

**Ightham**  
Ightham

**559088 156042 7 June 2011**

**TM/11/01444/FL**

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Proposal: Variation of conditions 1 and 2 on TM/07/01238/FL: Change of use for stationing of two caravans for residential use, fencing and sheds for occupation by a single gypsy family  
Location: Woodfold Old Lane Ightham Sevenoaks Kent TN15 9AH  
Applicant: Mr J Moore And Miss E Barton

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## **1. Description:**

- 1.1 The application is to renew a temporary planning permission granted on appeal against an Enforcement Notice served by the Council against the then unauthorised caravan site. It is proposed that the permission be renewed on either a permanent or further temporary basis. The two caravans referred to in the description are a twin unit mobile home and a touring caravan. The mobile home meets the statutory definition of a "caravan". The planning permission was granted on appeal on 17 July 2008 for a 3 year period. This renewal application was submitted before the expiry date of 17 July 2011.
- 1.2 The application supporting documents also referred to a related retention of the existing block paving and stable building. The paving was the subject of an enforcement notice and was given temporary consent on appeal, this being a length of time to coincide with the site planning permission. The stables were permitted by the Borough Council, also with a temporary condition to coincide with the site planning permission (such as decision being consistent with the approach of the Inspector in the appeal on the block paving). However, the current application form submitted failed to include these other 2 matters and remained invalid, despite several queries made to the agent. Hence, the retention of those operations are not for formal determination in this current planning application.
- 1.3 The application has been submitted on the basis of the site being occupied by one family comprised of 2 adults and 5 children.
- 1.4 The agent made the following comments in support of the application when it was originally submitted:
  - The Inspector accepted the Gypsy status of the family – the family still travel for work and attend many horse fairs.
  - There remains a clear and immediate need for more sites as all socially provided sites are full and most small private sites have temporary and personal consents.

- TMBC should have prepared a site allocation DPD- they are being unfair to the travelling community compared to how the housing needs of the settled community are addressed.
- In the district is a number of sites with temporary planning permission; a number of sites with tolerated occupation, a group of 9-10 caravans have been in the West Malling area with no lawful place to stop.
- The 2010 biannual count showed 52% of all caravans in the Borough to be on sites with no or temporary consent. There is a serious and immediate under-provision of sites in the district. The expected expanded and refurbished Coldharbour site will not address the need identified for small privately owned sites.
- 4 of the children are at local schools and the baby needs regular attendance at Fulham Hospital.

1.5 Several factors have changed since the submission of the application. The applicant has been invited to reflect further on two key factors, the introduction of the new Governmental policy on Traveller provision and also the fact that the County and Borough Councils have now procured an additional 18 pitches at the Coldharbour site that should be available around the turn of 2012. The applicants have been advised of the situation with Coldharbour and should they or their agent make any further comment, this will be included in a Supplementary Report.

## **2. Reason for reporting to Committee:**

2.1 The complex history and that it is a departure from the development plan and NPPF policy for this area.

## **3. The Site:**

3.1 The site is 0.24ha and lies in the countryside, lying outside the settlement confines of Ightham, within the Metropolitan Green Belt. The site is accessed from a single track called Old Lane and is steeply sloping up eastwards from the Lane. This track between the application site and the A25 was tarmacked last year, apparently by the applicant. No action was taken by the Kent County Council which is the Highways Authority responsible. It is understood that it deemed the re-surfacing to be an acceptable standard and the drainage profile and other services were not unduly affected. The section of Old Lane south of the application site remains untarmacked and is narrow and impassable by motor vehicles.

3.2 At the entrance to the site is a 5 bar gate and an arco drain. There is extensive red block paving and a small garden area with play equipment and a washing line. There is a large mobile home on the western boundary. There is also a touring caravan. Both of these structures are relatively well screened from Old Lane by a close board fence atop a bank to Old Lane and a row of trees.

