

Ightham

Wrotham, Ightham And
Stansted

1 June 2018

TM/18/01240/FL

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

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[Recommendation](#)

1. Description:

1.1 Determination of this application was deferred on 03 July 2019 to allow for legal services to provide the committee with a report setting out the risks involved should the recommendation of officers to grant planning permission subject to conditions not be accepted, and planning permission refused or a further temporary planning permission granted.

1.2 This is in line with the Council's Constitution which sets out as follows:

Where a Committee rejects a recommendation to approve, or is minded to refuse, an application which is recommended for approval by the Director of Planning, Housing and Environmental Health on grounds which the Director does not consider can be substantiated at appeal, the matter shall be deferred to the next meeting of the Committee to enable the Director of Central Services & Monitoring Officer to submit an independent report to the Committee on the possibility of costs being awarded against the Council. If the Director of Central Services & Monitoring Officer's report indicates that there is likely to be a significant risk of costs being awarded against the Borough Council and the Committee resolves to refuse the application that decision will be a recommendation only and the matter shall be submitted to Council for resolution.

1.3 Copies of the previous officer's report and supplementary report from the 03 July meeting are annexed for ease of information.

2. Consultees (since 03 July):

2.1 None

3. Determining Issues:

3.1 The key issues for consideration were addressed in detail within the report of 03 July but I would further clarify as follows:

Very special circumstances: unmet need:

- 3.2 Discussion took place at the July committee meeting concerning whether or not it could be concluded that very special circumstances had been found in this case sufficient to outweigh the identified harm (which is limited to harm by virtue of inappropriateness rather than any other Green Belt or wider planning harm). That is, rightly, a matter of planning judgement but that judgement must be made within the context of all relevant material considerations.
- 3.3 A fundamental change in the position concerning the existence of very special circumstances now when compared to that available to previous inspectors determining applications on this site is the most recent appeal decision in this Authority for traveller accommodation in the Green Belt. The inspector in that case expressly set out that unmet need within the Borough should be considered as a very special circumstance when appreciating that the emerging local plan does not propose to allocate any private sites to address that need. Whilst the Council's position in this respect will be tested at examination of the local plan itself, in the meantime there is a need to determine individual applications for development within the context of the prevailing development plan, national policy and relevant material considerations; in this case the decision made in respect of "The Spinney" and the site specific circumstances of individual cases. In order to assist the committee in this respect, the appeal decision is reproduced in full as a further annex to this report.

Temporary planning permissions:

- 3.4 The LPA is able in limited and evidenced circumstances to grant a planning permission for a temporary period of time. Indeed, those provisions have previously been invoked in this particular case. I also note that the applicant has mentioned within their submission that they would be prepared to accept a further temporary planning permission.
- 3.5 However, it must be understood that regardless of the "offer" made by the applicants in this case, the LPA must in all circumstances ensure that any planning conditions imposed upon a permission meet specified statutory and policy tests. Paragraph 55 of the NPPF (reflected in the Neighbourhood Planning Act 2107) sets out that planning conditions should only be imposed where they are:
- 1) necessary;
 - 2) relevant to planning and;
 - 3) to the development to be permitted;
 - 4) enforceable;
 - 5) precise and;

- 6) reasonable in all other respects.
- 3.6 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.
- 3.7 A condition limiting use to a temporary period only where the proposed development complies with the development plan, or where material considerations indicate otherwise that planning permission should be granted, will rarely pass the test of necessity. 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.
- 3.8 With these considerations in mind, and reflecting on the position as set out above and within the July report concerning the overall merits of granting planning permission, the grant of a further temporary planning permission either because the circumstances of the applicant might change in the future or in expectation or hope that the local plan position might change would fail to meet the tests we are required to apply. Indeed, the latter would only arise in the event that formal allocations were to be made for new private sites within the Borough and that is not something that the strategy under progression seeks to provide for.
- 3.9 Furthermore, it should be noted that in the event a further temporary permission was issued, the applicant would have a right to appeal against its imposition regardless of whether they had indicated acceptance at application stage.
- 3.10 With the above considerations in mind, the following recommendation is reiterated.

4. Recommendation:

- 4.1 **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 three 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

Informative:

- 1 The applicant is reminded that the use hereby approved does not afford any permitted development rights and that any built development or engineering operations in connection with the use would require planning permission from the Local Planning Authority.

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