

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 Part d says that where there are no relevant development plan policies or the relevant ones are out of date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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