



## Appeal Decisions

Hearing held on 12 January 2010

Site visit made on 20 January 2010

by **David Smith** BA(Hons) DMS MRTPI

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

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Decision date:  
9 February 2010

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### Appeal A - Ref: APP/U2235/A/09/2114473

#### Pear Paddock, Symonds Lane, Yalding, Kent, ME18 6HA

- 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 Mrs J Coster against the decision of Maidstone Borough Council.
- The application Ref MA/09/0731, dated 1 May 2009, was refused by notice dated 18 August 2009.
- The development proposed is change of use for caravan site for 2 mobile homes with associated development (storage of 1 touring van, shared utility shed (for washing machines), two timber stables, 2 storage sheds, cesspools, fencing, brick wall, gates and associated hardstanding and access).

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### Appeal B - Ref: APP/U2235/A/09/2114476

#### Pear View, Symonds Lane, Yalding, Kent, ME18 6HA

- 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 Mrs M Coates against the decision of Maidstone Borough Council.
- The application Ref MA/09/0732, dated 1 May 2009, was refused by notice dated 18 August 2009.
- The development proposed is change of use for caravan site for 2 mobile homes with associated development (1 touring van with shared day room, hardstanding, fencing, shed and stables, two cesspools).

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## Decisions

### Appeal A - Ref: APP/U2235/A/09/2114473

1. I allow the appeal, and grant planning permission for change of use for caravan site for 2 mobile homes with associated development (storage of 1 touring van, shared utility shed (for washing machines), two timber stables, 2 storage sheds, cesspools, fencing, brick wall, gates and associated hardstanding and access) at Pear Paddock, Symonds Lane, Yalding, Kent, ME18 6HA in accordance with the terms of the application, Ref MA/09/0731, dated 1 May 2009, and the plans submitted with it, subject to the conditions in the attached schedule.

### Appeal B - Ref: APP/U2235/A/09/2114476

2. I allow the appeal, and grant planning permission for change of use for caravan site for 2 mobile homes with associated development (1 touring van with shared day room, hardstanding, fencing, shed and stables, two cesspools) at Pear View, Symonds Lane, Yalding, Kent, ME18 6HA in accordance with the
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terms of the application, Ref MA/09/0732, dated 1 May 2009, and the plans submitted with it, subject to the conditions in the attached schedule.

### **Background**

3. The appeal sites adjoin each other on the northern side of Symonds Lane and have a long planning history. Enforcement and Stop Notices were issued in September 2000 and separate planning applications were subsequently made for, in each case, the stationing of a caravan and a utility room for a gypsy family. Both of these were refused and subsequent appeals were dismissed in 2001 (Refs APP/U2235/A/01/1056272 & 1056273). By this time the families had moved onto the sites. Injunction proceedings were issued in 2003.
4. Further planning applications were made in 2005. These were also refused. They were considered at an inquiry in 2007 on the basis of a change of use for residential purposes for the retention of 2 mobile homes and 2 touring caravans (Pear Paddock) and 3 mobile homes and 3 touring caravans (Pear View) together with associated buildings and a new access to Pear Paddock. Both appeals were dismissed (Refs APP/U2235/A/06/2015287 & 2015291). Under the terms of the injunction the sites should have been vacated by the end of September 2007 and the operational development removed by the end of December 2007. An application for committal has been lodged but not heard. This may have occurred during the week after the hearing.
5. Immediately to the east of Pear View is another gypsy site known as Greentops (formerly Pear Orchard). This was also the subject of the Enforcement Notice in 2000. The Council pursued an injunction successfully but the site was sold to another family. Although it has been delayed, legal action is still being progressed pending, I gather, the outcome of these appeals.
6. The residential accommodation at Pear Paddock is towards the rear of the site. It comprises a mobile home occupied by Mr and Mrs Coster and their two younger children Jessie (18) and Joseph (16). The other mobile home is occupied by their elder son Thomas, his wife Lena and their children Tommy (5) and Tia (2). There is also a touring caravan and several timber sheds and stables mainly along the western boundary. The front part of the land is an orchard divided by a drive.
7. Mr and Mrs Coates live at Pear View with their daughter Tracey Wenham who is a single mother with two daughters Maryanne (15) and Lena Marie (10). They share a mobile home, a touring caravan for sleeping and a day room used as a sitting room and kitchen. This pitch is set back from the road and behind it is a mobile home occupied by their son Robert Coates and his wife Kelly and son Sammy (2). There is a small associated shed and also a touring caravan kept at the very rear on the parking area. Closer to Symonds Lane are paddocks and several stables and a metal shed outside the appeal site.
8. The biographies of the senior members of the families are set out at paragraphs 14-19 of the 2001 decision. I shall not repeat them here. Suffice it to say that they come from a gypsy background. The entire Coster family travel each summer for about 12-13 weeks doing landscaping work as well as dealing in horses and attending the traditional fairs. Thomas also works locally (mainly landscape gardening) and Joseph assists him. Mr and Mrs Coates do not travel because of their age and health. Robert Coates does groundwork

