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Dear Sir / Madam

## Planning Application for

**Retrospective change of use of the land for the accommodation of one Gypsy and Traveller pitch for personal occupation only. Siting of one Mobile home, one touring caravan and utility shed. Associated hard and soft landscaping. Plot 10, Three Sons, Hampstead Lane, Yalding, Kent, ME18 5HN.**

Following previous submissions by a number of parties on the wider site above, our client seeks a personal planning consent to occupy the site, within the definition of Gypsy / Traveller use.

The clients would like a personal, permanent consent; however, based on previous Inspector's findings, it is reasonable to conclude that the site is not acceptable for permanent occupation.

Therefore, the applicant and their family would respectfully request consideration for a **temporary planning permission**, a period being **5 years** in line with a previous Inspectors' findings on an adjacent plot within the Three sons' site.

To that end, we have examined the Local Planning Policy, and have presented the personal circumstances of the applicants for the Local Planning Authority to consider their case.

### 1.0 The fundamental issues

1.01 The main issues regarding the planning appeal and enforcement appeal (Which are in effect one and the same in our opinion), were the requirement to demonstrate the following considerations;

Whether the development is appropriate within the Green Belt.


If inappropriate, whether there are very special circumstances to consider in this case.

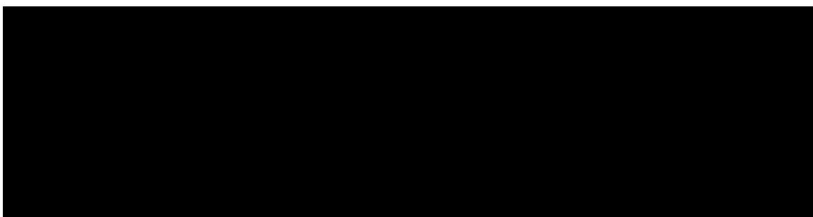
The gypsy status of the applicant, and the wider need for sites.

The consideration of impact on the rural landscape.

The consideration of flood risk.

## Gypsy status:

- 1.02 The applicants, Mr and Mrs Cooper, fall within the definition of Gypsies and Travellers in our view as defined by Government legislation. Mrs Cooper married into the Gypsy / Traveller culture in 2000 and have brought up their children amongst the travelling community.
- 1.03 We have submitted confidential medical information concerning the applicants, but we are also able to confirm that from a young age, Anthony would travel a lot with his parents and grandparents, often attending horse fairs and having left school at an early age, worked in landscaping and gardening predominantly.
- 1.04 
- 1.05 Whilst they had to live in a series of Maisonettes during their early years together (Not being able to find available pitches) they have lived continuously in chalets and mobile homes since 2012.
- 1.06 Especially when Anthony was younger, he would travel considerable distances for work, often as part of a small group of men who will travel seeking work elsewhere, leaving his wife and children at home. Anthony has forged his own path with a small landscaping company. The majority of his work is centred in and around Maidstone and the East of Kent. He has family on a number of local sites, including Collier Street, Headcorn and Staplehurst. The location is ideal for him to keep those close work and social ties.
- 1.07 Anthony has recently, since COVID, fallen under poor health. We discuss this further in the personal circumstances section, but in essence, following the recent Lisa Smith Court of Appeal Ruling, it is acceptable for Gypsies and Travellers to maintain their status if they cease travelling, either temporarily or permanently. Whilst Anthony is struggling with his health considerably at the moment, we do still believe he meets the definition, as does his wife Louisa.
- 1.08 When possible, Anthony likes to take his wife and children away travelling. Generally, this was done in the school holidays, but the appellant had special dispensation from the children's schools to take them out during term time (Generally a week or so earlier than the non-Roma children) to learn the trades that were taught to them by their grandfather and so on. This is culturally, an important part of travelling life. Whilst technology plays a part in making certain tasks easier, the more traditional skills of horsemanship are very much a hands-on approach and can only be taught out in the open.
- 1.09 The requirement for this site is one static home and one touring caravan, fitting the definition of a single pitch under government guidance. Given the siting in the Green Belt, they only wish for a personal consent.
- 1.10 Mr and Mrs Cooper have three children, two of which reside with them on the site



It is considered that in light of the above information, the Appellant fits the definition of Gypsy / Travellers as advised by the Planning Policy for Traveller Sites definition 2015, including the expanded definition handed down by the Court of Appeal decision.

