

**TONBRIDGE & MALLING BOROUGH COUNCIL**

**AREA 2 PLANNING COMMITTEE**

**06 August 2008**

**Report of the Acting Chief Solicitor**

**Part 1- Public**

**Matters for Information**

**1 PLANNING APPEAL DECISIONS**

- 1.1 Site **12 Golding Gardens, East Peckham**  
Appeal **Against the refusal of planning permission for a double storey extension**  
Appellant **Mr & Mrs Wilcox**  
Decision **Appeal dismissed**  
Background papers file: PA/11/08

Contact: Cliff Cochrane  
01732 876038

The Inspector considered the main issue to be the effect of the proposal on the character and appearance of the area.

The proposed extension would fill the space between the existing house and the boundary at first floor level. Since the neighbouring house is close to the common boundary, only a small space between the houses would remain and, while the existing space can only be seen from a limited area, the proposed space would only be apparent from immediately opposite the house. Although the extension would be set back from the main front wall and the roof ridge would be lower than that of the main roof, the Inspector considered that the loss of space between the buildings at first floor level would not respect the spatial characteristics of the area. He considered that the development would detract from the open and spacious character and appearance of the area.

The loss of space between the buildings would give rise to a terracing effect, conflicting with Policy P4/12 of the Local Plan as well as Policy CP24 of the Core Strategy 2007.

- 1.2 Site **Brookside Farm, Bourne Lane, Plaxtol**  
Appeal **Against the refusal of planning permission for a bungalow to replace a fire damaged bungalow**  
Appellant **M Otto & J Holdsworth**  
Decision **Appeal dismissed**  
Background papers file: PA/13/08

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The Inspector considered the main issue to be whether the proposal would be inappropriate development within the Green Belt and, if so, whether there are other considerations sufficient to clearly outweigh the harm thereby justifying it on the basis of very special circumstances.

The proposed dwelling would be 26% larger in footprint, 54% larger in terms of volume and considerably higher than the original dwelling.

The Inspector accepted that the assessment of whether the replacement dwelling is materially larger does not turn on precise figures, but an overall assessment of its visual impact and the effect on the openness of the Green Belt. He considered a comparison of the footprint and height of the replacement and original dwellings is an important starting point.

The proposed dwelling would be materially larger than the dwelling it replaces and the proposed height would lead to a significantly greater visual impact. This would constitute inappropriate development.

According to PPG2 inappropriate development is, by definition, harmful to the Green Belt. The most important attribute of Green Belts is their openness. The Inspector considered that the greater visual impact of the proposed dwelling would also reduce openness, causing further harm to the Green Belt.

The Inspector was satisfied that an extant planning permission for a replacement dwelling would cause less harm than the proposal. Although the Inspector took into account support from neighbours, he did not see any material considerations sufficient to clearly outweigh the harm identified and no very special circumstances therefore exist.

- 1.3 Site **The Granary, Roughetts Road, Ryarsh**  
 Appeal **Against the refusal of planning permission for a single-storey extension**  
 Appellant **Mr R Murray-Evans**  
 Decision **Appeal dismissed**  
 Background papers file: PA/05/08 Contact: Cliff Cochrane  
01732 876038

The Inspector considered the main issue in this case to be the effect of the proposal on the character and appearance of The Granary and the adjoining area.

The Granary is a residential dwelling which was formerly an agricultural building. The proposal would alter the simple rectangular shape of the building and would introduce various openings in the elevation that would face Roughetts Road. There are no openings in this elevation in the existing building. The Inspector considered that the visual impression gained by glimpses of the existing elevation when travelling south along Roughetts Road is that the building is rural in character and one befitting of this countryside location.

The extension would be close to Roughetts Road. The area where the building would be extended is currently shaded due to the height of the roadside vegetation. In the Inspector's view, if the proposal was allowed there would be pressure to reduce the height of this vegetation especially near the proposed windows and door so as to improve the level of light in rooms created by the proposal. As a result the building would be highly visible in the street scene. The Inspector had no doubt that the design of the extension would not be appropriate for this converted dwelling as it would result in a building that has an appearance far more of a dwelling and the rural character and appearance of the building would be harmed. The changed appearance of the building would also harm the rural character of this part of Roughetts Road and would fail to enhance the appearance of the area.

The Inspector therefore concluded that the proposal would materially harm the character and appearance of the Granary and the adjoining area. Accordingly the proposal would be contrary to the relevant part of the Core Strategy Policies CP14 and CP24 and Local Plan Policy P4/12.

- 1.4 Site **Land rear of Offham Methodist Church, Hayes Lane, Offham**  
 Appeal **Against the refusal of permission for the retention of mobile home, touring caravan and utility room for a gypsy family**  
 Appellant **Mr Joseph King**  
 Decision **Appeal allowed and permission granted for 5 years**  
 Background papers file: PA/16/08 Contact: Cliff Cochrane  
 01732 876038

The Inspector considered the main issues to be:

- (a) The effect of the development on the openness of the Green Belt.
- (b) The effect of the development on the character and appearance of the area, including the setting of the Offham Conservation Area.
- (c) The provision of and need for gypsy sites in the Borough and wider area.
- (d) The personal circumstances of the appellant and his family including any alternative accommodation options.
- (e) Whether the harm by reason of inappropriateness and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances as necessary to justify the development.

