

4.3 17/02424/FUL

Date expired 17 October 2017

Proposal: The use of land for the stationing of caravans for residential purposes together with dayroom ancillary to that use.

Location: Area Of Land Between Button Street And M20 Slip Road, Button Street, Swanley, Kent

Ward(s): Farningham, Horton Kirby & South Darenth

Item for decision

The application has been referred to Development Control Committee by Councillor McGarvey on the grounds that the very special circumstances do not clearly outweigh the harm to the Green Belt.

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

1) The occupation of the site hereby permitted shall be carried on only by Mr M Nichols and his resident dependants, whilst Mr Mark Nichols resides on the site and while he complies with the definition of gypsies and travellers set out in Annex 1 of Planning Policy for Traveller Sites August 2015.

Given that the very special circumstances in this case which clearly outweigh the harm to the openness of the Green Belt and any other harm expressly relate to Mr M Nichols and in accordance with Planning Policy For Traveller Sites August 2015.

2) There shall be no more than one pitch on the land and on the pitch hereby approved no more than 2 caravans (as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended) shall be stationed on the site at any time, of which only 1 caravan shall be a static caravan, together with the single associated amenity building.

In order to protect the openness of the Green Belt and character of the area as supported by Government Guidance in the form of the National Planning Policy Framework, policy L08 of the Council's Core Strategy and policies EN1 and EN5 of the Allocations and Development Management Plan.

3) No commercial activities shall take place on the land, including the storage of materials.

In order to protect the openness of the Green Belt and character of the area as supported by Government Guidance in the form of the National Planning Policy Framework and to preserve the visual appearance of the area as supported by EN1 and EN5 of the Sevenoaks Allocations and Development Management Plan.

4) Notwithstanding the provisions of Part 5 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (or any order revoking and re-enacting that Order with or without modification), no

other buildings other than the two caravans and utility/day room shall be erected on the site without the written approval of the local planning authority.

To prevent inappropriate development within the Green Belt as supported by the National Planning Policy Framework and policy SP6 of the Council's Core Strategy.

5) Within 2 months of the date of this decision, full details of the acoustic fence shall be submitted to the District Planning Authority for approval in writing. Such details to include the precise siting, method of construction and density of the fence. The acoustic fence shall be erected in accordance with the approved details within a period of two months from the date of approval and maintained as approved thereafter.

In the interests of the residential amenities of the occupiers of the site as supported by policy EN7 of the Council's Allocations and Development Management Plan.

6) For the avoidance of doubt the information to which this decision relates is as follows: Drawing Nos.: 15_757_001, 002 A, 003 A, 004 A and REC Air quality Assessment dated March 2019 and Ned Johnson Acoustic Consultants - Acoustic Assessment of Noise at Pedham Stables.

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

7) When the land ceases to be occupied by Mr Mark Nichols and his resident dependants, the use hereby permitted shall cease and all caravans and structures, materials and equipment brought onto or erected upon the land, or works undertaken to it in connection with that use, shall be removed and the land shall be restored to its condition before the work took place.

Given that the very special circumstances in this case which clearly outweigh the harm to the Green Belt and any other harm expressly relate to Mr M Nichols and in accordance with Planning Policy for Traveller Sites 2015.

National Planning Policy Framework

In dealing with this application we have implemented the requirements in the National Planning Policy Framework to work with the applicant/agent in a positive, proactive and creative way by offering a pre-application advice service; as appropriate updating applicants/agents of any issues that may arise in the processing of their application and where possible and if applicable suggesting solutions to secure a successful outcome. We have considered the application in light of our statutory policies in our development plan as set out in the officer's report.

Description of site

- 1 The application site lies within the Metropolitan Green Belt outside the village boundaries of Farningham Village and the built confines of Swanley. The site is small parcel of land approx.0.13ha, bounded by Button Street to its eastern boundary and a Public Right of Way (SD178A) that runs parallel to its south-west and north-western boundaries. Approximately 35m to the west is the M25 Slip road which is heavily trafficked and beyond this the M20

motorway. The slip road is raised above the level of the site by approximately 5m. Between the site and the slip road is mature scrubland and trees.

