

TONBRIDGE & MALLING BOROUGH COUNCIL



EXECUTIVE SERVICES

Chief Executive

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NB - This agenda contains proposals, recommendations and options. These do not represent Council policy or decisions until they have received proper consideration through the full decision making process.

Contact: Committee Services
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25 June 2019

To: MEMBERS OF THE AREA 2 PLANNING COMMITTEE
(Copies to all Members of the Council)

Dear Sir/Madam

Your attendance is requested at a meeting of the Area 2 Planning Committee to be held in the Civic Suite, Gibson Building, Kings Hill, West Malling on Wednesday, 3rd July, 2019 commencing at 7.30 pm. Deposited plans will be available for Members' inspection for half an hour before the start of the meeting.

Yours faithfully

JULIE BEILBY

Chief Executive

A G E N D A

PART 1 - PUBLIC

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To confirm as a correct record the Minutes of the meeting of Area 2 Planning Committee held on 29 May 2019

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7. Urgent Items

Any other items which the Chairman decides are urgent due to special circumstances and of which notice has been given to the Chief Executive.

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The Chairman to move that the press and public be excluded from the remainder of the meeting during consideration of any items the publication of which would disclose exempt information.

PART 2 - PRIVATE

9. Urgent Items

Any other items which the Chairman decides are urgent due to special circumstances and of which notice has been given to the Chief Executive.

MEMBERSHIP

Cllr H S Rogers (Chairman)
Cllr B J Luker (Vice-Chairman)

Cllr Mrs J A Anderson
Cllr R P Betts
Cllr C Brown
Cllr M A Coffin
Cllr S A Hudson
Cllr Mrs F A Kemp
Cllr Mrs C B Langridge
Cllr P J Montague

Cllr L J O'Toole
Cllr W E Palmer
Cllr J L Sergison
Cllr T B Shaw
Cllr N G Stapleton
Cllr K B Tanner
Cllr M Taylor

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TONBRIDGE AND MALLING BOROUGH COUNCIL

AREA 2 PLANNING COMMITTEE

Wednesday, 29th May, 2019

Present: Cllr H S Rogers (Chairman), Cllr B J Luker (Vice-Chairman), Cllr Mrs J A Anderson, Cllr R P Betts, Cllr C Brown, Cllr M A Coffin, Cllr S A Hudson, Cllr Mrs F A Kemp, Cllr Mrs C B Langridge, Cllr P J Montague, Cllr L J O'Toole, Cllr W E Palmer, Cllr Miss J L Sergison, Cllr T B Shaw, Cllr N G Stapleton, Cllr K B Tanner and Cllr M Taylor

Councillors N J Heslop, R V Roud, Mrs M Tatton and D Thornevell were also present pursuant to Council Procedure Rule No 15.21.

PART 1 - PUBLIC

AP2 19/21 DECLARATIONS OF INTEREST

There were no declarations of interest made in accordance with the Code of Conduct.

AP2 19/22 MINUTES

RESOLVED: That the Minutes of the meeting of the Area 2 Planning Committee held on 10 April 2019 be approved as a correct record and signed by the Chairman.

DECISIONS TAKEN UNDER DELEGATED POWERS IN ACCORDANCE WITH PART 3 OF THE CONSTITUTION (RESPONSIBILITY FOR COUNCIL FUNCTIONS)

AP2 19/23 DEVELOPMENT CONTROL

Decisions were taken on the following applications subject to the pre-requisites, informatives, conditions or reasons for refusal set out in the report of the Director of Planning, Housing and Environmental Health or in the variations indicated below. Any supplementary reports were tabled at the meeting.

Members of the public addressed the meeting where the required notice had been given and their comments were taken into account by the Committee when determining the application. Speakers are listed under the relevant planning application shown below.

**AP2 19/24 (A) TM/18/03030/OAEA (B) TM/18/03033/OAEA
(C) TM/18/03034/OAEA - DEVELOPMENT SITE BETWEEN
1 TOWER VIEW AND 35 KINGS HILL AVENUE, KINGS HILL**

Development site between 1 Tower View and 35 Kings Hill Avenue, Kings Hill:

- (A) Outline Application: Redevelopment to provide up to 70 Class C3 residential units, together with landscaping, open space and other associated works. All matters reserved for future approval except for access (Site 5.1)**

RESOLVED: That outline planning permission be REFUSED for the following reasons:

- (1) The development of the site for residential purposes and associated infrastructure, would result in a loss of designated employment land, for which there is no justification particularly in light of the identified need for such land across the Borough. The proposed development fails to safeguard the site for employment purposes and is therefore contrary to policy CP21 of the Tonbridge and Malling Borough Core Strategy 2007 and policy E1 of the Development Land Allocations DPD 2008 and paragraphs 80, 120 and 121 of the National Planning Policy Framework (2019).
 - (2) The introduction of new residential development in this location would be completely at odds with the prevailing and established built environment both in terms of prevalent land uses and visual appearance. The development would, therefore, appear as an entirely incongruous feature within the immediate locality which would be harmful to the amenities of the locality and demonstrably would not respect the site and its surroundings, protect, conserve or enhance local distinctiveness, be sympathetic to local character and history, or take any opportunities for improving the character and quality of the area and the way it functions. The development proposed is therefore contrary to the requirements of policy CP24 of the Tonbridge and Malling Borough Core Strategy (2007), policy SQ1 of the Tonbridge and Malling Borough Managing Development and the Environment DPD (2010) and paragraphs 127(c), 130, 180 and 182 of the National Planning Policy Framework (2019).
- (B) Outline Application: Redevelopment to provide up to 70 Class C3 residential units, together with landscaping, open space and other associated works. All matters reserved for future approval except for access (Site 5.6)**

RESOLVED: That outline planning permission be REFUSED for the following reasons:

- (1) The development of the site for residential purposes and associated infrastructure, would result in a loss of designated employment land, for which there is no justification particularly in light of the identified need for such land across the Borough. The proposed development fails to safeguard the site for employment purposes and is therefore contrary to policy CP21 of the Tonbridge and Malling Borough Core Strategy 2007 and policy E1 of the Development Land Allocations DPD 2008 and paragraphs 80, 120 and 121 of the National Planning Policy Framework (2019).
 - (2) The introduction of new residential development in this location would be completely at odds with the prevailing and established built environment both in terms of prevalent land uses and visual appearance. The development would, therefore, appear as an entirely incongruous feature within the immediate locality which would be harmful to the amenities of the locality and demonstrably would not respect the site and its surroundings, protect, conserve or enhance local distinctiveness, be sympathetic to local character and history, or take any opportunities for improving the character and quality of the area and the way it functions. The development proposed is therefore contrary to the requirements of policy CP24 of the Tonbridge and Malling Borough Core Strategy (2007), policy SQ1 of the Tonbridge and Malling Borough Managing Development and the Environment DPD (2010) and paragraphs 127(c), 130, 180 and 182 of the National Planning Policy Framework (2019).
- (A) Outline Application: Redevelopment to provide up to 210 Class C3 residential units, together with landscaping, open space and other associated works. All matters reserved for future approval except for access (site 5.2-5.3)**

RESOLVED: That outline planning permission be REFUSED for the following reasons:

- (1) The development of the site for residential purposes and associated infrastructure, would result in a loss of designated employment land, for which there is no justification particularly in light of the identified need for such land across the Borough. The proposed development fails to safeguard the site for employment purposes and is therefore contrary to policy CP21 of the Tonbridge and Malling Borough Core Strategy 2007 and policy E1 of the Development Land Allocations DPD 2008 and paragraphs 80, 120 and 121 of the National Planning Policy Framework (2019).
- (2) The introduction of new residential development in this location would be completely at odds with the prevailing and established built environment both in terms of prevalent land uses and visual

appearance. The development would, therefore, appear as an entirely incongruous feature within the immediate locality which would be harmful to the amenities of the locality and demonstrably would not respect the site and its surroundings, protect, conserve or enhance local distinctiveness, be sympathetic to local character and history, or take any opportunities for improving the character and quality of the area and the way it functions. The development proposed is therefore contrary to the requirements of policy CP24 of the Tonbridge and Malling Borough Core Strategy (2007), policy SQ1 of the Tonbridge and Malling Borough Managing Development and the Environment DPD (2010) and paragraphs 127(c), 130, 180 and 182 of the National Planning Policy Framework (2019).

[Speakers: Caroline Bridger – Kings Hill Parish Council and Andrew Blevins – applicant]

AP2 19/25 TM/18/02093/OA - FIELD AT CORNER OF LAVENDERS ROAD AND SWAN STREET, WEST MALLING

Outline Application: Development comprising up to 80 residential dwellings (including 40% affordable housing), open space, drainage, access and associated works, with all matters reserved except for access which is to be considered in detail at this stage - field at corner of Lavenders Road and Swan Street, West Malling.