- 3.3 There is a small horse paddock (with 2 ponies grazing at the time of the site visit) and 2 generators, a storage shed, a shed used as a utility room and dog kennels. A stable block at the SE corner of the site is half used for domestic storage.
- 3.4 There is a connection to a public foul sewer.
- 3.5 Beyond the southern and eastern boundaries there is residential land and there is agricultural land to the north.
- 3.6 Members are advised that there is some confusion over the correct name for the site. The application form states it is Woodfold but the applicants and their various agents over time have called the site both Woodfold and Woodford and the name plate at the site says Woodford. However, the appeal decision is in the name Woodfold. The current agent has been asked by the Council to confirm the name but has not done so to date. The Land Registry record Title document names the site as "Land rear of the Cottage, Old Lane, Ightham"

**4. Relevant Planning History:**

TM/03/03028/FL	Refuse	13 November 2003
	Enforcement Notice served	23 November 2003
Siting of two twin unit mobile homes and two touring caravans		
TM/03/03567/FL	Refuse	22 December 2003
Siting of one twin unit mobile home (20ft x 40ft) Same type as previously applied for under ref TM/03/03028/FL		
TM/04/00536/FL	Refuse	27 October 2004
	Appeal dismissed	8 July 2005
Change of use of land for the stationing of one residential caravan		
TM/07/01238/FL	Refuse	14 September 2007
	Appeal Allowed (except septic tank) – 3 year temporary consent	17 July 2008
Change of use for stationing of two caravans for residential use with associated hardstanding, fencing, sheds, septic tank etc for occupation by single gypsy family		

TM/08/03163/RD	Approved	27 November 2008
Details of foul and surface water drainage, external lighting, site layout and landscaping submitted pursuant to condition 4 and 5 of appeal decision TM/07/01238/FL: Change of use for stationing of two caravans for residential use with associated hardstanding, fencing, sheds, septic tank etc for occupation by single gypsy family		
TM/10/00791/FL	Approved ( temporary until 16 July 2011))	16 June 2010
Stables		

There is a complex relevant enforcement history as summarised below:

**03/00371/UNAUTU**

alleged unauthorised use for the stationing of a caravan

Enforcement Notice served- 25 November 2003

Appeal dismissed and enforcement notice upheld and prosecuted

**08/00659/UNAWKS**

alleged unauthorised building works for red brick hard surfacing

Enforcement Notice served 27 July 2009

Appeal allowed 14 December 2009 - temporary planning permission until 16 July 2011.

**5. Consultees:**

- 5.1 DHH: Environmental Protection - No objection to extension of time period; Housing Standards - If planning consent is granted for the land to be used as a caravan site for permanent residential occupation then a caravan site licence under the Caravan Sites and Control of Development Act 1960 will be required. The existing caravan site licence has now expired. An application form for a caravan site licence may be obtained from the Environmental Health and Housing Service. Conditions will be attached to the licence to protect the health and safety of the site users and visitors. 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 PC: Objects in the strongest possible terms on behalf of almost 50 residents who actively oppose the apparent flouting of planning laws at Woodfold. The occupants have not made enough effort over a long period to find alternative legal site. They are not itinerant, having been on one place for a number of years. Residents nearby have had planning applications refused - there seems to be double standards. The accommodation at Coldharbour is an opportunity to bring an end to the breaches of planning laws. The travellers, the caravans, all structures and paving should be removed without further delay. The abuse of the planning system has gone on for far too long.

