

REPORT SUMMARY

REFERENCE NO: - 23/502481/FULL		
APPLICATION PROPOSAL: Section 73 - Application for variation of condition 3 (to allow stationing of an additional static caravan/mobile home at the site) pursuant to 19/500583/FULL for - Part retrospective and part proposed application for the material change of use of land to allow the stationing of two residential caravans and the storage of one touring caravan for use by a traveller family unit together with associated access, parking facilities, hardstandings, cesspit and landscaping (retrospective elements being the use of land for siting two residential caravans, the installation of an access and cesspit with proposed elements being revised siting of mobile homes and provision of new associated hard-standings and reduced access and parking areas).		
ADDRESS: Broken Tree, Forstal Lane Coxheath Kent ME17 4QF		
RECOMMENDATION: GRANT PLANNING PERMISSION subject to conditions		
SUMMARY OF REASONS FOR RECOMMENDATION: The proposal will comply with provisions of policy DM15 (Gypsy, Traveller and Travelling Show People Accommodation) which permits new Gypsy and Traveller and Travelling Showpeople Accommodation in the countryside where it would not result in significant harm to the landscape and rural character of the area. The development will comply with policy SP17 and DM30 of the Adopted Local Plan (2017). The proposals are acceptable in terms of maintaining the living conditions of neighbouring occupiers and providing adequate amenities for future occupiers of the proposed dwelling. There are no overriding highway safety challenges that would indicate a refusal of planning permission. The proposals would have the benefit of providing an additional pitch on an approved gypsy traveller site at a time when the borough council cannot demonstrate 5-year supply of deliverable traveller sites.		
REASON FOR REFERRAL TO COMMITTEE: Call in from Coxheath Parish Council for the reasons set out in section 4 of this report.		
WARD: Coxheath And Hunton	PARISH COUNCIL: Coxheath	APPLICANT: Mr & Mrs D Hilden AGENT: Kevin Wise Town Planning
CASE OFFICER: Francis Amekor	VALIDATION DATE: 02/06/23	DECISION DUE DATE: 25/11/23
ADVERTISED AS A DEPARTURE: No		

Relevant planning history

17/504398/FULL Change of use of land for permanent stationing of a gypsy caravan for residential purposes and storage of a further touring caravan with the creation of new access off Forstal Lane and driveway. Refused 07.11.2017.

19/500583/FULL Part retrospective and part proposed application for the material change of use of land to allow the stationing of two residential caravans and the storage of one touring caravan for use by a traveller family unit together with associated access, parking facilities, hardstandings, cesspit and landscaping (retrospective elements being the use of land for siting two residential caravans, the installation of an access and cesspit with proposed elements being revised siting of mobile homes and provision of new associated hard-standings and reduced access and parking areas). Refused 05.04.2019. Appeal Allowed.

20/501758/SUB Submission of Details to Discharge Condition 5 (28) Site development scheme and Condition 6 (29) Landscaping subject to 19/500583/FULL APP/U2235/W/19/3236142). Approved 16.06.2020.

21/504830/FULL Construction of timber storage shed to accommodate domestic and garden items and household laundry equipment. Approved 10.11.2021.

MAIN REPORT

1. DESCRIPTION OF SITE

- 1.01 The application site is in the countryside and relates to an established gypsy traveller site on the north side of Forstal Lane. On the opposite (south) side of Forstal Lane residential properties of suburban character are in the Local Plan designated larger village of Coxheath. The site is in the Loose Valley Landscape of Local Value.
- 1.02 Apart from the gated entrance, mature boundary hedges screen the application site from Forstal Lane with mature boundary hedges also screening the site from surrounding countryside. Fruit orchards adjacent to the application site are also screened from the road by mature boundary hedges along the northern edge of Forstal Lane.
- 1.03 The application site currently contains two mobile homes, a touring caravan and a tractor shed arranged around an area of hardstanding. There are other gypsy traveller sites in the wider area.

