

# Planning Committee

Notice of a Meeting, to be held as a **Virtual Meeting** in accordance with Regulation 5 of The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020

**A meeting of the committee will be held on:**

**Date:** Wednesday, 28 April 2021

**Time:** 6.30pm

**Venue:** Virtual Meeting

**Membership:** Councillors Adeoye, Barrett, Bhutia, Bowler, Buckwell, Mrs Diane Chambers (Chairman), Curry, Etheridge, Sylvia Griffin, Hubbard, McDonald, Potter, Chrissy Stamp, Thorne and Tranter (Vice-Chairman)

## Agenda

**12 Supplementary agenda advice sheet**

**(Pages  
3 - 22)**

For further information please contact Ellen Wright, Democratic Services Officer on Telephone: 01634 332012 or Email: [democratic.services@medway.gov.uk](mailto:democratic.services@medway.gov.uk)

Date: 28 April 2021

**Information about this virtual meeting**

Please note that any member of the press and public may follow proceedings at this 'virtual' meeting via a weblink which will be publicised on the Council's website ahead of the meeting. Please refer to this meeting via the meeting calendar for further details:

<https://democracy.medway.gov.uk/mgCalendarMonthView.aspx?GL=1&bcr=1>

Members of the press and public may tweet, blog etc. during the live broadcast as they would be able to during a regular Committee meeting.

**Medway Council**

**PLANNING COMMITTEE – 28 April 2021**

**Supplementary Agenda Advice**

**Page 16      Minute 863      65 Norman Close, Wigmore**

**With delegated authority, the Head of Planning agreed the final wording of the refusal reason with the Chairman, Vice Chairman and Planning Spokesperson to read as follows:**

- 1      The proposed development in particular to the first floor rear extension, by reason of the projection beyond the rear building line would result in a development that would be visually intrusive on the amenity of the occupiers of the neighbouring property to the north, no. 66, and would result in some reduction in daylight and sunlight that would impact on their residential amenity. In addition, the proposed front extension by reason of its proximity to the front habitable room window at no. 64 Norman Close, would have a harmful impact on the outlook of the occupiers of that property. The proposal would, therefore, be contrary to Policy BNE2 of the Medway Local Plan, 2003 and paragraph 127f of the NPPF.

**Page 22      MC/20/3237      Mountbatten House, Military Road, Chatham**

**Recommendation**

**Delete** reference to Section 106 and the wording ‘The applicants entering into agreement under Section 106 of the Town and Country Planning Act to ensure:

- Provision of 25% affordable housing (combined on-site and off-site)
- Contribution of £41,063.96 towards SAMMs (bird contribution)

**Amend** A. to read as follows:

A. The imposition of the following Planning conditions:

**Replace** condition 22 to read as follows:

Notwithstanding the submitted details, no dwelling herein approved shall be occupied until the location of 147no. parking spaces within the former bus

station and/or Pentagon rooftop area has been submitted to and agreed in writing by the Local Planning Authority. The approved parking spaces shall be provided, surfaced and drained in accordance with details submitted to and approved in writing by the Local Planning Authority prior to the first occupation of any residential dwelling herein approved. Thereafter these parking spaces 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 or re-enacting that Order) shall be carried out on the land so shown or in such a position as to preclude vehicular access to this reserved parking space.

Reason: Development without provision of adequate accommodation for the parking of vehicles is likely to lead to hazardous on-street parking and in accordance with Policy T13 of the Medway Local Plan 2003.

**Add** two further conditions as follows:

41. No development shall commence until a scheme to address the impact of the Development on the Special Protection Areas of the Thames Estuary and Marshes and the Medway Estuary and Marshes through a contribution towards strategic mitigation measures of £41,063.96 towards SAMMS (bird contribution) has been submitted to and agreed in writing with the Local Planning Authority. The payment shall be made in full in accordance with the agreed payment method before any development shall commence on the site.

Reason: To ensure adequate measures are in place to mitigate potential significant adverse effects on the Medway Estuary and Marshes SSSI, SPA and RAMSAR in accordance with Policy BNE35 of the Local Plan and paragraphs 175 and 176 of the National Planning Policy Framework 2019.

42. No development shall commence until details of an Affordable Housing Scheme has been submitted to and approved in writing by the Local Planning Authority for the provision of 25% affordable housing units in accordance with tenures and types of affordable housing to be agreed in advance with the Local Planning Authority. In the case of there being any off-site provision of affordable housing units those off-site units shall be practically complete prior to the first occupation of any of the dwellinghouses hereby permitted. A timetable for the delivery of the on-site affordable housing units and future management shall be included within the approved Affordable Housing Scheme. The affordable housing units shall thereafter be delivered in accordance with the approved Affordable Housing Scheme.

