

## REPORT SUMMARY

<b>REFERENCE NO - 15/501528/FULL</b>		
<b>APPLICATION PROPOSAL</b> Change of use of land for the stationing of a mobile home, utility room, stable block and touring caravan for gypsy family (Part retrospective).		
<b>ADDRESS</b> Maplehurst Lane Frittenden Road Staplehurst Kent		
<b>RECOMMENDATION</b>		
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b>  The proposed development, subject to imposition of the recommended conditions , is considered to comply with the policies of the Development Plan (Maidstone Borough Wide Local Plan 2000) and there are no overriding material planning considerations justifying a refusal of planning permission.		
<b>REASON FOR REFERRAL TO COMMITTEE</b>  <b>RECOMMENDATION CONTRARY TO THE VIEWS OF STAPLEHURST PARISH COUNCIL</b>		
<b>WARD</b> Staplehurst Ward	<b>PARISH/TOWN COUNCIL</b> Staplehurst	<b>APPLICANT</b> Mr P Roots <b>AGENT</b>
<b>DECISION DUE DATE</b> 18/05/15	<b>PUBLICITY EXPIRY DATE</b> 18/05/15	<b>OFFICER SITE VISIT DATE</b> 16/03/16

## MAIN REPORT

### 1.0 SITE DESCRIPTION

- 1.1 The application site is broadly rectangular in shape with an west to east orientation. Existing gypsy and traveller (G&T) development abuts the site to the east and west. This is shown on the plan attached as **APPENDIX 1** identifying lawful and unauthorised sites in the locality. The site is set just under 20 metres back from Maplehurst Lane. There is an existing mobile home stable block and utility room abutting the southern site boundary with the remaining area mainly made up of an open paddock and hardstanding.
- 1.2 Site access is gained via a narrow trackway onto Maplehurst Lane
- 1.3 In a wider context the site is located in open countryside identified as a Special Landscape Area (SLA) in the adopted local plan.

### 2.0 PROPOSAL

- 2.1 Retrospective planning permission is sought to retain an existing mobile home to be used for G&T accommodation by the applicant and his family along with a utility room having a footprint 4.5x7.5 metres, an eaves height of 2.6 metres and a ridge height of 3.3 metres and a stable block having a footprint of 10.9x3.6 metres, an eaves height of 2.2 metres and a ridge height of 2.7 metres.

- 2.2 Surface water will drain into adjoining watercourses while waste water will be dealt with by septic tank.

**Response to request for clarification of gypsy status:**

- 2.3 Revised Government guidance which came into force in August 2015 requires persons claiming gypsy and traveller status to provide evidence to show they intend to carry on a nomadic /traveller lifestyle. To fall within the definition of a nomadic lifestyle requires the adult occupants of the site move from place to place in the pursuit of work. The following has been submitted to in connection with the applicant's gypsy status:

- Take wife and sons to Appleby and Stowe for 2-3 weeks at a time where they meet up with family and friends along with carrying out tree and roofing work.
- The site is occupied by Paul Roots (the applicant) and Tammy Phillips, Jesse Phillips (8), Vinnie Phillips (6), Isaiah Phillips (4) Elijah Phillips (1) and Delilah Phillips (4 months)
- Need to have a permanent base to give children an education to improve their long term prospects as it is becoming more difficult to pursue a traveller lifestyle.
- Eldest son wants to be a farrier and two other sons attend Marden Primary school.
- Still intend to travel but to ensure the children maintain their education means that this will be more restricted.
- The applicant will continue travelling up and down the country dealing in horses, motor vehicles along with tree work.

- 2.4 In January 2017 further information was sought on the applicants circumstances seeking detailed information on how they (a) comply with the revised G&T definition in pursuing a nomadic lifestyle, (b) details of any health conditions which may preclude a nomadic lifestyle and (c) details of any children and education history.

- 2.5 No response appears to have been received to the above request and the application will therefore be determined on the basis of the information already submitted.

**3.0 RELEVANT PLANNING HISTORY**

- 3.1 There are existing gypsy and traveller sites abutting and close to the application site. These are shown on the location plan attached as **APPENDIX 1** along with their current planning status.

- 3.2 The two unauthorised sites fronting the eastern side of Maplehurst Lane to the north of the access serving this application site and subject to the planning applications refs: MA/13/1713 and 13/1732 have now both been refused. The grounds for refusal were (a) being visually intrusive development on their own and in combination with existing lawful G&T development fronting Maplehurst Lane harmful to the rural and landscape quality of the area and (b) the personal circumstances of the applicants insufficient to weigh against the harm identified. Enforcement notices requiring the use of the land to cease will be served shortly.

