

APPLICATION: MA/09/0541 Date: 26 March 2009 Received: 30 March 2009

APPLICANT: Mr M Vine & Mr W Lee

LOCATION: EMMETT HILL NURSERY, EMMET HILL LANE, LADDINGFORD, KENT, ME18 6BG

PROPOSAL: Change of use of land to mixed use to include stationing of four caravans, keeping of horses with associated development (hard standing, septic tank, fencing and utility buildings) for occupation of two gypsy families and shown on plan number Rev B July 2009.

AGENDA DATE: 13th August 2009

CASE OFFICER: Amanda Marks

The recommendation for this application is being reported to Committee for decision because:

- It is contrary to views expressed by Yalding Parish Council

POLICIES

Maidstone Borough-Wide Local Plan 2000: T1, ENV28, ENV48

South East Plan: C4, H4, NRM4, Interim Statement on Provision for Gypsies and Travellers;

Government Policy: Circular 01/2006, PPS3, PPS7, PPS9, PPS25, Draft New Policy H7 of the RSS South East Plan

HISTORY

MA/03/1226: Change of use to wholesale nursery with refurbishment: APPROVED 2/10/03

MA/91/0263: Erection of Kentish Barn for storage of farm machinery: REFUSED 26/4/91

MA/89/1243: Mobile home on land on SE side of Emmet Hill Lane Yalding: REFUSED 11/10/89

CONSULTATIONS

Yalding Parish Council: Strongly object to this application and wishes to see it refused. Not only are the caravans a visual intrusion in the open country-side, but the site is situated in Flood Zone 3.

Although the site itself does not flood, the surrounding roads are impassable in a flood situation and we attach for your information aerial photographs taken by the Environment Agency on 13 October 2000. As you will see, it is impossible to access or egress from the site safely. Due to the ponds and ditches in the lane, it is extremely dangerous for the emergency services to try to access by boat if required.

Granting permission for any residential use of this land will open the floodgates for ad hoc development in a Flood Zone 3; any such development must be resisted, as has been officers' recommendations to date in this area.

Kent Highway Services: The proposal seeks to use an existing access off Emmett Hill Lane which is a narrow rural lane where traffic speeds are generally low due to the nature of the road. The site currently has permission for a wholesale nursery. The traffic generation associated with the proposed change of use to the stationing of caravans and the keeping of horses, is not likely to give rise to an increase in traffic flows over that which would be generated from the nursery use. In view of this I have no objections to the proposals in respect of highway matters subject to the following condition:

The entrance gates should be hung to open away from the highway only and set back a minimum distance of 10m from the carriageway edge to allow equestrian vehicles to park clear of the highway whilst the gates are opened/closed.

Natural England: From the information provided in the ecological survey and from checking our records on protected sites and species we have no comments to make.

Environment Agency: no objection. The proposed site is situated within Zone 1, an area associated with a low probability of flooding. Such a development is therefore deemed appropriate in accordance with Table D3 of PPS25 (Flood Risk Vulnerability and Flood Zone Compatibility). However, you should be aware that the site is surrounded by Flood Zone 3 and therefore would be surrounded by flood water under the 1 in 100 year event. This would cause problems for access/egress to the site and ordinarily we would object to a development where there is not adequate provision or safe access/egress.

Given the extent of the dry land surrounding the development area, we would not object in this instance, and we would ask the Emergency Planning Department at your Local Authority to be consulted and make recommendations where necessary, this is in accordance with advice contained within the PPS25 Practice Guide (Para 7.23).

MBC Environmental Health Officer: The site is in a relatively quiet semi-rural area and traffic noise is not a problem. There is no indication of land contamination based on information from the MBC's contaminated land database and historic maps databases; but the site has been used as a garden nursery so there is some potential for chemicals having been used and stored on the site. In the interests of health and safety I therefore consider that a contaminated land condition should be set. The site

should not be occupied before all the conditions of the Caravan Sites Licence are met. The site should be used for residential purposes only and maintained in good order. The site should not be used for the use and/or storage of commercial vehicles. No objections subject to a condition requiring further details to be provided on how foul sewage will be dealt with.

