

Wateringbury **569476 153001** **9 October 2009** **TM/09/01878/FL**
Wateringbury

Proposal: Retrospective Application: Change of use to residential, stationing of one mobile home and four touring caravans with associated hard standing, connection to sewer and conversion of two stables to utility rooms
Location: Land Adjoining The Pavilion Known As Drayhorse Meadow Fields Lane Wateringbury Maidstone Kent
Applicant: Mrs Anne Medhurst

1. Description:

- 1.1 The proposal seeks planning permission to change the use of the land to residential, for the stationing of one mobile home and four touring caravans for residential occupation by an extended gypsy family, with associated hard standing and pathways, connection to sewer and conversion of stables to utility rooms.
- 1.2 The proposal is for the most part retrospective. An enforcement notice has been served for the siting of four touring caravans and a double unit mobile home with a one month period of compliance, as resolved at Area 2 Planning Committee meeting of 20 August 2009. An appeal has been lodged in respect to this, on ground (g), (requesting a 2 year period for compliance).
- 1.3 It is proposed to amend the position of the touring caravans, but keep them within the same area of land that is currently fenced. The applicant has confirmed that it is proposed to connect the site to the main sewer that passes under the site. It is proposed to convert the two stables to provide utility functions (toilet, shower, cooking facilities) to support the touring caravans.
- 1.4 Access is via a trackway off Fields Lane, over which there is a right of access.
- 1.5 Members may recall that an Enforcement Notice was served when the caravans first appeared on site, following a careful appraisal of the case involving an assessment of the occupation of the site and the impact on the Green Belt and the landscape setting of the site. That Notice has been appealed and this application needs to be determined in order that the decision can form part of the Council's evidence related to that appeal which will be heard in early 2010.

2. Reason for reporting to Committee:

- 2.1 The controversial nature of the application has attracted widespread public interest and it is a departure from the development plan for this area.

3. The Site:

- 3.1 The site lies on open land to the south of the A26 Tonbridge Road and to the east of Wateringbury village playing fields. To the south is the River Medway and the Medway Valley Railway line. The site is accessed off Fields Lane along a trackway.
- 3.2 The site is outside any settlement confines and within the designated Green Belt. It lies on sloping ground on the north side of the river valley and is visible from the public highway and public path network on the south side of the valley.
- 3.3 The site measures 30m x 40m. Some of the site is laid to hardcore. It is proposed to amend the position of the existing touring caravans and lay additional hardstanding around them. A stable building lies to the north of the site and there are dog pens, a container for storage and a store for carriages adjacent to the stable building. To the east of this lies a horse walker. The site is bounded by a post and rail fence. Beyond this are paddocks to the east and south, also in the ownership of the applicant.
- 3.4 It is proposed to connect the site to the main sewer that passes under the site.
- 3.5 Land south of the application site lies in Flood Zone 2. That land is within the ownership of the applicant, but not the application site.

4. Planning History:

TM/00/01092/FL Grant With Conditions 18 August 2000

Erection of block of 3 stables and haystore with hardstanding to front of stables

TM/00/02103/RD Grant 16 October 2000

Details of disposal of manure, bedding and other waste by a muck heap removal contractor, submitted pursuant to condition 4 of permission TM/00/1092/FL: erection of block of 3 stables and haystore with hardstanding to front

TM/00/02104/RD Grant 16 October 2000

Details of staining to ship lap cladding (Golden Brown) submitted pursuant to condition 3 of permission TM/00/1092/FL: Erection of block of 3 stables and haystore with hardstanding to front

TM/01/00340/FL Grant With Conditions 17 April 2001

Block of 5 stables and haystore

TM/03/00561/FL Refuse 28 April 2003

Construction of timber barn for storage also positioning of 2 CCTV poles (Restrospective)

TM/05/02434/FL Grant With Conditions 13 February 2006

Change of use and retention of equestrian related ancillary timber building plus retention of two CCTV 3m high poles

TM/06/00739/RD Grant 25 April 2006

Details of colour and texture of painting of CCTV poles pursuant to condition 2 of planning permission ref. TM/05/02434/FL (change of use and retention of equestrian related ancillary timber building plus retention of two CCTV 3m high poles)