and travels away for work. Tracey has a part-time job in a public house but travels with her brother in the school holidays to attend fairs and deal in horses as well as carts, saddles and other accessories.

9. There is no dispute about the gypsy status of the appellants. Based upon the information before me, I agree that they are gypsies as defined at paragraph 15 of Circular 01/2006 *Planning for Gypsy and Traveller Caravan Sites*. Therefore relevant national and local policies regarding gypsies should be applied to the proposed use of the sites.

#### **Other preliminary matters**

10. During the hearing it transpired that the residential touring caravan on Pear View described earlier was inadvertently omitted from the application. The Council raised no objection to its inclusion in my consideration. However, local residents and the Parish Council would not be aware of such a change. Indeed, I note that one letter of objection refers specifically to one touring caravan in its heading. To my mind, formally assessing the implications of an additional tourer could be prejudicial to the interests of others.
11. At Pear Paddock I noted a total of only four buildings compared to the five specified in the application. One has apparently been removed recently. Nevertheless, I shall consider the proposal on the basis of the application.
12. On the day of the hearing the surrounding area was covered in snow. I was able to make an accompanied inspection on that day but made a further unaccompanied visit to the locality once it had melted.

#### **Main issues**

13. I consider that the main issues in both appeals are:

- The effect of the proposals on the character and appearance of the area;
- The effect of the proposals on highway safety along Symonds Lane;
- Whether there would be a risk to safety from flooding; and
- If any harm arises whether this is outweighed by other material considerations including the general need for gypsy sites, the availability of alternatives for the appellants and their personal circumstances.

#### **Reasons**

##### ***Character and appearance***

14. The appeal sites were formerly part of a large pear orchard. They lie in an area of pleasant countryside with open fields on either side and clearly outside of any defined settlement. There is a cluster of dwellings some distance to the east at Mill Place Farm and other development at the western end of Symonds Lane. However, the lane is otherwise largely undeveloped although there is a longstanding private gypsy site to the east.
15. Compared to the 2007 appeals four less caravans in total are proposed but, as referred to earlier, a further tourer is present at Pear View. In order to address highway issues, a roadside hedge and fence panels along the combined site

frontage and between the two entrances have been removed. In its place a grass verge has been created with a low post and rail fence and planting set back behind it on a small embankment. The "conspicuous gate" mentioned by the last Inspector has been replaced by a modest timber one. Other minor alterations have taken place by removing buildings, re-positioning Mr and Mrs Coates' mobile home and carrying out additional planting. The Council accepted that the visual impact has been improved.

