



Appeal Decisions

Hearing held on 8 October 2024

Site visit made on 8 October 2024

by David Murray BA (Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 October 2024

Appeal A Ref: APP/U2235/W/23/3319745

Warren Lands, Lenham Heath Road, Sandway, KENT, ME17 2PD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the 1990 Act) (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Fred King against the decision of Maidstone Borough Council.
 - The application Ref is 22/505561/FULL.
 - The development proposed is the demolition of existing dwelling and erection of a one bedroom bungalow. Refurbishment of existing hardstanding to enable standing of one static caravan and storage of two touring caravans to be ancillary to the dwelling. Refurbishment of existing access.
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Appeal B Ref: APP/U2235/W/24/3340366

Warren Lands, Headcorn and Lenham Heath Roads, Sandway, Kent, ME17 2PD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the 1990 Act) (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Fred King against the decision of Maidstone Borough Council.
 - The application Ref is 23/504134/FULL.
 - The development proposed is the change of use of land to a caravan site for use by an extended Gypsy / Traveller family, including demolition of existing dwelling, siting of 3no. static caravans and 3 no. touring caravans, erection of family day room, installation of package treatment plant and ancillary works.
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Decisions

Appeal A Ref: APP/U2235/W/23/3319745

1. The appeal is dismissed.

Appeal B Ref: APP/U2235/W/24/3340366

2. The appeal is dismissed.

Preliminary Matters

Certificates of ownership

3. The 1990 Act¹ and accompanying Statutory Instruments require an applicant, when making a planning application, to either certify that the applicant is the sole owner of the land or serve notice on the owners of the land as defined in the regulations. In the case of Appeal A, Mr Carruthers, as agent for Mr King,

¹ The Town and Country Planning Act 1990 – as amended.

first served notice on the Secretary of State for Transport on the 22 August 2022, but this appears to have been amended with a revised site plan and application form. In this Mr Carruthers confirmed that Mr King was the sole owner. In Appeal B, Mr King was confirmed by his agent on the 10 October 2023 as the sole owner of the land.

4. This position on sole ownership is disputed by other parties. It is apparent that a Mr Fleming, acting as Administrator of the estate of the previous owner Ms Sally Town, was successful in applying to the Land Registry for title and this is shown in the copy of the Land Register as dated 7 December 2022 submitted with the representation on the appeal by the remaining family of Sally Town. This title is disputed by Mr King through Mr Carruthers who has complaints and challenges outstanding against the Land Registry.
5. Section 65(5) of the Act deals with publicity for applications and indicates, in essence, that applications should not be entertained if the requirements regarding an interest in the land have not been met and similar provisions exist for the lodging of an appeal. Mr Bell, Counsel for the residents suggests that on this basis the appeals should be turned away. However, the Council considered that both planning applications had been properly made by registering them. The Council is also anxious that if the current appeals are turned away the legal action pending over the Enforcement Notice on site (see paragraphs 17-18 below), will be held in limbo and the matter unresolved. For that reason the Council requests that the appeals are determined.
6. The circumstances over the ownership of the appeal site land are lengthy and complex with the title of the land in dispute. Moreover, the applications have been submitted over a period of over a year and the application forms, particularly associated with appeal A, have also been amended over time. I am not satisfied that there has been a clear mistake in the Certificate of Ownership stated at the time of submission or when changed. On balance I conclude that the disputed title should not result in the appeals being turned away. It appears to me that the continuing dispute over land ownership will end up being resolved in the Courts whatever my decisions on these appeals. For these reasons the appeals should be considered and I will proceed on this basis.

Clarification of proposal in Appeal A

7. In Appeal A the appellant says that it should be considered as a proposal for accommodation for a gypsy or traveller family. However, the application forms clearly refer in the description of the proposal to 'the replacement of existing damaged dwellinghouse' together with a static caravan and two touring caravans for storage and ancillary use 'with the house'. Moreover the plans accompanying the application refer in the title box to a 'new dwelling' and the drawing shows the layout of the building having a bedroom, lounge, kitchen, utility room and wet room. These are all the facilities necessary for an independent unit of residential occupation i.e. a dwellinghouse. Also, the overnight sleeping accommodation is inconsistent with the normal form of a day room associated with a gypsy or traveller site. Accordingly I will deal with Appeal A as primarily for the erection of a new dwelling, albeit one with a static mobile home and two touring caravans associated with it, and as such Local Plan policy DM15 and LPRHOU8, as well as the national Planning Policy for Traveller sites (PPTS) do not apply in this case.

