



Appeal Decisions

Inquiry opened on 13 October 2010

Site visits made on 13 October and 9 November 2010

by Clive Hughes BA (Hons) MA DMS MRTPI

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

Decision date: 4 February 2011

Appeal A: APP/U2235/A/10/2129095

Land to the rear of The Meadows, Lenham Road, Headcorn, Ashford, Kent TN27 9LG (western plot)

- 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 Messrs Murphy, Murphy, Harris, Berry and Doran against the decision of Maidstone Borough Council.
- The application Ref MA/10/0499, dated 22 March 2010, was refused by notice dated 17 May 2010.
- The development proposed is change of use of land to provide 5 plots for Gypsy site, each plot having a mobile home, day room and two touring caravans.
- The inquiry sat for 3 days on 13 and 14 October and 8 November 2010.

Appeal B: APP/U2235/A/10/2130188

Land to the rear of The Meadows, Lenham Road, Headcorn, Ashford, Kent TN27 9LG (eastern plot)

- 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 Messrs Doran, Nolan, O'Brien, Hanrahan and families against the decision of Maidstone Borough Council.
- The application Ref MA/10/0560, dated 31 March 2010, was refused by notice dated 25 May 2010.
- The development proposed is change of use of land to provide 5 plots for Gypsy site.
- The inquiry sat for 3 days on 13 and 14 October and 8 November 2010.

Application for costs

1. At the Inquiry an application for costs was made by Messrs Murphy, Murphy, Harris, Berry and Doran & by Messrs Doran, Nolan, O'Brien, Hanrahan and families against Maidstone Borough Council. This application is the subject of a separate Decision.

Procedural matters

2. The Council described the developments as *change of use of land to residential to provide 5 plots for gypsy families, with a total of 5 mobile homes, 9 touring caravans and 5 utility blocks with associated works* (Appeal A) and *change of use of land to residential to provide 5 plots for gypsy families, with a total of 8 mobile homes, 12 touring caravans and 8 utility blocks with associated works* (Appeal B). At the Inquiry the appellants accepted the wording used by the Council. I have used the Council's descriptions for these Decisions as they are more comprehensive.

3. The appellants submitted an amended plan (Drawing No WSP/ME/02A), accompanying a letter dated 5 October 2010, in respect of Appeal B. This plan shows a reduction in the amount of development proposed, reducing the number of mobile homes from 8 to 5; the number of touring caravans from 12 to 10; and reducing the number of utility blocks from 8 to 5. As this reduces the overall amount of development I do not consider that any other parties would be prejudiced by this amendment. I have therefore based the Decision on Appeal B on this revised scheme and plan.
4. At the Inquiry it was agreed by the appellants in respect of Appeal B that the proposed occupiers of Plot 6, Jim and Bridie Doran, would only require one touring caravan and not two touring caravans as shown on the amended plan. I have further amended the description of the development accordingly.
5. There is some duplication in respect of the plan numbering; the submitted plans for both applications and appeals are identical even though the location plans and site layout plans differ. For the avoidance of doubt, it was agreed at the Inquiry to suffix "west" after the Appeal A plans and "east" after the Appeal B plans.
6. The Secretary of State has announced an intention to revoke ODPM Circular 01/2006, describing it as flawed. No timing of such revocation has yet been announced and he has indicated that an impact assessment is required. The Secretary of State's announcement is clearly a material consideration which must be taken into account, and affects the weight that can be attached to the Circular as a statement of Government policy. However, the Circular remains in the place for the time being with as yet no draft replacement.
7. The Secretary of State has also announced an intention to abolish the Regional Spatial Strategies (RSS). Following the close of the Inquiry the main parties were invited to comment on the RSS taking account of the stated intention to abolish it and the contention in the Cala Homes litigation that the Secretary of State's position is open to challenge. The current position is that the RSS for the South East remains part of the development plan, albeit with less weight due to the Secretary of State's stated intention to abolish it.

Decisions

Appeal A: APP/U2235/A/10/2129095 (western plot)

8. I allow the appeal, and grant planning permission for change of use of land to residential to provide 5 plots for gypsy families, with a total of 5 mobile homes, 10 touring caravans and 5 utility blocks with associated works at land to the rear of The Meadows, Lenham Road, Headcorn, Ashford, Kent TN27 9LG (western plot) in accordance with the terms of the application, Ref MA/10/0499, dated 22 March 2010, subject to the conditions set out in the Schedule to this decision.

