

MC/19/0137

Date Received: 18 January 2019

Location: Hildensfield Matts Hill Road Rainham Gillingham

Proposal: Retrospective change of use of land to mixed use as Gypsy site for stationing of caravans for residential occupation with associated hard standing, utility block/shed, kennel runs and cess tank and keeping of horses with field shelters

Applicant Mr & Mrs J Axton

Agent Mrs Alison Heine
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Hartford
Northwich
CW8 1SJ

Ward: Rainham South Ward

Case Officer: Hannah Gunner

Contact Number: 01634 331700

Recommendation of Officers to the Planning Committee, to be considered and determined by the Planning Committee at a meeting to be held on 24th April 2019.

Recommendation - Approval Subject to:

- A. The submission of a Unilateral Undertaking or SAMM Mitigation Contribution Agreement to secure £239.61 towards Designated Habitats Mitigation.
- B. And the following conditions:
 - 1 The use hereby permitted shall be carried on only by Mr John Axton, Mrs Lisa Axton and their dependants Freddie Axton, Lenny Axton, Johnny Axton and Archie Axton and shall be for a limited period only until 30 April 2022. When the premises cease to be occupied by those named above, or by 30 April 2022 whichever shall first occur, the use hereby permitted shall cease and all materials and equipment (including, but not limited to, the mobile home, touring caravans, amenity blocks, sheds, kennels, field shelters, hard surfaces, cesspool and any domestic paraphernalia) brought onto the land, or works undertaken to it in connection with

the use shall be removed and the land restored to its condition prior to the use and development taking place.

Reason: Temporary and personal permission only to allow the Local Planning Authority complete the process of producing a Local Plan including the allocation of sites for gypsy/traveller accommodation in accordance with paragraph 61 of the National Planning Policy Framework 2019.

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

Plan 1 Location Plan, Plan 3 Utility building/shed and Kennel runs received 18 Jan 2019 and Plan 2 Proposed Site Plan Rev A 21.03.2019 received 21 March 2019.

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

- 3 No more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 (including any amendments or subsequent Act) and the Caravan Sites Act 1968 (including any amendments or subsequent Act) (of which 1 shall be a static caravan or mobile home and the other 1 a touring caravans) shall be stationed on site at any one time.

Reason: To regulate and control any subsequent use of the premises in the interests of visual and residential amenity in accordance with Policies BNE1, BNE2, BNE25, BNE31, BNE32 and BNE33 of the Medway Local Plan 2003.

- 4 No more than 1 commercial vehicle shall be parked/stored on site at any time.

Reason: To ensure that the site remains predominantly for the permitted use and reduce the potential for commercial activity on site in accordance with Policy BNE2 of the Medway Local Plan 2003.

- 5 No commercial activity shall take place on the site, including the open storage of materials or the stationing of any vehicle of more than 3.5 tonnes.

Reason: To ensure that the site remains predominantly for the permitted use and reduce the potential for commercial activity on site in accordance with Policy BNE2 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 identified as paddock and woodland on approved drawing entitled Plan 2 Proposed Site Plan received on 21 March 2019.

Reason: To protect the character and appearance locality, in accordance with Policies BNE1, BNE25, BNE31, BNE32 and BNE33 of the Medway Local Plan 2003.

- 7 Within two months of the date of this permission, the area of hardstanding located within the area identified on approved drawing entitled Plan 2 Proposed Site Plan received 21 March 2019 as paddock shall be removed and the original soils to be exposed.

Reason: To protect the Ancient Woodland in accordance with Paragraph 175 of the National Planning Policy Framework 2019.

Proposal

The application seeks full planning permission for the retrospective change of use of land to a mixed use as gypsy site for stationing of caravans for residential occupation with associated hard standing, utility block/shed, kennel runs and cess tank and keeping of horses with field shelters.

The mobile home is located on the west side of the site, on the hardstanding area toward the front (south) of the site. At the rear of the site is woodland, which is classified as Ancient Woodland, in front of this is a grassed area which is used as a paddock for the keeping of two horses.

