



Appeal Decision

Inquiry opened on 25 July 2006

Site visit made on 26 July 2006.

by **S J Emerson** BSc DipTP MRTPI

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

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Date

12 SEP 2006

Appeal A: APP/U2235/A/05/1194421

Honeysuckle, Cross Drive, Chartway Street, Broomfield, Maidstone ME17 3NP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr S Scamp against the decision of Maidstone Borough Council.
- The application Ref MA/05/0911, dated 9 May 2005, was refused by notice dated 6 October 2005.
- The development proposed is change of use to residential and the stationing of one mobile home and one touring caravan for a gypsy couple.
- The inquiry sat for 2 days on 25 and 26 July 2006.

Summary of Decision: The appeal is dismissed.

Appeal B: APP/U2235/A/06/1198038

Honeysuckle, Cross Drive, Chartway Street, Broomfield, Maidstone ME17 3NP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr S Scamp against the decision of Maidstone Borough Council.
- The application Ref MA/05/2370, dated 22 November 2005, was refused by notice dated 8 February 2006.
- The development proposed is change of use from agriculture to residential and the stationing of one mobile home and one touring caravan for a gypsy couple.
- The inquiry sat for 2 days on 25 and 26 July 2006.

Summary of Decision: The appeal is dismissed.

Procedural Matters

1. The applications are identical except that more supporting information was submitted with the 2nd application. I have dealt with the appeals together.
2. The appellant occupied the site for residential purposes at the beginning of February 2004 but his touring caravan was stolen soon after. The present static caravan was moved onto the site in December 2004 and has been the appellant's home since that time. The use was thus in existence when the applications were made and I have considered them as ones made under section 73A of the Act.
3. When the applications were submitted, a Ms Trudy Waller was also living on the site, but she does not do so now and neither her gypsy status nor her personal circumstances were matters considered at the Inquiry (although she is referred to in a number of the background documents).

4. There is a valid enforcement notice on the site which was served in 2002 and not appealed. There is also a High Court injunction requiring the appellant to leave the site within 3 months if the appeal on the first application is dismissed.
5. The application site is the front portion of a paddock owned by the appellant. The authorised use of the land is for the keeping of horses. There is a wooden field shelter in the front corner of the application site.

Main Issues

6. From what I have heard, seen and read I consider that the main issues are:
 - (a) The effect of the development on the character and appearance of the area, including any cumulative impact with existing and permitted caravan sites nearby.
 - (b) Whether there are any material considerations to outweigh any harm or conflict with policy; including:
 - the need for sites for gypsies in the District;
 - whether any need is likely to be met in the foreseeable future;
 - whether the appellant is a gypsy as defined in ODPM Circular 1/006;
 - the personal circumstances of the appellant.

Planning Policy

7. The development plan consists of the Kent and Medway Structure Plan 2006 and the Maidstone Borough-Wide Local Plan 2000. The appeal site is in the countryside. No national or local designations apply. The aim of structure plan policies EN1 and EN3 is to protect the countryside; development which would harm any aspect of its character should only be permitted where the need for the development outweighs the harm. Policy HP9 states that where there is a need for gypsy accommodation provision should be in accordance with the structure plan's environment and countryside policies. It also gives broad locational guidance for the provision of sites. It is not clear to me whether this policy applies primarily to sites to be allocated in the Local Development Framework (LDF) or the consideration of individual applications. In any case, the Council did not rely on the criteria of this policy to oppose this development.
8. In the local plan, policy ENV28 indicates that planning permission will not be given for development which harms the character and appearance of the area and limits development in the countryside to certain exceptions including exceptions indicated by other policies in the plan. It is agreed that one such exception is gypsy sites subject to policy H36.
9. Policy H36 indicates that planning permission for gypsy sites is dependent on 3 criteria being met. These are (1) that the resident has a nomadic way of life and travels for the purpose of making a livelihood (2) that the site should be satisfactorily screened by natural features and (3) that the development will not lead to an undue concentration of such developments which would adversely affect the character or amenity of the countryside or area. At the Inquiry, it was agreed that criterion 2 is to be interpreted as "*capable of being screened*" if satisfactory screening could be secured by a condition. I agree that this is a reasonable approach. The Council interpreted criterion 3 as one of assessing visual impact from any nearby caravans sites (not solely gypsy sites) and that an "undue concentration" was to be judged in relation to such factors as distance between sites, inter visibility,

