

PLANNING COMMITTEE MEETING

Date: Thursday 23 February 2023
Time: 6.00 p.m.
Venue: Town Hall, High Street, Maidstone

Membership:

Councillors Brindle, Cox, English, Harwood, Holmes, Kimmance, McKenna, Munford (Vice-Chairman), Perry, Spooner (Chairman), Trzebinski, D Wilkinson and Young

The Chairman will assume that all Members will read the reports before attending the meeting. Officers are asked to assume the same when introducing reports.

AGENDA

Page No.

1. Apologies for Absence
2. Notification of Substitute Members
3. Notification of Visiting Members
4. Items withdrawn from the Agenda
5. Any business the Chairman regards as urgent including the urgent update report as it relates to matters to be considered at the meeting
6. Disclosures by Members and Officers
7. Disclosures of lobbying
8. To consider whether any items should be taken in private because of the possible disclosure of exempt information.
9. Presentation of Petitions (if any)
10. 21/500786/FULL & 21/502369/FULL - Pilgrims Retreat, Hogbarn Lane, Harrietsham, Maidstone, Kent, ME17 1NZ 1 - 109

Issued on Wednesday 15 February 2023
Over/:

Continued

Alison Broom

Alison Broom, Chief Executive

PLEASE NOTE

The order in which items are taken at the meeting may be subject to change.

The public proceedings of the meeting will be broadcast live and recorded for playback on the Maidstone Borough Council website.

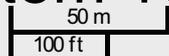
For full details of all papers relevant to the reports on the agenda, please refer to the public access pages on the Maidstone Borough Council website. Background documents are available for inspection; please follow this link: <https://pa.midkent.gov.uk/online-applications/>

PUBLIC SPEAKING AND ALTERNATIVE FORMATS

In order to speak at the meeting, please call 01622 602899 or email committee@maidstone.gov.uk by 4 p.m. on Wednesday 22 February 2023. You will need to tell us which agenda item you wish to speak on. Please note that slots will be allocated for each application on a first come, first served basis.

If you require this information in an alternative format please contact us, call 01622 602899 or email committee@maidstone.gov.uk

To find out more about the work of the Committee, please visit www.maidstone.gov.uk



Ordnance Survey - data derived from OS Premium



21/500786/FULL Pilgrims Retreat, Hogbarn Lane, Harrietsham, Maidstone, Kent, ME17 1NZ

Scale: 1:2500

Printed on: 14/2/2023 at 13:23 PM by JoannaW



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50 m
100 ft



Ordnance Survey - data derived from OS Premium

REFERENCE NOS: 21/500786/FULL and 21/502369/FULL		
APPLICATION PROPOSALS: 21/500786/FULL - Retrospective application for material change of use of land for use as caravan site including engineering works to create ditch to south of site. 21/502369/FULL - Retrospective change of use of land to a caravan site, including the siting of 84(no) residential caravans.		
ADDRESS: Pilgrims Retreat, Hogbarn Lane, Harrietsham, Maidstone, Kent, ME17 1NZ		
RECOMMENDATIONS: REFUSE BOTH APPLICATIONS		
SUMMARY OF REASONS FOR RECOMMENDATIONS:		
<p><u>1) The development the subject of 21/502369/FULL is contrary to local and national policy/guidance for the following reasons:</u></p> <p>The development, by virtue of the site's extension and the level of engineering works undertaken to create terracing, hardstanding, and retaining walls within the southern section of the site; the loss (and further potential loss) of woodland and protected trees; the inadequate and inappropriate mitigation planting proposed; the addition of 50 more static caravans; and the increased light pollution resulting from more static caravans that are occupied permanently, fails to conserve and enhance the landscape and scenic beauty of the Kent Downs AONB, as well as the intrinsic character and beauty of the countryside hereabouts. The adverse impact on this nationally designated landscape of the highest value is contrary to policies SS1, SP17, DM1, DM3 and DM30 of the Local Plan (2017), the Maidstone Landscape Character Assessment (March 2012 amended July 2013) and 2012 Supplement, the NPPF and the Kent Downs AONB Management Plan (2021-2026) and its Landscape Design Handbook.</p> <p>The development is considered to be a major development in the Kent Downs Area of Outstanding Natural Beauty, and there are no exceptional circumstances to permit this development, and it has not been demonstrated that the development is in the public interest. The development is therefore contrary to paragraph 172 of the NPPF.</p> <p>The development would authorise 84 residential units in an isolated location that would also have poor access to public transport and be remote from local services and facilities, resulting in occupants being reliant on the private motor vehicle to travel to settlements to access day to day needs. In the absence of any overriding justification or need for the development demonstrated in the application, this is contrary to the aims of sustainable development as set out in policies SS1, SP17 and DM1 of the Local Plan (2017) and the NPPF.</p> <p>The application has failed to demonstrate that the residual cumulative vehicle movements associated to 84 new residential homes on this site would not have a severe impact on the local road network. This is contrary to policies DM1 and DM30 of the Local Plan (2017) and the NPPF.</p> <p>In the absence of an appropriate legal mechanism to secure necessary contributions towards community infrastructure in the borough, the impact of the development would place unacceptable demands on local services and facilities. This is contrary to policies SS1, ID1 and DM19 of Local Plan and NPPF.</p> <p>In the absence of an appropriate legal mechanism to secure affordable housing provision, the development would fail to contribute to the proven significant need for affordable housing in borough. This would be contrary to Local Plan policies SS1, SP20 and ID1 of the Local Plan (2017) and the NPPF.</p>		
<p><u>2) The development the subject of 21/500786/FULL is contrary to local and national policy/guidance for the following reasons:</u></p> <p>The development, by virtue of the extension of the unauthorised caravan site fails to conserve and enhance the landscape and scenic beauty of the Kent Downs AONB, as well as the intrinsic character and beauty of the countryside hereabouts. contrary to policies SS1, SP17, DM1, DM3 and DM30 of the Local Plan (2017); the Maidstone Landscape Character Assessment (March 2012 amended July 2013) and 2012 Supplement; the NPPF; and the Kent Downs AONB Management Plan (2021-26) and its Landscape Design Handbook.</p>		
REASON FOR REFERRAL TO COMMITTEE: Given significant planning issues the application raises.		
WARD: Harrietsham & Lenham	PARISH COUNCIL: Harrietsham	APPLICANT AGENT: Sines Parks Ltd Pegasus Group
CASE OFFICERS: Kate Altieri	VALIDATION DATE: 21/500786/FULL - 17.03.21 21/502369/FULL - 14.07.21	DECISION DUE DATE: 21/500786/FULL - 16.09.22 21/502369/FULL - 13.10.21
ADVERTISED AS DEPARTURE: Both applications advertised as departures from Development Plan.		

This Committee report is accompanied by the following appendices:

Appendix a:	Appeal decision refs: T/APP/C/96/U2235/643713-4 & T/APP/U2235/A/96/273772/P6 (LPA reference: MA/96/1132)
Appendix b:	MA/13/1435 decision notice and plan
Appendix c:	Kent Downs AONB Unit comments
Appendix d:	Harrietsham Parish Council comments
Appendix e:	Committee report for 19/502469
Appendix f:	KCC Highways comments

RELEVANT PLANNING HISTORY

Pilgrims Retreat has an extensive planning history and below is thought to be the most relevant, with the key permissions highlighted in bold:

- 21/504221/LAPRO – Lawful Development Certificate for proposed use of the land as a caravan site and as a site for camping, with an unlimited number of caravans and unlimited occupation of the caravans – Invalid and no further action taken
- 21/506083/FULL- s73A application to vary conditions 1 (number of residential caravans), 2 (occupation period) and 4 (areas where caravans can be located) pursuant to T/APP/C/96/U2235/643714. Council has declined to determine the application and the agent has indicated an appeal will be lodged in due course. To date no appeal has been lodged.
- 21/500785 – s73A application to vary conditions 1 (number of residential caravans), 2 (occupation period) and 4 (areas where caravans can be located) pursuant to T/APP/C/96/U2235/643714 (re: **MA/96/1132**) for - Change of use of land to use as caravan site. This application was not determined.
- 19/502469 (APPENDIX E) – Retrospective application for change of use of land from mixed use of holiday units (180 caravans) & residential (18 caravans) to residential park home site (for full-time residential occupation) comprising stationing of 248 caravans, including engineering works to create terracing, hardstanding, retaining walls, and extension of site along south eastern boundary – Refused for the following (summarised) reasons:
 - (1) *Development, by virtue of site's extension and level of engineering works undertaken to create terracing, hardstanding, and retaining walls in southern section of site; loss (and further potential loss) of woodland and protected trees; inadequate and inappropriate mitigation planting proposed; addition of 50 more static caravans; and increased light pollution resulting from more caravans that are occupied permanently, fails to conserve and enhance landscape and scenic beauty of AONB, as well as intrinsic character/beauty of countryside hereabouts.*
 - (2) *Development considered to be major development in AONB, and there are no exceptional circumstances to permit it, and it has not been demonstrated development is in public interest.*
 - (3) *Development authorises 230 residential units in isolated location that would have poor access to public transport and be remote from local services/facilities, resulting in occupants being reliant on private motor vehicle to travel to settlements to access day to day needs.*
 - (4) *Application failed to demonstrate residual cumulative vehicle movements associated to 230 new residential homes would not have severe impact on local road network.*
 - (5) *Application failed to demonstrate site can provide adequate provisions for foul and surface water disposal for 248 residential units, posing health and safety risk to occupants of site.*
 - (6) *In absence of legal mechanism to secure necessary contributions towards community infrastructure, impact would place unacceptable demands on local services and facilities.*
 - (7) *In absence of appropriate legal mechanism to secure affordable housing provision, development fails to contribute to proven significant need for affordable housing in borough.*

- 19/500936 - EIA Screening Opinion for: Material change of use of land from mixed use (tourism [180 caravans] & residential [18 permanent residential]) to residential for 248 mobile caravans, including engineering works to create terracing, boundary walling, and extension of site along south-eastern boundary – EIA not required
- 17/506484 – Vary conditions 1 & 4 of 96/1132 for retention of expansion of area used for siting static holiday caravans and allow increase in number of static holiday caravans – Declined to determine
- 15/502481 - Submission of details pursuant to conditions 1 (landscaping) and 3 (future management of coppice) of MA/13/1435 – Refused
- ENF/11505 – Breach of planning control as alleged in notice is without planning permission, carrying out of engineering operations – Appeal dismissed and enforcement notice upheld with corrections – south-west corner of site to have hardstanding removed and land remodelled back to its original state
- **MA/13/1435 - Vary condition 4 of 96/1132 to allow expansion of area used for siting static caravans & alterations to land levels - Approved**
- MA/13/0724 - Vary condition 4 of 96/1132 to allow expansion of area used for siting static caravans and operational development to alter land levels – Refused
- MA/12/1910 - Advertisement – Approved
- MA/12/0388 - Extension to clubhouse to form indoor bowls facility – Approved
- MA/12/0378 - Erection of shop and offices building – Approved
- **MA/11/2190 - Vary condition 2 of 03/2343 to allow use of caravans, tents & static caravans for holiday purposes all year round – Approved**
- MA/11/1753 – (Retro) for mobile home for residential use by caretaker – Approved
- MA/11/0897 - Erection of double garage – Approved
- MA/11/0384 - Advertisement consent– Refused
- MA/08/1128 - Extensions and alterations to clubhouse – Approved
- MA/07/0142 – Vary condition 1 of 96/1132 to increase number of residential units from 18 to 27 with reduction of holiday units from 180 to 171 – Refused (dismissed)
- MA/03/2343 - Vary condition 2 of 96/1132 to extend season to 10mths - Approved
- **MA/02/2056 - Vary condition 4 of 96/1132, to enable static holiday caravans to be sited on area of southern part of site restricted to touring caravans - Approved**
- MA/97/3459 - Submission of details pursuant to condition 6(i) (scheme for provision & management of landscaping & for replacement lighting within area hatched & edged red on plan) of appeal decision related to 96/1132 - Approved
- **MA/96/1132 - Use of land for siting of 180 holiday caravans and 18 residential caravans (inc. extension of site) – Refused (allowed at appeal).** [This permission is considered to have expired unimplemented]
- MA/85/1597 - Use of caravan for camping in addition to caravans - Approved
- MA/84/0907 - Managers accommodation, amenity rooms/toilets & pool - Approved
- MA/83/0934 - Construction of internal roads, car parking and caravan hardstandings for 178 holiday caravans and 1 residential caravan – Approved

MAIN REPORT

1.0 OTHER RELEVANT BACKGROUND INFORMATION

1.01 A report seeking authority to serve enforcement notices was considered at Planning Committee on 27th February 2020. The report outlined the enforcement options available following the refusal of 19/502469 and recommended enforcement action to restore the site and its landscape back to the lawful use. It was considered that the action recommended was proportionate taking into account the residents' Human and Equality Rights and would maintain the integrity of the decision making process. The residents' welfare, health and personal circumstances would also be considered if the notices were served and took effect before any decisions were taken for further action for non-compliance with the notice. The Committee agreed to proceed with a hybrid approach combining more than one option in order to seek to regularise use and mitigate the impact on the AONB in a pragmatic way, but within a specific timeframe having regard to the continuing uncertainties for residents. The following was resolved:

1. *That delegated authority be given to the Head of Planning and Development in consultation with a Steering Group comprising the Chairman, Vice-Chairman and Political Group Spokespersons of the Planning Committee (to include Councillor Chappell-Tay as Spokesperson for Conservative Group) and the two Ward Members to establish terms of reference and a negotiating position and to engage with the applicant regarding the submission of an alternative planning application within the terms set out in consultation with the Steering Group within a maximum timeframe of 9 months.*
2. *That if the application is not submitted within the terms set out in consultation with the Steering Group and within this timeframe, or if negotiations fail, then the Head of Planning and Development be given delegated authority to proceed with Option 1 as set out in the report which is to serve two Enforcement Notices (with separate red line boundaries) at Pilgrims Retreat, Hogbarn Lane, Harrietsham, Kent with the aim of achieving the following:*
 - *Reduction in number of caravans on site to 198 - Compliance time 24 months.*
 - *Removal of all caravans, materials, rubbish etc. from site as result of above – Compliance time 30 months.*
 - *Cease permanent residential use of 180 of the 198 caravans that remain on site - Compliance time 48 months.*
 - *Restore southern part of site to accord with layout plan as approved under 13/1435 and remove all walls, domestic paraphernalia, retaining walls, hard surfacing and internal roadways etc. outside developed areas defined on plan – Compliance time 48 months.*
 - *Restore site in accordance with a specified landscape strategy – 48 months.*

1.02 There have been negotiations between the applicant's agent and the Council's Steering Group on a number of matters; and it is considered appropriate to highlight one matter. In the last round of written correspondence (Oct 2020) it was confirmed that the Steering Group agreed that Option B was the preferable solution to accommodate greater landscaping to the western boundary. For reference, the plan showing Option B is below:



- 1.03 The Steering Group also had regard to the history of the site and placed significant weight on the need for landscape mitigation and their duty under Section 85 of the Countryside and Rights of Way Act 2000.
- 1.04 At Planning Committee on 26th November 2020, it was resolved to grant an extension to the original 9 month time limit of a further three months, meaning an application should be submitted on or before 27th February 2021. Applications were submitted within this time period and this report makes recommendations on those applications.
- 1.05 The Ancient Woodland along the front of Pilgrims Retreat and on the opposite side of the road from the site's entrance, and other trees within the application site, are protected under Tree Preservation Order no. 10 of 2003. As such, any potential future works to these trees would require consent.
- 1.06 There is an Injunction Order (made on 8th June 2012) to refrain from works to any tree protected by TPO no. 10 of 2003.
- 1.07 There is an Injunction Order (made on 18th April 2019) to (inter alia) prevent further caravans or mobile homes being brought on to the site.
- 1.08 In relation to the whole site, the Council has served Planning Contravention Notices (PCNs) on the owners and occupiers and the results of these show that some 193 caravans are occupied as residences (other than the lawful 18 residential caravans) when the lawful use is as holiday accommodation only, albeit year round holiday use is permitted.
- 1.09 After taking legal advice, it has been determined that the application site does have a caravan site licence but it is being breached. The Council's Licencing Team have also confirmed that in regard to the site licence, the model conditions applied to this site are not particularly helpful with regard to drainage as they merely require that there is "suitable" drainage. They do however have an enforcement notice in place in regard to the nuisance caused by the smell emanating from the leaking system; and there is a requirement for the site owner to ensure a suitable system is in place that serves the entire site, not just the unlawful parts, so as to not be at risk of licence action from any odour nuisance that occurs.
- 1.10 In site licence terms there is a requirement for the spacing between occupied caravans to be 6m apart. The submitted plans show a cluster of 6 caravans in the south-western corner that are less than 6m apart.

2.0 SUMMARY OF PLANNING HISTORY AND FALLBACK POSITION

1967 permission

- 2.01 In the 1950s there were permissions for 20 seasonal caravans for temporary periods on the land. However, a 1967 planning permission under reference MK/2/67/145 (the "1967 Permission") regularised caravan activity on a site shaded pink shown on the plan accompanying the application. Permission was granted for "residential and recreational caravan site." The permission covered about 12 acres in area but the site owner owned about 3 more acres marked green on the plan.
- 2.02 That permission was subject to two conditions, i.e. (i) the number of residential caravans not to exceed 18 and (ii) the number of holiday caravans not to exceed 180 and not to be used for human habitation except between 1 March to 31 October in any year.
- 2.03 As it was a retrospective application it did not have a condition which required the permission to be implemented within a time period. The site was therefore operated under that permission.

1985 permission

- 2.04 Planning permission was granted on 13 December 1985 under reference **MA/85/1597** for "Use of caravan for camping in addition to caravans" (the "1985 Permission"). It was not retrospective and had a condition requiring implementation within 5 years.

- 2.05 The site operator claims much turns on this 1985 Permission and that it effectively granted unrestricted caravan use. The Council secured counsel advice on this point and counsel advised that the site operator's interpretation is incorrect.
- 2.06 The straightforward and natural meaning of the description of the development in the 1985 Permission is that the proposal was for camping to accompany the established caravan use. No further caravans were being sought and so the words 'in addition to' before "caravans" suggest that it was not an application for anything other than for tents. The ordinary meaning of the words to the reasonable reader is that the site operator was asking to be able allow camping on his existing caravan site.
- 2.07 Furthermore, taking the permission as a whole, there is only a condition limiting tent numbers and not a condition limiting caravan numbers because the application was only seeking permission for tents and not for caravans.
- 2.08 From all the evidence, including extrinsic evidence, the strong conclusion is that the 1985 permission was an additional permission in order to authorise camping as an additional use. It does not authorise a caravan site on the land, that is already "established" and already has planning permission by virtue of the 1967 Permission.
- 2.09 Moreover, no evidence has been provided that the 1985 Permission has actually been implemented. Counsel advice is that even if evidence can be provided that the 1985 Permission has been implemented, case law suggests that the conditions on the 1967 Permission should be 'read through' to the 1985 Permission in any event.

1997 appeal permissions

- 2.10 Appeals against a refusal of planning permission and two enforcement notices were determined on 26 June 1997.
- 2.11 The enforcement notices related to a material change of use of land to use as a caravan site and associated operational development. The plan shows that the land affected by the enforcement notices is only the southern part of the wider site (hatched on the below plan).



- 2.12 At appeal the Inspector quashed the enforcement notices and granted permission for the use of the land [southern part of the site] subject to a number of conditions, under LPA reference G77/E/989 and Appeal decision reference T/APP/C/96/U2235/643713-4 (the "1997 s174 Enforcement Appeal Permission").
- 2.13 The concurrent planning appeal against the refusal related to the entire site including the land to which the enforcement notices apply (the site outlined in red on the above plan). At appeal the Inspector granted permission for the siting of 180 holiday units (to include static caravans, touring caravans and tents) and 18 residential caravans subject to a number of conditions under appeal reference T/APP/U2235/A/96/273772/P6 (LPA reference: MA/96/1132) (the "1997 s78 Permission").

- 2.14 On both of these permissions, the Inspector restricted the southern part of the site to touring caravans (with a maximum of 25 at any one time) and limited the use of the entire site to a maximum of 18 residential caravans and holiday units not exceeding 180. Note that at the time, a significant number of touring caravans were in situ on the northern part but in the appeal decision the split between static caravans, touring caravans and tents was not conditioned.
- 2.15 The premise for a number of the site operator's applications, the subject of this report, is that it was the 1997 s174 Enforcement Appeal Permission that was implemented, and not the 1997 s78 Permission, claiming implementation of the s174 Enforcement Appeal Permission (which covers only the southern part of the site) allows the site operator to claim that the 1985 Permission allows unrestricted use of the northern part of the site.
- 2.16 The Council has secured advice from a leading barrister on this issue. Counsel advised that the planning history following the Appeal Decision unequivocally demonstrates that the landowner has relied on, and therefore implemented, the 1997 s78 Permission. There was an application to discharge condition 6(i) of the s78 Permission and numerous applications have been made to vary conditions attached to that permission. There is therefore no doubt that the 1997 s78 Permission was the operative 'parent' permission.

2002 Permission

- 2.17 Planning application reference: MA/02/2056 allowed 10 static caravans in a restricted part of the southern area of site, where only touring caravans were previously allowed by varying condition 4 of planning application reference MA/96/1132. This permission is considered to be the most relevant permission for the southern portion of the site, and it is considered that only 10 static holiday units at the south-eastern end of the site can be lawfully stationed and occupied for tourism related purposes. None can be occupied for residential purposes.

2011 Permissions

- 2.18 The nineteenth residential unit permitted under MA/11/1753 was restricted by condition to caretaker accommodation only. It is understood this that this unit has since been removed.
- 2.19 MA/11/2190 allowed holiday accommodation (180 caravans) to be occupied any time of year.

2013 Permission

- 2.20 Planning application reference: MA/13/1435 which was part retrospective and part prospective, allowed 60 additional static holiday caravans to be stationed in an area at the southern end of site, including operational works and an area of land in the southern corner to be planted with new woodland, and the retention of the coppice in the south-eastern corner.
- 2.21 Heart of the matter conditions (1 [landscaping] and 3 [future management of existing coppice woodland]) on this permission have not been discharged and notwithstanding this, what has been stationed/constructed on site is not as per the approved drawings. In terms of caravan numbers on the wider site, the site operator was not seeking more than the 198 caravans under the 1997 s78 Appeal Permission.
- 2.22 Whilst operational works were permitted under application reference: MA/13/1435, it is considered that this permission remains incapable of full implementation as the works were carried out without approval of conditions. Furthermore, the coppice should have been kept free of development but has been built upon. As such, the majority of development relying upon this permission will be unauthorised and the permission has now expired.

Summary of planning history

- 2.23 The last lawful permission was for 180 holiday units (comprising static caravans, touring caravans and tents) and 18 residential caravans (as per the 1997 s78 Permission, subsequently amended). The majority of the engineering works undertaken in the southern part of the site, which includes the terracing of the site, are unauthorised.
- 2.24 Ten static holiday units can be lawfully stationed at the south-eastern end but they cannot be occupied for residential purposes.

Present situation

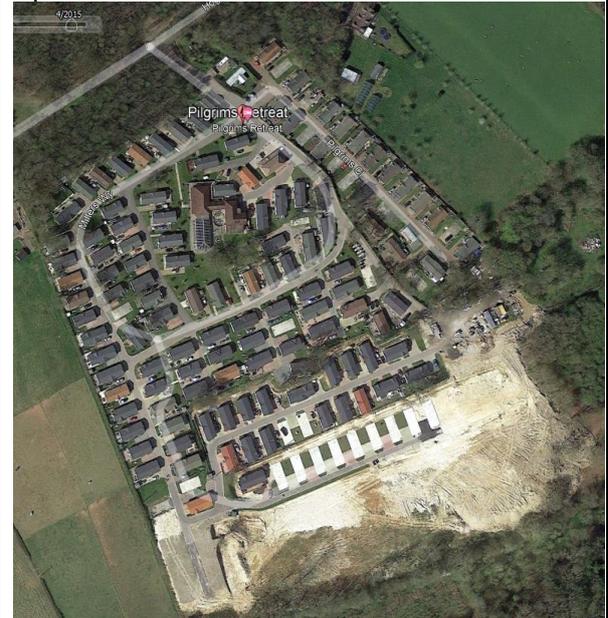
- 2.25 From aerial photography taken in March 2022 it appears there are approximately 223 mobile homes (static caravans) on the site. It is assumed that all of these mobile homes are lived in permanently as the response to the Council's Planning Contravention Notices indicated all caravans on site were occupied residentially. Comparing the present situation with the baseline of the 1997 s78 Permission (as amended by the 2002 permission) indicate a likelihood that an additional 204 caravans are now occupied on a permanent residential basis without the benefit of planning permission. As there are no touring caravans or tents at present, it is likely that this change of type of holiday units itself constitutes a material change of use of the site. A further 24 unauthorised 'units' have been brought onto the site as compared to the 1997 s78 Permission and the site has been extended southwards without planning permission.
- 2.26 The aerial photographs below show the progressive increase in numbers of caravans on the site, particularly evident in aerials from 2018 onwards.



July 2013



April 2015



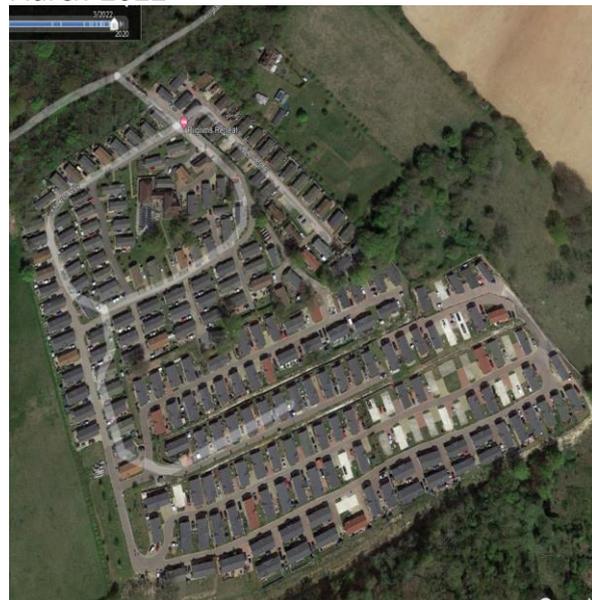
May 2018



April 2020



March 2022



Recent applications

2.27 Pursuant to the resolutions by Planning Committee on 5 March 2020 and 26 November 2020, a number of applications were submitted and are summarised below.

Certificate of Lawfulness

2.28 Application reference 21/504221/LAPRO for a Lawful Development Certificate for "Proposed use of the land as a caravan site and as a site for camping, with an unlimited number of caravans and unlimited occupation of the caravans" was submitted but this was treated as withdrawn as requested information was not supplied.

Second s73A Application for variation of the 1997 s174 Enforcement Appeal Permission

2.29 Another s73A application has been made under reference 21/506083/FULL for Variation of conditions 1 (number of residential caravans), 2 (occupation period) and 4 (areas where caravans can be located) pursuant to T/APP/C/96/U2235/643714.

2.30 The Council has refused to determine this application and the site operator's agent has indicated an appeal will be lodged in due course.

S73A application to vary conditions of 1997 s174 Enforcement Appeal Permission

2.31 On 8 December 2021 a s73A application was validated under reference 21/500785/FULL for the Variation of conditions 1 (number of residential caravans), 2 (occupation period) and 4 (areas where caravans can be located) pursuant to T/APP/C/96/U2235/643714, i.e. the 1997 s174 Enforcement Appeal Permission.

2.32 This application was not determined because the Council considered that the s174 Enforcement Appeal Permission had expired unimplemented.

2.33 The non-determination was appealed in June 2021. On 3 February 2022 the Planning Inspectorate issued a 'start letter' and fixed the Public Inquiry for 4 days starting 17 May 2022. Full statements of case were due to be submitted by both parties by 10 March 2022.

2.34 On 4 March 2022 the appellant's agent withdrew the appeal. The reason given for withdrawal was that the planning team was not available on the inquiry dates set by the Planning Inspectorate. Upon the Council's application for adverse costs against the appellant, the Planning Inspectorate made an award of costs for unreasonable behaviour.

Southern part of site

2.35 On 14 July 2021 a retrospective planning application was validated under ref: 21/502369/FULL for "Retro change of use of land to a caravan site, including the siting of 84 residential caravans".

2.36 In its planning statement, the application is described as 'seeking to vary the 1997 Enforcement Permission to regularise development which sits outside the 1985 Permission land'. However, as the Council believes the 1997 Enforcement Permission is no longer extant, the application could not be for variation. The applicant was informed of the Council's view on the matter and even though the applicant's agent made clear they disagree with the Council's view on the status of the 1997 Enforcement Permission, they confirmed that the planning application would now be for 'Use of land as a caravan site'.

2.37 21/502369/FUL would result in 84 residential caravans on the southern part of the site.

2.38 No application has been made to regularise the northern part of the site because the applicant is operating under the premise that the northern part of the site benefits from an unrestricted permission for residential caravans (following the site operator's argument on the 1985 Permission). This is not accepted and is further explained below.

2.39 Officers believe that the northern part of the site does not benefit from an unrestricted permission for residential caravans but instead that the lawful fallback is the 1997 s78 Permission which restricts the number of units on the entire site (180 holiday caravans and 18 residential caravans) and limits the number of touring caravans on the southern part of the site to 25.

- 2.40 The red line plan the subject of the 1997 Section 78 Permission includes the southern part of the site the subject of this application and specifically limited the number of touring caravans on this part to 25. MA/02/2056 amended that permission to allow 10 static holiday units to be lawfully stationed and occupied here for tourism related purposes (and not for residential purposes). It is not clear whether the 2002 variation was ever implemented.
- 2.41 Compared to the lawful fallback of either 25 touring caravans or 10 static caravans on the southern part, this application seeks a freestanding permission for the southern part for 84 residential caravans.

Planning application for southern strip

- 2.42 On 17th March 2021 a retrospective planning application was validated under reference 21/500786/FULL for "Retrospective application for material change of use of land for use as caravan site including engineering works to create ditch to south of site submitted". In their planning statement, the applicant's agent claims this application only pertains to the southern strip of the land, an extension of the site along the southern boundary which, they say, does not benefit from lawful planning permission. This application is also the subject of this report and the planning considerations apply similarly except where otherwise identified.

Site operator's strategy

- 2.43 The premise for all the above applications is a belief that the site can be divided into northern and southern parts that operate under different permissions.
- 2.44 The site operator believes that the northern part benefits from planning permission (the 1985 Permission) that allows them to use that part for an unlimited number of caravans. The site operator does not intend to make any applications for this northern part as they believe existing use rights exist.

Officers' response to site operator's strategy

- 2.45 The Pilgrims Retreat site is a single planning unit and the impact of the use of the planning unit as a whole ought to be considered in a single application. Nevertheless, the current applications were submitted and must therefore be considered in the terms under which they were made.
- 2.46 It must be noted that the site operator's present strategy and pending applications will not result in regularisation of the use of the site as a whole. In fact, if approved, the proposal will result in a position where 272 mobile homes can lawfully be stationed on the land, albeit the residential use of the units on the northern part is not lawful (except for 18 units which can already lawfully be used residentially). Even though the applicant's planning statement mentions a total of 133 caravans can be accommodated on the northern part (within caravan site licence requirements, they say), this limit cannot be controlled by planning condition as there is no application for the northern part.
- 2.47 Counsel advice has been clear that the 1985 Permission does not permit unlimited caravan use. In any event, it appears that the operative planning permission on the site is in fact the 1997 s78 Permission which covers the entire site and imposes conditions on caravan numbers.
- 2.48 The lawful fallback position against which the materiality of any change in use should be assessed, is the 1997 s78 Permission as subsequently amended by variation of conditions (s73a) applications. Essentially this permission is for stationing of 180 holiday caravans and 18 residential caravans across the whole site subject to conditions.
- 2.49 Aerial photography from 1990 and 2003 show a significant number of touring caravans in the northern part of the site. At the time of considering the 1997 appeals, it was assumed that some of the caravans on the northern part of the site would be touring caravans. Because touring caravans are smaller than static mobile homes, it explains why it was thought appropriate to grant permission for 180 'holiday caravans'. Furthermore, condition 1 to the 1997 s78 Permission limits the use of the site for "a maximum of 18 residential caravans plus holiday units comprising static caravans, touring caravans and tents, subject to the number of such holiday units not exceeding a total of 180.