MBC Emergency Planning Department: No objection. Request that the residents make arrangements or put systems in place to alert of impending floods. If this were a managed park there should be a procedure of responsibility for monitoring Environment Agency flood watch or met office websites on a daily basis and alerting residents. If they were aware of the impending risk it would speed up any evacuation.

REPRESENTATIONS

Cllr Nelson-Gracie has raised the following points:

1. 'Please request applicant to undertake a flood risk assessment if appropriate (especially for access by emergency vehicles to 5 children)
2. Require the additional hard standing to be permeable
3. Confirm the sightlines to the access are adequate (access is just before a bend)
4. Surveys required if any protected species (eg bats in the barn, newts in standing water)
5. Should be restricted to the two families (Vine and Lee). Tourers should not be used as living accommodation on site
6. No storage of hardcore or building materials on site
7. Please no massive wrought iron gates or other non natural screening.

To what does this bring the count of approved gypsy pitches in Maidstone?'

Neighbours: A petition with 35 names has been received together with an accompanying letter on behalf of local residents, plus one further individual letter raising the following (summarised) objections to the application:

- Isolated site away from appropriate facilities
- Location within a flood plain where land has flooded in the past
- Unsuitable development in locality of historic buildings and an area of natural beauty
- Area known for its nature conservation interest
- Allege someone is living in one of the touring caravans – not mentioned in the application
- Applicant has no respect for the rules and regulations of planning
- Structures and caravans are an eyesore from the road
- Yalding has more than its fair share of gypsy sites
- Emmett Hill Lane heavily used by traffic and not suitable for horse traps
- Gypsy count figures flawed

- Families did have somewhere else to live but chose to give up the bricks and mortar

CPRE: Has some concerns about the application. (In summary) The site is in the open rural countryside which is protected from inappropriate development by the Kent & Medway Structure Plan 2006 Policies EN1 and SS8, by Maidstone Borough-Wide Local Plan 2000 policy ENV28. Additional dwellings in such countryside are usually deemed to be inappropriate, unless associated with the functional requirements of a land-based enterprise supported by financial sustainability. This is not a brown field site.

The CPRE accepts the gypsy status of the applicant but questions why the applicant chooses this site with a small number of their horses when the majority of horse stock is kept near to Gravesend. The CPRE consider the application is contrary to PPS7 as the keeping of horses does not qualify for residential accommodation.

CONSIDERATIONS

Background

This application is for the change of use of the land to a mixed use comprising residential use together with the keeping of horses. The proposal is for two plots to be occupied by two separate gypsy families. The application form states that the development has not commenced, however very quickly after submission this became a retrospective application. Therefore, whilst the planning enforcement team were made aware of the siting of the caravans, it has not been expedient to take enforcement action as the merits can be considered under this application. Each plot requires 1 mobile home, 1 touring caravan, 1 utility room together with associated fencing, hardstanding, utility buildings and a shared septic tank. The utility rooms have yet to be built and the two containers shown on the block plan to be removed still remain on site.

Site Description

The site lies in the open countryside to the south west of Benover Road south east of Yalding village. The site is accessed off Emmett Hill Lane and contains a dense hedge on the boundary with the road. The site is rectangular in shape and the applicant has erected a close board fence inside the site on the front boundary with Emmett Hill Lane. The original access gates have recently been replaced with solid wood gates.

The closest residential boundaries are located to the north-east of the site and are of properties in Benover Road. The distance from the site boundary to these dwellings varies from approximately 80m (Little Benover Cottage) to 110m (Little Benover) a Grade II listed building.

There is an existing barn on the site which is used in conjunction with the keeping of the horses. The horses are being grazed on the land to the south of the barn. The site is already has substantial vegetation and screening on three boundaries. Close board

fencing, gates and trees on the site frontage, and natural screening on the north east and south east boundaries. The boundary to the north west affords open views into the adjoining fields as there is only an agricultural fence erected. However, from public vantage points views are extremely limited into the site.

