

APPLICATION: MA/09/1767 Date: 15 October 2009 Received: 15 October 2009

APPLICANT: Mr W. Perfect

LOCATION: PERFECT PLACE, MAPLEHURST LANE, FRITTENDEN ROAD,
STAPLEHURST, KENT

PARISH: Staplehurst

PROPOSAL: An application for continued use of land for a gypsy family with a twin unit, tourer and two stable blocks. Extension to planning permission MA/07/0837 and approved Enforcement Appeal ENF/8402.

AGENDA DATE: 18th March 2010

CASE OFFICER: Amanda Marks

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

- it is contrary to views expressed by Staplehurst Parish Council

1. POLICIES

Maidstone Borough-Wide Local Plan 2000: ENV6, ENV28, ENV34, ENV46
South East Plan 2009: CC1, CC6, C4, H4, NRM4, Interim Statement on Provision for Gypsies and Travellers;
Government Policy: PPS1, PPS3, PPS7, PPS9, PPS25, Circular 01/2006, Draft new Policy H7 of the South East Plan

2. HISTORY

2.1 ENFORCEMENT HISTORY

Enforcement Appeal ENF/8402 Permission granted for continued use of land for a gypsy family with a twin unit, tourer, utility room and two stable blocks. ALLOWED on 24/10/06 for temporary 3 year period.

2.2 PLANNING HISTORY

MA/07/0837 Erection of two stable blocks APP 11/04/2008 for a temporary period to expire on 24/10/09

3. CONSULTATIONS

3.1 STAPLEHURST PARISH COUNCIL wishes to see the application refused and reported to committee for the following reasons:

- they are concerned that not all of the planning conditions attached to MA/07/0837 have been complied with.
- The buildings are excessive within the open countryside, light and noise generated from the site causes harm to the Special Landscape Area and neighbouring properties.
- The increased vehicular traffic along Maplehurst Drive continues to have a detrimental effect, the area remains under threat of flood and there is a question of long term sustainability.
- However, Councillors further agreed that if Maidstone Borough Council is minded to grant permission it should only be on a temporary basis.

3.2 KENT HIGHWAYS chose not to comment as outside their remit – does not involve a new access and is on to a private road

3.3 THE ENVIRONMENTAL HEALTH OFFICER has no objections subject to conditions relating to foul sewage, disposal of animal waste, run-off.

3.4 THE ENVIRONMENT AGENCY has no objections to the proposals, the land in question is not situated within a high flood risk area, although there is some risk associated with the stream running through the site.

4. REPRESENTATIONS

Neighbours: one letter of support received from a Parish Cllr on the following grounds:

- Site is hidden from view; the applicant is trying to live cohesively with the local community; give Mr Perfect and his family a chance to settle in the community.
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three letters of objection received on the following grounds:

- The site is unsuitable for residential use due to its susceptibility to flooding; Circular 1/2006 states that gypsy sites should not be established on sites where the settled population would not be allowed to live;
- Maplehurst Lane is private, unadopted and in a poor state of repair. Four gypsy sites is more than the infrastructure can cope with and emergency services would be unable to get through if required.
- The Council is put 'on notice' that compensation will be sought on behalf of one resident for damage and the necessary repairs on Maplehurst Lane.

Non-material issues:

- Question land ownership where a new gate has been installed on Parkwood Lane;

- Why should permanent residents have to pay for repair costs to road when gypsy family's do not contribute

5. CONSIDERATIONS

5.1 Description of the Site

- 5.1.1 This is an existing gypsy site previously allowed on an enforcement appeal for a temporary period of 3 years. The applicant, Mr Perfect, was granted a temporary permission on the basis of his personal circumstances and largely due to the absence of the Council's DPD and/or alternative site. Mr Perfect still lives on the site with his wife and their 3 children and have done since November/December 2005. The current application was submitted approximately 10 days before the temporary permission was due to expire.
- 5.1.2 The application site lies in the open countryside, to the south of Frittenden Road at the southern end of Staplehurst village. The site falls within the designated Low Weald Special Landscape Area and is accessed off the private road of Maplehurst Lane. The existing development is located within the inner field owned by the applicant and is not readily visible from Maplehurst Lane. The site entrance is on the eastern side of Maplehurst Lane and is approximately 110m in length before reaching the inner field.
- 5.1.3 There is existing boundary treatment consisting of primarily hawthorn trees in excess of 10m high and of varying depth on the southern and western boundaries of the site. The northern boundary has limited planting and post and rail fencing; similarly the eastern boundary is post and rail where it adjoins land previously sold off by the applicant. There are distant views of the site from Park Wood Road but otherwise views from public vantage points are extremely limited into the site.
- 5.1.4 At the time of the most recent site visit there was one mobile home, one tourer, stable block one 1, temporary structure in place of stable block 2, a horse box, enclosed trailer, a mechanical digger and a temporary utility style building. There was also evidence that hardcore/surplus building materials were being placed in the north east corner of the site which the applicant advised the case officer was for a forthcoming application for a ménage.
- 5.1.5 The closest residential boundary is that of Folly Farm which is approximately 140m as the crow flies from the applicant's built development. This property is situated approximately 40m in advance of the applicant's private access of Maplehurst Lane. Maplehurst and Maplehurst Bungalow are located a further 230m- 250m south of the site access.