5.3 Private Reps (21/8R/0S/0X) plus Press and Site notices (Departure and General Public Interest). At the time of writing the report, 8 objection letters from 6 properties had been received with comments summarised as follows:

- Several planning applications and appeals were refused from 2003 onwards an appeal was dismissed in July 2005 on the grounds of harm to the Green Belt and the appearance of the area.
- We object to the proposed planning application. We believe it goes against standard planning application outlines.
- The original enforcement notice was not enforced.
- The temporary planning permission has now expired
- The children's schooling does not justify extending the temporary planning permission.
- There are plenty of schools with extra learning support and attendance at a London Hospital does not relate to living in Ightham.
- Human Rights law should be equally applied to all residents.
- The occupants have not lived on the site as long as is claimed and much of that period was in breach of planning regulations.
- The stables need to be removed as there are no horses anymore. They are not shown on the plan submitted.
- The occupants have refused to sell the land above market rates. They have made no effort to find a legal site within their means.
- Since the appeal, there have been many additions to the site which is unusual for a family which claims to have limited resources.
- They have installed a water pipe and connected to the public sewer
- Old Lane now ruined by use of over-size vehicles unsuitable for a byway.

- Will the children end up with their own vehicles using the Byway and will they all be entitled to their own caravans on site?
- The family pay a pittance in Council tax but other residents have had to pay for the costs of their applications and appeals.
- The applicants do not come from Kent and it should not be this Council's responsibility to find them a site.
- The gypsy site in Old Lane continues to be an eyesore in a Green Belt area.
- The occupation may be technically lawful – there is a sense of inevitability that every application will be retrospectively approved.
- The mobile home was too wide to travel down the lane and was broken up first - it is within the definition of a caravan or mobile home?
- The new 'Planning Policy for Traveller Sites' states that 'traveller sites....in the Green Belt are inappropriate development' and should therefore not be approved. There can be no special circumstances relating to this application which would override this - the Inspector in 2008 stated that permanent permission would not be justified on this site having considered the family's circumstances. As there will soon be pitches available at the Coldharbour site the other condition set by the Inspector for the family remaining temporarily in Old Lane has been fulfilled as there will be an official pitch available for them there.
- 25 Leylandii trees were planted in our field, at our own cost, effort and inconvenience, along the boundary with Woodford in 2003, when the site was first occupied by travellers. This was taken a precautionary action, in case the due process of law, to return the land to Green Belt, was not timely enough. However, it now appears that our efforts are being put forward as justification for the ongoing occupation of the site. The trees were only planted as a direct consequence of the occupation.
- Access is a narrow sunken lane along the valley from the A25. In order to widen the access to Woodford, Mr Moore has extensively cut back the banks to the field. This caused sections of the bank to collapse and has undermined the livestock fencing in places. This action was taken without any reference to us. When we queried this action with the Council, they had no knowledge of this action and had no interest in getting involved. The lane is still not wide enough for a family sized caravan.
- They carried out tarmacking part of Old Lane apparently without consent from KCC, it does seem that they are assuming that they will be allowed further planning permission.

**6. Determining Issues:**

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

**Planning Policy**

- 6.2 Members will be aware that there was a recent fundamental change in national planning policy in late March 2012.
- 6.3 Relevant national policy is now the National Planning Policy Framework 2012 (NPPF) and the Planning Policy for Traveller Sites 2012 (PPTS). The former supersedes PPG2 and PPS7 which dealt with Green Belt and countryside protection respectively and the latter supersedes ODPM circular 01/2006 *“Planning for Gypsy and Traveller Caravan Sites”*.
- 6.4 In terms of transitional arrangements, the NPPF states that until March 2013, decision-takers may continue to give full weight to relevant LDF policies adopted since 2004, even if there is a limited degree of conflict with the NPPF.
- 6.5 In terms of the countryside, the NPPF paragraph 17 (Core Principles) requires LPAs to recognise the intrinsic character and beauty of the countryside.
- 6.6 NPPF paragraphs 79-92 defines the purposes of including land within the Green Belt, one such being to assist in safeguarding the countryside from encroachment. Paragraph 79 states that the Government attaches great importance to Green Belts which should prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts being openness and their permanence.
- 6.7 As with previous Green Belt policy in the superseded PPG2, ‘inappropriate development’ is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Use of land as a caravan site is ‘inappropriate development’. When considering any planning application in the Green Belt, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. ‘Very special circumstances’ will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
- 6.8 The use of land to station residential caravans is a material change in use of land and this form of development is not listed in the NPPF as appropriate development in the Green Belt and indeed, the PPTS explicitly states in paragraph 14 and in Policy E that Traveller sites (temporary or permanent) in the Green Belt are inappropriate development.