RESOLVED: That the Secretary of State (through his Inspector) and the Appellant be advised that had the Local Planning Authority been in a position to determine the application at this time outline planning permission would have been REFUSED on the basis of, and having regard to, the following:

- (1) The Local Planning Authority considers that the Heritage Statement submitted in support of the proposed development continues to be inadequate in content and no recognised methodology has been adopted that would be demonstrably compliant with national policy and legislation meaning that it fails to meet the requirements set out at within the National Planning Policy Framework (2019) and the Historic England Good Practice Advice in Planning Note 3: Settings and Views' (GPA3).
- (2) The proposed residential development is of a scale and location that would give rise to a direct impact on the setting of designated heritage assets including listed buildings and the West Malling Conservation Area. Notwithstanding [1] above, the proposed development by virtue of the amount and type of development proposed, the location of the site and the resultant proximity and relationship to St Marys Abbey, other listed buildings within the vicinity and the West Malling Conservation Area, would cause less than substantial harm to these designated heritage assets which are

not outweighed by any public benefits that would be derived from the proposal in a manner required by the policies contained within the National Planning Policy Framework (2019). For these reasons, the proposed development also fails to meet the statutory duty provided for by the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990.

- (3) The proposed development by virtue of the overall number of units proposed, the resultant density, form, pattern and character that would subsequently arise would be entirely at odds with the prevailing character of the environment, which forms a key entrance to the historic town of West Malling, harmful to visual amenity and demonstrably would not respect the site and its surroundings, protect, conserve or enhance local distinctiveness, be sympathetic to local character and history, or take any opportunities for improving the character and quality of the area and the way it functions. The development proposed is therefore contrary to the requirements of policy CP24 of the Tonbridge and Malling Borough Core Strategy (2007), policy SQ1 of the Tonbridge and Malling Borough Managing Development and the Environment DPD (2010) and paragraphs 127(c) and 130 of the National Planning Policy Framework (2019).

AP2 19/26 TM/19/00001/TPO - FIELD AT CORNER OF LAVENDERS ROAD AND SWAN STREET, WEST MALLING

The report of the Director of Planning, Housing and Environmental Health advised that an objection had been made in response to a recent Tree Preservation Order (TPO) consultation. It was therefore necessary for the Local Planning Authority to consider any objections when deciding whether the Order should be confirmed.

After careful consideration of the determining issues, Members considered it necessary and appropriate in the circumstances to seek to protect the trees in question through confirmation of a TPO, subject to further confirmation of trees species cited in Groups 1 and 2 (set out in Annex 1 to the report).

RESOLVED: That the Tree Preservation Order as set out in Annex 1 to the report be REVIEWED and CONFIRMED following modification, subject to further confirmation of the tree species cited in Groups 1 and 2.

MATTERS FOR INFORMATION

AP2 19/27 SUMMARY OF PLANNING APPEALS

At the request of the Chairman, and for the benefit of newly elected Members, a brief verbal summary of the planning appeal process was provided. It was reported and noted that the recent number of successful

appeals demonstrated that the Borough Council had robust and sound procedures in place.

AP2 19/28 EXCLUSION OF PRESS AND PUBLIC

There were no items considered in private.

The meeting ended at 9.05 pm

TONBRIDGE & MALLING BOROUGH COUNCIL

AREA PLANNING COMMITTEES

Report of the Director of Planning, Housing & Environmental Health

Part I – Public

Section A – For Decision

DEVELOPMENT CONTROL

In accordance with the Local Government Access to Information Act 1985 and the Local Government Act 1972 (as amended), copies of background papers, including representations in respect of applications to be determined at the meeting, are available for inspection at Planning Services, Gibson Building, Gibson Drive, Kings Hill from 08.30 hrs until 17.00 hrs on the five working days which precede the date of this meeting.

Members are invited to inspect the full text of representations received prior to the commencement of the meeting.

Local residents' consultations and responses are set out in an abbreviated format meaning: *(number of letters despatched/number raising no objection (X)/raising objection (R)/in support (S))*.

All applications may be determined by this Committee unless (a) the decision would be in fundamental conflict with the plans and strategies which together comprise the Development Plan; or (b) in order to comply with Rule 15.24 of the Council and Committee Procedure Rules.

GLOSSARY of Abbreviations and Application types

used in reports to Area Planning Committees as at 23 September 2015

AAP	Area of Archaeological Potential
AODN	Above Ordnance Datum, Newlyn
AONB	Area of Outstanding Natural Beauty
APC1	Area 1 Planning Committee
APC2	Area 2 Planning Committee
APC3	Area 3 Planning Committee
ASC	Area of Special Character
BPN	Building Preservation Notice
BRE	Building Research Establishment
CA	Conservation Area
CPRE	Council for the Protection of Rural England
DEFRA	Department for the Environment, Food and Rural Affairs

DETR	Department of the Environment, Transport & the Regions
DCLG	Department for Communities and Local Government
DCMS	Department for Culture, the Media and Sport
DLADPD	Development Land Allocations Development Plan Document
DMPO	Development Management Procedure Order
DPD	Development Plan Document
DPHEH	Director of Planning, Housing & Environmental Health
DSSL	Director of Street Scene & Leisure
EA	Environment Agency
EH	English Heritage
EMCG	East Malling Conservation Group
FRA	Flood Risk Assessment
GDPO	Town & Country Planning (General Development Procedure) Order 2015
GPDO	Town & Country Planning (General Permitted Development) Order 2015
HA	Highways Agency
HSE	Health and Safety Executive
HMU	Highways Management Unit
KCC	Kent County Council
KCCVPS	Kent County Council Vehicle Parking Standards
KDD	Kent Design (KCC) (a document dealing with housing/road design)
KWT	Kent Wildlife Trust
LB	Listed Building (Grade I, II* or II)
LDF	Local Development Framework
LLFA	Lead Local Flood Authority
LMIDB	Lower Medway Internal Drainage Board
LPA	Local Planning Authority
LWS	Local Wildlife Site
MAFF	Ministry of Agriculture, Fisheries and Food
MBC	Maidstone Borough Council
MC	Medway Council (Medway Towns Unitary Authority)
MCA	Mineral Consultation Area
MDEDPD	Managing Development and the Environment Development Plan Document
MGB	Metropolitan Green Belt
MKWC	Mid Kent Water Company
MWLP	Minerals & Waste Local Plan
NE	Natural England
NPPF	National Planning Policy Framework
PC	Parish Council
PD	Permitted Development
POS	Public Open Space
PPG	Planning Policy Guidance
PROW	Public Right Of Way

SDC	Sevenoaks District Council
SEW	South East Water
SFRA	Strategic Flood Risk Assessment (prepared as background to the LDF)
SNCI	Site of Nature Conservation Interest
SPAB	Society for the Protection of Ancient Buildings
SPD	Supplementary Planning Document (a statutory policy document supplementary to the LDF)
SPN	Form of Statutory Public Notice
SSSI	Site of Special Scientific Interest
SWS	Southern Water Services
TC	Town Council
TCAAP	Tonbridge Town Centre Area Action Plan
TCS	Tonbridge Civic Society
TMBC	Tonbridge & Malling Borough Council
TMBCS	Tonbridge & Malling Borough Core Strategy (part of the Local Development Framework)
TMBLP	Tonbridge & Malling Borough Local Plan
TWBC	Tunbridge Wells Borough Council
UCO	Town and Country Planning Use Classes Order 1987 (as amended)
UMIDB	Upper Medway Internal Drainage Board
WLP	Waste Local Plan (KCC)
AGPN/AGN	Prior Notification: Agriculture
AT	Advertisement
CA	Conservation Area Consent (determined by Secretary of State if made by KCC or TMBC)
CAX	Conservation Area Consent: Extension of Time
CNA	Consultation by Neighbouring Authority
CR3	County Regulation 3 (KCC determined)
CR4	County Regulation 4
DEPN	Prior Notification: Demolition
DR3	District Regulation 3
DR4	District Regulation 4
EL	Electricity
ELB	Ecclesiastical Exemption Consultation (Listed Building)
ELEX	Overhead Lines (Exemptions)
FC	Felling Licence
FL	Full Application
FLX	Full Application: Extension of Time
FLEA	Full Application with Environmental Assessment
FOPN	Prior Notification: Forestry
GOV	Consultation on Government Development
HN	Hedgerow Removal Notice
HSC	Hazardous Substances Consent

