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<b>Platt</b> Borough Green And Long Mill	<b>562560 157700</b>	<b>1 June 2012</b>	<b>TM/12/00933/FL</b>
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Proposal:	Use of site as Gypsy/Traveller site with two mobile homes, two touring caravans, one day room and one utility
Location:	Land North East Of Askew Bridge Maidstone Road Platt Sevenoaks Kent
Applicant:	Mrs Bridget Doran

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## 1. Description:

- 1.1 Permission was sought for the use of the application site as a gypsy/traveller site for occupation by the Doran family under application TM/12/00933/FL.
- 1.2 Following the expiration of a temporary planning permission for the use of the site as a gypsy/traveller site for an extended family in April 2012, the site has continued to be used as such in the intervening period and is at present so used.
- 1.3 The submitted plans indicate the retention of the existing 3.3m x 3.4m day room within the eastern corner of the site, and the provision of a 4 x 3.4m utility room towards the centre of the site. The plans also indicate that two mobile homes would be positioned towards the north-western boundary of the site, together with two touring caravans towards the south-eastern boundary.
- 1.4 The statutory period for determination of the application has expired and the applicants have lodged an appeal against the non-determination of the application: Members' views are sought as to the decision which the Council would have made, and this will form the basis of the case put forward by the Council in relation to the appeal. Because an appeal has been lodged, the Borough Council cannot now issue a decision on the application.
- 1.5 The information provided as part of the application, and ascertained when Case Officers undertook a Human Rights interview with the occupiers of the site on 13 June 2012, detailed the following:
  - the site is presently occupied by:
    - Tommy and Margaret Doran and their children:
      - § Margaret Doran (age 23) and her child (Cathlene-Margaret Doran, aged 3);
      - § Bridget Doran (age 22 - the stated applicant) and her child (Isobel, age 2);
      - § James Doran (age 19);

- § Mary Doran;
  - § Miles Doran (age 12);
  - § Tommy Doran (age 11);
  - § Barbara Doran (age 9).
- the applicants are Irish Travellers who operate a landscape and paving business;
  - the youngest children attend local schools:
    - Miles attends Wrotham school: the applicants/application advises that Miles has learning difficulties;
    - Barbara and Tommy attend Platt C of E Primary School – a letter from the Headmistress of the school was submitted as part of the application confirming this;
  - Mr Doran suffers from severe ill health related to his liver (the application includes letters from the Maidstone and Tunbridge Wells NHS Trust confirming this);
  - the applicants do not consider that they could reside at the Coldharbour site:
    - the application includes a fax from the Romany Kris stating that the author “has visited the neighbouring caravan park at Cold Harbour Lane Caravan Park at Maidstone and have spoken to the residents there and they have said that Mr Doran and any Irish travelling family will not be welcome on the site and so I fear for Mr Doran and his family that there might be violence if forced to move on site”;
    - as “the family’s travel patterns and periods on the road would mean that they would be in breach of KCC tenancy agreements for the site” (letter from applicant’s agent dated 20 August 2012);
    - during the Human Rights interview undertaken by Case Officers, Mr Doran stated:
      - § he would not move to the Coldharbour site;
      - § he did not know or have disputes with any of the current residents at Coldharbour;
      - § he anticipated that the site would “attract a rough lot” and would not be cared for;

§ that he and his family would reside on a public site if “it was with his own”.

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

2.1 Due to significant local interest and in order to ascertain Members’ views as to the decision which the Council would have made, if the application had been capable of determination.

**3. The Site:**

3.1 The site as indicated on the submitted plans is broadly triangular in shape and is situated to the south-east of the A25 Maidstone Road, immediately to the north east of Askew Bridge which crosses this road. The London to Maidstone railway line is situated to the south-east of the site. The western corner of the triangle is indicated on the submitted plans as comprising land which is not part of the application site, but is in the applicant’s ownership.

3.2 Vehicular access is taken directly from the A25 to the site, across the wide highway verge and pedestrian path.

3.3 On the Case Officer’s site visit, the day centre building was located in the eastern corner of the site, with a caravan immediately to the west of this. To the west of this caravan were located a playhouse and shed, and two flat-bed Ford Transit vehicles were parked here. Two caravans were located adjacent to the north-western boundary, in positions approximately opposite the aforementioned caravan and parked vans.