- 2.50 The Steering Group members had determined a negotiating position on various issues including limiting numbers of caravans across the whole of the planning unit, to 198. A Landscape Strategy Plan formed part of the negotiating position, as did contributions, and requirements for foul and surface water disposal and Health and Safety Risk Assessments, amongst other things.
- 2.51 None of the submitted applications can achieve the Steering Group's negotiating position, not least of all because the site operator believes there is no need to submit a planning application for the northern part of the site, without which a limit on numbers on the site as a whole cannot be imposed.
- 2.52 The use of the site has changed so significantly over the years that the current use is materially different and represents a new chapter in the planning history. It is wholly unauthorised.
- 2.53 Unless further applications are made to regularise the planning position, the breaches of planning control persist and will in time become immune from enforcement action.

3.0 SITE DESCRIPTION

- 3.01 In the adopted Local Plan, 'Pilgrims Retreat' is within the countryside that falls within the Kent Downs Area of Outstanding Natural Beauty (AONB). The application site relates to the southern section of Pilgrims Retreat, approximately 4ha in area.
- 3.02 The site is on the south-eastern side of (unclassified) Hogbarn Lane and there are residential properties either side of the site, including 'Uplands' to north-east, and 'Broomfield' to the south-west. Pilgrims Retreat is located on the scarp slope of the North Downs escarpment, around 3.2km to the north of Harrietsham village; and more than 4.8km away from Lenham village. The local road network is of narrow (unlit) country lanes with no pavements or cycle lanes that are largely at national speed limit; the nearest bus stops are found on the A20, some 3km away.
- 3.03 The Ancient Woodland along the front of the site and on the opposite side of the road from the site's entrance, and other trees within the site, are protected under Tree Preservation Order no. 10 of 2003. There are public footpaths in the vicinity of the site, including a public footpath (KH209A) that runs to the south-west of the site; and public footpaths (KH288 and KH286) running further to the south of the site. The application site is within Flood Zone 1; the nearest listed building (known as 'Lenniker') sited some 435m to the north-east of the site (Grade II listed); and part of the site does fall within an area of archaeological potential.

4.0 PROPOSED DEVELOPMENT

- 4.01 Application ref: 21/502369/FULL is for a material change of use of the land from a holiday use to residential use (for full time residential occupation) comprising the stationing of 84 static caravans. Whilst not in the application's description, the application site also includes unauthorised terracing, hardstanding and retaining walls; and protected trees have been removed without consent. The development is accompanied by a Landscape Masterplan that shows new tree and hedge planting in the south-western corner of the site; new fastigate tree planting between the mobile homes; new wildflower grass along south-eastern boundary of the application site; and the creation of native woodland at the eastern end of the site.
- 4.02 21/500786/FULL seeks permission for engineering works to create a ditch to the south of site but otherwise includes the development the subject of 21/502369/FULL.
- 4.03 Paragraphs 4.1 and 4.2 of the submitted Planning, Design and Access Statement state:
- 4.01 Applicant has identified need to retain 217 caravans on site to safeguard existing households. Evidence has been provided to Steering Group in support of the required numbers.*
- 4.02 Applicant has sought to rationalise the site, by relocating caravans to northern part of the caravan site where unrestricted permanent residential caravan use has been demonstrated in the 1985 permission. Using Caravan Site license requirements, a total of 133 caravans can be accommodated within the northern part of the site without the requirement for further planning permission. Leaving the balance of 84 caravans to be retained on the southern area of the Pilgrims Retreat site. This southern area also benefits from lawful permission, in the 1997 Enforcement Permission for change of use of land for use as a caravan site.*

- 4.04 The assessment of this application will also focus on aspects that are normally covered by the site licence (i.e. drainage and sanitation). This is considered reasonable to do in this instance given the permanent residential uses proposed, the subjectivity and vagueness of the site licence conditions relating to such matters and the fact that the applicant is currently in breach of its site licence. There is also an obligation to ensure that the site provides adequate provisions of foul and surface water disposal for the site, particularly when the development is retrospective, and it is not known if the surface water and sewage disposal systems are adequate.
- 4.05 The submitted plans show the provision of a drainage field to the south-eastern corner of the site and this straddles both current applications that are pending consideration. The agent has confirmed this this will be installed as per Building Regulations Part H (Clauses 1.27 to 1.44).
- 4.06 The extension of Pilgrims Retreat along the south-eastern boundary is being considered under planning application ref: 21/500786.

5.0 POLICY CONTEXT

- Local Plan: SS1, SP17, SP19, SP20, ID1, DM1, DM3, DM8, DM19, DM21, DM23, DM30, DM38
- National Planning Policy Framework (2021) & National Planning Practice Guidance
- Landscape Character Assessment (2012 amended July 2013) and Supplement (saved sections of LCA and Landscape Guidelines)
- Kent Downs AONB Management Plan (2021-26) & Landscape Design Handbook
- Natural England Standing Advice; ODPM Circular 06/2005; and BS5837 (2012)
- Regulation 22 Local Plan
- Harrietsham Neighbourhood Plan: Pre-sub consultation withdrawn 5th May 2015

Maidstone Local Plan 2017

- 5.01 Local Plan policy SP17 states that new development in the countryside will not be permitted unless it accords with other policies in the Local Plan, and would not result in harm to the character and appearance of the area or residential amenity. Local Plan policy DM1 seeks high quality design and for development to respond positively to, and where possible enhance, the local and natural character of the area; it seeks new development to respect the topography and respond to the location of the site and sensitively incorporate natural features such as trees, hedges and ponds worthy of retention in the site; and it also states that new development should respect the amenities of occupiers of neighbouring properties, it should protect and enhance biodiversity and avoid inappropriate development within areas at risk from flooding. Local Plan policy DM30 states (inter alia) that new development should maintain, or where possible, enhance local distinctiveness; and ensure that associated traffic levels are acceptable. Local Plan policy DM3 seeks to protect positive landscape features such as Ancient Woodland; and Local Plan policies SP20 and ID1 relate to affordable housing and community infrastructure provision respectively. These matters are discussed in more detail later.
- 5.02 The application site is within the AONB and the statutory duty of the local planning authority requires any development to have regard for the purpose of conserving and enhancing the natural beauty of this nationally important designation. Local Plan policy SP17 requires that: *Great weight should be given to the conservation and enhancement of the AONB.*

Landscape Character Assessment

- 5.03 The Maidstone Landscape Character Assessment identifies the application site as falling within the Wormshill, Frinstead and Otterden Downs and Dry Valleys Landscape Character Area (Area 7). The landscape guidelines for both areas are to 'CONSERVE & REINFORCE'. The most relevant considerations are outlined below:
- *Landscape forms part of Kent Downs AONB; gently undulating landform of dry dip slope valleys and ridges; many large woodland tracts with oak and ash; chalk grassland pasture in dip slope valleys; arable fields on ridges; strong network of species rich native hedgerows; and narrow winding lanes which most often are lined by hedgerows.*
 - *Conserve & reinforce large tracts of woodland, especially where AW is present; reinforce management of historical coppice by encouraging management of areas of unmanaged coppice stools; conserve good network of hedgerows/reinforce management of hedgerows.*

NPPF (2021)

- 5.04 The NPPF is clear that good design is a key aspect of sustainable development and that permission should be refused for development that is not well designed, with section 12 of the NPPF referring to '*achieving well-designed places*'; and paragraph 176 of the NPPF states that great weight should be given to conserving and enhancing landscape and scenic beauty in AONB's.
- 5.05 For the purposes of paragraph 172 of the NPPF, planning judgment has taken into account all of the circumstances of the application (in light of its nature, scale and setting) and the site's local context, and this development is not considered to be a 'major development', which is to be given its ordinary meaning, as established in *High Court judgement Aston v SoS for Communities and Local Government [2013] EWHC 1936 [Admin]*.

Other relevant AONB guidance/legislation

- 5.06 Section 85 of the Countryside and Rights of Way Act 2000 places an explicit duty on relevant authorities to have regard to the purpose of conserving and enhancing the natural beauty of an AONB when exercising or performing any functions in relation to or so as to affect land in an AONB.
- 5.07 The Kent Downs AONB Management Plan does not form part of the statutory Development Plan, but the Council has adopted it and it is a material consideration when assessing any planning application. The AONB Management Plan helps to set out the strategic context for development; it provides evidence of the value and special qualities of this area; it provides a basis for cross-organisational work to support the purposes of its designation; and it details how management activities contributes to its protection, enhancement and enjoyment. The following policies within this Management Plan are considered to be of particular relevance: SD1; SD2; SD3; SD7; SD8; SD9; LLC1, LLC2, WT1, and WT7. In summary, these policies seek to conserve and enhance the natural beauty and distinctiveness of the AONB, which is recognised as the primary purpose of designation; and development or changes to land use will be opposed where they disregard or run counter to the primary purpose of Kent Downs AONB.
- 5.08 The Kent AONB Unit has confirmed the site lies in the Kent Downs landscape character area as classified in the Landscape Character Assessment of the AONB, where one of the overall landscape character objectives is identified as to seek to conserve the small scale of the roads and villages and the remote quality of the countryside and control urban fringe pressures. In the Mid Kent Downs LCA, the site lies within the Bicknor Local Character Area where specific guidelines include seeking the use of sympathetic local materials such as brick, tile and flint.

Regulation 22 Local Plan

- 5.09 The Council's Regulation 22 Local Plan is a material planning consideration, however at this time individual policies are not apportioned much weight.

Does application constitute 'major development' in the AONB

- 5.10 For the purposes of paragraphs 176 and 177 of the NPPF, this assessment is a matter for the decision maker, taking into account the development's nature, scale and setting, and whether it could have a significant adverse impact on the purposes for which the area has been designated or defined.
- 5.11 It is also important to note that the phrase 'major development' is to be given its ordinary meaning, as established in High Court judgement *Aston v SoS for Communities and Local Government [2013] EWHC 1936 [Admin]*:

Paragraph 94: I am satisfied the Inspector made no error of law when he determined that the meaning of the phrase major development was that which would be understood from the normal usage of those words.

- 5.12 It would therefore be wrong in law to:
- Apply definition of major development contained in Development Management Order to para 177 of NPPF
 - Apply any set or rigid criteria to define 'major development'
 - Restrict the definition to proposals that raise issues of national significance.

- 5.13 When making a judgement as to whether a development in the AONB is major or not, the potential for significant harm to the AONB should be a primary consideration. This however does not require (and ought not to include) a detailed assessment as to whether the development will in fact have such an impact.
- 5.14 It must be stressed again that as a matter of planning judgement, the decision maker must consider an application in its local context. This is implicit in High Court judgement *R. (Forge Field Society) v Sevenoaks DC [2014] EWHC 1895 (Admin)*, when it was noted that....“major developments would normally be projects much larger than 6 dwellings on a site the size of Forge Field”. It appears that Linblom J had considered the possibility that, depending on local context, there may be situations where a project of 6 dwellings could amount to major development for the purposes of paragraph 177 of the NPPF.
- 5.15 Specific to this application, it is important to first consider what is authorised. The appeal decision (as referenced in paragraph in 2.1 above) does authorise the lawful use of the identified land for the stationing of 198 static caravans. Notwithstanding this, planning application reference: MA/02/2056 is considered to be the most relevant permission for the southern portion of the site, and officers are of the view that only 10 static holiday units can be lawfully stationed and occupied here for tourism related purposes (and not for residential purposes). If simply considering the proposed increase in number of authorised static caravans on the southern portion of the site (which is 74), in this wider rural landscape setting and given that they would be residential in nature, the proposal constitutes major development. The authorisation of 74 additional caravans on the southern portion of the site is likely to have a significant adverse impact on the purposes for which the AONB has been designated.
- 5.16 Taking into account all of the above matters and the site’s local context, it is considered that the development does constitute major development in the AONB. It is therefore necessary to apply the two tests as informed by the three mandatory assessments referred to in paragraph 172 of the NPPF.
- 5.17 There must be both exceptional circumstances for allowing the proposal and it must also be demonstrated that the proposal is in the public interest. The judgement in *R (Mevagissey Parish Council) v Cornwall Council [2013] EWHC 3684 (Admin)* sets out the approach by which decision-takers should address the planning balancing exercise, such that: “*In coming to a determination of such a planning application under this policy, the committee are therefore required, not simply to weigh all material considerations in a balance, but to refuse an application unless they are satisfied that (i) there are exceptional circumstances, and (ii) it is demonstrated that, despite giving great weight to conserving the landscape and scenic beauty in the AONB, the development is in the public interest*”. The assessments referred to in the NPPF (paragraph 177) should be considered and these are returned to later.
- 5.18 The balancing exercise is applied in the conclusion section.

6.0 LOCAL REPRESENTATIONS

- 6.01 **Local Residents:** 24 representations received raising the following matters: Unclear what the planning history is for the site; situation is causing stress/worry for residents; there are drainage/flooding problems on site; site is not in a sustainable location; and applicant should contribute towards infrastructure.

7.0 CONSULTATIONS

(Please note that summaries of consultation responses are set out below with the response discussed in more detail in the main report where considered necessary)

- 7.01 **Harrietsham Parish Council:** The Parish Council originally commented on application with reference 21/500786/FULL. They comment that the travel plan is not feasible as there is no apparent plan on what to do with bicycles if the elderly residents were to use a bicycle to get to the nearest bus stop 3.4km away. The transport statement is said to be inaccurate because the site is not safely accessible by foot or by cycle, that there has recently been an accident and

that the minibus service is funded and run by the residents of Pilgrims Retreat rather than the applicant. The Parish Council expresses concern about the risk of flooding and highlights that the number of homes on site exceeds the number authorised.

In response to application 21/502369FULL the Parish Council confirm their views have not changed since 21/500786 but make additional comments about risk of flooding of the mobile homes, ecology issues and the landscape masterplan which in their view will not compensate for the destruction of habitat; they request that substantial native trees are reinstated. The Parish Council are concerned that the road to Pilgrims Retreat is dangerous. They also express the view that the housing cannot in their view be classified as retirement housing and are not affordable homes. Their comments are found in APPENDIX d.

7.02 **Frinsted Parish Council:** No representations received.

7.03 **Kent Downs AONB Unit:** Raise objection to both applications and their comments for 21/502369 are found in appendix c. For 21/500786, they commented as follows (in summary):

It is understood an area of coppice woodland that existed in south-east corner of site was felled to accommodate caravan park extension that was subject of 19/502469 and arboricultural report submitted with application notes development also impacts on root protection areas of several other trees due to significant cut and fill operations that have been carried out to terrace site. Measures comprise a new area of woodland in south-east corner, more tree planting in south-west corner, some wildflower seeded margins and a 'woodland edge' along southern boundary with adjacent woodland. Only some of this mitigation is within red line of current application site. As stated in Committee report relating to previous application: "The application site is well screened from Hogbarn Lane, however, public views of development are possible from Stede Hill, Flint Lane and public footpath (KH209A) to south-west of site. In any case, NPPF advice relating to countryside is unambiguous when it states that it is the intrinsic character and beauty that should be protected, as well as landscape and scenic beauty of an AONB. It is considered that this protection is principally independent of what public views there are of the development, and associated more to protection of nature of land in itself".

It is noted application is accompanied by a Landscape and Visual Assessment (to cover both applications). This assesses effects against baseline of enforcement permission G77/E/989 (T/APP/C/96/U2235/643714). LVA considers landscape value of site is medium, with a medium sensitivity to proposed development (paras 4.56-7). As with previous application, AONB Unit disagrees with this conclusion and considers value and sensitivity of landscape should be considered as 'high' or 'very high', given its AONB location. With regard to details of proposed landscaping on site, it is considered proposed new native woodland mix planting is appropriate subject to details of species to be used. Kent Downs Landscape Design Handbook (p26) recommends following species for this area: pedunculate oak, hazel, ash, and field maple (although in view of ash die back disease, its inclusion is no longer be appropriate). These should be of local provenance stock or at least of British origin to safeguard integrity and biodiversity of landscape. Wildflower areas should also use local provenance wildflower/grass seed mixes appropriate to chalky soil type. Location of proposed ditch is not clear from plans and should be clarified. This advice is given without prejudice to issue of whether this proposed landscaping will be effective mitigation for developed part of site. However, it should be noted the rising topography means that boundary planting will not be effective in screening or filtering views of higher parts of the site.

7.04 **KCC Highways:** Raises objection to both applications (please refer to appendix f).

7.05 **Environment Agency:** Raises no objection to both applications subject to recommended conditions. They have commented as follows (in summary):

Site drainage is now proposed to split surface water and foul water, with former directed to engineered drainage ditch along south of site, and latter discharged to a British Standard-compliant engineered foul drainage field. Foul drainage will be treated via British Standard package treatment plants, including a sampling chamber prior to drainage field. In separating surface water drainage and foul water drainage, risk posed to groundwater underlying this site is significantly decreased, when compared with initial proposals outlined in application. Provided drainage is implemented in accordance with revised details submitted for this application we are able to remove our earlier objection. We will agree final detailed requirements for foul water discharge through EA's environmental permitting process but will keep you informed of progress. At present, details submitted completely align, and will be adequate for us to agree proposals. To keep planning and environmental permitting process aligned, plus to ensure that work goes ahead correctly on site, we have suggested conditions. Provided applicant continues in line with current submissions we have no concerns regarding the sign-off of these conditions.

- 7.06 **KCC Biodiversity Officer:** Raises no objection provided conditions are imposed.
- 7.07 **KCC Flood Risk Officer:** Raises no objection.
- 7.08 **MBC Landscape Officer:** Raises objection (see main report).
- 7.09 **Environmental Protection Team:** Raises no objection provided conditions are imposed.
- 7.10 **Parks and Open Space:** Requests financial contributions (see main report).
- 7.11 **KCC Education:** Requests financial contributions (see main report).
- 7.12 **NHS West Kent:** Requests financial contributions (see main report).
- 7.13 **MBC Housing:** Whilst acknowledging application differs from previous refusal (19/502469), their original comments remain valid.
- 7.14 **Building Control:** Confirm there are no outstanding/ongoing building control issues on site.
- 7.15 **Kent Police:** Have no comments to make on application.
- 7.16 **Natural England:** Raises no objection to application.
- 7.17 **Southern Water:** Raises no objection.
- 7.18 **UK Power Networks:** Raises no objection.
- 7.19 **MBC Culture and Tourism:** No representations received.
- 7.20 **Forestry Commission:** No representations received.
- 7.21 **Upper Internal Drainage Board:** No representations received.
- 7.22 **Scottish Gas:** No representations received.

8.0 APPRAISAL

Main Issues

- 8.01 The key issues for consideration are:
- Location of development and highway safety implications
 - Visual impact
 - Arboricultural/landscaping implications
 - Foul and surface water disposal
 - Biodiversity implications
 - Ancient Woodland
 - Community infrastructure contributions
 - Affordable housing provision
 - Other considerations
 - Human rights and Equality Act

Location of development and highway safety implications

- 8.02 Whilst the Pilgrims Retreat site as a whole is authorised to have 180 holiday units (which includes static caravans, touring caravans and tents) and 18 residential caravans, only 10 static caravans should be on the southern part of the site the subject of the current applications. It is not considered that the authorised 18 residential units constitutes a 'settlement' and 84 additional residential units here would be remote from any other recognisable lawful settlement in the wider countryside. Whilst the situation on the ground is different (i.e. from evidence collected from the Planning Contravention Notices there are about 193 caravans being used unlawfully as permanent residences [in addition to the 18 lawful residential caravans] as opposed to being used lawfully as a caravan for holiday purposes only), in planning terms the other static caravans on the site should only be used for bona fide tourism related purposes (albeit they can be used

12 months of the year), and whatever sense of community they may create, this should be transient and cannot be considered as a 'settlement' for the purposes of the NPPF, as they are not authorised dwellings. It is therefore a matter of fact and planning judgement that the development would add 84 isolated homes in the countryside, and not one of the circumstances set out in paragraph 79 of the NPPF applies.

- 8.03 The lawful fallback use of the northern part of the wider site is for 198 units made up of static caravans, touring caravans and tents (of which 180 are holiday units and 18 are permanent residential) minus the 10 static caravans on the southern part (if the 2002 permission has been implemented, otherwise the southern part can be used for 25 touring caravans). If the southern part is carved out by means of the present applications, the applicant will no doubt claim it could result in 188 static caravans in the northern part and a further 84 in the southern part adding up to 272 static caravans across the site. Whilst the current applications does not grant permission for the residential use of the caravans in the northern part, it also cannot impose conditions preventing residential use of the northern part.
- 8.04 The development would result in the authorisation of 84 new residential units at Pilgrims Retreat. The nearest village (Harrietsham) is approx. 3.2km away; Lenham is more than 4.8km away; the local road network is of narrow country lanes that are unlit with no pavements or cycle lanes and are largely at national speed limit; the nearest bus stops are found on the A20; and to reach the site from the A20 is via a steep hill (Stede Hill). Without evidence to the contrary, there is also no assumption made that all residents are retired and so travelling for work purposes must also be considered.
- 8.05 The agent has confirmed that Pilgrims Retreat does have an all year round swimming pool; there is a bar on site (closed Mondays); there is a restaurant in the bar that is open six days a week (10:30-16:30); a mobile fish and chip van which attends the park every Monday from 5-7pm; the currently closed shop on site is being refurbished and due to re-open in September 2019; and there are discussions about having a separate meeting hub for residents where they will be able to have tea and coffee if they do not wish to use the on-site bar facilities.
- 8.06 With the above considered, it is not realistic to say that the majority of residents (who are over 50yrs) will regularly walk and cycle to local services and facilities or places of employment; and whilst there are some facilities on site, occupants of the site are/will be heavily reliant on the private car for their day to day living. The Highways Authority are also of the view that the site is unsustainable in terms of its location.
- 8.07 Furthermore, as set out in paragraph 103 of the NPPF, "*significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes*". This development (for 84 new dwellings) is considered significant; it is in an unsustainable location; and it is not accepted that the development (even with the introduction of a minibus service running into town three times a week, as briefly suggested in the submitted Transport Technical Note [para. 4.13]) could be realistically made acceptably sustainable. So whilst it is accepted that sustainable transport opportunities are likely to be more limited in rural areas, the lack of any apparent available or achievable sustainable transport options for 84 new dwellings would see a major development unable to adequately support the objectives set out in paragraph 102 of the NPPF which seek to ensure that transport issues are considered from the earliest stages of plan-making and development proposals.
- 8.08 The Highways Officer is also of the view that the development does not meet the objectives set out in paragraphs 102 and 103 of the NPPF; and without sustainable transport options being available, a Travel Plan in their view has little merit. This weighs against the development.
- 8.09 The Highways Authority has reviewed all of the submitted information relating to transport and has raised a holding objection on the basis of the provision of insufficient evidence required to fully assess the potential impacts that the proposal may have on the public highway.

- 8.10 The proposed offsite highways improvements in the form of installing and upgrading passing places along Hogbarn Lane and Stede Hill are not supported by the Highways authority as they are not considered likely to be successful in their aims and would likely represent a detriment to road safety as a result of increased driver uncertainty.
- 8.11 The Highways Authority requires the following information:
- Evidence of a robust trip generation assessment
 - Evidence to support the suitability of the access junction (including visibility splay diagrams)
 - Evidence of the impact that the proposals would have on road safety on the surrounding highway network and appropriate proposals to mitigate any significant impacts.
 - Details of the proposed parking provision.

Impact on character and appearance

- 8.12 The s78 1997 appeal permission granted permission for 198 'units' (18 of which for permanent residential use, the remainder to be split between static caravans, touring caravans and tents), but restricted the area to which these could be stationed on to the northern part of Pilgrims Retreat. Permission MA/02/2056 then permitted the stationing of 10 caravans on the southern part of the site for touring purposes only but did not increase the overall numbers permitted on the whole site.
- 8.13 MA/13/1435 granted permission for 60 static holiday caravans to be stationed in the southern end of site (leaving 138 in the northern section), and included operational works and an area of land in the southern corner to be planted with new woodland, and the retention of the coppice in the south-eastern corner of the site. However, as previously explained, heart of the matter conditions on this permission have not been discharged; notwithstanding this, what has been stationed/constructed on site is not as per the approved drawings; and whilst this permission remains extant, it remains incapable of full implementation and the majority of development relying upon this permission is not authorised.
- 8.14 As such, in terms of fallback the majority of the engineering works undertaken in the southern part of the site are unauthorised; and planning permission MA/02/2056 is considered to be the most relevant permission for the southern portion of the site (in terms of what can be lawfully stationed on this part of the site). The submitted Landscape and Visual Assessment (LVA) considers the baseline to be that at which planning permission was allowed in 2013, but as set out this is considered to be incorrect. The 2013 permission is a material consideration but not a fallback. The Council's Landscape Officer has commented that they would have liked to see a Landscape Visual and Impact Assessment rather than the Landscape and Visual Appraisal that has been submitted, following the GLVIA3 principles.
- 8.15 This application should be tested against the purpose of the AONB designation, which is to conserve and enhance the natural beauty of the AONB (in accordance with Local Plan policy and the NPPF), whilst having due regard to the fallback position.
- 8.16 In general terms, the submitted LVA draws conclusions that the landscape sensitivity of the site as being '*low to medium*'. However, both the Council's Landscape Officer and the Kent Downs AONB Unit disagree with this conclusion. Instead, the sensitivity of the landscape should be considered as '*high*' or '*very high*', given its AONB location. Indeed, whilst not prescriptive, the Landscape Institute's *Guidelines for Landscape and Visual Impact Assessment* makes it clear that landscapes that are nationally designated (such as AONB's) will be accorded the highest value in the assessment. The Landscape Officer does not consider the LVA to have reached an appropriate conclusion because it has not considered the true baseline; and it has not attached adequate weight to the importance of the nationally designated AONB.

8.17 The Kent Downs AONB Unit's comments are summarised below:

- *Such development rarely constitutes appropriate development, as utilitarian design of caravans fails to conserve or enhance local character, qualities and distinctiveness of AONBs. Therefore it fails to meet key requirement of conserving & enhancing landscape & scenic beauty within AONBs.*
- *Significant extension in number & density of caravans, in remote location, would fail to comply with guidelines for development in Mid Kent Downs LCA - would clearly be in conflict with objectives of KD AONB Management Plan as well as national & local plan policies.*
- *Clearance and levelling of 0.8ha of coppiced valley side with artificially engineered platforms to accommodate expanded area of permanently stationed caravans does not constitute a 'minor' change to landscape, nor would it be a 'low to medium' magnitude of change to landscape character.*
- *Harm is exacerbated by removal of existing vegetation/trees; & remodelling of land levels to form artificial terraces & retaining walls, introducing suburban features in rural location.*
- *Harm arises given increase in lighting & caravan numbers and their permanent occupation.*
- *Increase in amount & density of caravans doesn't allow for significant planting between units to help assimilate them into rural surroundings; & shown landscape mitigation is very meagre, failing to adequately compensate for substantive harm resulting from proposal.*

8.18 The application site is well screened from Hogbarn Lane, however, public views of the development are gained from Stede Hill, Flint Lane and the public footpath (KH209A) to the south-west of the site. In any case, NPPF advice relating to the countryside is unambiguous when it states that it is the intrinsic character and beauty that should be protected, as well as the landscape and scenic beauty of an AONB. It is considered that this protection is principally independent of what public views there are of the development, and associated more to the protection of the nature of the land in itself.

8.19 This view is echoed by the Kent Downs AONB Unit, who also considers it incorrect to assess a lower impact on the landscape character on the basis of a lack of wider visibility of site:

We consider high sensitivity of site and a high magnitude of change would give rise to a major adverse (i.e. significant) effect on landscape character. Furthermore, reducing assessed levels of harm on basis of small scale of an area affected, and its visual dissociation with the surrounding area is wholly inappropriate. Whilst site is relatively contained within wider landscape and development may not affect wider long-distance views, this is not the sole test for acceptability of development in an AONB. AONB is a wide and large expanse of area and any development which significantly detracts from elements which contribute to that wider natural and scenic beauty would not conserve or enhance it. This development would have a detrimental impact on many of special characteristics and qualities of Kent Downs, including landform and views; tranquillity (through introduction of additional lighting); and biodiversity rich habitats and woodland and trees. This is contrary to conclusion of submitted LVA that states: '...there would only be a very minor impact on very few elements of the special qualities and characteristics of the AONB.

8.20 To summarise, with regards to the Maidstone Landscape Character Assessment, the Landscape Officer does not consider the development to be appropriate in terms of the relevant recommended actions for landscape character area in which it sits; and further to this, proposed mitigation planting is considered to be wholly inadequate and inappropriate to the location. The Kent Downs AONB Unit also conclude by stating that the development weakens the characteristics and qualities of the natural beauty, having a significant detrimental impact on the landscape character; and the development disregards the primary purpose of AONB designation, namely the conservation and enhancement of its natural beauty, contrary to paragraph 172 of NPPF and Local Plan policy SP17.

8.21 It should also be stressed that the whole southern section of the site is covered by TPO no. 10 of 2003. As MA/13/1345 is valid but not capable of further implementation, the baseline for assessment should be with the trees in position on this part of the site (shown on plan APPENDIX B). Whilst the loss of some trees was accepted under MA/13/1345, as is evident on the plan, it was important to retain the large coppice of TPO trees and to establish substantial (and appropriate) new tree planting on the site, in terms of mitigating the landscape impact of the development. The development now being considered has largely removed the trees on site, and poor/limited mitigation planting has been proposed. As explained in more detail below, the loss of this swathe of trees is to the detriment of the scheme in visual amenity terms; and the application fails to provide adequate mitigation to compensate against the loss of these positive landscape features.

- 8.22 In considering the consultation responses, it is agreed that the site's extension; the level of engineering works undertaken within the southern section of the site; the additional caravans; the loss of protected trees; and the increased light pollution resulting from more static caravans that are occupied permanently, will not conserve and enhance the landscape and scenic beauty of the Kent Downs Area of Outstanding Natural Beauty, and it would not positively recognise the intrinsic character and beauty of the countryside hereabouts. The adverse impact upon this nationally designated landscape of the highest value weighs against this development.

Arboricultural/landscaping implications

- 8.23 As previously set out, planning application reference MA/13/1435 has now expired.
- 8.24 The development submitted under MA/13/1435 included the retention of the protected coppice woodland in the south-eastern corner of the site; the retention of existing trees on the lower section of the site; the planting of interspersed specimen trees and a new hedgerow along the southern boundary of the site; and the creation of a new woodland area in the south-western corner of the site (stated at some 400 new trees). It is clear that the protected trees that were found in the lower section of the site have largely been removed; and the new woodland, specimen trees and hedgerow have not been planted. Instead, the lower section of Pilgrims Retreat is densely populated with static caravans and associated roads/hardstanding.
- 8.25 Ref MA/13/1435 was recommended for approval on the basis of the importance of substantial mitigation as shown on the approved plans. The development approved under MA/13/1435 did not increase the number of caravans on the site, which remained at 198, allowing for a softer less intense development of caravans across the whole site. Indeed, the committee report's conclusion states:

Proposed scheme includes stationing of 58 additional caravans, 11 lower than previously proposed, and which when combined with those already on site would be below the 198 permitted. Proposal includes significant amount of landscaping with a mixture of approximately 400 new native trees and shrubs that are in keeping with the landscape character of the area. A significant woodland area is now proposed in the southwest corner which would soften public views from the west and south here. The mix of new species would also result in an enhancement in biodiversity from the previous hawthorn scrub.

6.3 Application would allow unambiguous control over remaining landscape areas through conditions and landscape management and maintenance regimes.

6.4 Site is an existing caravan site which is visible and out of place in the Kent Downs AONB. The proposal, whilst extending the site southwards, due to the extensive new landscaping and changes to the banks to soften their appearance would not result in significant additional harm to the character and appearance of the Kent Downs AONB.

