

MC/20/3289

Date Received: 23 December 2020
Location: The Paddock (Adjacent Sandhurst Farm) Sharnal Street
High Halstow ME3 3QR
Proposal: Change of use of land for the siting of an additional 2 mobile homes
for residential use and formation of additional hardstanding
Applicant: Mr G Maloney
Agent: WS Planning & Architecture
Mr Peter Brown John Europe House
Bancroft Road
Reigate
RH2 7RP
Ward: Peninsula Ward
Case Officer: Nick Roberts
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 28th April 2021.

Recommendation - Approval with Conditions

- 1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990 (as amended).

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

Proposed amenity block elevations and plans received 29 December 2020 and drawing number J003786-DD03 REV A received 15 February 2021.

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

- 3 The caravan site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1: Glossary of National Planning Policy for Travellers Sites 2018 (or any document amending or revoking that document with or without modification).

Reason: To ensure the site remains available as a site for the gypsy and traveller community and does not become a residential site within the countryside in accordance with Policy H13 of the Medway Local Plan 2003.

- 4 There shall be no more than 4 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended (of which 3 shall be static caravans/mobile homes and 1 shall be a touring caravan) 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 BNE2 and BNE25 of the Medway Local Plan 2003.

- 5 Within three 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, BNE2 and BNE6 of the Medway Local Plan 2003.

- 6 No more than one commercial vehicle shall be kept on the land for the use by the occupiers of the caravans hereby permitted, and it shall not exceed 3.5 tonnes in weight.

Reason: To ensure the development does not prejudice conditions of amenity in accordance with Policies BNE1 and BNE2 of the Medway Local Plan 2003.

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

Reason: To ensure the development does not prejudice conditions of neighbouring amenity in accordance with Policy BNE2 of the Medway Local Plan 2003.

- 8 Within two months of the date of this permission, the rear boundary of the site shall be repositioned in accordance with drawing number J003786-DD03 REV A received 15 February 2021, and shall be retained in that position thereafter.

Reason: To ensure the development does not prejudice conditions of occupier neighbouring amenity in accordance with Policy BNE2 of the Medway Local Plan 2003.

- 9 Within three months of the date of this permission, details of any external lighting on the boundary and within the site shall be submitted to and approved in writing by the Local Planning Authority. The lighting shall be installed in accordance with the details approved by the Local Planning Authority.

Reason: To ensure the development does not prejudice conditions of neighbouring amenity in accordance with Policy BNE2 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 seeks full planning permission in retrospective form for the proposed extension of the existing Gypsy/Traveller site known as “The Paddock”, through the change of use of the land for the siting of an additional 2 mobile homes for residential use and the formation of additional hardstanding.

Relevant Planning History

MC/20/0406	Details pursuant to condition 5 of planning appeal permission APP/A2280/C/19/3222539 - Change of use of land to use as residential caravan site for one gypsy family with two caravans including one static caravan together with construction of amenity building and laying of hardstanding Decision: Discharged Decided: 25 March 2020
MC/17/3126	Change of use of land to use as residential caravan site for one gypsy family with two caravans including one static caravan together with construction of amenity building and laying of hardstanding. Decision: Refusal Decided: 15 May 2018 Appeal Allowed 14 January 2020
MC/17/2467	Change of use from barn to residential facilitating a 4-bedroom dwelling with garage and associated landscaping Decision: Approval with conditions Decided: 10 January 2008

Representations

The application has been advertised on site and by individual neighbour notification to the owners and occupiers of neighbouring properties. High Halstow Parish Council have also been consulted.

Three letters of representation have been received (two from the same address) objecting to the application for the following reasons.

- Loss of privacy by way of overlooking
- Will lead to further expansion of the site
- Concerns with respect to unauthorised works that have previously taken place at the site.

High Halstow Parish Council have also objected to the application for the following reason:

- Increase in traffic entering and exiting and the impact this could have on highway safety.

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 (the NPPF) and are generally considered to conform. Where there is inconsistency between the NPPF and the Local Plan, it will be highlighted in the appraisal section below.