2. PROPOSAL

- 2.01 The appeal decision dated 6 April 2020 granted planning permission (overturning MBC refusal of 19/500583/FULL) for two static caravans and the storage of one touring caravan. The appeal decision restricted the number of caravans to the number requested by the application (total of 3 caravans of which 2 could be statics) and restricted the location of the caravans on the site to that shown on the submitted plans.
- 2.02 The current application involves increasing the total on site from 3 to 5 caravans with one additional pitch consisting of one static and one touring caravan. The total of 5 caravans would consist of 3 statics and two touring caravans.
- 2.03 The proposed additional static would be positioned close to the western site boundary between the existing tractor shed and mobile home no.2. The position of the touring caravan would follow the alignment of existing approved mobile homes at the site. The submission indicates the additional mobile home would provide accommodation for an adult son of the current occupiers of the existing mobile homes.

The National Planning Policy Framework -NPPF (2023)

Section 2 – Achieving Sustainable Development
Section 4 – Decision Making
Section 6 – Building a strong, competitive economy
Section 12 – Achieving well Designed Places

Supplementary Planning Documents

Maidstone Landscape Character Assessment
Landscape Character Assessment (2013) & Supplement (2012)
Landscape Capacity Study: Sensitivity Assessment (2015)
Planning Policy for Traveller Sites (2015)
Gypsy & Traveller and Travelling Showpeople Topic Paper (2016)
Gypsy & Traveller & Travelling Showpeople Accommodation Assessment (2012)
Para 99 of Govt Circular (ODPM 06/2005) & Natural England Standing Advice Kent
Minerals & Waste LP (2013-30) (amended by Early Partial Review 2020)



Views of the application site looking north

4. LOCAL REPRESENTATIONS

Local residents:

1 representation received from a local resident objecting in relation to the following (summarised) issues.

- The proposal would have a detrimental effect on visual amenity.
- The additional static caravan will be visible from houses across Forstal Lane.
- The hedgerow would not sufficiently screen the caravan from public view.
- The proposals would have detrimental effect on property values.

(NB officer note: The effect of the proposals on property values is not a material planning consideration that can be taken into account in determining this application).

Coxheath Parish Council

Objection for the following reasons:

- The applicant should adhere to the conditions set out in the appeal decision.
- Removing condition 3 would not respect the scale of and would dominate the nearest settled community and would place undue pressure on the local infrastructure.
- Condition 3 is necessary to protect the character and appearance of the area.
- If the Planning Officer is minded to approve this application, the Parish Council request that it is referred to the MBC Planning Committee.

5. CONSULTATIONS

Mid Kent Environmental Health Team

5.1 Raise no objection, subject to condition on foul sewage.

KCC Minerals and Waste

5.2 Raise no objection.

KCC Highways and Transport

5.3 Raise no objections.

6. APPRAISAL

The key issues are:

- Countryside location, policies SP17 and DM15
- Need and supply of sites.
- Residential amenity

Countryside location, policies SP17 and DM15

6.01 The application site is in the countryside and the starting point for assessing all applications in the countryside is Local Plan policy SP17. Policy SP17 states that development proposals in the countryside will only be permitted where:
a) there is no harm to local character and appearance, and
b) they accord with other Local Plan policies

6.02 Policy SP17 does not specify an acceptable level of harm to local character and appearance and all proposals in the countryside are likely to result in some degree of harm. In this context all development outside the designated settlements does not accord with this part of SP17.

6.03 In certain circumstances where there is locational need for development (equestrian, rural worker dwelling, agricultural buildings etc) other Local Plan policies permit development in the countryside subject to listed criteria. If development accords with one of these other Local Plan policies, this compliance generally outweighs the harm caused to character and appearance with a proposal found in accordance with policy SP17 overall.

6.04 In this case, policy DM15 accepts that new Gypsy and Traveller accommodation will be in the countryside and lists 5 criteria that planning applications will be assessed against. These criteria are considered below:

i. Local services, in particular school, health, and shopping facilities, are accessible from the site preferably on foot, by cycle or on public transport.