Proposed Development

The application seeks permission for the retention of the two static caravans and two touring caravans currently on the site. In caravan 1 live one couple with their four children aged 12, 11, 3 and 18mths. In caravan 2 are another couple, one of whom is the sister to applicant 1, and their 2 year old daughter.

There are also two utility buildings proposed and a shared septic tank, details of which have been enclosed with the application. The hardstanding which is largely already on the site, is permeable and formed from crushed road-stone. The utility rooms are to be 4m x 5m x 3.6m high with a pitched tiled roof and brick walls. The horses and associated traps and equipment utilise the existing barn on the site and the grazing land this sits on. One of the applicants has also stated that their daughter and son sleep in the touring caravan when not used for travelling as overflow accommodation.

Development Plan Policies

Due to the loss of the relevant gypsy policies in the Maidstone Borough-wide Local Plan and the Kent & Medway Structure Plan, the relevant policy considerations are comprised of Policy C4 of the South East Plan and Circular 01/2006. Policy C4 does apply to a variety of household types and is quite general in its stipulation that accommodation should be planned and provided for all sectors of the population. Circular 01/06 is directly applicable to this application and guides local authorities on decision making for gypsy sites. There is also the proposed Policy H7 of the South East Plan which can be seen in the document 'Partial Review of the Regional Spatial Strategy for the South East'. This draft policy sets out the number of **permanent** pitches that Authorities in the South East should be providing for in the period 2006 - 2016, a total of 35 for the period 2006 to 2016.

Gypsy Status

For the purposes of this application a gypsy is defined as follows:

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

The two families subject of this application are considered long established Kent Romany Gypsy Families. It is maintained that one of the families are well known horse dealers established in Gravesend for 60 years.

The second family are also horse dealers and sell carpets. They have previously tried to live in a house for 2/3 years but could not adjust to 'bricks and mortar'. They no longer own the house and have been living on the road until finding this site.

Need for Gypsy Sites

Members have been advised of the current situation regarding the need for gypsy sites in the Borough when they have considered past applications. I reiterate the previous update given with some minor alterations. 'The Gypsy and Traveller Accommodation Assessment (GTAA) undertaken for the Council revealed a need for some 32 pitches in the borough for the period 2006-2011. The Partial Review of the South East Plan which is dealing specifically with Gypsy, Traveller and Travelling Show people accommodation is underway and the **former** South East England Regional Assembly's (SEERA) 'preferred option' for the distribution of future pitches across the region is currently being consulted upon, and if confirmed through the Examination process, would result in a Borough requirement of 35 pitches for the period 2006 to 2016.

The Council's Cabinet (October '08) agreed that the Council's LDF work programme should prioritise the preparation of a DPD with the single purpose of allocating sites for Gypsies and Travellers. Preparatory work has been undertaken and **consultants approved** to undertake investigations leading to the identification and assessment of potential sites for subsequent informal public consultation.

Early in the process, Members will be briefed on the work the consultants are doing. The Council will agree a shortlist of sites in Spring 2010 to be included in a draft ('publication') before 'submission' and then a public inquiry. All being well the Development Plan Document will be adopted, and the additional sites allocated, by mid 2011.'

Recent appeal decisions have given considerable weight to the advice contained in Circular 01/2006 regarding unmet need.

At the time of writing this report the breakdown of the number of pitches granted since the beginning of the GTAA period (April 2006) was as follows:

- 21 permanent permissions;
- 9 temporary permission (all expire 2013)
- 6 permanent and personal permissions
- 12 temporary and personal permissions

Visual Impact of the Development/Landscaping

The application site lies in the open countryside outside a defined settlement. It is not subject to any specific landscape or other designation in the Borough-wide Local Plan 2000.

The northwest/west boundary of the site to Emmet Hill Lane is formed by mature trees and a hedgerow. These provide good screening to the site when travelling along the lane. Fencing has been erected within the site behind the trees and hedgerow along the site boundary with the lane. These largely screen the visual impact of the fencing apart from the newly erected gates at the site access.