LB	Listed Building Consent (determined by Secretary of State if made by KCC or TMBC)
LBX	Listed Building Consent: Extension of Time
LCA	Land Compensation Act - Certificate of Appropriate Alternative Development
LDE	Lawful Development Certificate: Existing Use or Development
LDP	Lawful Development Certificate: Proposed Use or Development
LRD	Listed Building Consent Reserved Details
MIN	Mineral Planning Application (KCC determined)
NMA	Non Material Amendment
OA	Outline Application
OAEA	Outline Application with Environment Assessment
OAX	Outline Application: Extension of Time
RD	Reserved Details
RM	Reserved Matters (redefined by Regulation from August 2006)
TEPN56/TEN	Prior Notification: Telecoms
TNCA	Notification: Trees in Conservation Areas
TPOC	Trees subject to TPO
TRD	Tree Consent Reserved Details
TWA	Transport & Works Act 1992 (determined by Secretary of State)
WAS	Waste Disposal Planning Application (KCC determined)
WG	Woodland Grant Scheme Application

Ightham

1 June 2018

TM/18/01240/FL

Wrotham, Ightham And
Stansted

Proposal:

Section 73 application for the variation of conditions 1 (time limited and personal condition), 2 (restore site when temporary consent expires) and 4 (number of caravans) pursuant to planning permission TM/11/01444/FL (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:

Woodford Old Lane Ightham Sevenoaks Kent TN15 9AH

Go to:

[Recommendation](#)

1. Description:

- 1.1 Temporary planning permission for the change of use of land to allow for residential occupation by a single family was granted at appeal under planning reference TM/11/01444/FL in July 2015.
- 1.2 Permission was granted on a temporary basis given the identified harm arising to the Green Belt as a result of the development, whilst recognising that appeal decisions around that time were making clear Inspectors were not satisfied that alternative sites for such use would become available in the short term for acceptable relocation.
- 1.3 This current application seeks the variation of a number of planning conditions imposed by the planning inspector at that time in order to allow for permanent residential occupation of the site. The conditions proposed to be varied, and the manner in which the variations are proposed, are summarised below:
- 1.4 Condition 1 allows for residential occupation of the site only for a period of seven years from 17 July 2011 (July 2018) and only by the applicants and their resident dependants. The variation sought in this respect is to allow for permanent residential occupation by this family but with the condition expanded to recognise the change in family circumstances to cite members of the family who are now adults within the limitations of the personal permission.
- 1.5 Condition 2 is linked to [1] above insofar that it requires restoration of the site to its former condition when the residential occupation of the site ceases. The submission indicates that this condition should be removed in the event that a permanent permission is granted.
- 1.6 Condition 4 of the planning permission states that no more than two caravans can be stationed on the site at any one time (of which no more than one can be a static caravan). The current application seeks to amend this to allow for a total of three

touring caravans, again in recognition of the changed circumstances of the family in occupation.

- 1.7 It is acknowledged that some time has elapsed since the submission of the current planning application and seeking to determine this application. It should however be made clear that this application was submitted in advance of the temporary period expiring. Determination has been held in abeyance pending the outcome of a number of key decisions from the Planning Inspectorate, High Court, and subsequently Court of Appeal, which would form material planning considerations and which needed to be considered within the context of this case. The Court proceedings in particular became rather protracted because of the number of parties involved (including intervention from the Equalities and Human Rights Commission) and satellite issues which had to be resolved before the Courts could make a determination. Those matters are still, to some extent, outstanding but in light of much more recent decisions by the planning inspectorate (which form important material considerations) there is now no imperative to await further outcomes for the purposes of progressing this application.
- 1.8 The recent decisions of the planning inspectorate required careful review and consideration in light of site specific circumstances and this has now been completed.
- 1.9 It is therefore now necessary to consider the planning application alongside the relevant planning policy framework, in light of the prevailing circumstances of the site and surrounding land and within this wider context. I refer to these as relevant throughout the assessment that follows:

2. Reason for reporting to Committee:

- 2.1 Given the planning history of the site.

3. The Site:

- 3.1 The site lies within the Metropolitan Green Belt, outside any defined village settlement confines and within designated countryside.

4. Planning History (relevant):

TM/11/01444/FL	Refuse; Allowed on appeal	31 May 2012 24 July 2015
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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

5. Consultees:

- 5.1 PC: Objects

5.2 Private Reps – 10 letters of objection. Objections raised on the following (summarised) grounds:

- Site should be restored to its original condition as it is AONB;
- No changes in circumstance that justify continued occupation of the site;
- Old Lane is a single track lane and any increase in traffic would be dangerous;
- Applicant has had ample time to make alternative arrangements;
- Family have been absent from the site for long periods of time;
- Noise and disturbance from dogs barking;
- Preference for continued occupation of the site should not mean it is allowed.

6. Determining Issues:

6.1 Since the Council and Planning Inspector last considered the use of this site, the planning policy framework has moved on significantly with the publication of the NPPF, NPPG and PPTS, replacing PPG2 and Circular 01/2006: Planning for Gypsy and Traveller Caravan Sites respectively. Most recently, the NPPF has been revised (February 2019) and it is on this basis that the current application must now be assessed.

6.2 Notwithstanding this, the main issues in the consideration of this case continue to relate to the principle of the development within the Green Belt, its impact upon openness, its impact upon the rural character of the locality more generally and the issues surrounding the provision and need of Traveller sites across the Borough. These matters form the basis of the assessment that follows.

Planning Policy for Traveller Sites (PPTS):

6.3 This forms part of the NPPF and should be read in conjunction with that document. PPTS makes clear that the policies set out in the NPPF will apply also to decision-taking for Traveller sites. In applying those provisions to Traveller sites, references in those provisions to policies in the NPPF should, where relevant, be read to include policies in the PPTS.

6.4 PPTS states that the government's overarching aim is to ensure fair and equal treatment for Travellers, in a way that facilitates their traditional and nomadic way of life while respecting the interests of the settled community, and gives guidance in respect of the use of evidence, plan-making and decision-taking. It sets out that 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;
- for local planning authorities to ensure that their Local Plan includes fair, realistic and inclusive policies;
- to increase the number of Traveller sites in appropriate locations with planning permission, to address under-provision and maintain an appropriate level of supply;
- to reduce tensions between settled and traveller communities in plan-making and planning decisions;
- to enable provision of suitable accommodation from which Travellers can access education, health, welfare and employment infrastructure;
- for local planning authorities to have due regard to the protection of local amenity and local environment.

6.5 Specific planning policies for Traveller sites, including sites within the Green Belt, are clearly set out within this document. The requirements set out in PPTS are considered in detail throughout this report.

Human Rights and Equalities Considerations:

- 6.6 A key matter in this type of application is the European Convention on Human Rights as applied by the Human Rights Act 1998 along with the Council's requirement to act in accordance with the Equality Act 2010.
- 6.7 In terms of Equalities legislation, Gypsies and Travellers have a protected status that must be considered in all decisions made by Public Authorities. The Council needs to coherently apply the PPTS, as described above, which itself has been subject to Equality Impact Assessment (EqIA) by the Government. Specifically, the Council in the exercise of its statutory functions (in this case the determination of

planning applications) has a clear duty to have due regard to particular needs and lifestyles when making decisions.

6.8 The Public Sector Equality Duty is set out at Section 149 of the Equality Act 2010. It imposes a duty on all public authorities that they must, in the exercise of their functions, have due regard to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

6.9 This is a duty that applies to Local Planning Authorities, the Planning Inspectorate and the Secretary of State. The key point is that whilst the duty is not a lone justification to grant planning permission or to not take enforcement action, decision makers must have regard to it when considering Traveller cases.

6.10 For example, it is necessary for consideration to be given as to whether refusing planning permission (which could potentially mean that the applicants would have to resort to roadside encampments) would be an action which would “foster good relations” between the settled community and Travellers. This is a matter to which the Planning Committee must give due regard in the consideration of this case, and one that the Planning Inspectorate will have regard to in determining any subsequent appeal lodged in the event that planning permission is refused and enforcement action reinstated.

Impact on the Green Belt:

6.11 The site lies within the Metropolitan Green Belt where the NPPF affords strict control to development stating that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Policy CP3 of the TMBCS sets out that national Green Belt policy will apply.

6.12 Paragraph 143 inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 144 goes on to state that when considering any planning application, 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 resulting from the proposal, is clearly outweighed by other considerations.

