
Appeal Decisions

Hearing Held on 12 October 2021

Site visit made on 13 October 2021

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2021

Appeal A, Ref: APP/U2235/C/19/3243809

Land rear of Neverend Farm, Pye Corner, Ulcombe, Kent ME17 1EF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Patrick McCarthy against an enforcement notice issued by Maidstone Borough Council.
- The enforcement notice was issued on 27 November 2019.
- The breach of planning control as alleged in the notice is the change of use of the land from agricultural to the stationing of caravans for residential purposes and associated integral operational development, comprising the installation of septic tanks, laying of hard surfacing and the erection of wooden fencing.
- The requirements of the notice are
 - (1) Cease the use of the land for the stationing of caravans for residential purposes within the red line of the plan attached to the notice.
 - (2) Remove the septic tanks and wooden fencing from within the red line of the plan attached to the notice.
 - (3) Remove hard surfacing, to be broken up and removed from the land, and to return the land to its previous condition/levels by ripping the ground in two directions, resspreading top soil over that land to a depth of 150mm (or more where necessary) to fill in any depression and grading.
 - (4) Remove all materials, rubbish and debris as a result of compliance with steps (1) (2) and (3) above from the land.
- The period for compliance with the requirements is 12 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary decision: The appeal is allowed subject to the enforcement notice being corrected in the terms set out below in the Formal Decision.

Appeal B, Ref: APP/U2235/W/19/3241823

Land rear of Neverend Farm, Pye Corner, Ulcombe, Kent ME17 1EF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Patrick McCarthy against the decision of Maidstone Borough Council.
- The application, Ref 19/503101/FULL, dated 8 August 2019, was refused by notice dated 3 October 2019.
- The development proposed is described as an application for 8 No pitch Gypsy & Traveller site with associated operational development.

Summary decision: The appeal is allowed and planning permission is granted subject to conditions set out below in the Formal Decision.

Procedural and Preliminary Matters

1. The National Planning Policy Framework (the Framework) was revised in July 2021, which was after the submission of the parties' cases. Both were given an opportunity to submit further comments on the effect of the revisions, if any, on their cases. The appellant had nothing further to add and the Council raised three points on biodiversity which I will consider later in my decision.
2. I find that the description of the development in the enforcement notice allegation requires more detail in order to define the scope of the deemed application. The parties agreed that the allegation is best expressed as the material change of use of the land for the stationing of five caravans for residential purposes and associated operational development comprising the installation of septic tanks, the laying of hard surfacing and the erection of wooden fencing.
3. It is open to me to correct the notice so that it reflects the development that was taking place when it was issued. I am satisfied that no injustice would be caused by my doing so after a detailed discussion about it at the Hearing and I will proceed on the basis of the corrected description.
4. During the Hearing the appellant withdrew the ground (g) appeal and I shall therefore proceed on the basis that the appeal under section 174 of the Act has been made only on grounds (a) and (f).
5. At the site visit I was accompanied by a representative from both parties whilst inspecting the appeal site, with access being provided by Mr M Tarry over his land at Little Neverend Farm. On leaving the site I then walked the length of public rights of way (PROW) numbered KH330 and KH326; the track that provides access to Plumtree Park; and along Crump's Lane between the southern points of KH330 and KH322, as agreed during my discussion on the extent of my site visit at the Hearing.
6. The agreed Statement of Common Ground sets out that the Council accepts the proposed occupiers of the site meet the definition of gypsies and travellers, as defined in the Planning policy for traveller sites (PPTS).

Background

7. The appeal concerns a rectangular parcel of land in the order of 2ha in area to the south of and formerly part of Neverend Farm. During May 2019 the Council received a report that operational development was taking place at the appeal site and that two touring caravans had been stationed on the land for residential purposes. A Temporary Stop Notice was issued. Works continued with more caravans arriving and an interim injunction was granted followed by a full injunction on 21 May 2019. The effect of this was that there was to be no further residential use of the site or operational development.
8. Thereafter the appellant submitted a planning application in August 2019 for a material change of use from agricultural to use for an 8 No pitch gypsy and traveller site. This comprised the residential use and siting of one mobile home, one touring caravan and the erection of a day room on each pitch with associated operational development. This application was refused on 3 October 2019 (Appeal B) and the enforcement notice was issued on 27 November 2019 (Appeal A).