- 2 The mobile home, which is in situ at present, is placed upon road scalplings towards the north western corner of the site, beyond which is an external garden area. The site is enclosed by close boarded timber fencing and existing mature landscaping to its north-eastern and north-western boundaries.
- 3 There is also a “day room” located on site immediately to the south-west of the mobile home.
- 4 Vehicular access can be gained from an existing vehicular crossover and access from the western side of Button Street.

Description of proposal

- 5 This is an application for use of land for “stationing of caravans for residential purposes together with dayroom ancillary to that use”.
- 6 Whilst the application forms indicate that the building works and change of use have not started, as described above, there is currently a mobile home located to the north-western corner of the site. To the south-west of this a day room. The accompanying plan scales this at 6m in width by 3m in depth. It has a low-pitched roof 3m to ridge. It is timber clad with bitumen roof and contains windows and doors to the north-east elevation, opening onto the open amenity area in front of the mobile home.
- 7 The proposed site location which indicates the siting of these structures appears to reflect the location of the structures on site and hence the proposals would appear to be retrospective. The Proposed Site drawing also indicates the location of a single touring caravan opposite the day room adjacent to the north-eastern boundary.
- 8 It is also proposed to erect a 2.4m high close boarded timber acoustic fence along the north-western portion of the site boundary, adjacent to the public footpath.
- 9 The supporting statement explains that the proposals are to provide one residential family gypsy pitch. The proposals are for one mobile home, touring caravan and day room, which will provide cooking and other facilities. The statement explains that there will be children living on the site and there is an explicit requirement to treat the needs of the children on the site as a primary consideration.

Relevant planning history

- 10 SE/14/03212/FUL: Application for stationing of a mobile home and a touring caravan (retrospective) and erection of a day room. Refused on 9th October 2015 on the following grounds:
 - 1) The land lies within the Metropolitan Green Belt where strict policies of restraint apply. The change of use proposed would constitute

inappropriate development harmful to the green belt in principle and to its openness. Any very special circumstances, noting the insufficient information submitted to support this application to demonstrate that the applicants would have gypsy status, would not clearly outweigh the harm to the green belt. This scheme is therefore contrary to the provisions of the NPPF, policies SP1, SP6 and LO8 of the Core Strategy and policy as set out by the Planning Policy for Travellers and Showpersons August 2015.

2) The applicants have failed to demonstrate that the development by virtue of its location will ensure a satisfactory environment for permanent occupation of the site with regard to the adverse impacts from noise and air quality generated by the nearby motorways. To allow habitable occupation on the site would be contrary to Policy EN2 and EN7 of the Sevenoaks Allocations and Development Management Plan and paragraphs 120 and 123, 124 of the National Planning Policy Framework.

Policies

11 Sevenoaks Core Strategy (CS)

- LO1 Distribution of Development
- LO8 The Countryside and Rural Economy
- SP1 Design of New Development
- SP2 Sustainable Development
- SP3 Affordable Housing
- SP6 Gypsy and Traveller Sites
- SP11 Biodiversity

12 Allocations and Development Management (ADMP)

- EN1 Design Principles
- EN2 Amenity Protection
- EN7 Noise Pollution
- GB6 Siting of Caravans and Mobile Homes in the Green Belt
- T2 Vehicle Parking

13 Other

- Sevenoaks Countryside Assessment SPD
- National Planning Policy (NPPF)
- Planning Policy for Traveller Sites 2015

Constraints

14 The site lies within:

- Green Belt
- Air Quality Management Area

Consultations

Farningham Parish Council: (Objection)

15 “It is acknowledged that children will be brought up on the site. Noise levels in the garden are above healthy maximums. The pollution levels are based on modelling although there is a measuring station not far away in

Wadard Terrace. It is not an official gypsy site in SDC books and may not be recorded as an unofficial one.

- 16 The noise impact report has the best photographs. There is nothing that looks like a caravan on site but we are used to that. Paragraph 6.7 of the noise impact report says that a 2.4m fence will reduce the noise because 'it appears to be on the same plane as the motorway' If you know the site, it is well below the motorway and a 2.4m fence will still be well below the motorway. The noise impact report does not record the weather - a rainy day would generate much more noise than a dry one.

- 17 Our comments from 2014 still apply:-

Paragraph 2 of the covering letter describes Mr Nichols' working life but the repeated statement that he travels throughout the country would argue strongly against the need to settle on green belt land. Secondly, it seems likely that horses for trade will be kept on site and this may have additional planning requirements.