location on the same route and so on. The appellant considers that this criterion is unacceptably ambiguous in the absence of any guidance in the policy or supporting text as to when an "undue concentration" might occur.

10. I agree with the Council that this criterion is primarily concerned with the visual impact on the character and appearance of the area from a grouping of sites. While the policy may have been intended to apply solely to gypsy sites (as interpreted by other Inspectors), I consider that since the primary land use is the use of land as a caravan site, consideration of any "undue concentration" should be in relation to all residential caravan sites in the locality. Although the planning definition of gypsies does not include consideration of race, gypsy sites in any one area may be occupied by a particular racial group and to apply the policy as originally intended could, in my view, wrongly focus on the occupiers of sites rather than the nature of the land use. I agree with the appellant that "undue concentration" is a rather ambiguous concept, but the Council's approach at the Inquiry can be straightforwardly expressed in conventional planning language as whether the cumulative impact of residential caravan sites in the area would be harmful. This approach is reflected in my main issue.
11. Given my interpretation of the criteria in policy H36 set out above, I do not regard the policy as the type of complicated and overly restrictive policy which Circular 1/2006 warns against, although I recognise that it was formulated without the proper assessment of the need for gypsy accommodation that was required by the previous gypsy circular. I know from past experience of gypsy appeals in the Borough that the Council has often interpreted the policy relatively strictly, but I do not regard the policy as fundamentally flawed.
12. Since the adoption of the local plan, ODPM Circular 1/2006 *Planning for Gypsy and Traveller Sites* has been published. Among other matters, the Circular expands the statutory definition of gypsy for planning purposes to encompass those who, in certain circumstances, have ceased to travel. It is the appellant's case that he retains a nomadic habit of life and he does not rely on the exceptions in the Circular's new definition for when travelling has ceased.

Reasons

Character and appearance

13. Cross Drive is an unmade track which serves about half a dozen dwellings and other plots of land, mainly used as paddocks. The dwellings are well separated from each other in large plots, appear long established and are generally modest in scale. There is a well wooded backdrop to the countryside around Cross Drive. The track is the route of a public footpath; after the last dwelling, the track becomes a path which emerges after a short distance on Gravelly Bottom Road. In my view, Cross Drive has an attractive rural character because built development and residential use do not predominate and are contained within a well-vegetated setting.
14. The southern end of Cross Drive joins Pitt Road close to its junction with Chartway Street. Pitt Road is a narrow country lane. There is a chalet bungalow on the corner of Pitt Lane and Chartway Street with a well screened curtilage. To the east of that property there is a caravan site containing a mobile home (known as The Glen) to the rear of that site, with a frontage on Chartway Street, is another caravan site where mobile homes have recently been installed (known as Bridgefields). Pitt Road contains some scattered development,

but runs through a generally well-wooded landscape. About 700m northwest along Pitt Road there are 2 adjoining caravan sites, Bramblewood and Bramblewood Stables. These are generally enclosed and screened from Pitt Road. West of its junction with Pitt Road, Chartway Street has almost continuous frontage development along its northern side for about 800m. Opposite Bridgefields is a large golf club house and car park.

