

REFERENCE NO: 21/505627/FULL		
APPLICATION: Permission is sought for extra capacity on existing Gypsy site to include, 4(no) additional static caravans, 3(no) additional touring caravans, with parking, a dayroom and infrastructure (part retrospective).		
ADDRESS: The Green Barn Water Lane Hunton Maidstone Kent ME15 0SG		
RECOMMENDATION: GRANT PLANNING PERMISSION subject to planning conditions		
SUMMARY OF REASONS FOR RECOMMENDATION: 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		
REASON FOR REFERRAL TO COMMITTEE: Hunton Parish Council has requested application is considered by Planning Committee if officers are minded to approve application. This request is made for reasons outlined in the consultation section below.		
WARD: Coxheath & Hunton	PARISH COUNCIL: Hunton	APPLICANT: Mrs D. Mendham AGENT: BFGC
TARGET DECISION DATE: 25/04/22		PUBLICITY EXPIRY DATE: 22/03/22

RELEVANT PLANNING HISTORY

- 19/505670 - Vary conditions 1 & 2 of appeal decision for MA/02/1380 to allow additional 4 mobile homes (total 5 Static caravans on site) – Declined to determine because Section 73 cannot be used here (*Finney v Welsh Ministers [2019] EWCA Civ 1868*).
- 18/501120 – Vary conditions 1 & 2 of MA/02/1380 for 4 additional mobile homes (totalling 5 mobile homes) – Refused (on grounds of unjustified development in this location in absence of sufficient information pertaining to Gypsy and Traveller status). Application was dismissed at appeal because Inspector concluded that to change description would be beyond powers conferred by Section 73 (*Finney*).
- 16/506436 – Vary conditions 1 & 2 of MA/02/1380 for additional 3 mobile homes – Refused (on grounds of unjustified development in this location in absence of sufficient information pertaining to Gypsy and Traveller status)
- 16/500393 – Enforcement case: Addition of mobile homes on site – Case open
- MA/03/2043 – Retention of existing pole barn - Approved
- MA/02/1380 – (Retro) Change of use from agriculture to agriculture and residential including stationing of mobile home for gypsy family - Refused (Allowed at appeal)
- MA/01/1894 – Retention of pole barn (Resubmission of MA/99/1880) - Refused
- MA/99/1880 – Retention of pole barn and new barn – Refused (dismissed at appeal)
- MA/75/0302 - Mobile caravan - Refused

MAIN REPORT

1.0 SITE DESCRIPTION

- 1.01 The application site is located on the western side of Water Lane, some 355m to the south of the junction with Bishop’s Lane. There are public footpaths in the vicinity of the site, including one (KM91) that runs in a general east/west direction, through the northern part of the site; and there are listed properties in the locality, including a Grade II listed building at Water Place (to the east of the application site) and other properties to the south and south-west of the site. For the purpose of the Local Plan the application site is within the designated countryside that falls within the Low Weald Landscape of Local Value. The application site mostly falls within Flood Zone 2, with the front part of the site falling in Flood Zone 3; an area of archaeological potential; and a KCC Minerals Safeguarding Area.

2.0 BACKGROUND INFORMATION

2.01 The appeal decision for MA/02/1380 allowed for one mobile home and one touring caravan (to be used only for purposes ancillary to the residential use of the mobile home) to be stationed on the site at any time, that is only to be occupied Mr Lance Mendham and/or Mrs Donna Marie Mendham and their dependent children. Condition 1 of the appeal decision stipulates that when the site ceases to be occupied by those named above, the permitted uses shall cease and the mobile home and all associated residential structures and paraphernalia should be removed from the land and the land restored to its former condition. For reference, the application site for MA/02/1380 is:



3.0 DEVELOPMENT DESCRIPTION

3.01 The application is described as: *Permission is sought for extra capacity on an existing Gypsy site to include, 4 additional static caravans, 3 additional touring caravans, with parking, a dayroom and infrastructure (part retrospective).*

3.02 The main element of the application that appears to not be retrospective is the proposed dayroom that is to be sited close to the front (eastern) boundary of the site. This building would measure some 13.5m by 4.7m in footprint (63.5m²); it would stand some 3.9m in height; and it would have a front canopy.

