

APPLICATION: MA/12/2103 Date: 21 November 2012 Received: 14 December 2012

APPLICANT: Mr M Hearn

LOCATION: CHERRY GARDENS, COLLIER STREET, TONBRIDGE, KENT, TN12 9RJ

PARISH: Collier Street

PROPOSAL: Change of use of land to residential caravan site for one gypsy family including stationing of one static caravan, one touring caravan and associated hard standing as shown on drawings received on the 21st November 2013 and drawing no:T13/522-01.

AGENDA DATE: 6th February 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 the Parish Council

1. **POLICIES**

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

2. **HISTORY**

MA/07/2478 – Change of use of land for stationing of two twin units, two touring caravans, stable block, and toilet and shower block to accommodate a gypsy family-
WITHDRAWN

3. **CONSULTATIONS**

3.1 **Collier Street Parish Council:** Wish to see the application refused for the following reasons and that the application be reported the Planning Committee.

- Site is located with an area falling within flood risk zone 3A and as such all other considerations are outweighed by this.

- Since 2000 in conjunction with Maidstone Borough Council have carried out drainage works with the intention of flooding the site in order to reduce flooding levels in other parts of the village.
- A site cannot be considered in isolation given the certainty of it being flooded in any major flooding event.
- The emergency services would be placed at considerable risk in attempting to rescue any resident.

3.2 Environment Agency:

- The site falls within flood zone 3 with hazardous access in flood conditions therefore object in principle to the continued use of the site for the stationing of a mobile home.
- Accept that it would be possible to locate the mobile home to a part of the site where levels are above 13.9 AOD or with minor reprofiling to secure a development platform minimising flood risk to the mobile home and its associated facilities.
- Confirm that parts of the site could be made safe against flooding without increasing flood risk elsewhere but still making access to site by applicant or emergency services hazardous.
- Based on the flood risk assessment (FRA) submitted by the applicants (based on EA data) in a 1:100 year flood event this suggests a flood depth of 216mm (approximately 9 ins) at the site entrance onto the B2162.
- The following exits from the site in 1:100 year flood conditions are as follows.
- Option 1: Heading north west towards Yalding (3.5 km away) flood depth ranges from 0 to 750mm within the village before safe access can be reached onto Yalding High Street.
- Option 2: Heading south towards Horsmonden (7 km) flood depth ranges from 0 to no more than 100mm (4 ins) for a distance of 4.4 km after which access could be made Horsmonden or Paddock Wood without encountering fluvial flooding.
- Option 3: Access to the east towards Marden or west towards Paddock Wood would encounter flooding in country lanes of varying depths up to 300mm(12 ins).
- Route heading south towards Horsmonden therefore presents least hazardous route to enter/leave site in flood conditions.
- Duration of flooding is difficult to assess but for options 1 and 3 flooding could be for up to 24 hrs while option 2 would be less (between 6-12 hours). In all cases floodwater would be turbid and flows sluggish.
- The issue of safe access to the site is a matter for the Local Authority to resolve. The Environment Agency can provide flood warning advice but cannot provide advice on access by emergency vehicles or on local authority evacuation procedures.

- 3.3 **Kent Highway Services:** Considers that the use of the site is not likely to lead to a material intensification in the use of the existing access where there have been no reported injury crashes within the latest 3 year period. In the event of planning permission being granted would recommend imposition of a condition requiring the access to be constructed with a bound surface 5 metres back from the highway.
- 3.4 **Upper Medway Internal Drainage Board:** The application site and its access pass close to Collier Street Stream (IDB19) which is managed and maintained by the Board. The applicant should be informed that any works within 8 metres of this watercourse (including fencing or planting), or works affecting any other ordinary watercourse, will require the formal written consent of the Board. This is to ensure that local drainage and flood risk is not adversely affected.

4. **REPRESENTATIONS**

- 4.1 In addition to the display of a site notice one property was consulted on the development. One representation was received as follows:
- Would like an undertaking that the site is maintained in good condition.

5. **CONSIDERATIONS**

5.1 **Site Description**

- 5.1.1 The application site lies in flat open countryside interspersed with some hedgerows and limited tree cover. It is sited a short distance to the west of the sporadic development fronting onto Collier Street and is occupied by a single static mobile home set just over 70 metres back from the B2162 with an area of hardstanding made of stone chippings sited to the south east of the mobile home and a container body stationed for security purposes. Access is onto Collier Street (B2162) via a single straight trackway also made of stone chippings, with a timber 5 bar gates separating the track from the standing area separating the site from the public highway.
- 5.1.2 Abutting the site to the east is Mockbeggar Barn, which has planning permission for use as holiday accommodation.