- 3.3 Turning to the application site, subject of this application, the site lies within an existing and larger gypsy and traveller (G&T) site known as Perfect Place. Under ref: MA/13/0466 Perfect Place was granted planning permission on the 1<sup>st</sup> July 2014 for the permanent retention of a mobile home, touring caravan and pole barn, utility room, 2 stable blocks and a sand school. This planning permission was subject, amongst other things, to condition 1 worded as follows:

*No more than one static residential caravan, as defined in Section 24(8) of the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 and one touring caravan, which shall not be used for permanent habitation purposes, shall be stationed on the land at anyone time.*

*Reason: To accord with the terms of the application and in the interests of the visual amenity.*

- 3.4 Located within the Perfect Place site and immediately abutting the current application site to the east is another G&T site for which part retrospective planning permission is being sought under ref:MA/15/501537 for the change of use of the land to enable the stationing of a mobile home, utility room, stable block and touring caravan. This application is also on the agenda for determination by the Planning Committee.
- 3.5 The current application site abuts the eastern boundary of the Blossom site fronting Maplehurst Lane (also falling within the Perfect Place site). Planning permission was granted on the Blossom site under ref:MA/14/503810 for the change of use of land from grazing to residential for one caravan and a touring caravan and one utility shed for a gypsy and traveller family. This decision has since been the subject of a judicial review (JR) attached as **APPENDIX 2**.
- 3.6 In summary the lawfulness of the Blossom decision was challenged on five grounds, four of which the Council successfully defended. Nevertheless the Court decided to quash the planning permission on the basis that the report to the Planning Committee had not described the planning status of nearby traveller sites, which the Court considered may have made a difference to the Planning Committee's decision. In particular, the Court considered the Committee may have granted temporary rather than full planning permission. The Court's decision is based on case-specific considerations and otherwise vindicates the Council's general approach to applications of this nature. It would normally be the case that the application would be re-determined by Planning Committee.
- 3.7 However the original applicant no longer occupies the site which was vacated for a period. It has now been reoccupied and when the site was reinspected on the 27<sup>th</sup> April 2017 this confirmed its continued occupation with a mobile home and one touring caravan present. The whole site remains covered with ballast hardstanding while a propane gas tank standing on a concrete base has been installed. Closeboarded fencing with immature landscaping abutting fronts the site.
- 3.8 As the original applicant no longer occupies the site and no longer wants the application determined the Council is not in a position to redetermine the application. Regarding the current occupation of the Blossom site as no planning permission exists this is currently unauthorised. However no planning permission has been submitted seeking to regularise the position.

#### **4.0 POLICIES AND OTHER CONSIDERATIONS**

- Development Plan 2000: ENV6, ENV28, ENV34, T13
- Staplehurst Neighbourhood Plan
- National Planning Policy Framework
- National Planning Practice Guidance
- Draft Local Plan policies:SP17, DM16, DM34
- Planning Policy for Traveller Sites (PPTS)

## 5.0 LOCAL REPRESENTATIONS

5.1 8 properties were notified of this application 9 objectors have made representations which are summarised as follows:

- Granting planning permission would lead to further plots being sold off on a piecemeal basis and given the number of existing G&T sites in the locality the settled community is becoming completely dominated therefore increasing local tensions contrary to Government policy.
- Result in harm to the rural character of the area and Low Weald Special Landscape Area while illumination results in harm to the night time rural environment.
- Contrary to the heritage provisions of the Staplehurst Neighbourhood plan.
- Intentional unauthorised development is a material consideration that should be given great weight in determining this application.
- To grant planning permission would breach the terms of the original permission setting limits on the number of pitches.
- Not convinced the applicant is a G&T.
- The area has been subject to adhoc and unregulated G&T development.
- Not convinced the Council has any idea regarding the numbers or the real impact of the G&T development that has taken place.
- On its own or in conjunction with existing G&T development the net result is a cumulative impact that has eroded the rural character of the area.
- The application cannot be considered in isolation.
- The site is not allocated for G&T development while being sited in open countryside . The Council must justify any decision to approve contrary to Government Guidance.
- There are Listed Buildings in the locality who are adversely affected by retention of the of this G&T site. In addition the site lies in historic landscape and impact of the development on this must be taken into account.
- The site has been subject to flooding exacerbated by the hard surfacing that has taken place.
- Site lies next to a watercourse resulting in contamination and is not a matter that has been enforced by planning condition.
- Site is accessed by narrow countryside roads and granting planning permission will cause ongoing harm to the free flow of traffic and highway safety in the locality.
- Unauthorised G&T development in the locality has had an adverse impact on local wildlife.
- The 2014 Sustainability appraisal did not select Perfect Place as a sustainable G&T allocation and this should apply to this application.
- Conditions imposed on Perfect Place required site to be vacated once original applicants leave the site.

5.2 In addition an objector took independent legal advice that concludes the following:

- The Council cannot determine the application without first identifying the relevant policy framework.
- The applicant is not a gypsy.
- The site lies in open countryside away from existing settlements where permission should be very strictly limited and that permission should only be granted in exceptional circumstances.
- The Councils current GTAA allocation based on an outdated definition of gypsies and is therefore no longer reliable guide on which to base need. In any event if planning permission is to be granted this should be on a temporary basis only.
- As unauthorised occupation of the site took place this is now a material consideration that should be taken into account.

