

Leybourne
West Malling And
Leybourne

567993 158459 8 May 2013

TM/13/01369/FL

Proposal: Continued use of land for the stationing of a residential caravan/touring caravan and continued use of existing building for ancillary living accommodation
Location: Land Known As Sunny Paddock Birling Road Leybourne West Malling Kent
Applicant: Mr Gower

1. Description:

- 1.1 The application relates to the provision of accommodation for a Gypsy family and seeks permission for the Gower family to continue to live on the site on a permanent basis and retain all the existing buildings and caravan. It includes the stationing of a touring caravan for sleeping accommodation and the use of a stable block as ancillary living accommodation/day room. The original stable block has been converted into a kitchen/living room, bathroom, dayroom and external store room. There are also a number of other residential elements such as a patio/garden area and external lighting to the amenity block. There are a number of outbuildings including a utility shed, field shelter/stable and open garden storage building. The site is landscaped and planted and there are chickens and a horse on site.
- 1.2 This application follows the granting of a temporary 3 year planning permission that expires on 22 August 2014. That approval was given after an appeal was lodged against non-determination on an earlier application for permanent occupation of the site. The Public Inquiry for the appeal was, however, initially postponed and later the appeal (and therefore the application) withdrawn.
- 1.3 The applicants have submitted supporting statements and information relating to their personal circumstances, in relation to the search for alternative sites, local connections and health and educational needs. The plans submitted are the same as those previously submitted. With reference to the flooding issues, the previous Flood Risk Assessment submitted in respect of TM/10/01717/FL is still considered to be relevant.

2. Reason for reporting to Committee:

- 2.1 Departure from the Development Plan and the nature of the proposal.

3. The Site:

- 3.1 The application site is situated to the east of Birling Road in Leybourne and sited to the north of the residential properties on London Road (A20). It is approximately 90 metres north of the junction of Birling Road with London Road.

This junction has “No Entry” signs preventing access into Birling Road from London Road, and only provides egress onto London Road.

- 3.2 The site has direct access onto Birling Road, with a gated entrance set back from the road and a hardstanding. The site is fenced at the entrance, with limited views of the site from the public highway.
- 3.3 The site is outside any settlement confines and within the countryside but its southern boundary immediately abuts the defined built-up confines of the urban area. It lies in the Metropolitan Green Belt (MGB).
- 3.4 The site is not readily visible from the surrounding area because of the extensive vegetation surrounding it. It is largely grassed land with some additional planting and landscaping on the site. The touring caravan is sited adjacent to the fenced entrance, to the south. The hardstanding continues onto the site and opposite the entrance is the converted stable block, associated landscaping and garden area.
- 3.5 The well established converted stable block has shiplap boarded elevations which are stained black and a tiled roof. This building is used as ancillary living accommodation. It comprises a kitchen and living area and a separate room, which is largely for the storage of clothes and would appear to be used as a dressing area. There is also a separate bathroom and one stable box.
- 3.6 The site is situated alongside the Leybourne stream which runs along the southern boundary of the site. This is between the application site and the residential properties to the south. It is at a lower level than the surrounding land, touring caravan and converted stable building.
- 3.7 There are a number of other structures and outbuildings on the site which are used for the storage of materials/equipment or animals.

4. Planning History:

TM/08/03144/FL Approved 11 December 2008

Removal of existing timber stable/shed buildings. Replace with new stable/storeroom

TM/08/03699/RD Approved 9 February 2009

Details of materials and storage/disposal of manure and stable waste submitted pursuant to conditions 2 and 4 of planning permission TM/08/03144/FL: Removal of existing timber stable/shed buildings. Replace with new stable/storeroom

TM/09/01697/FL Approved 10 August 2009

Erection of a replacement lean-to tractor shed attached to existing stable building

TM/10/01717/FL Application Withdrawn 7 September 2011

Retrospective application for the stationing of touring caravan for residential occupation and conversion and use of stable block as ancillary living accommodation

TM/11/01927/FL Approved 22 August 2011

Retrospective Application for the stationing of caravan for residential occupation and conversion and use of stables for ancillary living accommodation

TM/11/02373/RD Approved 29 September 2011

Details submitted pursuant to condition 2 (scheme for removal and reinstatement) and condition 8 (external lighting) for planning permission TM/11/01927/FL for retrospective application for the stationing of caravan for residential occupation and conversion and use of stables for ancillary living accommodation

5. Consultees:

- 5.1 PC: Object – inappropriate development on greenbelt land.
- 5.2 KCC Highways: No objection.
- 5.3 Environment Agency: No objections.
- 5.4 Private Reps: 12/0S/0X/1R + Departure Site and Press Notices. One response has been received. Objections have been raised in respect of where the family sleeps and the fact that the ancillary living accommodation/day room has all the facilities you would expect in any normal family home.