15. The appeal site is at the southern end of Cross Drive. It has an open frontage defined by post and rail fencing. The appellant's caravan is sited close to the southern boundary. Because of the open frontage the caravan is conspicuous. It can also be seen from the junction of Cross Drive and Pitt Road and glimpsed across intervening land when travelling west along Chartway Street. There is gravel surfacing alongside the caravan which provides an informal parking area.
16. In my view, the caravan detracts from the rural appearance of the area because it looks incongruous, appearing as a stark, isolated element unrelated to its surroundings. The appeal site lacks the well-vegetated boundaries which are characteristic of residential plots in the immediate area and the well vegetated, naturalistic gardens which help soften the setting of most of the dwellings and integrates them with the surrounding countryside. I consider that the caravan erodes the rural character of Cross Drive and conflicts with policy ENV28.
17. I recognise that the appellant's static caravan is a relatively modest unit and that he would be willing to accept a condition specifying only one caravan on the site and for any change in the caravan to be subject to approval by the Council. I also recognise that there is no domestic clutter. However, these considerations are most relevant only if I were to grant a permission personal to the appellant, which would depend on the weight I attach to personal circumstances. I address this matter later in the decision. The application is for use as a caravan site and in the first instance I must consider the full implications of that use.
18. A twin unit mobile home comes within the definition of a caravan. Such a unit is of a similar scale to a small bungalow and would be considerably larger than the appellant's current static van. It would have a much more dominant presence on the plot and be more readily noticeable in views from Pitt Road and Chartway Street. In addition, if the site were to be occupied by more than one person it is likely that there would inevitably be more domestic paraphernalia and vehicles. Even if the appellant were to live there it would be reasonable to assume that in the future his home might be shared with others. If the site is to be occupied by gypsies it is reasonable to expect that they would wish to retain a touring caravan in addition to any static caravan/mobile home to enable them to pursue the nomadic element of their lifestyle. The appellant states that he parks his touring caravan elsewhere but since such a caravan would normally be an integral part of the lifestyle of gypsies it would seem unreasonable to generally preclude such a unit from the site. Thus the permanent use of the site as a gypsy site would be likely to result in a much greater visual impact than occurs at present, which I consider is already harmful.
19. The appellant considers that the site could be adequately screened to comply with H36(2). The appellant planted some hedging plants last winter. From close examination, I saw that there is a single line of mixed native hedge plants along the frontage to Cross Drive, along the southern boundary and a short section of the northern boundary. At present these do not provide any screening and are competing with weeds. In my view, a much deeper belt of planting would be needed to create a hedge to provide some screening. I consider that it

would take 5-10 years to create the well vegetated setting which would soften any caravan/mobile home on the site and provide a more sympathetic context. However, that would be dependent not only on the satisfactory choice and implementation of substantial planting, but also its retention. The normal condition requiring the maintenance of new planting covers only the first 5 years. I do not accept that Council's concern that the scale of new planting would itself be out of keeping, given the well wooded character of this area of countryside, but in my view it would take too long to be of much benefit and would need to be permanently retained to reduce the harm. Thus the development fails to meet criterion (2) of H36.

20. Although residents were concerned that Cross Drive was becoming "caravan alley" I saw only the appellant's caravan along this track. I understand that caravans on the 3 pitch Apple Blossom mobile home park can be glimpsed in winter from the footpath at the northern end of Cross Drive, but it was not suggested that these were in any way conspicuous or harmful. The regenerating coppice woodland opposite the appeal site screens views from the track of The Glen in Pitt Road. In my view, the caravans at Bramblefields/Stables are distinctly separate to the development around the junction of Cross Drive, Pitt Road and Chartway Street. I am satisfied that the addition of one further caravan in this area would not result in harm as a result of its cumulative impact and, in so far as I am able to interpret and apply that criterion, would not amount to an undue concentration of sites. I place particular emphasis on the lack of inter-visibility in public views. I note that this assessment differs from that made by an Inspector in 1994 in dismissing an appeal for 2 mobile homes on land close to the present appeal site, but abutting Chartway Street. I note, however, that that site is more visible from Chartway Street than the appeal site.
21. The site is in an area without any special countryside designation which contrasts with a significant proportion of the Borough which is covered by Green Belt, AONB or the local Special Landscape Area designation. I recognise therefore that it is the type of countryside where a gypsy might reasonably look to find a suitable site. I also recognise that in most circumstances any residential development in the countryside is likely to have some adverse impact on existing rural character. Nevertheless, for the reasons given, I consider that the retention of the use would result in significant material harm to the rural character of the area.

