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- 3.2 The site is known locally as Askew Bridge Builders Yard, however, the land has no lawful use as a builders yard and the Planning History below shows that a Lawful Development Certificate for Existing Use was refused in 1996 for the storage of building material.
- 3.3 The site lies within the Metropolitan Green Belt.
- 3.4 Since occupation the application site has been cleared, partially levelled, hard core has been laid across much of the site, a brick wall, gates and fencing have also been erected, as has a hardstanding forming a drive between the public highway and the application site.

4. Planning History:

MK/4/54/217/OLD Refuse 9 July 1954

Outline application for five dwellings.

TM/95/1388/LDCE Refuse 11 April 1996

Lawful Development Certificate Existing: use of land for storage of building material and equipment.

5. Consultees:

- 5.1 PC: The Parish Council has written at some length, objecting to the proposal and inviting the Council to take enforcement action to secure the clearance of the site. The key points are:
- The site lies within the Green Belt.
 - The site is not brownfield land.
 - The noise impact from the railway and road makes the site unsuitable for the proposed use.
 - The absence of outdoor land makes the site unsuitable for stabling.
 - There will be many children and limited facilities on site.
 - The site is remote from services.
 - It is believed that the applicants have been refused permission on appeal in Bromley.

5.1.1 Other matters are also raised in these detailed comments.

5.2 DHH: Environmental Protection: Originally the Director of Health and Housing requested an acoustic appraisal to assess which Noise Exposure Category (NEC) level the site fell within, prior to any decision being made on the application. An acoustic appraisal was requested though has not (at the time of writing) been received. Accordingly the Director of Health and Housing has carried it his own assessment which concludes the following:

5.2.1 In my previous comments concerning this application I advised that before any decision on development is made, the applicant will need to demonstrate within which Noise Exposure Category the site falls (in accordance with PPG24 and also Saved Policy P3/17 of the Local Development Framework), owing to the close proximity of the highway & railway. No decision on development should take place until this information has been provided and approved, along with satisfactory noise insulation details, if appropriate.

5.2.2 I understand that an appraisal has not been submitted and I have therefore estimated the level of rail and road traffic noise affecting the site using the information available to me.

5.2.3 My calculations, lead me to conclude that the mobile homes on the site are exposed to railway noise levels within Noise Exposure Category (NEC) C as set out in Saved Policy P3/17 both during the day and at night. They are exposed to road traffic noise levels within Noise Exposure Category (NEC) C as set out in Local P3/17 during the day. Therefore in accordance with the guidance in PPG24 my advice is that the application should be refused.

5.2.4 Outside amenity areas are exposed to daytime noise in excess of 65 LAeq dB; this is some 10dB(A) higher (twice as noisy) as the level of 55 LAeq dB or less referred to in PPG24, (paragraph 17 and annex 2 paragraph 4), as being desirable to prevent any significant community annoyance.

5.2.5 Normally my advice would be that, if in balancing all the planning policy issues relating to the proposed development you are minded to grant permission then to, so far as possible, mitigate the adverse impact of noise any approval be subject to a condition to require the provision of a scheme to acoustic protection to habitable rooms. However in the case of mobile homes I do not believe that this is a practicable option.

5.2.6 Additional noise comments following the submission of the applicant's acoustic report: the acoustic report submitted by Bureau Veritas confirms that the site falls into NEC C for both day and night, and as such the application should be refused on noise grounds. I note the argument that the more stringent levels in P3/17 should not be applied here, however I disagree, for one given the precedent that would set and, but also that mobile homes are much harder to insulate against

noise than regular domestic dwellings. The applicant gives an indication that rail noise affecting the site could be improved by the construction of a barrier between the site and the railway, however, no calculations are given as to how effective this would be, and I have my doubts given that the railway is slightly higher than the application site. (The comments then reassert the text set out in paragraph 5.2.5 above) I therefore object to the application.

5.2.7 Waste Management: General advice offered in relation to refuse collection arrangements.

5.2.8 Housing: If planning consent is granted for the land to be used as a caravan site for permanent residential occupation then a site licence under the Caravan Sites and Control of Development Act 1960 will be required.