TM/06/00875/RD Refuse 22 November 2006

Details of parking and turning facilities pursuant to condition 9 of planning permission ref. TM/05/02434/FL (change of use and retention of equestrian related ancillary timber building plus retention of two CCTV 3m high poles)

TM/06/01239/FL Application Withdrawn 16 April 2007

Temporary dwelling for a period of 3 years

TM/06/02554/RD Approved 8 August 2007

Details of proposed commercial vehicles to be stored at the site pursuant to condition 10 of planning permission TM/05/02434/FL (change of use and retention of equestrian related ancillary timber building plus retention of two CCTV 3m high poles)

TM/07/03095/FL Refuse 27 December 2007

Temporary dwelling for a period of three years relating to the keeping and breeding of Shire Horses

TM/08/00648/FL Approved 18 April 2008

Horse walker exerciser

TM/08/03109/FL Refuse 3 December 2008

Residential log cabin to monitor the keeping and breeding of shire horses

5. Consultees:

- 5.1 PC: Objection. Mrs Medhurst claims she was unaware of the fact that the land is designated Metropolitan Green Belt. Ignorance of the land's status is no excuse for inappropriate development and is a matter which the Medhursts should take up with their solicitors. Presumably, the Medhursts could sue their solicitor and insist

that the land is sold with the solicitors paying the Medhursts for any loss of money. It is also quite clear that the Medhursts were given full knowledge of the planning history of the site including the two recent applications and refusals for residential accommodation.

- 5.1.1 Information previously supplied stated that the Medhursts would not have any children of primary school age living on the Drayhorse Meadow site. However, the revised application now states that George and Michael Medhurst are hoping to reconcile with their wives. This would mean the two or three primary school aged children currently on the site at weekends and holidays would need schooling locally. Wateringbury Primary School is a very over subscribed school, which consistently turns away local children. This year a family living in the Brucks (just off Fields's Lane) did not get their son into the reception class and the child has had to go to a school in King's Hill.
- 5.1.2 The same happens every year. It would cause a great deal of animosity in Wateringbury if the Medhurst children are given priority over other local children.
- 5.1.3 It would also seem highly unlikely that the proposed accommodation would be sufficient to house two additional adults and their children on a permanent basis. This would potentially lead to an application for further development on the site.
- 5.1.4 Although the Medhursts may well have seen a For Sale sign whilst travelling in the area, it is also believed that the Medhursts are known to and perhaps related to the Stevens family. The Stevens threatened both TMBC and Wateringbury Parish Council that they would sell the land to gypsies if planning permission for residential use was refused. If this application is granted it would seem that Wateringbury will suffer a loss of their Green Belt land due to spiteful behaviour by the parties involved.
- 5.1.5 Whilst sympathising with Mrs Medhurst's back condition, it is difficult to understand why she is better off living in a mobile home in the middle of a field rather than the house that she was previously living in. She is often seen carrying heavy bags of shopping from the village shop to Drayhorse Meadow. Surely, with such a bad back she should be either driving to the shops or getting one of her four children to help her with the heavy shopping? Similarly, Mrs Medhurst is often seen driving the burger trailer off the premises. Previously Wateringbury Parish Council has been assured that this trailer is not currently being used. However, the most recent information provided now states that the trailer is taken to Dagenham docks in Gravesham and Barking. The frequent use of this trailer and the additional use of the track is causing disturbance to the residents of The Brucks and Phoenix Drive, particularly those whose properties back onto the track and Playing Fields.
- 5.1.6 With regard to services, once again the agent has stated that the land benefits from a mains water supply. In fact, the Wateringbury Sports and Recreational Association (WSRA) agreed that the Stevens could install a meter so that they

could provide water for their horses. It was not intended to be used to supply water for living accommodation and the WSRA are considering whether to withdraw the supply.