As indicated above, the nearest residential properties are located along Benover Road to the north east of the site. The closest is 'Little Benover Cottage' which is located approximately 80m north east of the site boundary. 'Little Benover' located at the junction of Benover Road and Emmet Hill Lane, is some 110m from the site boundary. The north east boundary of the site beyond the area of the site where the mobile homes are located and the adjoining paddock land (i.e. the boundary closest to the nearest dwellings) is also very well screened by existing trees.

The nearest dwelling to the east of the site is 'Little Benover Farm' some 150m from the site boundary beyond existing trees on the boundary and across fields beyond these.

The site is more open along its south western boundary which fronts onto open rough pastureland. However, to the south of the site the nearest dwelling is Conifer Farm some 220m from the site boundary.

I do not consider that the site is visually intrusive in the countryside. It can be viewed from private land to the east and south/south west of the site, but from public vantage points is well screened and does not cause harm to the character and amenity of the countryside.

Residential amenity

The development is located a considerable distance from the nearest residential properties, the closest being approximately 80m away. The boundary between the site and these properties is well screened and defined.

I do not consider that there will be any adverse impact either visually or in terms of the noise and activity generated by the use of the site on the occupiers of the dwellings in Benover Road.

Sustainability

Circular 01/2006 paragraph 64 sets out the sustainability criteria which should be considered as part of the application process, in summary:

- Co-existence between the site and local community;
- Wider benefits of access to GP and other health services;
- Children attending school regularly;
- A settled base reducing the need for long distance travel & associated unauthorised camping;

- Not locating sites in areas at high risk of flooding

In terms of the impact on residential amenity, whilst the site borders neighbouring land, this is either agricultural or if residential, the dwellings are approximately 80-110m to the north east. The site is well screened and I consider can co-exist with the local community. The other criteria are addressed throughout this report.

Equestrian Development

Permission is also sought for the keeping of horses and horse related equipment. The applicant is a horse dealer and trader. I am advised that the number of horses to be kept on the site will vary but not exceed the capacity of the land. I have received further detail on the issue of horse keeping from the applicant's agent. It is proposed to provide 4-5 stalls within the existing barn in order to stable stallions, mares in foal, and trotting horses when in training. The traditional cobs are kept outside. It is also sometimes necessary to quarantine horses if they are to be exported, as these horses need veterinary checks and blood taken. I am advised that the applicant rents land in other areas of Kent – their website suggests a stock of 250 horses is held. Due to the manner in which the horses come and go in this gypsy lifestyle it is difficult to apply the traditional standard of 1-2 acres of pasture land per horse.

No actual business/trading is undertaken from the site as this is done via the internet or at horse fairs. As such the only regular visitors to the site in relation to horse keeping are the vet, the farrier and the feed merchants.

Highway Considerations

Kent Highway Services raise no objection to the proposal in terms of traffic generation. However, they do require the site gates to be set back 10m from the back of the highway and to open inwards to the site. This means that the position of the gates at present would need to be altered (currently 5m back from the road) in order to allow vehicles with trailers to pull off the highway whilst the gates are opened or closed. The width of the road is relatively narrow and the entrance to the site is close to a bend in the road. The Highway Authority considers that with the relatively low speeds of vehicles using the road does not compromise highway safety or visibility splays.

Ecology and Flooding

The application was subject to a Regulation 4 letter requesting that an ecological survey be submitted. The ecological survey has now been received and categorises the site as low ecological value with no further survey work required. Natural England has no objections to the report or its findings.

