

APPLICATION: MA/13/2014 Date: 14 November 2013 Received: 21 November 2013

APPLICANT: Mr Michael O'Brien

LOCATION: THE MEADOWS, LENHAM ROAD, HEADCORN, KENT

PARISH: Headcorn

PROPOSAL: Application for variation of condition 1 appended to planning permission MA/12/0760 to allow the occupation of the pitch by Michael O'Brien as shown on drawing no: J001520PL01.

AGENDA DATE: 12th June 2014

CASE OFFICER: Graham Parkinson

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

- It is contrary to views expressed by Ulcombe and Headcorn Parish Councils

POLICIES

- Maidstone Borough-Wide Local Plan 2000: ENV6, ENV28, ENV34, T13
- Draft Local Plan: SP5, GT1, DM26, DM30
- Government Policy: National Planning Policy Framework (2012), NPPG(2014) Planning Policy for Traveller Sites (2012)

1. RELEVANT HISTORY

MA/12/0760: Continued use of land as a residential gypsy site without complying with previously imposed conditions relating to restricted occupancy to Mr J Bignall Snr and his immediate family, and including the stationing of a mobile home; the retention of hardsurfacing and boundary fencing and proposed boundary fencing; the retention of a day room with conservatory addition; a separate storeroom building; and the retention of a new access created onto the Lenham Road. -APPROVED- Jan 10 2013

MA/08/0393 – Erection of a day room to serve existing Gypsy site (Resubmission of MA/07/2430) – APPROVED WITH CONDITIONS.

MA/07/2430 – Erection of a day room to serve existing Gypsy site – REFUSED.

MA/06/1181 – Variation of condition 1 and 2 of MA/00/1117 (Change of use of the land to allow the siting of a residential caravan for a gypsy family and the erection of a toilet block) to permit permanent occupation of the site with personal consent to Mr and Mrs John Bignall Snr – APPROVED WITH CONDITIONS.

MA/02/0834 – Erection of a permanent utility building – REFUSED – DISMISSED AT APPEAL.

MA/02/0324 – Variation of condition 3 of permission MA/00/1117, to allow a mobile home and a touring caravan to remain on the site all year – REFUSED – ALLOWED AT APPEAL.

MA/00/1117 – Change of use of the land to allow the siting of 1 No. residential caravan for a gypsy family and the erection of a toilet block – REFUSED – ALLOWED AT APPEAL.

MA/94/1012 – Retrospective application for change of use of land from agriculture to a mixed use comprising agriculture and the stationing of two caravans for occupation by a gypsy family between 1 October & 30 June each year – REFUSED – DISMISSED AT APPEAL.

MA/93/0765 – Use of land for the siting of (i) a residential caravan for the gypsy family (ii) water troughs and water tank together with the erection of a shed and electricity metre box and the laying of a hardstanding – REFUSED – DISMISSED AT APPEAL.

1. CONSULTATIONS

2.1 Ulcombe Parish Council: Objects on the following grounds:

- wishes to see the application refused because it believes that condition 1 should remain in place. The parish council notes that if condition 1 is removed, condition 2 is still in place.

2.2 Headcorn Parish Council: Wish to see refused as there is no identified need/or any identification that the applicant is of gypsy status as stipulated within the guidance on planning policy for traveller sites.

- 2.3 **Kent Highway Services:** No objection as the change in occupation will not result in any material change in traffic using the existing access.
- 2.4 **Environmental Health:** Cannot see any environmental health justification to support the application.

2. REPRESENTATIONS

- 2.1 Three properties were consulted. No representations were received.

4. CONSIDERATIONS

4.1 Site Description

- 4.1.1 The site is within the open countryside and is in an area designated as part of the Low Weald Special Landscape Area. It is located on the north west side of Lenham Road approximately 2.3km from the village of Headcorn.
- 4.1.2 The site is well enclosed by fencing on the site perimeters with the fencing fronting Lenham Road screened by a hedgerow. Currently on site there are two 'static' mobile homes one of which has a detached single garage abutting and two touring caravans. Much of the rest of the site is laid out as hardstanding.
- 4.1.3 In a wider context the area is mainly agricultural in nature though there is limited development in the surrounding area comprising a mix of other traveller sites and sporadic housing.