4.0 POLICY AND OTHER CONSIDERATIONS

Maidstone Local Plan (2017): SS1, SP17, DM1, DM3, DM8, DM15, DM23, DM30
National Planning Policy Framework (2021) & National Planning Practice Guidance
Landscape Character Assessment (2013) & Supplement (2012)
Landscape Capacity Study: Sensitivity Assessment (2015)
Planning Policy for Traveller Sites (2015)
Gypsy & Traveller and Travelling Showpeople Topic Paper (2016)
Gypsy & Traveller & Travelling Showpeople Accommodation Assessment (2012)
Regulation 19 Local Plan

4.01 Local Plan policy DM15 allows for gypsy and traveller accommodation in the countryside provided certain criteria are met.

4.02 The Maidstone Landscape Character Assessment (2012 amended 2013) identifies the application site as falling within the Low Weald – Yalding Farmlands (Area 38). The landscape guidelines for this area is to 'CONSERVE' and a summary of relevant actions is as follows (summarised):

- Consider generic guidelines for the Low Weald
- Conserve orchards and traditional small scale field pattern
- Conserve largely undeveloped rural landscape and remote quality of existing development
- Conserve rural setting of traditional buildings and farmhouses
- Conserve distinctive ragstone walling
- Conserve undeveloped character of the landscape
- Soften the visual prominence of large agricultural barns through native planting

- 4.03 Within the Council's Landscape Capacity Study: Sensitivity Assessment (Jan 2015), the overall landscape sensitivity of the Yalding Farmlands Landscape Character Area is 'HIGH' and is 'sensitive to change'.
- 4.04 The NPPF is clear that good design is a key aspect of sustainable development and that permission should be refused for development that is not well designed; and section 12 of the NPPF refers to achieving well-designed places. Paragraph 174 of the NPPF states that planning decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside.
- 4.05 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. This is an exception to the principle of restraint in the countryside. In terms of broad principles, Local Plan policies and central government guidance both permit gypsy and traveller sites to be located in the countryside as an exception to policies which otherwise seek to restrain development.
- 4.06 The Council's Regulation 19 Local Plan was submitted to the Planning Inspectorate on 31st March 2022 and whilst this document is a material planning consideration, at this time it is not apportioned much weight.

5.0 LOCAL REPRESENTATIONS

- 5.01 Mr Summersgill (Parish Councillor), has raised comments relating to: Flood risk on site (including safe access and egress); submitted FRA is out of date; foul sewage disposal as roadside ditch appears to have odorous sewerage at times.

6.0 CONSULTATIONS

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

- 6.01 **Hunton Parish Council:** Wish to see application refused and reported to Committee if officers are minded to recommend approval for following (summarised) reasons:
- *Cannot give application due consideration as it does not appear to be valid. There is no Design & Access Statement; plans are inaccurate; and very little info is provided about application.*
 - *FRA is out of date and a new FRA needs to be prepared.*
 - *Current sewage facility is inadequate - In summer, nearby ditch is foul and is a health issue.*
- 6.02 **Environment Agency:** Raise no objection (see main report).
- 6.03 **Environmental Protection Team:** Raise no objection to application.
- 6.04 **Landscape Officer:** Has been unable to take a landscape view.
- 6.05 **KCC Minerals Safeguarding Team:** Has no minerals or waste safeguarding objections or comments to make regarding this application.
- 6.06 **KCC Public Rights of Way Officer:** Confirms PROW KM91 footpath runs along northern boundary of site and should not affect application.
- 6.07 **KCC Archaeology Officer:** No representations received.

7.0 APPRAISAL

Main Issues

7.01 The key issues for consideration relate to: Need for Gypsy sites; supply of Gypsy sites; Gypsy status/personal circumstances; location; visual impact; flood risk; and then other matters.

Need

7.02 The Maidstone Local Plan is adopted and there are policies relating to site provision for Gypsies and Travellers. Local planning authorities also have responsibility for setting their own target for the number of pitches to be provided in their areas in their Local Plans.

7.03 The Gypsy & Traveller and Travelling Showpeople Accommodation Assessment: Maidstone (January 2012) provides the evidence of the need for Gypsy & Traveller pitches in the borough for the Local Plan period (October 2011 to March 2031).

7.04 The Assessment drew on existing information about sites in the borough (including caravan count data, information from stakeholders and council information about the planning status of sites) and used the results of face to face interviews with Gypsies & Travellers (and Travelling Showpeople) residing in the borough. To help encourage participation, the interview team included two members of the Gypsy & Traveller community. Interviews were undertaken with 37% of the estimated resident population in the borough, considered to be sufficient as a sample of the total Traveller population across all the accommodation types.

