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Elly Hammond
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P.A. Correspondence?	
Maidstone Council	
08 SEP 2009	Init'l
CHQ. DET. £	
DRAWER	

Your Ref: MA/08/0824
 Our Ref: APP/U2235/C/08/2089940
 Further appeal references at foot of letter
 Date: 7 September 2009

Dear Miss Hammond

Town and Country Planning Act 1990

Appeals by Leonard Friend

Site at South Side Of 22 Caring Lane, Bearsted, Maidstone, ME14 4NJ, Land On The South Side Of, Summer Place 22 Caring Lane, Bearsted, Maidstone, ME14 4NJ and Summer Place, 22 Caring Lane, Bearsted, Maidstone, ME14 4NJ

I enclose a copy of our Inspector's decision on the above appeals.

Leaflets explaining the right of appeal to the High Court against the decision, our complaints procedures and how the documents can be inspected are on our website - www.planning-inspectorate.gov.uk/pins/agency_info/complaints/complaints_dealing.htm - and are also enclosed if you have chosen to communicate by post. If you would prefer hard copies of these leaflets, please contact our Customer Services team on 0117 3726372.

If you have any queries relating to the decision please send them to:

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Yours sincerely

pp Ewa Sherman



EDL1(BPR)

2

Further appeal references:- APP/U2235/C/08/2090277 and APP/U2235/A/08/2090308

*You can now use the Internet to submit documents, to see information and to check the progress of this case through the Planning Portal. The address of our search page is - <http://www.pcs.planningportal.gov.uk/pcsportal/casesearch.asp>
You can access this case by putting the above reference number into the 'Case Ref' field of the 'Search' page and clicking on the search button*



Appeal Decisions

Hearing opened on 27 May 2009

Site visit made on 28 May 2009

by **D E Morden MRTPI**

an Inspector appointed by the Secretary of State
for Communities and Local Government

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Decision date:
7 September 2009

Appeal A: APP/U2235/C/08/2089940

Summer Place, adj 22 Caring Lane, Bearsted, Maidstone, ME14 4NJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr L Friend against an enforcement notice issued by Maidstone Borough Council.
- The Council's reference is ENF/10047.
- The notice was issued on 7 October 2008.
- The breach of planning control as alleged in the notice is the change of use of the land to use for the stationing of caravans for residential occupation.
- The requirements of the notice are to (i) cease permanently the use of the land for the stationing of caravans in residential occupation and (ii) remove permanently from the land all caravans unconnected with the lawful use of the land.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the ground (a) appeal and the application for planning permission deemed to have been made under section 177(5) of the Act as amended do not fall to be considered.
- The hearing sat for 2 days on 27 and 28 May 2009 and the site visit was also undertaken on 28 May.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with variations as set out in the Formal Decision at paragraph 41 below.

Appeal B: APP/U2235/C/08/2090277

Summer Place, adj 22 Caring Lane, Bearsted, Maidstone, ME14 4NJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr L Friend against an enforcement notice issued by Maidstone Borough Council.
- The Council's reference is ENF/10047.
- The notice was issued on 7 October 2008.
- The breach of planning control as alleged in the notice is the laying of an area of hard surfacing including the creation of a vehicular access to the highway; the erection of fencing and gates ancillary to the unlawful development and change of use of the land; erection of a brick utilities building and the erection of a sanitary building, all shown in various colours in the approximate positions on Plan B attached to the notice.
- The requirements of the notice are as follows: (i) excavate and remove permanently from the land, the area of hard surfacing; (ii) excavate and remove permanently from the land the vehicular access; (iii) demolish and permanently remove from the land the fencing and gates; (iv) demolish and permanently remove from the land the brick utilities building; (v) following compliance with (iv), excavate and remove permanently from the land the foundations of the brick utilities building; (vi) demolish and

permanently remove from the land the portable sanitary building; (vii) following compliance with (vi), excavate and remove permanently from the land the foundation of the portable sanitary building; (viii) remove permanently from the land all materials, waste and debris resulting from compliance with (i) – (v); (ix) following compliance with steps (i), (ii), (iv) and (vii), restore the land previously covered by the area of hard surfacing, the vehicular access and foundations to its original condition by ripping in two directions to a depth of 300mm; re-spreading topsoil over the ground to a depth of 150mm, or more where necessary, to fill in depressions left by excavation of the area of area of hard surfacing, vehicular access and foundations; grade the spread topsoil to leave a level surface; and reseed with grass.

