

Report of 9 December 2009

Offham Downs 565319 157449 30 April 2009 TM/09/00821/FL

Proposal: Log cabin to be occupied as dwelling in substitution of mobile home permitted by TM/07/01124/FL (Variation of condition 2 of planning permission TM/93/00722/FL (Use of land as residential caravan site) to allow additional mobile home and tourer caravan)

Location: Orchard Place Teston Road Offham West Malling Kent ME19 5PD

Applicant: Mrs N Draper

1. Description:

- 1.1 This application is retrospective and seeks to regularise the siting of a timber bungalow erected on site. This structure is described by the applicants as a “log cabin”. It is intended to replace a static caravan type mobile home permitted in 2007.
- 1.2 The static caravan has been on the site since Autumn 2006. However, it is understood that the caravan and its specific location were always intended to be a temporary measure, to be upgraded to a more thermally insulated mobile home which was proposed to be re-sited in the NW corner of the site under ref TM/07/01124/FL.
- 1.3 The applicant has re-evaluated the situation and has brought onto the site and started to construct a prefabricated modular timber framed and clad bungalow. It is not internally fitted out and not in occupation. In a different configuration this structure could have been a “caravan” but the chosen arrangements prevents that approach.
- 1.4 The base is a concrete slab, there is a brick plinth and the walls are timber panels with a low pitched felt roof. The dwelling is “L-shaped” with maximum dimensions at its widest of 13m and 8.6m. The footprint is approx. 85 sq m.
- 1.5 The site of Orchard Place was established as a residential caravan site in 1993 when a retrospective planning permission was granted under ref TM/93/0722/FL. At the time, the permission was granted in light of the applicants’ gypsy status when the applicants had 3 daughters under the age of 18.
- 1.6 Since 1993, the applicants have had another child, a son. The site is now occupied by Mr and Mrs Draper and 3 of their 4 children (2 daughters and one son). Only the son is still under 18 years of age. One of the daughters has recently given birth and now lives in the static caravan with her baby.

2. Reason for reporting to Committee:

2.1 Called in by the Ward member.

3. The Site:

3.1 This relates to a residential caravan site of 0.607ha, most of which is in the Green Belt although the first part of the access road is within the village confines of Offham.

3.2 It lies on an aquifer and is close to Offham Landfill site.

3.3 To the north and north-west is paddock and to the south-east is an extended house and large garden.

3.4 Within this site is the original 3 bedroomed mobile home located in the centre of the site with a brick built utility room to the rear. A pre-fabricated garage on the SE boundary with "Woodlands" has been removed to facilitate the erection of the timber bungalow.

3.5 A static caravan is currently sited to the rear of the established mobile home, sharing its private garden area.

3.6 The timber bungalow is being constructed in the SW corner of the site, close to the common boundary with Woodlands.

4. Planning History:

MK/4/48/121	Grant with Conditions	25 June 1948
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Additional bedroom to Orchard Place.

MK/4/54/291	Grant with Conditions	24 June 1954
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Extension to existing fruit store.

TM/93/0722FL	Grant with Conditions	29 March 1994
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Use of land as residential caravan site (one family)

TM/95/01372/FL	Grant With Conditions	27 November 1995
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construction of outbuilding

TM/05/02606/FL Refuse 24 October 2005

2 no. 2 bedroom bungalows

TM/06/02341/OA Refuse 27 April 2007

Outline Application to remove existing mobile and replace with new permanent dwelling

TM/07/01124/FL Approved 18 October 2007

Variation of condition 2 of planning permission TM/93/00722/FL (Use of land as residential caravan site) to allow additional mobile home and tourer caravan

5. Consultees:

5.1 PC: Object: The applicant has described the site in the Planning Application Form as a “mobile home park”. We strongly object to this terminology as the site certainly does not have planning consent for such a use.

