

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 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