

APPLICATION: MA/08/1460 Date: 18 July 2008 Received: 2 June 2009

APPLICANT: Mr W Eastwood

LOCATION: LAND NORTH OF WILLOW END, MAIDSTONE ROAD, STAPLEHURST, KENT

PROPOSAL: Change of use of land from agriculture to residential for the stationing of 1no. mobile home and 1no. touring caravan including erection of utility building and associated works including hardstanding, fencing and positioning of septic tank as shown on unnumbered location plan, proposed site plan and plan view received on 22/7/08 as amended by ecological survey received on 2/6/09.

AGENDA DATE: 15th October 2009

CASE OFFICER: Peter Hockney

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

- it is contrary to views expressed by Staplehurst Parish Council

POLICIES

Maidstone Borough-Wide Local Plan 2000: ENV6, ENV28
South East Plan 2009: H4, NRM5, C4, BE6
Government Policy: PPS7, PPS9, Circular 01/2006

HISTORY

MA/07/0476 Change of use of land from agriculture to residential for the stationing of one mobile home and one touring caravan for a gypsy couple (resubmission of MA/06/1472) – Refused

MA/06/1472 Change of use of land from agriculture to residential for the stationing of one mobile home and one touring caravan for a gypsy couple – Withdrawn

MA/03/1823 Outline application for the erection of 1 single dwellinghouse - Refused - Dismissed at appeal

MA/91/0778 Section 64 determination for a field shelter – Refused

MA/90/1656 Hardstanding for the tending loading and unloading of livestock (cattle) and the siting of a shelter and feed store – Refused

MA/83/0138 Outline application for farm shop – Withdrawn

MA/82/2078 New dwelling – Withdrawn

CONSULTATIONS

Staplehurst Parish Council wishes to see the application REFUSED stating:-

“Councillors considered this application in detail and considered that it was very much a resubmission of a previously refused application and nothing had changed to alter the reasons for refusal. Councillors also questioned the validity, truth and relevance of nine statements made by the applicant’s agent. The access remained on a very fast bend in the road, sight lines for traffic were poor and local signs now warned that this area was a dangerous crash site. The land is within open rural countryside and the proposal would be detrimental to the biodiversity of the area where there are nesting and hunting barn owls and little owls which indicates a healthy small mammal population. There is a pond and stream close to the site where newts return to breed so there may also be great crested newts using the area during the autumn and winter months for hibernating. Any new landscaping should only be indigenous species. The neighbouring property of Willow End would be severely affected by the proposal and had twice been approached to sell to the applicant which would indicate that adequate funds could be available to purchase an existing dwelling rather than building in the countryside. The threat of appeal should not be a reason to accept this proposal. For these reasons Councillors recommended REFUSAL.”

After considering the ecological survey they state that they consider it to be invalid and to contain many inaccuracies as there are known to be barn owls in the vicinity and ponds nearby.

Natural England raise no objections to the proposed development and state:-

“The proposal site is situated 480 metres from the River Beult SSSI. The SSSI is currently in unfavourable condition partly due to pollution/nutrient enrichment from agricultural run-off and sewage treatment works. Natural England would therefore recommend that a sealed cess pool that does not discharge effluent should be used rather than a septic tank. A septic tank may result in the release of contaminated effluent, which could reach the SSSI and cause damage to its special interest. We advise that the Council should ensure prior to the grant of planning permission that a regularly-emptied and maintained sealed unit will be used for collecting foul sewage resulting from this development. This will ensure that there should be no damage to the special interest of the SSSI.”

They have considered the additional information contained within the ecological walkover study and raise no objections to the findings or the application.

Kent Wildlife Trust have not responded.

MBC Gypsy and Caravan Sites Officer raises no objections to the granting of permission stating that it is likely to be a considerable period of time before the provision of any additional pitches is made within the Borough via social housing provision. Conditions are recommended, however, many of these relate to the site licence and not planning conditions.

MBC Conservation Officer has no objections with regard to the setting of the Listed Buildings to the north on the opposite side of Staplehurst Road.

MBC Environmental Health Manager raises no objections to the proposed development.

REPRESENTATIONS

Cllr Eric Hotson wishes to object on the grounds of refusal given in the 2007 decision (set out in the 'Background' section below).

The Staplehurst Society have objected to the application on the following grounds:-
The site is outside the village envelope.
It would result in the loss of agricultural land.
It sets a precedent that would not be allowed if it were a conventionally built dwelling.