5.2 The Proposed Development

- 5.2.1 The current application is two-fold. It seeks planning permission to renew a temporary permission for two stable blocks and at the same time seeks an extension to the 3 year period allowed on the enforcement appeal for the applicant to remain on site together with his family and no more than two caravans including one being a touring, and one utility block (the permanent utility block has not yet been built). Both permissions expired on the 24 October 2009. As mentioned previously, the current application was submitted prior to the previous permissions expiring, but has now become largely retrospective. Stable block 2 approved under MA/07/ 0837 has not been built, the original makeshift stable remains.
- 5.2.2 The permission was granted first for the stationing of the caravans and the stables proposal followed. The reason for the temporary permission for the family to remain on site was due to the status of the LDF process. The planning inspector considered that it would be unreasonable to uphold the enforcement notice when there was no obvious alternative location and work was to be undertaken by the Borough Council with regard to gypsy need and potential sites. The stables were granted a temporary permission to coincide with the end date of the residential occupation of the site. This being said, I consider that this is the type of location you would expect to see stables i.e in the countryside.
- 5.2.3 There was initially some confusion over the boundaries of the application site. The applicant sold off a small parcel of land on the eastern site bordering Parkwood Lane at some point after the Inspectors decision. As the access is not taken off this road it has no bearing on the determination of this application.

5.3 Principle of Development

Development in the countryside is restricted by the terms of Development Plan Policy and Central Government Guidance. As an exception to the general theme of restraint, policy and guidance allow for the creation of private gypsy caravan sites where there is a demonstrated need. Other than the very general advice in Policy H4 of The South East Plan 2009, there is no directly relevant adopted policy here and the advice in Circular 01/2006 is the most pertinent. Proposed Policy H7 of the South East Plan in its draft form sets out the number of permanent pitches that Authorities in the South East should be providing for the period 2006-2016.

5.4 Gypsy Status and Need

- 5.4.1 Circular 01/2006 provides the following definition of gypsies and travellers:

"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, but excluding members of an organised group of travelling show people or circus people travelling together as such."

- 5.4.2 The applicant's main business is horse trading which involves travel to horse fairs in other parts of the country. The gypsy status was explored and accepted at the time of the earlier appeal and is therefore not in question.
- 5.4.3 Paragraphs 17 and 18 of the Circular refers to the changing patterns of employment amongst gypsies and travellers and the fact that the community has generally become more settled. The Circular states that there is a need provide sites in locations that meet the current working patterns of gypsies and travellers.
- 5.4.3 *Planning Policy Statement 3: Housing* makes specific reference to the need to accommodate Gypsies and Travellers. *Circular 01/2006: Planning for Gypsy and Traveller Caravan Sites* gives guidance on how this should be achieved, including the need to start the process with a clear assessment of needs through Gypsy and Traveller Accommodation Assessments.
- 5.4.5 There is a clear and identifiable need for gypsy accommodation within the Borough that stems from the Gypsy and Traveller Accommodation Assessment (GTAA), which was undertaken in 2005/06 and covers four local authorities – Ashford, Maidstone, Tonbridge & Malling and Tunbridge Wells. Based on this assessment, there is a need for some 32 new pitches in the Borough over the five year period which equates to 6.4 pitches/year. The extremely low turnover of pitches on the Council sites, which is confirmed by the Council's Gypsy and Caravan Sites Officer, increases the yearly requirement by 2 to 3 pitches, meaning a yearly requirement of 8 to 10.
- 5.4.6 Work has begun on a gypsy DPD with consultation expected spring 2010 with adoption planned for July 2011.
- 5.4.7 At the time of writing this report the number of pitches allowed since 2006 is as follows:-
- 30 permanent permissions
 - 9 temporary permissions
 - 12 permanent with personal permissions
 - 15 temporary with personal permissions

5.4.8 From the above information it is clear that there is a significant need for gypsy sites within the Borough. This need and the absence of any allocated sites is given significant weight by Inspectors when determining appeals.