Other material considerations

The need for more gypsy sites in the district

22. The Council accepted at the Inquiry that there is a need for more gypsy sites in the district. Along with adjoining authorities, the Council has commissioned an assessment of the accommodation needs of gypsies and travellers in the area. This work has largely been completed, but not yet published. No previous assessment of such needs had been carried out. The latest biannual figures for the ODPM counts were for January 2006. The Council has serious concerns about the way the number of unauthorised caravans have been apportioned in this count between tolerated and not tolerated sites on gypsies' own land. As a result, they had attempted to retrospectively reappraise the number of unauthorised sites at the time of the count. The Council's best estimate is that on sites owned by gypsies there was 1 caravan on a tolerated site and 45 on sites not tolerated. In addition, the Council accepted that there were further unauthorised caravans on a site near Yalding, since the

authorised use of that site is during the summer months only. There was no serious dispute that the Council's revised figures represent a reasonable order of magnitude of unauthorised encampments.

23. In recent years, the Council has always accepted that there is some need for additional gypsy sites in the District. Over the past 5 years, the number of unauthorised sites recorded in the ODPM counts has been increasing. But such figures do necessarily represent the true level of need, especially in an area such as Maidstone Borough where there are already a large number of gypsy families and sites. There may be additional accommodation needs from suppressed household formation such as grown up children still living on their parents' pitch but wanting their own site and families living in permanent accommodation only because of the lack of suitable sites for caravans. Some of the existing sites have the benefit of only temporary planning permissions.
24. I am satisfied that there is a substantial if, as yet, unquantified level of need. The need weighs in favour of allowing the appeal.

Whether the need for more sites is likely to be met in the near future

25. The Council anticipate that a Site Allocations Development Plan Document will need to make specific allocations of land for gypsy sites. Given the likely level of need that will be identified by the needs assessment such an approach is consistent with advice in Circular 1/2006 on making adequate provision for the needs of gypsies. The Council envisage that this DPD might be adopted by the end of 2008. In my view, it would be quite possible for this timetable to slip, given that the Council is also progressing a Core Strategy with anticipated adoption in the first part of 2008. I am also mindful that the allocation of land for gypsy sites is likely to prove controversial and that even when sites are allocated in an adopted plan they still need to be acquired and developed for use by gypsies. I therefore consider that it is likely to be at least 3 years before there are any significant number of new gypsy pitches available.
26. The fact that the considerable local need for more pitches will not be met in the short term weighs in favour of the appeal. But as the present appeal is for only one pitch, whereas it is likely that a considerable number of pitches will need to be provided on allocated sites, it would make little difference to provision in the area.

The gypsy status of the appellant

27. The Council had previously accepted that the appellant is a gypsy for planning purposes and did not change their view at the Inquiry. The gypsy status of the appellant is, however, strongly contested by the Cross Drive Residents' Association.
28. The new definition for planning purposes in Circular 1/2006 retains, as a starting point, the statutory definition of a gypsy, namely persons of a nomadic habit of life, whatever their race or origin. Various court judgements over the years have qualified the way that definition is to be interpreted. I have had regard to the approach set out by Auld L J in paragraph 57 of the judgement in *Wrexham County Borough v National Assembly For Wales, Michael Berry and Florence Berry* (Court of Appeal 19 June 2003). The judgement in *R v South Hams District Council, ex p. Gibb* 1995 QB138 CA indicated that the purpose of travelling is a relevant consideration as *nomadic habit of life* involves purposive activities, including work. I also note from that judgement that the links between members

of any group are important, as living and travelling together in cohesive groups is a feature of nomadic peoples. I recognise that the periods spent travelling by gypsies may be comparatively short or undertaken only seasonally and that long periods without travelling for specific reasons do not necessarily result in gypsy status being lost. Over a period of time the gypsy status of any individual may be lost and may be regained. The relevant date for determining the gypsy status of the appellant is the date of my decision.

