual standard required to deem a residential development 'safe'. We accept that the risk of exposure to a flooding event would be reduced if the development was only permitted for a limited period, however, it is our opinion that the level of risk would still be inappropriate even for a temporary permission.

5.5 DHH: Waste management: 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.

Housing: 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.

Contaminated land: This is a retrospective application. However, I would like to point out that historically there is a landfill and gasometer within 250m of the proposed development site. A preliminary risk assessment could inform the need for any mitigation measures at the site under change of land use scenario.

5.6 Private Reps: Public interest and Departure Press/Site Notices (19/0S/6R/0X). Six objections have been received on the following grounds:

- The site has already been developed and occupied without consent.
- 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.

- 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.
- Where do planning applications stop in Pinkham Lane.
- A high perimeter fence has been erected by the occupiers.
- 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.
- Impact of further development on the locality.
- Inappropriate development in the MGB, adverse impact on openness and there is no case of very special circumstances.
- An enforcement notice to remove a hardstanding is still valid on this site, why is this not being enforced?
- Before the unauthorised development this was an open field that added to the rural character of the locality.
- The development will obstruct the flow of flood waters.
- The stables on the site also do not have the benefit of planning permission.

6. Determining Issues:

- 6.1 The main issues relate to the principle of the development and its impact upon the rural character of the locality, 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 Main strategic policy for gypsy cases is H4 of the adopted SEP and draft policy H7. Policy C4 requires Planning Authorities to aim to protect and enhance the diversity and local distinctiveness of the region's landscape. Policy NRM4 of the SEP requires PPS25 to be complied with in terms of Sustainable Flood Risk Management.
- 6.4 The relevant policies in the TMBCS 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 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.
- 6.6 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.

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 caravans and associated structures, the hard standing and use of land as residential garden. The mobile home is higher than the hedgerows on the southern and eastern boundaries and cream colour of the mobile home increase the visual prominence in the landscape.
- 6.8 The development is clearly inappropriate development within the Green Belt. The development also represents an encroachment into the countryside which is contrary to one of the aims of the Green Belt.
- 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. Policy CP3 TMBCS states 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 applicant and the family background.
- 6.11 Circular 01/2006: Planning for Gypsy and Traveller Caravan Sites 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."

Considerations in respect of Gypsy site provision

- 6.12 Government advice concerning Planning for Gypsy and Traveller Caravan Sites is set out in Circular 01/2006. The Circular 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 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 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.”

- 6.13 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.
- 6.14 The strategic policy for these types of cases is policy H4 of the SEP that requires Local Authorities to identify the full range of existing and future housing needs required in their areas, working with adjoining local authorities where appropriate including groups with particular housing needs such as gypsies, travellers and travelling showpeople. Local development documents should require an appropriate range and mix of housing opportunities by identifying the likely profile of household types requiring market housing, the size and type of affordable housing required. Local authorities should seek to identify a mix of site allocations in each five year period, preparing development briefs as necessary, to encourage a range of housing types to be provided.
- 6.15 In accordance with the Housing Act 2004, the Borough Council undertook a Gypsy and Traveller Accommodation Assessment (GTAA) survey in 2005/6 jointly with Ashford, Maidstone and Tunbridge Wells Borough Councils. The accommodation assessments are intended to provide, for the first time, comprehensive, robust and credible data relating to the needs and requirements of the Gypsy and traveller community.
- 6.16 The GTAA has served to inform the regional position on such accommodation. On the basis of the GTAA finding, the identified need was in the order of 10 units in the period until 2011 within Tonbridge and Malling Borough.
- 6.17 The SEP included an Interim Statement based on DCLG Circular 01/2006 (on the basis of local authority Gypsy and Traveller Accommodation Assessments).
- 6.18 The preferred option of the regional planning body is that 18 pitches would be the provision figure for the Borough as outlined in draft regional spatial strategy policy H7 published in June 2009. The consultation period for this document expired on 1 September 2009. This Council has raised objections to draft policy H7.
- 6.19 The Council has taken a position of objecting to the figure of 18 additional pitches, instead promoting an option which would mean 12 pitches; much closer to the GTAA which is based upon more localised analysis. The GTAA figure recognised those unauthorised facilities in the Borough at the time of completion plus the growth expected from existing facilities and incomers to the Borough.