Button Street is a pretty, winding lane that follows the line of a dry river bed; more could be made of this area by SDC but it is losing its amenity value due to unsightly business and housing development along its narrow route. This application refers to the point just before the two-lane road becomes single lane but it is evidently already used by numbers of heavy lorries. We question the desirability of putting new housing beside a sizeable and efficient lorry park and the apparent use of the area on the opposite side of the road for container storage. The impact of large lorries turning in a small area of road needs to be assessed.

Lastly, proximity to the M20/M25 slip road renders the site unsuitable for housing due to the levels of noise and air pollution which cause ill health in both children and adults."

Kent Public Rights of Way Officer (In summary):

- 18 A public Right of Way runs along the northern and western sides of the site, but it is not anticipated that this will be affected other than by the visual impact of the 2.4m high close boarded acoustic fence.

Environmental Health - (Response to original submission)

Noise:

- 19 I refer to the above application that has been passed to this team for comment. These comments concern noise, and comments on air quality will be submitted separately by a colleague.
- 20 The consultant has undertaken sound level measurements both inside and outside the dwelling.
- 21 The measurements taken inside are compliant with BS 8233:2014 Guidance on Sound insulation and noise reduction for buildings. However, it is presumed that measurements were taken with windows closed and alternate arrangements for ventilation would therefore need to be provided. A condition can be suggested on request.

- 22 External measurement for the garden was 59 dB LAeq 1 hour. This is above the guideline levels proposed in the above document and WHO's Guidelines for Community Noise. BS 8233:2014 states that "it is desirable that the external noise level does not exceed 50 dB LAeq,T with an upper guideline value of 55 dB LAeq,T.. However, the guidance also concedes that "it is also recognised that these guideline values are not achievable in all circumstances where development might be desirable".
- 23 The Noise Policy Statement for England (NPSE) develops on the NPPF. Whilst the NPSE does not define "Significant Observed Adverse Effect Level" (SOAEL) most acoustic reports define this level as 55 dB LAeq 16 hours for daytime and evening periods, though it could equally be argued to be 50 dB LAeq 16 hours (WHO Guidelines for Community Noise indicates that "moderate annoyance" occurs at 50 dB and "serious annoyance" occurs at 55 dB. It should be noted that 10 dB is approximately equivalent to a halving or doubling of noise level in perceptual terms, therefore 59 dB is nearly twice as loud (subjectively) as 50 dB.
- 24 The consultant suggests that a 2.4m high acoustic fence could be constructed that would provide up to 5 dB noise attenuation (bringing the noise level within the upper guideline figure). I do not know if such a fence would be acceptable in planning terms but if so, this team would first wish to see details of the proposed construction of the fence and acoustic modelling to demonstrate the extent of the garden that would be afforded protection. Since this is a retrospective application it may also be considered appropriate to require further monitoring to be undertaken to verify effectiveness, prior to granting consent.
- 25 I would also like to see the external survey measurements (that are not currently included in the report).

Air Quality:

- 26 The air quality assessment has identified pollution levels to be in excess of air quality objectives and recommends that a system of mechanical ventilation with filtration is employed to treat the air within the dwelling. In order for such a system to provide satisfactory internal air quality levels it would be necessary for windows to be sealed so that all internal air is brought into the dwelling via the filtration system.
- 27 I have concern over the use of such a scheme within a private residential dwelling, where the future occupier may choose to turn off the mechanical ventilation system or choose not to carry out the required maintenance of any purification system or retrofit sealed windows with opening ones Please see attached planning inspector decision regarding an application requiring a filtered mechanical ventilation scheme to treat high levels of air pollution.

Environmental Protection - Response to further information:

Noise (In summary):

- 28 “I have reviewed the information and taken into account previous comments made on the acoustic assessment for this application.
- 29 I agree with the acoustic assessment in that a proper fence 2.4m high with a nominal density of around 18 to 20kg/m² would have a significant impact on the noise exposure at the site. If you were minded to grant permission I would recommend that the details of the acoustic fence be required by condition.”

