

4.1 SE/14/03874/CONVAR Date expired 5 February 2015

PROPOSAL: Retention of change of use to caravan site for stationing of 5 caravans (3 mobile homes and 2 touring caravans) for Travellers, with retention of associated hardstanding, septic tank, sheds and fencing (retrospective). Two utility blocks are proposed on the site approved under reference SE/11/2120/CONVAR. Amendment to vary condition 1 (temporary period for permission), condition 2 (occupation of site) and condition 3 (number of caravans to be kept on site) to allow permanent permission or extension of temporary permission, to amend the occupants of the site and to increase to 4 static/mobile homes and 4 touring caravans.

LOCATION: Holly Mobile Home Park, Hockenden Lane, Swanley BR87QH

WARD(S): Swanley St Mary's

ITEM FOR DECISION

Former Councillor Fittock had referred this application to Development Control Committee as any changes in the development will affect provision of local amenities such as school places and health services, the site is already overcrowded and concerns on highway safety matters.

RECOMMENDATION: That planning permission be Granted subject to the following conditions:-

1) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1 of Planning Policy for Traveller Sites (2012).

In order that the site remains allocated for the occupation for gypsy and travellers.

2) The occupation of the site hereby permitted shall be carried on only by Mrs T B Nolan and her dependants, Mrs J Casey and her dependants, Katerina Casey and her dependants and Pamela O'Driscoll and her dependants. When the land ceases to be used by the residents and their dependants, the use hereby permitted shall cease to all caravans, utility building, structures, hardstanding, materials and equipment brought on to the land in connection with the use hereby approved, shall be removed and the site shall be restored to its previous condition, or restored in accordance with a scheme that has been submitted to and approved in writing by the Council.

Given that the very special circumstances in this case clearly outweigh the harm to the openness of the Green Belt and any other harm.

3) No more than 8 caravans as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than 4 shall be a static caravan or mobile home) shall be stationed on the site at any time.

Given that the very special circumstances in this case clearly outweigh the harm to the

openness of the Green Belt and any other harm, in accordance with Policy EN1 of the Allocations and Development Management Plan and Policy SP1 and LO8 of the Core Strategy.

4) No commercial activities shall take place on the land, including the storage of materials for the duration of this permission.

To preserve the visual appearance of the area as supported by EN1 of the Allocations and Development Management Plan and Policy SP1 and LO8 of the Core Strategy.

5) No building, enclosure or temporary structures other than those on approved block plan Rev. A received on 15th December 2014 shall be erected or placed on the site.

To preserve the visual appearance of the area as supported by EN1 of the Allocations and Development Management Plan and Policy SP1 and LO8 of the Core Strategy.

Note to Applicant

In accordance with paragraphs 186 and 187 of the NPPF Sevenoaks District Council (SDC) takes a positive and proactive approach to development proposals. SDC works with applicants/agents in a positive and proactive manner, by;

- Offering a duty officer service to provide initial planning advice,
- Providing a pre-application advice service,
- When appropriate, updating applicants/agents of any small scale issues that may arise in the processing of their application,
- Where possible and appropriate suggesting solutions to secure a successful outcome,
- Allowing applicants to keep up to date with their application and viewing all consultees comments on line (www.sevenoaks.gov.uk/environment/planning/planning_services_online/654.asp),
- By providing a regular forum for planning agents,
- Working in line with the NPPF to encourage developments that improve the improve the economic, social and environmental conditions of the area,
- Providing easy on line access to planning policies and guidance, and
- Encouraging them to seek professional advice whenever appropriate.

In this instance the applicant/agent:

1) Did not require any further assistance.

Description of Proposal

1 Under planning reference SE/11/02120/CONVAR, temporary planning permission was granted for the variation of condition 1 of SE/07/03543/FUL - (Change of use to caravan site for stationing of 5 caravans (3 mobile homes and

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2 touring caravans) for Travellers, with retention of associated hardstanding, septic tank, sheds and fencing (retrospective). Two utility blocks are proposed on the site.) To either make the site permanent or renew the time limited condition for a further temporary period.

- 2 This is a Section 73 application that seeks to vary condition one (temporary period for permission), condition 2 (occupation of the site) and condition 3 (number of caravans to be kept on site, to allow to allow permanent permission or extension of temporary permission, to amend the occupants of the site and to increase from 3 to 4 static/mobile homes and from 2 to 4 touring caravans.
- 3 This application proposes the additional number of caravans and other built form within the site by comparing this proposal to the previous scheme as shown in the table below:

	SE/11/02120/CONVAR	SE/14/03874/CONVAR (Current)	Difference
No. of Plots	2	4	+2
No. of Mobile Homes	3	4	+1
No. of Touring Caravans	2	4	+2
No. of Utility Blocks	2	3	+1

- 4 It is important to note that the site area remains unchanged.

Description of Site

- 5 The site is a triangular parcel on the main road to the west of Swanley on the corner of Hockenden Lane and London Road, opposite the Premier Inn Hotel and Beefeater Restaurant. There are hedgerows on both road boundaries and a coniferous hedge on part of the south-western boundary.
- 6 The application is in retrospect with a large part of the site now covered in hardstanding material and the area subdivided by low level close boarded fences. It is occupied by mobile homes and touring caravans.
- 7 The site is within the Metropolitan Green Belt. It is visible from the main road to the west of Swanley.
- 8 At present the occupants have strengthened the north-eastern boundary by soft landscaping planting.
- 9 The nearest neighbours are Russet House, the Gospel Church and a residential flat adjacent the site.
- 10 There are now four static mobile homes, 4 touring caravans and three utility blocks on site.

