

APPLICATION: MA/13/0103 Date: 19 January 2013 Received: 5 February 2013

APPLICANT: Mr & Mrs T Coster

LOCATION: PEAR PADDOCK, SYMONDS LANE, YALDING, KENT

PARISH: Yalding

PROPOSAL: An application to vary conditions 1, 2 and 5 attached to appeal decision APP/U2235/A/09/2114473 (MA/09/0731) to allow permanent non-personal occupation of the site and an additional touring caravan on the site.

AGENDA DATE: 27th June 2013

CASE OFFICER: Catherine Slade

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

- it is contrary to views expressed by **Yalding Parish Council**, who wish to see the application reported to Planning Committee.
- the application has been called in by **Councillor Nelson-Gracie** for the reasons set out in the report.

## 1. **POLICIES**

Maidstone Borough-Wide Local Plan 2000: ENV6, ENV28, T13

Government Policy: National Planning Policy Framework 2012, Planning for Traveller Sites 2012, PPS25 Development and Flood Risk – Practice Guide

## 1. **HISTORY**

Development Management:

MA/09/0731 Planning application for the change of use of land to residential use for the stationing of 2no. mobile homes and 1no. touring van with associated works including access, area of hardstanding, boundary treatment and gates, utility shed, 2no. stable blocks, 2no. storage sheds and cess pool - REFUSED, APPEAL ALLOWED

MA/05/2287 Retrospective application for the change of use of land from orchard to residential use for the stationing of 1 no. mobile home, 2 no. touring

caravans and 3 no. sheds, plus formation of a new access – REFUSED, APPEAL DISMISSED

MA/00/1729 Change of use from orchard to residential and orchard, with the stationing of 1 no. caravan and 1 no. utility room for a Gypsy family – REFUSED, APPEAL DISMISSED

Enforcement (relevant to current application only):

ENF/8342 Creation of new access and erection of gates, pillars and hard surfaces - case opened 24<sup>th</sup> October 2005, case closed 10<sup>th</sup> March 2010 (planning permission granted) EN issued

ENF/5948 Use of land as Gypsy caravan site – case opened 21<sup>st</sup> May 2002, case closed 10<sup>th</sup> March 2010 (planning permission granted) EN issued

- 2.1 The site has been occupied as a Gypsy site by the Coster family since 2001. Following the unauthorised occupation of the land, enforcement notices were served in respect of the change of use of the land and associated operational development; these enforcement notices were not appealed. Subsequent to the issue of the notices, three planning applications were submitted by the occupiers of the site; MA/00/1729 and MA/05/2287 were refused and dismissed at appeal.
- 2.2 Planning permission for the use of the land as a Gypsy site and the retention of various operational development to facilitate the use was granted subject to conditions at appeal in 2010, effectively quashing the enforcement notices relating to the development approved at appeal. Of specific relevance to the current application are the following conditions: condition 1 which restricts the use of the land to being personal to Mr and Mrs Tom Coster (senior), Mr and Mrs Thomas Coster, and their resident dependents for a temporary period of three years; condition 2 which requires the site to be restored to its former condition after the expiry of the temporary period; and condition 5, which limits the extent of the use to three caravans, of which no more than two can be mobiles or static caravans.
- 2.3 Prior to the determination of the appeal relating to MA/09/0731 two applications for similar uses had been refused and subsequently dismissed at appeal. In determining the appeal against the refusal of MA/09/0731 the Inspector identified the differences between the previously considered schemes and the development put forward under MA/09/0731, and identified the key considerations in determination of the appeal to be the visual impact upon the character and appearance of the area; highway safety; risk to safety by way of flooding; and whether any harm identified was outweighed by other material

considerations, including the need for Gypsy sites; the availability of alternative sites and the personal circumstances of the appellants.

- 2.4 The Inspector concluded that the development, both when taken individually and cumulatively with adjacent sites, materially harmed the character and appearance of the area. The Inspector also concluded that the development resulted in harm to highway safety, mainly as a result of limited visibility at the site access, although this was qualified by the Inspector who considered the risk level to be low by virtue of the specific circumstances of this case. Similarly, the Inspector concluded that whilst the site itself was outside any flood risk zone identified by the Environment Agency, access to the site was not and a flood event may result in the occupiers being marooned, the overall risk to safety from flooding to be limited.
- 2.5 Notwithstanding the above identified harm, the Inspector concluded that there was a need for sites, and whilst recognising the steps being made by the Council in addressing the recognised need, concluded that the lack of progress in the adoption of a Gypsy sites allocation DPD since the time of the previous appeal decision (relating to MA/05/2287) was such that significant weight was given to the general need for sites. The Inspector also found that there were limited alternative sites and that the personal circumstances of the applicants weighed in favour of granting planning permission, albeit on a temporary and personal basis. The appeal decision relating to MA/09/0731 is a key consideration in the determination of the current application, and is attached as **Appendix 1**.
- 2.6 The adjacent site to the east, Pear View, is also subject to the appeal decision referred to above; a separate application seeking consent for variation of conditions relating to Pear View is currently under consideration and is reported on the papers under MA/13/0104.

