

4.1 - SE/17/00796/FUL Revised expiry date 21 July 2017

PROPOSAL: Change of use of land to residential use, for one gypsy traveller family. Site to contain one static caravan, one touring caravan and parking for two associated vehicles.

LOCATION: Merry Lees, Billet Hill, Ash, Kent TN15 7HG

WARD(S): Ash And New Ash Green

ITEM FOR DECISION

This application has been referred to Development Control Committee by Councillor Clark as it is not felt that sufficient Very Special Circumstances have been demonstrated to outweigh the harm to the Green Belt.

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

1) The pitch on the site shall only be occupied by gypsies or travellers as defined by Annex 1, paragraph 1 of "Planning policy for travellers sites" produced by the Department for Communities and Local Government (August 2015).

Reason: Planning permission has been granted on the basis of a demonstrated need for accommodation for Gypsies and Travellers and it is therefore necessary to keep the site available to meet that need in accordance with Policy SP6 of the Sevenoaks Core Strategy.

2) The occupation of the site hereby permitted shall be carried out only by the following and their residential dependents. Mr and Mrs J Maloney. When the land ceases to be occupied by those named above the use hereby permitted shall cease and all caravans, structures, materials and equipment brought on to or erected on the land, or works undertaken to it in connection with the use, shall be removed and the land shall be restored to its former condition before the development took place or another state as agreed with the local planning authority, and the time period within which the restoration works must be undertaken.

Reason: In granting this permission the local planning authority has had regard to the special circumstances of the case and the visual amenities of the locality in accordance with Policy EN1 of the Sevenoaks Allocations and Development Management Plan.

3) The use hereby permitted shall be for a limited period of three years from the date of this decision. At the end of this temporary permission or when the land ceases to be occupied by those named in Condition 2, the use hereby permitted shall cease, all caravans, structures, materials and equipment brought on to the land in connection with the use, including the amenity block, shall be removed.

Reason: In the interests of visual amenity in accordance with Policy EN1 of the

Sevenoaks Allocations and Development Management Plan.

4) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan; Block/Site Plan

Reason: For the avoidance of doubt and in the interests of proper planning.

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) Was updated on the progress of the planning application.

Description of proposal

- 1 Change of use of land to residential use for one Gypsy Traveller family. Site to contain one static caravan, one touring caravan and parking for two associated vehicles.

Description of site

- 2 The application site is located to the west of the village of Ash.
- 3 The site sits on a lane characterised by its heavily enclosing features, including man-made features such as walls and other hard boundaries, and wooded enclosures.
- 4 There are a number of dwellings on the lane on both sides.

Constraints

5 Green Belt

Policies

Allocations and Development Management (ADMP):

6 Policies - EN1, EN2, EN5

Core Strategy (CS):

7 Policies - LO1, LO8, SP1, SP2, SP3, SP6, SP11

Planning history

8 07/01988/FUL Change of use to residential, stationing of one mobile home and one touring caravan for a Gypsy family WDN 14/11/2007

05/01665/LDCEX - Certificate of Lawfulness in respect of mobile home. REFUSE 07/09/2005

03/01644/LDCPR - Provision of a replacement mobile home. WDN 28/08/2003

Enforcement Notice served on 16/09/2005 to remove mobile home.

Consultations

Ash Parish Council

9 The Parish Council strongly objects to this application on Green Belt grounds; that it impacts on the openness of the countryside and that the Green Belt is particularly valued in this area. A recent application to increase the number of caravans from one to two on a pitch at Barnfield Park was recently turned down on Green Belt grounds. (SE/16/03244 refers).

Sustainability Statement:

Bus service - the site is remote from local facilities and there is no public bus service to or from the site. There are no footpaths from the site and any pedestrian use of Billet Hill would be extremely hazardous.

Access - the proposed means of access to the site is inadequate due to safety and convenience as it necessitates using part of the neighbouring drive way. Visibility to access Billet Hill from the site is poor. Despite being designated as a less than 6' 6" road, this is frequently ignored and is used as an outlet from New Ash Green and the surrounding areas to the A20/M25.

Google Earth Images

It is to be noted that these images refer to a static caravan that was in situ prior to the sub-division of Conningdale and was only in use during the

construction of Conningdale. A request for a Certificate of Lawfulness in respect of the mobile home was refused in July 2005 (SE/05/01665) as it had not been demonstrated that the mobile home had been in continuous use as a single self-contained unit.