- 6.20 The draft SEP policy H7 is due to be considered at an examination in public in February 2010 and the approved policy will be published some time after that. Draft policy H7 requires the provision of 18 additional permanent pitches for Gypsies and Travellers within Tonbridge and Malling by 2016. This is a little under the average requirement of 20 new pitches for authorities in the region. The policy is based on a modest redistribution of pitch provision among districts having regard to development constraints and district populations. The draft policy is a further step towards the determination of pitch requirements for districts in the region. To that extent it provides a somewhat clearer picture of the level of provision the Council will be expected to meet by 2016. The GTAA carried out on behalf of the Council and four other authorities in 2005/6 had already suggested a need for a further 10-13 pitches in the Council's areas by 2011, so the fact that there is an unmet need for new pitches is not a recent discovery. The publication of draft policy H7 provides some clarification of the need the Council is likely to have to meet by 2016 but will not become clearly refined until some time after February 2010
- 6.21 Hence at the Regional level, the pitch provision requirement for gypsy/travellers has not yet been finalised and will not be until the partial review of the Regional Spatial Strategy has been completed (expected to be mid 2010).
- 6.22 Circular 01/2006 states that where there is a clear and immediate need, local planning authorities should bring forward development plan documents containing site allocations in advance of regional consideration of pitch numbers. That is effectively what the SEP partial review will create a context for.
- 6.23 To comply with that national advice and in advance of the formal adoption of the SEP figure, the Borough Council and KCC are currently pursuing opportunities for the positive provision of gypsy and traveller sites to make up the deficit identified in the GTAA and a planning application has been submitted by KCC for the redevelopment and extension of the existing Gypsy site at Coldharbour, Aylesford. This is to provide a total of 18 pitches (a net gain of 10 additional pitches). It is envisaged that a decision on that planning application will be made by KCC within the next few weeks.
- 6.24 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 alternative provision would not be within the Green Belt and would follow policy criteria set out in Core Strategy policy CP 20. It is expected that the Secretary of State will shortly publish a decision on the funding of such specific projects.
- 6.25 The situation is that there is clearly a present need for additional gypsy accommodation within the Borough but it is intended that this is likely to be met within the next 3 years when the Coldharbour project comes to fruition. Whilst at

the time of writing this report, neither planning permission nor the grant application to the HCA have been approved for this development, it is anticipated that should such approvals be given by the end of this year, works could start on site in spring next year and potentially, the new pitches could become available by spring/summer 2011. Any update on these key issue of context will be reported in a Supplementary Report.

Risk of Flooding

- 6.26 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.
- 6.27 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, Circular 01/2006 and local plan policy, which the applicant's flood risk assessment appears to accept.
- 6.28 The applicant's FRA addresses the PPS25 Sequential Test but it does not appear that the applicant has defined an appropriate search area, let alone justified it with evidence. The FRA goes on to argue that the Exception Test is met but PPS25 indicates that the Exception Test is not applicable to highly vulnerable development in Flood Zone 3b. Even if it were, it would be for the Council to consider whether the FRA has demonstrated that the Exception Test is met. It is my view that the FRA does not show compliance with PPS25.
- 6.29 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. The applicant has not put forward countervailing expert evidence to allow me to advise Members that the Environment Agency's representations should not be afforded great weight.
- 6.30 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.

- 6.31 Policies CP10 of the Core Strategy and NRM4 of the SEP concurs with this advice and identifies that this site would not be appropriate for most forms of development due to the high flooding risk.
- 6.32 Whilst flood risk is very much a site-specific issue, a recent appeal decision for a site in Sevenoaks show that objections on the ground of flood risk are capable of attracting substantial weight, justifying the refusal of permission and weighing against the grant of planning permission even for a short temporary period.
- 6.33 The agent has referred to recent flood protection measures since the upheld enforcement appeal. However PPS25 does not make allowances for those aspects in terms of altering the flood zone designation.

Human Rights

- 6.34 A key issue in this type of case is the European Convention on Human Rights as applied by the Human Rights Act 1998. The applicants and their family occupy the site as a home. 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. The UK planning system has been held to be an appropriate mechanism to balance these matters alongside all other planning considerations.
- 6.35 Inspectors in such cases have commented that the fact that a home is established *unlawfully* can, to a degree, diminish the reliance that can be placed on the respect of that right. As mentioned above the Convention also provides that interference by a public authority with that right may be justified in some circumstances. As the potential loss of a home would technically be an interference with the human rights of the applicant and his family, consideration must be given whether the refusal of planning permission and associated enforcement action would be necessary and proportionate.
- 6.36 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. Also, and crucially in this particular case, the position with regard to flood risk was fully clarified when the earlier appeal was dismissed.

- 6.37 In a recent appeal case concerning another gypsy site in the Borough, the Inspector gave substantial weight to the educational needs of children and considered that the consequence of moving that family off site to live on the road would make attending school very difficult at best. (The Inspector in that case granted temporary planning permission for that development, which expires in July 2011). In this case, the applicants and their children have recently lived in bricks and mortar accommodation and there is no case submitted that they are likely to resort to live on the road with a detrimental impact on the children's continued education. On the contrary, it is the case that the applicants may have scope to reside within the Paddock Wood house.
- 6.38 Therefore in terms of human rights , whilst a refusal of planning permission and enforcement action would interfere with the respect for a "home", this would be proportionate and necessary- a residential use is unlawful, there is extant enforcement notices preventing stationing of caravans; there is a real risk to life from the site being in the flood zone 3(b).