5.1 Proposal

- 5.2.1 Condition 1 appended to planning permission MA/12/0760 is as follows:

"The use hereby permitted shall be carried on, and the caravans occupied, only by Mr Gilbert Smith and/or Mrs Chevone Smith (and any resident dependents) and shall be for a limited period, being the period during which the premises are under control of Mr Gilbert Smith or Mrs Chevone Smith;

Reason: In order to meet the identified need of the applicant in accordance with guidance contained in Planning Policy for Traveller Sites."

- 5.2.2 The applicants, who now own the site, wish to vary the condition so that the site is no longer subject to an occupancy condition but ideally seek unfettered permission permanent occupation by any gypsy and traveller family. The following has been submitted in support of the application:

- There are currently 9 people living at the site. These are Mr Michael O'Brien and his wife Miriam O'Brien. There is his son in law John Burke, who is married to Mr O'Brien's daughter Bridget who is currently pregnant. There is also Mr O'Brien's son Michael (age 19) and daughters Kathleen(24), Eleanor (17), Candice (10) and Paris(6).

5.2.3 Both Candice and Parish attend Headcorn School while Mr O'Brien, his son Michael and son in law John Burke carry out general building and landscape works and buy and sell at car boot sales.

5.2.3 The family travel as a family group during the Summer period and which includes visiting relatives in Ireland.

5.2.4 Prior to purchasing the site from Mr Smith they moved around staying on transit sites or doubled up with relatives. Headcorn is now their permanent base.

5.2.5 Since moving onto the site they have tidied it up and landscaped the site frontage.

5.3 DISCUSSION:

5.3.1 The key issues in relation to this proposal are whether there have been any material change in circumstances to justify granting planning for use as a permanent gypsy and traveller site with no restrictions on occupancy.

5.4 Principle of Development

5.4.1 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.

5.4.2 A key consideration in assessment of this application is 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.

5.4.2 Though work on the emerging local plan is progressing as yet there are no adopted policies responding 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

- 5.4.3 Draft Policy GT1 of the Regulation 18 version of the Local Plan relates to the Borough need for gypsy and traveller pitches being addressed through the granting of permanent planning permissions and through the allocation of sites.
- 5.4.4 The timetable for the Local Plan's adoption is July 2015.
- 5.4.5 Issues of need are dealt with below but, in terms of general principles Government Guidance clearly allows gypsy sites to be located in the countryside as an exception to the general policy of restraint.

5.5 Gypsy Status

- 5.5.1 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".

- 5.5.2 The gypsy status of the applicants is not challenged, it being accepted that they comply with the definition of a gypsy as outlined in Government guidance in Planning Policy for traveller sites. As such the concerns raised by Headcorn Parish Council in this respect cannot be supported.

5.7 Need for Gypsy Sites

- 5.7.1 The PPTS gives guidance on how gypsy accommodation should be achieved, including the requirement to assess need.
- 5.7.2 As stated above, the projection accommodation requirements is as follows –

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

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

54 Permanent non-personal permissions

9 Permanent personal permissions

0 Temporary non-personal permissions

28 Temporary personal permissions

Therefore a net total of 63 permanent pitches have been granted since 1st October 2011. As such a shortfall of 42 pitches remains outstanding.

5.7.3 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.

5.8 Visual Impact

5.8.1 Government's Policy for Traveller Sites states that Local Planning Authorities should strictly limit new traveller development in open countryside (para 23). Furthermore where sites are in rural areas they should not dominate the nearest settled community or place undue pressure on local infrastructure.

5.8.3 The Inspector's decision in connection with application ref: MA/00/111 (change of use of the land to allow the siting of 1 No. residential caravan for a gypsy family and the erection of a toilet block) relating to the application site, concluded that the proposal would encroach into the countryside and add to the sporadic development pattern along Lenham Road stating that

"...my conclusion on this issue is that the proposal would be a form of encroachment in the countryside and it would not conserve the natural beauty of the landscape. In these ways it would harm the character and appearance of

the area, although the existing natural screening reduces the degree of harm and visual intrusion."

5.8.4 The impact on the character and appearance of the countryside identified above has not significantly altered since occupation by Mr Smith though there is now hedging screening the boundary fence and site from direct view from Lenham Road. Nevertheless the creation of a separate access to the site has increased its overall visual impact by making it more visible from Lenham Road.

5.9 Residential Amenity:

5.9.1 The nearest house, Fiddlers Green, is over 100 metres away. Given the generally well enclosed nature of the site and separation distance from the nearest dwelling, there is considered to be no material impact on residential amenity.