7.05 The GTAA Assessment found that there is a need for a total 187 additional permanent pitches in the borough 2011-31, broken down in phases as follows:

Oct 2011 – March 2016 - 105 pitches

Apr 2016 – March 2021 - 25 pitches

Apr 2021 – March 2026 - 27 pitches

Apr 2026 – March 2031 - 30 pitches

Total: Oct 2011 – March 2031 = 187 pitches

7.06 The target of 187 additional pitches is included in policy SS1 of the Maidstone Local Plan. The Assessment was undertaken prior to the change to the definition of Gypsy & Travellers in the Planning Policy for Traveller sites (PPTS) in August 2015 to exclude those who have permanently ceased travelling. At the Local Plan Examination some representors (parish councils; residents) argued that this meant it was outdated. The Inspector specifically considered this and concluded that the changed definition would result in relatively little change to the needs figure. He confirmed that the assessment provides an adequate evidential basis for the Local Plan.

7.07 A new GTAA is being prepared to support the Local Plan Review. Survey work on the new GTAA commenced in 2020 but has been delayed due to Covid 19. The new GTAA will outline the current and future need for gypsy, traveller and travelling showpeople provision for Maidstone Borough until 2037 and will form the evidence base for a dedicated Gypsy, Traveller and Travelling Showpeople DPD.

7.08 The adopted Local Plan (MBLP) provides for the 187 pitch requirement through:

- *The permanent planning consents which have already granted*
- *Specific site allocations in policy GT1(1)-(16) for 41 pitches (some been granted permission)*
- *Application of Policy DM15 for applications on windfall sites*

- 7.09 The Local Plan Inspector was satisfied with the Plan's policy approach to meeting needs (Inspector's Report paragraphs 245-246). He drew on information in the Gypsy & Traveller Topic Paper which the Council had prepared as a background document for the Examination to explain its approach. In particular, the Topic Paper explains why the Council's partial reliance on the delivery of windfall sites to meet needs is sound (see pages 12-15 and Appendix B of the Topic Paper). The Inspector noted that the Local Plan Review will be the time to make further site allocations should windfall sites not come forward as expected.
- 7.10 As set out earlier, the Council's Regulation 19 Local Plan was submitted to the Planning Inspectorate on 31st March 2022 and whilst this document is a material planning consideration, at this time it is not apportioned much weight. This said, please note that within this Plan it states that there is a potentially significant emerging need for Gypsy & Traveller accommodation. The Local Plan review seeks to meet the identified need to 2031; and a separate Gypsy, Traveller and Travelling Showpeople DPD will be produced to manage the emerging need for the period until 2037. This is in its early stages and a call for sites exercise ran from 1st February - 31st March 2022.

Supply

- 7.11 Accommodation for Gypsies and Travellers is a specific type of housing that councils have the duty to provide for under the Housing Act (2004). Local Plan Policy DM15 accepts that subject to certain criteria, this type of accommodation can be provided in the countryside. Since 1st October 2011, the base date of the GTAA, the following permissions for pitches have been granted (as of 28th February 2022):

Permanent non-personal – 247

Permanent personal – 30

Temporary non-personal – 0

Temporary personal – 9

- 7.12 A total of 277 pitches have been granted permanent consent since October 2011. These 277 pitches exceed the Local Plan's 187 pitch target. This illustrates that the rate at which permanent permissions have been granted in the first 10 years of the plan period is ahead of the rate of need by the GTAA. Furthermore, the sites allocated through Policy GT1 in the Local Plan, sites granted permanent permissions on suitable windfall sites (in accordance with policy DM15), and pitch turnover on the two public Gypsy & Traveller sites in the borough, will continue to increase the number of pitches in the borough.
- 7.13 The PPTS directs that the lack of a 5 year supply of Gypsy and Traveller pitches should be given weight when considering the expediency of granting consent on a temporary basis. The Council's position is that it can demonstrate 6.2yrs worth year supply of Gypsy and Traveller sites at the base date of 1st April 2021. As the Council considers itself to be in a position to demonstrate more than a 5 year supply, paragraph 27 of the PPTS would not apply in the determination of this application and the direction to positively consider the granting of a temporary consent does not apply.

Gypsy status/personal circumstances

- 7.14 The Government's PPTS (August 2015) sets the planning definition of 'gypsies & travellers', and this excludes those who have ceased to travel permanently. The current definition is as follows (Annex 1):

'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, but excluding members of an organised group of travelling show-people or circus people travelling together as such.'

