

APPLICATION: MA/09/1510 Date: 16 August 2009 Received: 21 August 2009

APPLICANT: Ms B Cash

LOCATION: THE MELLOWS, MARLEY ROAD, HARRIETSHAM, MAIDSTONE, KENT, ME17 1BS

PARISH: Harrietsham

PROPOSAL: Retrospective planning permission for change of use of land for residence by a gypsy family including stationing of one mobile home, one touring caravan, use of former stable building as ancillary to mobile home and associated works including fencing and hardstanding (re-submission of MA/09/0851) as shown on site location plan and unnumbered site and landscape plan received on 21/8/09.

AGENDA DATE: 29th April 2010

CASE OFFICER: Peter Hockney

The recommendation for this application is being reported to Committee for decision because:

- it is contrary to views expressed by Harrietsham Parish Council
- Councillors Tom Sams and David Marshall have requested it be reported for the reason set out in the report

1. POLICIES

Maidstone Borough-Wide Local Plan 2000: ENV28, ENV33, ENV34, T13
South East Plan 2009: C4, C5, T4
Government Policy: PPS1, PPS7, Circular 01/2006

2. HISTORY

MA/09/0851 – Retrospective planning permission for change of use of land for residence by a gypsy family including stationing of one mobile home, one touring caravan and use of former stable building as ancillary to mobile home – WITHDRAWN.

MA/06/1508/C06 – Retrospective application for the stationing of two mobile homes for occupation by two travellers families, erection of polytunnels, retention of stable building and access road/hardstanding, drainage works and entrance gates - the submission of details received 31 January 2008, pursuant to Condition 6 of

MA/06/1508 being details of fencing, landscaping, gates, lighting and satellite receiving equipment required in appeal number APP/U2235/A/07/2037800 – REFUSED.

MA/06/1508 – Retrospective application for the stationing of two mobile homes for occupation by two traveller families, erection of polytunnels, retention of stable building and access road/hardstanding, drainage works and entrance gates – REFUSED – ALLOWED ON APPEAL 19/12/07.

MA/06/0471 – Use of land for the stationing of 2 no. chalet mobile homes; nursery; erection of stable block for agricultural use. Applicants claiming Gypsy status – REFUSED.

MA/93/0814 – Erection of a bungalow – REFUSED.

MA/88/1428 – Construction of two detached houses – REFUSED – APPEAL DISMISSED.

3. CONSULTATIONS

3.1 Harrietsham Parish Council wishes to see the application REFUSED stating:-
“Harrietsham Parish Council wishes to draw the following points to your attention regarding this application which is a re-submission of MA/09/0851 but with additional fencing, brick walls and hard standing.

- 1 This site was given a temporary permission in 2007 for Mrs Cash or her dependants for 5 years to reside at this site due to insufficient gypsy sites being available. Maidstone Borough Council is in the process of accessing and designating gypsy sites which should be available before the expiry of the existing temporary permission. The applicant has failed to identify any change in circumstances to warrant a new application which has not been fulfilled by the temporary permission already granted by the Planning Inspector in 2007.
- 2 It was also highlighted by the inspector that the front gates and brick piers should be replaced with something more in keeping. This has not been adhered to by the applicant. Also in the same paragraph the inspector requested a reduction in the size of the hard standing; we fail to see how you could recommend approval of this new application as it is requesting an increase in hard standing and the building of further brick walls within the site.
- 3 In respect of Application MA/09/0851 the council request an Ecological Survey which has not been submitted with this application. It has been drawn to the Borough Council’s attention the measures undertaken by the applicant to remove all possible vegetation and ecological habits prior to this second application. I must draw to your attention that it was a condition that any removal, uprooting or destroying of any tree, shrub or hedge that forms part of the approved site should be replaced. This condition was placed by the

inspector to protect this sensitive site, located within an A.O.N.B., from the applicant destroying the habits of protected species located within this area.

Whilst we sympathise with Mrs Cash's predicament of insufficient designated gypsy sites we feel strongly that the Special Landscape Area of the North Downs should be protected, so therefore these breaches in planning conditions should be investigated by MBC enforcement and at the same time we recommend this application should be refused."