## **2.0 The wider need for sites**

2.01 In recent planning applications, the LPA have considered the need for sites and general supply of those as well;

*The Maidstone Local Plan is adopted and there are policies relating to site provision for Gypsies and Travellers. Local planning authorities also have responsibility for setting their own target for the number of pitches to be provided in their areas in their Local Plans, and the Gypsy & Traveller and Travelling Showpeople Accommodation Assessment: Maidstone (Jan 2012) provides the evidence of the need for Gypsy and Traveller pitches in the borough for the Local Plan period (October 2011 to March 2031).*

### *Supply*

*Accommodation for Gypsies and Travellers is a specific type of housing that councils have the duty to provide for under the Housing Act (2004). Local Plan Policy DM15 accepts that subject to certain criteria, this type of accommodation can be provided in the countryside. Since 1st October 2011, the base date of the GTAA, the following permissions for pitches have been granted (as of 30th September 2020):*

- 1. 199 permanent non-personal pitches*
- 2. 32 permanent personal pitches*
- 3. 4 temporary non personal pitches*
- 4. 39 temporary personal pitches*

*A total of 231 pitches have been granted permanent consent since October 2011. These 231 pitches exceed the Local Plan's 187 pitch target. This illustrates that the rate at which permanent permissions have been granted in the first 9 years of the plan period is actually ahead of the rate of need by the GTAA. The sites allocated through policy GT1 in the Local Plan which do not yet have permission will also provide an additional 29 pitches. Furthermore, sites granted permanent permissions on suitable windfall sites (in accordance with policy DM15), and pitch turnover on the two public Gypsy & Traveller sites in the borough, will continue to increase the number of pitches in the borough.*

*The PPTS directs that the lack of a 5 year supply of Gypsy and Traveller pitches should be given weight when considering the expediency of granting consent on a temporary basis. The Council's position is that it can demonstrate 8yrs worth year supply of Gypsy and Traveller sites at the base date of 1st April 2020. As the Council considers itself to be in a position to demonstrate more than a 5 year supply, paragraph 27 of the PPTS would not apply in the determination of this application and the direction to positively consider the granting of a temporary consent does not apply.*

2.02 Fundamentally, what is now known is that further to recent work undertaken by ORS, the LPA published a topic paper relating to the forthcoming DPD work for Gypsies and Travellers. It highlights the significant uplift in need (both immediate and longer-term) to as many as 600 pitches. In our view, this significant uplift in need is a clear material planning consideration in this case. The GTAA highlights that this significant uplift in need must be addressed both in the short-term and longer term.

