



on 12 November 2009. It has the support of KCC and the Borough Council and did not attract any local objections. The current case was deferred to await the decision on the planning application and to enable the Committee to consider the proposal in the light of the Government's decision on funding for Coldharbour.

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

#### Length of Temporary Planning Permission

- 2.4 In the light of the delay in securing funding for the Coldharbour project, I would advise Members that a 1 year consent is unlikely to be considered to be reasonable by an Inspector in considering an appeal against such a condition.
- 2.5 Having taken Counsel's advice, I recommend that 2 years is a reasonable period for temporary planning permission at this site in all the circumstances.

#### Refusal of Pitches at Coldharbour

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

## Affordable Housing

- 2.8 The Council as Local Housing Authority has a duty to assess any homeless applicant to determine whether it has a duty to secure alternative accommodation. Homeless applicants who are deemed to be in priority need for accommodation, and who are homeless through no fault of their own, will usually be prioritised for rehousing in social housing. Priority need groups include those households with dependent children (or a pregnant member), and applicants who are vulnerable as a result of mental or physical illness or disability, old age or other special reasons. Where the Council accepts the duty to rehouse a homeless household, they may be placed in Bed and Breakfast or temporary accommodation where necessary, and awarded a high priority on the housing register. Applicants will then need to check properties that are advertised through choice based lettings every two weeks, and place bids on any they are interested in. If/when they are the highest bidder for a property, they will be subject to the RSL's usual verification checks before being offered the tenancy.
- 2.9 To assess an individual household, they will be required to complete an assessment form and provide ID for every member of the household. They will then be placed into one of four priority bands and awarded points according to their housing need in accordance with the Council's housing allocations scheme.

## Highway and other matters

- 2.10 KHS has provided supplementary advice that a reason for refusal on highway grounds is not sustainable in its view. The application site, although agricultural in use, is of a size that is unlikely to attract the usual vehicles associated with an agricultural use. However, the site may well have historically been part of a larger agricultural holding. I still consider that the site can potentially generate some traffic movements. There is an existing formally constructed vehicle drop crossing and originally an informal track crossed the verge to an existing gate that has been there for some time. However, to make a robust assessment of the highway issues, I have assumed that the site is currently a nil traffic generator and, in essence, the application will be for a new dwelling being served by a new vehicle access onto the Maidstone Road. When the Kent and Medway Structure Plan was in force the highway authority was able to support a refusal of a new access onto a road such as Maidstone Road (A25) on policy grounds.
- 2.11 However, this policy was not always supported at appeal. With the implementation of the South East Plan no policy objection exists. My understanding is that there is a presumption to support new developments dependant on sufficient capacity on the main road to meet the needs of the development. With this proposal being for residential use I am of the opinion that the traffic generated can be accommodated on the adjacent highway network. The traffic generated is likely to result in one additional in/out movement during the peak times. I do not consider that it is likely to result in a demonstrable unacceptable increase in highway hazards. The main

issue is the forward vision where the driveway joins onto the Maidstone Road. I find the forward vision to the west i.e. towards the bridge more than adequate. The forward vision to the east measured on site is 85m, below what would normally be expected of 105m. However, I have assessed a number of other vehicle accesses in the vicinity of the application site, particularly those close to the bridge where the road bends. All are deficient in some respect and in general have forward vision below that afforded at the access proposed under this application.

2.12 Although there are a number of substandard accesses along this stretch of road, the KCC crash database shows that in the last three years there have been no personal injury accidents recorded. I therefore do not consider that this stretch of road is inherently unsafe. I am therefore of the opinion that with the modest traffic generation occasioned by this residential use using a vehicle access in this location with, in my view, its acceptable forward vision is unlikely to result in a demonstrable unacceptable increase in highway hazards.

2.13 The issue of potential change in rail noise was raised in the context of what may occur to rail traffic which arises from any grant of planning permission for Kent International Gateway (KIG) at Bearsted. The decision on that case is awaited and therefore at present the Secretary of State's conclusion as to the increased level of generated rail traffic that will use this line is not yet clear and can't, therefore, be factored in the current case. Should the recommended temporary permission be granted on this site then any KIG related rail traffic approved by the Secretary of State would need to be considered should any further application be submitted in due course.

### **3. Consultees:**

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

### **4. Determining Issues:**

4.1 As advised above, the Coldharbour project now has planning permission but has not yet secured funding although this is being pursued.

4.2 All other determining issues are as detailed in my 28 October report.

### **5. Recommendation:**

5.1 **Grant Planning Permission** 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 2 years from the date of this decision.

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

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

Reason: In the interest of amenity.

3. The residential use hereby permitted shall be restricted to the stationing of one mobile home and 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 reminded that the bringing in, and laying out, of hardcore on the site is development for which planning approval is required.
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 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.

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