Currently there are a number of structures on the site, including stables/field shelter, kennels, 2 x sheds and a tourer. The hardstanding that has been laid on site currently encroaches into the Ancient Woodland however the proposed site layout shows that the hardstanding is to be removed up to the line of the Ancient Woodland.

At the site entrance is an approx. 2m high fence with gate. The gate is set back from the highway by approx. 6m (sufficient space for 1-2 vehicles) and in front of the fence is established hedgerow that is also +2m in height.

The cess tank is underground within the hardstanding area, on the boundary with the Ancient Woodland.

Site Area/Density

Site Area: 0.06 hectares (0.15 acres)

Site Density: 17 dph (6.7 dpa)

Relevant Planning History

MC/15/4385 Retrospective application to allow for the siting of a second static mobile home (following planning permission MC/13/2047).

Decision: Approval with conditions

Date: 30 June 2016

MC/14/0884 Details pursuant to condition 5 of planning permission MC/13/2047 for Use of land for the stationing of one mobile home and one touring caravan together with construction of single storey detached building for use as dayroom, hardstanding and cesspit
Decision: Discharge of Conditions
Date: 02 June 2014

MC/13/2047 Use of land for the stationing of one mobile home and one touring caravan together with construction of single storey detached building for use as dayroom, hardstanding and cesspit
Decision: Approval with conditions
Date: 30 January 2014

Representations

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

No letters of objection have been received from any of the neighbouring residents. It should also be noted that there has also not been any representation made by the Parish Council or any resident groups.

Development Plan

The Development Plan for the area comprises the Medway Local Plan 2003 (the Local Plan). The policies referred to within this document and used in the processing of this application have been assessed against the National Planning Policy Framework 2019 and are generally considered to conform. Where policies do not conform either wholly or in part, it is specified in the assessment part of the report.

The Planning Policy for Traveller Sites August 2015, Medway Council Gypsy and Traveller Accommodation Assessment, May 2018 (GTAA) and the Medway Landscape Character Assessment, 2011 are also relevant.

Planning Appraisal

Background

Planning history of travellers on this site goes back to 2013 when a different family first occupied the site. Their planning permissions were temporary permissions and personalised, given that the family had children of school age that were in education within the borough. The previous family vacated the site around May 2017 (Medway Planning and Enforcement Officers visited site on 1 June 2017 and witnessed it was vacant).

As a result of the previous temporary planning permission being personalised to the previous occupants, once they vacated the site there was no planning permission in place.

The site is known to have been vacant for a short period between May/June 2017 to November/December 2017. By late November/early December 2017 mobile homes had been placed on site. The current occupants had moved on to the site. The site is owned by a relative of the occupants who also owns and lives at the adjacent 10 Matts Hill Road.

Principle

The site is outside the urban area, as defined on the Proposals Map to the Medway Local Plan 2003 (the Local Plan) in open countryside and strategic gap (Policies BNE25 and BNE31). The site is also in the North Downs Special Landscape Area (Policy BNE33), the Kent Downs Area of Outstanding Natural Beauty (AONB) as identified in Policy BNE32 of the Local Plan and the Matts Hill Farmland landscape character area as defined in the Medway Landscape Character Assessment, 2011 (MLCA).

Policy BNE25 of the Local Plan seeks to restrict development within the countryside in order to protect the countryside for its own sake. This is not entirely consistent with the approach of the NPPF which supports development provided it is sustainable. Policy BNE23 of the Local Plan is also restrictive as it seeks to protect AONBs from development given that the landscape of the designated area is recognised for its national importance. However, alongside the need to protect the countryside, its open character (strategic gap) and the national designation of AONB, sits the Council's requirement to provide housing for different groups. Paragraph 61 of the NPPF supports the provision of housing for different groups and in terms of gypsies and travellers, refers to the Planning Policy for Traveller Sites in footnote 25. Policy H13 of the Local Plan relates to residential accommodation for gypsies and travellers and gives specific criteria as to where it is appropriate.