CPRE requests that the application not be determined until further consultations have been carried out with the local people and the Parish Council and an examination of alternative sites.

Twelve letters of objection have been received on the following grounds:-

- Harm to the character and appearance of the area.
- The site is located outside the village envelope.
- Concern regarding the establishment of a gypsy site.
- Concern regarding highway safety.
- Questioning the need of a utility building, which is a permanent structure.
- Impact on wildlife including barn owls that use the site.
- The statements made by the agent are incorrect.

SITE LOCATION AND DESCRIPTION

The site is located on the south-western side of Staplehurst Road at Cross at Hand, immediately to the north of the property known as 'Willow End', although the proposed mobile home would be approximately 50 metres from the residential property. Adjacent to 'Willow End' to the south is an existing car sales garage. On the north eastern side of Staplehurst Road, a minimum of approximately 23 metres from the

application site, are a number of residential properties, including a detached properties and a row of 14 terraced properties.

The site is rectangular in shape and approximately 0.14 hectares in area. The site forms part of a larger plot owned by the applicant and is currently used for grazing horses. The site is flat in nature and there are no trees contained within the site, although there is a relatively substantial hedgerow fronting Maidstone Road.

The site is not within a defined settlement and is therefore within the open countryside. The site is not subject to any specific landscape designations in the Local Plan.

PROPOSED DEVELOPMENT

The proposal relates to the change of use of the land to allow the stationing of a mobile home and a touring caravan for a gypsy couple Mr and Mrs Eastwood. The applicants are the same as the previous application MA/07/0476 where the gypsy status was accepted by the Council and I have no reason to conclude otherwise whilst assessing this application.

The application includes associated works including the laying of hardstanding, the erection of a utility building, fencing and the positioning of a septic tank.

The proposed utility building would be 4m by 5m and 4.4m to the ridge.

BACKGROUND

This application was due to be reported to Members on 2 April 2009. It was recommended that it be withdrawn from the agenda in order to request an ecological survey. A walkover ecological study has been undertaken, submitted and consulted upon, the results of this will be discussed within the report.

A similar application, MA/07/0476, was reported to planning committee on 28 June 2007 with an officer recommendation for approval. Members overturned the recommendation and refused the application on three grounds.

"1. The domestic and urbanising features, would appear intrusive in the landscape and would be detrimental to the character and appearance of the open countryside.

2. In the absence of an ecological survey for the protected species of reptiles, amphibians, bats and birds it has not been demonstrated that there would be no detrimental impact upon such wildlife.

3. The intensification of the use of the access associated with the proposed development, combined with the speed of traffic using this section of the A229 would result in an increased risk of accidents."

I consider that the above three issues and whether the applicant has overcome these are key in determining the current application.

Prior to this application there was an application, MA/03/1823, for a dwelling that was refused and dismissed at appeal. The reason for refusal related to unjustified residential development that would extend built development into the open countryside.

GYPSY STATUS AND CONSIDERATIONS

As the site lies within the open countryside policy ENV28 of the Local Plan is applicable. This policy seeks to restrict new development in the open countryside. However, it is accepted that gypsy and traveller sites are an exception to usual restraint in the countryside. Draft Policy H7 of the South East Regional Assembly seeks to deliver 1064 net additional residential pitches for Gypsies and Travellers in the period 2006-2016, 35 within Maidstone. This policy is in draft form and therefore does not have Development Plan weight but is a material consideration. In determining this application it is also necessary to have regard to the advice given in Circular 1/2006: *Planning for Gypsy and Traveller Caravan Sites*, which is given significant weight as a material consideration by Planning Inspectors when determining such appeals. There is no saved policy in the Maidstone Borough-Wide Local Plan (2000) that deals with the specific issue of gypsy and traveller accommodation.

Circular 1/2006 defines gypsies 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."

Information was submitted that states that the applicants are gypsies who have, in the past, led a nomadic life and have previously lived in the Maidstone area. The applicants stopped travelling whilst their children were being educated and, for the past 20 years, have lived in a caravan at their son's property in another borough. However, the applicants continued to travel to horse fairs during this period and are still engaged in the horse trade. The applicants wish to return to Maidstone to be close to family members in the area.

In view of the information submitted and the fact that the gypsy status of the applicants was not refuted under the previous applications I consider that gypsy status has been demonstrated in compliance with Circular 1/2006.