9. The appellant accessed the site from Eastwood Road via a track along the eastern boundary of Neverend Farm and Little Neverend Farm. Eastwood Road borders the north and western boundaries of Neverend Farm. Little Neverend Farm is a smaller parcel of land that lies to the south of Neverend Farm, though it once formed part of it. The appeal site then lies to the south of Little Neverend Farm. It was originally purchased by the owners of Neverend Farm but later sold on to a friend, who subsequently sold it to the current owners. There is a dispute between the owners of Neverend Farm, who own the access track and the appellant as to whether the appellant has a right of way from the road to the appeal site. That matter is not before me. In the event that planning permission is granted for the development, that would be for the concerned parties to resolve.

The ground (a) appeal, the deemed planning application and the s78 appeal

Main Issue

10. The main issue is whether the developments represent acceptable forms of development having regard to the following matters:
- The objectives of the development plan in respect of gypsy and traveller accommodation;
 - The character and appearance of the area, having regard to the location of the site in a landscape of local value;
 - The biodiversity of the site; and
 - Whether any harm arising from the above matters is outweighed by any other material considerations.

Reasons

Appropriateness of development: site location

11. The appeal site is situated in the countryside, a short walk from a group of dwellings and a repair garage at Pye Corner and to the south east of the village of Ulcombe. In the wider area there is sporadic development of houses and farm buildings along a network of single track roads. There are also a few lawful gypsy sites in the vicinity of the appeal site. Neverend Lodge partially borders the north east corner of the appeal site and comprises one pitch with planning permission for an additional pitch. Plumtree Park lies to the east of Little Neverend Farm and comprises seven pitches accessed from an unmade track leading onto Eastwood Road. Roydon Farm borders the south east corner of Plumtree Park and comprises seven pitches. Hawthorn Farm lies to the south east of Roydon Farm and is accessed from the same unmade track that serves Plumtree Farm and Roydon Farm and comprises five pitches.
12. Policy SS 1 from the Maidstone Borough Local Plan (LP)¹ sets out the Council settlement strategy and directs growth to the main urban centre of Maidstone followed by rural service centres and smaller villages. This policy was referred to in the officer report on Appeal B and a copy was included with the appellant's submissions. Policy SP 17 from the LP sets out the approach to development in the countryside. This will not be permitted unless it accords

¹ Adopted 25 October 2017

with other policies in the plan, will not result in harm to the character and appearance of the area and conserves and enhances landscapes of local value. Policy DM 15 from the LP deals with gypsy and traveller development and sets out various criteria such as the requirement that development is accessible to local services and that planning permission will be granted for development provided it does not result in significant harm to the local landscape. In addition, there is a requirement to assess the ecological impact of the development with any necessary mitigation and enhancement features confirmed.

13. National policy is contained in the PPTS which states that applications should be assessed and determined in accordance with the presumption in favour of sustainable development. In addition, Councils should very strictly limit new traveller site development in the open countryside that is away from existing settlements.
14. The parties agree that the location of the appeal site is acceptable, having regard to the proximity to local services and I concur. Therefore, on the matter of the appropriateness of the development for either five or eight pitches, I find no conflict with the Council's policies and approach to the siting of gypsy and traveller developments.