Appeal B: APP/U2235/A/10/2130188 (eastern plot)

9. I allow the appeal, and grant planning permission for change of use of land to residential to provide 5 plots for gypsy families, with a total of 5 mobile homes, 9 touring caravans and 5 utility blocks with associated works at land to the rear of The Meadows, Lenham Road, Headcorn, Ashford, Kent TN27 9LG (eastern plot) in accordance with the terms of the application, Ref MA/10/0560, dated 31 March 2010, and as amended by Drawing No WSP/ME/02A (east) and subject to the conditions set out in the Schedule to this decision.

Main issues (both appeals)

10. The main issues are

- the effect of the development on the character and appearance of the area which lies within the Low Weald Special Landscape Area (SLA);
- whether the proposed developments, taken on their own or in combination with each other and the existing Gypsy and Traveller sites in the vicinity, would unacceptably dominate the nearest settled community;
- whether the development accords with policies in the development plan and national guidance and advice which promote a sustainable pattern of development; and
- whether there are any other material considerations that, taken individually or taken together, are sufficient to outweigh any identified harm.

Reasons

Background

11. The two appeals relate to adjoining parcels of land, served by the same access drive, that are located in open countryside about 250m north west of Lenham Road. The appellants moved onto both sites on 20 March 2010; there are currently 14 caravans on the land (although there were others on the site at the time of my visit as the owners needed to be living in the area in order to be able to attend the Inquiry).
12. An Injunction was granted by the High Court on 26 May 2010 which prohibits the stationing on the site any further caravans, mobile homes, motor homes or associated structures or vehicles. It also prohibits the bringing onto the site any further hardstanding or the undertaking of any other development. The plan accompanying the Injunction shows that it includes land that lies outside either of the appeal sites, being the land to the north/ north west of the sites.
13. The western site (Appeal A) is fully occupied with all 5 plots in use although there are no mobile homes or utility blocks. There are a number of caravans, some fencing has been erected and hardcore has been placed on the land. The hardcore raises the level of the land up above the surrounding land. Only one of the plots on the eastern site (Appeal B) is occupied, although other plots have had hardcore placed on the ground and there are lengths of fencing.

Effect on the character and appearance of the area/ SLA

14. The appeal sites lie in the open countryside which is defined as being within the Low Weald SLA in the development plan. The sites are set back from Lenham Road, at the end of an unmade track. Lenham Road/ Headcorn Road is a fairly busy rural road that runs between the large villages of Headcorn and Lenham; the road name changes in Grafty Green. It appears to be a fairly typical rural road within the Low Weald. It runs through an area that contains many of the features described as being characteristic of the SLA in paragraph 3.111 of the Maidstone Borough-Wide Local Plan 2000. Around the appeal site the relatively small fields and intimate scale contribute to its tranquil quality.
15. Policy ENV28 of the Maidstone Borough-Wide Local Plan 2000 defines the countryside and says that planning permission will not be given for development that harms its character and appearance. It restricts

development to certain specified types and such other exceptions as indicated by policies elsewhere in the Plan. When the Local Plan was adopted it included a policy for sites for Gypsies and Travellers but this has not been saved. Policy ENV34 relates to the SLA where particular attention will be given to the protection and conservation of the area; priority will be given to landscape over other planning considerations.