Constraints

11 Metropolitan Green Belt

Policies

Sevenoaks Core Strategy

12 Policies – SP1, SP6, SP8, L08

ADMP:

13 Policies - EN1, EN2, EN6, GB6, T1, T2

Other

14 National Planning Policy Framework (NPPF)

15 Ministerial Statements dated 01 July 2013 & 17 January 2014

16 National Planning Practice Guidance (NPPG)

17 Planning Policy for Travellers (PPTS)

Planning History

18 00/00162 Outline application for proposed erection of eight nursery workshop units - REFUSED and DISMISSED APPEAL.

03/00029 Proposed erection of 5 detached chalet style dwellings with double garages - REFUSED.

19 Planning permission was refused (SE/04/02643) for the change of use of the land to a residential caravan site for two Gypsy families with 4 caravans and one transit pitch. A subsequent appeal was dismissed and an enforcement notice was upheld but with a longer period (24 months from 29 November 2005) for compliance. The notice required removal of the caravans and associated development and reinstatement of the land. The applicants were the same.

20 07/03543 - Change of use to caravan site for stationing of 5 caravans (3 mobile homes and 2 touring caravans) for Travellers, with retention of associated hardstanding, septic tank, sheds and fencing (retrospective). Two utility blocks are proposed on the site – GRANTED (Temporary Permission)

21 11/02120 - Variation of condition 1 of SE/07/03543/FUL - (Change of use to caravan site for stationing of 5 caravans (3 mobile homes and 2 touring caravans) for Travellers, with retention of associated hardstanding, septic tank, sheds and fencing (retrospective). Two utility blocks are proposed on the site.) To either make the site permanent or renew the time limited condition for a further temporary period – GRANTED (Further three year temporary permission)

Consultations

Swanley Town Council

22 Objects for the following reasons:

“Swanley Town Council objects to this application on the grounds that there should be no further changes at this site until the outcome of the Gypsy and Traveller consultation on site options within Sevenoaks District is known. In addition the Town Council considers this application will lead to an over intensification of the site resulting in the loss of agricultural land and the creation of on-site parking difficulties. The Town Council also objects on highway grounds as a result of an increase in the number of traffic movements, particularly in and around Hockenden Lane.”

Kent Highways Services

23 No objection

SDC – Environmental Health Officer

24 No objection

SDC Gypsy Liaison Officer

25 No comment received

KCC Gypsy Liaison Officer

26 No comment received.

Representations:

27 9 Letters of objection received, objecting on the following grounds:

- Highways safety matters
- Inappropriate development in the green belt
- Abuse of existing planning conditions
- Would appear that the travellers are permanently living there.

Chief Planning Officer’s Appraisal

Principal Issues

28 This is a Section 73 application to allow the variation or removal of a condition of a specific planning permission. This will effectively allow the consideration of the variation(s) and allow further conditions to apply if it is considered reasonable and necessary in accordance with guidance in the National Planning Practice Guidance (NPPG). This report will discuss relevant material considerations that apply to them.

Variation/removal of Condition 1 of planning permission SE/11/02120/CONVAR.

29 It states:

“This planning permission is granted for a temporary period of three years only, from the date of this permission. By the date this permission expires, all caravans, utility building, structures, hardstanding, materials and equipment

brought on to the land in connection with the use hereby approved, shall be removed and the site shall be restored to its previous condition, or restored in accordance with a scheme that has been submitted to and approved in writing by the Council.

Reason: In order that any other proposal for the use of the land for a longer period is the subject of a separate application, to be determined on its merits, having regard to the harm to the Green Belt, the status of the Local Development Framework and the allocation of sites for Gypsies and Travellers.”

Variation/removal of Conditions 2 & 3 of planning permission SE/11/02120/CONVAR

30 Conditions 2 & 3 of planning permission SE/11/02120/CONVAR states:

Condition 2

“The occupation of the site hereby permitted shall be carried on only by Mrs E O'Donahue and her dependants, Mrs T B Nolan and her dependants and Mrs J Casey and her dependants and whilst they comply with the definition of gypsies and travellers set out in paragraph 15 of ODPM Circular 01/2006. When the land ceases to be used the residents and their dependants, or at the end of the expiry of temporary permission, whichever is the sooner, the use hereby permitted shall cease to all caravans, utility building, structures, hardstanding, materials and equipment brought on to the land associated with the use hereby permitted.

Reason: Given that the very special circumstances in this case clearly outweigh the harm to the openness of the Green Belt and any other harm.”

Condition 3

“No more than 5 caravans as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than 3 shall be a static caravan or mobile home) shall be stationed on the site at any time.

Reason: Given that the very special circumstances in this case clearly outweigh the harm to the openness of the Green Belt and any other harm, in accordance with Policy EN1 of the Local Plan.”

31 The main considerations for the variation/removal of the conditions are:

- Gypsy Status and personal circumstances
- Planning Policy
- Impact upon the Green Belt
- Impact upon character and appearance of surrounding area
- Highway Safety
- Sustainability
- Balancing Exercise/Very Special Circumstances in varying/removing the relevant conditions.