29. The appellant lived in a house in Faversham until he was 10 when his father, who had a gypsy background, died. He then went to live with his father's father at a gypsy site in Darenth. He developed a close relationship with his uncle (Mr Len Scamp) who is a similar age and other members of the extended Scamp family who were (and are) gypsies. From that time he did a range of work, alongside other members of the Scamp family, including work in Kent's apple and cherry orchards, potato picking and, in the winter, work in the Darenth woods. He also undertook other forestry work around the country such as thinning plantations and cutting trees beneath power lines. This early background is supported by some statements from other members of the Scamp family and there is no contrary evidence. In 1977 he had a serious accident on a motorcycle whilst bird scaring in cherry orchards. This left him with permanent damage to one leg.
30. In the early 1980s the appellant married and his first child was born on the road. When his second child was born, they moved to a Council house in Sittingbourne which the appellant occupied with his wife for 10 years until they divorced in 1996. The appellant states that he found living in a house difficult and that he often went off in his caravan. The generality of these events is supported by a short statement from his former wife. There is no direct contrary evidence. I am satisfied that between the age of ten and when he moved to Sittingbourne the appellant had had a nomadic habit to life travelling for the purpose of work. I am also satisfied that, on the balance of probability, that an element of nomadism continued for the period that he lived with his wife in Sittingbourne and that this was sufficient to retain his gypsy status.
31. For the last 10 years the appellant asserts that he has maintained a nomadic habit of life, living in a caravan, stopping for a few months at a time on gypsy sites in Kent owned by members of the Scamp family, in the yards of firms where he has worked and in the cherry orchards when undertaking bird scaring. For the past 4 years or so Mr Scamp has also had a full time job as a driver for a food distribution company based in Faversham. During this period, Mr Scamp indicates that his occupation of houses have been confined to staying occasionally at weekends around 2000 with a Mrs Naomi Laura Berriman at 40 Rectory Road, Sittingbourne and briefly, overnight, at his mother's house in Faversham, but not for several years.
32. There are statements from others which support aspects of the appellant's account, including: that in "the late 1990s" Mr Scamp stopped at times at his cousin's gypsy site in Staplehurst; that in "later years" he has stopped on another cousin's pitch at the Council owned Stilebridge Gypsy site; "that for the last 4 years" he has stopped for 2-3 months at Mr Len Scamp's site at Bramblewood; that he stopped for 2-3 months each year at another cousin's site at Longfield; from 2 fruit buyers that Mr Scamp had stopped in the cherry orchards for the past 2 years (which would have been 2002 and 2003) and worked and stayed in another orchard for the last 4 years (2002-2005); and from a business in Throwley that "in the last few years" Mr Scamp has from "time to time" parked his caravan in the

firm's yard. The period given in the appellant's evidence for working and staying in the orchards ranges between a few weeks to a couple of months. Mr Scamp maintains that he is able to combine his traditional work in the orchards with his job as a lorry driver because the former is mainly bird scaring which is most needed in the evenings and at weekends when the fruit pickers are not on site and because he has 4 weeks leave and "10 lieu days". Mr Scamp also states that his keeping and trading in horses is part of his cultural background and that he likes to attend traditional fairs, where he may trade in horses.