5.4.9 The critical issue is that the Council does not have any public sites available and there are no new designations for public sites. The availability of public sites is a requirement in PPS3.

5.4.10 Whilst there is a significant need, this must be balanced against any harm caused in each case. Having dealt with general matters I now turn to an assessment of this particular site.

5.5 Visual Impact

5.5.1 The application site lies in the open countryside, outside a defined settlement and within a designated Special Landscape Area. The entrance to the site is clearly visible off Maplehurst Lane and views are afforded across the applicant's field where some horse jumps can be seen. The access drive is clearly visible across the field into the secluded residence of the family. When travelling along Maplehurst Lane it is not apparent that you are approaching the applicant's site and it is only upon arrival at the site entrance which is marked with a sign to identify the residence that you realise there is more than just a field with an access track running across it. This largely due to the abundant level of deciduous screening on the western boundary, the frontage onto Maplehurst Lane, where apart from the break within tree cover to enter the main residence there are no obvious signs of occupation. As mentioned earlier in this report, landscaping is a prominent feature of this site, but there is scope for improvement. The hawthorn trees on the western boundary are in excess of 15m in height and in places a staggered double row. Those on the southern and southeast boundary are more dense, almost wooded in character.

5.5.2 When travelling south along Park Wood Road views are afforded across to the applicant's site and the structures on the land can be seen. However, I would not say that the site is prominent in the landscape – simply it can be seen. There is scope for additional landscaping on the applicant's eastern boundary which would mitigate the views from this angle. Previously landscaping was not sought on this boundary as it formed part of the inner application site, however due to the sale of some of the land it now forms the outer boundary. The northern boundary is also less screened and could benefit from additional planting.

5.5.3 Looking north back down Maplehurst Lane towards Frittenden Lane the site is well screened with dense planting; and whilst the northern boundary is more

open when considering the impact from Frittenden Road the site is obscured from view by the other development closer to the road.

- 5.5.4 At the time of the site inspection there were no external lights apparent within the site, although I note that the Parish Council makes reference to light pollution. Due to the characteristics and location of the site I consider it would be very difficult for light pollution to permeate into the open countryside and cause harm to either residential amenity or the character of the area in times of darkness, however I have added a condition to my recommendation to ensure that any additional lighting be subject to an application to the Council.
- 5.5.5 I do not consider the site to be visually intrusive in the countryside, or detrimental to the character of the Low Weald SLA and the field pattern is maintained. Whilst there are views from private land adjoining the site, I am satisfied that from public vantage points the site is largely well screened.

5.6 Residential Amenity

- 5.6.1 The development is located a considerable distance from the nearest residential properties, the closest being approximately 140m away. As discussed the boundary treatment between sites is well screened and defined.
- 5.6.2 I do not consider that there will be any adverse impact either visually or in terms of the noise and activity generated by the use of the site on the occupiers of other dwellings in Maplehurst Lane.

5.7 Sustainability

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

- Co-existence between the site and local community;
- Wider benefits of access to GP and other health services;
- Children attending school regularly;
- A settled base reducing the need for long distance travel & associated unauthorised camping;
- Not locating sites in areas at high risk of flooding.

5.7.2 The site is approximately 2km from Staplehurst Village; whilst it is possible to walk from the site to the village the vast majority of trips are undertaken by car. The proximity to the village means that the applicant and his family are able to make use of the education and health facilities, goods and services. The site allows the applicant to continue his horse trading business, as whilst the

majority of his horses remain in Swale he is able to bring some to this site. In light of these issues I agree with the Inspectors view that the site can contribute to an integrated co-existence with the local community.

5.7.3 Clearly the site does allow a settled base for the applicant and his family, whilst still allowing him to travel at the relevant times of year. Flooding is dealt with in section 9.0 below.