**5.3 Weald of Kent Protection Society:** Object on the following grounds:

- Applicant assumes gypsy status qualifies for occupancy of this site but consider full justification is required along the lines of Government guidance on traveller sites, whereby applicants need to offer substantial evidence of a nomadic lifestyle.
- Furthermore application is sent from an existing address in a residential area, and the Planning Authority needs to question inability to remain at that address or in a similar dwelling.
- The site in question is in a comparatively remote area of woodland and green fields, some distance from public transport and the Staplehurst health centre and schools.
- Refer to paragraph 25 of the DCLG's Planning Policy for Traveller Sites, whereby locations in the open countryside need to be strictly limited.
- There are already several unauthorised traveller settlements on this Maplehurst Lane site, so the field presents a cumulatively unacceptable aspect.
- Concerned about the health and safety aspects as the area is prone to flooding, and close supervision of sewage, horse waste, and waste water disposal needs to be carried out to ensure that local waterways and water supplies are not contaminated.
- Continuing unauthorised development of traveller pitches at Maplehurst Lane requires a solution as it is unsatisfactory that a lack of a 5-year supply of suitable pitches for travellers should allow settlements like these to become established by default.

**5.4 Heritage Protection:** Objects on the following grounds:

- Has an unacceptable impact on nearby Listed Buildings
- Should be considered against the Staplehurst Neighbourhood Plan
- Harmful to the landscape character of the locality and appearance of the Low Weald.
- Unacceptable impact on historic landscape and has completely eroded the trackside scene of Maplehurst Lane.

## **6.0 CONSULTATION RESPONSES**

**6.1 Staplehurst Parish Council:** Wish to see the application refused for the following reasons:

- Compound existing drainage and flooding problems and the overwhelming impact of over intensification on existing residents.
- Felt the cumulative impact of the application was unsustainable and would intensify previous piecemeal and irregular development in the countryside in contravention of Maidstone Borough-Wide Local Plan Policy ENV28 and of DCLG Planning Policy covering sites in rural or semi-rural settings and the need to ensure that the scale of such sites do not dominate the nearest settled community

**6.2 Kent Highways:** Were consulted on the individual and cumulative impacts of G&T development in this locality and its key points are as follows;

- Understand that the majority of traffic movements access the public highway via private roads onto Frittenden Road. Data sources confirm that there have been no injury crashes at either access point for at least the last 10 years. As such in the context of the NPPF it is not considered a total of 28 static and touring caravans represent a severe impact on the surrounding road network justifying an objection.

6.3 **EA:** The surface water flood map shows the site to be at risk from flooding with photographic evidence to this effect. As well as existing flood risk the development may have an impact on the wider catchment area. There is an increased runoff associated with the area of hardstanding and no formal drainage system or surface water attenuation. As such recommend that the development is the subject of a Flood Risk Assessment (FRA).

6.4 **KCC Sustainable Drainage:** Consulted in relation to concerns raised in connection with surface flooding the area and its comments are summarised below:

- Have reviewed the location given the Environment Agency's comments and the larger fluvial concerns but have no record of any surface water issues at these locations.

## 7.0 BACKGROUND PAPERS AND PLANS

7.1 The development is shown on drawings received on the 23<sup>rd</sup> March 2015 and site location plan drawn at a scale of 1:500 showing the application site area outlined in red. Letter relating to the applicants gypsy status received on the 16<sup>th</sup> March 2016.

## 8.0 APPRAISAL:

8.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that all planning applications must be determined in accordance with the Development Plan unless other material considerations indicate otherwise. In this case the Development Plan comprises the Maidstone Borough-Wide Local Plan 2000. However given the advanced progress of the Draft Local Plan (DLP) to formal adoption this can now also be given significant weight in the determination of this application. As the site lies within open countryside forming of a Special Landscape Area (SLA) the application is specifically subject to policies ENV28 and ENV34 of the adopted local plan and policy PW2 of the Staplehurst Neighbourhood Plan. Policy states ENV 28 states that:

*"In the countryside planning permission will not be given for development which harms the character and appearance of the area or the amenities of surrounding occupiers, and development will be confined to:*

- (1) that which is reasonably necessary for the purposes of agriculture and forestry; or*
- (2) the winning of minerals; or*
- (3) open air recreation and ancillary buildings providing operational uses only; or*
- (4) the provision of public or institutional uses for which a rural location is justified; or*
- (5) such other exceptions as indicated by policies elsewhere in this plan."*

8.2 Policy SP17 of the submission version of the DLP (which is also a countryside protection policy) following the Interim findings of the local plan Inspector now states that proposals which accord with other policies in the plan and do not harm the countryside will be permitted. Policy PW2 of Staplehurst Neighbourhood Plan states that development outside development boundaries will be assessed according to its impacts on landscape features and other matters and where these impacts cannot be addressed, development will not be supported.