- 6.13 Paragraphs 145 and 146 set out the exceptions to inappropriate development within the Green Belt, including at paragraph 146 (e) material changes in the use of land provided that they preserve its openness and do not conflict with the purposes of including land within it. It is this exception that requires consideration within the context of this application because the development in question amounts to a material change of use in the land rather than built or operational development.
- 6.14 Paragraph 134 sets out the five purposes of including land within the Green Belt as being:
- a) to check the unrestricted sprawl of large built-up areas;
 - b) to prevent neighbouring towns merging into one another;
 - c) to assist in safeguarding the countryside from encroachment;
 - d) to preserve the setting and special character of historic towns; and
 - e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.
- 6.15 Policy E of the PPTS states that Traveller sites (temporary or permanent) in the Green Belt are inappropriate development; such development is harmful to the Green Belt and should not be approved except in very special circumstances. In July 2013, in a Ministerial Statement, the Secretary of State made clear he considered that the single issue of unmet need, whether for Traveller sites or for conventional housing, is unlikely to outweigh harm to the Green Belt, and other harm, such as to constitute the very special circumstances justifying inappropriate development in the Green Belt. A further written Ministerial Statement in January 2014 re-emphasised this point. Policy CP20 of the TMBCS also states that there is a presumption against Traveller sites in the Green Belt unless there are very special circumstances, although this now is broadly out of date given the conflict that exists with the NPPF.
- 6.16 I am of the view that the development still constitutes inappropriate development within the Green Belt, given that the structures in situ to some degree materially affect openness in both visual and spatial terms, and represent a form of physical encroachment into the countryside. As such, very special circumstances are still required which outweigh the degree of harm caused to the Green Belt.
- 6.17 However, it is necessary to have regard to what the previous inspector said in respect of actual harm to the openness of the Green Belt given the particular characteristics of the development and the site circumstances, which is set out as follows:
- The development has encroached into the countryside and consequently conflicts with one of the purposes of the Green Belt. The extent of encroachment is limited, which reduces the amount of actual harm. There is no conflict with the other remaining four purposes of the Green Belt.*

In summary, the primary source of harm is through the inappropriateness of the change of use of the land. The actual loss of openness and the encroachment increases that harm to a small degree.

6.18 Having established this, it is also necessary to consider whether the development causes any other harm, which includes any other harm to the Green Belt itself, along with any other harm that is relevant for planning purposes. In this respect, in terms of Green Belt impact, the structures on site are small in scale and extent and, whilst they have a presence within the Green Belt which in my view affects openness, this impact is very limited on the ground. This harm must as a matter of policy be given “great weight”, but whilst this limited physical impact is not – as a matter of law – capable of amounting to a very special circumstance outweighing the definitional harm identified it does however limit the degree of harm arising on the whole.

Impact on the countryside:

6.19 Policy CP14 of the TMBCS restricts development within the countryside to certain types. In the broadest of terms, the continued residential occupation of this site would not fall within any of the exceptions sited and as a result there is conflict with policy CP14.

6.20 Elsewhere across the Borough, with the restrictions set out in CP14 in mind, developments within the countryside (irrespective of whether they also lie within the Green Belt) have met with refusal of planning permission on grounds of principle i.e. they do not meet one of the types of development set out in the policy in the same way as identified in this application. However, I am mindful that recent appeal decisions indicate that Planning Inspectors are allowing appeals for development within the countryside on wider considerations involving locational characteristics, regardless of those restrictions. These appeal decisions are important material planning considerations and regard must be had to them in the assessment of this case. This means that we must carefully consider the site specific characteristics of any such schemes rather than immediately concluding that CP14 does not allow for such development to take place and issuing a blanket embargo against anything that does not strictly adhere to the restrictions contained within it. Effectively, for determining this planning application, policy CP14 must be considered to be out of date.

6.21 Notwithstanding this position, a core principle of the NPPF is that planning should recognise the intrinsic beauty and character of the countryside. Policy CP20 of the TMBCS requires consideration of the visual effect of the development on the character and appearance of its surroundings and rural amenity.

6.22 More generally, policies CP1 and CP24 of the TMBCS and policy SQ1 of the MDE DPD require all development to be well designed, of a high quality, appropriately respecting the site and its surroundings.

6.23 In these respects, the determining inspector previously noted in particular:

The site is tucked away off Old Lane, a narrow sunken land enclosed by hedgerows and earth banks. The layout of the caravan site responds to the physical features of the land. The mobile home and domestic spaces are on the lower part of the land and are effectively screened by boundary hedgerows and trees. The mobile home as a dwelling type is compatible with the diversity of building forms in the surrounding area.

6.24 He goes on to state:

The visual impact of the site is limited by the topography, well-established vegetation and the position of the site “off the beaten track”.

In conclusion, the development does not cause visual intrusion and detracts little from the character and appearance of the surrounding area. In this respect the development does not prejudice rural amenity.

6.25 Whilst I note that this submission proposes the inclusion of additional touring caravans on the site, a suitably worded condition can control their siting to ensure it is visually appropriate.

6.26 For the reasons given above concerning the character and appearance of the site, I am satisfied that the requirements of the relevant policies are met and there would be no harm to the rural character or appearance of the countryside.

Residential amenity:

6.27 Crucially, there were no grounds to resist the development on grounds of impact to residential amenity at the time it was last considered and no such issues were found to be determinative by the inspector in granting a temporary planning permission in 2015. I do not consider that the introduction of additional touring caravans to serve the family would alter this position.

6.28 I do note that representations have indicated disturbance arising from barking dogs but this is not material to the consideration of this application. In such instances, complaints should be properly directed to the Environmental Protection Team to allow for separate investigations to take place as to whether a nuisance is occurring.

Other material considerations:

Meeting need:

6.29 The most recent inspector’s decision concerns a site known as “The Spinney”, Wrotham where permanent planning permission has been allowed on appeal. This site is also within the Green Belt. In respect of need, the determining inspector set out as follows:

The Council is unable to demonstrate a 5 year supply of traveller sites as sought in paragraph 10 of Planning Policy for Traveller Sites, and the evidence is that the site would provide affordable housing for the appellant. There is emerging policy that seeks to address this matter, but Green Belt land may well be required, and the outcome of that process is some way off. This is a consideration of significant weight.

As set out in paragraph 24 of Planning Policy for Traveller Sites, subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances. However, 'unlikely' should not be read to mean that these considerations will never clearly outweigh the harm, and any decision must take account of the actual weight afforded both the harm and the other considerations. A determination of weight is for the Decision taker.

- 6.30 This, and other previous appeal decisions, indicate clearly that the correct mechanism for delivery of sites is therefore through the new Local Plan. The planned system is the means of achieving sustainable development in Traveller site provision and PPTS provides a framework for plan-making in this respect. The determining inspector in the case of The Spinney set out that:

There is emerging Policy LP37 in the Tonbridge & Malling Local Plan which lists sites that are to be safeguarded for the provision of accommodation for travellers that meet the definition in Planning Policy for Traveller Sites, of which one, Orchard Place is agreed to be within the Green Belt, and redevelopment or expansion of those listed sites will only be permitted if all of 7 criteria are met. The Policy ends with the statement that development of sites will not be permitted in the Green Belt unless very special circumstances can be demonstrated and there is compliance with other policies in the Local Plan. Limited weight attaches to this emerging policy as it has not yet been examined.

- 6.31 In a more recent appeal decision (Aylesford Lakes), issued after the submission of the Local Plan to the Planning Inspectorate, the Inspector there noted that the emerging plan was still (due to the number of unresolved objections) insufficiently advanced to be afforded more than limited weight.
- 6.32 In light of these observations it is clear that, for the current application, the issue of unmet need and supply of sites must be considered primarily in the context of the current supply situation as it stands, rather than seeking to rely upon the emerging policies to remedy the lack of supply in the future.
- 6.33 I note that representations reference that the applicants have not sought to find an alternative site during the temporary period allowed by the inspector. However, it was clear that the inspector granted a temporary permission in this instance to allow for the progression of the local plan, which on the evidence available at that time indicated likely adoption in 2017.

6.34 Furthermore, inspectors have repeatedly set out that the public site at Coldharbour cannot be relied upon to meet need and that small private sites such as this have a clear part to play in meeting identified need.

6.35 With these factors collectively in mind and given that this site contributes towards meeting an identified need for such accommodation within the Borough, this is capable of amounting to a very special circumstance outweighing the harm identified. Furthermore, whilst only limited weight can be attributed to draft policy LP37, it is worth noting that allowing for the limited expansion of this site to accommodate the family in fact properly aligns with the broad principles adopted in drafting that policy as a way of addressing the needs of the Borough.

Personal Circumstances:

6.36 Since the application was submitted, officers have conducted an Equalities Assessment to establish the particular circumstances of the family in occupation. This has confirmed that there are children of school age living on the site who attend local schools.

6.37 As a matter of law, there is a requirement for decision makers to treat the best interests of any children affected by a decision to grant/refuse planning permission or to issue/uphold an enforcement notice as 'a primary consideration'. The requirement comes from Article 3(1) of the *UN Convention on the Rights of the Child* (UNCRC) and is considered by the European Court of Human Rights to be integral to the consideration of Article 8 rights in any case where a decision of a public body will affect children.

