



Appeal Decision

Inquiry held on 19 & 20 October 2005 and site visit undertaken on 19 October 2005

by **R J Tamplin BA(Hons) MRTPI Dip Cons Studies**

an Inspector appointed by the First Secretary of State

POST ROOM T.R.	
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Dip Cons Studies	

The Planning Inspectorate
4/09 Kite Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN
☎ 0117 372 6372
e-mail: enquiries@planning-inspectorate.gsi.gov.uk

Date

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Appeal Ref: APP/U2235/A/05/1178307

Primrose Paddock, Heath Farleigh Lane, Loose, Maidstone, Kent, ME15 0QE

- The appeal is under Section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr and Mrs Draper against the decision of Maidstone Borough Council.
- The application Ref MA/04/2010, dated 8 September 2004, was refused by notice dated 1 February 2005.
- The development proposed is change of use to gypsy site for one mobile home and one touring caravan.

Summary of Decision: The appeal is allowed subject to conditions.

Procedural Matters

1. The appellants agreed that the address of the appeal site on the application form is partly incorrect and should read 'Primrose Paddock, Stockett Lane, Coxheath, Maidstone, Kent, ME15 0QE'. I shall use the correct address throughout this decision.

Main Issues

2. It was agreed that there are three main issues before me in this appeal, these being:
 - (a) The effect of the development on the character and appearance of the countryside around Stockett Lane;
 - (b) The effect of traffic generated by the development on the safety of users of Stockett Lane; and
 - (c) Whether any harm arising from the above issues is outweighed by material considerations, and in particular the claimed gypsy status of the appellants, their personal circumstances and any need for gypsy sites in Maidstone Borough.

Planning Policy

3. The statutory development plan for this area includes the adopted Kent Structure Plan 1996 (the SP) and the adopted Maidstone Borough-Wide Local Plan 2000 (the LP). The Council referred to SP Policies S1, S2, ENV1, H8, RS1 and RS5 and LP Policies ENV28, ENV32, T22 and H36 and the appellants accepted that these policies are applicable for the purpose of my determination. Reference was also made to the policies of the emerging Kent and Medway Structure Plan: Deposit Plan of September 2003 but it was agreed that less weight should be given to those policies at this stage in the plan's progress towards adoption.

The Appeal Site and its Surroundings

4. The appeal site lies in open undulating countryside about 250m north of Coxheath, a substantial village some 5km south of Maidstone. It consists of an almost rectangular parcel

of land with a depth of around 120m and a frontage of roughly 50m to the eastern side of Stockett Lane. The front two-thirds of the land is divided into two paddocks in which a few horses and ponies were grazing at the time of the inspection. A track leads along the northern side of these paddocks to the rearmost third of the site which is occupied by about twenty cherry trees in two rows. There are fruit orchards to the east and south, although towards Stockett Lane these thin out, allowing views of the upper storeys of houses on the northern edge of Coxheath, along Forstal Lane. The northern boundary of the appeal site consists of a row of poplar trees about 10m high; the western, roadside, boundary is a blackthorn hedge about 3-4m high and this is a feature of the lane to both north and south of the site.

5. Stockett Lane is a single carriageway road with no verge or footway for most of the distance from Coxheath to the site. The carriageway has a width of about 5m and there is no local speed limit or street lighting beyond the Forstal Lane junction at the village edge. The road dips to the north and rises slightly to the south when seen from the access to the appeal site. Immediately north of this access a triangular plot is separated from the site by a public footpath which crosses the poplar hedge by a stile and then continues northeast across a paddock to orchards and farm buildings in that direction. Beyond the paddock the roof of a caravan is just visible above a boundary hedge. Opposite the site the land is more open and there is an access to a group of farm buildings. About 150m south-west of the site is the junction to a minor road, Workhouse Lane, which leads past a small wood in the direction of Dean Street and East Farleigh.