3.4 This part of the site was partially separated from that located further to the west by fences which run perpendicularly from the boundaries, although the fences do not join within the centre of the site which facilitates vehicular access to the more westerly part.

3.5 Case Officers observed one touring caravan located adjacent to the southern boundary of the site and another located towards the north-western boundary. A generator was also located within this part of the site.

3.6 The westerly corner of the site (that outlined in blue on the submitted application plans) was not physically differentiated from the remainder of the site, for example through a fence. It comprised a surface of levelled hardcore, and an old public telephone box and small digger were positioned there.

3.7 Members will note that the current layout of the site therefore differs both from that proposed in this application/appeal and that which was approved under the previous temporary planning permission.

3.8 The site lies in the MGB and within the designated countryside.

#### 4. Planning History:

TM/54/10653/OLD Refuse 9 July 1954

Outline application for five dwellings

TM/95/51388/LDCE Refuse 11 April 1996

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

TM/07/04156/FL Approved for a temporary period 12 April 2010

Change of use to residential for one extended gypsy family, stationing of one mobile home and one touring caravan, and erection of one utility room and one store room (part retrospective)

#### 5. Consultees:

5.1 Platt PC: The PC's comments are provided in full as an **Annex**. The summary provided as part of the comments stated that the PC objects on the grounds that:

- "temporary permission was granted due to no alternative sites being available. Coldharbour is now available;
- there are no grounds to justify a caravan site on Green Belt under the latest planning criteria;
- there is no excuse not to re-locate the family to Coldharbour;
- this application exceeds the level of occupation that the temporary permission permitted;
- the site has not, nor never has had, permission to be used commercially".

5.2 KCC Highways: Whilst access is off the strategic A25 the existing access is prominent, with good inter-visibility and I would consider to be of sufficient standard for the level of development off it. I confirm I would not wish to object to the proposal with respect to highway matters.

5.3 EA: No objection.

5.4 DHH: Owing to the proximity of the site to the busy A25 and also the Maidstone-London Railway line, noise is an important consideration. A noise assessment (dated March 2009) was provided as part of the original application. The report shows that the site falls into NEC C for both day and night, and as such the application should be refused on noise grounds, as per TMB MDE Policy SQ6.

DHH notes that British Standard 8233 'Sound Insulation and Noise Reduction for Buildings - Code of Practice' sets out "good and reasonable" internal noise criteria and that British Standard 3632:2005 – 'Residential Park Homes', requires a minimum Sound Reduction Index for caravans/mobile homes manufactured since 2005. Further investigations are being carried out as to what this might mean in practice for the mobile homes on this site; any available information will be included in a supplementary report.

It is also important to note that the acoustic report gives an indication that rail noise affecting the site could be reduced by the construction of a barrier between the site and the railway, although no calculations are given as to how effective this would be. For the barrier to have any meaningful effect it would have to prevent line of sight between noise source and receptor. Given the train line is on an embankment owned by Network Rail it would have to go at the bottom, and therefore likely be so high as to be prohibitive both in practicality and cost terms.

In addition to noise affecting the application site, complaints of noise arising from the site have also been received, specifically in relation to the use of a generator. If permanent permission is to be granted, I would recommend a Condition requiring mains electricity to be installed.

Furthermore the details of the drainage arrangements for the site are also required in relation to the suitability of the existing cesspit for the use of additional numbers of people occupying the site.

5.5 Private Reps (17/0X/4R) and Site and Press Notices: 4 no. letters have been received objecting to the proposal on the following grounds:

- the site is in the MGB and there are not considered to be very special circumstances to overcome this – in particular the respondents were unable to deduce how the applicants could not reside at the Coldharbour site;
- the site is on a dangerous bend which creates conditions which are harmful to highway safety;
- the site is subject to noise disturbance from the adjacent road and railway;
- since the change in use of the site which occurred, neighbours have been subjected to noise from the site through the operation of a generator, machinery and domestic noise such as barking of dogs and music being played, and the lighting of bonfires.

## **6. Determining Issues:**

6.1 The main issues relate to:

- the principle of the development in the Green Belt;

- the impact of the development on the rural character of the locality;
- issues surrounding the accommodation needs of gypsies and the provision of sites, including the relationship of Irish Travellers and English/Romany Gypsies;
- whether the personal circumstances of the applicant's family amount to very special circumstances (VSC) in MGB terms;
- whether the aural environment is acceptable.

