

MC/16/1562

Date Received: 7 April, 2016

Location: Land Between Chestnuts And Duddingstone Farm (Known As Scarlett Meadow) Matts Hill Road Hartlip ME9 7XA

Proposal: Retrospective application for change of use of land to residential for the siting of a mobile home, two touring caravans, a cesspit and hard standing area; construction of a day room; paddock to rear and construction of 1.8m high boundary fencing

Applicant: Mrs Twinley

Agent: WS Planning & Architecture Europe House Bancroft Road Reigate RH2 7RP

Ward Rainham South

Case Officer Hannah Gunner

Contact Number 01634 331700

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**Recommendation of Officers to the Planning Committee, to be considered and determined by the Planning Committee at a meeting to be held on 27 July, 2016.**

**Recommendation - Approval with Conditions**

- 1 The use hereby permitted shall be discontinued and the land restored to its former condition on or before 30th June 2019 in accordance with a scheme of work submitted to and approved in writing by the Local Planning Authority.

Reason: To allow the Local Planning Authority an opportunity to assess the effect of the permitted development on the amenities of the surrounding area in accordance with Policies BNE25, BNE32 & BNE33 of the Medway Local Plan 2003.

- 2 The development hereby permitted shall be carried out in accordance with the following approved plans:

Drawing numbers J002215/PL02 A, J002215/PL03 B and J002215/PL04 A received on 7 April 2016.

Reason: For the avoidance of doubt and in the interests of proper planning.

- 3 The use hereby permitted shall be carried on only by Ms. Kelly Twinley, Moses Twinley, Tammy Lee Twinley, Scarlet Twinley and Alvina Mead.

When the premises cease to be occupied by Ms. Kelly Twinley, Moses Twinley, Tammy Lee Twinley, Scarlet Twinley and Alvina Mead the use hereby permitted shall cease and any materials and equipment brought on to the premises in connection with the use shall be removed.

Reason: To take account of the special circumstances of the submitted application and to regulate and control any subsequent use of the premises in the interests of amenity in accordance with Policy BNE25, BNE32 and BNE33 of the Medway Local Plan 2003.

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

Reason: To take account of the special circumstances of the submitted application and to regulate and control any subsequent use of the premises in the interests of amenity in accordance with Policies BNE25, BNE32 and BNE33 of the Medway Local Plan 2003.

- 5 Within two months of the date of this permission, a scheme of landscaping (hard and soft) and boundary treatment shall be submitted to and approved in writing by the Local Planning Authority. All planting, seeding and turfing comprised in the approved scheme of landscaping shall be implemented during the first planting season following the approval. Any trees or plants which within 5 years of planting are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless the Local Planning Authority gives written consent to any variation.

Reason: Pursuant to condition 197 of the Town and Country Planning Act 1990 and to protect and enhance the appearance and character of the site and locality, in accordance with Policy BNE1 and BNE6 of the Medway Local Plan 2003.

- 6 No development whether permitted or not by the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order amending, revoking or re-enacting that Order) shall be carried out on the land beyond the front 22m of the site (so shown as paddock on drawing number J002215/PL02 A). The rear parts of the site are to remain open to be used for grazing and as a grassed play area and no buildings are to be erected on these parts without first obtaining permission from the Local Planning Authority.

Reason: To protect and enhance the appearance and character of the site and locality, in accordance with Policy BNE1 and BNE6 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**

This application relates to an area of land with a frontage to Matts Hill Road of approx. 23m in width at the front (approx. 50m at its widest point) and a depth of around 110m. The site has been divided up with post and rail fencing and the rear third is used for grazing for ponies, the middle section as a garden/play area and the front section as the residential area and parking.

The land within the front section (1<sup>st</sup> approx.21.55m) has been part surfaced with shingle (on top of a weed suppressing fabric) and is already occupied by a mobile home and a touring caravan. The mobile home has a decked stepped area to the front door to accommodate the ground level differences between the ground and internal floor level. The application seeks retrospective planning permission for these aspects.

Additional to these, this planning application also seeks permission for a day room and an additional tourer. The day room is to be an approx. 10.8m x 3.6m wooden structure and these would generally house washing facilities as well as shower rooms. These can also be a place to eat or relax. In this instance it has been implied that this would act as a wash facility as well as an area for the children to play. It would function in a manner considered to be ancillary to the main mobile home unit. The day room would be located to the west of the entrance gate, between the front boundary fence and the existing mobile home. The eaves height is shown to be approx. 2.25m with a max height of approx. 3m.