Inspector's Reasons

Effect on the Character and Appearance of the Countryside

6. My site visit showed that a mobile home and touring caravan, if placed on the rear of the site as the appellants propose, would be visible from the entrance on Stockett Lane, probably throughout the year. The adjacent cherry trees give only limited screening during the summer months and in winter would afford little or none. But such a view would be fleeting as passers-by went past the gap in the tall roadside hedge. Moreover, I disagree with the Council that the development would be seen from Workhouse Lane, where a combination of the landform, wood and hedges along Stockett Lane would block views at all seasons. The effect of the landform on views in this area is much more subtle than is at first apparent, with the upper floors of houses in Coxheath being plain when standing near the entrance to the site, but becoming completely hidden as one walks to the rear. I accept that from the public footpath at the site entrance any development on the land would be seen, but again I believe those views would be short-lived and limited by the poplar hedge north of the stile and shortly thereafter would be entirely lost. This would be due to the heavily planted orchards in the fields to the north, east and south, which trees would also obscure visibility of the caravans from the dwellings in Forstal Lane.
7. There is no doubt that the site lies in the countryside as a matter of fact and as defined by LP Policy ENV28. The aim of that policy is to prevent harm to the character and appearance of the area or the amenities of surrounding occupiers. In this case the character of the countryside north of Coxheath is of intensive fruit growing where, as Mr Draper explained, picking and management using itinerant labour is still a feature of the rural economy. I saw that this results in the fruit fields being intensively planted with fruit trees which are protected by tall boundary hedges providing windbreaks and shelter belts, giving

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a very characteristic appearance. Furthermore the use of caravans for temporary housing of the labour appears to be a common feature in the vicinity. However, the dense planting and shelter largely screens these features so that, for example, I was unable to see the unauthorised caravans on nearby land, to which the Council referred, despite their apparent proximity. Similarly the caravans on land a short distance north of the appeal site are all but invisible for similar reasons.

8. In these circumstances I consider that the limited visibility of the proposed development would be entirely consistent with the character and appearance of the local landscape. So too would any increase in its visibility during the winter, because I would expect that other caravans in the vicinity would also become more apparent at those times. In reaching this conclusion I draw a distinction between unauthorised caravans, which have no justification for being in the landscape, and those which are lawful, for whatever reason, and which hence are part of the local rural scene. I have also borne in mind that much of the screening is on land outside the appellants' control. However, the hedge alongside Stockett Lane is said to be within their land, as is the poplar hedge on the northern boundary. Conditions could therefore be imposed requiring these to be reinforced and the eastern and southern boundaries planted with hedges and such planting would appear entirely consistent with the character and appearance of the local landscape.
9. Accordingly I conclude that the appeal proposals would not undermine the aims of LP Policy ENV28, provided they fall within one of the exceptions afforded by other Plan policies. That is a matter for consideration under the third main issue of this case. For similar reasons the development would also not conflict with the aims of SP Policies S2 and ENV1.
10. The Council also argued that the development would be contrary to the aims of LP Policy ENV32, which defines an anti-coalescence belt to the south of Maidstone in order to keep separate the settlements in that area and prevent them coalescing with the town itself. But it seems to me that the appeal proposals neither significantly extend the built up area of Coxheath nor consolidate an existing area of development as a result of infilling. On this part of Stockett Lane there is no development on its eastern side between the appeal site and the edge of the village, a distance of some 250m. To the north the next development is the authorised caravan site some 60m distant, beyond which there appears to be no development for some considerable way. I therefore do not consider that caravans sited here could in any reasonable sense of the term be described as an infilling development, particularly as they would be set back some 100m or more from the lane. Nor would they undermine the underlying aim of the policy because they would be seen as being related to the particular character of the local countryside rather than being a part of urban development. Therefore I conclude that the appeal proposals would not conflict with the aims of LP Policy ENV32.

The Effects on Highway Safety

11. The highway authority undertook a brief random speed check at the appeal site from which they estimate the indicative vehicle speeds in the vicinity to be about 30-35mph (48-56 kph). Using Table A on page 58 of "*Places, Streets and Movements*" this speed gives rise to a recommended minimum visibility at the access to the appeal site of 90m in each direction from a point 2m back from the carriageway edge. Although the visibility currently available at this point was not measured at the site inspection, the appellants did not

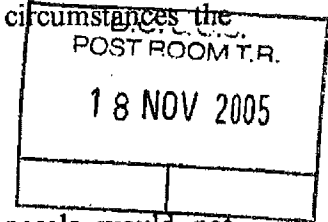
challenge the Council's measurements of 32m to the south and 10m to the north, and my observations lead me to agree. Consequently the available visibility in both directions is substantially less than the recommended minimum, that to the north being particularly limited.