6. Determining Issues:

- 6.1 This application is seeking a permanent planning permission to follow on from the temporary planning permission given in 2011 and in light of some recent appeal decisions cited by the applicant.
- 6.2 Since the last temporary planning permission was granted a number of significant changes have occurred in respect of the context in which applications such as this must be considered. Key considerations in the determination of this application are:
 - The TMBC Core Strategy (2007)
 - The National Planning Policy Framework (NPPF) (2012)
 - Planning Policy for Traveller Sites (PPTS) (2012)

- An up to date Tonbridge and Malling Gypsy and Traveller Accommodation Assessment (GTAA) (April 2013).
- The deletion, by Government, of the South East Plan (SEP) from the overall planning framework.

- 6.3 The 2013 GTAA is the most up-to-date assessment of need for Gypsy and Traveller accommodation conducted by the Borough Council and is relevant to the determination of applications of this nature. It supersedes an earlier study that was the context for the temporary permission. With the exception of the Core Strategy the documents mentioned above have all been published since the temporary 3 year planning permission was issued on this site.
- 6.4 The combination of these documents forms the policy context for decision making and if there is any conflict between the Core Strategy and NPPF/PPTS then the latter documents prevail. In fact, the PPTS introduces *additional* factors in respect of Gypsy and Traveller accommodation over and above the policy considerations set out in the Core Strategy.
- 6.5 Councils are required to demonstrate both a range and diversity of sites for Gypsies and Travellers, including public and private sites and for varying scales of provision and must also demonstrate a 5 year supply of such sites. To do this the Council must create a forward planning document allocating sites and the GTAA 2103 is the first (evidence gathering) stage on that process which will form part of the wider process towards a new Local Plan. In addition, since the temporary permission was granted, planning permission has been granted for an extension to the Coldharbour Gypsy and Traveller site and the additional pitches will be available later this year. Interviews for potential occupants are to commence soon in the light of the County Council's recent adoption of a local lettings plan for this site, which sits alongside the more generic allocations policy. The local lettings plan is intended to reflect the need to make the pitches available for those who currently have an established local connection, and who are currently occupying a site in the Borough, but no security that their site will be found acceptable in the long term in the context of planning policy.
- 6.6 Recently, two appeal decisions have been made, both granting permission for Gypsy and Traveller sites in the Borough, at Old Orchard, Rochester Road, Aylesford and Land at Orchard Farm, Well Street, East Malling. However, both these decisions were issued before the publication of GTAA 2013 and the local lettings arrangements for Coldharbour. The context of these decisions and their relevance to this case is borne out of the facts of the case and the timing of the decisions. The Inspectors, in those two cases, were not wholly satisfied that the provision of new supply solely on a public site at Coldharbour meets the tests for variety of provision in PPTS and at that time did not have the comfort of the lettings details now available. In both cases the relevant Inspector found specific local factors that militated in favour of the *particular* case. In the first case, there

was a pre-existing caravan at the site and also two stable blocks, a utility building and a sand school which formed part of the assessment of impact on the countryside. In the latter case, the applicant's farrier business requirements were relevant to deciding that Coldharbour was not considered to be an appropriate alternative to the East Malling site. So neither case turned purely and simply on policy considerations and/or the availability of pitches at Coldharbour.

