

REPORT SUMMARY

REFERENCE NO - 14/501193/FULL		
APPLICATION PROPOSAL Retrospective application to vary condition 1 to MA/12/1123 to allow an additional mobile home to be stationed on the site (a maximum of 3 caravans to be situated on the land at any one time)		
ADDRESS Oak Lodge Tilden Lane Marden Kent TN12 9AX		
RECOMMENDATION APPROVE SUBJECT TO CONDITIONS		
SUMMARY OF REASONS FOR RECOMMENDATION The site has previously been assessed and found to be well screened and acceptable for the stationing of caravans for residential use by persons of Gypsy status in terms of its impact on the character of the rural area. There are already a number of longstanding plots in this location and a total of two mobile homes on the application site - an additional mobile on the site does not cause any significant harm in respect of visual impact, or any other material planning consideration.		
REASON FOR REFERRAL TO COMMITTEE The recommendation is contrary to the views of Marden Parish Council, who have requested that the application be recommended to Planning Committee.		
WARD Marden	PARISH/TOWN Marden	COUNCIL
		APPLICANT Mr Michael Burke AGENT
DECISION DUE DATE 12/09/14	PUBLICITY EXPIRY DATE 12/09/14	OFFICER SITE VISIT DATE Various
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):		

- MA/12/1123 Change of use of land to residential use for the stationing of 2no. mobile homes for occupation by gypsies (resubmission of MA/11/0182) – APPROVED SUBJECT TO CONDITIONS
- MA/11/0182 Change of use of land to residential use for the stationing of 2no. mobile homes for occupation by Gypsies – WITHDRAWN

MAIN REPORT

1.0 DESCRIPTION OF SITE AND PROPOSAL

1.01 The proposal site is located to the north west of the junction between Tilden Lane and Underlyn Lane in open countryside with no specific environmental designations in the parish of Marden. The site is located adjacent to the north west boundary of 1 Oak Lodge, a long established Gypsy site allocated in the emerging Local Plan for use by persons of Gypsy status for residential purposes comprising two plots (effectively regularisation of the existing situation) under the scope of policy GT1 (1). To the south of 1 Oak Lodge further Gypsy pitches are located which again, have been in place for a period of decades. To the east of the site on the opposite side of Tilden Lane is Foundation Farm, a livery and stud.

Agricultural land is located to the north and west of the site, and there are a number of ponds known to provide habitat for Great Crested Newts to the south of the site. The site has an existing vehicular access on the outside of a 90 degree bend to Tilden Lane, an unclassified public highway.

1.02 The site is approximately level, and mainly laid to lawn or hard surfacing as shown on the plan attached as Appendix A.

1.03 Planning permission for the change of use of the site for residential occupation by persons of Gypsy status, including the stationing of two caravans and the laying out of hard surfacing, has previously been granted under the scope of MA/12/1123.

1.04 The current application is retrospective, and seeks consent for the stationing of an additional mobile home in the north west of the site and associated hard surfacing and fencing to facilitate the use as shown on the plan attached as Appendix A. The external and internal boundaries of the site are mainly demarcated by close boarded fences, including the north west boundary of the site, however a robust native hedge to the north east boundary has been retained. The access and boundaries of the site remain unchanged. The application has been submitted in response to an enforcement investigation into the stationing of three caravans on the land, exceeding the scope of the previous consent on the land.

2.0 POLICY AND OTHER CONSIDERATIONS

The National Planning Policy Framework 2012 (NPPF)
Planning Policy for Gypsy Sites 2012 (PPGS)
National Planning Practice Guidance 2014 (NPPG)
Maidstone Borough-Wide Local Plan 2000: ENV6, ENV28, ENV49
Emerging Local Plan: SP5, DM6, DM10, DM26, DM30

3.0 LOCAL REPRESENTATIONS

3.01 A site notice was displayed at the site on 28th August 2014.

3.02 Four representations were received, all of which raised objection to the proposal. The following concerns were raised:

- Concern that further additional caravans can be secured by way of subsequent planning permissions, and level of Gypsy development along Tilden and Stilebridge Lanes.
- Highway matters including additional traffic, speed of vehicles on the highway, and conflict between cars and horses/pedestrians on Tilden Lane.
- Harm to residential amenity by way of disturbance from the use of the site.
- Impact on the commercial activities of Foundation Farm (by way of conflict between cars and horses/pedestrians on Tilden Lane).
- Blight and impact on property values.

4.0 CONSULTATIONS

4.01 **Marden Parish Council** raise objection to the application on the grounds of insufficient evidence of the Gypsy status of the applicants and requested that the application be reported to Planning Committee in the event of a recommendation for approval.

