

**REPORT SUMMARY**

<b>REFERENCE NUMBER:</b> 24/501759/FULL		
<b>APPLICATION PROPOSAL:</b> Change of use of land for the siting of 2no. static caravans, 2no. touring caravans and erection of 2no. day rooms for Gypsy/Traveller use with associated parking (part retrospective).		
<b>ADDRESS:</b> Plot 1 The Meadows, Lenham Road, Headcorn, TN27 9LG		
<b>RECOMMENDATION:</b> <b>GRANT PLANNING PERMISSION subject to planning conditions.</b>		
<b>SUMMARY OF REASONS FOR RECOMMENDATION:</b> The development is acceptable with regard to the relevant provisions of the Development Plan, the NPPF and all other material considerations such as are relevant.		
<b>REASON FOR REFERRAL TO COMMITTEE:</b> The application has been called in by Headcorn Parish Council for the following reasons: <ul style="list-style-type: none"> <li>• Proper assessment of the evidence that supports the assertion that the applicants are of Gypsy or Traveler status.</li> <li>• Cumulative effect of so many G&amp;T sites in such a small area.</li> <li>• The lack of suitable G&amp;T sites leading to overcrowding in unsuitable areas like this.</li> <li>• Gypsy and Traveler housing need verses supply.</li> <li>• Development in the Open Countryside and paragraph 25 of the PPTS which states that Local Authorities should strictly limit Traveler site development in open countryside.</li> <li>• Lack of surface water drainage.</li> <li>• Lack of local plan policy support</li> </ul>		
<b>WARD:</b> Headcorn and Sutton Valence	<b>PARISH COUNCIL:</b> Headcorn	<b>APPLICANT:</b> Mr R Lee <b>AGENT:</b> Martin Potts Associates
<b>CASE OFFICER:</b> William Fletcher	<b>VALIDATION DATE:</b> 03/06/24	<b>DECISION DUE DATE:</b> 31/01/25
<b>ADVERTISED AS A DEPARTURE:</b> No		

**Relevant Planning History need enforcement history.**

10/0560

Planning application for change of use of land to residential to provide 5 plots for gypsy families, with a total of 8 mobile homes, 12 touring caravans and 8 utility blocks with associated works as shown on drawing numbers WSP/ME/01, WSP/ME/02 AND WSP/ME/03 received on 1/4/10.

Refused. Appeal Allowed 04.02.2011

12/1772

Use of land as residential to provide 5 plots for gypsy families, with a total of 5 mobile homes, 10 touring caravans and 5 utility blocks with associated works as shown on drawing numbers MAI/29/PL/01A and WSP/ME/03 received on 30/1/13.

Approved 25.04.2013 (3 year temporary).

20/502643/FULL

Retrospective change of use of land to use as travellers caravan site consisting of 10 pitches, with 13(no) mobile homes and 6(no) utility buildings.

Declined to Determine 21.12.2020

21/500604/FULL

Retrospective change of use of land to use as travellers caravan site consisting of 10 pitches, with 13(no) mobile homes and 6(no) utility buildings. (Resubmission of 20/502643/FULL)

Declined to Determine 05.05.2021

### **Appeal History**

17 March 2023

APP/U2235/C/18/3210851, APP/U2235/C/18/3212986 Land known as Plot 6, The Meadows, Lenham Road, Headcorn, Maidstone, Kent TN27 9LG

Appeals allowed, enforcement notice quashed, and planning permission is granted.

APP/U2235/C/18/3210854 and linked appeals Land known as Land to the rear of The Meadows, Lenham Road, Headcorn, Maidstone, Kent TN27 9LG

Appeals succeed in part and permission for that part is granted but otherwise the appeals fail and enforcement notice as corrected and varied upheld.

APP/U2235/C/18/3210879 and linked appeals Land known as Plots 6 - 10 Rear of The Meadows, Lenham Road, Headcorn Maidstone, Kent TN27 9LG

Appeals succeed in part and permission for that part is granted but otherwise the appeals fail and enforcement notice as corrected and varied upheld.

### **Background**

Permission at this site was granted on appeal in February 2011 following an inquiry. Then a three-year temporary planning permission was granted by the Council in 2012. After another application took two years to decide, a fresh enforcement notice was served, which after a six-year long appeal process culminated in the March 2023 Inspectors decisions detailed above.

Following the appeal decisions, the situation on site is that there are 'unauthorised' sites situated amongst authorised ones. Now that details of an owner are available enforcement could consider prosecution and the Local Planning Authority could decline to determine the application under section 70c, however if prosecution were to take place the owner will likely leave the site, the case is unlikely to go to court and the site will most likely be sold on to another member of the Travelling community at which point the 'cycle' will begin anew.

On this basis the enforcement team have not taken any enforcement action but have actively encouraged the submission of this retrospective planning application due to the personal circumstances of the applicant as will be detailed below.