- 6.7 In respect of Gypsy and Traveller site provision, Development Plan Policy CP20 of the TMBCS is the Council's main policy and states that provision will be made (either through the LDF process or through specific planning permissions) for the number of plots specified in the SEP on sites that meet certain criteria, as set out in the policy. As explained above, SEP is no longer relevant and PPTS requires further processes to be satisfied before a new Local Plan can be considered on this type of development with the number of plots being now informed by GTAA 2013. One of CP20 policy requirements is that permission should only be granted where there is an identified need that cannot reasonably be met on an existing or planned site. Other requirements are that residential or rural amenity should not be prejudiced as a result of visual intrusion or other factors and that the site respects the scale of, and does not dominate, the nearest settled community.
- 6.8 There are two KCC-managed Gypsy and Traveller sites in the Borough, one at Coldharbour, Aylesford that is being expanded and another longstanding site at West Malling. The 2013 GTAA identified that there was a need for between 18-22 additional pitches for the period up to 2017. This figure could be met by the approved additional 18 pitches at Coldharbour which are under construction and 4 further, additional plots. In the event, the two allowed appeals mentioned above have reduced this latter residual need. The additional Coldharbour provision must be seen in the context of the 2012 PPTS, as cited by Inspectors, and because of the terms of PPTS cannot be said to be suitable as the *only* form of provision to meet the need for accommodation for local travellers. The requirements of 2012 PPTS post date the commitment made by KCC and TMBC to extend Coldharbour to cover the unmet need for traveller accommodation that had been identified in the GTAA that predated the 2013 review.
- 6.9 Both Inspectors interpreted that 'identified need' should include a choice of tenure, affordability and the needs of those who do not wish to live on public gypsy sites as holding significant weight. Additionally, the Coldharbour site would not allow the keeping of animals and horses or space for the storage of equipment related to the business uses.
- 6.10 Given all the changes in context that have occurred since the temporary planning permission was granted on this site, it is necessary to consider the merits of this particular site, its location within the MGB and whether there is a case of very special circumstances to justify allowing such a development.

- 6.11 The application site is situated in the countryside which needs to be protected in accordance with paragraphs 17 and 55 of the NPPF and policy CP14 of the TMBCS. It also lies within the MGB where, in accordance with paragraphs 88 & 89 of NPPF, there is a presumption against inappropriate development. The PPTS states that Gypsy and Traveller sites in the Green Belt constitute inappropriate development, as defined the NPPF and as such proposals need to comply with the provisions of the NPPF and alternatives should be explored before Green Belt locations are considered. In addition, policy CP14 of the TMBCS outlines those types of development that are appropriate in rural locations. This proposal does not fall into any of these categories, unless it is considered that this type of development demands a rural location, and neither NPPF nor PPTS change this policy position.
- 6.12 There is a presumption against inappropriate development, as a matter of principle, and permission should not be given unless there is a case of very special circumstances that clearly outweighs any harm to the openness, character and visual amenities of the Green Belt and any other identified harm.
- 6.13 The applicants, Mr Paul Gower and Mrs Janette Gower, live on the site with their two daughters aged 19 and 15. The daughters attended Mascalls School in Paddock Wood and now have places at college and employment locally. Mr and Mrs Gower both travel across Kent and Sussex for work and the family are members of the Romany Guild and National Romany Rights Association. The Gypsy status of the applicants is not in dispute. It is stated that they wish to pursue a Gypsy lifestyle and wish to travel more once the children are settled. Although they have lived in “bricks and mortar” in the past, substantial evidence has been submitted to demonstrate that they cannot reasonably live in “bricks and mortar” as a permanent solution to their accommodation needs. In addition, there are also significant and valid health concerns in respect of one of the daughters and Mr Gower who suffers from, amongst other medical problems, claustrophobia. The information provided also demonstrates a local family link, with Mrs Gower’s parents living near Mereworth and her father needing specialist medical treatment and care, which Mrs Gower assists with regularly. There appears to be no-site specific case for the applicants to be on this particular site, other than its historic availability and affordability together with employment locally. The PPTS recognises that it is beneficial for Gypsies and Travellers to have a settled base, in terms of access to schools and health care provision. Additionally, Mr and Mrs Gower have said that they have been searching for alternative sites for some time and have contacted local estate agents and put adverts in the press. In this time only one site has been identified, that was outside the MGB, but in a rural location which was unaffordable. Therefore, in this particular case, the circumstances of the family and their needs could amount to a case of very special circumstances that outweighs the harm to the Green Belt.