16. As noted above, the adjoining site at Greentops is unauthorised and action is still being pursued. I shall therefore assume that the use will eventually cease. The 2007 decision referred to the removal of unauthorised structures, operational development and the access in order to comply with the outstanding Enforcement Notices. However, the fencing along both the eastern side of Greentops and its boundary with Pear View might remain together with conifer planting.
17. The mobile homes and buildings are clearly evident from Symonds Lane particularly from the west and through the gaps created by field entrances. These views would also be possible in the summer months. Owing to the absence of greenery at the time of my visits I was able to see their upper walls and roofs through the roadside hedge. The perimeter fence at Pear Paddock masks some of the domestic structures, parked vehicles and touring caravans but is, in itself, particularly unattractive due to its length and exposure. It is less easy to pick out the mobile homes at Pear View but they would become more noticeable if the current shielding offered by Greentops came to an end.
18. Although softened to an extent by low-level planting the gates, angled flanking walls and conifers at Pear Paddock are suburban features that are not really 'at home' in this rural setting. The entrances also allow for limited views along the drives and signal the presence of the developments but this criticism could be applied to most potential gypsy sites where direct vehicular access is required. Similarly, I attach limited weight to the consequences of interior lighting. No external lighting at the sites was drawn to my attention and this could be controlled by condition.
19. Both previous Inspectors expressed concern about the possible loss of the central section of hedge. This has now occurred. I have no photographic evidence about its appearance to assist in determining whether their fears have been realised. However, as well as being attractive in its own right, I imagine that its removal has weakened the sense of enclosure to the lane. Having said that, the verge that has been created is of a low-key appearance and there are other breaks in the hedges along Symonds Lane.
20. The above aspects of the developments all contribute towards the urbanisation that has been brought about. Nevertheless, the appeal sites are not covered by any landscape designations and are not seen in wider public views. Circular 01/2006 establishes that rural settings are acceptable in principle where not subject to special planning constraints. I accept this implies that the countryside is bound to be affected if progress is to be made in addressing the under-provision of gypsy sites. Equally, that is not to say they should all be accepted in 'ordinary' countryside regardless of their consequences.

21. It is difficult to see how further indigenous planting could meaningfully reduce the visual impact. In any event, as highlighted in the appeal decision at Rabbits Cross, Chart Sutton in 2008 (Ref APP/U2235/A/08/2063378), Circular 01/2006 warns against deliberately isolating gypsy sites and their occupants from the rest of the community. Nevertheless, Annex C accepts that landscaping can, amongst other things, help to blend sites into their surroundings and maintain visual amenity.
22. At the end of the day, as remarked upon by the 2001 Inspector, the developments appear intrusive as they form a scattered group in an isolated rural location. As I see it, it is because of their sporadic nature and position away from other buildings that they stand out to the extent that they do. So rather than being absorbed into the local scene they detract from it.
23. I therefore conclude that both individually and collectively the residential use of the appeal sites materially harms the character and appearance of the area. As such, there is conflict with Policy ENV28 of the Maidstone Borough-Wide Local Plan. In addition, the developments are contrary to Policy C4 of The South East Plan as they do not protect local landscape distinctiveness.

#### **Highway safety**

24. Symonds Lane is a single track country lane. There are separate accesses into Pear Paddock and Pear View. Since the last appeals the arrangements along the road frontage have been changed as noted above. Following measurements taken at the hearing the Highway Authority now raises no objection to the visibility from both accesses across the central area between them. Although it was difficult to discern the edge of the carriageway, visibility of about 2m by 37m can be achieved to the right (west) at Pear Paddock on exit and at Pear View it is some 2m by 20m to the left (east). These would be reduced by foliage on the roadside hedges.
25. In 2007 the dimension given to the west at Pear Paddock was 2m by approximately 24m. The increase that has taken place since then may be explained by the loss of a small section of hedge on adjoining land due, I am told, to a farm vehicle driving off the road. However, for Pear View a figure of 2m by approximately 40m to the east was given in 2007 which is considerably greater. This may be due to the fact that the entrance is quite wide so that when leaving the site drivers could position themselves to gain the clearest view. The same situation exists at Pear Paddock so that the actual visibility is slightly more than that measured conventionally from the 'centre line'.
26. However, the visibility splays rely on areas outside of appellants' control. Those over the recently created 'set-back' alongside the road involve land in the ownership of the other family. The Highway Authority takes a pragmatic approach to this and assumes that it would be in the interests of occupiers of both sites to ensure that vision remains unobstructed in future. There is much to be said for this as a probable outcome. The vision to the east of Pear View is across the existing entrance and bellmouth serving Greentops. Although its use may cease there is nothing to indicate that the action required would involve the erection of a high wall or hedge. Furthermore, there is a field gate to the Council-owned land to the east served from this tarmac apron which

would be likely to remain. In practice, therefore, the prospect of the available splays being obstructed is quite small.