- 2.03 In a recent committee report relating to the provision of four static mobiles and four touring caravans for Gypsy and Traveller occupation on the site 'land west of The Hawthorns' the Case Officer confirmed that; *'the Gypsy, Traveller and Travelling Showpeople Accommodation Assessment is the only complete assessment of need that is currently available forming part of the evidence base to the Local Plan (Total need Oct 2011 to March 2031 of 187 pitches). The GTAA when it was carried out provided a reasonable and sound assessment of future pitch needs. However, this is now over 11 years old and because of its age, little weight can be attached to this document.'*
- 2.04 The Council have therefore confirmed that the only published GTAA is now substantially out of date and as a result, limited weight can be attached to the contents. It is understood that the preparation of a GTAA has been ongoing since 2019 and that the publication of this has been delayed. Whilst restrictions in gathering data relating to the Covid pandemic, It is not clear why there has been such a significant delay in the publication of an up to date GTAA. The Council are now preparing a Gypsy and Traveller and Travelling Showpeople DPD. The Council anticipate adopting this DPD in December 2024. This timeframe is considered to be overly optimistic given that submission is not programmed until February/March 2024. We would therefore expect to see delays to the adoption of the Gypsy and Traveller and Travelling Showpeople DPD.
- 2.05 In the meantime, the Council have not published their overall need although in the Committee report for the application at Land West of Hawthorns, referenced above, the Case Officer stated; *'In contrast to the full assessment in the 2012 GTAA, (and whilst it is highlighted that nothing has to date been published), the work completed so far on an up to date assessment has indicated a significant emerging need for Gypsy and Traveller accommodation in the borough.'* (Underlined for our emphasis).
- 2.06 Paragraph 6.06 of the recent committee report went on to state in relation to need and supply that; *'Importantly, in the recent Meadows appeal decision (APP/U2235/C/18/3210851 and others), dated 17 March 2023, the Inspector concluded that the 2012 GTAA does not represent a robust and accurate assessment of need within the Borough. Into the future, the Inspector found that evidence points to an existing shortfall of sites and a shortfall in the supply of 5 years' worth of deliverable sites. At the same time, the Council accepted the need for pitches over the plan period to 2037, is likely to be significant.'*
- 2.07 The Inspectors report for 'The Meadows – ref APP/U2235/C/18/3210851, referred to in the committee report assessed within paragraphs 82-94 the Councils need for Traveller sites and local provision. Within Paragraph 90 the Inspector stated that *'A new GTAA is being prepared to inform the Gypsy, Traveller and Travelling Showpeople Development Plan Document (the DPD). Survey work commenced in September 2019 but the publication of the GTAA has been delayed, not least by the restrictions related to the Covid pandemic. The Council accepted that the preliminary GTAA work shows the need for pitches over the plan period to 2037, as yet unquantified, is likely to be significant. The Council submitted that the need arises over the plan period up to 2037, that it is not known when the need will arise over the course of fifteen years and it is a future need. That may be so, but the plan period starts in 2022 and the probability is a proportion of total need exists in the immediate and short term.'*
- 2.08 The Inspector goes on to conclude that; *'The probability is that the GTAA of 2012 does not represent a robust and accurate assessment of need within the Borough and into the future. The authors of the report recommended a repeat assessment after about 5 years and a further 5 years has elapsed since the anticipated review date. The number of pitches granted permission over the plan period to date substantially exceeds the total pitch target.'* The Inspectors decision goes on to state within para 92 that; *'The Council is able to demonstrate a 5 year supply against the Local Plan target. The target*



*probably no longer is an accurate and up-to-date figure because the 2012 GTAA continues to provide base data to inform the pitch requirements over the next five years.'*

2.09 In a current Planning Appeal in Emmet Hill Lane, Yalding, the LPA has stated that the revised need has been reduced slightly, from 604 pitches to 529; Although this is subject to final confirmation through the Local Plan Main Modifications consultation which has just commenced on 29<sup>th</sup> September 2023.

Based on the Councils recent committee report and Inspectors decision, we consider that there is a significant shortfall of Gypsy and Traveller sites within the Borough, and must now weight heavily in favour of the applicant, particularly in light of their request for a temporary permission.

### **3.0 Impact on Landscape**

- 3.01 It is accepted that the development, by virtue of its urbanising appearance, does cause some harm to the previously unspoilt character of the rural landscape in this vicinity.
- 3.02 The site is not, however, isolated. Taking into account the consented site to the East, Three Acres, and the existing residential park home site immediately north of the entrance, the local character is somewhat influenced by the presence of static homes.
- 3.03 Taken in isolation, the applicant can use the existing driveway to access the property; The proposed plans include the removal of existing closeboard fencing and being replaced with native mixed hedging. The applicants are prepared to do this even in light of a potential temporary, rather than permanent, consent. This could be conditioned to occur within 3 months of the date of any permission being granted, for example, including the native mixed hedgerow species being put forward for boundary planting.
- 3.04 It is clear that the development will have an impact on the previously open character of the site, but this harm is limited by virtue of the temporary consent being sought.
- 3.05 Suitable conditions can be put forward to include a land remediation scheme, that requires the land to be put back to its original state following their exit from the site.

