



# Appeal Decisions

Hearing held on 12 June 2007

Site visit made on 12 June 2007

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

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

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**Decision date:**  
4<sup>th</sup> July 2007

## The Appeals

### Land known as **Maplehurst Paddock, Maplehurst Lane, Staplehurst TN12** **ODL**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr J Lee against two enforcement notices issued by Maidstone Borough Council.
- The Council's reference is ENF/9045.
- The notices were issued on 24 October 2006.

#### **Notice A Appeal Ref: APP/U2235/C/06/2030038**

- The breach of planning control as alleged in the notice is without planning permission, the change of use of the land from agricultural to a mixed use of agricultural and the stationing of a caravan in residential occupation.
- The requirements of the notice are (i) stop using the land for the stationing of a caravan in residential occupation, (ii) permanently remove from the land the caravan.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.**

#### **Notice B Appeal Ref: APP/U2235/C/06/2030041**

- The breach of planning control as alleged in the notice is without planning permission, operational development comprising of the construction of hardsurfacing, the erection of a timber utility room building and the construction of a brick built utilities box (the approximate positions being shown on the plan attached to the notice).
- The requirements of the notice are
  - i. Demolish and permanently remove the hardsurfacing.
  - ii. Permanently remove from the land all rubble and material resulting from compliance with step (i).
  - iii. Demolish and permanently remove the timber utility room building.
  - iv. Permanently remove from the land all rubble and material resulting from compliance with step (iii).
  - v. Demolish and permanently remove the brick built utilities box.
  - vi. Permanently remove from the land all rubble and material resulting from compliance with step (v).
  - vii. Following compliance with step (i) above, rip the area of ground previously covered by the unauthorised hardsurfacing in two directions to a depth of 300mm, spread topsoil over the ground to a depth of 150mm and re-seed with grass.
- The period for compliance with the requirements (i) to (vi) is three months and the period for compliance with the requirement (vii) is four months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the

Town and Country Planning Act 1990 as amended.

**Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.**

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## **Appeals under ground (a) – the deemed applications**

### ***Background***

1. The land identified in both enforcement notices as the site covers an area of about 0.76 hectares. The hard surfaced and mown grass areas fronting Maplehurst Lane are being used for residential purposes, served by an access in the north west corner. The caravan, utility building, parking space and small utility box are near to the front boundary along with other household items and a generator. This domestic space is fenced off from the grazing land that becomes narrower in shape as it extends eastwards. The notices are primarily directed at the caravan site use and the associated operational development and hence I will focus on these elements in my decision.
2. The site is in the countryside, in the designated Low Weald Special Landscape Area (the SLA). Maplehurst Lane is a private single track road that provides access to some nine properties<sup>1</sup>, which appear to be a mix of residential, farm holdings and gypsy sites. They form a fragmented pattern of development along its length.
3. Mr Lee and his family moved onto the land in September 2006. Mr Lee explained that the families of both he and his wife are gypsies. He has lived all his life in caravans and could not live in a house. He attended school in Headcorn, married at 18 and travelled in Kent and the Dorset area. He has undertaken such work as general dealing, tree surgery, hop picking, trading in scrap metal and so on. He intends to have a more settled lifestyle in order to bring up their children, Phoebe who is now 4 and Sarah Jane who is 14 months old. Mr Lee's gypsy status was not disputed by the Council or third parties and at this point in time I have no reason to come to a different conclusion. I am satisfied that Mr Lee complies with the definition of gypsies and travellers set out in paragraph 15 of ODPM Circular 01/2006 and that having regard to the family group the use of the western part of the site is as a gypsy caravan site.

### ***Planning Policy***

4. The development plan for the area includes the Kent and Medway Structure Plan adopted in 2006 (KMSP) and the Maidstone Borough-Wide Local Plan adopted in 2000 (MLP). Relevant policies are those seeking to promote sustainable development, protect and enhance the countryside and the landscape quality of the SLA plus the criteria based policies for gypsy site provision, HP9 in the KMSP and H36 in the MLP.
5. ODPM Circular 01/2006 sets out national policy on *Planning for Gypsy and Traveller Caravan Sites*. Planning Policy Statements on *Delivering Sustainable Development (PPS1)*, *Sustainable Development in Rural Areas (PPS7)* and *Development and Flood Risk (PPS25)* are also particularly relevant.