Air Quality:

- 30 There have been continued discussions with Environmental Protection regarding up-to-date monitoring results for the Diffusion Tube which monitors levels of NO² (Nitrogen Dioxide) in Wadard Close, which is located approximately 35m to the north-east of the application site. Figures have now been provided covering the years from 2013 up until 2017. On the basis of this information Environmental Protection have commented (in summary):

“Data below shows that pollution levels at the nearest monitoring location has been falling over recent years.

- 31 I think it would be difficult to support a refusal on AQ grounds as I suspect that levels on site would be below the unacceptable threshold.”

Planning Policy Team (12th October 2017):

- 32 The key strategic planning policy issues are considered to be: the status of the emerging Local Plan and G&T accommodation.
- 33 The Council are currently producing a new Local Plan which will identify locations for accommodating the District’s Gypsy and Traveller community. The recent Gypsy and Traveller Accommodation Assessment identified a need for 51 additional pitches across the District up to 2035. The Local Plan will seek to meet this need in full with a focus on existing sites. Where sites have existing pitches which do not have permanent permission or where there is scope for additional adjacent pitches, the Local Plan will assess the suitability of these sites. We will also consider any new sites submitted to the Council as part of the wider “Call for Sites”.
- 34 The preferred sites for new Gypsy and Traveller pitches will be part of the Draft Local Plan and subject to public consultation in late Spring 2018.
- 35 We would also like to note that this sites adjacent to a major Motorway and junction as well as a smaller road. Therefore, there are likely to be significant air quality and noise issues for this site. The views of the Environmental Health officer will carry significant weight in any suitability appraisal of this site whether for Development Management or Local Plan purposes.

Representations

- 36 None received.

Chief Planning Officer's appraisal

Principle issues

37 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 character and appearance of the Area.
- Impact on the living conditions of the applicant.
- Impact on the amenities of nearby properties.
- Impact on highways.

Of particular relevant to this application is the following guidance:

Presumption in favour of sustainable development

38 Para 11 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.

39 Para 11 of the NPPF (and footnote 6) 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

40 Having established that the site is within the Green Belt the Authority must consider both its own Development Plan Policy and edicts of the NPPF.

41 As set out in para 143 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.

42 Para 144 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 resulting from the proposal, is clearly outweighed by other considerations.

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

44 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

- 45 'Planning Policy for Traveller Sites' 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.

Appraisal

Status of the applicant

- 46 The application is made by Mr M Nichols, who is currently residing on the site and is claiming Gypsy status.
- 47 Planning Policy for Traveller Sites (PPTS) has been revised since the earlier refusal of planning permission. 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.'*
- 48 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.
- 49 There is very limited information submitted in support of the application. However, a letter submitted to the Authority prior to submission of the application states the following, in particular:
- Mr Nichols travels extensively across the country seeking any form of outside or gardening work.
 - The whole family travel in the summer months during school holidays.
 - The family also attend fairs including Appleby.
 - The family are registered with the local GP.
 - The youngest child is undergoing some specialist medical treatment.
 - Two older children attend the local primary school, with a third starting shortly (presumably now at school).

- The site provides a settled base for the family to enable their children to receive a school education.

50 Whilst the information above is limited, it would appear that the applicant has pursued a nomadic lifestyle and will continue to do so. In my view the applicant meets the definition of “gypsy’s and travellers” given in the PPTS.

Green Belt

51 The site is located in the Metropolitan Green Belt. Paragraph 145 of the NPPF states that local planning authorities should regard construction of new buildings as inappropriate in the Green Belt, subject to exceptions listed. Paragraph 146 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 145 or the types of development described in paragraph 146. For this reason the development is inappropriate in the Green Belt by definition. This is reinforced by paragraph 16 of the PPTS 2015.

52 Paragraph 16 of the PPTS and the NPPF acknowledges 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 as to establish very special circumstances’*

53 The use of the land for the stationing of additional mobile home/caravans with associated works including the erection of 2.4m high close boarded fencing would, by its very nature, have a greater impact on the openness of the Green Belt. In my view the provision of a mobile home, day room and pitch for a touring caravan, together with the stationing of vehicles and the resultant domestic paraphernalia would result in loss of openness and would fail to meet the Green Belt purpose of safeguarding the countryside from encroachment.

