

Alleged Unauthorised Development

Kings Hill
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12/00402/USEM

568357 155897

Location: Traveller Caravan Site (Site A) Hoath Wood Lavenders Road
West Malling Kent

1. Purpose of Report:

1.1 To report the alleged unauthorised use of the site as a residential caravan site. In addition there has been the formation of concrete bases, the erection of a large building and the erection of an extension to the caravan (with the appearance of a conservatory). The site is almost entirely surrounded by a close boarded fence save for a vehicular access point.

2. The Site (Site A):

2.1 As shown on the attached plan, as Site A, this site lies adjoining Lavenders Road, West Malling close to the junction with Broadwater Road. This site appears to be in the ownership of several parties, at least one of whom has an interest in part of the land in Location B.

3. Context history (Location B):

3.1 Location B is known anecdotally as Hoath Wood (see attached plan), which has been used as a Gypsy and Traveller site for a varying number of caravans since the 1970s. In the mid 1980s it was accepted that the site was "tolerated" by Kent County Council (KCC) and TMBC and thus powers were granted, by Government, to KCC, under provisions then in force but no longer part of law, to control unauthorised encampments throughout the Borough. It appears that there is more than one land owner at Location B.

3.2 In light of that previous and continuing occupation of Location B, from the 1970s/80s onwards, the occupation became lawful under planning legislation and is therefore immune to planning enforcement action. Location B appears to remain in occupation or at the very least the use has not been abandoned.

4. History of the site (Site A)

4.1 In 1993, KCC applied to create a new permanent residential Gypsy site of eight double pitches and the erection of amenity blocks. TMBC was consulted on this application and it was determined that no objection be raised with regard to the application. It was suggested that a number of conditions should be imposed on any permission given, one of these being that the existing area of Gypsy occupation (Location B) shall be given up on completion of the works. KCC granted planning permission on 13 September 1994.

- 4.2 The land was not in the ownership of the KCC and therefore in December 1995 KCC issued a Compulsory Purchase Order. Following an Inquiry, the Compulsory Purchase Order was not confirmed and the approved planning permission was never implemented. In recommending that the CPO be not confirmed the Inspector identified the “hazardous road access”, for traffic generated by the proposed 8 double pitches, as the reason for his assessment.
- 4.3 On 17 December 2008, it became apparent that work was being undertaken to clear the site of trees and undergrowth. As a result a Tree Preservation Order was served in the vicinity of and including Site A.
- 4.4 Subsequently work was undertaken to create a large concrete base and on 29 January 2009 a double unit mobile home (legally a caravan) was moved onto the site. It appeared that this caravan was occupied by persons previously living at Location B. (It is understood that KCC staff visited the site earlier in 2012 and the occupying family is the same as was living on this site in January 2009.) It is understood that the family in residence is there without the express approval of the landowners.
- 4.5 In April 2009, it became clear that an extension was added to the caravan and this gave the appearance of being a conservatory-like structure. In February 2010 it became apparent that an additional new concrete base was under construction. It then became clear in April 2010 that a large building had been constructed which the occupier of the site claimed was to be used as a stable. An inspection of the site in September 2010 showed that this building was complete. The fence described in 1.1 was *in situ* and the vast majority (if not all) of this fence was erected under permitted development rights.

5. Determining Issues:

- 5.1 It will be noted from Sections 3. and 4. above that there is an interconnection between the occupation of the two sites in that the occupier of Site A was previously an occupier of part of Location B and the family concerned has been accepted, in past statutory censuses of Gypsy and Traveller accommodation, as a local Gypsy and Traveller family.
- 5.2 The underlying ownership of Site A was, when checked recently, comprised in several ownerships none of which includes the occupying family. It is believed that the occupying family does not have the authority of the landowners.
- 5.3 Some “works” at Site A, namely the initial hardstanding and the extension to the caravan, have been on site for nearly 4 years and so the Council must decide if it wishes to take Enforcement Action as that option will not be open to it after 4 years has elapsed.