5.2 Proposal

- 5.2.1 Retrospective planning permission is sought to retain the existing mobile home along with consent to site one touring caravan, retention of the hardstanding and for the parking of two vehicles.
- 5.2.2 It is intended that the front part of the site abutting Collier Street, though not falling within the application site area, shall be planted up as an apple orchard while the whole perimeter of the application is shown to be planted up with unspecified screening.
- 5.2.3 The applicant advises that he has lived on the site since 2008, that he is a Romany gypsy by birth and culture and that the site represents his only permanent place of residence where he can live in accordance with his gypsy lifestyle.
- 5.2.4 In support of his case he advises that he has chronic health problems which have been made worse by uncertainty over his continued occupation of the site, the need to provide a stable home for his children, that the flood risks referred to have been greatly overstated and that the Council has nowhere suitable to relocate him and his family in the event of the application being refused.
- 5.2.5 He further advises that he is no longer well enough to permanently travel and needs to have a stable base well located to medical support services. Furthermore he would accept conditions relating to occupation by him and his family only along with requirements for additional landscaping.

5.3 Principle of Development

- 5.3.1 There are no saved Local Plan Policies that relate directly to this type of development. Policy ENV28 of the Maidstone Borough-Wide Local Plan 2000 (MBWLP) relates to development in the countryside stating that:

“Planning permission will not be given for development which harms the character and appearance of the area or the amenities of surrounding occupiers”

ENV28 then outlines the types of development that can be permitted.

- 5.3.2 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 emphasis on the need to provide more gypsy sites, supporting self provision and acknowledging that sites are likely to be found in rural areas.

5.3.3 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 2012	25 pitches
April 2021 – March 2026	27 pitches
April 2026 – March 2031	30 pitches
Total Oct 2011 – March 2031	187 pitches

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

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

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

5.3.6 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.

5.4 Gypsy Status

5.4.1 Annex 1 of the PPTS defines gypsies and travellers as:-

“Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependents' educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling show people or circus people travelling together as such”.

5.4.2 The gypsy status of the applicant is not challenged it being accepted that he complies with the definition of a gypsy as outlined in Government guidance in Planning Policy for traveller sites.

5.4.3 He has 7 children though no further details have been provided. Regarding any personal circumstances to be taken into consideration, the need for the family to have a stable base, the applicants chronic health condition preventing him from travelling as widely as he would like and the need to be well located to medical services are all acknowledged.

5.5 Need for Gypsy Sites

5.5.1 The PPTS gives guidance on how gypsy accommodation should be achieved, including the requirement to assess need.

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

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

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

48 Permanent non-personal permissions

8 Permanent personal permissions

0 Temporary non-personal permissions

27 Temporary personal permissions

Therefore a net total of 56 permanent pitches have been granted since 1st October 2011. As such there is an outstanding shortfall of 49 pitches.

5.5.4 It must be noted that the requirement for 105 pitches in the initial 5 year period includes need such as temporary consents that are yet to expire (but will before the end of March 2016) and household formation. This explains why the need figure appears so high in the first 5 years.

5.6 Visual Impact

5.6.1 The preferred locations for Gypsy and Traveller accommodation is that they are normally outside AONB's, areas having Green Belt status and areas liable to flooding. The site is located in open countryside having no particular landscape

designation and is therefore subject to the general provisions of policy ENV28 relating to development in the countryside. Generally development will not be permitted in the countryside where it would harm the character and appearance of an area or amenities of surrounding occupiers. Policy ENV28 makes clear that exceptions will be permitted if justified by other policies contained in the plan.

- 5.6.2 It is generally accepted that mobile homes are visually intrusive development out of character in the countryside and are therefore unacceptable in their visual impact unless well screened or hidden away in unobtrusive locations. The preference is therefore for them to be screened by existing permanent features such as existing hedgerows, tree belts, existing buildings or lie of the land.
- 5.6.3 Though the mobile home for which planning permission is sought is set over 70 metres back from Collier Street, the surrounding area is completely level. This currently enables long range views of the mobile home particularly when travelling in a south easterly direction along Collier Street and from immediately opposite. In acknowledgement of the currently highly visible presence of the mobile home the applicant proposes to plant an orchard between the mobile home and Collier Street. Such a measure would, it is considered provide long term screening of the site when viewed from Collier Street. However given that such planting is essentially for agricultural purposes, its provision, though welcome, cannot be made the subject of a condition. Nevertheless the whole perimeter of the application site is shown with screen planting.
- 5.6.4 It is considered that the perimeter landscaping measures referred to above, which can be conditioned, once established, will screen the site from view providing sufficient landscaping mitigation. It should be specified that it be allowed to grow up to height 3 metres and retained at this height at all times thereafter. It is nevertheless recognised that this screening will not be available from the outset and that the mobile home and associated development will continue to intrude into the landscape for a while yet.
- 5.6.5 Nevertheless, in the absence of suitable alternative accommodation being available as part of an adopted gypsy and traveller accommodation strategy, the Council is unlikely to be successful in defending a refusal at appeal at this stage. As such it is likely that the mobile home will remain on site for some time to come. In the circumstances it is considered preferable to secure landscaping at this stage rather than refuse planning permission bringing with it no prospect of landscape mitigation measures. As an added safeguard a condition should be imposed relating to lighting in order to safeguard the night time rural environment.