16. Concerning the character of the area, the existing nearby developments, including houses, farms, farm buildings, mobile homes and caravans, are generally sited close to the roads, are at a low density and have space around them. The existing and proposed development of the appeal sites would contrast markedly with almost all aspects of that established character. Not only would they be sited well back from the roads, surrounded by fields, but the intensity of the development would greatly exceed prevailing densities in this part of the countryside. Although the combined area of the sites is substantial the amount of development proposed is very considerable. A total of 29 caravans, including mobile homes, are now proposed for the two sites, as well as 10 utility buildings. There would also be likely to be fencing and some residential paraphernalia as well as parked vehicles. Given the nature of the trades of the occupants, these would be likely to include a number of small vans used for work purposes. While for parts of the year some of the touring caravans would be off the site, there could be times when the plots were all fully occupied.
17. According to the appellants, the appeal sites would accommodate some 56 persons including about 25 children under 16. The Design and Access Statement and the evidence of the appellants' agent both give substantially smaller, albeit different, numbers. However, I have based these decisions on the most recent figures which were provided by the appellants in their witness statements to the Inquiry. This would thus be a large community located in a site that is surrounded by the countryside. At the site visit noise from the site could be heard on the public footpath; local residents' letters have referred to noise of dogs barking and the impact of lights on the character of the area. Vehicles using the access drive, possibly between 6 and 8 movements per plot per day, would result in noise and disturbance in the countryside; at the time of the site visit the weather was dry and vehicles using the access raised dust. When the plots are fully occupied the impact of all these factors on the character of the countryside is likely to increase. While the impact would be localised, the developments would, individually and taken together, result in severe harm to the character of the surrounding countryside. This would be contrary to the cited policies in the Local Plan.
18. In terms of the effect of the development on the appearance of the area, due to the set back from the road and the mature hedge along the Lenham Road frontage, the existing touring caravans on the sites are not particularly noticeable from Lenham Road. In winter they can be seen through the hedge. Not all the proposed plots are yet occupied, due to the injunction, and the proposed introduction of a significant number of mobile homes and day rooms, 5 of each on each site, and may increase the visibility of the development due to the increased height and bulk of the mobile homes when compared to the existing touring caravans.
19. The existing touring caravans on the sites are also visible from a public footpath that runs at right angles to Lenham Road and lies to the south west of the Appeal A site. It is separated from the appeal site by a field which is

flanked by hedges on both sides which, when in leaf, provide some screening. However, there are gaps in these hedges through which the caravans are clearly visible. Again, the level of visibility would be likely to increase with the introduction of mobile homes to supplement the touring caravans. The development on the sites already causes harm to the appearance of the area; when fully developed the level of harm would also increase due to the introduction of mobile homes, which would be larger than the existing caravans, and the increased quantity of development. External lighting, within the plots or along the access drive, would further increase its visibility. The lights from inside the mobile homes, touring caravans and day rooms, which could number as many as 39 in total on the combined sites, in addition to the lights of vehicles using the drive, would appear incongruous in their countryside surroundings. This impact of both developments on the appearance of the area would be severely harmful and contrary to Policies ENV28 and ENV32 of the Local Plan.

20. I conclude on the first issue that the developments, individually or taken together, would be severely harmful to both the character and the appearance of the countryside which is identified as a SLA. This would be contrary to the cited development plan policies.
21. The second reason for refusal also refers to the cumulative impact of the proposed development on the appeal sites together with the existing Gypsy and Traveller sites in the vicinity on the character and appearance of the countryside. There are 10 existing sites for Gypsies and Travellers that were brought to my attention in this section of Lenham Road, 8 of which have the benefit of planning permission. Eight of these sites lie in the short section between the junctions with Baker Lane and Southernden Road. These other sites are, for the most part, situated close to the road and visible to road users.
22. These sites have undoubtedly altered both the character and the appearance of the area and it could be argued that their presence lessens the impact of the developments now proposed. However, the proposed schemes differ markedly from the existing developments in that both the sites are set well back from the road, surrounded by open countryside, and in terms of their scale and intensity. The character of the area has undoubtedly been changed by the incremental increase in the number of caravan sites; the current proposals would take this change a very significant step further. While I have already set out above the harm that they would cause, I consider that the harm to the character of the area would be lessened a little by the presence of the existing sites. In terms of the appearance of the area the established sites, including the more recent caravans, have given the road a less rural appearance. The developments now proposed would further detract from the rural appearance of the countryside; being set so far behind the previous developments the sites now proposed would fail to respect the pattern of the established developments in the immediate area and they would further erode the appearance of the countryside. The existence of the other sites that are on, or close to, the road frontage, therefore, do not significantly lessen the impact of the current proposals on the appearance of the countryside.

Impact on the nearest settled community

23. The second reason for refusal (both appeals) alleges that, in respect of each of the appeal sites, the combined use of the site together with other Gypsy sites in the vicinity would dominate the settled community. The reason for refusal

cites ODPM Circular 01/2006; the Council confirmed that this referred particularly to paragraph 54 of that Circular. There was some debate at the Inquiry as to exactly how to define the "*nearest settled community*". The Council considered it to comprise the scattered dwellings along that section of Lenham Road shown in Appendix 1 of Mr Hockney's evidence; the appellants considered it to refer to Headcorn; and the Parish Council thought it referred to Ulcombe. There was further disagreement as to whether the occupiers of the established Gypsy and Traveller sites along this section of Lenham Road now form part of the settled community.