Gypsy Status & personal Circumstances

- 32 The gypsy status of the proposed occupiers is not relevant unless the decision maker finds it necessary to consider personal circumstances when determining the application.
- 33 This application is for the development of land to allow residential occupation by those that fall within the definition of 'gypsies and travellers' as cited Paragraph 1 of Annex 1 of the Planning Policy for Travellers Sites March 2012 (PPTS) It states:
- "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 dependant's 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".*
- 34 It has been accepted on all previous submissions that Mrs Tersea Nolan complies with the definition of Gypsy status. Mrs Nolan resides at Plot 3b with her 6 children.
- 35 Plot 3a is a newly created plot and is resided by Katherina Casey aged 32, (daughter of Mrs Casey and sister of Theresa Nolan) with her three children:
- 36 Plot 2 to be occupied by Mrs Eileen O'Donaghue and her family but has left the site. That plot is now occupied by extended Nolan/ Casey family, Pamela O'Driscoll, aged 25 (who was married to Patrick Casey, son of Josephine Casey and brother of Theresa, John, Francis, Simon and Katherina) and her three children.
- 37 The families still travel for work. The last two years they have spent most of the summer in Scotland (Dunblane, Edinburgh, Aberdeen, Elgin) with other Irish Traveller families (Cash, Maughan, Rooney, Hanrahan) and Scottish Travellers Mcfee stopping on waste ground and laybys. The men do mostly ground work and collecting/recycling of scrap metal.
- 38 The families have not given up their travelling way of life. The young children are still being brought up in this tradition but clearly they have need to be settled at this time due to their personal circumstances for health and educational needs.
- 39 With regard to condition one, planning permission reference SE/11/02120/CONVAR allowed for the continued temporary occupation of the site by Mrs T Nolan, Mrs J Casey and Mrs O Donaghue, together with their resident dependants due to the special circumstances presented by the applicant. Since the 2011 permission, Mrs O'Donaghue has left the site and now Pamela O'Driscoll and Katherina Casey, together with their dependants wish to continue to reside on site, as they are bloodline relatives of the applicant. As a result an additional plot within the site has been created and another mobile home with associated paraphernalia resides within the site.
- 40 Upon considering the personal circumstances of the families above, it is recognised that they need continued access to healthcare and educational facilities. Upon considering this there are undoubtedly educational benefits for the all children on the site to remain in a stable education. These education and health benefits are material considerations that weigh in favour of the development.

Planning Policy

- 41 National policy is set out in Planning Policy for Traveller Sites (PPTS) adopted March 2012. Paragraph 25 states that local authorities cannot demonstrate an up-to-date five year supply of deliverable sites; this should be a significant consideration when determining applications for the grant of temporary permission.
- 42 In August 2011, the Council commissioned a new Gypsy, Traveller and Travelling Show-person Accommodation Assessment to provide an update on the current need in the District and to consider how the issues in the emerging national policy on local and historic demand could be addressed. This has been completed.
- 43 The Assessment draws a distinction between those households that identify themselves as having current and/or future needs for pitches and those that identify a need for a pitch and meet the planning definition of ‘gypsies and travellers’ or ‘travelling show-people’ as set out at Annex 1 of the PPTS.
- 44 The different levels of need identified are set out below:

Period	Applying planning definition
2012 - 2016	40
2017 - 2021	15
2022 - 2026	17
2012 - 2026	72

- 45 The GTAA concluded that there is a total need for 40 additional pitches between 2012 and 2016, with a further 15 pitches in the next five year period and from 2022 to 2026 17 pitches. The report highlighted (as noted in the table above) that it would be possible to meet a significant proportion of the accommodation needs in the first five years by 2016, where acceptable. This site falls into this category. It is acknowledged there is a substantial level of unmet need in the District and this carries significant weight in favour of the proposal.
- 46 Given the need identified in the 2006 and 2011 assessments, the Council has, in accordance with national policy (previously in Circular 01/06 and now in PPTS), given favourable consideration to the grant of temporary planning permission for Gypsy and Traveller sites that are inappropriate because they constitute development in the Green Belt but are otherwise acceptable. This is intended to ensure that gypsies and travellers have some security in their accommodation until such time as sites are allocated for gypsy and traveller pitches in the Local Development Framework (LDF).
- 47 In August 2012 a “call for sites” was carried out. This involved contacting Gypsy and Travellers living in the District, Gypsy and Traveller organisations and all those who registered an interest in the issue through consultations on the LDF. Parish and Town Councils were also contacted for their views on any potential within their areas. This work was carried in preparation in formulating a Gypsy and Traveller Site Allocation Development Plan Document (DPD).
- 48 Significant progress has been made. This work in forming the DPD has focused on the assessment of the existing temporary and unauthorised sites and a review of the non-Gypsy and Traveller allocations proposed in the Allocations and

Development Management Plan. This assessment identifies whether any of the proposed allocations are appropriate locations for new pitches and whether the existing temporary pitches should be made permanent. The same assessment will be made of any new sites proposed.

- 49 As mentioned previously, on the 14 September 2014 the Government published a consultation document: "Proposed changes to national planning policy and Planning Policy for Traveller Sites". The consultation document proposes to change the definition of "traveller" for planning related purposes so that it would exclude those who have permanently ceased from travelling. Furthermore it proposes changes to planning policy to deal with the intentional unauthorised occupation of sites, so that if a site were to be intentionally occupied without planning permission, that this would be a material consideration in any retrospective planning application for that site. However, given that the proposals are subject to consultation, little weight can be given to it in the determination of this application.
- 50 In a January 2014 written ministerial statement the Government sought to re-emphasise existing policy that "unmet need, whether for traveller sites or for conventional housing, is unlikely to outweigh harm to the green belt and other harm to constitute the "very special circumstances" justifying inappropriate development in the green belt." Regard must be had to the Written Ministerial Statements of 1 July 2013 and 17 January 2014.
- 51 Also noted, changes have been made in National Planning Policy Guidance issued on 6 October 2014. This change to the NPPG lowers the emphasis to be placed on the weight afforded to the unmet need of traveller sites within the Green Belt. Therefore upon considering the guidance in the PPTS and the absence of available sites, significant weight can be afforded to this, whereas less weight can be given to the unmet need of the sites within the District.
- 52 At present the drafting of the Gypsy and Traveller Plan has been put 'on hold' until the outcome is known with regard the recent Government consultation relating to changing the planning definition of a gypsy traveller. However in the background, site assessment will still be undertaken by the Council's Planning Policy Team.
- 53 At present there is no real prospect of providing the gypsy/traveller families accommodation needs on an alternative sites. There are no available spaces on public sites and there are long waiting lists for vacant pitches at Barnfield Park, Ash and Polhill KCC sites and the turnover of pitches are low. It is likely the families would have to double up on another site or result in moving onto other unauthorised encampments or the roadside.
- 54 The existing development plan does not identify any land suitable for traveller sites other than those previously mentioned. High value land within settlements is unlikely to be affordable and all areas outside settlements are Green Belt sites.
- 55 It is clear now that until additional sites are identified through a DPD, there is no realistic prospect that an alternative site will become available for the applicant /families. There is acknowledgement that there have been delays preparing the DPD which have come about through the revocation of the South East Plan, but there is a good prospect of permanent sites being identified through the DPD process, to which the families could then seek to move or this site being allocated