5.1.1 In 1993 the current applicants, the Drapers, were granted consent to use the land “as a residential caravan site (one family) by Mr and Mrs Draper and their dependents”. Although the land was zoned Green Belt permission was granted “... in the absence of the very special circumstances pertaining to this gypsy family, consent would not normally be permitted”. There was also a condition stating that the land would not be used for more than one residential caravan at any one time.

5.1.2 In 2007 planning permission to remove the existing mobile home and replace with a new permanent dwelling was refused on the grounds that “the proposal would result in the loss of a lawful Gypsy/Traveller Site that has the benefit of planning permission in an area where there is a current deficit in provision” and “the proposed erection of a dwelling in the Green Belt and outside a village settlement boundary is inappropriate development for which no adequate case of “very special circumstances” has been submitted”.

5.1.3 We were most surprised when an application in 2007 to vary condition 2 of the 1993 consent to permit an additional mobile home and tourer caravan was approved under delegated powers with no significant written justification.

5.1.4 In the case of the current application we presume that the same constraints apply as in the case of the 2007 application to substitute the mobile home for a permanent dwelling.

5.1.5 This log cabin was purchased from another resident in the village and has been the subject of a planning application that was refused on the grounds of

inappropriate development in the MGB and upheld at Appeal, albeit that its use then was stated as a “garden amenity building”.

5.1.6 The log cabin is, we understand, erected on a solid base and connected to mains services and is, therefore, a “permanent” structure in the same way as any other permanent dwelling unit.

5.1.7 Bearing in mind that the whole of the site is zoned MGB and outside the village confines of Offham the only justification for any dwelling units on this site is by virtue of the special gypsy status pertaining to this family. Following on from this consent has been granted very specifically for a maximum of two mobile homes/residential caravans and one tourer caravan at any one time. There is no justification for substituting one of these mobile units for a permanent dwelling just as there was no justification in 2007.

5.1.8 We very much hope that you will agree with our objections and refuse planning permission for this retrospective application. If permission is refused then we presume that you will at the same time require removal of the structure from the site.

5.2 KCC (Highways): No objections.

5.3 EA: Advise that there is a potential landfill gas problem at this site which needs a specific risk assessment. It is likely that extensive measures will need to be incorporated into the construction and permitted development rights need to be removed so that no more unplanned development increases risk.

5.4 DHH:

5.4.1 Housing: Caravan site licence requirements need to be met.

5.4.2 Contamination: Due to the close proximity of a landfill site, a landfill risk assessment is needed and any recommended measures need to be incorporated in the dwelling.

5.5 Private Reps: (21/0R/0X/2S). One neighbour supports the application because the log cabin is the correct building for the environment and the family are members of the local community. Another letter of support has been received from the Romani Gypsy Advisory Group. Log cabins have been permitted on many Gypsy sites as they blend in better, the timber panels make them easy to erect and remove and they have the appearance of a stable block. This is a well established private site aiming to provide a family member with a pitch. Local needs likely to be high. Inspectors will be aware of the problems of Gypsies and Travellers seeking suitable affordable land and the appellant would seek costs.

6. Determining Issues:

- 6.1 National Policy is PPG2 (Green Belts), PPS7 (Sustainable Development in Rural Areas), PPS23 (Planning and Pollution Control) and Circular 01/06 (Planning for Gypsy and Traveller Caravan Sites).
- 6.2 Main strategic policy for gypsy cases is H4 of the adopted SEP and draft policy H7. Policy C4 of the SEP requires Planning Authorities to aim to protect and enhance the diversity and local distinctiveness of the region's landscape.
- 6.3 The relevant policies in the TMBCS are CP3, 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.
- 6.4 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.
- 6.5 The Borough Council's Gypsy and Traveller Accommodation Assessment (GTAA) survey in 2005/6 identified a need in the order of 10 units in the period until 2011 within Tonbridge and Malling Borough.
- 6.6 Whilst planning permission has been granted for an additional 10 pitches at Coldharbour, there is clearly an ongoing need for site provision beyond 2011. This is exemplified by the fact that Council has taken a position of 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.
- 6.7 The caravan site at Orchard Place was permitted by this Council in 1994 on the basis of the then Circular 1/94 (Gypsy Sites and Planning). It was considered that, whilst the development was inappropriate in the Green Belt, there was a case of very special circumstances: the family were gypsies who resorted to and resided in the Borough (a consideration that applied at that time but is not longer a consideration in itself), they had left a Gypsy site in the Borough for convincing reasons (serious disputes with other Gypsy families) and there were no other vacant plots for their use in the Borough.