Conclusion

In the immediate vicinity, relative to the hamlet of Ash, there is ample provision for the Gypsy and Traveller community at Barnfield Park which has provision for 35 pitches and 45 caravans. The Travelling population outnumber the core number of inhabitants of the hamlet.

We do not feel that very special circumstances exist in this case that would outweigh the significant harm to the Green Belt and the already existing provision of Gypsy and Traveller sites in the vicinity.

Officer Note: The Parish Council also referred to the Gypsy Status Questionnaire in their response, which has been redacted.

Representations

10 Ten objections to the application which can be summarised as:

- Does not comply with Green Belt policy;
- Noise;
- Traffic;
- Anti-social behaviour;
- Loss of property value;
- That the applicants are not travellers.

Key Issues

11 The main issues for consideration are:

- The status of the applicant in relation to the NPPF and Planning Policy for Traveller Sites (August 2015).
- Appropriateness of the development in the Green Belt and impact on openness.
- Impact on the living conditions of the applicant.
- Impact on the amenities of nearby properties.
- Impact on highways.

12 Of particular relevance to this application is the following guidance:

Presumption in favour of sustainable development:

13 Para 14 of the NPPF confirms that the NPPF has a presumption in favour of sustainable development, and that development that accords with the development plan should be approved unless material considerations indicate otherwise. (See paras 11, 12, 13 of NPPF.)

14 Para 14 of the NPPF (and footnote 9) also advises that where the development plan is absent, silent or relevant policies are out of date, permission should be granted unless there are specific policies in the NPPF

that indicate that development should be restricted. This applies to a variety of designations, including SSSIs, Green Belt, AONBs, designated heritage assets and locations at risk of flooding.

Green Belt considerations:

- 15 Having established that the site is within the Green Belt we must consider both our own Development Plan Policy and edicts of the NPPF.
- 16 As set out in para 87 of the NPPF, where a proposal is inappropriate development in the Green Belt, it is by definition harmful and should not be approved except in very special circumstances.
- 17 Para 88 of the NPPF advises that LPAs should give substantial weight to any harm to the Green Belt. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness and any other harm, is clearly outweighed by other considerations.

Therefore, the harm in principle to the Green Belt remains even if there is no further harm to openness because of the development.

- 18 Openness is an essential characteristic of the Green Belt and is different from visual impact. Openness is about freedom from built form. Even if there is absence of harm to openness, there can be harm in principle to the Green Belt from inappropriate development.

Gypsy and Traveller Sites

- 19 'Planning Policy for Traveller Sites' (PPTS) 2015 contains guidance in respect of the treatment of planning applications for Traveller and Gypsy sites. Paragraph 24 states that local planning authorities should consider the following issues amongst other relevant matters when considering planning applications for Traveller sites:
 - a) The existing level of local provision and need for sites
 - b) The availability (or lack) of alternative accommodation for the applicants
 - c) Other personal circumstances of the applicant
 - d) That the locally specific criteria used to guide the allocation of sites in plans or which form the policy where there is no identified need for pitches/ plots should be used to assess applications that may come forward on unallocated sites
 - e) That they should determine applications for sites from any Travellers and not just those with local connections.

Chief Planning Officer's Appraisal

Status of the applicant

- 20 The application is made by J Maloney, who is currently residing on the site and is claiming Gypsy status.

- 21 Planning Policy for Traveller Sites (PPTS) has been revised since the previous applications for mobile homes on the site. The latest guidance was issued August 2015. Annex 1 defines “gypsies and Travellers” as:
- ‘Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family’s or dependants’ educational or health needs or old age have ceased to travel temporarily, but excluding members of an organised group of travelling show people or circus people travelling together as such.’*
- 22 It states that consideration should be given to a) whether they previously led a nomadic habit of life, b) reasons for ceasing their nomadic habit of life and c) whether there is an intention of living a nomadic habit of life in the future and if so how soon and in what circumstances.
- 23 The information submitted in support of the application gives details of the circumstances of the application. In particular it states the following:
- *Mr Maloney has lives a nomadic habit of life;*
 - *The family travel for work in construction, landscaping and ‘general trading’ and attends Horse Fairs, Fairs and Events other culturally specific and family events.*
- 24 The family consist on Mr and Mrs Maloney, and two children.
- 25 It is clear that the applicant has pursued a nomadic lifestyle and will continue to do so. The applicant meets the definition of “gypsies and Travellers” given in the PPTS.