3.2 Kent Highway Services raise no objections to the application with regard to highway matters.

3.3 MBC Environmental Health Manager raises no objections to the application.

4. REPRESENTATIONS

4.1 Twenty letters of objection have been received including one from a Planning Consultant on behalf of neighbours on the following grounds:-

- The site is in the countryside and not suitable for residential use.
- Concern that damage may have occurred to protected species contrary to the Wildlife and Countryside Act 1981.
- Impact on the Kent Downs Area of Outstanding Natural Beauty.
- Concern that more families would move onto the site.
- The access is inadequate.
- Concern regarding the applicant's gypsy status and that they have previously lived in a house.

4.2 Cllrs Tom Sams and David Marshall have called the application to Planning Committee stating:-

- "As you will be aware this is a contentious application and one which has attracted a great deal of public interest;
- This site has been the subject of previous contested applications and we feel that the full Planning Committee should consider this latest application."

4.3 CPRE Maidstone raise concerns with regard to the impact of the development on the Kent Downs Area of Outstanding Natural Beauty and the conditions imposed on appeal should be strictly adhered to.

5. CONSIDERATIONS

5.1 Site Location

5.1.1 The application is a field located on the west side of Marley Road within the countryside in Harrietsham Parish. It is approximately 80m north of the junction of Marley Road and Dickley Lane and 400m south of the junction of Marley Road

and the Pilgrims Way. The site is approximately 0.68 hectares. The northern boundary of the site is bounded by Public Bridleway KH291.

5.1.2 The site is within the nationally designated landscape of the Kent Downs Area of Outstanding Natural Beauty and the locally designated North Downs Special Landscape Area.

5.1.3 The site is enclosed by close-boarded fencing on all sides which is partially screened by an existing hedge along the Marley Road frontage. The access to the site is located in the south east corner.

5.2 Proposed Development and Background

5.2.1 The application is retrospective and is for the change of use of land to allow the continued stationing of a mobile home and touring caravan for permanent residential occupation by a gypsy family. The applicants originally moved onto the site just over four years ago and Enforcement Notices were served in March 2006.

5.2.2 The applicant is Mrs Bridget Cash and her children Anne, Eileen and Patrick. Patrick is registered as disabled, epileptic, partially sighted and has speech problems and attends a special school for children with profound and severe disabilities in Maidstone, a taxi is provided (on health grounds). A cross agency team of health workers and social workers are assisting with Patrick's care. Eileen has a problem with her lungs and needs to use an inhaler and gets tired quickly although is not on any regular medication. She attends school in Maidstone and a taxi is provided (on health grounds) to take her to and from school. Anne has no particular health problems and attends school in Maidstone.

5.2.3 Members will see from the History section above that permission was granted on appeal under MA/06/1508 on 19 December 2007 for gypsy accommodation on this site. The permission granted was temporary and personal to Mrs Cash and her dependants on the basis of the harm caused and the personal circumstances of the appellants. I attach a copy of this decision as Appendix 1 to this report.

5.2.4 Maidstone Borough Council considered and refused an application for the stationing of two mobile homes, polytunnels and the retention of a stable building under reference MA/06/1508 on the grounds that the development would harm the character and appearance of the area, the Kent Downs Area of Outstanding Natural Beauty and the North Downs Special Landscape Area and that the access would have inadequate visibility and as a result its use would be a hazard to highway safety. During the appeal the description of the development was altered and considered on the basis of 1 mobile home and 1 ancillary touring caravan, stable building, access, hardstanding, drainage works

and entrance gates. The polytunnels were removed from the proposed development.

5.2.5 The Inspector considered the main issues to be the effect of the development on:-

- The character and appearance of the area having regard in particular to the nationally recognised designation;
- Highway safety;
- The need for gypsy sites in the area; and
- The appellant's need for a site.

5.2.6 On these issues, the Inspector considered that the development would cause significant harm to the character and appearance of the area and fails to protect or conserve the landscape character and beauty of the surrounding nationally important landscape (paragraphs 19 and 42). The Inspector concluded that there would be no significant impact on highway safety from the development (paragraphs 27 and 42). The Inspector identified that there was an immediate general need for the provision of gypsy accommodation and that the specific needs of the appellant should be given significant weight.