6.5 Overall, I consider that the proposed reduction in caravans and increases in landscaping are sufficient to overcome the previous reasons for refusal and on this balanced case I consider that the harm caused is not so significant to warrant refusal when balanced against the landscape replacement, biodiversity improvements and future control over the site, and permission is recommended.

- 8.26 The current layout of the site has retained some existing trees. However, the Council's Landscape Officer questions their suitability for long-term retention, given the significant encroachment into the root protection areas during construction works; the significant changes in levels likely to lead to premature decline; and the inappropriate proximity of protected trees to occupied units that are resulting in applications for works to protected trees because of safety fears as the trees are 'too close to park homes'. In summary, the Landscape Officer objects for the following reasons:

Landscape: Landscaping scheme drawing No. P18-2071.208B titled Landscape Masterplan depicts fastigate trees to be planted. However, native species of fastigate form are available such as Quercus robur 'Fastigiata' and Carpinus betulus 'Fastigiata'. The Landscape and Visual Appraisal (LVA) drawing No. 102 Rev A created by Pegasus Group has been produced in accordance with the principles of the Landscape Institutes Guidelines for Landscape Visual & Impact Assessment Third edition (GLVIA3). The Landscape Institutes own guidance on the difference between an LVIA and LVA is: 'The main difference between an LVIA and LVA is that in an LVIA the assessor is required to identify 'significant' effects in accordance with the requirements of Environmental Impact Assessment Regulations 2017, as well as

type, nature, duration and geographic extent of the effect whilst an LVA does not require determination of 'significance' and may generally hold less detail.'

Conclusion: As site location and surrounding study area lies within the Kent Downs AONB I would have liked to have seen a Landscape Visual & Impact Assessment following the GLVIA3 principles.

Arboriculture: Following previous comments made on past applications the site has continued to expand with additional park homes now covering what was protected scrub woodland to the south-eastern part of the park. The current layout of the site has retained some existing trees which are identified within the arb impact assessment report (by Southern Ecological Solutions, dated 10.05.2019) that accompanies the application. The report confirms that most of the trees that have been retained have suffered significant encroachment into the root protection areas during construction works with significant changes in levels likely to lead to premature decline; and the inappropriate proximity of protected trees to occupied units. From an arboricultural perspective the considerable loss of tree cover on this site for the provision of static closely built homes has in our view eroded the mature and verdant landscape of the area by a marked degree, giving rise to significant harm to its sylvan character and appearance.

Direct loss of trees and woodland: Whilst an assessment cannot be made on the quality of the trees/woodland lost, the retention of this planting was key in the determination past applications in terms of screening the development and to safeguard amenity space for residents. Retained mature tree stock is an important visual element of large sites, acting as a foil to built forms, filtering views and providing some screening in longer views to ensure developments sit well in surrounding countryside.

Indirect loss of trees & pressure for inappropriate pruning/removal: The current site layout has not respected the location of existing trees, which has resulted in development that is inappropriately close; and development has clearly taken place within RPAs, contrary to advice contained within BS5837:2012. This includes not only the siting of park homes within RPAs, but extensive ground level changes, excavations that have resulted in root severance, and ground compaction from the use of heavy machinery. It is clear that most of retained tree stock is suffering as a result, with many trees showing signs of premature decline.

The inappropriate relationship between retained trees and park homes has already led to works, some of which have been subject of applications under the TPO, to prune or remove trees simply on the basis they are too close to homes, or because the trees are showing signs of decline. Such applications are particularly difficult to resist when the juxtaposition of mature trees and park homes mean that even minor deadwood failures could result in building and property damage, or injury to occupiers. Occupants are clearly concerned about fear of failure in our experience of dealing with applications, and also complain about other problems such as leaf litter and shading. The result of this situation is any retained mature trees will either die or be pruned to such an extent they have little, if any, public amenity value.

Inadequate space for mitigation planting: The current cramped site layout and lack of space around and between the park homes does not allow for new planting of a type appropriate to the landscape character of area to mitigate extensive tree loss on the site. This includes the trees already lost, and likely to be lost as a result of premature tree decline and pressure to prune or fell. The many Chusan Palms planted are not considered to be adequate mitigation, as these are not trees, but woody herbs and certainly not a species that are appropriate to the character of area. Replacement tree planting should be in accordance with Council's Landscape Character guidance, with species of a suitable ultimate size to ensure the development sits well in surrounding landscape, with sufficient space to ensure they can reach mature size without conflict. I note that this application shows the creation of a woodland area to the SE corner of the site returning it to its previous wooded form before the current homes that now cover it were built. This is welcomed although the creation of the new woodland will require the removal of numerous existing park homes and extensive ground/soil amelioration before the area can be suitable for planting. Further details on how this area will be re-landscaped needs to be provided.

Summary: In its current form the development on this site has resulted in permanent tree loss on a scale that is harmful to the amenity of park home users and the wider landscape; and there is insufficient space to be able to provide mitigation planting to help screen and integrate the development into the surrounding countryside. Whilst this application goes some way in providing the creation of a woodland block to the south-eastern side of the site the general layout fails to provide a suitable juxtaposition from existing trees contrary to the recommendations given in BS5837:2012.

Foul and surface water disposal

8.27 The development site is within Flood Zone 1 and the Environment Agency has assessed the application as having a low environmental risk and has raised no objections (notwithstanding the applicant may be required to apply for other consents directly from the Environment Agency). Southern Water has also raised no objection; and the Environmental Protection Team would seek details of the packaged treatment plant. The KCC Drainage Team has also assessed the development as a low risk development and require no further information but do comment that the proposed improvements to the ditch, through incorporating check dams, should be applied to the trench as the attenuation volume within the ditch would be increased.

8.28 Following the receipt of further information, the Environment Agency advised as follows:

Site drainage is now proposed to split surface water and foul water, with the former directed to engineered drainage ditch along south of site, and latter discharged to a British Standard-compliant engineered foul drainage field. Foul drainage will be treated via British Standard package treatment plants, including a sampling chamber prior to drainage field. In separating surface water drainage and foul water drainage, risk posed to groundwater underlying this site is significantly decreased, when compared with initial proposals outlined in planning application. Provided drainage is implemented in accordance with revised details submitted for this application we can remove our earlier objection to this planning application.

Biodiversity implications

8.29 Under 19/502469, the KCC Biodiversity Officer confirmed that because the site had already been cleared, it was accepted that the submitted Preliminary Ecological Appraisal (PEA) was sufficient to determine application, and no further ecological information is required. The same PEA (dated April 2019) has been submitted again for this application that in part assesses the impact of the vegetation clearance on the site. The submitted information has detailed that this woodland may have qualified as a Habitat of Principal Importance under the mixed lowland deciduous woodland categorisation, and it is likely to have provided suitable habitat for a range of protected and notable species such as bats, birds, reptiles, dormice and badger. The Biodiversity Officer has commented on application with reference 21/502369FULL as follows:

We understand proposal is for replacement planting of a woodland and wildflower grassland area and if it is created, established and managed appropriately, proposal is likely to end up creating habitat which can provide suitable habitat for a range of protected species previously expected to be present on site. We advise, if permission is granted, a detailed habitat creation, management and monitoring plan must be submitted to the LPA as a condition of planning permission.

8.30 If the application were to be approved, the recommended condition for a habitat creation, management and monitoring plan would be considered reasonable, in the interests of biodiversity enhancement (and net gain).

8.31 Under 19/502469, it was noted that the habitats within and adjacent to the site area are likely to experience high recreational pressure and impacts from development (including increase in lighting). On this basis, the Biodiversity Officer recommended the need for a Landscape and Ecological Management Plan to be produced and implemented. This is still considered relevant and again, if this application were to be approved, imposing such a condition is considered reasonable. Suitable conditions would also be imposed for a bat sensitive lighting plan, and for further ecological enhancements as set out in the submitted preliminary ecological appraisal.

8.32 The KCC Biodiversity officer's response on 21/500786 were as follows:

Application is for creation of a drainage ditch and the planting plan details that planting of ditch will be a mixture of wildflower grassland and woodland planting – from a biodiversity point of view we are supportive of principle of this proposal. However we advise MBC must be satisfied that proposed planting is appropriate from a drainage prospective and once established the woodland planting will not prevent the free flowing of water through the drainage ditch. We highlight that it is not clear from the submitted plans the extent to which the woodland planting is within the ditch or if it is just on the edge of the drainage ditch.

Plan details that wildflower meadow grassland will be EM3 - Special General Purpose Meadow Mixture by Emorsgate (or similar approved), however if ditch is likely to be wet for majority of the year we

recommend that species planted are those which are suited to that environment such as EP1 Pond Edge Mixture. There is a need to ensure that species planted in those areas will be able to establish and retained in long term. We suggest that a plan is submitted confirming where grassland/woodland planting will be implemented and provides clarification on the proposed grassland planting. Proposed planting can benefit biodiversity and still function as a drainage ditch if managed appropriately – therefore we advise that if planning permission is granted a management plan condition is included. We will provide suggested wording once the additional information requested above is submitted.

- 8.33 In respect of 21/500786 a further condition would need to be imposed requiring a plan of the woodland and grassland planting.

Ancient woodland

- 8.34 Ancient Woodlands are irreplaceable, and the NPPF (paragraph 180[d]) is clear in that *"...development resulting in loss or deterioration of irreplaceable habitats (such as ancient woodland) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists."*
- 8.35 The woodland that runs along the northern (roadside) boundary of Pilgrims Retreat and the woodland found on the opposite side of Hogbarn Lane is designated Ancient Woodland; and there is other Ancient Woodland to the south-east of the site. For clarification purposes the development is not within 15m of any Ancient Woodland, including that found to the south-east of the site (that is on land not in the ownership of the applicant).
- 8.36 As identified by the Council's Landscape Officer response, the trees that have been retained have suffered significant encroachment into the root protection areas during construction works with significant changes in levels likely to lead to premature decline. The Landscape Officer notes that the proposed creation of the new woodland will require the removal of numerous existing homes and extensive ground/soil amelioration before the area can be suitable for planting. Further details on how this area will be re-landscape needs to be approved.

Community infrastructure contributions

- 8.37 This development is excluded from the CIL Regulations because the mobile homes are not buildings. This does not mean that financial contributions cannot be sought via s106 of the Town and Country Planning Act 1990. Financial contributions through s106 are used to mitigate the specific requirements of a development site, in order to make the development acceptable in planning terms. Any request for such contributions needs to be scrutinised in accordance with Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010. The Reg 122 criteria sets out that a planning obligation may only constitute a reason for granting planning permission for the development if the obligation is –
- (a) Necessary to make development acceptable in planning terms;
 - (b) Directly related to development; and
 - (c) Fairly and reasonably related in scale and kind to development.
- 8.38 In this regulation "*planning obligation*" means a planning obligation under s106 of the TCPA 1990 and includes a proposed planning obligation.
- 8.39 The Council's Regulation 123 List identifies the infrastructure types and/or projects which it intends will be, or may be, wholly or partly funded through s106 planning obligations. The Infrastructure Delivery Plan (IDP) provides the analysis for how specific infrastructure delivery requirements will be met.
- 8.40 Specific to this application, the development is for 84 new residential units on the southern portion of Pilgrims Retreat, to be occupied by persons of 50yrs of age and over. A development of this scale will clearly place extra demands on local services and facilities and it is important to ensure that this development can be assimilated within the local community. As such, suitable financial contributions to make the development acceptable in planning terms should be sought in line with the relevant policies of the Maidstone Local Plan (2017), if the application were to be approved.

8.41 The KCC Development Contributions Team has requested the following (for 84 units):

- *Secondary education: £381,360.00 towards expansion of Lenham School to provide additional capacity*
- *Libraries: £4,657.80 towards additional resources, services and stock for mobile library service attending Harrietsham and fixed Libraries at Lenham and Maidstone to increase capacity to meet needs of development.*
- *Community learning: £1,379.28 towards additional resources (including portable teaching and mobile IT equipment), and additional sessions and venues for delivery of additional Adult Education courses both locally and at Maidstone Adult Education Centre.*
- *Youth services: £5,502.00 towards additional resources and upgrade of existing youth facilities to accommodate additional attendees, as well as resources and equipment to enable outreach services in vicinity of development.*
- *Social Care: £12,337.92 towards Specialist care accommodation, assistive technology and home adaptation equipment, adapting existing community facilities, sensory facilities, and Changing Places Facilities within Borough.*
- *Waste: £4,575.48 towards increases in capacity at Maidstone Household Waste Recycling Centre at Burial Ground Lane, Maidstone.*

8.42 Based on 84 residential mobile homes, the NHS Primary Care Team has requested a contribution of £72,576 to go towards the refurbishment, reconfiguration and/or extension of Len Valley Practice and/or towards new GP premises development in area. They explain that the development will generate approximately 202 new patient registrations when using the average occupancy of 2.4 people per dwelling; and the site falls within the current practice boundary of Len Valley Practice. The NHS Primary Care Team go on to comment that there is currently limited capacity in existing GP premises to accommodate growth in this area; and the need from this development, along with other new developments, will therefore need to be met through creation of additional capacity in GP premises. It is not possible at this time for them to set out a specific premises project for this contribution, but they confirm that based on current practice boundaries they would expect contributions to be utilised as set out above.

8.43 The Council's Parks and Open Spaces Team comment that whilst the application does not specifically indicate how much publicly accessible space there is on the application site, it appears that approximately a quarter of the area will be woodland which they have taken as some 0.14ha; and they also assume that the woodland will be accessible. For a development of this size, the Parks and Open Spaces Team would expect a minimum onsite provision of 1.85ha of open space and as there is a shortfall due to the constraints of the site they would seek an off-site contribution to cover this. On this basis, an off-site open space contribution of £122,284 is made (based on 84 units), to be used for: Developing, refurbishing or maintaining existing infrastructure in publicly accessible open space within a two-mile radius of the development. If open space is not available, the contribution would be used for purchasing land for publicly accessible open space. Again these requirements have not been evidenced.

8.44 It is considered that the requested contributions relating to the NHS, parks and open space, and economic development (excluding primary and secondary education) do meet the tests of Regulations 122 of the Act and as such should be provided by the applicant if this application were to be approved.

8.45 The agent has questioned the necessity for financial contributions towards education and youth services, as they do not consider this to wholly relate to, or be reasonable for the units that are occupied by persons over 50yrs old; and it has previously been suggested that a condition is attached to any potential permission which requires occupants (or at least one occupant per caravan) to be over 50 years old. However, whilst national advice is to take a positive approach to schemes that might address the provision of specialist housing for older people, other than some communal facilities, there is little to suggest that the caravans offer specialist housing for older people. Furthermore, the location is remote and not particularly well suited to provide permanent accommodation for older people. Moreover, as the application is retrospective, the condition would not regulate the occupancy of the existing residential caravans or those used unlawfully as residential caravans. The caravan occupants generally own the caravans and pay rent under the Licence Agreement to station the caravan on the plot. The Licence Agreement requires sellers to obtain approval from the Park Owner to a prospective buyer of the caravan (unless a family member) but it does not restrict the onward sale of the caravan to solely persons

over 50. If the Park Owner does not purchase the caravan, it appears that it can be sold to persons under 50. It is therefore not clear how the requirement could be lawfully or reasonably imposed on existing or on all future caravan owners. Such potential restrictive condition is likely to be disproportional and unenforceable. Notwithstanding this, it is not entirely out of the question that residents may have children, or adopt or foster children, or are/become legal guardians of children. However, considering that it is unlikely that children are living on site, financial contributions towards education and youth services will not be required.

- 8.46 To clarify, the agent has not presented an analysis or counter-offer to the CIL compliant financial requests, and they have not submitted a legal mechanism to secure any planning obligations to mitigate the development's impact. Based on the impact to the landscape character, and the inability to mitigate/compensate for this, further negotiations on acceptable contributions have not been progressed. If Members were minded to approve the application, a resolution on the appropriate contribution which met the 122 test would need to be negotiated.

Affordable housing provision

- 8.47 The Council's Housing Team have reviewed this current submission, with respect to affordable housing provision, and have commented as follows (in summary):

Whilst acknowledging this application differs from that previously refused (19/502469), our original comments (APPENDIX E - paragraphs 7.77 to 7.85 inclusive) do not appear to have been addressed in this application and therefore remain valid.

- 8.48 An argument has been presented that the development should be classed as a retirement housing scheme and as such 20% affordable housing should be provided. Firstly, this development is not considered to be a retirement housing scheme in the strictest sense. Such housing developments are similar to sheltered housing, but built for sale, usually on a leasehold basis, where all the other residents are older people (usually over 55). Properties in most schemes are designed to make life a little easier for older people - with features like raised electric sockets, lowered worktops, walk-in showers, and so on. Some will usually be designed to accommodate wheelchair users; and are usually linked to an emergency alarm service (sometimes called 'community alarm service') to call help if needed. Many schemes also have their own 'manager' or 'warden', either living on-site or nearby, whose job it is to manage the scheme and help arrange any services residents need. Managed schemes will also usually have some shared or communal facilities such as a lounge for residents to meet, a laundry, guest accommodation etc. It is appreciated that this is not a bricks and mortar scheme, but there appears to be limited or no such facilities/services of this nature offered to the occupants on site and no presumption that all occupants are retired or over 55.
- 8.49 In exceptional circumstances, the Council will consider off-site contributions towards affordable housing where on-site provision is not feasible. The Housing Manager has previously commented that a registered provider would be reluctant to take on permanent residential caravans as affordable housing. This application raises a number of management concerns and queries for the Housing Manager, such as licence/site fees and the length of licence (it is understood owners would pay a licence fee for the siting of the caravan which may be moved within the site at the site owners discretion), and security of tenure etc. Furthermore, no information has been provided regarding the specific management arrangements in this respect. It is considered that the appropriate way to deal with affordable housing provision would be an off-site contribution.
- 8.50 The development should provide 40% affordable housing provision, in compliance with adopted Local Plan policy SP20. A commuted sum towards an off-site contribution (for 84 units) has been calculated at £1,444,793. No counter offer or analysis of this figure has been submitted by the agent.

- 8.51 The agent is also proposing that the 'affordable caravans' would fall under the NPPF definition for Discounted Market Sale housing which is that sold at a discount of at least 20% below local market value. Eligibility for this is determined with regard to local incomes and local house prices; and that provisions should be in place to ensure housing remains at a discount for future eligible households. No evidence has been submitted to demonstrate that there are the relevant eligibility mechanisms in place (for now or the future) for Pilgrims Retreat.
- 8.52 The agent states that they have assessed the local housing market and the value of the properties (2-bed bungalows) in comparison to the price of a new park home site based on market sales at the site. This demonstrating that the site is affordable and is at least 25% lower in price than the market value for new build properties. As such, the agent considers the park homes meet the definition for discounted market sales housing, being sold at a discount of at least 20% below local market value. However, no evidence of market sales comparisons has been submitted.
- 8.53 The principle behind this type of affordable housing is that the market value of the actual property itself is given a 20% discount, not that it can be demonstrated that the market value of the property is 20% or more lower than comparable local properties. The price of a caravan is the price of a caravan. Therefore, it is not a fair comparison for the market value of these caravans to be compared against the local market value of 2-bed new-build properties.
- 8.54 The agent also proposes that the caravans will remain affordable in perpetuity since the market will preserve them at a discounted price given the more restrictive nature of ownership suppressing prices, with provision within the s106 . Furthermore, the agent has suggested attaching an age occupancy restricted planning condition to ensure that the proposal is providing permanent accommodation for older persons. However (as previously established) it is not reasonable to impose such a condition, and in any case the Housing Manager considers this alone does not make the development acceptable with respect to affordable housing given the above concerns. Notwithstanding the above, the proposal has no affordable rented provision proposed which is contrary to being a policy compliant scheme.
- 8.55 In summary, the submitted details state that the development will provide accommodation for older people in homes which are affordable in relation to the wider housing market in locality. Meeting the housing need for older people is not only identified by the National Planning Guidance to be critical, but also meets the objectives of the Housing Act, the SHMA and the Local Plan. In addition, the number of older people is expected to increase in the future and the Council does need to consider providing opportunities for households to downsize and allow larger properties to be made available for younger families with children. However, the Housing Manager does not consider this development will provide a better choice of specialist accommodation for a group of older people with specific needs, that purpose built accommodation for the elderly would provide. It is also not considered that the development should be considered as retirement housing or Discounted Market Sale housing, and the management arrangement for the caravans remains a cause for concern. As such, the development does not accord with policy and should not be given substantial weight.

Other considerations

- 8.56 The Environmental Protection Team has raised no objections to the development in terms of noise; air quality; land contamination; amenity; asbestos; radon; external lighting; odour; accumulations; sewage; and private water supplies.
- 8.57 If the application were to be approved, then details relating to external lighting and the provision of electric vehicle charging points could be considered; and the recommended precautionary land contamination condition would be duly imposed. On this occasion, the recommended conditions relating to dust, odour and vapour emissions; and hours of construction working are not considered to be necessary or reasonable. Part of the site falls within an area of archaeological potential, but given the nature of the submission it is not considered necessary to request any further details in this respect.

Human rights and Equality Act

- 8.58 Article 8 of the European Convention on Human Rights, as incorporated into UK law by the Human Rights Act 1998, states everyone has the right to respect for (amongst other things) his private and family life, and his home. Refusing this application could be interpreted as an interference with the rights of the property owners to use their property as they see fit and the right to private and family life as set out in Article 8. It could also be seen as interference with owners' property rights under article 1, protocol 1. Such interference is permitted by the European Convention if it is in the general interest, but the interference must be 'proportionate', which means that it must not be in excess of what is needed to prevent harm to the general interest. Whether any actual interference ensues would ultimately be an enforcement matter. However, any interference with those human rights should be in accordance with the law and necessary in a democratic society, applying the principle of proportionality. If homes are lost then it is considered that the cumulative harms that would result from the application would be such that refusal of permission is a necessary and proportionate response.
- 8.59 The Council must also have regard to its public sector equality duty (PSED) under s149 of the Equalities Act. The duty is to have due regard to the need (in discharging its functions) to:
- *Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.*
 - *Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing, minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s).*
 - *Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.*
- 8.60 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. It is considered that although the majority of occupants on site are likely to be older persons, the equality duty is not sufficiently weighty to sway the planning balance towards granting permission for the proposed scheme.

9.0 CONCLUSION

- 9.01 It is a matter of fact and planning judgement that the development would add 84 isolated homes in the countryside; and occupants on the site are/will be heavily reliant on the private car for their day to day living, making the site unsustainable in terms of location. The Highways Officer also considers the development does not meet the objectives of promoting sustainable transport, as set out in paragraphs 102 and 103 of the NPPF; and the application has failed to demonstrate that the residual cumulative vehicle movements associated to 84 new residential homes on this site would not have a severe impact on the local road network. This weighs against the development.
- 9.02 The development will not conserve and enhance the landscape and scenic beauty of the Kent Downs AONB; and it would not positively recognise the intrinsic character and beauty of the countryside hereabouts. The adverse impact upon this nationally designated landscape of the highest value weighs against this development.
- 9.03 The development has and will result in permanent tree loss on a scale that is harmful to the amenity of park home users and the wider landscape; and there is insufficient space to be able to provide appropriate mitigation planting to help screen and integrate the development into the surrounding countryside. This weighs against the development.
- 9.04 Through the submission of additional documents, the applicant has satisfied the Council that surface water and sewage disposal can be dealt with appropriately on the site. This is considered to be neutral matter, neither weighing against or in favour of the development.

- 9.05 There are no specific objections raised to the development in terms of its biodiversity impact; and the proposed enhancements, whilst not completely mitigating for the loss of the woodland, would be of some benefit in this regard. This is considered to be neutral matter.
- 9.06 There are no specific objections raised to the development in terms of its impact upon Ancient Woodland; and so this is considered to be neutral matter.
- 9.07 The requested financial contributions relating to the NHS, parks and open space, and economic development are considered to meet the tests of Regulations 122 of the Act and as such should be provided by the applicant if this application were to be approved. The agent has not submitted a legal mechanism to secure these planning obligations to mitigate the development's impact, and this weighs against the development.
- 9.08 The development is not considered to formally provide for retirement housing and/or extra care homes, or Discounted Market Sale housing, in planning policy terms; and the Housing Manager considers the most appropriate way to deal with affordable housing provision to be by way of an off-site contribution. The agent has not submitted a legal mechanism to secure off-site affordable housing provision, and this weighs against the development.
- 9.09 Whilst the proposed scheme would increase the supply of homes and would provide an additional choice to bricks and mortar homes, the Council has a 5 year housing land supply. Only moderate weight should be attached to the increased supply and choice of a home.
- 9.10 The issue of intentional unauthorised development is a material consideration in the determination of this appeal, and this does weigh against the development.
- 9.11 Specific to this development, human rights are qualified rights, and so there needs to be a balance between the rights of the residents and the rights of the wider community. In this case, the interference would be due to pursuing the legitimate aim of protecting the countryside in a nationally designated AONB; and it is considered that the recommendation in this report would not have a disproportionate impact upon any protected characteristic in terms of the Equality Act. To quantify further, this is a part retrospective application whereby some 193 protected persons are already living permanently on site. In purely planning terms, purchasers of the caravans should have been aware that the lawful position on the site was for 18 permanent and 180 tourist accommodation units; and that the site licence at that time set out the licensing conditions on the site. It should also be pointed out that this recommendation does not commit the Council to any particular course of action.
- 9.12 The proposed scheme constitutes "major development" in terms of paragraph 172 of the NPPF. Great weight must be given to conserve and enhance this landscape of scenic beauty of the AONB. It is not simply a matter of weighing all the material considerations in a balance, but to refuse this application unless satisfied that (i) there are exceptional circumstances, and (ii) it is demonstrated that, despite giving great weight to conserving the landscape and scenic beauty in the AONB, the development is in the public interest. In terms of the assessments referred to in paragraph 172 of the NPPF, the need for the development is not so great that it could be concluded that it is in the public interest to grant it, or that it would be particularly exceptional. There would be detrimental effects on the environment and on the landscape which could not be adequately moderated. Overall there are no exception circumstances for allowing the development and it has not been demonstrated that it would be in the public interest.

10.0 RECOMMENDATION: REFUSE 21/502369FULL for the following reasons:

1. The development, by virtue of the site's extension and the level of engineering works undertaken to create terracing, hardstanding, and retaining walls within the southern section of the site; the loss (and further potential loss) of woodland and protected trees; the inadequate and inappropriate mitigation planting proposed; the 84 proposed static caravans; and the increased light pollution resulting from more static caravans that are occupied permanently, fails to conserve and enhance the landscape and scenic beauty of the Kent Downs Area of Outstanding Natural Beauty, as well as the intrinsic character and beauty of the countryside hereabouts. The adverse impact upon this nationally designated landscape of the highest value is contrary to policies SS1, SP17, DM1, DM3 and DM30 of the Maidstone Local Plan (2017); the Maidstone Landscape Character Assessment (March 2012 amended July 2013) and 2012 Supplement; the National Planning Policy Framework (2021); and the Kent Downs AONB Management Plan (2021-26) and its Landscape Design Handbook.
2. The development is considered to be a major development in the Kent Downs Area of Outstanding Natural Beauty, and there are no exceptional circumstances to permit this development, and it has not been demonstrated that the development is in the public interest. The development is therefore contrary to paragraph 172 of the National Planning Policy Framework (2021).
3. The development would authorise 84 residential units in an isolated location that would also have poor access to public transport and be remote from local services and facilities, resulting in occupants being reliant on the private motor vehicle to travel to settlements to access day to day needs. In the absence of any overriding justification or need for the development demonstrated in the application, this is contrary to the aims of sustainable development as set out in policies SS1, SP17 and DM1 of the Maidstone Local Plan (2017) and the National Planning Policy Framework (2021).
4. The application has failed to demonstrate that the residual cumulative vehicle movements associated to 84 new residential homes on this site would not have a severe impact on the local road network in terms of sustainability, access, road safety and off-site highway works required. This is contrary to policies DM1 and DM30 of the Maidstone Local Plan (2017) and the National Planning Policy Framework (2021).
5. In the absence of an appropriate legal mechanism to secure necessary contributions towards community infrastructure in the borough, the impact of the development would place unacceptable demands on local services and facilities. This would be contrary to policies SS1, ID1 and DM19 of the Maidstone Local Plan (2017); and the National Planning Policy Framework (2021).
6. In the absence of an appropriate legal mechanism to secure a financial contribution towards affordable housing provision, the development would fail to contribute to the proven significant need for affordable housing in the borough. This would be contrary to policies SS1, SP20, and ID1 of the Maidstone Local Plan (2017); and the National Planning Policy Framework (2021).

REFUSE 21/500786 for the following reason:

1. The development, by virtue of the extension of the unauthorised caravan site fails to conserve and enhance the landscape and scenic beauty of the Kent Downs Area of Outstanding Natural Beauty, as well as the intrinsic character and beauty of the countryside hereabouts, contrary to policies SS1, SP17, DM1, DM3 and DM30 of the Maidstone Local Plan (2017); the Maidstone Landscape Character Assessment (March 2012 amended July 2013) and 2012 Supplement; the National Planning Policy Framework (2021); and the Kent Downs AONB Management Plan (2021-26) and its Landscape Design Handbook.



The Planning Inspectorate

An Executive Agency in the Department of the Environment and the Welsh Office

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Mr J R M Ridgwell
Fleury Manico
Pavilion View
19 New Road
BRIGHTON
BN1 1UF



Your Reference:
JR/mjs/21045
Council Reference:
G77/E/989, 414/02/115/2502 &
MA/96/1132N
Our Reference:
T/APP/C/96/U2235/643713-4
T/APP/U2235/A/96/273772/P6

Date:

26 JUN 1997

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990, SECTIONS 78 AND 174 AND SCHEDULE 6
PLANNING AND COMPENSATION ACT 1991
APPEALS BY ARTHUR FITT LEISURE GROUP
LAND AT HOGBARN CARAVAN PARK, HOGBARN LANE, HARRIETSHAM**

1. I have been appointed by the Secretary of State for the Environment to determine your client's appeals against two enforcement notices issued by the Maidstone Borough Council and a refusal of planning permission by the same council, both concerning the above mentioned land. I held an inquiry into the appeals on 15 and 16 April 1997. The evidence as to fact given by Mr Gannon and Mr Jarvis was taken on oath.
2. Both the notices were issued on 14 June 1996.

Notice A

- The breach of planning control as alleged in the notice is:
 - (1) The excavation, levelling and grading of the land,
 - (2) The laying of a tarmac chipping trackway,
 - (3) The installation of electrical services including lighting and caravan power connection points, and
 - (4) The erection of a toilet block and waste bin area.
- There are 5 requirements of the notice which, together, require the regrading of the levelled areas to their previous contours and the removal of the trackway, electrical services, toilet block and waste bin area. Finally, the notice requires the establishment of a specified type of woodland. The council, however, no longer wish to pursue that particular requirement.
- The periods for compliance with these requirements are three months and, in respect of the replanting requirement, the end of the next planting season.





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MAIDSTONE B.C.
SECRETARY'S DIVISION
RECEIVED

27 JUN 1997

P/H/T

Your Reference:

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Notice B

- The breach of planning control as alleged in the notice is the change of use of the land to use as a caravan site.
 - The requirements of the notice are to stop using the land as a caravan site and to excavate and remove all electrical services, fittings and fixtures from the land.
 - The period for compliance with these requirements is one month.
3. The appeals were made against Notice A on grounds (a), (d) and (f), and against Notice B on grounds (a) and (c), as set out in section 174(2) of the 1990 Act as amended by the Planning and Compensation Act 1991. Prior to the inquiry ground (c) was withdrawn in respect of Notice B.

The appeal made under section 78

4. The development for which the Council has refused planning permission is use of the land for the siting of 180 holiday caravans and 18 residential caravans. The application site consists of the existing caravan park and land to the south-east. The land to the south-east is subject to the enforcement notices.

