

APPLICATION: MA/12/1518 Date: 20 August 2012 Received: 24 August 2012

APPLICANT: Mrs B. Cash

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

PARISH: Harrietsham

PROPOSAL: Application for the removal of conditions 1 and 2 of permission MA/09/1510 (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) to allow a permanent permission as shown on plan date stamped 20 August 2012.

AGENDA DATE: 27th June 2013

CASE OFFICER: Amanda Marks

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

- * it is contrary to views expressed by the Parish Council
- * Cllr Sams has requested the application be reported to planning committee for the reasons set out in the report

1.0 POLICIES

Maidstone Borough-Wide Local Plan 2000: ENV6, ENV28, ENV33, ENV34, T13
Village Design Statement: N/A
Government Policy: National Planning Policy Framework (2012), Planning Policy for Traveller Sites (2012)

1.0 HISTORY

MA/09/1510 The Mellows, Marley Road, Harrietsham, Maidstone. Retrospective application for the 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 and associated works including fencing and hardstanding.

APPROVED -

MA/09/0581 – Retrospective application for change of use of land for residence by a gypsy family - WITHDRAWN

MA/06/1508/C06 – 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 – submission of details pursuant to cond 6 of MA/06/1508 being details of fencing, landscaping, gates, lighting and satellite receiving equipment - 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

REFUSED Appeal Allowed for 5 year temporary personal permission 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

2.0 CONSULTATIONS

2.1 Harrietsham Parish Council: were consulted and objected to the application for the following reasons:

Harrietsham Parish Council wish to see application MA/12/1518 refused as the development causes visual harm to the national designation of the Kent Downs Area of Outstanding Natural Beauty. As detailed in the inspectors report dated 13th November 2007, it was found “that this proposal would be harmful to the character and appearance of the AONB which enjoys the highest status of protection in relation to landscape and scenic beauty”.

The inspector allowed a temporary permission for 5 years to find an alternative site suitable for the present occupants. This was considered a fair and reasonable timescale to allow adaptations for an alternative site to rehouse this family to an alternative traveller pitch. The site was then scheduled to be returned to its former landscape.

It must be noted that no attempt has been made by the applicant to implement any of the recommendations made by the inspector to the entrance way to lessen the impact from the site occupation. This situation cannot be allowed to continue.

3.2 Kent Highway Services: raise no objections to the application.

3.3 Environmental Health Manager: This does not change our recommendations made pursuant to the original application (MA/09/1510) which sought to ensure adequate drainage facilities for the application site.

3.0 REPRESENTATIONS

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

- * lack of compliance, effort and justification to comply with the previously imposed landscaping condition;
- * visual impact of the site to users of the Bridleway and footpath;
- * visual harm and incongruous feature in the AONB (fence & gates add to this);
- * the site continues to causes considerable visual harm;
- * site outside the village envelope and contrary to policy;
- * previous reason to grant a temporary permission related to the visual harm not the shortfall of gypsy sites;
- * no urgent need to meet the shortfall due to the rate at which MBC are granting permissions;
- * if a temporary permission is considered necessary then suggest it be a short time limit; no further development to occur on site; no additional families on site;
- * can funds allocated by government be used to re-site the applicant and restore the site;
- * considerable increase in traffic using the lane to access the site (exacerbated by business use);
- * poor visibility;
- * do not consider the special circumstances a reason to spoil the AONB;
- * dispute school attendance;
- * the applicant has a track record for undertaking work before gaining consent;
- * fencing erected within the site is surely to be used for further plots?
- * site out of keeping with adjacent properties;
- * site should be assessed against its pre-2005 condition as fallow land;
- * new plans should be submitted;
- * altercations on the site at night are not in the best interests of the child;
- * contrary to the aims of the Core Strategy in that the site causes intrinsic harm to the countryside and AONB in particular;
- * dispute the comments made by the applicants supporting statement;

4.2 Cllr Sams: The above application site has been of significant interest to the community over many years and has been subject to planning inspector scrutiny. This is a very sensitive location in an area of outstanding natural beauty and if you were minded to approve the application I would like this to go before the planning committee.

4.3 Kent County Council West Kent Disabled Children's Service: A detailed letter in support of the applicant has been submitted based on the 'unique' needs of Patrick.