5.10 Highways:

5.10.1 Kent Highway Services are satisfied that the proposal will not result in an intensified use of the use of the access resulting in any material harm to the free flow of traffic and highway safety along Lenham Road. In the circumstances no objection is identified to the proposal on highway grounds.

5.11 Landscaping:

5.11.1 There is an existing native hedgerow along the frontage with Lenham Road which remains in good condition and which continues to provide good screening to the fence behind and site in general. Subject to a condition requiring this hedgerow to be maintained in good condition in perpetuity, the site is generally well screened from public view apart from views to it through the access.

5.12 Personal Circumstances:

5.12.1 Application ref: MA/00/1117 was allowed on appeal with the Inspector concluding that that the general need for gypsy sites should be given significant weight along with the personal circumstances of Mr Bignall and his family. In particular the stability that a lawful site provides in terms of the educational needs of the children and future healthcare requirements of the family resulted in the Inspector granting a temporary personal permission.

5.12.2 In determining application ref: MA/06/1181 the personal circumstances of Mr Bignall and family indicated above, including the fact that he was related to occupiers of other sites in the immediate vicinity, were sufficient to warrant granting a permanent consent though on a personal basis.

- 5.12.3 The planning permission granted under ref: MA/12/0760 accepted that the circumstances of Mr Smith and his family were similar to that of the Bignalls and a permanent personal consent was granted accordingly.
- 5.12.4 Turning to the personal circumstances of the current applicants there are two children attending a local school. The need to provide a stable educational background for children was given significant weight in connection with previous occupation of the site and is a matter which also applies to the current applicants. The applicants also advise of local business connections and that apart from trips away over the Summer, occupy the site on a permanent basis. Given these circumstances, it is considered that the applicants have demonstrated a sufficiently strong link with the area justifying their occupation of the site.

5.13 Unrestricted occupation:

- 5.9.1 The site has been occupied by gypsy and travellers on a permanent/personal basis for in excess of 10 years.
- 5.9.1 Condition 2 appended to planning permission MA/12/0760 required that once occupation ceased by the Smiths the site would be cleared and returned to its former condition. Prior to occupation by the current applicant this did not happen. The condition of the site continues to remain as before in a clean and tidy condition and occupied in the manner described.
- 5.9.2 It is normally the case that permanent unrestricted planning permission is only granted for gypsy and traveller sites where, amongst other things, they are well screened and located in a sustainable location. The reality however is that many gypsy and travellers site occupy isolated rural locations with access via narrow country roads. In this case the site has access onto a main route and is sited a relatively short distance to the north of Headcorn with its services. In relative terms this site is therefore comparatively sustainable and it is considered it would be difficult to withhold setting aside the personal condition solely on sustainability grounds.
- 5.9.3 The key issue is therefore whether over the years the visual impact of the site has improved such that it is no longer considered to have an adverse impact on the character and setting of the wider countryside such that it appropriate to now grant a permanent unfettered consent for occupation by gypsies and travellers.
- 5.9.4 In making a judgement on this it is important to deal with this application on its own merits and not to assess it in combination it with the visual impacts

attributed to other traveller sites located to the rear of this site and those set much further back from Lenham Road.

- 5.9.5 Where a site has unacceptable visual implications which are not capable of reasonable mitigation it is appropriate to only grant temporary consent until circumstances change enabling the harmful use to be removed with the site to reverting back to its former condition. However in the case of this site as long as each occupant makes a compelling case of need they can occupy the site on a permanent basis.
- 5.9.6 When setting aside the visual impact of the adjoining access entrance features and fencing serving the gypsy and travellers sites at the rear of this site, the main visual presence of the application site on the Lenham Road street scene is the fencing and gates to the access onto Lenham Road and views into the site when these gates are left open. Though there is screening on the site frontage the impact of the gates and fencing is not capable of mitigation. As such they are and continue to remain intrusive features in their own right and harmful to the Lenham Road street scene as a consequence. However the longer they remain in situ the more likely it is that may become to be viewed as an acknowledged and permanent presence in the street scene.
- 5.9.7 Nevertheless though the requirement is that occupants before leaving the site should clear it and leave it in a clean and tidy condition, in practice this has not happened. The demand for gypsy and traveller accommodation has meant that occupation has remained constant such that the physical impact of the site in its current condition has so far been permanent.
- 5.9.8 Given this, where the demand for gypsy and traveller accommodation continues to remain unmet, the question is whether there is any longer a planning justification requiring each change of occupant to apply for consent based on their own personal circumstances.
- 5.9.9 It is acknowledged that this site does have some visual impact that is not completely capable of being mitigated though the frontage screening materially reduces its visual impact.
- 5.9.10 Nevertheless given the only partial resolution of the identified visual harm, notwithstanding that there is an ongoing lack of alternative sites for gypsy and traveller accommodation which is still unlikely to be resolved for some time yet, that this is now a long established site with the current occupants having ties with the surrounding area and the sustainable location of the site just to the north of Headcorn with its range of local facilities, it is not considered that these represent sufficient arguments in favour of setting aside the occupancy

