

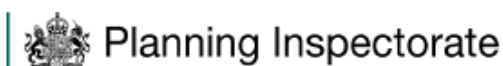
PLANNING COMMITTEE – 17<sup>th</sup> July 2025

## PART 5

Report of the Head of Planning

## PART 5

Decisions by County Council and Secretary of State, reported for information



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## Appeal Decisions

Hearing held on 11 March 2025

Site visit made on 11 March 2025

**by Diane Lewis BA(Hons) MCD MA LLM MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12 May 2025

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**Appeal A Ref: APP/V2255/W/24/3357886****Land at Eden Top, Sheppey Way, Bobbing, Kent, ME9 8QP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Mr Robert Beck against the decision of Swale Borough Council.
- The application Ref is 22/503908/FULL and is dated 9 August 2022.
- The development proposed is: Removal of conditions 3 (occupancy restriction) and 4 (use of land) pursuant to application SW/09/0972 (allowed on appeal) for the material change of use of land to use as a residential caravan site for one gypsy family with two caravans (including one static), erection of amenity block and laying of hardstanding.

**Summary of Decision: The appeal is allowed and planning permission is granted subject to conditions.**

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**Appeal B Ref: APP/V2255/C/24/3352254****Land at Eden Top, Sheppey Way, Sittingbourne, Kent ME9 8QP**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) by Mr Robert Beck against an enforcement notice issued by Swale Borough Council.
- The notice was issued on 19 August 2024.
- The breach of planning control as alleged in the notice is: The unauthorised material change of use of the Land from agricultural to the stationing of a mobile home for residential use including the laying of hardstanding.
- The requirements of the notice are to:
  1. Cease the use of the Land for residential use.
  2. Break up and remove the hardstanding located adjacent to the mobile home.
  3. Dismantle and remove the raised timber platform adjoining the mobile home.
  4. Remove from the Land the mobile home currently located in its approximate position marked 'A' on the attached plan.
  5. Dismantle and remove any associated foundations, pipework or utilities installed in association with the mobile home.
  6. Remove from the land all resultant materials, debris, rubbish and rubble from compliance with Steps 2-5 above.
  7. Reseed with grass seed (or lay grass turf on) the area uncovered as a result of compliance with Steps 2-5 above in keeping with the surrounding agricultural land.
- The period for compliance with the requirements is: Six (6) calendar months after the Notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (f) and (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

**Summary of Decision: The appeal is allowed subject to the enforcement notice being corrected in the terms set out in the Formal Decision.**

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## BACKGROUND TO THE APPEALS

### The Appeals

1. The appeal sites form part of a larger block of land owned by the appellant lying between Sheppey Way to the north and the A249 dual carriageway to the south. Beyond the A249 is the urban area of Sittingbourne, including Milton Regis and Kemsley.
2. In February 2011 planning permission was granted on appeal for a caravan site for a gypsy family. Appeal A seeks removal of the conditions making the permission personal to the appellant. Appeal B follows the issue of an enforcement notice that relates to a second caravan site which was established about two years ago and is occupied by members of the appellant's family. Planning policy and general need for traveller sites are considerations that provide the context for both appeals.
3. The applications for costs made by the appellant against Swale Borough Council are the subject of separate Decisions.

### Planning Policy and Statutory Duties

4. The Planning policy for traveller sites, December 2024 (the PPTS) applies to both appeal developments. This document should be read in conjunction with the National Planning Policy Framework December 2024 (the Framework). The Swale Borough Local Plan Bearing Fruits 2031, adopted in 2017 (the Local Plan), details the relevant development plan policies.
5. The Local Plan recognises that Swale Borough has one of the largest Gypsy and Traveller populations within Kent and South East England. Making sufficient provision in a fair fashion for their site and accommodation needs is a key objective. No site allocations are made through the Local Plan. Policy DM 10 safeguards existing permanent sites and sets out criteria for assessing proposed new sites. Policy DM 10 has to be read and interpreted in conjunction with Policy ST 3, which sets out the Local Plan settlement strategy. The availability of sites at each tier of settlement category should be considered before a site within the next lower tier is considered and permitted. A degree of flexibility is introduced to respond to particular personal or business requirements.
6. The explanatory text to Policy DM 10 indicates the Borough's need for pitch provision was informed by a Gypsy, Traveller and Travelling Showperson Accommodation Assessment that was carried out before 2015. The findings of the study were then revisited and the overall need for the plan period revised to take account of the definition of Gypsies and Travellers in the 2015 PPTS, which did not include gypsies and travellers who had ceased to travel permanently. Subsequent revisions to the definition in the PPTS would have the probable effect of increasing the need figure and so the assessment of need and the associated Local Plan policies are out-of-date.
7. Human rights and equality issues will be integral to my decision. Article 8, a Convention Right<sup>1</sup>, affords a person the right to respect for their private and family life, their home and their correspondence. This qualified right requires a balance between the rights of the individual and the needs of the wider community. There is a positive obligation to facilitate the Gypsy way of life to the extent that the