5.2.9 The mobile homes should have proper sanitary accommodation and should not be in such a state or so overcrowded as to be prejudicial to the health and safety of the occupants.

5.2.10 Contaminated Land: A preliminary risk assessment report is submitted as prepared by Bureau Veritas (Feb 2008) at Land North East of Askew Bridge. The report para 6.2 states that “based on the findings of the PRA and the nature of the proposed development it is considered that an intrusive investigation is not necessary as potentially significant pollutant linkages were not identified”. I concur with the report. However, if LPA is minded to grant the application, then to safeguard the situation in the event that significant deposits of made ground or indicators of potential contamination are discovered during development, I recommend that any permission be subject to a three stage condition.

5.3 EA: No objection, but offered advice in relation to PPS23: Planning and Pollution Control and recommended conditions. The analysis of risks and liabilities detailed in the submitted preliminary risk assessment report are agreed in principle as being in accordance with relevant guidance and good practice. The planning requirements relating to this would appear therefore to have been met.

5.4 KCC (Highways): It seems that the site may have been used as a builder’s yard in the past, which has been vacant for some time. [DPTL: this use was not lawful]

5.4.1 Currently an existing crossing/access exist with the entrance set back from the road.

5.4.2 Full parking requirements are likely to be required in this location, however, no details of bedrooms are shown. Based on the suggested occupation two four bedroom dwellings would require six suitable parking spaces. Adequate curtilage turning to be provided to allow vehicles to exit from the site in a forward direction.

5.4.3 Refuse collection is not shown, the applicant to be advised to liaise with the local authority regarding bin storage and collection arrangements.

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- 5.4.4 In principle, with an extant use, I raise no objections to a residential use that compares to the previous use, subject to normal conditions relating to curtilage parking and turning provision. [DPTL: this use was not lawful]
- 5.5 London Green Belt Council: Objection (in summary). Whatever the scale of residential development and usage involved in the application, such activity remains inappropriate in the Green Belt.
- 5.5.1 The case does not raise anything other than normal family etc circumstances, in no way “special”, let alone “very special.” Human Rights do not necessarily or automatically outweigh harm to principle objection. Government seeks to robustly defend the MGB.
- 5.6 KCC Gypsy and Traveller Unit: I refer to your planning application underway for families of Doran and Berry. I can confirm that neither family has applied to go on our Caravan Site Waiting List in recent years.
- 5.7 Private Reps (5/0X/19R/1S) + Site and Press Notices: 18 objections and one letter of support were received. The following grounds for objection have been put forward (in summary):
- The amount of people proposed at the site (making reference to the 3 further families which have now been omitted from the application). The plot is too small for this many families.
 - The site was never used as a builders yard. An application was refused and site required to be cleared. A previous application for a dwelling was also refused. Therefore the site has never been approved for any development, either domestic or commercial.
 - The site is Green Belt. It has no services, it has a dangerous access, and it is noisy.
 - The site is not brownfield, a few years ago it was covered with trees. Proposal highly inappropriate. Insufficient local infrastructure, such as school places and doctors etc.
 - Vehicle parking, would there be sufficient space to accommodate the number of vehicles required to serve the number of people. Parking on the verge to the front would be unacceptable.
 - Level of dogs, laundry and domestic waste.
 - The application lacks clarity, is inaccurate and offers no reasons to justify its approval and should therefore be rejected.

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- Previous applications for development were refused as it is Green Belt and so this should be the same.
 - Contrary to PPG2, harmful to character and openness.
 - Distance from amenities. Application suggests that this is “affordable housing”. TMBC refused permission for affordable housing opposite the The Brickmakers Arms on the grounds it was too far from amenities. This site is a further half a mile from said amenities.
 - Proximity to A25 and mainline railway.
 - Smells. Waste is being burnt on site almost daily resulting in smoke nuisance and smells. Potential smells if cess pool is proposed which would be exacerbated in summer.
 - Agreeing to this planning permission would have a detrimental aesthetic impact on the area, creating an eye sore for anyone living nearby or passing through.
 - There is no screening and the mobile homes can clearly be seen from the road.
 - A sign has been erected on the wall of the site saying Askew Bridge Builders Yard. I was not aware that the planning application was for a builders yard.
 - By allowing planning permission for this project it will set a precedent for others to do the same.
 - The applicants would have known from the price of the site that it was not suitable for development, especially as it is within the Green Belt.
 - The site is already occupied by more people than the applicants is applying for.
 - Noise from the generator is causing an undue disturbance to nearby residents.

