# APPENDIX ONE

# Appeal Decisions

Hearing held on 20 June 2007
Site visit made on 20 June 2007

**by Wendy McKay** LLB

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

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**Decision date:**
**7th August 2007**

## Appeal A, Notice A Ref: APP/U2235/C/06/2030043
## 'The Chances' to the South of Lughorse Lane, Hunton, Maidstone, Kent, ME15 0QU

- 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 J Collins against an enforcement notice issued by Maidstone Borough Council.
- The Council's reference is ENF/8968.
- The notice was issued on 19 October 2006.
- The breach of planning control as alleged in the notice is without planning permission, the change of use of the land from agriculture to a mixed use comprising agriculture, the stationing of caravans for residential occupation, the storage of motor vehicles and the operation of a tree surgery/tree topping/landscape gardening business.
- The requirements of the notice are (i) cease permanently the residential occupation of the land; (ii) cease permanently the use of the land for the storage of caravans and motor vehicles unconnected with the agricultural use of the land; (iii) remove permanently from the land the caravan and all domestic paraphernalia; (iv) remove permanently from the land the motor vehicles unconnected with the agricultural use of the land; (v) cease permanently the use of the land for a tree surgery/tree topping/landscape gardening business; (vi) remove permanently from the land all materials, waste and debris arising from compliance with steps 5(i) to 5(v) above.
- The periods for compliance with the requirements are: steps 5(i) to 5(iv) two months; step 5(v) one month and step 5(vi) three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b) and (g) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails, and the enforcement notice as corrected and varied is upheld as set out below in the Formal Decision.**

## Appeal B, Notice B Ref: APP/U2235/C/06/2030045
## 'The Chances' to the South of Lughorse Lane, Hunton, Maidstone, Kent, ME15 0QU

- 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 J Collins against an enforcement notice issued by Maidstone Borough Council.
- The Council's reference is ENF/8968.
- The notice was issued on 19 October 2006.
- The breach of planning control as alleged in the notice is without planning permission, the carrying out of operational development being the construction of a hard surface access way at the approximate area shown cross-hatched on Plan B attached to the notice.
- The requirements of the notice are (i) remove permanently from the land the hardsurfacing shown cross-hatched on the plan attached to the notice by excavating

and removing all materials down to the underlying soil layer or bedrock; (ii) remove permanently from the land to a suitably licensed waste disposal facility all materials, waste and debris arising from compliance with step 5(i) above; (iii) restore the surface of that part of the land affected by the excavation under step 5(i) above 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, grade the spread top-soil to leave a level surface and reseed with grass.

- The periods for compliance with the requirements are: steps 5(i) and (ii) three months; step 5(iii) six months.
- 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 application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

**Summary of Decision: The appeal succeeds in part and the enforcement notice is upheld as varied in the terms set out below in the Formal Decision.**

## Procedural Matters

1. The appeal site has been split into ten plots under different ownership. The appellant has purchased the southern plot. It measures between about 4 and 40m in width and is some 114m in length. The appellant queries whether it was correct for the notice plan to show the whole field edged in red when ownership was known to be subdivided between different owners. There are no physical barriers that subdivide the plots on the ground and they do not form separate and physically distinct areas of land. All plots share the track which runs down the western side of the field. It is clear from the evidence presented to the hearing and my observations at the time of my site visit that other plots have been crossed to access the appellant's land during the wet winter months. There is clearly a degree of inter-relationship between the plots even though they are in separate ownership. I consider that it was entirely appropriate for the Council to select a larger unit than the land solely in the appellant's ownership as the area against which to direct enforcement action in this case.

## Appeal A, the appeal on ground (b)

2. On ground (b), the appellant submits that there has been no storage of motor vehicles nor has any part of the plot been used for any business purposes. The Council accepts that the storage of vehicles in a commercial capacity has not occurred at the site. The Council agrees that the notice could be corrected to exclude reference to any car storage activity.

3. Mr Collins is a self-employed tree-topper. The Council submits that there have been tree cuttings present in piles on the land and reports of bonfires on the site attributed to him burning waste debris from his business. The appellant has given clear evidence that his work had always been undertaken away from the site and that no business use was undertaken on the land. The Council agrees that there has been no recent evidence or reports from local residents that such activity has been continuing at the site. In my view, the Council's evidence in support of this allegation is vague and lacking in necessary detail. The observations made are consistent with any work having been limited to

initial site clearance. I find, on the balance of probabilities, that the appellant has not conducted his business activities on the site and I shall correct the notice in this respect. I am satisfied that this can be done without causing any injustice to the parties. The appeal on ground (b) succeeds to this limited extent.

**Appeal B, the appeal on ground (c)**

4. On ground (c), the appellant disputes that a hard surfaced access way measuring 8m wide and 40m in length has been constructed at the site entrance. He claims that the stone referred to by the Council does not extend to an area of that size. Although the notice plan shows the approximate position of the hard surface it does not set out specific dimensions for this area either in the alleged breach of planning control or the requirements. Whilst the dimensions of the hard surfacing may not be exactly as shown on the notice plan I do not consider that the notice is unclear or that the appellant has been misled by this. The notice plan does not require any correction in this respect.

5. The appellant contends that the amount of stone put down is de minimis, sufficient to facilitate vehicular use of an existing vehicular access into this field. The Council provides photographic evidence to support its case. The photograph taken on 21 August 2006 shows the view from the field entrance on Lughorse Lane with a hardstanding leading from the gate in a southerly direction. The Council's case was also supported by the direct evidence of local residents on this topic. I find, as a matter of fact and degree, that the amount of hard surface revealed by the Council's photographs is clearly not de minimis.