6.05 The application site is on the opposite side of Forstal Lane to the Coxheath larger village settlement boundary with Coxheath Primary School circa 10 minutes walk from the site along pavements with streetlighting. Coxheath Londis is circa 12 minutes walk with Doctor's surgeries available similar distances from the application site.

ii. The development would not result in significant harm to the landscape and rural character of the area. Impact on these aspects will be assessed with particular regard to: a. Local landscape character; b. Cumulative effect - the landscape impact arising as a result of the development in combination with existing lawful caravans; and c. Existing landscape features - development is well screened by existing landscape features and there is a reasonable prospect of such features' long term retention; Additional planting should be used to supplement existing

landscaping but should not be the sole means of mitigating the impact of the development.

- 6.06 The application site is in Local Plan designated Loose Valley Landscape of Local Value. The Local Plan advises "*Development proposals within landscapes of local value should, through their siting, scale, mass, materials and design, seek to contribute positively to the conservation and enhancement of the protected landscape*".
- 6.07 In the Maidstone Landscape Character Assessment, the application site is in the Loose Greensand Orchards and Pasture (27-7) detailed character area. Key characteristics include, large areas of traditional orchards, farm buildings (modern and traditional), native hedgerows and tree lines, Hamlet Wood coppice, Pimp's Court Farm Centre and dwellings, network of farm tracks, sunken lanes with earth banks and undulating landform. The overall landscape sensitivity of the area (Farleigh Fruit Belt) is assessed as high, indicating that the area is sensitive to change.



View of the extent of hedgerow along Forstal Lane

- 6.08 The application site due to the existing boundary hedging is enclosed and benefits from screening in views from Forstal Lane. The existing boundary trees and hedgerows will be retained as part of the development. The additional mobile home taken cumulatively with the existing mobile homes would have a relatively diminutive presence in the wider landscape and would not have any significant adverse impact on the visual amenities of the countryside.
- 6.09 A local resident has stated that the mobile home would be visible from Forstal Lane. Whilst there are glimpses of caravans from Forstal Lane, with the site layout and location of the access, the views into the site are restricted and would not have a harmful effect on the landscape.
- 6.10 The proposal would not result in significant harm to the landscape and rural character of the area. The development is well screened by existing landscape features and there is a reasonable prospect of such features' long-term retention. The proposals would conserve the valued landscape as required by Policy SP17 and DM15 of the Maidstone Borough Local Plan (2017) the Maidstone Landscape Character Assessment and relevant sections of the NPPF (2021).

iii. The site can be safely accessed to and from the highway by all vehicles using the site on a regular basis.

- 6.11 Policy DM23 of the Local Plan sets out the parking standards for the Borough. The policy adopts a flexible approach to minimum and maximum parking standards to

reflect local circumstances and the availability of alternative modes of transport to the private car.

- 6.12 The submitted site layout plan shows the hardstanding area within the site is adequate to meet the demands of existing and proposed mobile homes. There is sufficient turning space within the site for vehicles to enter and leave the site in a forward gear. The proposals would comply with the standards in policy DM23. The submission indicates access to the proposed development will be via the existing vehicular access from Forstal Lane. The access is of a suitable standard.
- 6.13 On traffic generation, the proposal has the potential to generate additional movements to and from the site. Any increase in the traffic movements will not be significant enough to create congestion and highway safety issues. KCC Highways and Transport were consulted and have confirmed they raise no objection to the proposals.
- 6.14 The application involves a new static caravan and a touring caravan on an existing gypsy and traveller site using an existing access. Highway safety issues were not raised as part of either the refusal of the original application (19/500583/FULL) or as part of the subsequent appeal. The site access is acceptable in relation to the additional trips that would be generated by the additional caravans.

iv. The site is not located in an area at risk from flooding (zones 3a and 3b)

- 6.15 The application site is not located in an area at risk from flooding (zones 3a and 3b).

v. The ecological impact of the development has been assessed through appropriate survey and a scheme for any necessary mitigation and enhancement measures confirmed.