- The periods for compliance with the requirements are four months for (ix) and three months for (i) to (viii).
- The appeal is proceeding on the grounds set out in section 174(2)(c) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the ground (a) appeal and the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.
- The hearing sat for 2 days on 27 and 28 May 2009 and the site visit was also undertaken on 28 May.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with variations as set out in the Formal Decision at paragraph 42 below.

Appeal C: APP/U2235/A/08/2090308

Summer Place, adj 22 Caring Lane, Bearsted, Maidstone, ME14 4NJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr L Friend against the decision of Maidstone Borough Council.
- The application Ref MA/08/0824, dated 24 July 2008, was refused by notice dated 4 September 2008.
- The development proposed is the change of use of the land to use for stationing three twin mobile caravans, three touring caravans, two toilet and kitchen blocks, a new access and a hard standing.
- The hearing sat for 2 days on 27 and 28 May 2009 and the site visit was also undertaken on 28 May.

Summary of Decision: The appeal is dismissed as set out in the Formal Decision at paragraph 43 below.

Preliminary Matters

1. At the opening of the hearing the appellant confirmed that the appeal on ground (c) on appeal B was withdrawn. The appeal on ground (a) and those on the deemed applications (Appeals A and B) had lapsed as the appropriate fee had not been paid in either case leaving just the question of whether or not the time for compliance with the notices was reasonable. I confirmed on site that the brick utilities building referred to in the notice was the small box like structure fixed to the fence in the south east corner of the site rather than a building and it was not one of the buildings described in the S78 appeal.
2. On the S78 appeal the appellant confirmed that the proposal to be considered should be for only one utility building; it was unlikely that two sited on the land could comply with site licensing regulations. It was also put forward that its exact siting could be the subject of a condition requiring a plan to be submitted

to the Council for approval; it was acknowledged that the position shown on the submitted layout plan (front of the site) was an unacceptable location. I shall deal with the appeal, therefore on the basis that it is only for one utility building on the site as I agree, from what I saw on the site visit, that it would be very unlikely that two such buildings could be accommodated on the land as well as all the 'caravans' that are there.

3. The parties agreed that if I determined that the boundary fence needed planning permission, I should include it in the S78 appeal for consideration. It had been included in the operations notice (Appeal B) but not in the planning application (the subject of Appeal C). In my view it is a relatively minor alteration to the appeal being considered and everyone who wanted to make comments had the opportunity to do so at the Hearing. There would, therefore, be no injustice to any party in my view if I included the boundary fencing in the S78 appeal (I measured it on site and found it to be less than two metres high).

Gypsy Status

4. The Council agreed that the appellant and those others who were on the site satisfied the definition of gypsy i.e., a person of nomadic habit of life whatever their race or origin. Some interested persons questioned the matter and one stated those on the site were developers but the family circumstances set out in Annex A to the appellant's representations gave a history of the family members currently living on the site confirming their travelling lifestyle. The appellant was self employed and did roofing, external building work and landscaping. He had built himself a house once in Chatham but still kept a caravan in the curtilage and used the house just for kitchen and bathroom facilities. He sold it some years ago and returned to the travelling lifestyle.
5. The last place he stayed on had was a site in Wrotham Heath until September 2007 but had to leave it as it was a Caravan Club site and no one can stay on those permanently. His son, who also stays on the site, is self employed undertaking building contracting work and had travelled across much of the country until settling here with his wife as both his young children attend the local play school in Bearsted.
6. Also on the site are the appellant's wife (who was born on a caravan site and travelled with her parents before marrying the appellant) and two daughter's one of whom is married (to Matthew Holland, a gypsy who was evicted from a site in June 2006) and has three young children and the other who is engaged to a gypsy (Gary Brazil) but he does not stay on this site at present.
7. I consider from the representations made at the hearing, concerning the lifestyle of those living on site, and what was in the written representations, that the appellant and his wife and also his three children and their partners are all gypsies.

