



Delegated Report

Planning Application

Planning Application No: 20230991

Location: Land At Heron Hill Lane Meopham Gravesend

Description: Application for variation of conditions 2 and 3 attached to planning permission reference number 20180163 allowed on Appeal under reference number APP/K2230/W/19/3223958 for an application for a material change of use of land to a Gypsy Traveller site with 5 pitches each with space for stationing of a static caravan, touring caravan and utility block, with associated hard standing, gabion retaining wall and shared package sewage treatment plant; to allow a replacement of the approved layout plan to drawing no. GP01/23 Rev B.

Applicant: Mr F And M Dunphy, Stokes, Buckland And Townsley

Site Visit Date: 28th November 2023

Submitted Documents/Plans

Planning Application Form;
Site Location Plan;
Drawing No. GP/01/23 Rev C – Proposed Block Plan
Drawing No. GP/02/23 Rev A – Cross Sections AA and BB; and
Drawing No. GP/03/23 Rev A – Cross Sections CC and DD.

Relevant Planning History

Reference	Description	Decision	Decision Date
20180163	Application for a material change of use of land to a Gypsy Traveller site with 5 pitches each with space for stationing of a static caravan, touring caravan and utility block, with associated hard standing, gabion retaining wall and shared package sewage treatment plant.	Refused Appeal Allowed	07.12.2018 14.05.2020

Development Plan

Gravesham Local Plan Core Strategy (September 2014):

- CS01 – Sustainable Development
- CS02 – Scale & Distribution of Development
- CS11 – Transport
- CS12 – Green Infrastructure
- CS17 – Provision of Traveller Sites
- CS18 – Climate Change
- CS19 – Development & Design Principles

Gravesham Local Plan: First Review (1994)

- T1 – Impact of Development on the Highway Network
- T5 – Access to the identified Highway Network
- P3 – Vehicle Parking Standards

Paragraph 33 of the NPPF (2023) sets out that policies within adopted local plans should be reviewed to assess whether they need updating at least once every five years, and should then be updated as necessary. Such reviews are also a legal requirement as set out in Regulation 10A of the Town and Country Planning (Local Planning) England Regulations 2012.

The Council undertook such a review in September 2019 and found that the adopted Local Plan Core Strategy is in need of a partial review in terms of Policy CS02, due to the increased need for housing since the Local Plan Core Strategy was adopted and the need to ensure that a sufficient land supply exists to meet this need. Whilst saved policies from the Local Plan 1st Review (1994) generally conform with the NPPF (2021), the Council will also seek to replace these.

National Planning Policy Framework (2023)

- 2 – Achieving Sustainable Development
- 4 – Decision Making
- 8 – Promoting healthy and safe communities
- 9 – Promoting Sustainable Transport
- 12 – Achieving well-designed and beautiful places
- 13 – Protecting Green Belt Land
- 15 – Conserving and enhancing the natural environment

Supplementary Planning Guidance

- SPG 4 - KCC Parking Standards (2006);
- Gravesham Landscape Character Assessment (2009)

Consultations, Publicity and Representations

Consultees

External

Forestry Commission

We note that the development proposal includes an access track that is within the 15m buffer zone of ancient woodland. There is a possibility that the new proposals could impact tree roots within the ancient woodland if they have spread under the existing road and/or excavating a new access road could prevent future root growth. We suggest the Council consider the below advice in relation to this to make sure that the proposal is consistent with national policy and standing advice regarding ancient woodland which requires a suitable buffer zone to avoid direct or indirect impacts on the woodland.

Thank you for taking the time to consult the Forestry Commission regarding this application. We are currently receiving a significant number of planning consultations. We are triaging all requests and may have further comments as a result; however, this response should be considered to be the Forestry Commission's formal response to this consultation unless we provide subsequent comments.

As a Non-Ministerial Government Department, we do not provide an opinion supporting or objecting to planning applications. Instead, we provide advice on the potential impact that proposed developments could have on trees and woodland using our local knowledge and expertise, planning policy and legislation that could be relevant and measures that could help to avoid or limit impacts and result in overall gains wherever possible.

The planning authority should consider the following policy and guidance as part of their decision-making process for this application.