- 6.16 Policy DM3 of the Maidstone Borough Local Plan and paragraph 174 of the NPPF (2021) directs the planning system to contribute to and enhance the natural and local environment.
- 6.17 The vegetation along the site boundaries constitutes valuable elements in terms of biodiversity of the site, as well as contributing towards the natural appearance of the site and surrounding area. The grounds on which the additional mobile home is proposed comprises partly of intensively managed lawn and existing area of patio and unlikely to have any biodiversity interest.
- 6.18 On this basis, the proposal would accord with Policies DM3 of the Maidstone Borough Local Plan (2017), and paragraph 174 of the NPPF (2021). These policies jointly direct the planning system to contribute to and enhance the natural and local environment.

Need and supply of sites.

- 6.19 Local Authorities have responsibility for setting their own target for the number of pitches to be provided in their areas in their Local Plans. The Council has chosen to separate the matter of Gypsy and Traveller policy from the Local Plan Review and is pursuing a separate DPD on this matter. This Gypsy, Traveller and Travelling Showpeople DPD is yet to go out to first stage consultation.
- 6.20 The updated Gypsy, Traveller, and Travelling Showpeople Accommodation Assessment (GTAA), which forms part of the evidence base for the Gypsy, Traveller and Travelling Showpeople DPD, was published in September 2023. It provides the evidence of the current and future need for gypsy, traveller and travelling showpeople in the borough for the Local Plan Review until 2040.

- 6.21 The GTAA published in 2023 outlines a need for 340 pitches in Maidstone that met the planning definition between 2023 and 2040, broken down as follows:

	2023-27	2028-32	2033-37	2038-40	2023-40
Gypsy & Traveller Pitches	205	48	53	34	340

- 6.22 In addition, the DPD will be informed by the outcome of a Pitch Deliverability Assessment and a targeted Call for Sites exercise to identify potential new sites so the needs of the community can be adequately, and appropriately addressed and appropriate engagement can take place. The LPR Call for Sites exercise ran from February and March 2022 and February and March 2023, with the aim of comprehensively addressing the needs of the community appropriately. The Gypsy, Traveller and Travelling Showpeople DPD is at its early stages and is not due to be adopted until 2025 at the earliest.
- 6.23 The Planning Policy for Traveller Sites (2015) requires Local Plans to identify a supply of 5 years' worth of deliverable sites against the Plan's pitch target. The Council's 5-year supply comprises:
- unimplemented Local Plan 2017 (Policy GT1) allocations which are to be carried forward.
 - an allowance for pitch turnover on the two public Gypsy & Traveller sites in the borough.
 - a windfall allowance for pitches which will be granted planning permission in the future.
- 6.24 The Council are not able to provide a supply of specific deliverable sites sufficient to provide five years' worth of sites against locally set targets. The Council's current position is that it can demonstrate a 1.2 years' worth of deliverable pitches at 1st April 2023. Paragraph 27 of 'Planning policy for traveller sites (2015) states: "If a local planning authority cannot demonstrate an up-to-date 5 year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission. The exception is where the proposal is on land designated as Green Belt... [or]an Area of Outstanding Natural Beauty.

Gypsy status

- 6.25 A judgement dated 31 October 2022, from the Court of Appeal in Smith v. SoS for Levelling Up, Housing and Communities (CA-2021-00171, 31st October 2022) concerned a planning inspector's reliance on the definition of Gypsies and Travellers in Planning Policy for Traveller Sites. This guidance was introduced by the government in August 2015.
- 6.26 The previous definition before August 2015 had been: "*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' education 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*". The new definition post 2015 deleted "or permanently".
- 6.27 The SoS accepted that this indirectly discriminated against elderly and disabled Gypsies and Travellers but argued that the discrimination was justified. The appeal court judgement sets out 66... "the nature of the discrimination before the judge was the negative impact on those Gypsies and Travellers who had permanently ceased to travel due to old age or illness, but who lived or wanted to live in a

caravan. This discrimination was inextricably linked to their ethnic identity". 139
"... the effect of the relevant exclusion was – as the Secretary of State has conceded – discriminatory, and that, on the evidence before the court in these proceedings, there was no proper justification for that discrimination..."