24. Concerning Headcorn and Ulcombe, I agree with the appellants that these communities are too large and too distant from the appeal sites for them to be dominated by the proposed developments, either individually or taken together. I have some sympathy with the concerns of nearby residents, particularly those living in Lenham Road and Boys Court Road to the north, given the scale of the developments now proposed compared to the scale of the scattering of dwellings. The established Gypsy and Traveller sites cannot be considered to dominate this local community but the sites have undoubtedly changed the character of the area and the appearance of the road. It seems clear, however, that the occupants of most of these sites now form part of the settled community.
25. The scale of the developments now proposed differs from the existing sites. The total number of residents on the combined sites, based on the witness statements, would be 56 with two more expected. There are a number of definitions of the term "community"; one is "a body of people in the same locality". These proposals would add a substantial number of homes and people to a relatively small and scattered community and I can understand that some of the nearby residents of long-standing are very concerned about such a large influx of new residents into a relatively small community. However, I am not convinced that the developments, even when considered together, would be so large or so close as to harmfully dominate the settled community which, in any case, includes a significant number of Gypsies and Travellers.

Sustainable patterns of development

26. It is not disputed that the nearest shops and services are in Headcorn, the commercial heart of which is about 3km from the appeal sites. It is large village with numerous shops and other facilities such as a primary school and dentists' and doctors' surgeries. The road to Headcorn is a rural road with no street lights or footways outside the built-up area. There is no bus service along this road and the primary mode of transport is likely to be the car.
27. The Council recently granted temporary, personal planning permission for a single plot for a Gypsy family on land almost immediately opposite the entrance to the appeal sites from Lenham Road (MA/09/1821). That site is slightly closer to Headcorn than the appeal sites as it is close to Lenham Road whereas the appeal sites are set well back down a long access drive. However, the Officers' report in respect of that other site did not even mention sustainability when weighing the harm against the other material considerations. The concluding balance only involved harm to the countryside and the ongoing need to provide sites for Gypsies. The decision to allow that single plot was made on 23 September 2010; that is to say it was made after the applications the subject of this Inquiry had been refused. The Council's reason for coming to such a different conclusion was due solely to the

difference in scale between the approved scheme (one plot) and the combined scale of the appeal proposals (10 plots). There was no individual analysis of these two appeal schemes.

28. There is nothing in the Circular to suggest that considerations of scale are relevant when considering issues of sustainability. While the Circular makes it clear that the definition goes beyond location and transport mode, I am not convinced that scale is a factor that should be taken into account. In any case, although a larger site will, usually, produce more vehicular traffic than a smaller site, the sites now proposed offer more opportunities for shared trips such as, in this case, the taxis used for the school run from the Appeal A site.
29. The Circular says that local authorities should be realistic about the availability or likely availability, of alternatives to the car in accessing local services. It also says that issues of sustainability should not only be considered in terms of transport mode and distances from services and gives examples of other factors which should be considered. The appellants are already integrating into the local community as several of the families have children at the local primary schools. This integration is also likely to be aided by the fact that at least two of the families have relatives already living in Lenham Road.
30. The appellants currently have no fixed base. It is not in dispute that they are in immediate need of accommodation; nor is it in dispute that there are no known vacancies on any sites in the area or any likelihood that any sites will become available within the short term. A fixed base, without the need for constant upheaval and travelling to a new site, would be likely to result in the appellant families being able to pursue a more sustainable way of life.
31. The location of the site seems to be typical of sites in rural locations; the sites in the Borough referred to at the Inquiry show that there are many Gypsies' and Travellers' sites in the SLA. ODPM Circular 01/2006 says that rural locations are acceptable in principle for sites for Gypsies and Travellers. While the lack of public transport links to Headcorn means that most trips are likely to be made by car, this is outweighed by the sustainability benefits that would arise from the appellants having settled bases. There would be no conflict with the cited policies.
32. Having concluded that the developments would, individually and when taken together, result in severe harm to the character and appearance of the area, it is necessary to consider whether the other material considerations advanced by the appellants are sufficient to outweigh that harm.

Other material considerations

33. There is no dispute that there is a need generally for sites for Gypsies and Travellers. The GTAA identified sub-regional and local needs although the Council now argues that the local need has been met. In addition to the local considerations, I have also had regard to the fact that there are no Council-run sites for Irish Travellers in Kent.
34. The sub-regional GTAA identified a need for 32 more plots in Maidstone over the period 2006 to 2011. However, this included an allowance for pitch turnover which has not materialised and the Council now accepts that a higher figure of 40 to 50 pitches is required in that period. The Council's position when the delegated reports were written in respect of these two cases (May 2010) was that there was still a significant need for Gypsy sites in the Borough.