Character and appearance – landscape of local value

15. The rural area in the vicinity of the appeal site is largely low lying with small fields in agricultural use, bounded by mature hedges and hedgerow trees. Natural England produced National Character Area profiles in 2014 and the appeal site and its surroundings fall within an area known as the Low Weald. The Framework encourages the protection and enhancement of valued landscapes and Maidstone has identified the Low Weald as one of its valued landscapes.
16. The Council's Landscape Character Assessment was amended in 2013 and within the Low Weald, smaller areas are analysed. The appeal site falls within the Ulcombe Mixed Farmlands area of the Low Weald. The key characteristics are an undulating landscape of pasture, scattered orchards and mixed woodland blocks with linear settlements. The Maidstone Landscape Capacity Study: Sensitivity Assessment was published in January 2015.² This finds that the Ulcombe Mixed Farmlands overall landscape sensitivity to change is high.
17. I find that all these documents were prepared some time ago and the nature of them is that they have looked at the landscape in broad terms, even when broken down into sub areas. They provide the starting point in making a judgement as to whether or not any development is likely to cause harm to the character and appearance of an area.
18. However, none of them refer to the effect of sporadic developments of gypsy and traveller sites on the landscape, or indeed any other significant changes in the area. I observed Little Neverend Farm is used as a farm plastic recycling business and has a large area of open storage and the nearby repair garage has extensive hard surfacing for parking/storing cars. These developments may have existed for some time but the documents only mention the development of isolated dwellings and farmsteads. With the proposals before

² This document falls part of the evidence base for the Local Plan.

me, and notwithstanding the findings in these documents, I have made my own assessment of the appeal site and the surrounding area. In particular, I have had regard to the requirement of Policy DM 15 to consider the cumulative impact of the development on the landscape arising from the combination with existing lawful caravans.

19. Generally, the appeal site is not visible from local public viewpoints such as Eastwood Road or the PROW and there are few private views. This is because of the location of the appeal site behind other parcels of land and the mature boundary hedging on three sides. It is currently obscured on the eastern boundary by a 3m high earth bund. This lies outside the site and is not part of the development carried out by the appellant. I find that if this was removed, as required by a separate enforcement notice, other gypsy and traveller sites in the area accessed from PROW KH330 would not be visible from within the appeal site due to the mature boundary hedging around the fields separating them from the appeal site. These views may change in the winter, due to less leaf coverage, but I find this would not be a noticeable change because of the location of the appeal site.
20. I also find that from more distant viewpoints, such as the spectacular view from the Greensand Ridge from Knole Hill, the overall impression looking south across the landscape is of an expanse of woodland, with one or two isolated dwellings. The appeal site and nearby gypsy and traveller sites are not easily discerned, if at all, and so I find that there would be little harm caused by any cumulative effects. This is the case whether the site is developed for either five or eight pitches. There are also no orchards near the appeal site. The earth bund was also not apparent, probably because the former bare earth is now overgrown with vegetation. From Crump's Lane, there are intermittent long distant views northwards to the Greensand Ridge. Along the section of lane I walked, the appeal site was generally separated from it by intervening fields. These were usually small and enclosed with mature hedgerows and hedgerow trees.
21. The Council submits that the location of the appeal site harms the character and appearance of the area. This is because it is located behind other parcels of land and does not directly front the road, which it is stated is the established pattern of development in the area. However, I find that this does not take into account the location of Roydon Farm, an allocated gypsy and traveller site in the LP, which does not directly front a road. Plumtree Park and Hawthorn Farm are also in a similar position, as is the case with some dwellings in the area such as Owls Nest Cottage to the south east of Hawthorn Farm.
22. A third party submitted a photograph of the appeal site taken at night to show the level of illumination from the residential use that was taking place before the notice was issued. I was told that the lights were powered by generators and that this was a temporary arrangement. It is not known where the photograph was taken from but it appears there was an intervening hedge. This submission draws attention to the fact that the character and appearance of an area can change at night and that in a rural area tranquillity and dark skies often contribute to the attractiveness and value of an area. The Council raised no concerns about noise in their submissions and should I be minded to allow either or both appeals, a condition could be imposed to require the submission of appropriate lighting details and for any approved scheme to be implemented. Such lighting would be powered by mains electricity.

23. It would appear from old Ordnance Survey map extracts that the appeal site was never used as an orchard, though Neverend Farm and Little Neverend farm were in the 1960's. The appeal site is also not shown as woodland in times past. Having regard to the identified features of the Ulcombe Mixed Farmlands area and the character and appearance of the surrounding area, I find that the existing and proposed uses would not cause significant harm. As such, the development complies with Policy DM 15 (ii). I also note that PPTS states³ that sites should be well planned or soft landscaped in such a way as to positively enhance the environment and increase its *openness* (my emphasis) and not be enclosed with high walls or fences. As such, it appears to me that a degree of visibility for gypsy and traveller sites is expected and accepted if it exists.

