

Authority to serve Enforcement Notices at Pilgrims Retreat, Hogbarn Lane, Harrietsham, Kent, ME17 1NZ.

Final Decision-Maker	Planning Committee
Lead Head of Service	William Cornall - Director of Regeneration and Place Rob Jarman – Head of Planning and Development
Lead Officer and Report Author	James Bailey – Development Manager
Classification	Public
Wards affected	Harrietsham and Lenham

Executive Summary

The taking of enforcement action is discretionary, however, Local Authorities should act in a proportionate way which is in the public interest when they regard it as expedient to do having regard to the development plan and any other material considerations. An application for residential use on the site has been refused and the grounds of refusal sets out the harm arising. The current unlawful use of the land is contrary to National and Local Plan policies and the recommended enforcement action seeks to restore the site and its landscape back to the lawful use. The action recommended is proportionate taking into the account the residents Human and Equality Rights and will maintain the integrity of the decision-making process. The resident's welfare, health and personal circumstances will be considered if the notices are served and take effect before any decisions are taken for further action for non-compliance with the notice.

Purpose of Report

Decision

This report makes the following recommendation to this Committee:

Serve two Enforcement Notices on land encompassing Pilgrims Retreat, Hogbarn Lane, Harrietsham with the aim of achieving:

- Reduction in the number of caravans on site to 198 – Compliance time of 24 months.
- Removal of all caravans, materials, rubbish etc from the site as a result of the above – Compliance time of 30 months.

- Cessation of the permanent residential use of 180 of the 198 caravans that remain on site - Compliance time of 48 months.
- Restoration of the southern part of the site to accord with the layout plan as approved under 13/1435 (see Appendix B of this report for this layout) and remove all walls, domestic paraphernalia, retaining walls, hard surfacing and internal roadways outside the developed areas defined on the plan - Compliance time of 48 months.
- Restoration of the site in accordance with a specified landscape strategy – 48 months.

That delegated authority be given to the Head of Planning and Development to settle the drafting and issuing of the Notices broadly in line with the terms set out in the recommendation above.

Timetable	
<i>Meeting</i>	<i>Date</i>
Planning Committee	27 February 2020

1. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	<p>The four Strategic Plan objectives are:</p> <ul style="list-style-type: none"> • Embracing Growth and Enabling Infrastructure • Safe, Clean and Green • Homes and Communities • A Thriving Place <p>We do not expect the recommendations will by themselves materially affect achievement of corporate priorities given the unlawful nature of activities that we are recommending enforcement action on. We set out the reasons other choices will be less effective in section 4 - available alternatives.</p>	Rob Jarman
Cross Cutting Objectives	<p>The four cross-cutting objectives are:</p> <ul style="list-style-type: none"> • Heritage is Respected • Health Inequalities are Addressed and Reduced • Deprivation and Social Mobility is Improved • Biodiversity and Environmental Sustainability is respected <p>The report recommendation supports the achievement of the Biodiversity and Environmental Sustainability cross cutting objective by seeking to restore the site, which is located in the AONB, in line with the mitigation proposed as part of the enforcement notices.</p>	Rob Jarman
Risk Management	Already covered in the risk section.	Rob Jarman
Financial	<ul style="list-style-type: none"> • The cost of covering the service of the Enforcement Notices can be met from the existing enforcement budget however in the event of appeals being submitting to the Planning Inspectorate, the Council will need to defend these. A £ figure cannot be estimated on the cost of such appeals as there are 	Section 151 Officer & Finance Team

	<p>various connotations on how these may come forward. It is likely that the existing appeals budget would not be able to fund the full cost of defending such appeals if submitted.</p>	
Staffing	<ul style="list-style-type: none"> We will deliver the recommendation with our current staffing. 	Rob Jarman
Legal	<ul style="list-style-type: none"> Accepting the recommendation will fulfil the Council’s duties under Town and Country Planning Act and The Countryside and Rights of Way Act 2000. Failure to accept the recommendations without agreeing suitable alternatives may place the Council in breach of its legal duty under The Countryside and Rights of Way Act 2000 which requires the Council to have “regard to the purposes of conserving and enhancing the natural beauty of the area of outstanding natural beauty”. Acting on the recommendations is within the Council’s powers as set out in the Constitution. 	Susan Mauger – Legal Officer
Privacy and Data Protection	<ul style="list-style-type: none"> Accepting the recommendations will increase the volume of data held by the Council. We will hold that data in line with our retention schedules. 	Policy and Information Team
Equalities	<ul style="list-style-type: none"> We recognise the recommendations will have an impact under S149 of the Equalities Act and Article 8 and Art 1 of the First Protocol of the Human Rights Act 1998 and have therefore assessed this impact separately within this report. 	James Bailey
Public Health	<ul style="list-style-type: none"> We recognise the recommendations may have varying impacts on the health of individuals within Pilgrims Retreat and the surrounding population. Displacement of individuals is likely to cause them distress. It is also recognised that the site is not served by public transport and therefore access by existing residents, many of whom are elderly, to core facilities and services is only obtained 	Public Health Officer

