

REFERENCE NOS: 21/500786/FULL and 21/502369/FULL		
APPLICATION PROPOSALS: 21/500786/FULL - Retrospective application for material change of use of land for use as caravan site including engineering works to create ditch to south of site. 21/502369/FULL - Retrospective change of use of land to a caravan site, including the siting of 84(no) residential caravans.		
ADDRESS: Pilgrims Retreat, Hogbarn Lane, Harrietsham, Maidstone, Kent, ME17 1NZ		
RECOMMENDATIONS: REFUSE BOTH APPLICATIONS		
SUMMARY OF REASONS FOR RECOMMENDATIONS:		
1) <u>The development the subject of 21/502369/FULL is contrary to local and national policy/guidance for the following reasons:</u>		
<p>The development, by virtue of the site's extension and the level of engineering works undertaken to create terracing, hardstanding, and retaining walls within the southern section of the site; the loss (and further potential loss) of woodland and protected trees; the inadequate and inappropriate mitigation planting proposed; the addition of 50 more static caravans; and the increased light pollution resulting from more static caravans that are occupied permanently, fails to conserve and enhance the landscape and scenic beauty of the Kent Downs AONB, as well as the intrinsic character and beauty of the countryside hereabouts. The adverse impact on this nationally designated landscape of the highest value is contrary to policies SS1, SP17, DM1, DM3 and DM30 of the Local Plan (2017), the Maidstone Landscape Character Assessment (March 2012 amended July 2013) and 2012 Supplement, the NPPF and the Kent Downs AONB Management Plan (2021-2026) and its Landscape Design Handbook.</p> <p>The development is considered to be a major development in the Kent Downs Area of Outstanding Natural Beauty, and there are no exceptional circumstances to permit this development, and it has not been demonstrated that the development is in the public interest. The development is therefore contrary to paragraph 172 of the NPPF.</p> <p>The development would authorise 84 residential units in an isolated location that would also have poor access to public transport and be remote from local services and facilities, resulting in occupants being reliant on the private motor vehicle to travel to settlements to access day to day needs. In the absence of any overriding justification or need for the development demonstrated in the application, this is contrary to the aims of sustainable development as set out in policies SS1, SP17 and DM1 of the Local Plan (2017) and the NPPF.</p> <p>The application has failed to demonstrate that the residual cumulative vehicle movements associated to 84 new residential homes on this site would not have a severe impact on the local road network. This is contrary to policies DM1 and DM30 of the Local Plan (2017) and the NPPF.</p> <p>In the absence of an appropriate legal mechanism to secure necessary contributions towards community infrastructure in the borough, the impact of the development would place unacceptable demands on local services and facilities. This is contrary to policies SS1, ID1 and DM19 of Local Plan and NPPF.</p> <p>In the absence of an appropriate legal mechanism to secure affordable housing provision, the development would fail to contribute to the proven significant need for affordable housing in borough. This would be contrary to Local Plan policies SS1, SP20 and ID1 of the Local Plan (2017) and the NPPF.</p>		
2) <u>The development the subject of 21/500786/FULL is contrary to local and national policy/guidance for the following reasons:</u>		
<p>The development, by virtue of the extension of the unauthorised caravan site fails to conserve and enhance the landscape and scenic beauty of the Kent Downs AONB, as well as the intrinsic character and beauty of the countryside hereabouts. contrary to policies SS1, SP17, DM1, DM3 and DM30 of the Local Plan (2017); the Maidstone Landscape Character Assessment (March 2012 amended July 2013) and 2012 Supplement; the NPPF; and the Kent Downs AONB Management Plan (2021-26) and its Landscape Design Handbook.</p>		
REASON FOR REFERRAL TO COMMITTEE: Given significant planning issues the application raises.		
WARD: Harrietsham & Lenham	PARISH COUNCIL: Harrietsham	APPLICANT Sines Parks Ltd AGENT Pegasus Group
CASE OFFICERS: Kate Altieri	VALIDATION DATE: 21/500786/FULL - 17.03.21 21/502369/FULL - 14.07.21	DECISION DUE DATE: 21/500786/FULL - 16.09.22 21/502369/FULL - 13.10.21
ADVERTISED AS DEPARTURE: Both applications advertised as departures from Development Plan.		