## **2. CONSULTATIONS**

- 3.1 **Yalding Parish Council** wish to see the application refused, and make the following detailed comments:
- 3.1.1 "Yalding Parish Council strongly objects to this applications and feels that it is time for the sites to be returned to their agricultural condition. Our reasons for objection are as follows:
- 3.1.2 APPEARANCE

The developments, both on their own, and in combination with each other, materially harm the character and appearance of the area and are contrary to development plan policies. Despite the low-level planting, the gates, angled

flanking walls, and conifers at Pear Paddock are urban features which are out of keeping in this rural setting and should be removed.

### 3.1.3 FLOODING

Although the sites themselves are not subject to flooding, during significant flood events the roads leading to them become impassible. We attach photographs taken on the morning of 13 October 2000, long before the rivers peaked at around 7pm. It is quite clear in all directions that there were long stretches of highway that were impassible and no attempt should have been made to try and get through this as this could have serious repercussions in the event of a breakdown or a driving into ditches or even the river.

Photo 1 – shows the site and that Symonds Lane was flooded at both ends, Lees Road and Benover Road both flooded and impassible. It is interesting to note the occupancy of the site, or lack of, on this date.

Photo 2 – shows the junction of Lees Road with Gravelly Way and beyond Woodfalls Bridge the road was flooded to the extreme that, where the River Teise runs below beside the road, it is impossible to distinguish between road and river.

Photo 3 – shows the extent of flooding of Gravelly Way at Little Buds Farm in the foreground and the flooding of the road through Laddingford village to the school in the background.

### 3.1.4 HIGHWAY ISSUES

Symonds Lane is extremely narrow, and even with the attempt to improve sightlines at the entrances of the sites, there are still potential hazards bearing in mind the commercial vehicles constantly accessing and egressing from the site.”

3.2 The **Environment Agency** raise objection to the proposal on the grounds that safe access and egress to and from the site cannot be secured, and makes the following detailed comments:

3.2.1 “Flood conditions described in (the Environment Agency’s response to MA/09/0731 and the Parish Council’s response to MA/13/0103) remain valid as no significant works have been undertaken to reduce flood risk in this area, as a result of a major flood event similar to that of October 2000.

3.2.2 The consequence of flooding is that the site becomes isolated by floodwater which is impassable to vehicular traffic. Access by emergency services would be extremely hazardous.

3.2.3 Further guidance on access through flood condition can be found in Table 13.1 of the DEFRA Guidance entitled FRA Guidance for new development: Phase 2 FD2320/TR2. This table describes the danger associated with floodwater of different depth and velocity, a copy of which is shown below:

HR	Depth of flooding - d (m)												
	DF = 0.5				DF = 1								
Velocity v (m/s)	0.05	0.10	0.20	0.25	0.30	0.40	0.50	0.60	0.80	1.00	1.50	2.00	2.50
0.0	0.03+0.5 = 0.53	0.05+0.5 = -0.55	0.10+0.5 = -0.60	0.13+0.5 = -0.63	0.15+1.0 = -1.15	0.20+1.0 = -1.20	0.25+1.0 = -1.25	0.30+1.0 = -1.30	0.40+1.0 = -1.40	0.50+1.0 = -1.50	0.75+1.0 = -1.75	1.00+1.0 = -2.00	1.25+1.0 = -2.25
0.1	0.03+0.5 = 0.53	0.06+0.5 = -0.56	0.12+0.5 = -0.62	0.15+0.5 = -0.65	0.18+1.0 = -1.18	0.24+1.0 = -1.24	0.30+1.0 = -1.30	0.36+1.0 = -1.36	0.48+1.0 = -1.48	0.60+1.0 = -1.60	0.90+1.0 = -1.90	1.20+1.0 = -2.20	1.50+1.0 = -2.50
0.3	0.04+0.5 = 0.54	0.08+0.5 = -0.58	0.15+0.5 = -0.65	0.19+0.5 = -0.69	0.23+1.0 = -1.23	0.30+1.0 = -1.30	0.38+1.0 = -1.38	0.45+1.0 = -1.45	0.60+1.0 = -1.60	0.75+1.0 = -1.75	1.12+1.0 = -2.12	1.30+1.0 = -2.30	1.58+1.0 = -2.58
0.5	0.05+0.5 = 0.55	0.10+0.5 = -0.60	0.20+0.5 = -0.70	0.25+0.5 = -0.75	0.30+1.0 = -1.30	0.40+1.0 = -1.40	0.50+1.0 = -1.50	0.60+1.0 = -1.60	0.80+1.0 = -1.80	1.00+1.0 = -2.00	1.50+1.0 = -2.50	2.00+1.0 = -3.00	2.50+1.0 = -3.50
1.0	0.08+0.5 = 0.58	0.15+0.5 = -0.65	0.30+0.5 = -0.80	0.38+0.5 = -0.88	0.45+1.0 = -1.45	0.60+1.0 = -1.60	0.75+1.0 = -1.75	0.90+1.0 = -1.90	1.30+1.0 = -2.30	1.50+1.0 = -2.50	2.25+1.0 = -3.25	3.00+1.0 = -4.00	3.75+1.0 = -4.75
1.5	0.10+0.5 = 0.60	0.20+0.5 = -0.70	0.40+0.5 = -0.90	0.50+0.5 = -1.00	0.60+1.0 = -1.60	0.80+1.0 = -1.80	1.00+1.0 = -2.00	1.30+1.0 = -2.30	1.60+1.0 = -2.60	2.00+1.0 = -3.00	3.00+1.0 = -4.00	4.00+1.0 = -5.00	5.00+1.0 = -6.00
2.0	0.13+0.5 = 0.63	0.25+0.5 = -0.75	0.50+0.5 = -1.00	0.63+0.5 = -1.13	0.75+1.0 = -1.75	1.00+1.0 = -2.00	1.25+1.0 = -2.25	1.50+1.0 = -2.50	2.00+1.0 = -3.00	3.50	4.75	6.00	7.25
2.5	0.15+0.5 = 0.65	0.30+0.5 = -0.80	0.60+0.5 = -1.10	0.75+0.5 = -1.25	0.90+1.0 = -1.90	1.30+1.0 = -2.30	1.50+1.0 = -2.50	1.80+1.0 = -2.80	3.40	4.00	5.50	7.00	8.50
3.0	0.18+0.5 = 0.68	0.35+0.5 = -0.85	0.70+0.5 = -1.20	0.88+0.5 = -1.38	1.03+1.0 = -2.03	1.40+1.0 = -2.40	1.75+1.0 = -2.75	3.10	3.80	4.50	6.25	8.00	9.75
3.5	0.20+0.5 = 0.70	0.40+0.5 = -0.90	0.80+0.5 = -1.30	1.00+0.5 = -1.50	1.30+1.0 = -2.30	1.60+1.0 = -2.60	3.00	3.40	4.20	5.00	7.00	9.00	11.00
4.0	0.23+0.5 = 0.73	0.45+0.5 = -0.95	0.90+0.5 = -1.40	1.13+0.5 = -1.63	1.35+1.0 = -2.35	1.80+1.0 = -2.80	3.25	3.70	4.60	5.50	7.75	10.00	12.25
4.5	0.25+0.5 = 0.75	0.50+0.5 = -1.00	1.00+0.5 = -1.50	1.25+0.5 = -1.75	1.30+1.0 = -2.50	2.00+1.0 = -3.00	3.50	4.00	5.00	6.00	8.50	11.00	13.50
5.0	0.28+0.5 = 0.78	0.60+0.5 = -1.10	1.10+0.5 = -1.60	1.38+0.5 = -1.88	1.63+1.0 = -2.63	3.20	3.75	4.30	5.40	6.50	9.25	12.00	14.75

#### Hazard to People Classification

- White Less than 0.75 Very low hazard - Caution
- Yellow 0.75 to 1.25 Danger for some – includes children, the elderly and the infirm
- Amber 1.25 to 2.0 Danger for most – includes the general public
- Red More than 2.0 Danger for all – includes the emergency services

3.2.4 For example, for situations where flood depth is 0.5m and velocity of flow is 0.3m/s, the Hazard Rating is 1.38 and shown as amber, "Danger to Most".

