

<b>REFERENCE NO:</b> 20/502215/FULL		
<b>APPLICATION:</b> Relocation of 1(no) existing mobile home approved under 16/505930/FULL to rear of site, including erection of utility building and stationing of 1(no) touring caravan for use by existing residents (part retrospective).		
<b>ADDRESS:</b> Hawthorn Place, Greenway Forstal, Harrietsham, ME17 1LB		
<b>RECOMMENDATION:</b> GRANT PLANNING PERMISSION subject to planning conditions		
<b>SUMMARY OF REASONS FOR RECOMMENDATION:</b> In Local Plan policy terms, there is resistance to residential caravans in the countryside. As an exception to this general policy constraint, Local Plan policy DM15 allows for gypsy and traveller accommodation in the countryside provided certain criteria are met; and policies SP17 and DM30 allow for development provided it does not result in harm to the character and appearance of the area.  In this instance, Hawthorn Place is an authorised (unrestricted) Gypsy site, with permission for two mobile homes, and this development will not increase the number of mobile homes but merely reposition one mobile home and erect a new utility building. It has also been established that the adult occupants of the site still meet the Government's planning definition of a Gypsy as set out in the PPTS, and there is no reasonable justification to object to the development on sustainability grounds in terms of location and reliance on the private motor vehicle to access day to day needs. Furthermore, the development is not considered to cause unacceptable harm to the character and appearance of the countryside hereabouts, subject to supplementary boundary planting.  Article 8 of the European Convention on Human Rights, as incorporated into UK law by the Human Rights Act 1998, protects the right of an individual to, amongst other things, a private and family life and home. Furthermore, the courts have held that the best interest of the children shall be a primary consideration in all decisions concerning children including planning decisions. In addition to this, race is one of the protected characteristics under the Equality Act and ethnic origin is one of the things relating to race. Romany Gypsies and Irish Travellers are protected against race discrimination because they are ethnic groups under the Equality Act. This application has been considered with regard to the protected characteristics of the applicant and the Gypsies who occupy the caravans. Apart from what appears to be the desire to have two larger plots, there has been no other specific health, education or personal circumstances presented as part of the application in order to justify the development. This application is to merely relocate an existing lawful static caravan, and it is considered that the requirements of the PSED have been met and approving this development would not undermine the objectives of the Duty.  With everything considered, the development is therefore acceptable with regard to the relevant provisions of the Development Plan, the NPPF and all other material considerations such as are relevant. In consequence of this finding, a permanent permission will be granted and restricted only by a gypsy and traveller occupation condition.		
<b>REASON FOR REFERRAL TO COMMITTEE:</b> Harrietsham Parish Council has requested that the planning application is considered by the Planning Committee if officers are minded to approve planning permission, this request is made for the reasons outlined in the consultation section below.		
<b>WARD:</b> H/sham & Lenham	<b>PARISH COUNCIL:</b> Harrietsham	<b>APPLICANT:</b> Mr L. Austin
<b>TARGET DECISION DATE:</b> 25/09/2020 (EOT)	<b>PUBLICITY EXPIRY DATE:</b> 26/06/2020	

## **RELEVANT PLANNING HISTORY**

### **Land to rear and north-west of Hawthorn Place:**

- 19/502168 - Extension to existing gypsy site, including 3 additional caravans and erection of 3 utility buildings – Refused (on visual impact and Gypsy status)

### **Hawthorn Place (applicant's site):**

- 16/505930 – Change of use of land for gypsy families and amenity building - Approved (Non-personal/permanent for 2 static caravans and 2 tourers)

### **1 & 2 Oakland Place (land to front of Hawthorn Place):**

- 19/503176 - Construction of 2no. day rooms/utility blocks - Refused (visual harm)
- 14/500696 - Remove conditions 1 & 2, and vary condition 3 of MA/07/2232 – Approved (Personal permission for 2 static caravans and 2 tourers)
- MA/07/2232 - Change of use for gypsy family – refused (allowed on appeal)

### **Land to north-west of Oakland Place:**

- 18/504491 - Erection of 2 day rooms/utility blocks – Refused (visual harm)

