
Report of 28 October 2009**West Malling**
West Malling And
Leybourne**567231 156878 15 June 2009****TM/09/01487/FL**

Proposal: Change of use of land for stationing of one twin unit mobile home 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 (Part retrospective)

Location: Land East Of Teston Road Teston Road West Malling Kent

Applicant: Mr E Barton

1. Description:

- 1.1 The application is now partly retrospective as the site is currently being occupied by the applicant and his family permanently living in the two touring caravans. The twin unit mobile home is not yet situated within the site. An existing static caravan is located within this site, which has been used as a chattel over a number of years. This would be replaced by the mobile home referred to in the application for residential occupation by the applicant and his family. This is shown to measure 15m x 7m in terms of its footprint scaling from the submitted drawings.
- 1.2 The site is occupied by the applicant, his partner and their 5 children. The applicant is a gypsy within the meaning described within circular 01/2006 and has travelled extensively through Kent and Essex as a child and in adult life. His father was a horse dealer and farm worker. He has, according to his agent, lived on land within West Malling and Hadlow, including the public site at Windmill Hill, where his uncle was the site warden. He has lived on the road since the mid 1990s according to his agent.
- 1.3 According to his agent, the applicant's partner (Ms Botton) was brought up as a gypsy, living in Kent including the public site in Windmill Hill for 10 years until she was 16. She married another gypsy at the age of 18 and they lived briefly at Swan Farm at Ash before moving to Stockbury and Faversham. Her marriage broke up and she initially lived into a women's refuge with her two daughters (the eldest of the five children referred to in the application) before moving into a flat and then a house for the past 8 years. According to the information submitted with the application, she has taken up residence on the site with her partner as she wishes her children to be brought up in the gypsy traditions and during the recent years of her life residing in bricks and mortar, she has felt isolated from her gypsy community.
- 1.4 The applicant and Ms Botton have been a couple for 5 years and have had three children together (one aged 4 and twins aged 2). Two older children of Ms Botton

(aged 17 and 10) also live with the family. It is understood that two of the children started attending West Malling Primary School in September this year.

- 1.5 A planning statement has been submitted in support of this application that details the personal circumstances of the applicant, the need for gypsy sites within the Borough and wider area and relevant Government guidance and development plan policies.

2. Reason for reporting to Committee:

- 2.1 The controversial nature of the application and that it is a departure from the development plan for this area.

3. The Site:

- 3.1 The site is located outside the settlement confines of West Malling, within the Metropolitan Green Belt. The site is located on the north east side of Teston Road approximately 170m north of the junction with St Leonards Street. The site lies in an area of open countryside.
- 3.2 The site measures approximately 50 m x 23 m and currently contains an old static caravan (which is to be replaced with a twin unit mobile home), two touring caravans, a timber utility shed and a storage shed.
- 3.3 The boundary of the site that fronts onto Teston Road is defined by a mixed deciduous hedgerow. A coniferous hedge defines the north west and north east boundaries of the site. An area of hard standing has been laid down adjacent to the site entrance which has a gravelled top dressing.
- 3.4 Timber post and rail fencing has been used within the site to separate the vehicle parking area from the lawned area where the caravans are situated.
- 3.5 The site forms part of a larger small holding and horses/ponies are grazed within a paddock located to the north east of the application site.
- 3.6 Further information is being sought from the agent as to the current method of foul drainage.

4. Planning History:

TM/95/50691/FL Refuse 3 October 1995

Portal framed building for the storage of agricultural implements and equipment

- 4.1 The site has been the subject of a number of enforcement investigations in the period 2000 to 2005 but on each occasion, there was no evidence of residential occupation of the chattel, it appeared on each inspection to be used by the applicant as a shelter whilst tending to horses being grazed.