	by car without the ability to mitigate against the impacts of permanent residential homes with community infrastructure or affordable housing.	
Crime and Disorder	The recommendations are not considered to have a negative impact on Crime and Disorder. However, the Community Protection Team have been consulted in the event that such matters arise.	John Littlemore
Housing	We recognise the recommendations may have an impact on the Housing Team in terms of providing housing advice in the early stages and the possibility of providing more in-depth advice should any resident become threatened with homelessness. Until more is known about the circumstances of each household, it is difficult to plan for the quantum of temporary accommodation that might arise out of enforcement action.	John Littlemore
Licensing	The Council has issued a Caravan Site License for 198 caravans comprising 18 permanent residential mobile homes; 9 holiday caravans/mobile homes of the same type as the permanent residential ones but only to be used for holiday purposes; and; 171 static holiday caravans/mobile homes for holiday use only. This licence is valid, however it no longer reflects the number of caravans permitted on the site and therefore the site is being operated in breach of the site license.	John Littlemore

2. INTRODUCTION AND BACKGROUND

- 2.1 Pilgrims Retreat has been the subject of an on-going enforcement investigation following allegations that the number of caravans on site were above the lawful number permitted (set out in paragraph 2.8 below) and that a significant number of these caravans were being occupied as permanent residences, rather than as required by the conditions imposed on the main operative planning permission.
- 2.2 Planning Contravention Notices (PCN) were served on the landowner and the residents of the caravans in February 2019 and this established there were some 193 caravans being occupied as permanent residences at that time (the lawful use being for 18 permanent residences and 180 tourism related uses, albeit year round holiday use was permitted). Officers are aware that additional permanent residencies have been established on the site since the service of the original PCN's.
- 2.3 As a result of concerns over the continued breach of planning control at the site, the Council obtained a High Court Injunction on 18 April 2019, which

amongst other things, prevents any further caravans being brought onto the site and further prevents any vacant caravans (show homes) from being occupied.

- 2.4 Following discussions with the owner of the site and the refusal by the Council to determine application 17/506484 which sought a variation of condition 1 and 4 of MA/96/1132 to provide for the retention of the expansion of the area used for siting static holiday caravans and allow an increase in the number of static holiday caravans allowed to be sited, planning application 19/502469 was submitted and made valid on the 7 June 2019. This application was a 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 east boundary.
 - 2.5 This application was considered by the Planning Committee on the 26th September 2019. A copy of the report is attached as Appendix 1 with Appendices A, B and C comprising the accompanying plans/decision letters.
 - 2.6 Members resolved to refuse the application on the grounds stated on pages 57 and 58 of the agenda pack (the last two pages of Appendix 1). A copy of the minutes for this meeting is attached as Appendix 2.
 - 2.7 The refusal of planning permission was issued on 27 September 2019 and is attached as Appendix 3.
 - 2.8 The committee report attached as Appendix 1 sets out the relevant planning history for the site and highlights in bold the key planning permissions. It also sets out the other relevant background information and a summary of the planning history and fall-back position. I do not intend to repeat that position in the current report as this should be read alongside this report, except to summarise that your officers consider the lawful permission for the site is for 198 static caravans of which only 18 should be used as permanent residences and 180 for holiday related uses and the majority of the engineering works undertaken in the southern part of the site, which includes the terracing of the site, are unauthorised.
 - 2.9 Following the refusal of planning permission, the applicants have sought to argue that some parts of the site are not restricted by caravan numbers, type and manner of use of those caravans as suggested by your officers. This counter argument has been carefully considered; however, I am of the firm view and having taking advice on this matter, that the position as set out in the officer's report to committee attached as Appendix 1 is correct and as summarised in paragraph 2.8 above.
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3. POLICY AND OTHER CONSIDERATIONS.