Reason: To ensure the development provides affordable housing in accordance with Policies H3 and S6 of the Medway Local Plan 2003.

## **Representations**

**One** additional representation has been received raising the following:

The extension is contrary to the Building Heights Policy 2006  
Impact on views from heritage assets and feature within historic views.

## **Relevant Planning History**

**Amend** MC/20/3061 to refer to the 2017 at the end of the paragraph and **replace** the words 'Under consideration' in the brackets with the following wording: (Not EIA development 22 April 2021)

## **Planning Appraisal**

**Add** the wording 'for Mountbatten House' to the end of the first sentence of paragraph 12 of the Highway Section (p.54).

**Add** the following paragraph after the last paragraph of the S106 Matters Section:

It has now come to light that due to the specific circumstances in this matter, that in place of the reported obligations of Affordable Housing and Bird Contribution these obligations need instead to be secured through the use of planning conditions. This has become necessary due to ownership issues, due to the fact that Medway Council is the freehold landowner of the site and the applicant has no legal interest in the site at this time to enable them to enter into a Section 106 agreement to secure the planning obligations. The Council is not able to sign the S106 with itself and as such the officers are comfortable that the use of negatively worded conditions, to secure these obligations, is acceptable in this instance.

**Page 60      MC/20/3289      The Paddock (Adjacent to Sandhurst Farm) Sharnal Street, High Halstow**

## **Relevant History**

The appeal decision related to refusal of planning application MC/17/3126 and the Enforcement Notice served on 24 January 2019 is attached in full to this supplementary agenda.

**Page 72      MC/21/0445      Buddys View, Perry Hill, Cliffe**

This item is deferred from this agenda.

**Page 86      MC/21/0386      Land Adjacent to 89 Hollywood Lane Wainscott**

## **Recommendation**

**Add** a further condition as follows:

12. No development shall take place until drawings showing details of the existing and final land levels have been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details prior to occupation of the dwelling herein approved and the final levels shall be retained thereafter.

Reason: Required prior to commencement to ensure the amenities of occupiers of neighbouring properties can be maintained in accordance with Policy BNE2 of the Medway Local Plan 2003.

## **Planning Appraisal**

**Delete** the word 'rear' from the first sentence of the first paragraph in the Drainage Section.

## Appeal Decisions

Date of Hearing 24 September 2019

Site visit made on 24 September 2019

**by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA**

**an Inspector appointed by the Secretary of State**

**Decision date: 14 January 2020**

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### **Appeal A: APP/A2280/C/19/3222539**

#### **The Paddock, Sharnal Street, High Halstow, Kent ME3 3QR**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr G Maloney against an enforcement notice issued by Medway Council.
- The notice was issued on 24 January 2019.
- The breach of planning control as alleged in the notice is:
  1. Material Change of Use  
Without the benefit of planning permission the unauthorised change of use of the Land to a residential caravan site including the stationing of a mobile home, and a touring caravan.
  2. Operational Development  
Without the benefit of planning permission the unauthorised development of the Land including:
    - a) the laying of hard surfacing; and
    - b) the installation of a septic tank.
- The requirements of the notice are:
  - (i) Cease using the Land for residential purposes
  - (ii) Permanently remove all mobile homes, caravans, trailers and portaloo from the land [sic]
  - (iii) Remove all areas of hard surfacing from the Land
  - (iv) Remove the septic tank from the Land
  - (v) Remove all domestic paraphernalia from the Land
  - (vi) Remove all resultant debris and rubbish from the Land arising from requirements (iii) to (vi) above
  - (vii) Restore the Land to the condition it was in before the unauthorised development and change of use took place.
- The period for compliance with the requirements is:
  - a) Requirements (i) to (ii) within 2 months
  - b) Requirements (iii) to (vi) within 3 months; and
  - c) Requirement (vii) within 4 months
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision**

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### **Appeal B: APP/A2280/W/18/3216244**

#### **The Paddock, Sharnal Street, High Halstow, Kent ME3 3QR**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Gerry Maloney against the decision of Medway Council.
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- The application Ref MC/17/3126, dated 29 August 2017, was refused by notice dated 15 May 2018.
- The development proposed is material change of use of land to use as a residential caravan site for one gypsy family with two caravans, including no more than one static caravan, together with erection of amenity building and laying of hardstanding.

**Summary of Decision: The appeal is allowed and planning permission granted subject to conditions set out below in the Formal Decision.**

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## **Appeal A on ground (a) and Appeal B**

### **Preliminary matters and common ground between the parties**

1. The s78 appeal proposal reflects in substance the deemed application made under ground (a) for the description of development alleged in the enforcement notice to be in breach of planning control, save that an amenity building is also proposed.
2. At the hearing the Council withdrew its reasons for issuing the enforcement notice and for refusal of the s78 appealed application, as they related to an alleged lack of contribution towards strategic mitigation measures within Special Protection Areas (SPAs) and Ramsar Sites that comprise the North Kent Marshes. This was on the basis that an agreement was entered into for such a contribution to be made to the Council.
3. It is undisputed that the Council cannot demonstrate a 5-year deliverable supply of pitches to meet accommodation needs for travellers in its district.