A cesspit has been provided between the mobile homes and touring caravans. The land is enclosed on three sides by an approx. 2m close boarded fence, with a double gate at the front (also solid close board style). The gate is set in from the highway by approx. 6-7m

The application is part retrospective and is for personal use by the applicant, her 3 children and her mother in law. There are to be no other people on site (unless visiting) as she is a single parent.

## **Site Area/Density**

Site Area: 0.95 hectares (2.36 acres)  
Site Density: 1 dph (0.42 dpa)

## **Relevant Planning History**

There is no relevant planning history available for this site.

## **Representations**

The application has been advertised on site and by individual neighbour notification to

the owners and occupiers of neighbouring properties.

**6 letters** have been received raising the following objections:

- Loss of trees and hedges;
- Site is in Strategic Gap and AONB;
- The appearance is not in keeping with its countryside location;
- Development in countryside;
- Additional demand on infrastructure;
- Additional traffic on Matts Hill Road;
- Traveller sites here dominate the settled community
- This application represents a spread of the traveller community

**1 petition** has also been received with 23 signatories. The covering letter to this petition stipulates that support of the signatories is in relation to the loss of AONB and they feel strongly about the growing number of traveller sites within Matts Hill Road.

Members have all been sent letters from local residents that raise issues relating to the application. This letter is appended in full to this supplementary agenda advice sheet.

## **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. Regard should also be paid to the Department of Communities and Local Government's National Policy for Travellers (August 2015).

## **Planning Appraisal**

### *Background*

During officer site visits to the applicant it has been established that the applicant is a Romany Traveller and has been living on this site, with her 3 children and mother in law since August 2015. The children are aged 13, 11 and 7. Whilst the eldest boy is home schooled the two youngest currently attend a Special Educational Needs school in the Istead Rise area. The applicant is seeking to relocate the children now that she is currently more settled and is currently in discussion with Mierscourt Primary School.

The mother in law that is living with the applicant is also under her care as she is partially blind and has suffered with a stroke.

Prior to living at this site the applicant and her children were living with her Grandad at the Cuxton site (by the waste and recycling centre), however he has Alzheimer's and was becoming aggressive toward her children which has forced the family to move out. The applicant's grandad is now being cared for by another member of the immediate family.

## *Principle*

The site is outside the urban area, as defined on the Proposals Map to the Medway Local Plan 2003 and in open countryside. It is also in the Strategic Gap, as identified in Policy BNE31, the Kent Downs Area of Natural Beauty (AONB) as identified in Policy BNE32, and the North Downs Special Landscape Area as identified in Policy BNE33 of the Medway Local Plan 2003. The development proposed is a retrospective application for the siting of a static mobile home and two tourers already on site along with an additional dayroom. The proposed development therefore falls within the area of Saved Policies BNE25, BNE31, BNE32, BNE33 and H13 of the Medway Local Plan 2003. Policy BNE25 of the Medway Local Plan 2003 states that development in the countryside will only be permitted if it maintains and wherever possible enhances the character, amenity and functioning of the countryside and it offers a realistic chance of access by a range of transport modes. In addition Policy BNE25 identifies seven criteria for assessing proposals for development in the countryside, including that the development essentially demands a countryside location such as agriculture, forestry, outdoor or informal recreation.

The National Planning Policy Framework (NPPF) states that planning should contribute to conserving and enhancing the Natural Environment (Paragraph 17) and protecting and enhancing valued landscapes (Paragraph 109).

Policy BNE31 states that within the Strategic Gap development will only be permitted when it does not:

- (i) result in a significant expansion of the built confines of existing settlements; or
- (ii) significantly degrade the open character or separating function of the strategic gap.

Policy BNE32 states that development within the Kent Downs AONB will only be permitted where it conserves that natural beauty, wildlife and cultural heritage of the area. This is consistent with and supported by Paragraph 115 of the NPPF which states that great weight should be given to conserving landscape and scenic beauty in AONB's.

Policy BNE33 of the Local Plan states that within the North Downs Special Landscape Area development will only be permitted if:

- (i) it conserves and enhances the natural beauty of the area's landscape; or
- (ii) the economic, and social benefits are so important that they outweigh the local priority to conserve the area's landscape.

As can be seen above, Policies BNE25, BNE31, BNE32 and BNE33 seek to protect the countryside and rural environment from development. These policies seek to restrict development in rural and countryside locations. These policies would normally find the proposed development unsuitable. However similar style of development has already been permitted elsewhere along Matts Hill Road (MC/13/2047) and the principle established for temporary accommodation for travellers within this area.