The biodiversity of the site

24. The Council are concerned that the development has resulted in a loss of semi-natural habitat. From the information before me it appears that prior to the unauthorised development, satellite imagery seems to show that the site was in arable use until 1990 with boundary hedges on three sides. Thereafter, the imagery shows the informal development of trees and vegetation across the site.

25. An adjacent landowner stated that the former owner of the appeal site had not used it for agricultural purposes and for various reasons it was largely untouched. The trees and vegetation from the centre of the site were cleared by the appellant, although logs were left in piles in the southern area of the site. The proposed occupiers then imported and spread hardcore, erected fences to demarcate some pitches and installed septic tanks. As such, when the application was submitted in August 2019, it was accompanied by a preliminary ecology assessment (PEA) that was prepared six weeks after the clearance event.

26. Notwithstanding this, it is the appellant's case that it is still possible to mitigate and provide enhancements to biodiversity which, overall, result in net gain for biodiversity. The 2019 PEA was updated in May 2020 and identified the need to carry out a reptile survey, which was completed October 2021. Tools such as the Defra biodiversity metric can be used to assess whether a biodiversity net gain outcome is expected to be achieved but there is no requirement to use this particular tool.⁴

27. I find, due to the previous agricultural use and thereafter a period of non-use, that not all of the site is a priority habitat.⁵ It has not been shown that it was for example, lowland meadow, and therefore the only other categories of identified priority habitat that it could fall within are arable field margins and hedgerows.

28. These have been assessed by the appellant as well as the ditches along the west and southern boundaries and the log piles. With appropriate conditions, these can not only be protected during/after construction but also enhanced. The site has no particular habitat designation in the LP, such as SSSI, but it does lie approximately 500m south west of a non-statutory site comprising

³ Paragraph 26

⁴ Planning Practice Guidance Ref ID: 8-025-20190721

⁵ The National Planning Policy Framework Annex 2: Glossary

ancient woodland and pasture.⁶ Nevertheless, Policy DM 15 requires that the ecological impact of the development is assessed via a survey and a scheme for any necessary mitigation and enhancement measures is confirmed.

29. To that end, the Council are particularly concerned about the effect of the development on bats and dormice. However, records returned from the Kent Bat Group show that, whilst there are eight bat species found within 5km of the site, only three roost records were returned within 1km of the site of which the nearest is 0.5km east of the site. In addition, the Kent and Medway Biological Records Centre had no records of dormice in the area.
30. As such, the appellant's original recommended actions remain unchanged regarding maintaining a 6m dark buffer zone around the perimeter of the site and controlling the design of any lighting. A local landowner is concerned that the use of the site will affect nearby plots of land he has taken out of agricultural use to form designated habitats for feeding/nesting wild birds.⁷ However, in the absence of any other information on this point, this concern is unsubstantiated.
31. The appellant proposes a significant change to the proposed layout of the scheme by deleting the turning area at the southern end of the site and replacing it with a wild flower meadow, a wet land scrape and a hibernaculum. In particular, the latter is to provide mitigation and enhancement for reptiles which have been found on the site after it was left undisturbed for two years and vegetation/ground cover has regenerated.
32. The Council raised concerns about this but I find that if I were minded to allow either or both developments, then a condition could be imposed requiring the submission, approval and implementation of a site development scheme. This could address several matters including the provision of turning for a variety of vehicles. It could also require the submission of a landscape and ecology plan to secure mitigation and enhancement.
33. Overall, I am therefore satisfied that there is no conflict with Policy DM 15 and that the developments accord with Policy DM 3 of the LP, which seeks to avoid significant adverse impacts as a result of development and to create, enhance, restore and connect habitats, amongst other matters. They also accord with Policy DM 1, which seeks, in particular, to protect and enhance any on site biodiversity, where appropriate, or provide sufficient mitigation measures.
34. Furthermore, I find no conflict with the Framework. The Council submit that the revised Framework contains subtle changes on the subject of biodiversity and refers to paragraphs 8c), 179b) and 180d). I consider that there is no real change between the previous paragraph 8c) and the revised version. The wording in paragraph 177b) is the same as the previous paragraph (numbered 174b)). However, the requirement to improve biodiversity in and around developments is bolstered in paragraph 180d) (previous paragraph numbered 175d)) as previously this was "encouraged" whereas now it should be "integrated". This would be achieved by the appellant provided he complied with these suggested conditions.