The Section 78 appeal – Appeal C

Main issues

8. I consider, having regard to the prevailing policies, that there are four main issues in this case. These are whether the development materially harms

6

firstly, the rural character and appearance of the area, secondly, highway safety, thirdly, the living conditions of nearby occupiers and fourthly, whether the location is sustainable having regard to the objectives of the relevant policies in the Development Plan.

Reasoning

9. Dealing with the first issue, the site lies in an Area of Special Landscape Value, the boundary being along Caring Lane and is to the north east of the built up area of Maidstone. It lies about three quarters of a mile to the south of the North Downs AONB which is to the north of the M20 motorway. Caring Lane is generally rural in character with some scattered frontage development although it is more densely developed at this northern end with the appeal site once being the frontage part of a nursery (accessed on the other side of the dwelling immediately to the north).
10. There is a row of seven or eight dwellings to the north spread over a frontage of about 100 metres and then on the other side of Caring lane a ribbon of 15 or so dwellings on a frontage of about 250 metres and all are generally set back about 15 to 18 metres from the highway with well screened frontages in most cases. Further south the development along the lane is more scattered with individual properties and/or nurseries and farm buildings close to the road.
11. The Special Landscape Area was designated as a buffer between the AONB and the rest of the countryside outside of the settlements and has a generally open character rolling down to the river valley with small woodlands and copses being typical as well as hedgerow boundaries to the roads and small to medium sized fields behind. I acknowledge that the further south one travels along Caring Lane the more rural it appears (as stated by the Council in its representations). The appeal site is located just to the south of the two ribbons of development, one on either side of the road but is, in my view, in an area with a rural character.
12. There is a footpath about 30 metres to the south off Caring Lane which then turns north and runs along the western boundary of what used to be the nursery garden (continuing north to the A20 and Bearsted to the west). It is some 65 metres to the rear of the site but there are glimpses of the development through the trees, particularly from the south where it is obvious to any walker that the site is there.
13. National guidance has the overall aim of protecting the countryside for its own sake and there is a presumption against new development outside existing settlements that is not associated with the needs of agriculture, forestry or other uses essential to the rural economy. The policies within the Kent and Medway Structure Plan (adopted in July 2006) and those saved in the Maidstone Borough wide Local Plan (adopted in 2000) reflect that national aim and are restrictive. Both plans were still in force at the time of the hearing and whilst the new South East Plan has now replaced them there is no material difference concerning the policy for new development in rural areas.
14. There is nothing opposite the site other than open countryside and I do not consider that development on the appeal site even if sensitively landscaped on the frontage, would be acceptable in this location; any development can be 'hidden' but that does not make it acceptable development in the countryside.

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15. I consider that it is intrusive and adversely affects the character of the area contrary to the objectives of the relevant policies in the Development Plan which seek to restrict new development in the countryside unless it is for particular needs that are set out in the policies. This development is not one of those that in certain circumstances could be considered acceptable.
 16. Turning to the second main issue, Caring Lane is straight at this point and slopes gently downwards from north to south. The road has a 30 mph speed restriction on it although whilst spending just over an hour surveying traffic between 0800 and 0900 on the second day I noted that traffic frequently drove in excess of that speed, particularly if there was nothing coming in the opposite direction. Drivers did slow considerably, however, when someone else was travelling towards them, due to the narrowness of the highway. Although there are no street lights and the road is not wide (about 15 metres) it is straight with good forward visibility so speeds in excess of the limit are not surprising when the road is clear.
 17. Whilst a sight line of 43 metres can be achieved to the south, so long as the hedge is kept trimmed, only about one third of that distance is within the appellant's control and to the north, even though the boundary fence on the adjoining property is currently low and one can just see over it from the driving position, it could be raised and a sight line of only just over 11 metres can be achieved in this direction on land within the appellant's control. Wherever the actual crossing to the road is placed in the land owned by the appellant sight lines in both directions that meet the highway requirements cannot be provided. The Council were also concerned about the surface of the access but that is something that could be made satisfactory and the appellant did not object to that being the subject of a condition if the appeal was allowed.
 18. Highway safety was a major concern of adjoining and nearby occupiers who made written representations and stated that the road was used as a 'rat run' and very busy at peak times with most traffic travelling well in excess of the speed limit. The appellant argued that the sight line was only inadequate to the north and that was less important when people were exiting the site as approaching traffic was on the other side of the road. The sight line has to be taken for the near side, however, as there is always the possibility of an overtaking vehicle that needs to be seen,
 19. From what I saw on site I consider that the access is poor and there is no opportunity to improve visibility to ensure a safe access. I disagree with the appellant's view that one should be less concerned with the view to the north. I acknowledge that the access is only for three units and traffic generation will be minimal; it is not a junction of two roads with the latter carrying a great deal of traffic but just a single private access on to a road. In my view though, it will be likely to generate more traffic and adding a further access with inadequate sight lines would be prejudicial to road safety along Caring Lane in the vicinity of the appeal site.
 20. Looking at the third main issue, those nearby were concerned about noise disturbance that would arise from two, possibly three, families with young children who, because of the accommodation provided tended to spend more time outside playing than might otherwise be the case. There would also be more traffic movements than if it was one dwelling and when it had been part