This Committee report is accompanied by the following appendices:

Appendix a:	Appeal decision refs: T/APP/C/96/U2235/643713-4 & T/APP/U2235/A/96/273772/P6 (LPA reference: MA/96/1132)
Appendix b:	MA/13/1435 decision notice and plan
Appendix c:	Kent Downs AONB Unit comments
Appendix d:	Harrietsham Parish Council comments
Appendix e:	Committee report for 19/502469
Appendix f:	KCC Highways comments

RELEVANT PLANNING HISTORY

Pilgrims Retreat has an extensive planning history and below is thought to be the most relevant, with the key permissions highlighted in bold:

- 21/504221/LAPRO – Lawful Development Certificate for proposed use of the land as a caravan site and as a site for camping, with an unlimited number of caravans and unlimited occupation of the caravans – Invalid and no further action taken
- 21/506083/FULL- s73A application to vary conditions 1 (number of residential caravans), 2 (occupation period) and 4 (areas where caravans can be located) pursuant to T/APP/C/96/U2235/643714. Council has declined to determine the application and the agent has indicated an appeal will be lodged in due course. To date no appeal has been lodged.
- 21/500785 – s73A application to vary conditions 1 (number of residential caravans), 2 (occupation period) and 4 (areas where caravans can be located) pursuant to T/APP/C/96/U2235/643714 (re: **MA/96/1132**) for - Change of use of land to use as caravan site. This application was not determined.
- 19/502469 (APPENDIX E) – Retrospective application for change of use of land from mixed use of holiday units (180 caravans) & residential (18 caravans) to residential park home site (for full-time residential occupation) comprising stationing of 248 caravans, including engineering works to create terracing, hardstanding, retaining walls, and extension of site along south eastern boundary – Refused for the following (summarised) reasons:
 - (1) *Development, by virtue of site's extension and level of engineering works undertaken to create terracing, hardstanding, and retaining walls in southern section of site; loss (and further potential loss) of woodland and protected trees; inadequate and inappropriate mitigation planting proposed; addition of 50 more static caravans; and increased light pollution resulting from more caravans that are occupied permanently, fails to conserve and enhance landscape and scenic beauty of AONB, as well as intrinsic character/beauty of countryside hereabouts.*
 - (2) *Development considered to be major development in AONB, and there are no exceptional circumstances to permit it, and it has not been demonstrated development is in public interest.*
 - (3) *Development authorises 230 residential units in isolated location that would have poor access to public transport and be remote from local services/facilities, resulting in occupants being reliant on private motor vehicle to travel to settlements to access day to day needs.*
 - (4) *Application failed to demonstrate residual cumulative vehicle movements associated to 230 new residential homes would not have severe impact on local road network.*
 - (5) *Application failed to demonstrate site can provide adequate provisions for foul and surface water disposal for 248 residential units, posing health and safety risk to occupants of site.*
 - (6) *In absence of legal mechanism to secure necessary contributions towards community infrastructure, impact would place unacceptable demands on local services and facilities.*
 - (7) *In absence of appropriate legal mechanism to secure affordable housing provision, development fails to contribute to proven significant need for affordable housing in borough.*