Planning Policy Statement 3: *Housing* makes specific reference to the need to accommodate Gypsies and Travellers. Circular 01/2006: *Planning for Gypsy and Traveller Caravan Sites* gives guidance on how this should be achieved, including the need to start the process with a clear assessment of needs through Gypsy and Traveller Accommodation Assessments.

The Gypsy and Traveller Accommodation Assessment (GTAA) was undertaken in 2005/06 and covers four local authority areas of Ashford, Maidstone, Tonbridge & Malling and Tunbridge Wells Authorities. Based on this assessment there is a need for some 32 new pitches in the Borough over the five year period which equates to 6.4 pitches/year. The extremely low turnover of pitches on the Council sites, which is confirmed by the Council's Gypsy and Caravan Sites Officer, increases the yearly requirement by 2 to 3 pitches, meaning a yearly requirement of 8 to 10.

Another way of assessing need is by analysing the number of unauthorised pitches. The best estimate of the number of unauthorised caravans at the January 2008 count was 41. The estimate of unauthorised caravans taken at the January 2009 count was 57. This level seems to suggest that the provision of pitches in the Borough is not keeping up with the demand.

The Council has not allocated any gypsy sites although work has begun on a DPD to allocate any gypsy sites, this is a requirement of Circular 01/2006 and.

From the above information it is clear that there is a significant need for gypsy sites within the Borough. This need and the absence of any allocations is given significant weight by Inspectors when determining appeals.

VISUAL IMPACT

The visual intrusiveness of the use of the site and the development formed the basis of one of the reasons for refusal imposed by Members on the previous application, MA/07/0476.

The guidance in Circular 01/2006 indicates that gypsy sites are normally inappropriate in areas of Green Belt. In nationally recognised designations (SSSIs, National Nature Reserves, National Parks, AONBs, Heritage Coasts, Scheduled Monuments, Conservation Areas, Registered Historic Battlefields and Registered Parks and Gardens) permission shall only be granted where it can be demonstrated that the objectives of the designation will not be compromised by the development. The guidance goes on to say "local landscape and local nature conservation designations should not be used in themselves to refuse planning permission for gypsy and traveller sites."

This site is not in any area of protection, either national or local. The guidance states in paragraph 54 states:-

“Sites on the outskirts of built-up areas may be appropriate. Sites may also be found in rural or semi-rural settings. Rural settings, where not subject to special planning constraints, are acceptable in principle. In assessing the suitability of such sites, local authorities should be realistic about the availability, or likely availability, of alternatives to the car in accessing local services. Sites should respect the scale of, and not dominate the nearest settled community. They should also avoid placing an undue pressure on the local infrastructure.”

The site is currently screened by a mature hedge on the eastern side adjacent to Staplehurst Road. This hedge would screen the majority of the development from views from Staplehurst Road.

The proposed site layout has limited the hardsurfaced area to a relatively small amount, approximately 38% of the site, to the northern part of the site. There is additional landscaping proposed at the northern and southern ends as well as the planting of a new hedgerow along the western and southern boundaries of the hard surfaced area. This additional planting would soften the proposed development and assist with its integration into the landscape. This is a significant difference from the previous refused application.

The layout of the site keeps the development to the north western portion of the site and therefore away from the views through the access. This would ensure that the development would not appear dominating in the landscape and would not result in harm to the character of the area.

There are two footpaths located to the north west of the application site, these are KM289 and KM266. The proposed landscaping would assist in screening the proposed development from views along this footpath in order to ensure that it would not appear visually dominant.

The principle of a gypsy site in the countryside is acceptable and complies with the guidance within Circular 01/2006. I consider that the proposed landscaping would be sufficient to provide an acceptable level of screening for the development. The existing screening can be strengthened with the upgrading of the boundary hedge fronting Maidstone Road to further assist this aim. It is important to remember that gypsy sites do not have to be screened so that they are hidden from view completely.

Objectors have raised the issue of the Inspectors decision for a single dwelling on the site considered under application MA/03/1823, which was refused on the following ground:-

“The proposed development would constitute unjustified residential development, which would extend the area of built development into the open countryside, contrary to policy ENV28 of the Maidstone Borough-Wide Local

Plan 2000, policies ENV1 and RS5 of the Kent Structure Plan 1996 and the advice contained in PPG7: 'The Countryside - Environmental Quality and Social and Economic Development'."

The fundamental difference is that the principle of a new residential dwelling in the countryside is unacceptable whereas the principle of a gypsy site is acceptable.