5.8 In support of the application, the following comment was received:

- I support the application for a change from industrial to residential use for the Builders Yard, Askew Bridge, Maidstone Road, Platt. The site has already been screened effectively from neighbouring properties and the road, with wooden panel fencing erected by the current owner, so the proposed low level development and siting of mobile homes will not create a blot on the landscape.
- The development of this site to provide affordable housing for an ethnic minority, Gypsies, would be a valid justification for a change of use and associated planning permission for this long neglected brown field site.

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), Circular 01/06 (Planning for Gypsy and Traveller Caravan Sites) and PPG24 (Planning and Noise).
- 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.
- 6.6 Saved Policy P3/17 of the TMBLP relates to noise issues.

Green Belt and Impact on the Countryside:

- 6.7 The site is within the Green Belt where Government guidance contained within PPG 2 applies. Paragraph 1.5 of PPG 2 defines the purposes of including land within the Green Belt, one such being to assist in safeguarding the countryside from encroachment. The development does harm the openness of the Green Belt, with the introduction of caravans and associated structures, the hard standing and use of land as residential garden. The mobile home is higher than the hedgerows on the southern and eastern boundaries and cream colour of the mobile home increase the visual prominence in the landscape.
- 6.8 The development is clearly inappropriate development within the Green Belt. The development also represents an encroachment into the countryside which is contrary to one of the aims of the Green Belt.

- 6.9 PPG 2 also states at paragraph 3.1 that there is a general presumption against allowing inappropriate development which should not be permitted, except in very special circumstances. Policy CP3 TMBCS states that proposals within the Green Belt will be considered against National Green Belt policy.
- 6.10 As inappropriate development, there is an onus on the applicant to demonstrate that 'very special circumstances' exist such as to outweigh the strong policy objection to this proposal. Consideration of potential "very special circumstances" can include the personal circumstances of the applicant and the family background.
- 6.11 Circular 01/2006: Planning for Gypsy and Traveller Caravan Sites confirms the importance of Green Belt policies and the protection of the environment from inappropriate development. It states "there is a general presumption against inappropriate development within Green Belts. New gypsy and traveller sites in the Green Belt are normally inappropriate development, as defined in PPG2. National planning policy on Green Belts applies equally to applications for planning permission from gypsies and travellers, and the settled population. Alternatives should be explored before Green Belt locations are considered."

Considerations in respect of Gypsy site provision

- 6.12 Government advice concerning Planning for Gypsy and Traveller Caravan Sites is set out in Circular 01/2006. The Circular states at paragraph 12 that its main intentions are:

"a) Create and support sustainable respectful and inclusive communities where gypsies and travellers have fair access to suitable accommodation, education, health and welfare provision, where there is mutual respect and consideration between all communities for the rights and responsibilities of each community and individual and where there is respect between individuals and communities towards the environments in which they live and work;

b) to reduce the number of unauthorised encampments and developments....

c) to increase significantly the number of gypsy and traveller sites in appropriate locations with planning permission in order to address under provision over the next 3-5 years;

d) to recognise, protect and facilitate the traditional travelling way of life of gypsies and travellers whilst respecting the interests of the settled community;

e) to underline the importance of assessing needs at regional and sub-regional level and for local authorities to develop strategies to ensure that needs are dealt with fairly and effectively;

f) to identify and make provision for the resultant land and accommodation requirements;

g) to ensure DPDs include fair, realistic and inclusive policies and to ensure identified need is dealt with fairly and effectively;

h) to promote more private gypsy and traveller site provision in appropriate locations through the planning system, while recognising that there will always be those who cannot provide their own sites; and

i) to help avoid gypsies and travellers becoming homeless through eviction from unauthorised sites without an alternative to move to.”