5. Consultees:

- 5.1 West Malling PC: Members objected to this proposal as they considered it to be inappropriate development within the Green Belt.
- 5.1.1 They did not profess to have any specialist knowledge of the legislation pertaining to gypsy/traveller site but based their objections on the impact on the area, as they would with any proposal:
- 5.1.2 In particular they expressed concerns about loss of openness and encroachment into the countryside as well as being inappropriate development within the Green Belt.
- 5.1.3 These adverse factors were acknowledged by the applicant in the supporting papers.
- 5.1.4 Members expressed concern that any planning approval has been pre-empted and this development has already started; this Parish Council has already brought this to the attention of the Borough Council
- 5.2 Offham PC: Although not officially notified of the above application we have been contacted by a number of our local residents concerned about the recent activity that has taken place on the site and consequently this application. The application was discussed at Offham Parish Council's Meeting on the 21st July and, on behalf of our residents, we write to confirm our very strong objections to the proposal.
- 5.2.1 In the first instance, whilst we note from the application that it states that none of the proposed works have taken place, it is clearly evident from viewing the site from the public highway that most, if not all, of the works have already been implemented and this application is therefore retrospective.
- 5.2.2 Like West Malling Parish Council we have noted that there has been a caravan on the site for some considerable time and it seemed to us that the site owner was living on the site. However, although we made several enquiries to TMBC, each time we have always been told that "as far as they were aware no one was living on the site". This obviously was not the case as from information submitted with the application it states that whilst the owner was not living on the site all of the time he did use it as a base and resided in the caravan when "not travelling".
- 5.2.3 The number of caravans existing on the site before the recent additions is somewhat confusing. The supporting statement states that "the previous farmer kept a caravan on the land and this has been moved to the bottom end of the field where there is an old set of stables clad with tin sheets". It then goes on to state "a second caravan has been kept along side the road for the storing of horse feed

etc". We presume that it was this "second caravan" that the applicant used to "over night" in when "not travelling"?

- 5.2.4 Whilst we are aware that different rules seem to apply to gypsy families in terms of where they are able to set up home, there is very little justification in the supporting statement submitted with the application as to the need for this family to live on this particular parcel of land which is very visible from the road and sits within the MGB. The only two statements that address the issue of need are: "The couple are unable to consider moving onto any socially provided site as Ms Botton is separated from her husband and a number of his relatives are on local sites" and "The local plan fails to identify suitable locations for Gypsy-Traveller sites in this district".
- 5.2.5 The Supporting Statement states that the applicant "...never intended to live on the land when he bought it", but this seems to contradict other statements in the document that suggest that the applicant used this as a base when "not travelling". There is no indication as to what proportion of time was spent "travelling" and what proportion was spent "over nighting". It seems very convenient that based on the two very flimsy justifications set out above that this site is now the only option for this new family unit whom have already taken up residence.
- 5.2.6 In addition to the considerable increase in caravans and outbuildings within the site boundaries we are also concerned about the proliferation of "caravans" around the site: there is a "static caravan" now stored in the "lower paddock" – we are not sure if this is an additional caravan owned by the applicant or whether it is one in the same as "the previous farmer kept a caravan on the land and this has been moved to the bottom end of the field where there is an old set of stables clad with tin sheets". Are all of these various caravans in use and necessary, and could these also transpose into addition accommodation for this or other gypsy families?
- 5.2.7 Whilst we strongly oppose the granting of permission for accommodating a gypsy family on this site in addition we object to the total number of caravans, outbuildings and large hardstanding area. The use and look of the site is totally contrary to all planning policies of which we are aware that seek to protect the MGB and the local environment.
- 5.2.8 The applicant suggests that "little would be seen of the caravans or other structures from any public place". However, much of the site can be viewed from the public highway and it is exactly because of the site's visibility that we received a number of complaints from concerned local residents.
- 5.2.9 "The scale of development is too small to have any noticeable impact on local services". We would disagree with this statement in that the site area is now totally covered with caravans, outbuildings and hardstanding and a number of vehicles, including at least two flat bed/open backed lorries are regularly seen entering, leaving and parked on the site.

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- 5.2.10 “Teston Road...is lightly trafficked”. Anybody living and working in the area knows that this is most certainly not the case as unfortunately it has become a rat run for traffic accessing Kings Hill. Morning and evening rush hour are particularly busy times in addition to the regular movements of tractors and lorries accessing Church Farm in Offham.
- 5.2.11 We have been very surprised, and disappointed, by TMBC’s response to two sites within Offham that are occupied by gypsy families with a consequential uneasy alliance with local residents. Whilst nobody objects to the occupants themselves it is understandable that local residents feel that it is one rule for gypsy families and another for everyone else. The simple fact is that without the benefit of their gypsy status none of the families, the applicant included, would have any grounds for setting up home on any of the sites and this is what seems to be most unjust in terms of everybody being treated on the same basis.
- 5.2.12 Whilst we are aware that considering applications by gypsy families is not straight forward, far too often this is, we feel, used as an excuse. We very much hope that in the case of this application all factors will very carefully be considered and that you will be able to support our objections and refuse to grant retrospective planning permission for the occupation of the site by the applicant.
- 5.3 KCC (Highways): No objections. An existing vehicle access serves this proposal. Improvements are to move the gate further back into the site to permit a vehicle to stand clear of the public highway. The gate will need to be set back a minimum distance of 5m. I am satisfied that adequate off street parking is to be provided.
- 5.4 DHH: If permission is granted, a caravan site licence under the Caravan Sites Control and Development Act 1960 will be required.
- 5.5 EA: Foul drainage: The applicant should be made aware that under the terms of the Water Resources Act 1991, the prior written consent of this Agency is required for the operation of a septic tank in addition to any planning permission that may be granted. Such consent may be withheld and so the applicant is advised to contact the EA at the earliest opportunity. Surface Drainage: The application form states that surface water is to be discharged to a watercourse. However, our records do not show any watercourses in this vicinity. As such the applicant will need to submit further details regarding this element and how they intend to implement any pollution prevention measures.
- 5.6 Private Reps (including art 8 and departure site/press notices) (4/0X/0S/14R). Fourteen objections have been received making the following points (summarised):
- The development encroaches into the Green Belt.
 - Teston Road is not lightly trafficked as the applicant suggests.