6. The appellant submits that what stone has been laid constitutes maintenance or improvement of an existing track which constitutes permitted development by virtue of Schedule 2, Part 9 of the Town and Country Planning (General Permitted Development) Order 1995 (GPDO). The appellant refers to the Court of Appeal case of *Cowen v SSE and Peak District National Park 2000 JPL 171* in support of his case. However, although the HM Land Registry documentation makes reference to a roadway or track as being shown tinted brown on the title plan, the evidence of the Council and local residents indicates that the title plan does not accurately shows the dimensions of what may have existed on the ground. The ordinary meaning of "improvements" is limited to changes which do not alter the basic character of the thing which is improved. The Council's photographic evidence confirms that the works undertaken have not been kept within the boundaries of the vehicle track marks that may have existed before the works began. The works far exceed the mere stoning up of the rutted tracks of an existing track. I find, as a matter of fact and degree, that the works undertaken have widened the track and so changed its character that they go beyond the scope of an "improvement" of a private way permitted by Part 9. The development which has taken place is not therefore permitted development under the GPDO. Since no other planning permission has been granted the appeal must fail on ground (c).

## Appeal A, the appeal on ground (a) and the deemed application for planning permission

### *The Main Issues*

7. The main issues are:

- Whether the appellant and his family enjoy Gypsy status for planning purposes.
- The effect of the development on the character and appearance of the surrounding countryside having particular regard to the location of the site within a Special Landscape Area.
- Whether there is a general local need for additional Gypsy site provision in the Borough.
- Whether the development would comply with the development plan Gypsy site provision policies and the adequacy of those policies to meet the accommodation needs of Gypsy families.
- The accommodation needs of the appellant and his family and the availability of alternative sites.
- The educational needs of the appellant's children.
- The healthcare needs of the family.
- Human rights.
- Whether any harm arising under the second issue would be outweighed by other material considerations.

### *The Development Plan and other policies*

8. The development plan comprises the Kent and Medway Structure Plan 2006 (KMSP) and the Maidstone Borough-Wide Local Plan 2000 (MBWLP).

9. The relevant KMSP policies are SP1, SS8, EN1, EN3, EN14, QL1, HP5 and HP9.

10. The relevant MBWLP policies are ENV26, ENV28, ENV34, ENV36 and H36.

11. As regards emerging policies, the Council has, in conjunction with other adjoining District Council's, undertaken a Gypsy and Traveller accommodation assessment (GTAA). The new statutory development plan process will make Gypsy site provision on the basis of this GTAA. The Council has published a Local Development Framework programme that is currently being revised. At the hearing, the Council explained that a Preferred Option Development Plan Document on housing need with specific allocations of Gypsy sites is likely to be available in April 2008 with its adoption likely by April 2010.

12. Relevant national policy is set out in PPS1: Delivering Sustainable development; PPG3: Housing; PPS7: Sustainable Development in Rural Areas; PPG18: Enforcing Planning Control and ODPM Circular 01/2006: Planning for Gypsy and Traveller Sites.

***Gypsy Status***

13. The appellant states that he and his wife are Romany Gypsies and have never lived in housing. The appellant provides details of their travelling pattern and his horse dealing and gardening work. The appellant's mother-in-law, Mrs Lena Smith, has recently joined the family on the site. He requests that any permission granted should include her as part of the family group. She has her own small touring caravan and no extra caravans are required on the site. Whilst the Council accepts that the appellant, his wife and children are Gypsies for planning purposes, it makes no such concession in relation to Lena Smith.

14. At the hearing, Lena Smith explained that she is 62 years old and her parents were Gypsies. She has lived on the road all her life. She is separated from her husband and has been left living on the side of the road with just a caravan and no towing vehicle. She is reliant upon her son-in-law to move her on from one place to the next. At times she has stayed on Hopfield Common and at other times she has stayed in lay-bys and car parks. The Council queried the fact that the HM Land Registry details for the site record her address as being in Sussex. She explained that this was her sister-in-law's address. Over the years, she has worked mostly in Kent doing general fruit picking but could only stay on the farms on a seasonal basis.

15. The Council provides no evidence of its own to contradict the oral evidence given by Lena Smith as to her nomadic habit of life and her reasons for moving onto the appeal site. The definition of the term "Gypsies and Travellers" is set out in paragraph 15 of Circular 01/2006. Taking all the available evidence into account I am satisfied, on the balance of probabilities, that the family group including Lena Smith meet the Circular 01/2006 definition of a Gypsy for planning purposes.

***The effect of the development on the character and appearance of the surrounding countryside***

16. The site is located in the countryside and the Low Weald Special Landscape Area (SLA). Whilst there are pockets of woodland and boundary hedges I consider that the area is generally open in nature. The site is positioned on the southern side of Lughorse Lane to the north-east of the settlement of Hunton. There is a belt of mature trees that separates the site from the playing fields and cricket field to the south. The remainder of the site is fairly open in character. There is a public footpath which crosses the site in a north-south direction.

17. When I visited the site I saw that the caravans could be seen from the field gate. Although there is a mature hedge along the road frontage, the caravans could also be seen from a variety of points to the west and east of this position on Lughorse Lane. They are, of course, apparent from the public footpath which crosses the field. Whilst the tree line along the southern boundary provides a good screen from the playing fields in summer, in winter the caravans would be more apparent from this direction. The caravans were not noticeable from the Greensands Way at the time of my site visit.