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- 6.8 The 1994 permission limited the use of the land to a caravan site for 1 caravan and is personal to Mr and Mrs Draper and their dependents.
- 6.9 The timber bungalow is intended to be occupied solely by the applicants' daughter and grandson and it is intended that it be sited away from the original mobile home. This therefore constitutes a proposal for a dwelling in the Green Belt, outside the settlement confines and is therefore inappropriate development and contrary to national, strategic and local policies of restraint on development in the countryside as outlined in PPG2 (Green Belts), PPS7 (Sustainable Development in Rural Areas); Policies CP3 and CP14 of the TMBCS.
- 6.10 The case of very special circumstances for additional accommodation on the site has already been accepted by the planning permission TM/07/01124/FL, namely that the family on site now comprises of Mr and Mrs Draper, 2 adult daughters, a school aged son and a baby grandchild. A third (eldest) adult daughter lives elsewhere in the Borough. There is now another baby at the site and I remain satisfied that the applicant family are of Gypsy status and that the continued occupation of the timber bungalow will allow her human rights to be met.
- 6.11 This is a Gypsy site with planning permission, and within the Borough there is an acknowledged local deficit in provision of gypsy sites as revealed by the GTAA. Members may agree that the creation of an additional provision on an established and lawful gypsy site solely to allow for an expanding family is a preferable solution to meeting need compared to the creation of a new site.
- 6.12 Until recently, there was a touring caravan on the site but it is understood that this has been sold although it is intended to buy another one. There is a planning permission for a second caravan/mobile home on this site. The applicant advises that the timber bungalow is intended to replace the mobile home for which planning permission was obtained and it is therefore appropriate to compare the impact of the two alternatives.
- 6.13 A statutory definition of a caravan states that it can be any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any other motor vehicle so designed or adapted.
- 6.14 Twin-unit caravans are composed of not more than two sections, constructed or designed to be assembled on site by means of bolts, clamps or other devices, and should not exceed 65 ft by 23 ft by 10 ft high approx. Hence a caravan can be a twin unit mobile home and may have a sizable footprint.
- 6.15 It is clear that the structure erected on site does not, as installed, meet the criteria to be a "caravan". However, in terms of its character and impact on the Green Belt and countryside, the timber bungalow is of a size that is similar to a mobile home and the dark wooden appearance, is as if not more, aesthetically in-keeping and rural in character compared to a conventional mobile home.

- 6.16 In these circumstances, subject to conditions controlling occupation, the principle of the timber bungalow in lieu of a mobile home is considered to be acceptable. The timber bungalow is modular and easily dismantled and so this is a structure whose removal could be conditioned in a similar way to the permitted caravans/mobile homes. Hence, whilst the objections of the PC are noted, the refusal of a “bricks and mortar” dwelling under ref TM/06/02341/OA is not directly comparable, in my view. Moreover, the circumstances have changed in that the GTAA has acknowledged the current shortfall in supply of suitable site and to refuse this proposal would merely increase the need to find further sites for persons who are of Gypsy status and, in this case, also have local connections.
- 6.17 One matter which remains of concern however is that the construction of the timber bungalow in lieu of a mobile home means that it is more at risk of the effects of landfill gas than the approved caravans. No expert assessment has been commissioned by the applicant as to the risk or to the need for gas protection measures to be included in the construction. However this is not considered, on all the facts of this particular case, to be an insurmountable hurdle due to the modular nature of the structure. It is considered that a condition should be applied to prevent occupation until the detail of the risk is properly assessed and satisfactorily mitigated, as requested by DHH and as advised by the EA in order to accord with PPS23 (Planning And Pollution Control).