- 6.13 Policy CP20 states that provision will be made (either through the LDF process or through specific planning permissions) for the number of plots specified in the South East Plan on sites that meet certain criteria, as set out in the policy.
- 6.14 The strategic policy for these types of cases is policy H4 of the SEP that requires Local Authorities to identify the full range of existing and future housing needs required in their areas, working with adjoining local authorities where appropriate including groups with particular housing needs such as gypsies, travellers and travelling showpeople. Local development documents should require an appropriate range and mix of housing opportunities by identifying the likely profile of household types requiring market housing, the size and type of affordable housing required. Local authorities should seek to identify a mix of site allocations in each five year period, preparing development briefs as necessary, to encourage a range of housing types to be provided.
- 6.15 In accordance with the Housing Act 2004, the Borough Council undertook a Gypsy and Traveller Accommodation Assessment (GTAA) survey in 2005/6 jointly with Ashford, Maidstone and Tunbridge Wells Borough Councils. The accommodation assessments are intended to provide, for the first time, comprehensive, robust and credible data relating to the needs and requirements of the Gypsy and traveller community.
- 6.16 The GTAA has served to inform the regional position on such accommodation. On the basis of the GTAA finding, the identified need was in the order of 10 units in the period until 2011 within Tonbridge and Malling Borough.
- 6.17 The SEP included an Interim Statement based on DCLG Circular 01/2006 (on the basis of local authority Gypsy and Traveller Accommodation Assessments).
- 6.18 The preferred option of the regional planning body is that 18 pitches would be the provision figure for the Borough as outlined in draft regional spatial strategy policy H7 published in June 2009. The consultation period for this document expired on 1 September 2009. This Council has raised objections to draft policy H7.

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- 6.19 The Council has taken a position of objecting to the figure of 18 additional pitches, instead promoting an option which would mean 12 pitches; much closer to the GTAA which is based upon more localised analysis. The GTAA figure recognised those unauthorised facilities in the Borough at the time of completion plus the growth expected from existing facilities and incomers to the Borough.
- 6.20 The draft SEP policy H7 is due to be considered at an examination in public in February 2010 and the approved policy will be published some time after that. Draft policy H7 requires the provision of 18 additional permanent pitches for Gypsies and Travellers within Tonbridge and Malling by 2016. This is a little under the average requirement of 20 new pitches for authorities in the region. The policy is based on a modest redistribution of pitch provision among districts having regard to development constraints and district populations. The draft policy is a further step towards the determination of pitch requirements for districts in the region. To that extent it provides a somewhat clearer picture of the level of provision the Council will be expected to meet by 2016. The GTAA carried out on behalf of the Council and four other authorities in 2005/6 had already suggested a need for a further 10-13 pitches in the Council's areas by 2011, so the fact that there is an unmet need for new pitches is not a recent discovery. The publication of draft policy H7 provides some clarification of the need the Council is likely to have to meet by 2016 but will not become clearly refined until some time after February 2010
- 6.21 Hence at the Regional level, the pitch provision requirement for gypsy/travellers has not yet been finalised and will not be until the partial review of the Regional Spatial Strategy has been completed (expected to be mid 2010).
- 6.22 Circular 01/2006 states that where there is a clear and immediate need, local planning authorities should bring forward development plan documents containing site allocations in advance of regional consideration of pitch numbers. That is effectively what the SEP partial review will create a context for.
- 6.23 To comply with that national advice and in advance of the formal adoption of the SEP figure, the Borough Council and KCC are currently pursuing opportunities for the positive provision of gypsy and traveller sites to make up the deficit identified in the GTAA and a planning application has been submitted by KCC for the redevelopment and extension of the existing Gypsy site at Coldharbour, Aylesford. This is to provide a total of 18 pitches (a net gain of 10 additional pitches). It is envisaged that a decision on that planning application will be made by KCC within the next few weeks.
- 6.24 This project has also been submitted to the Housing and Communities Agency for the current funding bidding round for gypsy site provision. On the assumption that this project is successful and is implemented, it could provide accommodation for the occupiers of the site the subject of this report. That alternative provision would

not be within the Green Belt and would follow policy criteria set out in Core Strategy policy CP 20. It is expected that the Secretary of State will shortly publish a decision on the funding of such specific projects.