By the time of the Inquiry, however, the Council's position had changed and it argued that there was no longer a need as the GTAA figure had been met by a combination of the Council approving schemes and appeal decisions.

35. This seems a rather unrealistic approach in that it fails to take account of any changes on the ground since the GTAA was researched in 2005/06. It also fails to take account of the fact that the Council itself has not provided any new sites and that there is no 5-year supply of sites as required by PPS3. Indeed, the Council has not yet embarked on a new GTAA, despite the age of the existing one, and it is not certain whether the next GTAA will be carried out on a Borough wide basis or on a sub-regional basis. The Council's Site Allocations DPD is not expected until mid 2012; the provision of sites with planning permission and facilities will take longer. The Inspector who determined the appeal in March 2006 at The Meadows, the site being located much closer to Lenham Road than these sites, was under the impression that the adoption of the Site Allocations DPD would take place in August 2008. If a clear and immediate need for sites was found, that DPD would be brought forward. Given the amount of slippage that has taken place, it is not reasonable to blame the delay on changes to the status of the RSS.
36. The appellants sought a clear indication of the level of need in the Borough; that is not possible to assess due to the inadequacy of the GTAA – it fails to identify or survey needs arising from Gypsies and Travellers living in bricks and mortar – and to the agreed inaccuracies of the Caravan Count figures. However, the Caravan Count figures, which show 50 unauthorised mobile homes and 71 unauthorised touring caravans in the Borough in July 2010, are a good indication of the level of need. It is clear that, notwithstanding the planning permissions granted by the Council and on appeal, the ongoing level of need remains significant.
37. There are no alternative sites that are suitable, affordable, appropriate and available anywhere in the Borough. It is not disputed that the Council cannot demonstrate an up-to-date 5-year supply of deliverable sites. In such circumstances PPS3 advises that local planning authorities should consider favourably planning applications for housing, albeit subject to considerations such as the suitability of a site for housing.
38. Concerning policy considerations, ODPM Circular 01/2006 seeks to increase significantly the number of Gypsy and Traveller sites in order to address under provision within 3-5 years; that period ends in February 2011, well before the Site Allocations DPD will be published. In the meantime the Council has no policies relating directly to Gypsies and Travellers so there is no guidance from the Council, in policy terms, as to where acceptable sites may be found.
39. The national, sub-regional and local immediate need for sites, the lack of available sites, and the lack of any policy relating directly to Gypsies and Travellers in the Local Plan, and the lack of a five year supply of deliverable sites all weigh in favour of the appellants. Dismissal of either, or both, appeals would be likely to result in the current occupants being forced to leave and it would mean that the other potential occupiers, currently living off-site due to the injunction, not being able to occupy land that they own. Due to the lack of suitable alternative sites this may result in unauthorised camping. This would undoubtedly result in an interference with their rights under Article 8 of the *European Convention on Human Rights* (right to respect for private and family life). However, these are qualified rights and so there needs to be a balance

between the rights of the appellants and their families and the rights of the wider community. In this case the interference would be due to pursuing the legitimate aim of protecting the countryside.

40. Concerning the personal circumstances of the appellants, in respect of Appeal A all the families are now living on the site. The occupiers of 4 of the plots have, between them, 8 children at local schools and one awaiting a place. Concerning health, Michael James Doran (Plot 5) has a heart condition, is diabetic and has a narcoleptic type sleep problem. His doctor, at the local Headcorn Surgery, describes him as being one of his unhealthiest patients and has advised him to stop in one place long enough to engage properly with local medical services. Shannon Murphy (Plot 1), is six years old and has speech, dental and hearing problems; details of appointments at Hawkhurst and Bénénden Hospitals were submitted. The occupier of Plot 3 cares for his uncle who has a nervous illness and has previously attempted suicide. The occupier of Plot 4 is elderly, has breathing problems that need a personal oxygen supply and is looked after by his son. Two of the site occupiers are expecting babies.
41. With regard to Appeal B, only one of the plots is currently fully occupied due to the injunction. There are two children on the occupied plot (Plot 8) that attend a local school. The head teacher of that school has said that she cannot comment on progress as their attendance has not been sufficient. She has further commented that being settled in one place would be of great benefit to them. Another site occupier cares for his uncle who suffers from epilepsy; another is pregnant. None of the other potential site occupiers have permanent sites anywhere; two are doubling up on sites in Swanley. They own the appeal site.
42. I have also had regard to the other matters raised by interested parties at the Inquiry and in writing. Concerning the alleged recent increase in litter in the area there is nothing in the evidence to link this to the occupiers of this site. I was shown the quantity and consequences of recent instances of defecation on adjoining land resulting in, amongst other things, unpleasant smells and flies. There is nothing in the evidence that demonstrably links this to the occupiers of either appeal site. Concerning traffic generation and highway safety, the developments would each be likely to result in a significant increase in the use of the road access. Taken together, the increase would be substantial. However, the Council's delegated reports say that there is no history of accidents at this access and visibility is acceptable. Kent Highways have not raised any objections. In these circumstances I do not consider that there would be any harm to highway safety. Concerns about trespass are serious and potentially dangerous due to the horses on adjoining land. However, not all the plots are occupied and boundary fencing can be required by condition. Dust arising from the use of the access drive could be prevented by a requirement that the track be surfaced.