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<sup>1</sup> Article 8 of the European Convention on Human Rights, which was enshrined into UK law by the Human Rights Act 1998.



vulnerable position of Gypsies and Travellers as a minority group means some special consideration should be given to their needs and different lifestyle in the regulatory planning framework and in reaching decisions on particular cases. Where the Article 8 rights are those of children, they must be seen in the context of Article 3 of the UNCRC<sup>2</sup>, which requires a child's best interests to be a primary consideration.

8. The public sector equality duty (PSED) in section 149 of the Equality Act 2010 requires that I have due regard to the three aims identified in the Act – to eliminate discrimination, advance equality of opportunity and foster good relations. Romany Gypsies and Irish Travellers are ethnic minorities and have the protected characteristic of race under section 149(7). The decision must be proportionate to achieving the legitimate planning aims.

#### **Need for traveller sites**

9. The Swale Borough Council Gypsy, Traveller and Travelling Showperson Accommodation Assessment 2023 (the GTAA) is the most recent study on the accommodation needs of these communities. The GTAA analysis takes into account the needs arising from existing households, households on unauthorised sites, newly forming households, in-migrant households and vacancies on existing public and private pitches. The report concludes there is an overall need for 114 additional Gypsy and Traveller pitches across the Borough over the period 2022/23 to 2037/38, with a shortfall of 80 in the five year period 2022/23 to 2026/27 and 34 pitches in the longer term.
10. The Council, when determining the application in July 2024 reported there was an identified 1.3 year supply of pitches. Subsequently the Council has agreed in the statement of common ground there is not a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against the locally set target.
11. The appellant's appraisal of the GTAA concluded the GTAA had underestimated the level of need in the Borough and that the 2025 five year supply figure is 134 pitches. This estimate is significantly different to the locally set target in the GTAA.
12. In considering pitch needs the GTAA relied on the December 2023 PPTS definition of Gypsies and Travellers. The current definition in the 2024 PPTS has been broadened to include all other persons with a cultural tradition of nomadism or of living in a caravan. The identified need of 114 pitches is probably an under-estimate for this reason alone.
13. For the purposes of the current appeals, the evidence indicates a very significant shortfall in pitches in the Borough. The lack of a five year supply engages the presumption in favour of sustainable development set out in paragraph 11(d) of the Framework, unless the application of policies protecting the North Kent Marshes Special Protection Areas and Ramsar sites (the SPA) provide a strong reason for refusing the development proposed.
14. To increase the supply of pitches, the GTAA recommended regularisation of sites that are not permanently authorised and the expansion/intensification of existing sites. Together with a small level of turnover on Council pitches there was thought to be potential to largely meet the short term 5 year need. The GTAA study also

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<sup>2</sup> United Nations Convention on the Rights of the Child

identified the appeal site as a permanent private authorised site, contributing one pitch to the Borough's supply.

#### **APPEAL A**

15. Planning permission was granted on appeal on 1 February 2011 for a material change of use of land to use as a residential caravan site for one gypsy family with two caravans (including one static), erection of amenity block and laying of hardstanding (Appeal ref. APP/V2255/A/10/2129278).
16. The permission was subject to 13 planning conditions. Condition 3 states "The occupation of the site hereby permitted shall be carried out only by Mr Robert Beck and his resident dependants." Condition 4 states "When the land ceases to be occupied by Mr Robert Beck and his resident dependants, the use hereby permitted shall cease and all caravans, structures, materials and equipment brought on to the land in connection with the use, including the amenity block hereby approved, shall be removed. Within six months of that time, the land shall be restored in accordance with a scheme previously submitted to and approved in writing by the local planning authority." In addition, condition 2 restricts occupation to Gypsies and Travellers.
17. The reasoning for the personal conditions indicated that a permanent approval to the applicant Mr Beck arose from his strong economic links to horses and that this particular need for a residential presence in the countryside was an overriding reason for granting permission to him. The Inspector observed that if the appellant left the site, all of the approved development, including the hardstanding and amenity block would go too.
18. The red line site shown on the approved plan includes the access road from Sheppey Way and the yard where the two caravans and amenity block would be sited. The site excluded the barn on the eastern side of the yard and the adjacent manège to the south. They were included within the 'blue land', together with the paddocks to the west and south where horses were grazed or kept.
19. As seen on the appeal site visit the existing caravan site is not exactly as shown on the approved layout plan and the outdoor amenity space has extended into the adjacent paddock.