5.7 Residential Amenity

5.7.1 The site occupies an isolated position with only long range glimpse views available to from dwellings to the east of the site over 60 metres away. Once the proposed landscaping establishes even these limited views of the site will almost cease. In the circumstances no material harm is identified to the outlook or amenity of the dwelling located to the east of the site in Collier Street. However in order to protect aural and visual amenity a condition should be imposed requiring that no commercial or business activities shall take place on the land, including the storage of vehicles or materials.

5.8 Highways Safety

5.8.1 The site access is existing and the application is not the subject of objection by Kent Highways subject to resurfacing of that part nearest to the highway. In the circumstances there is not considered to be any sustainable objection to the development on highway grounds.

5.9 Flooding

5.9.1 The application site is located within Flood Zone 3 and the Environment Agency has raised an objection in principle on flooding grounds. It nevertheless accepts that it would be possible to locate the mobile home to a part of the site where levels are above a 1:100 year flooding event flood levels plus weighting for climate change or with minor reprofiling to secure a development platform minimising flood risk to the mobile home and its associated facilities.

5.9.2 In response, the site was surveyed the site and three areas identified within the applicants ownership/control having levels in excess of those specified by the Environment Agency. Two areas are however very small though there is an area over 50 metres to the west of the current siting of the mobile home which though of an appropriate size has an awkward shape.

5.9.3 The applicant propose that rather than resite the mobile home, which currently sits on a concrete slab having an area of about 55 sqr metres, the area of the slab is extended to about 100 sqr metres. This would be achieved by using spoil from the area to the west which would be reduced in height to maintain overall flood storage levels. In addition the concrete slab be raised from its current height of 13.66 metres AOD to 13.8 metres AOD raising the mobile home by 140mm (just under 6 ins) and raising its floor level to about 14.2 metres AOD. This would enable the floor level of the mobile home to be about 400mm above any predicted flood level.

- 5.9.4 In the absence of the mobile home being flooded this nevertheless does not address access to the site both by the applicant and his family and emergency services through standing floodwater affecting the wider site and area. The Environment Agency advises that the access heading south towards Horsmonden (7 km) would involve encountering flood depths ranging from 0 to no more than 100mm (4 ins) for a distance of 4.4 km after which access could be made Horsmonden or Paddock Wood without encountering fluvial flooding. That in addition while flooding duration is difficult to assess, for this route it would be between 6-12 hours.
- 5.9.5 The applicant advises that he is aware of the flooding issue and considers the risks associated with it to be wholly overstated. Nevertheless as part of any grant of planning permission he would sign up to the Environment Agency's Automatic Voice messaging system. In addition were a flooding event to be predicted he would ensure that the caravan was securely tethered, the floodable void beneath it cleared and any vehicles either removed from the site or otherwise made safe.
- 5.9.6 Notwithstanding the above, public safety is a material planning consideration which must be taken into account in assessing this application. In the absence of evidence that (a) subject to the slab level of the mobile home being raised as proposed, it would not be subject to direct flooding and (b) apart from the area around the access that the road south to Horsmonden would only be subject to limited inundation for a relatively short duration, with adequate preparation the applicant and his family would, it appear not be exposing themselves to an unacceptable level of risk.
- 5.9.7 Regarding the emergency services, they are under a requirement to provide assistance as necessary. Nevertheless placing them at greater risk than necessary as part of planning decision should be avoided. No evidence is available from emergency services nor has the Council in its possession evidence which it can apply to this situation. Given maximum flood levels around the site access onto Collier Street of 216mm (approximately 9 ins) but on the southern route much lower, again this would not appear, in the absence of evidence to the contrary, to expose members of the emergency services to an unacceptable level of risk.
- 5.9.8 Despite the above it must be acknowledged that the site falls within an area at risk of flooding and that permanent planning permission would not normally be granted in such circumstance. However given (a) the absence of alternative sites where the applicant had his family could be relocated and (b) the mitigation measures set out, it is considered that this is a site where it appropriate to grant temporary planning permission, for say 3 years, until an adopted gypsy and traveller accommodation strategy is in place enabling the position to be reviewed.
- 5.9.9 As a further point, notwithstanding the recent extreme flooding events, the applicant has confirmed that the caravan in its current position was not flooded.