5.8 Highway Safety

5.8.1 The site takes its existing access off a private unmade road which suffers from potholes which I am advised need regular maintenance. The issue of access to the site was discussed in some length in the enforcement appeal where it was determined by the Planning Inspector that access was acceptable off Maplehurst Lane and the additional volume of traffic would not be detrimental to highway safety or residential amenity. Limited change has occurred since the Inspectors decision and the highways authority do not wish to comment on this application. I do not consider the minimal additional traffic movements associated with the continued use of this site to be of significant harm to the locality. This being said, a letter has been received from a solicitors (appended) on behalf of one resident stating that compensation will be sought from the Council to repair the damage that has occurred to the privately owned Maplehurst Lane. The claim is that the Council is at fault for granting planning permissions for gypsy sites which are accessed off the lane. It is alleged that the additional traffic using the lane to access these sites is contributing to the poor state of the road.

5.8.2 There are three other gypsy sites accessed off Maplehurst Lane. Maplehurst Paddock and Little Oaks Farm are subject to temporary planning permissions and the recently sold site of Mr Webb is subject of a current planning application by a Mr Lewis to occupy as a gypsy site; this site is adjacent to the access of the current planning application.

5.8.3 Whilst the issue of access is a material consideration, the access is considered acceptable in terms of highway safety and issues of maintenance and rights of way over the road are a private matter. Legal advice confirms that in terms of potential damage to the road, this is a civil issue that is beyond the control of the planning system. There is no right to compensation under the Planning Act.

5.9 Flooding & Drainage

Residents have submitted photographs which show the first field in times of flood. However, having consulted the Environment Agency they advise that the area does not fall within a high flood risk area and accordingly they raise no

objections to the development. Flooding and drainage issues were also scrutinised on appeal whereby the Inspector found that on the rare occasion when the area did flood it was due to lack of maintenance of the ditches on site as much as localised drainage patterns. The issue was not considered to be of such significance as to withhold planning permission.

5.10 ECOLOGY

As the site has been in continued use as a gypsy site for approximately 4 years and two months, I do not consider it reasonable to ask for an ecology assessment to be undertaken as new development is not part of this application. This being said, I have considered the possible impact of the development on ecology matters and find that land suitable for species habitat is within the wooded area outside the site boundary. I do not consider the continued use of the site as a threat.

5.11 Other issues

5.11.1 The applicant has stated on his application form that he seeks continued use of the site as previously allowed on a temporary basis. Due to the wording on the application form I have dealt with this application as a renewal on a temporary basis.

5.11.2 Issues of road maintenance to a private road are a matter between the affected residents and not relevant to the consideration of this application.

5.11.3 The applicant is aware that planning permission is required for a proposed ménage in the north east corner of his site where at present he has acquired some hardcore. Planning Enforcement have visited the site and will be checking on the progress of the forthcoming planning application.

5.12 Conclusion

This site does not cause harm to the character and functioning of the countryside in my opinion. There are no objections to the development on the grounds of flooding from the Environment Agency. In light of the shortfall of gypsy sites and the on-going work being undertaken by the Borough Council for the provision of gypsy sites, I consider the site acceptable for continued use until the necessary work has been completed by the Council's Planning Policy team.

RECOMMENDATION

GRANT PLANNING PERMISSION subject to the following conditions:

1. The use hereby permitted together with the provision of the stable blocks shall be carried on only by Mr Walter Perfect, his wife and children and shall be for a limited period being the period of three years from the date of this decision, or the period during which the premises are occupied by the, whichever is shorter.

Reason: The site is in an area where the stationing of caravans/mobile homes is not normally permitted. Due to the current status of the Council's Development Plan Document and the lack of alternative options for the applicant at this time, an exception has been made to provide accommodation solely for gypsies pursuant to Policy H4 of the South East Plan and in light of the personal circumstances of the applicant and his family.

2. When the premises cease to be occupied by Mr Walter Perfect, his wife and children or at the end of two years, whichever shall first occur, the use hereby permitted shall cease, all materials and equipment brought onto the premises in connection with the use shall be removed, including the stable blocks, and the land restored to its former condition.

Reason: The site is in an area where the stationing of caravans/mobile homes is not normally permitted and in accordance with Policy ENV28 of the Maidstone Borough-Wide Local Plan 2000.

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

Reason: The site is in an area where the stationing of caravans/mobile homes is not normally permitted.

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

Reason: To accord with the terms of the application and in the interests of the visual amenity in accordance with Policy ENV28 of the Maidstone Borough-Wide

Local Plan 2000 and Policy C4 of the South-East Plan 2009.