Residents have indicated that flooding has occurred in the past at the junction of Emmet Hill Lane and Benover Road. I also note that there are two ponds either side of Emmett Hill Lane a few metres up from the application site which have apparently flooded onto the road in the past. I have discussed the application directly with the Environment Agency and voiced my concerns/those of the residents. I am however,

advised that site lies within Flood Risk zone 1 which is an area at low risk of flooding. PPS25 considers development in such areas to be appropriate. It is acknowledged that the site is surrounded by zone 3 where development would not normally be acceptable under the terms of PPS25 and Policy NRM4 of the South East plan. The EA confirm that they have no objections to the proposal due to the extent of dry land surrounding the development area. In light of the comments of the Council's Emergency Planning Officer I have recommended an informative that the applicants sign up to the Environment Agency's flood watch programme.

Personal/Temporary Permission

In this application, reference is made to the personal health and education needs of the families. Two of the children are school age and at the time of the original submission attended Thames View School and West School Gravesend. However, from September both children are to start at Mascalls School in Paddock Wood. Their mother attends Kings Hospital on a 3 monthly basis for treatment relating to fluid on the brain. I am also advised that the mother of the 2 year old is treated for depression.

The main focus of the application is built around the lack of alternative sites/options and the suitability of this site as opposed to special medical or education needs. Whilst I acknowledge the comments of the Ward member, I do not feel that a personal permission is appropriate in this instance, due to the suitability of the site in meeting the appropriate policy and guidance. Furthermore, by granting a non-personal permission this would enable the pitches to firmly count in meeting the shortfall.

I am also aware the two eldest children use one of the touring caravans as sleeping accommodation when it is not needed for touring purposes. I am satisfied that this touring caravan is not used as an independent residential unit and therefore would not be in breach of the standard condition regarding habitation of the touring caravans.

Other issues

The majority of points raised by local residents have already been addressed earlier in the report.

Concern has been raised in the objections regarding the impact of the site on historic buildings. The closest is 'Little Benover' (Grade II) located at the junction of Emmet Hill Lane and Benover Road. The northern site boundary is some 110m from the property and with the screening along the northern boundary the development will not adversely affect its setting. The application has therefore not been advertised as affecting the setting of a listed building, due to this separation distance.

Objections have also been raised that the planning laws have been flouted. Members will be aware that the application should be considered on its merits and only if found to be unacceptable does the issue of expediency in relation to taking any enforcement action arise.

The issue of Yalding having more than its fair share of gypsy sites has also been raised in the representations. It is acknowledged that there are a number of sites within the parish as a whole. However, the application site is not located in close proximity to any other sites and does not result in any harmful cumulative visual impact.

Conclusion

This site does not in my view cause harm to the character and functioning of the countryside. There are no objections to the development on Flood Risk grounds either from the Environment Agency or the Council's Emergency Planning Officer. I do not consider that this is a case for a temporary permission to be granted as no harm is caused to the character and functioning of the countryside. In light of the shortfall of gypsy sites in the borough and in light of the above deliberations, I consider that this is an acceptable site for the keeping of horses and occupation by gypsies and recommend accordingly.

RECOMMENDATION

GRANT PLANNING PERMISSION subject to the following conditions:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission;

Reason: In accordance with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. This permission does not authorise the use of the land as a caravan site by any other persons other than gypsies, as defined in paragraph 15 of ODPM Circular 01/2006.

Reason: The site is in an area where the stationing of caravans/mobile homes is not normally permitted and as exception has been made to provide accommodation solely for gypsies who satisfy these requirements pursuant to Policy H4 of the South East Plan 2009 and Circular 01/2009: Planning for Gypsy and Traveller Caravan Sites.

3. No more than two static residential caravans, as defined in Section 24(8) of the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 and two touring caravans, which shall not be used for habitation purposes, shall be stationed on the land at any one time.

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

visual amenity of the area in accordance with Policy ENV28 of the Maidstone Borough-Wide Local Plan 2000 and Policy C4 of the South East Plan 2009.

4. Within three months of the date of the permission hereby granted:

1. The application site shall be subjected to a detailed scheme for the investigation and recording of site contamination and a report submitted to and approved by the local planning authority. The investigation strategy shall be based upon relevant information discovered by a desk study. The report shall include a risk assessment and detail how site monitoring during decontamination shall be carried out. The site investigation shall be carried out by a suitably qualified and accredited consultant/contractor in accordance with a Quality Assured sampling and analysis methodology and these details recorded.

