



Appeal Decision

Hearing held on 13 October 2022

Site visit made on 13 October 2022

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 November 2022

Appeal Ref: APP/T2215/W/20/3262652

Rear of 95 High Road, Wilmington DA2 7BW

- 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 Mrs Maxine Lee against the decision of Dartford Borough Council.
 - The application Ref DA/19/01233/COU, dated 27 August 2019, was refused by notice dated 5 November 2020.
 - The development proposed is the change of use of land to a gypsy and traveller site to accommodate 4 x 2-bed static homes, new access and parking.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of land to a gypsy and traveller site to accommodate 4 x 2-bed static homes, new access and parking at land rear of 95 High Road, Wilmington DA2 7BW in accordance with the terms of the application, Ref DA/19/01233/COU, dated 27 August 2019, subject to the conditions in the attached schedule.

Preliminary Matters

2. It is common ground that the appellant and the other adult members of her family, who are intended to occupy the site, have a nomadic habit of life, travelling for an economic purpose. I am satisfied that they comply with the definition of a Gypsy and Traveller in Annex 1: Glossary of the Planning Policy for Traveller Sites (August 2015) (the PPTS).
3. The appeal has been accompanied by a plan of how the site could be landscaped were permission to be granted. This provides one way in which the appellant considers the site could be planted and managed to help to address the Council's concerns with the effect of the proposal on the character and appearance of the area. The plan is for illustrative purposes and I will consider the information accordingly.
4. The emerging Dartford Local Plan (September 2021) has been submitted to the Planning Inspectorate and the next stage of the examination is planned to continue in the coming months. The policies in the emerging Local Plan in themselves, because of the stage of preparation of the plan, should be attributed little weight. Nevertheless, the background information that supports the emerging policy approach is of particular relevance as it provides up-to-date information and this includes the Dartford Borough Council Gypsy and Traveller Accommodation Assessment (October 2019) (the 2019 GTAA) and the Meeting the Needs of Gypsies, Travellers and Travelling Showpeople Report September 2021 (the 2021 Needs Report).

5. The red lined area of the appeal site includes the access from High Road, the existing bungalow at 95 High Road and the drive through that part of the site up to the public footpath and beyond to the approximately triangular shaped paddock area for the proposed four Gypsy and Traveller pitches. The section of the red-lined site from High Road up to the end of the bungalow (No 95), and where the drive through the site intersects with the footpath, falls within the designated settlement area of Wilmington and is outside the Green Belt. Conversely, the area for the four pitches would be located outside the settlement area and is within the Green Belt.
6. Paragraph 16 of the PPTS confirms that traveller sites (temporary or permanent) in the Green Belt are inappropriate development. Furthermore, the change of use of the land for the stationing of mobile homes, where there is presently no other structures or buildings, would not meet with the exceptions for development in the Green Belt as set out in the National Planning Policy Framework (the Framework). It is common ground that the substantive part of the scheme, which lies within the Green Belt, would be inappropriate development.

Main Issues

7. As a consequence of the above and the reasons for refusal, the main issues are:
 - the extent to which the development would affect the openness of the Green Belt and whether or not the development would conflict with the purposes of including land within the Green Belt,
 - the effect of the proposal on the character and appearance of the area,
 - whether or not the harm to the Green Belt by reason of inappropriateness, and any other harm arising from the development, would be clearly outweighed by other considerations such that very special circumstances exist to justify the proposal.

Reasons

Green Belt

8. As explained, the proposed residential use of the land to the south of the footpath would be located within the Green Belt. The Framework explains that the Government places great importance to Green Belts. The Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. It goes on to state that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
9. The development plan includes the Dartford Core Strategy (adopted September 2011) (the Core Strategy) and the Dartford Development Policies Plan (adopted July 2017) (the DPP). Policy CS13 of the Core Strategy is limited in scope and reverts to Government Green Belt policy although the reference is made to the then PPG2. Policy DP22 of the DPP essentially, in terms of the Green Belt considerations in this appeal, sets out Framework policy and includes a list of potential impacts in criterion 3 which are to be assessed in considering the harm to the Green Belt. Policy DP10 of the DPP concerns Gypsy and Traveller sites and references the Green Belt balancing exercise in national policy and lists criterion against which proposals are to be considered.