- 6.14 It is also submitted by the applicant that the Coldharbour site would not provide the facilities that would be required for their daughter's health problems, would cause unnecessary stress for the family, particularly Mr Gower, who could become unnecessarily agitated in such an environment and would not provide the family with space for the storage of equipment in relation to Mr Gower's business and horse trading. In addition, it is submitted that the family would not be accepted by current occupants on Coldharbour. That, in itself, is not an issue that has been awarded any significant weight in the recent appeal decisions. The availability of space in connection with business activities has been afforded weight in those decisions, and the health issues are also relevant. In the circumstances of this particular case, therefore, it seems that a permanent permission could be justified as concerns and issues over occupation of the Coldharbour site could contribute to a case of very special circumstances.
- 6.15 In the two recent appeal cases the Inspectors have both given weight to the fact that, where there is no other identified *private* provision in the area for Gypsies and Travellers and there is no reasonable expectation that an allocated private site is likely to become available within the period, which meets the needs of the family, then significant weight needs to be given to an identified need for this site. It is necessary for the full assessment of this case to refer back to Policy CP20 and two of the criteria for site selection in terms of visual *and rural* amenities and the impact on the nearest settled community. The application site is situated on the edge of Leybourne and adjacent to the settlement boundary and the boundary of the MGB. It is therefore not an isolated or remote site, but rather is surrounded by other built development. In fact the southern limit of the site forms the edge of the built-up area as shown on the LDF Proposals Map. The site is also largely screened from most views, due to the topography and landscaping. Its impact on residential, visual and rural amenities is therefore limited. The site is also small in scale and has a limited impact on the nearest settled community of Leybourne. Its limited impact would therefore accord with the criteria in policy CP20 of the TMBCS and would also comply with policies CP1 of the TMBCS and SQ1 of the MDE DPD.
- 6.16 Moreover, there are a number of existing buildings on site including a stable block with a tiled roof and weather-boarded elevations. This has been there for some time, as enhanced and improved by replacement following a grant of planning permission in 2008. The retained stationing of one caravan on the site and some limited domestic paraphernalia cannot be said to dominate or have an intrusive visual impact on the rural locality or the wider openness and visual amenities of the MGB.
- 6.17 It is also the case, that the conversion of rural buildings to a residential use is acceptable in respect of Green Belt and rural development policies, in particular policies CP14 of the TMBCS and DC1 of the MDE DPD. Paragraphs 17, 55 and 90 of the NPPF actively encourage the re-use of existing buildings.

- 6.18 Bearing in mind the combined effect of all of the above factors I believe that, on balance, a permanent personal permission is acceptable *in these particular circumstances*, especially in light of the aspiration in PPTS to ensure a range of types of Gypsy and Traveller provision. I believe that the effect of these factors is such as to amount to a case of very special circumstances for allowing this development in the Green Belt.
- 6.19 The other issue that has been identified is the risk of flooding. The EA has raised no objection and concurs with the outcome of the originally submitted FRA, in that the site and caravan are unlikely to be at a high risk of flooding, due to a number of factors (and bearing in mind a known misalignment of the flood zone map in this location). The EA agrees with the results of the FRA that concluded that the risk of flooding to the caravan's location is overstated and the likelihood is that the caravan may be sited within Flood Zone 1. (A low probability of flooding, where all uses of land are appropriate.) For these reasons and as the EA has raised no objection to the proposed use of land, it is clear that the risk of the site flooding is limited and in fact would comply with paragraphs 100-104 of the NPPF and policy CP10 of the TMBCS.
- 6.20 Finally, the Equality Act 2010 and the Human Rights Act 1998 must be considered in the determination of this application and a Human Rights Interview has been carried out. It is considered that the restriction of any permission to a personal permission is appropriate and proportionate, having regard to the potential harm to the environment, the personal circumstances of the applicants and the submitted case of very special circumstances.
- 6.21 In conclusion, the proposed development is inappropriate development but the overall background of all factors to the case amounts to very special circumstances such as would allow the grant of permission on a personal and permanent basis for the Gower family.

7. Recommendation:

- 7.1 **Grant Planning Permission** in accordance with the Other PERSONAL CIRCUMSTANCES INFO dated 13.05.2013, Letter dated 08.05.2013, Design and Access Statement dated 08.05.2013, Planning Statement dated 08.05.2013, Supporting Statement dated 08.05.2013, Supporting Statement APPENDIX 1 dated 08.05.2013, Supporting Statement APPENDIX 2 dated 08.05.2013, Supporting Statement APPENDIX 3 dated 08.05.2013, Supporting Statement APPENDIX 4 dated 08.05.2013, Supporting Statement APPENDIX 5 dated 08.05.2013, Supporting Statement APPENDIX 6 dated 08.05.2013, Letter dated 08.05.2013, Historic Decision Notice dated 08.05.2013, Historic Decision Notice dated 08.05.2013, Existing Plans and Elevations dated 08.05.2013,

Elevations dated 08.05.2013, Block Plan dated 08.05.2013, Location Plan dated 08.05.2013 subject to:

Conditions:

- 1 The consent shall ensure only for the benefit of Mr Paul Gower and Mrs Janette Gower together with their dependents and it shall not enure for the benefit of the land or any other person or persons for the time being having an interest therein.