#### **Proposal and Main Issue**

20. The appellant proposes the use of the land as a residential caravan site for one gypsy family without complying with conditions 3 and 4. The application was made and determined under section 73 of the Act, which applies to development to be carried out and is not retrospective. At the hearing the appellant confirmed that he no longer lived at the caravan site but his son, also named Robert Beck, and family did.
21. If the appeal is allowed, a new permission would be granted for the development as described in the 2011 permission. Occupation of the caravan site would be restricted by condition 2 to gypsies and travellers and the permission would be permanent. A planning judgement needs to be made whether permission can be granted for the development as set out in the description without the conditions attached. Case law has confirmed the application should be considered in the light of the development plan and material considerations prevailing now, and not those



at the time of the original permission, since the result is a new permission. The original permission would remain extant and unaltered, along with the conditions attached to it.

22. The main issue is the effect of the proposal on (i) the character and appearance of the area, having regard to the location of the site within an Important Local Countryside Gap, and (ii) on the supply of gypsy and traveller sites in the area.
23. The National Planning Policy Framework states planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Planning Practice Guidance states planning permission usually runs with the land and it is rarely appropriate to provide otherwise. There may be exceptional occasions where development that would not normally be permitted may be justified on planning grounds because of who would benefit from the permission.

#### **Reasons**

24. The Local Plan explains the settlement strategy is to focus development pressures at the major settlements in the Borough, and to prevent the coalescence and the erosion of the intrinsic character of settlements close by. The Important Local Countryside Gaps (ILCGs) in the 2008 Local Plan were reviewed and Policy DM 25 now controls development within the defined Gaps.
25. The purposes of the ILCGs are to maintain the separate identities and character of settlements by preventing their merging; to safeguard the open and undeveloped character of the areas; to prevent encroachment and piecemeal erosion by built development or changes to the rural open character, and to influence decisions on the longer-term development of settlements through the preparation and review of Local Plans. Policy DM 25 states that within the defined gaps planning permission will not be granted for development that would undermine one or more of their purposes. One of the defined ILCGs is between Sittingbourne and the satellite villages of Bapchild, Rodmersham Green, Tunstall, Borden, Chestnut Street, Bobbing and Iwade.
26. As discussed at the hearing, the wording of Policy DM 25 is not the same as the previous Policy E7, which the Inspector set out in full in the 2011 Decision. Policy DM 25 places emphasis on Sittingbourne as the main settlement and the retention of the defined gaps between this urban area and the satellite villages. The Inspector's focus was on the gap between the settlements of Iwade and Bobbing.
27. In so far as relevant to the appeal and the appeal site, the Proposals Map defines the ILCG as a narrow area of land following the A249 between Bobbing and Iwade. Most of the ILCG land is between Sheppey Way and the A249, with a narrow strip south of the A249. The appeal site is within the block of land between Quinton Road, which leads into Sittingbourne and the footpath link to Kemsley.
28. The nearby land use pattern reflects the history of development when Sheppey Way was the original A249 linking the mainland to the Isle of Sheppey. The surroundings are of fields and related agricultural buildings with pockets of residential development and commercial sites. The Crematorium and Memorial Gardens has a distinctive sense of place and is opposite the appeal site entrance. The A249 corridor, where the dual carriageway is in a cutting, acts as a firm

physical boundary. To the south east of the A249 corridor, new housing development has taken place in the area near to Quinton Road, although a greenway has been formed on the narrow strip of land in the ILCG. The appellant has drawn attention to proposals for development in the wider area, including on land north of Sheppey Way.

29. In 2011 the Inspector considered it important that the appeal site maintained its attractive rural appearance, which could be best achieved by maintaining the land in a positive countryside use related to the keeping and trading of horses. The caravan site, by providing the necessary associated residential accommodation, was regarded as the best way of facilitating this rural use and keeping the land in good economic order.
30. I agree the open grazing land makes a valuable contribution to the rural character, that distinguishes the ILCG from the urban area not too far away. The home is of low height, the caravan site is compact and small scale. In local views, from Sheppey Way and from Quinton Road, the taller barn and the security lights are prominent, rather than the mobile home and dayroom. The residential use is in keeping with the land use pattern and the residential accommodation has much less of a physical presence than the built housing further north on Sheppey Way.
31. Back in 2011 the Inspector was firmly of the view that a personal permission was justified by the appellant's strong economic links to horses. The caravan site is now occupied by members of the appellant's family. The paddocks and horse grazing remain. The keeping and trading in horses is a typical means of earning a livelihood for many gypsies and travellers and integral to their traditional way of life. The removal of the personal condition would not necessarily result in the loss of the link between the caravan site and retaining the open use of the adjacent paddocks. Importantly the condition restricting occupation to gypsies and travellers would remain. In addition, a condition would continue to limit the number of caravans to no more than two.
32. Conclusions. The caravan site does not conflict with the purposes of the ILCG. A condition making the permission personal to the appellant is not necessary to protect the ILCG.