*“Inappropriate development is harmful to the Green Belt and should not be approved, except in very special circumstances. Traveller sites (temporary or permanent) in the Green Belt are inappropriate development.”*

*Green Belt boundaries should be altered only in exceptional circumstances. If a local planning authority wishes to make an exceptional limited alteration to the defined Green Belt boundary (which might be to accommodate a site inset within the Green Belt) to meet a specific, identified need for a traveller site, it should do so only through the plan-making process and not in response to a planning application. If land is removed from the Green Belt in this way, it should be specifically allocated in the development plan as a traveller site only”.*

6.9 The national policy in the PPTS states in Paragraphs 3 and 4

*“3 The Government’s overarching aim is to ensure fair and equal treatment for travellers, in a way that facilitates the traditional and nomadic way of life of travellers while respecting the interests of the settled community”.*

*4 To help achieve this, Government’s aims in respect of traveller sites are:*

- that local planning authorities should make their own assessment of need for the purposes of planning*
- to ensure that local planning authorities, working collaboratively, develop fair and effective strategies to meet need through the identification of land for sites*
- to encourage local planning authorities to plan for sites over a reasonable timescale*
- that plan-making and decision-taking should protect Green Belt from inappropriate development*
- to promote more private traveller site provision while recognising that there will always be those travellers who cannot provide their own sites*
- that plan-making and decision-taking should aim to reduce the number of unauthorised developments and encampments and make enforcement more effective*

6.10 The definition in the PPTS of A Gypsy/Traveller is *“Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family’s or dependants’ educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling showpeople or circus people travelling together as such”.*

6.11 Paragraph 23 indicates that LPAs should strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. Local planning authorities should ensure



that sites in rural areas respect the scale of and do not dominate the nearest settled community, and avoid placing an undue pressure on the local infrastructure.

- 6.12 Paragraphs 25 and 28 of the PPTS state that any application for temporary planning permission submitted after March 2014, if a local planning authority cannot demonstrate an up-to-date five-year supply of deliverable sites, this is a significant material consideration.
- 6.13 The relevant policies in the TMBCS are CP3, CP14 and CP20. These have all been adopted post 2004 and so can be given full weight in decision making.
- 6.14 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 acceptable. The need to provide a case of 'very special circumstances' in the Green Belt is also outlined and states that all development not listed as appropriate will be refused. CP3 refers to national Green Belt policy - which is now the NPPF policy as outlined above – the two policy documents are consistent with each other.
- 6.15 Policy CP20 relates to Gypsies and site provision and 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**

- 6.16 The development is clearly inappropriate development within the Green Belt and thus substantially harms the Green Belt by definition. The development also represents an encroachment into the countryside which is contrary to one of the aims of the Green Belt.
- 6.17 The development harms the openness of the Green Belt, with the introduction of caravans and associated structures, the hard standing and use of land as residential garden.
- 6.18 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, eg Gypsy Status and the family background.