6.25 The situation is that there is clearly a present need for additional gypsy accommodation within the Borough but it is intended that this is likely to be met within the next 3 years when the Coldharbour project comes to fruition. Whilst at the time of writing this report, neither planning permission nor the grant application to the HCA have been approved for this development, it is anticipated that should such approvals be given by the end of this year, works could start on site in spring next year and potentially, the new pitches could become available by spring/summer 2011. Any update on these key issue of context will be reported in a Supplementary Report.

Human Rights

6.26 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.

6.27 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 give whether the refusal of planning permission and associated enforcement action would be necessary and proportionate.

6.28 In terms of the personal circumstances, the applicant has four children of primary school age who have started attending Platt Primary School in November 2007. One of the children is stated to have special educational needs. A letter of explanation to this effect has been received from Platt School. This adds further weight to the educational needs of this family.

6.29 In a recent appeal case concerning another gypsy site in the Borough, the Inspector gave given 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.

6.30 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

6.31 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.

6.32 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.”

- 6.33 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 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, it is likely that temporary permission for this site would be allowed on appeal even though the site is in the Green Belt.
- 6.34 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.
- 6.35 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.
- 6.36 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.

Noise

- 6.37 The application site has additional site specific amenity issues for the occupants, being the proximity of the A25 Maidstone Road and the London to Maidstone railway line and their associated noise. The applicants have submitted an acoustic appraisal which sets out that the site falls within Noise Exposure Category (NEC). This assessment supports the Director of Health and Housing who conducted his own assessment which also concluded that the site fell within NEC C.
- 6.38 The site lies within NEC C as a result of rail noise during the day and night, and from road noise during the day. Saved policy P3/17 of the Tonbridge & Malling Borough Local Plan 1998 and PPG24 state that applications for new residential development within NEC C will not normally be permitted. Outside amenity areas are exposed to daytime noise levels in excess of 65 LAeq, which is some 10dB(A) higher (twice as noisy) than 55 LAeq being desirable to prevent significant community annoyance. Due to the nature of the proposed development, being mobile homes and caravans, it is not practicable to mitigate sufficiently against the acoustic harm set out above. The proposal is therefore contrary to saved policy P3/17 of the Tonbridge & Malling Borough Local Plan 1998, policy CP20 of the Tonbridge and Malling Core Strategy and PPG24 as it results in undue harm to the aural amenity of the occupants of the site.
- 6.39 The acoustic climate of the site and, in turn, its occupants must be considered in relation to the likelihood of the occupants finding a suitable alternative site which does not have noise or similarly harmful impacts. The lack of available sites within the Borough has been set out previously. Accordingly, there is a strong chance that if the applicant's were moved on from this site they would return to a life on the road in lay-bys and similar areas. It would therefore follow that these types of locations suffer from road noise which is likely to be similar to the noise levels at the application site. I therefore consider that although the application fails the Council's noise policy and that of the PPG, there is no better alternative available at this time. A temporary permission on this site would not therefore be any more harmful, in terms of the noise climate of the occupants, compared to the alternatives available to the applicant if forced to relocate. The current situation does not, for instance, pose an immediate threat to life.
- 6.40 The submitted acoustic report recommends an acoustic wall near to the railway line. No details of the proposed wall or calculations to determine the necessary height have been provided. In any event, such a barrier would be costly and would be permanent feature on this site which could further erode the openness of the MGB. I do not consider such an undertaking could be justified for a temporary permission.

Other material considerations

- 6.41 The development is acceptable in terms of highway safety.