- 7.15 The definition still includes those who are of a nomadic habit of life, and those who have ceased to travel temporarily because of their own, or their dependants, health or education needs, or old age.
- 7.16 The submission confirms the following occupation:
- *Lawful mobile home is occupied by Mr Lance Mendham and Mrs Donna Mendham and their daughter and her 2 children. The children attend nursey and secondary school.*
 - *Mobile home 2: Mr Lee Mendham (brother of Lance Mendham). The brothers usually travel together for work purposes.*
 - *Mobile home 3: Ms Lisa Mendham and her 2 children who attend secondary school/6th form.*
 - *Mobile home 4: Ms Kelly Mendham (daughter of applicants) and her 2 children who attend primary school.*
 - *Mobile home 5: Mr Tommy Mendham and Mr Tony Mendham (sons of Kelly Mendham) who are both over 18yrs of age.*
- 7.17 It is understood that the family are principally involved in recycling, small building works and property maintenance, horse and equine related trading, and dealing vehicles etc. around different fairs, drives, events and sites across the country; and they travel to do their trading and to find work and to trade.
- 7.18 The application confirms that all of the family continue to travel for work purposes, at different times either separately or together as a single group. Further information stipulates that in 2019, after a family bereavement, the family attended and traded at several horse fairs (Stow, Appleby and Peterborough); networked and canvassed at steam fairs in Dorset and St Albans; traded horses in Chichester; and worked in and around the New Forest on several occasions. The submission also details that the family worked in and around the New Forest in Jan-Feb 2020. There is little information after this date, but clearly Covid-19 would have interrupted travelling and working.
- 7.19 Further to this, the submission also includes a lengthy list of other horse fairs, fairs and that the family have attended in recent years where they trade and do networking; and it is evident that the family travel to attend cultural events, such as horse drives, and family events throughout the year, to different sites and to various locations across the UK for networking and trading.
- 7.20 With everything considered, it is reasonable to say that the occupants of the site continue to travel for work purposes to make a living; and it is accepted that the Gypsy status has been met in accordance with the provisions of the Government's PPTS. Such occupation of the site can be controlled by way of condition.
- 7.21 With regards to other relevant personal circumstances, it is accepted that the uncertainty of not currently having a permanent home can causes a great deal of stress and that all persons require good access to healthcare. The children on the site are in education; one child has additional medical needs; and it is recognised that the support of a family unit is important.

Location

- 7.22 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. This is an exception to the principle of restraint in the countryside. In terms of broad principles, Local Plan policies and central government guidance both permit gypsy and traveller sites to be located in the countryside as an exception to policies which otherwise seek to restrain development.

Visual impact

- 7.23 Guidance in the Planning Policy for Traveller Sites (PPTS) states that local planning authorities should very strictly limit new traveller development in the countryside but goes on to state that where sites are in rural areas, considerations are that sites do not dominate the nearest settled community and do not place undue pressure on local infrastructure. No specific reference to landscape impact has been outlined however this is addressed in the relevant Local Plan policies and the NPPF. Specifically, policy DM15 of the Local Plan allows for Gypsy accommodation in the countryside provided certain criteria are met. This includes allowing development that does not result in significant harm to the landscape and rural character of the area. There is also specific reference in DM15 to existing landscape features, stating that permission will be granted for development that "*...is well screened by existing landscape features and there is a reasonable prospect of such features' long term retention*".
- 7.24 The site benefits from one lawful mobile home (with associated hardstanding) that is located in the south-eastern corner of the site; there is a barn in front of this mobile home that appears to have been on the site in excess of ten years (and mentioned by the Planning Inspector in 2002); and there is a lawful pole barn in the north-eastern corner of the wider site. The existing access gate is slightly set back from the road, with the driveway up to the site largely screened by the mature roadside hedge.
- 7.25 The development has seen mobile homes and associated paraphernalia encroach further into the countryside and this has changed the character of the site, when compared to what was allowed under the 2002 appeal. However, it is considered that the development is still relatively well contained to the southern corner of the land owned by the applicants, whilst allowing for a reasonable amount of space between the mobile homes, with the wider site remaining undeveloped. Furthermore, the mobile homes themselves are of a typical style and appearance; they appear to fall within the definition of a caravan (Section 29 of the Caravan Sites and Control of Development Act 1960); and the palette of external materials is not objectionable. In addition to this, the dayroom (that is some 65.5m² in footprint and some 3.9m in height), would provide the family with basic amenities/services that are considered proportionate for a large family occupying the site; and on this basis, it is considered to be reasonably necessary and overall it would not harmfully dominate the main living accommodation. The day room's scale, siting and design is also not objectionable in visual amenity terms.
- 7.26 There is other sporadic development in the area and given how well screened the application site is, it does not appear entirely incongruous or visually dominant on the landscape (even in the winter). Indeed, given the established planting along Water Lane and the surrounding area, and around the application site itself, public views of the development from Water Lane are largely limited to possible glimpses through the site's access; and then these views are limited to the tops of the mobile homes, given the existing boundary planting and fencing around the application site. Public views of the site from the public footpath that runs close to the northern boundary of the site are again restricted given the site's existing boundary treatments; and once passed through the land that the applicant owns, there is little to no view of the site. There appears to be no other clear public views of the site and so it is considered that it is only visible from short range vantage points. Furthermore, there is the opportunity to plant additional and native hedgerow planting around the northern and western boundaries of the site, to help supplement existing landscaping in and around the site. To further safeguard the amenity of the surrounding landscape, external lighting can be restricted by way of an appropriate condition.