12. The guidance in "*Places, Streets and Movements*" needs to be assessed in the circumstances of each case. In this instance the Council argued that Stockett Lane is a busy country road used by traffic from the wider area going to and from Maidstone. Though the site inspection, carried out around 1600hrs on a Wednesday, did not suggest that flows were heavy in the afternoon peak, there is no evidence to dispute the Council's claim. In the light of the minimal visibility, limited road width and absence of verges or footways I consider that at present traffic emerging from this access is a potential danger to itself and other users of Stockett Lane. The appellants said that this access has historically been used by many farm vehicles so that any traffic generated by their proposals would be substantially less and thus would reduce rather than increase the hazard caused by use of the access. But the formation of a separate planning unit when this land was acquired by the appellants in 2002 means that the true comparison today is the traffic generated by the current use of this land, as a small area of grazing, compared to residential and grazing use. This they acknowledged would result in increased turning movements.
13. Nevertheless, the appellants have offered to improve the visibility at the access by forming a splay in both directions. The highway witness agreed that such a feature to the south, using land within their control, would increase the visibility for and of emerging drivers to about 46m. To the north of the access the appellants own none of the roadside land but they provided a letter from the landowner of the triangular parcel beyond the public footpath stating that he would allow them to reduce the hedge in that direction to a level enabling good visibility. My observations on site showed that this section of land projects slightly into the general alignment of Stockett Lane, so that if this section of hedge were reduced to the 0.9m height required by the highway authority, this would permit vision of more than 100m to the north. Though no undertaking under Section 106 of the Town and Country Planning Act 1990 was submitted in support of the letter, I consider that, in the light of the judgement in *British Railways Board v SSE & LB Hounslow [1994] JPL32*, a negative condition could be imposed preventing implementation of permission before the height of the hedge is reduced.
14. In those circumstances there would be vision for and of emerging drivers of 46m to the south and in excess of 100m to the north. My observations of driver behaviour in Stockett Lane is that not only do many of them drive at well below what is legally possible on an unrestricted road, but that they usually show awareness of oncoming vehicles by slowing and pulling in to allow them to pass using field entrances or wider stretches of the lane. Such a brief observation does not lead to a conclusion that all drivers behave in such a manner, and the evidence of local residents is that some speeding does occur along parts of Stockett Lane. But no recorded accidents have occurred on this stretch of road, and traffic approaching from the south would tend to be on the far side of the carriageway, albeit that is very limited. Therefore I conclude that the harm arising from additional turning traffic generated by the appeal proposals would be overcome by the provision of visibility splays to north and south as proposed.
15. Hence, subject to the imposition of a condition requiring such splays (without which permission should be refused) I conclude that no serious harm to the safety of road users

would arise from the traffic generated by the development. In those circumstances the appeal proposals would not conflict with the aims of LP Policy T22.

Other Material Considerations

Local Plan Policy H36



16. In the light of my conclusions in paragraph 9 above, that the proposals would not undermine the aims of LP Policy ENV28 provided they fell within one of the exceptions to countryside policy indicated by policies elsewhere in that plan, I now turn to examine the claimed exception. This is through LP Policy H36 which concerns accommodation for gypsies. The policy has three criteria which have to be satisfied before planning permission may be granted, and for simplicity and ease of understanding I have not considered them in numerical order.
17. Criterion (2), that the site should be satisfactorily screened by natural features, was interpreted by the Council as meaning that this should be the state of the site at the time of the decision. However, such an interpretation fails to recognise that an unacceptably visible site may be able to be made acceptable by the imposition of suitable planting conditions. Nor is it necessarily the case that, if the appeal site were to be screened, that screening would in itself appear unnatural and out of character with the surroundings, so that the development would fail the test of other countryside policies including ENV28. That would depend on the form of the landscaping proposals which would be subject to negotiation with and approval by the Council. I have already concluded that, given the character and appearance of the countryside around Coxheath, the limited visibility of the development would cause no serious harm to the landscape, but that in any event even that harm could be overcome by imposing a condition requiring screen planting; that could be designed to be appropriate to this area. I thus conclude that the proposals comply with criterion (2) of Policy H36.
18. Criterion (3) seeks to ensure that the development of the site would not result in an undue concentration of such developments which would adversely affect the character or amenity of the countryside or an area. I found the Council's interpretation of this part of the policy difficult to understand in that they appeared to say that the term 'such developments' means any caravans in the vicinity, whatever their purpose and whether or not they are authorised. But Policy H36 is purely a gypsy policy, and though I accept that gypsies live or seek to live mainly in caravans, those vans are distinguished from all other caravans by the specific identity of the occupiers, just as agricultural workers' dwellings are distinguished from other dwellings in the countryside. Hence I have interpreted the term 'such developments' as meaning other gypsy caravans.
19. In this case there is only one other gypsy caravan site in the vicinity, on the field a short distance to the north of the appeal site. Though this contains several caravans, I understand they all belong to members of one family. Such an arrangement is common in the gypsy community so that I consider these caravans as a group forming a single family unit and not as multiple caravans occupied by unrelated individuals. That being so I do not consider that a second gypsy caravan site, even as close as 60m to the first, could be considered an undue concentration of such developments. To accept that argument would mean that only isolated single family groups of gypsies would ever be permissible under this part of the policy; it would also prevent any new local authority sites being created or existing sites being enlarged. Because that would be irrational and unreasonable I hold to my interpretation of