#### **Need for and supply of traveller sites**

33. The background to the locally set target for traveller sites is summarised in the need section above. The evidence indicates a very significant shortfall in pitches in the Borough. A refusal of planning permission would not result in the immediate direct loss of the site but it would raise the possibility of such an outcome given that the appellant lives elsewhere. The continued restriction to personal occupation would not help ease the current position and would not be consistent with the approach recommended in the GTAA for increasing supply. The proposal would increase flexibility in the availability of the site to the traveller community.

#### **Other considerations**

34. Garden of England Crematorium and Memorial Gardens. At the hearing the Parish Council expressed concern about the proximity of the site to the Garden of Remembrance on the northern side of Sheppey Way.



35. The Crematorium and Memorial Gardens is an immaculately maintained place for reflection and remembrance. The background traffic noise is noticeable but visually the gardens are well enclosed with mature hedges and vegetation and from within the grounds there is no perception of the appeal site at all. The caravan site is glimpsed from by the main entrance and is visible from by the bus stop on the south side of Sheppey Way. However, the residential use is typical of the surroundings and the caravans are seen within a more open rural setting formed by the paddocks and neighbouring field. The proposal would have no adverse impact on the Crematorium.
36. Heritage. On the adjacent residential property, the house Upper Toes is a Grade II listed building. The listing description refers to the two storey, timber framed house, clad in red brick to first floor with a plain tile hipped roof. The Framework confirms when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
37. In the 2011 decision the Inspector noted the structures within the grounds near to the principal building and a very effective screen of dense evergreen vegetation along the boundary with the land at Eden Top. The Council say the listed house is approximately 60 metres away from the development and concludes the proposal would not be harmful to the setting of the listed building. I agree that the significance of the designated heritage asset would be preserved because of the separation distance and the enclosure to Upper Toes. For this reason the proposal complies with Policy DM 32 that protects listed buildings and their setting and with policy in the Framework that requires heritage assets to be conserved in a manner appropriate to their significance.
38. Location. The Council explained Policy DM 10 seeks to steer gypsy and traveller accommodation to the settlements identified as suitable for development in Policy ST 3. The reason for refusal describes the site as being in a remote location, which usually means far away in distance. The Council has clarified the meaning in this case as the separation of the development from main centres and the likely reliance on the car to access day to day services and facilities. Reference was made to an appeal decision dated 12 December 2024 regarding a new house at Nether Toes on Sheppey Way. The Inspector concluded the site was not a suitable location for a dwelling due to the accessibility to services and facilities for future residents. Future occupants would rely on the use of a car to reach the services and facilities they need.
39. In view of the dispute between the parties I visited the site by public transport and on foot. There is a bus stop outside and opposite the Cemetery, very near the entrance into the site. There is a regular bus service to Sittingbourne, the main Borough urban centre. The bus service also connects with the settlements to the north, where Iwade is a rural local service centre in the settlement tier identified in association with Policy ST 3. There is a hard surfaced footway along Sheppey Way to the north and south of the site entrance. The local centres of Milton Regis, Kemsley (with a railway station) and the main centre of Sittingbourne are within reasonable walking and cycling distance. In the Local Plan the indicative map of broad accessibility to local services from Policy ST 3 settlements shows the appeal site is within an area identified as accessible to most or all services. The officer report found the site has reasonable sustainability credentials for a traveller site.

40. In conclusion, residents of the site may well use the car for most trips because of convenience. However, a good range of facilities and services are not far away and there are genuine options of transport modes available for certain types of local trips. The site is in an accessible location, even though within the countryside where limited development is envisaged by the Local Plan. In my judgement the site is not in open countryside, away from existing settlements and therefore there is no conflict with the PPTS in terms of location.
41. Other DM 10 criteria. The living conditions of the site are not adversely affected by the A249 due to the separation distance and topography. There is adequate space on site to encourage healthy lifestyles for the occupants and to accommodate sufficient parking. The single pitch is of a scale that is compatible with neighbouring residential and community uses and local infrastructure. In view of the planning history of the site the proposal is not likely to have a significant effect on the interest features of the SPA through recreational pressure when considered either alone or in combination with other plans and projects. An Appropriate Assessment is not required and no mitigation is necessary.