54 The development would result in a loss of openness, which is the most important attribute of the Green Belt. As such, and in accordance with paragraphs 145 and 146 of the NPPF and paragraph 16 of the PPTS the proposal constitutes inappropriate development. Inappropriate development is by definition harmful to the Green Belt.

55 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 should be met. In summary, these relate to the location of the site, that the site will offer an acceptable living environment for future occupants in terms of noise and air quality, 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.

56 The site is not an allocated site within the current development plan. The site is not located within an area liable to flooding, but is within an Air

Quality Management Area. The implications of policy SP6 will be considered further below.

Impact on character and appearance of the area

- 57 Policy EN1 of the ADMP requires development to respect and take 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 and incorporate materials and landscaping of a high standard so that the distinctive character of villages is not damaged.
- 58 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.
- 59 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.
- 60 The PPTS indicates that traveller sites may be acceptable in rural settings. Although this statement is qualified by paragraph 25 of PPTS, in this case the site lies close to the built confines of Swanley.
- 61 Whilst the site is located within the open countryside, it is sited immediately adjacent to the motorway. Because of the proximity to the motorway, the site is not visible to the south-west, west or north-west as it is screening by the raised embankment of the adjacent motorways.
- 62 In the circumstances, whilst the mobile home/caravan and associated paraphernalia, including existing fencing is visible, the impact is limited to views at close quarters from Button Street itself.
- 63 The site is also visible when viewed from the adjacent public footpath, especially the sections adjacent to the south-western boundary and on approach from the south-west from the motorway underpass. The boundary of the site adjacent to the footpath is formed by a close boarded timber fence and planting, although this does not provide a dense visual screen. Thus both the upper elements of the mobile home and day room in situ are readily visible. I note that the proposals would introduce a means of enclosure 2.4m high adjacent to the footpath. This would be somewhat at odds with the wider rural character of the area. On the other hand, the site cannot be isolated from the physical presence of the motorway embankment which forms a fundamental part of the context of the site.
- 64 The caravans would give a developed appearance to the site. However, established planting along the north-western boundary and the boundary adjacent to Button Street provides a dense and effective screen to the site. In my opinion, however, views of the site and visual impact of the proposals are restricted and limited to very close quarters only.
- 65 In light of the above, whilst the introduction of the day room and mobile home onto what would otherwise be an open undeveloped site would result

in some harm to the visual amenity of the area contrary to Policy EN1 of the ADMP and Core Strategy Policies SP1 and LO8, I do not consider the structures to be prominent in the wider landscape and thus consider the visual impact would be modest. Nevertheless, this does add to the harm identified to the Green Belt, even if to a relatively limited degree.

Need for gypsy/traveller accommodation within the District

- 66 The Gypsy and Traveller Accommodation Assessment (GTAA) was agreed by Cabinet on 20 April 2017 as a robust evidence base for the Local Plan. This followed a report to Planning Advisory Committee. The GTAA set out the Council's need for 51 new Gypsy and Traveller pitches up to 2035. However, the submission version of the (emerging) Local Plan (submitted 30th April 2019), has reduced the level of need to 40, due to the granting of various planning permissions since the GTAA. To meet the remaining needs site have been identified where additional pitches could be provided.
- 67 The application site was one of those original noted as a gypsy/traveller pitch in the GTAA, although it was recognised that this was an unauthorised use. Further assessments of site have been undertaken as part of the emerging Local Plan work. The application site is not one of those taken forward in the submission version of the Local Plan, although another site close-by in Button Street is included.
- 68 The reason the application site was not included is that there was already a "live" planning application for the site and formal allocation in the plan would potentially prejudice the consideration of the application. Furthermore, based on the information originally submitted in support of this application, it was far from clear whether the environmental constraints of the site (noise and air quality in particular) would render the site unsuitable for residential occupation. A further 18 months has elapsed since the submission of this application and during this time further information has become available regarding noise and air quality. These have had a bearing on the consideration on the application.
- 69 While the Draft Local Plan contains allocated sites to meet the needs of Gypsies and Travellers in the District, at this time that policy is not adopted and has not been subject to an examination in public. It therefore remains the case that the Council cannot demonstrate an adopted supply of sites for Gypsies and Travellers and weight must be given to this unmet need.