Had this been an isolated plot with no other plots around, then there would be no hesitation to prosecute and take steps to protect the site, however, this is located on a site with eight plots approved by the inspector. The Inspector dismissed this plot as there was no representative for this plot at the inquiry to offer evidence on their need or personal circumstances. Gypsy and Traveller applications are a unique area of the planning system as the personal circumstances of the applicant are a material planning consideration and must be assessed and given weight and this weight can be significant. Had a representative been present to put these forward the inspectorate may have judged that these weighed in favour of granting a permission.

Paragraphs 165-175 of the appeal report concluded that visual impact on the immediate was considered to be localised and on the 'moderate' level of harm (significant harm to the landscape character was identified) and concluded that harm would be from the plots at the 'rear' of the site. However, the inspector did not seem to conclude on the written evidence given by one of the landowners in 2021, it can only be concluded it was because he wasn't present in person.

Paragraph 194 of the appeal states: "If the appeals are unsuccessful the families would have to leave the site. At the present time no alternative available site(s) has been identified for them. To have to leave in such circumstances would result in a serious interference with each family's rights under Article 8 and the best interests of the children would suffer. Success in the appeals would enable stability in home and family life, improve opportunities for education and health care whilst at the same time enabling continuation of a nomadic lifestyle to earn a livelihood." This is a clear steer to the Local Planning Authority of the effects of the occupants of the site having to leave the site should planning permission be refused.

The personal circumstances are detailed in the below 'Gypsy Status' section and considering paragraph 194 of the appeal it is considered it is justified to invite further applications in this location despite the appeal decision.

The plots that are willing to submit planning applications all have close family connections at the front and back of the Meadows but have not been able to regularise the situation given the appeal process which has taken some six years.

## **MAIN REPORT**

### **1. DESCRIPTION OF SITE**

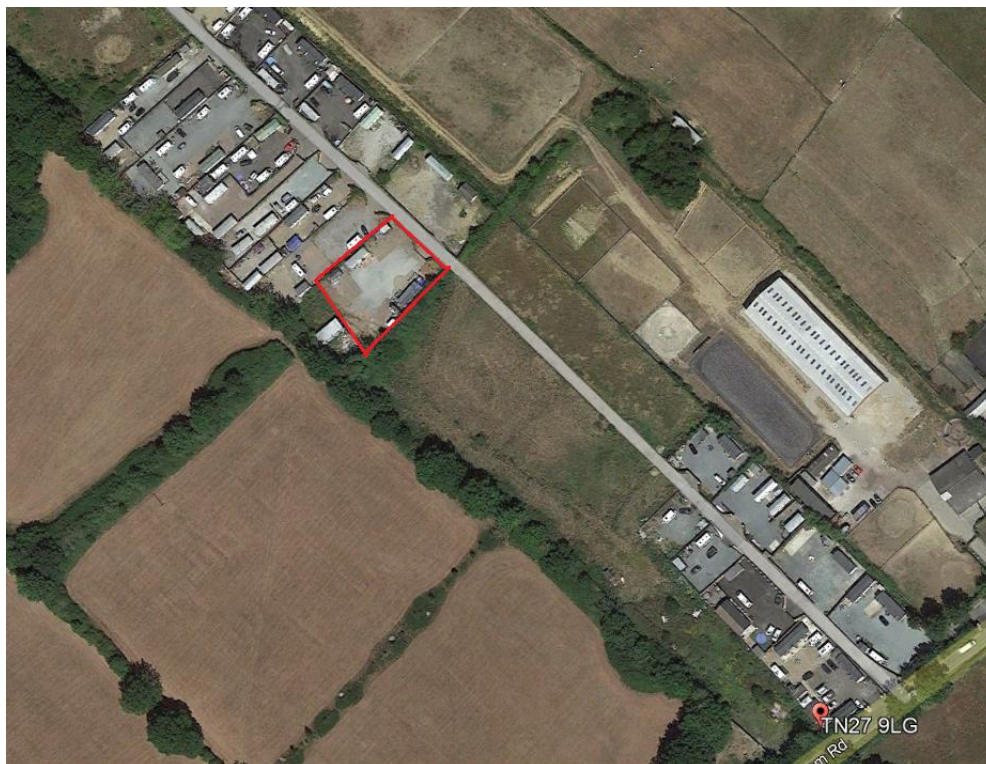
- 1.01 The application site is located in the countryside, approximately 2.3km north east of Headcorn and within the Low Weald Landscape of Local Value and forms part of an larger Gypsy and Traveller site. The pitches are at the northern end of an access road some 250 metres back from Lenham Road. Paddocks separate the sites from the group of Traveller sites close to Lenham Road.
- 1.02 In the near vicinity sporadic development fronts onto Lenham Road, comprising residential properties, farmsteads and traveller sites. A network of public rights of way crosses the farmland, including footpaths to the west of the application site.
- 1.03 The wider landscape setting has a relatively flat to slightly undulating topography and the predominant land use is agricultural, primarily in the form of enclosed pastures. Development in the open countryside is sparse, typically scattered farms, small hamlets and individual residential properties linked by rural roads and lanes. The village of Headcorn, one of the rural service centres, has grown from the historic core, with recent housing on its northeastern edge. The landscape character assessments highlight the importance of watercourses, water bodies and riparian habitats as well as the hedgerows, shelterbelts and dominance of mature oaks.
- 1.04 Tranquillity and remoteness are identified as qualities of the rural area. The condition of the landscape was assessed as good and having a high sensitivity to change in the Maidstone Landscape Character Assessment (2012).