33. Land Registry Records indicate that a Stephen Scamp and a Naomi Laura Berriman purchased 40 Rectory Road, Sittingbourne in 2001. The land transfer document (TP1) and the mortgage deed are signed (albeit indecipherable) by those parties in front of a witness. At the Inquiry, Mr Scamp denied all knowledge of being the owner of 40 Rectory Road or of signing any documents relating to its purchase or sale and could only suggest that the Land Registry was wrong. My understanding is that Land Registry records are a definitive statement of the ownership of property and so, as a matter of fact, Mr Scamp was the owner of 40 Rectory Road between 2001 and 2005.
34. Further evidence from the Land Registry produced by the Residents' Association indicates that Stephen Scamp and Naomi Laura Scamp purchased the appeal site in May 2001. It is reasonable to conclude that Naomi Laura Scamp and Naomi Laura Berriman are the same person. Mr Finch states that he had spoken to Mrs Naomi Berriman/Scamp and she had referred to her "divorce" from Mr Scamp, but I come to no conclusion as to whether they were actually married. At the Inquiry, Mr Scamp stated that he had been unaware of the Land Registry entry for his land until it had been produced in the representations from the Residents' Association; that the information was wrong and that the land had not been purchased jointly with Naomi Laura Berriman/Scamp. Mr Scamp indicated that once he had been made aware of this error he had sought legal advice to get it changed. Mr Scamp is now recorded by the Land Registry as the sole owner.
35. I find it highly improbable that 2 separate property transactions involving Mr Scamp could include such fundamental errors as Mr Scamp's account requires. Whilst I might have thought that the appearance of his name on the transactions relating to 40 Rectory Road, could have been the result of fraud by others, if that were the only disputed transaction, the fact that he also disputes the details on another transaction with which he must have been directly involved, leads me to doubt his account. As a result, I have to question the credibility of his evidence generally where that is not supported by other material.
36. Counsel for the Residents' Association concluded on all the evidence that the appellant had lived at 40 Rectory Road between 1999 and 2003 and was not pursuing an element of nomadism as he asserts. I can see the logic in that conclusion, based on such considerations as qualifying for the right to buy discount and the apparent close relationship between Mrs Berriman/Scamp and the appellant, but it does not necessarily preclude an element of nomadism in Mr Scamp's lifestyle at that time. Ownership of a house does not, in itself, directly affect a person's gypsy status.
37. The number and varied sources of statements supporting aspects of Mr Scamp's lifestyle prior to moving onto the appal site form a strong body of evidence that the appellant has consistently and regularly undertaken an element of travel and that part of this travel has been associated with work in orchards in Kent. This is not incompatible with the appellant having a settled base at a house in Sittingbourne for a period either side of 2001, as I think

is probable. The weeks spent away living and working in orchards have continued since the appellant took up his full-time job and since moving to the appeal site. There is no evidence that the appellant intends to abandon this well established routine. I recognise that the appellant does not travel as part of a group, but he clearly has close links with that part of the extended Scamp family who are gypsies. Living and working in orchards in Kent is clearly a long established pattern of activity by other gypsies. Bearing in mind that the periods and frequency of travelling do not have to be extensive for gypsy status to be retained, I conclude that for the purposes of planning policy, as a matter of fact and degree, the appellant has not lost his gypsy status. Although only a small element of Mr Scamp's year is taken up with travel and working away from his settled base, I consider that this is sufficient to meet criterion 1 in policy H36.