3.1 Maidstone Borough Local Plan 2017 – SS1, SP17, SP20, ID1, DM1, DM3, DM8, DM19, DM23 and DM30
National Planning Policy Framework - Feb 2019 (NPPF)
National Planning Practise Guide (NPPG)
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
Local Enforcement Plan - Nov 2018

3.2 Paragraph 58 of the NPPF states:

Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. They should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate.

3.3 The NPPG provides further guidance on taking enforcement action and advises that *Local planning authorities have responsibility for taking whatever enforcement action may be necessary, in the public interest in their administrative areas¹ and that local planning authorities should act in a proportionate way. Local planning authorities have discretion to take enforcement action, when they regard it as expedient to do so having regard to the development plan and any other material considerations. This includes a local enforcement plan, where it is not part of the development plan. In considering any enforcement action, the local planning authority should have regard to the National Planning Policy Framework, in particular paragraph 58².*

3.4 The NPPG advises that effective enforcement is important to:

- *tackle breaches of planning control which would otherwise have unacceptable impact on the amenity of the area;*
- *maintain the integrity of the decision making process;*
- *help ensure that public acceptance of the decision-making process is maintained³*

3.5 The NPPG further advises:

Nothing in this guidance should be taken as condoning a wilful breach of planning law. Enforcement action should, however, be proportionate to the breach of planning control to which it relates and taken when it is expedient to do so. Where the balance of public interest lies will vary from case to case.

¹ NPPG Paragraph 002 Reference ID: 17b-002-20140306. Revision date 06.03.2014

² NPPG Paragraph 003 Reference ID: 17b-003-20140306. Revision date 06.03.2014

³ NPPG Paragraph 005 Reference ID: 17b-005-20140306. Revision date 06.03.2014

In deciding, in each case, what is the most appropriate way forward, local planning authorities should usually avoid taking formal enforcement action where:

- *there is a trivial or technical breach of control which causes no material harm or adverse impact on the amenity of the site or the surrounding area;*
- *development is acceptable on its planning merits and formal enforcement action would solely be to regularise the development;*
- *in their assessment, the local planning authority consider that an application is the appropriate way forward to regularise the situation, for example, where planning conditions may need to be imposed⁴.*

3.6 The term “expedient” is not defined in the Town and Country Planning Act but its ordinary meaning is “suitable for achieving a particular end”; “characterised by concern with what is opportune or advantageous rather than what is right, just or moral”.⁵

Expediency and Public Interest taking account of the above:

3.7 Having particular regard to the officer’s report to Planning Committee on 26 September 2019, attached as Appendix 1 to this report and to the reasons for refusal of the planning application to regularise the site, attached as Appendix 3, I would draw Members attention to the following paragraphs which explain the reasons why it is expedient, proportionate and in the public interest to pursue the preferred option as set out in section 6 below. I do not set these out verbatim, but the following paragraphs crystallise the harm being caused to the landscape designated as a national landscape and to the unsustainable location for permanent residential housing and impact on highways.

3.8 Paragraphs 7.10 – 7.20, 7.29- 7.39 regarding the impact on the landscape designated as an Area of Outstanding Natural Beauty and the Council’s legal duty under S85 of the Wildlife and Countryside Act 2000, and the associated conclusion on such matters at paragraph 8.02 and paragraphs 7.22 – 7.28 regarding the unsustainable location for housing and the objection raised on highway grounds with consequential conclusion on such matters at paragraph 8.01.

4. AVAILABLE OPTIONS

4.1 In considering how to exercise its discretionary powers and to ensure proportionality in the options pursued for enforcement action which are in the public interest, your officers, had a number of desired outcomes in mind which are summarised below. Not all of these outcomes can be controlled by planning/enforcement powers however it was considered important to consider these matters as a whole as the report to committee on the 26

⁴ NPPG Paragraph 011 Reference ID: 17b-011-20140306 Revision date 06.03.2014

⁵ Section 172(1) of the Town and Country Planning Act 1990

September and the subsequent grounds of refusal do cite most of the matters as areas of concern.