the term 'undue concentration' and to my conclusion that this would not arise were permission to be granted for the appeal proposals.

20. Because I have already concluded in the first main issue that permission would not adversely affect the character of the countryside, and because I have no evidence that it would affect its amenity, I further conclude that the development complies with criterion (3) of Policy H36.

The Appellants' Gypsy Status and Personal Circumstances

21. Finally I turn to criterion (1) of LP Policy H36, which requires that the resident of a site permitted under this policy has a nomadic way of life and travels for the purpose of making a livelihood. The Council say that they fully accept that the appellants are both ethnic gypsies; what they dispute is that either of them comes within the requirements of this policy criterion. They argue that they have granted several recent permissions for sites under this policy so that it is not contrary to Government advice under Circular 1/94, "Gypsy Sites and Planning", and they have followed the advice of letters from the former DETR in 1998 and 1999 in seeking to make provision for gypsy sites. They emphasise that they are now embarking on a Housing Needs Assessment for the Borough, including an assessment of the needs of gypsies for sites and for housing provision, the results of which are expected shortly. But in their view the position in this case remains that the appellants do not fall within the definition of gypsy in the policy, so that there is no justification for permission.
22. The supporting text to LP Policy H36 refers to the definition of gypsies in the Caravan Sites Act 1968, that it means persons of nomadic habit of life, whatever their race or origin, but excluding travelling showpeople. The policy criterion refines that definition by reference to travel for the purpose of making a livelihood and, though the reason for this refinement is not stated in the supporting text, I understand it arises from case law. That is important because, while the definition in the policy has remained fixed since it was adopted in December 2000, case law relating to gypsy status has continued to evolve. As the decision maker in this appeal it is my duty not only to apply this development plan policy, but to do so taking full account of how the courts have interpreted the law surrounding the matter of gypsy status.
23. The background facts in this case are that the appellants have been married for some thirty years and for many years travelled around mid-Kent in a caravan, moving from farm to farm, with Mr Draper doing work such as fruit and hop picking and hop tying. However, farming changed, orchards and hopyards were grubbed up and farmers were increasingly reluctant to allow the larger caravans on their land, fearing the occupiers would not leave as those caravans were their homes. Because it became difficult to travel in their traditional way the Drapers moved onto the local authority site at Stilebridge near Marden in about 1991. They did so reluctantly as they had never lived on such a site before, but they could find no alternative. They used Stilebridge as a base from which Mr Draper continued to travel around the local area doing general farm work, fruit and hop picking and tying plus some house painting and logging in the winter. But they could not get used to the site, thought it dirty and run down, and later found themselves in the midst of rival groups who were constantly feuding and fighting. Because they were so concerned at the effects of all this on their children they applied to the Council for an alternative site but were offered only housing accommodation. By 1998 they were so desperate to leave Stilebridge that they accepted the offer of a local authority house in Maidstone.