18. Circular 01/2006 paragraph 53 advises that local landscape designations should not be used in themselves to refuse planning permission for Gypsy and Traveller sites. Nevertheless, the SLA designation reflects the general quality

and visual interest of the landscape in this location. The development is inherently urban in nature and appears as an alien feature that is visually intrusive and out of keeping with the surrounding countryside. It can readily be seen from a variety of public viewpoints. The appellant has undertaken some planting around the plot boundary and further landscaping could be required by planning condition. However, it seems to me that the provision of planting around one corner of an otherwise open field would, itself, appear odd even when seen against the backdrop of the mature trees to the south. I do not believe that planning conditions designed to control the number of vans, their siting and colour would reduce the visual impact to an acceptable level. The appellant draws attention to the impact of the mobile homes at Cheveney Fruit Farm to the west and the adjoining depot. However, this development is not directly comparable to that which has taken place at the appeal site. The fact that this other site also has an adverse visual impact is not a strong argument in support of this appeal. I conclude that there is significant harm to the character and appearance of the surrounding rural landscape contrary to development plan countryside and landscape protection policies.

***Whether there is a general local need for additional Gypsy site provision in the Borough***

19. Circular 01/2006 requires that the new statutory development plan process introduced under the Planning and Compulsory Purchase Act 2004 should make Gypsy site provision based on a Gypsy and Traveller accommodation assessment (GTAA).

20. The result of the joint assessment of Gypsy and Traveller accommodation needs undertaken with other local planning authorities is now available in the form of a draft Final Report. This identified a need for 94 additional authorised site pitches across the study area for the period 2005-2010. This comprises an identified current shortfall of 70 pitches and need for a further 24 pitches through household formation. It is assumed that 30 pitches will be made available through pitch turnover on Council sites over a 5 year period. In total, 64 additional pitches need to be found. The report noted that the distribution of new pitches would be a matter for local debate, but 50% of those surveyed preferred Maidstone. The report strongly recommended that, in line with new housing needs assessments, new Gypsy and Traveller site allocations are made on the basis of preference, as expressed through the question on ideal location within the survey. If 50% of the provision was to be in Maidstone then this would equate to a need for at least another 30 pitches.

21. The study took as its benchmark the July 2005 biannual returns and the findings were not updated to reflect more recent counts. Maidstone found anomalies in its counting methodology in January 2006 and the July 2006 figures are significantly higher than previous figures. The Council places no reliance on the January 2006 Gypsy site count figures because the statistics were incorrectly completed. Its latest assessment would indicate that the January 2006 ODPM survey figures for unauthorised sites should have been 1 'tolerated site' and 45 'not tolerated' sites. In July 2006, there were 94 unauthorised caravans on Gypsies own land in Maidstone of which 64 are listed as 'tolerated' and 30 as 'not tolerated' when the GTAA study found no tolerated sites in Maidstone. This subsequent count suggests that, if anything, the need identified by the study is likely to be an underestimate of its true extent. As at

November 2006, there were 31 unauthorised caravans on 'not tolerated' sites in Maidstone.

22. The Council drew support from a list of Gypsy/Traveller pitches granted in the Borough since April 2006. This shows that 7 permanent sites and 3 temporary sites have been granted permission either by the Council or on appeal with 6 of these having been granted on appeal. This is fairly consistent with the findings of the GTAA which recorded that historic data from local planning departments revealed an average of 10 new pitches granted per year in 2003, 2004 and 2005 in Maidstone.

23. Circular 01/2006 paragraph 41 explains that, in advance of the consideration of new GTAAs at a regional level by the RPB, translated into pitch numbers for DPDs, other means of assessment of need will be necessary. I have had regard to the level of unauthorised encampments in the Borough as evidenced by the recent ODPM bi-annual counts; the GTAA; the numbers and outcomes of planning applications and appeals and the occupancy levels of the 2 existing public sites. These factors indicate that there is at present a substantial unmet need for lawful sites within the Borough. This is a material consideration to be weighed in the appellant's favour.

***The development plan Gypsy site provision policies***

24. The KMSP Policy HP9 relates to the provision of permanent and transit Gypsy accommodation. It states that where a need is established, provision should be made in accordance with Structure Plan policies for the protection of the environment and the countryside. The development is contrary to general policies for the protection of the countryside. Whilst the need for Gypsy accommodation has been established the provision of Gypsy sites is not a category of development for which an exception to those policies is specifically made.

25. Policy HP9 also sets out a sequential preference for sites to be located within the major/principal urban areas of rural settlements. However, this policy was drafted prior to Circular 01/2006 which advises, at paragraph 54, that rural settings, where not subject to special planning constraints, are acceptable in principle for Gypsy sites. As regards the remaining criterion of this policy, the Council does not seek to argue that the development has an adverse impact on residential amenity, highway capacity and highway safety. Local residents complain that there would be conflict between vehicles using the access track to visit the site and walkers using the public footpath. However, the route of the footpath coincides with only a very short section of the access track. Given the likely level of traffic generation I do not consider that there would be any material harm caused to the safety of users of the footpath.

26. The MBLP Policy H36 is a criteria-based policy relating to the provision of Gypsy sites. The first criterion of this policy relates to the Gypsy status of the applicant, although it does not fully reflect the revised definition of "Gypsy" set out in Circular 01/2006 which it pre-dates. As indicated above, I am satisfied that the appellant and his family enjoy Gypsy status for planning purposes.

27. The second criterion requires that the site should be satisfactorily screened by natural features. The caravans are easily seen from public viewpoints even during summer months and with the benefit of the new planting along the

boundary of the plot. There are uninterrupted views across the open flat field from gaps in the roadside hedge on Lughorse Lane. The natural contours of the land do not assist in providing screening for development in this location. The site is not, at present, satisfactorily screened by natural features. It is necessary also to consider whether the site is capable of being so screened. There is room for planting around the boundary of the plot, but the appellant accepts that it would take some 4-6 years to provide effective screening using natural hedgerow plants and trees. In any event, the provision of such a screen in a small corner of the field would not reflect the natural features of the immediate surroundings, even if native species were used.