10. The Planning Practice Guidance (the Guidance) explains factors that can be taken into account when considering the potential impact of development on the openness of the Green Belt. This advises that assessing the impact of a proposal on the openness of the Green Belt requires a judgment based on the circumstances of the case. In particular, it is explained that openness is capable of having both spatial and visual aspects – in other words the visual impact of the proposal may be relevant, as could its volume.
11. In this case, the Green Belt section of the site, including the area for the proposed mobile homes and associated residential occupation, is a reasonably modest sized and level site. It is fairly well contained by the established vegetation along the footpath, by the trees to the west adjoining the school site and by the copse of trees and other vegetation to the south. It is more open to views from the broadly east because of the adjoining paddock area although there are small/medium sized trees and some bushes that partially screen the site in views from public locations and residential properties, such as from the first floor windows of some of the dwellings in South View Road.
12. As a result of the surrounding vegetation, there would be some limited views of the proposed Gypsy and Traveller site, including parts of the mobile homes and associated activity, from some neighbouring properties and the footpath, especially from the intersection of the driveway and the footpath. However, the site would be largely contained by the vegetation and this would reduce the visual effect on openness from the development itself. In terms of other visual impacts, there would be other associated activity resulting from the residential use, including the comings and goings of vehicles. However, this visual effect again would be reasonably modest in extent and in proportion to the use of the four mobile homes. The increased traffic movements to the proposed residential accommodation would be partially offset because the appellant would be living on site and would be able to look after the horses on the wider land without the need to visit using a vehicle.
13. Given all these considerations, the visual effect of the development on the openness of the Green Belt would be limited.
14. In terms of the spatial effect on openness, the appellant explained that the proposal has been formulated to try to limit the extent of spatial (and visual) impact as the scheme does not include dayrooms or for the stationing of touring caravans. The development could, therefore, be considered to be towards the minimum that would provide a four pitch Gypsy and Traveller site. Nevertheless, the introduction of four mobile homes, including parking and associated residential activity and paraphernalia, would introduce a spatial volume to this presently open and undeveloped area. The site is reasonably modest in size and the spatial effect of the development would be to reduce the openness of the site in its surroundings to a moderate extent.
15. Taken together, the combined visual and spatial effects of the development on openness would be moderate and localised.
16. The Framework explains that the Green Belt serves five purposes. Two of these purposes are to check the unrestricted sprawl of large built-up areas and to assist in safeguarding the countryside from encroachment. The proposed Gypsy and Traveller site lies just beyond the settlement area of Wilmington. It is therefore vulnerable to the encroachment of development into the Green Belt.

17. The settlement boundary is drawn tightly to the edge of much of the built-up area although the adjoining redundant school site to the broadly south west is included within the Green Belt. The proposed scheme would extend development into land beyond the settlement and into, in planning terms, undeveloped countryside. In these respects, the two relevant Green Belt purposes would not be met as the development would not safeguard the countryside from encroachment or check the sprawl of large built-up areas. Taking into account the size of the scheme and its contained form, the nature and size of the settlement, and the irregular shape of the settlement boundary as it follows the existing built development in this area, the conflict with the two identified Green Belt purposes would be moderate in extent.
18. Drawing all these matters together, I conclude the scheme would be inappropriate development in the Green Belt, which the Framework confirms is harmful by definition. There would be additional harm in terms of the localised and moderate effect on openness and the moderate level of conflict with two of the purposes. I am conscious that the Framework requires that any level of harm to the Green Belt should be attributed substantial weight. I will return to this matter later.
19. In terms of the development plan policies, again I will examine these matters later, but generally compliance with Policies DP10 and DP22 of the DPP and Policy CS13 of the Core Strategy is principally dependent on whether or not there would be very special circumstances to justify inappropriate development in the Green Belt.

Character and appearance

20. The appeal site, in terms of the section beyond the settlement boundary, is a modest sized and overgrown paddock. It forms part of an urban fringe around this part of Wilmington. This urban fringe area includes the adjoining paddocks, stables, shelters and equestrian use which combine to form an intervening character to the land between the built-up area and the open arable land further to the south.
21. The topography of the site and surroundings are generally level, and with the boundary vegetation around parts of the site, there would be few long or medium distance views of the proposed development.
22. The public footpath runs along the broadly north western boundary of the proposed Gypsy and Traveller site. Within this adjoining section of the site there is a fairly broad strip of existing vegetation which includes smaller self-sown trees, medium sized bushes and trees, and lower height and unmanaged scrub. This provides an informal and verdant feel to the section of the footpath by the site and this appearance merges with the area adjoining the footpath which leads to Stock Lane. In the broadly easterly direction, the paddocks are more noticeable from the footpath and the views south have a more open character. Generally, along much of this length of the footpath, there is a feeling that it separates the built-up area from the countryside.
23. In terms of the proposal, the four mobile homes, parking and access would be positioned largely within the more open part of the site. There would be a need to cut back some of the vegetation to accommodate the western ends of the mobile homes for pitches 1 and 2 but this would not involve the loss of any significant areas of greenery. The north west corner of the mobile home on