- 3.2.5 Mapping of the hazard rating has not been undertaken for this area but we envisage that most of the access routes to this site would fall into the "Danger to Most" category.
- 3.2.6 We do not consider that safe access can be achieved but this a matter for the local authority to consider."
- 3.2.7 A copy of the letter received from the Environment Agency in response to the consultation relating to MA/09/0731, referred to in the comments above, is attached as **Appendix 2**.
- 3.3 The **Kent County Council Highway Services Officer** raises no objection to the proposal, and makes the following comments:
- 3.3.1 "The (previous) application was subject to a planning appeal and officers from KCC Highways attended the Hearing. The Inspector, having considered the highways evidence, decided to allow the appeal. The decision made by the Inspector is respected and KCC Highways do not wish to raise objection to the current planning applications."
- 3.4 The **Maidstone Borough Council Environmental Health Manager** raises no objection subject to the imposition of conditions requiring the submission and approval of details of disposal of foul sewage and animal waste, and makes the following detailed comments:
- 3.4.1 "Previously re MA/09/0731, Environmental Health noted the following:
- 3.4.2 *"The closest foul sewer is approximately 200m away and therefore the applicant is proposing the use of a cess pit. Before installation we would like to see and approve the cess to ensure it is fit for the purpose. We need to have details regarding the number of site occupants and the size of the cess pit. The site also has two stables included and as there are several residential properties in the area it would be prudent to request details regarding how manure from the horses is stored, what duration it is on site and how the manure is to be disposed.*
- 3.4.3 *The above issues are not major concerns to Environmental Health due to the small scale of the development and can easily be dealt with via condition. The site is not situated near any potential sites of concern with regards to contaminated land. Laddingford Landfill is approximately 900m away."*
- 3.4.4 Condition 1 of the appeal decision relates to the planning permission only applying to specific individuals, whilst condition 2 relates to the permitted use

ceasing after 3 years or at the end of occupation by the specified individuals. The appeal decision placed no conditions on the planning permission granted relating to foul sewage or animal waste. I can find no Environmental Health related complaints relating to this site on our system and we have no objections to the variation of conditions 1, 2 and 3, as long as further information regarding foul sewage and animal waste is supplied.”

3.5 The **Upper Medway Internal Drainage Board** raise no objection to the proposal.

### **3. REPRESENTATIONS**

4.1 **Councillor Nelson Gracie** has requested that the application be reported to Planning Committee in the event of a recommendation for approval, and makes the following detailed comments:

4.1.1 “The grounds are:

- Flood risk in the surrounding area, causing exiting from the sites and access by emergency services to the sites to be dangerous or impossible in a flood event. It is noted that a lot of good work has been carried out by the Environment Agency and others on improving land drainage in the surrounding area recently but despite this, the extremely wet period over the last 12 months has not improved road network flooding. Fortunately the wet periods this winter (so far) have been sufficiently spaced out to allow river drainage to take place
- Visual intrusion in the countryside (notwithstanding there has been visual intrusion for some years), having an adverse effect on the amenity of the area, well outside the village envelope
- The sites are not well related to public transport, shopping or community facilities
- Access onto a narrow lane with poor sightlines, endangering highway safety

4.1.2 If there is a move to approve the applications, then:

- The permission should be renewed on a temporary basis, suggested as three years
- There should be a continuation of the personal permission, ie, only those named in the current permission should be allowed to reside on the sites
- There should be no increase in the number of currently permitted mobiles and tourers, as an intensified use of the site would even further harm the character and appearance of the surrounding area, and exacerbate the problems set out in the suggested reasons for refusal

- No commercial activities on the site, including (but not limited to) outside storage of road planings, building materials, garden waste
- No vehicles over 3.5 tonnes GVW on site
- Applicants should be required to register on the Gypsy Sites Register, if not already registered, so that they may avail themselves of a vacancy on a site should one come up.”

4.2 Four neighbour representations were received, three of which raised objection to the application, whilst one raised concern over the publicity process which the application had been subject to. The objections raised the following concerns:

- Flooding
- Harm to the visual character and appearance of the area
- Perception of planning permission being a reward for failing to comply with policy and legislation
- Absence of policy or alternative sites should not be a reason to grant permission.
- Maintaining consistency in planning decisions on the site since 2001.

4.3 A site notice was displayed on the site entrance.

#### **4. CONSIDERATIONS**

##### **5.1 Site Description**

5.1.1 The proposal site is located in a rural location in open countryside with no specific local or national environmental designations. The site is located to the north of Symonds Lane, a narrow, single track unclassified public highway subject to national speed restrictions. A public footpath, the KM201, runs approximately 200m to the north of the site.