Gypsy status

8. The appellant Mr King identifies as being a Romany Gypsy. He says he carries on a traditional gypsy way of life by travelling away for work and to go to the traditional gypsy horse fairs spread around the country. He wants to continue with his base on site as he and his family are settled there and the children attend local schools and the address gives his family access to medical care. He says he travels with his small lorry and touring caravan for about three months per year doing work particularly at other gypsy and traveller sites and that is how he makes his living. Recently he has done gardening jobs around Cambridge, Somerset and Wells. His hobby is restoring old commercial vehicles but he said that he does not buy and sell vehicles as part of his business.
9. The Council considers that Mr King has not clearly established gypsy status and refer to other proceedings against him where he was said to live in a 'bricks and mortar' property. Mr King said that was at the instigation of his now ex-wife and he has a cultural aversion to living in a house. The Council also refers to the lack of any verifiable evidence about his travel periods and the nature of the work undertaken and neighbours who overlook the site said that they were not aware of any of the touring caravans on site being away for significant periods.
10. Mr Carruthers referred to the appellant's participation in the most recent Gypsy and Traveller Accommodation Assessment (GTAA) undertaken in 2022 in which the appellant was interviewed for about 1.5 hours. The company undertaking the Assessment (ORS) would have had the definition of a gypsy and traveller in mind when they included the appellant's details and accommodation needs in the GTAA. I attach moderate weight to this independent assessment of the appellant's gypsy status.
11. Whilst I acknowledge the lack of written and verifiable evidence, on balance there is sufficient basis to the appellant's claim to have a nomadic habit of life as described in Annex 1 to the PPTS (December 2023). As such it is appropriate to consider in Appeal B this national policy and the relevant local policy DM15/LPRHOU8.

Costs

12. No application for costs was made by any party but Mr Bell for local residents asked me to consider an award initiated by me as inspector. However, the preliminary aspects of the two appeals and their inherent planning merits are very complex and I do not consider that any party's behaviour in making their case was unreasonable. I have also concluded that no party incurred wasted or unnecessary costs in the pursuit of the appeals and making representations. An award of costs is therefore not justified.

Main Issues

13. The main issues in the appeals are:
 - Whether the principle of development accords with the strategy in the development plan;
 - The effect on the character and appearance of the area including the rural landscape;

- Whether the site lies in a sustainable location with good accessibility to a range of services and modes of transport;
- The effect on the character and appearance of the Sandway Conservation Area;
- The effect on the Stodmarsh Marshes SAC through the additional overnight accommodation resulting in increased nutrient to this habitat and whether adversely affects its integrity;
- The effect on protected species within the site and whether there would be a net gain in biodiversity;
- The effect on highway capacity, safety and amenity.
- The need for and supply of gypsy/traveller sites (Appeal B);
- The availability of alternative sites (Appeal B); and
- The personal circumstances of the appellant and best interests of children.

Reasons

Policy context

14. The Council adopted the Maidstone Local Plan Review (LPR) in March 2024 following examination. This supersedes some of the policies in the Maidstone Local Plan 2017 (MLP) but not all of them. The relevant policies will be set out in the main issues below. The Lenham Neighbourhood Plan (LNP) was made in July 2021 and is also part of the development plan.
15. The LPR does not amend policies in respect of gypsy and traveller accommodation. The Council has embarked on a separate Development Plan Document (DPD) to cover this topic. Initial consultation has just started and the Council expects to adopt the DPD in late 2025.

Background

16. The appeal site comprises an open area of land which lies on the eastern edge of the village of Sandway which is situated in open countryside about 1.5km south of Lenham a local service centre village. The appeal site lies immediately to the south of the London to Channel Tunnel fast rail link (HS1) which enters a short tunnel near this point. The site has an existing access to Lenham Heath Road (now referred to as the southern access) and another access to Headcorn Road (the northern access). At the time of the visit, the site, which slopes away from north to south, contained a modern static caravan, three touring caravans, and various small and medium sized commercial vehicles (in various states of repair, restoration or dismantling), light 4x4s and cars and a number of small sheds and structures.
17. The planning history of the site is relevant to these appeals. The key aspects are that an enforcement notice was issued by the Council in August 1991 which alleged a breach of planning control for the change of use to agriculture and a use as a caravan site. The land to which the notice related included the appeal site and land further to the north and to the west of Headcorn Road. An appeal against the notice was dismissed in June 1992 and the inspector upheld the

notice (with corrections) as he concluded that there was a strong policy objection to the caravan site development in this area of countryside and it detracted from the open character of the field despite the presence of boundary screening. He concluded that these aspects outweighed other factors in favour of the development.