The sites of the appeals

5. The approximately 5.26 hectares (13 acres) caravan site, permitted in 1967, is in a relatively isolated rural location to the north of the crest of the North Downs escarpment. The permission limits the number of residential caravans to 18 and holiday caravans to 180 and the use to the period 1 March to 31 October in any year. A later permission authorises 30 pitches for tented camping. The site is provided with amenity rooms with licensed club and restaurant, play areas and a covered swimming pool as well as the normal facilities and site manager's accommodation. The permitted site is operated, as a matter of management choice, on the basis of 2 residential caravans, 167 caravan pitches and space for some tents. The tent area could hold 6 large frame tents or more smaller tents.

6. The area of the enforcement notices, about 3 ha (7.41 acres), is the steeply sloping side of a dry valley covered in mainly hawthorn woodland. A surfaced vehicular track has been cut through the woodland from the main caravan park. It links three terraces, each about 20x35 metres, which have been formed by cut and fill within the woodland on the valley side. A mobile toilet block has been sited near the entrance point and a refuse bin stand has been constructed. Three lighting columns and 10 electrical "hook up" upstands have been provided.

Matters concerning the notices

7. At the start of the inquiry I raised the question of the effect of s173(11) since it appeared to me that, bearing in mind the judgement in *Murfit v SSE & E Cambridgeshire DC* [1980] JPL 598 a notice alleging a material change of use could require works to be removed, provided they formed an integral part of the breach of planning control complained of. Indeed Notice B, as issued, included the removal of an item of operational development, which is also covered by Notice A, in its requirements. To the extent that Notice B under enforces by not requiring the removal of all the elements of operational development which had facilitated and formed an integral part of the change of use, it is arguable that s173(11) would have the effect of giving them planning permission. The two notices are not on all fours with the two notices in *Millen v SSE & Maidstone BC* [1996] JPL 735 but the implications are similar. The effect of s173(11) on Notice B could be to cancel out Notice A, other than to the extent of the limited operational development requirement in Notice B.

8. The council say that the matter can be put right by removing all reference to operational development in the requirements of Notice B, thus putting all operational development matters into

one notice and the change of use into the other. However, that does not overcome the *Millen* point unless it can be shown that the operational development did not form an integral part of the change of use and thus *Murfit* does not apply.

9. You say that the operational development was carried out to facilitate a use which did not require planning permission since it was permitted development. The use which does require permission, the caravan site use in Notice B, came along later. The discovery that there had been a use beyond permitted development rights (Class B Part 4 and Class A Part 5 of the 1988 GDO) caused the withdrawal of the ground (c) appeal. As a result of that withdrawal evidence of the claimed permitted development use was not explored at the inquiry; the point was only made in closing in responding to the *Millen/Murfit* point. Both the permitted development rights referred to (rallies by exempted organisations lasting up to 5 days and tent camping) relate to essentially temporary uses of land. The operational development was carried out to provide a permanently available facility as an extension to the permitted caravan site, even though it may have been used by exempted organisations and for tents. Prior to the works being carried out the natural slope of the land made such use impractical. Moreover, access is through the main caravan site and the recreational facilities of the main site were available to those on the extended site. It is my assessment that in making the enforcement notice land permanently available for use by caravans through the alleged operational development the planning unit of the lawful caravan site was extended. A material change of use took place and the operational development facilitated it and was an integral part of it. Looked at another way, the fundamental planning change which has taken place to this area of land is that it has become part of the caravan site use. The operational development is secondary to the use. There is a very clear parallel to *Murfit*, where the operational development of preparing the ground by the laying of hardcore enabled the use for the parking of heavy goods vehicles to take place.

10. I note that in *Millen* the Deputy Judge said that in the very special circumstances of that case the matter was capable of resolution by quashing one notice and varying the requirements of the other. You accept that this falls generally within the scope of s176(1) but in this case consider that to do so would cause injustice to the appellant. It is your client's case that the first terrace and the access to it was substantially completed as a discrete piece of operational development more than 4 years before the notice was issued. If it is immune the local planning authority, through its committee, has not had the opportunity to consider whether they would consider Notice B should be amended or whether they would not wish to take action in recognition of that immunity. There could be no certainty that if the notices were quashed the committee would decide to re-issue one notice in the different format. Thus to amend the notices now does not short circuit an inevitable process.

11. I agree that there can be no certainty how a committee would respond. However, it is clear that the council's case is that the operational development should not be considered separately from the use. In the event of me finding for them on the use they urge that the operational development should not be allowed to remain. At the inquiry the council did not argue that the requirements of Notice A could not or should not be incorporated in Notice B. There is no evidence to suggest that the council would be unlikely to adopt that procedure were the notices to be quashed. This matter has been at large since the start of the inquiry and your client has had ample opportunity to deal with the issue. I recognise that it would deprive the appellant of the ground (d) argument in respect of part of the operational development but even if that were made out it would not preclude its incorporation into the requirements of Notice B. Moreover, it seems to me to be fundamentally right that operational development which has facilitated and formed an integral part of a change of use should not be able to gain immunity on a different timescale to the use which it has enabled. I do not

consider that it can be legitimately claimed that there would be injustice in the particular circumstances of this case if I were to quash Notice A and import its requirements into Notice B. I shall quash Notice A because of the conflict I have identified; the appeal on grounds (a) and (d) and the deemed application do not need to be considered. My further consideration of the appeals before me will therefore be based on the premise of an all embracing Notice B and be directed to ground (a) on that notice and the s78 appeal. I will also deal with the Notice A ground (f) appeal as if it had been made against the corrected Notice B.

The s174 appeal against Notice B on ground (a) and the s78 appeal

12. The main issues are, firstly, the impact of the development on the character and appearance of the countryside in the locality, bearing in mind that it is within the AONB and having particular regard to development plan policies concerning the protection of the countryside and those concerning tourism. The second issue is the impact on the access road leading to the site in environmental and road safety terms.

13. I deal with the second issue first since its resolution helps to throw the first issue into sharper focus. Access to the site from the A20, and hence the main M20/A20 tourist corridor through the county, is by a narrow and winding country lane which climbs the steep scarp slope of the North Downs. It is ill-suited to carry cars towing caravans or camping trailers. In many places de facto passing bays have been created by erosion of the verge, such is the road's restricted width. A caravan site was permitted here in the 1960s but I am in no doubt that such a proposal, were it made now, would be rejected on highway grounds. I also consider the deficiencies of the access road are so severe that a material increase in traffic generation from the appeal site would cause an unacceptable traffic hazard. However, the site can be lawfully used up to the permitted maximum of 198 caravans and 30 tents regardless of the highway implications.

14. The site is presently operated, as a matter of company policy, on the basis of 168 caravans and some tents¹, substantially less than the lawful level of use. I am satisfied from the plan presented to the inquiry and from what I saw at the site that the existing site is physically capable of taking a further 25 caravans and possibly a few more. I take this view notwithstanding the fact that some of the original site area has been effectively lost to built development. No doubt the site would not be so attractive to its existing visitors, many of whom, I understand, are repeat visitors, if it were to lose some of its spaciousness. You felt that it was possible that there could be some slight increase without undermining the current company policy of providing quality pitches on the site. But even if that is not right, company policy could change, or the site ownership could change and a more down market operator could seek to exploit the existing permission and licence to the full. In your experience a lot of companies would do just that.

15. If permission is given to the area covered by the enforcement notice your client would accept a condition relating to the whole of the enlarged site to limit the number to 198 units, including tents. This represents an increase in number of about 25 pitches above the present use but substantially less than the permitted use if the 30 permitted tents are taken into account. Thus to allow this appeal would not increase the potential traffic generation above that which could result from the lawful use of the existing site. It is significant that no formal objection was raised by the council's highway advisor and the council's highway case at the inquiry was put by their planning witness in general terms.

¹ See paragraph 5 above.

16. From the company's evidence of a full park throughout the 1996 six week summer season and that bookings had to be declined and customers turned away, and from your own experience of the industry, I consider it is probable that without the appeal site the company would be likely to go some way to meeting this demand on the existing site within the terms of the permission and licence. I think it unlikely, based on current policy, that they would risk the character of the site by accommodating the full 25 pitches, but in the longer term a different operator with different objectives is a clear possibility. I do not find the council's case a cogent argument for concluding that this outcome is less rather than more likely; it is a real possibility. Therefore, I conclude that there is no sustainable argument that a limited permission would cause an unacceptable hazard to road safety or lead to unacceptable environmental harm to the countryside through increased traffic.

17. The development plan comprises the 1996 Kent Structure Plan and the 1993 Maidstone Borough Local Plan. Development which adversely affects the countryside is to be resisted; the countryside, especially in the AONB, is to be conserved and enhanced. This is the thrust of KSP policies S2, ENV1, 2 and 3. Policy ENV7 indicates that it is also policy to maintain tree cover in the county. The few exceptions provided for in those policies, for example to meet the social and economic requirements of local communities, do not relate to the appeal proposal. Tourism is an important element of strategic policy and the availability of high quality facilities in an attractive environment is seen as critically important. Policy TO1 is to normally permit new tourism facilities where they make an important contribution to upgrading the tourism attractions of the county provided they are consistent with environmental policies and designed in sympathy with the landscape and setting. Again, provided there is consistency with environmental policies, proposals for the development of touring and camping facilities will normally be permitted where they are well related to the primary transport network and either the ports of entry, the Channel Tunnel terminal or major visitor attractions.

18. The adopted local plan supports the countryside conservation policies in its strategic counterpart. The balance between meeting the needs of tourism and the conservation of the countryside is also recognised. Policy C1 specifically indicates that within the rural area one of the allowable types of development is that relating to tourist accommodation as indicated in policies RT28-31. Under policy RT31 the council will give favourable consideration to caravan proposals provided they have adequate access, are well screened and would not prejudice the landscape quality of their setting, would not have an unacceptable environmental effect and would not conflict with other policies.

19. Both parties agree that this is the sort of case where the principle of what is proposed finds support in the tourism policies of the development plan and where it is necessary to strike a balance between that and the impact on the countryside. I share the council's view that the impact is not simply a visual impact but is a wider one which goes to overall countryside character. Having said that I shall address the visual impact first since that is the main impact.

20. The enforcement notice appeal site is, apart from the cleared areas, covered in a fairly dense hawthorn thicket some 4 to 5 metres high. The only significant public view of the area is from the public footpath to the south and a nearby lane. From here the thicket appears as an extension of adjoining woodland. Caravans on the first terrace would be visible from a relatively short length of the footpath, and a point on the lane to the south, through a gap in the thicket but caravans on the other terraces would not be seen. The first and third lamp posts are also visible from the footpath. This is a very sensitive area of landscape that has already suffered visual damage through the existing caravan site which, because of the topography, is prominent over the south-western boundary planting

in views from the footpath. Given the important planning objective of conserving the landscape in the AONB I consider that any material increase in the visual prominence of this caravan site would be unacceptable.

21. However, your client, on the advice of his landscape architect, proposes certain works of mitigation. It is proposed to replace the lamp standards with 1.0-1.5m high bollard lighting with louvred directional light units. In the day they would not be visible from outside the site and at night the impact would be minimal. I recognise that light pollution in the countryside can lead to a loss of the sense of isolation and rurality but in this case, given the presence of the existing site and limited views, and provided suitable luminaires are chosen, I consider the impact would be negligible. The toilet block, although not visible from outside the site is to be removed. In addition to additional planting on the newly cut slopes a 10m deep block of hawthorn planting, reinforced with oak, would fill the gap through which the first terrace can be seen. A line of ash on the field boundary would provide screening in depth. These seem to me to be well thought out proposals and I see no reason to dispute the landscape architect's conclusion that they would provide an effective screen in about five years time. Your client is prepared to accept a condition that the first terrace shall not be used for the siting of touring caravans until the council are satisfied that there is an effective screen. The combined effect would be that the development would not be visible to the public outside the site.

22. Even so, the loss of tree cover, albeit naturally regenerated hawthorn thicket; the reshaping of a natural landform, albeit a common enough feature; the loss of a particular habitat, albeit not of recognised local or statutory significance; the loss of fresh land, are other matters which tell against the development. I also recognise that development in the countryside is not made acceptable just because it cannot be seen; it could be repeated too often, albeit that proposals to extend existing caravan sites are unlikely to arise frequently. However, when I set these considerations in the context of no increase in the permitted level of use, no material visual impact and the policy support for tourism – in particular policy RT31 with which there is no conflict – I find that the impact is not so harmful as to justify a refusal of planning permission. Some local residents fear an increase in noise disturbance but given that the extension would be no nearer to dwellings than the existing site I do not consider that objection can be substantiated.

23. There are two other aspects raised by the council. Firstly, if this extension is agreed where do extensions stop on this site, and, secondly, the impact of this extension should be compared with the impact of expanding within the existing site to the lawful level of use. On the first issue there is a very clear restriction on the creation of a fourth or fifth terrace. Immediately adjacent to the third terrace there is a large dene hole which would limit further physical expansion. Of greater significance, however, is the numbers limit I intend to impose through condition. It is clear from my reasoning above that I have been substantially influenced by the fact that there will be no increase in overall intensity beyond permitted levels; indeed, there is the small planning gain of a reduction when tents are taken into account. I am satisfied that the site is already at its limit in terms of numbers and there was no evidence to show where further physical extensions which would not harm the landscape could take place.

24. I am not convinced that the appellants need to show that more harm would flow from accommodating the lawful level of use within the existing site, provided it can be shown that the extension would not cause unacceptable harm. Nevertheless I consider that the change to the character of this small area of countryside, referred to in paragraph 22, which would not occur if the additional pitches were accommodated within the existing site is outweighed by the benefit to tourists

through maintaining the quality of the caravan site. KSP policy TO1 and the written statement recognise the benefits of upgrading tourist facilities and achieving high standards. A move in the opposite direction would run counter to that policy objective.

25. I now turn to consider the conditions which should be attached to the planning permission I intend to grant. I have already justified the limitation on numbers, the restriction on use of part of the enforcement notice land, the lighting scheme and the landscaping. Removal of the toilet block, as built development on the appeal site, is offered and would be appropriate. Seasonal use, which already applies, needs to be re-imposed. Careful control over the use of the whole site and adjoining land within the control of the appellant is necessary because of the sensitive location and your client would accept removal of Part 4 and 5 permitted development rights. Your client offers a limitation to a maximum of 25 touring caravans on the notice land and I agree that it is a desirable safeguard.

26. The council seek a thickening of the 2m planting belt on the south-western boundary of the existing site to 3m. Your client considers that an unreasonable loss of amenity land adjoining existing caravans, bearing in mind that the existing planting is now maturing. I looked at this belt at my site visit from close to and from the public footpath in terms of potential screening. It seemed to me that it would benefit from improved management and some replacement planting as much as it would from an additional metre of planting. Because that belt is largely on lower land than much of the site many of the caravans are likely to remain visible from the footpath over the top of the planting for some considerable time regardless of the depth of planting. I am not convinced that an additional metre of planting would be so significant that it can be justified in the context of these appeals.

27. The appeal on ground (a) succeeds and permission will be given on the deemed application and on the section 78 appeal. The enforcement notice will be quashed. The appeal on ground (f) does not therefore need to be considered.

28. In reaching my conclusions on all these appeals I have taken into account all the matters raised in the representations but none outweighs the considerations which have led to my decisions.

FORMAL DECISIONS

29. For the above reasons, and in exercise of the powers transferred to me, I determine these appeals as follows:

The appeal under S174 against Notice A [Department's Reference T/APP/C/96/U2235/643713]

I direct that the enforcement notice be quashed.

The appeal under S174 against Notice B [Department's Reference T/APP/C/96/U2235/643714]

I allow your client's appeal and direct that the enforcement notice be quashed. I hereby grant planning permission on the application deemed to have been made under S177(5) of the amended Act for the development already carried out, namely the use of the land at Hogbarn Caravan Site, Hogbarn Lane, Harrietsham, as shown on the plan attached to the notice, for use as a caravan site subject to the following conditions:

1. The combined areas shown edged red and edged and hatched red ("the site") on the plan submitted with planning application reference MA/96/1132 dated 23/08/96 ("the plan") shall be used for a maximum of 18 residential caravans plus holiday units comprising static

caravans, touring caravans and tents, subject to the number of such holiday units not exceeding a total of 180.

2. The site shall not be open to touring caravans and tents, and static caravans shall not be occupied, between 1 November in any one year and 28 February in the succeeding year.
3. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no caravan or camping development permitted by Article 3(1) and Parts 4 and 5 of Schedule 2 of that Order shall take place on the site or the area edged blue on the plan.
4. Within the area hatched and edged red on the plan only touring caravans shall be sited, with a maximum number of 25 at any one time, and, subject to condition 5, only those areas which have already been cleared and levelled shall be so used.
5. The most western of the three cleared and levelled areas within the area hatched and edged red on the plan shall not be used for the siting of touring caravans until the local planning authority have indicated in writing their satisfaction that the planting required under condition 6 has matured sufficiently for the presence of caravans on that part of the site to be no longer visible from the public footpath to the south of the site.
6. The use hereby permitted shall cease within 28 days of any one of the following requirements not being met:
 - (i) within 3 months of the date of this letter there shall have been submitted for the approval of the local planning authority a scheme for the provision and management of landscaping and for replacement lighting within the area hatched and edged red on the plan and for additional planting within and future management of the existing landscaping strip on the western boundary of the area edged red on the plan (hereafter referred to as a landscaping scheme) and the said scheme shall include a timetable for its implementation.
 - (ii) within 11 months of the date of this letter a landscaping scheme shall have been approved by the local planning authority or, if the local planning authority fail to approve such a scheme, or fail to give a decision within the prescribed period an appeal shall have been lodged and accepted by the Secretary of State for the Environment.
 - (iii) in the event of an appeal being made in pursuance of requirement (ii) above, that appeal shall have been finally determined and the submitted landscaping scheme shall have been approved by the Secretary of State.
 - (iv) all works comprised in the landscaping scheme as approved shall have been implemented, and completed within the timetable set out in the approved scheme.
7. In the event of the use ceasing by virtue of condition 6, the following actions shall be taken on the land edged and hatched red on the plan within three months of the use ceasing:
 - (i) excavate the levelled areas and regrade the land to that previously existing to match the surrounding slope and levels;
 - (ii) excavate the trackway and remove all resultant materials from the land; and
 - (iii) excavate and remove all electrical services, fittings and fixtures.
8. The existing mobile toilet block sited within the area hatched and edged red on the plan shall be removed within one month of this decision.

The appeal under S78 [Department's Reference T/APP/U2235/A/96/273772/P6]

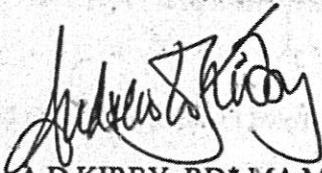
I hereby allow your client's appeal and grant planning permission for the use of the land for the siting of 180 holiday caravans and 18 residential caravans in accordance with the terms of the application (No. MA/96/1132) dated 23/08/96 and the plans submitted therewith, subject to conditions identical to those set out above.

30. These decisions do not convey any approval or consent required under any enactment, bylaw, order or regulation other than Section 57 of the Town and Country Planning Act 1990.

RIGHTS OF APPEAL AGAINST DECISIONS

31. This letter is issued as the determination of the appeals before me. Particulars of the rights of appeal against my decisions to the High Court are enclosed for those concerned.

Yours faithfully



A D KIRBY RD* MA MSc FRTPI FRSA
Inspector

ENC

Ref No: T/APP/C/96/U2235/643713-4
T/APP/U2235/A/96/273772/P6

APPEARANCES FOR THE APPELLANT

Mr R Humphreys

of Counsel, instructed by Fleury Manico.

He called:

Mr M E Gannon

General Manager (Parks), Fitt Leisure
Caravan Division.

Mr J R M Ridgwell FRICS

Chartered Surveyor, Fleury Manico

FOR THE PLANNING AUTHORITY

Miss M Jones

Solicitor, Maidstone BC

She called:

Mr D A Jarvis BA DipTP MRTPI

Chartered Town Planner, Maidstone BC

INTERESTED PERSONS

Mr A Hogben

Chairman, Harrietsham PC.

Mr R McDermott

Bromfield, Hogbarn Lane, Harrietsham.

DOCUMENTS

- | | | |
|----------|----|-----------------------------------------------------------------|
| Document | 1. | List of persons attending the inquiry. |
| " | 2. | Letter of notification and circulation list. |
| " | 3. | 7 letters of representation arising from Document 2. |
| " | 4. | Appendices 1-5 submitted by Mr Gannon. |
| " | 5. | Appendices 1-16 submitted by Mr Ridgwell. |
| " | 6. | Landscape assessment by Partridge Associates. |
| " | 7. | List of local businesses used by occupiers of the caravan site. |
| " | 8. | Appendices A-L submitted by Mr Jarvis. |
| " | 9. | Schedule of conditions submitted by Mr Jarvis. |

PLANS

- | | | |
|------|--------|---------------------------------------------------------------|
| Plan | A & B. | Plans attached to Notices A and B |
| " | C. | 1:2500 plan submitted with the planning application. |
| " | D. | Site layout plan to show additional pitches on existing site. |

THE MAIDSTONE BOROUGH COUNCIL
Town and Country Planning Act 1990

Statement of Submissions under Rule 6 of The Town and Country Planning (Inquiries Procedure) Rules 1992

Appeal by Arthur Fitt Leisure Group under Section 78 of the Town and Country Planning Act 1990 against the refusal of Maidstone Borough Council as District Planning Authority to grant planning permission in respect of planning application MA/96/1132 for "Use of land for the siting of 180 holiday caravans and eighteen residential caravans (including extension to currently permitted site), as shown on Site Plan received on 27th August 1996" on land at and adjacent to Hogbarn Caravan Site, Hogbarn Lane, in the Parish of Harrietsham.

Statement of Submissions under Rule 8 of The Town and Country Planning (Enforcement) (Inquiries Procedure) Rules 1992

Appeals by Arthur Fitt Leisure Group under Section 174 of the Town and Country Planning Act 1990 in respect of Enforcement Notices issued by Maidstone Borough Council as follows:

Enforcement Notice A

In which the Breach of Planning Control alleged is - Without Planning Permission,

- (1) the excavation, levelling and grading of the land,
- (2) the laying of a tarmac chipping trackway,
- (3) the installation of electrical services including lighting and caravan power connection points,
- (4) the erection of a toilet block and waste bin area.

Enforcement Notice B

In which the Breach of Planning Control alleged is - "Without Planning Permission, the change of use of land to use as a caravan site

The Council will submit :

1.0 The Section 78 Appeal

1.1 A Planning Application reference MA/96/1132/N. was received by the the Maidstone Borough Council as District Planning Authority on 28th July 1996 The application was refused on 18th October 1996 for the following reasons:

01. The site is located within the Kent Downs Area of Outstanding Natural Beauty and the North Downs Special Landscape Area wherein priority

will be given to the landscape over other planning considerations. In the opinion of the Local Planning Authority the change of use of the land and the destruction of existing woodland and landscaping features is detrimental to the character and visual appearance of the countryside contrary to Policies CC7 and TR 4 of the Kent Structure Plan 1990, Policies ENV 3 and TO 4 of the Kent Structure Plan Third Review Deposit Plan Schedule of Modifications and Policies C4, C5 and RT 31 of the Maidstone Borough Local Plan and to the advice contained within Planning Policy Guidance Note No 7 'The Countryside and the Rural Economy'

1.2 A copy of the Decision Notice is at Appendix 'A'

2.0 The Section 174 Appeal

2.1 Enforcement Notice 'A' was issued on 14th June 1996

2.2 The Breach of Planning Control alleged by the notice is

Without Planning Permission,

- (1) the excavation, levelling and grading of the land,
- (2) the laying of a tarmac chipping trackway,
- (3) the installation of electrical services including lighting and caravan power connection points,
- (4) the erection of a toilet block and waste bin area.

2.3 The steps required by the Enforcement Notice to remedy the breach of planning control are as follows

- (i) Excavate the levelled areas and regrade the land to that previously existing to match the surrounding slope and levels.
- (ii) Excavate the trackway and remove all resultant materials from the land.
- (iii) Excavate and remove all electrical services, fittings and fixtures.
- (iv) Demolish the toilet block and waste bin area and remove all resultant materials from the land.
- (v) Restore the woodland and vegetation to the following specifications:

Woodland

60% Sweet Chestnut, 20% Ash, 10% Beech, 10% Hazel as transplants at 120 cm heights set at 3 metre by 3 metre spacings and protected with Gro-cones and bamboo stakes to be beat up in first year and chemical weed control until established with any planting dying or becoming diseased within the five years being replaced by equivalent species of similar size.

Ground Flora

Seed with woodland mixture including *Anemone nemorosa*; *Hyacintheides non-Scripta*; *Arum maculatum*; *Mercurialis perennis* and *Viola riviniana*, sown at 4 grams per square metre.

3

Time for Compliance with the Notice

Requirements (i), (ii), (iii) and (iv) three months after the Notice takes effect and for requirement (v) before the end of the planting season (October to March) following the Notice taking effect

- 2.5 The reason the Council determined that it was expedient to issue the notice was:

"It appears to the Council that the above breach of planning control has occurred within the last four years. The unauthorised development is harmful to the visual qualities and to the landscape function of the area. It has resulted in traffic using an inadequate access and highway infrastructure.

The unauthorised development is contrary to Policies S6, RS1, RS6, CC%, CC&, CC10, TR5 and TR 8 of the Kent Structure Plan 1990, Policies T14 C 1, C 3, C 4, C 5, C 7 and RT 25 of the Maidstone Borough Local Plan and Policies ENV1, ENV2, ENV3, ENV6 and TO 3 of the Kent Structure Plan Third Review. The Council do not consider that planning permission should be given, because planning conditions could not overcome these objections to the development"

- 2.6 Enforcement Notice 'B' was issued on 14th June 1996

- 2.7 The Breach of Planning Control alleged by the notice is

"Without Planning Permission, the change of use of land to use as a caravan site"

- 2.8 The steps required by the Enforcement Notice to remedy the breach of planning control are as follows

- (i) Stop using the land as a caravan site.
- (ii) Excavate and remove all electrical services, fittings and fixtures from the land.

- 2.9 The period for compliance with both requirements of the notice is one month after the notice takes effect.

- 2.10 The reason The Council determined that it was expedient to issue the Notice was:

"It appears to the Council that the above breach of planning control has occurred within the last four years. The unauthorised development is harmful to the visual qualities and to the landscape function of the area. It has resulted in traffic using an inadequate access and highway infrastructure.

The unauthorised development is contrary to Policies S6, RS1, RS6, CC%, CC&, CC10, TR5 and TR 8 of the Kent Structure Plan 1990, Policies T14 C 1, C 3, C 4, C 5, C 7 and RT 25 of the Maidstone Borough Local Plan and Policies ENV1, ENV2, ENV3, ENV6 and TO 3 of the Kent Structure Plan Third Review. The Council do not consider that planning permission should be given, because planning conditions could not overcome these objections to the development"

- 2.11 Copies of the Enforcement Notices are attached as Appendix 'B'.

3.0 The Site and Its Surroundings

- 3.1 The Council will refer to the sites location, the general characteristics of the surrounding area and to specific details of the site and its layout.
- 3.2 Reference will be made to the planning history of the site and adjacent area.

4.0 Policies and Guidance

- 4.1 Reference will be made to the Development Plan for the area comprising the approved Kent Structure Plan 1990 and the adopted Maidstone Borough Local Plan. The Deposit Plan of the Kent Structure Plan (Third Review) and the Schedule of Proposed Modifications will also be referred to where appropriate.
- 4.2 The Council will draw attention to the relevant Government advice including Planning Policy Guidance Notes including PPG 1 - "General Policy and Principles", PPG 7 - "The Countryside and the Rural Economy", PPG 18 - "Enforcing Planning Control" and PPG 21 - "Tourism".

5.0 The Appeals

- 5.1 In the case of the Section 78 Appeal the Borough Council will explain and expand on its reasons for refusing the planning application and will show that all material considerations were taken into account
- 5.2 The Section 174 appeal are as follows:

<u>Enf. Notice.</u>	<u>Grounds</u>	<u>DoE Ref.</u>
A	A, D and F	APP/C/96/U2235/643713
B	A, and C	APP/C/96/U2235/643714

- 5.3 The Borough Council will establish that the development enforced against is contrary to adopted development plan policies and causes demonstrable harm to interests of acknowledged importance, in this case by virtue of its harm to the special landscape function of the area, to the character and appearance of the countryside and further that there is no demonstrated need for the developments that would override established planning policies and central government guidance.
- 5.4 The Borough Council will demonstrate that the developments enforced against are indeed Developments within the meaning of the Town and Country Planning Act 1990, are not Developments permitted by the Town and Country Planning General Permitted Development Order 1995 and have not the benefit of an express planning permission
- 5.5 The Council will demonstrate that the developments are not immune from enforcement action through the passing of any specified period of time.
- 5.6 The Council will demonstrate that the steps specified in the enforcement notices are appropriate and the minimum steps necessary to alleviate the breaches of planning control.

6.0 Submissions

- 6.1. The Council will submit that the rural character is an acknowledged national asset that deserves protection for its own sake. Further, the special quality of designated Areas of Outstanding Beauty and Special Landscape Areas deserve an even higher degree of protection to retain the special landscape function of such areas. The developments the subject of these appeals are unacceptable in terms of their impact on the special landscape function of the area, to the character and visual, rural and scenic amenity of the area and are contrary to Development Plan Policies which seek to prevent such inappropriate development.
- 6.2. The Council will submit that in the case of the Section 174 appeal the increased movements to the site have the potential to cause hazards to traffic through additional vehicles (including those towing caravans) using an inadequate highway infrastructure in the area.
- 6.3. For these and other reasons and the Council is justified in seeking their permanent removal.

7.0 Conclusions

- 7.1. The Borough Council will demonstrate that its decision to refuse planning permission and take enforcement action was properly made for sound and clear cut reasons in accordance with Development Plan Policies and relevant ministerial guidance and advice.

8.0 Further Evidence

- 8.1. The Council reserves the right to refer at the Inquiry to any other Circulars, documents or planning and appeal decisions as may be relevant.
- 8.2. The Borough Council reserves the right to produce in evidence any such further information as may be appropriate in response to the statement of case submitted by the appellants. In addition the Borough Council reserves the right to refer to such other documents, photographs (including aerial photographs), officer site visit notes, appeal decisions and further information as may come to its attention prior to the Inquiry

9.0 Conditions

- 9.1. The Council will prepare a schedule of conditions without prejudice to its case should the Inspector be minded to allow the Section 78 appeal or to grant the deemed application as a result of the Section 174 appeal.



Directorate of Change, Planning and the Environment
Maidstone House, King Street, Maidstone, ME15 6JQ

DEVELOPMENT CONTROL

Mr Mark Southerton
Springfield
Gawtersyke
Kirbymoorside
North Yorkshire
YO62 6DR

My Ref: MA/13/1435
Date: 31 October 2013

TOWN AND COUNTRY PLANNING ACTS

Town and Country Planning (General Permitted Development) Order 1995
Town and Country Planning (Development Management Procedure) (England)
Order 2010

TAKE NOTICE that **THE MAIDSTONE BOROUGH COUNCIL**, The Local Planning Authority under the Town and Country Planning Acts, has **GRANTED PLANNING PERMISSION** in accordance with the details set out below:

APPLICATION: MA/13/1435

DATE RECEIVED: 16 August 2013 DATE VALID: 16 August 2013

APPLICANT: Sines LLP

PROPOSAL: Application to vary condition 4 of MA/96/1132 to allow an expansion of the area used for siting static caravans and operational development to alter land levels (partly retrospective and resubmission of MA/13/0724) as shown on A4 site location plan and drawing nos. PR102a (cross section), PR102a (existing contours), and PR103b received on 16th August 2013, and PR101c received on 21st October 2013.