5.1.2 The site comprises a rectangular plot with a width of 30m and a depth of 70m. The site is set back from the highway by approximately 50m, an access track extending between the road and the site. Operational development on the site comprises hard surfacing and fencing, as well as the outbuildings permitted under MA/09/0731. The frontage of the site is marked by a raised earth bund with a height of approximately 0.5m, above which is a post and rail fence. Behind the fencing is a hedge of mixed native and non-indigenous species, which provides some screening to the site. A metal gate with brick pillars and surround is located in the west of the site frontage to the highway.



- 5.1.3 The site is bound by agricultural land to the north, south and west, and to the east by Pear View, a Gypsy site referred to in paragraph 2.6 above. An application relating to variation of conditions attached to an appeal decision in respect of this neighbouring site is also reported on the papers under reference MA/13/0104. Beyond Pear View, further to the east, is a third residential Gypsy site, Green Tops, which has a personal temporary planning permission granted under MA/10/0504.
- 5.1.4 The site itself is not recorded as being prone to flood by the Environment Agency, however it (together with some adjacent land) forms a raised island surrounded by land which is prone to flooding, including Symonds Lane. Evidence has been provided by Yalding Parish demonstrating that much of the surrounding land and highways were flooded during a major event during October 2000.
- 5.1.5 The site is occupied by six adults and two school age children, who both attend Laddingford Primary School. The occupation of the site is in accordance with condition 1 attached to appeal decision APP/U2235/A/09/2114476 (appeal A).

## **5.2 Proposal**

- 5.2.1 The current application seeks to vary/remove conditions 1, 2 and 5 attached to Appeal A of appeal decision APP/U2235/A/09/2114476 in order to allow a permanent use of the land on a non-temporary basis (conditions 1 and 2); and to allow the stationing of an additional touring caravan on the land.
- 5.2.2 In respect of the variation/removal of conditions 1 and 2, the applicant seeks a non-personal consent for permanent use of the land as a Gypsy site. As Members will be aware, in the event of a permanent permission being granted, it would be abnormal for such a consent to be made personal, as a permanent consent indicates that a site is acceptable in principle. However, the supporting documentation states that in the event of a permanent consent being considered to be inappropriate, a further temporary personal permission would be accepted.
- 5.2.3 In respect of the variation of condition 5, the applicant seeks that the condition be amended to allow the stationing of four caravans, of which no more than two shall be mobiles/static homes, an increase in one tourer over the previous consent. The additional tourer would be sited on the existing hard surfacing.

## **5.3 Principle of Development**

- 5.3.1 There are no saved Local Plan Policies that relate directly to this type of development. Policy ENV28 of the Local Plan relates to development in the countryside stating that:

*"Planning permission will not be given for development which harms the character and appearance of the area or the amenities of surrounding occupiers"*

ENV28 then outlines the types of development that can be permitted. This does not include Gypsy development as this was previously covered under housing Policy H36 but this is not a 'saved' policy.

5.3.2 A key consideration in the determination of this application is central government guidance contained with 'Planning Policy for Traveller Sites' (PPTS) published in March 2012. This places a firm emphasis on the need to provide more Gypsy sites, supporting self-provision and acknowledging that sites are likely to be found in rural areas.

5.3.3 Work on the Local Development Framework is progressing; however there is, as yet, no adopted Core Strategy. Local authorities have the responsibility for setting their own target for the number of pitches to be provided in their areas in their Local Plans. To this end Maidstone Borough Council, in partnership with Sevenoaks District Council procured Salford University Housing Unit to carry out a revised Gypsy and Traveller Accommodation Assessment (GTAA). The GTAA concluded the following need for pitches over the remaining Core Strategy period:-

Oct 2011-March 2016	105 pitches
April 2016- March 2021	25 pitches
April 2021- March 2026	27 pitches
Total Oct 2011 – March 2026	157 pitches

These figures were agreed by Cabinet on the 14<sup>th</sup> March 2012 as the pitch target to be included in the next consultation version of the Core Strategy. However, an amended target was agreed by Cabinet on 13<sup>th</sup> March 2013 of **187 pitches** (30 additional pitches) to reflect the extension of the new Local Plan period to 2031.

5.3.4 Draft Policy CS12 of the Regulation 25 version of the Core Strategy outlines that the Borough need for Gypsy and traveller pitches will be addressed through the granting of planning permissions and through the Development Delivery DPD.

5.3.5 Since this, the Local Development Scheme approved by Cabinet on 13<sup>th</sup> March 2013 approved the amalgamation of the Core Strategy Local Plan and the Development Delivery Local Plan, to be called the Maidstone Borough Local Plan. The single local plan would contain policies together with the balance of all land allocations (including Gypsy and traveller sites). The timetable for adoption is July 2015.