6.38 Insofar as planning decisions are concerned, the best interests of the children are discussed in the case of *Stevens v Guildford Borough Council* [2013] EWHC 792 (Admin) which related to stationing of the caravans on the site as a single family site. The Judgement acknowledges that the Courts have long recognised that town and country planning involves acute, complex and interrelated social, economic and environmental implications, requiring judgements of fact and degree. The *Stevens* Judgement states that once identified, although a primary consideration, the best interests of the child are not determinative of the planning issue. The Judgement recognises that most planning cases will have too many competing rights and interests, and will be too factually complex, to allow such an exercise.

6.39 However, it equally recognises that no other single consideration must be regarded as more important or given greater weight than the best interests of any child, merely by virtue of its inherent nature apart from the context of the individual case. Further, the best interests of any child must be kept at the forefront of the decision-maker's mind as he examines all material considerations and performs the exercise of planning judgment on the basis of them; and, when considering any decision he might make (and, of course, the eventual decision he does make), he needs to assess whether the adverse impact of such a decision on the interests of the child is proportionate.

6.40 What is clear in these respects is that the children's best interests and the other factors weighted in favour of the grant of planning permission in any given case have the potential to be outweighed by the harm that could be caused by such a grant of permission; the key point being that those best interests are not necessarily determinative and could properly be found to be outweighed by the identified harm. In this case, my view is that the interests of the children residing on site would be best served in them remaining on site, in permanent accommodation, where they will have the greatest ability to access education and healthcare.

Very special circumstances:

6.41 With the above assessment in mind, it is necessary to establish whether very special circumstances exist which outweigh the identified harm to an extent to justify the grant of planning permission. The NPPF states that 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. This requirement sets a very high threshold.

6.42 Notwithstanding this policy position, the most recent appeal decision (The Spinney) granted a permanent planning permission for a Traveller site within the Green Belt with the very special circumstances being unmet need and personal circumstances. This is reflective of all earlier decisions by the Planning Inspectorate too where inspectors have habitually granted temporary planning permissions with the justification in mind that the new local plan would positively allocate sites in order to meet the Borough's identified need for pitches (often described in their decision letters as being a lack of suitable alternative accommodation). They were, in effect, giving the Council time to forward plan for such need. The draft local plan policy (LP37) goes further than the current adopted policy (CP20) insofar that it seeks to safeguard existing authorised sites across the Borough but does not allocate new sites in order to meet our identified need as inspectors have continually anticipated it would in making their decisions to date.

6.43 This is important for us because the PPTS sets out that whilst matters of unmet need and personal circumstances are *unlikely* to outweigh harm to the Green Belt as to establish very special circumstances, there are cases where this will be the case. Indeed, in the absence of a policy which seeks to address unmet need, inspectors in every instance have concluded that the lack of available suitable alternative sites amounts to very special circumstances. The rationale behind this in every case being that the grant of temporary permissions would afford us time to satisfactorily meet our need through the local plan coming forward. The draft plan does not do this in a manner perhaps anticipated by those inspectors, notwithstanding the fact that there is a justification for this approach which will be for the examining inspector to address in due course. There remains an identified need (albeit relatively small) through our own evidence base and alternatives are not coming forward through the local plan process.

Temporary planning permission:

- 6.44 The applicant has set out that in the event a permanent permission is not forthcoming, they would ask for a further temporary permission for a period of 4 years.
- 6.45 Guidance states that a temporary planning permission *may* be appropriate where it is expected that planning circumstances will change in a particular way at the end of the period. More specifically, PPTS emphasises the importance of positive planning to manage development and sets clear objectives to increase the number of authorised Traveller sites in appropriate locations to address under-provision and maintain an appropriate level of supply.
- 6.46 The planning practice guidance sets out that under section 72 of the Town and Country Planning Act 1990 the local planning authority may grant planning permission for a specified temporary period only. Circumstances where a temporary permission may be appropriate include where a trial run is needed in order to assess the effect of the development on the area or where it is expected that the planning circumstances will change in a particular way at the end of that period. The guidance makes clear that it will rarely be justifiable to grant a second temporary permission – further permissions should normally be granted permanently or refused if there is clear justification for doing so.
- 6.47 In light of this guidance, and the preceding assessment that has taken place, I do not consider that it would be necessary or indeed justified to grant a further temporary planning permission in this instance. There are very special circumstances present which are supported by very recent and consistent approaches by the Planning Inspectorate that indicate a permanent permission should be granted here.

Conclusion:

- 6.48 I therefore conclude that these factors combined along with the best interests of the children living on the site is sufficient to amount to a case of very special circumstances outweighing the harm to the Green Belt by reason of inappropriateness. Permanent permission within the terms as set out by the submission, allowing for the additional named occupants and additional touring caravans (subject to approval of their precise location) should be granted. Rather than removing condition 2 as previously imposed, this should be varied to set out that in the event that residential occupation does cease for some reason in the future, the land would be restored to its former condition.
- 6.49 As such, the following recommendation is put forward:

7. Recommendation:

- 7.1 **Grant planning permission** in accordance with the following submitted details: Supporting Statement Redacted dated 23.08.2018, Location Plan dated 29.05.2018, Statement Renewal 2018 dated 29.05.2018, subject to the following conditions:

Conditions:

- 1 The residential use hereby permitted shall be carried on only by [REDACTED] and their resident dependants.

Reason: In order to preserve the open function and nature of the Green Belt and in the interests of amenity.

- 2 In the event that the site ceases to be occupied by those named in Condition 1) above, the use hereby permitted shall cease and all caravans and associated buildings or structures brought on to the land, or works undertaken to it in connection with the use, shall be removed and the land restored to its condition before the development took place.

Reason: In order to preserve the open function and nature of the Green Belt and in the interests of amenity.

- 3 No more than four caravans (of which no more than 1 shall be a static caravan) as defined by the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, shall be stationed on the site at any one time and no further caravans shall be placed at any time anywhere within the site.

Reason: In order to preserve the open function and nature of the Green Belt and in the interests of amenity.

- 4 Prior to the installation of any means of foul or surface water disposal system, a scheme shall be submitted to the Local Planning Authority for approval. The approved scheme shall be implemented within two months of the date of the approval.

Reason: In order to prevent pollution of controlled waters.

- 5 No external lighting shall be erected within the site without the prior written approval of the Local Planning Authority.

Reason: In the interests of rural and visual amenity

- 6 The existing screen hedging shown on the approved plan shall be retained at a minimum height of 2.5m.

Reason: Pursuant to Section 197 of the Town and Country Planning Act 1990 and to protect the appearance and character of the site and locality.

- 7 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any re-enactment thereof, no fences, walls, gates or other means of enclosure shall be erected within any part of the application site.

Reason: In order to preserve the open function and nature of the Green Belt and in the interests of amenity

- 8 Prior to the stationing of any more than one touring caravan on this site as hereby approved, details of the layout of the site detailing the siting of the caravans shall be submitted to and approved by the Local Planning Authority. The development shall thereafter be undertaken in accordance with the approved details.

Reason: In order to preserve the open function and nature of the Green Belt and in the interests of amenity