of the nursery there was no access from Caring Lane causing any disturbance on that side. The appellant stated that he got on well with his neighbours who actually remarked that it was good to see children playing outdoors. He had no animals and traffic was limited.

21. I agree that there would be likely to be more noise than when the land (or at least the rear half of it) was used as part of a nursery garden. There is no business use on the site (and that can be secured by condition) so the only additional noise that is generated comes from the residential occupation of the site by the appellant and his extended family. In my view that would not be sufficient to cause material harm to the occupiers to the north such that it could justify refusing planning permission and, as the appellant put it, each individual reason for refusal has, by itself, to be sufficient to justify not allowing some development to take place.
22. The last main issue is whether the site is in a sustainable location. Regarding gypsy and traveller sites Circular 1/2006 at paragraph 64 says consideration should be given to a number of matters including the promotion of peaceful and integrated co-existence with the local community, the wider benefits of easier access to a GP and other health facilities, children attending school, the provision of a settled base and sites that are not subject to high risk of flooding although the list is not meant to be exhaustive. The Council referred to an appeal decision (APP/U2235/A/06/2026541) for a new dwelling adjacent to 15 Caring Lane (about 90 metres to the north of this site) where the inspector determined that it was not in a sustainable location.
23. The nearest bus stop is on the A20 about 500 metres (one third of a mile) away but there is no footway along the unlit and narrow Caring Lane and the Council stated that the route that stopped there went to Maidstone and not to the local facilities in Bearsted. It is about 2.25 kilometres (1.4 miles) drive to the local facilities in Bearsted, which the Council agreed provided the shops and health facilities necessary and also schools although it is slightly less if one uses the public footpath system that runs along the back of the site.
24. I agree with the Council that people will rely almost solely on the car to travel from here and it is not a sustainable site. The footpath route is unlit and just across fields in places including the need to get over stiles. It is unlit and in my view not a route one would walk along with small children to get them to school nor a route one would use to carry home shopping which, in any event, would normally be limited to about a quarter of that distance if carrying goods.
25. National and local policy is aimed at reducing dependence on the private car and achieving sustainable patterns of development. Sites such as this should only be allowed where there is a clear need for the development to be in this location. Nothing was put forward to state that the development has to be in this particular location and it is contrary and prejudicial to the objectives of the policies in the Development Plan which seek to promote a sequential type approach and give priority to sites within settlements rather than those in the countryside.
26. The weight is heavily against the development on three of the four main issues (only the effect on the living conditions of the neighbours would not justify dismissing the appeals) and the appeals should only be allowed, therefore, if

there are material considerations that outweigh those objections. In this instance the appellant relied on the need that existed for permanent sites for gypsies and travellers in the area, of which the appellant and his family were a part and that they were local to the area. There were no special educational or health needs put forward to support any claim that this was the location where they needed to be.