- To ensure only the lawful number of caravans (198) remain on site with any above this number being required to be removed.
- Notwithstanding what is stated in paragraphs 1.05 and 1.06 of the committee report to Planning Committee dated 26 September 2019, to seek the reversion of the southern part of the site (which comprises the hatched area of land as shown within paragraph 1.01 of the committee report) to that as shown on approved plan drawn by Peter Lead in application MA/13/1345 for the stationing of 60 caravans (a copy of this plan is included in this report as Appendix B).
- To seek the removal of retaining boundary walls to the southern section of the site and ensure adequate capacity in the drainage system.
- To ensure that minimum spacing requirements of the units are compliant with the licensing regime.
- To minimise risk, uncertainty and disruption to the current residents on site and to consider the impact on their Human and Equalities rights.

4.2 I set out below what I consider to be the available options for Members to consider:

Enforcement Options:

4.3 There are effectively 2 main enforcement options available to the Council to peruse and I briefly explain the advantages and disadvantages of both options:

OPTION 1

4.4 Serve two Enforcement Notices (with separate red line boundaries) with the aim of achieving the following:

- Reduction in the number of caravans on site to 198 - Compliance time 24 months.
- Removal of all caravans, materials, rubbish etc from the site as a result of the above – Compliance time 30 months.
- Cease the permanent residential use of 180 of the 198 caravans that remain on site - Compliance time 48 months.
- Restore the southern part of the site to accord with the layout plan as approved under 13/1435 (see Appendix B of this report for this layout) and remove all walls, domestic paraphernalia, retaining walls, hard surfacing and internal roadways etc outside the developed areas defined on the plan - Compliance time 48 months.
- Restore the site in accordance with a specified landscape strategy – 48 months.

- 4.5 The reasons for serving these notices is set out in paragraphs 3.7 and 3.8 above and refer back to the Planning Committee report to identify the harm arising.
- 4.6 The advantages of this option would see the site revert to its lawful use, would be the most compliant with regards to National and Local plan policies, would seek to restore the site and mitigate the harm to landscape and visual amenity and comply with the Council's statutory duty. It would be expedient and proportionate in that it seeks a reversion to the lawful use of the site but also seek to under-enforce by allowing the southern part of the site to be developed in accordance with the terms of application 13/1435 (the notice could require removal of all development on the southern part of the site except for that approved under MA/02/2056).
- 4.7 The disadvantages would be that the notices would require any persons occupying the site in excess of 198 caravans to move off-site and find alternative permanent residences and of the remaining residents, save for the 18 authorised caravans which can be residentially occupied, all those permanently occupying the site would likewise need to find alternative permanent residences as the authorised use would be for holiday purposes only.
- 4.8 This option would comply with most of the desired outcomes listed above but has the greatest impact on existing residents.

OPTION 2

- 4.9 Serve two Enforcement Notices (with separate red line boundaries) with the aim of achieving the following:
- Reduce the number of caravans on site to 198 - Compliance time 24 months.
 - Remove all caravans, materials, rubbish etc from the site as a result of the above – Compliance time 30 months.
 - Restore the southern part of the site to accord with the layout plan as approved under 13/1435 (see Appendix B of this report for this layout) and remove all walls, domestic paraphernalia, retaining walls, hard surfacing and internal roadways outside the developed areas defined on the plan - Compliance time 48 months.
 - Restore the site in accordance with a specified landscape strategy – 48 months.
- 4.10 The reasons for serving these notices is set out in paragraphs 3.7 and 3.8 above and refer back to the Planning Committee report to identify the harm arising, however this option would effectively permit the occupancy of all 198 caravans as permanent residences (i.e without the holiday use restriction).
- 4.11 The reason for this is that the last lawful use is the starting point when considering the discretionary exercise of taking enforcement action. By not seeking the reversion to the last lawful use in the terms of the notice, will,

on compliance with all the requirements of the notice, result in a deemed consent⁶ for those matters not enforced against.

