

## **MC/23/2423**

Date Received: 31 October 2023  
Location: Harewood, Matts Hill Road, Rainham, Gillingham  
Proposal: Retrospective application for the change of use of land to Gypsy/Traveller site comprising the stationing of 1 mobile home, hardstanding area, utility shed, oil tank, and cesspit.  
Applicant: Ms. D Twinley  
Agent: WS Planning & Architecture  
Mr Brian Woods  
5 Pool House  
Bancroft Road  
Reigate  
RH2 7RP  
Ward: Rainham Southeast  
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 14th February 2024.**

### **Recommendation - Approval with Conditions**

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

Drawing numbers:

J004650-DD-04 - As proposed block plan

J004650-DD-05 - As proposed site plan

J004650-DD-06 - As proposed utility plans and elevations

received on 1 November 2023.

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

- 2 The use hereby permitted shall be carried on only by Ms. Delia Twinley, Mr Craddy Lee, Natalya Lee (child), Isaiah Lee (child) and Cruize Lee (child). When the premises cease to be occupied by those named, 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.

- 3 No more than one caravan, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (which shall be a static mobile) 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.

- 4 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. No further buildings or caravans are to be erected or sited on this site 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 is a retrospective application for the change of use of land to Gypsy/Traveller site comprising the stationing of 1 mobile home, hardstanding area, utility building, oil tank, and cesspit.

The mobile home is sited on the western boundary of the site, facing in toward the centre of the site with a modest utility room located north of the mobile home.

The application site is located to the north of Matts Hill Road to the east of a detached dwelling known as Gramerci. To the east of the appeal site is a gypsy and traveller site which benefits from a personal planning permission for the siting of one static caravan and one tourer.

The site is located within the designated Kent Downs Area of Outstanding Natural Beauty and to the rear of the site is a part of an area of ancient woodland, known as Beeches Broom Wood, which is subject to a Tree Preservation Order (Number 145/94).

Matts Hill Road is a country lane with sporadic residential development in an area with a strong rural character, separated from the built-up outskirts of Gillingham and Chatham by the M2 motorway, albeit that some 300m to the southeast is the grass runway of Farthing Corner Airfield. The Medway Landscape Character Assessment identifies the area as being within "Matts Hill Farmland".

## Site Area/Density

Site Area: 540 sqm = 0.054 hectares (0.133 acres)

Site Density: 18.5 dph (7.52 dpa)

## Relevant Planning History

ENF/14/0418 Without planning permission the change of use of the land to residential for the stationing of 3 touring caravans, the erection of a day room, shed, storage of vehicles, erection of timber kennels, erection of fencing and the creation of hardstanding.

Enforcement notice served

Decision: Appeal – Enforcement Appeal Dismissed

Date: 4 August 2017

## Representations

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

**4 letters** of objections have been received from neighbouring residents within Matts Hill Road and also from a wider area. The comments are as follows:

- The application is the same as previous applications to this site which already has an enforcement notice (ENF/14/0418).
- Nothing has changed in terms of circumstances since this time.
- There are already 4 other traveller sites within this road.
- The site remains in AONB.
- This is contrary to Policies BNE25, BNE32, BNE33 and H13.
- Will have a negative impact on the local wildlife and AONB.
- The scale of traveller sites should not dominate the nearest settled community however this is not the case here now as there is an estimated 30 travellers surrounding 2 houses, which now dominate the area.
- Medway Council should treat everyone equally and impartially and not favour any person, group or locality.

## 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 December 2023 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*

This site has a significant amount of history as it was first used for gypsy/traveller accommodation without planning permission in 2014.

Since the original applicants inhabited the site there have been a number of different occupants and also a significant level of enforcement action due to non-compliance of an extant enforcement notice and a lack of information in relation to the occupants at that time.

As part of the consideration of this application it will therefore be essential to understand the circumstances of the current occupant when weighing up the balance of acceptability here.

### *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 for the siting of a total of one static mobile home (already on site). 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.

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 the 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 (specifically at the adjacent site – originally known as Hildensfield, Chestnuts and also Scarlet Meadow) 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 show people'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.

Currently, Medway does not have any Gypsy/Traveller sites identified or allocated within the Local Plan. It is also acknowledged that the two adjacent boroughs (Maidstone and Swale) also cannot provide sufficient sites. Despite the May 2018 Gypsy and Traveller Accommodation Assessment (GTAA) identifying a need for more pitches there is still a need to identify suitable sites. This therefore has to be taken into consideration when looking at the application and the occupant's situation.

With Government policy alteration to the definition of Gypsies and Travellers, the Local Planning Authority considered this impact with an updated evaluation of the GTAA. The purpose of the GTAA was to define the level of specialist Gypsy and Traveller need that we need to plan for. Through the Council's work on drafting policies and site allocations for the new Local Plan, it has carried out iterative processes of reviewing sites and land with development potential, including for gypsy and traveller accommodation to meet identified needs.