- Vehicles entering and leaving the site create a hazard to highway safety.
- The domestic arrangements of the applicant and his family should not be relevant to this case.
- An existing authorised site should be used before allowing this development in the Green Belt. There is an existing site nearby in Windmill Lane that could be used.
- If allowed, the development would set an undesirable precedent for other development along Teston Road.
- The number of people and caravans living on site could increase unless controlled. What is a single family?
- There seems to be no fair reasonable justification for this development of Green Belt land.
- The family was satisfactorily housed in a dwelling.

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 and the issues surrounding gypsies and the provision of sites.

Planning Policies:

- 6.2 National Policy is PPG2 (Green Belts) 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.
- 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.

Green Belt and Impact on the Countryside:

- 6.6 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 would be higher than the hedgerows on the southern boundary and the colour of the mobile home would increase the visual prominence in the landscape if there were no control over its external colour.
- 6.7 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.
- 6.8 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.
- 6.9 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.
- 6.10 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

- 6.11 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.”

6.12 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.

6.13 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.

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- 6.14 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.
- 6.15 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.
- 6.16 The SEP included an Interim Statement based on DCLG Circular 01/2006 (on the basis of local authority Gypsy and Traveller Accommodation Assessments).
- 6.17 The preferred 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 consultation period for this document expired on 1 September 2009. This Council has raised objections to draft policy H7.
- 6.18 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.
- 6.19 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
- 6.20 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).

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- 6.21 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.
- 6.22 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.
- 6.23 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.
- 6.24 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.

Human Rights

- 6.25 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.

- 6.26 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.
- 6.27 In terms of the personal circumstance, this case, the applicant has two children of primary school age who have recently started attending West Malling Primary School. The applicant also has two younger children who will need to attend school in two years time. 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). It is apparent that the applicant and his partner wish to raise their children as gypsies. It seems unlikely that the applicant, his partner and their children would return to bricks and mortar accommodation but are likely to resort to live on the road with a detrimental impact on the children's continued education. It would also be likely that on "on the road" lifestyle would also give a poor environment for the family to reside within, cause other harm to the countryside/Green Belt and in all probability cause objections and concerns to other residents affected by that mode of living. That is, the concerns that arise from this case would not necessarily be eradicated by refusal/ enforcement action when there is still an identified deficit of adequate site provision within the Borough.
- 6.28 It is clear that in the current circumstances, while the Human Rights background is very important consideration in all cases such as this, it is not in itself the sole or decisive factor nor is it the fact that such matters automatically override all other material planning considerations.

Temporary planning permission

- 6.29 The primary objection to the development is that it lies within the countryside and Green Belt and in the latter respect is inappropriate development. Much of the Borough is covered by this 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 including those outside the Green Belt, suitable sites within rural or urban settlements are unlikely to be readily available yet be acceptable in terms of their planning merits.

6.30 Given that the development does cause harm to the countryside and Green Belt by reason of its inappropriateness and impact on the amenities of the Green Belt, I do not consider that a permanent planning permission is justifiable in the current context especially bearing in mind the factors mentioned by the Inspector quoted above. However, Circular 01/2006 requires that consideration be given to granting a temporary planning permission. It states at paragraphs 45 and 46:

“45. Advice on the use of temporary permissions is contained in paragraphs 108 – 113 of Circular 11/95, The Use of Conditions in Planning Permission. Paragraph 110 advises that a temporary permission may be justified where it is expected that the planning circumstances will change in a particular way at the end of the period of the temporary 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, local planning authorities should give consideration to granting a temporary permission.