through the 'plan-led' process. However this does represent the failure to meet the need for pitches for Gypsies and Travellers due to the absence of such DPD.

- 56 This is compounded by not being able to demonstrate a 5 year supply of deliverable land to accommodate such families as cited by the PPTS.
- 57 Considering the above, that there is a clear and immediate need of sites, however the delivery of permanent sites are being considered in a 'plan-led' approach in accordance with Government Guidance as part of the Gypsy Traveller site consultation.
- 58 Gypsy Traveller sites identified through the DPD process would be assessed against the criteria in Core Strategy policy SP6. Apart from its location within the Green Belt, it is considered that the proposal would meet all the criteria in policy SP6, as it requires sites to be located within or close to existing settlements with a range of services/facilities and access to public transport (criterion a). There should also be a safe and convenient vehicular and pedestrian access to the site (criterion c). Compliance with policy SP6 is afforded substantial weight, to which this site does and is likely to be allocated through the DPD 'plan-led' process.

Impact upon the Green Belt

- 59 Para.79 of the NPPF, states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, and that the essential characteristics of Green Belts are their openness and their permanence.
- 60 Para. 87 of the NPPF states that there is a general presumption against inappropriate development within the Green Belt. Such development should not be approved, except in very special circumstances. Inappropriate development is, by definition, harmful to the Green Belt. The construction of new buildings inside the Green Belt is inappropriate unless, amongst other things, it is for agricultural and forestry, sports facilities, infilling, redevelopment of Brownfield sites as stated in para. 89.
- 61 Other forms of development not considered to be inappropriate in the Green Belt are set out in paragraph 90 of the NPPF. However, the proposed use of the site as a residential caravan site for the families and associated development would not fall within any of the above exceptions, or those contained in paragraph 90 of the NPPF. This includes material changes in the land use which do not maintain openness. Indeed, the PPTS (paragraph 14) confirms that "Traveller sites (temporary or permanent) in the Green Belt are inappropriate development".
- 62 If the proposal is deemed to be considered as inappropriate development is, by definition, harmful to the Green Belt. Then it is for the applicant to show why permission should be granted. Very Special Circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. In view of the presumption against inappropriate development, substantial weight should be given to the harm to the Green Belt when considering any planning application concerning such development, as cited in para. 87 of the NPPF and supported by written ministerial statements dated July 2013 and January 2014 and the NPPG.

Extent of harm

- 63 The proposed retention of the stationing of four twin unit caravans (mobile homes) and four touring caravans, together with the fencing, hardstanding and utilities/shed that have already been erected, have a detrimental impact upon the openness of the Green Belt.
- 64 The introduction of the additional caravans, vehicles and other residential paraphernalia associated with the residential pitches diminishes the otherwise open nature of the site. The development encroaches into the countryside beyond the urban built confines of Swanley. As such, it clearly conflicts with one of the purposes of including land in the Green Belt.
- 65 The development overall, results in a loss of openness, which is the most important attribute of the Green Belt. As such, and in accordance with paragraph 89 of the NPPF and paragraph 14 of the PPTS, the proposal constitutes inappropriate development. Inappropriate development is by definition harmful to the Green Belt.
- 66 The weight to be attributed to the harm to openness and the conflict with one of the purposes of including land in the Green Belt due to encroachment is substantial.
- 67 This does not outweigh the presumption against inappropriate development, in order for inappropriate development to be permitted, very special circumstances need to be demonstrated which clearly outweigh the harm by reason of inappropriateness and any other harm. This will be considered after all other matters.

Impact on character and appearance of surrounding area

- 68 Policy EN1 of the ADMP requires that development respects and takes opportunities to enhance the character and distinctiveness of the locality. The form of the proposed development, including any buildings or extensions, should be compatible in terms of scale, height, density and site coverage with other buildings in the locality.
- 69 Policy SP1 of the Sevenoaks Core Strategy seeks for all new development to be of high quality and respond to the distinctive local character of the area.
- 70 Policy LO8 of the Sevenoaks Core Strategy requires that the countryside should be conserved and the distinctive features that contribute to its character protected and enhanced.
- 71 The site whilst it is located within the green belt, it is not a significant distance from the main residential development of Swanley. In addition, this site is not covered by any specific landscape designation. To the north west of the site lies a small collection of commercial/agricultural outlets and seasonal agricultural workers accommodation, which when viewed cumulatively, the impact of the low level buildings proposed to be retained is limited on the wider landscape character.
- 72 The site does have some visual impact from outside the site, however the low level structures, together with good established mature landscaping fronting the site along Maidstone Road and the small change in ground levels, limits the visual

harm, particularly within the context of rural, residential and commercial uses within close proximity. The retention of the proposed use would in part comply with the above policies and would preserve the character of the area.