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<sup>1</sup> The nine properties are those identified at the Hearing, a total that excludes Maplehurst Paddock.

### ***Main Issues***

6. I consider the acceptability of the site for the development mainly depends on:
- the effects on the local countryside, the living conditions of nearby occupiers and local infrastructure;
  - whether there is a need generally for additional gypsy sites in the district; and
  - consideration of any particular need of the Appellant for a site and his personal circumstances.

### ***Reasons***

#### ***Countryside location***

##### *Policy*

7. The development plan seeks to protect the countryside for its own sake, conserve its distinctive character, to restrict development and to ensure where development occurs it does not harm the qualities of the countryside. These objectives are expressed in KMSP policies SP1, EN1 and EN3 and MLP policy ENV28. Whilst KMSP policy HP9 directs gypsy accommodation to urban areas or rural settlements, there is allowance for gypsy sites to be located elsewhere, preferably where there is good accessibility. The policy also requires an established need and compliance with environmental and sustainability criteria. MLP policy H36 does not rule out a countryside location, subject to considerations such as gypsy status and the effect on countryside amenity and character.
8. In this case the location of the site in the Low Weald SLA gives rise to additional requirements. MLP Policy ENV34 requires particular attention, and even priority, to be given to the conservation of scenic quality and landscape character. This approach remains consistent with the primary objective of designating SLAs set out in KMSP policy EN5, although the latter recognises the need to facilitate the social and economic well-being of the communities situated within them. However, the SLA is a local and not a national landscape designation. Circular 01/2006 advises it should not be used in itself to refuse planning permission for a gypsy site and that rural settings are acceptable in principle.
9. My conclusion from this review of prevailing policy is that gypsy sites are a form of development that may be appropriately accommodated in the countryside if there is an established need and compliance with the stated policy criteria. I turn now to look more specifically at the effect of the development on the character and appearance of the site and its surroundings.

##### *Character and appearance*

10. The attractive countryside is characterised by a patchwork of fields and pockets of woodland. The fields are mainly of pasture and are typically enclosed by strong hedgerows and mature trees. Built development is generally of a domestic scale and compact form, in a fragmented pattern along the country

lanes. Views are generally well contained by the landscape features and the gentle nature of the landforms.

11. By all accounts before development took place the site was pastureland with trees and hedgerows forming a strong landscape feature along part of the northern boundary and a mature hedgerow along part of the frontage. Therefore it was typical of the local landscape. Change has been concentrated on the front of the plot, where the laying of a hard surface has introduced a material with a harsh appearance and the areas of mown grass have a manicured appearance in contrast to the pasture behind. The caravan, utility building and other domestic paraphernalia do not have a well ordered layout and they lack consistency in materials and overall appearance. Views of the developed area of the site are confined to a short length of Maplehurst Lane, although compared to Perfect's Place and Little Oak Farm the caravan site does not benefit from a good level of natural screening. A larger caravan in the form of a mobile home, which Mr Lee is hoping to have to provide extra space for his growing family, would be more prominent to the extent of being visually intrusive. Attempts have been made to improve the level of screening by planting leylandii, laurel and some privet along the front and side boundaries. Unfortunately, whilst quick to grow and evergreen, such species are more associated with urban locations and they would be alien in the SLA. The effect would be to draw attention to rather than to soften the appearance of the development.
12. However, the development is domestic and small scale, the trees and hedgerows have been retained, along with much of the pasture. It follows the pattern of fragmented residential development seen in the area. Maplehurst Lane is not a public highway and even allowing for its status as a toll ride the development is not as open to public view as say a location on the frontage of Frittenden Road. In this sense any visual harm is limited in scope and the caravan site is not visually intrusive in the wider landscape. Referring to criterion (3) of MLP policy H36, Mr Lee's site is not seen in conjunction with Perfect's Place or Little Oak Farm. Therefore there would not be an undue concentration of gypsy developments to adversely affect the character of surrounding countryside. Undoubtedly the stationing of a caravan would lead to some small increase in activity, associated domestic noise and lighting. In my view the effect of this activity on local character would not be harmful, bearing in mind the single family occupation, the ability to impose planning conditions, the activity from the other properties along the Lane and the location of the site towards the Frittenden Road end of the Lane.
13. In summary, the harm stems from the fairly open nature of the site on the frontage of Maplehurst Lane, the loss of a small piece of undeveloped, unspoilt countryside to a domestic use and the erosion of the scenic quality of the SLA. To achieve a satisfactory standard of boundary landscaping would take a number of years. For these reasons there is conflict with KMSP policy HP9 and criterion (2) of MLP policy H36 on provision of gypsy sites, and with the objectives to protect and enhance the countryside and SLA set out in KMSP policies EN1, EN3 and EN5 and MLP policies ENV28 and ENV34. The harm is very localised and contained, however, due to the small scale of the development and the limited views, even along Maplehurst Lane.