#### **Planning Conditions**

42. The conditions attached to the 2011 permission have been reviewed. Development has been carried out and approvals granted for the materials for the amenity block and a landscape scheme. Control on the number and type of caravans that may be stationed on the site would be adequately covered by a single condition based on the statutory definition. No issues have been identified regarding surface water drainage. Therefore conditions 1, 6, 9 10, 11 and 13 would no longer be necessary.
43. A condition restricting occupation to gypsies and travellers is necessary to ensure the site contributes to the stock of traveller sites in the Borough. The definition of gypsies and travellers will be updated to repeat the wording in Annex 1 of the current PPTS. The conditions controlling vehicle size and precluding commercial activities are necessary to protect amenity. External lighting also should be controlled to ensure the effect on local character and amenity is acceptable.

#### **Conclusions**

44. The caravan site complies with Policy DM 25, criteria in Policy DM 10, Policy DM 32 and with the development plan when read as a whole. Any adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. Policy in PPTS supports the development and by using planning conditions the scale of development would be suitably controlled.
45. The caravan site, without regulation through conditions 3 and 4, is in accordance with the development plan and other considerations also indicate permission should be granted.
46. For the reasons given above the appeal should succeed. I will grant a new planning permission without the disputed conditions 3 and 4 and restating those undisputed conditions that are still subsisting and capable of taking effect.



**APPEAL B****Appeal on ground (b)**

47. An appeal on ground (b) is that the matters stated in the alleged breach of planning control have not occurred. In this case the appellant's concern is the extent of the Land, as shown on the plan attached to the enforcement notice, is across a wider area than where the alleged use is taking place.
48. The Land identified on the notice plan is equivalent to the blue land as shown on the Appeal A site location plan. The Land therefore includes the barn, manège and the paddocks. The breach of planning control is alleged to relate to all the Land.
49. As confirmed on the site visit, the mobile home is sited to the south of the manège. The associated garden and amenity space extends further southwards towards the rear boundary. A utility block/dayroom is close to the eastern boundary. The residential caravan site is enclosed by fencing and a gated entrance. The residential use appears physically and functionally separate from the horse related use of the adjacent lands and buildings and also from the caravan site to the north. The site area in Appeal A was restricted to the land in use as the caravan site and to follow a consistent approach for the new development would be appropriate.
50. It was agreed at the hearing that the area of the Land would be reduced to correspond to the enclosed caravan site. The Council has submitted an amended plan, which the appellant has confirmed is acceptable. No injustice will be caused by correcting the notice accordingly. The appeal on ground (b) succeeds to this extent.
51. In addition, minor corrections to the description of the breach of planning control will be made to delete reference to the previous use and to reflect the use as a caravan site with a mobile home and a touring caravan.

**Appeal on ground (a)**

52. The deemed planning application is for the development described in the corrected allegation and the site is confined to that shown on the corrected plan.

**Main Issue**

53. The main issue is whether the development would be in an appropriate location, taking into account the effects of the caravan site on (i) the character and appearance of the surrounding area, (ii) the location of the site in an Important Local Countryside Gap (ILCG) and (iii) the integrity of the North Kent Marshes Special Protection Areas and Ramsar sites.
54. The occupiers of the site have gypsy status, based on the information in the submitted witness statement. PPTS and Policy DM 10 of the Local Plan apply. The success of Appeal A confirms the permanence of the existing traveller caravan site at Eden Top. That being so the additional caravan site at Eden Top, on a broad interpretation, complies with criterion 1(c) of Policy DM 10, that allows for an extension to, or the stationing of, additional caravans at an existing site.

**Character and appearance and Important Local Countryside Gap**

55. To recap, the purposes of the ILCGs are to maintain the separate identities and character of settlements by preventing their merging; to safeguard the open and

undeveloped character of the areas; to prevent encroachment and piecemeal erosion by built development or changes to the rural open character, and to influence decisions on the longer-term development of settlements through the preparation and review of Local Plans.