1. Ancient woodlands, ancient trees and veteran trees are irreplaceable habitats. Paragraph 180(c) of the NPPF sets out that development resulting in the loss or deterioration of irreplaceable habitats should be refused unless there are wholly exceptional reasons and a suitable compensation strategy exists. In considering the impacts of the development on Ancient Woodland, Ancient and Veteran trees, the planning authority should consider direct and indirect impacts resulting from both construction and operational phases.

Please refer to Natural England and Forestry Commission joint Standing Advice for Ancient Woodland and Ancient and Veteran Trees, updated in January 2022. The Standing Advice can be a material consideration for planning decisions, and contains advice and guidance on assessing the effects of development, and how to avoid and mitigate impacts. It also includes an Assessment Guide which can help planners assess the impact of the proposed development on ancient woodland or ancient and veteran trees in line with the NPPF.

2. Existing trees should be retained wherever possible, and opportunities should be taken to incorporate trees into development. Trees and woodlands provide multiple benefits to society such as storing carbon, regulating temperatures, strengthening flood resilience and reducing noise and air pollution.[1] Paragraph 131 of the NPPF seeks to ensure new streets are tree lined, that opportunities should be taken to incorporate trees elsewhere in developments, and that existing trees are retained wherever possible. Appropriate measures should be in place to secure the long-term maintenance of newly planted trees. The Forestry Commission may be able to give further support in developing appropriate conditions in relation to woodland creation, management or mitigation.

For all planning applications, we advise the Council to carefully consider the previous usage of sites, including historical satellite imagery, to consider if development is being proposed on recently felled woodland. Please contact us if you suspect this is the case.

3. Biodiversity Net Gain (BNG): Paragraph 174(d) of the NPPF sets out that planning (policies and) decisions should minimise impacts on and provide net gains for biodiversity. Paragraph 180(d) encourages development design to integrate opportunities to improve biodiversity, especially where this can secure net gains for biodiversity. BNG offers opportunities for protecting (retaining) trees and woodlands, as well as new planting and enhancement of existing trees and woodlands, and the planning authority also should consider the wider range of benefits trees, hedgerows and woodlands can provide as part of delivering good practice biodiversity net gain requirements. Ancient woodlands (including PAWS) and ancient & veteran trees are already recognised as irreplaceable habitats and as such are exempt from the net gain requirement.

KCC Highways and Transportation

Referring to the above description, it would appear that this development proposal does not meet the criteria to warrant involvement from the Highway Authority in accordance with the current consultation protocol arrangements. If there are any material highway safety concerns that you consider should be brought to the attention of the HA, then please contact us again with your specific concerns for our consideration.

KCC West Kent Public Rights of Way

The alterations do not affect Public Right of Way NS284 and the comments made by the Area Officer in previous communication still apply.

Kent Wildlife Trust

The application proposes to extend outside of the approved red line boundary and further into the Happy Valley, Meopham Local Wildlife Site (LWS) to the east and west.

Kent Wildlife Trust (KWT) are seriously concerned about the both the impacts of this proposal on the LWS and its continued destruction in this area from development. The proposal also fails to provide at least a 15-metre buffer zone from the Cowcrofts / Copicar Woods ancient woodland situated opposite the application

site as advised by Natural England and the Forestry Commission. No assessment has been provided on the impacts of the development on this irreplaceable habitat.

KWT objects to the current variation of condition application in the absence of any ecological appraisals or detailed assessment on how a biodiversity net gain would be achieved.

Southern Water

Southern Water has no objections to the variation of condition 02 and no comments to make with respect to the variation of condition 03.

Environment Agency

This application relates to condition(s) that were not requested by us, we therefore have no comments to make with regards to the variation of condition(s).

KCC Dartford Group Fire Safety

I can confirm that on this occasion it is my opinion that the emergency access requirements for the Fire and Rescue Service under the above Act appear to have been met.

Fire Service access and facility provisions are also a requirement under B5 of the Building Regulations 2010 and must be complied with to the satisfaction of the Building Control Authority. A full plans submission should be made to the relevant building control body who have a statutory obligation to consult with the Fire and Rescue Service.