### **Main issues**

4. The main issues, relevant to both appeals, are:
  - a. The principle of development in the countryside and the effect of the development on the character and appearance of the surrounding area;
  - b. Whether the location of the development results in an unacceptably adverse impact on the living conditions of its occupants and nearby residents, with reference to noise, disturbance and air quality;
  - c. Whether the appellant meets the definition of a gypsy/traveller as set out in the Planning Policy for Traveller Sites; and
  - d. Availability of accommodation for gypsies and travellers.

### **Reasons**

#### *Principle of development and its effect on character and appearance of the area*

5. The development is on a site, formerly a paddock, shown on the proposals map of the Medway Local Plan 2003 (MLP) to be outside the limits of a rural settlement, constituting development in the countryside. By restricting development in such areas MLP Policy BNE25 seeks to protect the countryside for its own sake. The Council therefore asserts that the principle of the development is not acceptable.
6. Policy BNE25 itself provides for certain circumstances in which development would be permitted, provided (criterion (i)) it maintains, and where possible enhances the character, and functioning of the countryside and offers a realistic chance of access by a range of transport modes.



7. The site is some 1250m from High Halstow where there is a grocery store and a primary school, and within 500m of bus stops giving access by public transport to more services available in Hoo and Rochester. It would meet criterion (i) of MLP Policy H13 which requires gypsy sites to be close to essential local services.
8. As to Policy BNE25 (i) the site itself offers access by different transport modes but a key characteristic of the countryside is openness. The flat or undulating farmland which is key to the "Hoo Peninsula Farmland" landscape character, within which the appeal site lies, is not experienced in the immediate vicinity of the site since it is bounded on the west by Sharnal Street (A228) and Fishers Wood, and is near to residential dwellings to the north, east and south.
9. The site was said to be part of a wider area benefiting from a lawful development certificate relating to a contractors yard. However there was some uncertainty at the hearing over what area it was intended to cover. This makes it difficult to conclude that the land, described in the s78 appealed application form as a former paddock, is previously developed land. There would be no loss of valued views and the harm due to loss of openness is compromised only to a limited extent by the siting of the development.
10. Criterion (iii) of Policy BNE25 would permit "development essentially demanding a countryside location (such as agriculture, forestry, outdoor or informal recreation)". The examples given of development that demands a countryside location are clearly not exhaustive and I note that Planning Policy for Traveller Sites, updated on 31 August 2015 (PPTS), expects sites to be found in the countryside outside the Green Belt. Paragraph 25 advises Councils to *"very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan"*.
11. For gypsy and traveller accommodation MLP Policy H13 sets out criteria as to a site's suitability for occupation by gypsies or travellers who meet the planning definition set out in PPTS. Criterion (ii) requires that the site can be physically contained and adequately screened from surrounding land.
12. The Council accepts that the site is screened on all elevations with fencing, trees and hedgerow and is a reasonable level of screening for a site of this size. Provision is made for a tarmac entrance and crushed limestone hardstanding with two parking spaces. Further, it accepts the design and appearance of the mobile home and tourer to be standard and *"there is not therefore much to consider in relation to design of the caravans"*. The proposed amenity block would be 6m x 4m with a maximum ridge height of 4.1m and of a simple design. The Council states it is on a significant scale for a building in this location. However it would not be unduly prominent or out of place as an outbuilding in a plot of 0.007ha. Therefore the fact that about a half of the building would protrude above the fence line would not in my view have an unacceptably adverse visual impact in views from the road. Its design and appearance would therefore meet the relevant criteria of MLP Policy BNE1.
13. A few caravans are evident in the wider area as domestic and impermanent structures whose siting is ancillary to a main dwelling house use. There is also a small group of mobile homes on a site occupied by travellers off Parbrook Road. At some distance to the south-east, and being somewhat isolated, they

do not impinge on the character and appearance of the appeal site and its surroundings.