- 19/500936 - EIA Screening Opinion for: Material change of use of land from mixed use (tourism [180 caravans] & residential [18 permanent residential]) to residential for 248 mobile caravans, including engineering works to create terracing, boundary walling, and extension of site along south-eastern boundary – EIA not required
- 17/506484 – Vary conditions 1 & 4 of 96/1132 for retention of expansion of area used for siting static holiday caravans and allow increase in number of static holiday caravans – Declined to determine
- 15/502481 - Submission of details pursuant to conditions 1 (landscaping) and 3 (future management of coppice) of MA/13/1435 – Refused
- ENF/11505 – Breach of planning control as alleged in notice is without planning permission, carrying out of engineering operations – Appeal dismissed and enforcement notice upheld with corrections – south-west corner of site to have hardstanding removed and land remodelled back to its original state
- **MA/13/1435 - Vary condition 4 of 96/1132 to allow expansion of area used for siting static caravans & alterations to land levels - Approved**
- MA/13/0724 - Vary condition 4 of 96/1132 to allow expansion of area used for siting static caravans and operational development to alter land levels – Refused
- MA/12/1910 - Advertisement – Approved
- MA/12/0388 - Extension to clubhouse to form indoor bowls facility – Approved
- MA/12/0378 - Erection of shop and offices building – Approved
- **MA/11/2190 - Vary condition 2 of 03/2343 to allow use of caravans, tents & static caravans for holiday purposes all year round – Approved**
- MA/11/1753 – (Retro) for mobile home for residential use by caretaker – Approved
- MA/11/0897 - Erection of double garage – Approved
- MA/11/0384 - Advertisement consent– Refused
- MA/08/1128 - Extensions and alterations to clubhouse – Approved
- MA/07/0142 – Vary condition 1 of 96/1132 to increase number of residential units from 18 to 27 with reduction of holiday units from 180 to 171 – Refused (dismissed)
- MA/03/2343 - Vary condition 2 of 96/1132 to extend season to 10mths - Approved
- **MA/02/2056 - Vary condition 4 of 96/1132, to enable static holiday caravans to be sited on area of southern part of site restricted to touring caravans - Approved**
- MA/97/3459 - Submission of details pursuant to condition 6(i) (scheme for provision & management of landscaping & for replacement lighting within area hatched & edged red on plan) of appeal decision related to 96/1132 - Approved
- **MA/96/1132 - Use of land for siting of 180 holiday caravans and 18 residential caravans (inc. extension of site) – Refused (allowed at appeal).** [This permission is considered to have expired unimplemented]
- MA/85/1597 - Use of caravan for camping in addition to caravans - Approved
- MA/84/0907 - Managers accommodation, amenity rooms/toilets & pool - Approved
- MA/83/0934 - Construction of internal roads, car parking and caravan hardstandings for 178 holiday caravans and 1 residential caravan – Approved

MAIN REPORT

1.0 OTHER RELEVANT BACKGROUND INFORMATION

1.01 A report seeking authority to serve enforcement notices was considered at Planning Committee on 27th February 2020. The report outlined the enforcement options available following the refusal of 19/502469 and recommended enforcement action to restore the site and its landscape back to the lawful use. It was considered that the action recommended was proportionate taking into account the residents' Human and Equality Rights and would maintain the integrity of the decision making process. The residents' welfare, health and personal circumstances would also be considered if the notices were served and took effect before any decisions were taken for further action for non-compliance with the notice. The Committee agreed to proceed with a hybrid approach combining more than one option in order to seek to regularise use and mitigate the impact on the AONB in a pragmatic way, but within a specific timeframe having regard to the continuing uncertainties for residents. The following was resolved:

1. *That delegated authority be given to the Head of Planning and Development in consultation with a Steering Group comprising the Chairman, Vice-Chairman and Political Group Spokespersons of the Planning Committee (to include Councillor Chappell-Tay as Spokesperson for Conservative Group) and the two Ward Members to establish terms of reference and a negotiating position and to engage with the applicant regarding the submission of an alternative planning application within the terms set out in consultation with the Steering Group within a maximum timeframe of 9 months.*
2. *That if the application is not submitted within the terms set out in consultation with the Steering Group and within this timeframe, or if negotiations fail, then the Head of Planning and Development be given delegated authority to proceed with Option 1 as set out in the report which is to serve two Enforcement Notices (with separate red line boundaries) at Pilgrims Retreat, Hogbarn Lane, Harrietsham, Kent with the aim of achieving the following:*
 - *Reduction in number of caravans on site to 198 - Compliance time 24 months.*
 - *Removal of all caravans, materials, rubbish etc. from site as result of above – Compliance time 30 months.*
 - *Cease permanent residential use of 180 of the 198 caravans that remain on site - Compliance time 48 months.*
 - *Restore southern part of site to accord with layout plan as approved under 13/1435 and remove all walls, domestic paraphernalia, retaining walls, hard surfacing and internal roadways etc. outside developed areas defined on plan – Compliance time 48 months.*
 - *Restore site in accordance with a specified landscape strategy – 48 months.*

1.02 There have been negotiations between the applicant's agent and the Council's Steering Group on a number of matters; and it is considered appropriate to highlight one matter. In the last round of written correspondence (Oct 2020) it was confirmed that the Steering Group agreed that Option B was the preferable solution to accommodate greater landscaping to the western boundary. For reference, the plan showing Option B is below:



- 1.03 The Steering Group also had regard to the history of the site and placed significant weight on the need for landscape mitigation and their duty under Section 85 of the Countryside and Rights of Way Act 2000.
- 1.04 At Planning Committee on 26th November 2020, it was resolved to grant an extension to the original 9 month time limit of a further three months, meaning an application should be submitted on or before 27th February 2021. Applications were submitted within this time period and this report makes recommendations on those applications.
- 1.05 The Ancient Woodland along the front of Pilgrims Retreat and on the opposite side of the road from the site's entrance, and other trees within the application site, are protected under Tree Preservation Order no. 10 of 2003. As such, any potential future works to these trees would require consent.
- 1.06 There is an Injunction Order (made on 8th June 2012) to refrain from works to any tree protected by TPO no. 10 of 2003.
- 1.07 There is an Injunction Order (made on 18th April 2019) to (inter alia) prevent further caravans or mobile homes being brought on to the site.
- 1.08 In relation to the whole site, the Council has served Planning Contravention Notices (PCNs) on the owners and occupiers and the results of these show that some 193 caravans are occupied as residences (other than the lawful 18 residential caravans) when the lawful use is as holiday accommodation only, albeit year round holiday use is permitted.
- 1.09 After taking legal advice, it has been determined that the application site does have a caravan site licence but it is being breached. The Council's Licencing Team have also confirmed that in regard to the site licence, the model conditions applied to this site are not particularly helpful with regard to drainage as they merely require that there is "suitable" drainage. They do however have an enforcement notice in place in regard to the nuisance caused by the smell emanating from the leaking system; and there is a requirement for the site owner to ensure a suitable system is in place that serves the entire site, not just the unlawful parts, so as to not be at risk of licence action from any odour nuisance that occurs.
- 1.10 In site licence terms there is a requirement for the spacing between occupied caravans to be 6m apart. The submitted plans show a cluster of 6 caravans in the south-western corner that are less than 6m apart.

2.0 SUMMARY OF PLANNING HISTORY AND FALLBACK POSITION

1967 permission

- 2.01 In the 1950s there were permissions for 20 seasonal caravans for temporary periods on the land. However, a 1967 planning permission under reference MK/2/67/145 (the "1967 Permission") regularised caravan activity on a site shaded pink shown on the plan accompanying the application. Permission was granted for "residential and recreational caravan site." The permission covered about 12 acres in area but the site owner owned about 3 more acres marked green on the plan.
- 2.02 That permission was subject to two conditions, i.e. (i) the number of residential caravans not to exceed 18 and (ii) the number of holiday caravans not to exceed 180 and not to be used for human habitation except between 1 March to 31 October in any year.
- 2.03 As it was a retrospective application it did not have a condition which required the permission to be implemented within a time period. The site was therefore operated under that permission.

1985 permission

- 2.04 Planning permission was granted on 13 December 1985 under reference **MA/85/1597** for "Use of caravan for camping in addition to caravans" (the "1985 Permission"). It was not retrospective and had a condition requiring implementation within 5 years.

- 2.05 The site operator claims much turns on this 1985 Permission and that it effectively granted unrestricted caravan use. The Council secured counsel advice on this point and counsel advised that the site operator's interpretation is incorrect.
- 2.06 The straightforward and natural meaning of the description of the development in the 1985 Permission is that the proposal was for camping to accompany the established caravan use. No further caravans were being sought and so the words 'in addition to' before "caravans" suggest that it was not an application for anything other than for tents. The ordinary meaning of the words to the reasonable reader is that the site operator was asking to be able allow camping on his existing caravan site.
- 2.07 Furthermore, taking the permission as a whole, there is only a condition limiting tent numbers and not a condition limiting caravan numbers because the application was only seeking permission for tents and not for caravans.
- 2.08 From all the evidence, including extrinsic evidence, the strong conclusion is that the 1985 permission was an additional permission in order to authorise camping as an additional use. It does not authorise a caravan site on the land, that is already "established" and already has planning permission by virtue of the 1967 Permission.
- 2.09 Moreover, no evidence has been provided that the 1985 Permission has actually been implemented. Counsel advice is that even if evidence can be provided that the 1985 Permission has been implemented, case law suggests that the conditions on the 1967 Permission should be 'read through' to the 1985 Permission in any event.