Impact on the living conditions of the applicant

- 70 Paragraph 127 (f) of the NPPF states that planning policies and decisions should create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users. Paragraph 180 of the NPPF explains that planning decisions should take into account the likely effects of pollution on health and living conditions.
- 71 Policy EN2 of the ADMP states that the proposed development including any changes of use does should not have an adverse impact on the privacy and amenities of a locality by reason of form, scale, height, outlook and

ensuring development would not be exposed to excessive noise, vibration odour and air pollution. Policy EN7 of the ADMP relates to Noise Pollution.

- 72 Policies EN2 and EN7 of the ADMP seek to mitigate and reduce impacts arising from noise and air quality that could have an adverse impact on the quality of life of residents.
- 73 In addition, criteria b. of policy SP6 (Provision for Gypsies and Travellers) states that the Council will take into account whether the site will offer an acceptable living environment for future occupants in terms of noise and air quality.
- 74 The application site is located close to the M20 and M25 slip roads. It is evident from a site visit that the site suffers from associated road noise. Furthermore, the site is within an Air Quality Management Area (AQMA). As a consequence, the applicant originally submitted detailed reports relating to both these issues.
- 75 With regard to the impact of noise, concern was originally raised by Environmental Health as there was lack of information to support the effectiveness of the 2.4m high acoustic fencing proposed along the boundary with the public footpath, particularly because of the raised nature of the adjacent motorway. Without evidence that this would be effective, use of the site would only be acceptable if the doors and windows were to be kept closed and the mobile home and caravan reliant on mechanical ventilation. There may also be unacceptable levels of noise within the amenity area.
- 76 The Environmental Health Officer has since gained access to the site and considered further information following discussions with the agents. As a consequence, Environmental Health have now confirmed that the acoustic fence proposed would overcome their original objections on noise grounds to the proposals. Specific details of the fencing could be subject to a planning condition.
- 77 Turning to the issue of air quality, this was also raised as a significant concern by Environmental Health. One of the main concerns was that the air quality report submitted by the applicant in support of the application did not take into account actual monitoring figures and was based on computer modelling. This modelling overestimated the Council's monitored data and was based on an estimated worst case scenario. This indicated that the application site would be subject to unacceptable pollution levels (between 53 to 68 micrograms/m² NO₂). As a consequence occupation of the site would only be acceptable if the buildings were to be completely sealed and mechanically ventilated. This was considered unrealistic, unreasonable and would not address the situation within the external areas.
- 78 Following the passage of time, further results of the Council monitoring station at Ward Close (approx. 35m north-east of the application site) became available. This covers the period from 2013 to 2017. This clearly indicates that not only have the levels of NO₂ continued to fall, but that they are also well below the threshold.

- 79 The applicant has since produced a revised air quality assessment based on these actual readings. In summary, this concludes that the levels of nitrogen dioxide, lead (PM₁₀) and other particulate matter would be well below the unacceptable thresholds.
- 80 On the basis of this updated data, Environmental Health raise no objection to the proposals on health grounds.
- 81 In light of the above, I am satisfied that the proposals would comply with the relevant policies listed above.

Impact on the amenities of nearby properties

- 82 Policy EN2 of the ADMP, which relates to Amenity Protection, has been outlined above.
- 83 The closest residential properties are those located in Wadard Terrace to the north. The closest properties are sited approximately 40m away with the flank of no.10 45m from the site. There is intervening landscaping between this property and the site, especially the dense foliage along the Button Street boundary with the site. Use of the site for a single mobile home/touring caravan would be likely to be low-key.
- 84 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. This would further protect residential amenity.

Impact on Highways

- 85 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.
- 86 It appears that the site would continue to use the existing access from Button Street. This is set back from the road frontage with good visibility in both directions. Whilst the Highway Authority have not been consulted on this application, I note that they did respond on the previous application but raised no objections because of the limited number of vehicle movements likely to result from the proposals. I have no reason to consider the present proposals, which essentially appear the same as before, would have any greater impact.
- 87 In the circumstances I am satisfied that satisfactory parking can be provided on site and use of the site in connection with a single mobile home would not result in conditions prejudicial to highway safety.

Sustainability

- 88 The NPPF makes it clear that the purpose of the planning system is to contribute to the achievement of sustainable development. At the heart of the NPPF is the presumption in favour of sustainable development, which:

“...should be seen as a golden thread running through both plan making and decision taking”.