4.0 CONSIDERATIONS

5.1 Site Description

4.1.1 The application site lies in the open countryside within a designated Area of Outstanding Natural Beauty and locally designated North Downs Special Landscape Area. The site is on the western side of Marley Road approximately 80m north of the junction where Marley Road and Dickley Lane meet; and approximately 400m south of where Marley Road and Pilgrims Way meet.

4.1.2 To the north of the site is a Public Bridleway KH291; to the east are dwellings on Marley Road; to the south and south-west are curtilages of two detached dwellings. The dwellings in the vicinity of the site are characterised by planted frontages, substantial plots and a mix of close board fencing and post and rail. There are no footpaths in this location on either side of Marley Road.

4.1.3 The site has close board fencing on each of its boundaries. There is hedging enclosing the site on all sides in front of the fencing save for at the access. The access in the south east corner comprises close board fencing, brick piers, walls, wrought iron features and a solid double gate of considerable height and stained green.

4.1.4 Within the site at the time of my most recent site visit was the double unit mobile home, a stable/utility building, a gas tank and general domestic paraphernalia (lighting column, dog kennel). Within the site itself the residential element is separated off by dwarf brick walling and an enclosed garden area is said to provide a safe area of play for Patrick. To the south/south west within the site is the former piggery building which is also separated by fencing. A paddock in the north west corner is separated by close board fencing, a field gate and a partial line of conifer trees.

4.2 Background

4.2.1 This site has a lengthy planning and enforcement history. In March 2006 the Council issued enforcement notices which took effect the following month in respect of the use of the site and associated operations by Mrs Cash and her brother. Stop notices were also issued. Enforcement action was then held in abeyance whilst the submitted planning application for the occupation of the site by Mrs Cash and her dependents was being considered. Application MA/06/1508 was subsequently refused by the Council and allowed on appeal by the Planning Inspectorate.

4.2.2 In his decision the Inspector applied a detailed condition requiring the submission of a scheme showing proposed lighting; satellite equipment; internal site layout; measures to screen the existing fence; additional planting. Details were duly submitted but then refused by the Council. The reasons for refusal were as follows:

1. *It is considered that there is insufficient detail provided on the screening of the close boarded fence as the applicant has indicated that it is only the fence at the road boundary of the site that is to be screened. The appeal decision states that 'measures to screen the existing close boarded fence around the perimeter of the site or details of any replacement means of enclosure' which would mean the whole site and not just the front boundary of the site. The reason for this condition was to ensure the development of the site is undertaken in accordance with Policy ENV33 and ENV34 of the Maidstone Borough-Wide Local Plan 2000.*
2. *In addition to this the decision also states that 'means of enclosure including the replacement of the existing entrance gates and pillars', the applicant has indicated that they wish to see the gates retained. The site is located within an Area of Outstanding Natural Beauty and Special Landscaping Area, where the protection of the landscape and character of the area is essential. The gates are not considered to be appropriate for the site due to the rural location especially in an Area of Outstanding Natural Beauty and Special Landscape Area. The height of the gates is considered to be excessive and leading to an unsightly entrance to the site and therefore is contrary to Policies ENV33 and ENV34 of the Maidstone Borough-Wide Local Plan 2000.*

Informative: The applicant will need to amend the site plan to indicate an amended entrance gate that is more appropriate for the development of the site.

4.2.3 Due to the failure of the applicant to submit a further scheme within the timetable as required by the Inspectors decision, the permission lapsed and a further application to retain the entire development had to be submitted.

MA/09/1510 was subsequently granted for a 3 year temporary period – it is this permission which the applicant seeks to vary by requesting a permanent planning permission is now granted.