### **Considerations in respect of Gypsy site provision**

- 6.19 The Borough Council carried out the Gypsy and Traveller Accommodation Assessment some time ago and that study revealed a need for additional accommodation by 2011. Subsequently the Council gave evidence to a Hearing aimed at reviewing the need for such accommodation in the context of a partial review of the South East Plan – that evidence accepted a need for 12 pitches but in light of the subsequent abandonment of this Partial Review that figure has not been confirmed. No subsequent or more reliable assessment of the level of need is available.
- 6.20 In light of the general acknowledgement of the justification for additional provision within the Borough, the Borough Council has continued to be committed to the provision of additional pitches at the Coldharbour site in Aylesford to assist in the housing of Traveller families. I can confirm that the necessary land has been purchased, funding has been achieved and contracts finalised and let for construction of the scheme as permitted by ref TM/11/02523/CR3 (*Provision of 18 new caravan pitches arranged around a new road, and renewal of 8 existing pitches already accommodating 8 Traveller families (total 26), semi detached utility blocks, a children's play area, erection of a 3m high acoustic barrier adjacent to the A20 London Road, amenity lighting, landscaping and resurfacing of existing access road (KCC Ref: KCC/TM/0393/2011)*)
- 6.21 In light of the fact that the recently adopted Government policy presumes against this type of development in the Green Belt and given that a new supply of pitches will be forthcoming over the next few months, the applicant has been invited to take steps to secure accommodation at Coldharbour by applying to Kent County Council, who will be managing the site. Any response will be detailed in a supplementary report.
- 6.22 In allowing the appeal that led to the current applicant's occupation of this site, the Inspector indicated that the adverse effects on the Green Belt were acceptable *only* because there was, at that time, a lack of alternative sites and in particular, he queried whether the Coldharbour site would come forward in a timely fashion. The extra Coldharbour provision will be in place by early 2013 and therefore that aspect of the previous justifications no longer exists for the continuation of this use of land in the Green Belt.
- 6.23 In addition to referring to the existing level of local provision and need for sites, and the availability (or lack) of alternative accommodation for the applicants, paragraph 22 of the PPTS contains further criteria to be assessed:
- other personal circumstances of the applicant

- locally specific criteria used to guide the allocation of sites in plans or which form the policy where there is no identified need for pitches/plots should be used to assess applications that may come forward on unallocated sites
- LPAs should determine applications for sites from any travellers and not just those with local connections

6.24 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.

6.25 The situation is that there is clearly still a present need for additional Gypsy accommodation within the Borough but it is intended that this is likely to be met within the next 8-9 months when the Coldharbour project comes to fruition. Any update will be included in a Supplementary Report.

### **Human Rights and Equalities Considerations**

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 and the Council's requirement to act in accordance with the Equalities Act 2010.

6.27 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 for the purposes of The Human Rights Act.

6.28 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. The current occupation of the site has been lawful due to the temporary planning permission given by the Inspector on appeal. However, it is a fact that in the period January 2004 to July 2008, the original occupation was in breach of planning control. 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 be an interference with the human rights of the applicants and their family, consideration must be given to whether the refusal of planning permission and associated enforcement action would be necessary and proportionate.

6.29 It is clear that in the current circumstances, while the Human Rights background is a 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.

- 6.30 In terms of Equalities legislation, Romany Gypsies and Irish Travellers have 'protected characteristics' that must be considered in all decisions made by Public Authorities. The Council needs to coherently apply the new PPTS which itself has been subject to Equality Impact Assessment (EqIA) by the Government.

#### **Availability of Pitches at Coldharbour**

- 6.31 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. Indeed the EqIA carried-out by Government mentions that for planning policy purposes the 'ethnic' characteristics of various traveller groups is not normally a consideration.
- 6.32 The Equality Act 2010 makes it unlawful for a public authority to discriminate in the exercise of any of its functions on racial grounds, including when considering housing and planning matters. S.149 of the Act places an obligation on public authorities to advance equality of opportunity between persons who share a protected characteristic and those who do not share it, and to foster good relations between the foregoing groups. Discrimination by planning authorities in carrying out their planning functions will be unlawful under s149. In the course of determining a planning application, if the Council were to lend credence to subjective considerations put forward by an applicant with regard to their prospective neighbours' ethnicity, then the Council risks falling foul of the prohibition on discrimination in the Equality Act.
- 6.33 The Council as Local Housing Authority has a duty to assess any homeless applicants to determine whether it has a duty to secure alternative accommodation. Any homeless applicants who are deemed to be in priority need of accommodation, with a local connection to the Borough and who are homeless through no fault of their own, may be prioritised for rehousing in social housing or in the private rented sector. 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.
- 6.34 For households seeking accommodation in bricks and mortar within the settled community, they will need to be assessed by the Council as to whether they are suitable to join its Housing Register. To assess a household for joining the Housing Register, they will be required to complete an assessment form and provide ID for every member of the household, along with proof of current address, financial verification and anything else as may be required for the particular given circumstances. 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.