- pitch 1 would come reasonably close to the footpath and it is likely to be visible from the footpath but there would still be space for planting and the retention of most of the existing vegetation in this area.
24. From a practical management point of view, parts of the unmanaged scrub within the boundary strip alongside the footpath would be likely to be removed. It would then be possible to incorporate replacement planting that would have more structure and that could be managed more effectively than the existing undergrowth. There is space to accommodate the layout of the pitches and to retain the trees and most of the established bushes that provide a verdant feel within the strip. The illustrative landscaping plan shows that a suitable landscaping scheme could supplement the existing trees and bushes and could provide a reasonable depth of landscaped buffer alongside the footpath. As many of the trees and bushes adjoining the footpath are already in place and could be retained, the replacement planting in the sections where the undergrowth would be removed could, within a reasonably short time, combine to provide a fairly effective strip of landscaping along this part of the site.
25. The Gypsy and Traveller area of the site has been designed in a compact form without dayrooms or space for the storing of touring caravans. From what I heard at the hearing I am satisfied that this could be a practical approach to occupation of the site. Nevertheless, this part of the appeal site would be occupied quite intensely and much of this area would be taken up with mobile homes, parking, access drive and amenity space which could very well be suburban in appearance. The existing and enhanced boundary planting would assist with helping to soften and partially screen the site. However, the use of the site and the associated change to the character and appearance of the area, in particular when the leaves were off the vegetation, would still be perceptible. This effect would represent a clear change in character when experienced from sections of the footpath, the access/footpath intersection and some of the adjoining properties.
26. The undeveloped form of the site means that presently it will be dark at night. Introducing residential use would almost certainly lead to a requirement for some form of external lighting in the interests of safe use of the site. A suitably worded condition, as part of any approval, could minimise the effect of the lighting on this otherwise unlit section of the land but would not be able to entirely mitigate the residential presence after dark. This would add to the noticeable character change to this area.
27. I appreciate that Gypsy and Traveller sites are not an uncommon sight in the countryside and the PPTS accepts that such sites in open countryside, providing that they are not away from existing settlements. I have also had regard to all the landscape character and visual effects evidence from the appellant, including the Landscape Statement (November 2020). However, on this southern side of the footpath, which has a generally undeveloped and rural character, and notwithstanding the benefits from the landscaping strip adjoining the footpath, the effect of the development would be to form an encroachment of residential development into an undeveloped and rural space and thereby this would harm the character and appearance of the area. Because of the existing vegetation, and potential to enhance this with additional structural planting with an associated management regime, the harm to the character and appearance of the area would be moderate in extent.

28. In the light of the above analysis, I conclude that the proposal would cause moderate harm to the character and appearance of the area. In this respect it would not accord with the Framework policy that requires that development is sympathetic to local character, including the surrounding built environment and landscape setting.
29. The related reason for refusal identifies conflict with Policies DP10 and DP22 of the DPP. However, Policy DP10 concerning Gypsy and Traveller sites does not have a directly applicable policy test concerning the effect of such development on the character and appearance of the area. Policy DP22 indicates that when assessing other harm (in addition to any Green Belt harm), the Local Planning Authority will use five criteria, including the impact on the visual amenity or character taking into account the extent of screening required. The harm that I have found in terms of character and appearance forms part of the other harm in addition to the Green Belt harm and therefore forms part of the assessment within the overall planning balance.

Other Planning Matters

30. There have been a wide range of objections received, both at the application and appeal stages, including from local residents, Wilmington Parish Council and The Wilmington Society. I have taken all the comments into account in my considerations. One of the main objections raised is on Green Belt grounds and I consider these matters elsewhere in this decision.
31. One of the other main objections concerns the impact on highways, including road safety. The case, in particular, is made that High Road is already very busy and that the road cannot accommodate further traffic which would also create a danger at the access onto the main road.
32. In respect of the highway implications, there would be reasonable visibility for drivers leaving the site to see pedestrians, providing the fencing along the frontage was kept at an appropriate height. It would then be possible for a driver to safely edge forward. With the sections of double yellow lines along this side of the road, and notwithstanding the parked vehicles, those leaving the site would have satisfactory visibility of approaching traffic.
33. With the likely traffic generated by a four pitch site, together with the existing bungalow, and with a likely reduction in vehicles related to visits to look after the horses, the additional traffic movements would not be of a level to materially affect traffic flows along High Road and the wider area. The Highway Authority did not object to the scheme and I am satisfied, in terms of the Framework policy tests, that a safe and suitable access to the site could be achieved for all users, there would not be an unacceptable impact on highway safety, and the residual cumulative impacts on the road network would not be severe.
34. Away from High Road, the proposal would be likely to lead to more vehicles crossing the public right of way. However, there is already a driveway that passes across this area. The private drive past No 95 would be widened but its width and slightly curving layout would help to limit vehicle speeds and there would be reasonable intervisibility at the intersection with the public footpath to ensure adequate safety between footpath users and occupants of the site.

35. Local residents also raise concerns with the effect of the development on their living conditions. Those occupants of some of the closest properties in South View Road would be able to see parts of the development, and could be able to perceive the increased traffic movements and residential use of the site. However, given the separation distance, and the nature and scale of the use, I do not consider that the development would have an unacceptable impact on the living conditions of adjoining residents. The Council came to the same judgement and the proposal was not refused on these grounds.
36. In terms of any impact on biodiversity, the Council did not raise objection in this regard and I have no clear evidence that the loss of the overgrown paddock land would unduly affect any species or habitat.
37. I have also considered all the other issues raised in objection to the scheme, including the effect of the development on local property values and the ability for refuse to be satisfactorily collected. Where these concerns are planning considerations, I have taken them into account, however, they are not issues which are determinative and, therefore, I attach them little weight such that they do not affect my overall conclusions.
38. I have also taken into account in my considerations the letters of support which were submitted at the planning application stage.

