MC/13/3164

Date Received: 5 December, 2013

Location: The Chestnuts, Matts Hill Road, Rainham, Gillingham, ME9 7XA

Proposal: Variation of conditions 01 and 02 on planning permission MC/09/1804 (change of use for caravan site, stationing of one mobile home, one touring caravan, one small portacabin with associated hard standing and cess pool – temporary period of 5 years) to allow for a permanent use of the land as a caravan site

Applicant: Mrs SCAMP

Agent: Mrs Heine Heine Planning Consultancy 10 WHITEHALL DRIVE HARTFORD NORTHWICH Cheshire CW8 1SJ

Ward Rainham South

Recommendation of Officers to the Planning Committee, to be considered and determined by the Planning Committee at a meeting to be held on 18 June 2014.

Recommendation - Approval with Conditions

1 The use hereby permitted shall be carried on only by Mrs Sarah Scamp, Mr William Scamp and their resident dependants and shall be for a limited period to expire on 31 December 2018 or the period during which the premises are occupied by them, whichever is the shorter.

Reason: The site lies within the open countryside, an Area of Outstanding Natural Beauty and Special Landscape Area and permanent use as a caravan site would be detrimental to the character and appearance of the area and contrary to Policies BNE25, BNE32, BNE33 and H13 of the Medway Local Plan 2003. Permission is only granted having regard to the particular circumstances pertaining at the time of the application and to enable the Council's new Local Plan to be prepared that will include a section on land allocation for any new gypsy or traveller caravan sites.

2 When the premises cease to be occupied by Mrs Sarah Scamp, Mr William Scamp and their resident dependant's or by 31 December 2018, whichever shall first occur, the use hereby permitted shall cease, all materials and equipment (including caravans, hard surfaces and cesspool) brought on to the premises in connection with the use shall be removed and the land restored in accordance with a scheme of work for the restoration of the site that shall be submitted to the Local Planning Authority for its written approval no later than 1 month prior to either of the above events occurring. The
scheme of work for the restoration of the site shall include a timescale for the restoration works to take place. Following the approval of the scheme of work for the restoration of the site by the Local Planning Authority the scheme of work shall be implemented in accordance with the approved details.

Reason: The site lies within the open countryside, an Area of Outstanding Natural Beauty and Special Landscape Area and permanent use as a caravan site would be detrimental to the character and appearance of the area and contrary to Policies BNE25, BNE32, BNE33 and H13 of the Medway Local Plan 2003. Permission is only granted having regard to the particular circumstances pertaining at the time of the application and to enable the Council's new Local Plan to be prepared that will include a section on land allocation for any new gypsy or traveller caravan sites.

3 No more than two caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than one shall be a static caravan or mobile home) shall be stationed on the site at any time.

Reason: The site lies within the open countryside, an Area of Outstanding Natural Beauty and Special Landscape Area and a more intense use would be detrimental to the character and appearance of the area and contrary to Policies BNE25, BNE32, BNE33 and H13 of the Medway Local Plan 2003. Permission is only granted having regard to the particular circumstances pertaining at the time of the application and for the limited use.

4 The existing landscaping on the road boundary of the site shall be maintained for the duration of the permission. Any trees or plants which within that period die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species.

Reason: The site lies within the open countryside, an Area of Outstanding Natural Beauty and Special Landscape Area and the landscaping helps reduce the adverse impact to the character and appearance of the area in keeping with Policies BNE25, BNE32, BNE33 and H13 of the Medway Local Plan 2003.

5 No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.

Reason: The site lies within the open countryside, an Area of Outstanding Natural Beauty and Special Landscape Area use for parking larger vehicles and business purposes would be detrimental to the character and appearance of the area and contrary to Policies BNE25, BNE32, BNE33 and H13 of the Medway Local Plan 2003.

6 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.
Reason: The site lies within the open countryside, an Area of Outstanding Natural Beauty and Special Landscape Area use for parking larger vehicles and business purposes would be detrimental to the character and appearance of the area and contrary to Policies BNE25, BNE32, BNE33 and H13 of the Medway Local Plan 2003.

7 No commercial activities shall take place on the land, including the storage of materials.

Reason: The site lies within the open countryside, an Area of Outstanding Natural Beauty and Special Landscape Area use for parking larger vehicles and business purposes would be detrimental to the character and appearance of the area and contrary to Policies BNE25, BNE32, BNE33 and H13 of the Medway Local Plan 2003.