27. Following a mobile speed check undertaken in 2006 it is agreed that the 85<sup>th</sup> percentile speed along the lane is in the region of 25-30mph (40-48kph). In line with the outcome of the last appeal the Highway Authority is seeking visibility splays of 2m by 70m. On the basis of *Manual for Streets* (MfS) the appellants maintain that the relevant standard is 2m by 43m.
28. MfS provides guidance on sight stopping distances for streets where 85<sup>th</sup> percentile speeds are up to 60kph as is the case along Symonds Lane. Furthermore, many of its key principles may be applicable to lightly-trafficked lanes in rural areas. This description was used by the last Inspector and is agreed by the Highway Authority except when Symonds Lane is used as a diversion route. However, there is no evidence that this occurs often. Even allowing for the weather conditions, vehicles travelling along the lane during my inspections were few and far between.
29. In these circumstances I consider that MfS offers appropriate guidance in assessing visibility at the site accesses. Nevertheless, when judged against it the visibility is sub-standard although the shortfall is fairly minimal to the right of Pear Paddock.
30. In terms of traffic generation from the appeal sites the Highway Authority suggests that some 24 movements per day in total is likely. In practice, shared trips take place and the number of journeys is fewer when family members are away travelling. The appellants' snapshot survey in 2006 recorded about 14 movements per day. For various reasons the last Inspector was "circumspect" about it and I shall base my assessment somewhere between the two figures. Due to the low usage of Symonds Lane there is nevertheless a significant increase in traffic along it. However, I consider that the proposals are only slightly above the "modest" additional daily vehicle movements referred to by Circular 01/2006.
31. Aside from the matters already mentioned, the last Inspector referred to vehicles towing caravans being slow-moving and they would also be hampered by the restricted width of the lane. This would be a further potential hazard but this is a straight section of road so approaching drivers would recognise well in advance if such an event were taking place. I also expect that this would be infrequent. Moreover, because of the alignment of the lane and the lack of other distractions, I consider that on-coming traffic has a good view of all vehicles about to emerge.
32. The local nature and geometry of the road means that most drivers using it are likely to be familiar with the conditions and will take account of hidden access points and the possibility of meeting an on-coming vehicle. Those exiting the site are, and would be, also acquainted with the situation and thereby exercise the necessary degree of caution. I understand that the sites were first occupied in 2001 and, since then, no accidents have taken place in association with Pear Paddock or Pear View. However, although acting as a pointer to the level of danger, it cannot be assumed that they would not occur in future.
33. This is not a situation where traffic is moving past the appeal sites at high speed and in considerable volumes. In fact, it is quite the reverse and this

reduces the likely frequency and severity of accidents. Having said that, the visibility in one direction at both access points is not ideal. The last Inspector concluded that their continued use would present a "considerable threat to the safety of road users". I consider that this threat has been reduced due to the improvements undertaken and the subsequent publication of MfS also sets a different context for assessing the adequacy of visibility splays. Circular 01/2006 indicates that gypsy sites should not be rejected if the impact on a minor road would not be significant. However, in my view, the situation in these appeals does not quite fall into this category.

34. Rather because of the limited visibility from both sites I find that the proposals result in harm to highway safety along Symonds Lane due to the possibility of collisions. However, my view is that the level of risk is quite low.

### **Flooding**

35. The appeal sites are in Flood Zone 1 as defined by PPS25: *Development and Flood Risk* where the probability of flooding is low. Although caravans and mobile homes are defined as highly vulnerable to flooding in Table D.2 it is confirmed in Table D.3 that they are appropriate development in Zone 1. Consequently I consider that the threat to life from river flooding would be insignificant. I therefore agree with the 2007 Inspector that there is no reason to exclude development from the appeal sites themselves.
36. However, Pear Paddock and Pear View form part of a 'dry island' at the western end of Symonds Lane which is surrounded by land in Flood Zone 3. This has a 1 in 100 or greater annual probability of river flooding in any year. PPS25 refers to safe access and escape routes. However, both this and the guidance at paragraph 4.59 of the associated Practice Guide seem to me to relate to development in flood risk areas where occupiers might need to evacuate because of danger to themselves should they remain. That is not the case here and there is no formal guidance about 'dry islands'. Nonetheless I agree with the last Inspector that "land use planning cannot divorce the implications of development on a particular site from the means of access to it."
37. The most recent significant flooding in the Yalding area was in October 2000. The Environment Agency (EA) estimates that this was a 1 in 60 event. At that time the eastern half of Symonds Lane was under water as was Lees Road at the western end of the lane. However, Mrs Coster was able to take her children to school by car since Lees Road and Gravelly Ways to the south were not seriously affected. The 2001 Inspector suggested that they were "fortunate" to be able to get through safely. However, from the evidence I heard the reality is that the families were not cut off in 2000 because although the lane to the east was impassable there was another option to the west.
38. Detailed modelling has been undertaken by the EA to predict the kind of flood levels to be expected during a 1 in 100 year flood event of the Rivers Medway, Teise and Beult which flow through this area. If the Medway flooded in these circumstances it is estimated that the depth of water at the junction of Symonds Lane and Lees Road would be 1m. In the case of the River Teise 0.5m. Because of the likely depth and velocity of water there would be 'danger for all' according to Table 13.1 of FD2320 (DeFRA).