5.3.6 Issues of need are dealt with below but, in terms of broad principles Central Government Guidance clearly allow for Gypsy sites to be located in the countryside as an exception to the general theme of restraint.

5.3.7 In the case of this specific site, use as a Gypsy site has been accepted previously, albeit for a temporary period for personal use only, the view of the Inspector being that the significant identified harm was outweighed by personal circumstances including the lack of alternative accommodation but the harm was considered too severe to grant a permanent consent.

## **5.4 Gypsy Status**

5.4.1 Annex 1 of the PPTS defines Gypsies and travellers as:-

*"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 or permanently, but excluding members of an organised group of travelling show people or circus people travelling together as such."*

5.4.2 The proposed occupiers would be the same as those that received temporary consent at appeal. The Gypsy status of the occupiers was accepted by both the Council and the Inspector at the appeal (and throughout the course of the planning application).

5.4.3 There have been no changes in circumstances or any available evidence to indicate that the Gypsy definition does not now apply to the occupiers.

## **5.5 Need for Gypsy Sites**

5.5.1 The PPTS gives guidance on how Gypsy accommodation should be achieved, including the requirement to assess need.

5.5.2 The latest GTAA (2011-2026) provides the projection of accommodation requirements as follows –

Oct 2011-March 2016	105 pitches
April 2016- March 2021	25 pitches
April 2021- March 2026	27 pitches
Total Oct 2011 – March 2026	157 pitches

However, an amended target was agreed by Cabinet on 13<sup>th</sup> March of **187 pitches** (30 additional pitches) to reflect the extension of the new local plan period to 2031.

5.5.3 Taking into account this time period, since 1<sup>st</sup> October 2011 the following permissions for pitches have been granted (net):

37 Permanent non-personal permissions

8 Permanent personal permissions

0 Temporary non-personal permissions

21 Temporary personal permissions

Therefore a net total of 45 permanent pitches have been granted since 1<sup>st</sup> October 2011.

5.5.4 It must be noted that the requirement for 105 pitches in the initial 5 year period includes need such as temporary consents that are yet to expire (but will before the end of March 2016) and household formation. Therefore although the pitch target is high for the first five years, the immediate need is not, in my view, overriding. However, the latest GTAA clearly reveals an ongoing need for pitches.

## **5.6 Visual Impact**

5.6.1 The latest guidance in the PPTS states that Local Planning Authorities should strictly limit new traveller development in open countryside (paragraph 23) but goes on to state that where sites are in rural areas, the key 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 is outlined, however, this is addressed in the NPPF and clearly under Local Plan policy ENV28.

5.6.2 The particular character of the area is generally open agricultural fields with sporadic residential and agricultural development mainly located fronting onto Lees Road at the junction of Symonds Lane to the west of the site, and Mill Place to the south of Symonds Lane, to the east of the site. There is no significant development other than the three Gypsy sites in the immediate setting, and the dominant character of the surroundings is clearly of agricultural fields and orchards with traditional fencing and hedgerow separation.

5.6.3 Whilst the use of a grassed verge/bund and a post and rail fence to the site frontage is preferable to close board fencing and other more intrusive means of enclosure, the site access is defined by prominent brick walls and pillars and substantial metal gates which despite being set back from the main carriageway are dominant in views of the site. Furthermore, the use of close board fencing

around the main (rear) part of the site, represents a further intrusive urbanising feature in open countryside, which is visible in medium range views from public rights of way including Symonds Lane.

- 5.6.4 Although landscaping has been introduced to the site's boundary with Symonds Lane, in the vicinity of the site access (the dominant feature on the site frontage) the planting is non-native and suburban in character, and inappropriate to a rural site such as this. Although some native landscaping has been introduced behind the post and rail fence, in the time since the appeal determination this has not matured to the extent that adequate screening is provided in views from the public highway.
- 5.6.5 The previous Inspector found that the use of the land for the provision of a Gypsy site caused significant visual harm to the character and appearance of the surrounding area, finding that the isolated setting of the site when taken both individually and cumulatively with the neighbouring Gypsy sites was such that it represented an intrusive form of development, and found, as I have, that the landscaping and site access in particular were detrimental to the character and appearance of the area (paragraph 22). The Inspector also opined that "it is difficult to see how further indigenous planting could meaningfully reduce the visual impact", which is borne out by the failure of the existing landscaping to provide adequate screening or for effective additional landscaping to be introduced (paragraph 21).
- 5.6.7 The development is thereby materially harmful to the character and appearance of this rural part of the open countryside, and that satisfactory mitigation has not to date been achieved and is unlikely to be so. A permanent consent is therefore considered to be inappropriate in the circumstances of this case.
- 5.6.8 There are six adults living on the site, all of whom benefit from the personal condition attached to the appeal decision. As such I consider the application to vary condition 5 to allow an additional tourer to be reasonable in the event of a further temporary consent being granted. In terms of the visual impact of this element of the application, the introduction of an additional chattel, whilst introducing further visual clutter to the site, would not significantly increase the harm caused by the site to the character and appearance of the open countryside, which by virtue of the mobility of the additional tourer would be relatively transient in character.