I do not consider that the proposed development would result in significant demonstrable harm in visual terms that would justify a reason for refusal. The layout of the site and the proposed additional landscaping is sufficient to overcome the previous reason for refusal.

ECOLOGY

The lack of an ecological survey formed the basis of the second reason for refusal imposed by Members on MA/07/0476.

An ecological walkover survey has been submitted as part of this application. The walkover results indicate that the area has a low ecological value due to its short grassland nature offering little shelter or habitat. The study acknowledges that there might be foraging bats using the site but that the development proposed would have a limited impact on this behaviour. The study comments that the proposed development is in an area that is:-

"already noisy with passing traffic and has obvious housing. The proposed land use change will be less intrusive visually with no added loud noise. The disturbance to existing wildlife will be minimal."

Consultation was carried out with Natural England who commented in relation to the submitted ecological survey and the nearby River Beult SSSI and they raised no objections to the application in terms of impact on wildlife and no additional ecological surveys were requested as part of their response.

I note the comments from Staplehurst Parish Council and residents regarding ecological issues and barn owls. However, there are no features on the site that would have potential for barn owl roosts and whilst the site may be used for foraging the similar impact as bats is considered likely in that there would be low ecological impact from the development.

I consider that the submitted ecological walkover survey and the response from Natural England means that a reason for refusal based on ecological grounds could be sustained.

HIGHWAY SAFETY CONSIDERATIONS

On application MA/07/0476 members used a highway safety reason for refusal. The access to be used for the development is an existing access and given that the site has a lawful agricultural use, traffic associated with that use could be expected.

There are horses being grazed at the site currently and I do not consider there to be a significantly greater hazard from a more residential form of traffic than an agricultural form of traffic, which could include tractors and horse boxes.

The issue of highway safety was addressed by the Inspector in the 2004 appeal decision and the Inspector concluded that the matter of visibility could be addressed through the imposition of a condition in relation to sight lines, which are within the applicant's ownership. The Highway Officer from Kent Highway Services raises no objection on highway safety grounds and does not require the submission of visibility splays due to the adequacy of the visibility at the access.

I have studied the KCC crash record for the area, which indicates a total of 6 crashes from 2005. Five of the crashes are categorised as slight and one crash is categorised as serious. There have been no fatal crashes in the area. Of the crashes only 1 crash involved more than one car, with the majority being vehicles that have lost control.

The crash record, the visibility splays, the fact that the entrance is an existing access and the response from Kent Highway Services raising no objections on highway safety grounds leads me to conclude that the refusal of permission on highway safety grounds could be sustained at an appeal.

SUSTAINABILITY

The application site is approximately 2.0km from the village boundary of Staplehurst. Therefore it is not considered that the site is in a remote location. Furthermore, there is a bus stop located outside the site offering another form of readily available transport as an alternative to the private car. The bus route runs from Maidstone through Staplehurst, Cranbrook and Hawkhurst before terminating at Sandhurst and runs hourly.

By the nature of their often rural location gypsy sites are rarely located in urban locations which have good access to local amenities and services. A more pragmatic approach needs to be taken when assessing the sustainability of such sites and this site with a regular bus service to Maidstone and the villages to the south would provide a sustainable site.

I consider that given the location of this site in relation to Staplehurst and the close proximity of the bus stop that a reason for refusal in sustainability grounds could not

be sustained. This view corresponds with Members view on the previous application MA/07/0476.

OTHER CONSIDERATIONS

In terms of loss of agricultural land, the highest quality agricultural land is Grade 1. In terms of this site, part of the site is classified as Grade 2 agricultural land whilst the remainder is Grade 3. In view of the small amount of land involved I do not consider that the proposal would result in a significant loss of the best or most versatile agricultural land.

The issue of the number of gypsy sites in the nearby area has been raised. However, there are none in the immediate vicinity and Circular 01/2006 does not raise the issue of concentration. Policy H36 of the Maidstone Borough-Wide Local Plan (2000) that dealt with the issue of gypsy accommodation was not saved, this policy did cover the issue of concentration.

The proposed utility building is not an unusual requirement for a gypsy site. The proposed building is a small building in the context of the site. A condition is proposed to ensure that this building is removed in the event of the use ceasing.

Many residents have raised objections relating to the accuracy of the comments submitted by the applicant's agent. The Council has no control over documents submitted in support of a planning application, however, this application has been assessed in accordance with the relevant policies and Government guidance.