56. The appeal site, roughly rectangular in shape, is on land immediately south of the manège. The site does not extend as far as the southern boundary of the appellant's land ownership, which continues in use for keeping/grazing horses. The site is further separated from the A249 corridor by an open strip of land and a belt of trees. There is no intervisibility between the site and the built-up area of Sittingbourne east of the A249.
57. The mobile home is sited to face south, in close proximity to property boundaries and vegetation. The structure is raised on decking but even so it is low in height and the external materials are of subdued colours. All these factors ensure the mobile home, whilst visible, is not prominent in local views from footways and it blends well into the surroundings. A small touring caravan with its white finish was much more noticeable when seen stationed on site.
58. This small scale development is consistent with the pattern of land use in the ILCG, which includes residential, commercial as well as agricultural uses, and it has no effect on the identity and character of the nearest settlements. A small area of land has been developed but the rural open character remains dominant both within the larger site at Eden Top and in the ILCG. Decisions on the longer term development of settlements would not be affected.
59. In conclusion the development would not undermine one or more of the purposes of the ILCG and there is compliance with Policy DM 25. A planning condition would be necessary to limit the number and type of caravans because the acceptable effect on local character is based on the existing position and is sensitive to the details of development.

***Special Protection Areas (SPAs) and Ramsar sites***

60. The North Kent Marshes is the continuous swathe of coastal habitat stretching 70 miles eastwards from Gravesend through to Whitstable. Comprising of approximately 17,000 hectares of grazing marsh, saltmarsh, shingle beaches, mudflats and reedbeds, this diverse habitat mix provides food and shelter for hundreds of thousands of migratory birds every year. The large number of birds that depend on this coastline, the size of over-wintering populations and the significant numbers of threatened species are the main reasons why the Thames Estuary, Medway Estuary and The Swale and surrounding wetlands are designated as Special Protection Areas (SPAs) and Ramsar sites. Policy DM 28 of the Local Plan applies the highest level of protection to these internationally designated sites.
61. Research undertaken between 2009 and 2014 found that areas with high levels of human recreational activity on the coast had seen the largest declines in bird numbers. It also established that 75% of coastal visitors surveyed had travelled from within 6 kilometres (km) to undertake their chosen activity. The research led to the publication of the North Kent Strategic Access Management and Monitoring Strategy (SAMMS) in 2014. SAMMS set out a suite of mitigation measures designed to reduce disturbance to coastal birds arising from human recreational



activity. These mitigation measures are funded through a developer tariff applied to all new dwellings built within 6km of the SPAs.

62. The appeal site is within the 6km catchment. With reference to Regulation 63<sup>3</sup>, the proposed use of the appeal site as a caravan site is not directly connected with or necessary to the management of the designated sites. The caravan site would be a new home in the area and is 'likely to have a significant effect' on the interest features of the designated sites through recreational pressure when considered either alone or in combination with other plans and projects. An appropriate assessment is required to determine whether the proposal would have an adverse effect on the integrity of the protected sites, alone or in combination with other plans or projects.
63. The internationally designated sites are important for bird species which are rare and/or vulnerable in a European context, and they also form a critically important network for birds on migration. The three European sites together are part of a vast and linked expanse of critically important habitat to the SPA network around the British coast. The bird interest features for which each site has been classified varies slightly across the three sites, but all three provide on passage, overwintering, and breeding habitat to an array of species of European Importance.
64. The caravan site, being a new home, would result in additional residential population. Residents may be expected to visit the North Kent Marshes for a range of recreational purposes all year round, as evidenced by the visitor surveys undertaken. On its own the project may not have an adverse effect and it is the cumulative effect of the development of the site along with many residential developments that is of particular concern by reason of the planned housing and associated population growth within the strategy area. Applying the precautionary principle, I cannot be certain the integrity of the designated sites will not be adversely affected by the proposal in combination with other plans and projects.
65. The purpose of the SAMMS is to provide a strategic approach to mitigation because the sources of recreational impacts on Habitats sites originate from more than one local authority area. As a result, it is typically the effect of multiple and widespread sources of recreational impact which may result in adverse effects on site integrity in-combination. A strategic and co-ordinated approach ensures a robust strategy to avoid and successfully mitigate impacts and enables the delivery of effective bespoke mitigation measures. Components of the strategy cover education, engagement and communication, site specific works and projects aimed at specific activities such as dog walking, managing access, monitoring and review. The most recent monitoring illustrated that even though recreational activity on the coast during winter had increased by 34% the levels of disturbance, had not increased significantly.
66. The total cost of mitigation measures identified in the strategy was calculated over an in-perpetuity period of 80 years and divided by the estimated total number of new dwellings to give a per-property contribution. After allowing for indexation the baseline tariff is now (May 2025) £337.49 per property. In accordance with the Swale Council procedures the appellant has made this necessary and

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<sup>3</sup> The Conservation of Species and Habitats Regulations 2017

proportionate contribution. No additional bespoke mitigation is required in relation to this small development.