5.10 Sustainability

5.10.1 The site is approximately 4.9 miles from Paddock Wood and 3.1 miles from Marden with access to a comprehensive range of services, amenities and facilities at these centres. Whilst the majority of trips are likely to be by car, the site is considered reasonably sustainable in terms of its proximity to these centres.

6. CONCLUSIONS

6.1 These are considered to be as follows:

- The site is located in open countryside.
- The applicant is a gypsy falling within the definition contained in the PPTS.
- There is a continuing unsatisfied need for Gypsy and Traveller sites as identified by the updated GTAA.
- The applicant has lived on the site since 2008.
- The applicant has 7 children. He requires a stable base while his chronic health condition preventing him from travelling as widely as he would wish along with the need to be well located to medical services.
- That subject to additional landscaping the impact on the wider landscape is acceptable.
- No harm to residential amenity is identified nor any harm to the free flow of traffic or highway safety in general.
- That though the site falls within flood zone 3 subject to appropriate mitigation the Environment Agency's objection cannot be sustained.
- The site is considered to be in a sustainable location within reasonable access of local services, amenities and facilities and

6.2 In the circumstances set out above it is considered appropriate to recommend that temporary planning permission be granted for 3 years or until such time as alternative more suitable sites for permanent accommodation are identified as part of emerging policy response for Gypsy and Traveller accommodation.

7. RECOMMENDATION

GRANT PLANNING PERMISSION subject to the following conditions:

1. The occupation of the site hereby approved shall cease and the land restored to its former condition within 3 years from the date of this permission unless prior approval is obtained in writing for a further period.

Reason: It is considered that the site, due to risk of flooding is unsuitable for a permanent caravan site and to enable the position to be reviewed at the end of the stated period.

2. The screen planting to the site perimeter shown on drawing no:PP-02152711 shall comprise a belt of native mix planting not less than 3 metres wide which shall be planted in the first available planting season. It 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.

3. Within 3 month of the date of this approval the height of the concrete slab on which the mobile home is currently sited shall be raised to 13.9 metres AOD. In addition the yellow area shown to the west of the current siting of the mobile home shown on drawing no:T13/522-01 shall be lowered in height to 13.66 AOD. The resultant spoil shall be resisted abutting the mobile home hereby permitted to provide a level platform not exceeding 100 sqr metres (including the area on which the mobile home is sited) and shall be retained at a level of 13.9 metres AOD. Any excess spoil shall be removed from the site.

Reason: To protect the occupants of the mobile home from flooding and to ensure that the flood storage capacity of the site is maintained.

4. No more than one static residential caravan as defined in Section 24(8) of the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 or the existing 'mobile structure' stationed on the site, and one touring caravan, 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 on the area where the static caravan is currently sited or on the area of hardstanding as shown on drawing no:PP-02152711.

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

5. The use of the land hereby permitted shall only be for the benefit of Mr Hearn, his wife and children.

Reason: Due to the lack of alternative sites available to meet the applicants personal needs.

6. Should the existing 'mobile structure' 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 illumination of the site shall take place without first obtaining prior approval in writing from the Local Planning Authority;

Reason: In the interests of residential amenity and to protect the character of the countryside.

8. 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.

9. Within 3 months from the date of this consent the surface of the access for a distance 5 metres back from Collier Street shall be resurfaced using a bound material.

Reason: In the interests of highway safety and the free flow of traffic.

Informatives set out below

Please also note that planning permission does not convey any approval for construction of the required vehicular crossing, or any other works within the highway for which a statutory licence must be obtained. Applicants should contact Kent County Council - Highways and Transportation (web: www.kent.gov.uk/roads_and_transport.aspx or telephone: 0300 333 5539) in order to obtain the necessary Application Pack.

You are advised that any works within 8 metres of the Collier Street Stream (including fencing or planting), or works affecting any other ordinary watercourse, will require the formal written consent of the Upper Medway Internal Drainage Board.

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 there are no overriding material considerations to indicate a refusal of planning consent.