restriction given that the ultimate aim is to get the site cleared and returned to its former condition.

6. CONCLUSIONS

- 6.1 Given the applicants family and business connections within the area there is no objection to the change of occupant particularly taking into account the educational needs of the children and the weight given to this previously in connection with earlier decisions. However as there is only a partial resolution of the identified visual harm to the Lenham Road street scene and the surrounding area, it is not considered appropriate to recommend that the occupancy condition be set aside. As such it is considered that permanent/personal planning permission should be granted as before.

7. RECOMMENDATION

GRANT PLANNING PERMISSION subject to the following conditions:

1. The use hereby permitted shall be carried on, and the caravans occupied, only by Mr Michael O'Brien and Mrs Miriam O'Brien, John Burke and Bridget Burke (and any resident dependents) and shall be for a limited period, being the period during which the premises are under control of Mr Michael O'Brien and Mrs Miriam O'Brien, John Burke and Bridget Burke;

Reason: In order to meet the identified need of the applicant in accordance with guidance contained in Planning Policy for Traveller Sites.

2. The development hereby permitted shall be carried out in accordance with the following approved plans: as shown on drawing no: J001520PL01.

Reason: To ensure the quality of the development is maintained in the interests of amenity.

3. When the premises cease to be under the control of Mr Michael O'Brien and Mrs Miriam O'Brien, John Burke and Bridget Burke the use hereby permitted shall cease and any caravan and all materials and equipment brought on to the premises in connection with the use shall be removed, including any hardstanding or cesspool, and the land restored to its former condition prior to the commencement of the use;

Reason: To ensure a satisfactory impact on the character and appearance of the countryside and in order to meet the identified need of the applicant.

4. The screen planting on the on the Lenham Road frontage shall be allowed to grow up to a height of 3 metres and shall be retained no lower than 3 metres in height at

all times thereafter. Should any planting die or become dying, diseased or dangerous it shall be replaced with the same species within the first available planting season and maintained at all times thereafter in accordance with the provisions of this condition.

Reason: To screen the development in the interests of visual amenity.

5. No more than two static residential caravans as defined in Section 24(8) of the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 and two touring caravans, which shall not be used for habitation purposes, shall be stationed on the site at any one time. The caravans hereby permitted shall only be sited as shown on the approved drawings.

Reason: To accord with the terms of the application and in the interests of visual amenity.

6. Should any residential caravan that is on the site be removed at any time, it shall be replaced with a mobile home that accords with the definition as contained in Section 24(8) of the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968.

Reason: In order to conform with the use of the site as a gypsy and traveller site.

7. No commercial or business activities shall take place on the land, including the storage of vehicles or materials;

Reason: To prevent inappropriate development and safeguard the amenity, character and appearance of the countryside and nearby properties

8. No floodlighting or column lighting shall be installed and no more than one external light source shall be affixed to any mobile home.

Reason: To safeguard the night time rural environment in the interests of visual amenity.

9. The site shall only be occupied by gypsies and travellers as defined DCLG guidance 'Planning policy for Traveller Sites' published in March 2012 as set out in Annexe 1.

Reason: To reflect the special circumstances of the application.

Informatives set out below

It is the responsibility of the applicant to ensure , before the development hereby approved is commenced, that all necessary highway approvals and consents where

required are obtained and that the limits of highway boundary are clearly established in order to avoid any enforcement action being taken by the Highway Authority. The applicant must also ensure that the details shown on the approved plans agree in every aspect with those approved under such legislation and common law. It is therefore important for the applicant to contact KCC Highways and Transportation to progress this aspect of the works prior to commencement on site.

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