- 6.28 Permission is sought on the basis that the site is required to satisfy an identified need for one extended Gypsy and Traveller family. The agent has submitted that the intended occupiers of the site qualify for Gypsy and Traveller status for planning purposes. The additional static mobile home at this permitted traveller site is to provide a home for the applicants' son, who is now an adult and in the process of settling down with his partner. It is common for several generations of the same family to live on one plot, or on adjacent plots, and this would be the case here.
- 6.29 Based on the evidence available it can be reasonably concluded that the intended occupants are of Gypsy heritage and are from the travelling community. A condition is recommended to ensure that the site shall not be used as a caravan site by any persons other than Gypsies or Travellers and their family and/or dependants, as defined in Annex 1 of the Planning Policy for Traveller Sites 2015.
- 6.30 In awarding costs against the Council as part of a recent appeal on this issue (Pear Paddock) the appeal Inspector sets out: "*The Council's second reason for refusal complains that the appellants (then the applicants) have not demonstrated that the proposed site occupants are Gypsies or Travellers. Yet there is nothing in the relevant policy that requires a personal demonstration of need or ethnic identity. It is not as though any housebuilder is required to tell the LPA who exactly is intended to live in the houses s/he proposes to build; concomitantly, there is no such requirement here*". With this background and the availability and common use of planning conditions to restrict occupation to Gypsies or Travellers, the refusal of planning permission on the grounds that Gypsies or Travellers status has not been proven pre decision would generally be unreasonable.

Residential amenity

- 6.31 Policy DM1 of the Maidstone Borough Local Plan requires development to secure high quality design and a good standard of amenity for all existing and future occupants of buildings.
- 6.32 The proposed mobile home would maintain acceptable separation distances from existing mobile homes and neighbouring properties, and this will avoid any adverse effect in terms of overshadowing. The mobile home will have no impact on the amenity or outlook of residents. All the existing hedgerows and trees will be retained as part of the proposal and in view of the strong enclosure no further landscaping is necessary in this case.
- 6.33 Policy LPRQ&D7 of the emerging draft Local Plan sets out the amenity space standards for new houses. The policy requires outdoor amenity space for a house this size must be sufficient to provide sufficient space for day to day activities and the current proposal meets these standards.
- 6.34 The proposals are acceptable in terms of maintaining the living conditions of neighbouring occupiers and providing adequate amenities for future occupiers of the proposed dwelling. The proposal is in accordance with policy DM1 of the Maidstone Borough Local Plan and LPRQ&D7 of the Emerging Draft Local Plan.

PUBLIC SECTOR EQUALITY DUTY

- 6.35 In considering this application due regard has been had to the Public Sector Equality Duty (PSED), as set out in Section 149 of the Equality Act 2010 in particular with regard to:
- unimplemented Local Plan 2017 (Policy GT1) allocations which are to be carried forward.
 - an allowance for pitch turnover on the two public Gypsy & Traveller sites in the borough.
 - eliminate discrimination, harassment, victimisation, and any other conduct that is prohibited by or under the Act.
 - advance equality of opportunity between persons who share protected characteristics and persons who do not share it; and
 - foster good relations between persons who share protected characteristic and persons who do not share it.
- 6.36 Race is one of the protected characteristics under the Equality Act and ethnic origin is one of the things relating to race. Romany Gypsies and Irish Travellers are protected against race discrimination because they are ethnic groups under the Equality Act. This application has been considered with regard to the protected characteristics of the applicant and the gypsies and travellers who occupy the caravans. I am satisfied that the requirements of the PSED have been met and it is considered that the application proposals would not undermine objectives of the Duty.