- 6.42 The application states that the site has a previous use as a builders yard and considers the land to be brownfield. The planning history clearly shows that a Lawful Development Certificate for an Existing use was refused on the site and there have been enforcement notices on the site to clear any materials which may have, albeit temporarily, been stored there. The site was formerly partly chestnut coppice and is considered to be agricultural land for planning purposes. I do not consider that there is any lawful fall back position for the land as a builders yard and it is not a brownfield “development” site. There is therefore no “brownfield” justification to override the strong policy objections to the development in the green belt and open countryside in this manner.
- 6.43 There have been objections on the basis of the site being used in the future by additional members of the applicant’s family and others. However, 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.
- 6.44 An objection has also been received on the grounds of unacceptable noise from the generator on site, on the amenity of the adjacent property. DHH has assessed this noise issue and it is the view that the level of noise is unnecessary. Therefore a condition has been suggested to seek to overcome this issue for the period of any consent.
- 6.45 The original application stated that foul sewage would be dealt with by way of a cesspool. No details of a proposed cesspool have been provided by the applicant. The permanent development of a cesspool would not, in my view, be appropriate in this instance as a temporary permission would not justify a permanent solution to foul sewage on this site. The existing “portaloos” on site are, in my opinion, satisfactory and have not given rise to any health or sanitary difficulties in the time the applicants have been present on site. I consider the existing is acceptable for a temporary planning permission. Full details of foul and surface water disposal should be required by condition to formalise this arrangement to ensure that acceptable usage continues.

Conclusion

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

7. Recommendation:**7.1 Grant Temporary Planning Permission**, subject to the following conditions.

- 1 The occupation of the site hereby permitted shall be carried on only by Mr M Doran and Mrs B Doran 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 site ceases 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 1 touring caravan.

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 written approval of the Local Planning Authority.

Reason: In the interests of rural and visual amenity.

- 6 Within 1 month of this decision or prior to any replacement caravan being brought on site, details of an alternative external colour finish to the mobile home shall be submitted for the approval of the Local Planning Authority, and the approved details shall be carried out within 1 month of approval.

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

- 7 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 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.
- 2 The applicant is advised that this permission does not grant approval for a cesspool or similar development. Any development of this nature would therefore require a separate formal application for planning permission.
- 3 The applicant is reminded that the application site does not, and has never had, a lawful use as a builders yard. Any commercial use on this site would therefore require a separate planning permission.
- 4 The applicant is reminded that the bringing in, and laying out, of hardcore on the site is development for which planning approval is required.

Contact: Lucy Stainton

SUPPLEMENTARY REPORTS

AREA 2 PLANNING COMMITTEE

DATED 28 October 2009

Platt **TM/07/04156/FL**
Borough Green And Long Mill

Change of use to residential for one extended gypsy family, stationing of one mobile homes and one touring caravan, and erection of one utility room and one store room at Land North East Of Askew Bridge Maidstone Road Platt Sevenoaks Kent for Bridget Doran

KHS (amended comments in the light of no lawful "builders yard" use).

I am advised that the application site should be considered as a nil use. Therefore there is no balance of traffic generation between uses with this application generating new movements onto the highway network. However, the site has historically benefitted from a vehicle drop crossing leading to originally an informal grass track and accessed through a gate. With the establishment of the grassed track it is likely that some form of vehicle movements are likely to have occurred in the past but maybe infrequently and not for some time. The access gate to the application site is set some distance back from the road. The area fronting the application site benefits from an extensive forward vision splay across the bend providing intervisibility between the opposing traffic on Maidstone Road, albeit that maintenance is required to the area. The application site access is located off centre of the bend and my desktop analysis shows that to the left when emerging at kerbside the forward vision splay 'y' distance measured along the road is in the order of 120m and is acceptable. However, to the right I assess that it is in the order of 70m a little short of what would be expected of 105m. Actual site measurements may amend these figures. This 'y' figure is based on a 40mph limit but there is an opportunity for this to be reassessed subject to actual speed measurements. The proposal is for two mobile homes. As dwellings they could generate in the order of 2 in/out movements during the peak times. I would require that each unit benefits from 2 off street parking spaces in this location and on site turning is provided. It is noted that the informal grass track has been upgraded with hardcore. This is not an acceptable form of construction to be used on the public highway. I will be advising the highway inspector for the area and ask that the site be inspected. Any new driveway would need to be constructed to Kent Highway Services specification and satisfaction. The matter to be addressed is what demonstrable harm to highway safety is to be occasioned by the introduction of these modest additional movements onto the public highway at this location. Although one of the forward vision splays is a little below that usually expected, bearing in mind the modest traffic movements generated by the proposal and the inference that historically vehicle movements could have occurred I would on balance support this proposal.