⁶ The site falls within the River Beult SSSI Impact Risk Zone but the development does not meet the criteria for impacts that would likely lead to a significant effect on the SSI.

⁷ Defra Countryside Mid-Tier Steward Scheme

Intentional unauthorised development

35. It is now Government planning policy that intentional unauthorised development is a material consideration that should be weighed in the determination of planning applications and appeals. The Written Ministerial Statement announcing this policy stated that it applied to all new planning applications and appeals received since 31 August 2015. The change of use of land was clearly done in the knowledge that planning permission was required. However, there was no attempt to hide the fact and a planning application was submitted for the development. Nevertheless, it was intentional unauthorised development to which I attach some weight against the grant of planning permission.

Other Matters

36. Concerns were expressed by third parties that the development causes harm to the setting of two grade II* listed buildings in the area as well as other grade II listed buildings nearby. The grade II* listed buildings are located at Knole hill, about 1.5km away, and along Crump's Lane, separated from the appeal site by intervening fields. The Framework states (paragraph 199) when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
37. The setting for a listed building is an undefined area around the building in which the significance of the building can be experienced and appreciated. I find that any harm to the listed buildings arising from the development is very little, if there is any at all, due to the distance between the appeal site and the listed buildings. In addition, it is not possible to view either of the grade II* listed buildings from within the appeal site or view the juxtaposition of the development in the foreground or background of the listed buildings. I therefore give this matter little weight.
38. I have been referred to a number of previous appeal decisions. Some concern sites outside the Maidstone area, some are in areas such as an AONB⁸ or Green Belt and some find conflict with the development plan but on planning balance allow the appeal with a temporary planning permission. They are all material considerations which I have taken into account. However, I find that they each can be distinguished from the current appeal in that each case had its own individual set of circumstances and thus each planning balance and each decision reached was different. I therefore only give limited weight to these various decisions.
39. Third parties submit that the development, together with other sites in the area, fails to respect the scale of the nearest settled community, as required by the PPTS. This is identified as being Pye Corner, a cluster of dwellings and a repair garage clustered around a road junction. It seems to me though, that Pye Corner is an outlier of Ulcombe village where there is a public house, a village hall and a primary school, amongst other facilities. Various totals for the number of houses in the area were submitted to me including 320 in Ulcombe parish and these were compared to the various totals of caravan numbers.

⁸ Area of Outstanding Natural Beauty

40. However, the details for the location of a sum total of 91 caravans were not submitted. Many gypsy and traveller families live in a static home and a touring caravan and totalling the number of caravans inflates the actual number of families living in the area. Should the appeal be allowed, this would increase the total number of gypsy and traveller families near to Ulcombe village to 29⁹ on the basis of the information before me. If the number of households in the settled community is based on the number of houses in the parish then 320 compared to 29 to my mind is an acceptable scale and I therefore give this matter limited weight.
41. Submissions are also made that there is no need for the development as the Council has more than a seven year supply of gypsy and traveller sites in the area. This argument overlooks the fact that within the LP Policy DM 15 states planning permission for gypsy and traveller accommodation will be granted, subject to various criteria. A criteria-based policy is needed to address development that comes forward on unallocated gypsy and traveller sites in the same way as there are policies to determine proposed housing developments that come forward on unallocated housing sites. As such, I give this matter limited weight.
42. Many third parties commented on the proposed size of the day rooms. However, as explained at the Hearing, each pitch would be occupied by a family with several children. As such the proposed day rooms would be used as a kitchen, dining area, laundry, bathroom and sitting area, leaving the caravans as sleeping accommodation. These would be single storey buildings with a pitched roof sited towards the rear of each pitch on a landscaped site. For the reasons I have already given, I find the overall development of the appeal site would not result in harm to the character and appearance of the area. As such, I give very limited weight to this matter.