- 4.12 The advantage with this option is that it would be the most compliant with the last of the desired outcomes (last bullet point in paragraph 4.1 above) in that it would cause the least disruption to residents on site however, it would still result in a number of residents having to leave the site to reduce numbers to 198 and would still require displacement of those residents in the southern part of the site (to the north of the site) to comply with the layout plan approved under 13/1435.
- 4.13 The disadvantage with this option is that is the least compliant with regard to National and Local Plan policy. It is true to say that this option would seek to address the harm to the AONB (by restoring the southern section of the site to that previously approved under 13/1435) and would follow Option 1 in this regard, however it would not address the key concerns as set out in the officers report to Planning Committee dated 26 September 2019 (Appendix 1 of this report) regarding the creation of an additional 180 permanent homes in the countryside in an unsustainable location and with poor highway connections. Kent Highways objected to the planning application which sought 248 residential caravans. Acknowledging that if any deemed consent arose (and that assumes full compliance with any enforcement notices served), that this would be for 180 caravans and not the 248 previously applied for, however the same issue arise in terms of location and highway issues as set out in the committee report.
- 4.14 There is also no certainly, and one I should add that is not relevant to the serving of any enforcement notices but is relevant to desired outcomes cited in 4.1 above, that were deemed consent effectively granted, the landowner could, pursuant to the Owners Licence, serve a Notice to quit to the residents – as the residents would be in breach of their licences to occupy for leisure purposes only. However, this is not in the remit for consideration as to which option/route the Council decides to take.
- 4.15 I shall also say that unlike a planning application which can seek to mitigate the impact of development arising (in the form of contributions/affordable housing via a S106 agreement) a deemed consent which could arise through Option 2 would not cater for this and any opportunities to help mitigate the impacts from 180 permanent homes would be lost through this option.
- 4.16 This option on face value appears to be the best fit option having regard to the desired outcome listed in paragraph 4.1 above, however, is the least compliant option when taking into account those matters as set out in Section 3 above and having regard to S172(1) of the Town and Country and Country Planning Act which confirms that *The local planning authority may issue a notice (in this Act referred to as an "enforcement notice") where it appears to them –*

(a) *that there has been a breach of planning control, and*

⁶ Section 173(11) of the Town and Country Planning Act 1990 – anything that is not enforcement against is deemed to have been granted/authorised.

- (b) *that it is expedient to issue the notice, having regard to the development plan and to any other material considerations.*

Other Options:

4.17 **DO NOTHING - OPTION 3**

4.18 Members could decide to take no enforcement action on the site and leave the status as it currently is.

4.19 The advantage of such an approach would appear to meet the desired objective of causing the minimal risk, uncertainty and disruption to the current residents on site as set out in the last bullet point of paragraph 4.1 above, however the disadvantage of the do nothing option would be that the other desired outcomes cannot be achieved.

4.20 This option would also seemingly make a mockery of the planning system where such blatant breaches of planning control would go unchecked and would go against National and Local Plan policy. This could have widespread implications for the Council in that it could open up adverse public comments/LGO complaint procedures, undermine the principle of the planning process, open up the potential for further blatant breaches of planning control which the Council would seem to tolerate, make the Council appear weak and tolerant of such abuses and open up the potential for Judicial Review proceeding when clearly the existing breaches of planning are contrary to both National and Local Plan policies.

4.21 **GIVE AN EXTENDED PERIOD OF TIME FOR THE APPLICANT TO SUBMIT AN ALTERNATIVE PLANNING APPLICATION WHICH MEETS THE DESIRED OUTCOMES AS SET OUT IN PARAGRAPH 4.1 ABOVE – OPTION 4.**

4.22 The applicant has already been given a significant period of time in which to submit the previous application with the Council holding in abeyance any potential action awaiting the determination of that application. I am aware of occupants taking up permanent residential status on the site following the Council's enforcement investigations into the unlawful use of the caravans as permanent residences (when assurances were given by the park owner that the situation would remain as it was). This culminated in the Council obtaining a High Court Injunction as set out in paragraph 2.3 above.

4.23 There is a high degree of uncertainty both for residents on site and for the Council with such an approach. For instance, is it likely that the applicant will submit an application to restore the southern section of the site to that approved under 13/1435 (which both Options 1 and 2 seek to restore)? This is an essential requirement to address those concerns raised by the AONB Unit (attached to this report as Appendix C) and as set out in the officer's report to planning committee and in the grounds of refusal (Appendix 3). The Council has a statutory duty to conserve and enhance the AONB. Similar concerns relate to reducing caravan numbers to the lawful numbers. There are also inherent difficulties in addressing the

highway matters raised and indeed Kent Highway Services has objected to the previous application on the grounds of its unsustainable location⁷ and this was included in the grounds of refusal and significant difficulties arise (if agreement can be reached) regarding potential mitigation in the form of S106 contributions to address matters such as healthcare/affordable housing/sustainability/highway matters etc. Who will pay such contributions (the sums are significant).