5.2.7 The Inspector balanced the issues and concluded that the absence of alternative accommodation combined with the specific personal circumstances of the appellant meant that a temporary 5 year personal permission (from 19 December 2007) would be appropriate.

5.2.8 When the Inspector allowed the appeal, she attached conditions that included condition 6 as follows:-

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 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 a scheme for:

- *External lighting on the boundary of an within the site;*
- *Any existing and proposed satellite receiving equipment;*
- *The internal layout of the site, including the siting of caravans, areas of hardstanding, access roads, parking and amenity areas and any means of boundary treatments to define these areas;*
- *Proposed measures to screen the existing close boarded fence around the perimeter of the site or details of any replacement means of enclosure including the replacement of the existing entrance gates and brick pillars.*

- *Tree, hedge and shrub planting and seeding of any former areas of hardstanding which shall include details of species, plant sizes and proposed numbers and densities;*
(hereafter referred to as the site development scheme) shall have been submitted for the written approval of the Local Planning Authority and the said scheme shall include a timetable for its implementation.
- ii) *Within 11 months of the date of this decision the site development scheme shall have been approved by the Local Planning Authority or, if the Local Planning Authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall 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 shall have been finally determined and the submitted site development scheme shall have been approved by the Secretary of State.*
- iv) *The approved scheme shall have been carried out and completed in accordance with the approved timetable.*

5.2.9 The applicant submitted a site development scheme in order to satisfy this condition under reference MA/06/1508/C06 on 31 January 2008. This was refused on the 19 March 2008 on the grounds that there was insufficient information on the screening of the close boarded fencing and that the retention of the existing entrance gates and pillars would have an unacceptable impact on the Kent Downs Area of Outstanding Natural Beauty and Special Landscape Area.

5.2.10 The applicant did not appeal this decision and did not submit a revised scheme for consideration within the requisite time and as such the permission expired. This has led to the submission of the current planning application.

5.3 Gypsy Need and Status

5.3.1 There remains an established general gypsy need within the Borough despite the continued permissions that have been granted and a lack of alternative available sites. I will not look too in depth at the 'general gypsy need' as the Inspector has already confirmed that the specific need of the applicant and her dependents warranted the granting of a temporary and personal consent.

5.3.2 I will briefly outline the current situation with regard to the general need for gypsy accommodation. There is a clear and identifiable need for gypsy accommodation within the Borough that stems from the findings of the Gypsy and Traveller Accommodation Assessment (GTAA), which was undertaken in 2005/06 and covers four local authorities – Ashford, Maidstone, Tonbridge & Malling and Tunbridge Wells. Based on this assessment, there is a need for some 32 new pitches in the Borough over the five year period which equates to 6.4 pitches/year. The extremely low turnover of pitches on the Council sites, which

is confirmed by the Council's Gypsy and Caravan Sites Officer, increases the yearly requirement by 2 to 3 pitches, meaning a yearly requirement of 8 to 10.

5.3.3 Work has begun on a gypsy DPD with consultation expected spring 2010 with adoption planned for July 2011.

5.3.4 At the time of writing this report the number of pitches allowed since 2006 is as follows:-

- 30 permanent permissions
- 9 temporary permissions
- 12 permanent with personal permissions
- 16 temporary with personal permissions

(The appeal decision on this site is included within the 16 temporary with personal permissions).

5.3.5 There remains an identified need for gypsy accommodation within the Borough even though permissions have broadly kept pace with the identified need in the GTAA. The general need for gypsy accommodation needs to be given weight in the determination of this application.

5.3.6 Many residents have questioned the gypsy status of the applicant due to the fact that she had previously lived in a house. The agent for the applicant has stated within the application that the residents comply with the definition of a gypsy as set out in Circular 01/2006. Furthermore, the Inspector considered that the applicant meets the definition of a gypsy (paragraph 33 of her decision).

5.4 Visual Impact

5.4.1 The site is within the national designation of the Kent Downs Area of Outstanding Natural Beauty, which recognises its particular natural beauty. Its character and natural beauty should be protected above other planning considerations. There are national and local policies that support this view.