- 5.1.7 Cars parking at the pavilion are parked predominantly for football matches on Saturday and Sunday mornings and are there for a couple of hours. Similarly, in the summer, cars are parked there for cricket matches on Sunday afternoons. It is ridiculous to imply that they have the same impact on the landscape as mobile homes or caravans.
- 5.1.8 The conversion of the stables into 'utility areas' would cause more unnecessary development of the land. This would effectively be converting the stables for residential use.
- 5.1.9 The additional information supplied by Heine Planning Consultancy (based in Cheshire) implies that the caravans and mobile home have a minimal impact on the landscape. If they have visited the site and surrounding area, they will see that this is simply not the case. From the road and houses on the other side of the valley the mobile home and caravans have a detrimental impact and can be seen to quite clearly interrupt the open nature of the agricultural land and playing fields between the built up areas of Wateringbury and Teston.
- 5.1.10 I trust this response to the information supplied by Heine Planning Consultancy will be taken into consideration. The residents of Wateringbury feel most strongly that their Green Belt should be protected from development.
- 5.2 EA: No objections, subject to layout not involving development in the flood zone.
- 5.3 Southern Water: There is a public sewer available to serve the site, however, the application form also makes reference to 'drainage in stables'.
- 5.3.1 Whilst discharge of foul effluent to the public sewer is a satisfactory means of disposal, no animal wastes are permitted to discharge to sewer.
- 5.3.2 We request that, should this application receive planning approval, a condition is attached requiring details of foul sewerage disposal and surface water disposal to be submitted for approval.
- 5.4 Maidstone BC: No objections.
- 5.5 KCC (Highways): No objections.
- 5.6 DHH: In my previous comments I expressed concern that no information had been provided about the drainage proposed to be installed for this development. Having regard to the advice in DETR Circular 03/99 Planning Requirement in respect of the Use of Non-Mains Sewerage incorporating Septic Tanks in Development that, *"If the non- mains sewerage and sewage disposal proposals are assessed as*

being unsatisfactory, this would normally be sufficient to justify refusal of planning permission". I entered a holding objection.

- 5.6.1 I note that the letter from Heine Planning Consultancy, reference L5-J11-05 dated 6th October states, page 2 para 1, "the site would be connected to the main sewer that passes under the site... For this reason there is no need for an assessment of any other method" (of drainage). However, the letter from Heine Planning Consultancy, reference L5-J11-05 dated 14th October states, "I write to confirm that it would be our intention to connect to the main sewer when it is so close, provided a connection can be agreed".
- 5.6.2 To my mind this position leaves open the possibility that drainage will not be to the main sewer and demonstrates a need for alternatives to mains drainage, including the drainage of the stables, to be investigated and be shown to be viable before any permission is granted. In the interim I must maintain my holding objection to grant of planning permission.
- 5.6.3 Should the drainage issues be resolved then, a condition should be attached to safeguard the amenity of nearby residents in relation to stabling activity and the storage and disposal of manure.
- 5.6.4 I note that the Parish Council comments that, "*The site is Radon Zone 1, which means that there are high levels of radon in the earth*". This is a misapprehension. The British Geological Survey – Health Protection Agency Radon Potential Dataset (2007) shows the site to be in Radon Class 1 where less than 1% of homes are estimated to exceed the recommended radon 'Action Level' of 200 becquerels per cubic metre for the annual average of the radon gas concentration in a home. This means that no radon protective measures are required for new properties or extensions to existing ones.
- 5.6.5 Planning history suggests that there is a commercial vehicle storage facility at the site. Some asbestos problem was also reported at the site. In order to change the site to a residential use, a preliminary risk assessment is required. This assessment should inform the need for further investigation.
- 5.7 Teston PC: Teston is immediately to the east of Wateringbury, on the northern slope of the Medway valley. Teston Parish Council wishes strongly to support objections to this application made by Wateringbury Parish Council and many local residents. We note that Maidstone Borough Council has responded formally with "Raised no objections", but that is from the narrow perspective of direct impact upon Maidstone Borough Council residents.
- 5.7.1 Teston is very concerned about the indirect impact upon Teston of the site to which this application refers. Drayhorse Meadow is "just over the border" between Maidstone Borough Council (of which Teston is a part) and Wateringbury.

5.7.2 For the past 4-5 years, Teston Parish Council has supported Maidstone Borough Council in its efforts to restrict development at Kings Farm in Teston, which is some 5-600 metres to the east of Drayhorse Meadow and similarly located on the north side of the gently sloping Medway valley. There is also another site between Kings Farm and Drayhorse Meadow at which an un-authorized caravan has appeared and which is likely to be subject to enforcement action.