- 4.24 Case law dictates that *...a decision maker should give the views of statutory consultees... "great" or "considerable weight". A departure from those views requires "cogent and compelling reasons"*.⁸ Case law also requires a consistency in decision making which is not limited to the formal decision but extends to the reasoning underlying the decision.⁹
- 4.25 The advantages of such an approach would be to see if there is an acceptable solution which complies with National and Development Plan policies. The disadvantage with such an approach is as set out above with the continued uncertainties for residents on site. There is also the added disadvantage with this option that there is no certainly over timing and the time periods for immunity as set out in Section 171B(3) of the Town and Country Planning Act 1990 i.e the 10 year use continue and the effect of this option would be that some residencies would be able to gain immunity from enforcement and become lawful due to the passage of time.
- 4.26 A further matter is that the 6-month time period for the appeal of the refusal of planning permission 19/502469/FULL expires on 27 March 2020. The applicant will need to decide whether to pursue this option. A further application could be submitted which seeks to address the grounds of refusal whilst simultaneously running a Section 78 appeal, however, the Council would need to retain the ability to defend such an appeal if no new application was submitted or determination of this application fell outside of the appeal timeframes (it is the Planning Inspectorate who sets the timeframes for appeals).

5. HUMAN RIGHTS AND EQUALITY ACT

- 5.1 Article 8 of the European Convention on Human Rights, as incorporated into UK law by the Human Rights Act 1998, states that everyone has the right to respect for (amongst other things) his private and family life, and his home. A decision to take enforcement on the site would be an interference with the majority of 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

⁷ Paragraphs 102 and 103 of the Feb 2019 NPPF

⁸ Shadewell Estates Ltd v Brackland DC (2013) EWHC 12 (Admin) paragraph 72.

⁹ As succinctly set out in R (oao Matthew Davison) and Elmbridge Borough Council (2019) EWHC 1409 (Admin)

needed to prevent harm to the general interest. Any interference with those Human rights should be in accordance with the law and necessary in a democratic society, applying the principle of proportionality.

- 5.2 As set out in the report above, the decision to take enforcement action is discretionary, but should only be taken when it is expedient, and any action is proportionate and in the public interest. The law, i.e the Town and Country Planning Act 1990, Section 172(1) states that *The local planning authority may issue a notice (in this Act referred to as an "enforcement notice") where it appears to them –*
- (a) *that there has been a breach of planning control, and*
 - (b) *that it is expedient to issue the notice, having regard to the development plan and to any other material considerations.*
- 5.3 Planning permission for an earlier scheme was refused on the grounds as set out in the decision letter dated 27 September 2019. There has been a breach of planning and the refusal notice sets out the harm arising as a result of the unlawful stationing and occupation of caravans. A decision to serve enforcement notices to seek compliance with the lawful use of the land and compliance with both National and Local Plan policies and which resulted in the loss of individuals homes would be considered a necessary and proportionate response.
- 5.4 The Council must also have regard to its Public Sector Equality Duty (PSED) under Section 149 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 protected characteristic(s).
 - Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.
- 5.5 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. Whilst it is acknowledged that the majority of occupants on site are older persons, which is a protected characteristic and the impacts of enforcement action is likely to have significant effects on those residents, given the harm to landscape quality and amenity of the locality, designated an Area of Outstanding Natural Beauty, the unsustainable location of the site, the impacts on highway matters and the conflict with established National and Local Plan policies, the equality duty is not sufficiently weighty in my view to prevent proportionate and expedient action which is in the public interest and maintains the integrity of the decision making process.

6. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

6.1 The option which delivers most of the desired outcomes and fulfils the requirements of Section 172(1) of the Town and Country Planning Act in so far as having regard to the provisions of the development plan and to any other material considerations is **OPTION 1**.

6.2 In order to set out my reasons for recommending Option 1, I must draw Members attention to the officer's report to Planning Committee on the 26 September (attached as Appendix 1 to this report) and to the refusal of planning permission (attached as Appendix 3). In particular paragraphs 7.10 – 7.20, 7.29- 7.39 regarding the impact on the landscape designated as an Area of Outstanding Natural Beauty and the Council's legal duty under S85 of the Wildlife and Countryside Act 2000, and the associated conclusion on such matters at paragraph 8.02 and paragraphs 7.22 – 7.28 regarding the unsustainable location for housing and the objection raised on highway grounds with consequential conclusion on such matters at paragraph 8.01.