For the reasons for this recommendation for approval please see Planning Appraisal Section and Conclusions at the end of this report.

Proposal

The application seeks a variation of conditions 01 and 02 on planning permission MC/09/1804 (change of use for caravan site, stationing of one mobile home, one touring caravan, one small portacabin with associated hard standing and cess pool – temporary period of 5 years) to allow for a permanent use of the land as a caravan site. Whilst the applicant has indicated that they are seeking a permanent consent they have also submitted that as an alternative, they would accept another temporary permission.

The development as approved was for the use of the land as a caravan site with one mobile home, one touring caravan, one small portacabin, hardstanding and cesspool. Currently there is no mobile home on the site, the previous mobile home having been damaged and as yet not replaced. In addition, the portacabin has been replaced by a timber utility block, designed to look like a stable block.

Relevant Planning History

Application site

MC/13/3171 Variation of condition 01 on planning permission MC/13/0878 (retrospective application for the construction of a stable block) to allow for a permanent use of the land as a traveller site 
Reported elsewhere on the agenda

MC/13/0878 Retrospective application for the construction of a stable block Approval With Conditions 12/06/2013 Expired 9 December 2013
MC/09/1804  Change of use for caravan site, stationing of one mobile home, one touring caravan, one small portacabin with associated hard standing and cess pool – temporary period of 5 years
Refused 19 January, 2010
Allowed on appeal 9 December 2010
Expired 9 December 2013

MC/09/0833  Retrospective application for use of land for siting of a mobile home and a touring caravan
Refused 10/08/2009
Appeal Withdrawn

MC/04/2702  Use of land for the siting of a mobile home
Refused 13/04/2005
Appeal Dismissed 10/08/2006

Adjoining site referred to as the Mobile Home, Kings Langlei, Matts Hill Road, Hartlip

MC/03/1220  Use of land for the siting of a mobile home
Refused 11/08/2003
Appeal Allowed 06/07/2004

Representations

The application has been advertised on site and by individual neighbour notification to the owners and occupiers of neighbouring properties.

Eight letters have been received raising the following objections:

- The application site is in an AONB;
- The proposal would be visually intrusive and not in keeping with character of area;
- The proposal would have an unacceptable impact on neighbouring properties in terms of loss of outlook, loss of privacy and noise and disturbance;
- The site is close to a bend;
- Increase in traffic;
- There are already too many sites in the area;
- Proposal is contrary to Local Plan;
- No need for gypsy caravan site in this location;
- Detriment to wildlife;
- Loss of ancient woodland;
- Impact on service - water, electricity etc.;
- Precedent;
- Request that consideration of application be postponed for three months to enable residents to meet;
- Ask for meeting with councillors.

"All other matters raised not listed above are non material"
Maidstone and Swale Borough Councils have both written raising no objection.

Development Plan

The Development Plan for the area comprises the Medway Local Plan 2003. The policies referred to within this document and used in the processing of this application have been assessed against the National Planning Policy Framework, 2012 and are considered to conform.

Planning Appraisal

Background

Planning permission was granted by the Secretary of State on appeal on 9 December 2010 for "Change of use for caravan site, stationing of one mobile home, one touring caravan, one small portacabin with associated hard standing and cess pool. The planning permission was subject to conditions, including conditions 1 and 2 which state:

"1) The use hereby permitted shall be carried on only by Mrs Sarah Scamp, Mr William Scamp and their resident dependant's and shall be for a limited period being the period of three years from the date of this decision, or the period during which the premises are occupied by them, whichever is the shorter.

2) When the premises cease to be occupied by Mrs Sarah Scamp, Mr William Scamp and their resident dependant's or at the end of five years, whichever shall first occur, the use hereby permitted shall cease, all materials and equipment (including caravans, hard surfaces and cesspool) brought on to the premises in connection with the use shall be removed and the land restored in accordance with a scheme of work submitted to and approved in writing by the Local Planning Authority."

The temporary permission expired on 8 December 2013.

The application seeks to vary conditions 1 & 2 to make, the site permanent, but it is submitted that as an alternative, the applicant would accept another temporary permission.

Main Issues

- The principle of the use;
- Countryside protection policies;
- Design and appearance;
- Neighbour amenity;
- Highway considerations; and
- Planning Policy for Traveller Sites.