5.7.3 Kings Farm has currently got personal permission for one mobile home and one touring caravan with a restriction limiting occupation to the site's owner and her resident dependants on the grounds that "...an exception has been made in recognition of the personal circumstances of the applicant in accordance with policy H36 of the Maidstone Borough-Wide Local Plan 2000 and the advice given in OPDM Circular 01/2006". The owner had provided extensive evidence of her apparent need to live at the site and, without such clear evidence of personal need, the site would not have been granted any permission for caravans. (It should be noted that there is now considerable doubt about whether the site-owner is actually living on site and activities are being monitored). The agent used by the applicant for Drayhorse Meadow has also been used by Kings Farm; that is, Mrs Heine.

5.7.4 Besides objections made by Watringbury Parish Council and many local residents, we ask, please, that the adverse impact upon open countryside (especially in a gently sloping valley and which is visible from West Farleigh, Yalding and Nettlestead) and the potential precedent that would be set for other parts of this attractive section of the Medway valley are taken in to account and that this application be refused.

5.8 Private Reps: Departure Press/Site Notices: (286/0S/124R/0X) 124 letters received, objecting on the following grounds:

- The applicants have shown a blatant disregard for planning laws by moving their caravans and large mobile home onto the site with no planning permission in place;
- The site lies outside of the village confines of Watringbury, within the Metropolitan Green Belt. There are five purposes of including land in the MGB that are stated in PPG2. This proposal contravenes each of these purposes;
- The previous owner submitted a planning application for a dwelling on this land and was refused planning permission;
- The proposal does not fulfil any of the criteria for exceptional circumstances;
- The applicant must have been aware that previous applications for residential development on the site have been refused;

- Should planning permission be granted a precedent would be set for other similar sites;
- If approved, this could set a precedent for an intensification of the site and lead to a merging of Wateringbury and Teston;
- The views of the Medway Valley from the A26 should be retained; The proposal will be visible from the A26, from across the river and from the houses in Phoenix Drive;
- The proposal would result in visual erosion and spoil the natural beauty of the surrounding countryside;
- The applicants are not local, having come from Gravesend, and provide little or no evidence of any special circumstances to support their case;
- The present planning use of the land is for agriculture/for livery and stabling, and this should remain;
- There are health and safety concerns about the use of the site, particularly the owner's use of large gas cylinders and the disposal of waste;
- The conversion of two stables into utility rooms normally constitutes part of a permanent residence. If planning permission is granted for this conversion, this could create a precedent and be used as the precursor to seeking permission for permanent housing on the site at a future date;
- The development is isolated which means it is highly visible during the day and night when the lights are turned on;
- The village infrastructure, including school, is already struggling to cope with a previous housing development in Wateringbury in 1998. Any further new homes will only add to this problem. Several local village children have already had to attend schools outside the village because of over subscription at Wateringbury school;
- What was a well controlled and frequently used track will be in regular use, posing a threat to not only playing children at the play area but also at night. Parents with children for the playground, cricket and football matches and other walkers use the access. The increase in vehicular use could jeopardise pedestrian safety;
- The proposal would be detrimental to the new play area adjacent to the site;
- There has been a lack of consideration to adequate social facilities. There is no adequate planning for sewerage, water services, refuse collection and increased road traffic, which puts additional strain on the local community;

- The proposal will be detrimental to the wildlife and natural beauty of the area;
- The occupants appear to be trading from the site as mobile fast food outlets. Adequate hygiene measures need to be in place to protect the public and Council Tax and Business Rates need to be considered;
- There is no evidence of appropriate arrangements for waste water and sewage disposal. There is evidence of water leaking from the site into the playing field;
- The applicant is proposing the use of a Klargestor Cesspool. This type of cesspool requires regular and frequent emptying by tanker and would necessitate additional heavy vehicle access to and from the site down the track.
- The smell resulting from the cesspool would be intolerable to local residents. They are unsuitable for the disposal of fatty waste, which will be problematic to the applicant's burger vans that operate from the site;
- The applicant suggests that they need to look after two horses on the site. The horses would be able to look after themselves;
- The gas cylinders put on the site to support the development will be near the pavilion and play area, which could pose a danger;
- If planning permission is granted it should be subject to conditions restricting the number of people occupying the site;
- The use of or overwintering of commercial or fairground vehicles should be banned for 360 days each year;
- The applicant previously sold a house before moving onto Drayhorse Meadow. This undermines any pretensions that the current occupiers may have to gypsy status and the so called privileges that go with that status.