67. Natural England is satisfied that the measure of a financial SAMMS contribution to mitigate recreational disturbance impacts from the proposed development on the North Kent Marshes SPA and Ramsar sites is sufficient to avoid an adverse impact to the integrity of these sites in relation to the specified qualifying feature<sup>4</sup>. The question raised in Natural England's response over the expected contribution has been addressed to ensure the contribution is correct at the time of determination.
68. In conclusion, the proposal would not have an adverse effect on the integrity of the designated sites included within the North Kent Marshes protected areas once mitigation is taken into account. Having made an appropriate assessment of the implications of the proposal for the sites in view of those sites' conservation objectives and having consulted Natural England and fully considered the representation received, as the competent authority I may agree to the project under regulation 63 of the Conservation of Habitats and Species Regulations 2017. The development complies with Part A of Policy DM 28.

#### **Need**

69. The GTAA indicates there is a substantial need for additional pitches and traveller sites in the Borough, with additional need being likely to arise from the revised December 2024 PPTS definition of gypsies and travellers. Currently, new pitches have to come forward as 'windfalls' through private site provision because of the absence of allocations, the very limited supply of specific deliverable sites and the shortfall of available pitches on public sites. Appropriate permanent sites bring important benefits to the traveller community, facilitate the traditional way of life and promote equality of opportunity. The settled community also benefit from fewer unauthorised encampments and better planned provision.
70. The additional site at Eden Top would contribute to the stock of pitches. The witness statement of Mrs Clarke explains how the pitch has enabled the family to move from overcrowded conditions and the importance of a stable base for the family in terms of their health, education and well-being. The value of an additional single pitch should not be under-estimated. With pressure on a very limited supply of pitches, finding a suitable, affordable and acceptable alternative pitch would be challenging.

#### **Other considerations**

71. The site is of a generous size for a single pitch and so there is adequate space to provide parking and amenity areas. Noise from the A249 is not intrusive and no other factors detract from the quality of the living environment for the site's residents. The adjacent land to the east is a field and given the good separation distance between the site and residential properties, the development has no effect on the setting of the listed building at Upper Toes or the living conditions of neighbours.

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<sup>4</sup> Consultation response dated 6 May 2025.



72. As explained in Appeal A, the location of the site enables a choice in the means to travel to services and facilities, although use of the private car probably would be more convenient.
73. There is no evidence to indicate that an additional pitch would have an adverse effect on the capacity of local services or put undue pressure on local infrastructure.

**Summary and planning balance**

74. For the purposes of Policy ST 3 the single pitch caravan site is in the countryside and not in a preferred location for development. The site is also in an ILCG. However, the development is close to the main urban area of Sittingbourne and a rural service centre. The application of the relevant Policy DM 10 criteria has not identified any significant harm to the local environment or social infrastructure. There is a high level of immediate need for traveller pitches. This small scale windfall development would be a positive contribution to the stock of traveller sites.

**Planning Conditions**

75. The occupation of the site should be restricted to Gypsies and Travellers to ensure the development adds to the stock of such sites within the Borough in order to contribute to meeting the existing pressing need. The small scale of the development should be maintained to protect local character by control of the number and type of caravans. In addition to a single static caravan, it would be reasonable to allow a touring caravan in order that occupiers could pursue a travelling lifestyle.
76. As discussed at the hearing a site development scheme is necessary to confirm details of the site layout, including the position of the mobile home, parking area and amenity space and to secure a landscaping scheme. The appropriate treatment of the boundaries of the site is an opportunity to ensure the local environment and views are positively enhanced.
77. The residential use of the caravan site is compatible with the neighbouring residential uses and the appearance of the area. Preclusion of commercial activities and a limit on vehicle size are justifiable for this reason. A condition is necessary to ensure any external lighting is appropriate to the rural setting and not intrusive in local views across the ILCG.
78. In view of my conclusion that the development is in an appropriate and sustainable location there is no need to impose conditions making the permission personal and/ or temporary.

**Conclusion**

79. The caravan site complies with Policy DM 25, Policy DM 28 and Policy DM10 and with the development plan when read as a whole. Any adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. Policy in PPTS supports the development and planning conditions provide a suitable mechanism to secure a good quality of development on the caravan site.

80. For the reasons given above the appeal should succeed on ground (a) and planning permission will be granted. Therefore the appeal on grounds (f) and (g) do not need to be considered.