5. No plant machinery or equipment, including any mobile electricity generator, shall be operated on the site unless it has been installed and maintained in a way which will minimise transmission of noise and/or vibration beyond the boundaries of the site in accordance with a scheme approved in writing by the local planning authority.

Reason: To accord with the terms of the application and in the interests of the visual amenity in accordance with Policy ENV28 of the Maidstone Borough-Wide Local Plan 2000 and Policy C4 of the South-East Plan 2009.

6. Notwithstanding the provisions of Schedule 2, Part 4 of the Town and Country Planning (General Permitted development) Order 1995 (or any order revoking or re-enacting that Order with or without modification), no temporary buildings or structures shall be stationed on the land without the prior permission of the local planning authority.

Reason: To accord with the terms of the application and in the interests of the visual amenity in accordance with Policy ENV28 of the Maidstone Borough-Wide Local Plan 2000 and Policy C4 of the South-East Plan 2009.

7. Within 2 months of the date of this permission a scheme of landscaping including a double staggered hawthorn hedgerow along the northern and eastern boundaries of the site, using indigenous species to include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development and a programme for the approved scheme's implementation and long term management shall be submitted to and approved in writing by the local planning authority. The scheme shall be designed using the principles established in the Council's adopted Landscape Character Assessment and Landscape Guidelines;

Reason: No such details have been submitted in accordance with policies ENV6, ENV28 and ENV34 of the Maidstone Borough-Wide Local Plan (2000), policy C4 of the South East Plan (2009) and guidance contained in PPS9.

8. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the building(s) or the completion of the development, whichever is the sooner; and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or

diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation;

Reason: To ensure a satisfactory setting and external appearance to the development in accordance with policies ENV6, ENV28 and ENV34 of the Maidstone Borough-Wide Local Plan (2000) and guidance contained in PPS9.

9. Within 2 months of the date of this permission full details of foul and surface drainage shall be submitted to and approved in writing by the Local Planning Authority and the development shall be carried out in accordance with the approved details;

Reason: To ensure adequate drainage is proposed and to prevent pollution in accordance with policies NRM1 and NRM4 of the South East Plan (2009).

10. Within 2 months of the date of this permission, details of the means of storage prior to disposal and the method of disposal of faecal, bedding or other waste arising from the animals housed within the development shall be submitted to and approved in writing by the local planning authority. Such waste material arising from the animals so housed shall be disposed of solely in accordance with the approved detail;

Reason: To safeguard the enjoyment of their properties by adjoining residential occupiers and the amenities of the surrounding area and in accordance with ENV28 of the Maidstone Borough-Wide Local Plan (2000).

11. Within 2 months of this permission a scheme for the disposal of run-off from the stable, hardstanding, manure heaps, stable washings and hay soaking areas shall be submitted to and approved in writing by the local planning authority and these works shall be completed in accordance with the approved details.

Reason: To ensure adequate drainage arrangements and to prevent risk of polluting run-off entering either ground or surface waters and in accordance with policies NRM1 and NRM4 of the South East Plan (2009).

12. No external lighting shall be erected on the site at any time unless previously agreed in writing by the Local Planning Authority;

Reason: To safeguard the character and appearance of the area and to prevent light pollution in accordance with policies ENV28 and ENV34 of the Maidstone Borough-

Wide Local Plan (2000) and policy C4 of the South East Plan (2009).

Informatives set out below

Any watercourse within the boundary of the site would be classified as an ordinary watercourse and would not be maintained by the Agency or by an Internal Drainage Board. In the absence of any express agreement to the contrary, maintenance is the responsibility of the riparian owners. Any culvert, diversion, dam or like obstruction to the flow of the watercourse requires the consent of the Agency and/or Internal Drainage Board, under the Land Drainage Act 1991. For nature conservation reasons, the Agency seeks to avoid culverting and will not normally consent such works except for access.

The applicant is advised that, if they have not already done so, it will be necessary to make an application for a Caravan Site Licence under the Caravan Sites and the Control of Development Act 1960 within 21 days of planning consent being granted. Failure to do so could result in action by council under the Act as caravan sites cannot operate without a licence. The applicant is advised to contact the Environmental Health Project Manager on 01622 602145 in respect of a licence. #

The grant of this planning permission does not infer consent or a right of access to the private road Maplehurst Lane. The use of a private road is a matter between the applicant and the owner of the road.

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