- 6.35 Applicants will then need to check available suitable properties that are advertised through the choice based lettings system every two weeks and place bids (expressions of interest) on any they wish to pursue, with their points and banding influencing the likelihood of being housed. If/when they are the highest bidder for a given property, they will be subject to the housing association's usual verification checks before being offered the tenancy.
- 6.36 In contrast to this, members of the Gypsy & Traveller community seeking a pitch on a public site (such as Coldharbour) are assessed and assisted for accommodation through Kent County Council's dedicated Gypsy and Traveller Unit (GTU) and not by the local authority directly. Registration for accommodation and subsequent allocations are not through the same approach of choice based lettings described above (for the settled community) that caters to available housing association properties. Vacant Gypsy and Traveller pitches on public sites are allocated through a specialised approach that takes into account a wider spectrum of factors and the process for registering on the County's Gypsy and Traveller pitch waiting list reflects these requirements and is administrated by GTU. However, the requirement for a local connection to Tonbridge & Malling before being considered for a vacant pitch at the Coldharbour site remains paramount, and this criterion is assessed jointly between the Council's housing officers and those of GTU.
- 6.37 Members should note that, in this case, it appears that Miss Barton left a public Gypsy Pitch in Greenwich to go to live at the application site with her partner.

#### **Temporary planning permission**

- 6.38 In deciding the appeal in 2008, the Inspector considered that there was unacceptable harm to the Green Belt/countryside/amenities such that permanent planning permission should not be granted. However, at that time the Inspector felt that whilst the Council was investigating options for increasing the supply of suitable sites (under the then national policy framework) a temporary permission was appropriate as the Inspector was not satisfied that alternative sites would be available in the short term for acceptable relocation. The successful emergence of the Coldharbour project has gone a significant way to remedying the shortfall of sites identified in the Borough and makes a significant contribution towards remedying the very concern expressed by the Inspector in 2008.
- 6.39 Given that the previously identified shortfall situation (that led the Inspector to allow the 2008 appeal) will be remedied by the Coldharbour project, the applicant has been invited to apply for an opportunity to move to Coldharbour so as to abate the unacceptable impact on the Green Belt.

- 6.40 The agent has indicated that another temporary planning permission would be acceptable to her client if the Council is not minded to grant a permanent permission. No specific justification is sought other than the same arguments submitted for unmet need in the Borough and personal educational/health issues.
- 6.41 The provisions of Circular 01/2006 that were relevant at the time of the 2008 appeal made it clear that decision makers should consider positively granting temporary planning permissions whilst the adequate provision of a supply of gypsy sites is ensured. In the circumstances of this case, I am of the opinion that a temporary permission would no longer be justified in light of the imminent availability of new pitches at Coldharbour. I shall therefore recommend that planning permission be refused. In the light of the continuing occupation of the site, if Members agree with my recommendation to refuse planning permission, it will be necessary to consider the expediency of taking enforcement action to secure the cessation of the unauthorised use. Given the nature and degree of the harm that the use gives rise to, I believe such enforcement action would be necessary.
- 6.42 However, I also consider that it would be a disproportionate response to seek to force the applicants to leave the site before pitches at Coldharbour become available, particularly as there is no evidence of any other readily available lawful site to which the applicants could quickly move without detrimentally disrupting the family's education. It is clear from PPTS that access to education remains a material consideration.
- 6.43 In the circumstances of this particular case, I believe there is a reasoned justification to allow a compliance period in a Enforcement Notice which factors in the timescale of the Coldharbour pitches becoming available, would enable the long term adverse impact on the Green Belt to be abated, whilst meeting all obligations towards the needs of the applicants in the interim.