18. Although the period of compliance was increased to six months (i.e. by the 11 December 1992) it is evident that the Council gave the then occupier of the caravan/mobile home, Ms Sally Town, a 'letter of comfort' to remain in the caravan because of her poor health and ailing circumstances. It is also evident that she occupied the mobile home unit until about 2016 when she left because of her health and the structure being classed as unfit for habitation. Mr King says that he and his family occupied the site in June 2022.
19. An application from the appellant for a Certificate of Lawfulness for the mobile home was refused by the Council and considered on appeal in 2023 under ref. APP/U2235/X/22/3308797. The inspector described the proposal as 'use of the existing dwelling as a dwelling' but found that the structure was not a building but was a twin unit mobile home. The inspector concluded that a proposed use of the mobile home as a dwelling was not lawful as it would be in breach of the extant enforcement notice and dismissed the appeal on that basis. The Council advised that legal proceedings against the appellant in the courts are pending the decision on these appeals. It is also apparent that the appellant demolished the old structure of the mobile home in September of this year and I noted the cleared part of the site at my visit.
20. Mr King and Mr Carruthers said that there were other permissions related to the land including it being used for works and hardstandings in association with the construction on the high-speed rail link. However, I did not see the remnants of any such works at or above ground level at my site visit.

Principle of development

21. In relation to appeal A, the site lies outside the settlement boundary of the village of Sandway and in the countryside. Policy LPRSP9 applies and this contains a general presumption against new development unless it is permitted by other policies in the plan and would not result in significant harm to the rural character and appearance of the area. There are no housing policies which support the erection of a dwelling on the site in the LPR or Policy CP1 of the LNP, and therefore the principle of the development does not accord with the development plan.
22. For appeal B, the principle of accommodation for gypsies and travellers is set out in the development management Policy DM15 now LPRHOU8. These provide a criteria based approach to proposals for gypsy and traveller sites which are not allocated for development. The criteria set out in the policy are similar to the main issues I have identified in this appeal and I will make a final assessment on whether the proposal meets these overall before undertaking the planning balance.

Effect on character and appearance

23. In assessing this issue I considered the proposals from the public realm of the lanes around the northern and southern access points and around the site itself including from the rear boundary of two of the houses fronting Headcorn Road.

There is an existing roadside hedge along the Lenham Heath Road which appears to be largely of hawthorn and is therefore deciduous. This partly screens views into the site but there are some of views through the hedge of the existing mobile home and where the previous structure stood. Even taking account of the proposals for additional planting it is likely that the proposed dwelling and two static mobile homes in appeal A, and the day room and three mobile homes in appeal B, would be seen though the roadside hedge given their close proximity to this southern boundary. The presence of such development would materially spread the developed form of the village along this road into the countryside.

24. From the north the development proposed in both appeals would not be seen from the public realm around Headcorn Road. However because of the topography of the land where it slopes away from the north-west the main hub of development would be prominent to view from the rear of the residential properties on the southern-eastern side of the road. The formal access drive together with the large extent of hardstanding and the dwelling in appeal A and day room in appeal B, along with the siting of the residential mobile homes would result in a fundamental change in character compared to that of a simple field associated with the lawful agricultural use. The spread and form of the development proposed in both appeals would have a significant harmful effect on the rural character and appearance of the area and as such both proposals would conflict with the criterion 2 of LPRSP9 for development in the countryside.
25. In addition to the affect on landscape character, Policy LPRQD4 sets out design principles for development in the countryside where part 1 indicates that the design and materials of new development must maintain and where possible enhance local distinctiveness. As far as can be judged from the submitted plans, the proposal dwelling in appeal A and day room in appeal B would not do this as it is likely to be at best a pyramid roof bungalow with a utilitarian appearance, coupled with the standard form of one or three static residential mobile homes. This overall design form would be at odds with rather than enhance the distinctiveness of the area and so Policy LPRQD4 would also be conflicted with.

