

REFERENCE NO 20/502133/FULL (Plot 1)			
APPLICATION PROPOSAL Siting of 1no. additional mobile home and 1no. additional tourer (Retrospective).			
ADDRESS Oaklands (previously known as 1 Martins Gardens) Lenham Road Headcorn Ashford Kent TN27 9LE			
RECOMMENDATION - GRANT PLANNING PERMISSION subject to planning conditions			
SUMMARY OF REASONS FOR RECOMMENDATION <p>The site is an established Gypsy and Traveller plot within Martins Gardens which comprises a row of six such plots – both authorised and unauthorised. The plot is at the south-western end of the six plots.</p> <p>The current application for one additional mobile home and one touring caravan represents the same number of caravans as was previously approved in 2019. In the context of the existing and proposed Gypsy and Traveller development in Martins Gardens, the additional mobile home and touring caravan proposed in this application, together with the removal of existing caravans in the rear part of the site and implementation of a scheme of native species tree and hedgerow planting to provide a landscape buffer, will not have a significant and unacceptable harmful visual and landscape impact in the locality.</p> <p>The current plot extends significantly into the designated area of Ancient Woodland to the rear of the plot. The proposed reduction in the depth of the current plot will allow the rear part of the existing site which forms part of the area designated as Ancient Woodland to be landscaped with native species tree and hedgerow planting which will provide some mitigation for the harm which has taken place. Full details and implementation of the landscaping/planting scheme can be secured by planning condition.</p> <p>The native species planting proposed will enhance ecology/biodiversity at the site and further ecological mitigation and/or enhancements can be secured by planning condition in accordance with Government guidance in the NPPF (para. 175).</p> <p>The proposed additional mobile home is to accommodate a family member of the established occupiers of the Martins Gardens site. A condition is recommended on any grant of planning permission to ensure that the additional mobile home is not occupied by any persons other than gypsies and travellers as defined in Planning Policy for Travellers Sites, August 2015.</p>			
REASON FOR ORIGINAL REFERRAL TO COMMITTEE <p>Ulcombe Parish Council have requested that the planning application is considered by the Planning Committee if officers are minded to approve for the reasons set out in paragraph 5.01 of the original report to the meeting on the 24 September 2020 (adjourned till the 1 October). This report is included as an appendix to this current report.</p> <p><i>NB: This report follows the deferral of a decision by members at the meeting on the 24 September 2020(adjourned till the 1 October).</i></p>			
WARD Headcorn	PARISH/TOWN Ulcombe	COUNCIL	APPLICANT Mr James Cash AGENT L Jennings
TARGET DECISION DATE 04/12/2020 (EOT)		PUBLICITY EXPIRY DATE 14/07/20	

1. **BACKGROUND**

- 1.01 At the meeting on the 24 September 2020 (adjourned till the 1 October) members considered a report for this retrospective application for the siting of 1 additional mobile home and 1 additional tourer on the application site.
- 1.02 With the original vehicle access to the application site, provided off the internal access road, the submitted plans showed the retention of a new second access directly from Lenham Road.
- 1.03 The reason for the deferral of a decision by members was as follows: *"That consideration of this application be deferred to enable the Officers to investigate the status of the separate access from the application site onto Lenham Road (i.e. is it lawful and immune from enforcement action)"*
- 1.04 Following the committee decision, the applicant's agent was asked to firstly provide any evidence that that they have in relation to the date that the entrance was constructed and secondly to consider the removal of the entrance.
- 1.05 The agent was not able to provide any photographic evidence or a date when the entrance was constructed but did submit a statement that included the following: *"...The entrance has been in situ and used for over 4 years, so it is my view that it is now immune from enforcement. I understand that there are no other issues with the current application so I do feel that it would be unjust to refuse it based on the opposition to the entrance. Therefore, my client would ask that the application is determined as it stands. Should it be refused then the appeal process will be followed".*

2. **APPRAISAL**

- 2.01 The officer report that is included as an appendix to this report considered the submitted proposal. The report concluded that the proposal including the retained site entrance was acceptable and recommended approval.

Oaklands 20.04.2015: Google Earth.



Oaklands 05.05.2018: Google Earth.



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- 2.02 The Google Earth images above confirm that the entrance was constructed at some point in the 3 year period between April 2015 (entrance was not present on the 20 April 2015 - left hand image above) and May 2018 (entrance was present on the 05.05.2018 - right hand image above).
- 2.03 The Council's records include the photograph below dated 02.05.2015. This photograph is taken from inside the site and does not include the direct entrance to Oaklands. At some point after this photograph was taken, the second direct site entrance was formed to the right of the entrance shown in the photograph.