### *Sustainability*

14. Local services are available in Staplehurst, some 2 kms away and also at Headcorn. Whilst it is likely that the car would be the main form of transport, the journey distance is not far and the location of the site enables Mr Lee's family to benefit from easy access to GP services and education at pre-school and primary school.
15. In addition to transport mode and distance from services Circular 01/2006 encourages wider considerations, including social cohesion. Representations have expressed concern that allowing Mr Lee's development would lead to an imbalance between the numbers of residents in the settled community and those in the gypsy community living along Maplehurst Lane. This opinion is not shared by all and other neighbours have voiced support. There may well be individual tensions but in my experience the overall scale of development at issue, even with an additional gypsy family, would still respect the scale of and not dominate the nearest settled community.

### **Living conditions**

16. The appeal site is surrounded by agricultural land, the nearest dwellings being the pair of semi-detached houses known as Maplehurst Cottages at the northern end of the Lane and Folly Farm on the opposite side of the Lane to the south west. In my estimation it would be possible to see the development from the only upper floor window on the side of 2 Maplehurst Cottage. It is also possible to see the caravan and utility building from Folly Farm, more particularly from one of the bedrooms and near the gateway. However, I consider such views would not be harmful to the outlook or privacy of the occupiers because of the generous space separating the dwellings from the site, the obliqueness and limited nature of the views and the small scale of the developed area.
17. A generator has been installed on the site to provide electricity. Even though it has been enclosed, the noise is still audible outside the site. I don't doubt that at certain times in this peaceful rural area it would be disturbing and irritating to near neighbours. It is not a satisfactory arrangement for the Lee family either, not only because of the noise but also the interruptions in supply. However, an alternative source of power is available to Mr Lee, which would be secured should permission be forthcoming. Overall, I conclude the development is located to avoid adverse impact on residential amenity in compliance with KMSP policy HP9.
18. The point has been made that the development, by intruding into the peaceful, unspoilt countryside environment, has infringed residents' rights under Article 8 of the European Convention on Human Rights, the right to respect for private and family life and the home. As explained above I do not consider that any significant harm would be caused to neighbours' living conditions with regard to outlook or privacy. The specific effect of noise from the generator is capable of being resolved, Mrs Lee indicated that they had no need for external domestic lighting and in any event such matters could be subject to control through planning conditions. Therefore adverse effects are not inevitable consequences of the development. At a more general level the effect of the development on the character and appearance of the surrounding area is more appropriately

considered within the context of the wider public interest rather than the rights of individual residents. In view of the particular circumstances I conclude the human rights of individual residents are not at issue and there is no evidence to show the effects of the development would be sufficiently serious to lead to an interference of the rights of neighbours.