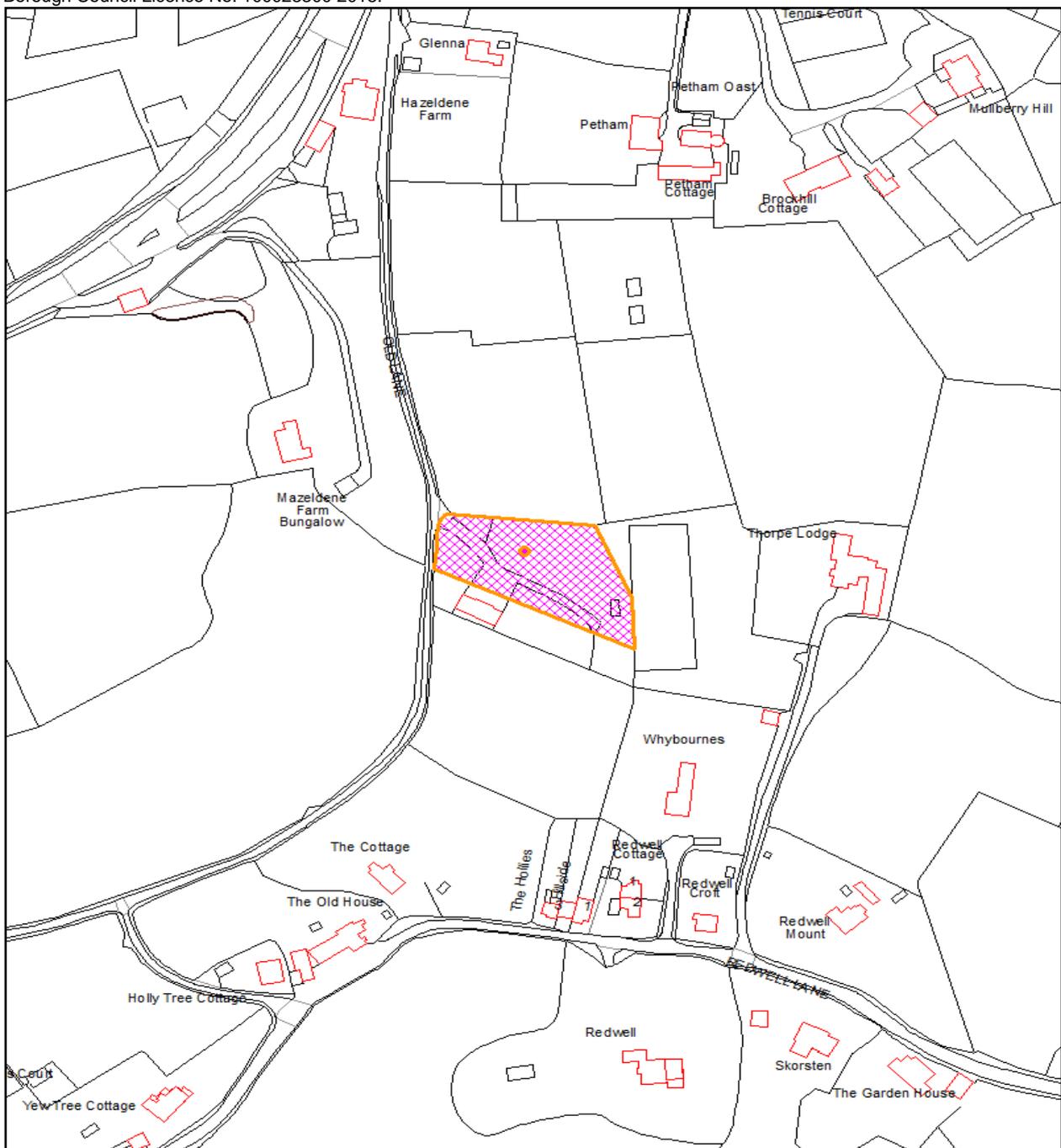
Contact: Emma Keefe

TM/18/01240/FL

Woodford Old Lane Ightham Sevenoaks Kent TN15 9AH

Section 73 application for the variation of conditions 1 (time limited and personal condition), 2 (restore site when temporary consent expires) and 4 (number of caravans) pursuant to planning permission TM/11/01444/FL (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)

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Platt
Borough Green And
Long Mill

12 February 2019

TM/19/00326/FL

Proposal: Demolish existing dwelling and erection of replacement dwelling and detached studio
Location: Bonhill Cottage Basted Lane Crouch Sevenoaks Kent TN15 8PZ
Go to: [Recommendation](#)

1. Description:

- 1.1 Planning permission is sought for the demolition of the existing dwelling known as Bonhill Cottage and the erection of a replacement dwelling and detached studio, along with associated parking and landscaping.
- 1.2 The proposed dwelling is to be set out over two floors with further accommodation in the loft space. The design has a mix of gables and hipped roofs with tile hanging and face brick work. The proposed dwelling would sit in a generous landscaped plot with parking provided in the integral garage and on the front driveway. Two spaces are proposed in the integral garage but the drive is wide and could accommodate a number of additional cars.

2. Reason for reporting to Committee:

- 2.1 At the request of Councillor Taylor and Councillor Palmer in order to consider whether the proposal represents:
 1. Overdevelopment of a rural site
 2. Poor design out of keeping with the local area
 3. Although not listed, the existing building is a significant piece of local heritage
 4. Lack of any landscaping to address the damage that recent indiscriminate tree clearance has had on the site and the surrounding area.

3. The Site:

- 3.1 The site is a detached two storey cottage and garden, located within the settlement confines of Crouch. It is dated to 1864, and was built as an estate workers' cottage associated with Winfield House (listed Grade II). The quality of the exterior materials and craftsmanship is worthy of note, in particular the galetted joints of the stonework and the use of smooth-faced gault brick detailing (now largely painted). In other aspects the building is curious: the tall proportions, old-fashioned styling, the almost identical symmetrical front and rear elevations, and a floor plan which requires each of the main rooms to have two doors for convenient

circulation. This unusual but slightly awkward architecture suggests that the design was perhaps the work of a builder, not a professional architect. Not unsurprisingly for an estate cottage, greater effort has gone into the exterior styling of the building than the interior fit-out. What remains of the original fittings, most obviously the doors and some skirting, indicates that the interior was always modest. The building has undergone a number of alterations, including two extensions. That to the north has a lesser impact than that to the east, which is on the front of the building and has required the loss of one of the window openings and the repositioning of the front door. Internally there has been the loss of fireplaces and some joinery. There will almost certainly have been losses of other fittings too, but these can only be speculated.

4. Planning History (relevant):

TM/56/10591/OLD grant with conditions 20 September 1956

Garage to 'Barnhill Cottage'.

TM/59/10564/OLD grant with conditions 22 December 1959

Garages.

5. Consultees:

5.1 PC: Objects strongly to this application on the following grounds.

5.1.1 The Council feel it is very important that an archaeological survey is undertaken as the existing dwelling is described as a non-designated heritage asset. The ragstone from the old building should be recycled, not just as a token gesture on the studio. It is important to retain as much as possible of the old building and local materials. Crouch is a hamlet and is fast becoming an area of modern houses out of keeping with the location and history of Crouch. See Head of Planning's advice notes 5.2 and 5.4.

5.1.2 The house is massive, the main bedroom is 16 1/2 ' x 20' and the kitchen 32 ft long! The current cottage is 80 sq m footprint and it looks as if the studio is more than 80 sq m. However, the size of the footprint of the new house is not shown anywhere on the plans. Is there a reason for this?

5.1.3 The use of red tiles on the main building and slate on the studio looks very strange. The west and east elevations are not aesthetically appealing and highlights the clumsy design whereas the existing property has a number of attractive character features. The gable with the tall window (landing) gallery also has two sky lights. The Parish Council question why this is necessary when there is a glass wall. It is also questioned why it is thought necessary to have double

height windows in this house which only creates light pollution. The use of the Ibstock Bexhill Dark Stock brick would be preferable to the other suggestion which is quite garish. The flat roof of the kitchen area is sprawling and not in keeping with the rest of the house. Has this been done to create a terrace which again is totally out of keeping with the area and only adds to the mass of the house. The terrace is 3 ½ m high and will definitely over look Crouch Court. The Council feel that 5.5 and 5.7 in the Head of Planning Officer's advice should be noted.

5.1.4 The second floor of the house is described as roof space accommodation/storage but it's intended purpose is unclear. If it is storage space why is it so high with windows and a skylight. This seems totally unnecessary and a lower roof line would improve the unattractive roof design of the house. The roof should be reduced to improve the finished roof line. The studio is very large and there is no indication on the plans what it will be used for. As shown on the plans it just a building with no facilities and the Parish Council feel that it should be conditioned that any changes, ie toilet etc. should be the subject of a planning application because it could easily be changed to a separate hereditament. If the Borough Council is minded to grant this application then this building should be conditioned as non-residential.

5.1.5 The site was very wooded until cleared and so if there were any trees worth protecting then they will have been removed. It is a pity to expose the site so much and it is requested that a landscaping scheme should be submitted and the use of native trees be stipulated. Head of Planning's advice note 5.8 should be taken into consideration. It is noted that recycling bins are to be stored in the garage. However, the Parish Council feels that a stipulated area should be shown as a permanent outside location because some residents will use a garage for its intended purpose and in this instance there will then be five bins sitting on the drive. This allocated land use should apply to all new dwellings.

5.1.6 The Council is concerned about health and safety on the site which is very cluttered and request that there is a designated area for parking and turning during construction because of the narrowness of Basted Lane. Great care and consideration should be afforded to pedestrians and traffic in the area because of the expected traffic disruption for delivery and removal of materials. In the Demolition and Construction Management Plan it states that the anticipated loading of each lorry is expected to be approximately 15 minutes. The Parish Council request confirmation that this loading takes place on site please. The Council also request that large vehicles be instructed to access and exit Basted Lane with care because the local residents, together with donations from the Parish Council and the Local Members' Fund, have recently invested money in improving the triangle at Long Mill Lane not only to improve the visual impact of the area but for the safety of pedestrians and motorists at the junction.

5.1.7 The Parish Council object to the planning application on the grounds of over development of the site, size of building far exceeding existing footprint, design

and proposed materials, light pollution, unstated use of studio and lack of suitable landscaping scheme. The Parish Council feels that very little attention has been taken of the Head of Planning's advice which is important and should be taken into consideration before any decision is made. The Parish Council would like to take the opportunity to request that the current name is retained. House names are part of the local history and Parish Councils are no longer consulted when new properties are named.