Other Considerations

39. When considering the Green Belt assessment, it is necessary to have regard to "other considerations". These could weigh for or against the scheme. In particular the following other considerations have been raised.
40. *Existing level of provision and unmet need* - the 2021 Needs Report explains that many of the traveller sites in Dartford are unauthorised, occupied by extended family groups which contain concealed or doubled-up adults and/or occupied by teenagers. This helps to demonstrate elements of the underlying level of unmet need for pitches. The unmet and future need was also reflected in the 2019 GTAA which documents a need for 48 pitches in the Dartford Borough Council area in the period 2019-2024 and 52 pitches in the period 2019-2026, with 70 by 2035.
41. The 2021 Needs Report explains that planning permission has been granted since 2019 for 18 traveller pitches which leaves a residual of 34 pitches to 2026. While this demonstrates that some pitches are coming forward, there is still a substantial level of unmet need. Given the evidence of past poor delivery of Gypsy and Traveller sites and that the Council has not allocated, to date, sites in an adopted plan, I attribute this unmet need substantial weight.
42. The proposed occupiers of the site are presently living on a caravan site in the Sevenoaks District Council area. Dartford Borough Council has made the point that it should be for Sevenoaks District Council to meet the needs of the appellant and family and not Dartford Borough Council which is seeking to meet the needs of its own residents. However, I do not accept this argument for a number of reasons.
43. Firstly, the PPTS explains that local planning authorities should determine applications for sites from any travellers and not just those with local

connections. Secondly, the evidence¹ shows that there are established links between the two Councils in relation to Gypsy and Traveller flows which are rooted in historic patterns of movement of the Gypsy and Traveller community linked to seasonal work such as fruit picking in remote areas such as the North Downs. Finally, it seems to me that there would be a reasonable likelihood over time, given the historic connections, that migration of Gypsies and Travellers between the two Council areas would largely cancel each other out. Consequently, the provision of 4 additional pitches at this site should be seen as a contribution to meeting the identified needs for pitches in the Dartford Borough Council area.

44. *Five year supply of pitches* – Policy DP10 of the DPP states that the Local Planning Authority will, through its planning and other roles, work actively to identify a supply of Gypsy and Traveller pitches sufficient to meet future identified needs in the Borough. Furthermore, the policy explains that the Council will maintain a five year supply with deliverable land to meet identified requirements for traveller pitches. The evidence is that this policy requirement has not been met and the Council accept that it cannot demonstrate an up-to-date five year supply of deliverable pitches.
45. The PPTS states that if a local planning authority cannot demonstrate an up-to-date five year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of a temporary planning permission. However, importantly, the PPTS explains that an exception to this is where the proposal is on land designated as Green Belt.
46. Consequently, with this appeal I do not treat the lack of a five year supply as a significant material consideration when considering a temporary permission. Nevertheless, this lack of supply is an aspect that is reflected to some extent in the level of unmet need and the failure of policy, which I consider below. I appreciate that this application of the PPTS in respect of the approach to five year supply differs from the view of the Inspectors in the Eebs Stables, Dartford² and Nurstead Stables, Longfield³ decisions. However, I am not persuaded by the evidence before me in this case is such that a deviation from the PPTS in this respect is justified even if it is likely that sites for Gypsy and Travellers in the Dartford area would be in the Green Belt in the future.
47. *Failure of policy* – the appellant argues that there has been a failure of policy reflected in the long-standing unmet need for sites. It appears that the policy approach has not ensured an adequate supply of sites as required since the introduction of Circular 1/94. Based on all the evidence, both in writing and at the hearing, I am satisfied that there has been a long-standing failure of policy to meet the full need for culturally appropriate accommodation for Gypsies and Travellers within the Dartford area through the plan-led system and this is contrary to national planning policy. This is a matter that should afford substantial weight in its own right.
48. *Emerging policy* – the emerging Local Plan sets out, in Policy M12, the proposed policy approach for Gypsy, Traveller and Travelling Showpeople

¹ Statement of Common Ground as agreed between Sevenoaks District Council and Dartford Borough Council – May 2019.

² APP/T2215/C/19/3228536 and 3228522 – Eebs Stables, Downs Farm, Dartford DA2 6NR – 25 February 2022

³ APP/T2215/C/18/3202384 and APP/T2215/C/17/3187839, 3187840 and 3187841 – Land at Nurstead Stables, Nurstead Avenue, Longfield DA3 7HG – dated 27 December 2018.