28. The third criterion requires that the development of the site would not result in an undue concentration of such development which would adversely affect the character or amenity of the countryside or an area. At the hearing, local residents drew attention to other Gypsy sites in the locality. However, this appeal is concerned with one plot for two caravans to accommodate one extended family. In my view, the other sites mentioned are not sufficiently close nor sufficiently large for this to be regarded as an undue concentration of caravans in this area.

29. I conclude that the development does not meet all the criteria set out in the development plan Gypsy site provision policies. However, these policies were drafted or approved prior to Circular 01/2006 and are not entirely consistent with that advice. They are not based upon an adequate assessment of need. One of the main intentions of that Circular is to underline the importance of assessing needs at regional and sub-regional level and for local authorities to develop strategies to ensure that needs are dealt with fairly and effectively. In relation to forthcoming Development Plan Documents (DPDs) the advice given is that critieria must not be used as an alternative to site allocations where there is an identified need for pitches. In the light of the advice set out in Circular 01/2006, I find Policies HP9 and H36 to be inadequate to meet the existing need identified by the GTAA and other factors. The Council indicates that the policy framework in unlikely to change before 2010 at the earliest. This factor adds considerable weight to the appellant's case.

***The accommodation needs of the appellant and his family and the availability of alternative sites***

30. The family have lived on the roadside and have been constantly moved on. They have never owned or had security of any pitch on any site. They have 3 children, John Boy, Chantilly and Vinnie. The family had been looking for 2-3 years to settle down. It was the imminent birth of Vinnie and the need for the children to receive a proper education that brought them to the appeal site.

31. There are 2 Council-owned Gypsy sites in Maidstone Borough providing a total of 32 pitches but both are full with waiting lists. The Council does not suggest that they currently provide a realistic alternative for the appellant. The Council is not aware of any alternative site to which the appellant and his family could go.

32. At the hearing, Ann King, specialist nurse for Gypsy/Travellers, explained that as part of her job she regularly visits all of the local Gypsy sites. She knows

that there are no pitches currently available and it can be difficult to even get onto the waiting list.

33. At present, there is no alternative suitable available plot of land to which the family could move. They have nowhere else to go and, if the appeal is unsuccessful and the notice upheld, the family would be likely go back to a roadside existence. I conclude that this Gypsy family have a personal need for lawful accommodation and the obvious difficulties that they would experience in seeking a suitable alternative site is a material consideration of some weight in support of this appeal.

***The educational needs of the children***

34. Circular 01/2006 paragraph 5 explains that Gypsies and Travellers are believed to experience the worst health and education status of any disadvantaged group in England. Research has consistently confirmed the link between the lack of good quality sites for Gypsies and Travellers and poor health and education.

35. The letter dated 31 January 2007 from the Headteacher of Hunton C.E. Primary School confirms that Chantilly started at the school on 6 November 2006. She has attended the school regularly since that date. She will need support through intervention programmes to address the gaps in her mathematics learning and she will be placed on the SEN register for that subject only, as she does not have any other special needs apart from the need to catch up for lost time.

36. Her elder brother John Boy has missed an entire primary education. He is not now attending any secondary school as he is so far behind other pupils of the same age. The letter dated 19 June 2007 from Ann King advises that the baby, Vinnie, (born June 2006) would benefit from regular mother and toddler groups.

37. There is a clear benefit to Chantilly being able to attend the same school on a consistent basis and she has a need for a stable education. I believe that it would be very much more difficult for her to obtain the educational support which she presently receives without a settled base. I consider that living on the roadside would be likely to result in a serious disruption in the continuity of her education. In my opinion, the disruption that would be caused to her education in those circumstances is not comparable to that generally experienced by a child moving from one settled base to another or from one school to another whilst remaining at a settled base. The same will, in time, apply to Vinnie. In the absence of an alternative settled site within the area for the family to go to, I believe that the particular educational needs of these children amount to a material consideration of appreciable weight in support of this appeal.

***The healthcare needs of the family***

38. The appellant's family do not have any particular healthcare needs with the exception of Lena Smith. Nevertheless, there is a general benefit to all site residents, particularly, the young children, having easy access to a local doctor. Lena Smith has high cholesterol, high blood pressure and arthritis. She also has a bone marrow deficiency which results in a weak immune system and she

is prone to getting bad infections. She takes medication for these complaints which she presently obtains from the hospital casualty department. Her intention now that she has a settled base is to get on the list of a local GP.

39. There was no doctor's letter submitted in support of her oral evidence but I find no reason to question the reliability of what she said at a public hearing. I consider that her medical problems would prove to be far more difficult to manage in the long-term if she did not have a settled base and was living on the roadside. In my opinion, her particular medical needs should be afforded appreciable weight.

***Human Rights***

40. As regards the submissions made under Article 8 of the European Convention on Human Rights, the upholding of the enforcement notices and dismissal of the appeals would be likely to result in John Collin's eviction from the site and interference with his home and private and family life. In particular, it could result in the loss of his home with no satisfactory alternative. It is necessary to consider whether it would be proportionate to uphold the enforcement notice and refuse planning permission in all the circumstances of this case.

41. That interference and the rights of this Gypsy must be balanced against the wider public interest in pursuing the legitimate aims stated in Article 8, particularly the economic well-being of the country (which includes the preservation of the environment). The objections to the development which has taken place are serious ones. The overall harm to the countryside and the SLA could not be overcome by planning conditions. There is a need for restrictive countryside policies to be applied to the area and this restriction is an appropriate proportional response to that need. I am satisfied that this legitimate aim can only be safeguarded by the cessation of the use.