Green Belt

- 26 The site is located in the Metropolitan Green Belt. Paragraph 89 of the NPPF states that we should regard the construction of new buildings as in appropriate in the Green Belt, subject to exceptions listed. Paragraph 90 specifies further forms of development that are not inappropriate in the Green Belt. The proposed development does not lie within any of the exceptions of paragraph 89 or the types of development described in paragraph 90. For this reason the development is inappropriate in the Green Belt by definition. This is reinforced by paragraph 16 of the PPTS 2015.
- 27 Paragraph 16 of the PPTS and the NPPF acknowledge that the development should therefore not be approved unless in very special circumstances. The PPTS states *‘subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm to as to establish very special circumstances’*
- 28 As well as being inappropriate development, the development would cause some harm to the openness of the Green Belt.
- 29 The mobile home is modestly sized structure which is located to minimise the wider visual impact, it would nevertheless result in the introduction of

an additional three dimensional form on the site, which in turn would be harmful to the openness of the Green Belt and result in encroachment into the countryside. This adds to the harm in principle identified above.

- 30 Whilst there is principle harm, the site has a very low degree of visibility and is well screened. The lane is bound by a large wall mounted upon a natural rise in land levels, as well as being screened by trees and other natural shelter. To the east and west, the site is well sheltered. To the north, there is a steep rise in land levels which quickly tapers off, leaving the site in an effective visual ditch. The site is therefore comparatively well sheltered.
- 31 Policy SP6 of the Core Strategy relates to provision for Gypsies and Travellers. It explains that sites will be provided by means of allocations in the Allocations and Development Management DPD for Gypsies and Travellers. The policy sets a number of criteria relating to such sites which relate, in summary, to the location of the site, provision of safe and convenient access and acceptable living conditions for occupants of the site, the site should not be subject to flooding, there should be no significant adverse landscape impact and consideration of alternative sites. The site is not an allocated site within the current development plan.
- 32 The site is not particularly well located, with the nearest bus routes being in New Ash Green and West Kingsdown, where other local shopping facilities can be found, both of which are practically inaccessible by foot. There are no nearby rail facilities. Realistically, private vehicle use is the only form of transportation to and from the site.

Impact on character and appearance of the area:

- 33 Core strategy L08 states that the extent of the Green Belt will be maintained. The countryside will be conserved and the distinctive features that contribute to the special character of its landscape and its biodiversity will be protected and enhanced where possible. The distinctive character of the Kent Downs and High Weald Areas of Outstanding Natural Beauty will be conserved and enhanced, which in this instance does not apply as the site is not within the AONB.
- 34 The hardstanding was in situ prior to occupation of the site by the applicant; the same is said of the large boundary treatments on all elevations and the driveway.
- 35 The site is well screened, with significant assistance from local topography; there is thus a low degree of increasing visual impact.
- 36 The application would not have any detrimental impact on local character and would likely go unnoticed to any user of the surrounding area.

Impact on the living conditions of the applicant:

- 37 The application site is well screened, in a quiet location (with minor background motorway noise at times) and not in an Air Quality Management Zone. The site would provide a suitable living standard quality.

Impact on the amenities of nearby properties:

- 38 Policy EN2 of the ADMP relates to “Amenity Protection”. The policy states that proposals will be permitted where they would provide adequate residential amenities for existing and future occupiers of the development and would safeguard the amenities of existing and future occupants of nearby properties by ensuring the development does not result in, amongst other things, overlooking, loss of privacy, loss of light or visual intrusion.
- 39 By reason of its scale and relatively isolated location, the development would not cause harm to the amenities of any nearby residential properties. In the event permission were to be recommended, it would be appropriate to attach conditions to ensure permission is personal to the applicant and that no commercial activities operate from the site, limiting the risk of noise generation from the site. This would further protect residential amenity.

Impact on highways

- 40 The site is of an adequate size to accommodate vehicles associated with the use, therefore the proposals would not increase pressure for local on street parking. This is compliant with policy T2.
- 41 The existing access drive is well established and finished in tarmac. The access mouth/junction with the main road is wide with acceptable visibility onto the lane. Traffic associated with the site is likely to be limited and very low key.
- 42 Satisfactory parking can be provided on site.

Human Rights and Equalities Act

- 43 Regard has also been given to the rights of the applicant and his family under Article 8 of the European Convention on Human Rights. However, in considering their right to home and family life, it is noted that any interference with these must be balanced against the wider public interest, in particular the protection of the rights and freedoms of others.
- 44 The Council also have a public sector equality duty (PSED) under the Equalities Act 2010. 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.
- 45 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.
- 46 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.
- 47 In this case the applicant does have educational and health needs arising from his children which are given significant weight as part of the consideration of this application and the claim for very special circumstances.