6.2 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 MGB and countryside protection respectively, and the latter supersedes ODPM circular 01/2006 "*Planning for Gypsy and Traveller Caravan Sites*".

6.3 In terms of the countryside, the NPPF requires LPAs at paragraph 17 (Core Principles) to recognise the intrinsic character and beauty of the countryside.

6.4 NPPF paragraphs 79 - 92 define the purposes of including land within the MGB, one such being to assist in safeguarding the countryside from encroachment. Paragraph 79 states that the Government attaches great importance to MGBs which should prevent urban sprawl by keeping land permanently open; the essential characteristics of MGB being openness and their permanence.

6.5 As with previous MGB policy 'inappropriate development' is, by definition, harmful to the MGB and should not be approved except in VSCs. Use of land as a caravan site is 'inappropriate development'. When considering any planning application in the MGB, LPAs should ensure that substantial weight is given to any harm to the MGB. VSCs 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.

6.6 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 MGB; indeed the PPTS explicitly states in paragraph 14 and in Policy E that Traveller sites (temporary or permanent) in the MGB 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”.*

6.7 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*

6.8 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”.*

6.9 Paragraph 23 indicates that LPAs should, in the context of ensuring a supply of different types of site overall, also *“strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the Development Plan. LPAs 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”.*

- 6.10 TMBCS Policies CP3 and CP14 relate to the restrictions in the MGB and in the designated countryside and identify the types of development that may be acceptable. The need to provide a case of VSCs in the MGB is also outlined, as is the principle that all development not listed as appropriate will be resisted. CP3 refers to national MGB policy, which is now the NPPF policy as outlined above. The two policy documents, NPPF and TMBCS, are consistent with each other.
- 6.11 TMBCS Policy CP20 relates to Gypsies/Travellers 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 MGB unless there are VSC.
- 6.12 The proposal constitutes inappropriate development within the MGB and thus by definition harms the MGB. The development also represents an encroachment into the countryside which is contrary to one of the aims of the MGB.
- 6.13 The development harms the openness of the MGB, with the introduction of caravans and associated structures, the hard standing and use of land as residential garden/amenity space. Although, given the particular physical and topographical characteristics of this particular site, development here might be argued to impact less on the open character than it might in some other, more remote or prominent sites, there is nonetheless an appreciable impact on openness which is, by definition, harmful.
- 6.14 As inappropriate development, there is an onus on the applicant to demonstrate that VSCs exist such as to outweigh the strong policy objection to this proposal. Consideration of potential VSC can include the personal circumstances of the applicant such as Gypsy/Traveller status and the family background and the provision of available pitches on authorised sites.
- 6.15 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 presently available. In light of the time limitations of the earlier GTAA and in the context of the Government's introduction of PPTS, the Council has actively commenced further studies of current need, through specialist consultants. On-site surveys and interviews are currently occurring so as to update the GTAA findings.



- 6.16 Moreover, in light of the general acknowledgement of the justification for additional provision within the Borough as identified by Inspectors in earlier appeals, the Borough Council has continued to be very practically committed to the provision of additional accommodation in the form a further 18 pitches at the Coldharbour site in Aylesford to assist in the housing of Gypsy/Traveller families. Development is now well advanced on that site to construct the scheme permitted by planning permission 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)*) and completion is anticipated early in 2013.
- 6.17 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;
- 6.18 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.
- 6.19 The situation is that there is clearly still a present need for additional Gypsy/Traveller accommodation within the Borough but it is intended that this is likely to be met when the Coldharbour pitches becomes available.
- 6.20 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.
- 6.21 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.
- 6.22 Members of the Gypsy & Traveller community seeking a pitch on a public site (such as Coldharbour) are assessed and assisted for accommodation through KCC's dedicated Gypsy and Traveller Unit ["GTU"] and not by the local authority or local planning authority directly. Registration for accommodation and subsequent

allocations are not through the same approach of Choice Based Lettings that caters for the settled community when applying for 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 is a key element in that process.

6.23 The applicant has set out that the family would not be able to occupy the Coldharbour site both on grounds of ethnicity (given that the applicants are Irish Travellers and the occupants of the Coldharbour site are predominantly English/Romany Gypsies) and because the family's travel pattern and period of time on the road would be in breach of the tenancy agreements for the Coldharbour site.

6.24 In respect of the initial point, the Council received legal advice when determining the earlier application at this site. Members were previously advised:

"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.