Accommodation. The figures in the emerging Local Plan reflect the findings of the 2019 GTAA. The strategy seeks to deliver the required accommodation in a number of ways and this includes realising the potential for additional accommodation within existing authorised and tolerated sites, allocating land for additional pitches at two existing Gypsy and Traveller sites, actively seeking to identify deliverable non-Green Belt sites within Ebbsfleet Garden City and determining planning applications in accordance with the second part of the policy which includes assessing a scheme against local and national Green Belt policy.

49. The appellant drew my attention to sections of the 2021 Needs Report which sets out some of the background to Policy M12 of the emerging Local Plan. This includes the difficulties of finding suitable sites, the correspondence with the Ebbsfleet Development Corporation which explains that a site does not appear at present to be available, and that there is no Dartford Borough Council land that could be used to allocate pitches.
50. The 2021 Needs Report explains that work is continuing with a formal request to Kent County Council to consider its sites and that the Council considers that the evidence demonstrates that it has made significant progress and is actively working towards meeting the needs of traveller accommodation.
51. I appreciate that the appellant has set out the reasoning why it is considered there are doubts that the emerging Local Plan would address the long standing failure to provide sufficient pitches for Gypsies and Travellers. However, it should be left to the Inspector at the Local Plan Examination to look at this matter in detail and reach conclusions. In future, an adopted policy approach may result in options and availability of sites that could have less landscape and/or Green Belt harm than the present scheme, although there appears a likelihood that such sites would be within the Green Belt. There is therefore a reasonable prospect that the policy situation to help deliver the level of pitches required to meet the identified need would improve going forward.
52. *Available, suitable, acceptable and affordable alternative sites* - the evidence indicates that there are no suitable sites available for the appellant and her family within the Dartford area. This is a matter which attracts substantial weight.
53. *Personal circumstances* – the proposed occupants of the site at Wilmington are one part of a wider Gypsy family presently living on a site within the Sevenoaks District Council area. The evidence is that this Sevenoaks site is reasonably remote and is subject to a Lawful Development Certificate for four caravans. On the basis of the number of residents on the site it should be considered overcrowded in terms of the certificated level of accommodation although the site is fairly spacious in area.
54. The Sevenoaks site also lies within the Green Belt. Sevenoaks District Council consider that it has allocated sufficient pitches in its area for Gypsies and Travellers to meet the need for permanent pitch provision⁴. The appellant believes that as Sevenoaks District Council consider it has met its pitch requirements, that the site in Sevenoaks is not a Gypsy and Traveller site in itself, and coupled with the remote and Green Belt location, the circumstances

⁴ Statement of Common Ground as agreed between Sevenoaks District Council and Dartford Borough Council – May 2019.

would combine such that planning permission to increase the number of caravans at that site may not be looked upon favourably by the Council. This, and the drawbacks of that site, has led the appellant to look elsewhere.

55. A benefit of the appeal site would allow this section of the family, all close relatives, to live together in culturally appropriate housing. The site would be nearer to services and facilities than the Sevenoaks site, and would be more convenient for schools and other facilities to assist the identified needs of the proposed occupiers. Because of its position in relation to the settlement, the appellant and her family would be able to be more integrated into a local community at the Wilmington site than with the present one.
56. These are all important considerations. If permission was refused then it seems that the appellant and her family would be required to remain at a site which is not now entirely suited to the family as a whole and their accommodation needs for separate caravans. Nevertheless, there is no clear suggestion that refusal would lead to a road side existence or that they would not be able, for instance, to access medical or other services that they may need.
57. Taking all these matters into account, I attribute the personal circumstances moderate weight in support of the proposal.
58. *Best interests of the children* – in considering these matters I am conscious that the best interests of the child⁵ shall be a primary consideration in all actions by public authorities concerning children. No other consideration can be inherently more important than the best interests of the child, that is, the need to safeguard and promote their welfare. In general terms, the importance or weight given to the best interests of the child and any other considerations will always depend on the circumstances and that their interests can be outweighed by other factors when considered in context.
59. The supporting information explains that there would be five children who would occupy the site. They are not of an age yet to attend school. The children would benefit from occupying the proposed Wilmington site including that, in due course, that they could walk to one of the various schools in the area, have easier access to wider community facilities and be alongside the settled community.
60. The children are presently housed on an existing site and a road side existence is not likely, nevertheless the accommodation does not meet their needs and is overcrowded in terms of the certificate that identifies the lawful number of caravans. I consider that it would be in the best interests of the children if they were to be able to continue to live and grow up together in a more suitable environment as part of an extended Gypsy and Traveller family group, which could be provided on the Wilmington site. Given that there are presently no identified suitable alternatives and that there are five children who would benefit, I attribute this matter substantial weight in favour of the proposal.
61. PPTS – one of the Government's aims set out in the PPTS is to promote more private traveller provision and the site would accord with this aim. In terms of the matters in paragraph 26 of the PPTS to which weight should be attached, the site would not make effective use of previously developed, untidy or derelict land. While the site could be well planned and soft landscaped it would

⁵ Article 3(1) of the United Nations Convention on the Rights of the Child.

not, for the reasons I have explained, positively enhance the environment or increase openness. The site would be sufficient in size to allow for healthy lifestyles, and would not be enclosed with so much hard landscaping that the impression was given that the site and its occupants were deliberately isolated from the rest of the community. Where the site would provide a benefit in relation to the above, those benefits would be quite modest in extent and I attribute them limited weight.