Whether the material considerations are sufficient to outweigh the identified harm

43. The identified harm relates to the harm to both the character and appearance of the area which is in the countryside and lies within the Low Weald SLA. This harm is severe due to the scale and siting of the developments and the high quality of the surrounding countryside. The sites are partly screened from public viewpoints, and could be further screened by additional planting which would, in time, reduce the visual impact. There is insufficient width to provide

planting adjacent to the access drive and in any case planting would not overcome the harm to the character of the area.

44. I give considerable weight in favour of the developments due to the general need for sites nationally, within the sub-region, locally and personally for the appellants. The lack of alternative sites; the absence of a five-year supply of deliverable sites; and the lack of any policy in the development plan against which potential sites may be assessed also weighs in favour of the developments. There is also considerable weight in favour arising from the appellants' personal circumstances. Taken together this amounts to a significant weight in favour of the developments.
45. However, the harm would be very substantial and severe. I do not consider that this is an appropriate location for one or two sites each comprising 14/15 caravans and 5 utility buildings. The damage these developments would do to the countryside would be severe. The development would be in conflict with the development plan and Government advice in ODPM Circular 01/2006. Having come to the above conclusions, it is necessary to consider whether temporary planning permission would be appropriate in these cases.

Temporary planning permission

46. I have given consideration to the transitional arrangements as set out in ODPM Circular 01/2006. Paragraphs 45 and 46 are particularly relevant in considering planning applications in circumstances where no sites have been provided through the development plan process. In these cases there is a substantial unmet need for sites and there are no alternative suitable sites that are available and affordable. The DPD process will take at least two years before sites are available for occupation. In these circumstances, the advice in the Circular is that substantial weight should now be given to the unmet need in considering whether a temporary planning permission is justified.
47. As the circumstances identified in these paragraphs exist the balance is altered when considering whether temporary planning permission is justified. Substantial weight is now given to the unmet need while the harm to the character and appearance of the area is reduced due to the use being for a limited period. In this revised balance, the harm to the character and appearance of the area is now outweighed by the other material considerations.
48. In this revised balance, I have taken account of the fact that the personal circumstances, and in particular in relation to education and health, of the residents on the Appeal A site are more immediate and compelling than those on the Appeal B site. However, the fact that there was a development on the Appeal A site would reduce the harm to the countryside and especially to views from the public footpath, arising from allowing the development on the Appeal B site. I therefore conclude that temporary, personal planning permissions are appropriate in respect of both appeals.

Conditions

49. I have taken account of the conditions suggested by the Council and those discussed at the Inquiry. For the reasons given above I have made the permission temporary and personal to the appellants and their resident dependants. The temporary period, 2 years, is sufficient to allow the appellants to seek alternative sites or the Council to produce and act upon a

Site Allocations DPD. The number of caravans has been restricted in the interests of the visual amenities of the area. Commercial uses and the parking of large vans have been prohibited for the same reason. It is necessary for the appellants to submit schemes showing the layout of the site; surfacing materials; external lighting; boundary treatment; and surface and foul water drainage as no such details have been submitted. Due to the relatively short time period of these permissions, landscaping is not considered necessary.