42. The need to maintain a Gypsy lifestyle is an important factor in the decision-making process. Those Gypsies without an authorised site face difficulties in endeavouring to continue their traditional way of life within the law. There is no site presently available for occupation by the appellant or the other site occupants in Maidstone Borough. The lack of available alternative accommodation makes the interference more serious. The appellant's home in this case has been established unlawfully. He bought the appeal site knowing that it did not have the benefit of planning permission and without seeking assistance from the Council. Since his home has been established without planning permission, his position in objecting to leave is less strong. I shall consider whether the dismissal of the appeal would have a disproportionate effect on the appellant under the next issue.

***Whether any harm arising under the second issue would be outweighed by other material considerations***

43. The development would materially harm the character and appearance of the surrounding rural area. It is contrary to development plan policies designed to protect the countryside and SLA. It does not meet all the criteria of the development plan Gypsy site provision policies. However, the relevant Gypsy site provision policies are not based upon a satisfactory assessment of need. In accordance with the advice set out in Circular 01/2006, a GTAA has

now been concluded. There is at present a substantial unmet local need for Gypsy sites in the Borough and the local planning policy framework is to change to meet existing unmet needs by way of identification of specific sites.

44. The appellant moved onto the site unlawfully in the knowledge that it did not have the benefit of planning permission for use as a Gypsy site. However, this particular family have a need for accommodation. There is no other site presently available for occupation by the appellant, and his family in the Borough. It is likely that if forced to leave the site they would be living "on the road" on an illegal pitch.

45. There are children living on the site and Lena Smith has a particular medical problem. The site would provide a settled base to enable these people to access health care facilities. The site would also provide a settled base from which Chantilly could attend school and receive a stable education.

46. I have considered all the factors in support of the development both singly and cumulatively. I believe that the material considerations in support of this appeal taken together do not outweigh the conflict with development plan and national policies designed to protect the countryside so as to justify the grant of a full planning permission. Although at present there is no alternative site, in all the circumstances it is not disproportionate to refuse the grant of permanent permission. I shall now consider whether the grant of a temporary permission is justified in this case.

47. The appellant submits that any temporary planning permission ought to be granted for a period that would enable the Council to search for sites and adopt a DPD that caters for the needs which have been identified. Such a DPD would be likely to assist the appellant to locate another parcel of land in the area and then obtain a planning permission for its use as a Gypsy site. In the meantime, the family would not have to leave the site and suffer the considerable hardship that a return to a wholly nomadic way of life would entail. The appellant asserts that a temporary period of 3-4 years is justified as it is unlikely that the Council would allocate any sites quickly.

48. Circular 01/2006 paragraph 45 draws attention to Circular 11/95 paragraph 110 which advises that a temporary permission may be justified where it is expected that the planning circumstances will change in a particular way at the end of the period of the temporary permission. Circular 01/2006 paragraph 46 explains that such circumstances might arise, for example, in a case where a local planning authority is preparing its site allocations DPD. In this case, there is an unmet need but no available alternative Gypsy and Traveller site provision in the area at present. The grant of a 3 year temporary planning permission would enable the process of identifying additional sites to have made substantial progress.

49. It is a main intention of Circular 01/2006 to address under-provision of Gypsy and Traveller sites over the next 3-5 years. In my view, there is a reasonable expectation that substantial progress will have been made as regards the availability of other alternative sites in the area to meet that need at the end of the period of 3 years. I believe that it is likely that the planning circumstances will have materially changed by that time. In the meantime the family would not have to leave the site and suffer the considerable

hardship that living "on the road" would necessarily entail. One of the main intentions of Circular 01/2006 is to help avoid Gypsies and Travellers becoming homeless through eviction from unauthorised sites without an alternative to move to. The grant of a 3 year temporary permission would also enable the family and Lena Smith, in particular, to access medical services without disruption. It would also enable Chantilly to continue with her education. I conclude that the factors in support of this appeal including the existing unmet need for Gypsy sites in the area, the lack of a suitable alternative available site and the personal accommodation needs and circumstances of this particular Gypsy family taken together justify the grant of a temporary planning permission for the period of 3 years.

50. Circular 01/2006 paragraph 46, advises that the fact that temporary permission has been granted on this basis should not be regarded as setting a precedent for the determination of any future applications for full permission for use of the land as a caravan site. I consider the grant of a temporary permission to be a proportionate response that strikes a fair balance between the competing interests of the wider public interest and the individual in this case. There would be no violation of the appellant's rights under Article 8 of the Convention.

***Other Matters***

51. The Council is concerned that if the development were to be permitted, it would make it extremely difficult for it to resist similar proposals in the future. For example, the original field has been sold off in separate plots and there is concern that to grant permission for the appeal development would encourage people to believe that they could secure rights to develop their plots for residential purposes notwithstanding that such land is in the open countryside. I have considered this case on its own merits and found that the relevant material considerations justify the grant of a temporary permission. The appeal has been considered on its own particular facts including evidence on health and educational needs, the accommodation needs of this Gypsy family and the availability of alternative accommodation. The various factors to be weighed in the balance will inevitably vary from case to case. The cumulative visual impact of any further development and the advice set out in Circular 01/2006 paragraph 54 as regards the need for Gypsy sites to respect the scale of the nearest settled community would also need to be borne in mind. I do not believe that to allow a temporary permission in this case would undermine development plan countryside policy or make it more difficult for the Council to refuse temporary permission for other similar development where appropriate.