8.3 Policy DM16 of the DLP specifically relates to G&T development. This policy has also been amended by the local plan inspector and renumbered DM15. Criterion 2 has been amended to state that planning permission for G&T development will be granted if it would not result in significant harm to the to the landscape and rural

character of the area. The requirement remains that the development should be well related to local services, would not harm the rural character and landscape of an area due to cumulative visual impacts and is well screened by existing landscape features, is accessible by vehicles, not located in an area at risk of flooding and wildlife considerations are taken into account.

- 8.4 In the adopted plan none of the exceptions to the general policy of development restraint applied to this application which therefore represented a departure from the Development Plan. In such circumstances it falls to consider whether there are any overriding material considerations justifying a decision not in accordance with the Development Plan and whether granting planning permission would result in unacceptable demonstrable harm which is incapable of being acceptably mitigated. However given the increasing weight to be given to the DLP means policy DM16 (now DM15) is now a material consideration.
- 8.5 As a point of clarification it is considered the mobile homes fall within the definition of a caravan as set out under Section 13 of the Caravan Sites Act 1968 (as amended). In the event of Members seeing fit to grant retrospective consent for this development an appropriate condition will be imposed to secure this.
- 8.6 The key issues in relation to this application are therefore considered to be (a) principle (b) justification (c) visual impact (d) landscape and heritage (e) sustainability (f) impact on general and residential amenity (g) highway safety (h) wildlife considerations and (i) flooding.

#### **PRINCIPLE OF DEVELOPMENT**

- 8.7 The site lies in open countryside and is therefore subject to policy ENV28 of the adopted local plan.
- 8.8 Policy ENV28 relating to development in the countryside states, amongst other things, that;
- “Planning permission will not be given for development which harms the character and appearance of the area or the amenities of surrounding occupiers.”*
- 8.9 Policy ENV28 sets out the type of development that can be permitted in the countryside but excludes G&T development and PW2 requires development to be able to acceptable in relation to its impact on a range of matters including landscape impact
- 8.10 Policy DM16 (now DM15) of the DLP specifically relating to G&T development now also represents a material consideration.
- 8.11 A key consideration in the determination of this application is Government Guidance set out in ‘Planning Policy for Traveller Sites’ (PPTS) amended in August 2015. This places an emphasis on the need to provide more gypsy sites, supporting self-provision and acknowledging sites are likely to be found in rural areas.
- 8.12 Issues of need are dealt with below but in terms of broad principle both local plan policies and Central Government Guidance permit G&T sites to be located in the countryside as an exception to the general development restraint policies.

#### *Need for Gypsy Sites*

- 8.13 Although the DLP is well advanced and therefore carries significant weight, there are not yet any adopted development plan policies relating to the provision of G&T sites. Local Authorities have responsibility for setting their own target for the number of pitches to be provided in their areas in their Local Plans. Maidstone Borough Council, in partnership with Sevenoaks District Council commissioned Salford University Housing Unit to carry out a Gypsy and Traveller and Travelling Showpeople Accommodation Assessment (GTAA) dated January 2012. The GTAA concluded the following need for pitches over the remaining Local Plan period:

Oct 2011 – March 2016	-	105 pitches
April 2016 – March 2021	-	25 pitches
April 2021 – March 2026	-	27 pitches
April 2026 – March 2031	-	30 pitches
Total: Oct 2011 – March 2031	-	187 pitches

- 8.14 The GTAA was completed prior to the refinement to the definition of Gypsies and Travellers contained in the revised PPTS published in August 2015. The GTAA is the best evidence of needs at this point, forming as it does part of the evidence base to the DLP. It is considered to be a reasonable and sound assessment of future pitch needs, albeit that actual needs may prove to be a degree lower as a result of the definition change. The current GTAA provides the best evidence of need but each decision must be taken on evidence available at the time of a decision made.

The target of 187 additional pitches is included in Policy SS1 of the Maidstone Borough Local Plan which itself was agreed by Full Council on 20<sup>th</sup> January 2016 and has been accepted by the DLP inspector in his interim report.

Supply of Gypsy sites

- 8.15 Accommodation for G&T's is a specific type of housing that councils have the duty to provide for under the Housing Act (2004).
- 8.16 Since 1<sup>st</sup> October 2011, the base date of the GTAA, the following permissions for pitches have been granted (net):
- 86 Permanent non-personal mobiles
  - 20 Permanent personal mobiles
  - 3 Temporary non-personal mobiles
  - 33 Temporary personal mobiles
- 8.17 Therefore a net total of 106 permanent pitches have been granted since 1<sup>st</sup> October 2011. A further 81 permanent pitches are needed by 2031 to meet the need identified in the GTAA.
- 8.18 The PPTS states that local planning authorities should identify a future supply of specific, suitable Gypsy and Traveller sites sufficient for the 10 year period following adoption of the Local Plan. The DLP allocate specific sites sufficient to provide 41 additional pitches by 2031. In addition, it can reasonably be expected that some permanent consents will be granted on suitable 'unidentified' sites in the future. There will also be turnover of pitches on the two public sites in the borough. Overall, by the means of the site allocations, the granting of consents (past and future) and public pitch turnover, the identified need for 187 pitches can be met over the timeframe of the Local Plan.