#### *Background*

The appellant has occupied the site with his wife since 2001. An appeal against a refusal of planning permission and against an enforcement notice to cease the use of the land as a residential caravan site and to remove from the land the caravan was dismissed in August 2002. The period for compliance was extended to 12 months. The appellant has 2 children - one attends the village primary school and the other attends a nursery at the adjoining Methodist Church

for 3 days a week. The Council does not dispute the gypsy status of the appellant. The previous Inspector accepted that Mr and Mrs King were gypsies. Since that decision, Mr King has not been able to work on a regular basis and for some years has been in receipt of sickness benefit. He has therefore travelled little for the purposes of work. The definition of a gypsy for planning purposes set out in Circular 1/2006 allows for a settled existence if explained by reason of ill-health or the educational needs of children. The Inspector accepted that the appellant and his family come within that definition.

The Council has a recently adopted Core Strategy. Policy CP3 indicates that in relation to the Green Belt, national policy will apply. This is also the stance of Structure Plan policy SS2. The Inspector therefore addressed the Green Belt issue in the light of the advice in Planning Policy Guidance (PPG) 2 *Green Belts*. Policy CP20 includes criteria for consideration of gypsy sites. In his view, there is no material conflict with criteria (a) (c) and (d). Criterion (b) concerns visual intrusion and he addressed this under the first issue.

Criterion (e) concerns accessibility to services by means other than the car. The primary school and nursery are within walking distances, but apart from a pub and a church, Offham provides no other services and walking to West Malling along country lanes without footways is not a practical proposition. There is therefore some conflict with this criterion. However, Offham is a village with a settlement boundary where infilling with 1 or 2 dwellings is permitted and there is a recently built dwelling close to the appeal site on Hayes Lane. In terms of the need to use a car to access services, the appeal proposal is comparable to an additional dwelling in the village and the Inspector saw no good reason why a gypsy pitch should be subject to a more demanding test in relation to accessibility than a conventional dwelling in a similar location. He therefore considered that the limited conflict with criterion (e) does not weigh against the proposal.

The Council also consider that there is conflict with the general countryside policies of the development plan (Structure Plan policy HP5 and Core Strategy Policy CP14) because these do not include gypsy sites in the list of developments normally acceptable in principle. However, policy CP20 clearly anticipates gypsy sites being in the countryside as it refers to the impact on rural amenity and Circular 1/2006 states that gypsy sites are acceptable in principle in the countryside.

#### *Character and appearance*

The appeal site is a small parcel of land that abuts the defined settlement boundary of the village. It also abuts the boundary with the Offham Conservation Area. Access is via Hayes Lane, which is a narrow road serving several residential properties, which becomes a track alongside the appeal site. Hayes Lane is a public footpath. In planning terms, the site is in the countryside and prior to the appellant's occupation it was a parcel of

undeveloped, overgrown land. The site now has a residential character. There is a large area of tarmac for car parking at the front, on which is also sited the touring caravan and a wooden chalet. To the rear of the mobile home is a lawn with play equipment. Along part of the eastern boundary is a stable block. This building is the subject of an undetermined planning application.

The appeal plot has an irregular shape. On 3 sides it adjoins land within the settlement boundary – namely adjoining gardens and the rear of the Methodist Church. On the opposite side of Hayes Lane there is a parcel of land enclosed by close-boarded fencing and tall conifers. This land is outside the settlement boundary, but is more closely related to the village than the open countryside to the west. It contains some garages and outbuildings. Only a very short section of the perimeter of the appeal site adjoins the open countryside. This boundary and that along Hayes Lane are defined by post and rail and wattle fencing, behind which is a mixed hedgerow. This boundary is in keeping with other boundaries abutting the countryside. The fencing and hedging around the site is not the subject of enforcement action and would remain even if the appeal were to be dismissed and the unauthorised use were to cease.

The mobile home on the site is a twin unit and is sited on a substantial brick plinth. It has the appearance of a small bungalow. The mobile home is of a striking neo-Georgian design with bay windows and a large portico over the entrance. The Inspector considered that the visual appearance of the unit is incongruous in this semi-rural setting and jars with the traditional materials of most of the adjoining buildings. He recognised that most types of caravan do not reflect the appearance of traditional building and will tend to stand out, but the design of the unit on appeal site is particularly incongruous in this location. However, the appearance of the mobile home is only readily perceived from within the site and from the entrance when passing along Hayes Lane.

Apart from the appearance of the mobile home, he considered that the residential use of the appeal site appears unremarkable and a logical part of the village where development has an irregular pattern. There is no harm to the character of the adjoining open countryside as the caravans are seen against a backdrop of more substantial buildings and are reasonably screened by the boundary fencing and hedging.