5.4.2 The development, including the stationing of the caravans and the use of the site for residential purposes and the associated domestic paraphernalia and parked vehicles would introduce new development that would cause considerable harm to the character and natural beauty of the Kent Downs Area of Outstanding Natural Beauty and Special Landscape Area.

5.4.3 The Inspector agreed with this assessment and considered that there was significant harm caused by the development.

5.4.4 The application to discharge the development scheme was refused on the grounds that there was insufficient information on the screening of the close boarded fencing and that the retention of the existing entrance gates and pillars would have an unacceptable impact on the Kent Downs Area of Outstanding Natural Beauty and Special Landscape Area. The current application proposes the replacement of the entrance gates with wooden gates and the planting of hedgerows around all boundaries of the site. I consider that these details overcome the reasons for refusal and help to reduce the effect of the development on the Kent Downs Area of Outstanding Natural Beauty.

5.5 Highway Safety

5.5.1 The application proposes the use of the existing access in the south eastern portion of the site. The access was assessed by the Inspector at the appeal and she concluded that there was no significant highway safety issue arising from the use of the site and access.

5.5.2 Kent Highway Services raise no objections to the use of the access on highway safety grounds.

5.5.3 I conclude on this issue that the access is suitable for the purpose and there would be no significant highway safety concerns.

5.6 Residential Amenity

5.6.1 There are residential properties on the opposite (eastern) side of Marley Road 'Giddhorn', 'Greensleeves', 'Little Kempford', 'Ringstead', 'Stanmore Lodge' and 'Eaglesham' also properties to the south 'Ridgedown' and 'Westmount' and 'Glebe Croft' to the north.

5.6.2 The nearest property to the site is 'Greensleeves', approximately 28 metres from the boundary of the site. This distance is sufficient to prevent any significant impact on residential amenity with regard to loss of light, privacy, an overbearing impact. The other properties are further away and would also not suffer from an unacceptable level of amenity.

5.6.3 I consider that the development would not result in any harm to the level of amenity enjoyed by the neighbouring residents. The Inspector did not consider that the impact on residential amenity was unacceptable and was not a key issue in the determination of the appeal.

5.7 Ecology

5.7.1 The applicants have been on site for approximately 4 years. The Enforcement Notices were originally served in March 2006. The site is not in any area of

nature conservation and the nearest pond is approximately 225m away from the western site boundary across a number of separate parcels of land. The application is retrospective and there is no additional development proposed as part of this application. There would be no trees removed and the landscaped margins would be maintained and indeed enhanced. For this reason I consider that the application is acceptable with regard to its impact on biodiversity.

- 5.7.2 I note that application MA/09/0851 was withdrawn following the request for an ecological survey. However, when considering the appeal in 2007 the Inspector did not identify ecology as a significant issue in its determination. There was no ecological survey submitted as part of the 2006 application, the subsequent appeal or as part of this application.
- 5.7.3 Many objectors allege that damage and harm has been caused to protected species and that an offence has occurred under the Wildlife and Countryside Act 1981. The Planning System is not the method to investigate or regulate such alleged offences.
- 5.7.4 I consider that on balance and in these circumstances it would be unreasonable to request an ecological survey at this stage given that the applicants have been on site for four years and the Inspector did not require such a survey to determine the appeal in 2007 or indeed request its submission by way of a condition.

5.8 Applicant's Circumstances

- 5.8.1 The applicant is a gypsy and the gypsy status in accordance with the definition in Circular 01/2006 has been accepted by the Inspector at the last appeal.
- 5.8.2 The personal circumstances of the applicant and in particular her children are a significant issue in the determination of this application. Mrs Cash's son Patrick is registered as disabled, epileptic, partially sighted and has speech problems and attends a special school for children with profound and severe disabilities in Maidstone, a taxi is provided (on health grounds). A cross agency team of health workers and social workers are assisting with Patrick's care. The Inspector gave the personal circumstances of the applicant considerable weight at the last appeal. She stated "I consider the personal needs of this family are pressing and that there is a clear need for a gypsy site for this family. There are no alternative sites available for her at present." (paragraph 40 of the appeal decision).
- 5.8.3 The circumstances of the Mrs Cash and her children have remained unchanged since the appeal and the health considerations of the children, in particular Patrick, shall be given considerable weight in the determination of the application. There are no allocated gypsy sites immediately available for this family and no space on public sites. The issue of the lack of alternative available

gypsy accommodation is effectively unchanged since permission was granted on appeal in December 2007. This is an issue that has significant weight in the determination of this application, as it was at the last appeal and was in fact the determining factor for the Inspector in the appeal.