8.19 The Council prepared a Gypsy & Traveller and Travelling Showpeople Topic Paper as background to DLP Examination. This asserts the Council can demonstrate a 5.6 years supply of G&T sites by counting the LP allocations and making an allowance for the pitch turnover on the public sites (pages 11, 15) and the DLP Inspector did not comment on this. As such the Council's position is that it can demonstrate a 5.6 year supply of G&T sites at the base date of 1st April 2016.

8.20 The PPTS directs that the lack of a 5 year supply of Gypsy pitches should be given weight in the consideration of granting a temporary consent. As the Council considers itself to be in a position to demonstrate a 5 year supply the PPTS direction to positively consider the granting of a temporary consent does not apply if the development is found to be unacceptable for other reasons.

### **Gypsy status**

8.21 Since this application was submitted, the Government has revised the national planning guidance for Gypsy & Traveller development contained in 'Planning Policy for Traveller Sites' (PTS). The revised guidance came into force on 31<sup>st</sup> August 2015, with the planning definition of 'gypsies & travellers' being amended to exclude those who have ceased to travel permanently. The revised definition is as follows;

*"Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily, but excluding members of an organised group of travelling showpeople or circus people travelling together as such."*

8.22 The definition still includes those who are of a nomadic habit of life who have ceased to travel temporarily because of their own, or their dependants', health or education needs or old age. To determine whether an applicant falls within the definition, the PTS advises that regard should be had to; a) whether they had previously led a nomadic habit of life; b) the reasons for ceasing their nomadic habit of life; and c) whether there is an intention of living a nomadic habit of life in the future and if so, how soon and in what circumstances.

8.23 In response to the above the applicant advised the following:

- Take wife and children to Appleby and Stowe for 2-3 weeks at a time where meet up with family and friends along with carrying out tree and roofing work.
- Need to have a permanent base to give children an education to improve their long term prospects as it is becoming more difficult to pursue a traveller lifestyle.
- Eldest son wants to be a farrier and two other sons attend Marden Primary school.
- Still intend to travel but to ensure the children maintain their education means that this will have to be more restricted.
- The applicant will continue travelling up and down the country dealing in horses, motor vehicles along with tree work.

8.24 The request for further information made in January 2017 did not appear to elicit any response and as such any judgement on the applicants as G&T status must be based on the information already submitted.

8.25 Regarding whether the occupants of the mobile home have lived a nomadic lifestyle and intend to continue living in such a manner it is evident the submitted information lacks detail. However it must be taken into account that gypsy and travellers by their very nature, live a more footloose and less regulated lifestyle compared to many in

the settled community. Given the family circumstances of the applicant it is considered highly likely that to provide a stable base for the children to enable them to attend school occupation of the mobile home would be for extended periods. This would not however preclude adult members of the family continuing a nomadic lifestyle while one remained on site to perform family care duties to provide a stable base for the children. As such is considered this meets the latest planning definition of gypsies and travellers.

- 8.26 In assessing this application it would have been useful to have times, dates and locations of all events and places of work the occupants of the mobile home attend. However it must be reiterated that by their very nature G&T lifestyles make monitoring such activities problematic in planning terms. As such, unless the Council is in possession of clear substantiated evidence to refute the occupants claims both of an existing nomadic working lifestyle and intention to continue this lifestyle, such claims must be taken at face value. To go beyond this could be considered an overly forensic approach failing to reflect the realities of G&T lifestyles thereby making the Council vulnerable to claims of discrimination in its dealings with the G&T community.
- 8.27 In addition even if the applicants have permanent housing accommodation elsewhere this does not preclude them from resuming a G&T lifestyle nor does this affect their ongoing G&T status.
- 8.29 As such it is considered that based on the submitted details the applicant and other occupants of the site, on the balance of probability, are gypsies and travellers that have led and will continue to lead a nomadic lifestyle and therefore fall within the latest planning definition of gypsies and travellers.

#### **VISUAL IMPACT**

- 8.30 Guidance in the PPTS states that Local Planning Authorities should strictly limit new traveller development in the countryside but also states that where sites are in rural areas they not should dominate the nearest settled community and or place undue pressure on local infrastructure. No specific reference is made to landscape impact though this is addressed in the NPPF, policy ENV28 of the adopted local plan and policy SP17 of the DLP (which specifically states that provided proposals do not harm the character and appearance of an area they will be permitted). In addition policy DM16 states, amongst other things, that permission will be granted if a site is well related to local services, would not harm the rural character and landscape of an area due to cumulative visual impacts and is well screened by existing landscape features, is accessible by vehicles, not located in an area at risk of flooding and wildlife considerations are taken into account. Policy PW2 of the SNP states the development should be able to address its impact on a range of matters including landscape features and visual setting.
- 8.31 It is generally accepted that mobile homes comprise visually intrusive development of character in the countryside. Consequently unless well screened or hidden away in unobtrusive locations they are normally considered unacceptable in their visual impact. Consequently where they are permitted this is normally on the basis of being screened by existing permanent features such as hedgerows, tree belts, buildings or land contours.
- 8.32 In this case, the application site lies within an existing lawful G&T site i.e. Perfect Place. It is acknowledged the permanent planning permission granted for Perfect Place was subject to a condition restricting the number of mobile and touring caravans which is exceeded by the current application. However the JR decision did

not place weight on this condition in setting a limit on the number of pitches the site could accommodate. As such the existence of this condition does not constrain Members from dealing with this application on its merits as a new planning chapter in the sites history.