LOCATION: PILGRIMS RETREAT, HOGBARN LANE, HARRIETSHAM, MAIDSTONE, KENT, ME17 1NZ

GRID REF: 588508, 154893

This permission is **SUBJECT** to the following conditions:

1. Within 2 months the following details shall be submitted to and approved in writing by the Local Planning Authority:-

Continuation of decision: MA/13/1435

- a) Full and specific details of all proposed trees and hedgerows including locations, species mix and sizes, and a plan clearly showing all existing trees as being retained.
- b) Cross section plans to show the re-grading of the land in the southern corner of the site where the sewage plant access and woodland area is shown.
- c) Full details of the wildflower and grass mix.
- d) Planting and staking details for the proposed selected heavy standard trees.
- e) Details of the type of weeding to be used around the newly planted trees (e.g. cultural, mechanical or chemical) together with a full maintenance programme specifying watering and weeding and replacement of failed stock.
- f) Details of tree protection around the existing retained trees in accordance with BS5837:2012.
- g) Measures for protection of the landscaping scheme during the course of development and a programme for the approved scheme's implementation and long term management.

The scheme shall be designed using the principles established in the Council's adopted Landscape Character Assessment and Landscape Guidelines;

Reason: To ensure a satisfactory appearance to the development.

2. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in accordance with the implementation plan approved under condition 1. Any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation;

Reason: To ensure a satisfactory setting and external appearance to the development.

3. Prior to the occupation of any of these units full details of the future management of the retained coppice to the east of the development site and how the area is to be used as amenity for the local residents shall be submitted to and approved in writing by the Local Planning Authority and the development

IMPORTANT:- YOUR ATTENTION IS DRAWN TO THE ATTACHED NOTES

Continuation of decision: MA/13/1435

shall be undertaken in accordance with the approved details;

Reason: No such details have been submitted and to ensure the woodland is appropriately maintained.

4. All accommodation units permitted at the site shall be occupied for holiday purposes only. No such accommodation shall be occupied as a person's sole or main place of residence. The operators of the caravan park shall maintain an up-to-date register of the names of all owners/occupiers of individual accommodation units on the site, and of their main home addresses, and shall make this information available at all reasonable times to the local planning authority.

Reason: In order to ensure proper control of the use of the holiday units and to prevent the establishment of permanent residency.

5. The development hereby permitted shall be carried out in accordance with the following approved plans:

A4 site location plan and drawing nos. PR102a (cross section), PR102a (existing contours), and PR103b received on 16th August 2013, and PR101c received on 21st October 2013.

Reason: To ensure a satisfactory setting and external appearance to the development.

Informatives set out below

With regard to condition 1 (landscape implementation), the Council would expect at least the woodland area with specimen trees within the south corner of the site to be implemented within the current planting season (by the end of February 2014).

This application has been considered in relation to the following policies:

Maidstone Borough-Wide Local Plan 2000: ENV6, ENV28, ENV33, ENV34, ED20

South East Plan 2009: N/A

The proposed development, subject to the conditions stated, is considered to comply with the policies of the Development Plan (Maidstone Borough-Wide

IMPORTANT:- YOUR ATTENTION IS DRAWN TO THE ATTACHED NOTES

Continuation of decision: MA/13/1435

Local Plan 2000) and there are no overriding material considerations to indicate a refusal of planning consent.

Note to Applicant

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

Offering a pre-application advice and duty desk service.

Where possible, suggesting solutions to secure a successful outcome.

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

In this instance:

The application was acceptable as submitted and no further assistance was required.

The application was approved without delay.

The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the committee and promote the application.

Signed

R. L. L. Jarman

Rob Jarman
Head of Planning

Date 31 October 2013

IMPORTANT:- YOUR ATTENTION IS DRAWN TO THE ATTACHED NOTES

Continuation of decision: MA/13/1435

~~~~~  
**THIS IS NOT A BUILDING REGULATION APPROVAL**

It is the responsibility of the developer to ensure, before the development hereby approved is commenced, that approval under the Building Regulations, where required, and any other necessary approvals, have been obtained, and that the details shown on the plans hereby approved agree in every aspect with those approved under such legislation.

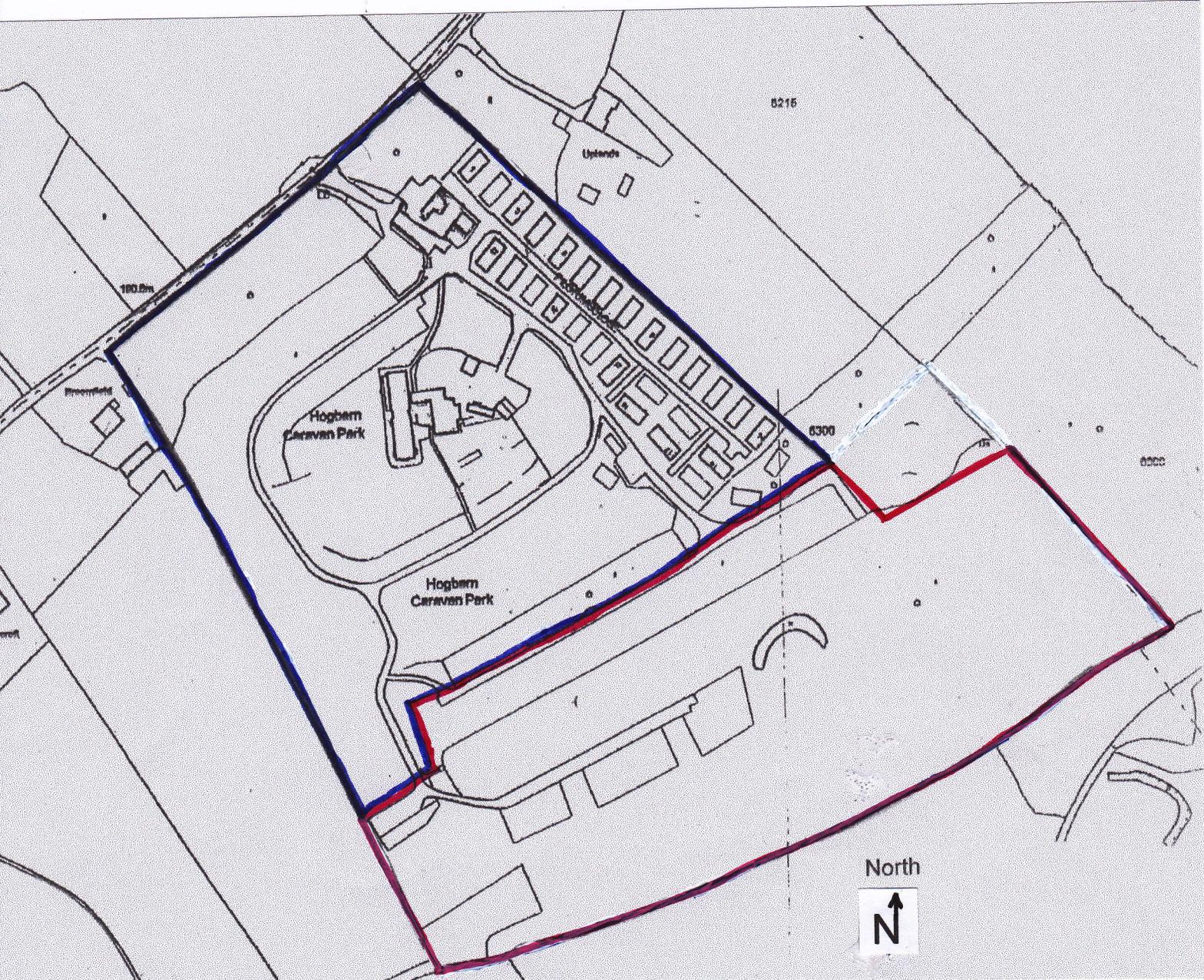
**TAKE NOTICE** that this decision does not confirm compliance with Section 53 of The County of Kent Act, 1981 and, therefore, it will be incumbent upon the applicant to ensure they comply with the said requirement.

~~~~~

IMPORTANT:- YOUR ATTENTION IS DRAWN TO THE ATTACHED NOTES

Variation of condition 4 of planning permission MA/96/1132 to allow a partial reorganisation of the site including an expansion of the area used for the siting of static caravans together with the revision of site levels - Pilgrims Retreat ME17 1NZ.

Location plan. Scale – 1:2500 at A4



Case Officer: Kathryn Altieri
Maidstone Borough Council

Sent by email to: planningcomments@midkent.gov.uk



Kent Downs AONB Unit
West Barn
Penstock Hall Farm
Canterbury Road
East Brabourne
Ashford, Kent TN25 5LL
Tel: 01303 815170
mail@kentdowns.org.uk
www.kentdowns.org.uk

4 August 2021

Dear Kate

21/502369: Pilgrims Retreat Hogbarn Lane Harrietsham Maidstone Kent

Retrospective change of use of land to a caravan site, including the siting of 84no. residential caravans.

Thank you for your consultation on the above application. The following comments are on behalf of the Kent Downs AONB Unit and as such are at an officer level and do not necessarily represent the comments of the whole AONB partnership. The legal context of our response and list of AONB guidance is set out at Appendix 1 below.

National Planning Policy

The application site lies within the Kent Downs AONB. The application therefore needs to be tested against the purpose of the designation, to conserve and enhance natural beauty and the way that this purpose is represented in national and local policy. Section 85 of the Countryside and Rights of Way Act 2000 requires local authorities to have regard to 'the purpose of conserving and enhancing the natural beauty of AONBs' in making decisions that affect the designated area.

The National Planning Policy Framework (NPPF) paragraph 176 requires great weight to be given to conserving and enhancing landscape and scenic beauty in Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to landscape and scenic beauty and advises that the scale and extent of development within these designated areas should be limited.

NPPF paragraph 11 explains the presumption in favour of sustainable development. For decision-making this means that proposals in accordance with the development plan should be approved. Part d says that where there are no relevant development plan policies or the relevant ones are out of date

Enhancing landscapes and life in the Kent Downs

The Kent Downs AONB Joint Advisory Committee (JAC) promotes and co-ordinates the conservation and enhancement of the Kent Downs AONB. Funding is provided by DEFRA, Kent County Council and the local authorities of Ashford, Bromley, Canterbury, Dover, Gravesham, Medway, Maidstone, Sevenoaks, Shepway, Swale and Tonbridge & Malling. Other organisations represented on the JAC include Natural England, the Environment Agency, Country Land and Business Association, National Farmers Union, Kent Association of Parish Councils and Action with Communities in Rural Kent.



Anglesey
Arnside and Silverdale
Blackdown Hills
Cannock Chase
Chichester Harbour
Chilterns
Clwydian Range
Cornwall
Cotswolds
Gower
Cranbourne Chase and
West Wiltshire Downs
Dedham Vale
Dorset
East Devon
Forest of Bowland
Howardian Hills
High Weald
Isle of Wight
Isles of Scilly
Kent Downs
Lincolnshire Wolds
Llyn
Malvern Hills
Mendip Hills
Nidderdale
Norfolk Coast
North Devon
North Pennines
North Wessex Downs
Northumberland Coast
Quantock Hills
Shropshire Hills
Solway Coast
South Devon
Suffolk Coast and
Heaths
Surrey Hills
Tamar Valley
Wye Valley

(for instance in applications involving new housing where there are housing supply or delivery deficits) then permission should be granted unless:

- "i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed⁶; or
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole".

Areas of Outstanding Natural Beauty are listed in footnote 7 and the most relevant policies in the Framework are paragraphs 176 and 177. A recent court of appeal case¹ confirms that, if a proposal causes harm to an AONB sufficient to refuse planning permission if there were no other considerations, then the presumption in favour (or 'tilted balance' expressed in ii) above) should be disengaged. The decision-maker should therefore conduct a normal planning balancing exercise, applying appropriate weight to each consideration, to come to a decision. This will of course include giving great weight to the AONB as required by NPPF paragraph 176.

The national PPG provides additional guidance on new development in National Parks and AONBs (Paragraph: 041 Reference ID: 8-041-20190721). This specifies that 'all development within nationally protected landscapes needs to be located and designed in a way that reflects their status as landscapes of the highest quality'.

Major Development

In the event that the decision-maker concludes that development is 'major' in terms of its impact on the AONB, paragraph 177 of the NPPF states that "Planning permission should be refused for major development⁶⁰ other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. Consideration of such applications should include an assessment of:

- a) the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;
- b) the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way; and
- c) any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.

Footnote 60 states: "For the purposes of paragraphs 176 and 177, whether a proposal is 'major development' is a matter for the decision maker, taking into account its nature, scale and setting, and whether it could have a significant adverse impact on the purposes for which the area has been designated or defined".

Local Planning Policy

The Maidstone Borough Local Plan (adopted 2017) Policy SP 17 3) requires that "Great weight should be given to the conservation and enhancement of the Kent Downs Area of Outstanding Natural Beauty".

Kent Downs AONB Management Plan

¹ Monkhill Limited vs Secretary of State for Housing, Communities and Local Government and Waverley Borough Council Case No: C1/2019/1955/QBACF

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Under the Countryside and Rights of Way Act, local authorities are required to prepare an AONB Management Plan which must “formulate the policies for the management of the AONB and for carrying out their functions in relation to it”. The Kent Downs AONB Unit produces a Management Plan on behalf of the local authorities within the AONB. The Management Plan has been adopted by all local planning authorities in the Kent Downs.

The national Planning Policy Guidance, 2019, confirms that Management Plans can be a material consideration when assessing planning applications ([Paragraph: 040 Reference ID: 8-040-20190721](#)) and this view is confirmed in previous appeal decisions, including APP/U2235/W/19/3232201, Cossington Fields Farm North, Bell Lane, Boxley, Maidstone where at paragraph 5 of the Inspectorate’s decision letter it is stated that “I am mindful of the policies contained within the Kent Downs AONB Management Plan (2014-2019) requiring development to conserve and enhance natural beauty of AONB to which I attach substantial weight.” The decision can be downloaded at: <https://acp.planninginspectorate.gov.uk/ViewCase.aspx?caseid=3232201>

The following policies from the Management Plan are considered to be of particular relevance to the application:

SD1 The need to conserve and enhance the natural beauty of the Kent Downs AONB is recognised as the primary purpose of the designation and given the highest level of protection within the statutory and other appropriate planning and development strategies and development control decisions.

SD2 The local character, qualities and distinctiveness of the Kent Downs AONB will be conserved and enhanced in the design, scale, setting and materials of new development, redevelopment and infrastructure and will be pursued through the application of appropriate design guidance and position statements which are adopted as components of the AONB Management Plan.

SD3 New development or changes to land use will be opposed where they disregard or run counter to the primary purpose of the Kent Downs AONB.

SD7 To retain and improve tranquillity, including the experience of dark skies at night, careful design and the use of new technologies should be used. New developments and highways infrastructure which negatively impact on the local tranquillity of the Kent Downs AONB will be opposed unless they can be satisfactorily mitigated.

SD8 Proposals which negatively impact on the distinctive landform, landscape character, special characteristics and qualities, the setting and views to and from the AONB will be opposed unless they can be satisfactorily mitigated.”

SD9 The particular historic and locally distinctive character of rural settlements and buildings of the Kent Downs AONB will be maintained and strengthened. The use of locally-derived materials for restoration and conversion work will be encouraged. New developments will be expected to apply appropriate design guidance and to be complementary to local character in form, setting, scale, contribution to settlement pattern and choice of materials. This will apply to all development, including road design (pursued through the adoption and implementation of the AONB Rural Streets

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and Lanes Design Handbook), affordable housing, development on farm holdings (pursued through the farmstead design guidance), and rights of way signage.

LLC1 – The protection, conservation and enhancement of special characteristics and qualities, natural beauty and landscape character of the Kent Downs AONB will be supported and pursued.

LLC2 The promotion, management, restoration and appropriate creation of prominent views and viewpoints will be supported.

WT1 Threats to the existing extent of woodland and transitional habitats around woodland will be resisted. Extension of both habitat types will be supported where appropriate to landscape character. The loss of ancient woodland will be opposed.

WT7 Activities and developments causing damage to woodlands, such as disease, illegal and harmful recreation, an expanding deer population, poorly managed use for game rearing and development associated with wood lotting, will be addressed by appropriate means. Inappropriate developments subject to planning control will be opposed, other available regulatory mechanisms supported, and positive, strategic management interventions pursued.

The Kent Downs AONB Management Plan can be downloaded at:

<http://www.kentdowns.org.uk/guidance-management-and-advice/management-plan>

Landscape Character

The application site lies within the Mid Kent Downs landscape character area as classified in the Landscape Character Assessment of the AONB where one of the overall landscape character objectives is identified as to seek to conserve the small scale of the roads and villages and the remote quality of the countryside and control urban fringe pressures. Within the Mid Kent Downs LCA, the site lies within the Bicknor Local Character Area where specific guidelines include seeking the use of sympathetic local materials such as brick, tile and flint.

Application Site and Proposal

The AONB Unit responded to the previous application 19/502469 raising concerns about the large scale caravan park being inappropriate development in the AONB as well as a number of detailed matters. This application was subsequently refused planning permission, largely because of the impact of the development on the AONB and its unsustainable location for residential use. However, the Local Planning Authority has not taken enforcement action but instead is working with the applicants to resolve the situation through a revised application.

The revisions to the application include a reduction in the number of caravans to be retained on the site and the incorporation of additional landscaping including a large area of woodland planting to the east, a smaller area of tree and shrub planting at the south-western end of the site and the incorporation of a minor number of trees between the caravans.

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Notwithstanding the amendments to the scheme, the AONB Unit remain of the view the proposal remains wholly inappropriate development within a rural setting within the Kent Downs AONB that fails to meet the key policy test of conserving and enhancing the AONB. While the proposal is an improvement to the previously refused one, the proposed woodland planting at the eastern end of the site is replacing what was felled to make way for the unauthorized development and therefore does not, in our view, represent an enhancement to the AONB as required under local and national policy.

As advised in respect of previous application 19/502469, large scale and/or permanent caravan parks in the AONB rarely constitute appropriate development as by reason of the utilitarian design of the caravans, they fail to conserve or enhance the local character, qualities and distinctiveness of the AONB and therefore fail to meet the key requirement of conserving and enhancing landscape and scenic beauty within the designated area. The revised application still proposes a significant extension in the number and density of caravans at the site, which is in a remote, rural location that is unconnected to existing settlement pattern in the locality, would fail to comply with the guidelines for development in the Mid Kent Downs LCA and would clearly be in conflict with the objectives of the Kent Downs AONB Management Plan as well as national and local plan policies that seek to conserve and enhance the AONB.

Harm to the AONB also results from the removal of vegetation from the site, including trees, remodeling of land levels to form artificial terraces and the construction of a retaining wall. Harm would also arise as a result of an increase in lighting as a result of both an increase in numbers of caravans and also the permanent, rather than temporary occupation of the caravans. The increase in the amount and density of caravans allows little in the way of significant tree planting between the units to help assimilate them into their rural surroundings. The pale cream and white colour of all of the caravans also increases impact, making the units more prominent in the landscape than darker or more muted colours would. While landscape mitigation has increased from that proposed in the previously refused scheme, it still fails to adequately compensate for the substantive harm that would result from the proposal and it should be noted that the rising topography means that planting along the southern boundary of the site will not be effective in screening or filtering views of higher parts of the site from the south.

The LVIA remains wholly unrealistic in its assessment of both landscape and visual impacts, significantly underestimating both. We do not consider the Sensitivity of the site to be 'low to medium' and given the site's location within the nationally designated AONB, on a vegetated valley side that (prior to the works) was entirely in keeping with the identified local landscape character, consider landscape value should be assessed as high. Clearance and leveling of 0.8ha of coppiced valley side with artificially engineered platforms to accommodate an expanded area of permanently stationed caravans does not in our view constitute a 'minor' change to the landscape, nor do we agree that there would be a 'low to medium' magnitude of change to landscape character. It is also considered incorrect to assess a lower impact on landscape character on the basis of a lack of wider visibility of the site. The AONB Unit considers the high sensitivity of the site and a high magnitude of change would give rise to a major adverse (i.e. significant) effect on landscape character.

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Furthermore, reducing assessed levels of harm on the basis of the small scale of the area affected and visual dissociation with the surrounding area is wholly inappropriate; while the site is relatively contained within the wider landscape and the development may not affect wider long distance views, this is not the sole test for acceptability of development in an AONB. The AONB is a wide and large expanse of area and any development which significantly detracts from elements which contribute to that wider natural and scenic beauty would not conserve or enhance it. The proposal would have a detrimental impact on many of the special characteristics and qualities of the Kent Downs including landform and views, tranquillity (through the introduction of additional lighting), biodiversity rich habitats and woodland and trees – contrary to the conclusion in the LVIA that 'there would only be a very minor impact on very few elements of the special qualities and characteristics of the AONB'.

We also raise new concerns that the proposed vehicle passing strategy plan indicates numerous interventions comprising 'give way' markings on the surface of Hogbarn Lane. This would result in a loss of the current rural character of this rural lane, that would further degrade the character and qualities of the Kent Downs AONB.

Taking the above into account, the Kent Downs AONB Unit remains of the view that the proposal fails to conserve or enhance the AONB. We are also of the opinion that in view of the number of caravans involved and the rural location of the site, the proposal represents 'major development' under paragraph 177 of the NPPF and that no exceptional circumstances have been demonstrated, as required by the NPPF. The AONB Unit therefore objects to the proposal.

However, should the Council be minded to approve the application, it is considered that the proposed new native woodland mix planting is appropriate subject to details of the species to be used. The Kent Downs Landscape Design Handbook (p26) recommends the following species for this area: pedunculate oak, hazel, ash, and field maple (although in view of ash die back disease, its inclusion would no longer be appropriate). These should be of local provenance stock or at least of British origin to safeguard the integrity and biodiversity of the landscape and Plant Healthy accredited stock used. The wildflower areas should also use local provenance wildflower/grass seed mixes appropriate to the chalky soil type. We would also request consideration be given to requiring the caravans to be coloured in more muted tones; advice on appropriate colours can be found in the Kent Downs AONB [Guidance on the Selection and Use of Colour in Development](#).

I hope this is of assistance to you. I would be happy to discuss the issues raised further if this would be of assistance.

Yours sincerely

Katie Miller
Planning Manager, Kent Downs AONB Unit

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APPENDIX 1

Planning consultations with the Kent Downs AONB Unit

Background and context:

The Kent Downs Area of Outstanding Natural Beauty partnership (which includes all the local authorities within the AONB) has agreed to have a limited land use planning role. In summary this is to:

- Provide design guidance in partnership with the Local Authorities represented in the AONB.
- Comment on forward/strategic planning issues-for instance Local Development Frameworks.
- Be involved in development management (planning applications) in exceptional circumstances only, for example in terms of scale and precedence.
- Provide informal planning advice/comments on development control (planning applications) at the request of a Kent Downs AONB Joint Advisory member and /or Local Authority Planning Officer.

The Countryside and Rights of Way Act 2000

The primary legislation relating to AONBs is set out in the Countryside and Rights of Way Act 2000. Section 85 of this Act requires that in exercising any functions in relation to land in an AONB, or so as to affect land in an AONB, relevant authorities, which includes local authorities, shall have regard to the purpose of conserving and enhancing the natural beauty of the AONB. This is known as the 'Duty of Regard'. The Duty of Regard can be demonstrated by testing proposals against the policies set out in the Kent Downs AONB Management Plan and its supporting guidance (see below).

Relationship of the AONB Management Plan and Development Management

The CRoW Act requires that a management plan is produced for each AONB, and accordingly the first Kent Downs AONB Management Plan was published in April 2004. The second revision Management Plan (20014-2019) has been formally adopted by all the local authorities of the Kent Downs. The Management Plan may be viewed on the Kent Downs web site. Please let us know if you would like any hard copies.

<https://s3-eu-west-1.amazonaws.com/explore-kent-bucket/uploads/sites/7/2018/04/18113849/KDAONB-Management-Plan.pdf>

Under the CRoW Act, the Management Plan is required to 'formulate the (Local Authority) policies for the management of the AONB and for carrying out their

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functions in relation to it'. The policies of the Kent Downs AONB Management Plan are therefore the adopted policies of all the Local Authorities in the Kent Downs.

The national Planning Policy Guidance confirms that AONB Management Plans can be a material consideration in planning decisions and this view is confirmed in previous appeal decisions, including APP/U2235/W/15/3131945, Land west of Ham Lane, Lenham, Maidstone, where at para 48 of the Inspectorate's decision letter, it is confirmed that "the Kent Downs AONB Management Plan April 2014 (the Management Plan) is also a further significant material consideration". The decision can be downloaded at:

<https://acp.planninginspectorate.gov.uk/ViewCase.aspx?caseid=3131945>

Any Kent Downs AONB Unit response to consultations on planning applications will reflect the policies of the Management Plan along with other Kent Downs AONB produced guidance which help support the delivery of the policies of the Management Plan, as set out below.

Other Kent Downs AONB Guidance

[Kent Downs AONB Guidance on the selection and use of colour in development – Guidance](#)

The purpose of this guidance is to provide guidance on the selection and use of colour for building development within the AONB and its setting. 'Development' includes any building work, ranging from home extensions and conversions through to house building, agricultural and industrial premises, and retail and office buildings. It also includes infrastructure developments associated with transport, flood defences, power generation and distribution, communications and other utilities.

[Kent Downs Landscape Design Handbook](#)

Design guidance based on the 13 landscape character areas in the Kent Downs. Guidance is provided on fencing, hedges, planting, gateways etc. to help the conservation and enhancement of the AONB.

[Kent Downs Renewable Energy Position Statement](#)

Provides a clearly articulated position for the Kent Downs AONB partnership with regards to renewable energy technologies. It recognises that each Local Planning Authority must balance the impact of proposals for renewables on the AONB with all the other material planning considerations.

[Kent Rural Advice Service Farm Diversification Toolkit](#)

Guidance on taking an integrated whole farm approach to farm developments leading to sound diversification projects that benefit the Kent Downs.

[Kent Downs Land Manager's Pack](#)

Detailed guidance on practical land management from how to plant a hedge to creating ponds and enhancing chalk grassland.

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[Rural Streets and Lanes - A Design Handbook](#)

Guidance on the management and design of rural lanes and streets that takes the unique character of the Kent Downs into account. This document discusses the principle of shared space and uses examples from around the UK and Europe. The Handbook has been adopted by Kent County Council as policy.

[Managing Land for Horses](#)

A guide to good practice on equine development in the Kent Downs, including grassland management, fencing, trees and hedges, waste management and basic planning information.

[Kent Farmstead Guidance and Kent Downs Farmstead Guidance](#)

Guidance on the conservation, enhancement and development change of heritage farmsteads in the Kent Downs based on English Heritage's Kent and National Character Area Farmstead Statements. Includes an Assessment method and Design Guidance.

[Kent Downs Setting Position Statement](#)

An advisory document providing guidance on issues of setting including the legislative basis for considering setting, identification of where setting is likely to be an issue and provision of advice on how to mitigate potential impacts.

The NPPF and AONBs

National planning policies are very clear that the highest priority should be given to the conservation and enhancement of Areas of Outstanding Natural Beauty. The NPPF confirms that AONBs are equivalent to National Parks in terms of their landscape quality, scenic beauty and their planning status.

Paragraph 176 of the revised NPPF specifies that 'great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to these issues.' It is advised that the scale and extent of development within AONBs should be limited. Paragraph 177 of the NPPF states that major developments should be refused in AONBs except in exceptional circumstances and where it can be demonstrated that they are in the public interest. No definition is given as to what constitutes major development within an AONB, however a footnote to this paragraph states that this is 'a matter for the relevant decision taker, taking into account its nature, scale and setting, and whether it could have a significant adverse impact on the purposes for which the area has been designated or defined'.

NPPF paragraph 11 explains the presumption in favour of sustainable development. For decision-making this means that proposals in accordance with the development plan should be approved. Part d says that where there are no relevant development plan policies or the relevant ones are out of date (for instance in applications involving new housing where there are housing supply or delivery deficits) then permission should be granted unless:

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- “i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed⁶; or
 ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole”.

Areas of Outstanding Natural Beauty are listed in footnote 6 and the most relevant policies in the Framework are paragraphs 176 and 177. A recent court of appeal case² confirms that, if a proposal causes harm to an AONB sufficient to refuse planning permission if there were no other considerations, then the presumption in favour (or ‘tilted balance’ expressed in ii) above) should be disengaged. The decision-maker should therefore conduct a normal planning balancing exercise, applying appropriate weight to each consideration, to come to a decision. This will of course include giving great weight to the AONB as required by NPPF paragraph 176.

² Monkhill Limited vs Secretary of State for Housing, Communities and Local Government and Waverley Borough Council Case No: C1/2019/1955/QBACF

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Harrietsham Parish Council

APPENDIX D

Chairman: Cllr Eddie Powell
Clerk: Mrs Amanda Broadhurst

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31st March 2021

Ms K Altieri
Planning Officer
Mid Kent Planning Support
Maidstone Borough Council
Maidstone House
King Street
Maidstone
Kent
ME15 6JQ

Dear Ms Altieri

**Re: 21/500786/FULL – Pilgrims Retreat, Hogbarn Lane, Harrietsham, Kent, ME17 1NZ
Retrospective application for a material change use of land for use as a caravan site including engineering works to create a ditch to the south of the site**

Harrietsham Parish Council feels that it would be inappropriate to make a recommendation with regards to the Officer's determination of this planning application and believe that any decision should be made by the Steering Group and Planning Committee. Councillors do however wish to bring the following points to your attention relating to the documents submitted as part of the planning application:

In section 6 of the application form, it states that the land is undeveloped but not currently vacant. These two answers contradict each other and the applicant should have been asked to clarify these answers when the application was being validated.

Travel Plan

4.2 Bus Service – There is no bus service in this very rural area, apart from the one 3.4 kms away, serving the A20 to Maidstone and Ashford. Even if the elderly residents would ever use a bicycle to get to the nearest bus stop, what are they to do with the bicycle once they get there?

5.5 refers to a Travel Plan Co-ordinator being employed on the site. Whilst it is stated that Kent County Council will be informed of this appointment, how will this Co-ordinator's work be monitored to see whether they are having any positive impact?

6.3 states that the Travel Plan is there to reduce the number of single occupancy car trips and that it would be reasonable to set a target of 62% for this type of journey within 5 years after first occupation of the site. It should be noted that some of the residents have probably been living on the site for this amount of time already, so this target cannot be met. It is also interesting to see that, from the last application in 2019, the target percentage has already fallen from 65%.

Transport Statement

This site is not safely accessible on foot or by cycle. Pilgrims Retreat is sited at the top of a steep hill with a gradient of 1 in 10 and the highway is mostly one track with pull ins and no lighting. Hedges on either side of the numerous bends in the road make this very unsafe for pedestrians, especially given the average age of the residents is 70.

2.8 states that there are no Personal Injury Accidents on Hogbarn Lane reported through Crashmap.co.uk in the 'most recent five-year period'. This is incorrect as there was an accident recorded between a van and car on the 25th January 2020, which took place on the lane between the application site and junction with Stede Hill on the way to the village.

Page 6 states that the traffic flow is generally low. This is not correct, since the increase in population at Pilgrims Retreat, the Parish Council has received complaints from people who have to access the Glebe Medical Centre, in Church Road, where there is no footpath. These complaints centre on the increase in car movements along the road, where older people and parents with prams are feeling increasing unsafe walking along the road.

As part of the 2019 application, it stated that "*Pilgrims Retreat is prepared to consider providing a weekly minibus so that residents undertake shipping trips sustainably. This will also assist residents who are unable to drive.*" This document (3.16) highlights that there is now a minibus, but the Parish Council is very disappointed to learn that this has had to be funded and run by the residents rather than the applicant, who does not appear to have offered any financial support for this service. This would indicate that the applicant has no interest in ensuring the site is as sustainable as possible.

Planning Statement

Having read page 14 (4.6), could the Officer confirm that Condition 8 '*The existing mobile toilet block sited within the area thatched and edged in red on the plan shall be removed within one month of this decision*' has been completed, as the table states '*No change proposed as this condition is spent*'. The wording does not confirm that this condition was met.