39. Details were also provided of the extent of flooding in a 1 in 25 year event although without information about the likely depth of water. This shows flooding at the eastern end of Symonds Lane and along Lees Road. To the west problems are likely to be greatest towards Yalding whilst to the south the River Teise runs very close to the road at this point. The EA suggested that an event of this magnitude last took place in January 2003 but there is no evidence that this resulted in the appeal sites becoming inaccessible.
40. However, during significant flood events the roads leading to them would be impassable. The last Inspector highlighted some of the dangers of such a situation including driving off the road and breaking down in the floods thereby blocking it and forcing vehicle occupants to wade through deep and fast flowing water. Furthermore, if residents became stranded then the emergency services would be compelled to act putting other people at risk especially as they would be attending a part of the lane where there are no occupied buildings. Moving to and from the appeal sites in those circumstances could therefore be hazardous especially as occupiers might be 'caught out' by sudden inundation and may not be aware of what lies ahead when driving back home.
41. I appreciate that storms are of different durations but the EA indicated that 24-48 hours would be a typical period for flooding to persist. During that period the families could, of course, just 'sit it out' and they are linked to the EA's flood warning system. The chances of a medical emergency arising are remote. The appellants' indicated that they have had more difficulties during the recent episodes of snow in January 2010 and February 2009. This provides some perspective about the potential risk from flooding.
42. An appeal was allowed for a private gypsy site in a similar 'dry island' situation at Benover Road, Yalding in 2006 (Ref APP/U2235/A/06/2014951) but that decision pre-dated PPS25. The site at Brenchley Fields, Paddock Wood is within Flood Zone 3 but on the outer fringes of the potential flood area. The circumstances in which that appeal (Ref APP/M2270/C/09/2101094) was allowed are therefore not directly comparable to those before me.
43. Planning permission was given recently for two small gypsy sites in 'dry island' locations at Emmett Hill Nursery, Laddingford and land north of Willow End, Cross at Hand. In neither case did the EA object because the predicted depth of flooding on the roads leading to the sites would not be so deep as to be dangerous. In particular, the A229 serving the Cross at Hands site is raised above the likely level of flood water during a 1 in 100 year event thereby ensuring access. Although the EA did not explain its position on these other sites clearly until the hearing I consider that they can be distinguished in terms of risk especially since their level of occupation would be much lower.
44. Essentially the situation in respect of this issue is very much unchanged since the 2007 decision. In 2001 the number of residents was fewer but the expectation was that the appeal sites themselves would be liable to flooding. This is no longer the case as more sophisticated predictive techniques have identified a 'dry island'. The recent works nearby would have no impact on the River Medway and a flood defence scheme for Yalding is not funded and cannot be relied upon. I therefore reach a similar broad conclusion to my predecessor in 2007 to the effect that the residential use of the appeal sites increases the number of people at risk during significant flooding events. This is due to the

consequences arising for them and for others of the sites becoming 'marooned' at times when Symonds Lane is inaccessible.

45. However, in these circumstances, I see no direct conflict with PPS25 as explained earlier. Furthermore, Policy NRM4 of The South East Plan is concerned with sustainable flood risk management but does not deal with the situation that applies here. The proposals would therefore not be at odds with it. Clearly the risk is greater than if the sites were undeveloped. However, from the evidence provided, I consider that the overall risk to safety from flooding is not of a high order.