In assessing the affect on the setting of the conservation area, the Inspector had regard to the Offham Conservation Study (1981) which sets out the justification for the original designation and highlights the important buildings and features of the conservation area. The study does not refer to the approach to the conservation area along Hayes Lane. From what the Inspector read and saw, he considered that the most important attribute of the conservation area is the loose grouping of buildings from a variety of periods along the elongated village green and continuing along Teston Road. He noted also that the conservation area was subsequently extended. The largest additions included

open land to the east of Tower Lane and on either side of Comp Road, which were included because they contribute to the setting of the conservation area. The only change in the vicinity of the appeal site was a small extension to include the Methodist Church because that building marks a change in the character of the village when approaching along Teston Road.

He did not regard the previously open nature of the appeal site as an important attribute of the setting of the conservation area. In this respect he came to a different assessment to that of the Inspector in 2002, but he does not refer to the conservation study and may well not have been referred to it. In understanding whether the appeal site has any particular significance for the setting of the conservation area, he placed particular weight on this study and the fact that the conservation area was subsequently extended to include land important to its setting. Since the 2002 decision, the boundary hedging has become much more established, visually separating the appeal site from the adjoining open countryside and integrating it with the enclosed plots of the village.

Overall, he found that the change from undeveloped land to a residential plot does not harm the setting of the conservation area, but that the poor design and incongruous appearance of the mobile home has a localised adverse impact on the character and appearance of the area. There is thus some conflict with criterion (b) - visual intrusion – of policy CP20.

#### *Green Belt*

PPG 2 indicates that substantial weight should be attached to inappropriate development in the Green Belt. The PPG also states that openness is the most important attribute of the Green Belt. If the appeal were to be dismissed and the enforcement notice complied with, the appeal site would be cleared of the mobile home and touring caravan and the cessation of the residential use would mean that there was no longer any of the associated residential paraphernalia, including parked vehicles. It would be an essentially open (i.e. undeveloped) parcel of land, albeit enclosed by the boundary hedging. As the Inspector has already indicated, the mobile home is similar in scale to a small bungalow. He considered that the development encompassed by the appeal application does materially reduce the openness of the Green Belt, but because the site is well related to the village and adjoining development, the harm is limited in this particular location. This limited harm is however additional to the substantial harm resulting from the appeal proposal being inappropriate development. Although the development encroached on what was previously countryside, he found that there is no adverse impact on the adjoining open countryside.

#### *The need for gypsy sites and future provision*

A Gypsy and Traveller Accommodation Assessment (GTAA) was published in 2006 covering the Boroughs of Tonbridge and Malling, Maidstone, Ashford and

Tunbridge Wells. It found a need for 64 net additional pitches in the study area for the period 2006-2011 of which between 10- 13 should be in Tonbridge and Malling. The GTAA formed the basis of the Council's evidence to the South East England Regional Assembly (SEERA) for its partial review of the South East Plan for the provision of accommodation for gypsies, travellers and travelling showpeople. SEERA has agreed to consult on 4 distribution options for pitch provision across the region, but at this early stage he could give those options very little weight and no evidence was available at the hearing relating to the figures suggested for Tonbridge and Malling Borough.

The GTAA is therefore the best starting point on which to consider the scale of accommodation needs in the Borough. But for 2 reasons highlighted by the appellant and discussed below, he considered that the need for additional pitches may well be greater than suggested by the GTAA. Firstly, the GTAA assumes that the long tolerated site at Hoath Woods (to the north of the Kings Hill development area) will contribute 8 pitches to the authorised supply. But the long term future of this site is uncertain. The land is not owned by the occupying gypsies, although they have been squatting on it for a long time. The appellant understands that agreement has been reached for the occupiers to leave the site by the end of the year. Although the land has been occupied for more than 10 years, no certificate of lawful use has been applied for and therefore the site's status (and the number of pitches) is not firmly established. In addition, there is a planning application for a private hospital on the site. The Council indicated that permission for development of the land would not be granted unless provision was made for replacement pitches, but there is the possibility that occupiers would be leaving the site irrespective of the outcome of this application. If this were to occur, there would be a need for more pitches than the 10-13 predicted in the GTAA. Secondly, the GTAA assumed that over the 5 year period, 30 pitches in the study area would become available as a result of families moving into conventional accommodation. This assumption was based on the preferences of 6 families expressed in a survey in 2006. Even assuming that other gypsy families have the same preference in the coming years, whether pitches become available will depend on whether housing is made available and thus on their priority on the housing waiting list. Given the competing needs for social housing, it seems unlikely that all families who express a desire for rehousing will be found a conventional home. If this is the case, the supply of new pitches over the 5 year period will be less than predicated and the need for additional pitches will be greater.

The Council has made considerable progress on its Local Development Framework (LDF) with the adoption of the Core Strategy, a Site Allocations Development Plan Document (DPD) and a Town Centre Action Plan. The Site Allocations DPD did not address gypsy sites. The Council is awaiting the confirmation of the figure for the Borough in the Partial Review of the South East Plan before deciding whether a DPD is required to allocate additional sites. The Partial Review is likely to be adopted in 2010 and it was agreed that a DPD

to allocate required sites would take 2-3 years thereafter. Such a DPD is not included in the Council's Local Development Scheme.