6. Determining Issues:

- 6.1 The main issues relate to the principle of the development in the Green Belt, the impact upon the rural character of the locality and the issues surrounding accommodation provision for gypsies.

Planning Policies:

- 6.2 National Policy is PPG2 (Green Belts) and Circular 01/06 (Planning for Gypsy and Traveller Caravan Sites).
- 6.3 The 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.

- 6.4 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.
- 6.5 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.

Green Belt and Impact on the Countryside:

- 6.6 The site is located within the Metropolitan Green Belt where Government Guidance contained within PPG2 applies. It is stated at paragraph 3.12 of PPG2
- “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”.*
- 6.7 Paragraph 1 of PPG2 defines the purposes of including land within the Green Belt, one such being to assist in safeguarding the countryside from encroachment. The development does indeed cause harm to the openness of the Green Belt, with the introduction of the caravans, hardstanding 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. The site can be widely viewed across the Medway Valley, from public vantage points, forming a highly visual intrusive feature within the open countryside. The use is inappropriate development in the Green Belt, harmful by definition, and harmful to its openness.
- 6.8 PPG2 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.
- 6.9 Policy CP3 of the Tonbridge and Malling Borough 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 Borough 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.

- 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 if the proposal is not to be refused planning permission. 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 for 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 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 (words in bold are my emphasis):

"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.”

- 6.13 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 show people. 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 sites 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.
- 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 show people. 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. The GTAA suggested a need for a further 10 -13 pitches in the Council's areas by 2011 and recognised those unauthorised facilities in the Borough at the time of completion plus the growth expected from existing facilities and incomers to the Borough.

- 6.16 The published option of the regional planning body is that 18 pitches would be the provisional figure for the Borough as outlined in draft regional spatial strategy policy H7 published in June 2009. The Council has taken a position of objecting to the figure of 18 additional pitches, instead promoting an option which would mean 12 pitches.
- 6.17 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).
- 6.18 Members will be aware that to comply with that national advice in C. 01/2006 and in advance of the formal adoption of the SEP figure, the Borough Council and KCC are currently pursuing 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). Planning permission has been granted for this project.
- 6.19 This project has 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 in future 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 CP20. It is expected that the Secretary of State will shortly publish a decision on the funding of such specific projects.
- 6.20 The situation is that whilst there is clearly a present need for additional gypsy accommodation within the Borough, it is intended that this is likely to be met when the Coldharbour project comes to fruition.

Race Relations Act

- 6.21 In considering applications for gypsy and traveller sites local authorities need to have regard to the Race Relations Act 1976 as amended by the Race Relations (Amendment) Act 2000. The Act provides that local authorities have a general duty to seek to eliminate discrimination and to promote equality of opportunity and good race relations in all they do. The guidance states that a reference to the Act does not confer a right on gypsies and travellers to establish sites in contravention of planning control, but rather that the applicant's status under the Act should be considered, and that the duty of local authorities to promote good race relations is a factor that needs to be considered in any decision making.

Human Rights

- 6.22 A key issue in this type of case is the European Convention on Human Rights as applied by the Human Rights Act 1998. The applicant and her 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.

6.23 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 her family, consideration must be given whether the refusal of planning permission and associated enforcement action would be necessary and proportionate.

Personal circumstances

6.24 In terms of personal circumstances, the letter received from the applicant's agent on 9 October 2009 suggests that her two eldest sons are married but no longer with their wives. They have children who visit at weekends. The applicant's daughter has a 14 month old baby. There are no children currently residing at the site of school age.

6.25 The agent claims that Mrs Medhurst does not travel for work due to health problems and that she has suffered with a serious back complaint and from asthma. It is claimed that the applicant and her family do not wish to return to bricks and mortar and wish to pursue a gypsy lifestyle.