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24. At first Mr Draper continued to do the same farm work in the countryside around the town but almost immediately Mrs Draper began to experience severe physical symptoms such as joint, stomach and back pains and sleeplessness. As these became increasingly debilitating she sought medical help and was prescribed a great variety of drugs, many of which she still uses, but to little effect. She is now seeing her own GP twice a week and has been referred by him to the Blackthorn Trust, a specialist practice dealing with apparently incurable and inexplicable symptoms. Their view is that Mrs Draper is genuinely suffering, is perfectly sane and sensible, and that her deep aversion to living in a house is very likely to be leading to these symptoms. The only relief she obtains is when spending nights in a touring caravan at her mother's site, near Robertsbridge in East Sussex.
25. When his wife is suffering very badly and is almost immobile, which may be for periods of up to five weeks at a time, Mr Draper has to stay at home to look after her. Therefore he cannot commit to being available when farmers need him for work in the orchards and hopyards and so he has had to develop alternative sources of income. He now helps a horse owner attend traditional fairs such as Stow and Appleby to give advice on buying and selling and to act on her behalf in what is an essentially male-dominated situation. This occurs about five or six times a year, each event lasts a day or two, and he is paid about £25 each time plus board, lodging and other expenses. He also carves traditional picture frames, takes them to the fairs and sells them to other gypsies, though recently he has exhausted this market. A third source of income is what Mr Draper described as street work, that is, with others, gardening, painting the exterior of houses and doing general handyman jobs. Most recently he has started his own business in the same line and he travels around the Maidstone, Tonbridge and Malling areas putting cards through doors and then following up these leads to see if any work is required.
26. The judgement in *Hearne v National Assembly of Wales & Carmarthenshire CC*, [1999] QBENF 1999/0648/C, held that the relevant time for assessing the gypsy status of an appellant is at the time the matter is being considered, in this case at the inquiry. It was also held that the guidance in Circular 1/94 applies to gypsies who combine a nomadic life and a permanent site or base to which they return from time to time. Where appellants have retreated to their permanent base, the question for the decision-maker in a planning case is essentially one of fact as to whether, in doing so, they have abandoned their nomadic way of life. In such circumstances, their intention may be relevant to that question of fact. The judgement in *Wrexham CB v National Assembly of Wales and Berry*, [2003] EWCA Civ 835, referred to the *Hearne* and other judgements and set out in paragraph 57 a series of propositions in law to guide decision makers where the status of an appellant claiming to be a gypsy is at issue.
27. In this case there is no dispute that, at the time of the inquiry, the appellants were not, as a matter of fact, actually living a travelling life. It is thus a matter of fact and degree whether this current absence of travelling means that they no longer follow a nomadic habit of life. The circumstances are that both of the appellants are from an ethnic gypsy background and for many years did pursue a travelling life and this was only curtailed to a permanent base in about 1991 because they could no longer find regular farm accommodation due to changes in agriculture and in the attitude of farmers to large caravans. Nevertheless, Mr Draper continued to carry out the same farm work as he had always done, together with house painting and logging, and he travelled in the same area as before because he enjoyed this work. It was also evident that Mr Draper and his wife are a very close and private couple who, with their immediate family, are largely self-sufficient and happy to depend on

their own resources. Hence they were entirely at ease with a nomadic existence and I believe that he and his wife would have continued to live as they had before 1991 if circumstances beyond their control had not forced them to move onto a local authority gypsy site.

28. Whether they travelled seasonally while on that site was not the subject of evidence. However, irrespective of that, it seems to me that what was important to whether or not they can be said to have retained their status at that time is that they were reluctant to be on a permanent base at all and that Mr Draper continued to work in the same way and the same area as before. They had not retired or retreated to that site because they never felt settled there and they had not given up their traditional means of making a living, that is travelling to work in fruit and hop farms plus some painting and logging. I therefore conclude, as a matter of fact and degree, that up to the time they left the Stilebridge gypsy site, Mr and Mrs Draper retained their gypsy status.
29. Their move to a house in Maidstone was, I am satisfied, not made because the appellants wanted to live in bricks and mortar, but because at the time they saw it as the only way they could move from a rundown site where there was physical danger to their children. Thus it was again a decision made because they were forced into it by circumstances outside their control. Nonetheless Mr Draper attempted to continue working as he had before, but further extraneous circumstances, those of his wife's illness, forced a change and led to the loss of farm work and any other employment where he had to commit to regular attendance. His current sources of income are thus very much small scale, short term and depend on his own initiative. His development of the three strands of work noted above reflect his expressed view that he has to make money as best he can; effectively Mr Draper is doing what gypsies have usually had to do and make a living by relying on his wits.
30. His wife's symptoms are accepted, both by her own GP and a specialist doctor, to be genuine, longstanding and probably caused by her aversion to living in a house. Both appellants firmly believe that Mrs Draper will only find relief once she can live in a caravan and the evidence that she finds some relief when staying in her mother's touring van supports this view. The appeal proposals would therefore enable Mr Draper to resume farm work as well as carrying out his painting and gardening business. It is a measure of their desperation to move to a caravan site of their own that on their unchallenged evidence they have spent all their limited savings in acquiring the appeal site in order to do so. Though they were criticised by the Council for failing to approach them before buying the land, Mr and Mrs Draper have acted in a completely responsible manner. They have refused to move a caravan onto their land before they have obtained planning permission and have pursued their aim through the proper channels, despite the harm and personal upset that staying in bricks and mortar is causing them, especially Mrs Draper. As a result of their responsible and honest approach to this matter I attach great weight to Mr Draper's evidence that he intends to resume his former travelling and working pattern should planning permission be granted.
31. In all these circumstances I conclude as a matter of fact and degree that, since they moved into their house at Maidstone in about 1998, the Drapers no longer pursue their traditional travelling way of life because of the circumstances of Mrs Draper's illness and the need for her husband's frequent but irregular attendance to care for her. I am satisfied that Mrs Draper's aversion to living in a house is genuine and arises from her background and way of life as a gypsy and that it is probable her symptoms will disappear only when she is able