- 73 Being mindful of the established landscaping in and around the site and taking into consideration of the above paragraph, the impact of the additional built form would be very limited upon the character and appearance of the wider landscape. Therefore limited weight is attached to the impact on the character and appearance of the area.

Highway Safety

- 74 Policy T1 of the ADMP requires that development should ensure satisfactory access for vehicles and pedestrians. The Kent Highway Services have raised no objection to the existing access or its use based on Highway Safety.
- 75 The Kent Highway Authority has raised no objection to the existing access or its use based on Highway Safety being in close proximity to the junction of Hockenden Lane and Maidstone Road.
- 76 On considering the above, the development would accord with Policy T1 of the ADMP.

Sustainability

- 77 Paragraph 11 of the PPTS and Policy SP6 of the Core Strategy seeks to ensure that traveller sites are sustainable economically, socially and environmentally. Policies should promote peaceful and integrated co-existence between the site and local community, promote access to appropriate health services, ensure that children can attend school regularly, provide a settled base that reduces the need for long distance travelling and possible environmental damage caused by unauthorised roadside encampments and reflect the extent to which traditional lifestyles can contribute to sustainability.
- 78 In this case, it is clear that the site would continue to provide a settled base which in itself would facilitate access to medical facilities and education for the children. By the very nature of a nomadic way of life, the applicants travel to areas of work and stay for periods of time. Moving on the families from the site would result in them using unauthorised roadside encampments and unlawful doubling up on pitches on other sites. As a result would facilitate the families need to travel further and as a result, the potential for further environmental damage would be increased.
- 79 Notwithstanding the above, it is acknowledged that the site is within easy walking distances of shops and other facilities, it would nevertheless provide many of the other sustainable benefits referred to in PPTS. These include addressing the need for a settled base thereby facilitating access to health care, regular education for the children and the reduction in the possible environmental roadside encampments. These benefits outweigh the negative aspects relating to the location of the site in terms of sustainability and can be afforded moderate weight.

Human Rights and Equality Duty

80 Paragraph 3 of the Government's Planning Policy for Traveller Sites (March 2012) provides that:-

"The Government's overarching aim is to ensure fair and equal treatment for travellers, in a way that facilitates the traditional and nomadic way of life of travellers while respecting the interests of the settled community."

81 When considering an application for planning permission for the use of land as a residential gypsy caravan site, the Council needs to consider whether Article 8(1) of the European Convention on Human Rights (ECHR) is engaged. Article 8(1) provides that everyone has the right to respect for his private and family life, his home and his correspondence.

82 Case law has established that Article 8(1) of the ECHR is engaged in applications for planning permission for residential gypsy caravan sites, irrespective of whether the applicants are occupying the site as their home at the time the application is made.

83 Article 8(2) of the ECHR allows interference by a public authority with the right to respect where the interference accords with the law and is necessary in a democratic society for the wider public interest, in terms of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals or for the protection of rights and freedoms of others.

84 Case law has also established that the greater the interference with ECHR rights, the greater will be the need to justify that interference by reference to necessity and proportionality. The concept of proportionality can be equated to the balancing exercise which should be undertaken by all decision makers and in the case of applications for gypsy sites, any action must be evenly balanced and fully considered in order to avoid the criticism that it is disproportionate relative to the harm caused.

85 In making its decision the Council must also have regard to its public sector equality duty (PSED) under Section.149 of the Equalities Act. The duty is to have due regard to the need (in discharging its functions) to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
- Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s);
- Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding;

- The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 86 The PSED must be considered as a relevant factor when considering its decision but does not impose a duty to achieve the outcomes in s.149. The level of consideration required (i.e. due regard) will vary with the decision including such factors as:
- The importance of the decision and the severity of the impact on the Council's ability to meet its PSED;
 - The likelihood of discriminatory effect or that it could eliminate existing discrimination.
- 87 The Council should give greater consideration to decisions that have a disproportionately adverse impact on a protected characteristic and this impact may be unintentional. In appropriate cases, this may involve an understanding of the practical impact on individuals so affected by the decision. Regard should be had to the effect of mitigation taken to reduce any adverse impact. Further, the PSED is only one factor that needs to be considered when making a decision and may be balanced against other relevant factors. The Council is also entitled to take into account other relevant factors in respect of the decision, including financial resources and policy considerations. In appropriate cases, such countervailing factors may justify decisions which have an adverse impact on protected groups.
- 88 Having regard to the balance of considerations outlined above and the effect of the proposal upon the public interest, it is considered that the refusal of this application would have a disproportionate effect upon the rights of the children and the rights of the families under the provisions set out above. For the reasons given above it is considered that the appropriate balance would be struck between the rights of the individuals and the protection of matters of acknowledged public interest by the grant of a permanent permission, such that the action would not be disproportionate and would not result in a violation of the occupiers rights and nor would it raise any equalities issues. Consideration has been given to the grant of a temporary permission, however such an action would not appear to meet the tests.

Balancing Exercise/Very Special Circumstances in varying/removing the relevant conditions

- 89 The retention of the land as a traveller site would represent inappropriate development within the green belt, with an associated harmful impact upon openness.
- 90 The applicant's agent recognised that the application amounts to inappropriate development in the Green Belt and submitted the following considerations as a case of Very Special Circumstances:
- Unmet need for Gypsy sites in Sevenoaks
 - Failure of policy not delivering a five year supply
 - PPTS does not preclude sites being located within the Green Belt

- Absence of alternative provision in Kent as a whole
- Personal need of the applicants and education for their children
- Realistically any site in Sevenoaks District would be in the Green Belt
- PPTS encourages Gypsy Travellers to self provide where there is a shortage of plots.