Notwithstanding the above, the County Council is proposing to redevelop and extend the existing County Council gypsy site at Coldharbour Lane, which is within Tonbridge and Malling Borough. Whilst the Inspector had no doubt that the County Council is actively pursuing this proposal, there are a number of important hurdles to overcome. Planning permission needs to be obtained, but an application has not yet been submitted. Funding from the government needs to be secured and an application for funds needs to be made by August 2008. Additional land needs to be acquired and there is no agreement with the landowner as yet. Given these hurdles, there must be uncertainty as to the delivery of this project. Furthermore, given that any extended site would be owned and operated by the County Council and in the absence of proposals for extensions to other County Council gypsy sites in the study area, the additional pitches at Coldharbour Lane would not be solely for needs arising within Tonbridge and Malling. This would be a site with pitches available to rent and would therefore not meet the need of the majority of gypsies in the study area who seek privately owned sites. Thus even if the additional pitches were to become available towards the end of 2009 as anticipated by the Borough Council, they would meet only part of the need within the Borough. He therefore considered that adequate provision for all needs arising in the Borough would not be made without the preparation of a DPD and thus not until 2013 at the earliest. Additional needs are likely to arise by then given that the GTAA assessed needs only as far as 2011.

*The appellant's personal circumstances and possible alternative accommodation*  
Prior to moving to the appeal site, the appellant lived at the tolerated site at Hoath Woods. But he was forced to leave that site because of threats of violence from his father and as a result was eventually accepted by the Council as being homeless in 2004. The Council agreed that there are no available lawful pitches in the area for the appellant. The appellant has been on the waiting list for a pitch on a County Council site, but has not been offered any pitch. Russet Homes, the main social housing provider within the Borough, has also been looking for a plot of land to make available to the appellant to rent, but has not found any suitable site. The appellant has very limited financial resources and the Inspector accepted that he is not in a position to compete with other gypsies or other purchasers of land that might be suitable for a gypsy site. In any case, only a small part of the Borough is free from major planning constraints such as Green Belt and flood risk. Given these constraints and the inevitable competing pressures for the use of land, the identification of gypsy sites is best done through the preparation of a DPD.

The Inspector therefore accepted that if the appellant and his family were forced to leave the appeal site he would have to adopt an itinerant and stressful lifestyle involving roadside camping, with all the practical difficulties that that entails,



especially with a young family. Whilst this is a possible consequence of the dismissal of the appeal that he needed to take into account, he noted that the Council does not currently appear to be taking any steps to prosecute for non-compliance with the enforcement notice and took over 2½ years to process the planning application leading to this appeal. This suggests a considerable degree of toleration of the appellant's occupation of the appeal site.

The appellant explained that even if a pitch was made available at the extended site in Coldharbour Lane, he could not take it up because he would be in fear of his life. This is because of the reputation of his father within the local gypsy community and long standing feuds. Such an assertion is difficult to test and weigh in this appeal. However, he has already noted that the Council accepts that the appellant was forced to leave Hoath Woods as a result of threats of violence and the appellant indicated that when he was younger his uncle was shot and killed on a gypsy site. There is therefore a background of violence. He accepted that the appellant's fears are genuine and that he would not take up any offer of a place at Coldharbour Lane. In the light of all the above, the Inspector considered that the only possible alternative sites for the appellant would be any new gypsy sites allocated in a DPD, which would take at least 5 years. Occupation of the appeal site has enabled the appellant's eldest child to attend school regularly and for the youngest to attend nursery. Whilst he saw no particular need for continued attendance at Offham Primary School compared with any other school, he accepted that if the appellant was forced to leave the site with no lawful alternative available the resulting itinerant lifestyle would make it very difficult for the children to attend any school regularly. The need for a settled site for the benefit of the children's education weighs in favour of allowing the appeal.

The Inspector noted that the appellant has been on sickness benefit for some years. This is a result of severe, frequent headaches caused by a head injury received when he was 14. He recognised that this medical condition is debilitating, but apart from regularly having to take pain killers, the appellant is not receiving medical treatment. Like any young family access to GP services is important and the family is registered with a doctor in West Malling, but he do not regard the appellant's medical circumstances as adding any particular weight to the need to stay on the appeal site.

He recognised that the appellant grew up in the West Malling area and thus has strong local links. He also accept that the appellant and his family have, to a large extent, become accepted members of the local community, albeit as a result of their unlawful occupation of the appeal site. This acceptance is reflected in a number of letters of support from local people, including some immediate neighbours, although he also noted the letters of objection submitted at the application stage. He consider that given the small size of the appeal site, its close physical relationship to the village and the generally good relations with neighbours that have been established, allowing the appeal

would be consistent with the Government's objective expressed in Circular 1/2006 of creating sustainable, respectful and inclusive communities.

*Overall balancing exercise and very special circumstances*

Substantial weight must be given to the inappropriate nature of this development in the Green Belt, but there is only limited additional harm as a result of the loss of openness and the very localised adverse visual impact as a result of the appearance of the mobile home. In other respects, the Inspector considers that the site has merit as a small gypsy site because of its close integration with the village.