Planning balance

43. I have found no conflict with the development plan read as a whole. For decision taking this means approving development proposals that accord with the development plan, notwithstanding the weight I afforded to the intentional unauthorised development. Within their submissions and at the Hearing the parties addressed other material considerations including personal circumstances. These are not matters that I need to address as I have concluded that the development the subject of the enforcement notice and the proposed development accord with the development plan.
44. However, a third party is concerned that their Article 8¹⁰ rights under the Human Rights Act 1998 appear to be a secondary consideration to that of the proposed occupiers. I consider this concern is not well-founded because I find that the development would not cause unacceptable harm to the character and appearance of the area and the matter of whether there is a right of access is not before me.
45. The section 78 appeal and the appeal on ground (a) therefore succeed and the appeal on ground (f) does not therefore need to be considered.

⁹ On the basis of 2 pitches at Neverend Lodge, 7 at Plumtree Park, 7 at Roydon Farm and 5 at Hawthorn Farm.

¹⁰ The right to respect for private and family life, home and correspondence.

Conditions

46. I have considered the need for the conditions put forward by the Council in the light of the advice in the Planning Practice Guidance and the discussion at the Hearing. Having regard to my findings on the development plan, I do not consider that it is necessary for either a temporary or personal permission to be granted. It is, nonetheless, necessary to restrict the occupation of the site to gypsies and travellers meeting the definition.
47. In the interests of the appearance of the site it is necessary to limit the number of caravans, control lighting, prevent commercial activities on the land and the stationing/storage of vehicles over 3.5 tonnes. It is also necessary to remove permitted development rights in relation to means of enclosure in the interests of the appearance of the site. In addition, it is necessary to require the submission of a scheme to deal with the storage and collection of waste from the site.
48. As the material change of use has already occurred, it will also be necessary to impose a condition requiring the submission of a Site Development Scheme (SDS), in the interests of the appearance of the site. The condition is drafted in such a way as to require the appellant to comply with a strict timetable. This condition would also require the submission of a Landscape and Ecology Plan (LEP) to secure biodiversity protection and enhancements.
49. The SDS and LEP condition is drafted in a particular form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of outstanding detailed matters as the development has already taken place. The condition therefore provides for the loss of the effective benefit of the grant of planning permission where the detailed matters in question are not submitted for approval during the time set by the condition, approved (either by the local planning authority or by the Secretary of State on appeal), and then implemented in accordance with an approved timetable. Should the requirements of the condition not be met in line with the strict timetable, then the planning permission falls away.

Conclusions

Appeal A

50. For the reasons given above I conclude that the appeal should succeed on ground (a) and I will grant planning permission in accordance with the application deemed to have been made under section 177(5) of the 1990 Act as amended, which will now relate to the corrected allegation.

Appeal B

51. For the reasons given above I conclude that the appeal should be allowed.

Formal Decisions

Appeal A

52. It is directed that the enforcement notice be corrected: by the deletion of the words in the allegation and the substitution of the words "The material change of use of the land for the stationing of five caravans for residential purposes

and associated operational development comprising the installation of septic tanks, the laying of hard surfacing and the erection of wooden fencing.” in paragraph 3 of the notice.

53. Subject to these corrections, the appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the development already carried out, namely the material change of use of the land for the use as a residential caravan site and operational development comprising the installation of septic tanks, the laying of hard surfacing and the erection of wooden fencing, subject to the conditions in the schedule attached to this decision.

Appeal B

54. The appeal is allowed and planning permission is granted for the change of use of agricultural land to an 8 No pitch gypsy and traveller site comprising 1 No mobile home, 1 No dayroom and 1 No touring caravan for each pitch with associated operational development (part retrospective) in accordance with the terms of the application, reference 19/503101/FULL, dated 8 August 2019, subject to the conditions in the schedule attached to this decision.