Regard should be paid to the previous appeal decision and the application also raises Human Rights Issues.
Principle

The site is in open countryside and in the Strategic Gap, as identified in Policy BNE31 of the Local Plan, the Kent Downs Area of Natural Beauty (AONB) as identified in Policy BNE32, and the North Downs Special Landscape Area (SLA) as identified in Policy BNE33. At the time, the previous planning application was considered in 2010, there was, therefore a strong policy presumption against the development. The application was therefore refused on the grounds that:

"1 The development is contrary to Policy BNE25 of the Medway Local Plan 2003 that states that development will not normally be permitted within the rural area unless it falls within one of a number of specified categories. The development does not fall within any of these categories.

2 The development as a result of its form and appearance fails to respect and conserve the natural beauty and character and appearance of the open countryside, Area of Outstanding Natural Beauty and Special Landscape Area contrary to Policy C4 of the South East Plan 2009 and policies BNE25, BNE32, BNE33, and H13 of the Medway Local Plan 2003."

No concerns were raised in terms of the design of the mobile home and other structures on the land, neighbour amenity or highways.

The policy presumption remains today but is re-inforced by the National Planning Policy Framework (NPPF) which states that planning should contribute to conserving and enhancing the Natural Environment (Paragraph 17) and protecting and enhancing valued landscapes (Paragraph 109). Paragraph 115 of the NPPF states that great weight should be given to conserving landscape and scenic beauty in AONB's.

The previous appeal decision

In his decision letter, the Inspector identified the main considerations to be:

a) The effect of the proposed development on the character and appearance of the surrounding area, part of an AONB and SLA; and
b) Whether any conflict with policy or other harm would be outweighed by other material considerations, including the need for gypsy sites and the appellant's personal and family circumstances.

The Inspector had regard to Policies BNE25, BNE32, BNE33 and H13 of the Local Plan, Circular 01/2006 and PPS7 (now replaced by NPPF). He concluded that the proposed development would harm the character and appearance of the surrounding area, which was part of an AONB and SLA and would conflict with the aims of these Local Plan policies and with PPS7 and Circular 01/2006.

However, such harm would be localised and temporary, there was an unmet need for gypsy and traveller site in Medway, and there was no suitable alternative for the appellant and her family, whose personal circumstances meant that they have a
pressing need for a site. He added that if they had to leave the site, the effect on their human rights would be disproportionate. These considerations outweighed the harm which would be caused to the countryside for a limited period of time after which the harm could be remedied through restoration of the site. He, therefore recommended that planning permission be granted for a temporary period of 5 years.

The Secretary of State however, took account of the fact that the Council planned to produce a Development Plan Document (DPD) related to land allocation for any new gypsy or traveller caravan sites and programmed for adoption in 2013. In the light of this the Secretary of State considered a 3 year period should be granted thus enabling a much greater degree of certainty with regard to the provision of gypsy sites in Medway. He did not consider that a period of 5 years was justified and granted temporary consent for a period of 3 years. However, the DPD has not come forward due to the withdrawal of the Local Development Framework Core Strategy.

Planning Policy for Traveller Sites

Since the appeal decision, the Government has published the National Planning Policy Framework (NPPF) and the Planning Policy for Traveller Sites. Medway Gypsy Traveller and Traveller Accommodation Assessment (GTAA) has been published and covers the period from 2013 to 2028. Additionally, the Council has commenced work on a new Local Plan that will include a section in relation to the provision of gypsy and traveller accommodation sites. The GTAA identifies a 5 year requirement of 13 pitches between 2013 and 2018. And planning permission was granted on 30 January 2014 for the use of land for the stationing of a mobile home and touring caravan on land adjoining Four Seasons, Matts Hill Road, for a temporary period expiring on 30 September 2018.

Policy H13 of the Local Plan covers Gypsy caravan sites. This Policy states that Gypsy caravan sites and travelling showpeople’s quarters will be permitted when:

(i) the site is close to essential local services, including shops, public transport, schools, medical and social services; and

(ii) the site can be physically contained and adequately screened from surrounding land; and

(iii) there is compliance with agricultural, landscape, nature conservation and countryside policies; and

(iv) there is no adverse impact on nearby residential amenity or agricultural interests; and

(v) access arrangements are of a standard approved by the Highway Authority; and

(vi) there is adequate provision of power, water and sewerage.

Policy C of the Planning Policy for Traveller sites states that when assessing the suitability of sites in rural or semi-rural settings, Local Planning Authorities should ensure that the scale of such sites does not dominate the nearest settled community.
Policy H states that planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise (Paragraph 20). Applications should be assessed and determined in accordance with the presumption in favour of sustainable development and the application of specific policies in the National Planning Policy Framework and the Government's planning policy for traveller sites (Paragraph 21).