Against this harm, there is a clear need for additional gypsy sites within the Borough and within the wider area. At present there is no certainty as to when or how all these needs will be met. Even if the extension to the Coldharbour Lane site is achieved, it would not be suitable for the appellant. The Council has not given any priority to addressing the needs of gypsies in the preparation of its LDF and thus a potential suitable site is at least 5 years away and will have taken much longer than the expectation expressed in Circular 1/2006. The appellant has no alternative site to move to and being forced to move from the appeal site would be extremely disruptive to family life and especially the education of the children.

On balance, the Inspector found that the positive factors in favour of the appeal do not outweigh the harm he identified and do not create the very special circumstances necessary to grant a permanent planning permission. Given this conclusion, he had to consider whether a temporary permission should be granted. Temporary permissions are suggested in Circular 1/2006 (paragraphs 45 and 46) where new sites are likely to become available at the end of any temporary period. For the reasons already given, he considers that at least 5 years would be necessary for alternative sites to be available to the appellant through the development plan process.

The Circular notes that temporary permissions granted in such circumstances should not be regarded as setting a precedent for the determination of any future applications for full permission for the use of the site. The emphasis in Circular 1/2006 on avoiding gypsies becoming homeless as a result of eviction from unauthorised sites and the active role of Councils in site provision through the LDF process are new considerations since the dismissal of the appellant's previous appeal in 2002. A temporary permission would avoid permanent harm to the Green Belt and provide time for an objective search for the most suitable sites in the Borough through the LDF process.

He found that the positive factors in favour of the appeal when considered on the basis of only a 5 year temporary permission do outweigh the harm he identified and that, as a whole, the circumstances of the case are very special and sufficient to justify the development for a limited period, subject to conditions.

In the light of the considerations above, the Inspector considered conditions should be imposed limiting the permission to 5 years and to the occupation by the appellant, his wife and dependent children. In the interests of the openness of the Green Belt, the number of caravans should be limited to 2, of which no more than one should be a mobile home or static caravan. Given the well established hedging to the boundaries the Inspector saw no need for additional landscaping or a maintenance condition.

- 1.5 Site **Woodfold, Old Lane, Ightham**  
 Appeal **Against the refusal of permission for change of use for stationing of two caravans for residential use with associated hardstanding, fencing, sheds, septic tank etc for occupation by single gypsy family**  
 Appellant **Mr J Moore**  
 Decision **Appeal dismissed in respect of septic tank, allowed in respect of the change of use for stationing of two caravans etc**  
 Background papers file: PA/08/08 Contact: Cliff Cochrane  
 01732 876038

The Inspector considered the main issues to be: what effect the development has on the Green Belt, including its openness and the purposes of including land in it; what effect it has on the character and appearance of the site and its surroundings; and whether any identified harm to the Green Belt and any other harm would be clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify granting permission for the development.

## Reasons

### *Green Belt*

The site lies within the Metropolitan Green Belt. The Council and the Appellants agreed at the Hearing that the development constitutes inappropriate development in the Green Belt as defined in the development plan and in the Government's Planning Policy Guidance 2 'Green Belts' (PPG2). Paragraph 49 of Circular 01/2006 'Planning for Gypsy and Traveller Sites' also advises that Gypsy sites are normally inappropriate in the Green Belt. The proposal is therefore subject to the presumption against inappropriate development set out in paragraph 3.1 of PPG2 which states that such development should not be approved except in very special circumstances. The Inspector agreed with the Inspector for the 2005 appeal that the stationing of caravans and minor ancillary outbuildings within the Green Belt has reduced openness. The Appellant also wishes to replace one of the touring caravans with a larger static caravan. However he considered that the effect on openness is here mitigated in that the

caravans and structures only occupy a small part of a site which remains substantially open.

The development does represent an encroachment on the countryside which is contrary to one of the aims of the Green Belt. However as much of the site is retained for horse grazing which is a countryside use, the encroachment is relatively slight.

The Inspector concluded that there is substantial harm to the Green Belt by reason of inappropriateness and that there is some slight additional harm to openness and in respect of encroachment on the countryside. That adds marginally to the harm to the Green Belt.

#### *Character and appearance*

The site is in the countryside outside any defined settlement and where CS Policy CP14 (previously Policy CP15) restricts development to defined categories. The only potentially qualifying category for a gypsy caravan site would be '(i) any other development for which a rural location is essential'. Paragraph 54 of Circular 01/2006 provides that rural settings are acceptable in principle for sites for gypsies and travellers. CS Policy CP20 sets criteria for Gypsy site development including that (b) residential or rural amenity is not prejudiced as a result of visual intrusion, excessive noise, lighting, traffic generation or activity at unsocial hours.

The site was formerly within a 'Special Landscape Area' but the relevant LP Policy P3/6 expired in September 2007. The site still lies within the Ightham Common/Ivy Hatch 'Area of Special Character' designated by (saved) LP Policy P4/8 and which applies to development which is acceptable in Green Belt terms. It requires in summary that: the scale and density of development be compatible with the area's residential character; that the impact on the woodland setting is minimised; that undeveloped woodland is not lost; and that appropriate boundary treatment and tree planting are provided. Paragraph 53 of Circular 01/2006 provides that 'local landscape designations ... should not be used in themselves to refuse planning permission for gypsy and traveller sites.'

