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<b>West Malling</b> West Malling And Leybourne	<b>567231 156878</b>	<b>15 June 2009</b>	<b>TM/09/01487/FL</b>
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Proposal:	Change of use of land for stationing of one static caravan and two touring caravans for residential occupation by single gypsy family; associated utility shed, storage shed, septic tank, hard standing and pathways and recessed gateway to site
Location:	Land East Of Teston Road Teston Road West Malling Kent
Applicant:	Mr E Barton

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## **1. Description:**

1.1 Members will recall that this application was reported to the Area 2 Committee of 28 October 2009. The previous and supplementary reports are annexed. The application was deferred for the following reasons:

- the formal decisions on the planning and DCLG grant applications for expansion of KCC's Gypsy and Traveller Site at Coldharbour Lane
- officers to re-assess the suggested 3 year period for a temporary planning permission in the light of the timescale that emerges in relation to Coldharbour site
- officers to advise on the implications of the applicants refusing any pitches that become available at Coldharbour Lane in the future
- officers to request information from the Director of Housing about affordable housing being available for the applicants and whether it has/can be established if it could be offered to the applicants
- TMBC officers to liaise with KHS to re-assess the Highway safety issues in light of the KHS officer's expressed willingness to physically reappraise the highways conditions at the site.

## **2. Update following Deferral**

Coldharbour Lane

2.1 One contextual aspect to this case is that the KCC is currently pursuing redevelopment and extension of the existing Gypsy site at Coldharbour, Aylesford, in partnership with the Borough Council. This is to provide a total of 18 pitches (a net gain of 10 additional pitches). Planning permission was granted for this project on 12 November 2009. It has the support of KCC and the Borough Council and did not attract any local objections. The current case was deferred to await the decision on the planning application and to enable the Committee to consider the proposal in the light of the Government's decision on funding for Coldharbour.

- 2.2 As Members will be aware the Coldharbour scheme will be promoted for Government grant support in the forthcoming bidding round and both KCC and TMBC remain optimistic about the funding prospects. When implemented, it will provide alternative accommodation in future for the occupiers of this site. That alternative provision would not be within the Green Belt and would follow policy criteria set out in policy CP20 of the Tonbridge and Malling Borough Core Strategy 2007.
- 2.3 The situation is that whilst there is clearly a present need for additional gypsy accommodation within the Borough, it is intended that this need will be substantially met when the Coldharbour project comes to fruition.

#### Length of Temporary Planning Permission

- 2.4 In the light of the delay in securing funding for Coldharbour project, I would advise Members that a one year consent is unlikely to be considered to be reasonable by an Inspector in considering an appeal against such a condition.
- 2.5 Having taken Counsel's advice, I recommend that 2 years is a reasonable period for temporary planning permission at this site in all the circumstances.

#### Refusal of Pitches at Coldharbour

- 2.6 On the point of whether weight would be given to any future assertion by the applicants that the Coldharbour site was unsuitable because of the "ethnicity" of other occupants, Counsel's advice is that it is unlikely that this matter can be considered within the ambit of planning and development control.
- 2.7 The Race Relations Act 1976 makes it unlawful to discriminate on racial grounds, including when considering housing and planning matters. The Act specifically states that discrimination by planning authorities in carrying out their planning functions is unlawful (s.19A). In addition, s.71 of the Act states that in carrying out their functions, specified authorities have a duty to eliminate unlawful racial discrimination and to promote racial equality of opportunity and good relations between persons of different racial groups. By taking into account, in the course of determining a planning application, considerations put forward by an applicant with regard to their prospective neighbours' ethnicity, the Council risks falling foul of the prohibition on discrimination in the Race Relations Act.

#### Affordable Housing

- 2.8 The Council as Local Housing Authority has a duty to assess any homeless applicant to determine whether it has a duty to secure alternative accommodation. Homeless applicants who are deemed to be in priority need for accommodation, and who are homeless through no fault of their own, will usually be prioritised for rehousing in social housing. Priority need groups include those households with dependent children (or a pregnant member), and applicants who are vulnerable as

a result of mental or physical illness or disability, old age or other special reasons. Where the Council accepts the duty to rehouse a homeless household, they may be placed in Bed and Breakfast or temporary accommodation where necessary, and awarded a high priority on the housing register. Applicants will then need to check properties that are advertised through choice based lettings every two weeks, and place bids on any they are interested in. If/when they are the highest bidder for a property, they will be subject to the RSL's usual verification checks before being offered the tenancy.

- 2.9 To assess an individual household, they will be required to complete an assessment form and provide ID for every member of the household. They will then be placed into one of four priority bands and awarded points according to their housing need in accordance with the Council's housing allocations scheme.