- 7.27 Whilst the Council's Landscape Officer comments that they find it difficult to take a landscape view, they do state that any new planting should be of mixed native hedgerow, in accordance with the Council's landscape guidelines. After visiting the site, it has been possible to take a view on the landscape impact of the development (as set out above); and as previously mentioned, a suitable condition would be recommended to secure new appropriate landscaping. It is not considered necessary to seek the removal of any existing landscaping.
- 7.28 The occupants are considered to meet the Government's definition of Gypsy status. With everything taken into account, including the retention of existing landscaping and the potential for mitigation/further planting, it is considered that the development would cause harm to the character and appearance of the countryside hereabouts, but that in landscape terms it would be in accordance with Local Plan policy DM15 as this harm to the landscape and rural character of the area is not considered to be significant.

Flood risk

- 7.29 The four additional mobile homes are located in Flood Zone 2. The NPPF states (para. 159 & 167):

Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere.

When determining planning applications, LPAs should ensure flood risk is not increased elsewhere. Where appropriate, applications should be supported by a site-specific FRA. Development should only be allowed in areas at risk of flooding where, in light of this assessment (and sequential and exception tests, as applicable) it can be demonstrated that:

- a) within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location;*
- b) the development is appropriately flood resistant and resilient such that, in the event of a flood, it could be quickly brought back into use without significant refurbishment;*
- c) it incorporates SUDs, unless there is clear evidence that this would be inappropriate;*
- d) any residual risk can be safely managed; and*
- e) safe access/escape routes included where appropriate, as part of agreed emergency plan.*

- 7.30 In accordance with the NPPF and its Technical Guidance, mobile homes intended for permanent residential use are classified as 'Highly Vulnerable' and such development in Flood Zone 2 can be acceptable subject to the Sequential and Exception Tests being undertaken. Furthermore, local planning authorities should also ensure that flood risk is not increased elsewhere, and should only consider development in flood risk areas to be appropriate where informed by a site-specific Flood Risk Assessment (FRA).
- 7.31 An FRA (dated 2nd March 2022) has been submitted as part of this application. The Environment Agency (EA) has reviewed the application and has raised no objection subject to a recommended condition to set finished floor levels at no lower than 14.41m AOD, which is 600mm above the flood design level of 13.81mAOD.
- 7.32 The EA, whilst not within their direct remit or expertise, also comment that the local authority need to be satisfied that, where appropriate, safe access and egress can be achieved from site during a flood event.
- 7.33 The submitted FRA demonstrates (referring to the EA's flood map for surface water), that the site is at 'very low' risk of surface flooding, meaning that the probability of flooding in any given year is less than 1 in 1000 (0.1%). Further to this, appropriate finished floor levels can be secured by way of condition; and as set out in the FRA, the static caravans can be anchored to avoid becoming buoyant in an extreme flood event; the occupants can sign up to the EA Flood Warning Service; and a flood plan

can be put in place. In the event of having to evacuate the site, egress to Flood Zone 1 is also available some 360m to the north of the site (along Water Lane). With these flood risk measures in place, the FRA considers the development to be acceptable in flood risk terms, without increasing flood risk elsewhere.

7.34 The NPPF seeks to steer new development to areas at the lowest probability of flooding by applying a Sequential Test. The site already benefits from permission for the stationing of one mobile home for permanent residential use and there is no known alternative land within the applicant's ownership for the development. It is also noted that the four additional mobile homes are sited out of Flood Zone 3 and in an area that is appropriate for such a development provided the Exception Test is carried out and met.

7.35 Paragraph 164 of the NPPF states that for the Exception Test to be passed it should be demonstrated that:

- a) the development would provide wider sustainability benefits to the community that outweigh the flood risk; and*
- b) the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.*

7.36 The Council's position is that it can demonstrate 6.2yrs worth year supply of Gypsy and Traveller sites at the base date of 1st April 2021. However, it must also be considered that there is still an unmet need for such sites in the borough, and perhaps most importantly, the submitted FRA also sets out how the development will be safe for its lifetime and the EA has not stated that it would unacceptably increase flood risk elsewhere. It is therefore considered that the NPPF's Exception Test is passed.