6.15 refers to 'new development in the countryside' referencing the MBC Local Plan Policy SP17. This clearly states "*3. Great weight should be given to the conservation and enhancement of the Kent Downs Area of Outstanding Natural Beauty. 4. Proposals should not have a significant adverse impact on the settings of the Kent Downs Area of Outstanding Natural Beauty. 6. The distinctive landscape character of the Greensand Ridge, the Medway Valley, the Len Valley, the Loose Valley and the Low Weald, will be conserved and enhanced as landscapes of local value.*" Any number of caravans above the 198 already agreed will further affect the distinctive landscape character of the Greensand Ridge, Len valley and Kent AONB. The retrospective application is in conflict with SP17 and is certainly not new development in the countryside.

MBC's Local Plan Policy DM1 (Principles of Good Design) has been largely ignored and additionally does not safely accommodate the vehicular traffic. Whilst there is mention of the possibility of installing and upgrading passing places in Hogbarn Lane and Stede Hill (Planning Statement 6.23) there is no firm confirmation that this will ever come to fruition.

FRA & Drainage Strategy

4.3 states '*It is recognised that the development site comprises a significant amount of impermeable hardstanding. As a result, there is a risk of localised flooding across parts of the site*

where there is insufficient drainage, as rain landing on the site could pond in small depressions within the access roads and parking areas. Although this is the case, if flooding were to occur, it is unlikely floodwater would reach a depth which would be significant enough to present a risk to the proposed caravans, all of which are elevated .05m above ground level.' It is not acceptable to simply indicate that, because caravans are 0.5m above ground level they will be ok, this risk should be mitigated. The Parish Council therefore remains concerned about the risk of flooding to residents.

Conclusion

Harrietsham Parish Council is concerned to read in the Travel Plan (3.4) *'the Applicant has identified the need to retain 217 caravans on site to safeguard the existing households'*. There is no rationale for this comment and it is not supported with any evidence. It appears to be included simply to try to ensure the applicant can continue to increase the number of homes above the 198-limit set by Maidstone Borough Council. These additional homes should be removed from the site, with the limit of 198 being given permanent residential status.

Homes have been moved around the site since 2019 and the Parish Council would request that the Planning Officer checks how many homes have been squeezed into the area of residential homes within the northern part of Pilgrims Retreat, to ensure that the amount of space legally required between homes is adhered to.

Due to the current size of the development, the Parish Council feels it would be appropriate to stop any future expansion of the site, with a permanent court injunction being put in place, in order to curtail the ongoing destruction to the surrounding area.

As a small section of ancient woodland has been removed to accommodate caravans in Pilgrims Corner, we would ask that further protection is put in place for this area at the front of the site, along with the parcel of ancient woodland owned by the applicant on the other side of Hogbarn Lane, which has previously had trees felled. Enhanced protection would ensure that there is no further destruction for caravans or camping paraphernalia in the future.

The Parish Council would request that Pilgrims Retreat is included in Harrietsham's housing number, when considering future development in the village, as part of the Local Plan review.

Yours sincerely

Harrietsham Parish Council

Harrietsham Parish Council

Chairman: Cllr Eddie Powell
 Clerk: Mrs Amanda Broadhurst

4 Southfields Way
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28th July 2021

Ms K Altieri
 Planning Officer
 Mid Kent Planning Support
 Maidstone Borough Council
 Maidstone House
 King Street
 Maidstone
 Kent
 ME15 6JQ

Dear Ms Altieri

**Re: 21/502369/FULL – Pilgrims Retreat, Hogbarn Lane, Harrietsham, ME17 1NZ
 Retrospective change of use of land to a caravan site, including the siting of 84no.
 residential caravans**

Harrietsham Parish Council's views have not changed since the last application (21/500786) was submitted. In respect of this most recent application, we wish to point out that, of the 400+pages of documentation, the following are a repeat of papers lodged in relation to the previous application, which is still awaiting determination on the planning portal:

Landscape and Visual Assessment 1 of 2
 Landscape and Visual Assessment 2 of 2
 Arboricultural Impact Assessment
 Travel Plan
 Travel Statement
 Flood Risk Assessment and Drainage Strategy
 Landscape Masterplan
 Composite Existing Site Plan
 Proposed Site Plan
 Existing Site Plan
 Composite Proposed Site Plan

Most of the new documents consist of multiple photographs of caravans which presumably do not have the requisite planning permissions and on which we have no comments. However, we are concerned that the caravan shown on Page 45 of the Preliminary Ecological Appraisal (photo 1), is perilously close to a ravine? Is this something that building control should be looking at?

We will therefore restrict our comments, in the main, to the following documents and request that, as the two applications appear to be running in parallel, our previous comments relating to 21/500786 are taken into account.

Flood Risk Report. 4.3

We remain concerned about the Flood Risk and Drainage Strategy. It is admitted that, "due to the significant amount of impermeable hardstanding, there is a risk of localised flooding across parts of the site where there is insufficient drainage". What measures will be put in place to prevent this? It is not acceptable to indicate that, because the caravans are 0.5m above ground level, that they will be ok. We therefore remain concerned about the risk of flooding.

Preliminary Ecological Appraisal

This seems to be a pointless exercise in as much that valuable habitat including ancient woodland has been destroyed. This area would have been classed as a Habitat of Principal Importance and most likely contained many protected species. Planting of shrubs and wildflowers do not compensate for the habitat destroyed. We would request that substantial native trees rather than whips are replanted.

3.27 If the owner has indeed removed a Habitat of Principle Importance (HoPI), without the necessary permission, shouldn't legal action be taken against him? The report states that there may have been reptiles, Roman snails and nesting birds; destroying their habitat is a criminal offence.

3.50 The statement regarding Great Crested Newts is incorrect. The record is associated with Harrietsham not Pilgrims Retreat, and numerous Great Crested Newts have been sighted in Harrietsham.

Page 37 refers to a holiday occupancy condition being attached to any permission granted. This is confusing since the Applicant has been fighting for full residential for many years. Should a 10-month licence be issued, what guarantee would there be that this would be strictly enforced? It is not sufficient to allow the applicant to police this, given past planning history.

Composite Landscape Masterplan

As we have already stated, planting with scrubs and wildflowers will in no way compensate for the destruction and loss of valuable habitat that has occurred in the past and we request substantial native trees are reinstated. This site would have been rich in wildlife had it not been wantonly destroyed and Harrietsham Parish Council would like it to be reinstated over time to its previous condition.

Vehicle Passing Strategy Plan Sheets 1 and 2

We reiterate Pilgrims Retreat is sited at the top of a hill with a gradient of 1 in 10, one track in width, no lighting and important 2-metre-high hedgerows on either side of the numerous bends. It is an extremely dangerous road for pedestrians and vehicles alike. The limited passing points do not change the nature of this rural road.

In answer to the comment 'Hedges on Stede Hill need to be kept trimmed' - these hedges are not owned by Pilgrims Retreat, so the applicant cannot guarantee this will happen. Furthermore, landowners are fully aware that these hedges are important habitat for wildlife and can only be "trimmed" at certain times of the year.

The illustrations are not what would normally be classed as passing points. These would normally be areas cut out in verges/banks to allow cars to pull off the carriageway for an oncoming vehicle to pass safely. The ones proposed are still on the main carriageway which is under Kent Highways control.

In the appendix to the Landscape and Visual Assessment, the Planning Inspectorate's decision dated 26th June 1997 has been included. Section 13 states "Access to the site from the A20 and hence the main M20/A20 tourist corridor through the county is by a narrow and winding country lane which climbs the steep scarp slope of the North Downs.... In many places de facto passing bays have been created by erosion of the verge such is the road's restricted width. A caravan site was permitted here in the 1960's, but I am in no doubt that such a proposal, were it made now, would be rejected on highway grounds. I also consider the deficiencies of the access road are so severe that a material increase in traffic generation from the appeal site would cause an unacceptable traffic hazard. However, the site can be lawfully used up to **the permitted maximum of 198 caravans.**

Planning Statement

As previously stated, 6.15 refers to 'new development in the countryside' referencing the MBC Local Plan Policy SP17. This clearly states "*3 Great weight should be given to the conservation and enhancement of the Kent Downs Area of Outstanding Natural Beauty. 4 Proposals should not have a significant adverse impact on the settings of the Kent Downs Area OF Outstanding Natural Beauty. 6 The distinctive landscape character of the Greensand Ridge, the Medway Valley, the Len Valley, the Loose Valley and the Low Weald, will be conserved and enhanced as landscapes of local value.*

It is staggering that this development was ever given permission. This development is a blight on the Kent AONB and can be seen for miles. To indicate on the application that it cannot be seen from the road is completely untrue. DM30 and SP17 refer. Any number of caravans above the 198 already agreed will further affect the distinctive landscape character of the Greensand Ridge, Len Valley and Kent AONB. The retrospective application is in conflict with SP17 and is certainly not new development in the countryside.

Affordable Homes Statement.

This statement is disingenuous to say the least. This refers to SP20 - retirement housing / extra care homes. The Applicant cannot try to put themselves in this category as they do not offer warden assistance or homes for residents requiring extra care - especially when they expect them to cycle up Stede Hill!

The homes, whilst being cheaper than a brick-built bungalow, still have to pay a ground rent as the residents do not own the land. This application alone shows how owning this type of property can come with lots of issues.

These homes are not included in the housing number for Harrietsham so, even if they did meet the criteria of Policy SP20, they are not counted towards the numbers of affordable homes needed in the Borough.

Affordable homes are ones that are shared ownership, usually with a housing association, not just lower priced homes, there are none of these on site. The Applicant is deliberately twisting the meaning of affordable homes to support the application.

The application documents still refer to 248 caravans. We are aware that not all these are occupied and are still seeking clarification of how many illegal caravans have been removed from the site and assurance they have not been simply moved around. Whatever homes are currently occupied are the only ones that should remain. The rest should be removed immediately with the land being reinstated.

Finally, the applicant states they received pre planning advice from the Steering Group. Harrietsham Parish Council finds it concerning that the Steering Group appear to have advised them to submit an application which is basically the same as the one submitted in March 2021 namely 21/500786 and which still remains in the system.

Yours sincerely

Harrietsham Parish Council

REFERENCE No: 19/502469/FULL		
APPLICATION PROPOSAL: Retrospective application (in part) for the change of use of land from a mixed use of holiday units (180 caravans) and residential (18 caravans) to a residential park home site (for full-time residential occupation) comprising the stationing of 248 caravans, including engineering works to create terracing, hardstanding, retaining walls, and the extension of the site along the south eastern boundary.		
ADDRESS: Pilgrims Retreat, Hogbarn Lane, Harrietsham, ME17 1NZ		
RECOMMENDATION: REFUSE		
SUMMARY OF REASONS FOR RECOMMENDATION: The development is contrary to local and national policy/guidance for the following reasons: <ul style="list-style-type: none"> - It fails to conserve and enhance the landscape and scenic beauty of the AONB, as well as the intrinsic character and beauty of the countryside. - It is considered major development in the AONB, and there are no exceptional circumstances to permit this development, and it has not been demonstrated that development is in public interest. - It would authorise 230 residential units in an isolated location that would also have poor access to public transport and be remote from local services and facilities. - It fails to demonstrate the residual cumulative vehicle movements associated with 230 new residential homes would not have a severe impact on the local road network. - It has failed to demonstrate the site can provide adequate provisions for foul and surface water disposal for 248 residential units. - It fails to provide or agree to provide the necessary contributions towards community infrastructure and affordable housing provision in the borough. 		
REASON FOR REFERRAL TO COMMITTEE: <ul style="list-style-type: none"> - Given the significant planning issues the application raises - Councillors Sams have requested the application to be reported to Planning Committee 		
WARD: Harrietsham and Lenham	PARISH: Harrietsham	APPLICANT: Sines Parks Luxury Living Limited AGENT: Pegasus Group
TARGET DECISION DATE: 06.09.19		PUBLICITY EXPIRY DATE: 04.07.19

RELEVANT PLANNING HISTORY

Whilst the site has an extensive planning history, the key permissions are highlighted in bold below:

- 19/500936 - EIA Screening Opinion for: Material change of use of land from mixed use (tourism [180 caravans] & residential [18 permanent residential]) to residential for 248 mobile caravans, including engineering works to create terracing, boundary walling, and extension of site along south-eastern boundary – EIA not required
- 17/506484 – Vary conditions 1 & 4 of 96/1132 for retention of expansion of area used for siting static holiday caravans and allow increase in number of static holiday caravans – Declined to determine
- 15/502481 - Submission of details pursuant to conditions 1 (landscaping) and 3 (future management of coppice) of MA/13/1435 – Refused
- ENF/11505 – Breach of planning control as alleged in notice is without planning permission, carrying out of engineering operations – Appeal dismissed and enforcement notice upheld with corrections – South-west corner of site to have hardstanding removed and land remodelled back to its original state
- **MA/13/1435 - Vary condition 4 of 96/1132 to allow expansion of area used for siting static caravans & alterations to land levels - Approved**
- MA/13/0724 - Vary condition 4 of 96/1132 to allow expansion of area used for siting static caravans and operational development to alter land levels – Refused
- MA/12/1910 - Advertisement – Approved
- MA/12/0388 - Extension to clubhouse to form indoor bowls facility – Approved

- MA/12/0378 - Erection of shop and offices building – Approved
- **MA/11/2190 - Vary condition 2 of 03/2343 to allow use of caravans, tents & static caravans for holiday purposes all year round – Approved**
- MA/11/1753 – (Retro) for mobile home for residential use by caretaker – Approved
- MA/11/0897 - Erection of double garage – Approved
- MA/11/0384 - Advertisement consent– Refused
- MA/08/1128 - Extensions and alterations to clubhouse – Approved
- MA/07/0142 – Vary condition 1 of 96/1132 to increase number of residential units from 18 to 27 with reduction of holiday units from 180 to 171 – Refused (dismissed)
- MA/03/2343 - Vary condition 2 of 96/1132 to extend season from 8 to 10mths - Approved
- **MA/02/2056 - Vary condition 4 of 96/1132, to enable static holiday caravans to be sited on area of southern part of site restricted to touring caravans - Approved**
- MA/97/3459 - Submission of details pursuant to condition 6(i) (scheme for provision & management of landscaping & for replacement lighting within area hatched & edged red on plan) of appeal decision related to 96/1132 - Approved
- **MA/96/1132 - Use of land for siting of 180 holiday caravans and 18 residential caravans (inc. extension of site) – Refused (allowed at appeal)**
- MA/85/1597 - Use of caravan for camping in addition to caravans - Approved
- MA/84/0907 - Managers accommodation, amenity rooms/toilets & pool - Approved
- MA/83/0934 - Construction of internal roads, car parking and caravan hardstandings for 178 holiday caravans and 1 residential caravan – Approved

OTHER RELEVANT BACKGROUND INFORMATION

- The Ancient Woodland along the front of the site and on the opposite side of the road from the site's entrance, and other trees within the site, are protected under Tree Preservation Order no. 10 of 2003.
- There is an Injunction Order on the site (made on 8th June 2012) to refrain from works to any tree protected by TPO no. 10 of 2003.
- There is an Injunction Order on the site (made on 18th April 2019) to (inter alia) prevent further caravans or mobile homes being brought on to the site.
- The application site currently does not have a valid site licence. The licence holder was a body corporate which is now dissolved. No transfer of the licence had been applied for prior to the company's dissolution. Whilst it is desirable for the operator to obtain a site licence, they may apply for a site licence but can only apply for the numbers granted under the extant planning permission i.e. 198 (being 18 full residential the remaining 180 for holiday occupation) and not the proposed number of 248 permanent residential. Therefore any licence at this time cannot be granted for 248.
- Planning contravention notices have been served on the site and from the responses returned to the Council, there are about 193 caravans being used unlawfully as permanent residences (in addition to the 18 lawful residential caravans) as opposed to being used lawfully as a caravan for holiday purposes only.

The Council is also aware of recent households moving onto the site on a permanent basis.

- In site licence terms there is a requirement for the spacing between occupied caravans to be 6m apart. The submitted plans show a cluster of 6 caravans in the south-western corner that are less than 6m apart. However, as explained above, Pilgrims Retreat does not have a valid site licence.
- A Council Building Control officer visited the site in July 2018, after a major wall had collapsed due to water pressure built up behind wall after heavy rainfall. This was found to be only a garden 'feature' wall. There is another wall (some 3m in height) designed as a retaining structure (rear of units 2-8 Castle Drive) for which a structural appraisal was requested by Building Control. This was received and passed to a Structural Engineer for assessment. One of the suggestions made by the Structural Engineer to the site owner was to have a full assessment of the road drainage system (by a competent drainage engineer), to include storm drainage from each residential unit as these are just discharging to the ground surface, adding to the failure of the road drainage system. This was only advisory as the Council's Building Control Department does not have the authority to pursue this matter. The Building Control Team has also confirmed that there is no ongoing involvement for Building Control, as the works are outside the Building Act 1984.

1.0 Summary of planning history and fall back position

- 1.01 Appeal decision references: T/APP/C/96/U2235/643713-4 and T/APP/U2235/A/96/273772/P6 (LPA reference: MA/96/1132), granted use of the land as a caravan and camping park (180 caravans or tents) for tourism relates purposes only and for 18 permanent residential caravans. The Inspector restricted the southern part of the site to touring caravans (with a max. of 25 at any one time) and attached a number of conditions to the consent. For reference, the plan below shows the site location plan related to the appeal decision and the hatched area is the 'southern' part of the site. For reference, the appeal decision is attached to this report (APPENDIX A).



- 1.02 Planning application reference: MA/02/2056 allowed static caravans in a restricted part of the southern area of site, where only touring caravans were previously allowed. This permission is considered to be the most relevant permission for the southern portion of the site, and officers are of the view that only 10 static holiday

units at the south-eastern end of the site can be lawfully stationed and occupied for tourism related purposes. None can be occupied for residential purposes.

- 1.03 The nineteenth residential unit permitted under MA/11/1753 was restricted by condition to caretaker accommodation only. It is understood this that this unit has since been removed.
- 1.04 MA/11/2190 allowed holiday accommodation (180 caravans) to be occupied any time of year.
- 1.05 Planning application reference: MA/13/1435 which was part retrospective and part prospective, allowed 60 additional static holiday caravans to be stationed in an area at the southern end of site, including operational works and an area of land in the southern corner to be planted with new woodland, and the retention of the coppice in the south-eastern corner of the site. The layout plan and decision notice for MA/13/1435 is attached for reference (APPENDIX B). Heart of the matter conditions (1 [landscaping] and 3 [future management of existing coppice woodland]) on this permission have not been discharged and notwithstanding this, what has been stationed/constructed on site is not as per the approved drawings. In terms of caravan numbers on the wider site, the applicant was not seeking more than the 198, as approved under the above referenced appeal decision.
- 1.06 Whilst operational works were permitted under application reference: MA/13/1435, it is considered that this permission remains incapable of full implementation as the works were carried out without approval of conditions. Furthermore, the coppice should have been kept free of development but has been built upon. As such, the majority of development relying upon this permission will not be authorised.
- 1.07 In summary, the site has lawful permission for 198 static caravans to be stationed on it, of which only 18 should be used as permanent residences; and the majority of the engineering works undertaken in the southern part of the site, which includes the terracing of the site, are unauthorised. The description of development (see below) is to seek regularisation of the development already carried out (retrospective) and works proposed to be carried out (prospective).

2.0 Site description

- 2.01 For the purposes of Maidstone's Local Plan, Pilgrims Retreat is within the countryside that falls within the Kent Downs Area of Outstanding Natural Beauty (AONB). The application site measures approximately 11ha in area.
- 2.02 The site is on the south-eastern side of the rural and unclassified Hogbarn Lane; and there are residential properties either side of the site, including 'Uplands' to the north-east, and 'Broomfield' to the south-west. Pilgrims Retreat is located on the slope of the North Downs, around 3.2km to the north of Harrietsham village; and more than 4.8km away from Lenham village. The nearest district centre, as defined by the Local Plan, is The Square in Lenham village which is more than 5.5km away from the site. The local road network is of narrow (unlit) country lanes with no pavements or cycle lanes that are largely at national speed limit; the nearest bus stops are found on the A20, some 3km away from the site.
- 2.03 The Ancient Woodland along the front of the site and on the opposite side of the road from the site's entrance, and other trees within the site, are protected under Tree Preservation Order no. 10 of 2003. Please note that the Ancient Woodland within the application site (red outline), was not in the 1994 revised Provisional Inventory of Kent's Ancient Woodlands, but was in the 2012 Inventory. There are public footpaths in the vicinity of the site, including a public footpath (KH209A) that

runs to the south-west of the site; and public footpaths (KH288 and KH286) running further to the south of the site.

- 2.04 The application site is within Flood Zone 1; there are no listed buildings on the site, with the nearest listed building (known as 'Lenniker') sited some 435m to the north-east of the site (Grade II listed); and there is small circular Area of Archaeological Potential some 370m to the south-east of the site.

3.0 Proposal

- 3.01 This application is for a material change of use of the land from a mixed use of holiday units (180 static caravans) and residential (18 static caravans) to a residential park home site (for full time residential occupation) comprising the stationing of 248 static caravans, including engineering works to create terracing, hardstanding, retaining walls, and the extension of the site along the south-eastern boundary.
- 3.02 The majority of the engineering works, which includes the terracing of the site, undertaken in the southern part of the site are unauthorised; the development involves full-time residential use across the site, with the addition of 50 more static caravans over and above that permitted by the Inspector's decision (increasing the number of full-time residential units by 230); the southern part of the site is now largely populated by static caravans; the site has been extended southwards; and protected trees have been removed without consent. The Council has served Planning Contravention Notices (PCNs) on the owners and occupiers and the results of these show that some 193 caravans are occupied as residences (other than the lawful 18 residential caravans) when the lawful use is as holiday accommodation only, albeit year round holiday use is permitted.
- 3.03 The development is also accompanied by a landscape mitigation plan. This shows new native trees and shrubs planted in the south-western corner of the site, and new native tree and hedgerow planting along the south-western boundary of the site. The plan also shows the retention of existing trees on the site, as well as new tree planting; and a wildflower grass strip and new woodland edge would be planted at the southern end of the site.
- 3.04 The assessment of this application will also focus on aspects that are normally covered by the site licence (i.e. drainage and sanitation). This is considered reasonable to do in this instance given that the (subjective and vague) site licence conditions relating to such matters are not currently enforceable as the site licence is invalid, and there is an obligation to ensure that the site provides adequate provisions of foul and surface water disposal for a site with 248 residential units. This is particularly when the development is part retrospective, and it is not known if the surface water and sewage disposal systems are adequate.

4.0 Policy and other considerations

- Local Plan: SS1, SP17; SP20; ID1; DM1, DM3, DM8, DM19, DM23, DM30
- National Planning Policy Framework (2019)
- National Planning Practice Guidance
- Landscape Character Assessment (amended July 2013) and 2012 Supplement (saved sections of LCA and Landscape Guidelines 2000)
- Natural England Standing Advice on Ancient Woodland
- AONB Management Plan (2014-19) & Landscape Design Handbook
- Harrietsham NHP: Pre-submission consultation withdrawn 5th May 2015

5.0 LOCAL REPRESENTATIONS

- 5.01 111 representations received:
- 109 representations (from residents of the site) are in support of application
 - 1 objection raises concerns over need for contributions to infrastructure; highway safety; and what impacts development has in terms of water pressure, drainage, flooding and sewage problems
 - 1 representation neither objects nor supports development, but does oppose another retrospective application on this site, and current site license should be enforced

6.0 CONSULTATION RESPONSES

6.01 **Councillors Sams:** If minded to recommend approval of application it is requested that application is reported to Planning Committee on the grounds of the size of the application and the impact on the health and wellbeing of the residents of the site and the wider community.

6.02 **Harrietsham Parish Council:** As there is an injunction on site, the parish council feels it would be inappropriate to make a recommendation. However, they wish to make the following (summarised) points:

- There are errors in Travel Plan
- How will Travel Plan Co-ordinator being employed on site be monitored?
- Site is not safely accessible on foot or by cycle
- Development can clearly be seen from within AONB and beyond
- Pilgrims Retreat not included in housing figures for Harrietsham
- Does not support local economic growth and not served by public transport
- Increase in vehicle traffic has unacceptable impact on local roads
- No exceptional circumstances; need not demonstrated; expansion not in public's interest
- Concerns site is unsafe, in terms of terracing and caravan bases
- Both foul and surface water have not been addressed
- Development will affect distinctive landscape character of AONB
- Glebe Medical Centre overstretched and local roads unsuitable for traffic generated
- Trees felled to accommodate additional caravans and there is a TPO in place on site
- Visitor parking removed contrary to LP policy DM23

Parish has sympathy for occupants and suggested common sense approach would be only the 212 properties currently occupied should have residential status. Additional dwellings should be refused and additional homes and bases removed, reinstating all of land devastated without permission. Due to current size of development, Parish feels it appropriate to stop future expansion of site with permanent court injunction put in place.

6.03 **Finstead Parish Council:** No representations received.

6.04 **Kent Downs AONB Unit:** Raises objection (APPENDIX C).

6.05 **Environmental Protection Team:** Raises no objection.

6.06 **KCC Highways:** Raises objection.

6.07 **Landscape Officer:** Raises objection.

6.08 **KCC Biodiversity Officer:** Raises no objection.

6.09 **KCC Drainage:** Raises no objection.

6.10 **Environment Agency:** Assessed application as having low environmental risk.

6.11 **Southern Water:** Raise no objection.

6.12 **Forestry Commission:** Confirms Ancient Woodlands are irreplaceable.

6.13 **Kent Police:** Raise no objection.

- 6.14 **KCC Economic Development:** Financial contributions requested.
- 6.15 **MBC Parks and Open Space:** Financial contributions requested.
- 6.16 **NHS Primary Care Team:** Financial contributions requested.
- 6.17 **MBC Housing Manager:** Affordable housing provision requested.

7.0 APPRAISAL

Main issues

Maidstone Local Plan (2017)

- 7.01 In accordance with Local Plan policy SS1 (Borough Spatial Strategy), the principal focus for new residential development in the borough is the urban area, then rural service centres and then larger villages. As set out in Local Plan policy SP17 (countryside), new development in the countryside will not be permitted unless it accords with other policies in this plan and does not result in harm to the character and appearance of the area.
- 7.02 Local Plan policy DM30 (design principles in countryside) allows for development in the countryside provided it is of a high quality design; it satisfies the requirements of other policies in the Local Plan; and it meets the following (summarised/relevant) criteria:
 - *Type, siting, materials, design, mass & scale of development and level of activity would maintain, or where possible, enhance local distinctiveness including landscape features*
 - *Impacts on appearance and character of landscape would be appropriately mitigated*
 - *Proposals would not result in unacceptable traffic levels on nearby roads*
- 7.03 Local Plan policy DM1 (principles of good design) seeks high quality design and for development to respond positively to, and where possible enhance, the local and natural character of the area. It also seeks development to respect the topography and respond to the location of the site and sensitively incorporate natural features such as trees, hedges and ponds worthy of retention in the site.
- 7.04 The development site is within the AONB and the statutory duty of the local planning authority requires that any proposals have regard for the purpose of conserving and enhancing the natural beauty of the AONB. Local Plan policy SP17 states that "*...great weight should be given to the conservation and enhancement of the Kent Downs AONB.*"
- 7.05 Local Plan policy DM3 (natural environment) seeks to protect positive landscape features such as Ancient Woodland; and Local Plan policies SP20 and ID1 relate to affordable housing and community infrastructure provision respectively. These matters will be discussed in more detail later on in this report.

Revised National Planning Policy Framework (2019)

- 7.06 What is key to note here is that the Council does have an up to date Local Plan and this is the starting point for decision making; and where planning applications conflicts with this Local Plan, permission should not usually be granted unless material considerations indicate otherwise.
- 7.07 The NPPF is also clear that good design is a key aspect of sustainable development; and that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions. Paragraph 170 of the NPPF also states that planning decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside.

7.08 Of most relevance, paragraph 172 of the NPPF states the following:

Great weight should be given to conserving and enhancing landscape and scenic beauty in.....AONBs, which have the highest status of protection in relation to these issues. Conservation and enhancement of wildlife and cultural heritage are also important considerations in these areas. Scale and extent of development in these designated areas should be limited. Planning permission should be refused for major development other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. Consideration of such applications should include an assessment of:

- a) the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;*
- b) the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way; and*
- c) any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.*

7.09 As set out in the NPPG, it is clear that the scale and extent of development in an AONB should be limited, in view of the importance of conserving and enhancing its landscape and scenic beauty. All development in the AONB needs to be located and designed in a way that reflects its status as a landscape of the highest quality.

Other relevant matters

7.10 Section 85 of the Countryside and Rights of Way Act 2000 places an explicit duty on relevant authorities to have regard to the purpose of conserving and enhancing the natural beauty of an AONB when exercising or performing any functions in relation to or so as to affect land in an AONB:

85(1): In exercising or performing any functions in relation to, or so as to affect, land in an area of outstanding natural beauty, a relevant authority shall have regard to the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty.

7.11 Pilgrims Retreat falls within the Dry Valleys and Downs Landscape (Area 7: Wormshill, Frinstead and Otterden Downs and Dry Valleys) within Maidstone's Landscape Character Assessment (amended July 2013). The guidelines for this area are to 'conserve and reinforce'; and the most relevant considerations are outlined below:

Key characteristics:

- *Landscape forms part of Kent Downs AONB*
- *Gently undulating landform of dry dip slope valleys and ridges*
- *Many large woodland tracts with oak and ash*
- *Chalk grassland pasture in dip slope valleys*
- *Arable fields on ridges*
- *Strong network of species rich native hedgerows*
- *Narrow winding lanes which most often are lined by hedgerows*

Summary of actions:

- *Conserve and reinforce large tracts of woodland, especially where AW is present*
- *Reinforce management of historical coppice by encouraging management of areas of unmanaged coppice stools*
- *Conserve good network of hedgerows & reinforce management of hedgerows*

7.12 The Kent Downs AONB Management Plan does not form part of the statutory Development Plan, but the Council has adopted it and it is a material consideration when assessing any planning application. The AONB Management Plan helps to set out the strategic context for development; it provides evidence of the value and special qualities of this area; it provides a basis for cross-organisational work to support the purposes of its designation; and it details how management activities contributes to its protection, enhancement and enjoyment. The following policies within this Management Plan are considered to be of particular relevance: SD1; SD2; SD3; SD7; SD8; SD9; LLC1, WT1, and WT7. In summary, these policies seek to conserve and enhance the natural beauty and distinctiveness of the AONB, which

is recognised as the primary purpose of designation; and development or changes to land use will be opposed where they disregard or run counter to the primary purpose of Kent Downs AONB.

- 7.13 There is also an AONB Landscape Design Handbook that includes landscape character areas (LCAs). The Kent AONB Unit has confirmed that the site lies in the Mid Kent Downs LCA, where overall landscape character objectives seek to conserve the small scale of roads and villages and the remote quality of the countryside; and to control urban fringe pressures. Within the Mid Kent Downs LCA, the site lies in the Bicknor LCA, specific guidelines include to conserve and manage the dense belts of broadleaf woodland; to create wooded edges to settlements; and to seek the use of sympathetic local materials such as brick, tile and flint.

Is application major development in the AONB?

- 7.14 For the purposes of paragraph 172 of the NPPF, this assessment is a matter of planning judgment to be made by the decision maker when taking into account all of the circumstances of the application and the site's context. It is also important to note that the phrase 'major development' is to be given its ordinary meaning, as established in High Court judgement *Aston v SoS for Communities and Local Government [2013] EWHC 1936 [Admin]*:

Paragraph 94: I am satisfied that the Inspector made no error of law when he determined that the meaning of the phrase major development was that which would be understood from the normal usage of those words.