The main consideration therefore is whether the proposal to provide residential accommodation, specifically as a home for people of gypsy or traveller definition as per the Planning Policy for Traveller Sites 2015, is suitable in this location either permanently or temporarily.

Use of Site as Residential Accommodation for Travellers

As a starting point, the Council is required to provide adequate land supply for gypsy and traveller pitches. The Council is currently in the process of producing a new Local Plan. As part of this process, an assessment has been made to determine the 'need' in terms of pitches required for the gypsy and traveller community. The Medway Council Gypsy and Traveller Accommodation Assessment May 2018 (GTAA) carried out by Opinion Research Services is the most recent and up-to-date document. The assessment indicates that there is a need for further pitches but specifies that the further need is for those households that meet the planning definition (set out below) and those unknown households. 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.

The Planning Policy for Traveller Sites 2015 contains the following definition of a 'traveller' (includes gypsies and travellers for the purpose of the policy document), 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."

This means that those who have permanently given up travelling are now not defined as 'travellers'.

The document goes on to state that:

"In determining whether persons are "gypsies and travellers" for the purposes of this planning policy, consideration should be given to the following issues amongst other relevant matters:

- A. Whether they previously led a nomadic habit of life
- B. The reasons for ceasing their nomadic habit of life
- 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"

The Planning Policy for Travellers Sites 2015 and the GTAA 2018 is relevant to this site and the matters identified above are considered below.

Also relevant is an appeal decision for a site at King's Langley, Matts Hill Road (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 Medway Local Plan. However, the Inspector balanced in favour of the personal circumstances and considered 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.

As is it still the case that the Council has an identified need for pitches and taking account of the Inspectors decision at King's Langley, consideration needs to be given as to whether the personal circumstances of the applicant outweigh any harm caused to the AONB.

Personal Circumstances

Evidence has been submitted as part of this application with regard to the gypsy status of the occupiers:

The applicant (Mr) states that he is of gypsy status and that he still travels on a regular basis. It is stated that the applicant (Mr) comes from a long line of gypsy families in Kent. Although the applicant is in full time employment (and has been employed by the same company for 17 years); it is stated that he uses all of his paid annual leave (28 days per year), agreed unpaid leave (at least 10 days) and time of in lieu (accrued through overtime) taking extended leave during the summer months so that he can attend horse fairs, where he trades in horses and horse tack. At the time of the site visit for this application, there were two horses being kept on site.

It is stated that applicant (Mr) takes part in the following events:

- Appleby (usually 2 weeks)
- Kenilworth (2-3 long weekends)
- New Forest Drives (at least 1 week and several long weekends)
- Blackpool Drives
- Stowe (several long weekends)
- Blandford Stream Fair (usually 1 week)
- Local Drives (Eg. Belvedere) – Often day trips.

Overall, it is estimated that the applicant (Mr) is away travelling as a horse dealer for a minimum of 8 weeks each year between March and October.

The applicant (Mrs) is not of gypsy heritage but has adopted the gypsy way of life. It is stated that since marrying they have predominantly lived in mobile homes and a touring caravan. Since 2014, it is said that they have been stopping on unauthorised sites and have doubled up for 3 years on a site on Park Lane Boughton Monchelsea in Maidstone.

Further information relating to personal circumstances which is considered exempt information is provided within the exempt papers attached to this agenda.

Whilst the applicant (Mr) is in full time employment, he continues to travel extensively to the horse shows and drives and trades at these events. It is accepted that on balance, the applicant (Mr) meets the definition of the gypsy/traveller as set out in The Planning Policy for Traveller Sites 2015. Further to this, it is considered that the personal circumstances as set out in the confidential papers provides significant justification for the family to remain on the site at this time.

The principle of allowing residential accommodation for the applicants who are of gypsy status is acceptable and in accordance with Paragraph 61 of the NPPF, including with regard to footnote 25 and the 'Planning Policy for Traveller Sites' and Policy H13 of the Local Plan, subject to the consideration of more detailed matters set out below.