Personal circumstances

38. The appellant now lives on his own, he has no dependents. The appellant's main reasons for wanting a pitch in this location are its proximity to members of the Scamp family on nearby sites and the ability to look after his horses in his paddock adjoining the appeal site. I do not give much weight to these factors. Although I accept that there is a longstanding close friendship between the appellant and Mr Len Scamp at The Glen, there is no particular reason why they have to live in close proximity. I also accept that it is convenient for the appellant to live on the same site as his horses but it is commonplace for horses to be kept on land without their owner/keeper being immediately on hand.
39. I recognise that the appeal site is the appellant's only home and that if the appeal were to be dismissed, the appellant would have to move from the site within a few months given the enforcement notice and High Court order. There are no vacancies on any Council owned gypsy sites in the area. A local resident indicated that there is a vacant pitch on the small, long established, mobile home park at Apple Blossom. This is not a recognised gypsy site, but that would not preclude occupation of the site by the appellant, especially as he has no resident children or dogs, nor requires any area for business activities, which are the reasons commonly given as to why gypsies cannot occupy pitches on mobile home parks. But in the absence of any direct evidence from the owner/operator of this site I cannot be certain that a pitch is genuinely available to Mr Scamp.
40. Being forced to leave the site would result in the appellant adopting an itinerant lifestyle. I recognise that such a lifestyle has many difficulties, especially whilst maintaining a fulltime job, but (on the appellant's evidence) it is the lifestyle the appellant had prior to moving to the appeal site, including the first 2 years of his present job. Some of the sites where the appellant used to stop for a few months are no longer available as they are occupied by other members of the families resident on those sites, but there is no evidence that all of those sites are no longer available to him for short periods.
41. The appellant asserts that he has an aversion to bricks and mortar accommodation. I accept that he now has a cultural preference for living in a caravan, but as the Council concluded at the Inquiry, the evidence does not suggest a consistent aversion to living in a permanent dwelling and I cannot rule out this option, at least as a short term expedient. The appellant has lived in dwellings for periods in the past. The appellant's assertion of the unacceptability of such accommodation is undermined by the evidence of his joint purchase of a house in 2001. I also do not give much weight to the 2 letters from his doctor on this issue. A straightforward reading of those letters suggests that the appellant was, or had

recently been living in permanent accommodation at the time they were written and the doctor's assessment is based solely on the appellant's explanation.

42. The appellant has permanent damage to his leg following his accident in 1977. I accept that since then he has suffered pain and that the injury has restricted to some extent what he can do, but he was clearly able to pursue an itinerant lifestyle for many years after that accident. The appellant states that his job as a lorry driver has helped reduce problems with his leg and there is no evidence to suggest that this injury is causing him more difficulties now than in the past. Nor is there any evidence of any requirement for ongoing medical treatment. There is no reason in relation to the appellant's health that he needs to stay on this site.
43. The appellant denies any knowledge of the enforcement notice being served in 2002, but it is undisputed that he was aware of the requirements of the notice by the time he moved his touring caravan onto the site in February 2004. It was some months after his tourer was stolen that he moved on to the site the present static caravan. The appellant therefore established his home knowing that it was unlawful.
44. In the light of all the above, I consider that the personal circumstances of the appellant carry little weight in the balance of overall considerations. His need for a permanent pitch for his caravan is a part of the overall need for more gypsy sites in the Borough.

Overall Conclusions

45. I have found that the use of the appeal site as a caravan site would harm the character and appearance of the locality contrary to policy ENV28. It could not be effectively screened within a reasonable time and is thus contrary to Policy H36. I have found that there is a considerable, if unquantified need for more gypsy sites in the Borough, that the Council is now seeking to address that need through the LDF, but that additional pitches are likely to be 3 years away. This need weighs in favour of allowing the appeal. On balance, I consider that the appellant's need for a permanent pitch, the overall need and the consequences for the appellant if the appeal were to be dismissed do not outweigh the harm I have identified and conflict with policy.
46. The appellant indicated that if I were to come to the above conclusion then I should consider the possibility of a temporary permission for 2-3 years, whilst the Council pursues further provision through site allocations in the LDF. Such temporary permissions are contemplated in Circular 1/2006. During the lifetime of such a temporary permission there would be insufficient time for any planting to ameliorate the visual harm and it would be unreasonable to require expenditure on planting. Given the very limited weight that I attach to the appellant's personal circumstances (as opposed to the general need for sites) I consider that temporary permission is unjustified.
47. As regard the submissions made relating to Article 8 of the European Convention on Human Rights, I recognise that dismissal of the appeals would result in an interference with Mr Scamp's home and private life. However, that interference must be balanced against the legitimate aims stated in Article 8, which encompass the protection of the environment. In my view, the objections to residential use are serious ones and cannot be overcome by granting temporary planning permission or by the imposition of conditions. The public interest can be safeguarded only by dismissal of the appeals. In all the circumstances, I consider that dismissal of the appeals is necessary in a democratic society in furtherance of the legitimate aim stated. They do not place a disproportionate burden on Mr Scamp. I

therefore consider that dismissal of the appeals would not result in violation of his rights under Article 8 of the Convention.