- 7.15 It would therefore be wrong in law to:
- Apply the definition of major development contained in the Development Management Order to para. 172 of NPPF
 - Apply any set or rigid criteria to define 'major development'
 - Restrict the definition to proposals that raise issues of national significance.
- 7.16 When making a judgement as to whether a development in the AONB is major or not (in light of its nature, scale and setting), the potential for significant harm to the AONB should be a primary consideration. This however does not require (and ought not to include) a detailed assessment as to whether the development will in fact have such an impact.
- 7.17 It must be stressed again that as a matter of planning judgement, the decision maker must consider an application in its local context. This is implicit in High Court judgement *R. (Forge Field Society) v Sevenoaks DC [2014] EWHC 1895 (Admin)*, when it was noted that...."*major developments would normally be projects much larger than 6 dwellings on a site the size of Forge Field*". It appears that Linblom J had considered the possibility that, depending on local context, there may be situations where a project of 6 dwellings could amount to major development for the purposes of paragraph 172 of the NPPF.
- 7.18 Specific to this application, it is important to first consider what is authorised on the site. Notwithstanding the site's extension and the restrictions on the number of units permitted in the southern part of the site, the appeal decision (as referenced in paragraph in 1.01 above) does authorise the lawful use of the land for the stationing of 198 static caravans. However, even if simply considering the proposed increase in number of authorised static caravans on the site (which is 50), in this wider rural landscape setting and given that they would be residential in nature, the proposal constitutes major development. The authorisation of even 50 additional caravans is likely to have a significant adverse impact on the purposes for which the AONB has been designated.

- 7.19 Taking into account all of the above matters and the site's local context, it is considered that the development does constitute major development in the AONB. It is therefore necessary to apply the two tests as informed by the three mandatory assessments referred to in paragraph 172 of the NPPF.
- 7.20 There must be both exceptional circumstances for allowing the proposal and it must also be demonstrated that the proposal is in the public interest. The judgement in *R (Mevagissey Parish Council) v Cornwall Council [2013] EWHC 3684 (Admin)* sets out the approach by which decision-takers should address the planning balancing exercise, such that: "*In coming to a determination of such a planning application under this policy, the committee are therefore required, not simply to weigh all material considerations in a balance, but to refuse an application unless they are satisfied that (i) there are exceptional circumstances, and (ii) it is demonstrated that, despite giving great weight to conserving the landscape and scenic beauty in the AONB, the development is in the public interest*". The assessments referred to in paragraph 7.08 above (a, b & c of NPPF paragraph 172) should be considered and these are returned to later.
- 7.21 I shall apply the balancing exercise in my conclusion section of this report.

Location of development and highway safety implications

- 7.22 Whilst the site is authorised to have 198 static caravans on the site, only 18 of these should be in permanent residential use. It is not considered that the authorised 18 residential units constitutes a 'settlement': (see *Braintree DC v SSCLG, Greyread Ltd & Granville Developments Ltd [2018] EWCA Civ 610*), and 230 additional residential units here would be remote from any other recognisable settlement in the wider countryside. Whilst the situation on the ground is different (i.e. from evidence collected from the PCN's there are about 193 caravans being used unlawfully as permanent residences [in addition to the 18 lawful residential caravans] as opposed to being used lawfully as a caravan for holiday purposes only), in planning terms the other static caravans on the site should only be used for bona fide tourism related purposes (albeit they can be used 12 months of the year), and whatever sense of community they may create, this should be transient and cannot be considered as a 'settlement' for the purposes of the NPPF, as they are not authorised dwellings. It is therefore a matter of fact and planning judgement that the development would add 230 isolated homes in the countryside, and not one of the circumstances set out in paragraph 79 of the NPPF applies.
- 7.23 The development would result in the authorisation of 230 new residential units at Pilgrims Retreat. The nearest village (Harrietsham) is approx. 3.2km away; Lenham is more than 4.8km away; the local road network is of narrow country lanes that are unlit with no pavements or cycle lanes and are largely at national speed limit; the nearest bus stops are found on the A20; and to reach the site from the A20 is via a steep hill (Stede Hill). Without evidence to the contrary, there is also no assumption made that all residents are retired and so travelling for work purposes must also be considered.
- 7.24 The agent has confirmed that Pilgrims Retreat does have an all year round swimming pool; there is a bar on site (closed Mondays); there is a restaurant in the bar that is open six days a week (10:30-16:30); a mobile fish and chip van which attends the park every Monday from 5-7pm; the currently closed shop on site is being refurbished and due to re-open in September 2019; and there are discussions about having a separate meeting hub for residents where they will be able to have tea and coffee if they do not wish to use the on-site bar facilities.

- 7.25 With the above considered, it is not realistic to say that the majority of residents (who are currently over 50yrs of age) will regularly walk and cycle to local services and facilities or places of employment; and whilst there are some facilities on site, occupants of the site are/will be heavily reliant on the private car for their day to day living. The Highways Authority are also of the view that the site is unsustainable in terms of its location.
- 7.26 Furthermore, as set out in paragraph 103 of the NPPF, "*significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes*". This development (for 230 new dwellings) is considered significant; it is in an unsustainable location; and it is not accepted that the development (even with the introduction of a minibus service running into town three times a week, as briefly suggested in the submitted Transport Technical Note [para. 4.13]) could be realistically made acceptably sustainable. So whilst it is accepted that sustainable transport opportunities are likely to be more limited in rural areas, the lack of any apparent available or achievable sustainable transport options for 230 new dwellings would see a major development unable to adequately support the objectives set out in paragraph 102 of the NPPF which seek to ensure that transport issues are considered from the earliest stages of plan-making and development proposals. The Highways Officer is also of the view that the development does not meet the objectives set out in paragraphs 102 and 103 of the NPPF; and without sustainable transport options being available, a Travel Plan in their view has little merit. This weighs against the development.
- 7.27 The Highways Authority has reviewed all of the submitted information relating to transport, and has considered the application as one for 230 new homes. Within the submitted information, it has not been established what proportion of residents on the site are retired or employed, and this is considered to be an issue of fundamental importance in transport terms. Without clarity, the Highways Authority consider the surveys undertaken to have no value and have no basis for undertaking projections/forecasts. Furthermore, the site is in a rural area accessed by rural, narrow roads. The applicant previously undertook a conflict analysis for Hogbarn Lane (para 5.10 of original Transport Statement); and this document also makes reference to rural lane capacity research (para 5.11). Without an impact assessment undertaken for 230 new homes, The Highways Authority objects to the development. This weighs against the development.
- 7.28 No objection is raised to the application in terms of parking provision.

Visual impact

- 7.29 The appeal permission granted 198 caravans (18 of which for permanent residential use), but restricted the area to which these could be stationed on to the northern part of the site. Permission MA/02/2056 then permitted the stationing of 10 caravans on the southern part of the site for touring purposes only but did not increase the overall numbers permitted on the whole site.
- 7.30 MA/13/1435 granted permission for 60 static holiday caravans to be stationed in the southern end of site (leaving 138 in the northern section), and included operational works and an area of land in the southern corner to be planted with new woodland, and the retention of the coppice in the south-eastern corner of the site. However, as previously explained, heart of the matter conditions on this permission have not been discharged; notwithstanding this, what has been stationed/constructed on site is not as per the approved drawings; and whilst this permission remains extant, it remains incapable of full implementation and the majority of development relying upon this permission is not authorised.

- 7.31 As such, in terms of fall back the majority of the engineering works undertaken in the southern part of the site are unauthorised; and planning permission MA/02/2056 is considered to be the most relevant permission for the southern portion of the site (in terms of what can be lawfully stationed on this part of the site). The submitted Landscape and Visual Assessment (LVA) considers the baseline to be that at which planning permission was allowed in 2013, but as set out this is considered to be incorrect.
- 7.32 This application should be tested against the purpose of the AONB designation, which is to conserve and enhance the natural beauty of the AONB (in accordance with Local Plan policy and the NPPF), whilst having due regard to the fall back position.
- 7.33 In general terms, the submitted LVA draws conclusions that the landscape sensitivity of the site as being 'low to medium'. However, both the Council's Landscape Officer and the Kent Downs AONB Unit disagrees with this conclusion. Instead, the sensitivity of the landscape should be considered as 'high' or 'very high', given its AONB location. Indeed, whilst not prescriptive, the Landscape Institute's *Guidelines for Landscape and Visual Impact Assessment* makes it clear that landscapes that are nationally designated (such as AONB's) will be accorded the highest value in the assessment. The Landscape Officer does not consider the LVA to have reached an appropriate conclusion, because it has not considered the true baseline; and it has not attached adequate weight to the importance of the nationally designated AONB.
- 7.34 The Kent Downs AONB Unit's comments are summarised below:
- *Such development rarely constitutes appropriate development, as utilitarian design of caravans fails to conserve or enhance local character, qualities and distinctiveness of AONBs. Therefore it fails to meet key requirement of conserving & enhancing landscape & scenic beauty within AONBs.*
 - *Significant extension in number & density of caravans, in remote location, would fail to comply with guidelines for development in Mid Kent Downs LCA - would clearly be in conflict with objectives of KD AONB Management Plan as well as national & local plan policies.*
 - *Clearance and levelling of 0.8ha of coppiced valley side with artificially engineered platforms to accommodate expanded area of permanently stationed caravans does not constitute a 'minor' change to landscape, nor would it be a 'low to medium' magnitude of change to landscape character.*
 - *Harm is exacerbated by removal of existing vegetation/trees; & remodelling of land levels to form artificial terraces & retaining walls, introducing suburban features in rural location.*
 - *Harm arises given increase in lighting & caravan numbers and their permanent occupation.*
 - *Increase in amount & density of caravans doesn't allow for significant planting between units to help assimilate them into rural surroundings; & shown landscape mitigation is very meagre, failing to adequately compensate for substantive harm resulting from proposal.*
- 7.35 The application site is well screened from Hogbarn Lane, however, public views of the development are possible from Stede Hill, Flint Lane and the public footpath (KH209A) to the south-west of the site. In any case, NPPF advice relating to the countryside is unambiguous when it states that it is the intrinsic character and beauty that should be protected, as well as the landscape and scenic beauty of an AONB. It is considered that this protection is principally independent of what public views there are of the development, and associated more to the protection of the nature of the land in itself.

- 7.36 This view is echoed by the Kent Downs AONB Unit, who also considers it incorrect to assess a lower impact on the landscape character on the basis of a lack of wider visibility of site:

"We consider the high sensitivity of the site and a high magnitude of change would give rise to a major adverse (i.e. significant) effect on landscape character. Furthermore, reducing the assessed levels of harm on the basis of the small scale of an area affected, and its visual dissociation with the surrounding area is wholly inappropriate. Whilst the site is relatively contained within the wider landscape and the development may not affect wider long-distance views, this is not the sole test for the acceptability of development in an AONB. The AONB is a wide and large expanse of area and any development which significantly detracts from elements which contribute to that wider natural and scenic beauty would not conserve or enhance it. This development would have a detrimental impact on many of the special characteristics and qualities of the Kent Downs, including landform and views; tranquillity (through introduction of additional lighting); and biodiversity rich habitats and woodland and trees. This is contrary to the conclusion of the submitted LVA that states: '...there would only be a very minor impact on very few elements of the special qualities and characteristics of the AONB'.

- 7.37 To summarise, with regards to the Maidstone Landscape Character Assessment, the Landscape Officer does not consider the development to be appropriate in terms of the relevant recommended actions for landscape character area in which it sits; and further to this, proposed mitigation planting is considered to be wholly inadequate and inappropriate to the location. The Kent Downs AONB Unit also conclude by stating that the development weakens the characteristics and qualities of the natural beauty, having a significant detrimental impact on the landscape character; and the development disregards the primary purpose of AONB designation, namely the conservation and enhancement of its natural beauty, contrary to paragraph 172 of NPPF and Local Plan policy SP17.

- 7.38 It should also be stressed that the whole southern section of the site is covered by TPO no. 10 of 2003, which is an effective landscape designation. As MA/13/1345 is valid but not capable of further implementation, the baseline line for assessment should be with the trees in position on this part of the site (shown on plan APPENDIX B). Whilst the loss of some trees was accepted under MA/13/1345, as is evident on the plan, it was important to retain the large coppice of TPO trees and to establish substantial (and appropriate) new tree planting on the site, in terms of mitigating the landscape impact of the development. The development now being considered has largely removed the trees on site, and poor/limited mitigation planting has been proposed. As explained in more detail below, the loss of this swathe of trees is to the detriment of the scheme in visual amenity terms; and the application fails to provide adequate mitigation to compensate against the loss of these positive landscape features.

- 7.39 In considering the consultation responses, it is agreed that the site's extension; the level of engineering works undertaken within the southern section of the site; the addition of 50 additional caravans; the loss of protected trees; and the increased light pollution resulting from more static caravans that are occupied permanently, will not conserve and enhance the landscape and scenic beauty of the Kent Downs Area of Outstanding Natural Beauty, and it would not positively recognise the intrinsic character and beauty of the countryside hereabouts. The adverse impact upon this nationally designated landscape of the highest value weighs against this development.

Arboricultural/landscaping implications

- 7.40 As previously set out, whilst planning application reference: MA/13/1435 remains valid, it is incapable of full implementation as the works were carried out without approval of conditions; and notwithstanding this, what has been

stationed/constructed on site is not as per the approved drawings. As such, any development relying upon this permission will not be authorised.

- 7.41 The development submitted under MA/13/1435 included the retention of the protected coppice woodland in the south-eastern corner of the site; the retention of existing trees on the lower section of the site; the planting of interspersed specimen trees and a new hedgerow along the southern boundary of the site; and the creation of a new woodland area in the south-western corner of the site (stated at some 400 new trees). It is clear that the protected trees that were found in the lower section of the site have largely been removed; and the new woodland, specimen trees and hedgerow have not been planted. Instead, the lower section of Pilgrims Retreat is densely populated with static caravans and associated roads/hardstanding.
- 7.42 It must be made clear that the officer was minded to recommend approval of the development shown under MA/13/1435 on the basis of the importance of substantial mitigation as shown on the approved plans. It should also be noted that the development approved under MA/13/1435 did not increase the number of caravans on the site, which remained at 198, allowing for a softer less intense development of caravans across the whole site. Indeed, the committee report's conclusion states:

6.2 Proposed scheme includes stationing of 58 additional caravans, 11 lower than previously proposed, and which when combined with those already on site would be below the 198 permitted. Proposal includes significant amount of landscaping with a mixture of approximately 400 new native trees and shrubs that are in keeping with the landscape character of the area. A significant woodland area is now proposed in the southwest corner which would soften public views from the west and south here. The mix of new species would also result in an enhancement in biodiversity from the previous hawthorn scrub.

6.3 Application would allow unambiguous control over remaining landscape areas through conditions and landscape management and maintenance regimes.

6.4 Site is an existing caravan site which is visible and out of place in the Kent Downs AONB. The proposal, whilst extending the site southwards, due to the extensive new landscaping and changes to the banks to soften their appearance would not result in significant additional harm to the character and appearance of the Kent Downs AONB.

6.5 Overall, I consider that the proposed reduction in caravans and increases in landscaping are sufficient to overcome the previous reasons for refusal and on this balanced case I consider that the harm caused is not so significant to warrant refusal when balanced against the landscape replacement, biodiversity improvements and future control over the site, and permission is recommended.

- 7.43 The current layout of the site has retained some existing trees. However, the Council's Landscape Officer questions their suitability for long-term retention, given the significant encroachment into the root protection areas during construction works; the significant changes in levels likely to lead to premature decline; and the inappropriate proximity of protected trees to occupied units that are resulting in applications for works to protected trees because of safety fears as the trees are 'too close to park homes'. As will now be summarised, the Landscape Officer objects to the development for the following reasons:

Direct loss of trees and woodland

- 7.44 Whilst an assessment cannot be made on the quality of the trees/woodland lost, the retention of this planting was key in the determination of MA/13/1435 in terms of screening the development and to safeguard amenity space for residents. Retained mature tree stock is an important visual element of large sites, acting as a foil to built forms, filtering views and providing some screening in longer views to ensure developments sit well in surrounding countryside.

Indirect loss of trees & pressure for inappropriate pruning/removal

- 7.45 The site layout has not respected the location of existing trees, which has resulted in development that is inappropriately close; and development has clearly taken place within RPAs, contrary to advice contained within BS5837:2012. This includes not only the siting of park homes within RPAs, but extensive ground level changes, excavations that have resulted in root severance, and ground compaction from the use of heavy machinery. It is clear that most of retained tree stock is suffering as a result, with many trees showing signs of premature decline.
- 7.46 The inappropriate relationship between retained trees and park homes has already led to works, some of which have been subject of applications under the TPO, to prune or remove trees simply on the basis they are too close to homes, or because the trees are showing signs of decline. Such applications are particularly difficult to resist when the juxtaposition of mature trees and park homes mean that even minor deadwood failures could result in building and property damage, or injury to occupiers. Occupants are clearly concerned about fear of failure in our experience of dealing with applications, and also complain about other problems such as leaf litter and shading. The result of this situation is any retained mature trees will either die or be pruned to such an extent they have little, if any, public amenity value.

Inadequate space for mitigation planting

- 7.47 The cramped site layout and lack of space around and between the park homes does not allow for new planting of a type appropriate to the landscape character of area to mitigate extensive tree loss on the site. This includes the trees already lost, and likely to be lost as a result of premature tree decline and pressure to prune or fell. The many Chusan Palms planted are not considered to be adequate mitigation, as these are not trees, but woody herbs and certainly not a species that are appropriate to the character of area. Replacement tree planting should be in accordance with Council's Landscape Character guidance, with species of a suitable ultimate size to ensure the development sits well in surrounding landscape, with sufficient space to ensure they can reach mature size without conflict. The layout does not provide sufficient structural landscaping space to enable this.

Summary

- 7.48 It is considered that the development has and will result in permanent tree loss on a scale that is harmful to the amenity of park home users and the wider landscape; and there is insufficient space to be able to provide mitigation planting to help screen and integrate the development into the surrounding countryside. This weighs against the development.

Foul and surface water disposal

- 7.49 The development site is within Flood Zone 1 and the Environment Agency has assessed the application as having a low environmental risk and has raised no objections (notwithstanding the applicant may be required to apply for other consents directly from the Environment Agency). Southern Water has also raised no objection; and the Environmental Protection Team would seek details of the packaged treatment plant. The KCC Drainage Team has also assessed the development as a low risk development and require no further information but do comment that the proposed improvements to the ditch, through incorporating check dams, should be applied to the trench as the attenuation volume within the ditch would be increased.
- 7.50 Notwithstanding this, it is considered important under this planning application to ensure that the site provides adequate provisions of foul and surface water disposal for a site with 248 residential units. Indeed, this development is in part retrospective, and it is not considered appropriate to deal with these matters by way of condition if the application was to be approved, when the site is occupied

and it is not known if the surface water and sewage disposal systems are adequate. Furthermore, the site licence conditions relating to drainage and sanitation, which in any case are model conditions that are very subjective and vague, are not currently enforceable as the site licence is invalid.

- 7.51 As set out in the amended FRA and Drainage Strategy Report (Aug 2019), the existing situation is as follows:

SURFACE WATER DRAINAGE: Rainwater drains from the roofs of the caravans via downpipes onto impermeable surfacing. Several gullies across the site then transport water to the ditch at the southern end of site. Water overflow also goes to the ditch.

FOUL SEWAGE DISPOSAL: There are 3 package treatment plants on the site that also discharge to the southern ditch. The package treatment plant at the south-western corner of site is overflowing, with untreated foul waste draining into small ditch. The Environment Agency are apparently aware of this ongoing issue and the applicant is waiting for an insurance agreement to provide a replacement treatment plant.

- 7.52 In terms of surface water drainage, the submitted report considers infiltration SuDS presents the most viable solution for draining surface water run-off. It goes on to state that testing will need to be carried out to confirm the viability of this across the site, and to determine whether or not the ditch has sufficient capacity to accommodate run-off for 248 residential caravans. Based on uncertainty with respect to the percolation rate of silts, the report recommends that infiltration testing is undertaken in the base of the existing ditch to confirm the existing permeability of the ground. This testing has not been carried out.

- 7.53 It is also worth noting here that there was the incident where a build up of surface water led to the collapse of a non-structural wall which could have had fatal consequences. Furthermore, with regards to the retaining wall to the rear of units 2-8 Castle Drive, for which a structural appraisal was undertaken by the applicant, the subsequently recommended assessment of the road drainage system (by a competent drainage engineer) does not appear to have been carried out or submitted as part of this planning application. Whilst this was only advisory at the time, as the Council's Building Control Team did not have the authority to pursue this matter, without it there remains uncertainty and there is the potential risk to health if this wall did indeed collapse.

- 7.54 In terms of foul sewage disposal, the report confirms that the performance of the treatment plants has not been assessed and it is not known if they also have sufficient capacity to manage the volume and rate of wastewater discharge draining to them from 248 caravans in residential use. The report recommends surveys to be carried out to determine the current capacity and performance of the network. This testing has not been carried out. The submitted information also fails to explain how, given the re-graded land and the cut and fill technique used to station caravans on the land, how the applicant is going to deal with the overflowing tank, or indeed (if required) replace or install new underground tanks on the site. It has also not been demonstrated that there is room on the site to deal with this issue, i.e. if new and/or replacement tanks will be required, what with any underground tanks having caravans above them, or very close to them.

- 7.55 This retrospective application has failed to demonstrate that surface water and sewage disposal can be dealt with appropriately on the site; and it is evident that the development is likely to create a requirement for new and/or improved surface water and sewage disposal infrastructure. The development is therefore contrary to Local Plan policy ID1, as it has failed to demonstrate the site has sufficient infrastructure capacity available either now or in the immediate future, and this raises a health and safety risk for occupants of the site.

Biodiversity implications

- 7.56 The Biodiversity Officer confirms that because the site has already been cleared, it is accepted that the preliminary ecological appraisal is sufficient to determine application, and no further ecological information is required.
- 7.57 In summary, the Biodiversity Officer is of the view that whilst replacement woodland planting and the creation of wildflower grassland strips would not completely mitigate for the loss of the woodland, it would create habitats (if managed properly) that will benefit biodiversity. If minded to approve this application, species would need be secured by way of condition with a habitat establishment plan (to be native and representative of those trees found within the adjacent woodland).
- 7.58 Given that the habitats within and adjacent to the site area are likely to experience high recreational pressure and impacts from development (including increase in lighting), the Biodiversity Officer has recommended the need for a Landscape and Ecological Management Plan to be produced and implemented. If this application were to be approved, imposing such a condition is considered reasonable.
- 7.59 Again, if minded to approve this application, suitable conditions would also be imposed for a bat sensitive lighting plan, and for further ecological enhancements as set out in the submitted preliminary ecological appraisal.

Ancient woodland

- 7.60 Ancient Woodlands are irreplaceable, and the NPPF (paragraph 175) is clear in that *"...development resulting in loss or deterioration of irreplaceable habitats (such as ancient woodland) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists"*
- 7.61 The woodland within the application site that runs along the roadside boundary is Ancient Woodland. Whilst static caravans and associated hardstanding etc. are within 15m of this woodland, the fallback position remains that the original appeal decision did allow for 198 static caravans to be sited in the northern section of the site; and it is accepted that the development has been within 15m of this Ancient Woodland before it was designated as such in the 2012 Ancient Woodland Inventory. It is therefore considered unreasonable to now raise an objection on this issue or insist on a buffer zone here. Notwithstanding this, the woodland in question is now designated Ancient Woodland and protected under TPO no. 10 of 2003, and so any potential works to the woodland in the future will require the consent of the local planning authority.
- 7.62 The Biodiversity Officer recommends the need for the Ancient Woodland within the application site, as well as the woodland across the road from the site (within the applicant's ownership) to be actively managed to minimise impacts from the development. Whilst a caravan site has been here for many years, the development would see an addition of 50 more static caravans that would be used for residential use above what has been previously allowed in planning terms. With 248 households permanently on the site, there is expected to be increased pressure on the Ancient Woodland, in it being used for recreation purposes by residents. The Landscape Officer also makes the point that the loss of the trees and woodland within the site, and the lack of amenity space around the caravans is likely to increase recreational activity in the Ancient Woodland across the road from the site, which is discouraged by current planning policy and standing advice. If this application were to be approved, it is therefore considered reasonable to impose a condition to secure an appropriate management plan of the woodland, to minimise impacts from the proposed development.

- 7.63 For clarification purposes, the development is not within 15m of the Ancient Woodland to the south-east of the site; and this woodland is also on land not in the ownership of the applicant.
- 7.64 As an aside, it should be noted here that the submitted Arboricultural Impact Assessment (para. 2.6) suggests that the Ancient Woodland is of 'local importance', on the basis that the local landscape is relatively rich in this habitat. This view is strongly refuted, and the NPPF and current standing advice is clear that it does not allow for such 'downgrading' of Ancient Woodland, which is considered to be of national importance and is accordingly afforded a high status in planning policy. Indeed, there appears to be no precedent set whereby Ancient Woodland was considered to be of lesser importance due to a perceived local abundance.

Community infrastructure contributions

- 7.65 This development is excluded from the CIL Regulations. This does not mean that financial contributions cannot be sought via s106 of the Town and Country Planning Act 1990. Financial contributions through s106 are used to mitigate the specific requirements of a development site, in order to make the development acceptable in planning terms. Any request for such contributions needs to be scrutinised in accordance with Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010. The Reg 122 criteria sets out that a planning obligation may only constitute a reason for granting planning permission for the development if the obligation is -

- (a) Necessary to make development acceptable in planning terms;
- (b) Directly related to development; and
- (c) Fairly and reasonably related in scale and kind to development.

- 7.66 In this regulation "*planning obligation*" means a planning obligation under s106 of the TCPA 1990 and includes a proposed planning obligation.
- 7.67 The Council's Regulation 123 List identifies the infrastructure types and/or projects which it intends will be, or may be, wholly or partly funded through s106 planning obligations. The Infrastructure Delivery Plan (IDP) provides the analysis for how specific infrastructure delivery requirements will be met.
- 7.68 Specific to this application, the development is for 230 new residential units on the site, to be occupied by persons of 50yrs of age and over. A development of this scale will clearly place extra demands on local services and facilities and it is important to ensure that this development can be assimilated within the local community. As such, suitable financial contributions to make the development acceptable in planning terms should be sought in line with the relevant policies of the Maidstone Local Plan (2017), if the application were to be approved.
- 7.69 The relevant statutory providers have been consulted on this development, and they have confirmed that their financial requests are CIL compliant:
- 7.70 The KCC Economic Development Team has requested the following:
- *Primary education*: £764,520 towards expansion of Harrietsham Primary School
 - *Secondary education*: £946,450 towards extension of Maplesden Noakes School
 - *Libraries*: £33,272.46 towards improvements at Lenham library to accommodate additional borrowers
 - *Community learning*: £7,060.27 towards additional resources for new learners generated by this development
 - *Youth services*: £1,951.62 towards additional resources for youth service locally at Lenham School
 - *Social Services*: £14,618.80 towards local additional resources and community building improvements

- 7.71 The NHS Primary Care Team has requested a contribution of £193,752 to go towards the refurbishment, reconfiguration and/or extension at the Len Valley Practice (Lenham and Harrietsham Surgeries).
- 7.72 There is no publicly available open space within the site and so the Council's Parks and Open Space Team are seeking an off-site provision contribution, for the development to be in accordance with the Local Plan policy DM19. This financial request totals £362,250.00, to go towards developing, refurbishing, or maintaining existing amenity green space, play facilities, outdoor sports, allotments/community gardens, and natural/semi-natural publicly accessible open space, within a 2 mile radius of the development (which includes areas in Harrietsham and Lenham).
- 7.73 It is considered that the requested contributions relating to the NHS, parks and open space, and economic development (excluding primary and secondary education) do meet the tests of Regulations 122 of the Act and as such should be provided by the applicant if this application were to be approved.
- 7.74 The agent has questioned the figures for the education contributions, as they do not consider this to wholly relate to, or be reasonable for 230 units that are to be occupied by persons over 50yrs old; and it has been suggested that a condition is attached to any potential permission which requires occupants (or at least one occupant per caravan) to be over 50 years old. However, whilst national advice is to take a positive approach to schemes that might address the provision of specialist housing for older people, other than some communal facilities, there is little to suggest that the caravans offer specialist housing for older people. Furthermore, the location is remote and not particularly well suited to provide permanent accommodation for older people. Moreover, as the application is partly retrospective, the condition would not regulate the occupancy of the existing residential caravans or those used unlawfully as residential caravans. The caravan occupants generally own the caravans and pay rent under the Licence Agreement to station the caravan on the plot. The Licence Agreement requires sellers to obtain approval from the Park Owner to a prospective buyer of the caravan (unless a family member) but it does not restrict the onward sale of the caravan to solely persons over 50. If the Park Owner does not purchase the caravan, it appears that it can be sold to persons under 50. It is therefore not clear how the requirement could be lawfully or reasonably imposed on existing or on all future caravan owners. The potential restrictive condition cannot therefore be given other than limited weight. Notwithstanding this, it is also not entirely out of the question that residents may have children, or adopt or foster children, or are/become legal guardians of children; and the agent has failed to acknowledge this. Given that the imposition of an age restriction condition would not pass the 6 tests of when a planning condition should be imposed (as set out in the NPPG), the development should be liable for financial contributions towards primary and secondary education, and in this respect the requested contributions do meet the tests of Regulations 122.
- 7.75 The agent also argues there are significant overlaps between the CIL charging and s106 requirements, and questions whether it is lawful in requesting s106 contributions for the same piece of infrastructure. In response, the Council must ensure that applicants are not charged twice for the same infrastructure, and this is done by clearly stating on an infrastructure list how things are to be funded. The IDP also assists the Council in identifying where the infrastructure contributions will be coming from. In this instance, the IDP does not provide clarification on this point and therefore reliance is made on the CIL 123 list. This confirms that the above contributions can be sought by S106. The applicants argument is therefore not accepted.

- 7.76 To clarify, the agent has not presented an analysis or counter-offer to the CIL compliant financial requests, and they have not submitted a legal mechanism to secure any planning obligations to mitigate the development's impact. Based on the impact to the landscape character, and the inability to mitigate/compensate for this, further negotiations on acceptable contributions have not been progressed. If Members were minded to approve the application, a resolution on the appropriate contribution which met the 122 test would need to be negotiated.

Affordable housing provision

- 7.77 The Housing Manager for the Council has reviewed the agent's response with respect to affordable housing provision, and their comments will be set out below.
- 7.78 The agent states that the Council will seek provision of 20% affordable housing for schemes that provide for retirement housing and/or extra care homes. It appears they are classing this development as a retirement housing scheme and therefore take the view that 20% affordable housing should be provided. Firstly, this development is not considered to be a retirement housing scheme in the strictest sense. Such housing developments are similar to sheltered housing, but built for sale, usually on a leasehold basis, where all the other residents are older people (usually over 55). Properties in most schemes are designed to make life a little easier for older people - with features like raised electric sockets, lowered worktops, walk-in showers, and so on. Some will usually be designed to accommodate wheelchair users; and are usually linked to an emergency alarm service (sometimes called 'community alarm service') to call help if needed. Many schemes also have their own 'manager' or 'warden', either living on-site or nearby, whose job it is to manage the scheme and help arrange any services residents need. Managed schemes will also usually have some shared or communal facilities such as a lounge for residents to meet, a laundry, guest accommodation etc. It is appreciated that this is not a bricks and mortar scheme, but there appears to be limited or no such facilities/services of this nature offered to the occupants on site. There is also no presumption that all occupants on the site are retired.
- 7.79 The agent notes that in exceptional circumstances the Council will consider off-site contributions towards affordable housing where on-site provision is not feasible. The Housing Manager remains of the view that a registered provider would be reluctant to take on permanent residential caravans as affordable housing. This means a non-registered provider (who would not be regulated) would probably be required to manage the caravans which gives cause for concern. This application raises a number of management concerns and queries for the Housing Manager, such as licence/site fees and the length of licence (it is understand owners would pay a licence fee for the siting of the caravan which may be moved within the site at the site owners discretion), and security of tenure etc. Furthermore, no information has been provided regarding the specific management arrangements in this respect. Given the above, the Housing Manager considers the most appropriate way to deal with affordable housing provision would be by way of an off-site contribution.
- 7.80 So if the application were to be approved, the development should provide 40% affordable housing provision, in compliance with adopted Local Plan policy SP20. A commuted sum towards an off-site contribution has been calculated at £8,070,274. No counter offer or analysis of this figure has been submitted by the agent.
- 7.81 The agent is also proposing that the 'affordable caravans' would fall under the NPPF definition for Discounted Market Sale housing which is that sold at a discount of at least 20% below local market value. Eligibility for this is determined with regard to local incomes and local house prices; and that provisions should be in place to

ensure housing remains at a discount for future eligible households. No evidence has been submitted to demonstrate that there are the relevant eligibility mechanisms in place (for now or the future) for Pilgrims Retreat.