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to live in a caravan. Because I accept that it is not possible for Mr Draper to continue his travelling way of life in these circumstances, and because I attach great weight to his stated intention to resume his former travelling way of life should permission be granted, I conclude as a matter of fact that he has not abandoned his nomadic habit of life at this time. Instead, he has put it into abeyance. Should permission be granted in this case I believe, on the medical evidence and the stated intentions of the Drapers which I believe were honestly made, that within a short time of their settling into a caravan on this site that Mrs Draper's condition is likely to ease, if not disappear, so that Mr Draper could, and in my view would, resume his former travelling lifestyle. That being so, I conclude that there is a realistically realisable prospect of him resuming his former nomadic habit of life.

32. Therefore, bearing in mind the *Wrexham* judgement, I further conclude that Mr Draper has retained his nomadic way of life, even though he is not travelling for the purpose of making a livelihood for the time being and that it has been a considerable time since he lived in that way. Accordingly Mr Draper falls within the definition of a gypsy for the purposes of the statute as interpreted by the courts. In the light of this conclusion it also follows that he complies with criterion (1) of LP Policy H36. This means that all three policy criteria are satisfied so that in turn this establishes an exception within point (5) of LP Policy ENV28.

The Need for Gypsy Sites

33. The appellants also argued that there is an unmet need for additional gypsy sites in Kent generally and in the Borough in particular. The Council accept that this is so but say that they are now carrying out a housing needs appraisal, the results of which will shortly be available, and that they have granted permissions for several gypsy caravans in the past 12 months. I recognise that such positive action is to be welcomed but it does not materially alter the situation as it stands at the time of my determination. This is that there is an accepted substantial unmet need for additional gypsy accommodation in this area, but that its extent and nature remain unknown. This situation therefore adds considerable weight to the appellants' case.

Human Rights

34. I have also taken into account the human rights arguments advanced by the appellants in the event that I was minded not to grant permission on the planning merits. However, because my conclusions on the main issues in this case all point to the grant of permission, I do not need to consider those submissions.

Conclusions

35. From the above it follows that my overall conclusions are that, providing appropriate conditions were imposed, the appeal proposals would cause no serious harm to the character and appearance of the local countryside nor to the safety of the users of this part of Stockett Lane. Furthermore, because Mr Draper retains his gypsy status and has a realistically realisable intention to resume his nomadic way of life, these proposals fall within LP Policy H36 and are thus acceptable as an exception to LP Policy ENV28. I have taken into account all the other arguments advanced by the Council, by Coxheath Parish Council and by other objectors, including that this is not a sustainable location for a residential use.
36. I walked from the appeal site to the edge of Coxheath and found the walk relatively easy and not obviously dangerous. I also noted the location of services and facilities in the

village, all of which appear to lie within about 1km of the site. This is well within the 2km distance referred to in paragraph 75 of PPG13, "Transport", as offering the greatest potential to replace car trips. The evidence is that Mrs Draper does not drive and that she already uses the shops and other local facilities, so that I would expect her to continue to do so if she lived here. Therefore I consider that the appellants would not find the distance to services excessive or difficult, and that permission would be unlikely to result in significant numbers of unnecessary additional vehicle journeys.