### ***Local infrastructure***

19. The matters for consideration, which have been raised by local residents, are access and highway safety together with flooding and drainage. No detailed technical information has been submitted and therefore I will rely on local knowledge, consultation responses, my own observations on the site visit and the assessments in the appeal decision on Perfect's Place.

### ***Access and highway safety***

20. Maplehurst Lane is not part of the adopted highway network but it is a rural, single track private road providing access to the properties along its length. It is also a toll ride and so it may be used by horse riders seeking to avoid the busier local roads. The Lane joins Frittenden Road, part of the route to the local service centres of Staplehurst and Headcorn. I consider visibility at the junction is likely to be below generally advised standards and the width of the Lane at this point is such that in some situations vehicles travelling in opposite directions would not be able to pass. However such characteristics are typically found in rural areas and although not ideal I would not describe them as presenting a serious hazard if approached with due care. No accidents were brought to my attention and I consider the difficulties described by the occupiers of the cottages are attributable to the specific conditions at these properties – their location at the junction, the restricted space and inability to turn within the curtilages and the parking of a vehicle for transporting horses. This combination of factors does not apply to the appeal site.
21. The vehicular traffic currently using Maplehurst Lane would be mainly that generated by the existing nine properties. The appeal site has the advantage of being near to Frittenden Road and there is good visibility at the gateway and along the Lane to the north and south. There is room to park and turn vehicles within the site and as Mr Lee does not propose to run a business, vehicles would be restricted to those arising from a residential use. The highway authority raised no objections to the development and at the Hearing the Council confirmed it agreed with that opinion. I conclude the number of vehicle movements associated with an additional family would not make a significant difference, whether in terms of safety for all users of the Lane or the character of the Lane.
22. An additional concern was the extra wear and tear to the surface of the Lane. However, the right of Mr Lee to use the Lane was not disputed and he stated that he contributes to its maintenance and upkeep. In my view this consideration has little bearing on the acceptability of the use at issue.
23. My conclusion is that the development at Maplehurst Paddock causes no significant reduction in highway safety, while the likely number of vehicle movements could be accommodated satisfactorily without detriment to free movement by all users of the Lane, its character and capacity. On these matters the development complies with a requirement of KMSP policy HP9.

*Flooding and drainage*

24. Evidence from residents shows that Maplehurst Lane and adjoining fields suffer at times from waterlogging and localised flooding. The last flooding event was said to have occurred in March 2007, although Mr Lee said it had not affected his site.
25. In general terms caravans intended for permanent occupation are regarded as 'highly vulnerable' to flood risk because of the instability of the structures. They should not be permitted in areas where there is a high probability of river flooding or flooding from the sea or in a functional flood plain. However, the appeal site is not located in such high risk flood areas. The issue has not been within the remit of the Environment Agency and in these appeals the local planning authority has not identified flooding as contributing to the unsuitability of the site. These initial considerations suggest that flooding is not a factor weighing against the development.
26. However, the reasons for the flooding are not entirely clear. One view is that it is primarily related to the main dyke that follows the valley, the pattern of drainage ditches and gradients. In the Perfect's Place appeal decision, the problem was thought to be more related to the condition of the ditches and that significant alleviation may result from ditch clearance and maintenance. Either way, the flooding is a longstanding problem, there is nothing to show that it has been brought about or exacerbated by Mr Lee's development and the solution is not his responsibility or under his control. If the site itself were to suffer from excess surface water, and it has not been shown conclusively that it does, at the least there would be inconvenience to the occupiers. Dependent on the depth of water and length of time of the flooding event there could be more serious implications for living conditions. This uncertainty over the likelihood and nature of any flood event leads me to be cautious over dismissing its significance. That said, the available evidence is not sufficiently strong to justify withholding permission for this reason alone.