Policy H13 of the Medway Local Plan 2003 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.

The development proposed is for specific gypsy and traveller accommodation. National Policy for Travellers (August 2015) states that the Council need to have established a 5 year supply of sites for accommodation.

The Council commissioned the University of Salford to undertake a Gypsy, Traveller and Travelling Showpeople Accommodation Assessment (GTAA) in 2013. This identified a need for 13 extra pitches 2013-2018. At present a total of 9.6 pitches have been supplied since 2013 to meet the assessed need. Therefore there is an undersupply of pitches identified.

However the National Planning Policy for Traveller sites (2015) amended the definition of a 'traveller' (includes gypsies and travellers for the purpose of the policy document). It stated that 'travellers' were:

'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 showpeople or circus people travelling together as such.'

This means that those who have permanently given up travelling are now not defined as 'travellers'. This change could have an impact on the level of need in the GTAA as this was undertaken under the previous definition. Medway Council is in the process of updating its Local Plan and has not yet produced a new GTAA to account for the changes.

The applicant (Ms Twinley) is believed to have lived as a traveller in the true sense, living at the designated Cuxton site prior to moving to this site. This is explained in better detail in the 'background' section of this report. Childrens schooling appears to be the reason for settling currently.

Policy C relates to sites in rural areas and the countryside. It 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. Given the location of this site and the fact that the majority of the settled community are located to the east (some 400m+ away) it is considered that the current scale of traveller occupation here is not dominant.

Policy H of the Planning Policy for Traveller Sites (2015) states that a LPA must demonstrate a 5 year supply of deliverable sites. At the present time Medway Council cannot do this for the reasons outlined above and so a presumption in favour of sustainable development should be followed unless exceptional circumstances prevail. Exceptional circumstances are defined as in the National Policy for Travellers:

‘where the proposal is on land designated as Green Belt; sites protected under the Birds and Habitats Directives and / or sites designated as Sites of Special Scientific Interest; Local Green Space, an Area of Outstanding Natural Beauty, or within a National Park (or the Broads).’

As noted the site is within the Kent Downs AONB and so this is considered to be an 'exceptional circumstance' and thus outside of the remit of the policy to fall within the caveat for special consideration in light of the lack of a demonstrable 5 year supply. The circumstances of this particular applicant however demonstrate that she has been living within Medway at a designated site. Due to circumstances within the site she has been forced to move off and re-locate. She has re-located within the borough, albeit a protected area. Given that she is an existing resident within Medway it is considered that her circumstances differ from those of the recently refused application at Harewood (MC/14/3045). The temporary nature of this proposed permission also forms part of the conclusion to consider this application more favourably.

The Local Authority also acknowledges that the principle for the proposed development has been established the area and that at the present time does not have adequate evidence to establish an accurate picture of the level of need in the area due to the change in definition and therefore does not raise an objection. It notes that this work is currently being undertaken and so any permission granted should be temporary until the policy context can be updated and allocations of sites established. This is especially true given the proposed location within the Kent Downs AONB and associated landscape grounds impacts.

#### *Design and effect on the character of the area*

Policy BNE1 of the Medway Local Plan 2003 states that the design of development should be appropriate in relation to the character, appearance and functioning of the built and natural environment. The impact on the character of the area also needs to be assessed in accordance with the provisions of Policies BNE25, BNE32 and BNE33 of the Medway Local Plan 2003.

Being a mobile home and tourers, the structures have no design merit in themselves. However, the impact of the development on the character and appearance of the locality needs to be assessed. Matts Hill Road is a tree lined country lane, with occasional openings, serving houses. In some cases the houses are visible but in several instances, vegetation has established itself along the frontage to houses. The

application site is situated in a section of Matts Hill Road which is wooded for the most part, although this particular site has remained fairly open. The frontage of the application site is characterised by trees and hedges over 2m tall (behind the boundary fence). On the south side of this section of Matts Hill Road, there is a more densely wooded area.