### **Comments on the Private Representations**

- 6.44 In response to the consultation exercise, Members will note that some representations have been made that are critical of the Council's approach to this site, allege that not enough has been done quickly enough to return the site to Green Belt and that the applicants have been given an unduly favourable presumption. It is, of course, appreciated that this case has raised some difficult issues and that many local residents have been frustrated and have interpreted the complex and changing planning issues and context as an unwillingness of the Borough Council to act positively. In the circumstances, I cannot find any reasonable justification for such a view but it has set an unfortunate background to the case. However, I hope and intend that the views expressed on these general concerns can be answered by the explanation provided in this report of the matters before the Council and how those have changed over time

6.45 Many of the specific points of concern expressed have been addressed above but some clarification is necessary.

6.46 The gypsy status of the applicants was not doubted by the Inspector in the Hearing in 2008 and indeed, had this been 'not proven' then, it is not likely that permission would have been given at that time (especially when bearing in mind the Inspector's reasoning for granting only a temporary permission). There is no evidence that the status has been abandoned, notwithstanding comments that the occupants are "no longer itinerant". The schooling needs of the children and the medical needs of the baby could explain any change in nomadic travelling of the family. The position is not, on this point, inconsistent with PPTS.

6.47 To clarify the site history:

- The only planning permission granted by the Council is for the stable block and permission was linked, in timescale terms, to the duration of permission allowed by the Inspector on appeal for the use of land as a caravan site.
- The Enforcement Notice served in 2003 was subject to a continuing breach and as result the Council prosecuted the original occupants but a very limited fine was imposed.
- The PPTS is explicit that absence of a local connection is not a reason for refusal (this position has not changed from previous policy).

## **7. Conclusion**

7.1 NPPF/PPTS policy as it applies to Travellers confirms the importance of Green Belt policies and the protection of the environment from 'inappropriate development'. There is a general presumption against 'inappropriate development' within Green Belts. New Gypsy and Traveller sites in the Green Belt are inappropriate development, as defined in the NPPF. National planning policy on Green Belts applies equally to applications for planning permission from Gypsies and Travellers, and the settled population. Alternatives should always be explored before Green Belt locations are considered.

7.2 Provision of additional pitches for Travellers at Coldharbour will be in place by early 2013 and therefore the argument that the need for sites was unmet at the time of the 2008 appeal decision, will no longer exist by the end of 2012/early 2013. Therefore, there is no justification for the continuation of this inappropriate and harmful use of land in the Green Belt.

7.3 The human rights of the applicants and their family have been considered but will not be affected in the light of the potential to relocate to Coldharbour. Under the Race Relations Act and Equalities legislation, the provision at Coldharbour will

provide for suitable accommodation for the occupants, even if they may express a wish not to re-locate there.

7.4 In light of the above, I recommend that planning permission be refused and enforcement action taken on the use of the site for the stationing of 2 caravans and associated structures.

7.5 Enforcement action also needs to be taken against the stables and the block paving which were only allowed on a temporary basis and on a time period consistent with the time limited permission for the Gypsy site and so were effectively domestic adjuncts.

## 8. Recommendation:

8.1 **Refuse Planning Permission** for the following reasons:

- 1 The site lies within the Metropolitan Green Belt where there is a strong presumption against permitting inappropriate development, as defined in paragraphs 89-91 of the National Planning Policy Framework 2012 and paragraph 14 of the Planning Policy for Traveller Sites 2012 and Policies CP3 and CP20 of the Tonbridge and Malling Borough Core Strategy 2007. An inadequate case of very special circumstances has been submitted in justification of the harm caused by inappropriateness and the harm to the openness of the Green Belt.
- 2 The development, by virtue of its nature and scale, detracts from the openness of the Green Belt and the character of the rural locality and is therefore contrary to paragraphs 17 and 79 of the National Planning Policy Framework 2012, paragraph 23 of the Planning Policy for Traveller Sites 2012 and Policies CP14 and CP20 of the Tonbridge and Malling Borough Local Development Framework Core Strategy.
- 3 The development is contrary to paragraph 22 of the Planning Policy for Traveller Sites 2012 and Policy CP20 of the Tonbridge and Malling Borough Core Strategy 2007 for the reason that the likely need for additional gypsy pitches within the Borough will be met by the proposed expansion of an existing gypsy site in the Borough.