The appeal site is situated on rising ground to the side of a secluded valley that is otherwise occupied by paddocks, woodland and low density residential development. Old Lane is a narrow sunken lane along the valley from the A25. It is no longer maintained as a vehicular through-route and it is signposted as unsuitable for vehicles. Whilst it is little used by vehicles to the south of the appeal site, it provides vehicular access to other properties to the north of the site including an equestrian establishment which has a vehicular access and hardstanding adjacent to the appeal site.

The Appellant's two touring caravans are sited on a loose-surfaced

hardstanding on the lower part of the site. Hedgerows and the landform limit views from the lane. Hedgerows substantially screen the caravans and solid wooden fencing from public view. These include long established and overgrown field hedges to the southern and western boundaries, recent mixed planting beside the access drive, and quick-growing cypress planting along the northern boundary, mainly within land belonging to the adjacent landowner. The site includes several mature trees and it borders woodland to the east. There appears to have been a loss of trees in the past when the site was in different occupation. However there was no evidence before the Inspector that the enforcement action requires the restoration of all the trees and this appears to be unlikely in the fallback position. Nevertheless tree planting has been carried out by the Appellant, who works as a tree surgeon. Apart from the caravans and outbuildings, the appearance of the site is in keeping with the mixed agricultural and residential character of the surroundings in the Area of Special Character. Traditional timber field gates have recently replaced former solid wooden gates at the site entrance. The application of suitable conditions could further limit or mitigate the harm to the character and appearance of the area.

The Inspector concluded that the harm to the character and appearance of the area that was identified at the 2005 appeal has been reduced by the subsequent planting and modifications to the entrance. The caravans are substantially screened but where they can be seen they remain a visual intrusion in the landscape. This adds a little to the other identified harm to the Green Belt.

#### *Other considerations*

The Secretary of State confirms at paragraph 3.2 of PPG2 that substantial weight is to be attached to the harm of inappropriate development to the Green Belt and that very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness and any other harm is clearly outweighed by other considerations.

#### Need for sites for Gypsies in Tonbridge and Malling

At the time of the 2005 appeal, the Council conceded that there was a national and local need for Gypsy sites, but the quantitative assessment required by Circular 1/94 had not been carried out for Tonbridge and Malling and the Inspector found it impossible to calculate the extent of the need in the Borough. There has since been a material change in circumstances. Firstly the Council has (with other local Councils) now undertaken a Gypsy and Traveller Accommodation Assessment (GTAA). That recognised a need for about 10 new pitches in the Borough over the next 5 years. At the hearing the Council confirmed that the Appellant (with several others) would have been included in the record of those occupying currently unauthorised pitches in the Borough which contributes to that level of need. Circular 01/2006 also postdates the 2005 appeal and paragraph 23 provides that the number of pitches for each local planning authority is identified in a revision to the Regional Spatial Strategy (RSS). Work on that revision is

progressing and the Regional Assembly is considering options which would result in a requirement in Tonbridge and Malling for between 15 and 31 pitches based on the GTAA and on other considerations including the distribution of pitches between districts.

#### Lack of alternative sites

CS Policy CP20 post-dates the 2005 appeal and it provides that the number of plots to be required by the RSS will be the subject of either a specific allocation Development Plan Document or a planning permission with 'first consideration' being given to the limited expansion of one or both of the Borough's two existing publicly controlled Gypsy sites. One of the criteria is that there be an identified need that cannot be met on an existing or planned site.

It is not disputed that there are currently no available pitches on existing public sites in Kent. The Appellant is on the waiting list for several sites. The Council states that it is working with the County Council on the feasibility of upgrading or expanding the existing public Coldharbour site at Aylesford. However the evidence at the hearing suggests that the work is at an early stage with no proposals in the public domain and no decision on whether to extend or replace the existing site. That site is not in the Green Belt but it is in the countryside and within a designated 'strategic gap' where development is restrained. It is not available now and there is no timescale before me to confirm when (and how many) additional pitches would be available at that site. Having regard to the need to design a scheme, secure planning permission (which is not certain) and to obtain the necessary grant funding and carry out the construction works, it appears unlikely that any additional pitches would be available there before 2010 at the earliest. It does not to the Inspector's mind yet qualify as a 'planned site'. Circular 01/2006 at paragraph 43 advises that local planning authorities should consider preparing a site allocations DPD in parallel with or in advance of the RSS where there is an urgent need to provide new pitches. In this case there is no Development Plan Document for Gypsy site provision in preparation or in the Council's Development Plan Scheme. No private site allocations are therefore proposed.

The Inspector for the 2005 appeal accepted that urban sites were likely to be too expensive for the Appellant but went on to describe the eastern half of the Borough as being largely outside the Green Belt. In fact only about 20% of the Borough outside the urban areas lies outside the Green Belt and most of that land lies within the 'strategic gap'. Substantial parts are also designated variously as an Area of Outstanding Natural Beauty, as at risk of flooding or as best and most versatile agricultural land. Whilst these designations do not necessarily preclude development, they are substantial constraints. Land to the south of Borough Green has been removed from the Green Belt to provide new housing, including affordable housing. No equivalent provision has so far been made for Gypsy development although paragraph 51 of Circular 01/2006

advises that alterations to the Green Belt may exceptionally be considered for this purpose.