14. Of some concern, is that the appeal site is enclosed on three sides by several plots containing substantial and traditionally built dwellinghouses. A mobile home and tourer van, with or without the proposed amenity block, used for primary residential purposes would be perceived as incongruous development within the immediate vicinity of this established residential group, and unsympathetic in design terms to the character of its surroundings. MLP Policy BNE1 sets out principles "for built development", therefore it is arguably not applicable to the change of use of the land, only the proposed amenity block. Nonetheless NPPF at paragraph 127 is applicable to all forms of development in seeking development sympathetic to the surrounding built environment and maintenance of a strong sense of place, using the arrangement of building types and materials to create distinctive places to live. The development would undermine somewhat the distinctive character of the traditionally built group of dwellings close by.
15. However the development is relatively small scale and self-contained. Although in the countryside, the site is not in a designated or protected area. The loss of openness, taking into account the amenity block, would be evident but the structures, associated boundary treatment and hardstanding would encroach into the countryside only to a limited extent. The design of the accommodation within the plot would be consistent with other relevant requirements for gypsy and traveller sites under Policy MLP H13, in that there is no objection to the access arrangements and there is adequate provision of power, water and sewerage.
16. The development would also comply with the second limb of paragraph 25, PPTS in that the site would *"respect the scale of, and not dominate, the nearest settled community, and avoid placing undue pressure on local infrastructure."*
17. Objections from owners of the neighbouring properties include that the development is close to the road, in front of "Travellers Rest" and the building line of existing houses. There is however no consistent line of development, Travellers Rest being one property that is particularly well set back from the highway. The siting of the tourer close to the boundary is not in a location that I consider to be intrusive within the street scene; its appearance is similar to touring vans I saw in other plots in the area.
18. I find on this issue that despite MLP Policy BNE25 restricting development in the countryside the thrust of national policy is not to make it unacceptable in principle. Nevertheless a conflict with Policy BNE25 exists in the form of a limited loss of openness and encroachment into the countryside. Further harm, to which I accord some weight, results to the character and appearance of the area, whether or not the proposed amenity block is added to the accommodation, contrary to Paragraph 127 of National Planning Policy Framework (NPPF) which seeks to secure development sympathetic to local character including the surrounding built environment.

*The impact on living conditions on neighbours and occupiers of the development*

19. The Council accepts that one family would not cause excessive noise impacts to existing neighbours, but states that the nature of living in caravans is noisier than houses which are robust and better soundproofed. Noise would

potentially be experienced outside the site and a condition was offered to be imposed on any eventual permission to provide for noise mitigation. The vans would not be in close proximity to main dwellings in other plots. I have considered the proposed condition but see no good reason why noise from use of the site should be significantly over and above what may be experienced from other dwellings from time to time. If excessive noise were to occur, as with other properties, this could effectively be addressed by other means, including environmental health controls if necessary.

20. In view of the overall size of the site, although the visual impacts of the caravans, amenity block and parked vehicles would have an effect on the character and appearance of the vicinity, they would certainly not be at the level required for me to conclude their appearance is so oppressive that they unacceptably interfere with living conditions of nearby residents. Additional vehicles could be controlled by condition.
21. However a condition providing for approval of a site layout and landscaping scheme, offered by the appellant in both appeals, would ensure an acceptable configuration of the structures and boundary treatment that would minimise the potential for adverse impacts to be experienced by residents nearby.
22. The appeal site, as with some nearby dwellings is close to the busy A228. Whether occupants of the development would experience poor living conditions or health due to poor air quality is not certain. No air quality assessment has been provided or any evidence as to the baseline local air quality. The use of green infrastructure, in particular trees, on the site could create a barrier or maintain separation between sources of pollution and receptors. The site development condition would provide the opportunity for the Council to justify any special measures considered necessary to impose in that regard.
23. I find that the use of the development including the amenity block would not unacceptably interfere with the living conditions of its occupants or occupants of neighbouring properties. It would thus comply with criterion (iv) of MLP Policy H13 in ensuring that there is no adverse impact on nearby residential amenity.

*Gypsy status and personal circumstances of appellant and his family*

24. The Council's statement denies that the appellant or any member of his family is a traveller within the definition in PPTS. "Traveller" includes gypsies and travellers for the purpose of the policy and is defined as:

*"Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily, but excluding members of an organised group of travelling show people or circus people travelling together as such."*

25. Thus persons who have permanently given up travelling are not defined as travellers for such purposes. Consideration is given to: a) whether they previously led a nomadic habit of life; b) the reasons for ceasing their nomadic habit of life; and c) whether there is an intention of living a nomadic habit of life in the future, and if so, how soon and in what circumstances.