Conclusions

50. I have taken into account all the various other decisions and judgements that were put forward. I have had particular regard to other recent planning appeal decisions within the Borough. However, the circumstances of these cases differ materially from the appeals before me. I have found no other decisions where the particular circumstances of these cases are replicated. Both decisions have been the result of a balance between the conflict with policy, harm to the countryside and the other material considerations.
51. In respect of both appeals, I conclude that the other material considerations, taking account of the personal circumstances of the appellants, are sufficient to outweigh the harm provided that the permission is both personal to the appellants and temporary. Due to the harm to the countryside, permanent permission would not be appropriate in these cases.

Clive Hughes

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

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|--------------------------------------|---|
| Giles Atkinson of Counsel | Instructed by Head of Law, Maidstone Borough Council |
| He called | |
| Peter Hockney BSc (Hons) MA MRTPI | Principal Planning Officer, Maidstone Borough Council |

FOR THE APPELLANT:

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|----------------------------|--------------------------------|
| Alan Masters of Counsel | Instructed by WS Planning |
| He called | |
| Brian Woods BA TP MRTPI | Managing Director, WS Planning |
| Lisa Murphy | Appellant Plot 1 |
| Michael Murphy* | Appellant Plot 2 |
| William Harris* | Appellant Plot 3 |
| Miles Berry* | Appellant Plot 4 |
| Michael James Doran* | Appellant Plot 5 |
| Jim Doran* | Appellant Plot 6 |
| Felix Doran* | Appellant Plot 7 |
| Michael Purcell* | Appellant Plot 8 |
| Michael Nolan* | Appellant Plot 9 |
| John Hanrahan* | Appellant Plot 10 |

* Produced witness statements and answered questions arising from them

INTERESTED PERSONS:

| | |
|--------------------|--|
| Robert Taggart | Local resident |
| Philip Easton | Local resident |
| Sahail Zafar | Local resident |
| Daniel Watson | Local resident |
| Cllr Jenny Whittle | Councillor, Kent County Council and Member of KCC Gypsy and Traveller Advisory Board |
| Jeffrey Beale | Chair, Ulcombe Parish Council |

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Council's neighbour notification letter and list of persons notified
- 2 Signed Statement of Common Ground (undated)
- 3 *Hedges and Hedges v SoS for the Environment and east Cambridgeshire* DC T&CP 73 P&CR pp534-546
- 4 *R v Kerrier DC ex p Catherine Uzell & Others* T&CP 71 P&CR pp566-574
- 5 *Baker & Others v SoS CLG and L B Bromley and Equality and Human Rights Commission* [2008] EWCA Civ 141
- 6 Letter from Head Teacher, Headcorn Primary School concerning Rosanna, Michael and Margaret Purcell (13 October 2010)
- 7 Letter from Head Teacher, Headcorn Primary School concerning Lisa-Marie, Shannon and Melissa Murphy (13 October 2010)
- 8 Letter from Maidstone and Tunbridge Wells NHS Trust concerning Anne Marie Murphy (20 September 2010)

- 9 Letter from Headcorn Surgery concerning Michael James Doran (21 September 2010)
- 10 Revised Appendix 7 to evidence of Mr Hockney
- 11 Revised Appendix 8 to evidence of Mr Hockney
- 12 Plan of Borough indicating Green Belt, AONB and SLAs
- 13 Plan showing public footpaths near appeal site
- 14 Delegated Report on case MA/10/0499 dated 13 May 2010
- 15 Bundle of delegated reports, committee reports and appeal decisions
- 16 Ashford, Maidstone, Tonbridge & Malling GTAA 2005/6 – Final Report
- 17 Caravan count figures July 2010
- 18 Report to Council's Local development Document Advisory Group 26 July 2010
- 19 Letter from Head Teacher, Headcorn Primary School, concerning Margaret, Michael and Rosanna Purcell (5 November 2010)
- 20 Letter from Head Teacher, Ulcombe Church of England Primary School concerning Francis and Tommy Purcell (8 November 2010)
- 21 Statement of Philip Easton
- 22 Statement of Cllr Jenny Whittle
- 23 Letter from West Kent Primary Care Dental Service concerning Shannon Murphy (21 October 2010)
- 24 Consent form from Benenden Hospital concerning dental treatment for Shannon Murphy (18 October 2010)
- 25 Signed witness statement of Lisa Murphy (Plot 1)
- 26 Signed witness statement of Michael Murphy (Plot 2)
- 27 Signed witness statement of William Harris (Plot 3)
- 28 Signed witness statement of Miles Berry (Plot 4)
- 29 Signed witness statement of Michael James Doran (Plot 5)
- 30 Signed witness statement of Jim Doran (Plot 6)
- 31 Signed witness statement of Felix Doran (Plot 7)
- 32 Signed witness statement of Michael Purcell (Plot 8)
- 33 Signed witness statement of Michael Nolan (Plot 9)
- 34 Signed witness statement of John Hanrahan (Plot 10)
- 35 Closing submissions of Giles Atkinson on behalf of the Council
- 36 Closing submissions of Alan Masters on behalf of the appellants
- 37 Costs application by Alan Masters on behalf of the appellants
- 38 Response to costs application by Giles Atkinson on behalf of the Council