Whether sustainable location and accessibility

26. It is agreed that Sandway has no facilities and that local residents turn to the villages of Lenham and Harrietsham, both rural service centres situated about a mile (1.6km) away, for their day to day needs. Although this distance can be appropriate for walking and cycling for local everyday facilities such as schools and for food shopping, I am concerned that the characteristics of the intervening roads are not conducive for these modes of transport. In particular the lane to Lenham is mostly unlit with no footway and it has for a large part restricted forward visibility for all users which makes it generally unsuitable for children and the elderly to walk or cycle along. I have also not seen or been advised of any public transport that services Sandway.
27. I have taken account of the guidance in the paragraph 109 of the Framework that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. Further it is inherent that a gypsy or traveller way of life is dependent on a regular degree of travel probably by a vehicle. Nevertheless, the proposals are for a dwelling and/or a settled permanent base

and this is likely to involve the families still having to reach schools, services and facilities even when a worker is travelling away. The location of the site away from services and facilities and the lack of practical alternatives to the use of a car means that the proposed dwelling or gypsy/traveller site would still be largely dependent on the use of a car. This would not help achieve a sustainable pattern of growth and both proposals conflict with the policy in the Framework to promote sustainable transport, together with Policy AT2(3) of the LNP.

The effect on the Sandway Conservation Area;

28. The appeal site runs close to but outside two 'arms' of the conservation area which was designated in 1971. Mr Carruthers says that there has been considerable change since then particularly with the construction of HS1 close-by which apparently involved the demolition of three listed houses in the conservation area and their replacement with new ones at Warren Cottages. The gardens of these properties also appear to have been extended out past the boundary so that this does not now follow any feature on the ground.
29. I understand that these changes have not resulted in a review of the conservation area but it appeared to me that the boundary still covered the nucleus of the village where the properties are sited close to local roads. There is no appraisal which set out the significance of the conservation area but Mr Morton for the Council described this as small traditional houses in local materials in a rural setting included surrounding fields and open land. I saw the elements that contribute to this significance at the visit. The changes resulting from the construction works with HS1 have settled locally and do not now weaken the significance of the conservation area.
30. In terms of the appeal proposals, the main effect on the conservation area would be in the southern area of the site where the proposed hardstanding would abut the boundary and the dwelling house in appeal A and day room in Appeal B would be sited close to this edge. Although there is an intervening roadside hedge and this is proposed to be thickened, the presence of the this natural screen cannot be relied on in perpetuity. As I concluded in paragraph 24 above the presence of the structures and mobile homes will be apparent from Lenham Heath Road as well as from the houses and rear gardens of the properties to the north west and west. The large extent of hardstanding coupled with the utilitarian form of the dwelling/ day room and the static residential mobile homes would have a harmful visual impact on the setting of the conservation area and spoil its character and appearance. The proposals would therefore conflict with policy LPRSP14(B).
31. I have paid special attention to the desirability of preserving the character and appearance of this designated heritage asset and I find that neither proposal would achieve this as they would harm its setting. In terms of the guidance set out in paragraphs 207-209 of the Framework this harm amounts to 'less than significant harm' and I will weigh this with public benefits as part of the overall balancing exercise.

The effect on the Stodmarsh Marshes SAC

32. Standing advice from Natural England is that the appeal site lies within the catchment area of Stodmarsh, an area of lakes and wetland habitat which are designated as a Special Area of Conservation / Special Protection Area. The

habitats are said to be at risk from additional nutrient inputs including that arising from new development located within the catchment area. In particular discharge of waste water from new residential development into wastewater treatments works within the Stour Valley River Catchment area could have a potentially significant effect on the integrity of the Stodmarsh SPA.