26. Mr Maloney is the site owner, is married to Tracey Maloney and they have four children, L, 18, G, 16, T, 12, and M, aged 9. M is at school locally, and G and T are home schooled. L has a baby, MA who is 4 months.
27. The established principle that the need to safeguard and promote the welfare of children is a primary consideration, is generally applicable in the planning context, and applies in these appeals.
28. The Council's officer, Ms Munck completed a questionnaire on behalf of the appellant, Mr Maloney, at the appeal site on 14 January 2019. In response to the question "why did you decide to occupy this site" it was recorded "family had nowhere else to go". Prior to occupying the appeal site the appellant was "with family in car parks" in Margate, Thanet or Deptford. As to Question 11 - details of previous sites occupied in the last 5 years, it was recorded: "*haven't lived on any designated sites in the last 5 years*". Question 17 asked to where, if required to vacate the site, the appellant and family would relocate. "Roadside" was the recorded answer. Mr Maloney is also recorded as stating:  
  
*"he was traveller/gypsy born and bred, it's in his blood. Goes to all the horse fairs – Appleby, Horsemonden, Cumbria and Epsom. Does paving for work and travels for work also."*
29. Mr Maloney, his family and other families had occupied an unauthorised site in White Post Lane, Sole Street, Gravesend from 2004 until 2009 when they were moved to a new site specifically created for the families, at Springvale. The Council lay emphasis on an agreement Mr Maloney had with Gravesham Council to occupy a plot at Springvale, as well as the fact that during the bi-annual Gypsy and Traveller Count on the morning of 17 January 2019, Mrs Maloney was seen at the plot chatting to a neighbour.
30. It emerged at the hearing, which was undisputed by the Council, that Mr Maloney was in fact separated from his wife. Mr Maloney told me that they separated on 1 or 2 January 2019, and he stayed in hotels and friends' places for a week or ten days or so, whilst Mrs Maloney remained at Springvale. They have remained separated. The family group to be considered in connection with these appeals is the appellant, the eldest daughter L and her newly born baby, and son G. The other two children stay with Mrs Maloney.
31. The appeal site was bought in 2016 with assistance from the wider family and the intention was not then to occupy it without planning permission. It was bounded by a post and rail fence, overgrown and Mr Maloney graded it, and put in hardstanding only when he moved there, adding to the laurel bushes and installing a septic tank. Mr Maloney only returns to Springvale to collect the children T and M to spend time with them, usually seeing them at weekends and some weekday evenings.
32. Mr Maloney had been paying rent in respect of Springvale for the sake of the children, and because Mrs Maloney did not work. He undertook landscaping and paving work and travelled widely to obtain such work, staying with relations in Manchester, Leeds, Birmingham and other places. He was last in Leeds a few weeks previously when he was leaflet dropping, pulling onto places belonging to people he knew, with the tourer van. This pattern of work was unlikely to change. When he travelled he took with him G who is 16 and has finished his schooling and usually L, who is now 18 and her baby. The design

- and access statement discloses that the family travels with caravans on a seasonal basis whereby they will be away for several weeks at a time.
33. Mr Maloney could not live in a house, he had never done so throughout childhood and when he had tried it, had found it claustrophobic. He was not aware of any other publicly available site in Kent. Some enquiries had been made of sites potentially available in Maidstone and West Malling but there was a long waiting list. He would go back to the roadside if he had to leave the appeal site.
34. Despite this evidence throughout the hearing the Council was strongly of the opinion that Mr Maloney does not have gypsy status. I formed the clear impression that the officers had issues with his credibility although he was not accused directly of making any false or misleading statements. In this regard particular attention was drawn to two questionnaire replies he supposedly made. For Question 1, as to who was occupying the appeal site, the reply made on his behalf lists the appellant, his wife and four children, whereas it was pointed out that appellant had said he separated from his wife on 1 or 2 January. Secondly, it was said that in reply to Question 11, occupation of the Springvale site should have been mentioned.
35. The stated aim of the questionnaire is to enable claims made under human rights legislation to be fully considered in connection with a current planning application or a decision to take enforcement action. Several prefatory paragraphs point out the respondent's right, before the questions are put, to independent advice, how the information would be shared, including personal and medical information and so forth. It is unclear how, if at all, this information was imparted to the appellant who, it emerged at the hearing and which was undisputed, has difficulty in reading and writing. Ms Munck, the planning officer, completed the questionnaire and said she would go through each question and "complete it on their behalf".
36. The questionnaire had "14 January 2019" annotated at the top right corner of the first page, but in the allotted places on the last page it was neither signed nor dated, nor was the interviewee's name printed. In other cases where literacy issues arose, Ms Munck said an agent completed the form. No agent appears to have been present when Mr Maloney was interviewed and it was accepted that his mark or signature should have been secured on the form.
37. Mr Maloney said that they had had a chat at the back of the trucks, he was going through some stress and "was up to his eyeballs in everything". This may well have led him to reply to Question 1 in the way he is recorded to have done, by mentioning all members of his family. He said he did not know what a "designated" site was (the word does not even appear in the printed question) and he would not have used such a word in his reply to Question 11.
38. I believe that to be the case. Given the likelihood that he was stressed when interviewed, it is also as likely as not that he did not take in the full purport of each precise question. Taken with the failure to have him sign or make his mark to acknowledge the replies, and given his difficulty with reading and the generally sparse nature of the recorded replies, in my opinion the form cannot be relied on to have recorded fully or accurately the circumstances in which the appellant found himself at the time of the interview.