### **2. PROPOSAL**

- 2.01 The application is described as follows:  
"Change of use of land for the siting of 2no. static caravans, 2no. touring caravans and erection of 2no. day rooms for Gypsy/Traveller use with associated parking (part retrospective)."

- 2.02 In terms of their visual appearance the mobiles are 'typical' to this type of development.
- 2.03 The day rooms are single storey buildings the main bulk of which has a depth of 5m, a width of 7m and a maximum height of 3.8m with a gabled roof form. Each building has a small 'storm shelter' over the entrance.

Application site (Highlight in red)



### 3. **POLICY AND OTHER CONSIDERATIONS**

Maidstone Local Plan Review 2024

LPRSS1: Maidstone borough spatial strategy

LPRSP9: Development in the countryside

LPRSP10: Housing

LPRSP10(A): Housing mix

LPRSP12: Sustainable transport

LPRSP14: Environment

LPRSP14(A): Natural environment

LPRSP14(C): Climate change

LPRSP15: Principles of good design

LPRTRA2: Assessing transport impacts.

LPRTRA4: Parking

LPRQ&D 1: Sustainable design

LPRQ&D 2: External lighting

LPRQ&D 4: Design principles in the countryside

LPRHOU 8: Gypsy and traveller accommodation

LPRQ&D 6: Technical standards

LPRTRA2: Assessing the transport impacts of development.

PRTRA4: Parking

Kent Waste and Minerals Plan (amended 2020):

The National Planning Policy Framework (NPPF):

National Planning Practice Guidance (NPPG):

Maidstone Landscape Character Assessment 2012 (Updated 2013)

#### **4. LOCAL REPRESENTATIONS**

##### **Local residents:**

4.01 No representations received.

##### Headcorn Parish Council (summarised)

- 4.02 Headcorn Parish have objected to the application and raised the following issues:
- Proper assessment of the evidence that supports the assertion that the applicants are of Gypsy or Traveler status.
  - Cumulative effect of so many G&T sites in such a small area.
  - The lack of suitable G&T sites leading to overcrowding in unsuitable areas like this.
  - Gypsy and Traveler housing need verses supply.
  - Development in the Open Countryside and paragraph 25 of the PPTS which states that Local Authorities should strictly limit Traveler site development in open countryside.
  - Lack of surface water drainage.
  - Lack of local plan policy support
- 4.03 Headcorn Parish have requested the application be brought to planning committee if the LPA is minded to approve.

##### Ulcombe Parish Council (summarised)

- 4.04 Ulcombe Parish Council object to the application on the following grounds.
- Planning Inspectorate March 2023 decision, ongoing breaches, and live enforcement act.
  - Cumulative impact and domination of the local community.
  - Harm to the Low Weald of Land of Local Value and Headcorn Pastureland .
  - Illegal proposal for foul sewage disposal.
  - Caravans and huge unnecessary day rooms .

#### **5. CONSULTATIONS**

(Please note that summaries of consultation responses are set out below. Comments are discussed in more detail in the appraisal section where considered necessary)

##### Headcorn Aerodrome

5.01 No objection

#### **6. APPRAISAL**

- 6.01 The key issues are:
- Spatial Strategy
  - Character and Appearance
  - Issues of Need and Supply
  - Gypsy Status
  - Residential Amenity
  - Biodiversity Net Gain

##### **Spatial Strategy**

- 6.02 The starting point for assessment of all applications in the countryside is Local Plan policy LPRSP9. Policy LPRSP9 states that development proposals in the countryside will only be permitted where:
- a) there is no 'significant' harm to local character and appearance, and
  - b) they accord with other Local Plan policies
- 6.03 In this case policy LPRHOU 8 (gypsy and traveller accommodation) can allow for gypsy and traveller development in the countryside. Policy LPRHOU 8 states that gypsy and traveller accommodation will be granted in two situations. Firstly "...where the site is allocated for that use and proposals comply with the site

allocation criterion", and secondly (with reference to consultation comments on allocation) subject to criteria listed in the policy being met. These criteria are considered below.