37. Accordingly neither that argument, nor any other argument, is of such weight as to affect my final conclusion that planning permission ought to be granted for the appeal proposals. I shall therefore allow the appeal and grant permission subject to conditions.
38. I have considered the conditions suggested by the Council in the light of the appellants' comments and the advice of Circular 11/95, "The use of conditions in planning permissions". Because the appellants require only one caravan to enable them to go travelling and one to remain on site as their accommodation base, and to minimise the effect of the development on the appearance of the countryside, suggested condition (1) limiting the number of caravans to two is necessary. I agree with the appellants that because the term 'mobile home' is nowhere defined in planning legislation, the condition should not refer to such a type. But equally a touring caravan is not defined and all caravans are capable of being moved around by their very nature. In the circumstances no description of the type of caravan will be included because it would be imprecise and unenforceable; it will be for the appellants to determine the nature of the caravans brought on site, subject to the maximum number. However, it would be appropriate to require the caravans to be sited as proposed, to the rear of the site, in order to minimise their effect on the landscape.
39. In the light of my consideration of this appeal, which has turned substantially on the status of the appellants themselves, as opposed to the needs of gypsies in general, suggested condition (3) limiting occupation personally to Mr and Mrs Draper would be appropriate and necessary to prevent use by others. In suggested condition (4) the use of the term 'under the control of the appellants' rather than 'occupied' would avoid uncertainty when the appellants travel for any length of time and the site remains unoccupied. At the same time this would ensure that if the appellants were to sell or otherwise lose control of the site, for whatever reason, the residential use would cease and its material features would be removed, thus protecting the appearance of the countryside. Suggested condition (2) is necessary in the interests of highway safety and to protect the appearance of the countryside, subject to minor amendment to ensure that the discretion of the First Secretary of State on a subsequent appeal is not fettered.
40. The form of suggested conditions (5) and (6) concerning landscaping and its implementation is necessary and reasonable in the context of this case, and the conditions themselves are necessary to protect the character and appearance of the countryside. Similarly, suggested condition (7), to prevent commercial activity and open storage, is necessary to protect the appearance and amenity of the countryside. All the conditions satisfy the other tests of Circular 11/95.

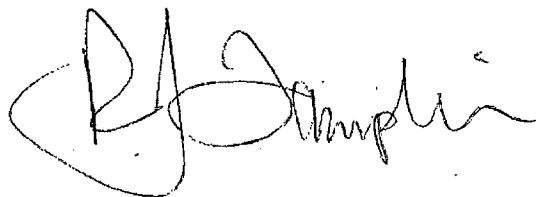
Formal Decision

41. For the above reasons, and in exercise of the powers transferred to me, I hereby allow the appeal and grant planning permission for the change of use to a gypsy site for one mobile home and one touring caravan at Primrose Paddock, Stockett Lane, Coxheath, Maidstone,