2. As appropriate, detailed proposals in line with current best practice for removal, containment or otherwise rendering harmless such contamination (the 'Contamination Proposals') shall be included within the report and also submitted to and approved by the Local Planning Authority. The Contamination Proposals shall detail sources of best practice employed.

3. The approved remediation works shall be carried out in full on site under a Quality Assurance scheme to demonstrate compliance with the proposed methodology. If, during any works, contamination is identified which has not previously been identified additional Contamination Proposals shall be submitted to and approved by, the local planning authority.

4. Upon completion of the works, this condition shall not be discharged until a closure report has been submitted to and approved by the local planning authority. The closure report shall include full details of the works and certification that the works have been carried out in accordance with the approved methodology. The closure report shall include details of any post remediation sampling and analysis together with documentation certifying quantities and source/destination of any material brought onto or taken from the site. Any material brought onto the site shall be certified clean;

Reason: To prevent harm to human health and pollution of the environment in accordance with PPS23.

5. No commercial or business activities shall take place on the land, including the storage of vehicles or materials and livery use;

Reason: To prevent inappropriate development and safeguard the amenity , character and appearance of the countryside and nearby properties in accordance

with Policy ENV28 of the Maidstone Borough-Wide Local Plan 2000 and policies C4, H4,

6. Within 3 months from the date of this permission the existing entrance gates shall be set back a minimum of 10 metres from the carriageway edge and be hung to open inwards to the site.

Reason: In the interests of highway safety to enable a vehicle towing a horse box to stand clear of the carriageway whilst the gates open and in accordance with Policy T1 of the MBWLP 2000.

7. On completion of the utility buildings hereby approved, the two existing containers shown in the north-west corner of the site shall be removed from the site.

Reason: In the interests of amenity and in accordance with Policy ENV28 of the MBWLP 2000.

Informatives set out below

Attention is drawn to Sections 60 and 61 of the Control of Pollution Act 1974 and to the Associated British Standard Code of practice BS5228:1997 for noise control on construction sites. Statutory requirements are laid down for control of noise during works of construction and demolition and you are advised to contact the Environmental Health Manager regarding noise control requirements.

Clearance and subsequent burning of existing woodland or rubbish must be carried out without nuisance from smoke, etc. to nearby residential properties. Advice on minimising any potential nuisance is available from the Environmental Health Manager.

Plant and machinery used for demolition and construction shall only be operated within the application site between 0800 hours and 1900 hours on Mondays to Fridays and between 0800 hours and 1300 hours on Saturdays and at no time on Sunday and Bank Holidays.

No vehicles may arrive, depart, be loaded or unloaded within the general site except between the hours of 0800 and 1900 Mondays to Fridays and 0800 and 1300 hours on Saturdays and at no time on Sundays or Bank Holidays.

Adequate and suitable provision in the form of water sprays should be used to reduce dust from demolition work.

Adequate and suitable measures should be carried out for the minimisation of asbestos fibres during demolition, so as to prevent airborne fibres from affecting workers carrying out the work, and nearby properties. Only contractors licensed by the Health and Safety Executive should be employed.

Any redundant materials removed from the site should be transported by a registered waste carrier and disposed of at an appropriate legal tipping site.

Provision should be made for the separate storage of recyclables from household waste. Advice on recycling can be obtained from the Environmental Services Manager.

The applicant is advised that the site lies within Flood Zone 1 and is surrounded by Flood Zone 3 land which is at risk of flooding. Therefore, the applicant should contact the Environment Agency and sign up to the Flood Watch Programme in order to minimise the risk to the occupants of the site in the event of a flood.

The proposed development, subject to the conditions stated, is considered to comply with the policies of the Development Plan (Maidstone Borough-Wide Local Plan 2000 and South East Plan 2009) and there are no overriding material considerations to indicate a refusal of planning consent.