- 5.2 KCC Heritage: The site of application lies within an area of archaeological potential associated with early Prehistoric remains. The building is also identifiable on the 1st Ed OS map which gives it a date of the 19th century or possibly earlier.

As such, I recommend that the following conditions are attached to any forthcoming consent:

No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a programme of building recording in accordance with a written specification and timetable which has been submitted to and approved by the Local Planning Authority.

Reason: To ensure that historic building features are properly examined and recorded.

And

No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a watching brief to be undertaken by an archaeologist approved by the Local Planning Authority so that the excavation is observed and items of interest and finds are recorded. The watching brief shall be in accordance with a written programme and specification which has been submitted to and approved by the Local Planning Authority.

Reason: To ensure that features of archaeological interest are properly examined and recorded.

- 5.3 Private Reps: 5 + site notice: 0X/1R/4S summarised as follow:

Objection:

- Size of the property is inappropriate for the site
- Loss of another older building
- Original cottage is in keeping with surrounding buildings
- Support bid to have it listed

Support:

- Expected two dwellings
- Breeze block extensions spoil existing cottage

- Site was cleared by previous owner
- Proposed house in keeping with surrounding dwellings
- Crouch is not a quaint hamlet
- Things change
- Strongly urge council to grant permission
- Small studio reusing the stone pays respect to the cottage
- Site is large and existing house is cramped and has reached the end of its useful life
- Proposed use very sympathetic

6. Determining Issues:

Principle of Development:

- 6.1 The site lies within the settlement confines of Crouch where policy CP13 sets out that development should be restricted to minor proposals appropriate to the scale and character of the settlement. The erection of a replacement dwelling is considered to accord with this policy as a minor development proposal. This is broadly consistent with the NPPF and recognises that there are no “in principle” reasons why development should not be allowed in the settlement boundary that lies outside of the Green Belt. As such, it is considered that there are no objections to the principle of the development under policy CP13, with the key issues resting on the impact of the proposal on the character and appearance of the area, neighbouring amenity, protected species and parking and highways.

Character and appearance, loss of undesignated heritage asset:

- 6.2 It is recognised that the proposal would result in the loss of the current building. The building is an attractive example of a rural estate workers’ dwelling, and as noted in the thorough assessment of the building’s history carried out by Historic England, it is an unusual example that has local significance.
- 6.3 Historically the building has been connected with Winfield House which, although listed, does not have particular claim to historic interest above many other houses of its type. The unlisted Winfield Cottage, which is stylistically similar to Bonhill Cottage and was also part of the Winfield estate, has a visual relationship with Winfield House because of its proximity, but this is not the case for Bonhill Cottage which is located a short distance away.
- 6.4 Bonhill Cottage has local interest for its use of materials; distinctive, composition and plan; and association with nearby Winfield House. It is however also a relatively late, modest building which has undergone notable alteration and which does not have strong group value with the house with which it is associated.
- 6.5 As a result of a thorough assessment of the history and architecture of the building by Historic England and the Department of Media, Culture, and Sport, it was

concluded that Bonhill Cottage does not merit addition to the statutory List of buildings.

- 6.6 Its loss will inevitably have some impact on the existing character and appearance of the area, and the association with nearby Grade II Listed Winfield House would be lost, although any group value with this property has been largely severed due to historic infilling (this was noted by the Department of Media, Culture and Sport). Nonetheless, the building is capable of being considered a non-designated heritage asset as envisaged by paragraph 197 of the NPPF.
- 6.7 Paragraph 197 sets out that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required, having regard to the scale of any harm or loss and the significance of the heritage asset. This test should be differentiated from circumstances where harm is identified to *designated* heritage assets, such as Listed Buildings, Conservation Areas, or Scheduled Monuments, in which case even less than substantial harm can only be justified by wider public benefits. In the case of non-designated heritage assets, identified harm must simply be balanced against other considerations.
- 6.8 Ultimately, irrespective of its status as a non-designated heritage asset, and the resulting harm from its demolition, it is not considered that objections to its loss could realistically or justifiably be sustained. As noted in the assessment by the DMCS, the building is not suitable for Listing. Furthermore, the site does not lie within a Conservation Area. As a result of these factors there is no way that the Council could prevent its demolition in perpetuity, as the applicant could do this without planning permission if so minded, subject to completion of the prior approval for demolition process (in which the merits of demolition would not be under consideration).
- 6.9 Whilst the prior approval process has not been applied for at the time of reporting, it is considered that this represents a “real prospect” as a fall-back position. Members will be well aware of the judgement in *Mansell v Tonbridge and Malling Borough Council [2017]* in which the Court of Appeal held that a permitted development fall-back position need not be specifically confirmed in order to be afforded weight, as long as there is a likely and realistic prospect of that fall back position being undertaken. It is considered probable that if the committee were minded to refuse planning permission on the grounds of loss of the building, it would be open to the applicant to undertake this process in which case the building would be lost anyway, and then mount an appeal, which would be difficult for the Council to defend.
- 6.10 For these reasons whilst its loss is regrettable, the building is not so nationally important that the harm arising is considered to justify a refusal, particularly given the likely and realistic fall-back position in which the building could be lawfully

demolished through an alternative process. Furthermore, the design of the new dwelling proposes to re-use the ragstone and other materials from the cottage to build the accompanying studio, as a reminder of the building that once stood on the site. This is considered to help mitigate any harm arising to the character of the area through its loss.

- 6.11 In other aspects the design of the replacement dwelling is reflective of rural character with tile hanging and brick work, a low eaves height, hipped roofs and gables. Comparable designs can be found within the locality. The rear projecting wing, whilst large, would be located to the back of the property and not be readily noticeable from the street scene. In any case, it would appear no different to rear extensions added to other dwellings, often under permitted development. The building would sit comfortably within its landscaped plot, which was underutilised by the existing dwelling, such that it would not appear cramped or represent overdevelopment. However, due to the design of the dwelling, the free exercise of permitted development rights in relation to enlargement would have the potential to completely undermine the holistic design of the building including, for example, if a further 8m deep rear extension was added on to the existing rear projection under the larger homes prior approval process, or bulky dormers added to the considerable roof space. As such it is considered necessary to restrict further enlargement of the building under Class A and B permitted development rights.
- 6.12 The detached studio would be located next to the building. The proposal to re-use the ragstone from the former dwelling is welcomed and will make a positive contribution to the design and character of the new development. Other properties in this part of the road have detached outbuildings and, whilst somewhat large, the generous spacing on the site would ensure that it does not appear cramped in relation to the main dwelling. No objections are raised to this element of the scheme.
- 6.13 Overall the design and choice of materials is considered appropriate and, whilst some harm would arise from the loss of the cottage, it is not considered that this would result in sufficient grounds to justify a refusal. Accordingly no objections are raised under policies CP24 of the TMBCS and SQ1 of the MDE DPD, and paragraph 197 of the NPPF.

Residential Amenity:

- 6.14 The plot is wide and the dwelling is orientated with the rear facing southwards across the fields with no windows located on side elevations. Adequate spacing would be provided on either side to prevent the building appearing overbearing or overshadowing neighbouring dwellings.
- 6.15 On the roof of the rear projection a small terrace area is proposed to serve the master bedroom. This is partially obscured from the neighbour on that side by the detached studio building, and the edge of the terrace is around 15m from the boundary with that neighbour. The neighbouring dwelling is located further into the

plot with a very large garden that extends further west. In many respects the position of the new dwelling is better for neighbouring amenity than the existing position of the dwelling that points towards the adjacent garden and is located much closer.

- 6.16 As a result of these factors it is not considered that any level of overlooking would arise that would be harmful to the amenity and privacy of the adjacent dwelling. Due to the design of the building the terrace is obscured by the rear flank such that overlooking into the other adjacent property would not be possible, which in any case is considerably further away. A condition to prevent the rest of the flat roof being used as a terrace is appropriate however, as utilising the full extent of the roof as a terrace would enable more of a vantage point into adjacent gardens.

Protected Species:

- 6.17 The site was cleared by the previous owner prior to the applicants taking control of the site. As such it is considered unlikely that any protected species would be present in the grounds of the building. However, due to the age of the property it is important that a bat survey is undertaken prior to demolition of the building and any recommendations arising from the survey are carried out in full. A condition will ensure that this occurs.

Highways Safety and Parking Provisions:

- 6.18 The wide plot would provide ample off street parking both on the drive and within the integral garage that would more than comply with the Council's adopted Parking Standards. The site benefits from an existing access and it is not considered that the vehicle movements would be significantly different as a result of the development.
- 6.19 Whilst Parish Council comments are noted concerning the difficulties of Construction Traffic accessing the site, it would be very difficult for the Local Planning Authority to monitor and enforce any conditions related to the submitted construction management plan. Ultimately construction vehicles using the road or parking unsafely or illegally would be a matter for the Police or the Highways Authority. It should be reiterated that the NPPF states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. This is a very high bar and the erection of a replacement dwelling will rarely have such an impact. Because of this a reason for refusal on highways safety grounds could not be substantiated and no conflict with policy SQ8 of the MDEDPD or policy CP2 of the TMBCS is considered to occur.