## **MAIN REPORT**

### **1.0 Site description**

- 1.01 The application site is on the north-eastern side of Greenway Forstal, located behind 1 and 2 Oakland place (existing lawful gypsy sites). For the purposes of the Local Plan, the site is located in the designated countryside with arable fields to the north, east and west of the site. Further to the east is the Garden of England Caravan Park, whilst to the west is a residential property known as Mount Farm and a cluster of commercial units. The Kent Downs AONB is located further away to the north of the site, beyond the railway line. The site is accessed via a shared (with the site to the front) entrance from the road. The site also falls within a KCC Minerals Safeguarding Area.
- 1.02 Planning permission 16/505930 granted unrestricted occupancy of the site for Gypsy and Traveller families, with no more than 4 caravans on site, of which no more than two shall be static caravans/mobile homes.

### **2.0 Description of development**

- 2.01 Hawthorn Place, as approved under 16/505930, has unrestricted permission for the siting of two mobile homes for Gypsy families (with 2 tourers and an amenity building). The current application seeks to extend the area of the site rearwards, and to place a mobile home, utility building, and touring caravan on the extended parcel of land. If the current application is approved, the enlarged pitch would consist of a total of 2 mobile homes (1 relocated), 3 tourers and a relocated amenity building.
- 2.02 Views of the site can be had from the road and the applicant has provided some photographs from within the site. It can be seen that the mobile home is on a dark brick plinth and largely rendered in appearance (cream colour) with a dark tiled pitched roof; it features modest bay windows; and it is positioned across the rear boundary of the site. The utility building would be sited next to the mobile home and will measure some 8mx7m (56m<sup>2</sup>), and with its mono-pitched roof it would stand at most, 3m in height. The building is shown to be timber clad with a brick plinth.

2.03 Under 16/505930, it was confirmed that the two static mobile homes were to be occupied by the applicant and his children, including his daughter, her partner and young son. These persons remain on the site and this application seeks more space for the applicant's other now grown up children (son and two other daughters).

### **3.0 Policy and other considerations**

- Maidstone Local Plan (2017): SS1, SP17, GT1, DM1, DM8, DM15, DM30
- National Planning Policy Framework (2019)
- National Planning Practice Guidance
- Planning Policy for Traveller Sites (2015)
- Gypsy & Traveller and Travelling Showpeople Topic Paper (2016)
- Gypsy & Traveller & Travelling Showpeople Accommodation Assessment (2012)
- Harrietsham Neighbourhood Plan: Pre-sub consultation withdrawn May 2015

### **4.0 Local representations**

4.01 No representations received.

### **5.0 Consultation responses**

(Please note summaries of consultation responses are set out below with responses discussed in more detail in main report where considered necessary)

5.01 **Harrietsham Parish Council:** Wish to see application refused and reported to Planning Committee if officers are minded to recommend approval for the following (summarised) reasons:

- *Development represents harmful intrusion into open countryside which would be out of keeping with general landscape and character of area and detrimental to visual amenities.*
- *In absence of information to demonstrate gypsy and traveller status of proposed occupants, accommodation is located in unsustainable location where future occupants would be reliant on private motor vehicle for their daily needs*

5.02 **Environmental Protection Team:** Raise no objection.

5.03 **KCC Minerals Safeguarding Team:** Raise no objection.

### **6.0 APPRAISAL**

#### *Main issues*

6.01 Local Plan policy DM15 allows for gypsy and traveller accommodation in the countryside provided certain criteria are met; and policies SP17 and DM30 allow development provided it does not result in harm to the character and appearance of the area.

6.02 Government Guidance set out in the Planning Policy for Traveller Sites (PPTS) places emphasis on the need for increased gypsy and traveller site provision, supporting self-provision (as opposed to local authority provision), and it acknowledges that sites are more likely to be found in rural areas. This is an exception to the principle of restraint in the countryside. In terms of broad principles, Local Plan policies and central government guidance both permit gypsy and traveller sites to be located in the countryside as an exception to policies which otherwise seek to restrain development.