As in 2005 it remains the case that the Appellant has not demonstrated a thorough search for an alternative (private) site in this or neighbouring districts. However the Appellant has applied unsuccessfully for pitches on public sites and claims that the only public pitch to be offered was then assigned to a different family before it could be taken up. There is no evidence from the Council that any lawful public or private pitches are currently available. A suggestion from the Council that previously developed land in the Green Belt might be preferable to the green field appeal site does not have specific policy support in the criteria of Core Strategy Policy CP20 and no suitable sites were suggested by the Council.

The Inspector concluded that there is no evidence that any alternative site is currently available in this or neighbouring districts to meet the need identified in the GTAA or the potentially greater need suggested by the Regional Assembly. He accorded substantial weight to the identified need for Gypsy pitches and the present temporary lack of alternative pitches.

#### Personal circumstances

It is not disputed that the Appellant qualifies as a Gypsy as defined by Circular 01/2006. He occupies the site with his partner and their 4 young children. At the 2005 appeal, the Inspector was critical of the Appellant for having previously given up a lawful pitch at Abbey Wood in the London Borough of Greenwich. At my hearing the Appellant explained that this was because of a violent altercation which had forced him to leave the site and to live apart from his partner and children until he could secure alternative accommodation. He has since been unable to visit his parents and other close family members who still live at Abbey Wood. They visit him. There is no evidence that the pitch at Abbey Wood remains available for Mr Moore to return to, even if the personal differences could be resolved. Also, whereas it is clear that Mr Moore came to Tonbridge and Malling from another local authority area, he has now been settled with his family in this area for several years and he claims to have local family and other ties. At the time of the 2005 appeal the relevant local plan policy (now expired) required that successful Applicants for planning be Gypsies who resided in or resorted to the Borough. However paragraph 62 of Circular 01/2006 provides that private applications should not be refused solely because the applicant has no local connection. He therefore now accorded little weight to the Appellant's previous residence in Greenwich.

At the time of the 2005 appeal, when Mr Moore and his partner had only 3 children, the two older children were attending Ightham Primary School which is within walking distance of the appeal site. The Inspector considered that the educational needs of the children were not 'out of the ordinary' but

acknowledged that their education would be disrupted by any move. Whilst accepting that education was a strong argument for the family remaining on the site, the Inspector balanced this with the legal obligation on the Local Education Authority to make appropriate provision for school age children.

Paragraph 5 of Circular 01/2006 points to the Government's belief that Gypsies and Travellers experience the worst education status of any disadvantaged group. Objectives of the Circular include enhancing the education outcomes of Gypsies, and providing fair access to education. A more settled existence is cited as beneficial in that regard as well as having other benefits. The Appellant now has 3 children of primary school age and one younger child. They have been moved from Ightham Primary School to Borough Green Primary School in the next village where they have a good attendance record. Whatever the relative merits of Ightham Primary School, that move to a more distant school would not have been made unless the parents believed that it would provide a better education for their children's particular needs. The children are not stated as having special educational needs but have been given extra learning support, particularly with literacy.

Whether or not the children could still attend Borough Green Primary School after a move to the even more distant Coldharbour site (as the Council claims but the Appellant disputes) no pitch is likely to be available at that or any other site within the next two to three years. In consequence, were the appeal to be dismissed and were the Council then to enforce the removal of the family from the appeal site, their only option would be live unlawfully at the side of the road and to be continually moved on within days or weeks. Continual attendance at any school would be at best very difficult and at worst impossible and there is no evidence before me that the Local Education Authority would be able to provide continuous and stable education in these circumstances. Moreover the children's present headteacher considers that a successful transfer to a secondary school would be unlikely if their primary education is further disrupted. He concluded that substantial weight should be given to the children's need for stable education provision pending the availability of a suitable permanent site.

#### Human rights

The Appellant occupies the appeal site as his home with his family. Article 8 of the European Convention on Human Rights provides that everyone has a right to respect for his private and family life, his home and correspondence. The fact that the home was in this case established unlawfully and has remained in occupation in breach of an enforcement notice diminishes the reliance that can be placed on that right. The convention also provides that interference by a public authority with that right may be justified in some circumstances.

However as the loss of their home would remain an interference with the



human rights of the Appellant and his family, consideration must be given to whether the refusal of planning permission would be proportionate. In particular, as the Appellant seeks either a permanent or a temporary permission, that test needs to be applied to both proposals.

Paragraph 12(c) of Circular 01/06 sets out the Government's objective 'to increase significantly the number of gypsy and traveller sites in appropriate locations with planning permission in order to address under-provision over the next 3-5 years' (that is by 2009-2011). Paragraphs 41-46 set out the transitional arrangements to be applied pending the fixing at regional level of pitch numbers to be translated into Development Plan Document allocations, and to address immediate needs. In particular paragraph 45 refers to circumstances where (as here) there is an unmet need and no available gypsy or traveller accommodation in an area but there is a reasonable expectation that new sites are likely to become available at the end of the period; then consideration should be given to granting a temporary permission.