39. Overall however, the evidence satisfies me on the balance of probability that the appellant, taken with the family group to be considered in respect of these appeals, is of a nomadic habit of life with an economic purpose, in the past as well as currently and has no intention of abandoning that way of life. This satisfies the definition of "traveller" for the purposes of PPTS.
40. The Council also objected that further documentary evidence of travelling should have been submitted. However it could not point to what documents in particular it needed to see and had no policy on what particular documentation was required for the purpose.
41. There were however several documents submitted by the Council itself that supported the appellant's position. The detailed report on the "*private gypsy caravan site*" and its occupants at White Post Lane included an assessment of the personal circumstances of the appellant and his family, but contains no hint of a suggestion that the occupants were other than gypsy/travellers. The 2011 planning permission for the site at Springvale has a condition requiring it not to be occupied by persons other than gypsies and travellers as defined in the now cancelled Circular 01/06. The circular defined gypsies and travellers in the same way as now but included persons who had ceased to travel permanently. In addition there is the 2011 lease of what was accepted to be a travellers' site at Springvale which included plot 5 previously occupied by Mr Maloney.
42. Then there is the application in November 2015 to amend the 2011 permission to increase the numbers of vans to accommodate growing family units. The government had already changed the definition of Gypsy/Traveller for planning purposes in August 2015 and there is no clear evidence that the family failed to meet the new definition when the application was dealt with.
43. Prior to the couple's separation, the appeal statement, itself documentary evidence and completed in June 2018, made clear not only the itinerant and economic nature of the work undertaken by Mr Maloney, but that he was away from his wife and two other children for weeks at a time, with Mrs Maloney and the other children staying for part of the year on holiday mobile home parks and for the rest of the year either travelling with her husband and oldest son or relying on doubling up at relatives sites or by the roadside. The statement also declared that they were in need of a permanent base to enable their children to go to school, at the same time wanting to continue a travelling lifestyle, and therefore met the new definition of "traveller" for planning purposes.

#### *Conclusion on gypsy status*

44. More than sufficient information has been submitted in relation to the applicant and his family that supports the statement that they are a traveller family for the purposes of MLP Policy H13 and the definition of a traveller/gypsy in PPTS.

#### *Availability of alternative accommodation and site provision*

45. The availability of alternative accommodation is a relevant matter under PPTS criteria (paragraph 24). The appellant and his family are certainly in need and there are no alternative gypsy/traveller sites available. I am satisfied from the evidence I heard and read that the needs of the family could not reasonably be met by occupying, purchasing or renting an existing residential dwelling elsewhere within the area or within a neighbouring authority.

46. The Medway Council Gypsy and Traveller Accommodation Assessment May 2018 (GTAA) at section 8.2 identifies a need for 34 additional pitches in Medway over the period 2018 to 2035 for gypsy and traveller households that meet the planning definition; up to 15 additional pitches for gypsy and traveller households that may meet the planning definition; and 8 additional pitches for gypsy and traveller households who do not meet the planning definition.
47. The GTAA recommends (8.3) that the need for households meeting the planning definition *"should be addressed through new pitch allocations or the expansion or intensification of existing sites"*. It is only need arising from unknown or new households seeking to move to the area and develop a site that should be addressed through a criteria-based Local Plan policy. In addition PPTS at paragraph 10 expects Councils in their local plan to *"identify and update annually, a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against their locally set targets."*
48. There has been a continuing failure of policy in Medway. Currently, there are no Gypsy and Traveller sites allocated within the MLP, adopted in 2003. The 2008 appeal decision<sup>1</sup> for a site elsewhere in High Halstow is instructive. In it the Inspector noted that the then GTAA study found a need for 10 additional pitches in Medway for the 5 year period 2006-2011. The Inspector noted that the Local Development Scheme had no timetable to produce a development plan to provide for this need, and *"it might be some 4-5 years before any new sites come forward through the development plan process"*. She thought that this equated to the 10-year period 2006 to 2016 identified in the RSS.
49. No progress has been made toward identifying sites to meet the need, despite the opportunity to do so during successive local plan processes. So the cycle of policy failure repeats itself: the Council says it is in the process of producing a new local plan. Despite the May 2018 GTAA indicating that the need for further pitches includes households that meet the planning definition, there appears no specific commitment to identify physical sites where pitches may be provided. The Council's appeal statement at paragraph 5.9 merely states *"within the new Local Plan, the need for the unknown households is likely to be met through a criteria based policy or for those households that provide evidence that they meet the planning definition."*
50. The draft plan is to be published shortly but as to when it could be expected that an adopted local plan would identify sites suitable for gypsies and travellers, none of the Council officers was able to tell me what the strategy would be for provision, and Mr Simon, the planning policy officer said that no assumptions could be made. The Council said it was looking to at least 2021 for adoption and assuming sites to have been identified, they would still have to be built out. Therefore there is no firm commitment for new sites to come forward through identification in any development plan document. Based on the evidence I heard and have read, I have no confidence that there is a realistic prospect that alternative accommodation would have become available at the end of three years.
51. As agreed with the Council, it cannot be shown there is a 5-year deliverable supply of pitches to meet gypsy and traveller needs in the district. The appellant's circumstances are such that he has no realistic choice but to occupy the site with his children. The dire lack of local provision and need for sites,