62. Additionally, in terms of paragraph 25 of the PPTS, the site would clearly not be away from an existing settlement and the scale of the site and number of pitches would not dominate the nearby settled community or place an undue pressure on the local infrastructure. Indeed the site is well related to local services and facilities and would allow the ability to walk or cycle, and connect with public transport, without the need to always rely on the private vehicle. In these respects the proposal would be PPTS compliant.

Whether or not the harm to the Green Belt by reason of inappropriateness, and any other harm arising from the development, is clearly outweighed by other material considerations such that very special circumstances exist to justify the proposal.

63. The Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. I have found that the proposed development would be inappropriate in the Green Belt and additionally there would be moderate and localised harm to openness and moderate harm to two of the purposes for including land within the Green Belt. Overall this Green Belt harm should be attributed substantial weight against the scheme.
64. In terms of other considerations, the proposal would cause moderate harm to the character and appearance of the area. I attribute this harm moderate weight.
65. In respect of those other considerations in favour of the proposal on a permanent basis, I attach substantial weight to each of the following, the existing level of provision and level of unmet need, the failure of policy, the lack of available, alternative sites and the best interests of the children. I attach moderate weight to the personal circumstances. The provision of four pitches would make a modest but worthwhile contribution to meeting targets and I attribute this moderate weight. In terms of the compliance with aspects of the PPTS, I attribute this limited weight for the reasons explained. Cumulatively, those matters in favour of approval merit substantial weight.
66. When considering whether very special circumstances exist, a combination of factors, even if ordinary on their own, can combine to create very special circumstances. I am also conscious that the emerging Local Plan is advancing with an approach to seek to meet the needs of the Gypsy and Traveller community. This is an important factor in the overall considerations and tempers the arguments in favour of a permanent permission.
67. Drawing all these matters together, the considerations in favour of a permanent permission merits substantial weight. However, the Green Belt harm, and the other harm, are also matters which combine to have substantial weight. It is such that the harm to the Green Belt by reason of inappropriateness, and the other harm, would not be clearly outweighed by

other considerations. Consequently, very special circumstances do not exist to justify a permanent permission for the development.

68. Accordingly, because very special circumstances do not exist to justify a permanent permission, the scheme would not meet with the requirements of the Green Belt balance in Policies DP10⁶ and DP22 of the DPP. It also follows that the proposal would not accord with the approach to Green Belt in Policy CS13 of the Core Strategy, although the reference is to PPG2 and the approach is now to be found in the Framework, nor Policy CS20 of the Core Strategy taking into account criterion 1c) regarding protection of the openness of the Green Belt.
69. I therefore conclude that the proposal, on a permanent basis, would not accord with the policies of the development plan when considered as a whole and material considerations do not indicate a decision should be made otherwise.
70. In terms of the considerations which may justify a personal and/or temporary planning permission, for the time being and in advance of the emerging Local Plan, the ability to address the housing needs of Gypsies and Travellers in the Dartford area is not encouraging. The lack of available options and long term failure of policy mean that the level of unmet need would, in all likelihood, continue at a level that is both pressing and immediate until an emerging Local Plan strategy has the ability to come to fruition. Coupled with the likelihood that future sites would be within the Green Belt, this helps support the case for a temporary planning permission on this site.
71. The Guidance advises that the circumstances where a temporary permission may be appropriate include where it is expected that the planning circumstances will change in a particular way at the end of that period. In terms of personal permissions the Guidance advises that there may be exceptional occasions where development that would not normally be permitted may be justified on planning grounds because of who would benefit from the permission.
72. If planning permission was refused, the outcome would be that the appellant and her family would continue to live in substandard accommodation on the site at Sevenoaks. However, the Wilmington site, even on a temporary basis, would address these needs and provide an accessible base from which the family could access health care, local services and, in due course, education for their children.
73. Taken together, I consider that this is a case where a temporary planning permission would be justified. This includes because of all the benefits and background to the scheme, especially the local level of unmet need, the Green Belt circumstances of the administrative area of Dartford, the personal circumstances, the best interests of the children and the timetable of the emerging Local Plan.
74. Furthermore, such a temporary permission would also be partly justified on the basis of the needs of the appellant, her family and, in particular, the children. Accordingly, a personal permission would also be appropriate so that the intended occupants would benefit from any approval. This approach would

⁶ I am satisfied that criteria 3a-e would be met

accord with the circumstances in the Guidance when temporary and/or personal permissions would be appropriate.