***Planning Conditions***

52. At the hearing, the parties discussed planning conditions that might be imposed in the event of my allowing this appeal. For the reasons given above, I consider that the permission granted should be for a temporary period of 3 years. In order to reflect the personal circumstances and need which justified allowing this appeal in part, I believe that the permission should be made personal to the appellant, his wife, their children and his mother-in-law. Since a personal condition is being imposed it is not necessary to also impose a Gypsy-occupancy condition.

53. I consider that it is necessary to impose a landscaping condition in this case in order to protect the visual amenities of the countryside and the SLA. For the same reason, it is also necessary to impose conditions relating to the protection and replacement of retained trees or hedgerows and to specifically prohibit the commercial use of the site and bonfires without prior permission. Given that the landscaping scheme will supplement existing screening in the form of the plot boundary planting I do not believe that the capital outlay would be excessive. It is not unreasonable to impose such a condition on a temporary permission of this length.

54. There is presently one mobile home and one touring caravan on the site. The appellant agrees that any planning permission granted be limited to this number and type of caravans and that restrictions are placed upon the provision of buildings, hardsurfacing and other structures or erections. I believe that it is both reasonable and necessary to impose planning conditions to limit the use in this way. This is so as to preserve the rural character and appearance of the surroundings.

55. It is both necessary, given the rural location, and reasonable, in terms of capital outlay, to impose conditions relating to the submission and approval of details of the siting of the caravans; vehicle parking area; pedestrian and vehicular means of access and external lighting and to subsequently restrict those activities to that which has been approved. It is also necessary to approve a sewage disposal scheme to ensure adequate sewage disposal arrangements.

56. The conditions imposed requiring the submissions of schemes for approval will reflect the fact that the use has already taken place and the advice set out in Circular 11/95. They will provide for the cessation of the use in the event that the terms of the condition are not met. I consider that it is reasonable to include a lengthy fall-back date within which the use is required to cease until approved works are implemented to encourage the appellant pursue the necessary approvals.

57. The appellant operates a generator on the site and local residents have complained that this has resulted in disturbance. However, the condition proposed by the Council does not quantify the noise levels in any way and I consider that it is unduly onerous. There was no expert or detailed evidence relating to noise disturbance from this source presented to the hearing. Given the distance from noise sensitive premises, and the powers available to control such matters under other legislation, I do not consider that it is necessary or reasonable to impose a condition relating to noise emissions in this case.

58. The Council also proposes a condition withdrawing permitted development rights under Schedule 2, Part 2 and Part 4 of the Town and Country Planning (General Permitted Development) Order 1995. In my view, the Article 4(1) Direction already imposed is sufficient to safeguard the character and appearance of the countryside. It is not necessary to impose the condition sought by the Council.

## The effect of S180 of the 1990 Act (as amended)

59. S180 of the 1990 Act provides that where, after the service of an enforcement notice, planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission. In this case, Appeal A will be allowed in part but subject to planning conditions. If the requirements of the notice were varied to exclude that part of the development for which conditional planning permission is being granted then this could give rise to two inconsistent permissions, the conditional one being granted, and an unconditional one deemed to have been granted under S173(11) as a result of the variation cutting down the requirements. To avoid this possibility the requirements of the notice will not be varied in this way and reliance will be placed on S180 to mitigate the effect of the notice so far as it is inconsistent with the permission.

## Notice B, the appeal on ground (g)

60. On ground (g), the appellant proposes that the period for compliance for the Appeal B operational development should be extended to match the decision for the Appeal A change of use. In the latter case, a 3 year temporary permission will be granted to permit the residential occupation of the caravans on part of the site including the use of the access way. The hard surfacing of the access way facilitates this use. Indeed, during winter months and wet periods it would be difficult to gain vehicular access to the site without such a hard surfaced access track in place. Although there is some additional harm caused to the character and appearance of the surroundings over and above that caused by the caravans themselves, it does not result in any serious adverse effects on the amenities of nearby residents or have any material adverse safety implications for users of the public footpath. There is no deemed planning application before me on Appeal B whereby a temporary permission could be granted for the operational development comprised in the hard surfacing of the access way. In these exceptional circumstances, I consider that it is necessary and reasonable to extend the period for compliance to coincide with the expiry of the 3 year temporary permission to be granted on Appeal A. To this extent the appeal succeeds on ground (g).

## Formal Conclusions

### Appeal A

61. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should succeed in part only, and I will grant planning permission for one part of the matter the subject of the enforcement notice, but otherwise I will uphold the notice with corrections and variations and refuse to grant planning permission on the other part. The appeal on ground (g) does not therefore need to be considered.

### Appeal B

62. For the reasons given above and having regard to all other matters raised, I conclude that a reasonable period for compliance would be 3 years, and I am varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (g) succeeds to that extent.

## Formal Decision

## Appeal A, Notice A Ref: APP/U2235/C/06/2030043

63. I direct that the enforcement notice be corrected by deleting from paragraph 3 the words "the stationing of caravans for residential occupation, the storage of motor vehicles and the operation of a tree surgery/tree topping/landscape gardening business." And substituting therefor the words "and the stationing of caravans for residential occupation." I allow the appeal insofar as it relates to the land shown cross-hatched black on the plan annexed to this decision and I grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the change of use of the land from agriculture to a mixed use comprising agriculture and the stationing of caravans for residential occupation subject to the following conditions:

1) The use hereby permitted shall be carried on only by John Collins, his wife, Lucy Collins, their children and his mother-in-law, Lena Smith, and shall be for a limited period being the period of 3 years from the date of this decision, or the period during which the premises are occupied by them, whichever is the shorter.