6.26 There appear to be inconsistencies in the statement provided by the applicant's agent (received 09 October 2009). There also appear to be inconsistencies between that statement and the information provided by the applicant in their Human Rights Interview. We are seeking to obtain further clarification. These checks may also relate to associated welfare considerations.

6.27 The statement provided by the applicant's agent suggests that, before moving to the site, Mrs Medhurst had been living in a dwelling house in Gravesend. She sold this house in October 2007. For 3-4 years prior to this she stopped with showmen at Buckles Lane in South Ockenden. Mrs Medhurst had been promised a piece of land at Buckles Lane before she sold her house. However, when she had sold her house and moved out she found that this was not honoured and she found herself homeless. Since then she has stopped with friends in Dartford and her sister in Chelmsford. Her sons have been independent for several years. They used their mother's house as a base to return to. They travel to where the work is. They do mostly tree and garden work, as well as jet washing.

6.28 In summary, Members are advised that 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.

Temporary planning permission

6.29 Circular 01/2006 requires that consideration be given to granting a temporary planning permission.. *“Where there is unmet need but no available alternative gypsy and traveller site provision in an area but there is a reasonable expectation that new sites are likely to become available at the end of that period in the area which will meet that need...”*

6.30 Members will be aware that two recent appeals have been allowed for gypsy caravan sites and temporary permissions were granted as the Inspectors were not, at the time, satisfied that alternative sites would be available in the short term for acceptable relocation. It therefore appears, on the basis of these fairly recent decisions by Inspectors (one of which granted a 3 year temporary permission and the other for 5 years), **that unless a site suffers from clear and overwhelming site specific problems**, then temporary permission could be allowed on appeal even for sites in the Green Belt. Members will recall this aspect is relevant to 3 other gypsy cases which were reported to the 28 October Area 2 planning committee but deferred.

6.31 In the circumstances of this particular case, I am of the opinion that a temporary permission could **not** be justified. The site can be clearly 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, from the A26, and in landscape views from across Medway Valley and has a very noticeable visual impact on the Metropolitan Green Belt. The proposed use forms a highly visual intrusive feature within the open countryside. 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 caravans form a prominent and intrusive feature.

6.32 As the site is occupied by adults with no serious health issues, and there are no resident school-aged children, there are no health or educational needs in my view that override the considerable harm that is caused by this site and there is no necessity for these persons being on this particular unauthorised site in the Green Belt, even for a limited period of time.

Other material considerations

6.33 I note the local concerns relating to health and safety. These concerns have been passed to the Director of Health and Housing to address separately. Again, issues of hygiene from the fast food outlets and Council Tax and Business Rates are not material planning considerations and will be dealt with by other means.

- 6.34 I note the concerns relating to the impact of the proposal on the access track and the conflict this proposal would have with the adjacent play area and cricket and football pitches. However, I can see no justification for refusing the proposal on this ground.
- 6.35 Whilst the applicant states that their solicitor did not inform her that the site was located within the MGB, this is an issue which she could easily have clarified by her own research and it does not provide any very special circumstances to justify overriding the relevant planning policies.

Conclusion

- 6.36 In light of the above, in the circumstances of this particular case, I believe that notwithstanding the applicant's personal background, there is a strong case to refuse permission because of the impact on the Metropolitan Green Belt. Because of this impact there is no case for granting even a temporary planning permission for this development.

7. Recommendation:

7.1 Refuse Planning Permission for the following reasons:

- 1 The development constitutes inappropriate development within the Metropolitan Green Belt and is therefore harmful by definition. The development is thereby contrary to PPG2 and Policy CP3 of the Tonbridge and Malling Borough Core Strategy 2007. No case of very special circumstances has been made such as to justify the grant of planning permission in the face of strong Green Belt policy objection.
- 2 The development is contrary to policy CP14 of the Tonbridge and Malling Borough 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 visual impact of the proposal on the surrounding countryside, no adequate case of overriding material considerations has been made to justify the harm caused by development.
- 3 The development is contrary to policy CP20 of the Tonbridge and Malling Borough Core Strategy 2007 for the reason that the Gypsy site is located in the Green Belt. Due to the overriding visual impact of the proposal on the surrounding countryside, no adequate case of overriding material considerations has been made to justify the harm caused by development.

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