8.2 Enforcement Notice(s) **be issued** as set out below and copies **be served** on all interested parties.

The Notice(s) to take effect not less than 28 days from the date of service, subject to:

- The concurrence of the **Chief Solicitor**, he being authorised **to settle** the final wording of the Enforcement Notice(s) as may be necessary (including period for compliance) to reflect the circumstances at the time of service



- In the event of an appeal against the Notice(s) the Secretary of State and the appellant to be advised that the Local Planning Authority is not prepared to grant planning permission for the development the subject of the Enforcement Notices

### **Breach Of Planning Control Alleged**

1 Continued use of the site without planning permission as a residential caravan site with associated infrastructure following expiry of conditions 1 and 2 of appeal decision APP/H2265/A/08/2062848 dated 17 July 2008.

2 Continued retention on the site without planning permission of fencing, storage shed, utility shed, external lighting, following expiry of conditions 1 and 2 of appeal decision APP/H2265/A/08/2062848 dated 17 July 2008.

3 Continued retention of a red brick hard surface without planning permission following expiry of condition 1 of appeal decision APP/H2265/C/09/2110816 dated 14 December 2009.

4 Continued retention of stable block following expiry of condition 1 of planning permission TM/10/00719/FL dated 16 June 2010.

### **Reasons For Issuing The Notice(s)**

It appears to the Council that, from the evidence before it, the breaches of planning control are not immune from enforcement action.

The site lies within the Metropolitan Green Belt where there is a strong presumption against permitting inappropriate development, as defined in paragraphs 89-91 of the National Planning Policy Framework 2012 and paragraph 14 of the Planning Policy for Traveller Sites 2012 and policies CP3 and CP20 of the Tonbridge and Malling Borough Core Strategy 2007. An inadequate case of very special circumstances has been submitted in justification of the harm caused by inappropriateness and the harm to the openness of the Green Belt. The development, by virtue of its nature and scale, detracts from the openness of the Green Belt and the character of the rural locality and is, therefore contrary to paragraphs 17 and 79 of the National Planning Policy Framework 2012, paragraph 23 of the Planning Policy for Traveller Sites 2012 and Policies CP14 and CP20 of the Tonbridge and Malling Borough Local Development Framework Core Strategy. The development is contrary to paragraph 22 of the Planning Policy for Traveller Sites 2012 and policy CP20 of the Tonbridge and Malling Borough Core Strategy 2007 for the reason that the likely need for additional gypsy pitches within the Borough will be met by the proposed expansion of an existing gypsy site in the Borough.

An application to retain the residential caravan site, associated structures, stables and red brick paving could not be supported in principle and the imposition of conditions could not overcome all the concerns with the unauthorised development.

The enforcement notice(s) are needed to overcome the harm to the site by inappropriateness and harm to the openness of the Green Belt and countryside.

### **Requirements**

- 1 To cease the use of the site as a residential caravan site and to remove from the land all caravans, fencing and domestic structures including sheds, utility rooms and generators from the land.
- 2 To remove the red brick paving hardsurface and all arisings from the land and restore the land to its pre development condition including replanting of trees
- 3 To remove the stable block and all arising from the land and restore the land to its pre-development condition

### **Period For Compliance**

The cessation of prohibited use of the land, removal of all structures and restoration to pre development condition must be complied with by 31.01.2013.

Contact: Marion Geary