75. In these circumstances, the harm to the Green Belt and to the character and appearance of the area would be temporary, although this still combines to merit substantial weight against the scheme. Nevertheless the other considerations I have identified are sufficient to clearly outweigh the harm to the Green Belt and the other harms. Taking account of the positive obligation to facilitate the gypsy way of life, I conclude that there are very special circumstances to justify a temporary and personal permission.
76. I appreciate that the PPTS makes clear that, subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances. The wording is that this is unlikely and therefore there may be circumstances where this would be the case. I consider that the appeal scheme is one such case, on the basis of a temporary and personal permission, because of the combination, extent and nature of the considerations would be such so as to demonstrate very special circumstances.
77. On a temporary and personal basis, the Green Belt balance falls in favour of an approval. Accordingly, I conclude that the proposal would then comply with Policies CS13 and CS20 of the Core Strategy and Policies DP10 and DP22 of the DPP, and thereby with the development plan as a whole. There are no material considerations that indicate that the decision, in relation to a temporary and personal planning permission, should indicate otherwise.
78. For completeness, in these circumstances, I consider that the outcome of this appeal, while decided on its merits, is generally consistent with the appeal decision at Eebs Stables, Dartford where a temporary and personal planning permission was granted in February 2022.
79. A temporary and personal planning permission would also have due regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010 as the proposed occupiers of the site are ethnic Romany Gypsies and have protected characteristics of race under this Act. Such an approach would also assist with meeting the requirements under Article 8 of the Human Rights Act 1998 regarding the right of the appellant and her family to respect for private and family life, which in this case would include the traditions and culture associated with the gypsy way of life. A temporary and personal planning permission would, therefore, be a proportionate and appropriate response, having due regard to the PSED and the human rights of the appellant and her family, in the circumstances of this Green Belt site.

Conditions

80. I have had regard to the conditions suggested by the Council and which were discussed at the hearing. I have amended the wording where necessary in the interests of clarity or to meet the six tests in the Guidance. The statutory time limit is required and a condition specifying the approved plans is necessary in the interests of certainty.
81. A condition restricting the permission on a personal and temporary basis is necessary for the reasons I have explained above. The time period, in the event that I was minded to allow the appeal on this basis, was discussed at the

hearing. Both the appellant and the Council considered that a five year period would be reasonable and appropriate because of the need to complete the Local Plan process and, in my view, for the resulting policies to take effect and deliver. I agree with the suggested five year period and will grant the permission on this basis. As the named occupants meet with the definition of a Gypsy and Traveller in the PPTS, it is not necessary to attach a general occupancy condition.

82. A condition is necessary for the site to be returned to its previous state at the end of the temporary period in the interests of the protection of the Green Belt and the character and appearance of the area.
83. Details of the surface and foul water drainage are necessary to be agreed by condition in the interests of protection from flooding and public health. Conditions requiring details of external lighting and a landscaping scheme, with related management plan, are necessary in the interests of minimising the effect of the development on the character and appearance of the area.
84. A condition requiring a sprinkler system to be installed is necessary having regard to the advice of the Kent Fire and Rescue Service, the position of the mobile homes and the related access.
85. A condition is necessary to limit the number of pitches and the number of mobile homes/caravans on each pitch to accord with the details of the application, in the interests of protecting the Green Belt and the character and appearance of the area. A condition restricting the floor area of any mobile home/caravan on the site is necessary to accord with the layout plan and in the interests of the character and appearance of the area.
86. Conditions are necessary to prevent commercial activities and the size of vehicles stationed on site in the interests of the character and appearance of the area and the amenities of local residents.
87. The Planning Report sets out the advice of the Highway Authority. This confirms that it has no objections to the development but suggests that the visibility of the existing access should be improved by reducing the height of the existing boundary treatments at the entrance. Consequently, for reasons of highway safety, especially those of pedestrians, a condition is necessary to ensure the works to the access onto High Road are undertaken and thereafter maintained. Similarly, a condition is necessary to ensure the parking spaces, turning areas and access shown on the submitted plans are provided in the interests of adequate parking and access.
88. It is necessary for three conditions to be subject to a pre-commencement requirement. In terms of a drainage scheme, this needs to be agreed at the outset so that the underground works can be planned and be shown to be effective in advance of any other works taking place on the site including to the driveway. The landscaping strip alongside the footpath is of particular importance, and therefore it is necessary that those trees and bushes which contribute significantly to softening the appearance of the site are identified and a complementary landscaping scheme agreed, together with related management objectives, before any works take place on site that could compromise the existing vegetation.

89. I have considered the other proposed conditions put forward by the Council. I am not convinced by the extent and detail of the evidence that for this greenfield site, with no existing buildings, that it would necessarily have any contaminated land. Therefore, it would not be reasonable to require a site investigation and related actions. I therefore have not included those suggested conditions. It is also not necessary to attach the suggested condition regarding the overall operational management of the site as it would contain only four pitches and would be occupied by a single extended family.