- 8.33 Regarding that part of the JR which was upheld, the judgement made clear that where G&T development is unauthorised (and notwithstanding the existence of applications seeking to regularise the development), the existence of such pitches is not material in assessing the character of an area. Assessment should therefore proceed on the basis that these sites are unoccupied and the land is in its former condition i.e. open countryside.
- 8.34 Members attention is drawn to the plan attached as **Appendix 1** showing G&T development in the locality. This shows 3 sites benefitting either from unconstrained permanent permissions or personal consents. However when these are excluded this still shows a number of sites in the locality (still including Blossom) which do not have the benefit of planning permission.
- 8.35 Members are reminded that two of these sites have since had planning permission refused with enforcement action pending. The current situation of Blossom is as explained earlier.
- 8.36 As such the Blossom site and other unauthorised development in the locality cannot be seen as having an impact on the character of the area. Consequently determining the visual impact of the development must be assessed on its own merits though the cumulative impacts of existing lawful development in the locality can also be taken into account.
- 8.37 Dealing first with the visual impact of the development as a discrete matter in its own right, the site is set back from Maplehurst Lane by a distance by just over 20 metres with access onto an existing track. The mobile home is tucked up against the southern site boundary. Notwithstanding its low profile, set back from Maplehurst Lane and that there are no public footpaths close to or abutting the site from which other public views of the site can be obtained, views are available through the access. As such the mobile home is partly visible and by implication, has some but limited impact on the character of the countryside and landscape quality of the SLA.
- 8.38 In making this point it should be noted the southern site boundary comprises deciduous tree cover. Though providing a dense screen in summer there is a gap through which long range views of a mobile home can be obtained from Maplehurst Barn to the south. In winter this screening effect would be lessened by leaf fall. However this needs to be placed in context. Firstly there is no right to a view as such while there is a separation distance in excess of 350 metres to the boundary with Maplehurst Barn. In these circumstances it is considered it would be difficult to make a substantive case of overriding visual harm based solely on loss of outlook to Maplehurst Barn.
- 8.39 Turning to the remaining elements of the proposal being the utility room and stable blocks, these are both small low profile buildings and given their small size and unobtrusive siting it is considered they will have little impact on the rural character or landscape quality of the area.

#### **CUMULATIVE VISUAL IMPACTS**

- 8.40 The JR judgement makes plain it is only the impact of lawful G&T sites that can be taken into account in assessing the cumulative impact of this development. The 3 lawful sites are shown on the plan attached as **Appendix 1**. Perfect Place is set well back from Maplehurst Lane and is considered to be relatively unobtrusive in its landscape impact. Another lawful site is hidden within woodland on the opposite side of Maplehurst Lane and is also unobtrusive in its impact as a consequence. The remaining lawful site is that fronting the eastern side of Maplehurst Lane to the north. Being a lawful site its visual impact now forms an acknowledged part of the local area..
- 8.41 Having regard to the impact of the development under consideration, though the site does have some visual impact, given its siting well back from the Maplehurst Lane road frontage and notwithstanding its proximity to the lawful Perfect Place site, its visual impact is considered to be more localised and contained. As such it is considered it would be difficult in this case to sustain an objection based on cumulative visual impact.

#### **LANDSCAPE AND HERITAGE CONSIDERATIONS:**

- 8.42 It is contended the site lies within an historic landscape while there are nearby Listed Buildings whose character and setting will be adversely affected by retention of this G&T site which is also contrary to the provisions of the Staplehurst Neighbourhood Plan. Though the Staplehurst Neighbourhood Plan can now be given weight in the determination of this application it is silent on specific G&T and landscape issues.
- 8.43 The site is identified as falling within open countryside and within the Low Weald SLA in the adopted local plan. The DLP no longer makes specific reference to SLA's but policy SP17 of the DLP, as amended by the Local Plan Inspector, states amongst other things that the distinctive landscape character of the Low Weald as defined on the policies map will be conserved and enhanced as landscapes of local value and PW2 of the Neighbourhood plan seeks to conserve landscape features of the countryside.
- 8.44 The Maidstone Landscape Character Assessment 2012 identifies the site as falling within the Sherenden Wooded Hills. The key characteristics of this area are identified as being a low lying and gently undulating clay Low Weald Landscape with many ponds, ditches and watercourses. This includes large irregular blocks of ecologically important ancient woodland interspersed with pasture, orchards and arable fields along with species rich native hedgerow field boundaries with mature oaks trees as imposing hedgerow trees and sometimes within fields where boundaries have been removed. Historic buildings are scattered throughout the landscape.
- 8.45 The Maidstone Landscape Capacity Study: Sensitivity Assessment – Jan 2015 assessed the Sherenden Wooded Hills as having high overall landscape sensitivity and therefore sensitive to change. It also concluded that development potential is limited to within and immediately adjacent to existing settlements and farmsteads in keeping with the existing. Other development supporting rural enterprises could be considered though extensive, large scale or visually intrusive development will be inappropriate.
- 8.46 It can only be reiterated that though the site does have some visual impact, given its siting well back from the Maplehurst Lane road frontage its visual impact is considered to be relatively localised and contained. As such it is considered it would be difficult in this case to argue landscape harm similar to the refused applications fronting Maplehurst Lane.