- 89 Paragraph 7 of the NPPF states that there are three dimensions to sustainable development: economic, social and environmental. In determining whether the proposed development is sustainable, it is not sufficient to consider each of the three dimensions in isolation; rather there must be a balance between the three.
- 90 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.
- 91 It is considered, that the site is not in close proximity to shops and other facilities within Swanley and Hextable. It would nevertheless provide many of the other sustainable benefits referred to in the PPTS. These include addressing the need for a settled base thereby facilitating access to health care and regular education and the reduction in the possible environmental roadside encampments. These benefits are considered outweigh the negative aspects relating to the location of the site in terms of sustainability and can be afforded moderate weight.

Balancing Exercise/Assessment of any very special circumstances

- 92 Para 145 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.
- 93 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;
 - Limited harm to the visual amenities of the immediate area.
- 94 I do not consider the proposals result in material harm to highway conditions or the amenities of neighbouring occupiers.
- 95 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.
- 96 As discussed above, while the emerging Local Plan identifies sites to meet the needs of Gypsies and Travellers in the District, the plan remains subject to formal examination and the allocation of the sites is not a foregone conclusion. At this stage the emerging plan cannot be afforded substantial weight. Thus the lack of an up to date 5 year supply of deliverable site must be afforded significant weight.
- 97 There are a number of recent applications and appeal decisions which have found that the above potential very special circumstances may well all also amount to very special circumstances in this case. I consider these material considerations to be applicable to the current application.
- 98 There is a recent appeal decision within the District which I consider particularly relevant to this application as it clearly set 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.
- 99 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.”
- 100 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.
- 101 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 there is an inevitability that some harm to the Green Belt will arise from requirements to provide gypsy and traveller pitches.
- 102 Removal of the family from this site would potentially result in an unauthorised encampment elsewhere, cause significant hardship, disruption

and nuisance to those whose land they may settle on and further harm to the environment. In addition, it would potentially disrupt the continued local education of the children and access to healthcare facilities.

- 103 In light of the above, I consider significant weight can be attached to the special circumstances set out above. The unmet needs of Gypsies and Travellers in this District, combined with the specific circumstances of the applicant and his family, amount to very special circumstances.
- 104 Whilst the proposals would result in the development of a Green Belt site, a permission would enable the Council to impose restrictions on any further development of the site (this is less likely on sites allocated within the emerging local plan which will be removed from the Green Belt).
- 105 In the particular circumstances it is therefore concluded that very special circumstances do exist in this case which would clearly outweigh the harm to the Green Belt and the modest harm to visual amenity and which justify a grant of permission in this instance.
- 106 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 that the permission is only valid insofar as the applicant meets the definition of gypsies and travellers contained in the PPTS 2015.

Human Rights and Equalities Act

- 107 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. In this case the grant of planning permission would not violate rights of the applicants under Article 8.
- 108 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.
- 109 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.
- 110 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.
- 111 In this case the applicant does have 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, it is my view that the very special circumstances would outweigh the harm to the Green Belt and the limited harm to the Area of Outstanding Natural Beauty.

Conclusion

- 112 The development is inappropriate in the Green Belt and also harmful to the openness of the Green Belt. However, there would be limited harm in terms of the impact on the wider visual amenities of the area. Furthermore the grant of a permission on this site could potentially serve to protect more visually sensitive sites elsewhere. No harm is identified with regard to the impact on the amenities of nearby residents or highway conditions.
- 113 In the circumstances, I consider there are very special circumstances which exist in this case which would clearly outweigh the harm identified. In light of all the material considerations I would recommend permission be granted for use of the site for the stationing of a single mobile home and caravan and day room, subject to conditions.