5.9 Summary and Conclusion

- 5.9.1 It is clear that the development does cause demonstrable visual harm to the national landscape designation of the Kent Downs Area of Outstanding Natural Beauty. This visual harm to a national landscape designation weighs significantly against the development. The previous Inspector came to the same conclusion.
- 5.9.2 However, the personal circumstances of the applicant and in particular her children combined with the lack of immediately available alternative accommodation leads me to the same conclusion as the Inspector at the appeal for MA/06/1508 and I recommend that a temporary and personal permission is given on the same grounds as the Inspectors decision. I consider that the appropriate temporary period would be to end on 19 December 2012. This was the same temporary period imposed by the Inspector at the appeal and will allow the completion of the Gypsy DPD and allow sufficient time for the applicant to find an alternative site.

6. RECOMMENDATION

GRANT PLANNING PERMISSION subject to the following conditions:

1. The use hereby permitted shall be carried on only by Mrs Cash and her dependants and shall be for a limited period being until 19 December 2012, or the period during which the premises are occupied by them, whichever is the shorter.

Reason: To prevent inappropriate development in the Kent Downs Area of Outstanding Natural Beauty in accordance with policies ENV33 of the Maidstone Borough-Wide Local Plan (2000), C3 of the South East Plan (2009) and Circular 01/2006.

2. When the premises cease to be occupied by Mrs Cash and her dependants or at the end of the temporary period (19 December 2012), whichever shall first occur, the use of the land and former stable building hereby permitted shall cease, all materials and equipment brought on to the premises in connection with the use, shall be removed and the land restored to its former condition.

Reason: To safeguard the natural beauty of the Kent Downs Area of Outstanding Natural Beauty in accordance with policies ENV33 of the Maidstone Borough-Wide Local Plan (2000), C3 of the South East Plan (2009) and Circular 01/2006.

3. No commercial activities shall take place on the land, including the storage of materials and the erection of polytunnels.

Reason: To safeguard the natural beauty of the Kent Downs Area of Outstanding Natural Beauty in accordance with policies ENV33 of the Maidstone Borough-Wide Local Plan (2000), C3 of the South East Plan (2009) and Circular 01/2006.

4. The former stable building shall be used for purposes ancillary to the residential use of the site only.

Reason: To prevent inappropriate development in the Kent Downs Area of Outstanding Natural Beauty in accordance with policies ENV33 of the Maidstone Borough-Wide Local Plan (2000), C3 of the South East Plan (2009) and Circular 01/2006.

5. No more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than 1 shall be a static caravan or mobile home) shall be stationed on the site at any time.

Reason: To safeguard the natural beauty of the Kent Downs Area of Outstanding Natural Beauty in accordance with policies ENV33 of the Maidstone Borough-Wide Local Plan (2000), C3 of the South East Plan (2009) and Circular 01/2006.

6. Any tree, hedge or shrub that forms part of the scheme on the approved plans that is removed, uprooted or destroyed or dies or, in the opinion of the local planning authority, becomes seriously damaged or defective, within the temporary period that ends on 19 December 2012 or during the period which the premises are occupied by Mrs Cash and her dependants, whichever is shorter, shall be replaced with another of the same species and size as that originally planted in the first available planting season.

Reason: To safeguard the natural beauty of the Kent Downs Area of Outstanding Natural Beauty in accordance with policies ENV33 of the Maidstone Borough-Wide Local Plan (2000), C3 of the South East Plan (2009) and Circular 01/2006.

The proposed development, subject to the conditions stated, is considered to comply with the policies of the Development Plan (Maidstone Borough-Wide Local Plan 2000 and South East Plan 2009) and there are no overriding material considerations to indicate a refusal of planning consent.