5.2 Proposal

- 5.2.1 Further to the background information set out above and events leading up to the present day, the applicant is seeking a permanent permission. The applicant is Mrs Bridget Cash who has three children. The two eldest children are now 17 & 18 years old, I understand one of these still remains on the site on a semi-permanent basis and the other returns less frequently. The youngest child, Patrick, is now 12 years old and is registered disabled, epileptic, partially sighted, has very limited mobility and has speech problems. Patrick attends Five Acre Wood School in Boughton Lane. This is a day Special School for children and young people with Profound, Severe and Complex Learning Disabilities, including Autistic Spectrum Disorder. The special circumstances relating to the needs of Patrick will be considered later in this report.
- 5.2.2 The application does not propose any further development on site. A layout plan has been submitted which identifies the position of the mobile home, the touring caravan pitch and the utility/stable building. As mentioned, the site has been sectioned off to contain the residential area of the site and leaving the site of the former piggery and grassed areas hived off to the rear/side. A few minor changes have been undertaken since the most recent planning permission was given on the site (MA/09/1510), which shall be considered later in this report.
- 5.2.3 Accompanying the application were two letters in support. One letter from the Disabled Children's Service of Kent County Council and the other from the doctor who oversees Patrick from Kent Community Health. Subsequently a far more detailed letter has been received from the Children's Disabled Service.

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 Maidstone Borough-Wide Local Plan 2000 (MBWLP) 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. Policies ENV33 and ENV34 relate to

the AONB and SLA status of the site and will be considered under the visual impact section of this report.

5.3.2 A key consideration in the determination of this application is Central Government guidance contained in '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.

5.3.2 Work on the emerging local plan is progressing; however there is, as yet, no adopted Local Plan which includes a specific policy relating to the provision of gypsy sites. 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 Local Plan period:

Oct 2011 – March 2016	105 pitches
April 2016 – March 2021	25 pitches
April 2021 – March 2026	27 pitches
April 2026 – March 2031	30 pitches
Total Oct 2011 – March 2031	187 pitches

These figures were agreed by Cabinet on the 13th March 2013 as the pitch target to be included in the next consultation version of the Local Plan.

5.3.3 Draft Policy CS12 of the Regulation 18 version of the Local Plan approved by Cabinet on 13th March 2013 that the Borough need for gypsy and traveller pitches will be addressed through the granting of permanent planning permissions and through the allocation of sites.

5.3.4 The timetable for the Local Plan's adoption is July 2015.

5.3.5 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.

5.4 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 dependents’ 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”.

- 5.4.1 The gypsy status of the applicant was explored in detail at appeal and as set out in the Inspectors decision notice in paragraphs 33 & 34 (decision appended). It is correct that the applicant did spend some time living in a house several years ago, however the background to this was considered and it was concluded did not compromise the claim of gypsy status.
- 5.4.2 Therefore from the evidence provided, I consider that Mrs Cash complies with the definition of a gypsy as outlined in Government guidance in Planning Policy for traveller sites.

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 As stated above, the projection accommodation requirements is as follows –

Oct 2011 – March 2016	105 pitches
April 2016 – March 2012	25 pitches
April 2021 – March 2026	27 pitches
April 2026 – March 2031	30 pitches
Total Oct 2011 – March 2031	187 pitches

- 5.5.3 Taking into account this time period, since 1st 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 1st October 2011. And hence a shortfall of 60 remains.

5.5.3 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. This explains why the need figure appears so high in the first 5 years.

5.6 Visual Impact

5.6.1 As stated the site lies within a designated AONB and SLA. Local plan policy ENV33 states that the conservation of the AONB will be given priority over other development plan policies. The main purpose of Policy ENV34 is to ensure that the quality of the landscape is protected and enhanced. As is widely known, the status of an AONB is considered greater than an SLA. The preferred location for developments of the nature being considered would clearly be in an area not with such recognised landscape quality. It is therefore fair to say that the development would be considered harmful by definition within an AONB. The level of harm however needs to be assessed in light of the site specific characteristics and the context of the site in relation to the surrounding landscape features. It would be unreasonable to state that because the site is within the AONB it is unacceptable in principle to grant planning permission.

5.6.2 The site is located outside the village boundary of Harrietsham in an area where there are a number of other residential properties. Views of the site are most prominent from immediately in front of the access – particularly as the gates are often left open. The mobile unit within the site is visible from a gap in the north east corner of the site (see photograph on slide show), and from above the fence line which flanks the access drive. Approaching the site from either the north or south on Marley Road the site is well screened by the roadside hedgerow and the access is not prominent unless within a few metres of the site.