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<sup>1</sup> APP/A2280/A/09/2096545/8

and lack of alternative accommodation available to the appellant and his family are relevant factors under PPTS. I accord them significant weight in these appeals.

*Are the appellant's human rights engaged and if so, unlawfully interfered with?*

52. The Council's statement at paragraphs 5.40 and 5.41 acknowledges that an enforcement notice might result in the loss of a home, which could amount to interference under Article 8 of the European Convention on Human Rights (the right to respect private and family life) and to the First Protocol Article 1 (right to peaceful enjoyment of possessions, including property). The Council views the harm to the character and appearance of the area from the development as justifying enforcement as a proportionate response, in view of the Human Rights Act 1998 (HRA) and the personal circumstances of the occupiers.
53. In considering their needs and different lifestyles there is a positive duty by virtue of Article 8 to facilitate the traditional and nomadic way of life of travellers. However in considering the proportionality of a requirement to leave one's home, it is relevant whether or not the home was established unlawfully. The government's policy as to intentional unauthorised development (IUD) is also material. It makes IUD a material consideration in determining all new planning applications and appeals received from 31 August 2015, and applies equally to settled and traveller communities.
54. The appellant applied for permission to use the appeal site residentially in August 2017 and appealed against the Council's refusal some time before January 2019 when he was presented with little option in effect but to unlawfully occupy the land as a caravan site. However the shortage of alternative sites and the circumstances of the appellant and his family must in my view reduce the weight given to the unlawfulness of the occupation as well as the weight to be given to IUD as a material consideration.

*Planning balance*

55. MLP Policy H13 (i) and (ii) would be complied with in that the site is close to essential local services, is physically contained and adequately screened from surrounding land. Criterion (iv) (v) and (vi) would be met in that there would be no adverse impact on nearby residential amenity, access arrangements are satisfactory and there is adequate provision of utilities. Meeting the policy as a whole is linked to countryside policies and as I have found there is a conflict with Policy BNE25 in the loss of openness caused by the development, although the harm is small given the limited loss of openness and encroachment into the countryside. I find that the development substantially complies with Policy H13 itself and despite the conflict with Policy BNE25 the development would comply with the development plan as a whole.
56. Harm would be caused to the character and appearance of the area whether or not the proposed amenity block is added to the accommodation, due to the proximity of the development to an established group of permanent and traditionally built dwellinghouses. Although in the countryside where gypsy sites are expected to be found, the incongruous nature of development in this particular location is contrary to the aims of NPPF, paragraph 127 in seeking development sympathetic to local character including the surrounding built environment. I was not directed toward any corresponding policy in the



development plan that deals with this issue in terms, however the harm identified is a material consideration to which some weight should be given.

57. Any harm has to be weighed in the planning balance against the benefits if any of the development.
58. The appellant and his family are travellers meeting the relevant definition set out in PPTS. The appeal site is in the countryside where PPTS expects sites to be found. The Council cannot demonstrate a 5 year deliverable supply of pitches to meet the need for travellers in the district and the appellant has nowhere else to live and no realistic option but to move onto the site with his children. The appeal site would provide for the family's needs for settled accommodation to enable some stability to be given in particular to L and her baby and to enable contact to be maintained with the other children of Mr and Mrs Maloney.
59. Taken together these are very considerable benefits in an area where there is an established need for such development that is unlikely to be met in the foreseeable future. In these circumstances I judge that the harm to the character and appearance that would accrue should permission be granted, is outweighed by the positive factors supporting the development.
60. The use of site would be acceptable for any traveller, bearing in mind that the GTAA identifies a need for 35 additional pitches. The continuing uncertainty over when this need will be met, and the personal circumstances of the appellant group lend support to granting a full permission that would be conditioned in the usual way to be occupied by gypsy and travellers.
61. Such a permission provides a proportionate response, compliant with human rights legislation discussed above and is within the margin of appreciation given to national authorities in taking account of all the circumstances, is inherent in the choice and implementation of planning policies and would not lead to any violation of protected rights.