Private Reps: Two letters received, one being additional comments from a neighbour and one being a letter of support. The additional comments against the proposal are set out in summary below:

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- I have photographs which show the site after it was first occupied which shows that the areas was all trees and shrubs. The applicant has stated that he did not lay hardcore but had actually cleared some. The photos show that the western end was only soil at that time.
 - In a letter from Donald Kenrick dated September 11th 2009 (Para 4), it is stated that: 'experience over past years has shown that very large sites create problems'.
 - However, in a letter from Donald Kenrick dated April 2008 (in response to questions from yourself), in the answer to question five it states that: 'Specifically, they have never stopped on an unauthorised site'. If the travellers have never stayed on an authorised site how can they have experienced problems?
 - In reference to the recent committee report - point 6.28 under Human Rights where it states: "One of the children is stated to have special educational needs." Documentation repeatedly states that there are six Doran children. This is not true. Miles' (9) surname is Berry. As shown in a letter from Donald Kenrick dated February 10th 2009 (Para 6) It would appear he has been appropriated as a Doran as he has been identified as having special needs thus adding weight to their case.
 - If this application is passed, even on a temporary basis, what is to stop owners of low value, previously undevelopable green belt selling off their land in strips to travellers who will be confident that they can move on to the site and remain indefinitely.
 - The report states that temporary residency has been proposed. Can I ask why for three years? If Coldharbour Lane is expected to become available in 2011 does that not give a year for their pitches to become occupied?

The letter of support received is from an unrelated planning consultant. The letter states that the information submitted with the application demonstrates that the extended family has a clear and immediate need for accommodation and that this accommodation should be at the above site.

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 and Mrs Doran are not on the waiting list for any KCC operated sites and have expressed no wish to be on the list at this time.

The main report makes it clear that the site has been cleared and hard surface laid across the site. I believe the reference to experience of authorised sites comes directly from the agent who has been involved in gypsy applications for many years. I note the comments made in regard to Miles Berry, however, I have no reason to doubt that Miles lives on site and attends the local school.

I also note the concern that the grant of temporary permission on this application may set a precedent to be used on other sites. However, each application is assessed on its own merits.

The recommended time limit for a temporary permission has been devised to allow for the completion of Coldharbour and any unforeseen delays.

Para 1.1 For clarification, the use of the land is retrospective and is taking place currently by the stationing of a number of touring caravans and timber outbuildings. The proposal in the application is to continue the use but to have one mobile home and one touring caravan plus 2 outbuildings (amenity block and store).

Paragraph 6.4 – Policy CP10 of the TMCS is not relevant to this application site.

Paragraph 6.7 –. There is only a hedge on the northern boundary behind a close boarded fence. At present there is no mobile home on the site as it was removed in late spring.

Paragraph 6.37 – The main report states that: “The applicants have submitted an acoustic appraisal which sets out that the site falls within Noise Exposure Category (NEC).” This should read Noise Exposure Category (NEC) C.

AMENDED RECOMMENDATION

Amend Conditions

1. The occupation of the site hereby permitted shall be carried on only by Mr Thomas Doran and Mrs Margaret Doran 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.

3. The residential use hereby permitted shall be restricted to the stationing of 1 mobile home/static caravan and 1 touring caravan and 2 associated outbuildings and all other caravans/outbuildings including those on site at the date of this decision, shall be permanently removed from the site within 3 months of this decision.

Reason: In the interest of the openness of the Green Belt.

6. Within 1 month of this decision or prior to any replacement caravan being brought on site, details of the external colour finish to the mobile home shall be submitted for the approval of the Local Planning Authority, and the approved details shall be complied with thereafter.

Reason: In the interests of visual amenity of the locality.

Additional Conditions:

8. The existing screen hedging to the northern boundary shall be retained at a minimum height of 3m.

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.

9. Within 1 month of this decision, any generators on the site shall be insulated to secure noise levels within rooms of residential premises in the locality no greater than the 'good' standard for the relevant room use set out in BS8233:1999 Sound insulation and noise reduction for buildings - Code of practice. Compliance to be tested by an appropriate combination of (distance) measurement and calculation, using noise readings taken on the northern boundary of the application site.

Reason: In the interests of residential amenity.

Additional Informative

5. In relation to condition 9, please contact TMBC Environmental Health Officer Crispin Kennard for advice on 01732 876180.