PLANS

- A Drawings No WSP/ME/01 (west), 02 (west) and 03 (west) (Appeal A) site location, layout and utility block details
- B Drawings No WSP/ME/01 (east), 02 (east) and 03 (east) (Appeal B) site location, layout and utility block details
- C Drawing No WSP/ME/02A (east) revised site layout plan (Appeal B)

Schedule

Conditions: Appeal A (APP/U2235/A/10/2129095)

- 1) The use hereby permitted shall be carried on only by:-
Plot 1: Lisa, Anne Marie & Tommy Murphy; Plot 2: Michael Murphy & Elizabeth Connor; Plot 3: Mark Harris, William Harris & Rose Purcell; Plot 4: Miles & Patrick Berry; Plot 5: Michael James & Marie Doran
and their resident dependants and shall be for a limited period being the period of 2 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 Appeal A (western) site ceases to be occupied by those named in Condition 1 (above) or at the end of 2 years, whichever shall first occur, the use hereby permitted shall cease, all materials and equipment brought on to the premises in connection with the use, including the amenity blocks hereby approved, shall be removed and the land restored to its former condition in accordance with a scheme of work submitted to and approved in writing by the local planning authority.
- 3) No more than 15 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than 5 shall be a static caravan or mobile home) shall be stationed on the site at any time.
- 4) No commercial activities shall take place on the land, including the storage of materials.
- 5) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 6) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 2 months of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
 - i) within 3 months of the date of this decision a scheme for: the means of foul and surface water drainage of the site; proposed and existing external lighting on the boundary of and within the site; boundary fencing; the surfacing of the access road; the internal layout of the site, including the siting of caravans, plots, hardstanding, access roads, parking and amenity areas; and a timetable for the carrying out of the necessary works and a schedule for the subsequent retention and maintenance of the works.
 - ii) if within 11 months of the date of this decision the site development scheme has not been approved by the local planning authority or, if the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted site development scheme shall have been approved by the Secretary of State.
 - iv) the approved scheme shall have been carried out and completed in accordance with the approved timetable.

Conditions: Appeal B (APP/U2235/A/10/2130188)

- 1) The use hereby permitted shall be carried on only by:-
Plot 6: Jim & Bridie Doran; Plot 7: Felix Doran, Michael & Mary Doran; Plot 8: Michael Purcell, James Doran & Eileen Connors; Plot 9: Michael Nolan, Charlene Hogan, Margaret & Thomas O'Brien; Plot 10: John Hanrahan, Kevin & Ann Doran
and shall be for a limited period being the period of 2 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 Appeal B (eastern) site ceases to be occupied by those named in Condition 1 (above) or at the end of 2 years, whichever shall first occur, the use hereby permitted shall cease, all materials and equipment brought on to the premises in connection with the use, including the amenity blocks hereby approved, shall be removed and the land restored to its former condition in accordance with a scheme of work submitted to and approved in writing by the local planning authority.
- 3) No more than 14 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than 5 shall be a static caravan or mobile home) shall be stationed on the site at any time.
- 4) No commercial activities shall take place on the land, including the storage of materials.
- 5) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 6) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 2 months of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
 - v) within 3 months of the date of this decision a scheme for: the means of foul and surface water drainage of the site; proposed and existing external lighting on the boundary of and within the site; boundary fencing; the surfacing of the access road; the internal layout of the site, including the siting of caravans, plots, hardstanding, access roads, parking and amenity areas; and a timetable for the carrying out of the necessary works and a schedule for the subsequent retention and maintenance of the works.
 - vi) if within 11 months of the date of this decision the site development scheme has not been approved by the local planning authority or, if the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - vii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted site development scheme shall have been approved by the Secretary of State.
 - viii) the approved scheme shall have been carried out and completed in accordance with the approved timetable.