CONCLUSION

The principle of a gypsy site in the countryside is acceptable in terms of national and local policies. The proposed development would not be prominent in the countryside and would not result in harm to the character and appearance of the area. There have been no objections raised from Natural England with regard to impact on wildlife and the proposed hedgerow planting would increase available habitat. There have been no objections received from the Highways Engineer of Kent Highway Services in relation to highway safety.

Overall I consider that this is an acceptable site for gypsy accommodation. Furthermore, the need for gypsy sites remains high and this is a strong material consideration.

RECOMMENDATION

GRANT PLANNING PERMISSION subject to the following conditions:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission;

Reason: In accordance with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. The site shall not be permanently occupied by any persons other than gypsies and travellers as defined in paragraph 15 of ODPM Circular 01/2006;

Reason: To ensure inappropriate residential development in the countryside does not occur in accordance with policies ENV28 of the Maidstone Borough-Wide Local Plan (2000) and C4 of the South East Plan (2009).

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

Reason: To safeguard the character and appearance of the countryside in accordance with policies ENV28 of the Maidstone Borough-Wide Local Plan (2000) and C4 of the South East Plan (2009).

4. No commercial activities shall take place on the land, including the storing of vehicles;

Reason: To prevent inappropriate development and safeguard the character and appearance of the countryside in accordance with policies ENV28 of the Maidstone Borough-Wide Local Plan (2000) and C4 of the South East Plan (2009).

5. Prior to the commencement of development details of a sealed unit for collecting foul sewage and method of regular emptying and maintenance shall be submitted to

and approved in writing by the Local Planning Authority and the development shall be carried out in accordance with the approved details and maintained thereafter;

Reason: To ensure no damage to the special interest of the SSSI occurs in accordance with policy NRM5 of the South East Plan (2009).

6. Prior to the commencement of the development, written details and samples of the materials to be used in the construction of the external surfaces of the utility building and the finish to the hardstanding hereby permitted shall be submitted to and approved in writing by the Local Planning Authority and the development shall be constructed using the approved materials;

Reason: To ensure a satisfactory appearance to the development in accordance with policies ENV28 of the Maidstone Borough-Wide Local Plan (2000) and C4 of the South East Plan (2009).

7. No development shall take place until there has been submitted to and approved in writing by the Local Planning Authority a scheme of landscaping including a new hedgerow along the western boundary of the site planting to screen the development from the north and the enhancement of the hedgerow along the boundary with Staplehurst Road, using indigenous species which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development and a programme for the approved scheme's implementation and long term management. The scheme shall be designed using the principles established in the Council's adopted Landscape Character Assessment and Landscape Guidelines;

Reason: No such details have been submitted and to safeguard the character and appearance of the countryside in accordance with policies ENV28 of the Maidstone Borough-Wide Local Plan (2000) and C4 of the South East Plan (2009).

8. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the building(s) or the completion of the development, whichever is the sooner; 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 safeguard the character and appearance of the countryside in accordance with policies ENV28 of the Maidstone Borough-Wide Local Plan (2000)

and C4 of the South East Plan (2009).

9. If the use hereby permitted ceases all caravans, structure, equipment and materials brought onto the land for the purposes including the hardstanding and utility room of such use shall be removed;

Reason: To safeguard the character and appearance of the countryside in accordance with policies ENV28 of the Maidstone Borough-Wide Local Plan (2000) and C4 of the South East Plan (2009).

Informatives set out below

Attention is drawn to Sections 60 and 61 of the Control of Pollution Act 1974 and to the Associated British Standard Code of practice BS5228:1997 for noise control on construction sites. Statutory requirements are laid down for control of noise during works of construction and demolition and you are advised to contact the Environmental Health Manager regarding noise control requirements.

Clearance and subsequent burning of existing woodland or rubbish must be carried out without nuisance from smoke, etc. to nearby residential properties. Advice on minimising any potential nuisance is available from the Environmental Health Manager.

Plant and machinery used for demolition and construction shall only be operated within the application site between 0800 hours and 1900 hours on Mondays to Fridays and between 0800 hours and 1300 hours on Saturdays and at no time on Sunday and Bank Holidays.

No vehicles may arrive, depart, be loaded or unloaded within the general site except between the hours of 0800 and 1900 Mondays to Fridays and 0800 and 1300 hours on Saturdays and at no time on Sundays or Bank Holidays.

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