4.02 **Environment Agency** raise no objection to the application subject to informatives, making the following detailed comments:

"We advise that the site is classified as a Flood Zone 2 which is associated with a medium probability of flooding and that the applicant should be aware that although the site is situated some distance from the River Lesser Teise, which is the main source of flooding in the area, there are also some drainage ditches close by which may cause flooding during an extreme event."

4.03 **Kent County Council Biodiversity Officer** raises concern that the application is retrospective, but raises no objection to the proposal subject to the imposition of conditions requiring biodiversity enhancements to the site, making the following detailed comments:

"The GCN survey submitted as part of planning application MA/11/0182 confirms that GCN were present within the pond adjacent to the site as such it is very disappointing that the works were carried out without seeking advice from an ecologist."

The submitted site plan indicates that a small area of overgrown vegetation needed to be removed to enable the third mobile home to be located on the site. GCN are found within terrestrial habitat for the majority of the year and as such it is possible that GCN were present within the overgrown vegetation and the clearance may have result in individuals being killed or injured.

If we had commented on the condition variation before the work had been carried out we would have requested additional information to be provided by the applicant's ecologist detailing how the vegetation will be cleared to ensure that the works will not result in GCN being killed or injured.

We recommend that to compensate for the loss of potential GCN habitat the site is enhanced for GCN. Suggestions to enhance the site for GCN include:

- Creating an area of rough grassland within the site*
- Enhancing existing rough grassland/areas of vegetation by creating log/rubble piles*
- Increasing the number of hedges within the site"*

5.0 APPRAISAL

Principle of Development

5.01 In terms of policy, there are no saved Local Plan policies relating to this specific form of development, however policy ENV28 of the Maidstone Borough-Wide Local Plan 2000 relates to development in the countryside in general, 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".

5.02 The policy outlines the types of development which are acceptable in the open countryside, this does not include Gypsy development; this was formerly dealt with under the scope of housing policy H36, however this is not a saved policy in the Maidstone Borough-Wide Local Plan 2000.

5.03 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. This policy guidance effectively supersedes the policy of restraint set out in policy ENV28 in respect of Gypsy accommodation. Although work on the emerging Local Plan is progressing; however there are, as yet, no adopted Local Plan policies relating to the provision of Gypsy and Traveller sites.

5.04 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
April 2026 – March 2031	30 pitches
Total Oct 2011 – March 2026	187 pitches

5.05 These figures were agreed by Cabinet on the 13th March 2013 as the pitch target included in the consultation version of the emerging Local Plan, which states that Gypsy and Traveller and Travelling Showpeople Accommodation Assessment (GTTSA) revealed the need for 187 permanent Gypsy and Traveller pitches to be provided in the Borough during the period October 2011 and March 2031, as set out above.

5.06 Accommodation for Gypsies and Travellers is a specific type of housing that Council's have a duty to provide for under the Housing Act (2004). Draft Policy DM26 of the Regulation 18 version of the Draft Local Plan accepts that this type of accommodation can be provided in the countryside provided that certain criteria are met, as set out in the policy wording. This is in accord with central government planning policy as set out in the PGTS. The emerging Local Plan also confirms that the Borough's need for gypsy and traveller pitches will be addressed through the granting of permanent planning permissions and through the allocation of sites. The timetable for adoption is currently for the latter half of 2016.

5.07 Issues of need are dealt with below but, in terms of broad principles, emerging development plan policy and central government guidance clearly allow for gypsy sites to be located in the countryside as an exception to the general theme of restraint set out in policy ENV28. In the case of this specific site, the principle has already been established as a permanent non-personal use for persons of Gypsy status by way of the previous consent, and therefore the principle of the development, subject to assessment of all other material considerations, is acceptable in the current national and local policy context.

Need

5.08 As outlined above, the accommodation need was agreed by Cabinet on 13th March 2013 to be 187 pitches for the emerging Local Plan period to 2031.

5.09 The current figures for pitches granted (net) since October 2011 is now as follows:

59 Permanent non-personal permissions
15 Permanent personal permissions
0 Temporary non-personal permissions
33 Temporary personal permissions

5.10 Therefore a net total of 74 permanent pitches have been granted since 1st October 2011. 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.

Gypsy status

5.11 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.”