7.37 Whilst the issue of safe access and egress is a balanced issue, given the precautionary measures and mitigation set out in the FRA and the available EA flood warning service, it is considered that future occupants of the site would be safe and have time to evacuate the site if necessary, avoiding the need of emergency egress and access. It is also worth noting that as there is no internal flooding objection, there is also the potential for future occupants to safely 'sit-out' any flood. Subject to suitable conditions being imposed, it is therefore considered that the development would be appropriately flood resistant and resilient to flood risk.

7.38 It should also be noted that at the time of the 2003 appeal on this site (for MA/02/1380), the Inspector considered the implications pertaining to flood risk and concluded that there was no unacceptable risk on the basis that the mobile units were raised off the ground and that projected flood waters would be unlikely to rise above the floor levels of the mobile units and would not occur rapidly without warning. Furthermore, the Inspector commented that the likelihood of site inhabitants requiring the assistance of the emergency services in time of flood, would be minimal.

Other matters

7.39 The development makes use of the existing access for The Green Barn and this is not considered to raise a highway safety objection; there is ample parking/turning provision on the site; and the traffic generation as a result of the additional mobile homes would not have a severe impact upon the local road network.

7.40 Given the separation distances of the development from any dwelling, and given that a residential use is not generally a noise generating use, this development would not have an adverse impact upon the living conditions of any neighbouring resident, including in terms of general noise and disturbance. It is also considered that the development would not have an unacceptable impact upon the existing residential

community, when considered on its own merits and then cumulatively with other lawful gypsy sites in the vicinity.

- 7.41 It is accepted that the development is unlikely to have had an adverse impact upon any protected species, and so no objection continues to be raised in this respect. Notwithstanding this, one of the principles of the NPPF (para 180) is that: *Opportunities to improve biodiversity in and around developments should be integrated as part of their design, especially where this can secure measurable net gains for biodiversity or enhance public access to nature where this is appropriate.* On this basis, if the application were to be approved a suitable condition could be imposed to seek biodiversity enhancement on the site.
- 7.42 The Environmental Protection Team has raised no objection to the application in terms of: Land contamination; radon; air quality; lighting; odour; accumulations; noise; amenity; sewage and potable water; and private water supplies. The submission has also provided details in terms of foul sewage disposal and the Package Sewage Treatment Plant that is used. On this matter the Environmental Protection Team is satisfied that the tank provides adequate capacity for the site. If approved, an informative will be added to remind the applicant that a discharge consent may be required from the Environment Agency.
- 7.43 The KCC Minerals Safeguarding Team and the KCC Public Rights of Way Officer have raised no objections to the submission; the provision of electric vehicle charging points is not considered reasonable or necessary; there is no arboricultural objection to the application; and given the separation distances of the development from any listed building, it does not cause harm to the significance or setting of any heritage asset.
- 7.44 Part of the site does fall within an area of archaeology potential. The KCC Archaeology Officer has made no representations and so it is assumed that they have no comments to make on the submission; and given the nature of the development no further details will be requested in this respect.
- 7.45 Regard should be given to the Human Rights Act 1998 and rights under Articles 3 and 8, and the Public Sector Equality Duty under the Equality Act 2010. This protects the right of an individual to, amongst other things, a private family life and home; there is a duty to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it; and the courts have held that the best interest of the children shall be a primary consideration in planning decisions concerning children, including requiring a settled base. In addition to this, race is one of the protected characteristics under the Equality Act 2010 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 his family who occupy the caravans, and it is considered that the requirements of the PSED have been met and approving this development would not undermine the objectives of the Duty.
- 7.46 In accordance with national planning policy, the issue of intentional unauthorised development has been a material consideration in the determination of this retrospective application and this does weigh against the development. In terms of EIA Screening the development is not schedule 2 development and it is not sited within an AONB.
- 7.47 If approved, the applicant will be reminded that it would be necessary to make an application for a Caravan Site Licence under the Caravan Sites and the Control of Development Act 1960 within 21 days of planning consent having been granted.

7.48 The representations made by Hunton Parish Council and all other responses received have been considered in the assessment of this application. Please note here that there is considered to be sufficient information to make a recommendation on this application, and a Design and Access Statement is not a validation requirement for such a development.