Policy H13 of the Local Plan sets out criteria with regard to gypsy and traveller accommodation. These criteria are still relevant having considered the policy's compliance with the NPPF, particularly in relation to impact on residential amenity and the impact on the countryside.

Impact on the Appearance of the Local Landscape

The impact on the character of the area needs to be assessed in accordance with the provisions of paragraphs 124, 127, 170, 172 and 175 of the NPPF and Policies H13, BNE1, BNE25, BNE31, BNE32 and BNE33 of the Medway Local Plan 2003. The site falls within open countryside, the strategic gap, AONB and the Matts Hill Farmland landscape character area as defined in the MLCA. The MLCA describes the area as flat or undulating wooded farmland. At a small scale the landscape is relatively flat with diverse rural land uses including horse pasture, orchards and arable farmland. The blocks of ancient woodland form the dominant landscape feature and a strong sense of containment.

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 not wooded to the front but where the frontage is characterised by hedges over 2m tall. On the south side of this section of Matts Hill Road, there are open fields, screened by hedges.

The site, which has already been occupied through the granting of temporary planning permissions since 2013, has opened up the frontage. However a solid gate of approx. 2m high has now been erected toward the front of the site (but set back approx. 6m), which ensures that the mobile home, touring caravan and other structures are generally not visible from the highway.

There are no long distance views of the site and whilst not immediately visible from the road when the gates are closed, the mobile home and the works that have been undertaken to facilitate the residential use such as the hardstanding, utility block/shed and kennel runs, alongside any domestic paraphernalia, are of no architectural merit. This development in conjunction with the gates and fences to the front, has an urbanising effect on the character and appearance of the locality. The proposal therefore does not conserve the natural beauty of the area. Whilst the use of landscaping could potentially alleviate some of the impact, the development still results in harm and is contrary to 124, 127, 170, 172 and 175 of the NPPF and Policies BNE1, BNE25, BNE31, BNE32 and BNE33 of the Local Plan.

For full assessment of this application, it is necessary to consider whether other material considerations outweigh the harm to the countryside, strategic gap, SLA and AONB.

Ancient Woodland

Ancient woodland is defined as an irreplaceable habitat, is important for its wildlife, soils, recreational, cultural, and historical and landscape values.

The mobile home is not located within the ancient woodland. The northern part of the site where the paddock and some hardstanding is located is within the ancient woodland.

It appears that some trees may have been removed, however there is no accurate account of the trees on site and therefore this cannot be confirmed with evidence.

A recent planning appeal decision within Maidstone Borough (The Coppice, South Street, Stockbury Valley – APP/U2235/W/18/3193629) considered that the removal of any buildings and hardstanding within the designated ancient woodland area would allow for the soils to be re-established. This appeal decision acknowledges that harm had occurred and that the re-profiling if left, would allow for soil regeneration. The appeal decision notes that conditions in relation to buildings and lighting can be placed on any permission. The Inspector also concluded that it was reasonable to remove permitted development rights.

In case of this application, whilst some trees may have been removed, the soils remain and trees could be re-established. In discussion with the agent, it is agreed that the hard surfacing that has been laid over the soils shall be removed, along with any structures in accordance with drawing no Plan 2 Proposed Site Plan Rev A 21.03.2019. It is therefore necessary to impose a condition requiring the removal of the hardstanding.

With the inclusion of a condition to ensure the hardstanding is removed from the ancient woodland area, the proposal is considered to be in accordance with paragraph 170 and 175 of the NPPF and Policy BNE43 of the Local Plan.

Amenity

The adjacent neighbouring property to the west is currently occupied without the benefit of planning permission. Further to the west is the property known as Gramerci. To the east is 10 Matts Hill Road. The location of the structures and the mobile within the application site, in conjunction with the boundary treatment to the sides is considered sufficient to ensure there is no detrimental impact on residential amenity in terms of loss of outlook, daylight, privacy and overshadowing.

To ensure that is no concern with regard to amenity at a later date, it is considered suitable to impose conditions regarding the occupants and number of units on site to prevent intensification and overdevelopment.