## **5.7 Flooding**

- 5.7.1 As set out above, whilst the site itself is not recorded by the Environment Agency as being prone to flood, the surrounding land is, and the Environment Agency concludes that access to the site during such an event could fall within

“danger to most” classification, and that safe access and egress cannot be assured, objecting to the application on that basis. Evidence has been put forward by the Parish Council to support the fact that during a flood event in 2000 the site became cut off for a period of time, although it does not appear that any significant events have taken place since that episode. As such objection has been raised on this ground by Councillor Nelson-Gracie, the Parish Council and neighbouring residents.

- 5.7.2 This evidence was before the Inspector at the time of the previous planning appeal, and at that time it was concluded that whilst the flooding of the means of access cannot be divorced from the use of the site itself and the use of the site increases the number of people at risk during flood events, that there was no conflict with central government guidance as set out in PPS25 Development and Flood Risk (whilst the core document no longer exists for development management purposes, the practice guide remains in force).
- 5.7.3 The Inspector set out in paragraphs 41 and 44 that the lack of risk insofar as the site itself flooding, the ability of the occupants to “sit it out” in the event of a flood event, the chances of a medical emergency arising (“remote”), the relative difficulties with snow, and the fact that the occupiers of the land are signed up to the Environment Agency flood warning system, were such that “the overall risk to safety is not of a high order” (paragraph 45).
- 5.7.4 In light of the Inspector’s findings, and the absence of any significant changes to either the circumstances of the site or central government advice on good practice since the time of the appeal decision, a refusal of planning permission on this ground is not considered to be sustainable.

## **5.8 Highways**

- 5.8.1 As set out above, the Kent County Council Highway Services Engineer raises no objection to the application, and confirms that no serious incidents have taken place since the grant of temporary consent as a result of the use of the access. This supports the inspector’s conclusion that despite limited visibility, “the level of risk is low” (paragraph 34).
- 5.8.2 The variation of condition 5 to allow an additional tourer to be stationed on the land is not objected to by the Highway Engineer, and as the tourer would be used to facilitate travelling of family members it is likely that the variation of this condition would in fact result in a limited number of additional vehicle movements, by virtue of the fact that the number of trips generated is likely to be reduced whilst family members are travelling, as was previously concluded by the Inspector (paragraph 30). The Inspector also discounted concerns over

highway safety being compromised by the towing of caravans on the public highway (paragraph 31).

5.8.3 It is therefore not considered that there are any significant objections to the application on the grounds of highway safety.

## **5.9 Personal Circumstances**

5.9.1 The Inspector gave considerable weight to the personal circumstances of the applicants including health and education needs. There have been no significant changes to these circumstances in the intervening two years. In the appeal decision, there was considerable criticism of the Council's 2006 GTAA and the Inspector concluded it was inadequate. Given the inadequacy of this document in identifying the level of need for Gypsy accommodation the Inspector gave weight to the national, sub-regional and local immediate need for sites, the lack of available sites and the lack of any policy relating directly to Gypsies and Travellers in the Local Plan and the lack of a five year supply of deliverable sites.

5.9.2 The Council has undertaken a new GTAA and has a robust evidence base with regard to need. The GTAA shows a requirement for 105 pitches in the initial 5 year period, which includes need such as temporary consents that are yet to expire (but will before the end of March 2016) and household formation. Therefore although the pitch target is high for the first five years, the immediate need is not, in my view, overriding. However, the latest GTAA clearly reveals an ongoing need for pitches. In view of the work done by the Council to undertake a quantitative assessment of need within the Borough in the new GTAA I do not give significant weight to the national and sub-regional immediate need for sites.

5.9.3 There is no information submitted in relation to any search for an alternative site that has been undertaken by the occupiers, although there is no local policy at this time to guide their search. At the time of the previous appeal decision it was noted that the Council's public sites were full (which remains the case) and that in any case an ongoing feud would prevent the applicant from taking up occupation were such a place to become available on either of the existing public sites. The Council has secured funding for the provision of a new 15 pitch public Gypsy site which will be complete in March 2015. In addition, the proposed local plan would contain policies together with the balance of all land allocations (including Gypsy and traveller sites). The timetable for adoption is July 2015. However, it may be the case that a suitable alternative public or allocated site may present itself in the future, this is not a possibility at the current time.