46. Such circumstances may arise, for example, in a case where a local planning authority is preparing its site allocations DPD. In such circumstances, local planning authorities are expected to give substantial weight to the unmet need in considering whether a temporary planning permission is justified. The fact that temporary permission has been granted on this basis should not be regarded as setting a precedent for the determination of any future applications for full permission for use of the land as a caravan site. In some cases, it may not be reasonable to impose certain conditions on a temporary permission such as those that require significant capital outlay.”

6.31 The outcomes of two recent appeal hearings within the Borough relating to gypsy development also provide relevant context for this case. These two appeals have been allowed for gypsy caravan sites. In both cases, the Inspectors' considered that there was harm to the Green Belt/countryside/amenities such that permanent planning permission should not be granted. However, 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. At that time the SEP process was in its infancy and has now become an even more important factor in determining the necessary supply of gypsy and traveller sites in the Borough. 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 it is likely that temporary permission for this site would be allowed on appeal even though the site is in the Green Belt. This is in light of the results of the GTAA, the fact that the SEP debate may yet define the need differently and potentially higher than GTAA, together with the practical timetable for the provision of the upgraded Coldharbour site being expanded.

6.32 Hence these recent appeal decisions made with regard to two sites elsewhere in the Borough indicate a crucial element in the judgement exercised in appeal decisions. 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. Given the above and the Inspectorial decisions to grant temporary permissions, and also given the position with regard to the Coldharbour project, consideration must be given to the appropriateness of the grant of temporary permission.

6.33 In the circumstances of this case, I am of the opinion that a temporary permission would be justified albeit will result in temporary harm to the Green Belt pending the availability of new pitches at Coldharbour. I also consider that it would be disproportionate in human rights terms to force the applicants to leave the site before pitches at Coldharbour become available, and the results of the SEP partial review are known, particularly as there is no evidence of any readily available lawful site to which the applicant could readily move without detrimentally disrupting the family's education.

6.34 In the circumstances of this particular case, I 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 and the outcome of the SEP partial review.

Other material considerations

6.35 Turning to other matters, objections have been submitted concerning highway safety. However, it must be borne in mind that the site has a lawful use as a small holding and a gated vehicle access previously existed immediately adjacent to the Teston Road boundary of the site that was used in connection with the lawful use of the site. The vehicle gate serving this site has been set back into the site, approximately 7 metres away from the edge of Teston Road. Some of the boundary hedging has also been cut back to increase forward visibility for vehicles leaving this site. Kent Highways has not objected to this development on highway safety grounds.

6.36 There have been a number of objections on the basis of the risk of the site being used in the future by additional members of the applicant's family and others. A condition can be used to limit the occupation of the site not only in terms of time, but also to the applicant, his partner and their dependant children, which would adequately address this matter.

Conclusion

6.37 In light of the above, I recommend that temporary and personal planning permission be granted subject to other conditions to reduce further harm to the rural area.

7. Recommendation:

- 7.1 Grant Temporary 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 E Barton, Ms A 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 3 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 3 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. (Q016)

Contact: Matthew Broome

SUPPLEMENTARY REPORTS**AREA 2 PLANNING COMMITTEE****DATED 28 October 2009**

**West Malling TM/09/01487/FL
West Malling And Leybourne****Change of use of land for stationing of one twin unit mobile home 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 (Part retrospective) at Land East Of Teston Road Teston Road West Malling Kent for Mr E Barton**

Agent: The applicant's agent has written in to confirm that foul drainage within the site is currently dealt with by way of a portaloo, the contents of which are removed from site on a weekly basis by a contractor. The septic tank referred to in the application has not yet been installed within the site.

The agent also states that whilst the precise details of the proposed mobile home are not known at this stage, it is likely to be a twin unit or a static caravan similar to the existing chattel within the site. The applicant's agent has confirmed that the use of a condition restricting the total number of caravans within this site to 3 (of which 2 would be touring caravans) would be acceptable.

The appellant's agent has also commented on the planned expansion to the Coldharbour site in Aylesford and has stated that to move all families onto one site is not what the families want and could lead to management problems.

DPTL: Members are reminded that 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.

The current position with regard to the Coldharbour project is that the planning application is likely to be decided by the end of this month so there is, currently, no planning approval for the scheme. There appears to have been no Ministerial announcement yet on the matter of grant support for the project.

Mr Barton and Ms Botton are not on the waiting list for any KCC operated sites.

For the purpose of clarification Policy CP 10 of the Tonbridge and Malling Borough Core Strategy does not apply to this particular site.

RECOMMENDATION AMENDED

Amend condition 1

1. The occupation of the site hereby permitted shall be carried on only by Mr Edward Barton and 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 3 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.