33. Mr Carruthers for the appellant takes issue with the threat of additional nitrate and the like on the habitat which he says should be limited to the specific habitat and range of the Desmoulins Whorl Snail not the whole area of wetland. He also raises technical problems over the designation of the SAC which he says has not been registered by the local Council as a Land Charge. Moreover he challenges the electronic information systems development and service used by English Nature which he says contain false information and that these have not been properly authorised for public use. English Nature's response to a request for further information, including on the status of the Biodiversity Netgain Matrix, is included in a letter from DEFRA² to the complainant and the allegations, including about the authorisation and operation of the Matrix, are refuted. Moreover, to my mind these matters of principle raised over the designation of the Stodmarsh SAC and the status of the Matrix are beyond the reasonable scope of these appeals. If I was minded to allow the appeals I would need to obtain specific advice from Natural England on the appeal proposals before undertaking an Appropriate Assessment under the Habitat Regulations. However, for the moment I conclude that the standing advice from Natural England should be given full weight.
34. Notwithstanding these points of principle, Mr Carruthers points out that Mr King and his family were living on the land on 9th May 2022 when the later guidance was issued by Natural England and he queries whether there would be any increase in waste water from the site. He also proposes that either development should be served by a packet (package) treatment plant from where he says it will take several centuries for any nitrogen and/or phosphorus to reach the River Stour.
35. However, it is clear to me that any residential caravan site in the past was in breach of the enforcement notice (notwithstanding Ms Sally Town's occupation for many years) and even if some weight was given to this continued use, the development proposed in either appeal would be very likely to lead to a considerable increase in the production of waste water from the site because of the number of people who would live there. Further, the use of a treatment plant was discussed at the hearing and my understanding is that waste solids still have to be removed from the plant at some stage and in planning terms there would be no continuing control over where the effluent could be discharged to.
36. On the relevant evidence before me I find that it has not been reasonably demonstrated that the proposed residential occupation of the site would not result in an increase in nutrient within the Stodmarsh SAC and it is more likely to have a potentially significant effect on the integrity of the habitat.

The effect on protected species and biodiversity

37. This issue is concerned with the effect on biodiversity on the appeal site itself. Policy LPRSP14(a) requires new development to deliver a minimum 20%

² Letter dated 7 October 2024 from Information Rights Team, Department for Environment, Food and Rural Affairs

biodiversity net gain on new residential development or if this is unviable, the statutory minimum net gain provision. Mr Carruthers for the appellant has undertaken a Ecological / Protected Species Survey, (as he says he is appropriately qualified and experienced) and this indicates that there was no evidence of statutory protected species present on the land. He says that there are areas of disturbed land but that overall the site should be classed as improved grassland edged in places with native species hedges. He concludes that the land has low bio-diversity and that the proposal to plant a large number of native species plants would increase biodiversity.

38. There is no formal assessment before me to quantify the present biodiversity state of the land or calculate any net gain that may arise and consider if it meets the requirements of LPRSP14(a) or the national level of increase. Therefore there is a technical breach of the policy. However it struck me at the visit that there is reasonable scope within the site to achieve such an increase with properly specified planting and other habit enhancements. If all other aspects of either development were clearly acceptable I find that it is likely that this issue could be addressed with further work on specific proposals to achieve biodiversity net gain and that the implementation of this could be required by condition.

Effect on highway capacity, safety and amenity.

39. On this issue the Council is concerned that there is a lack of evidence presented on the nature and scale of vehicle movements associated with either development to assess the impact on the highway network and also on the visibility at the junctions to ensure highway safety, bearing in mind that a gypsy or traveller use is likely to involve vehicles towing touring caravans and/or mobile homes.
40. Considering the individual access points first, at the hearing and the site visit the appellant and Mr Carruthers recognised that the southern access has limited visibility onto a single track road. They said the appellant was prepared to accept a condition that this access was blocked up, with the solid gates removed and a hedge and bank instated over the access, provided that the northern access was acceptable as an alternative. At the visit I noted that the southern access had very restricted visibility in both directions and its general use harmed highway safety. Its use for vehicles towing caravans and larger commercial vehicles would be even more problematic. Therefore, the closure of the access would be a highway benefit. Although no proper scaled drawings of the access and sight lines had been submitted, the northern access appeared to be capable of having appropriate visibility as Headcorn Road at this point was relatively straight where it passed over the railway tunnel.
41. However I have concerns about the wider effects of traffic associated with the development proposed on the wider highway network particularly at the junction of Headcorn Road, Lenham Heath Road and Sandway Road in the centre of Sandway. This junction has roads joining at an acute angle with virtually no forward visibility and the roads are narrow of single carriageway width. In the absence of more detailed information on likely trip generation it would not be in the interests of highway safety to allow development with the potential for a material increase in vehicle movements at this junction particularly those associated with lorries and vehicles towing caravans.

42. On this basis I find that it has not been demonstrated that the proposal accords with Policy LPRTRA2 in ensuring that there would be no severe impact on highway safety.

Policy conclusion LPRHOU8.