2) When the premises cease to be occupied by John Collins, his wife, Lucy Collins, their children and his mother-in-law, Lena Smith, or at the end of 3 years, whichever shall first occur, the use hereby permitted shall cease, all materials and equipment brought onto the premises in connection with the use, shall be removed and the land restored to its former condition.

3) The residential use hereby permitted shall be restricted to the stationing of no more than one mobile home and one touring caravan at any time.

4) No temporary or permanent or mobile buildings, hardsurfacing including footpaths, or other structures or erections of any kind for use in association with, or ancillary to, the use of the site for the stationing of a mobile home and a touring caravan for residential purposes, shall be brought onto the site or constructed or erected upon the site without the prior written permission of the local planning authority.

5) The site shall not be used for any business, industrial or commercial use without the prior grant of planning permission by the local planning authority.

6) No bonfires or incineration of rubbish or organic material and vegetation shall take place on the site without the prior agreement in writing of the local planning authority.

7) Unless within 2 months of the date of this decision a scheme showing (i) the location and the area of the part of the site to be used for the stationing of the mobile home and touring caravan for residential occupation; (ii) the area to be used for the parking of any vehicles belonging to the occupiers of the site and visitors; (iii) the means of pedestrian and vehicular access to these residential and parking areas and (iv) details of any external lighting, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 3 months of the local planning authority's approval, the use of the site hereby permitted shall cease until such time as a scheme is approved and implemented; and if no scheme in accordance

with this condition is approved within 18 months of the date of this decision, the use of the site hereby permitted shall cease until such time as a scheme approved by the local planning authority or the Secretary of State on appeal is implemented.

8) Following the approval and implementation of the scheme pursuant to condition 7 above, the mobile home and touring caravan shall thereafter only be stationed in the approved location and area unless otherwise agreed in writing by the local planning authority.

9) The parking areas and means of access approved pursuant to condition 7 above shall thereafter only be used for those purposes without the prior written approval of the local planning authority.

10) No external floodlighting other than that approved pursuant to condition 7 above shall be installed or operated on the site without the prior written approval of the local planning authority.

11) Unless within 2 months of the date of this decision a scheme of landscaping using indigenous species, and which shall include indications of all existing trees and hedgerows on the site, and details of any to be retained together with a programme for the approved scheme's implementation and management, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented and managed in accordance with the approved programme, the use of the site hereby permitted shall cease until such time as a scheme is approved and implemented; and if no scheme in accordance with this condition is approved within 18 months of the date of this decision, the use of the site hereby permitted shall cease until such time as a scheme approved by the local planning authority or the Secretary of State on appeal is implemented.

12) No retained tree or hedgerow shall be cut down, uprooted or destroyed, nor shall any retained tree or hedgerow be topped or lopped other than in accordance with the approved landscaping scheme, without the written approval of the local planning authority. If any retained tree or hedgerow is removed, uprooted or destroyed or dies, a replacement tree or hedgerow shall be planted at the same place and shall be of such a size and species, and shall be planted at such time, as may be specified in writing by the local planning authority.

13) Unless within 2 months of the date of this decision a scheme showing details of the method of the disposal of sewage, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 3 months of the local planning authority's approval, the use of the site hereby permitted shall cease until such time as a scheme is approved and implemented; and if no scheme in accordance with this condition is approved within 18 months of the date of this decision, the use of the site hereby permitted shall cease until such time as a scheme approved by the local planning authority is implemented.

64. I direct that the enforcement notice be varied by deleting from paragraph 2 the words "edged red" and the substituting therefor the words "hatched and cross-hatched black"; by substituting the plan attached to this decision for the plan attached to the enforcement notice; by deleting from paragraph 5(ii) the words "and motor vehicles"; by deleting paragraph 5(iv) in its entirety; by deleting paragraph 5(v) in its entirety and by deleting paragraph 5(vi) in its entirety and substituting therefor the words and figures "(iv) Remove permanently from the land all materials, waste and debris arising from compliance with steps 5(i) to 5(iii) above. Time for compliance: Three months after this Notice takes effect."

65. I dismiss the appeal and uphold the enforcement notice as corrected and varied insofar as it relates to the land shown hatched black and outside the black cross-hatching on the plan annexed to this decision, and I refuse planning permission in respect of that land identified on the substituted plan, on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

**Appeal B, Notice B Ref: APP/U2235/C/06/2030045**

66. I allow the appeal on ground (g), and direct that the enforcement notice be varied: by deleting from paragraphs 5(i) and 5(ii) the words "Three months" and substituting therefor the words "Three years" as the periods for compliance and by deleting from paragraph 5(iii) the words "Six months" and substituting therefor the words "Three years" as the period for compliance.

67. Subject to these variations I uphold the enforcement notice.

*Wendy McKay*

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

| | |
|---|---|
| Alison Heine BSc Msc MRTPI | Heine Planning Consultancy, 10 Whitehall Drive, Hartford, Northwich, Cheshire CW8 1SJ |
| John Collins | Appellant |
| Lucy Collins | Appellant's wife |
| Lena Smith | Appellant's mother-in-law |
| Ann King | Community Nursing Services, 14 Pelican Court, Wateringbury, Kent ME18 5SS |

FOR THE LOCAL PLANNING AUTHORITY:

| | |
|---|---|
| Joanne Empett | Planning officer, Maidstone Borough Council |

INTERESTED PERSONS:

| | |
|---|---|
| Cllr Brian Mortimer | 161 Heath Road, Coxheath, Maidstone, Kent ME17 4PA |
| Cllr Colin Parr | Cobtrees, 83 Heath Road, Coxheath, Maidstone, Kent ME17 4EH |
| Colin Armstrong | Jennings Cottage, Hunton Hill, Hunton, Maidstone ME15 OQX |
| Mrs Aucamp | The Old Rectory, Barn Hill, Hunton, Maidstone ME15 OQT |
| Mr Harris | Oast House Cottage, Barn Hill, Hunton ME15 OQT, |