27. There was little discussion on gypsy and traveller needs as the Council agreed there was an outstanding need for pitches in its area and the figure of 32 pitches to be provided in Maidstone Borough in the period April 2006-2011, contained in the East Kent Gypsy & Traveller Accommodation Assessment (GTAA), was agreed by the two main parties. There was also no dispute from the Council that the appellant was a 'local' who frequented this area. The appellant argued that the Regional Spatial Strategy (RSS) and Local Development Framework (LDF) processes were too slow and the only way forward was by granting planning permissions.
28. The Council had written to the appellant shortly before the hearing on 14 May and set out that 16 permanent permissions had been granted since 2006 (half the required figure) and there were a further 8 temporary permissions that ought to be counted against the total as they would not expire until 2013. It was clear that the Council was meeting its target requirement and on schedule. There was nothing put forward by the appellant concerning whether alternative land for purchase had been looked at or whether he had tried to find a pitch on any existing site, either public or private.
29. As stated above, the GTAA has been undertaken and the Partial Review of the South East Plan which is dealing specifically with accommodation for gypsies, and travellers is underway. The Regional Assembly (SEERA) has agreed its preferred option for future pitches across the region and if confirmed will result in a requirement of 35 pitches through to 2011 (an update of the 32 total, not an addition). The Council has resolved to prioritise its LDF work and the Development Plan Document (DPD) will be published in 2010 and should be adopted in 2011; a list of identified sites will be in the public consultation document to be published in the spring of 2010.

Conclusions on the Section 78 appeal – Appeal C

30. The objections to the development are not disputed by the appellant who stated that it was a question of balance for me to determine against what was agreed was an unmet need for sites in the Council's area. He argued in closing that each of the objections by itself was not sufficient to justify refusal and the development plan process for allocating sites was too slow; the need was there now and permission ought to be granted even if only a temporary one.
31. I found that refusal was justified on three of the four main issues even if taken individually and whilst the area is not a nationally recognised designation the development does materially harm the objectives of the policies seeking to protect it (as stated in paragraph 15 above). There is also a strong highway objection; the sight lines are poor to one side and even on the other side where they are better they are not within the control of the appellant. A recent decision on a site closer to bus routes and local facilities was found to be unsustainable and I have no reason to disagree with that in concluding on this

case. Against these strong objections there was little put forward as material considerations to outweigh that.

32. There are no particular personal circumstances that would weigh in favour of the appellant and his extended family being in this particular location and whilst it is acknowledged that a base is required for the children attending school or soon to be doing so, there were no special needs suggested that meant they had to go to the school local to this site. The Council accepted an unmet need existed but permissions given are well on target to meet that need and there are also a number of temporary permissions existing. Work is well advanced following the publication of the GTAA and site specific allocations will be published in spring 2010 in the Development Plan Document (DPD) dealing specifically with meeting the requirement already agreed. It is thought that it will be adopted in 2011.
33. Whilst substantial weight has to be attributed to the unmet need it has to be balanced against the significant harm arising from the development and that would be the case even if a temporary permission was granted. I conclude, for all the reasons set out above that permission should not be granted and I will consider a relevant time for compliance, bearing in mind the likely timescale for the adoption of a DPD allocating sites in looking at the ground (g) appeals (on Appeals A and B).
34. I recognise that the dismissal of these appeals would interfere with the appellant's home and private family life (including that of the extended family) and could result in the loss of the homes with no satisfactory alternative. The need to maintain a travelling lifestyle is an important factor in the decision making process. Nevertheless the interference and the rights of the appellant must be balanced against the wider public interest in pursuing legitimate aims stated in Article 8 of the European Convention on Human Rights, particularly the economic well being of the country which includes the preservation and conservation of the environment.
35. The objections to the development are serious and cannot be overcome by conditions or granting a temporary permission, both of which were discussed at the hearing. There are strong environmental and highway reasons for refusing the appeals and I consider that dismissing them is the only way to safeguard those legitimate aims. I consider, therefore, that there would not be a violation of the appellant's rights under Article 8 of the Convention.
36. For the reasons set out above I conclude that Appeal A should be dismissed and planning permission should not be granted.