6.03 The Government's PPTS (August 2015) sets the planning definition of 'gypsies & travellers', and this excludes those who have ceased to travel permanently. The current definition is as follows (Annex 1):

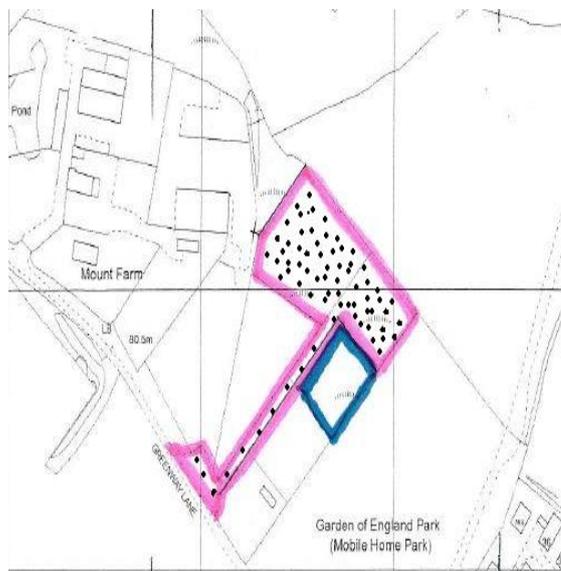
*'Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily, but excluding members of an organised group of travelling show-people or circus people travelling together as such.'*

- 6.04 Under the original application for Hawthorn Place (16/505930), where permission was granted for an unrestricted Gypsy site for two mobile homes, the Gypsy status of the applicant for the purpose of the above definition was accepted. The applicant has confirmed that all adult family members continue to travel to earn a living undertaking roofing works, with this work ranging from 9-10 months per year on average.
- 6.05 As well as roofing, Mr Nye's son also trades at horse fairs (usually travelling in June and attending fairs such as Stow Fair in July and Dorset Steam Fair in Blandford). The applicant has confirmed that no children are in full-time education, given their ages. With this considered, it is reasonable to say that the occupants of the site have not ceased to travel permanently, and they still continue to travel for work purposes to make a living. It is therefore accepted that the Gypsy status has been met in accordance with the provisions of the Government's PPTS.
- 6.06 As the application site (albeit extended) is already an authorised Gypsy site with one pitch (consisting of 2 static caravans, 2 tourers and an amenity building) and the Gypsy status of the occupants is accepted, there is no reason to cover the issues of need and supply as this is based on the number of pitches rather than caravans. Furthermore, for the same reasons, it would now be unreasonable to object to the application on sustainability grounds in terms of its location as there is no proposed increase in the numbers of caravans. Therefore, in accordance with the relevant policies of the Maidstone Local Plan and central Government guidance, the main issue for consideration is the visual impact of the development.

### Visual impact

- 6.07 Guidance in the Planning Policy for Traveller Sites (PPTS) states that local planning authorities should very strictly limit new traveller development in the countryside but goes on to state that where sites are in rural areas, considerations are that sites do not dominate the nearest settled community and do not place undue pressure on local infrastructure. No specific reference to landscape impact has been outlined however this is addressed in the relevant Local Plan policies and the NPPF. Specifically, policy DM15 of the Local Plan allows for Gypsy accommodation in the countryside provided certain criteria are met. This includes allowing development that does not result in significant harm to the landscape and rural character of the area.
- 6.08 For comparison, the two drawings below show the proposed site extension under 19/502168 (that was refused) and what is now being applied for (dotted areas):