### ***Other considerations***

#### *Need for and provision of sites*

46. A Gypsy and Traveller Needs Assessment (GTAA) was produced for Maidstone and three other Kent authorities in 2005/2006. This identified that 64 additional pitches were needed prior to 2011 of which 32 should be in Maidstone. Because the study over-estimated the turnover on public sites this translates into a requirement of 8-10 new pitches a year. Since 2006, 59 pitches have been permitted although 20 of these are temporary permissions. However, according to the Council's database there are 53 unauthorised pitches in the Borough and this figure has not come down markedly in recent years. An explanation for the apparent lack of progress in reducing needs is that some sites were missed before and that there has been in-migration.
47. The partial review of The South East Plan is on-going. Policy H7 indicates that 35 pitches should be provided in Maidstone between 2006 and 2016 but the options for the Borough range between 32 and 48. Although there are no relevant policies in the Local Plan the Council accepted a need for additional sites. Its site allocations development plan document (DPD) is progressing in advance of the finalisation of the regional consideration of pitch numbers and distribution. Consultants are due to report in spring 2010 prior to consultation with the DPD expected to be adopted by mid 2011. However, in 2007 the Council anticipated that the DPD would be adopted towards the end of 2009. There has therefore been some delay.
48. Despite the steps being taken by the Council the sites permitted do not appear to have kept pace with the needs of gypsies and travellers. The level of need is persistent and the scale of the task is considerable. The DPD should lead to an improvement in the situation although that is still a little way off. The last Inspector found there to be substantial unmet need even though at that stage it was unquantified. The position is essentially unchanged and the appeal sites would go some way towards meeting it. In the light of these factors I give significant weight to the general need for gypsy sites.

#### *Available alternatives*

49. The public sites in the Borough at Ulcombe and Stilebridge are full and, as previously mentioned, turnover is not fast. In any event, there is a feud between the families on the appeal site and those on the existing public sites that would prevent occupation.

50. The Costers and the Coates are of limited means. Consequently they would be seeking public provision as they are unable to afford to buy another site themselves. The expansion of Ulcombe and Stilebridge is mooted but is not straightforward. It has not been ruled out completely and is to be progressed through the DPD. At this stage it is not clear whether any alternative public sites will be put forward.
51. Both families are registered as homeless but the Council have no caravan sites to offer them. Indeed, the Council accepts that there are currently no alternative sites. I give this matter significant weight.
52. As the legal action against the occupiers is being pursued there is a possibility that they would have to leave the appeal sites. If that were to happen there seems to be no alternative to a roadside existence. Apart from the hardship and uncertainty that would result to the families, Circular 01/2006 indicates that a settled base may reduce possible environmental damage caused by unauthorised encampment. I add to that the potential cost to the authorities of having to move them on. More pertinently in this case it is reasonable to assume that the Costers and the Coates would seek to remain in the vicinity which might put them at greater risk from flooding than currently.

*Personal circumstances*

53. The appeal decision of 2007 sets out the personal, medical and educational position of family members at paragraphs 49-54. Three years have gone by since then but I take account of those underlying details particularly in relation to health matters.
54. In addition, further evidence has been put to me. Mr and Mrs Coster continue to have back pain of varying degrees and Mr Coster has depression. Mr and Mrs Coates are suffering from stress due to the lack of planning permission for their mobile homes. Mr Coates has other health issues but there is more concern about Mrs Coates at the moment. She has been having hospital tests and counselling and attends the doctor regularly. The situation was described as "serious". The other family members are well.
55. Maryanne Wenham is at Mascalls School and due to take her GCSEs in the summer of 2010. After that, she hopes to go on to Hadlow College. It is quite rare, in my experience, for gypsy children to take public examinations and to contemplate moving onto further education. Lena-Marie is at Laddingford Primary School. In November 2008 the Headteacher commented that although she finds learning difficult progress is being made and her self-esteem is increasing. As I understand it, she is due to transfer to secondary school in 2010. Young Tommy Coster has just started at Laddingford and it is hoped that the other children will follow him there.
56. The benefits of a settled base for gypsy families in order that they can access health care and any children can attend school regularly are well known and are part of the consideration of sustainability in Circular 01/2006. Apart from those general advantages I place particular weight on the need of Mrs Coates for a caravan site rather than being forced to adopt an itinerant existence. Furthermore, the stage that both Maryanne and Lena-Marie Wenham have reached in their education is critical and I am concerned about the implications if they were forced to leave Pear View at this juncture.