### **Character and Appearance**

- 6.04 LPRHOU8 states that Gypsy and Traveller development must comply with the following criteria.
- a. Caravans to meet the definition of a caravan in the Caravan Sites and Control of Development Act (1960)<sup>13</sup> and the Caravan Sites Act (1968).
- 6.05 The mobile homes are of a typical style and appearance and the submitted information indicates that the proposed caravans will meet this definition. A planning condition is recommended requiring compliance with the definition.
- b. Local services, in particular school, health, and shopping facilities, are accessible from the site preferably on foot, by cycle or on public transport.
- 6.06 The supporting text to policy LPRHOU 8 states in relation to Gypsy and Traveller accommodation "It is preferable for sites to be located close to existing settlements where there are community facilities such as schools and health services. Frequently, because of land availability, more rural sites are proposed. Where such sites are proposed, the impact of development on the landscape and rural character is an important factor in respect of the wider objective of protecting the intrinsic character of the countryside".
- 6.07 Government guidance set out in the Planning Policy for Traveller Sites (PPTS) places emphasis on the need for increased gypsy and traveller site provision, supporting self-provision (as opposed to local authority provision), and it acknowledges that sites are more likely to be found in rural areas.
- 6.08 Although the occupants of the site would be largely reliant on private motor vehicles to access local services and facilities, this is not untypical of Gypsy and Traveller sites in rural locations. Although not highly sustainable in respect of location, the site is not so far removed from basic services and public transport opportunities as to justify refusal.
- c. The development would not result in significant harm to the landscape and rural character of the area.
- 6.09 The application site is located in countryside identified as a Landscape of Local Value, The Headcorn Pasturelands within the Low Weald. The Low Weald Landscape of Local Value (LLV), for the purposes of the Local Plan, is a landscape that is highly sensitive to significant change. The Low Weald has distinctive landscape features including field patterns (many of medieval character), hedgerows, stands of trees, ponds and streams, and buildings of character. The landscape has a gently undulating form with only scattered housing, farmsteads or hamlets and a few narrow lanes like Lenham Road. The landscape is generally attractive with an agricultural and rural quality. The site also falls within the Headcorn Pasturelands Landscape Character Area as a low lying landscape which forms part of the wider Low Weald and shares many of the same characteristic.
- 6.10 The Maidstone Landscape Character Assessment advises that the site is in the Headcorn Pasturelands Landscape Character Area which is assessed as being of 'Good' condition and of 'High' sensitivity with guidelines to 'Conserve'.
- 6.11 Where Gypsy and Traveller developments are normally permitted, it is based on being screened by existing permanent features such as hedgerows, tree belts, buildings, or land contours, as required by policy LPRHOU 8. Consequently, unless

well screened or hidden away in unobtrusive locations, mobile homes are normally considered unacceptable in their visual impact.

- 6.12 The site forms part of a row of Gypsy and Traveller sites, which are bounded by close boarded fencing. The site itself is screened by the neighbouring Gypsy and Traveller development, to the south, north and east. Views into the site are only possible when travelling along the access road.
- 6.13 Local Plan Review policy HOU8 states that in assessing impact on the landscape weight will be attached to screening by existing landscape features. The application site is screened from Lenham Road by a mature hedgerow and the adjacent Gypsy and Traveller sites to the south.
- 6.14 Some long views are found across the Low Weald to the Greensand ridge to the north and from the ridge to the Low Weald. More typically, intervening vegetation encloses many immediate views across the flat to very gently undulating landform. Views of the application site are interrupted to a large extent by boundary vegetation, although there are views across from the public footpath on elevated ground to the north east of Upper Boy Court Farm.
- 6.15 Apart from the residents of the Traveller sites as users of the access track, receptors mainly would be people using the rights of way for leisure purposes, who are regarded to have high sensitivity. I found the mature field boundary vegetation limits short distance views from the public footpath to the west. In longer distance views, as from the north, the site is seen as part of the Meadows development as a whole. The sense is of a developed area of land, with structures of a low height as opposed to open fields and elements or features were not distinct. From near the Lenham Road entrance the focus is on the caravan sites nearest the road. Apart from caravans on adjacent pitches the pitch is not visible from inside anyone's home. Adjoining landowners to the west would be well aware of the site's presence from their landholding as part of the wider development. The probability is that external lighting would be visually intrusive in conjunction with the lighting associated with the two other sites.
- 6.16 The application site is in the Low Weald Landscape of Local Value. Policy LPRSP9 (7) states "The distinctive landscape character of...the Low Weald...will be conserved and enhanced as [a]landscape...of local value". The Low Weald covers a significant proportion of the countryside in the rural southern half of the borough. The Low Weald is recognised as having distinctive landscape features: the field patterns, many of medieval character, hedgerows, stands of trees, ponds and streams and buildings of character should be conserved and enhanced where appropriate.
- 6.17 Policy LPRHOU 8 advises that the cumulative effect on the landscape arising because of the development in combination with existing lawful caravans needs to be assessed and to ensure no significant harm arises to the landscape and rural character of the area.
- 6.18 Overall, it is not assessed that the mobile homes cause significant visual harm. They would clearly be seen in the context of the surrounding caravan plots.
- 6.19 The application also seeks the siting of 2 day-rooms/outbuildings. The dimensions of which are detailed in the above proposal section. When considering these buildings are clearly subservient in scale to the mobile homes and benefits from the screening detailed above, it is not assessed that the building causes significant harm to the character and appearance of the countryside.