#### Highway matters

- 2.10 The following additional comments have been received from Kent Highway Services following the deferral of this application from the October 2009 meeting of APC2.

2.10.1 The application site has a lawful use as a smallholding that also forms part of a larger smallholding where horses/ponies are grazed within a paddock located to the northeast of the application site. Therefore, the site has a lawful use that can currently generate unlimited traffic movements. Although the access arrangements are not ideal, with it originally being gated at the boundary and adjacent to the road, all potential traffic movements generated by the smallholding use could lawfully use it. Under this residential proposal improvements are proposed to the existing access. These have been implemented in respect of setting the existing gate back some 7m from the road suitable to permit a vehicle to stand clear of the road prior to entering the site. Some maintenance of the boundary hedge, that is set back from the road, has been undertaken to improve forward visibility. The continuing maintenance can only be beneficial. The access also benefits from being on the outside of a sweeping bend that aids forward vision. This application is part retrospective and I am unaware of any adverse highway issues occasioned by the residential occupation. Indeed the KCC crash database has been interrogated and shows that, in the last three years, there have been no personal injury accidents recorded in the vicinity of the application site.

2.10.2 I do not consider that the proximity of the Ashtree Farm entrance, some 80m along the road from the application site, is likely to result in conflict of movements likely to be detrimental to highway safety. The proposed residential use is likely to generate few daily traffic movements. It is also relevant to be mindful with the extant use of the application site as a smallholding, if conflicts of movements were to occur, that potential already exists.

## Summary

The application site benefits from a lawful use as a smallholding. The traffic associated with the proposed residential use compared to that of a smallholding is acceptable. Although the access is not ideal, there being no history of personal injury accidents in the vicinity I would support this temporary permission.

### 3. Consultees:

- 3.1 No further representations have been received other than supplementary KHS comments above.

### 4. Determining Issues:

- 4.1 As advised above, the Coldharbour project now has planning permission but has not yet secured funding although this is being pursued.
- 4.2 All other determining issues are as detailed in my 28 October report.

### 5. Recommendation:

- 5.1 **Grant Planning Permission** as detailed by: Letter dated 17.06.2009, Supporting Statement dated 15.06.2009, Location Plan dated 17.06.2009, Block Plan dated 17.06.2009, subject to the following:

### Conditions / Reasons

1. The occupation of the site hereby permitted shall be carried on only by Mr Edward Barton, Ms Angela Botton who are gypsies as defined by paragraph 15 of ODPM Circular 01/2006 and by their resident dependants and shall be for a limited period being the period of 2 years from the date of this decision.

Reason: The site is located in an area where this development would not normally be allowed and it is the particular circumstances of this case that justify granting a temporary and personal planning permission.

2. When the premises cease to be occupied by those named in Condition 1 or at the end of 2 years from the date of this decision, whichever shall first occur, the use hereby permitted shall cease. Within 3 months of that date the land shall be restored to its condition before the use commenced and all caravans, structures, materials and equipment brought onto the land in connection with the use shall be removed.

Reason: In the interest of amenity.

3. The residential use hereby permitted shall be restricted to the stationing of one mobile home and 2 touring caravans.

Reason: In the interest of amenity.

4. Within 2 months of the date of this decision a scheme for the disposal of foul and surface water shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented within 2 months of the date of the approval.

Reason: In order to prevent pollution of controlled waters.

5. No external lighting shall be erected within the site without the prior written approval of the Local Planning Authority.

Reason: In the interests of rural and visual amenity

6. The mobile home shall not be brought on to the site until details of its external colour finishes have been submitted to and approved by the Local Planning Authority, and the development shall be carried out in accordance with the approved details.

Reason: To ensure that the development does not harm the visual amenity of the locality.

7. The existing screen hedging shown on the approved plan shall be retained at a minimum height of 2.5m.

Reason: Pursuant to Section 197 of the Town and Country Planning Act 1990 and to protect the appearance and character of the site and locality.

8. 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 fences or walls shall be erected unless planning permission has been granted on an application relating thereto.

Reason: In order to protect the appearance and character of the site and the wider rural locality.

### **Informatives**

1. The applicant is advised that the consent of the Environment Agency is required to operate a septic tank within this site. For advice concerning this matter please contact the Environment Agency at Orchard House, Endeavour Park, London Road, Addington, West Malling, Kent ME19 5SH.
2. Regarding the requirements for a site licence under the Caravan Sites and Control of Development Act 1960, the applicant is advised to contact the Director of Health & Housing, Tonbridge & Malling Borough Council, Gibson Building, Gibson Drive, Kings Hill, West Malling, Kent, ME19 4LZ. Tel: (01732) 844522.

Contact: Matthew Broome