7. Recommendation:

- 7.1 **Grant Planning Permission** as detailed by Design and Access Statement dated 30.04.2009, Letter dated 06.04.2009, Site Plan dated 06.04.2009, Photographs dated 06.04.2009, Floor Plans And Elevations dated 06.04.2009, Design and Access Statement dated 06.04.2009, Letter dated 30.04.2009 subject to the following conditions:

- 1 Before first occupation of the dwelling hereby permitted, a risk assessment shall be carried out by a competent person in relation to any landfill gas migration on the site and a scheme of measures to mitigate any incursion of such gas and render the building suitable for the permitted use shall be submitted to and approved in writing by the Local Planning Authority. Any necessary mitigation measures shall be implemented in full as approved and certified as such by a competent person before first occupation of the dwelling and any gas protection measures shall be retained thereafter.

Reason: In the interests of public safety.

- 2 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order amending, revoking and re-enacting that Order) no development shall be carried out within Class A, B, C, D, E of Part A of Schedule 2 of that Order unless planning permission has been granted on an application relating thereto. (R001)

Reason: In the interests of the Green Belt and of public safety.

- 3 The dwelling hereby permitted shall be occupied by Mr Stanley Draper, Mrs Naomi Draper or their daughter Louise Draper together with any of their dependents and shall be for a limited period being the period during which the site is occupied by any of Mr Stanley Draper, Mrs Naomi Draper or Louise Draper.

Reason: The site lies in the Green Belt where, in the absence of the very special circumstances pertaining to this Gypsy family, consent would not normally be permitted.

- 4 The existing static caravan shall be removed from the site within 1 month of the first occupation of the timber bungalow hereby permitted and thereafter, in addition to the timber bungalow hereby permitted, the site shall not be used for the stationing of more than 1 tourer caravan and 1 mobile home/residential caravan at any time.

Reason: In the interests of the character and amenities of this Green Belt site.

- 5 When the site ceases to be used by any of Mr Stanley Draper, Mrs Naomi Draper or their daughter Louise Draper, the use hereby permitted shall cease and all materials and equipment brought onto the site in connection with the use including the timber dwelling hereby permitted, shall be dismantled and all structures, materials, foundations and hardstandings shall be removed from the site.

Reason: The site lies in the Green Belt where, in the absence of the very special circumstances pertaining to this Gypsy family, consent would not normally be permitted.

Contact: Marion Geary

 SUPPLEMENTARY REPORTS

AREA 2 PLANNING COMMITTEE

DATED 9 December 2009

Offham **TM/09/00821/FL**
Downs

Log cabin to be occupied as dwelling in substitution of mobile home permitted by TM/07/01124/FL (Variation of condition 2 of planning permission TM/93/00722/FL (Use of land as residential caravan site) to allow additional mobile home and tourer caravan) at Orchard Place Teston Road Offham West Malling Kent ME19 5PD for Mrs N Draper

Private Reps: A petition with 16 signatures has been received in support of the application.

AMENDED RECOMMENDATION**Amend condition 5**

- 5 When the site is no longer in use as a main residence by Mr Stanley Draper, Mrs Naomi Draper or their daughter Louise Draper (in combination or singly), the use hereby permitted shall cease and all materials and equipment brought onto the site in connection with the use including the timber dwelling hereby permitted shall be dismantled and all structures, materials, foundations and hard standings shall be removed from the site.

Reason: The site lies in the Green Belt where, in the absence of the very special circumstances pertaining to this Gypsy family, consent would not normally be permitted.

Add informative

- 1 You are advised to contact the Director of Health and Housing (01732 876199) with regard to compliance with Caravan site licence requirements
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