The appeals on Ground (g) – Appeals A and B

37. The Council stated that the three months set out for all the requirements (other than the four months for restoration of the land after clearance) in both notices was standard for this type of development. The time period has to be considered reasonable from the time the Notice comes into effect. The appellant should be entitled to proceed on the basis that the appeal will be successful and should not have to be engaged in what could prove an expensive and time consuming exercise in searching for alternatives until the outcome of the appeal is known. I do not consider three months is a

reasonable period taking into account the undisputed difficulty the appellants will have in finding a suitable alternative site within the area.

38. In this instance I am aware that these are the only homes of the appellant and his extended family (three children and in some cases their children) and it would be unreasonable to consider any period less than 12 months bearing in mind they would be made homeless. In this instance it is likely that suitable sites will be identified in early 2011 and whilst not agreeing with the appellant that at least two years should be given for compliance, a period of compliance of 18 months would end in spring 2011 and should coincide with sites being made available. I will, therefore, extend the period of compliance to 18 months and to that limited extent the appeal on ground (g) on Appeal A succeeds.

39. On Appeal B the appellant stated that the site could be made good in the three and four month periods specified but bearing in mind my decision on Appeal A these periods should be varied to reflect that. As 18 months is the period for compliance for the cessation of the use and the removal of the caravans then, in my view, it would be appropriate to vary the time on the other notice to 19 months for requirements (i) to (viii) and 20 months for (ix). That would allow the physical works to take place after the caravans have gone as it would not be possible, for example, to remove the access and portable sanitary building whilst they are still there. To that limited extent the appeal succeeds and I will vary the notice.

Overall conclusions

40. For the reasons given above and having regard to all other matters raised, I conclude that all three appeals should be dismissed. I shall uphold the enforcement notices with variations.

Formal Decisions

Appeal A: APP/U2235/C/08/2089940

41. I direct that the enforcement notice be varied by substituting the words 'Eighteen months' for the words 'Three month' in paragraphs 5(i) and 5(ii). Subject to these variations I dismiss the appeal and uphold the enforcement notice.

Appeal B: APP/U2235/C/08/2090277

42. I direct that the enforcement notice be varied by substituting the words 'nineteen months' for the words 'three months' in paragraph 5 (i) - (viii) and 'twenty months' for the words 'four months' in paragraph 5(ix). Subject to these variations I dismiss the appeal and uphold the enforcement notice.

Appeal C: APP/U2235/A/08/2090308

43. I dismiss the appeal.

D E Morden

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Dr R K Home	Appellant's agent
Mr L Friend	Appellant
Mrs S Friend	Appellant's wife

FOR THE LOCAL PLANNING AUTHORITY:

Ms C Sladé BSc	Planning Officer, Maidstone BC
Mr R Timms MATCP MRTPI	Planning Officer, Maidstone BC
Mrs L Rowlands	Kent County Council (Highways)

INTERESTED PERSONS:

Mrs A Bloomfield BA(Hons) MRTPI	Bloomfields, Chartered Town Planners, representing Caring Conservation Society
Mr E Sandford	Local resident
Mr B Clifford	Chairman, Bearsted and Thurnham Society
Mr P Kelsey	Local resident

DOCUMENTS

- 1 Council's letter notifying people of date and time of Hearing
- 2 Letter from a local resident
- 3 Council's update on the South East Plan RSS and DPD for gypsies & travellers
- 4 Copy of Policy C4 of the South East Plan
- 5 LPA's brief note on bus timetables on the A20
- 6 List of members of Caring Conservation Society
- 7 Mrs Bloomfield's document regarding the Need for pitches and details of applications received from gypsies and travellers
- 8 Mrs Bloomfield's copy of the :PA 'toolkit' for dealing with applications for gypsy and traveller caravan sites
- 9 Mr Sandford's extract from Babbie traffic survey, 2004
- 10 Inspector's traffic survey

PLANS

- A Plan showing boundary of Special Landscape Area
- B Plan showing Public footpath KH139
- C Amended layout plan for site considered by the Council when dealing with the planning application

PHOTOGRAPH

- 1 Council's aerial photograph showing the site in 2003.