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 (section 19A). In addition, section 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".

In light of the fact that this argument against relocation to Coldharbour has been raised again we are seeking further, and the most up-to-date possible legal advice on this aspect of the case and the further information received will be set out in a supplementary report.

6.25 It is understood that the KCC GTU arrangements for tenancy at the Coldharbour site include a flexible allowance for tenants to be absent from the site in order to travel. The applicants have not provided any information either as part of the application or during the Human Rights interview undertaken by Case Officers that their travel patterns are such that they would be absent from the site for a period which would be in excess of that which could be agreed with KCC GTU.

- 6.26 I understand that one of the members of the applicant's family suffers from ill health, one of the children has special learning needs and two other children are enrolled at a local primary school. However, I am not aware that the educational needs of the children are such that they could not be addressed through alternative educational arrangements nor would preclude the family from becoming tenants at the Coldharbour site. I have reached a similar conclusion in respect of the health issues of a member of the applicant's family.
- 6.27 As reflected in the comments from DHH, the site is located in proximity to the A25 and is bounded to the south-east by the Maidstone-London railway. Although the noise assessment which was submitted as part of the original application details that the site falls in NEC Category C (now defined only in TMBC but not national policy), any further advice from DHH will be set out in a supplementary report. Members may be aware that the Council is required, as part of the appeal process, to provide the Planning Inspectorate with a list of Conditions which the Council would expect to be attached to the Decision Notice to address concerns, in the event that the appeal is allowed; the issue of noise insulation is potentially one of the matters that could be covered by such conditions.
- 6.28 I have also had regard to DHH's comments regarding the disturbance to neighbouring properties which has occurred as a result of the use of the site. DHH reports that 4 no. complaints have been received since July 2009 regarding noise. An abatement notice was served in respect of noise from generators on the site. The applicants advised Case Officers that they would be willing to install mains electricity at the site, but have not done so yet as they have been advised by the electricity providers that it would be necessary to pay a considerable fee to undertake this. They have not had this work done due to the uncertainty as to whether permanent planning permission would be granted.
- 6.29 I intend to include a Condition requiring the provision of mains electricity in the list to be provided to PINS.
- 6.30 I note DHH's comments regarding the foul water drainage of the site and consider that details of foul drainage could potentially be agreed by Condition.
- 6.31 The majority of the comments raised by the representations have been addressed in the body of this report. The outstanding issues relate to highways and the use of the site for business purposes.
- 6.32 Despite the location of the vehicular access directly onto the A25, KCC Highways has not objected to the proposal on highway safety grounds.
- 6.33 In terms of the use of the site for business or commercial uses, at the time of the Case Officers' visit to the application site there was no material evidence that it was currently being used as such: the parking of the transit vans are as would be expected of a resident's work vehicle whilst they were at their residence.

## 7. Conclusion

- 7.1 NPPF/PPTS policy as it applies to Gypsy/Travellers confirms the importance of MGB policies and the protection of the environment from 'inappropriate development'. There is a general presumption against 'inappropriate development' within MGBs. New Gypsy and Traveller sites in the MGB are inappropriate development, as defined in the NPPF. National planning policy on MGBs applies equally to applications for planning permission from Gypsies and Travellers, and the settled population. Alternatives should always be explored before MGB locations are considered.
- 7.2 Provision of additional pitches for Gypsy/Travellers at Coldharbour will be in place by early 2013 and therefore there is no justification for the inappropriate and harmful use of land in the MGB.
- 7.3 The personal circumstances pertaining to the family have been taken into account but they are not considered to be sufficient justification for overturning the strong policy objection. Under the Race Relations Act and Equalities legislation, the provision at Coldharbour will provide for suitable accommodation for the occupants, even if they express a wish not to re-locate there.
- 7.4 In light of the above, I recommend that the Planning Inspectorate be advised that the Council would have refused planning permission, had it been in a position to determine the application. In the light of this conclusion, and bearing in mind that the site is in current actual occupation, it is also appropriate to consider the expediency of serving an Enforcement Notice, which could require the cessation of the use and removal of the operational development that has taken place. Any enforcement action would have to be directed at the development that is actually on the site, rather than what was proposed in the appealed application. Further details on this aspect will be included in the Supplementary report.

## 8. Recommendation:

- 8.1 The Planning Inspectorate be advised that, if the Council had determined the application, planning permission would have been **refused** 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 Metropolitan 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.

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