Given the progress that has been made since the 2005 appeal towards quantifying the need for sites in the GTAA and RSS, together with the commitment in the newly adopted Core Strategy to allocate or permit sites in suitable locations, and the consideration being given by the County and District Councils to enhanced public site provision in the Borough, the Inspector considered that there is now a reasonable expectation that new sites will become available within a few years. That was not the case at the time of the 2005 Appeal. The situation now closely accords with that referred to in paragraph 45 and therefore requires consideration of a temporary permission.

The Council excluded the possibility of a temporary permission principally because the site is in the Green Belt and because paragraph 49 of Circular 01/2006 advises that alternatives should be explored before Green Belt locations are considered. However, whilst the Borough does contain some non Green Belt land, the Inspector referred above to the constraints which apply to its development. There is no evidence that any suitable sites are currently available in that area and no new public provision is anticipated other than at Coldharbour to which he referred above. Also, given that the Appellant is already established on a site with children attending a local school, he considered that it would be disproportionate to expect the Appellant to find within that small non Green Belt area a suitable private site with a willing landowner at an affordable price which is acceptable to the local planning authority but which would only be required for a temporary period pending a move to a permanent site. Moreover a significant part of that temporary period would be taken up with finding and establishing the site; during which time the Applicant would be have no lawful site to occupy.

The more likely scenario is that the dismissal of the appeal in respect of both temporary and permanent permission would result in the Appellant and his

family living on a succession of unlawful sites in the Borough which would probably themselves be in the Green Belt. He concluded that a permanent permission would result in permanent harm to the Green Belt and to the character and appearance of the area. That would justify the interference with human rights and would be proportionate. However a temporary permission would only result in temporary harm pending the availability of additional permanent pitches as envisaged in the Council's Core Strategy. He concluded that it would be disproportionate in human rights terms to force the Appellant to leave the site for that temporary period, particularly as there is no available lawful site to which the Appellant could move in the Borough and because the lack of such a site would seriously disrupt his children's education. As there is no available urban site, the temporary use of the site qualifies as a development for which a rural location is essential in the terms of CS Policy CP14.

#### *Septic tank*

34. DETR Circular 03/99 sets as the first presumption that connection should be made to the public sewer. There is such a sewer adjacent to the site at a lower level in Old Lane. The construction of a septic tank would therefore not be justified in respect of permanent development. However connection to the foul sewer could be expensive and Circular 01/2006 at paragraph 46 warns that conditions requiring significant capital outlay may not be justified for a temporary development. Alternative arrangements such as the continued use of the portable toilet pod can be addressed by the use of conditions.

The Inspector's overall conclusion is that the substantial harm to the Green Belt by reason of inappropriateness and the slight additional harm to openness, countryside encroachment and character and appearance would be clearly outweighed by a combination of: the identified need for additional pitches in the Borough; the present lack of alternative sites; and the consequent disruption that would occur to the children's education. In these circumstances it would be disproportionate in human rights terms to require the Appellant to vacate the site during the temporary period pending the improved availability of pitches envisaged in the Council's Core Strategy. Moreover the harm to the Green Belt and the area would be temporary and the site could be restored to its former undeveloped appearance. He concluded that these are in combination the very special circumstances required by PPG2 and the Development Plan and which justify a temporary planning permission for 3 years. However, as the need for sites is being addressed and alternative lawful sites are expected to become available within a few years, a permanent permission with associated permanent harm to the Green Belt and area would not be justified.

For the above reasons and having regard to all other matters raised in representations the Inspector concluded that the appeal should be dismissed in respect of the septic tank allowed in respect of the other development subject to conditions including a temporary time period of 3 years.

## **2. FORTHCOMING PLANNING INQUIRIES AND HEARINGS**

This list includes forthcoming inquiries and hearings for all three Areas which have now been arranged. Unless otherwise indicated, they will be held in the Civic Suite at the Gibson Building and will last one day. All hearings and inquiries commence at 10.00 hours on the first day.

There are also a number of other outstanding appeals for which hearing/inquiry dates have not yet been allocated. It is now the practice of the Planning Inspectorate not to list new cases for hearing more than three months in advance.

- 2.1 Site **Horseshoes, Sandy Lane, Ryarsh**  
 Details **Appeal against refusal of permission (application TM/04/00281/FL) for continued use of land for the siting of 1 mobile home and 1 touring caravan for permanent residential occupation including installation of septic tank**  
 Date **Inquiry – 23 September 2008 (2days)**  
 Background papers file **PA/20/08**
- 2.2 Site **Land east of Water Tower, Common Road, Bluebell Hill, Aylesford**  
 Details **Appeal against (1) refusal of permission (application TM/07/02245/FL) for change of use of land to storage and stationing of mobile home and (2) the service of an enforcement notice in respect of the unauthorised erection of a fence and gates and the creation of a hardsurface.**  
 Date **hearing – 22 October 2008**  
 Background papers file **PA/15/08**

**Ian Henderson**  
 Acting Chief Solicitor