D Fleming

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr B Woods	Agent, WS Planning & Architecture
Mr M Rudd	Of Counsel
Ms C Munn	David Archer Associates
Mr R Petrow	Petrow Harley – Landscape Architects
Mr P McCarthy	Appellant
Mr E Rutherford	Previous site resident

FOR THE LOCAL PLANNING AUTHORITY:

Mrs E Temple	Consultant, ET Planning
Ms E Lambert	Of Counsel, appointed by Head of Kent Legal Services
Mr M Flatman	Liz Lake Associates – Landscape Architects
Mr S Jarman	Opinion Research Services

INTERESTED PERSONS:

Mr P Titchener	Local resident
Mr M Tarry	Local resident
Mr W Samuelson	Local resident

DOCUMENTS

- 1 Copy of letter from H Shephard, of Counsel, on behalf of Mrs P Tarry and Mr M Tarry
- 2 Copy of an anonymous Statement from 'A Resident'
- 3 Copy of a Statement from Mrs P Tarry
- 4 Copy of Mr J Bailey's Affidavit which accompanied the Council's application for an injunction
- 5 Copy of the Council's officer report authorising the issue of the enforcement notice
- 6 Copy of Maidstone BC committee report in respect of an application for a material change of use of the land for the siting of one mobile home and one touring caravan for residential occupation by a gypsy & traveller family at 4 Ash Gardens, Headcorn
- 7 Copy of Maidstone BC decision letter for 4 Ash Gardens

Schedule of conditions appeal ref: APP/U2235/C/19/3243809

- 1) The site shall not be occupied by any persons other than gypsies and travellers as defined in Planning Policy for Traveller Sites, August 2015, (or any subsequent definition that supersedes that document).
- 2) No more than 16 caravans, as defined by the Caravan Sites and Control of Development Act 1960 and the Caravan Site Act 1968 as amended, shall be stationed on the site at any one time, of which no more than 8 shall be static caravans, and no further caravans shall be placed at any time anywhere within the site.
- 3) No external lighting shall be put in place or operated on the site at any time other than has been previously submitted to and approved in writing by the Local Planning Authority.
- 4) No vehicles over 3.5 tonnes shall be stationed, parked or stored on this site.
- 5) No commercial activity shall take place on the land including the storage of materials.
- 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development)(England) Order 2015 (or any Order revoking and re-enacting or amending that Order) no additional gates, walls or fences or other means of enclosure including bunding, shall be erected or placed within/to the boundaries of the site.
- 7) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed and the land restored to its condition before the development took place within 28 days of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
 - (i) Within 3 months of the date of this Decision, submit details of:
 - a) the internal layout of the site, hereafter referred to as the Site Development Scheme (SDS), including the layout of the pitches on the site, the siting of the approved caravans, day rooms, vehicular parking and manoeuvring areas;
 - b) fencing and other means of enclosure, hard and soft landscaping, including the retention and protection during construction works of the native hedges along the northern, western and southern boundaries of the site, and including details of species, plant sizes and proposed numbers, and densities and measures for their protection during construction and retention;
 - c) the size and appearance of the day rooms including finishing materials;
 - d) foul and surface water drainage;
 - e) waste disposal including collection point and storage areas;
 - f) external lighting within the site; and
 - g) a landscape and ecology plan, hereafter referred to as the Landscape and Ecology Plan (the LEP). This shall include:
 - the aims and objectives of management and works to ensure compliance with the Preliminary Ecology Appraisal dated July 2019 and the Reptile Survey and Mitigation report dated October 2021, both prepared by David Archer Associates;

- details of the body for the implementation of the LEP;
- details of the on-going monitoring and remedial measures;
- specification and work programme for all works; and
- details of site maintenance including establishment maintenance and replacement planting for a period of five years.

The SDS and the LEP shall have been submitted for the written approval of the Local Planning Authority and shall include a timetable for its implementation.