- d. The site can be safely accessed to and from the highway by all vehicles using the site on a regular basis.
- 6.20 Policy LPRSP15 states that applications must accommodate vehicular movements generated by the proposal on the local highway network and through the site access. LPRQD4 states that proposals must not result in unacceptable traffic levels on nearby roads or unsympathetic changes to the character of rural lanes.
- 6.21 NPPF guidance states "Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe" (NPPF para 111).
- 6.22 There are no highway issues with the existing access and this access is suitable for the extra traffic generated from this application. The vehicle movements resulting from the application can easily be accommodated on the local road network. There is sufficient parking/turning provision on the site. The current application does not result in severe impact on the highway network and the application is in accordance with policy LPRSP15 and the NPPF.
- e. The site is not located in an area at risk from flooding (zones 3a and 3b)
- 6.23 The site lies within Flood Zone 1, consequently flooding is not an issue. A planning condition will be imposed to that surface water runoff is dealt with within the site boundaries.
- f. The ecological impact of the development has been assessed through appropriate survey and a scheme for any necessary mitigation and enhancement measures confirmed.
- 6.24 Policy LPRSP14 directs the planning system to contribute to and enhance the natural and local environment.
- 6.25 The site and adjacent land is not designated land and do not contain important habitats or other biodiversity features. There is no reasonable likelihood of protected or priority species being present on the site or being adversely impacted by this application. The surrounding paddock is a grass covered field with some scrubby vegetation. It is unlikely that the area is of any significant ecological significance or provides a habitat for any protected species.
- 6.26 Planning conditions are recommended to seek on site biodiversity enhancement and for new landscaping especially around the site boundaries. On this basis, the proposal would accord with policies LPRSP14 and LPRHOU 8 of the Maidstone Local Plan Review (2024), and the NPPF (2023). These policies jointly direct the planning system to contribute to and enhance the natural and local environment.

### **Need and supply**

- 6.27 The Maidstone Borough Council Gypsy, Traveller, and Travelling Showperson Accommodation Assessment (GTAA) was published in September 2023 replacing the January 2012 assessment.
- 6.28 The 2023 GTAA formed part of the Local Plan Review evidence base and informs the current preparation of the separate Development Plan Document covering the period 2023-2040. The 2023 GTAA was submitted to the LPR Inspector as part of this Council's evidence base for the LPR and the need has now increased very significantly to 529 pitches between 2023 and 2040. Whilst the most up to date assessment, the weight attached to the figures needs to be balanced against the following limitations.



6.29 The need figures for Gypsy and Traveller households in the GTAA are divided into three categories: 'Meet planning definition'; 'Undetermined'; and 'Do not meet planning definition':

- Meet Planning Definition (Need found for 340 households)
  - 2023 GTAA uses Gypsy & Traveller definition found in 2015 National Planning Policy for Traveller sites.
  - After Court of Appeal found it discriminatory, definition was changed (Dec 2023), after 2023 GTAA.
  - Revised definition now includes those who have permanently ceased to travel due to "...their own or their family's or dependents' educational or health needs or old age".
  - An assessment using this revised definition is likely to slightly increase the future need for Gypsy and Traveller accommodation for households who now meet the planning definition in the borough.
- Undetermined (Need found for 122 households)
  - 2023 GTAA states (para 3.31): As well as calculating need for households that meet the planning definition, a GTAA has to consider the needs of any households where an interview was not able to be completed (either due to refusal to be interviewed or households that were not present during the fieldwork period) .....
  - Whilst there is no law or guidance that sets out how the needs of these households should be addressed; an approach would have been taken that sought an estimate of potential need from these households.....
  - This would be an additional need which is over and above the need identified for households that meet the planning definition.
- Do not meet the Planning Definition. (Need found for 67 households)
  - With definition change outlined above, size of group outside definition will decrease, with an increase in the group meeting the definition.
  - 2023 GTAA states (para 3.38)" ...housing needs of any Gypsy & Traveller households who do not meet planning definition of a Traveller will need to be assessed as part of the wider housing needs of area and will form a subset of the wider need arising from households residing in caravans".

6.30 In conclusion, the key material consideration regarding need is that this Council should have a 5-year supply of Gypsy and Traveller accommodation. Based on the figure in the 2023 GTAA of those meeting the planning definition only, the current supply is 1.2 years; and this is made up of: Carried forward unimplemented 2017 Local Plan allocations; turnover on the two public sites in the borough; and windfall allowance for pitches which will be granted planning permission in the future. The need assessment in the 2023 GTAA was out of date 3 months after publication and this was due to the change in the central government definition of gypsy and travellers.

6.31 The Council's true supply will be lower than 1.2 years and further away from the required 5 year supply. This is after accounting for the potential increased need from the change in definition, and proportion of the 'undetermined' group that meet the definition. An addendum note (July 2024) is now published on the Council's website, which advises that the change in definition has resulted in an additional 2 pitches arising from households who now meet the definition and conversely, a reduction by 2 pitches from households who do not meet the need.