- 8.47 Turning to the impact of the development on heritage assets with the area, the site does not lie within or close to any Conservation Area. The nearest listed building is Maplehurst sited some distance to the south of the site with views to the development screened by intervening trees and hedgerows.
- 8.48 As such it is not considered the development has any material impact on the character and setting of any existing acknowledged heritage assets within the locality.

### **SUSTAINABILITY**

- 8.49 Gypsy and traveller sites are mainly located in the countryside and the development follows this pattern. Concerns have been raised that this site is unsustainable and is unacceptable on this ground. However the development lies within the site area of a lawful G&T site for which planning permission has already been granted. As such it appear perverse to adopt a different approach to this development.
- 8.50 In addition, compared to many G&T sites the site occupies a relatively sustainable location with Staplehurst just over 1.5 kilometres to the west. As such no objection is identified to the development on sustainability grounds.

### **GENERAL AND RESIDENTIAL AMENITY**

- 8.51 Given the distant siting of the nearest houses it is considered it would be difficult to argue any ongoing significant detrimental impact to the residential amenity of any neighbouring houses in terms of loss of light, outlook, privacy, general noise and disturbance.
- 8.52 Of wider concern is the view that the local community is being overly dominated by G&T development and the adverse impact this is having on local services. However given the small number of persons being accommodated in this development it is considered it would be problematic to seek to pursue such an argument in the circumstances of this application.

### **HIGHWAY SAFETY CONSIDERATIONS:**

- 8.53 Objections to the development include concerns relating to highway safety and the free flow of traffic on the local road network arising not only from this development but also in connection with other G&T development that has taken place. The views of Kent Highways were therefore sought. It concluded that notwithstanding the traffic generated by lawful and unlawful G&T development in the locality it could not support an objection based on harm to the free flow of traffic and highway safety in the locality.
- 8.54 Consequently as it is only possible to take into account traffic generated by the lawful G&T sites in the locality and that traffic generated by these would be materially less than the quantum of lawful and unlawful G&T development, it not considered there are sustainable objections to retention of this site form G&T use based on harm to the free flow of traffic and highway safety in the locality.

### **WILDLIFE CONSIDERATIONS:**

- 8.55 This is a retrospective application with the site occupied by the mobile home and existing buildings with the remainder laid out as hardstanding or grassed. It therefore clearly has little wildlife and habitat potential in its current form.

**FLOODING:**

- 8.56 The site lies in zone 1 and is therefore not subject to fluvial flooding. However concerns were raised that the site lies in an area at risk of surface water flooding and the EA was consulted as a consequence.
- 8.57 Its response was that the surface water flood map shows the site to be at risk from flooding with photographic evidence to this effect. As well as existing flood risk the development may have an impact on the wider catchment area. There is an increased runoff associated with the area of hardstanding and no formal drainage system or surface water attenuation. As such it recommended the development be the subject of a Flood Risk Assessment (FRA).
- 8.58 It should be noted that as the site is not at risk from fluvial flooding there was no requirement to submit an FRA with the application. In addition the area of hardstanding has a ballast surface while the remainder of the site is grassed. Given these are both permeable the likelihood of water runoff is unlikely to be materially different from previous site conditions in the absence of changes to site levels.
- 8.59 As such it not considered the EA's request for an FRA is justified nor has evidence been submitted that retention of the development would make surface water runoff and flooding any worse or that the occupants of the development are placed at risk as a result of surface water flooding. KCC sustainable drainage have also been consulted. However in the absence of a negative response from this body it is not considered there is sufficient evidence to support objections to the development based on surface water flood risk.