Background papers

Site and block plan

Contact Officer(s):

Mr J Sperryn

Contact: 01732 227000

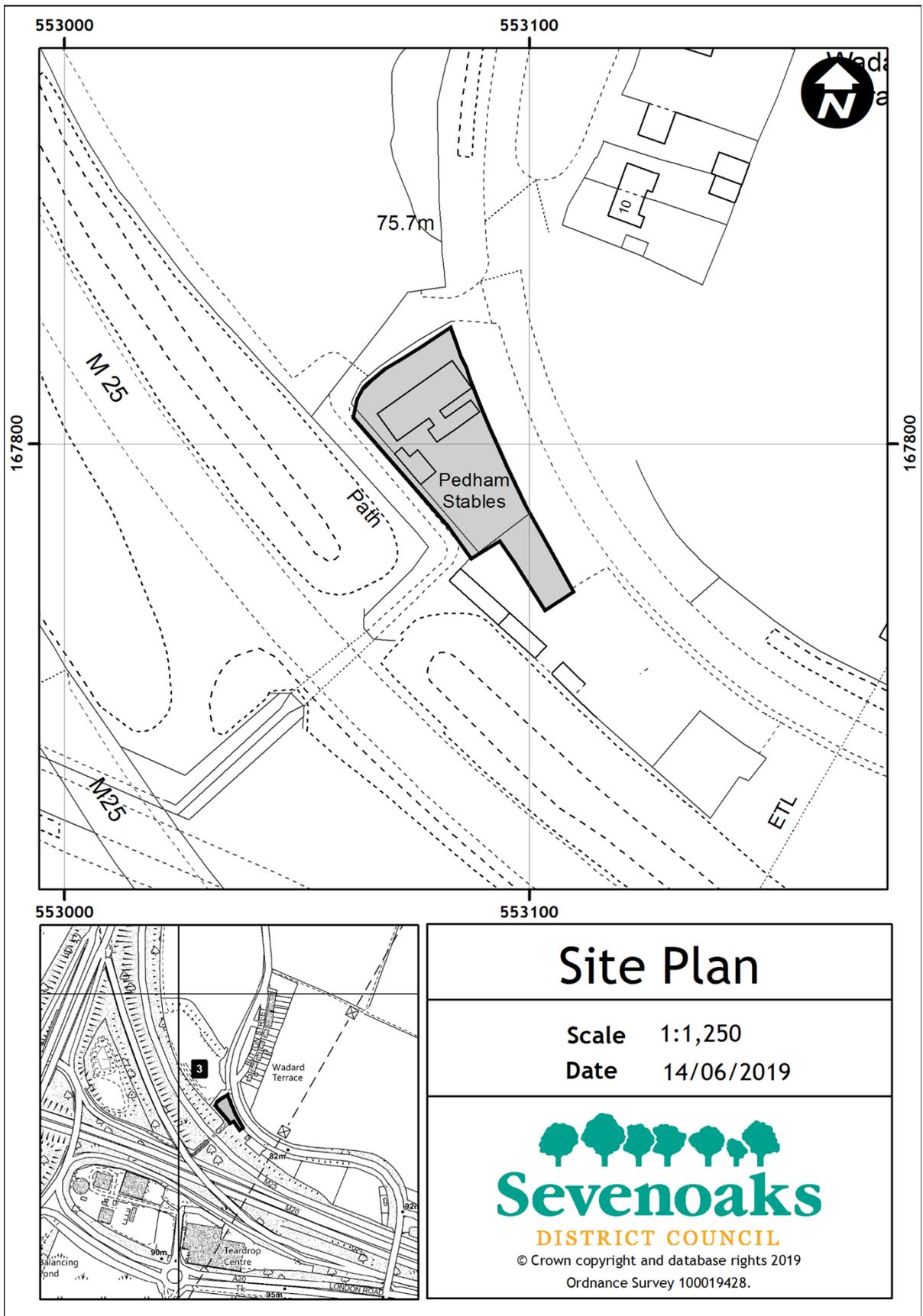
Richard Morris
Chief Planning Officer

Link to application details:

<https://pa.sevenoaks.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=OTRB8BBKJ2Z00>

Link to associated documents:

<https://pa.sevenoaks.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=OTRB8BBKJ2Z00>



Site Plan

Scale 1:1,250

Date 14/06/2019



DISTRICT COUNCIL

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Ordnance Survey 100019428.

Block Plan



LEGEND	
	Proposed mobile home
	Proposed utility/day room
	Proposed touring caravan
	Proposed loose bound permeable hardstanding
	Residential gardens
	Grassed area
	Additional native hedge & tree planting
	Existing hardstanding
	Existing hedgerow
	Soakaway
	Proposed tree planting
	Existing trees
	Existing foul drainage
	Existing buildings/structures
	Existing close boarded timber fence
	Proposed 2.4m close boarded timber fence