**General need**

27. The Council's evidence included details of the five counts of gypsy caravans between July 2004 and July 2006 for the local authority areas in the South East Region, as well as information specific to Maidstone Borough on planning applications/decisions between 2001 and 2006 and on gypsy site provision. This body of information indicates there is an increasing need for gypsy and traveller sites across the region and in Maidstone Borough. In respect of Maidstone I regard the number of caravans on 'not tolerated' sites, standing at 31 in November 2006, and the continuing pressure for new sites as particularly significant. The two Council owned sites in the Borough are unlikely to offer a solution as they are currently full and have a low turnover.
28. At the Hearing the Council was able to produce the draft final report of the gypsy and traveller accommodation needs survey 2005/6 covering Ashford, Maidstone, Tonbridge & Malling and Tunbridge Wells (the GTAA). The report has yet to be considered by stakeholders, although the Council officer anticipated it would be an agreed document soon, by the end of June. Nevertheless I need to bear in mind its current draft status and the possibility for change. Furthermore in the context of these appeals it would be

inappropriate for me either to question the data base or to assess the methodology adopted. The objective of the study is to provide a starting point for the development of plans and strategies to meet both the backlog of need and the need arising from family formation over the next 5 years.

29. The key conclusion highlighted by the Council is that Maidstone will need to provide 6 or 7 pitches per year over the next five years. A schedule was presented to show that this target has been met over the last year, April 2006-2007. Residents regarded this evidence, that the need is being met, to be all the more relevant in the 'other material considerations balance' in relation to the appeal site. In contrast, the Appellant's consultant drew attention to the caravans on the 'not tolerated sites'. He explained why in his opinion priority in meeting the identified need would be given to other gypsy families before Mr Lee. Consequently his need for a site would remain.
30. The GTAA has concluded that Maidstone Borough has a high level of unauthorised sites along side a strong supply of authorised sites. Furthermore it recognises Maidstone has made a recent significant contribution to an increase in the supply of authorised pitches locally. I consider that the GTAA indicates that a continued increase in supply of sites will be important in order to improve on the existing situation and to make inroads into the current backlog. There are no plans to provide additional local authority pitches within the study area. A supply of pitches on publicly owned sites relies instead on households wishing to move into permanent housing and thus the availability of such housing. Therefore I conclude the main source of new pitches will be through more privately owned sites. Also, the study is a starting point and the challenging aspect is how the projections of need will be met and realised over the next 5 years.
31. The intention is that GTAAs will inform the preparation of Development Plan Documents (DPDs) that form part of the Local Development Framework (LDF). Government policy requires site specific allocations to be made at local level. At the Hearing the Council was unable to provide up-to-date information on the timetable for the Maidstone Borough LDF programme. The last programmed date for the adoption of a DPD on housing need, including allocations for gypsy and traveller sites, was towards the end of 2008. The Council accepted at the Hearing that this was optimistic and the view I gained is that a more realistic date would be 2009/2010. Consequently identification of sites to meet outstanding needs and their subsequent release and development will not be immediate. In the interim a pressing need for private sites remains and this is a consideration of significant weight in the Appellant's favour.

***Personal need and circumstances***

32. Mr Lee explained that before moving to Maplehurst Paddock, he and his wife and children lived on a site at Gloversbridge, Headcorn, a site occupied by other members of his family. However, because of overcrowding and family tensions he needed to find an alternative site where they could bring up their children. Their daughter Phoebe, who is now 4 years old, has been attending Headcorn pre-school and is due to start at Staplehurst primary school in September. The County Council had confirmed to him that at present there are no vacancies on local authority sites and Mr Lee says his family have no alternative site to move to.