Assessment of any very special circumstances:

- 48 Para 88 of the NPPF states that when considering any planning application, LPAs should ensure that substantial weight is given to any harm to the Green Belt. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness and any other harm is clearly outweighed by any other considerations.
- 49 The harm arising from this development has been identified in the assessment above as:
- The harm in principle from inappropriate development in the Green Belt, which must be given significant weight and harm to openness through the introduction of the mobile home.
- 50 The proposals would not result in material harm to highway conditions or the amenities of neighbouring occupiers.

- 51 The very special circumstances in this case can be summarised briefly as follows:
- a recognised unmet need for Gypsy sites in the District,
 - lack of an up to date 5 year supply of deliverable sites,
 - recognition that Traveller and Gypsy sites are likely to be required in the Green Belt
 - personal circumstances of the applicant and Gypsy status, including the best interests of the children.
- 52 There are a number of recent applications and appeal decisions which have concluded that the very special circumstances advanced may all contribute to a case of very special circumstances.
- 53 I consider these material considerations to be applicable to the current application. The PPTS paragraph 27 acknowledges that if a local planning authority cannot demonstrate an up-to date 5 year supply of deliverable sites, this should be a significant material consideration when considering applications for the grant of temporary permissions. The existing development plan does not identify any land suitable for Traveller sites, other than the need identified by the Council's Gypsy, Traveller and Travelling Showperson Accommodation Assessment in April 2017.
- 54 There is a very recent 'allowed' appeal decision within the District which I consider particularly relevant to this application as it clearly sets out the weight which may be attached to the above factors. The appeal related to land at Station Court in Halstead, where permission was granted for a permanent Gypsy site (October 2016 - Council reference 14/02899/CONVAR). I summarise this decision in more detail below.
- 55 Of particular relevance was the fact that the Inspector gave significant weight to the fact that the Council did not have an adopted Gypsy and Traveller Development Plan Document and thus did not have any allocated sites. The Inspector noted that the Council did not have a 5 year supply of sites and that there was a level of unmet need within the District. The Inspector also identified an important consideration in the allocation of sites was the likely location of other Gypsy and Traveller sites and that the entire District outside the urban areas was covered by green belt. The Inspector accepted that urban land within the District had potential value for housing or commercial uses that makes it unviable as a Gypsy site. Consequently, at paragraph 17 the Inspector stated that "I have no doubt therefore that when the Council do come to allocating Gypsy sites they will have to be located in the green belt. I consider this to be a significant material consideration."
- 56 In conclusion, at paragraph 23, the Inspector gave significant weight to the unmet need for Gypsy sites and lack of 5 year supply of sites in the District, delays of the Council in adopting a Gypsy and Traveller DPD and formally adopting sites and the applicant's Gypsy status. He gave considerable weight to the fact that any future Gypsy sites will almost certainly have to be in the green belt.

- 57 On 20th April 2017 the Council adopted an updated evidence base for the need for sites in the District. This will be taken forward for the new development plan, but it does not at this stage alter the weight to be given to the issues set out in this report.
- 58 It remains the case that alternative sites are difficult to find in the District due to high land values and Green Belt designations. As such some harm to the Green Belt will arise from requirements to provide Gypsy and Traveller pitches.
- 59 In light of the above, I consider considerable weight can be attached to the very special circumstances set out above.
- 60 I am mindful that this application seeks a permanent permission, but within their supporting documentation would 'accept' a 5 year temporary permission. In my view a permanent permission would be premature prior to the formal consideration process of allocating Gypsy and Traveller sites within the new local plan. However, a temporary permission would fulfil a recognised need for a Gypsy family where no other suitable sites have been identified and provide the Council an opportunity to adopt the Local Plan. It is recommended that, in line with historic cases and the proposed timescale for the adoption of the new Local Plan, temporary permission be granted for 3 years.
- 61 It is also that the case that applicant has educational and health needs arising from his children and when this is taken into account together with his Gypsy status and other relevant considerations outlined above.
- 62 It is therefore concluded that very special circumstances do exist in this case which would clearly outweigh the harm to the Green Belt and which provide justification for the temporary grant of a personal permission in this case.
- 63 I would recommend the use of conditions to ensure the site is used only as a pitch for a single mobile home with single touring caravan and a single static caravan, and that the permission is only valid insofar as the applicant meets the definition of Gypsies and Travellers contained in the PPTS 2015.