Photograph from inside the application site showing the single shared entrance 02.05.2015



- 2.04 In order for the entrance to be immune from planning enforcement action it would need to have been present for a continuous period of more than 4 years. With reference to the committee meeting date (26 November 2020), the entrance would therefore have to have been constructed before the 26 November 2016. There is no photographic evidence available between 02.05.2015 and 05.05.2018.
- 2.05 Where it is unclear whether a development is immune from enforcement action (lawful) an application for a Certificate of Lawfulness may be submitted. There has been no application for this legally binding certificate submitted here. As part of this application the onus would be on the applicant to demonstrate on the 'balance of probability' that the entrance for more than 4 years.
- 2.06 Other than a statement from the applicant with a reference to Google Maps (see assessment at paragraph 2.02 of this report), the applicant has been unable to provide any evidence to demonstrate the length of time that the entrance has been in place. In conflict with this statement from the applicant, a council officer has stated categorically that the entrance was not present when they visited the application site in January 2017. On this basis, the relevant 'balance of probability' test has not been met and if submitted, any Certificate of Lawfulness application that relies on the information currently available is unlikely to be successful.
- 2.07 The original officer report in assessing the relative merits of the overall proposal did not place any weight on the lawfulness of the second entrance that had been formed for Oaklands. With no significant new evidence available from either

photographs or from the applicant this situation remains unchanged. The applicant has advised that the second entrance is required to enable mobile homes to be transported for off site servicing. This is due to the tight bend on the internal access road. The vehicle carrying the mobile homes enters Oaklands from the internal access road before egress onto Lenham Road through the second entrance.

- 2.08 A concern was expressed by a member at the committee meeting about the visual impact of the second entrance. It is accepted that the additional entrance has a visual impact on Lenham Road, however this negative visual impact needs to be considered against other factors such as the existing local character and the positive impacts from the proposal (as set out in the conclusion to this report).
- 2.09 It is considered that visual impact of the second entrance is reduced in the context of a number of other existing nearby residential entrances on both sides of Lenham Road.
- 2.10 As shown below Oaklands is the plot within Martins Gardens with the biggest encroachment into designated ancient woodland. As a result of this current situation, the proposals for Oaklands with the removal/relocation of caravans from the rear part of the site offers the greatest benefit in terms of the area of land being rewilded.

Current application - caravans to be removed, retained caravans and replacement/proposed caravans.



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|----------------------------|------------------------------|
| 1. Removed existing mobile | 4. Retained existing utility |
| 2. Removed existing mobile | 5. Retained existing mobile |
| 3. Removed existing mobile | 6. Proposed touring |
| | 7. Proposed mobile |

Relationship of the application site to designated Ancient Woodland (Ancient Woodland shown as green hatching)



- 2.11 In summary, there is no conclusive evidence available to show whether the entrance has been in place for more than 4 years and therefore immunity from enforcement has little weight in the planning balance. It is acknowledged that the second entrance has a visual impact, however it is considered that this impact is reduced by the site context and outweighed by the positive aspects of the proposal.

3. CONCLUSION

- 3.01 All of the matters that were assessed in the main committee report (included as an appendix) remain relevant to the consideration of the development and this deferred application.
- 3.02 The plot, the subject of this application, benefits from the planning permission granted on appeal 24.07.09 under ENF/10155 (Enforcement notice A) for the stationing of 1 static caravan, 1 touring caravan and a utility room. A previous recent application (18/506273/FULL) for one additional mobile home and one

tourer was approved by members with the decision issued on the 12.08.2019. The current application involves the same number of caravans in a revised layout.

- 3.03 The site is an established Gypsy and Traveller plot within Martins Gardens which comprises a row of six such plots – both authorised and unauthorised. The plot is at the south-western end of the six plots.
- 3.04 The current application for one additional mobile home and one touring caravan represents the same number of caravans as was previously approved in 2019. In the context of the existing and proposed Gypsy and Traveller development in Martins Gardens, the additional mobile home and touring caravan proposed in this application, together with the removal of existing caravans in the rear part of the site and implementation of a scheme of native species tree and hedgerow planting to provide a landscape buffer, will not have a significant and unacceptable harmful visual and landscape impact in the locality.
- 3.05 The current plot extends significantly into the designated area of Ancient Woodland to the rear of the plot. The proposed reduction in the depth of the current plot will allow the rear part of the existing site which forms part of the area designated as Ancient Woodland to be landscaped with native species tree and hedgerow planting which will provide some mitigation for the harm which has taken place. A condition is recommended seeking full details and implementation of the landscaping/planting scheme.
- 3.06 The native species planting proposed will enhance ecology/biodiversity at the site and further ecological mitigation and/or enhancements can be secured by planning condition in accordance with Government guidance in the NPPF (para. 175).
- 3.07 The proposed additional mobile home is to accommodate a family member of the established occupiers of the Martins Gardens site. A condition is recommended on any grant of planning permission to ensure that the additional mobile home is not occupied by any persons other than gypsies and travellers as defined in Planning Policy for Travellers Sites, August 2015.