- 6.32 It is highlighted that this formal acknowledgement of a lack of a 5yr supply for Gypsy and Traveller Pitches triggers paragraph 27 of the Government's Planning Policy for Traveller Sites (PPTS) which states:

*"If a LPA cannot demonstrate an up-to-date 5 year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission(see footnote). The exception is where the proposal is on land designated as Green Belt; sites protected under the Birds and Habitats Directives and/or sites designated as Sites of Special Scientific Interest; Local Green Space, an AONB, or within a National Park (or the Broads)". Footnote: "There is no presumption temporary grant of permission should be granted permanently. Planning Committee Report 22 August 2024".*

- 6.33 The Local Plan Review has full weight, but the Council has chosen to separate the matter of gypsy and traveller policy from the Local Plan Review and is pursuing a separate DPD on this matter.
- 6.34 The first stage consultation (Regulation 18a) took place between February and April 2023; and additionally, two targeted call for sites exercises ran between 1st February and 31st March 2022, and 28th February and 17th April 2023. The Gypsy, Traveller and Travelling Showpeople DPD is at its early stages and further public consultation is expected on this towards the end of 2024. In the interim, Local Plan Review policy LPRSP10(c) (Gypsy & Traveller Site Allocations), includes extant allocations carried forward from the 2017 Local Plan policy GT1; and development management policy LPRHOU8 for windfall applications.
- 6.35 The DPD will be informed by the outcome of a Pitch Deliverability Assessment (to assess what proportion of the need can be met on existing sites through intensification or expansion) and a targeted Call for Sites exercise to identify potential new sites so the needs of the community can be adequately, and appropriately addressed and appropriate engagement can take place.
- 6.36 In respect of the Maidstone Gypsy, Traveller and Travelling Showpeople DPD, the Local Development Scheme (LDS) timetable indicates a Reg 18b consultation taking place from February to March 2024. Evidence gathering ahead of a Reg 18b consultation is currently ongoing and the Council is considering whether it is appropriate to formally amend the LDS in relation to the DPD.

### **Gypsy Status**

- 6.37 Following the judgment in the Court of Appeal in the case of *Smith v SSLUHC & Ors*, it should be noted that the land-use needs of potential future occupants of the site may only relate to their ethnicity and the government has reverted the definition of Gypsies and Travellers used in the PPTS to that adopted in 2012 for plan and decision making. The current definition is therefore as follows:

*"Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependents' educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling showpeople or circus people travelling together as such".*

- 6.38 Whilst the submission does not provide specific details regarding how they would meet the above definition, it is considered unreasonable to request further information on this matter. The argument is that when granting planning permission for a farm worker's dwelling for example, the Council does not require the farmer to prove that the intended occupant is a bone fide farm worker. Instead, the Council would rely on an occupancy condition to ensure that the dwelling is used for its intended purpose.

6.39 A previous award of costs against the Council on a separate unrelated site is also highlighted in relation to gypsy status. At the site known as Pear Paddock, in the decision letter the appeal Inspector set "The Council's second reason for refusal complains that the appellants have not demonstrated that the proposed site occupants are Gypsies or Travellers. Yet there is nothing in the relevant policy that requires a personal demonstration of need or ethnic identity. It is not as though any housebuilder is required to tell the LPA who exactly is intended to live in the houses s/he proposes to build; concomitantly, there is no such requirement here". With this background and the common use of planning conditions to restrict occupation of relevant sites to Gypsies or Travellers, the refusal of planning permission on the grounds that Gypsy status has not been proven would be unreasonable.

6.40 The applicant has provided a statement which details there would be children on site with health needs. As detailed above, were the application refused and the family to leave the site, with no alternate sites available, this would result in a serious interference to the families rights under Article 8 and the best interests of the children would suffer.

#### **Residential Amenity**

6.41 Policy LPRSP15 states that proposals will be permitted where they "Respect the amenities of occupiers of neighbouring properties and uses and provide adequate residential amenities for future occupiers of the development by ensuring that proposals do not result in, or its occupants are exposed to, excessive noise, vibration, odour, air pollution, activity or vehicular movements, overlooking, or visual intrusion, or loss of light to occupiers".

6.42 The application site is forms part of a row of Gypsy and Traveller sites, with the existing landscaping screening the caravans from neighbouring properties. The caravans will avoid any adverse effect in terms of overshadowing, loss of light, outlook, or privacy. This development does not have an adverse impact upon the living conditions of any neighbouring resident, including in terms of general noise and disturbance. In the interests of amenity, A planning condition is recommended in relation to external lighting.

6.43 The proposal is acceptable in terms of maintaining the living conditions of neighbouring occupiers and providing adequate amenities for future occupiers of the proposed dwelling. The proposal is in accordance with policy LPRQ&D7 of the Maidstone Local Plan Review (2024).

6.44 The Planning Policy for Traveller Sites 2023 (PPTS) advises "When assessing the suitability of sites in rural or semi-rural settings, local planning authorities should ensure that the scale of such sites does not dominate the nearest settled community" (paragraph 14).

6.45 The application includes 2 Gypsy and Traveller pitches (2 static homes). The impact of the current application individually or taken cumulatively with other sites in the locality is not of a scale that would dominate the nearest settled community of Headcorn located to the south west.

#### **Biodiversity net gain**

6.46 Unless in the list of specified exemptions, biodiversity net gain is required for all non-major planning applications made after the 2 April 2024 (and for major applications made after 12 February 2024).