In preparation of the Local Plan and to meet the identified need for sites the Council continues to work on the site allocations for the new Local Plan, entering into Duty to

Cooperate discussions with neighbouring LPAs and to put in place a criteria-based policy to provide guidance in assessing the sustainability of sites coming forward.

The Council are in discussions about the potential to carry out further site visits to identify if there is a potential to re-configure sites to provide for additional pitches.

With the revised planning definition, the Council would need to revisit the approach to include permanent sites as it is recognised that the number of needs will increase taking in the cultural definition (meaning more people than the actively travelling definition). It is recognised that there is a need to provide more permanent sites with or without new definition and so the Council will need to revisit its approach to provision.

### Definition of Traveller

The National Planning Policy for Traveller sites (2015) - Updated 19 December 2023 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 or permanently, 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 again 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 (detailed above).

Through speaking directly to the applicant during a site visit it is apparent that the applicant and her family are considered to fall within the definition of gypsy/travellers. There are 2 adults on site along with their 3 young children, all of a dependable age (currently aged 8, 6 and 2) with the oldest two children attending Parkwood Primary School, approx. 1 mile from the site.

### NPPT (2015)

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 there are similar sites within the vicinity 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 an 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 and her family have lived within Medway at a designated site for various periods of time. Due to the fact that she has a young family the circumstances within the site were not suitable to accommodate her young family's needs, so she has been moved off site and re-located to a site that is not shared. She has re-located within the borough, albeit a protected area. Given that the Local Authority cannot supply a 5-year plan, it is considered that her circumstances are found to be acceptable. The restrictive/personal consent nature of this proposed permission also forms part of the conclusion to consider this application more favourably.

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

Policy BNE1 of the Local Plan 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 Local Plan.

Consisting of a mobile home, the structure has no design merit in itself. 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 and mobile homes. 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, in years gone by was an open fronted orchard but for the last 10 years has accommodated mobile homes (albeit some unlawfully).

These proposals will have an impact on the street or how the property sits within the road as it will result in the loss of some of the green space. When weighed against the need for this site it is concluded to be acceptable in this instance.

Fencing, boundary treatments and vegetation are not altered as a result of this proposal.

Whilst it is concluded that this proposal fails 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 existing settled traveller sites in the street. Taking into consideration all the above and in particular the need for traveller

sites and the lack of a 5-year supply as well as the limited (albeit harmful) impact, it is considered that this outweighs in this instance the harm to the AONB and rural character of the area.

### *Amenity*

This application is not considered to impact neighbouring amenity to any significant extent. The closest residential properties are directly adjacent (Granmerci to the west) and Harewoods (to the east). The boundary treatments that are in place ensure that there is no loss of privacy or overlooking from the application site also.

The scale of the proposed occupation on site is considered to be modest and as a result noise and disturbance from activity on site is considered to be comparable to an average household in this location.

Accordingly, 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 Local Plan or paragraph 135 of the NPPF.

### *Highways*

There is 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 significant additional traffic movements from the existing levels. No objection is therefore, raised under Policies T1 and T2 of the Medway Local Plan 2003.

### *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 £314.05 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. This tariff should be collected for new dwellings, either as new builds or conversions (which includes HMOs and student accommodation).

These strategic SAMMS mitigation measures are being delivered through Bird Wise North Kent, which is the brand name of the North Kent Strategic Access Management and Monitoring Scheme (SAMMS) Board, and the mitigation measures have been informed by the Category A measures identified in the Thames, Medway & Swale Estuaries Strategic Access Management and Monitoring Strategy (SAMB) produced by Footprint Ecology in July 2014. Further information regarding the work being undertaken is available at The Bird Wise website which can be found at <https://northkent.birdwise.org.uk/about/>.



The applicant has submitted a SAMMS Mitigation Contribution Agreement and payment and therefore no objection is therefore raised under Policies S6 and BNE35 of the Local Plan and paragraphs 186 and 187 of the NPPF.

#### *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 wider planning permissions within Matts Hill Road and the circumstances of the family on this site, the Government Advice on Traveller sites, the current GTAA and the human rights of the applicants, it is recommended that the mobile home, hardstanding area, utility building, oil tank, and cesspit is granted, on a personal permission basis.

The application would normally be determined under delegated powers but is being referred to committee for determination due to the extent of the representations received expressing a view contrary to the recommendation and at the request of Councillor Hackwell, who has referred the case in order to ensure consistency of decision making within the Matts Hill Road area.

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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 on Medway Council's Website <https://publicaccess1.medway.gov.uk/online-applications/>