DOCUMENTS SUBMITTED AT THE HEARING

1 Attendance List
2 Copy letter sent by the Council to local people notifying them of the hearing and circulation list
3 Letter dated 19 June 2007 from Ann King Specialist Nurse for Gypsy/Travellers
4 Copy letter dated 18 June 2007 sent by Mrs S Wood Headteacher of Hunton C.E. Primary School to the appellant
5 Copy letter date 15 June 2007 from the occupant of 1 Orchard Cottages, Lughorse Lane, Yalding in support of the appeal
6 Planning Appeal Decision dated 18 April 2006 relating to Greengates, Lenham Road, Headcorn, Kent
7 List of Gypsy/Traveller pitches granted April 2006-present day

PLANS

A Plan 1:1250 showing appeal site

PHOTOGRAPHS

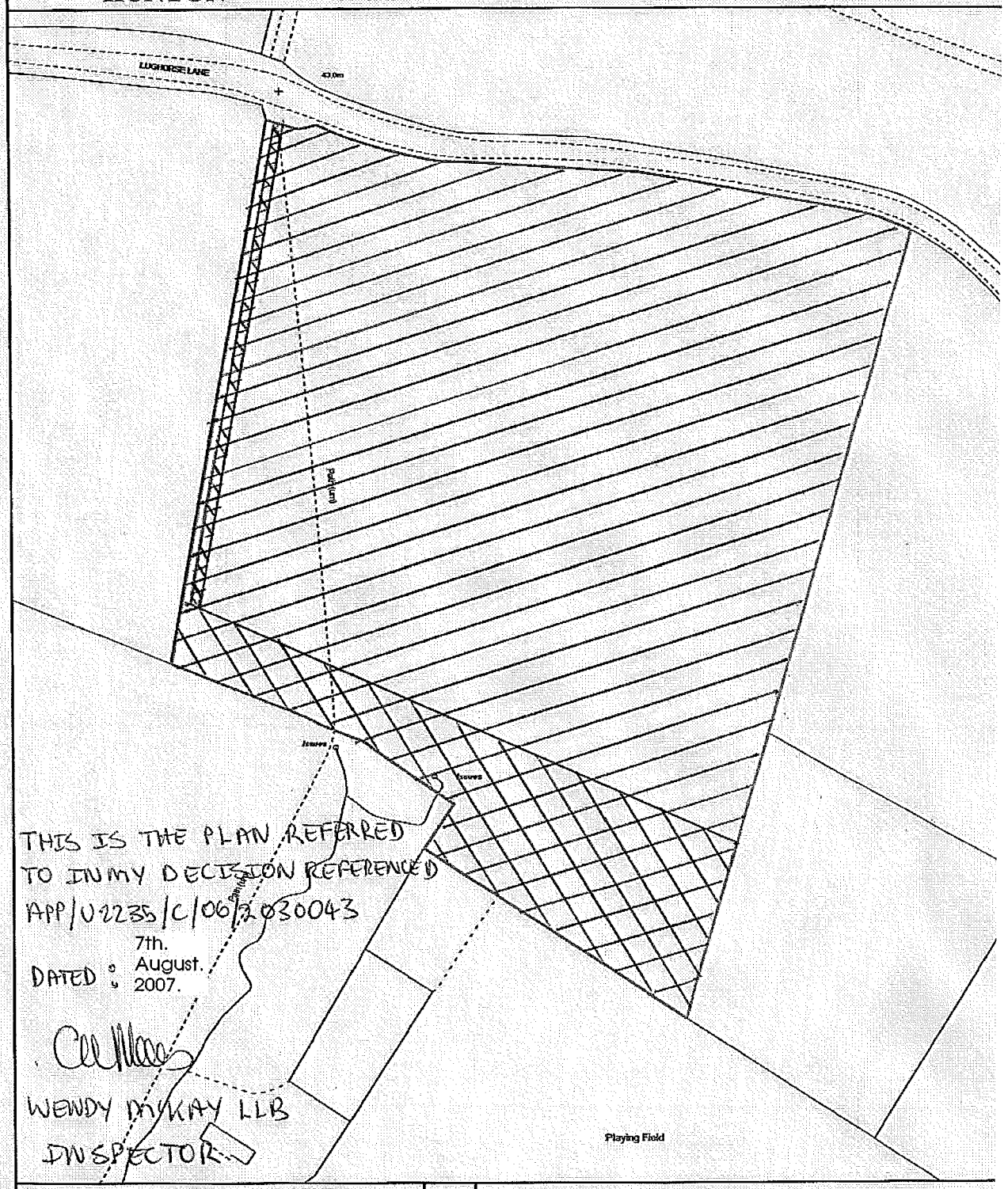
1 Bundle of 14 photographs of the appeal site submitted by the Council and local residents

# THE MAIDSTONE BOROUGH COUNCIL

## PLAN REFERRED TO IN ENFORCEMENT NOTICE A

**EXTRACT FROM O.S. MAP TQ 7250** **REFERENCE ENF/8968**

## THE CHANCES, LAND TO THE SOUTH OF LUGHORSE LANE, HUNTON




THIS IS THE PLAN REFERRED TO IN MY DECISION REFERENCED APP/U2235/C/06/2030043

DATED 7th. August. 2007.

WENDY MCKAY LLB

INSPECTOR



**Steve Goulette, Assistant Director Regulatory and Environmental Services**