Natural England

No comments received.

Kent Police Designing Out Crime

No comments received.

Meopham Parish Council

No comments received.

KCC Flood and Water Management

No comments received.

Internal

GBC Waste Services

No comments received.

GBC Highways

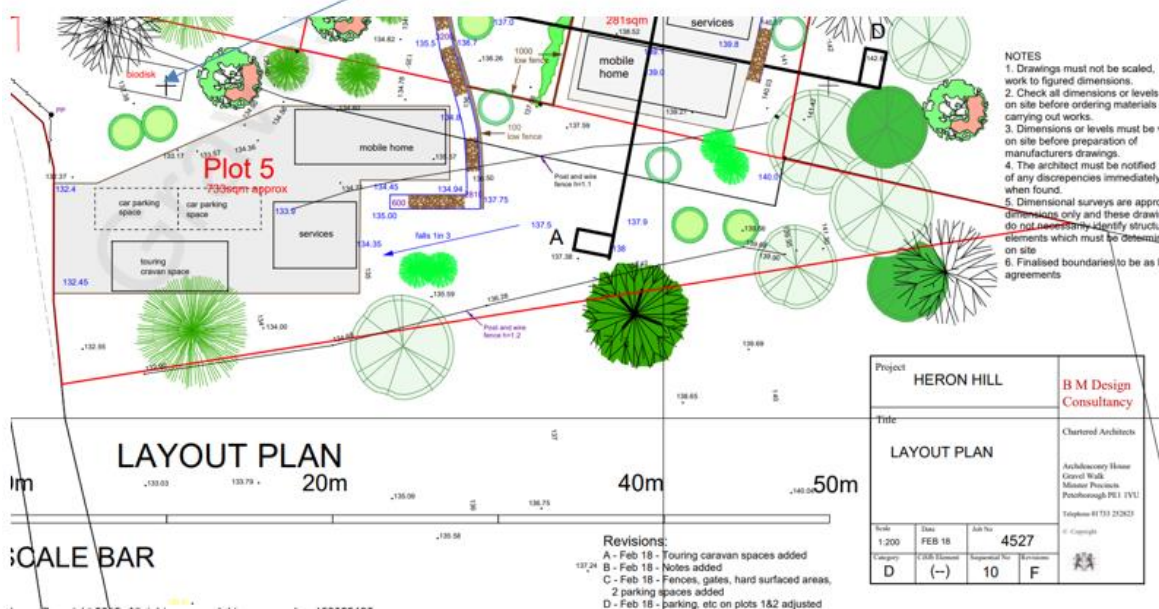
The as built layout appears to be far from ideal with some difficult manoeuvres to gain access to some of the plots, plots one and two in particular. But as this will be off highway the only people inconvenienced will be the applicants. The important thing is to ensure that the location and accessibility of the foul water package treatment plant is unaffected by these proposals.

It is noted that drawing GP/01/23 Rev C now shows a Septic Tank not a package treatment plant and it appears to be partially installed outside the red line site boundary!



Extract from submitted drawing.

This differs from the layout permitted under appeal shown on drawing 4527/D/10/F, which shows a biodisk which is a package treatment plant for foul water and is located in a slightly different position and wholly within the red line.



As there are differences between a Septic Tank and a Package Treatment Works, although both discharge liquid to ground, further consideration may be required by the appropriate agency, in particular the Environment Agency as they may need to review any permits that have been issued if the method of foul water disposal changes as the quality of the effluent may change.

No objection to this application or comments to make.

Neighbouring properties

Consultation was by way of the displaying of site notices and individual letters sent to 6 surrounding properties with an overall expiry date of 19th December 2023. Ten letters/comments of objection have been received, making the following summarised comments:

- Concern over stability of the sheer wall create by the excavation of the site
- Conditions were imposed for installation of gabion basket retaining wall to prevent land slippage
- Reasons for the need for traveller site don't appear to be relevant and occupants aren't original appellants;
- Permission should be revoked and land returned to original condition;
- Chalet style building on site has no permission;
- Detrimental impact on area of outstanding natural beauty and woodland;
- Impact on trees;
- Out of character with rural area and properties;
- Poor construction
- Access road not suitable for large vehicles / caravans;
- Increase traffic;
- Increase noise;
- Lack of street lighting;
- Sets a precedent;
- Plans not inline with proposed planning over previous years;
- Impact on state of single track due to increase volume;
- Highway safety;
- Questions over intended volume of residence in the area;
- No in keeping with existing and previous planning applications;