Temporary planning permission

- 6.39 The primary objection to the development is that it lies within the Green Belt and that it is unsafe for this form of development due to the location in the flood zone. Much of the Borough is covered by Green Belt designation and the existing public gypsy sites stand at full capacity and have a low turnover. Whilst the applicant has not submitted any evidence of searching for sites outside the Green Belt, suitable sites within rural or urban settlements are unlikely to be affordable to the applicant and sites in the general countryside depend upon finding a willing landowner and still need to be acceptable in terms of their planning merits.
- 6.40 However, given that this is such a sensitive zone in terms of flood risk, the position with regard alternative sites must be relegated to the ensure that the site is not occupied because of risk to life and limb .
- 6.41 Given that the development does cause harm to the Green Belt by reason of its inappropriateness and impact on the amenities of the Green Belt and the flood zone location, I do not consider that a permanent planning permission is justifiable in this instance.
- 6.42 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 and this has in fact been the outcomes of two recent appeal hearings within the Borough relating to gypsy development. However, those sites did not pose the same concerns with regard to flooding and in my view, it would not be appropriate to grant temporary permission in these circumstances. This stance has been endorsed by recent appeal decisions on similar cases.

6.43 Whilst the submissions of the agent are noted, in the circumstances of this particular case, I do not believe there is a reasoned justification to grant a temporary planning permission for this development pending the development of the additional pitches at the existing Coldharbour site. This is because the application site is at the highest risk of flooding and there is real 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.

Other material considerations

6.44 In terms of the potential harm to the environment, the site is relatively well screened, there are no extensive public views of the site, the development is acceptable in terms of highway safety. The development does have an urbanising influence due to the close board fencing and does encroach onto the countryside.

Conclusion

6.45 In terms of the wider issues related to gypsy caravan sites in the countryside and Green Belt it is possible that it would have been appropriate to consider the grant of temporary planning permission (given the background described above).

6.46 However the fact that the site is in a functional flood plane makes this case quite different to others of an otherwise similar nature. 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, particularly because occupation of this site would put occupants at risk in the event of flooding.

6.47 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 and that Notice is still valid. The Inspector in that earlier case concluded in respect of flooding that (even before the stricter controls now in force in PPS25) that the site was subject to a serious level of flooding and at sufficient risk to justify a refusal on such grounds, as well as for the protection of the Green Belt.

6.48 I consider that, in light of the foregoing, planning permission should not be granted for the development the subject of this application and enforcement action should be taken to secure removal of caravans and hardstanding. The use of the paddock adjacent as domestic curtilage is not applied for in this application but is a breach of planning control and is inappropriate in the Green Belt. There is no justification for any domestic use to serve a residential use that is being refused planning permission.

6.49 The Human Rights of the applicants and their family have been assessed but are outweighed in particular by the flood risk which means that the inappropriate development proposed within the Green Belt is not justified by a sufficiently

powerful case of very special circumstances to override the presumption against development.

7. Recommendation:

7.1 Refuse Planning Permission for the following reasons:

- 1 The development 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) and policies NRM4 of the South East Plan and CP10 of the Tonbridge and Malling Core Strategy 2007.
- 2 The development constitutes inappropriate development within the Metropolitan Green Belt and is therefore harmful by definition and by harm on the amenities and openness of the Green Belt. The development is thereby contrary to PPG 2 and Policy CP3 of the Tonbridge and Malling Borough Core Strategy 2007. Due to the overriding flood risk of the site, no adequate case of very special circumstances has been made to justify the harm caused by the development.
- 3 The development is contrary to 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. Due to the overriding flood risk of the site, no adequate case of overriding material considerations has been made to justify the harm caused by development.
- 4 The development is contrary to policy CP20 of the Tonbridge and Malling Core Strategy 2007 for the reason that it is a Gypsy site located in the Green Belt. Due to the overriding flood risk of the site, no adequate case of overriding material considerations has been made to justify the harm caused by development.

7.2 An Enforcement Notice be issued as set out below and copies **be served** on all interested parties.

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 change in use of the land to the use for the stationing of caravan(s) for residential purposes and the creation of hard surfaces and the use of a paddock area as domestic garden.

Reasons For Issuing The Notice

It would appear to this authority that the above breach of planning control has occurred within the last ten years. The site is 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) and policies NRM4 of the South East Plan and CP10 of the Tonbridge and Malling Core Strategy 2007. The development constitutes inappropriate development within the Metropolitan Green Belt and is therefore harmful by definition and by harm on the amenities and openness of the Green Belt. The development is thereby contrary to PPG 2 and Policy CP3 of the Tonbridge and Malling Borough Core Strategy 2007. The development is contrary to 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. 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. Due to the overriding flood risk of the site, no adequate case of overriding material considerations has been made to justify the harm caused by development.

Requirement

- A. To cease the use of the site for the stationing of any caravan and remove from the land all caravan(s) and hard surfaces.

- B. To cease the use of the paddock area as domestic garden area and remove from this land all domestic paraphernalia including all children's play equipment.

Period For Compliance

Three calendar months from the date the Notice takes effect

Contact: Marion Geary