- 5.4 It is also a requirement that, if the LPA is seized of knowledge of breaches of planning control at the time when one breach (that in 5.3 above) is identified, it cannot put off the consideration of all known breaches until a later time. As a result this report deals with all outstanding matters at Site A.
- 5.5 The key planning considerations are planning policy and the relevance of any aspects of the occupying family's earlier occupation of Location B.
- 5.6 The current national Planning Policy for Traveller Sites (March 2012) supersedes all previous policy considerations and recognises the need for LPAs to provide for a range of types of site and to identify that supply of sites in the light of evidence evinced from up-to-date survey data. The Council has commissioned an update of its previous Assessment which took into account the occupation of Location B. The earlier Assessment recognised a general need to make long term provision for the occupants of sites such as Location B, because the use of land in that vicinity is immune to planning enforcement.
- 5.7 Site A lies in an area where policy CP14 of the TMBCS (2007) identifies acceptable forms of development in the countryside, of which a Traveller caravan site such as on Site A is not one. National Planning Policy Framework (March 2012) also recognises that the countryside outside any area of special controls, such as here, should be respected.
- 5.8 So the question that arises in this case is whether the background to the use of the site and associated building and allied works is such that the Council should proceed to require the cessation of the use of the land as a caravan site and the removal of the associated works, or whether there is justification for accepting retention of these facilities on Site A.
- 5.9 Notwithstanding the then policy considerations, now substituted by those cited in 5.6 and 5.7 above, both KCC and TMBC accepted that planning permission could be granted on Site A in 1995 in light of the need for Gypsy and Traveller accommodation recognised from the mid 1980s in the vicinity of Location B. It has been held, therefore, that the release of Site A could be accepted if justified by some specific need. In the current situation the occupation of Site A is by a family previously resident at Location B and I am satisfied that, on the face of it, the family concerned formed part of the need for accommodation identified in this Council's earlier Accommodation Assessment (up to 2011) and therefore will remain part of the "need" in the emerging Audit data. In that sense, I believe that there are close parallels between the decision made by KCC in 1995 and the position now in terms of there being a Gypsy and Traveller need for accommodation to form part of the overall planning judgement with regard to the future of Site A.
- 5.10 I recognise that, in assessing the suitability of the site for larger scale development than is currently on site, the CPO Inspector found against it in traffic terms. With hindsight I feel that the CPO decision failed to recognise the implications of the usage of Location B continuing (as we now know it is "lawful" and immune to

planning enforcement action and was so at the time of the CPO Inquiry). In the current circumstances I do not think it is appropriate in traffic terms to seek to resist the use of Site A when that same scale of residential caravan use could immediately and legitimately (in planning law terms) recommence on Location B and still generate traffic through the current access point.

- 5.11 Whilst the site is now covered by a Tree Preservation Order that did not exist in 1995, the plain fact is that the trees were essentially removed in this area such that the TPO could only practically protect regrowth actually on Site A. The TPO is drawn widely to protect trees in the immediate environs of Site A and this seems to have been successful.
- 5.12 Another factor that must be considered is the potential outcomes if the Council were to find the use and works unacceptable and thus serve Enforcement Notices. The first factor to bear in mind is that any Enforcement Notice served on this land will be served on and bite against all land owners and occupiers and others who have an interest in the land (whether or not the occupation is authorised by the owners). There is the right of appeal by all parties so served. Whether all or any of the parties would appeal cannot be speculated upon. However, I consider that in light of all the material background matters, but especially the history of Location B, Site A and the occupants' long term residence in this vicinity, there is a real possibility of planning permission being given on appeal.
- 5.13 Moreover, given that the vast majority of the high fence that surrounds Site A is not subject to the control of the Council now or in the future, there is little guaranteed prospect of the appearance of the area returning to a more rural feel, even if the use and other works were to be removed under enforcement action.
- 5.14 It also needs to be borne in mind that, if an Enforcement Notice were to be successfully served, then that would merely move this long standing accommodation need to some other location, be that back to Location B, possibly to Coldharbour (meaning loss of facilities needed in light of other enforcement action on sites far more adverse in planning terms than this), or possibly to another unauthorised location in the Borough (or indeed possibly elsewhere outside the Borough).
- 5.15 To put the position in context it should be noted that to date the land owners have not exercised their proprietary rights to secure the removal of the use and works from Site A or the cessation of occupation. It is understood that one of the owners did seek to secure possession of part of Location B in the 1980s – it appears that the court order was given but not successfully enforced. At that time Site A was woodland.
- 5.16 It is also understood, at Officer level, that KCC is contemplating the use of powers under S77 of the Criminal Justice and Public Order Act 1994 to assist the landowners to secure removal of some of the facilities on Site A (and possibly that part of

Location B owned by one of the owners of Site A.) Not all of what is on either site may prove to be controllable under S77 – for instance any permanent buildings *might* prove to be outwith the controls in S77.

5.17 This case raises a number of issues, all of which have to be balanced to reach a final judgement. The Council has a discretion to serve Enforcement Notices but as always in making a decision, to serve or not, the Council also has to decide whether it is expedient to take enforcement action. In my opinion the service of Enforcement Notices would have the merit, if upheld, of removing the use and the building from this site. However if service were successful this would bring uncertainty of relocation of the residential caravan such that *in this particular case* there are potentially significant demerits if such action simply leads to unauthorised development elsewhere in the Borough, or indeed elsewhere. On balance I feel that, given the close proximity of Site A to the historical Gypsy and Traveller site at Location B and also given the nature of the family occupancy, it is, on balance, not appropriate to take enforcement action in respect of Site A.

6. Recommendation:

- 6.1 **NO FURTHER ACTION BE TAKEN** in respect of enforcement action in relation to the occupation of Site A as a residential caravan site and associated buildings and works (to the extent shown on aerial photograph taken on 08.11.2012).
- 6.2 The owners/occupants **BE INVITED** to submit a planning application to regularise the position (to the extent shown on aerial photograph taken on 08.11.2012).

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