Conclusion

90. For the reasons given above, and subject to the conditions in the schedule, I conclude the appeal should be allowed.

David Wyborn

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Dr Angus Murdoch	Murdoch Planning Ltd
Mr Philip Russell-Vick	Enplan
Mrs Maxine Lee	Appellant
Mr Lee Webb	Appellant's brother

FOR THE LOCAL PLANNING AUTHORITY

Mr Neill Whittaker	Ivy Legal
Mrs Abigail Lavery	Dartford Borough Council

INTERESTED PARTIES

Cllr Derek Hunnisett	Dartford Borough Council
Mrs Sheila Mayes	Local Resident

DOCUMENTS SUBMITTED AT THE HEARING

1. Update paper on personal circumstances of the appellant and family
2. Dartford Borough Council – Gypsy and Traveller Accommodation Assessment Final Report October 2019
3. Site Availability Assessment of Fair Haven – Sevenoaks District Council
4. Statement of Common Ground as agreed between Sevenoaks District Council and Dartford Borough Council (signed May 2019)
5. Copy of supporting document submitted with planning application explaining personal circumstances of the applicant and family

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development shall be carried out in accordance with the following plans: 4525-PD-101 (Location Plan / Site Plan Existing); and 4525- PD-100 Revision A (Location Plan / Site Plan Proposed).
- 3) The four caravans hereby permitted shall be occupied by no persons other than Maxine Lee, Michael Lee Snr, Vanny Lee, Rebecca Lee, Michael Lee Jnr, Beth Lee, Joe Lee and Scarlett Lee and their resident dependants, and shall be for a limited period of five years from the date of this decision, or the period during which the land is occupied as a caravan site by them, whichever is the shorter.
- 4) When the caravan site ceases to be occupied by those named in Condition 3 above, or at the end of the five years, the residential use of the red lined land to the south of the public footpath hereby permitted shall cease and all caravans, buildings, structures, hardstandings, materials and equipment brought onto that part of the land, or works undertaken to it in connection with the use, shall be removed and the land restored to its condition before the development took place.
- 5) Prior to commencement of the development hereby approved, details of the surface water drainage system and foul water drainage system for the development (including storage facilities where necessary) shall be submitted to and approved in writing by the local planning authority. The details shall be implemented as approved prior to first occupation of the development.
- 6) Prior to installation, details of any proposed external lighting within the red lined site as shown on Plan 4525-PD-100 Rev A shall be submitted to and approved in writing by the local planning authority. Such external lighting details shall include siting, angles, levels of illumination and any shields. Development shall be carried out in accordance with the approved details. No external lighting shall thereafter be installed other than in accordance with the approved scheme.
- 7) Prior to commencement of the development hereby approved, a landscaping scheme including both hard and soft landscaping which shall include the reinforcement, with native species, of planting within and around the appeal site, including to the areas of land to the north, south and east of the appeal site which are in the ownership of the appellant, shall be submitted to and approved by the Local Planning Authority and shall be implemented prior to first occupation (unless this falls outside of the planting season in which case it shall be implemented at the first opportunity during the following planting season, between October and March inclusive). Such landscaping shall thereafter be maintained for a specified period in accordance with the maintenance schedule the subject of Condition 8. Any trees, hedges, shrubs or grassed areas which die, are removed or become seriously damaged or diseased within this period shall be replaced within the next planting season with plants of similar species and size to that approved.

- 8) Prior to commencement of the development hereby permitted, a Landscape Management Plan, including design objectives, management responsibilities, and maintenance schedule for all landscape areas shall be submitted to and be approved in writing by the local planning authority. The Landscape Management Plan shall thereafter be carried out as approved.
- 9) Prior to the first occupation of any mobile home/caravan on the site, details of sprinkler systems for all mobile homes/caravans within the site shall be submitted to and be approved in writing by the Local Planning Authority. The approved sprinkler system shall be installed and be operational before each of the mobile homes/caravans on the site are first occupied and thereafter the approved sprinkler system shall be retained.
- 10) There shall be no more than 4 pitches on the site and on each of the 4 pitches hereby permitted there shall contain no more than one mobile home/caravan. The mobile homes/caravans, subject to compliance with the requirements of Condition 11, shall meet with the definition of a caravan as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968.
- 11) No mobile home/caravan stationed on the site shall be larger in area than 16.76m by 6.096m (55ft by 20ft).
- 12) No commercial activities shall take place on the land, including the burning or storage of materials.
- 13) No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.
- 14) Prior to first occupation of any of the mobile homes/caravans hereby approved, details of the front boundary treatments facing High Road and appropriate resulting visibility splay details for the access way onto High Road shall be provided to and be approved in writing by the Local Planning Authority. The approved works shall be fully installed prior to the first occupation of any mobile home/caravan and thereafter there shall be no obstruction exceeding 600mm within the approved splays.
- 15) The 5 car parking spaces, turning areas and means of access shown on the approved plans shall be provided prior to occupation of any mobile home/caravan hereby approved and these areas shall be kept available for their designated uses at all times.

End of schedule