7. CONCLUSION

- 7.01 The National Planning Policy Framework (NPPF) reiterates The Town and Country Planning Act 1990 and The Planning and Compulsory Purchase Act 2004, which requires by law that planning applications “must be determined in accordance with the development plan, unless material considerations indicate otherwise”.
- 7.02 The proposal will comply with provisions of policy DM15 (Gypsy, Traveller and Travelling Show People Accommodation) which permits new Gypsy and Traveller and Travelling Showpeople Accommodation in the countryside where it would not result in significant harm to the landscape and rural character of the area. The development will comply with policy SP17 and DM30 of the Adopted Local Plan (2017).
- 7.03 The proposals are acceptable in terms of maintaining the living conditions of neighbouring occupiers and providing adequate amenities for future occupiers of the proposed dwelling. There are no overriding highway safety challenges that would indicate a refusal of planning permission.
- 7.04 Overall, the proposals would have the benefit of providing an additional pitch on an approved gypsy traveller site at a time when the borough council cannot demonstrate 5-year supply of deliverable traveller sites.

8. RECOMMENDATION GRANT planning permission subject to the following conditions with delegated powers to the Head of Planning and Development to be able to settle or amend any necessary planning conditions in line with the matters set out in the recommendation and as resolved by the Planning Committee.

- 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) No development shall take place other than in accordance with the following approved plans:
Application Form
Drawing Number; KWTP.02 (Site Location Plan)
Drawing Number: KWTP.01 (Existing and Proposed Block Plans)

Reason: To ensure a satisfactory appearance to the development and to safeguard the enjoyment of their properties by existing and prospective occupiers.

- 3) The site shall not be occupied by any persons other than Gypsies and Travellers as defined 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 showpeople or circus people travelling together as such.

Reason: The site is in an area where residential development would not normally be permitted and to protect the visual amenities of the surrounding countryside.

- 4) No more than five caravans, as defined by the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, shall be stationed on the site at any one time, of which no more than three shall be a static caravan or mobile home, and no further caravans shall be placed at any time anywhere within the site. The static caravans or mobile homes shall be stationed on the site only in the position shown on Drawing No. KWTP.01 (Existing and Proposed Block Plans).

Reason: To prevent overcrowding of the site in the interest of the visual amenities of the surrounding countryside.

- 5) No commercial activities shall take place on the land at any time, including the storage of materials. No vehicles over 3.5 tonnes shall be stationed, stored, or parked on the site and not more than four vehicles shall be stationed, stored or permanently parked on the site at any one time.

Reason: In the interest of the visual amenities of the surrounding countryside.

- 6) Details on the proposed method of foul sewage treatment, along with details regarding the provision of potable water and waste disposal must be submitted to and approved by the Local Planning Authority prior to occupation of the site. These details should include the size of individual cess pits and/or septic tanks and/or other treatment systems. Information provided should also specify exact locations on site plus any pertinent information as to where each system will discharge to, (since for example further treatment of the discharge will be required if a septic tank discharges to a ditch or watercourse as opposed to sub-soil irrigation). If a method other than a cesspit is to be used the applicant should also contact the Environment Agency to establish whether a discharge consent is required and provide evidence of obtaining the relevant discharge consent to the local planning authority.

Reason: To ensure adequate sewage disposal arrangements for the development.

- 7) Any external lighting installed on the site (whether permanent or temporary) shall be in accordance with details that have previously been submitted to and approved in writing by the Local Planning Authority. The submitted details shall be in

accordance with the Institute of Lighting Professionals Guidance Notes for the Reduction of Obtrusive Light, GN01, dated 2011 (and any subsequent revisions) (Environmental Zone E1), and follow the recommendations within the Bat Conservation Trust's 'Guidance Note 8 Bats and Artificial Lighting'. The submitted details shall include a layout plan with beam orientation and a schedule of light equipment proposed (luminaire type; mounting height; aiming angles and luminaire profiles) and an ISO lux plan showing light spill. The development shall thereafter be carried out in accordance with the subsequently approved details and maintained as such thereafter.

Reason: To safeguard the character and appearance of the countryside, protected species and in the interests of residential amenity.

- 8) Notwithstanding the provisions of Schedule 2 Part 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no temporary buildings or structures shall be stationed on the land other than those expressly authorised by this permission.

Reason: In the interest of the visual amenities of the surrounding countryside.

- NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.