### **4.0 Flood Risk**

- 4.01 A new flood risk assessment has been prepared by Unda Consulting.
- 4.02 As a point of clarification, the Applicant has indicated that they do not intend to apply for a day room for the site at this time, and therefore the requirement for flood compensatory measures would not be applicable in this instance. The mobile home and touring caravan would not be sited on the ground and due to the permeable nature of the hardstanding and road entrance, there is no requirement for off-site consideration of flood risk given the permeability of the site has not reduced.
- 4.03 The report states that much of the site, during the 1:100 year flood event (+35%CC) would be some 0.34m beneath water. It is important to pick up on section 1.2 of the report, where the applicant's mobile is 0.05m below the recommended FFL for the site. Within 2 months, the applicant could lift the mobile home the required height of 5cm.
- 4.04 It is our understanding that the site is not liable to flash flooding given the characteristics of the flood plan and river basin in this location. The majority of sites that are considered acceptable in these locations, have a good flood evacuation plan in place. The Flood report remarked that this would be

possible in this instance, as a means of reducing the risk to occupants on site, as well as reducing the need for emergency services.

- 4.05 By their very definition, Gypsies and Travellers are ready to move at a moment's notice. A touring caravan is always stationed on the land. Should such an event occur, it would be possible for the appellants to leave the site to higher ground at relatively short notice.
- 4.06 This could, in our view, reduce the perceived threat to human life in terms of the granting of planning permission for the applicant.
- 4.07 All of the existing site is made up of permeable roadstone – however the proposed block plan shows a section of site being put back to grass with additional planting. We see this as a benefit, even in the short term of a 5 year consent which is being sought.

## **5.0 Personal circumstances**

- 5.01 It is important to recognise that in line with the NPPF and PPTS, proposed Gypsy and Traveller sites located in the Green Belt must be considered to be inappropriate development.
- 5.02 To that end, it is important to consider whether there are very special circumstances that can be applied to the applicants in order for the Council to determine whether those circumstances
- 5.03 We have appended documents that were prepared by the applicants pursuant to previous injunctive proceedings on the wider site. We wish for those to be treated as confidential as they include elements of personal information which we do not consider pertinent to have out in the public domain.
- 5.04 Nonetheless, the evidence points towards an adult couple who both have health conditions that require regular treatment and access to a settled base in order to benefit from those health services. Two of their children, who also reside at the property still, have significant health requirements that must be catered for, and the stability that they currently have by retaining that access is paramount in our view.
- 5.05 They have no access to immediate family member sites due to a breakdown in their personal relationship with their respective parents, as well as Mrs Cooper's Mother passing away just over 2 years ago.
- 5.06 They accept that the site might not be considered appropriate for permanent permission – however it is clear that they have nowhere else to go, and that there are no LPA sites available.
- 5.07 A recent discussion with Kent County Council also revealed that there is a waiting list of more than 70 families, and plot turnover is generally in the order of 2-3 a year, meaning there is every possibility that it might take 20 years to acquire a KCC pitch, made even harder when it is known that in the last two years, Kent County Council have sold some of their existing stock of sites to the current occupants, reducing the chances of acquiring a site even further,
- 5.08 In considering the previous temporary consent for a different site at three sons in 2017, the Inspector correctly gave weight to the need for sites, as well as the needs of the children. We believe that the case remains now that the applicants could in this case, confirm that in line with a personal, temporary approach, very special circumstances can be considered to apply in this case.

6.0 **Summary**

- 6.01 Previous Inspectors correctly identified that the Green Belt designation meant that the proposal for Gypsy and Traveller occupation amounted to inappropriate development.
- 6.02 The amended flood risk assessment provides assurances that the mobile home can be sited at an appropriate height (similar to that which is existing) to ensure that the mobile would have a safe finished floor level. It is also possible to tether the unit to its concrete base, subject to a detail which could be provided by means of a condition. The site is also immediately adjacent to the edge of the flood zone, meaning a short distance is required to evacuate the site. Early warning measures can also be deployed.
- 6.03 In light of the additional information pertaining to their personal circumstances, we believe the application can demonstrate 'Very Special Circumstances' to justify a temporary consent. In this case, given the significant emerging need (Of which the applicants fall within) we believe that a 5 year consent would be appropriate given the likely time for sites to come forward.
- 6.04 A temporary consent would also limit the perceived visual harm, notwithstanding the permanent consent that has been recently approved adjacent to the application site to the East.
- 6.05 In light of the above we respectfully request consideration be given for a personal, temporary consent.

*Yours Sincerely*



*Simon McKay BSc MA MRTPI*  
Director, SJM Planning Ltd