19/502168



Current application



- 6.09 As can be seen, the development now for consideration is much more contained and in context with the linear form of existing development to the front of the site, and under 19/502168 there were 3 additional mobile homes and 3 utility buildings to assess the impact of. Furthermore, whilst the site does encroach further into the countryside, it does not extend beyond the existing field margin that acts as a natural barrier; and other development within the vicinity of the site means that the development would not appear incongruous or harmfully out of character with the prevailing pattern of sporadic development in the locality. Indeed, the development does not extend beyond the array of buildings at Mount Farm to the north-west of the site; and it does not significantly extend beyond the rear boundary of the Garden of England Mobile Home Park to the south-east. There is also what appears to be an existing plant/open storage site beyond the application site, next to the railway line, which detracts from the openness of the countryside hereabouts.
- 6.10 In terms of views, the application site is not publicly visible when approaching the site from the north-west, given existing built and natural features on the landscape and the topography of the land; and even when at the entrance of Hawthorn Place, views of the site are limited. When approaching the site from the south-east along Greenway Forstal, views of the site are only possible from the front of Penn Lodge, a property that is some 130m from the access of Hawthorn Place. Any view from the A20 to the south of the site (more than 290m away) would be minimal and very much seen in the context of existing development.
- 6.11 The public views of the site across the field are of a mobile home more than 100m away (and the proposed utility building), and whilst the south-eastern boundary of the site is largely open, the applicant has agreed to plant a native hedge along this boundary to help mitigate the impact of the development. This is considered to supplement the existing planting along north-western and rear boundaries of the site.
- 6.12 The mobile home itself is of a typical style and appearance, and not too dissimilar to other mobile homes in the vicinity of the site (including at the Garden of England site); it is located to the rear of the site; and in terms of its scale (that can be confirmed by way of condition), it appears to fall within the definition of a caravan (Section 29 of the Caravan Sites and Control of Development Act 1960). Furthermore, the palette of external materials is considered to be subdued and not visually incongruous, and it is not considered reasonable or necessary to alter the appearance of the mobile home. The utility room is considered to be of an appropriately low-key and traditional design that would appear subordinate and ancillary to the main living accommodation on the site. Its siting away from the south-eastern boundary would also help to reduce the overall visual impact of it on the landscape (particularly when the boundary planting is enhanced).
- 6.13 It is accepted that the development causes some harm to the character and appearance of the countryside. However, this development is extending the depth of an existing authorised Gypsy site by only some 30m, and the visual impact of a repositioned mobile home and new utility building is not considered to be so harmful as to warrant refusal in terms of landscape harm, when compared to the existing lawful position. Furthermore, the proposed supplementary boundary planting will sufficiently help to mitigate any harm caused as a result of this development. External lighting, hard boundary treatments, and any commercial activity on the site can also be controlled by way of appropriate condition, in the interests of visual amenity. With everything considered, the development does not have an unacceptable impact upon the character and appearance of the countryside hereabouts, in accordance with Local Plan policies SS1, SP17, DM15 and DM30.

Other matters

- 6.14 A residential use is not generally a noise generating use and this development does not involve any additional static caravans. As such, it is considered that the application would not have an adverse impact upon the living conditions of any neighbouring occupant, including in terms of general noise and disturbance.
- 6.15 The site falls within Flood Zone 1 and no objection is raised in terms of flood risk; the site will make use of an existing access and this is not considered to raise a highway safety objection; and given the current condition of the site and its context, it is not considered necessary to request any further details in terms of arboriculture and ecology. The Environmental Protection Team raises no objection to the development in terms of land contamination; radon; air quality; lighting; odour; accumulations; noise; amenity; sewage and potable water; and private water supplies. This is subject to recommended conditions for external lighting and details of the method of foul waste disposal. If this application were to be approved, these conditions are considered reasonable and they would be duly imposed.
- 6.16 The site falls within a KCC Minerals Safeguarding Area, but KCC raise no objection to the development on mineral and waste safeguarding grounds. The comments from Harrietsham Parish Council have been considered in the assessment of this application; and the development, when considered cumulatively with other lawful gypsy sites in the vicinity, would not result in it having an unacceptable impact upon, or dominating, the nearest settled community and local infrastructure, as the number of mobile homes has not increased.

Human Rights and Equality

- 6.17 Article 8 of the European Convention on Human Rights, as incorporated into UK law by the Human Rights Act 1998, protects the right of an individual to, amongst other things, a private and family life and home. Furthermore, the courts have held that the best interest of the children shall be a primary consideration in all decisions concerning children including planning decisions. Due regard has been had to the Public Sector Equality Duty (PSED) contained in the Equality Act 2010. The ethnic origins of the applicant and his family and their traditional way of life are to be accorded weight under the PSED.