Officer's Analysis

For the purposes of this section 73 application, only issues relating to the variation of condition 2 and 3 can be considered and **no other matters pertaining to the original application can be considered.**

Section 73 of the 1990 Act provides for applications for planning permission to develop land without complying with previously imposed planning conditions. The local planning authority can grant permission unconditionally or subject to different conditions, or the local planning authority can refuse the application if it is decided that the original condition(s) should be kept. The only limits imposed by the wording of s73 itself is on the type of amendment which can be affected are as follows:

- The amendment must be facilitated through an amendment to a condition.
- The original planning permission must have been lawfully implemented or still be capable of implementation.
- The amendment cannot have the effect of extending the time within which a development must be begun or within which an application for approval of reserved matters must be made.

The proposal includes the rearrangement of the site layout due to engineering obstacles within the topography of the site. The site access remains the same. The applicant therefore wishes to vary conditions 2 and 3 which lists the approved plan, Drawing No. 4527 D 10 Rev F – Site Layout Plan, to include the revised proposed block plan with Drawing No. GP01/23 Rev C.

Below is a comparison of the approved and proposed site layouts:

Approved Proposed Block Plan (Drawing No 4527 D 10 Rev F Site Layout Plan)



Revised Proposed Block Plan (Drawing. No. GP01/23 Rev C)



The supporting application form states the reasoning for the proposed amendments and variations is that the applicants encountered unforeseen engineering obstacles within the site topography which has led to necessary amendments. The applicant therefore wishes to replace the approved layout plan with the new layout plan.

Site Boundary

The proposed variations seek to amend the site boundary which also takes the development within the 15m buffer zone of ancient woodland.

Site Layout Changes

The proposal as shown above in the comparison images, seek to amend the overall site layout, together with the inclusion of retaining walls and a substantial decrease in the amount of soft landscaping.

In a recent High Court case of Mikael Armstrong and Secretary of State for Levelling Up, Housing and Communities (2) Cornwall the Inspector concluded “that the nature of the development proposed would be substantially different to that allowed by the existing permission. Consequently it goes beyond the parameters of a minor material amendment and cannot be considered under section 73”.

Variation of Condition 2

Condition 2 of Appeal Decision APP/K2230/W/19/3223958 reads;

2. *The development hereby permitted, unless otherwise reserved for approval by another condition in this schedule, shall be carried out in accordance with the following plans:*

- *OS Site Plan*
- *Drawing No. 4527 D 10 Rev F – Site Layout Plan*
- *Drawing No. 4527 D 11 Rev E – Sections*
- *Plan 3 – Elevations and Plans for Utility Buildings*
- *Drawing No. S17/6307/01 Rev B – Level Survey Plots 1-5*

Condition 2 lists all of the submitted documents that were taken into consideration when assessing the scheme for planning application 20180163 and Appeal Decision APP/K2230/W/19/3223958. The appeal decision is attached as Appendix 1 for reference. The site layout is inherently different with how the individual plots are laid out and in relation to each other, specifically with being further located to the east and south within the 15m buffer of the ancient woodland, together with a substantial decrease in the soft landscaping and the inclusion of timber retaining walls.

Condition 3

Condition 3 of Appeal Decision APP/K2230/W/19/3223958 reads;

3. *Prior to any operational works for the construction of the development hereby approved, the following additional information shall be submitted to and approved in writing by the Local Planning Authority:*

- *Details to prevent the discharge of surface water from the site onto the public highway.*
- *Notwithstanding the site layout shown on Drawing No. 4527 D 10 Rev F, a revised site layout shall be submitted which:*
 - o *Provides adequate vehicular turning space within the site to enable the occupants of plots 1-4 to leave the site in a forward direction.*
 - o *Provides a western visibility splay of 11 metres x 2.4 metres at the access to plots 1-4 from the byway as measured from the give way line, and an eastern visibility splay up to the tree in the north-east corner which is retained pursuant to condition 6.*
 - o *Increases the width of the internal access road serving plots 1-4 to 5.5 metres for the first 10 metres from the access junction with the byway.*
 - o *Provides parking space within each pitch capable of accommodating one light goods vehicle. The light goods vehicle space shall measure 7.5 metres x 3.5 metres.*
 - o *Provides details of the position of the caravans, the utility rooms and retaining walls.*

The approved site layout (excluding the utility buildings) shall be implemented and completed prior to the first residential occupation of the site and thereafter.