33. The Council confirmed at the Hearing that there is the maximum permitted number of caravans on the Gloversbridge site, although no application had been made for any additional caravans. There was no suggestion that the family tensions involved any form of physical harm or violence. Accordingly this site cannot be entirely ruled out as an alternative, although I recognise that to return there may not be an option Mr Lee would wish to pursue and planning permission would need to be secured first. Mr Lee said that when he first bought Maplehurst Paddock he had no intention of living there and so it appears to have been an easy option to take up when circumstances changed. There was no evidence that efforts had been made to look for another site.
34. That said, I consider that a settled base for the family is important, particularly in view of two very young children and the need to encourage Phoebe to regularly attend school. Such objectives could be equally well met by another site, a point that was not disputed at the Hearing. However, as I have explained, the Council has yet to adequately address gypsy and traveller site provision and to guide the allocation of sites in a DPD. The history of unauthorised sites in the district and the various planning constraints suggest that Mr Lee would have difficulty in finding an alternative appropriate site for his family. Dismissal of the appeals would mean the Lee family would have to remove their home from the site. As there has been no suggestion as to where else they could lawfully go this would be a serious interference with their human rights under Article 8. I do have to take into account though that the home was established without planning permission and therefore the Appellant's position is less strong.

### **Conclusions**

35. Looking first at the criteria based policies for gypsy site provision, the Appellant has gypsy status and the resultant level of gypsy site development would not adversely affect the character or amenity of the area. Therefore the conflict with MLP policy H36 is the unsatisfactory natural screening of the site, even allowing for new planting. A need for gypsy accommodation has been established. The site avoids adverse impact on residential amenity, highway capacity and highway safety. On all these matters there is compliance with KMSP policy HP9. I also consider that in a rural context the site is reasonably accessible to local service centres, even though it is located outside a settlement with little choice of transport mode. Consequently conflict with the policy objectives primarily arises from the harm to countryside character. The priority attached to the landscape quality in the SLA by KMSP policy EN5 and MLP policy ENV34 is not determinative because of the caution on local landscape designations expressed in Government policy through PPS7 and Circular 01/2006. Nevertheless, the overall balance of the development plan is against the development, when account is also taken of the objectives of KMSP policies EN1 and EN3 and MLP policy ENV28 to protect and enhance the local distinctiveness of the rural environment.
36. Circular 01/2006 encourages consideration of a broad range of factors in assessing gypsy site provision. The site would provide a settled base that reduces the possibility of environmental damage caused by unauthorised encampments and it enables the Lee family to regularly access GP services and schools. The development respects the scale of the nearest settled community and it does not place undue pressure on local infrastructure. It is outside

nationally designated areas and the harm to local countryside character is not serious. The site is not located in an area recognised to be at a high risk of flooding, although there are localised flooding issues that could make the site unsuitable. Further detailed study is required to come to a well informed conclusion on the flood risk.

37. There is a clear unmet need for gypsy sites in the Maidstone area and within this context the Lee family also have a need for a site. There is no lawful provision available to them in the short term and little direction where a new site would be suitable. In such circumstances dismissal of the appeal could well lead the family to resort to unauthorised roadside camping, generally acknowledged to be detrimental to health, educational attainment and wasteful of resources.
38. Weighing up all these considerations my conclusion is that the appeal site does not fully comply with the principles encouraging sustainable development in terms of safeguarding the local distinctiveness of the rural environment, its location in relation to settlements and the risk of flooding. Personal circumstances do not raise special health or educational requirements and the needs of the Appellant and his family could be met by another site. On balance I am not satisfied that a full planning permission is justified.
39. However, the identified harm is not severe such that it should be remedied in the time scale suggested in the compliance periods of three and four months. This would be a disproportionate response when currently there is no alternative lawful site for Mr Lee's family to occupy. It may well be that the Council, or neighbouring local authorities, will in time identify sufficient suitable sites to meet unmet need. Progress is being made on the LDF, including the preparation of a site allocations DPD. In this context there has to be a reasonable expectation that circumstances will change. New sites are likely to become available within a three year period. Accordingly temporary permissions for the caravan site and associated operational development would be consistent with advice in Circular 11/95 *The Use of Conditions in Planning Permissions* and the guidance in Circular 01/2006. The Appellant would also have an opportunity to fully explore with the local authorities what options are available to him and to look himself for another site.
40. The Council expressed a preference for an extended period of compliance but given the length of time involved, temporary permissions would be the more appropriate and reasonable way forward thereby allowing planning conditions to be imposed. Therefore the appeals on ground (a) succeed to this extent. I consider this outcome to be a proportionate response in the circumstances. The protection of the public interest cannot be achieved by means which are less interfering of the Appellant's rights and hence there would not be a violation of the family's rights under Article 8.