Archaeology:

- 6.20 The site lies within an area of archaeological potential. It is therefore necessary to attach a planning condition which requires a recording of the building prior to

demolition and a watching brief to be undertaken should any features of archaeological interest be discovered. Subject to this no harm would arise to possible buried heritage assets, in accordance with paragraph 193 of the NPPF.

Other Matters:

6.21 Parish Council comments concerning the studio are noted; however its small size would not readily lend itself to conversion into a separate unit. In any case, this would constitute a change of use for which planning permission is required, and so it is not considered necessary to impose a condition on the use of the studio.

Conclusion:

6.22 In conclusion, whilst the demolition of the existing building would result in some harm to the character of the area, the amount of weight that can be afforded to this harm is greatly tempered by the inability of the Council to prevent it being demolished via the prior approval process, and the re-use of materials for the studio. Ultimately it is not considered that a refusal of planning permission on the grounds that the building should be retained is a justifiable position.

6.23 No harm is identified to neighbouring amenity or parking and highways and, subject to conditions concerning protected species and archaeology, no harm would arise in these respects. The proposal would make more efficient use of a previously developed site and there is no identified harm that would be sufficient to withhold permission.

7. Recommendation:

7.1 **Grant Planning Permission** in accordance with the following submitted details: Location Plan 18051 P01 dated 12.02.2019, Site Plan 18051 P02 dated 12.02.2019, Landscape Layout 18051 P02 dated 12.02.2019, Proposed Plans and Elevations 18051 P03 dated 12.02.2019, Method Statement dated 12.02.2019, Design and Access Statement dated 12.02.2019, Materials Schedule dated 12.02.2019, Other FINF dated 12.02.2019, subject to the following conditions:

Conditions

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: In pursuance of Section 91 of the Town and Country Planning Act 1990.

2. All materials used externally shall accord with the approved plans.

Reason: To ensure that the development does not harm the visual amenity of the locality.

3. All planting, seeding and turfing comprised in the approved scheme of landscaping shall be implemented during the first planting season following occupation of the buildings or the completion of the development, whichever is the earlier. Any trees or shrubs removed, dying, being seriously damaged or diseased within 10 years of planting shall be replaced in the next planting season with trees or shrubs of similar size and species, unless the Authority gives written consent to any variation.

Reason: Pursuant to Section 197 of the Town and Country Planning Act 1990 and to protect and enhance the appearance and character of the site and locality.

4. The dwelling hereby approved shall not be occupied until the area shown on the submitted layout for a vehicle parking space has been provided, surfaced and drained. Thereafter it shall be kept available for such use and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking and re-enacting that Order) shall be carried out on the land so shown (other than the erection of a garage or garages) or in such a position as to preclude vehicular access to this reserved parking space.

Reason: To ensure that parking is provided and maintained in accordance with the Council's adopted standards.

5. The development shall be constructed at the level indicated on the approved drawing.

Reason: To ensure that the development is constructed in accordance with the approved plans to safeguard neighbouring amenity.

6. Except for the area shown to be used as a terrace on the approved plans, the remainder of the flat roof rear projection shall not be used as a balcony or terrace.

Reason: To minimise the effect of overlooking onto adjoining property.

7. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking and re-enacting that Order) no development shall be carried out within Class A or B, of Part 1 of Schedule 2 of that Order unless planning permission has been granted on an application relating thereto.

Reason: To ensure that design of the building and the character and appearance of the area is not undermined by further enlargement of the building.

8. No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a programme of building recording in accordance with a written specification and timetable which has been submitted to and approved by the Local Planning Authority.

Reason: To ensure that historic building features are properly examined and recorded.

9. No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a watching brief to be undertaken by an archaeologist approved by the Local Planning Authority so that the excavation is observed and items of interest and finds are recorded. The watching brief shall be in accordance with a written programme and specification which has been submitted to and approved by the Local Planning Authority.

Reason: To ensure that features of archaeological interest are properly examined and recorded.

10. No demolition shall commence until a Preliminary Ecology Study has been carried out and any recommendations for mitigation implemented in accordance with details to be submitted to and approved by the Local Planning Authority.

Reason: To avoid harm to protected species.

Contact: Adem Mehmet

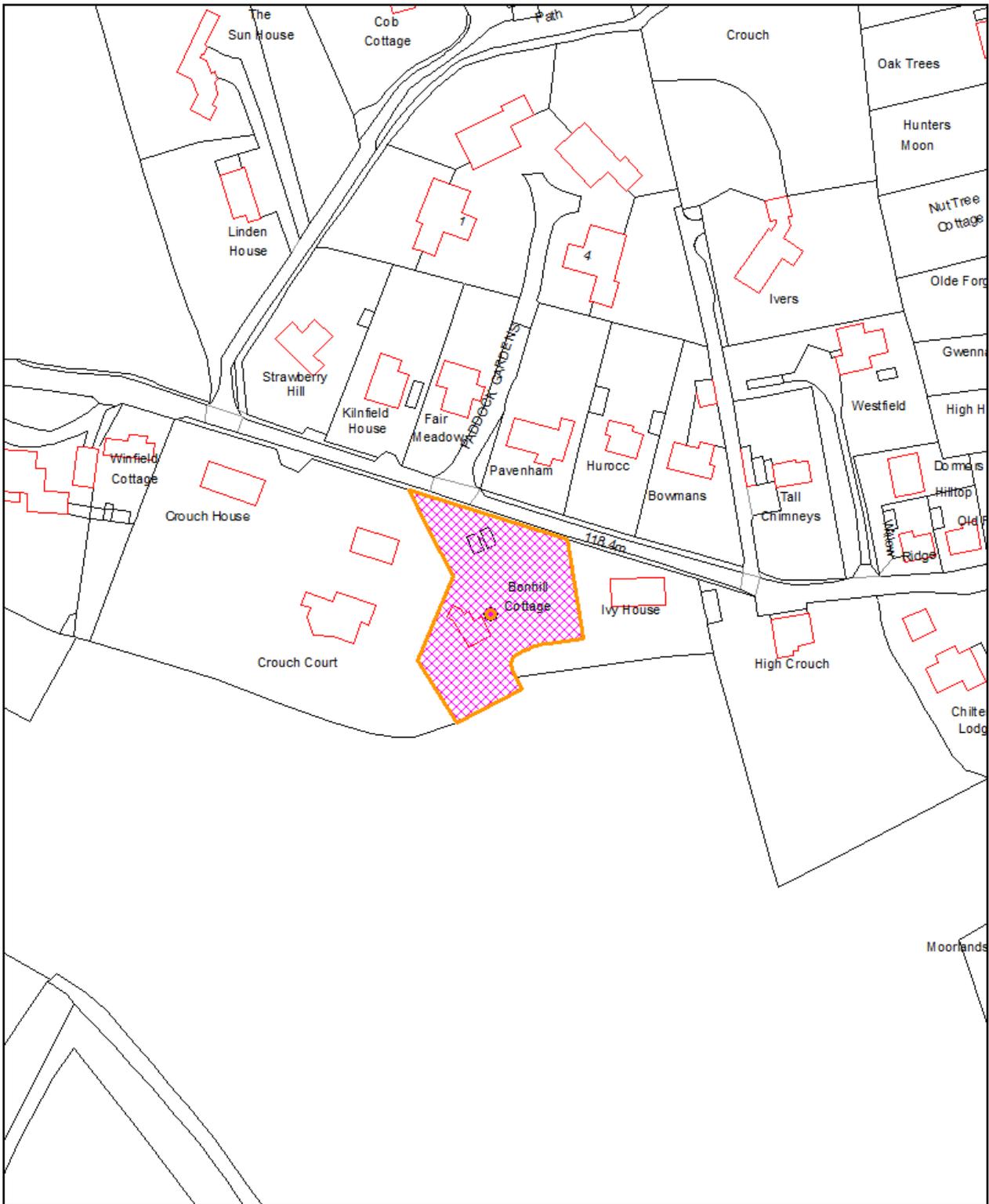
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TM/19/00326/FL

Bonhill Cottage Basted Lane Crouch Sevenoaks Kent TN15 8PZ

Demolish existing dwelling and erection of replacement dwelling and detached studio

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Agenda Item 8

The Chairman to move that the press and public be excluded from the remainder of the meeting during consideration of any items the publication of which would disclose exempt information.

**ANY REPORTS APPEARING AFTER THIS PAGE CONTAIN EXEMPT
INFORMATION**

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