91 The special circumstances are summarised as above, the families' gypsy traveller status, the unmet need for pitches in the district, lack of alternative sites, the need to prepare/adopt a site allocation DPD, and matters of human rights and race equality. The personal circumstances of the occupants should also be considered as is considering the children's best interest which is a primary consideration.

92 On the other hand, and as specified earlier, there is a clear unmet need for Gypsy sites in the District. This is coupled with the fact that the District currently has no identified or allocated land for such provision within no green belt sites even though the Council has been actively seeking them since 2010. The circumstances of the occupants also weigh in favour of the development that remained in existence for the past ten years.

Temporary Permissions

93 Further consideration has been given to the use of temporary conditions. National Planning Policy Guidance states it will rarely be justifiable to grant a second temporary permission – further permissions should normally be granted permanently or refused if there is clear justification for doing so. This site has already been subject to 2 temporary permissions and was set in the hope that site would be allocated to meet the need for travellers' sites which was preferably hope to be in 2016. In the light of another delay in identifying sites for travellers, the resolution to produce a separate DPD and the lack of progress in the past, the need for specific identified sites for travellers is afforded significant weight, even more so when development of the DPD being put 'on hold' at present.

94 There is recognition that the proposal would cause some harm by reason of inappropriateness, loss of openness and conflict with one of the purposes that the Green Belt serves. It would cause negligible harm to the character and appearance of the area with the retention of the existing landscaping within the site. Substantial weight in favour of the development is afforded in respect of compliance with Core Strategy policy SP6. Some weight in favour of the development is given to the collective educational, medical and personal needs of the occupiers.

95 By allowing the continued/permanent occupation of the site will allow the families to continue upon their daily lives without fear of the possibility of planning enforcement action to displace them from the site. It has been accepted on all previous submissions that Mrs Tersea Nolan and Mrs J Casey complies with the definition of Gypsy status. It is also accepted that Katherina Casey and Mrs O'Driscoll also comply with the definition. In addition, it is accepted that there is an unmet need in the provision of providing allocated site for Gypsy/Travellers and no 5 year supply of allocated sites as already stated in previous paragraphs above. Favourable consideration has been given to the variation of condition one for an extended period, however, there is uncertainty to when the Council will deliver the Gypsy/Traveller Site Allocation DPD. To continue granting further

temporary permissions in this instance could be deemed unreasonable in light of NPPG. In light of the circumstances, the number of temporary permissions granted on this site and Government advice on using further temporary permissions is no longer justified, it would be reasonable to allow permanent occupation of the site.

- 96 Overall, the harm associated with the permanent retention of the mobile homes and other paraphernalia within the site by reason of its inappropriateness and harm caused to the openness of the green belt is clearly outweighed by other material considerations and the fact that a further temporary permission is no longer justified. Very special circumstances do exist that would justify a permanent permission in this instance. If accepted, this would not set precedence for other sites to follow, as each application is judged on its own merits.

Other Matters

- 97 It is not considered that by allowing the continued occupation of the families on site would place a burden upon the existing provision of health and education services. In any event both families already have children who attend local educational establishments and have been for some years.
- 98 The opportunity has been undertaken to review the planning conditions of the 2011 permission. It is recommended that a further condition should be included that reflects current government guidance in relation to the definition of gypsy travellers. As it has been found that that a permanent permission is justified in this instance, it follows that conditions 2 & 3 can be varied to reflect the change in the situation to reflect the quantum of development on site and reflect the changes in occupation due to permission has been granted on the basis of the personal circumstances of the occupiers.

Conclusion

- 99 This application has been determined on its merits in the light of the development plan and all material considerations. It has been recognised that very special circumstances do exist for the occupiers together with other material considerations that outweigh the harm caused to the green belt and justify the recommendation for permanent permission.

Confidential Appendix Further to the Officer's Report personal circumstances are capable of being a material consideration to be assessed as part of a planning application.

Background Papers

Site and Block plans

Contact Officer(s):