## **Planning Conditions**

### **Notice A**

41. Following on from my conclusions on the planning merits in paragraphs 38 and 39 above I shall attach a condition limiting the permission to three years. The immediate personal need of the Appellant and his family has been important in tipping the balance in favour of a temporary permission and therefore I also
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intend to make the permission personal. A condition will provide for a single caravan to be stationed on the land to reflect the terms of the alleged breach, and to ensure the development remains small scale with a limited visual effect on the local landscape. In the circumstances I regard this as reasonable, particularly as Mr Lee is able to store his touring caravan elsewhere. The requirement for details to be submitted of the site layout, the method of sewage disposal and boundary treatment and any external lighting is necessary to safeguard the rural character of the site and its surroundings. The Council has put forward conditions requiring a landscaping scheme and protection of trees and hedgerows. I consider that because of the temporary nature of the permission a landscaping scheme is unreasonable, whilst retention of appropriate landscape features may be secured through the submitted details of boundary treatment.

42. A condition preventing commercial use is necessary in order to safeguard the living conditions of nearby occupiers and the peaceful character of the surroundings, and to minimise the visual impact of the development. Similarly, to safeguard amenity, I have included a condition to control noise from the generator, should it be retained. Other legislation exists to control bonfires and the burning of rubbish and therefore it is not necessary for control to be exercised through a planning condition.
43. Removal of permitted development rights should only be done in exceptional circumstances. The Council is seeking to control over minor operations and over temporary buildings and uses (Schedule 2 Parts 2 and 4 of the GPDO). I consider such control is unnecessary in this case when account is taken of the types of development covered by Parts 2 and 4, the proposed condition on a site development scheme and the operational development dealt with under notice B. The same considerations apply to the Council's suggested condition 11, which would also be unnecessary.

#### **Notice B**

44. The conditions put forward by the Council provide a starting point. However, I have had in mind the need for consistency and avoidance of duplication with the conditions related to the use, and the need to ensure conditions are directed only at the operational development in question. Therefore controls on landscaping, tree and hedgerow retention and removal of permitted development rights are unnecessary. I also consider that it is not necessary to require a scheme showing details of the hardsurfacing and the timber utility building, mainly because the permission is pursuant to the deemed application. Therefore I intend to attach two conditions.
45. The first is to control the time period of the permission in line with that for the permitted use. Also, for the sake of consistency, it is necessary to prevent commercial use of the hardstanding. The objectives of these conditions are to allow time for allocation of gypsy sites through the DPD, to limit the harm to the landscape and to protect residential amenity.

#### **Overall Conclusion**

46. For the reasons given above and having regard to all other matters raised, I conclude that the appeals should succeed on ground (a) and planning

permissions will be granted. The appeals on ground (g) do not therefore need to be considered.

### **Formal Decisions**

#### **Notice A Appeal Ref: APP/U2235/C/06/2030038**

47. I allow the appeal, and direct that the enforcement notice be quashed. I grant planning permission on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the use of the land at Maplehurst Paddock, Maplehurst Lane, Staplehurst, as shown on the plan attached to the notice, for a mixed use of agricultural and the stationing of a caravan in residential occupation, subject to the following conditions:

- 1) The use hereby permitted shall be carried on only by Mr J Lee, 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 land is occupied by them, whichever is the shorter.
- 2) When the land ceases to be occupied by Mr J Lee, his wife and children or at the end of three years, whichever shall first occur, the use hereby permitted shall cease, all materials and equipment brought onto the land in connection with the residential element of the mixed use, shall be removed and the land restored to its former condition.
- 3) No more than one caravan, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 shall be stationed on the site at any time.
- 4) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of the residential element of the mixed use shall be removed within 3 months of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
  - i) within 2 months of the date of this decision a site development scheme shall have been submitted for the written approval of the local planning authority. The scheme shall address: (a) the internal layout of the site, including identification of the area to be used for residential occupation, the position of the caravan within that area and provision for parking; (b) the means for the disposal of sewage; (c) boundary treatment, including details of fencing and trees and hedgerows to be retained; (d) any proposed external lighting on the boundary of and within the site; (e) a timetable for the scheme's implementation.
  - ii) within 11 months of the date of this decision the site development scheme shall have been approved by the local planning authority or, if 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 site development 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.
- 5) No commercial activities shall take place on the land, including the storage of materials.
- 6) Any mobile electricity generator to serve the residential use hereby permitted shall be so installed and enclosed with sound-insulating material and maintained in a way which will minimise transmission of noise and/or vibration beyond the boundaries of the site.

**Notice B Appeal Ref: APP/U2235/C/06/2030041**

48. I allow the appeal, and direct that the enforcement notice be quashed. I grant planning permission 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 construction of hardsurfacing, the erection of a timber utility room building and the construction of a brick built utilities box on land at Maplehurst Paddock, Maplehurst Lane, Staplehurst referred to in the notice, subject to the following conditions:

- 1) The hardsurfacing, the timber utility building and the utilities box shall be removed when the land ceases to be occupied for residential purposes by Mr J Lee, his wife and children or at the end of three years from the date of this decision, whichever shall first occur, and the land restored to its former condition in accordance with a scheme of work and timetable submitted to and approved in writing by the local planning authority.
- 2) No commercial activities, including the storage of materials, shall take place on the hardsurfaced area.

*Diane Lewis*

INSPECTOR

## APPEARANCES

### FOR THE APPELLANT:

Donald Kenrick	146 St Johns Road, Isleworth
Mr J Lee	Maplehurst Paddock
Mrs Lee	Maplehurst Paddock

### FOR THE LOCAL PLANNING AUTHORITY:

Jon Lawrence	Planning Officer (Enforcement) Maidstone Borough Council
Joanne Empett	Planning Officer, Maidstone Borough Council

### INTERESTED PERSONS:

Marita Jones	Brachers Solicitors on behalf of the East Weald Conservation Association
Michael Pounds-Longhurst Mr and Mrs Gallant	Folly Farm, Maplehurst Lane, Staplehurst 1 and 2 Maplehurst Cottages, Frittenden Road, Staplehurst TN12 0DL
Mr and Mrs Armytage Mr and Mrs Campbell	Maplehurst, Staplehurst TN12 0DL Maplehurst Bungalow, Frittenden Road, Staplehurst TN12 0DL
Georgie Collins	Staplehurst Parish Council

### DOCUMENTS submitted at the Hearing

Document 1	Letter of notification of the Hearing
Document 2	Appeal decision for Maplehurst Paddock ref APP/U2235/A/05/1189676 dated 2 February 2006
Document 3	Appeal decision for Perfect's Place ref APP/U2235/C/05/2005985 dated 24 October 2006
Document 4	Plan of the Special Landscape Area near Staplehurst
Document 5	Plan of planning constraints in Maidstone Borough
Document 6	Letter from Kent County Council submitted by the Appellant
Document 7	Three letters in support of the development submitted by the Appellant
Document 8	Letter from Staplehurst School submitted by the Appellant
Document 9	Letter from Headcorn Pre-School submitted by the Appellant
Document 10	Information from Headcorn Surgery submitted by the Appellant
Document 11	Gypsy and Traveller Pitches granted April 2006 to present day submitted by the Council
Document 12	Gypsy and Traveller Accommodation Needs Survey 2005/6 draft Final Report

### PLANS

Plan A	Plan attached to Enforcement Notice A
Plan B	Plan attached to Enforcement Notice B

### PHOTOGRAPHS

Photo 1	Photographs to show flooding on Maplehurst Lane taken 5 March 2007 and submitted by the East Weald Conservation Association.
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