43. Bringing my conclusions on the above issues together under Policy LPRHOU8 for Appeal B in respect of gypsy and traveller accommodation, I find that the proposal conflicts with part (b) in terms of the site's poor accessibility to local services; part (c) because of the significant landscape impact and harm to rural character; part (d) the wider impact on highway safety; and part (f) the ecological impact on the Stodmarsh SAC.

The need for and supply of gypsy/traveller sites (Appeal B);

44. Policy B of the PPTS indicates that Councils should be able to identify a five year supply of deliverable sites for gypsies and travellers to meet locally set targets. An updated Gypsy and Traveller Accommodation Assessment (GTAA) was undertaken on behalf of the Council in 2023. This outlines a need for 340 pitches in Maidstone between 2023 and 2024 and the breakdown for the period 2023-27 indicates a need for 205 pitches. This assessment is a considerable percentage increase in the level of need identified in the previous GTAA.
45. The Council accepts that it can only demonstrate a 1.2 years supply at the moment based on unimplemented allocations, pitch turnover and a windfall allowance. Although the Council considers that the need for new pitches could be met through the remaining allocations from the 2017 Local Plan and from pitch turnovers and windfalls, there is no evidence before me that this provision is likely to happen. Further, it appears that the LPR did not consider such allocations and this is left to the Gypsy and Traveller DPD which is at an early stage in the formal plan making process. There is therefore a short to medium term clear deficit in the supply of sites for gypsies and travellers.

The availability of alternative sites (Appeal B); and

46. Policy H of the PPTS advises that the availability or lack of alternative accommodation is a consideration when considering applications for traveller sites. The Council accepted that it was not aware of any vacant pitches on Council sites at the moment that the appellant and family could turn to. Mr Carruthers suggested that traditional gypsy and traveller public sites were now being used to accommodate non-traveller people in housing need and this was a common feature in other Council areas that he worked in.
47. The appellant and Mr Carruthers said that if the appeals were rejected the families had no where else to go. There were no public or lawful private sites available to them although Mr King accepted that he was not registered on the Council's waiting list for public traveller sites. He said that the families would have no alternative but to live on the roadside as they did not have other family locally that they could 'twin up' with even for a short period. A roadside existence would have a harmful effect on the stability of the families and particularly the children's ability to attend school regularly as they do at the moment. There would also be a practical issue in seeking medical and health care where there was no address for a regular point of contact.
48. Although the Council believed that the appellant had occupied other forms of housing in the past the evidence put to me was that this was only because of

the needs of his now ex-wife and such accommodation was at odds with his gypsy beliefs.

49. Overall on the evidence put to me I find that there is no alternative accommodation reasonably available at the moment to the appellant and his family if the proposal for the appeal site is not acceptable. If appeal B is dismissed there is a likelihood that the families would be homeless and have to live on the roadside.

Personal circumstances and children.

50. Either development is proposed for Mr King's family which is formed by his children and grandchildren and further children are expected. In the statement dated September 2023 the wider family was said to be made up of seven adults and nine children although Mr King said there were 12 children living on site at the moment. He said that all of the children of school age attend local schools in Lenham and elsewhere. He considered that this education would be severely disrupted if the families were made homeless and had to live on the roadside. Mr King also said that the adults received medication for illnesses and the appeal site with a given address enabled the family to have access to medical and social care facilities which would be difficult to continue with if moved on.

51. The continuation of the children's schooling for educational and social needs is clearly in their best interests and I give significant weight to this factor along with the adult's medical needs which are best served by having a permanent site.

Planning and conservation balance

52. As the start of the planning balance I have borne in mind the requirements of the Public Sector Equality Duty as the appellant and family have protected characteristics as Romany Gypsies. I have also placed no single factor above the best interests of any child.
53. On the main issues I have found that in appeal A the proposed dwelling and associated mobile home on this site would be contrary to the LPR as it would be sited beyond the recognised limits of the settlement and in the countryside. It would also have a significantly harmful effect on the character and appearance of this area of countryside and the design of the dwelling and the static mobile home would not maintain or enhance local distinctiveness. Neither does the site lie in a sustainable location with good accessibility. It has also not been demonstrated that additional traffic can be accommodated on roads/junctions within Sandway without adding to problems and effecting highway safety. While biodiversity enhancement could probably take place within the site itself and be controlled by condition, the scheme is likely to add to an increase in waste water having to be disposed off and it has not been established that this would not have a significant effect on the integrity of the Stodmarsh habitat.
54. The scheme in appeal A therefore conflicts with the provisions of the development plan as set out in detail above.
55. Regarding the appeal B scheme, this is for gypsy and traveller accommodation and it also has to be considered in respect of Policy LPRHOU8. For similar

reasons to those above the scheme does not accord with the stated elements of the policy and will cause substantial harm locally for a number of reasons.