Sean Mitchell Extension: 7349

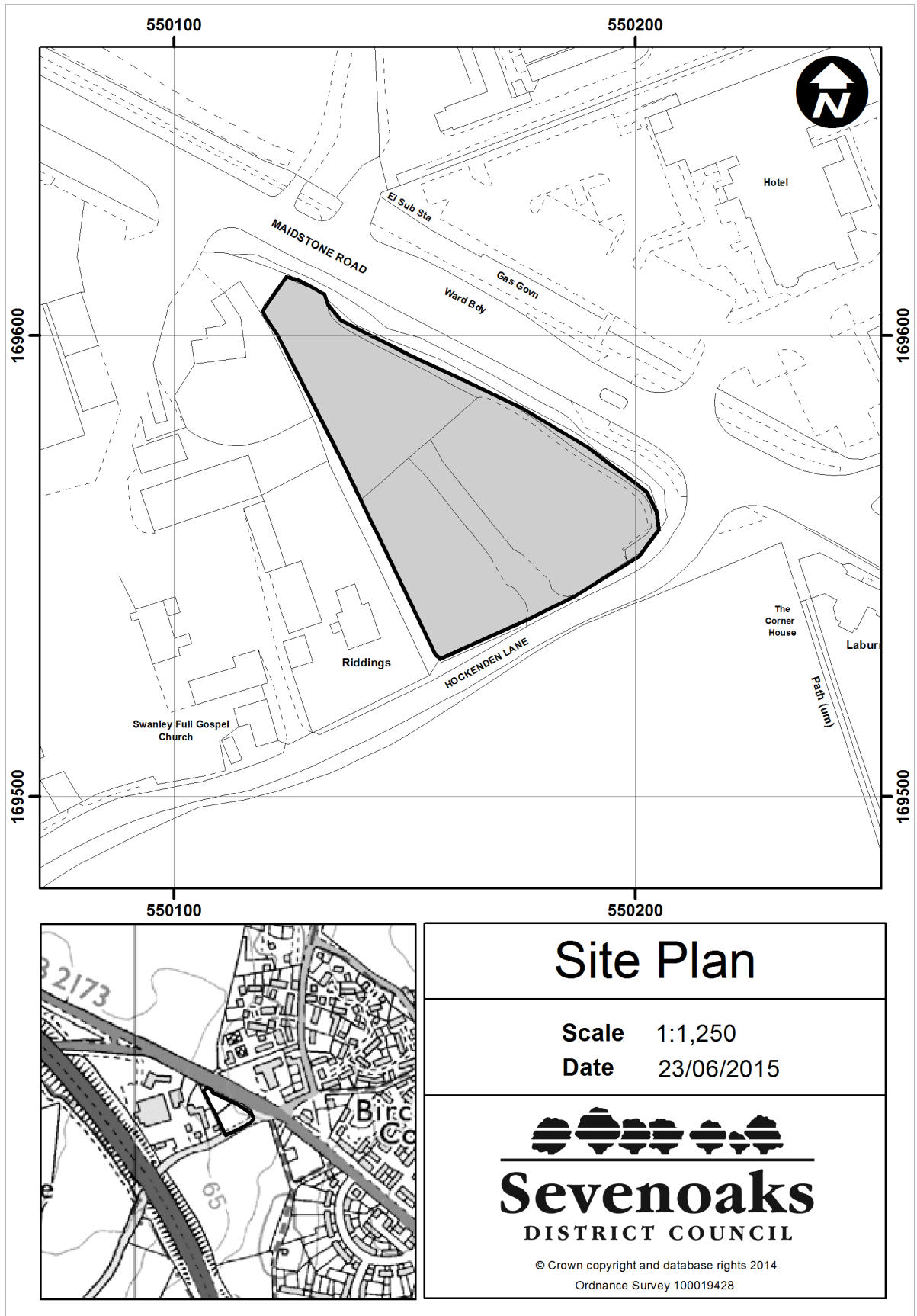
Richard Morris
Chief Planning Officer

Link to application details:

<http://pa.sevenoaks.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=NGERNMBKION00>

Link to associated documents:

<http://pa.sevenoaks.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=NGERNMBKION00>