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

Planning Appraisal

Background

Part of the application site has already been subject to a previous application for the change of use of the land to a residential caravan site for one gypsy family, including the stationing of one mobile home and one touring caravan and the construction of an amenity building and hardstanding under MC/17/3126. The application was allowed at appeal and planning permission granted on 14 January 2020. This current application seeks to extend the site to the south east to allow for the siting of an additional 2 mobile homes with associated hard and soft landscaping.

Principle

The application site is outside of the urban boundary, as defined on the proposal maps to the Local Plan and is on land classified as open countryside to which Policy BNE25 of the Local Plan applies. 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. Although the site itself has no other designations, it is also located within the Hoo Peninsula Farmland character area as defined in the MLCA.

However, alongside the need to protect the countryside, and landscape character, 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 PPTS in footnote 25. Paragraph 84 of the NPPF acknowledges that Planning policies and decisions should also recognise that sites required to meet community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. Policy H13 of the Local Plan also relates to residential accommodation for gypsies and travellers and gives specific criteria as to where it is appropriate.

It was stated within the Inspectors previous appeal decision, the need for Medway to provide additional pitches for gypsies and travellers who meet the PPTS definition of a traveller. The Inspector stated "*it cannot be shown there is a 5-year deliverable supply of pitches to meet gypsy and traveller needs in the district... The dire lack of local provision and need for sites, and lack of alternative accommodation available to the appellant and his family are relevant factors under PPTS*". To which the Inspector attached significant weight.

In view of the previous planning history for the site, and in light of the Inspectors appeal decision (APP/A2280/C/18/3222539), the principle of allowing the use of the land as a gypsy/traveller site has already been accepted. The main considerations therefore are; whether or not the extension and intensification of the site in respect to the number of mobile homes would detrimentally impact the character and appearance of the surrounding area, whether or not the development results in an unacceptable adverse impact on the living conditions of its occupants and nearby residents, and also whether the occupants of the new mobile homes would be travellers as defined by the PPTS.

Use of Site as Residential Accommodation for Travellers

The Council is required to provide adequate land supply for gypsy and traveller pitches and 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 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. The GTAA recommends that the need for households that meet the planning definition is addressed through new pitch allocations or the expansion or intensification of existing sites. 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 covering letter submitted with the application states that one of the mobile homes would be occupied by Mr Maloney's eldest daughter, her husband, and their child and the other mobile home would be occupied by the applicant's son. When taking into account the Gypsy status and personal circumstances of the future occupiers of these units it is important to take into account the recent appeal decision for the site.

Within the appeal decision the Inspector states that the established principle that was applicable to the appeal was "*the need to safeguard and promote the welfare of children*". The Inspector also identified the family group that he considered in connection with the appeal, which included Mr Maloney's eldest daughter and her baby, and his son. The Inspector also referred to Mr Maloney's line of work, "*landscaping and paving work*" and the fact that he "*travelled widely to obtain such work*". Elaborating on this, the Inspector alluded to the point that when Mr Maloney did travel, he would take his son, and usually his eldest daughter and her baby with him, and referenced information that was disclosed

as part of the application (design and access statement) with respect to the family travelling with caravans on a seasonal basis. Overall, the Inspector concluded that *“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 a traveller for the purposes of the PPTS”*. The Inspectors statement is of significance to this application as firstly he identifies “the family group to be considered” as Mr Maloney’s eldest daughter and her baby, and his son, and secondly, he confirms that both Mr Maloney and the identified “family group” would satisfy the definition of a “traveller” for the purposes of the PPTS.

As such, and in view of the above referenced appeal decision the proposed mobile homes would be intended for occupation by a gypsy/traveller family, as defined by Annex 1 of the PPTS.

Impact on the Character and Appearance of the Area

The impact on the character of the area needs to be assessed in accordance with the provisions of Policies H13, BNE1 and BNE25 of the Local Plan and paragraphs 124, 127 and 170 of the NPPF and the MLCA. The site falls within open countryside and the Hoo Peninsula Farmland character area as defined in the MLCA. The MLCA describes the landscape type as flat or undulating farmland with large open fields and little sense of enclosure.