56. In terms of the heritage balance, I have found that both appeal schemes would cause 'less than significant harm' to the setting of the designated heritage asset of the Sandway Conservation Area. This has to be balanced with public benefits. These are mainly limited to the Appeal B proposal where three gypsy and traveller pitches would be provided at a time when the Council has a clear deficiency of such accommodation. However, great weight has to be given to the designated asset's conservation. It is likely that the Council will make provision for sites to meet needs through the DPD programme in the medium term and the short term gain of the appeal site development does not justify harm to the conservation area on a permanent basis. The proposal would therefore conflict with the guidance in the Framework to protect heritage assets.
57. The conflict with the development plan has to be balanced with other considerations. It is clear that the Council cannot demonstrate an adequate supply of new gypsy and traveller sites at the moment and it appears that it will be a few years before this will be rectified. I attach significant weight to this failure to meet long established national policy. There is also no identified alternative site for the appellant to go to and I have no reason to doubt that Mr King and his family would be faced with a roadside existence.
58. Continuing to live on the appeal site would give the appellant and family a settled base. This and the ability to have continuing education locally would clearly be in the best interests of the children whereas this is unlikely to happen with the real risk of the families being on the roadside if the appeal is dismissed. In such circumstances the families may be subject to very unfavourable living condition.
59. However I find that the site is inherently unsuitable in planning terms because the development proposed would cause significant harm to the rural landscape; harm the conservation area, as well as highway safety and ecological matters and it is inappropriately sited for accessibility. Taken together these harms would be considerable and lasting.
60. I conclude that the other considerations that arise in these cases do not outweigh the conflict with the development plan and national guidance when both are taken as a whole. The permanent dwelling and residential caravan site uses should therefore not be allowed.
61. I have also considered whether the appellant's personal circumstances justify the allowing the proposal on a temporary basis pending the adoption and practical application of the forthcoming Gypsy and Traveller DPD. However, I give weight to the considerable harm that would arise over both proposals which would still be present for a temporary period and find that this is not justified by the short to medium term lack of alternative sites. A temporary permission is therefore not appropriate.
62. Dismissing the appeal would be likely to lead to circumstances where the appellant and his family are required to leave the site. This would be an interference with their rights under Article 8 of the European Convention on Human Rights as incorporated into the Human Rights Act 1998. Article 8 affords the right to respect for private and family life and home and the best

interests of children. However it is a qualified right and interference may be justified where that is lawful, in the public interest and is proportionate.

63. In this case the need to protect the countryside landscape and heritage assets, secure highway safety and proper accessibility, and biodiversity, are well established planning aims in the public interest. Interference would therefore be in accordance with the law.

64. The protection of the public interest cannot be achieved by means which are less interfering with the appellant and families rights. The dismissal of the appeal is proportionate and necessary and therefore would not result in a violation of rights under Article 8

Conclusion

65. For the reasons given above I conclude that the appeals should not be allowed.

David Murray

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr S Carruthers	Planning Consultant
Mr F King	Appellant
Ms A Waller	Appellant's partner

FOR THE LOCAL PLANNING AUTHORITY:

Mr R Morton	Solicitor, acting as advocate for the Council.
Mrs S King	Planning Enforcement Officer, Maidstone Council
Mr P De Villiers	Planning Enforcement, Maidstone Council.

INTERESTED PARTIES:

Mr S Bell	of Counsel, representing local residents
Mr P McCreery	Planning Consultant, representing Lenham Parish Council.
Mr G Raisbeck	Neighbour
Ms J Belkhauer	Neighbour
Mr A Leetham	Local resident
Ms M Walton	Neighbour
C Cymer	Local resident

Additional material submitted at the Hearing

1. High Court case - Bishop v Westminster Council [2017] EWHC 3102 (Admin) 2017 WL 06597399 submitted by Mr Bell
- 2 Various photographs taken from Warren Cottages submitted by Mr Bell.