- (ii) Within 11 months of the date of this decision the SDS and the LEP should have been approved by the Local Planning Authority or, if the Local Planning Authority refuse to approve the SDS or the LEP or fail to give a decision within the prescribed period, an appeal should have been made to and accepted as validly made by the Secretary of State
 - (iii) If an appeal is made in pursuance of (ii) above, that appeal should have been finally determined and the submitted SDS and the LEP should have been approved by the Secretary of State.
 - (iv) The approved SDS and the LEP shall have been carried out and completed in accordance with the approved timetable. Upon implementation of the approved schemes specified in this condition, those schemes shall thereafter be retained.
 - (v) In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition shall be suspended until that legal challenge has been finally determined.
- 8) The works comprised in the SDS and the LEP pursuant to condition 7 shall be retained for the duration of the use of the site and development.

Schedule of conditions appeal ref: APP/U2235/W/19/3241823

- 1) The site shall not be occupied by any persons other than gypsies and travellers as defined in Planning Policy for Traveller Sites, August 2015, (or any subsequent definition that supersedes that document).
- 2) No more than 5 caravans, as defined by the Caravan Sites and Control of Development Act 1960 and the Caravan Site Act 1968 as amended, shall be stationed on the site at any one time, of which no more than 2 shall be static caravans, and no further caravans shall be placed at any time anywhere within the site.
- 3) No external lighting shall be put in place or operated on the site at any time other than has been previously submitted to and approved in writing by the Local Planning Authority.
- 4) No vehicles over 3.5 tonnes shall be stationed, parked or stored on this site.
- 5) No commercial activity shall take place on the land including the storage of materials.
- 6) Notwithstanding the provisions of the Town and Country Planning (General

Permitted Development)(England) Order 2015 (or any Order revoking and re-enacting or amending that Order) no additional gates, walls or fences or other means of enclosure including bunding, shall be erected or placed within/to the boundaries of the site.

- 7) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed and the land restored to its condition before the development took place within 28 days of the date of failure to meet any one of the requirements set out in (i) to (iv) below:

- (i) Within 3 months of the date of this Decision, submit details of:
 - a) the internal layout of the site, hereafter referred to as the Site Development Scheme (SDS), including the layout of the pitches on the site, the siting of the approved caravans, vehicular parking and manoeuvring areas;
 - b) fencing and other means of enclosure, hard and soft landscaping, including the retention of the native hedges along the northern, western and southern boundaries of the site, and including details of species, plant sizes and proposed numbers, and densities and measures for their protection during the construction phase and retention;
 - c) foul and surface water drainage;
 - d) waste disposal, including collection point and storage areas; and
 - e) external lighting within the site.
 - f) a landscape and ecology plan, hereafter referred to as the Landscape and Ecology plan (the LEP). This shall include:
 - the aims and objectives of management and works to ensure compliance with the Preliminary Ecology Appraisal dated July 2019 and the Reptile Survey and Mitigation report dated October 2021, both prepared by David Archer Associates;
 - details of the body for the implementation of the LEP;
 - details of the on-going monitoring and remedial measures;
 - specification and work programme for all works; and
 - details of site maintenance including establishment maintenance and replacement planting for a period of five years.

The SDS and the LEP shall have been submitted for the written approval of the Local Planning Authority and shall include a timetable for its implementation.

- (ii) Within 11 months of the date of this decision the SDS and the LEP should have been approved by the Local Planning Authority or, if the Local Planning Authority refuse to approve the SDS or the LEP or fail to give a decision within the prescribed period, an appeal should have been made to and accepted as validly made by the Secretary of State.
- (iii) If an appeal is made in pursuance of (ii) above, that appeal should have been finally determined and the submitted SDS and the LEP should have been approved by the Secretary of State.

- (iv) The approved SDS and the LEP shall have been carried out and completed in accordance with the approved timetable. Upon implementation of the approved schemes specified in this condition, those schemes shall thereafter be retained.
 - (v) In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition shall be suspended until that legal challenge has been finally determined.
- 8) The works comprised in the SDS and the LEP pursuant to condition 7 shall be retained for the duration of the use of the site and development.