- 7.82 The agent states that they have assessed the local housing market and the value of the properties (2-bed bungalows) in comparison to the price of a new park home site based on market sales at the site. This demonstrating that the site is affordable and is at least 25% lower in price than the market value for new build properties. As such, the agent considers the park homes meet the definition for discounted market sales housing, being sold at a discount of at least 20% below local market value. No evidence of the above market sales comparisons has been submitted and the Housing Manager does not consider this development to be classed as discounted market sale housing.
- 7.83 The principle behind this type of affordable housing is that the market value of the actual property itself is given a 20% discount, not that it can be demonstrated that the market value of the property is 20% or more lower than comparable properties within the local area. The price of a caravan is the price of a caravan. Without seeing the comparable evidence, the Housing Manager is also of the view that it is not a fair comparison for the market value of these caravans to be compared against the local market value of 2-bed new-build properties.
- 7.84 The agent also proposes that the caravans will remain affordable in perpetuity since the market will preserve them at a discounted price given the more restrictive nature of ownership suppressing prices, with provision within the s106 to ensure they remain affordable and discounted in perpetuity. Furthermore, the agent has suggested attaching an age occupancy restricted planning condition to ensure that the proposal is providing permanent accommodation for older persons. However (as previously established) it is not reasonable to impose such a condition, and in any case the Housing Manager considers this alone does not make the development acceptable with respect to the affordable housing proposal for this application given the above concerns. Notwithstanding the above, the proposal has no affordable rented provision proposed which is contrary to being a policy compliant scheme.
- 7.85 In summary, the submitted details state that the development will provide accommodation for older people in homes which are affordable in relation to the wider housing market in locality. Meeting the housing need for older people is not only identified by the National Planning Guidance to be critical, but also meets the objectives of the Housing Act, the SHMA and the Local Plan. In addition, the number of older people is expected to increase in the future and the Council does need to consider providing opportunities for households to downsize and allow larger properties to be made available for younger families with children. However, the Housing Manager does not consider this development will provide a better choice of specialist accommodation for a group of older people with specific needs, that purpose built accommodation for the elderly would provide. It is also not considered that the development should be considered as retirement housing or Discounted Market Sale housing, and the management arrangement for the caravans remains a cause for concern. As such, the Housing Manager does not consider the development to fully accord with affordable housing policy and should not therefore be given substantial weight in the overall assessment of this application.

Other considerations

- 7.86 The Environmental Protection Team has raised no objections to the development in terms of noise; air quality; and land contamination, and so no further details are required in these respects.

- 7.87 Kent Police have no comments to make from a *Crime Prevention Through Environmental Design* aspect. Whilst they note some residents are concerned about emergency vehicle access, the Highways Authority has not raised this as an issue and this issue will not be pursued under this planning application.

Human rights and Equality Act

- 7.88 Article 8 of the European Convention on Human Rights, as incorporated into UK law by the Human Rights Act 1998, states everyone has the right to respect for (amongst other things) his private and family life, and his home. Refusing this application could be interpreted as an interference with the rights of the property owners to use their property as they see fit and the right to private and family life as set out in Article 8. It could also be seen as interference with owners' property rights under article 1, protocol 1. Such interference is permitted by the European Convention if it is in the general interest, but the interference must be 'proportionate', which means that it must not be in excess of what is needed to prevent harm to the general interest. Whether any actual interference ensues would ultimately be an enforcement matter. However, any interference with those human rights should be in accordance with the law and necessary in a democratic society, applying the principle of proportionality. If homes are lost then it is considered that the cumulative harms that would result from the application would be such that refusal of permission is a necessary and proportionate response.

- 7.89 The Council must also have regard to its public sector equality duty (PSED) under s149 of the Equalities Act. The duty is to have due regard to the need (in discharging its functions) to:

- *Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.*
- *Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing, minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s).*
- *Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.*

- 7.90 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. It is considered that although the majority of occupants on site are older persons, the equality duty is not sufficiently weighty to sway the planning balance towards granting permission for the proposed scheme.

8.0 CONCLUSION

- 8.01 It is a matter of fact and planning judgement that the development would add 230 isolated homes in the countryside; and occupants on the site are/will be heavily reliant on the private car for their day to day living, making the site unsustainable in terms of location. The Highways Officer also considers the development does not meet the objectives of promoting sustainable transport, as set out in paragraphs 102 and 103 of the NPPF; and the application has failed to demonstrate that the residual cumulative vehicle movements associated to 230 new residential homes on this site would not have a severe impact on the local road network. This weighs against the development.

- 8.02 The development will not conserve and enhance the landscape and scenic beauty of the Kent Downs AONB; and it would not positively recognise the intrinsic character and beauty of the countryside hereabouts. The adverse impact upon

- this nationally designated landscape of the highest value weighs against this development.
- 8.03 The development has and will result in permanent tree loss on a scale that is harmful to the amenity of park home users and the wider landscape; and there is insufficient space to be able to provide appropriate mitigation planting to help screen and integrate the development into the surrounding countryside. This weighs against the development.
- 8.04 The part retrospective application has failed to demonstrate that surface water and sewage disposal can be dealt with appropriately on the site; and it is evident that the development is likely to create a requirement for new and/or improved surface water and sewage disposal infrastructure. As such, the development has failed to demonstrate that the site has sufficient infrastructure capacity available either now or in the immediate future, and this raises a health and safety risk for occupants of the site.
- 8.05 There are no specific objections raised to the development in terms of its biodiversity impact; and the proposed enhancements, whilst not completely mitigating for the loss of the woodland, would be of some benefit in this regard. This is considered to be neutral matter, neither weighing against or in favour of the development.
- 8.06 There are no specific objections raised to the development in terms of its impact upon Ancient Woodland; and if minded to approve this application, suitable conditions could be imposed to secure an appropriate management plan of the Ancient Woodland in the ownership of the applicant, to minimise impacts from the proposed development. This is considered to be neutral matter, neither weighing against or in favour of the development.
- 8.07 The requested financial contributions relating to the NHS, parks and open space, and economic development are considered to meet the tests of Regulations 122 of the Act and as such should be provided by the applicant if this application were to be approved. The agent has not submitted a legal mechanism to secure these planning obligations to mitigate the development's impact, and this weighs against the development.
- 8.08 The development is not considered to provide for retirement housing and/or extra care homes, or Discounted Market Sale housing, in planning policy terms; and the Housing Manager considers the most appropriate way to deal with affordable housing provision to be by way of an off-site contribution. The agent has not submitted a legal mechanism to secure off-site affordable housing provision to help mitigate the development's impact, and this weighs against the development.
- 8.09 No specific objections have been raised against the development in terms of noise; air quality; land contamination; and crime prevention. These are considered to be neutral matters, neither weighing against or in favour of the development.
- 8.10 Whilst the proposed scheme would increase the supply of homes and would provide an additional choice to bricks and mortar homes, the Council is in a position where it can demonstrate a 6.3yrs worth of housing land supply as from April 2019. Only moderate weight should be attached to the increased supply and choice of a home.
- 8.11 The issue of intentional unauthorised development is a material consideration in the determination of this appeal, and this does weigh against the development.

- 8.12 Specific to this development, human rights are qualified rights, and so there needs to be a balance between the rights of the residents and the rights of the wider community. In this case, the interference would be due to pursuing the legitimate aim of protecting the countryside in a nationally designated AONB; and it is considered that the recommendation in this report would not have a disproportionate impact upon any protected characteristic in terms of the Equality Act. To quantify further, this is a part retrospective application whereby some 193 protected persons are already living permanently on site. In purely planning terms, purchasers of the caravans should have been aware that the lawful position on the site was for 18 permanent and 180 tourist accommodation units; and that the site licence at that time set out the licensing conditions on the site. It should also be pointed out that this recommendation does not commit the Council to any particular course of action, it only assesses the merits of the application against established development plan policies.
- 8.13 The proposed scheme constitutes “major development” in terms of paragraph 172 of the NPPF. Great weight must be given to conserve and enhance this landscape of scenic beauty. It is not simply a matter of weighing all the material considerations in a balance, but to refuse this application unless satisfied that (i) there are exceptional circumstances, and (ii) it is demonstrated that, despite giving great weight to conserving the landscape and scenic beauty in the AONB, the development is in the public interest. In terms of the assessments referred to in paragraph 172 of the NPPF, the need for the development is not so great that it could be concluded that it is in the public interest to grant it, or that it would be particularly exceptional. The impact on the local economy if it is refused would not be significantly harmful. The Local Plan has addressed housing need outside the AONB and the housing supply continues to be healthy. There would be detrimental effects on the environment and on the landscape which could not be adequately moderated. Overall there are no exception circumstances for allowing the development and it has not been demonstrated that it would be in the public interest. For the reasons outlined, and on this basis, a recommendation of refusal is therefore made.

9.0 RECOMMENDATION: REFUSE for the following reasons:

1. The development, by virtue of the site’s extension and the level of engineering works undertaken to create terracing, hardstanding, and retaining walls within the southern section of the site; the loss (and further potential loss) of woodland and protected trees; the inadequate and inappropriate mitigation planting proposed; the addition of 50 more static caravans; and the increased light pollution resulting from more static caravans that are occupied permanently, fails to conserve and enhance the landscape and scenic beauty of the Kent Downs Area of Outstanding Natural Beauty, as well as the intrinsic character and beauty of the countryside hereabouts. The adverse impact upon this nationally designated landscape of the highest value is contrary to policies SS1, SP17, DM1, DM3 and DM30 of the Maidstone Local Plan (2017); the Maidstone Landscape Character Assessment (March 2012 amended July 2013) and 2012 Supplement; the National Planning Policy Framework; and the Kent Downs AONB Management Plan (2014-19) and its Landscape Design Handbook.
2. The development is considered to be a major development in the Kent Downs Area of Outstanding Natural Beauty, and there are no exceptional circumstances to permit this development, and it has not been demonstrated that the development is in the public interest. The development is therefore contrary to paragraph 172 of the National Planning Policy Framework.

3. The development would authorise 230 residential units in an isolated location that would also have poor access to public transport and be remote from local services and facilities, resulting in occupants being reliant on the private motor vehicle to travel to settlements to access day to day needs. In the absence of any overriding justification or need for the development demonstrated in the application, this is contrary to the aims of sustainable development as set out in policies SS1, SP17 and DM1 of the Maidstone Local Plan (2017) and the National Planning Policy Framework (2019).
4. The application has failed to demonstrate that the residual cumulative vehicle movements associated to 230 new residential homes on this site would not have a severe impact on the local road network. This is contrary to policies DM1 and DM30 of the Maidstone Local Plan (2017) and the National Planning Policy Framework (2019).
5. The application has failed to demonstrate that the site can provide adequate provisions for foul and surface water disposal for 248 residential units, posing a health and safety risk to the occupants of the site. This is contrary to Local Plan policy ID1, and the National Planning Policy Framework (2019).
6. In the absence of an appropriate legal mechanism to secure necessary contributions towards community infrastructure in the borough, the impact of the development would place unacceptable demands on local services and facilities. This would be contrary to Local Plan policies SS1, ID1 and DM19 of the Maidstone Local Plan (2017); and the National Planning Policy Framework (2019).
7. In the absence of an appropriate legal mechanism to secure affordable housing provision, the development would fail to contribute to the proven significant need for affordable housing in the borough. This would be contrary to Local Plan policies SS1, SP20, and ID1 of the Maidstone Local Plan (2017); and the National Planning Policy Framework (2019).

Case Officer: Kathryn Altieri



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Tel: 03000 418181
Date: 30 July 2021

Application - MBC/21/502369/FULL

Location - Pilgrims Retreat Hogbarn Lane Harrietsham Maidstone Kent

Proposal - Retrospective change of use of land to a caravan site, including the siting of 84no. residential caravans.

Thank you for your consultation in relation to the above planning application. I have the following comments to make with respect to highway matters:

It is understood that this application seeks full planning permission for 84 residential (caravan) units, as an extension of the existing permitted site.

Background

It is noted that this application is substantially the same application as was submitted previously under 21/500786/FULL. The Transport Statement submitted in support of this application is the same as the one submitted under the previous application with no further information provided except for the two "Vehicle Passing Strategy Plan" documents which have been provided in support of this application.

In our response to 21/500786/FULL, dated 9th April 2021, KCC Highways raised a holding objection stating the need for further information which was required to fully assess the potential impacts that the proposals may have on the public highway. The previous Highways response concluded as follows:

"This application is seeking full planning permission for 84 units of residential dwellings. While this is a retrospective application, the Transport Statement confirms that the area of the site with existing planning permissions in place has capacity for 133 caravans and that this application therefore seeks permission to increase this by 84 units, or approximately 40%.

Insufficient evidence has been provided for a robust assessment to be made as to the impact these proposals would have on the highway network and there are significant concerns around the road safety and sustainability of the proposals which have not been satisfactorily addressed in the Transport Statement.

*I can therefore confirm that KCC Highways wish to raise a **holding objection** to the proposals*

- *Evidence of a robust trip generation assessment (as described above).*
- *Evidence to support the suitability of the access junction (including visibility splay diagrams).*
- *Detailed plans demonstrating the proposed offsite highway works.*
- *Evidence of the impact that the proposals would have on road safety on the surrounding highway network and appropriate proposals to mitigate any significant impacts.*
- *Details of the proposed parking provision.”*

New information

The following subheadings identify what new information has been provided in regard to the details required by KCC Highways' holding objection to 21/500786/FULL.

Trip Generation

No new information has been provided in regard to trip generation. I therefore refer you to the comments provided under “Trip Generation” in KCC Highways; April 2021 response to 21/500786/FULL.

Access

No new information has been provided in regard to the suitability of the access junction. I therefore refer you to the access related comments provided under “Access & Road Safety” in KCC Highways; April 2021 response to 21/500786/FULL.

Offsite highway works

While no new information has been provided within the Transport Statement in regard to the proposed offsite Highway works, plans have been provided in support of this application to illustrate a “Vehicle Passing Strategy Plan”.

Having assessed the proposed strategy and consulted with our road safety experts, I can confirm that the proposed approach is unfortunately not appropriate as a road safety measure. The proposed approach of using road markings only to create passing points is not considered likely to be effective and would be more likely to cause driver confusion than it is to improve the free flow of traffic.

There are further concerns around the highway maintenance implications of the proposed strategy and the viability of the proposed visibility improvements, given that the applicant appears to lack sufficient control or ownership over the land required to implement these visibility improvements.

If there are further meetings of the referenced Steering Group to advise offsite highway improvement proposals, it is recommended that KCC Highways should be involved in the discussions.

Road Safety

No new information has been provided in regard to impacts these proposals might have on road safety in the surrounding area, beyond the above referenced "Vehicle Passing Strategy". I therefore refer you to the road safety related comments provided under "Access & Road Safety" in KCC Highways; April 2021 response to 21/500786/FULL.

Parking Provision

No new information has been provided in regard to the proposed parking provision. I therefore refer you to the parking related comments provided under "Access & Road Safety" in KCC Highways; April 2021 response to 21/500786/FULL.

Conclusion & Recommendations

As explained above, the Transport Statement submitted in support of this application is the same as the one submitted in support of 21/500786/FULL. KCC Highways raised a holding objection to application 21/500786/FULL, identifying the need for a number of further items of information in order to fully assess the potential impacts that the proposals would have on the public highway.

The Transport Statement provided in support of these proposals is the same as that which was provided for the previous application, to which the above referenced holding objection was raised. With the exception of the proposed offsite highway improvements, no further information has been provided.

The proposed offsite highway improvements are not supported by KCC Highways as they are not considered likely to be successful in their aims and would likely represent a detriment to road safety as a result of increased driver uncertainty.

Given the above points, the same conclusions as were reached in KCC Highways' response to 21/500786/FULL apply for this application also. Insufficient evidence has been provided for a robust assessment to be made as to the impact these proposals would have on the highway network and there are significant concerns around the road safety and sustainability of the proposals which have not been satisfactorily addressed in the Transport Statement.

I can therefore confirm that KCC Highways wish to raise a **holding objection** to the proposals

- Evidence of a robust trip generation assessment.
- Evidence to support the suitability of the access junction (including visibility splay diagrams).
- Evidence of the impact that the proposals would have on road safety on the surrounding highway network and appropriate proposals to mitigate any significant impacts.
- Details of the proposed parking provision.

In the event that the Borough Council is minded to grant planning approval, the following should be secured via planning conditions or obligations as appropriate:

- The proposed access and car parking to be laid out and constructed in accordance with details to be submitted to and approved by the Local Planning Authority.
- Submission of a Construction Management Plan before the commencement of any development on site to include the following:
 - (a) Routing of construction and delivery vehicles to / from site
 - (b) Parking and turning areas for construction and delivery vehicles and site personnel
 - (c) Timing of deliveries
 - (d) Provision of wheel washing facilities
 - (e) Temporary traffic management / signage
- Provision of construction vehicle loading/unloading and turning facilities prior to commencement of work on site and for the duration of construction.
- Provision of parking facilities for site personnel and visitors prior to commencement of work on site and for the duration of construction.
- Provision of measures to prevent the discharge of surface water onto the highway.
- Provision of wheel washing facilities prior to commencement of work on site and for the duration of construction.

INFORMATIVE: Should the development be approved by the Planning Authority, it is the responsibility of the applicant to ensure, before the development is commenced, that all necessary highway approvals and consents where required are obtained and that the limits of highway boundary are clearly established in order to avoid any enforcement action being taken by the Highway Authority.

Across the county there are pieces of land next to private homes and gardens that do not look like roads or pavements but are actually part of the road. This is called 'highway land'. Some of this land is owned by The Kent County Council (KCC) whilst some are owned by third party owners. Irrespective of the ownership, this land may have 'highway rights' over the topsoil. Information about how to clarify the highway boundary can be found at

<https://www.kent.gov.uk/roads-and-travel/what-we-look-after/highway-land/highway-boundary-enquiries>

APPENDIX F

The applicant must also ensure that the details shown on the approved plans agree in every aspect with those approved under such legislation and common law. It is therefore important for the applicant to contact KCC Highways and Transportation to progress this aspect of the works prior to commencement on site.

Yours faithfully

James Lehane

Maidstone Borough Council

Highways and Transportation

Ashford Highway Depot

4 Javelin Way

Ashford

TN24 8AD

Tel: 03000 418181

Date: 9 April 2021

Application - MBC/21/500786/FULL

Location - Pilgrims Retreat, Hogbarn Lane, Harrietsham, Maidstone, Kent

Proposal - Retrospective application for a material change of use of land for use as a caravan site including engineering works to create a ditch to the south of the site.

Thank you for your consultation in relation to the above planning application. I have the following comments to make with respect to highway matters:

It is understood that this application seeks full planning permission for 84 residential (caravan) units, as an extension of the existing permitted site.

The submitted Transport Statement (dated February 2021) explains, in section 4.9, that the existing permitted site has a capacity of 133 caravans and that this application seeks permission to extend the site and increase capacity to 217 caravans, an approximately 40% uplift over the extant permission.

It is noted that this site was the subject of a recent planning application (19/502469/FULL) seeking *“retrospective planning application for the change of use of land from mixed uses (leisure (180 caravans) and residential (19 caravans) to a residential park home site comprising the siting of 248 caravans, including engineering works to create terracing, retaining walls, and the extension of the site along the south eastern boundary.”*

KCC Highways raised holding objections to application 19/502469/FULL for several reasons. These included:

- The lack of sufficient assessment on the impacts that the proposed site would have on highway safety and capacity. This in the context of narrow rural roads with no pedestrian infrastructure and insufficient passing opportunities.
- That the location of the site is inherently unsustainable and that the proposals were therefore in conflict with paragraphs 102 and 103 of the NPPF.

Section 5 of the Transport Statement (TS) seeks to assess the likely trip generation impact of the proposed 84 residential units.

The methodology applied uses a peak hour turning movement survey at the site access and divides the total movements recorded within a given hour by the total number of occupied units on site at the time to reach a trip rate per one unit. This number is then multiplied by 84, in order to represent the total trips likely to be generated by 84 units on this site.

This is an appropriate methodology, however paragraph 5.1 confirms that the turning movement survey was carried out on only one day (Thursday the 4th of April 2019) and only between the hours of 07:00 to 10:00 and 16:00 to 19:00. A single day is not considered to be a sufficient sample size to represent a robust evidence base, because there is no accounting for potentially anomalous data.

The limitation of the traffic count to peak periods only is understandable in that it seeks to assess the impact during the times with the highest levels of existing trips on the network, however this approach fails to provide any indication of the total daily trips.

While the methodology applied to deriving trip generation from traffic counts is suitable, the fact that the input data is based on such a small survey sample means that the outputs provided in table 5.1 of the TS unfortunately cannot be considered robust.

It is recommended that the applicant should be required to provide a revised trip generation assessment, based on a more extensive survey sample. Typically, the best approach in this case would be to provide an on-site traffic count, similar to the one already provided, but covering at least 07:00 to 19:00 Monday to Friday on a “normal week”.

It is recognised that the above survey may be difficult to achieve at present due to the lack of any “normal” conditions on the Highway as a result of the ongoing Covid-19 pandemic. If pre-pandemic data is not available, then a suitably robust trip generation assessment utilising the TRICS database would be a sufficient replacement for site specific data.

Access & Road Safety

Paragraph 4.14 of the TS confirms that there are no proposals to modify the existing access, internal access roads or the parking provision.

Despite being retrospective, this application nonetheless is seeking an approximately 40% uplift in scale over the capacity of the currently permitted site. This is why section 5 of the TS seeks to assess trip generation.

The TS does not include any evidence to demonstrate that the existing access can safely accommodate the extra trips that would be generated by the proposals. No evidence is provided to demonstrate that the layout of the access junction is suitable for the expected level and types of vehicle movements, no visibility splay diagrams are provided and the access junction does not appear on the submitted plans.

While this is an existing junction, the proposals would generate extra vehicle and pedestrian movements through the junction and therefore a lack of suitable sightlines and / or dimensions would represent a detriment to road safety.

It is recommended that the applicant should be required to prove evidence to demonstrate that the existing access is suitable to accommodate the proposed increase in trips. This evidence should include visibility splay diagrams.

KCC Highways has consistently raised concerns in regard to the unsuitability of the local highway network in the proximity of this site for supporting development of the type and scale proposed. Hogbarn Lane and Stede Hill are narrow rural roads with minimal passing opportunities for vehicles and a general lack of pedestrian infrastructure.

Paragraph 4.15 of the TS states that a *“strategy to install and upgrade a number of passing places along Hogbarn Lane and Stede Hill has been investigated as part of the planning application submission”*. No details are provided in regard to this strategy, however, so it is not possible to comment at this time as to whether they would suitably address the concerns raised historically and above in regard to the lack of passing provision.

It is recommended that the strategy for passing places on the highway network should be submitted as part of the planning application, so that the suitability of the proposals can be properly assessed.

As well as generating an increase in motor vehicle trips, these proposals would also generate an increase in pedestrian movements on the local highway network. Due to the lack of any suitable pedestrian infrastructure and the narrow road widths, the proposals therefore represent an increased risk of dangerous conflict between motor vehicles and vulnerable road users. No assessment has been provided in regard to the pedestrian safety of the proposals.

The road widths and infrastructure available are insufficient when compared to standards set out in the Kent Design Guide. It is recommended that the Applicant should be required to provide evidence either to demonstrate the suitability of the local highway network to support the proposals or to demonstrate that suitable mitigation measures are available.

No detail is provided in terms of what level of parking provision is proposed to be provided. While it is recognised that this is a retrospective application and it is not proposed to alter the existing provision, it is still recommended that the Applicant should be required to provide details of the proposed parking provision for the proposed 84 units and that this provision should be consistent with IGN3 and SPG4 parking standards.

Sustainability

Section 3 of the TS provides details in regard to the accessibility and sustainability of the proposals.

Paragraphs 3.5 to 3.9 confirm that there are not sufficient facilities within walking distance to consider this location accessible to pedestrians, based on Manual for Streets standards. This issue is compounded by the lack of pedestrian infrastructure on Hogbarn Lane.

Paragraph 3.11 states that the local roads are considered suitable for cyclists, however there is no evidence given to support this and no assessment as to whether the uplift in traffic to be

generated by these proposals would represent a significant increase in conflicts between motor vehicles and vulnerable road users.

Paragraphs 3.13 to 3.15 and 3.18 of the TS confirm that there are no public transport services available within a suitable vicinity of the site.

Paragraphs 3.16 and 3.17 describe a shuttle bus service which is provided by residents of the site. This service does seem to represent one sustainable option of transport mode available on site, however there is minimal information provided in terms of hours of operation, service regularity and how the service is funded. It is noted that this is provided by the residents and not the applicant, so it is unclear as to how long this service will be retained.

Based on the above, the previous assessment from KCC Highways that these proposals do not represent sustainable development remain valid.

Summary & Recommendations

This application is seeking full planning permission for 84 units of residential dwellings. While this is a retrospective application, the Transport Statement confirms that the area of the site with existing planning permissions in place has capacity for 133 caravans and that this application therefore seeks permission to increase this by 84 units, or approximately 40%.

Insufficient evidence has been provided for a robust assessment to be made as to the impact these proposals would have on the highway network and there are significant concerns around the road safety and sustainability of the proposals which have not been satisfactorily addressed in the Transport Statement.

I can therefore confirm that KCC Highways wish to raise a **holding objection** to the proposals on the basis that the applicant should provide the following information:

- Evidence of a robust trip generation assessment (as described above).
- Evidence to support the suitability of the access junction (including visibility splay diagrams).
- Detailed plans demonstrating the proposed offsite highway works.
- Evidence of the impact that the proposals would have on road safety on the surrounding highway network and appropriate proposals to mitigate any significant impacts.
- Details of the proposed parking provision.

In the event that the Borough Council is minded to grant planning approval, the following should be secured via planning conditions or obligations as appropriate:

- The proposed access and car parking to be laid out and constructed in accordance with details to be submitted to and approved by the Local Planning Authority.

- Submission of a Construction Management Plan before the commencement of any development on site to include the following:
 - (a) Routing of construction and delivery vehicles to / from site
 - (b) Parking and turning areas for construction and delivery vehicles and site personnel
 - (c) Timing of deliveries
 - (d) Provision of wheel washing facilities
 - (e) Temporary traffic management / signage
- Provision of construction vehicle loading/unloading and turning facilities prior to commencement of work on site and for the duration of construction.
- Provision of parking facilities for site personnel and visitors prior to commencement of work on site and for the duration of construction.
- Provision of measures to prevent the discharge of surface water onto the highway.
- Provision of wheel washing facilities prior to commencement of work on site and for the duration of construction.
- Provision of a Travel Plan monitoring fee.

INFORMATIVE: It is the responsibility of the applicant to ensure, before the development hereby approved is commenced, that all necessary highway approvals and consents where required are obtained and that the limits of highway boundary are clearly established in order to avoid any enforcement action being taken by the Highway Authority.

Across the county there are pieces of land next to private homes and gardens that do not look like roads or pavements but are actually part of the road. This is called 'highway land'. Some of this land is owned by The Kent County Council (KCC) whilst some are owned by third party owners. Irrespective of the ownership, this land may have 'highway rights' over the topsoil. Information about how to clarify the highway boundary can be found at <https://www.kent.gov.uk/roads-and-travel/what-we-look-after/highway-land/highway-boundary-enquiries>

The applicant must also ensure that the details shown on the approved plans agree in every aspect with those approved under such legislation and common law. It is therefore important for the applicant to contact KCC Highways and Transportation to progress this aspect of the works prior to commencement on site.

Yours faithfully

James Lehane



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Tel: 03000 418181
Date: 24 June 2019

Application - MBC/19/502469/FULL

Location - Pilgrims Retreat, Hogbarn Lane, Harrietsham, ME17 1NZ

Proposal - Retrospective planning application for the change of use of land from mixed uses (leisure (180 caravans) and residential (19 caravans) to a residential park home site comprising the siting of 248 caravans, including engineering works to create terracing, retaining walls, and the extension of the site along the south eastern boundary.

Kathryn

I note that the appendices to the Transport Statement are now available for this application. I particularly note the traffic survey undertaken on Thursday 4th April at the site access, details of which are given in Appendix 1. Cross referencing this survey with the statements on pages 6 and 7 of the body of the report under Trip Generation and with Appendix 2 do not appear to be consistent/correct. There are, I believe, several errors, inconsistencies and omissions.

Also, fundamentally I note that paragraph 5.8 concludes that 'It can be seen from the above table that *measured* peak hour trip rates for the application site are broadly similar to those for retirement homes'. Yet the transport statement does not go on from there to discuss the application? i.e. 'the conversion of existing holiday homes to permanent homes.', paragraph 2.9 of the Transport Statement. No forecast traffic flows are given.

I do not consider that a determination can be made without an indication or forecast given regarding the change of traffic flows that might be expected from the change of use/occupancy type. It would also be helpful if the applicant could confirm that whilst the survey was undertaken when 212 units were occupied, if this meant that 212 units were in use. In the meantime, if I can be of any further assistance, please do not hesitate to contact me.

Yours faithfully

Terry Drury
Senior Development Planner

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Highways and Transportation
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Tel: 03000 418181
Date: 27 August 2019

Application - MBC/19/502469/FULL

Location - Pilgrims Retreat, Hogbarn Lane, Harrietsham, ME17 1NZ

Proposal - Retrospective planning application for the change of use of land from mixed uses (leisure (180 caravans) and residential (19 caravans) to a residential park home site comprising the siting of 248 caravans, including engineering works to create terracing, retaining walls, and the extension of the site along the south eastern boundary.

Kathryn

Thank you for re-consulting this authority regarding this application. I have read the recent Transport Technical Note submitted.

Page 3, Chapter 2 Development Proposals

Paragraph 2.3 – ‘It is confirmed that the proposed development site is currently operating as a residential site for over-50’s and will continue to do so.’ Is this effectively or actually; a view, an opinion or applied by restriction?

‘Given the location and nature of the site, it is considered that caravans on this site are most attractive to this demographic.’ – but not entirely?

‘If it is considered necessary by the Local Planning Authority, this could be controlled by an appropriately worded planning condition.’ I am not sure of Maidstone Borough Council’s view regarding how readily this could be checked or enforced. Paragraph 55 of the NPPF states ‘Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, **enforceable**, precise and reasonable in all other respects.’

Paragraph 2.5 – ‘The site will be strictly restricted to over-50’s and will be closely monitored by the Local Authority.’ This seems to be at odds/conflict with the last sentence of paragraph 2.3. The applicant does not appear to be sure how to deal with an assertion or possibility that the site could be limited to over 50s.

Paragraph 2.4 – ‘The specific proportion of retired resident’s vs employed residents is unknown.’ This is an issue of fundamental importance in transport terms. The rest of paragraph 2.4 is speculative and unsubstantiated.

Without clarity on the above, the surveys undertaken have no value and have no basis for undertaking projections/forecasts. For robustness and without further information, the application should be considered as one for 230 new homes.

Sustainability

The applicant, through the transport consultant and the latest technical note has helpfully provided distances from the site to services and facilities. This in my view has demonstrated admirably that the site is unsustainable. There are no bus services or meaningful sustainable connections. Apart from the on-site shop, services and facilities are out of walking or cycling range.

Transport Impact

The site is situated in a rural area accessed by rural, narrow roads. Previously the applicant undertook a conflict analysis for Hogbarn Lane in paragraph 5.10 of the original Transport Statement. Reference to rural lane capacity research is also made in paragraph 5.11 of the same document.

Objection conclusions

Without an impact assessment undertaken for 230 new homes this authority recommends a holding objection.

It is further considered that this site is contrary to paragraphs 102 and 103 of the NPPF and this authority therefore recommends an objection to this application on that basis.

Yours faithfully

Terry Drury
Senior Development Planner