6.47 The national biodiversity net gain requirement is 10%. In accordance with local policy LPR14(A), applications for new residential development only received after

the above commencement dates are required to provide a total of 20% biodiversity net gain (inclusive)

- 6.48 The application is retrospective, the applicant has not provided any information to confirm whether or not the proposal would achieve BNG. The application site relates to an existing Gypsy and Traveller site which has been subdivided with hard standing already present, as such it is reasonable to conclude that the BNG 'base line' is very low if not zero. It is highly unlikely that the site will be restored to its former condition.
- 6.49 Whilst landscaping conditions will be imposed and this would result in some gain for biodiversity, without any quantifiable information it cannot be concluded that the development complies with policy LPR14(A).
- 6.50 In terms of 'balance' when considering the significant need for sites, the personal circumstances of the applicant which are a significant consideration and the lack of 'significant' visual harm, it is not assessed that it would be suitable to refuse the application on the basis of non-compliance with policy LPR14(A) alone.

#### **PUBLIC SECTOR EQUALITY DUTY**

- 6.51 Due regard has been had to the Public Sector Equality Duty, as set out in Section 149 of the Equality Act 2010. It is considered that the application proposals would not undermine objectives of the Duty.
- 6.52 Race is one of the protected characteristics under the Equality Act and ethnic origin is one of the things relating to race. Romany Gypsies and Irish Travellers are protected against race discrimination because they are ethnic groups under the Equality Act. This application has been considered with regard to the protected characteristics of the applicant and the gypsies and travellers who occupy the caravans. I am satisfied that the requirements of the PSED have been met and it is considered that the application proposals would not undermine objectives of the Duty.

#### **7. CONCLUSION**

- 7.01 The application site relates to a wider plot which was subject to a lengthy appeals process as noted in the above appeals history section and background section. Some sites were granted permission at appeal and others were refused in split decisions. Whilst there has been successful enforcement action, the remains of the sites remain. In any case, these decisions were made in March 2023, since then the updated Maidstone Local Plan Review has been adopted and the site supply and need situation has deteriorated and this gives significant weight to granting permission, particularly so in this instance where the personal circumstances of the applicant are given significant weight.
- 7.02 LPRHOU 8 of the Maidstone Local Plan Review (2024), allows for Gypsy and Traveller accommodation in the countryside provided certain criteria are met; and policy LPRSP9 allows for development provided it does not result in harm to the character and appearance of the area. The GTAA published in 2023 outlines a need and the Council's current position is that it can demonstrate a 1.2 years' worth of deliverable pitches at 1st April 2023.
- 7.03 The proposal has been assessed in relation to its visual and landscape impact, highways impact, sustainability, residential amenity, and flooding / drainage and found to be acceptable. The visual harm is assessed as being moderate and localised as is detailed by the inspectorate and this harm must be balanced against the personal circumstances of the applicant. There is little prospect of these sites being restored to their original condition.

- 7.04 The development is acceptable with regard to the relevant provisions of the Development Plan, the NPPF and all other material considerations such as are relevant. For the reasons set out above, it is recommended that permission be granted.

## **8. RECOMMENDATION**

### **GRANT PLANNING PERMISSION subject to the following conditions**

with delegated powers to the Head of Planning and Development to be able to settle or amend any necessary planning conditions and/or informatives in line with the matters set out in the recommendation and as resolved by the Planning Committee:

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission;  
Reason: In accordance with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:  
Application for planning permission  
P1047-1 Rev A Proposed Day Room  
P10d7-2 Existing And Proposed Units 1&2  
P1047-3 Existing Block Plan  
P1047-4 B Proposed Site Plan  
Design and Access Statement  
Examination of the Maidstone Local Plan Review  
Reason: For the avoidance of doubt and in the interests of proper planning.
- 3) The site shall not be occupied by any persons other than Gypsies and Travellers, defined as persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.  
Reason: The site is in an area where the stationing of caravans/mobile homes is not normally permitted.
- 4) No more than four caravans as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, as amended (of which no more than two shall be astatic caravan/mobile home) shall be stationed on the land at any time. The mobile homes shall be positioned on the site as set out on the submitted drawings.  
Reason: To safeguard the character and appearance of the countryside.
- 5) If the lawful use of the site ceases, all caravans, structures, equipment and materials brought onto the land for the purposes hereby permitted including hardstandings and buildings shall be removed within two months from the date of the use ceasing.  
Reason: To safeguard the character and appearance of the countryside.
- 6) No vehicles over 3.5 tonnes shall be stationed, stored or parked on the site at any time.  
Reason: To safeguard the character and appearance of the countryside.
- 7) Notwithstanding the provisions of Schedule 2 Part 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no temporary buildings or structures shall be stationed on the land other than those expressly authorised by this permission (as shown on the approved plans).

Reason: To prevent inappropriate development and safeguard the amenity, character, and appearance of the countryside, and in the interests of residential amenity.