Paragraph 22 states that Local Planning Authorities should consider the following issues amongst other relevant matters when considering planning applications for traveller sites:

(a) The existing level of local provision and need for sites;
(b) The availability (or lack) of alternative accommodation for the applicants;
(c) Other personal circumstances of the applicant;
(d) That the locally specific criteria used to guide the allocation of sites in plans or which form the policy where there is no identified need for pitches/plots should be used to assess applications that may come forward on unallocated sites
(e) That they should determine applications for sites from any travellers and not just those with local connections

It also advises that Local Planning Authorities should: strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan; and ensure that sites in rural areas respect the scale of, and do not dominate the nearest settled community, and avoid placing an undue pressure on the local infrastructure (Paragraph 23).

Paragraph 24 states that when considering applications, Local Planning Authorities should attach weight to the following matters:

(a) Effective use of previously developed (brownfield), untidy or derelict land
(b) Sites being well planned or soft landscaped in such a way as to positively enhance the environment and increase its openness
(c) Promoting opportunities for healthy lifestyles, such as ensuring adequate landscaping and play areas for children
(d) Not enclosing a site with so much hard landscaping, high walls or fences, that the impression may be given that the site and its occupants are deliberately isolated from the rest of the community.

Paragraph 25 states that if a Local Planning Authority cannot demonstrate an up-to-date five year supply of deliverable sites, this should be a material consideration in any subsequent planning decision when considering applications for the grant of planning permission. Whilst paragraph 26 states that Local Planning Authorities should consider how they could overcome planning objections to particular proposals using planning conditions or planning obligations.

The scale of the use would not dominate the community and therefore no objection is raised under Policy C and paragraph 23.

With regard to Paragraph 25, notwithstanding the comment of the Secretary of State
in the appeal decision letter, the DPD has not come forward due to the withdrawal of the Local Development Framework. However work has commenced the on the Council's new Local Plan that will include a section on the allocation of gypsy and traveller accommodation sites. In the mean while it must be remembered that the GTAA identifies a requirement which has not as yet been met in terms of gypsy and traveller accommodation provision.

The applicant is seeking permanent permission. However, having regard to the Inspector and the Secretary of State's comments, the harm to the that would be caused by the permanent use of the site, and the fact that the Council has commence work on its Local Plan that will include a section on the allocation of gypsy and traveller accommodation sites it is recommended that conditions 1 and 2 of planning permission be varied to grant a further temporary planning permission until 31 December 2018.

Human Rights Issues

As stated, the Inspector took into account the effect on the human rights of the applicants if the appeal were to be dismissed. Their Gypsy status was accepted at the time. The family have four children, one of whom attends a local secondary school and three of whom attend a local primary school. At present the applicant is not is a position to relocate to another site.

The application for the reasons set out above is considered to be permissible for a temporary period only. However, to refuse consent, without an up to date Local Plan which contains a section on the provision of gypsy and traveller accommodation sites, would, in all likelihood, result in the applicant and her dependant's vacating the site (which they regard as their home) without any certainty of suitable alternative accommodation being readily available. This would represent a significant interference with their home and family life, which outweighs the temporary harm which has been and will continue to be caused by the granting of a temporary permission for this development. Refusal of this application would be likely to have a disproportionate effect upon the rights of the applicant under Article 8 of the European Convention on Human Rights.

Local Finance Considerations

There are no Local Finance Considerations raised by this application.

Conclusions and Reasons for Approval

It is acknowledged that the proposal fails to conserve or enhance the character and appearance of the countryside, the AONB and the SLA and as such would conflict with Policies BNE25, BNE32 and BNE33 of the Local Plan and with the NPPF. However, having regard to the previous appeal decision, the Government advice on traveller sites, the current GTAA, the work that has commenced on the new Local Plan and the human rights of the applicants, it is recommended that conditions 1 and 2 of planning permission MC/09/1804 be varied to grant a further temporary planning permission until 31 December 2018.
The application would normally be determined under delegated powers but is being referred for Committee determination due to the extent of the representations received expressing a view contrary to the recommendation.

Background Papers

The relevant background papers relating to the individual applications comprise: the applications and all supporting documentation submitted therewith; and items identified in any Relevant History and Representations section within the report.

Any information referred to is available for inspection in the Planning Offices of Medway Council at Gun Wharf, Dock Road, Chatham ME4 4TR and here http://planning.medway.gov.uk/dconline/AcolNetCGI.gov