Conclusion

- 6.18 In Local Plan policy terms, there is resistance to residential caravans in the countryside. As an exception to this general policy constraint, Local Plan policy DM15 allows for gypsy and traveller accommodation in the countryside provided certain criteria are met; and policies SP17 and DM30 allow for development provided it does not result in harm to the character and appearance of the area.
- 6.19 In this instance, Hawthorn Place is an authorised (unrestricted) Gypsy site, with permission for two mobile homes, and this development will not increase the number of mobile homes but merely reposition one mobile home and erect a new utility building. It has also been established that the adult occupants of the site still meet the Government's planning definition of a Gypsy as set out in the PPTS, and there is no reasonable justification to object to the development on sustainability grounds in terms of location and reliance on the private motor vehicle to access day to day needs. Furthermore, the development is not considered to cause unacceptable harm to the character and appearance of the countryside hereabouts, subject to supplementary boundary planting.
- 6.20 Article 8 of the European Convention on Human Rights, as incorporated into UK law by the Human Rights Act 1998, protects the right of an individual to, amongst other things, a private and family life and home. Furthermore, the courts have held that the best interest of the children shall be a primary consideration in all decisions concerning children including planning decisions. In addition to this, race is one of the protected characteristics under the Equality Act and ethnic origin is one of the things relating to

race. Romany Gypsies and Irish Travellers are protected against race discrimination because they are ethnic groups under the Equality Act. This application has been considered with regard to the protected characteristics of the applicant and the Gypsies who occupy the caravans. Apart from what appears to be the desire to have two larger plots, there has been no other specific health, education or personal circumstances presented as part of the application in order to justify the development. This application is to merely relocate an existing lawful static caravan, and it is considered that the requirements of the PSED have been met and approving this development would not undermine the objectives of the Duty.

6.21 With everything considered, the development is therefore acceptable with regard to the relevant provisions of the Development Plan, the NPPF and all other material considerations such as are relevant. In consequence of this finding, a permanent permission will be granted and restricted only by a gypsy and traveller occupation condition.

**7.0 RECOMMENDATION:** GRANT planning permission subject to following conditions:

1. The site shall not be used as a caravan site by any persons other than gypsies or Travellers, as defined in Annex 1 of the Planning Policy for Traveller Sites 2015 (or any subsequent definition that supersedes that document);

Reason: The site is in an area where the stationing of caravans/mobile homes is not normally permitted.

2. No more than 5 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than 2 shall be static caravans or mobile homes) shall be stationed on Hawthorn Place (the site as outlined in both red and blue on the submitted site location plan [1:1250]) at any time;

Reason: To safeguard the character and appearance of the countryside.

3. 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, hereafter referred to as the Site Development Scheme, shall have been submitted for the written approval of the local planning authority. The Site Development Scheme shall include details of: the scale of the mobile home (including internal head height); the external cladding material and colour/stain of the utility building; hard and soft landscaping, including new native hedge along south-eastern boundary of site, including details of species, plant sizes and proposed numbers and densities; the method of foul sewage treatment, along with details regarding the provision of potable water and waste disposal; and external lighting.

ii) If within 11 months of the date of this decision the local planning authority refuse to approve the Site Development 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 Site Development Scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved Site Development Scheme specified in this condition, that Scheme shall thereafter be maintained/retained.

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 will be suspended until that legal challenge has been finally determined.

Reason: To safeguard the character and appearance of the countryside.

4. No commercial activities shall take place on the land at any time, including the storage of materials. No vehicles over 3.5 tonnes shall be stationed, stored or parked on the site and not more than 6 vehicles shall be stationed, stored or parked on the site at any one time.

Reason: To safeguard the character and appearance of the countryside.

5. If the lawful use of the site ceases, all caravans, structures, equipment and materials bought onto the land for the purposes hereby permitted including hardstandings and buildings shall be removed;

Reason: To safeguard the character and appearance of the countryside.

6. The development hereby permitted shall be carried out in accordance with the following plans: site location plan (1:1250); proposed site layout; and elevations/floor plan of utility building.

Reason: For the avoidance of doubt.

Case Officer: Kathryn Altieri