8.0 CONCLUSION

8.01 In Local Plan policy terms, there is resistance to residential caravans in the countryside. As an exception to this general policy constraint, Local Plan policy DM15 allows for gypsy and traveller accommodation in the countryside provided certain criteria are met; and policies SP17 and DM30 allow for development provided it does not result in harm to the character and appearance of the area.

8.02 In this instance, Gypsy status has been established in accordance with the Government's planning definition and there is no reasonable justification to object to the development on sustainability grounds in terms of location. Furthermore, the development is not considered to cause unacceptable harm to the character and appearance of the countryside; it is considered to be acceptable in flood risk terms; and there are no other planning objections raised to the development.

8.03 Under MA/02/1380, the appeal decision stipulated that the allowed mobile home was only to be occupied Mr Lance Mendham and/or Mrs Donna Marie Mendham and their dependent children, given their personal circumstances at the time (July 2003). Since this time, the current Local Plan has been adopted and policy DM15 allows such development to cause some harm to the landscape and rural character of the area, provided it is not significant; Gypsy status has been established; and the report sets out why the development is considered to be acceptable. It must also be highlighted again that the Council's Regulation 19 Local Plan states that there is a potentially significant emerging need for Gypsy & Traveller accommodation. On this basis, it is not reasonable to again restrict who can occupy the lawful mobile home and the recommendation is to allow the five mobile homes to be permanent and restricted only by a gypsy and traveller occupation condition.

8.04 With everything considered, 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. A recommendation of approval is therefore made on this basis, subject to the suggested conditions.

9.0 RECOMMENDATION: GRANT planning permission subject to following conditions:

(1) The development hereby permitted shall be carried out in accordance with the following approved plans: BP-03-2021; SC-01-2021; DR-01-2021; and LP-01-2018

Reason: For the avoidance of doubt and in the interests of proper planning.

(2) The site shall not be used as a caravan site by any persons other than Gypsies or Travellers, as defined in Annex 1 of the Planning Policy for Traveller Sites 2015 (or any subsequent definition that supersedes that document).

Reason: The site is in an area where the stationing of caravans/mobile homes is not normally permitted.

- (3) No more than 10 caravans, as defined by the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, shall be stationed on the land at any one time, of which no more than 5 shall be static caravans or mobile homes. The caravans shall be positioned on the site as set out on the submitted drawings and the 5 touring caravans shall only be used for the purposes ancillary to the residential use of the mobile homes hereby approved.

Reason: To safeguard the character and appearance of the countryside that falls within the Low Weald Landscape of Local Value.

- (4) 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 that falls within the Low Weald Landscape of Local Value.

- (5) No vehicles over 3.5 tonnes shall be stationed, stored or parked on the site, and not more than 6 vehicles shall be stationed, stored or parked on the site at any one time.

Reason: To safeguard the character and appearance of the countryside that falls within the Low Weald Landscape of Local Value.

- (6) No commercial activities shall take place on the land, including the storage of materials.

Reason: To prevent inappropriate development; to safeguard the character and appearance of the countryside that falls within the Low Weald Landscape of Local Value; and in the interests of residential amenity.

- (7) No manure or waste materials shall be burned on the land within the application site.

Reason: In the interests of residential amenity.

- (8) 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 reenacting 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 that falls within the Low Weald Landscape of Local Value; and in the interests of residential amenity.

- (9) 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 28 days of the date of failure to meet any one of the requirements set out in (i) to (vii) below:

- (a) Within 3 months of the date of this decision a scheme, hereafter referred to as the Site Development Scheme, shall have been submitted for the written approval of the local planning authority. The Site Development Scheme shall include details of:
- (i) the materials to be used in the construction of the external surfaces of the approved dayroom;
 - (ii) in accordance with submitted Flood Risk Assessment (WtFR Ltd ref: WtFR-FRA-2022/01/Q02 dated: 2nd March 2022), details of flood resistant design measures to static caravans to include details of how approved mobile homes