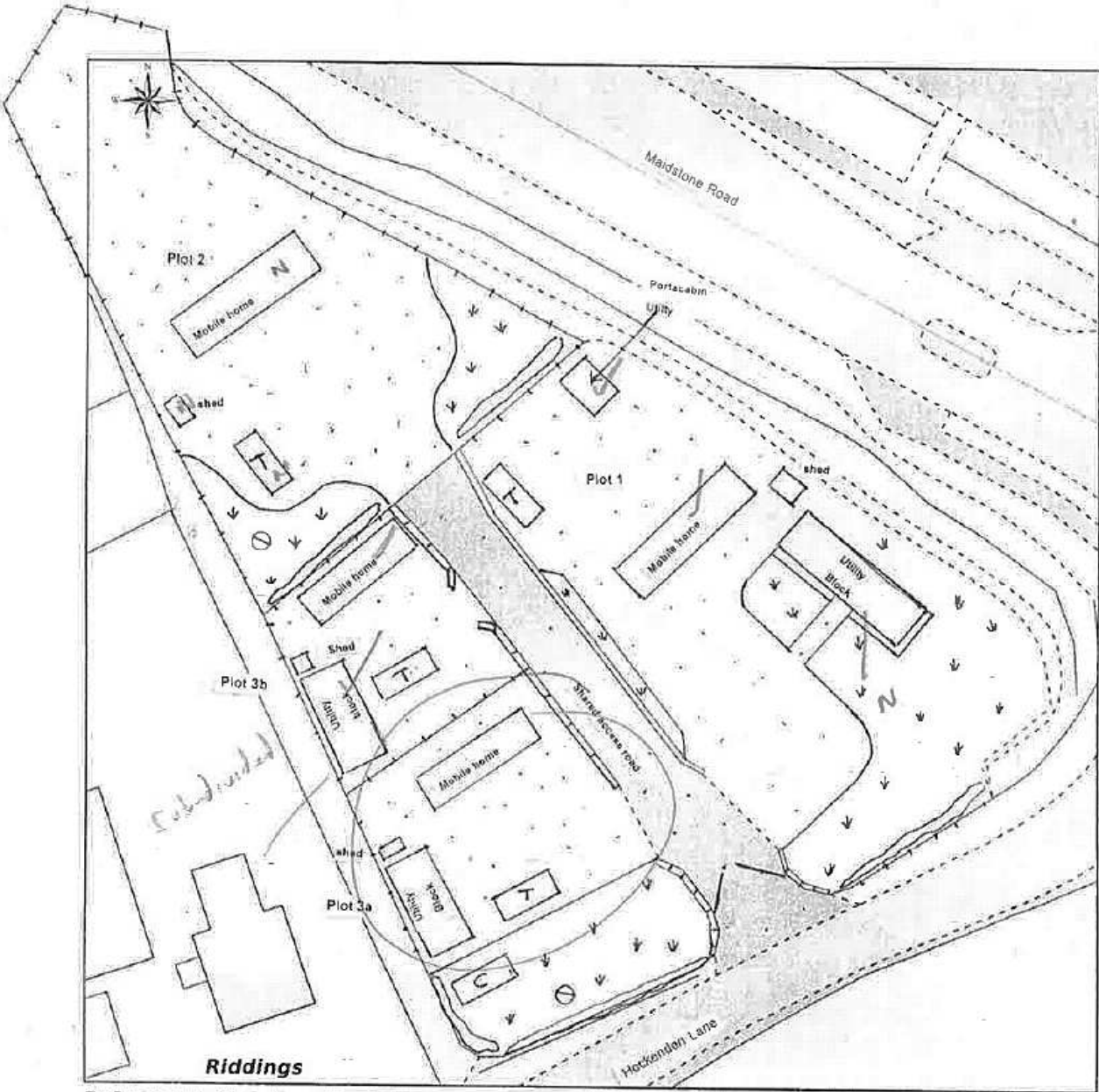
Site Plan

Scale 1:1,250
Date 23/06/2015



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Ordnance Survey 100019428.

Proposed Block Plan



<u>Key</u>			
T	Touring caravan	⊗	Septic tank
→	Timber fence	—	brick wall
C	container	⌋	hedgerows
		⬆	grassed area
		⬆	hard standing

Deputy Chief Executive and
Director of Community and Planning Services:
Kristen Paterson



Ms T Nolan and Mrs E O'Donaghue
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10 Whitehall Drive
Harthford
Northwich
Cheshire
CW8 1SJ

SE/11/02120/CONVAR
Valid on 15th August 2011

**TOWN AND COUNTRY PLANNING, ENGLAND
THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT
PROCEDURE) (ENGLAND) ORDER 2010**

GRANT OF PLANNING PERMISSION

Site : Land South West Of Deja Vu Nightclub London Road Swanley
Kent

Development : Variation of condition 1 of SE/07/03543/FUL - (Change of use to caravan site for stationing of 5 caravans (3 mobile homes and 2 touring caravans) for Travellers, with retention of associated hardstanding, septic tank, sheds and fencing (retrospective). Two utility blocks are proposed on the site.) To either make the site permanent or renew the time limited condition for a further temporary period.

Sevenoaks District Council, as the District Planning Authority, pursuant to powers in the above mentioned Act and Order, HEREBY GRANTS PLANNING PERMISSION for the development described above, to be carried out in accordance with the application and plans submitted therewith, SUBJECT TO THE CONDITIONS set out below :-

1) This planning permission is granted for a temporary period of three years only, from the date of this permission. By the date this permission expires, all caravans, utility building, structures, hardstanding, materials and equipment brought on to the land in connection with the use hereby approved, shall be removed and the site shall be restored to its previous condition, or restored in accordance with a scheme that has been submitted to and approved in writing by the Council.

In order that any other proposal for the use of the land for a longer period is the

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Telephone: 01732 227000 Fax: 01732 451332 DX 30006 Sevenoaks
Switchboard Times: Monday - Thursday 8.45 a.m. - 5.00 p.m. Friday 8.45 a.m. - 4.45 p.m.



subject of a separate application, to be determined on its merits, having regard to the harm to the Green Belt, the status of the Local Development Framework and the allocation of sites for Gypsies and Travellers.

2) The occupation of the site hereby permitted shall be carried on only by Mrs E O'Donahue and her dependants, Mrs T B Nolan and her dependants and Mrs J Casey and her dependants and whilst they comply with the definition of gypsies and travellers set out in paragraph 15 of ODPM Circular 01/2006. When the land ceases to be used the residents and their dependants, or at the end of the expiry of temporary permission, whichever is the sooner, the use hereby permitted shall cease to all caravans, utility building, structures, hardstanding, materials and equipment brought on to the land associated with the use hereby permitted.

Given that the very special circumstances in this case clearly outweigh the harm to the openness of the Green Belt and any other harm.

3) No more than 5 caravans as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than 3 shall be a static caravan or mobile home) shall be stationed on the site at any time.

Given that the very special circumstances in this case clearly outweigh the harm to the openness of the Green Belt and any other harm, in accordance with Policy EN1 of the Local Plan.

4) No commercial activities shall take place on the land, including the storage of materials for the duration of this permission.

To preserve the visual appearance of the area as supported by EN1 of the Sevenoaks District Local Plan.

5) No building, enclosure or temporary structures other than those shown on the approved block plan Rev. A received on 15th August 2011 shall be erected or placed on the site.

To preserve the visual appearance of the area as supported by EN1 of the Sevenoaks District Local Plan.

In determining this application, the Local Planning Authority has had regard to the following Development Plan Policies:

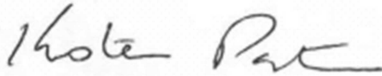
The South East Plan 2009 - Policies SP5, CC6, H4
Sevenoaks District Local Plan - Policies EN1
Sevenoaks District Core Strategy 2011 - Policies LO8, SP6

The following is a summary of the main reasons for the decision:

The following very special circumstances exceptionally outweigh any harm by reason of inappropriateness and any additional harm to the Metropolitan Green Belt by reason of other factors:

-
- a) the applicants are considered to be Gypsies;
 - b) there is a clear and immediate need for accommodation within Sevenoaks District and a backlog of unmet need as established by the Gypsy and Traveller Accommodation Assessment; and
 - c) a temporary permission would not result in a permanent adverse impact on the openness and character of the Green Belt.

The traffic movements generated by the development can be accommodated without detriment to highway safety.



Kristen Paterson
Community and Planning Services Director DATED THIS: 16th day of December 2011