5.12 The application seeks an unrestricted use of the land for persons of Gypsy status, that is to say, not restricted to one named party or the other specifically. Given the matter of the existing permission on the land and that the principle of the use of the land for residential stationing of caravans for occupation by persons of Gypsy or traveller status has previously been fully considered and found to be acceptable in this location, I do not consider there justification to restrict the occupation of the site further than to persons of Gypsy status. In light of this, and the lack of reliance upon personal circumstances to support an approval for a use which would otherwise be unacceptable on environmental or other grounds, it would be unreasonable to impose a personal or temporary consent in the circumstances of this case.

5.13 Notwithstanding this, the applicants are known to be of Gypsy status and are related to other Gypsy families in the local area. As such, I am satisfied that the consent is sought in respect of genuine additional Gypsies or travellers, and that an appropriately worded condition is adequate to safeguard the occupation of the site in order to secure the provision of the residential use towards the recognised need for accommodation for Gypsies and travellers, in line with national and emerging planning policy.

Visual Impact, Landscaping and Biodiversity

5.14 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, 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 in the document, however, this is addressed in the National Planning Policy Framework and clearly under Maidstone Borough-Wide Local Plan policy ENV28.

5.15 In this case, the proposal is for the intensification of an existing use; the site was, prior to the development for which planning permission is now sought, in use for the stationing of caravans for residential occupation by persons of Gypsy status. The intensification for which consent is sought amounts to the introduction of an additional caravan, taking the number of units on the land from two to three, and associated hard surfacing and fencing, entirely within the existing site boundaries. As such, the visual impact of the development is limited in the context of the existing development on the site.

5.16 As a permanent permission is sought for the use, it is reasonable to impose a condition requiring the submission of landscaping and the implementation of the approved details, and, given the failure to comply with the relevant conditions relating to the previous

consent, necessary. The landscaping should be required to include the retention and reinforcement of existing native hedging to the north and east site boundaries, and additional planting to the south, north and west site boundaries and along fence lines within the site.

5.17 As set out in the comments of the Kent County Council Biodiversity Officer, it is regrettable that the works took place without prior assessment of the ecological impact, particularly as this could potentially have resulted in harm to members of protected species. However, a Great Crested Newt survey had been undertaken in relation to the previous consent, and its recommendations have been implemented. Given that the area on which the hard surfacing and caravan are now located was formerly well maintained lawn ancillary to the original two caravans, it is likely that the site would have limited biodiversity value. Notwithstanding this, the comments of the Biodiversity Officer are noted, and the suggested biodiversity enhancements are considered to be reasonable and appropriate in the circumstances of this case. A condition requiring adherence with the recommendations of the Ecology Phase I Survey and Flag Ecology Great Crested Newt Survey submitted and endorsed under the scope of MA/12/1123 is also considered appropriate in this case to carry forward the approved recommendations for mitigation of long term impact upon biodiversity.

5.18 Subject to the landscape, landscape implementation and biodiversity conditions set out above, it is considered that the visual impact of the development and that on landscape and ecology are acceptable.

Residential Amenity

5.19 Concerns have been raised in regard to the potential for detriment to the residential amenity of the occupiers of neighbouring properties. The application seeks planning permission for a residential use comprising the stationing of a single additional mobile home on the land. It is not considered that the intensification of the existing residential use of the site would give rise to conditions likely to cause conflict with neighbouring residential uses, and it would not be reasonable to refuse to grant planning permission on this basis. I am aware that concerns have been expressed that unauthorised commercial uses may subsequently be established on the land. Planning permission would be required for any material change of use from a residential use to a mixed use, however for the avoidance of doubt I propose a condition explicitly precluding any commercial activity (including storage and livery) from taking place on the site.

Highways

5.20 The development utilises an existing access which is considered to be of adequate safety in terms of visibility splays and width, and adequate on site parking is provided for the scale of the intensification of the use. It is not considered that the intensification of the existing residential use by a single caravan would be likely to give rise to significant additional vehicle movements in the context of the pitches already using the site access and that of the adjacent property, Oak Lodge.

5.21 Objections have been received which raise concern over the speed at which vehicles enter and exit the site, and conflict at times between vehicle drivers and horse riders and pedestrians, this is not a function of the number of vehicles on the site, or the safety of the access per se; any concerns in this regard, and that more generally of the speed limit on Tilden Lane in general which is national speed limit, should be addressed to the appropriate authority (Kent Police and Kent County Council).

5.22 For these reasons it is not considered that there is any objection to the proposal on highway grounds.

Other Matters

5.23 The site is located in an area recorded by the Environment Agency as being in a Zone 2 area in terms of flood risk, however they have raised no objection to the proposal, and as such there is no objection to the proposal on the grounds of flood risk.