Reason: Planning permission would not normally be granted for such development in this locality without very special personal circumstances of the applicant being demonstrated and in accordance with policies CP20 of the Tonbridge and Malling Borough Core Strategy 2007 and paragraphs 17, 50, 55 and 89 of the National Planning Policy Framework 2012.

- 2 If the site ceases at any time to be occupied by Mr and Mrs P Gower together with any of their dependents all associated structures, materials and equipment shall be removed from the land in their entirety.

Reason: Planning permission would not normally be granted for such development in this locality without very special personal circumstances of the applicant being demonstrated and in accordance with policies CP20 of the Tonbridge and Malling Borough Core Strategy 2007 and paragraphs 17, 50, 55 and 89 of the National Planning Policy Framework 2012.

- 3 The touring caravan shall be sited in the location shown on Block Plan dated 08.05.13. Any material change to the position of the touring caravan, or its replacement by another touring caravan in a different location shall only take place following the prior written approval of the Local Planning Authority.

Reason: To comply with site license requirements and in the interests of the visual amenities and openness of the locality and in accordance with policies CP1 and CP20 of the Tonbridge and Malling Borough Core Strategy 2007, policy SQ1 of the Tonbridge and Malling Managing Development and the Environment Development Plan Document 2010 and paragraphs 17, 50, 55 and 89 of the National Planning Policy Framework 2012.

- 4 No commercial activities (including the storage of materials), shall take place on the land, other than the keeping and breeding of horses, including any storage of equine related materials, plant or equipment.

Reason: In the interests of the visual amenities and openness of the locality and in accordance with policies CP1 and CP20 of the Tonbridge and Malling Borough Core Strategy 2007, policy SQ1 of the Tonbridge and Malling Managing Development and the Environment Development Plan Document 2010 and paragraphs 17, 50, 55 and 89 of the National Planning Policy Framework 2012.

- 5 No commercial vehicles other than those connected with Mr Paul Gower's business shall be stationed, parked or stored on the site without the prior written approval of the Local Planning Authority.

Reason: In the interests of the visual amenities and openness of the locality and in accordance with policies CP1 and CP20 of the Tonbridge and Malling Borough Core Strategy 2007, policy SQ1 of the Tonbridge and Malling Managing Development and the Environment Development Plan Document 2010 and paragraphs 17, 50, 55 and 89 of the National Planning Policy Framework 2012.

- 6 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 development shall be carried out within Class A (gates, walls, fences), of Part 2 of Schedule 2 of that Order unless planning permission has been granted on an application relating thereto.

Reason: In the interests of the rural amenities of the locality and in accordance with policies CP1 and CP20 of the Tonbridge and Malling Borough Core Strategy 2007, policy SQ1 of the Tonbridge and Malling Managing Development and the Environment Development Plan Document 2010 and paragraphs 17, 50, 55 and 89 of the National Planning Policy Framework 2012.

- 7 The existing external lighting on the boundary and within the site shall be in accordance with that approved under TM/11/02373/RD and shall not be varied without the prior written approval of the Local Planning Authority.

Reason: In the interests of rural amenity and in accordance with policies CP1 and CP20 of the Tonbridge and Malling Borough Core Strategy 2007, policy SQ1 of the Tonbridge and Malling Managing Development and the Environment Development Plan Document 2010 and paragraphs 17, 50, 55, 89 and 125 of the National Planning Policy Framework 2012.

- 8 The ancillary residential accommodation shall be retained for the use identified on the floor plan dated 08.05.13 and shall not be used as residential sleeping accommodation nor used for commercial storage. Any variation to the layout or the proposed use of this building shall be submitted to and approved by the Local Planning Authority.

Reason: In the interests of rural amenity and the special circumstances of the applicant and his family requirements and in accordance with policies CP20 of the Tonbridge and Malling Borough Core Strategy 2007 and paragraphs 17, 50, 55 and 89 of the National Planning Policy Framework 2012.

Informatives:

- 1 Tonbridge and Malling BC operates a two wheeled bin and green box recycling refuse collection service from the boundary of the property. Bins/box should be stored within the boundary of the property and placed at the nearest point to the public highway on the relevant collection day.

Contact: Lucinda Green