This stretch of Sharnal Street is characterised by residential development which occurs in clusters predominantly on the south eastern side of the road and continues further north towards Fenn Street. The majority of the dwellings are detached houses of a mixed character, style and appearance. However, on the whole they are of a suburban rather than rural cottage style design. In referring to the Inspectors previous appeal decision and in acknowledging the MLCA he stated that *“the flat or undulating farmland which is key to the Hoo Peninsula Farmland landscape character is not experienced in the immediate vicinity of the site since it is bounded on the west by Sharnal Street and Fishers Wood, and is near to residential dwellings to the north, east and south”*. The Inspector was also satisfied that there would be *“no loss of valued views and the harm due to the loss of openness is compromised only to limited extent”*.

In considering the impact of this proposal, it is acknowledged, that due to the traditional style of some of the neighbouring dwellings that the intensification of mobile homes within the immediate vicinity would result in some harm to the character and appearance of the area. However, the two additional mobile homes would be located towards the rear of the site and would be somewhat screened on all elevations by fencing and existing hedgerows along the southern boundary. In addition, within the wider area there are a variety of domestic outbuildings of varying size which already impinge on the appearance of the surrounding area and its countryside location. It is therefore considered that the development would still remain relatively small, and self-contained, such that this harm is not significant, and a limited encroachment on the countryside. Furthermore, having

regard to paragraph 25 of the PPTS, it is not considered that the change of use and siting of two additional mobiles on the site would dominate the immediate area, which would remain predominately built-up, and thus the proposal respects the scale of its immediate surroundings and would not materially harm the character of the rural landscape. The Inspector has also previously accepted the principle of the amenity block (day room), concluding that *“it would not be unduly prominent or out of place as an outbuilding”* or have *“an unacceptably adverse visual impact in views from the road”*. Although the proposed block plan indicates the day room would be located further to the west of the site, when bearing in mind the Inspectors previous assessment this would be considered acceptable. Therefore, no objections are raised with regards to Policies BNE1, BNE25 and H13 of the Local Plan, paragraphs 124, 127 and 170 of the NPPF and paragraph 25 of the PPTS.

Proximity to Local Services

Matters concerning the sites proximity to local services has been considered under the previous appeal decision. The Inspector stated that *“the site is within 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”*. The Inspector was therefore satisfied that the site would be close to essential local services in accordance with Policy H13 of the Local Plan and paragraph 13 of the PPTS.

Amenity

Although there are immediately adjoining neighbours to the application site most notably, Toiler Croft, The Barn, Travellers Rest and Sandhurst Farm, due to their distance and relationship to the site the proposal would not result in any loss of amenity in terms of outlook, loss of light, or overshadowing. Whilst concerns have been raised from the neighbouring property (Toilers Croft) regarding a loss of privacy, there is already an existing hedgerow along the southern boundary of this property which provides a degree of screening, particularly from the two mobiles to the rear of the site. However, in recognising the need for additional screening from within the site, a condition is recommended requiring the submission of further landscaping details. With respect to noise and disturbance, whilst the original appeal authorised the use of the site for one family, and the intensification of this proposal would result in 3 families occupying the site, they are in fact all part of the same family. As such noise from the use of the site would not be considered detrimental when taking into account that they would all be permitted to occupy the site under the previously approved appeal decision. Furthermore, at the time of that appeal the Inspector stated there was *“no good reason why the noise from the use of the site should be significantly over and above what may be experienced from other dwellings from time to time”*.