## **DECISIONS**

### **Appeal A Ref. APP/V2255/W/24/3357886**

81. The appeal is allowed and planning permission is granted for change of use of land to use as a residential caravan site for one gypsy family with two caravans (including one static caravan), erection of amenity block and laying of hardstanding at Eden Top, Sheppey Way, Bobbing, Sittingbourne, Kent ME9 8QP in accordance with the application Ref 22/503908/FULL, without compliance with condition numbers 3 and 4 previously imposed on planning permission Ref SW/09/0972 (allowed on appeal ref. APP/V2255/A/10/2129278) dated 2 February 2011 and subject to the following conditions:

- 1) The site shall not be occupied by any persons other than gypsies and travellers, meaning 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 or permanently, and all other persons with a cultural tradition of nomadism or of living in a caravan, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.
- 2) No more than two caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended (of which no more than one shall be a static caravan or mobile home) shall be stationed on the site at any time.
- 3) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site, other than one horse box with a gross laden weight not exceeding 7.5 tonnes. All parking of vehicles, commercial or otherwise, shall take place on the proposed gravel hardstanding shown on the 1:500 site layout plan.
- 4) No commercial activities shall take place on the land, including the storage of materials, other than the keeping of horses.
- 5) No floodlighting, security lighting or other external lighting shall be installed or operated at the site, other than in accordance with details that have first been submitted to and approved in writing by the local planning authority.

### **Appeal B Ref. APP/V2255/C/24/3352254**

82. It is directed that the enforcement notice is corrected by the deletion of the text in paragraph 3 and the substitution of "The unauthorised material change of use of the Land to use as a caravan site by the stationing of a mobile home and including the laying of hardstanding," and by the substitution of the plan annexed to this decision for the plan attached to the enforcement notice.
83. Subject to the corrections, the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for the development already carried out, namely the material change of use of the Land to



use as a caravan site by the stationing of a mobile home and including the laying of hardstanding at Land at Eden Top, Sheppey Way, Sittingbourne, Kent ME9 8QP as shown on the corrected plan attached to the notice and subject to the following conditions:

- 1) The site shall not be occupied by any persons other than gypsies and travellers, meaning 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 or permanently, and all other persons with a cultural tradition of nomadism or of living in a caravan, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.
- 2) No more than two caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended (of which no more than one shall be a static caravan or mobile home) shall be stationed on the site at any time.
- 3) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one of the requirements set out in i) to iv) below.
  - i. Within 3 months of the date of this decision a site development scheme (hereinafter referred to as the scheme) shall have been submitted for the written approval of the local planning authority. The scheme shall include details of the internal layout of the site, including the siting of caravans, hardstanding, parking and amenity areas; tree, hedge and shrub planting including details of species, plant sizes and proposed numbers and densities; boundary treatment, specifying height and position of fencing; a timetable for implementation of the scheme. The scheme shall provide for the mobile home to be sited in the position shown on the plan attached to the enforcement notice and the planting scheme shall include plants of native species, of a type to encourage wildlife and biodiversity.
  - ii. If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
  - iii. If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
  - iv. The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

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In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 4) Any trees or plants included in the approved scheme of landscaping which within a period of 5 years from the completion of the planting scheme die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 5) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site, other than one horse box with a gross laden weight not exceeding 7.5 tonnes. All parking of vehicles, commercial or otherwise, shall take place on the parking area shown on site layout plan approved as part of the site development scheme.
- 6) No commercial activities shall take place on the land, including the storage of materials.
- 7) No floodlighting, security lighting or other external lighting shall be installed or operated at the site, other than in accordance with details that have first been submitted to and approved in writing by the local planning authority.

*Diane Lewis*

Inspector



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### **APPEARANCES**

#### **FOR THE APPELLANT:**

Matthew Green, Green Planning Studio Limited  
Mr R Beck (the appellant) and Mrs Beck  
Mr and Mrs R Beck  
Mr Tommy Clarke and Mrs Scarlet Clarke

#### **FOR THE LOCAL PLANNING AUTHORITY:**

Andrew Gambrell, Team Leader (Planning Applications) Development Management

#### **INTERESTED PARTIES:**

Gareth Randall, Bobbing Parish Council

### **DOCUMENTS submitted at the hearing**

Signed statement of common ground  
Signed Witness Statement of Mrs Scarlet Clarke  
Confirmation of payment of contribution to North Kent Strategic Access Management  
and Monitoring Strategy (SAMMS).

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## Planning Inspectorate

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### Plan

This is the plan referred to in my decision dated: 12 May 2025

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

Land at Eden Top, Sheppey Way, Bobbing, Sittingbourne, Kent ME9 8QP

Reference: APP/V2255/C/24/3352254

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