Formal Decisions

48. I dismiss the appeals.

Simon Emerson

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Giles Atkinson, of Counsel. Instructed by the Borough Solicitor.
He called:
Mr G Brown M Phil Planning Officer, Maidstone Borough Council.
MRTPI.

FOR THE APPELLANT:

Mrs A Heine BSc MSc MRTPI Heine Planning Consultancy, 10 Whitehall Drive,
who also gave evidence. Hartford, Northwich CW8 1SJ.
She called:
Mr S Scamp Appellant.

FOR THE CROSS DRIVE RESIDENTS ASSOCIATION:

Mr A Goodman, of Counsel Instructed by Mr Robinson, Robinson Escott Planning
He called:
Mr Finch Adjoining resident, Grove House, Cross Drive, Sutton
Valence, Maidstone, ME17 3NP.
Mrs P McShea Local resident; Heathercot, Cross Drive, Kingswood,
Maidstone ME17 3NP
Mrs Tourett Local resident; Cherry Tree Farm, Cross Drive,
Kingswood, Maidstone ME17 3NP
Mr Wood Local resident; Overhills, Cross Drive, Kingswood,
Maidstone ME17 3NP.

OTHER INTERESTED PERSONS:

Mrs C Juson 16 The Forstal, Pembury, Tunbridge Wells TN24 4EG.
Ms R Hunt 25 Lower Road, Maidstone.

DOCUMENTS SUBMITTED AT THE INQUIRY

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| Document 1 | List of persons present at the inquiry. |
| Document 2 | Council's letter of notification of the appeal and of the Inquiry and list of persons notified. |
| Document 3 | Statement of Common Ground and email between the Council's witness and the appellant's agent. |
| Document 4 | Committee report on application MA/05/2260 Roydon Farm, Ulcombe, submitted by the appellant. |
| Document 5 | Council statement, letter and list of sites concerning the ODPM gypsy count for January 2006, submitted by the Council. |
| Document 6 | Policy C15 from the previous Local Plan (1995), submitted by the Council. |

Documents requested by the Inspector before the Inquiry and submitted by

the Council.

- Document 7 Index of policies and policy extracts from the adopted Kent and Medway Structure Planl.
- Document 8 Note on the preparation of the LDF.
- Document 9 Planning permission and plans for touring caravan and camping site at Chartway Street Nursery and previous appeal decision for that use.
- Document 10 Appeal decision dated 3 July 2006 for one caravan at Detling Lime Works.

Documents submitted by the appellant.

- Document 11 Insurance cover note and certificate for touring caravan.
- Document 12 Letter dated 29 June 2006 concerning purchase of a car with tow bar.

Documents submitted by the Cross Drive Residents' Association.

- Document 13 Statement of Mr Finch 20 July 2006 and Appendices 1 and 2.
- Document 14 Land Registry documents concerning 40 Rectory Road, Sittingbourne, including mortgage deed.
- Document 15 Land Registry documents concerning the purchase of the appeal site and its current registered owner.
- Document 16 Statement of Mrs P Mcshea.
- Document 17 Statement of Mrs Tourett.
- Document 18 Statement of Mr Wood.
- Document 19 Statement of Mrs Wood.
- Document 20 Statement of Mrs C Stern.
- Document 21 Statement of Mr Tourett.
- Document 22 Bundle of legal cases concerning gypsy status.