#### *Conditions*

62. In relation to the s78 appealed application a condition is necessary to make the development accord with the submitted plans subject to an approved scheme under a site development condition. Given the nature of both appeals a condition restricting occupation of the site to gypsies and travellers is needed.
63. A condition specifying the maximum number of caravans is necessary to limit the scale of the development, as is the restriction of parking of vehicles over 3.5 tonnes, and commercial activities, including the storage of materials on the land, in the interests of the character and appearance of the area.
64. A site development condition is required to ensure details including layout and landscaping of the site are approved to protect the character of the area and in the interests of the occupants' living conditions and those of occupants of neighbouring properties.
65. As the development has begun the condition requiring the submission of details requires strict time limits for compliance so as to ensure that, if there is non-compliance the development becomes unauthorised and can be enforced against. A reasonable period within which to require submission of such details is three months.

### **Conclusion on Appeal A**

66. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted.

### **Conclusion on Appeal B**

67. For the reasons given above I conclude that the appeal should be allowed.

### **Formal Decisions**

#### **Appeal A**

68. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the use of the land at The Paddock, Sharnal Street, High Halstow, Kent ME3 3QR, as shown on the plan attached to the notice, for change of use to a residential caravan site including the stationing of a mobile home, and a touring caravan together with laying of hard surfacing and the installation of a septic tank, subject to the following conditions:

- 1) The caravan site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1: Glossary of Planning Policy for Traveller Sites (or its equivalent in replacement national policy).
- 2) There shall be no more than 1 pitch on the site, and on the pitch hereby approved no more than 2 caravans (as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended) shall be stationed at any time, of which only 1 caravan shall be a static caravan.
- 3) No more than one commercial vehicle shall be kept on the land for use by the occupiers of the caravans hereby permitted, and it shall not exceed 3.5 tonnes in weight.
- 4) No commercial activities shall take place on the land, including the storage of materials.
- 5) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 3 months of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
  - i. within 3 months of the date of this decision, details of: a) any external lighting on the boundary of and within the site; b) the internal layout of the site, including the siting of caravans, hardstanding, parking and amenity areas; c) means of enclosure; and d) tree, hedge and shrub planting including details of species, plant sizes and proposed numbers and densities, shall have been submitted for the written approval of the local planning authority and the said schemes shall include timetables for implementation.
  - ii. if within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, a valid appeal shall have been made to the Secretary of State.

iii. if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

iv. the approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

### **Appeal B**

69. The appeal is allowed and planning permission is granted for the change of use of land to use as a residential caravan site for one gypsy family with two caravans, including no more than one static caravan, together with erection of amenity building and laying of hardstanding, at The Paddock, Sharnal Street, High Halstow, Kent ME3 3QR in accordance with the terms of the application Ref MC/17/3126, dated 29 August 2017, subject to the following conditions:

- 1) The development hereby permitted shall, subject to compliance with Condition 6) be in accordance with the following plans: Proposed Site Location Plan, Proposed Amenity Block Plan (floor and end elevation), and Front and Rear Elevation.
- 2) The caravan site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1: Glossary of Planning Policy for Traveller Sites (or its equivalent in replacement national policy).
- 3) There shall be no more than 1 pitch on the site, and on the pitch hereby approved no more than 2 caravans (as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended) shall be stationed at any time, of which only 1 caravan shall be a static caravan.
- 4) No more than one commercial vehicle shall be kept on the land for use by the occupiers of the caravans hereby permitted, and it shall not exceed 3.5 tonnes in weight.
- 5) No commercial activities shall take place on the land, including the storage of materials.
- 6) Notwithstanding Condition 1) the use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 3 months of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
  - i. within 3 months of the date of this decision, details of: a) any external lighting on the boundary of and within the site; b) the internal layout of the site, including the siting of caravans, hardstanding, parking and amenity areas; c) means of enclosure; and d) tree, hedge and shrub planting including details of species, plant sizes and proposed numbers and densities,

shall have been submitted for the written approval of the local planning authority and the said schemes shall include timetables for implementation.

ii. if within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, a valid appeal shall have been made to the Secretary of State.

iii. if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

iv. the approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

*Grahame Kean*

INSPECTOR

## APPEARANCES

### FOR THE APPELLANT:

Brian Woods BA (MRTPI)	WS Planning and Architecture
Gerard Maloney	Appellant
L Maloney	Appellant's daughter

### FOR THE LOCAL PLANNING AUTHORITY:

Anjoli Foster	Counsel, Landmark Chambers
Hannah Gunner	Planning Officer
Alison Munck	Planning Officer
Jonathan Simon	Planning Policy Officer

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