57. Private applications should not be refused solely because the applicant has no local connections. However, in this case, all the senior members of the family were born in Kent and their personal histories indicate that they have lived or stayed in the county for most of their lives. They feel that this area is where they have their roots. Furthermore, although the occupation of the appeal sites is unauthorised being in one place has assisted Robert Coates in sourcing work and Tracey Wenham in finding a job.
58. Taken together, I do not describe the collective personal circumstances as significant in planning terms but nevertheless they are of some weight in favour of the appeals.

### **Final balancing**

59. This is the third time that an Inspector has had to consider appeals in respect of Pear Paddock and Pear View. Apart from anything else, the national policy background has changed significantly since the 2001 decisions. However, Circular 01/2006 had been introduced by the time of the 2007 decisions. Nevertheless, the proposed uses before me differ from those before that Inspector in a number of respects.
60. Firstly, the number of caravans proposed has been reduced and other minor changes made to the layout of the sites. In addition, the visibility at the access points has been improved and MfS has been published. The need for gypsy sites in Maidstone remains substantial but there is now a greater understanding of the level of that need. Finally, the personal circumstances of the families have 'moved on' due to the passage of time. Therefore, whilst on the face of it, the proposals are similar they are not identical. I have also reached my own views on the main planning objections raised by the Council. It follows that the balance that I have to perform is not the same as that carried out in 2007.
61. I find that the developments both on their own and in combination with the other site cause harm to the character and appearance of the area and are contrary to relevant development plan policies. Furthermore, there is harm to highway safety along Symonds Lane and the number of people at risk during significant flooding events is increased compared to the situation before the sites were occupied. However, in both cases, the level of risk is low and, in this way, I differ from the previous Inspector.
62. Set against the harm identified is the general need for gypsy sites in Maidstone as well as the wider need for sites in the county and nationally. There are no alternative sites for the appellants at present. Whilst matters have not progressed as quickly as expected at the last appeal positive steps are now being made to provide for sites through the DPD. The personal circumstances of the occupiers also weigh in support and especially the health needs of Mrs Coates and the education prospects of her grandchildren.
63. One of the objectives of Circular 01/2006 is to avoid gypsies becoming homeless through eviction from unauthorised sites without an alternative to move to. Dismissal of the appeal would, in all probability, eventually require those occupying them to vacate the sites. Although occupied without planning permission and in breach of an Enforcement Notice and an injunction they have to be regarded as their homes. I therefore recognise that dismissing the appeals would represent an interference with the home and family life of the

appellants. The strength of that interference is lessened by the fact that the uses have intensified since the appeal decisions in 2001 went against them.

64. In the final analysis, I consider that the totality of harm is not outweighed by the other material considerations that favour the developments. Therefore a permanent permission is not warranted.
65. Nevertheless, it was agreed that the general conditions and circumstances relating to the consideration of temporary permissions are met as set out in paragraphs 45 and 46 of Circular 01/2006. In such circumstances, substantial weight should be given to the unmet need. The appellants suggested a period of between three and five years.
66. If permission were given for a temporary period then the visual harm would be accepted for a short time span rather than indefinitely. This reduces the adverse physical consequences for the locality. Of course, during that time there would be highway safety and flooding risks to the occupiers and others. The 2007 Inspector referred to these as serious objections that cannot be ignored. I agree that there may be certain site specific matters that might prevent a temporary permission because of their severity. However, in the light of the changes made and the evidence before me, I consider that the level of danger at the appeal sites is not high.
67. Once the DPD is completed which is due to be in 2011 it is likely that the planning circumstances would change. In the meantime, the families would enjoy a stable existence with access to health services and education and would not have to keep moving on with all the disadvantages that brings. I therefore consider in the short term that the totality of harm would be outweighed. I appreciate that this outcome is different from that in 2007 but it arises primarily because I consider the harm in relation to highway safety and flooding is not so significant that granting permission for a short period of time should be prevented.
68. I am also conscious that it might be seen as surprising to grant even a temporary permission when the public authorities have opposed the residential occupation of these sites for the best part of ten years. I do not in any way condone the fact that the uses commenced without planning permission and have continued in defiance of various actions. Gypsies and travellers have the same responsibilities within the planning system as others. However, these families need a home and there are no lawful caravan sites available for them to move to. Furthermore, despite the work undertaken by the Council there remains a high level of need in the Borough.
69. Therefore having made my own assessment of the various components of these cases I judge that it makes sense for the families to remain where they are until the plan-making process is complete and alternative gypsy sites identified. A similar approach may not be justified when considering other long-standing and unauthorised gypsy sites but it is the view that I have reached here. Furthermore, these decisions should not be regarded as a precedent for the determination of any future applications for full permission for use of the land as a caravan site at either Pear Paddock or Pear View. In view of the anticipated date of adoption of the DPD and the uncertainty about