- 8) The use hereby permitted shall cease and all caravans, structures, equipment, and materials brought onto the land for the purposes of such use shall be removed within 6 weeks of the date of the failure to meet any one of the requirements set out in (i) to (iv) below:
- i) Within 6 weeks of the date of this decision a Site Development Scheme, hereafter referred to as the 'Scheme', shall have been submitted for the written approval of the Local Planning Authority. The Scheme shall include:
    - a) A detailed site layout showing how hardstanding and parking areas are the minimum area necessary.
    - b) Details of the permeable construction of hardstanding areas and measures to deal with surface water run off within the site boundaries.
    - c) Details of existing landscaping.
    - d) Details of proposed landscaping (see condition 9).
    - e) Details of measures to enhance biodiversity at the site (see condition 11).
    - f) the means of foul and surface water drainage at the site, along with details regarding the provision of potable water and waste disposal (see condition 11).
    - g) existing external lighting on the boundary of and within the site (see condition 13); and,
    - h) a timetable for implementation of the scheme including a) to g) with all details implemented in accordance with the agreed timetable and all details retained for the lifetime of the development.
  - ii) Within 11 months of the date of this decision the Scheme shall have been approved by the Local Planning Authority or, if the Local Planning Authority refuse to approve the Scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
  - iii) If an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted Scheme shall have been approved by the Secretary of State.
  - iv) The approved Scheme shall have been carried out and completed in accordance with the approved timetable and thereafter maintained and retained as approved.
- Reason: To ensure the visual amenity, character, and appearance of the open countryside location.
- 9) The landscaping required by condition 8 shall be designed in accordance with the principles of the Council's landscape character guidance (Maidstone Landscape Character Assessment Supplement 2012). The detailed landscaping drawings shall include:
- a) details of all existing trees, hedgerows and blocks of landscaping on, and immediately adjacent to, the site and indicate whether they are to be retained or removed.
  - b) details of the number, size, species, maturity, spacing and position of proposed trees and landscaping. (Including species, spacing, maturity and quantities) with new hedging at approximately 45cm spacing in a double staggered row, with 30cm between rows and consisting of 70% Hazel, 15% Hawthorn, 10% Spindle, 5% Holly.
  - c) a timetable of implementation of the approved scheme and
  - d) a five [5] year landscape management plan (Only non-plastic guards shall be used for the new trees and hedgerows, and no Sycamore trees shall be planted).
- Reason: In the interests of landscape, visual impact, and amenity of the area and to ensure a satisfactory appearance to the development.
- 10) All approved landscape details shall be completed by the end of the first planting season (October to February) following its approval. Any landscaping which fails to establish or any existing or proposed trees or plants which, within five years from

planting are removed, die or become so seriously damaged or diseased that their long-term amenity value has been adversely affected shall be replaced in the next planting season with plants of the same species and size as detailed in the approved landscape scheme.

Reason: In the interests of landscape, visual impact and amenity of the area and to ensure a satisfactory appearance to the development.

- 11) The enhancement of biodiversity on the site, required by condition 8 shall include the installation of a minimum of one bat tube on the approved mobile homes and the installation of ready-made bird and bat boxes on the site. The development shall be implemented in accordance with the approved details by the end of a two-month period following approval and all these features shall be maintained as such thereafter.

Reason: To enhance ecology and biodiversity on the site in line with the requirement to achieve a net biodiversity gain from all development.

- 12) The details of foul and surface water drainage required by condition 8 shall include the size of individual cess pits and/or septic tanks and/or other treatment systems. Information provided should also specify exact locations on site plus any pertinent information as to where each system will discharge to, (since for example further treatment of the discharge will be required if a septic tank discharges to a ditch or watercourse as opposed to sub-soil irrigation).

Reason: In the interests of amenity.

- 13) The details of existing lighting required by condition 8 shall:
- a) show that the existing lighting is in accordance with the Institute of Lighting Professionals Guidance Notes for the Reduction of Obtrusive Lighting, GN01, dated 2021 (and any subsequent revisions) with reference to environmental zone E1.
  - b) include a layout plan with beam orientation.
  - c) include a schedule of light equipment proposed (luminaire type; mounting height; aiming angles and luminaire profiles).
  - d) include an ISO lux plan showing light spill.

Reason: To safeguard residential amenity, wildlife and to protect dark skies and prevent undue light pollution, in accordance with the maintenance of the character and quality of the countryside.

- 14) Any future external lighting installed on the site (whether permanent or temporary) shall be in accordance with details that have previously been submitted to and approved in writing by the Local Planning Authority. The submitted details shall:
- a) be in accordance with the Institute of Lighting Professionals Guidance Notes for the Reduction of Obtrusive Lighting, GN01, dated 2021 (and any subsequent revisions) with reference to environmental zone E1.
  - b) include a layout plan with beam orientation.
  - c) a schedule of light equipment proposed (luminaire type; mounting height; aiming angles and luminaire profiles).
  - d) an ISO lux plan showing light spill.

The scheme of lighting shall be installed, maintained, and operated thereafter in accordance with the approved scheme.

Reason: To safeguard residential amenity, wildlife and to protect dark skies and prevent undue light pollution, in accordance with the maintenance of the character and quality of the countryside.

Case Officer: William Fletcher

NB: For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.