1997 appeal permissions

- 2.10 Appeals against a refusal of planning permission and two enforcement notices were determined on 26 June 1997.
- 2.11 The enforcement notices related to a material change of use of land to use as a caravan site and associated operational development. The plan shows that the land affected by the enforcement notices is only the southern part of the wider site (hatched on the below plan).



- 2.12 At appeal the Inspector quashed the enforcement notices and granted permission for the use of the land [southern part of the site] subject to a number of conditions, under LPA reference G77/E/989 and Appeal decision reference T/APP/C/96/U2235/643713-4 (the "1997 s174 Enforcement Appeal Permission").
- 2.13 The concurrent planning appeal against the refusal related to the entire site including the land to which the enforcement notices apply (the site outlined in red on the above plan). At appeal the Inspector granted permission for the siting of 180 holiday units (to include static caravans, touring caravans and tents) and 18 residential caravans subject to a number of conditions under appeal reference T/APP/U2235/A/96/273772/P6 (LPA reference: MA/96/1132) (the "1997 s78 Permission").

- 2.14 On both of these permissions, the Inspector restricted the southern part of the site to touring caravans (with a maximum of 25 at any one time) and limited the use of the entire site to a maximum of 18 residential caravans and holiday units not exceeding 180. Note that at the time, a significant number of touring caravans were in situ on the northern part but in the appeal decision the split between static caravans, touring caravans and tents was not conditioned.
- 2.15 The premise for a number of the site operator's applications, the subject of this report, is that it was the 1997 s174 Enforcement Appeal Permission that was implemented, and not the 1997 s78 Permission, claiming implementation of the s174 Enforcement Appeal Permission (which covers only the southern part of the site) allows the site operator to claim that the 1985 Permission allows unrestricted use of the northern part of the site.
- 2.16 The Council has secured advice from a leading barrister on this issue. Counsel advised that the planning history following the Appeal Decision unequivocally demonstrates that the landowner has relied on, and therefore implemented, the 1997 s78 Permission. There was an application to discharge condition 6(i) of the s78 Permission and numerous applications have been made to vary conditions attached to that permission. There is therefore no doubt that the 1997 s78 Permission was the operative 'parent' permission.

2002 Permission

- 2.17 Planning application reference: MA/02/2056 allowed 10 static caravans in a restricted part of the southern area of site, where only touring caravans were previously allowed by varying condition 4 of planning application reference MA/96/1132. This permission is considered to be the most relevant permission for the southern portion of the site, and it is considered that only 10 static holiday units at the south-eastern end of the site can be lawfully stationed and occupied for tourism related purposes. None can be occupied for residential purposes.

2011 Permissions

- 2.18 The nineteenth residential unit permitted under MA/11/1753 was restricted by condition to caretaker accommodation only. It is understood this that this unit has since been removed.
- 2.19 MA/11/2190 allowed holiday accommodation (180 caravans) to be occupied any time of year.

2013 Permission

- 2.20 Planning application reference: MA/13/1435 which was part retrospective and part prospective, allowed 60 additional static holiday caravans to be stationed in an area at the southern end of site, including operational works and an area of land in the southern corner to be planted with new woodland, and the retention of the coppice in the south-eastern corner.
- 2.21 Heart of the matter conditions (1 [landscaping] and 3 [future management of existing coppice woodland]) on this permission have not been discharged and notwithstanding this, what has been stationed/constructed on site is not as per the approved drawings. In terms of caravan numbers on the wider site, the site operator was not seeking more than the 198 caravans under the 1997 s78 Appeal Permission.
- 2.22 Whilst operational works were permitted under application reference: MA/13/1435, it is considered that this permission remains incapable of full implementation as the works were carried out without approval of conditions. Furthermore, the coppice should have been kept free of development but has been built upon. As such, the majority of development relying upon this permission will be unauthorised and the permission has now expired.

Summary of planning history

- 2.23 The last lawful permission was for 180 holiday units (comprising static caravans, touring caravans and tents) and 18 residential caravans (as per the 1997 s78 Permission, subsequently amended). The majority of the engineering works undertaken in the southern part of the site, which includes the terracing of the site, are unauthorised.
- 2.24 Ten static holiday units can be lawfully stationed at the south-eastern end but they cannot be occupied for residential purposes.