The development, which has already been part implemented, is set behind the fencing, gates and vegetation which does not make it that visible from the roadside. The visual impact from the highway and general public realm area is therefore not considered to be as 'intrusive' as other developments within the road and is comparable to the entrances to many of the settled residential plots within the road. The provision of a mobile home here is part obscured. The dayroom, when erected would also contribute to making the mobile home less visible and given that the day room structure is wooden, it would appear more in character with the overall street scene. Whilst the tourers might be less sheltered from vision, they would still be located behind the main gates and vegetation. Whilst this proposal therefore is still considered to fail to conserve or enhance the character and appearance of the countryside, the AONB and the SLA and as such is contrary to Policies BNE1, BNE25, BNE32 and BNE33 it is recognised that it is comparable in terms of visually intrusiveness, to many of the settled properties. It is necessary to consider whether other material considerations outweigh the harm to the countryside, AONB and SLA.

### *Amenity*

This application is not considered to impact neighbouring amenity to any significant extent. The closest residential properties are Duddingstone Farm (to the west) and Kings Langley (to the east). Whilst the boundaries may only be approx. 25m and 20m from the application site at their closest point, the dwellings would be approx. 70m and approx. 110m from the proposal. The boundary treatments that are in place ensure that there is no loss of privacy or overlooking from the application site also.

It is noted that other applications within this road for similar schemes have had conditions imposed in relation to landscaping to be submitted to be approved. To ensure that the visual impact of this proposal on the highway is kept to a minimum it is suggested that a landscaping plan is conditioned here also so that it may be implemented with the construction of the day room. It is noted that there is currently a degree of shrubbery and foliage on the front boundary that assists in screening the visual impact of this site from the road side. A condition regarding boundary treatment will only thicken this screen and protect the visual impact more so from public realm.

Another measure to ensure that amenity is not impacted (which has been implemented for other similar sites) is a condition regarding occupants and number of units to restrict a more intensive use on the site. The current situation, functioning as a sole family is not considered to be of an intensive nature.

The proposal would not result in any loss of light or generate unacceptable levels of activity and traffic. Accordingly, no objection is raised under Policy BNE2 of the Medway Local Plan 2003.



The plans that have been submitted as part of this application show the residential element of this site remaining at the front with the larger piece of land beyond it (separated into 2 parts by post and rail) remaining as open space for horse grazing and general play area. This shall remain as such and again, a condition can be placed on any permission stipulating that the rear 2 parts of the site remain open without buildings or structures being placed on it.

### *Highways*

It has been noted on many officer visits to the site that there is, in practice the ability to park several cars on the site. No objection is therefore raised in terms of parking under Policy T13 of the Medway Local Plan 2003.

The proposal would not generate unacceptable levels of traffic and the vehicular access onto Matts Hill Road would not be detrimental to highway safety. No objection is therefore, raised under Policies T1 and T2 of the Medway Local Plan 2003.

### *Human Rights Issues*

In his report into the planning appeal for the site at nearby Land adjoining King's Langley- now known as Chestnuts (MC/09/1804) the Inspector concluded that the development would harm the character and appearance of the surrounding area, the AONB and SLA and in this respect would conflict with Policies BNE25, BNE32, BNE33 and H13 of the Local Plan. However, the harm would be localised and temporary. He also took account of the unmet need for traveller accommodation and the lack of a suitable available alternative for the appellant and her family. He considered that if the appeal were to be dismissed the effect on their human rights would be disproportionate. In this instance, he considered that other material considerations, including the needs of the appellant and her family outweighed the harm which would be caused to the countryside for a limited period of time. On this basis, he recommended that temporary planning permission be granted for a period of five years. This was changed to three years by the Secretary of State in his decision letter. During a recent visit to the site it was noted that the caravan and mobile home were no longer in situ.

Members' attention is also drawn to planning application MC/13/1598 for change of use of land to use as a residential caravan site for one gypsy family with two caravans including one static caravan/mobile home on land East of North Dane Way, Chatham. That application was approved on 12 September 2013 for a temporary period of five years.

As already set out within this report, the applicant is an established resident within Medway already and has been forced to relocate sites due to family circumstances. This situation is deemed to impact on the applicants Human Rights in a similar way to that set out above if refused.

Having regard to the above considerations and taking account of the work currently being carried in for the production of a new Local Plan, it is recommended that temporary permission be granted for a period of three years.

### *Local Finance Considerations*

No local finance considerations are 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 Medway Local Plan 2003. However, having regard to the existing planning permissions on nearby sites, the applicants current personal circumstances, the Government Advice on Traveller sites, the current GTAA and the human rights of the applicants, it is recommended that temporary planning permission be granted for a period of three years.

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.

The application was reported to the Planning Committee on 29 June but deferred for clarification on the applicants status and this is now set out in the report above.

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### **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://publicaccess.medway.gov.uk/online-applications/>