4. RECOMMENDATION

GRANT planning permission subject to the following conditions:

- 1) The additional mobile home and tourer hereby approved shall not be occupied by any persons other than gypsies and travellers as defined in Planning Policy for Traveller Sites, August 2015 (or any subsequent definition that supersedes that document)
Reason: The site is in an area where the stationing of caravans/mobile homes is not normally permitted and an exception has been made to provide accommodation solely for gypsies/travellers who satisfy the requirements for Gypsy and Traveller Caravan Sites.
- 2) No more than four caravans, as defined by the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, shall be stationed on the site at any one time, of which no more than two shall be static caravans or mobile homes, and no further caravans shall be placed at any time anywhere within the site. The two static caravans or mobile homes shall be stationed on the site only in the positions shown on the plan (Proposed Block Plan) hereby approved.
Reason: To safeguard the visual amenity, character and appearance of the open countryside location which forms part of the designated Low Weald Landscape of Local Value.
- 3) No commercial activities shall take place on the land at any time, including the storage of materials and/or livery use. No vehicles over 3.5 tonnes shall be

stationed, stored or parked on the site and not more than four vehicles shall be stationed, stored or parked on the site at any one time.

Reason: To safeguard the visual amenity, character and appearance of the open countryside location which forms part of the designated Low Weald Landscape of Local Value and local amenity generally.

- 4) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed and the land restored to its condition before the development took place within 6 weeks of the date of failure to meet any one of the requirements set out in (i) to (iv) below:

(i) within 6 weeks of the date of this decision a Site Development Scheme, hereafter referred to as the 'Scheme', shall have been submitted for the written approval of the Local Planning Authority. The Scheme shall include details of: the external appearance of the mobile home means of enclosure, extent of hardstanding and parking; the means of foul and surface water drainage of the site; proposed and existing external lighting on the boundary of and within the site; new tree and hedgerow planting for the formation of a 5m wide landscape buffer zone to the repositioned north-western boundary of the plot including details of species (should not include the planting of Sycamore trees), plant sizes and proposed numbers and densities and then outside this area to the north the type 1 surface material to be removed with the land left to regenerate naturally; details of the measures to enhance biodiversity at the site; include the re-instatement of a pond within the land to the north of the site and, the said Scheme shall include a timetable for its implementation.

(ii) within 11 months of the date of this decision the 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 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 and thereafter maintained and retained as approved.

Reason: To ensure the visual amenity, character and appearance of the open countryside location which forms part of the designated Low Weald Landscape of Local Value is safeguarded.

NB: Underlined text above has been added to the condition following member comments at the committee meeting on the 24 September 2020 (adjourned till the 1 October) in relation to the other approved Martins Gardens planning applications.

- (5) At the same time as the Site Development Scheme required by condition 4 above is submitted to the Local Planning Authority there shall be submitted a schedule of maintenance for the proposed planting within the 5m wide landscape buffer zone for a period of 5 years, the 5 years beginning on the date of the completion of the implementation of the planting as required by that condition. The schedule shall make provision for the replacement, in the same position, of any tree, hedge or shrub that is removed, uprooted or destroyed or dies within 5 years of planting or, in the opinion of the Local Planning Authority, becomes seriously damaged or defective, with another of the same species and size as that originally planted. The maintenance shall be carried out in accordance with the approved schedule.

Reason: To ensure the visual amenity, character and appearance of the open countryside location which forms part of the designated Low Weald Landscape of Local Value is safeguarded.

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- 5) No external lighting shall be put in place or operated on the site at any time other than that which has been previously submitted to and approved in writing by the Local Planning Authority.
Reason: In order to safeguard the night-time rural environment, the ecological interests of the site, and residential and local amenity generally.
- 6) Notwithstanding the provisions of Schedule 2, Part 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking and/or re-enacting that Order with or without modification), no temporary buildings or structures shall be stationed on the land without the prior permission of the Local Planning Authority other than as expressly permitted by this decision;
Reason: To safeguard the visual amenity, character and appearance of the open countryside location which forms part of the designated Low Weald Landscape of Local Value.
- 7) No bonfires or incineration of rubbish or organic material or vegetation shall take place on the site.
Reason: In order to safeguard residential and local amenity generally.
- 8) The development hereby permitted shall be carried out in accordance with the following approved plans and information: Site Location Plan, Proposed Block Plan and Planning Statement
Reason: To clarify which plans have been approved.

Case Officer: Tony Ryan