Present situation

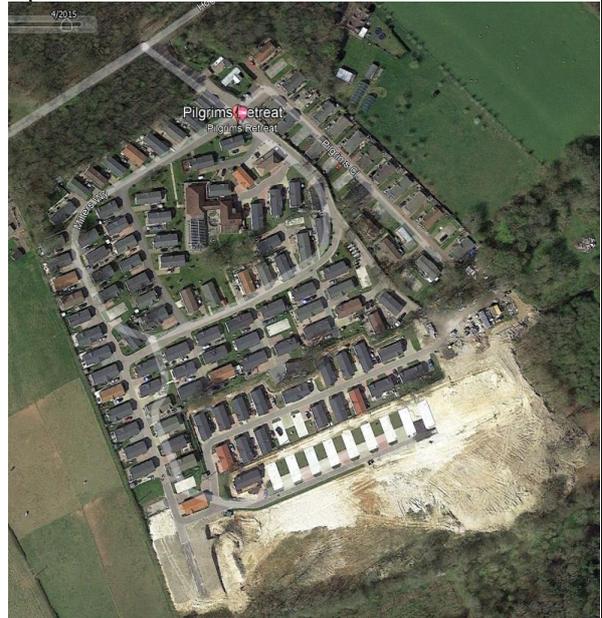
- 2.25 From aerial photography taken in March 2022 it appears there are approximately 223 mobile homes (static caravans) on the site. It is assumed that all of these mobile homes are lived in permanently as the response to the Council's Planning Contravention Notices indicated all caravans on site were occupied residentially. Comparing the present situation with the baseline of the 1997 s78 Permission (as amended by the 2002 permission) indicate a likelihood that an additional 204 caravans are now occupied on a permanent residential basis without the benefit of planning permission. As there are no touring caravans or tents at present, it is likely that this change of type of holiday units itself constitutes a material change of use of the site. A further 24 unauthorised 'units' have been brought onto the site as compared to the 1997 s78 Permission and the site has been extended southwards without planning permission.
- 2.26 The aerial photographs below show the progressive increase in numbers of caravans on the site, particularly evident in aerials from 2018 onwards.



July 2013



April 2015



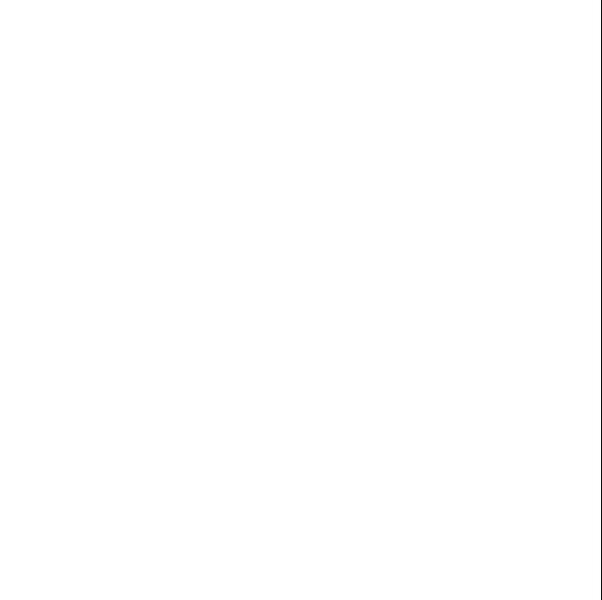
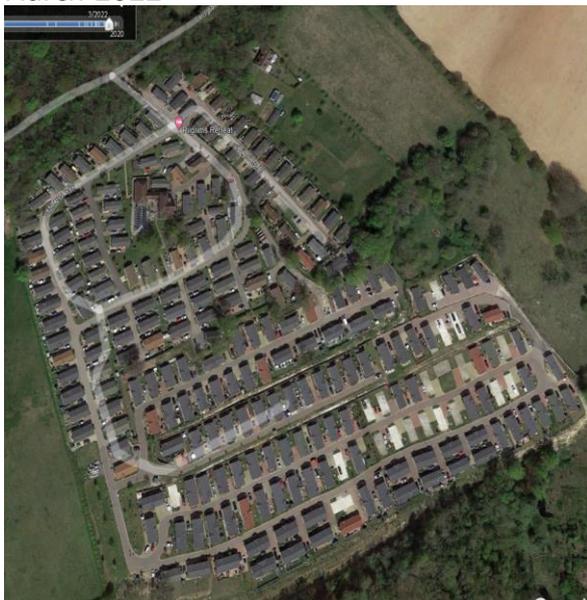
May 2018



April 2020



March 2022



Recent applications

2.27 Pursuant to the resolutions by Planning Committee on 5 March 2020 and 26 November 2020, a number of applications were submitted and are summarised below.