the delivery of public sites thereafter I consider that three years is a realistic temporary period. I intend to permit the developments on this basis.

70. I therefore find that a temporary planning permission for a period of three years is appropriate. The protection of the public interest cannot be achieved by means which are less interfering of the appellants' rights. They are proportionate and necessary in the circumstances and hence would not result in a violation of their rights under Article 8 of the European Convention on Human Rights.
71. Furthermore, in reaching my decision I have taken full account of my duties under the Race Relations Act 1976 as evidenced by, amongst other things, the references made to Circular 01/2006 which seeks to address the disadvantages experienced by gypsies and travellers.
72. It is claimed that the human rights of local residents are infringed as they are entitled to the peaceful rural existence that they enjoy. However, I was presented with no evidence to indicate that the activities connected with the appeal sites are disruptive. I therefore consider that allowing the appeals would not interfere with the home and family life of people in Symonds Lane or Lees Road under Article 8 of the European Convention on Human Rights. In addition, that this would not interfere with the peaceful enjoyment of their properties in compliance with the requirements of Article 1 of the First Protocol.

#### **Conditions**

73. I shall consider the conditions suggested by the Council having regard to the advice in Circular 11/95 *The Use of Conditions in Planning Permissions*.
74. As indicated above, I shall restrict the permission to three years. Because the justification for my decision stems to some extent from the personal circumstances of those living at the sites; I shall also impose a condition confining occupation to them. As they are gypsies a general limit on occupation is superfluous. To limit the visual impact and to control the use of the sites, the number of caravans should be limited to that applied for, the size of vehicles restricted and commercial uses precluded. For similar reasons, details of any external lighting should be agreed. Given the duration of the permission it is not reasonable to require that further planting be done.

#### **Conclusion**

75. For the reasons given above and having regard to all other matters raised, I conclude that the appeals should succeed.

*David Smith*

INSPECTOR

## **SCHEDULE OF CONDITIONS**

### **APPEAL A – APP/U2235/A/09/2114473**

- 1) The use hereby permitted shall be carried on only by Mr and Mrs Tom Coster (senior) and Mr and Mrs Thomas Coster and their resident dependants, and shall be for a limited 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 those named in condition 1) above, or at the end of three years, whichever shall first occur, the use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment brought on to the land, or erected on it or works undertaken to it in connection with the use shall be removed and the land restored to its former condition in accordance with a scheme of work including an implementation period previously submitted to and approved in writing by the local planning authority.
- 3) No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.
- 4) No commercial activities shall take place on the site, including the storage of materials.
- 5) No more than three caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than two shall be static caravans or mobile homes), shall be stationed on the site at any time.
- 6) Details of any external lighting shall be submitted to and approved by the local planning authority in writing prior to installation. The works shall be carried out in accordance with the approved details.

### **APPEAL B – APP/U2235/A/09/2114476**

- 1) The use hereby permitted shall be carried on only by Mr and Mrs John Coates, Mr and Mrs Robert Coates and Mrs Tracey Wenham and their resident dependants, and shall be for a limited 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 those named in condition 1) above, or at the end of three years, whichever shall first occur, the use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment brought on to the land, or erected on it or works undertaken to it in connection with the use shall be removed and the land restored to its former condition in accordance with a scheme of work including an implementation period previously submitted to and approved in writing by the local planning authority.
- 3) No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.

- 4) No commercial activities shall take place on the site, including the storage of materials.
- 5) No more than three caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than two shall be static caravans or mobile homes), shall be stationed on the site at any time.
- 6) Details of any external lighting shall be submitted to and approved by the local planning authority in writing prior to installation. The works shall be carried out in accordance with the approved details.