- will be anchored to avoid becoming buoyant in extreme flood event;
- (iii) in accordance with submitted Flood Risk Assessment (WtFR Ltd ref: WTFR-FRA-2022/01/Q02 dated: 2nd March 2022), details of a Flood Plan;
 - (iv) all existing external lighting (whether temporary or permanent);
 - (v) a scheme for the enhancement of biodiversity on the site;
 - (vi) landscaping scheme (in accordance with the principles established in the Council's adopted Landscape Character Assessment) that shall include details of species, plant sizes, proposed numbers and densities, planting plans and arrangements for maintenance; the retention of the existing roadside (eastern) and southern boundary planting; and new 100% mixed native hedgerow planting along the northern and western boundaries immediately surrounding the mobile homes hereby approved. Any planting which fails to establish or any trees or plants which, within five years from the date of this permission hereby approved, 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; and
 - (vii) a timetable for implementation of the Site Development Scheme.
- (b) If within 11 months of the date of this decision the local planning authority refuse to approve the Site Development 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.
- (c) If an appeal is made in pursuance of above, that appeal shall have been finally determined and the submitted Site Development Scheme shall have been approved by the Secretary of State.
- (d) The approved Site Development Scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved Site Development Scheme specified in this condition, that Scheme shall thereafter be maintained/retained as such thereafter. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Reason: To protect future occupants at times of flood risk; to prevent inappropriate development and safeguard the amenity, character and appearance of the countryside that falls within the Low Weald Landscape of Local Value; and in the interests of ecological enhancement/biodiversity gain.

- (10) The finished floor levels of the four mobile homes hereby approved shall be set no less than 14.41m AOD, which is 600mm above the flood design level of 13.81mAOD.

Reason: In order to reduce the risk to occupants from flooding.

- (11) Within 1 month of the date of this decision, the occupants of the development hereby approved shall sign up to the Environment Agency's Flood Warning Service, and shall remain registered thereafter. Evidence of this registration shall be made available at all reasonable times upon request to the local planning authority.

Reason: To protect future occupants at times of flood risk.

- (12) Notwithstanding the existing external lighting details required in condition 9 of this permission, no future and additional external lighting, whether temporary or permanent, shall be placed or erected within the site unless details are submitted to and approved in writing by the local planning authority. Any details to be submitted shall be in accordance with the 2005 Institute of Lighting Engineers Guidance Notes for the Reduction of Obtrusive Lighting, GN01 (and any subsequent revisions), and shall include a layout plan with beam orientation and a schedule of light equipment proposed (luminaire type; mounting height; aiming angles and luminaire profiles) and an ISO lux plan showing light spill. The development shall thereafter be carried out in accordance with the subsequently approved details and maintained as such thereafter.

Reason: In the interest of amenity.

Informatives:

- (1) The applicant is advised that it will be necessary to make an application for a Caravan Site Licence under the Caravan Sites and the Control of Development Act 1960 within 21 days of planning consent having been granted. Failure to do so could result in action by the Council under the Act as caravan sites cannot operate without a licence. The applicant is advised to contact the Maidstone Housing & Communities Support Team in respect of a licence or apply online at:
<https://www.gov.uk/apply-for-a-licence/caravanand-camping-site-licence/maidstone/apply-1>
- (2) Should the development be approved by the Planning Authority, it is the responsibility of the applicant to ensure, before the development is commenced, that all necessary highway approvals and consents where required are obtained and that the limits of highway boundary are clearly established in order to avoid any enforcement action being taken by the Highway Authority. Across the county there are pieces of land next to private homes and gardens that do not look like roads or pavements but are actually part of the road. This is called 'highway land'. Some of this land is owned by The Kent County Council (KCC) whilst some are owned by third party owners. Irrespective of the ownership, this land may have 'highway rights' over the topsoil. Information about how to clarify the highway boundary can be found at:
<https://www.kent.gov.uk/roads-and-travel/what-we-look-after/highwayland/highwayboundary-enquiries>
The applicant must also ensure that the details shown on the approved plans agree in every aspect with those approved under such legislation and common law. It is therefore important for the applicant to contact KCC Highways and Transportation to progress this aspect of the works prior to commencement on site.
- (3) The granting of planning permission confers no other permission or consent on applicant. It is therefore important to advise that no works can be undertaken on a Public Right of Way without the express consent of the Highways Authority. In cases of doubt the applicant should be advised to contact this office before commencing any works that may affect the Public Right of Way. Should any temporary closures be required to ensure public safety then this office will deal on the basis that:
- The applicant pays for the administration costs
 - The duration of the closure is kept to a minimum
 - Alternative routes will be provided for the duration of the closure.
 - A minimum of 6wks notice is required to process any applications for temporary closures.

This means that the Public Right of Way must not be stopped up, diverted, obstructed (this includes any building materials or waste generated during any of the construction phases) or the surface disturbed. There must be no encroachment on the current width, at any time now or in future and no furniture or fixtures may be erected on or across Public Rights of Way without consent.

- (4) In relation to foul sewage disposal, please contact the Environment Agency to establish whether a discharge consent is required from them. Further information on how to apply for an environmental permit and general binding rules applicable to small discharges of domestic sewage effluent is available on the gov.uk website.

Case Officer: Kathryn Altieri