## **5.10 Other Matters**

5.10.1 The application is retrospective, and would involve no additional operational development or intensification of the use, and there have been no changes in the ecology of the site since the previous appeal decision, at which time the Inspector did not consider biodiversity to be an issue in the determination of the appeal.

5.10.2 The proposal would not have any implications in respect of residential amenity or heritage assets. Whilst the comments of the Maidstone Borough Council Environmental Health Officer are noted in respect of waste, it is not considered, in the context of the previous consents relating to the site, to request the details set out in the comments.

## **6. CONCLUSION**

6.1 For the reasons set out above, the proposed development would result in significant visual harm to the character and appearance of the open countryside. For this reason a permanent consent is not considered to be appropriate in the circumstances of this case. However, there are no alternative sites available now and no local policy to guide the search for an alternative site, and the personal circumstances of the applicant are such that a settled base is advantageous for health and educational reasons.

6.2 The Council has undertaken work to ensure that there is now an up to date needs survey and funding has been secured for a new public Gypsy site. This is in addition to progressing the emerging policy and allocations through the Local Plan. This position is likely to change in the near future with the site allocation document due for adoption in July 2015. Following adoption of this document there would need to be some time to secure planning permission and implement those permissions.

6.3 Taking the above and the judgement of the previous Inspector into account, I conclude that in the circumstances of this case a further temporary personal planning permission would be appropriate. A three year permission would enable adequate time for the adoption of the policy document and site selection (by occupiers), planning permission gained and for permission to be subsequently implemented. As a result my recommendation is for permission to be granted with conditions limiting the use to a temporary three year period and to be personal to the applicants, and the other conditions attached to the appeal decision.

6.4 In respect of the variation of condition 5 to allow an additional touring caravan to be stationed on the site, the reasons set out above this is considered to be acceptable.



7. **RECOMMENDATION**

GRANT PLANNING PERMISSION subject to the following conditions:

1. The use hereby permitted shall be carried on only by Mr and Mrs Tom Coster (senior) and Mr and Mrs Thomas Coster and their resident dependents, and shall be for a limited period of three years from the date of this decision, or the period during which the land is occupied by them, whichever is the shorter;

Reason: The site is in an area where the stationing of caravans/mobile homes for residential purposes is not normally permitted and an exception has been made to reflect the personal need of the applicant and other occupiers, in accordance with Maidstone Borough-Wide Local Plan 2000 policy ENV28, and central government planning policy as set out in the National Planning Policy Framework 2012 and Planning Policy for Traveller Sites 2012.

2. When the site ceases to be occupied by those named in condition 1 (above) or at the end of three years, whichever shall first occur, the use hereby permitted shall cease, all caravans, buildings, structures, materials and equipment brought on to the land, or erected on it, or works undertaken to it in connection with the use hereby permitted, shall be removed and the land restored to its former condition in accordance with a scheme of work submitted to and approved in writing by the Local Planning Authority;

Reason: To appropriately restore the site in the interest of protecting the character and appearance of the countryside in accordance with policy ENV28 of the Maidstone Borough-Wide Local Plan 2000, and central government planning policy as set out in the National Planning Policy Framework 2012 and Planning Policy for Traveller Sites 2012.

3. No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site;

Reason: To prevent inappropriate development, safeguard the amenity, character and appearance of the countryside and safeguard highway safety in accordance with policy ENV28 of the Maidstone Borough-Wide Local Plan 2000, and central government planning policy as set out in the National Planning Policy Framework 2012 and Planning Policy for Traveller Sites 2012.

4. No commercial activities shall take place on the land, including the storage of materials;

Reason: To prevent inappropriate development, safeguard the amenity, character and appearance of the countryside and safeguard highway safety in accordance with policy ENV28 of the Maidstone Borough-Wide Local Plan 2000, and central government planning policy as set out in the National Planning Policy Framework 2012 and Planning Policy for Traveller Sites 2012.

5. No more than four caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than two shall be static caravans or mobile homes) shall be stationed on the site at any time;

Reason: To safeguard the character and appearance of the countryside in accordance with policy ENV28 of the Maidstone Borough-Wide Local Plan 2000, and central government planning policy as set out in the National Planning Policy Framework 2012 and Planning Policy for Traveller Sites 2012.

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 the South East Plan 2009) and there are no overriding material considerations to indicate a refusal of planning consent.