**OTHER MATTERS:**

- 8.60 Concerns have been raised that retention of the development will result in continued pollution and harm to the local water environment. The applicants state that surface water drains into adjoining watercourses while waste water is dealt with by a septic tank. Both measures appear as appropriate responses having regard to the nature of the development. However should pollution be identified from this site the EA using its pollution prevention powers will be far better placed to take immediate action in such an eventuality.
- 8.61 Government Guidance makes clear that G&T planning applications submitted on a retrospective basis represents a material consideration that should be taken into account in determining such applications. However guidance on how much weight this should be given is not clear while the planning system is not intended to be punitive but to secure compliance with legitimate planning objectives. As such when assessed against existing planning criteria the fact that retrospective planning permission is being sought is, on its own, insufficient to weigh significantly against the development.
- 8.62 The report states the development represents a departure from the development plan normally requiring Press and Site notices. However given the small scale and enclosed nature and minimal wider impact of the development it is seen to comply with the relevant polices. As such it is not considered necessary to advertise it as a Departure.

## 9.0 CONCLUSIONS:

9.1 Though the Council is able to demonstrate a 5 year supply of G&T sites this does not mean, in the absence of demonstrable harm on other grounds, that the development is unacceptable in principle particularly as the emerging plan policy DM16(now DM15) states that planning permission will be granted if the development does not result in significant harm to the landscape and rural character of the area

9.2 The key conclusions are considered to be as follows:

- The occupants of the site fall within the revised definition of gypsies and travellers.
- The development is acceptable in its individual and cumulative visual impacts with other lawful G&T development in the locality while not materially contributing to dominating the local settled community.
- Has not resulted in any material loss of amenity to dwellings in the locality.
- Is acceptable in sustainability and wildlife terms.
- Is acceptable in its highway impacts.

9.3 As such in the absence of demonstrable harm to the character of the countryside and wider landscape it is considered the development is acceptable in its own right. In the circumstances it is recommended that permanent and unfettered consent to use the site for G&T accommodation is granted. Members are also advised that granting permanent planning permission here counts towards the overall supply of G&T sites in meeting the need identified in the GTAA.

## 10.0 RECOMMENDATION – GRANT planning permission subject to the following conditions

1. The site shall only used as a caravan site for gypsies or Travellers and their family and/or dependants, as defined in Annex 1 of the Planning Policy for Traveller Sites 2015.

Reason: To reflect the special circumstances of the application.

- (3) No more than one caravan and one tourer, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 shall be stationed on the site at any time unless otherwise agreed in writing with the Local Planning Authority;

Reason: To safeguard the character and appearance of the countryside.

- (4) No external lighting whatsoever shall be placed on the site without first obtaining the prior approval in writing of the Local Planning Authority. Lighting shall only be installed in accordance with the approved details and retained as such at all times thereafter.

Reason: To safeguard the night time rural environment.

- (5) No commercial or business activities shall take place on the land, including the storage of vehicles or materials or any livery use.

Reason: To prevent inappropriate development and safeguard the amenity, character and appearance of the countryside.

## Planning Committee Report

- (6) Within three months of the date of this decision details of the method of foul and surface water disposal, general waste disposal and potable water provision shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented within 3 months of approval retained as such at all times thereafter.

Reason: in the interests of health and safety and to prevent water pollution.

- (7) The stables and utility room hereby approved shall only be used in connection with the use of the site as a gypsy and traveller site and not for any trade or business purpose.

Reason: In the interests of amenity.

- (8) The development hereby approved shall only be carried out in accordance with the following submitted plans being those received on the 23<sup>rd</sup> March 2015.

Reason: In the interests of amenity.

### INFORMATIVES:

#### **Foul sewage:**

Details should include the size of individual cess pits and/or septic tanks and/or other treatment systems. Information provided should also specify exact locations on site plus any pertinent information as to where each system will discharge to, (since for example further treatment of the discharge will be required if a septic tank discharges to a ditch or watercourse as opposed to sub-soil irrigation).

If a method other than a cesspit is to be used the applicant should also contact the Environment Agency to establish whether a discharge consent is required and provide evidence of obtaining the relevant discharge consent to the local planning authority.

#### **Caravan site licence:**

It will be necessary to make an application for a Caravan Site Licence under the Caravan Sites and the Control of Development Act 1960 within 21 days of planning consent having been granted. Failure to do so could result in action by the Council under the Act as caravan sites cannot operate without a licence. The applicant is advised to contact the Environmental Enforcement Team on 01622 602202 in respect of a licence.

#### **General waste provisions:**

Provision should be made for the separate storage of recyclables from household waste. Advice on recycling can be obtained from the Environmental Services Manager. Clearance and burning of existing wood or rubbish must be carried without nuisance from smoke etc to nearby residential properties. Advice on minimising any potential nuisance is available from Environmental Enforcement/Protection.

The Council's approach to this application:



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In accordance with paragraphs 186 and 187 of the NPPF, Maidstone Borough Council (MBC) takes a positive and proactive approach to development proposals focused on solutions. MBC works with applicants/agents in a positive and proactive manner by:

Offering pre-application advice.

Where possible, suggesting solutions to secure a successful outcome.

As appropriate, updating applicants/agents of any issues that may arise in the processing of their application.

In this instance:

The application, following the receipt of additional information, was acceptable as submitted.

Case Officer: Graham Parkinson

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.  
The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.