The proposal is considered to be in accordance with paragraph 127 of the NPPF and Policy BNE2 of the Local Plan.

Highways

The current layout drawing shows hardstanding, which provides adequate parking to serve the mobile homes. No objection is, therefore, raised under Policy T13 of the Medway Local Plan and Paragraphs 105 of the NPPF in terms of parking.

The proposal would not generate an unacceptable level of additional traffic onto Matts Hill

Road and therefore no objection is raised under paragraphs 105 and 108 of the NPPF and Policies T1 and T2 of the Medway Local Plan.

Bird Mitigation

As the application site is within 6km of the North Kent Marshes SPA/Ramsar Sites, the proposed development is likely to have a significant effect, either alone or in-combination, on the coastal North Kent Special Protection Areas (SPAs)/Ramsar sites from recreational disturbance on the over-wintering bird interest. Natural England has advised that an appropriate tariff of £239.61 per dwelling (excluding legal and monitoring officer's costs, which separately total £550) should be collected to fund strategic measures across the Thames, Medway and Swale Estuaries. The strategic measures are in the process of being developed, but are likely to be in accordance with the Category A measures identified in the Thames, Medway & Swale Estuaries Strategic Access Management and Monitoring Strategy (SAMM) produced by Footprint Ecology in July 2014. The interim tariff stated above should be collected for new dwellings, either as new builds or conversions (which includes HMOs and student accommodation), in anticipation of:

- An administrative body being identified to manage the strategic tariff collected by the local authorities;
- A memorandum of understanding or legal agreement between the local authorities and administrative body to underpin the strategic approach;
- Ensure that a delivery mechanism for the agreed SAMM measures is secured and the SAMM strategy is being implemented from the first occupation of the dwellings, proportionate to the level of the housing development.

The applicants have agreed to pay this tariff and are in the process of submitting a unilateral undertaking/SAMMs mitigation form. Natural England have agreed the appropriate assessment and indicated that there would be no adverse effect on the integrity of the European protected sites, subsequently the presumption of sustainable development still applies in accordance with paragraph 177 of the NPPF. No objection is therefore raised under Policies S6 and BNE35 of the Local Plan and paragraphs 175, 176 and 177 of the NPPF.

Local Finance Considerations

None relevant here.

Conclusions and Reasons for Approval

Whilst the application site is located in the countryside, the strategic gap, SLA and the AONB and that the development undertaken results in harm to the SLA and AONB, it is acknowledged that the Council currently does not have adequate supply of pitches for gypsy/traveller accommodation. As part of their application submission, the applicants

have been able to demonstrate their status as gypsies and have set out the personal circumstances.

Taking account of the personal circumstances and the Inspector's decision regarding the appeal at Land Adjoining Kings Langley, it is considered that there is justification for the Council to temporarily set aside the harm caused by the development, particularly given that it is localised and that the site can be restored.

With the payment of the contribution towards mitigation measures for the SPAs, it is considered that the material considerations, particularly the personal needs of the applicants, outweigh the harm caused. If the application were to be refused at this time, the applicants would need to leave the land and the effect on their human rights would be disproportionate.

It is considered that with the imposition of conditions to ensure the development is temporary in nature, personalised, that there is control restricting further development and that there is restoration, the proposal can be approved in accordance with paragraphs 61 (footnote 25), 105, 108, 124, 127, 170, 172, 175 and 176 of the NPPF; The Planning Policy for Traveller Sites 2015; Policies S6, H13, BNE1, BNE2, BNE25, BNE31, BNE32, BNE33, BNE35, BNE43, T1, T2 and T13 of the Medway Local Plan 2003; and Medway Landscape Character Assessment 2011.

The application would normally be determined under delegated powers but is being referred for Committee determination due to the fact that there are ongoing and outstanding cases within the locality for gypsy/traveller sites and the personal circumstances here are considered significant enough to outweigh harm to a sensitive area.

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://publicaccess1.medway.gov.uk/online-applications/>