5.6.3 Travelling north from the site you reach the Pilgrims Way where the land rises to the escarpment. From here it is possible to see the site in the context of the other properties in the vicinity. It would therefore be reasonable to conclude that the main visual impact is localised with less dominant views from a distance.

5.6.4 The access into the site is, in my view, the most harmful aspect of this site in terms of its impact on the landscape character of the area. Whilst other properties have some element of formal boundary treatment, the overriding character is of soft landscaping. The access is considerably larger than others nearby and therefore has a harsher appearance in the street scene. This being said, it is not as stark as at the time of the inspectors deliberations as the iron gates have been replaced with wooden gates and stained green. I do however still consider that the entrance pillars, with brick walling and infill of iron railings does give an incongruous appearance to the site in this locality. The lack of

any soft landscaping at the site entrance also highlights the more urban appearance of the entrance.

- 5.6.5 The hardstanding within the site, the use of dwarf walls as opposed to post and rail fencing and the planting of conifers as opposed to native species all add to the inappropriate treatment of a site within the countryside.
- 5.6.6 I am mindful however, that the points which have been raised above could all be softened through either further landscaping or replacement of materials. The access could be scaled down, the brick pillars and railing features removed, the height of the gates brought down. Part of the access could be dug up to allow for native planting flanking the fence line to soften the impact. These issues have been visited previously at appeal and the recent 3 year temporary permission, however the applicant has not wished to undertake significant changes on the site which have a cost implication when a permanent permission has not been forthcoming. I also note the objections from the local residents that the development causes visual harm to users of the bridleway and footpath. Yes, glimpses of the development can be seen from the PRoW – but they are glimpses. I do not consider that the development detracts from the enjoyment of users of this PRoW to such a degree that would in itself be sufficient reason to refuse planning permission. The footpath is very well screened and additional planting within the site could be undertaken to 'plug' views.
- 5.6.7 It is my view that with some alterations as set out above, the site could be more visually in accord with its neighbours. I consider that because the site sits in close proximity to other residential sites and is not in an isolated location or more prominent location within the open AONB then the harm that it causes can be minimised.

5.7 Residential Amenity

- 5.7.1 As mentioned there are a number residential properties in the locality – particularly on the western side of Marley Road. The residents have made representation both individually and under the umbrella of a planning consultant. Their concerns are listed at the beginning of this report. The majority of these concerns are addressed throughout the various sections of this report.
- 5.7.2 The closest property is located approximately 28m to the east of the site on the opposite side of Marley Road. The property 'Greensleaves' is arguably the most affected by the proposal as the access is opposite their site. In terms of amenity impact the dwelling is set sufficiently back that would not be a significant impact in terms of loss of light, privacy or overbearing impact. There may be occasions when both accesses are used at the same time but this is no more unusual than on other properties where they are opposite.

5.7.3 Giddyhorn to the south-east and Ridgedown to the south are approximately 40 and 45m away respectively; similarly I do not consider there would be an unacceptable amenity impact on these properties.

5.8 Highways Safety

5.8.1 The site access is existing and was assessed by the Inspector on appeal. After extensive consideration (para's 20 -27 of the decision) it was concluded that there was no significant highway safety issue. Kent Highways have never raised objection to the development on highway safety matters.

5.9 Personal Circumstances

5.9.1 I consider that the personal circumstances of the youngest child, Patrick, still carry significant weight in the determination of this application. The child will always be dependent on his mother and a team of care workers of different capacities. The care network of both social and medical nature has been established with Patrick living at his current address. If he leaves some of the care network could change. The school he attends is for children and young adults so he has many years of attendance ahead. His attendance at school has been confirmed at 94% despite time off in hospital. Whilst this in itself is not a reason to remain on the site in Harrietsham, the fact remains that the Council cannot at this stage provide an alternative site for the family to move to. The school is located within the Borough of Maidstone and Mrs Cash has lived on this site for nearly 8 years. The Council does have an identified need to provide permanent sites for gypsies and travellers of such origin and to grant a further temporary permission until such time as sites have been allocated does not, in my opinion, reflect the unique personal circumstances of the applicant and the considerable care required for the son.