Conclusion

- 64 The development is inappropriate in the Green Belt and also harmful to the openness of the Green Belt.
- 65 There are very special circumstances which exist in this case which would clearly outweigh the harm identified. In light of all the material considerations it is considered acceptable that a temporary planning permission is justified, subject to conditions.
- 66 I consider it reasonable to make the permission temporary for a period of three years, by which time we aim to have an adopted Local Plan with supporting Gypsy Traveller DPD. Permission can also reasonably be made personal.

Contact Officer(s):

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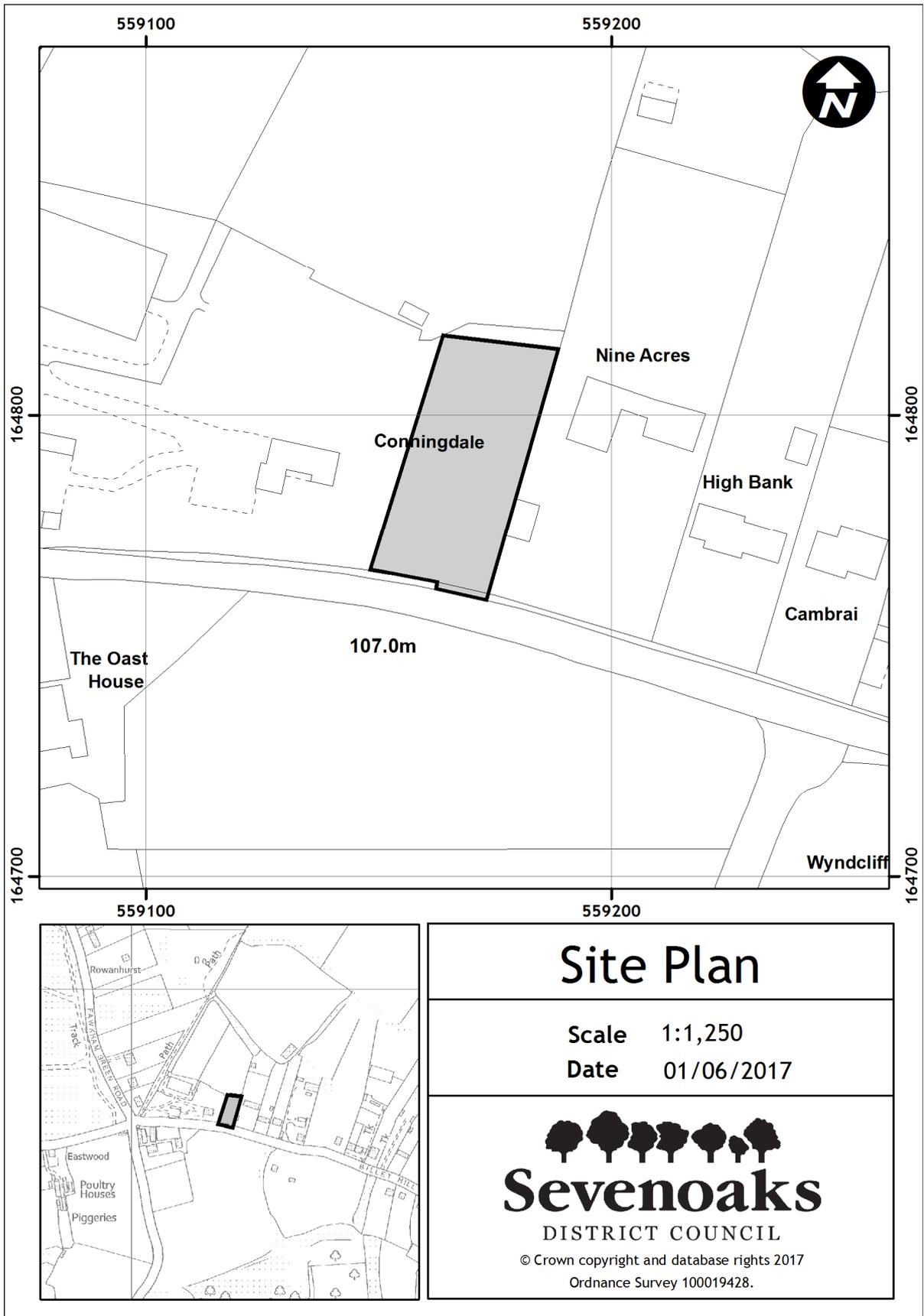
Richard Morris
Chief Planning Officer

Link to application details:

<https://pa.sevenoaks.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=OMLZBGBKGGD00>

Link to associated documents:

<https://pa.sevenoaks.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=OMLZBGBKGGD00>



Block Plan