5.24 I note that concerns have been raised over the number of Gypsy developments in the close vicinity of the site; although there are other Gypsy pitches in the immediate vicinity of the site (on the sites known collectively as "Oak Lodge"), it is considered that the scale of the proposed increase is such that it would not "tip the balance" in terms of dominating the settled community in this locality or pressure on infrastructure, and the limited visual impact of the intensification of the use of the site (as set out above) are such that the cumulative impact of the development is acceptable. Other sites referred to in representations (such as the public Stilebridge Lane site and unauthorised Eight acres site on Tilden Lane) are located at a distance from the application site such that they are not considered to contribute in any meaningful way to a cumulative impact on the immediate locality of the site.

5.25 Members will be aware that impact on property values is not a planning consideration, and furthermore that restrictions cannot be placed upon parties making repeat applications on land in order to change the character of its use or the extent of built development on land. Whilst it is regrettable that the application is retrospective, this represents a legitimate mechanism by which to regularise the current breach of planning control on the land.

10.0 CONCLUSION

10.01 The application site is located within the open countryside, however central government planning policy and emerging Local Plan policy allow that Gypsy sites can be acceptable in such locations. The site has previously been considered to be acceptable for such use under the assessment of MA/12/1123.

10.02 The intensification of the existing use is considered to be acceptable in terms of visual impact and overall impact on the character and appearance of the open countryside, as well as in regard to matters such as biodiversity, residential amenity, highway safety, flood risk and cumulative impact.

10.03 There are no other planning considerations which warrant refusal of the application, and for the reasons set out above, I therefore recommend a permanent non-personal permission for the stationing of three caravans for purposes of residential occupation by persons of Gypsy status subject to the following conditions.

11.0 RECOMMENDATION – GRANT Subject to the following conditions/REFUSE for the following reasons:

CONDITIONS to include

(1) No more than three caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 shall be stationed on the site at any time;

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

(2) This permission does not authorise the use of the land as a caravan site by any other persons other than Gypsies, as defined in Annex 1 of the Planning Policy for Traveller Sites 2012;

Reason: The site is in an area where the stationing of caravans/mobile homes is not normally permitted.

(3) No external lighting shall be erected on the 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.

(4) The development hereby permitted shall be maintained in strict accordance with the drawing attached to this decision in respect of the location and extent of operational development (fences and hard surfacing);

Reason: To ensure a satisfactory appearance to the development and in the interests of the visual amenity.

(5) Within 2 months of the date of this decision a scheme of landscaping, using indigenous species which shall include indications of all existing trees, hedgerows and boundary planted areas on the land, and details of any to be retained, and a programme for the approved scheme's implementation to include the planting of the boundary landscaping in the first planting season following commencement of the development and the scheme's long term management, shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be designed using the principles established in the Council's adopted Landscape Character Assessment 2012 and Landscape Character Assessment Supplement 2012.

The scheme shall include, inter alia, the retention and reinforcement of the existing hedgerow to the north and east site boundaries, additional hedging along the exterior of the south and west site boundaries and in the interior of the site along existing fence lines, an additional area of rough grassland within the site, and log/rubble piles on existing and proposed areas of rough grassland.

Reason: To ensure a satisfactory setting and external appearance to the development, secure the character and appearance of the open countryside, and safeguard biodiversity assets.

(6) 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 approval of the landscaping scheme required by condition 5, 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, secure the character and appearance of the open countryside, and safeguard biodiversity assets.

(7) The recommendations of the Swift Ecology Phase I Survey dated 3rd June 2011 and Flag Ecology Great Crested Newt Survey dated 3rd June 2012 shall be strictly adhered to;

Reason: To safeguard biodiversity assets.

(8) Within 2 months of the date of this decision full details of the means of foul drainage treatment and waste disposal shall be submitted to the Local Planning Authority for

assessment. The submitted details should include the size of individual cess pits and/or septic tanks and/or other treatment systems, the precise location of plant on the site plus any other relevant information such as where each system will discharge to. The approved details will be implemented in full within 2 months of the approval of the details, and shall be maintained thereafter;

Reason: to prevent pollution of the environment.

(9) No commercial or business activities shall take place on the land, including the storage of vehicles or materials and livery use, without the prior agreement of the Local Planning Authority;

To prevent inappropriate development and safeguard the amenity, character and appearance of the countryside.

INFORMATIVES

(1) The applicant is advised that it will be necessary to make an application for a Caravan Site Licence under the Caravan Sites and the Control of Development Act 1960 within 21 days of planning consent having been granted. Failure to do so could result in action by the Council under the Act as caravan sites cannot operate without a licence.

Case Officer: Catherine Slade

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.
The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.