6.3 I would also draw Members attention to the summarised reasons below which supports my recommendation for Option 1:

- the statutory obligation on the Council 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.¹⁰
- the fact that great weight should be given to conserving and enhancing landscape and scenic beauty in Areas of Outstanding Natural Beauty which have the highest status of protection¹¹. The officers report to committee paragraphs 7.14 – 7.20 sets out the key discussion on this point. To my mind, the approach advanced in paragraph 7.20 of the committee report as set out in R (Mevagissey Parish Council) v Cornwall Council (2013) EWHC 3684 (Admin) (given the importance to AONB's by the NPPF and S85 of the Countryside & rights of Way Act 2000) should equally be applied as to whether enforcement action should be taken given the effect of S172(1) of the Town and Country Planning Act 1990 "*that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations*".
- the strength of objection from the Kent Downs AONB Unit - Appendix C.
- this option restores the site back to the lawful position, however, is proportionate in that it seeks to restore the southern section of the site to that previously permitted under 13/1435 (see analysis of this permission in paragraph 1.05 of the committee report).
- the objection from Kent Highways as the statutory consultee for highways on the grounds that the site is unsustainable in terms of its location and does not meet the objectives of the NPPF,

¹⁰ S.85(1) of the Countryside and Rights of Way Act 2000: "*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*".

¹¹ NPPF - para 172

paragraphs 102 and 103 with poor access to public transport and remoteness from local services and facilities.

- having considered the Human Rights and Equality Duty as set out in section 5 of this report, Option 1 is considered a necessary and proportionate response to the current unlawful use of the land with the Equality Duty not sufficiently weighty to prevent proportionate and expedient enforcement action which is in the public interest and maintains the integrity of the decision-making process.

- 6.4 It is acknowledged that Option 1 has the greatest impact on existing residents residing in the park. The cross-cutting issues at the start of this report set out the responses from the Head of Housing on matters that may arise as medium-term consequence as a result of following Option 1.
- 6.5 However, it is important to set out the time periods recommended by Option 1, not taking into account any delays caused by any appeal the landowner/residents may pursue¹², are lengthy (between 2-4 years) and seek a very gradual reversion to the last lawful use (except the southern section of the site which is recommended to be returned to the terms of application 13/1435. This is considered proportionate as the notice could require removal of all development on the southern part of the site except for that approved under MA/02/2056.
- 6.6 The Council also has powers under Section 172A of the Town and Country Planning Act 1990 to offer assurances as regards prosecution for person/s served with a notice. The Council retains the ability to consider the personal circumstances of each individual in the event of non-compliance with the terms of a notice¹³ and would assess this as and when such issues arise.
- 6.7 It is usual in all enforcement cases, especially where non-compliance with the term of the notice has occurred, for welfare checks to be carried out as individual circumstances are raised at each stage of the enforcement process. The Council would be able to assess these and make a decision as to whether an assurance from prosecution should be given to the individual at that time.
- 6.8 It is therefore recommended that Option 1 is the more appropriate course of action when considering all the matters raised in this report. Delegated authority to the Head of Planning and Development will be required to finalise the exact wording and issuing of the notice.

7. RISK

- 7.1 The risks associated with this proposal, including the risks if the Council does not act as recommended, have been considered in line with the Council's Risk Management Framework. We are satisfied that the risks

¹² If any appeal is processed by Written Representations, 39 weeks, Hearing, 69 weeks, Inquiry, 70 weeks for PINS to determine an Enforcement Appeal.

¹³ Which is a criminal offence under Section 179(5) of the Town and Country Planning Act 1990.

associated are within the Council's risk appetite and will be managed as per the Policy.

8. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 8.1 If Option 1 is approved, then Enforcement Notices will need to be drafted. Individual addresses will need to be checked to ensure the correct names are added to the notices. A review of the information supplied through the PCN's and other records held by the Council will be carried out to establish if any of the caravans (in terms of their use as residential) are immune from enforcement action due to the passage of time.
- 8.2 It is anticipated that the notices could be served in three weeks following the decision of committee to authorise the serving of the notices.
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9. REPORT APPENDICES

The following documents are to be published with this report and form part of the report:

- Appendix 1: Planning Committee Report
 - Appendix A: Planning Inspectorate Decision letter dated 26 June 1997
 - Appendix B: Decision notice for MA/13/1435 and accompanying plan
 - Appendix C: Kent Downs AONB comments
 - Appendix 2: Minutes of DC meeting 26 September 2019
 - Appendix 3: Refusal Notice dated 27 September 2019
 - Appendix 4: Exempt Legal advice dated 22 November 2019
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