Condition 3 directly refers to the submission of further details relating to the operational works for the construction and the final surface water details, as well as vehicular turning details, visibility splays, access, parking and the position of the caravans, utility rooms and retaining walls.

It is noted that the extent of the application site identified in the proposed site block plan (Drawing No. GP/01/23 Rev C) differs from Drawing No. 4527 D 10 Rev F (Site Layout Plan) that was approved on appeal (Appeal Decision APP/K2230/W/19/3223958 (App. Ref. 20180163)) and the plans previously submitted to discharge Condition 3 (App. Ref. 20200867). **The submitted proposed block plan includes development which falls outside of the red outline identified on the drawing itself and that shown on the site location plan. The extent of the development did not form part of the original application and appears to include works such as the erection of a retaining wall within an area of woodland that forms part of the, the provision of additional hardstanding, and formation of a wider access road.**

Kent Wildlife Trust (KWT) have stated in their comments that in order to assess the impact of the revised layout appropriately, specifically due to the development extending the site further to the east or south. As such, it would be necessary for an ecological appraisal to be submitted. KWT are raise that the proposal fails to provide a 15-metre buffer zone from the ancient woodland as advised is the minimum requirement by Natural England and the Forestry Commission, and are concerned that there is a lack of information to

clearly establish that the proposed works will not have a detrimental impact on the adjacent ancient woodland in terms of damaging tree roots or preventing future tree root growth.

The Local Authority also share these concerns, in addition to the inability to amend the site boundaries development site under a S73 application.

It is therefore considered that the proposed variations seek to amend the site boundary, together with a revised site layout that is so inherently different from the approved, that this would need to be assessed fully through a full application, whereby the impact of the changes can be fully assessed, due to the sensitive nature of the site and surrounding ancient woodland.

Taking all of the above into account, the revised site boundary, together with the proposed changes to the site layout, which include retaining walls, a substantial decrease in soft landscaping, would result in a fundamental change to the overall design and appearance of the site, together with the high probability of a detrimental impact on the ancient woodland and cannot be considered as a “minor material amendment”.

As a result this proposal goes beyond the scope of Section 73 of the Town and Country Planning Act 1990 and is contrary to guidance within the National Planning Practice Guidance, specifically paragraph 001
Reference ID: 17a-001-20140306.

Conclusion & Recommendation

The proposal seeks to vary planning Conditions 2 and 3 of planning permission 20180163, allowed under appeal (Appeal Decision APP/K2230/W/19/3223958), to allow for a change in the site layout, however only revised plans have been submitted and it is considered that a full assessment of the amendments, including a revised ecological appraisal to be submitted in support of the application, to assess the full impact.

It is therefore considered that the proposed variations seek to amend the site boundary, together with a revised site layout that is so inherently different from the approved, that this would need to be assessed fully through a full application, whereby the impact of the changes can be fully assessed, due to the sensitive nature of the site and surrounding ancient woodland.

As a result this proposal goes beyond the scope of Section 73 of the Town and Country Planning Act 1990 and is contrary to guidance within the National Planning Practice Guidance, specifically paragraph 001
Reference ID: 17a-001-20140306.

For these reasons the application is recommended for refusal and a planning application should be submitted.

Recommendation: Refusal

(For detailed conditions / reasons for refusal and informatives, see draft Decision).

Case Officer:	Ms Amanda Cue	Team Leader:	Richard Hart
Signed:	<i>A Cue</i>	Signed:	<i>R Hart</i>
Dated:	22 nd December 2023	Dated:	22nd December 2023