In considering the impact on the amenity of any future occupants of The Barn, Travellers Rest, the site subject to this application would extend further to the south east and into land allocated as private amenity space for the barn conversion approved under

MC/17/2467. Whilst although the extension of the existing traveller's site would occupy a large portion of this private amenity space, and it is acknowledged that this is not an ideal arrangement, The Barn would still be left with a south facing private garden that would be approx. 9.8m in width and 18m length, which would exceed the guidance specified within the Medway Housing Standards (interim) November 2011 (MHDS). In addition, there would be a landscape buffer of approx. 2.5m between the boundary of the application site and the garden of The Barn. On balance, and with a condition requiring the submission of additional landscaping details along this boundary this would be considered acceptable. Accordingly, no objection is raised to the proposal in terms of amenity considerations and the provisions of Policy BNE2 of the Local Plan and paragraph 127 of the NPPF.

Highways

The site would provide sufficient off street parking provision to serve both the current number of units and the additional two mobile homes proposed in this application and as such would accord with Medway Councils Interim Residential Parking Standards. Although concerns have been raised in regard to additional traffic entering and exiting the site, and its implications with respect to highway safety, the access has already been established, and the site would be of a sufficient size to allow for vehicles to enter and exit onto Sharnal Street in a forward gear. In view of the above it is not considered that an additional two mobile homes would have a severe impact on the efficiency and safety of the existing highway network and no objection is therefore raised under Policy T1 and T13 of the Medway Local Plan and paragraph 109 of the NPPF.

Climate Change and Energy Efficiency

As this application relates to the change of use of the land and the mobile homes would not constitute development this section is not applicable. However, the applicant has confirmed that the hardstanding would be porous, and the day room would be constructed from sustainably resourced materials with an Environmental Product Declaration. All internal light fittings will also be 100% LED.

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 £250.39 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 in principle to pay this tariff. No objection is therefore raised under Policies S6 and BNE35 of the Local Plan and paragraphs 175 and 176 of the NPPF, on the basis that this contribution can be secured before a decision is issued if a resolution to approve the application is made.

Conclusions and Reasons for Approval

The expansion and intensification of the existing site would be acceptable in principle, and there would be no detrimental impact on the character and appearance of the area, on neighbouring and occupier amenity, or highways. In addition, the mobile homes would be occupied by Gypsy/Travellers who meet the definition of a Gypsy/Traveller as set out in Annex 1 of the National Planning Policy for Travellers 2015 and therefore the additional pitches would contribute to meeting the Council's identified need for Gypsies and Travellers. The development is therefore in accordance with Policies BNE1, BNE2, BNE25, BNE35, H13 and S6 of the Local Plan, paragraphs 61 (footnote 25), 84, 109, 124, 127, 170, 175 and 176 of the NPPF, the advice set out in the PPTS and the guidelines of the Medway Landscape Character Assessment 2011.

The application would normally be determined under delegated powers but is being referred for Committee determination due to the number of representations received expressing a view contrary to the officer's recommendation.

Update Following Deferral

This application was deferred from the Planning Committee held on 31 March 2021 to allow for the appeal decision related to MC/17/3116 and an enforcement notice served on 24 January 2019 to be attached in full to the supplementary agenda and to therefore allow for consideration of the European Convention on Human Rights [ECHR].

Members were unsure as to whether the refusal of the earlier 2017 application and the serving of the enforcement notice had breached Article 6 of the ECHR (not to breach unlawfully engaged human rights).

The Appeal Inspector dealt with ECHR matters in his decision at paragraphs 52-54 where he noted that the Council, in its statement, acknowledged of the potential interference with Article 8 (the right to respect private and family life) with the potential loss of a home

and to the First Protocol Article 1 (rights to peaceful enjoyment of possessions, including property). The Council therefore did not breach Article 6 of the ECHR in the consideration and refusal of the 2017 planning application nor in the serving of the enforcement notice.

The Inspector noted that the Council balanced the harm to the character and appearance of the area and the intentional unlawful development alongside the loss of a home and the personal circumstances of the occupier in the context of the ECHR. However, the Inspector felt that the occupier had little alternative option but to occupy the site unlawfully. The Inspector therefore attached limited weight to the intentional unauthorised development and the unlawfulness of the occupation and therefore balanced this alongside the Council's lack of 5-year land supply for gypsy and traveller sites and the impact on the countryside differently to the Council to reach a different conclusion which led to the granting of planning permission.

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/>