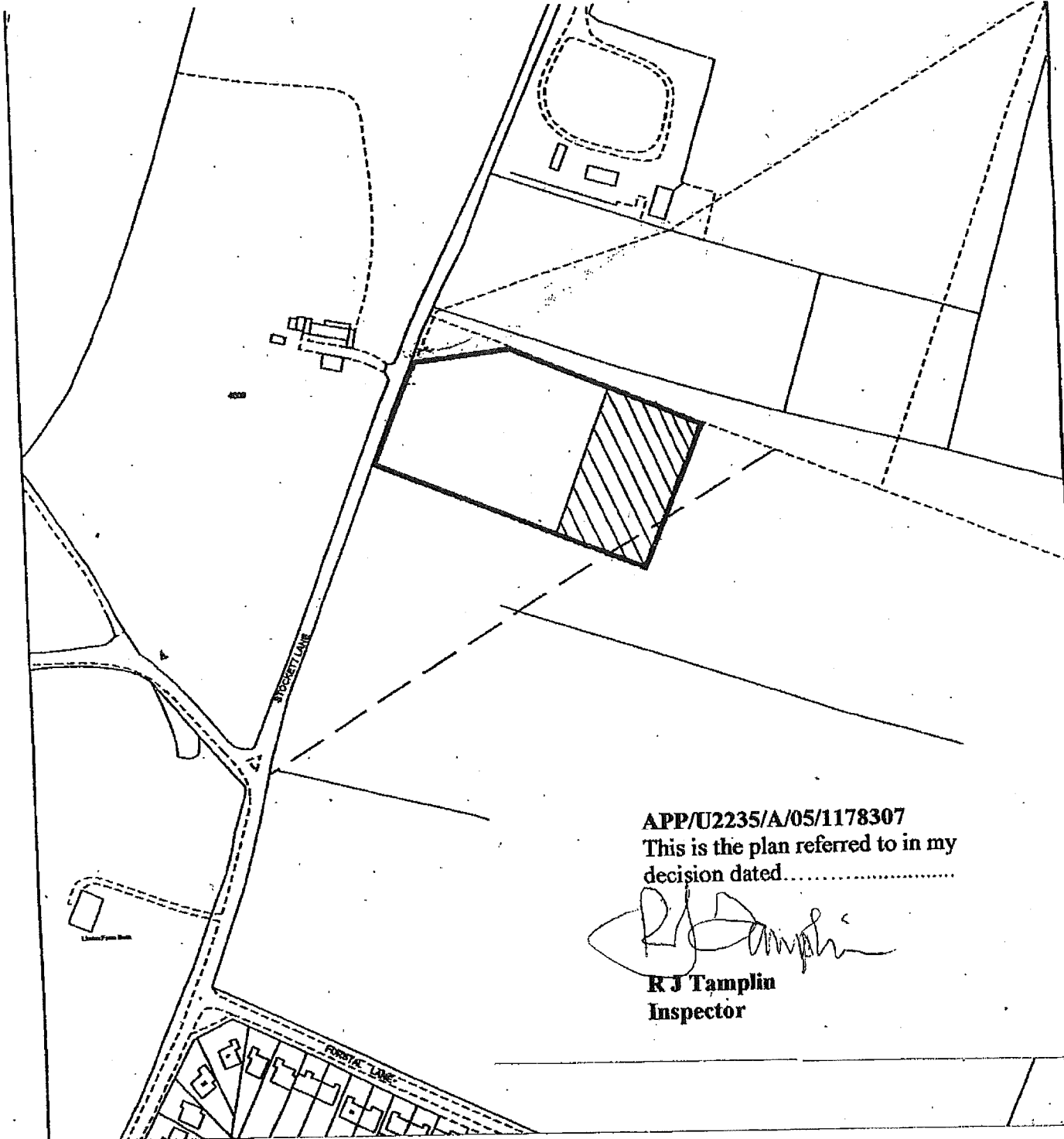
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Kent, ME15 0QE, as set out in the application (Ref MA/04/2010) dated 8 September 2004 and the plans submitted therewith, and subject also to the following conditions:

1. No more than two caravans shall be placed on the land at any one time and these shall be sited only within the area shown hatched on the plan attached to this decision.
2. The use hereby permitted shall be carried on, and the caravans occupied, only by Mr Chris Draper and/or Mrs Diane Draper, and shall be for a limited period, being the period during which the premises are under the control of Mr Chris Draper and Mrs Diane Draper, or the surviving partner in the event of the death of either.
3. When the premises cease to be under the control of Mr Chris Draper and/or Mrs Diane Draper the use hereby permitted shall cease and any caravan and all materials and equipment brought on to the premises in connection with the use shall be removed, including any hardstanding or cesspool, and the land restored to its condition prior to the commencement of the use.
4. No caravan shall be placed on the land before full details of a scheme for the improvement of visibility at the access to the site have been submitted to, and approved by, the local planning authority (or in default of their approval, by the First Secretary of State on appeal) and the scheme has been fully implemented in accordance with those details.
5. Full details of both hard and soft landscaping shall be submitted to the local planning authority within one month of the date of this permission, including details of all hard surfaces and planting and any existing trees and shrubs to be retained.
6. All planting, seeding or turfing and works comprised in the landscaping of the development shall be carried out in the first planting season following approval of the details by the local planning authority (or in default of their approval, by the First Secretary of State on appeal) and any tree or shrub which within a period of five years from approval of the scheme dies, is removed, or becomes seriously damaged or diseased, shall be replaced in the following planting season with another of similar size and species, unless otherwise agreed in writing by the local planning authority.
7. No commercial activity or open storage shall take place on the site.



Inspector



APP/U2235/A/05/1178307
This is the plan referred to in my
decision dated.....

R J Tamplin
Inspector

- Document 9 Mr and Mrs Draper's proofs and appendices
- Document 10 Statement by Mr Draper
- Document 11 Letter from adjacent landowner to Mr Draper relating to the roadside hedge, 12 October 2005 (Put in by Mr Draper)
- Document 12 Mr Brown's proof and appendices
- Document 13 Mr Cottle's skeleton submissions and judgements referred to in closing
- Document 14 Mr Hughes' proof

PLANS

- Plan A Application plans, OS Based, scale 1/2500 and unscaled
- Plan B Extract from the Maidstone Borough-Wide Local Plan Proposals Map, December 2000 (Put in by Ms Marks)