5.9.2 Since the inspectors decision the need for gypsy and traveller sites has increased. A small effort has been made to reduce the harsh impact of the site entrance. There is still scope to improve the site further which the applicant would be prepared to do with the security of knowing she could remain on the site.

6.0 CONCLUSION

6.1 As stated this site is located in the open countryside, Special Landscape Area and an Area of Outstanding Natural Beauty. Whilst it is acknowledged that the continued presence of the development would cause some harm to the AONB, when balanced against the on going need to provide gypsy sites, the exceptional

personal needs of the applicant, and the scope to continue to soften the impact of the development it is considered that a permanent permission would be appropriate.

- 6.1 It is considered that the applicant is a gypsy and complies with the definition contained in the PPTS.
- 6.2 The size and scale of the development does not dominate the nearest settled community.
- 6.3 There is a current need for Gypsy and Traveller sites as identified by the updated GTAA.
- 6.4 The applicant has resided on site for some 7 years and therefore any implications for ecology have likely already taken place. The continued use of the site on the same scale is not likely to have further impact on any ecological interests within or close to the site.
- 6.5 The site is considered to be in a sustainable location that is within access from local services, amenities and facilities.
- 6.6 The applicant has significant proven personal circumstances which have previously been found at Appeal to justify her to remain on site, these circumstances have not changed but the need for permanent sites has increased thereby indicating that a permanent personal permission should be forthcoming.

7.0 RECOMMENDATION

GRANT PLANNING PERMISSION subject to the following conditions:

1. The occupation of the site hereby permitted shall be carried out only by Mrs Bridget Cash and her resident dependents and when the site ceases to be occupied by Ms Bridget Cash the use hereby permitted shall cease and all materials and equipment brought onto the land in connection with the use, including hardstandings, fencing, walls and outbuildings hereby approved shall be removed and the land stored to its former condition.

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 reflect the personal need of the named person and her family; and to safeguard the character and appearance of the countryside in accordance with Policy ENV28, ENV33 and ENV34 of the Maidstone Borough-Wide Local Plan 2000 .

2. No more than one static residential caravan (double unit), as defined in Section 24(8) of the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 and one touring caravan, which shall not be used for habitation purposes, shall be stationed on the site at any one time.

Reason: To accord with the terms of the application and in the interests of the visual amenity in accordance with Policy ENV28, ENV33 and ENV34 of the Maidstone Borough Wide Local Plan 2000.

3. Within 2 months of the date of this decision a scheme of enhancement to include, reduced gate height, loss of iron railings and brick walls/piers from the access together with alternative access treatment to include landscaping. Additional landscaping to plug the gaps in the boundary hedgerow shall be submitted together with the revised access scheme to the Local Planning Authority. The revised scheme shall be submitted to the Council within the next 2 months for approval. The approved details shall be undertaken within the first planting and seeding season following the granting of this permission; and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation;

Reason: To ensure a satisfactory setting and external appearance to the development in accordance with policy ENV28, ENV33 and ENV34 of the Maidstone Borough-Wide Local Plan 2000.

4. No additional external lighting shall be erected on site at any time unless previously agreed in writing by the Local Planning Authority;

Reason: To safeguard the character and appearance of the area and to prevent light pollution in accordance with policies ENV28, ENV33 and ENV34 of the Maidstone Borough Wide Local Plan 2000.

5. No commercial activity or open storage shall take place on the site;

Reason: To ensure a satisfactory impact on the character and appearance of the surrounding area in accordance with policies ENV28, ENV33 and ENV34 of the Maidstone Borough-Wide Local Plan 2000.

Informatives set out below

The applicant is advised to contact the Local Planning Authority to discuss the requirements to meet condition 3 in order to ensure a satisfactory finish to the development.

Note to Applicant

In accordance with paragraphs 186 and 187 of the NPPF, Maidstone Borough Council (MBC) takes a positive and proactive approach to development proposals focused on solutions. MBC works with applicants/agents in a positive and proactive manner by:

Offering a pre-application advice and duty desk service.

Where possible, suggesting solutions to secure a successful outcome.

As appropriate, updating applicants/agents of any issues that may arise in the processing of their application.

In this instance:

The applicant/agent was advised of minor changes required to the application and these were agreed.

The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the committee and promote the application.

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.