Certificate of Lawfulness

2.28 Application reference 21/504221/LAPRO for a Lawful Development Certificate for "Proposed use of the land as a caravan site and as a site for camping, with an unlimited number of caravans and unlimited occupation of the caravans" was submitted but this was treated as withdrawn as requested information was not supplied.

Second s73A Application for variation of the 1997 s174 Enforcement Appeal Permission

2.29 Another s73A application has been made under reference 21/506083/FULL for Variation of conditions 1 (number of residential caravans), 2 (occupation period) and 4 (areas where caravans can be located) pursuant to T/APP/C/96/U2235/643714.

2.30 The Council has refused to determine this application and the site operator's agent has indicated an appeal will be lodged in due course.

S73A application to vary conditions of 1997 s174 Enforcement Appeal Permission

2.31 On 8 December 2021 a s73A application was validated under reference 21/500785/FULL for the Variation of conditions 1 (number of residential caravans), 2 (occupation period) and 4 (areas where caravans can be located) pursuant to T/APP/C/96/U2235/643714, i.e. the 1997 s174 Enforcement Appeal Permission.

2.32 This application was not determined because the Council considered that the s174 Enforcement Appeal Permission had expired unimplemented.

2.33 The non-determination was appealed in June 2021. On 3 February 2022 the Planning Inspectorate issued a 'start letter' and fixed the Public Inquiry for 4 days starting 17 May 2022. Full statements of case were due to be submitted by both parties by 10 March 2022.

2.34 On 4 March 2022 the appellant's agent withdrew the appeal. The reason given for withdrawal was that the planning team was not available on the inquiry dates set by the Planning Inspectorate. Upon the Council's application for adverse costs against the appellant, the Planning Inspectorate made an award of costs for unreasonable behaviour.

Southern part of site

2.35 On 14 July 2021 a retrospective planning application was validated under ref: 21/502369/FULL for "Retro change of use of land to a caravan site, including the siting of 84 residential caravans".

2.36 In its planning statement, the application is described as 'seeking to vary the 1997 Enforcement Permission to regularise development which sits outside the 1985 Permission land'. However, as the Council believes the 1997 Enforcement Permission is no longer extant, the application could not be for variation. The applicant was informed of the Council's view on the matter and even though the applicant's agent made clear they disagree with the Council's view on the status of the 1997 Enforcement Permission, they confirmed that the planning application would now be for 'Use of land as a caravan site'.

2.37 21/502369/FUL would result in 84 residential caravans on the southern part of the site.

2.38 No application has been made to regularise the northern part of the site because the applicant is operating under the premise that the northern part of the site benefits from an unrestricted permission for residential caravans (following the site operator's argument on the 1985 Permission). This is not accepted and is further explained below.

2.39 Officers believe that the northern part of the site does not benefit from an unrestricted permission for residential caravans but instead that the lawful fallback is the 1997 s78 Permission which restricts the number of units on the entire site (180 holiday caravans and 18 residential caravans) and limits the number of touring caravans on the southern part of the site to 25.

2.40 The red line plan the subject of the 1997 Section 78 Permission includes the southern part of the site the subject of this application and specifically limited the number of touring caravans on this part to 25. MA/02/2056 amended that permission to allow 10 static holiday units to be lawfully stationed and occupied here for tourism related purposes (and not for residential purposes). It is not clear whether the 2002 variation was ever implemented.

2.41 Compared to the lawful fallback of either 25 touring caravans or 10 static caravans on the southern part, this application seeks a freestanding permission for the southern part for 84 residential caravans.

Planning application for southern strip

2.42 On 17th March 2021 a retrospective planning application was validated under reference 21/500786/FULL for "Retrospective application for material change of use of land for use as caravan site including engineering works to create ditch to south of site submitted". In their planning statement, the applicant's agent claims this application only pertains to the southern strip of the land, an extension of the site along the southern boundary which, they say, does not benefit from lawful planning permission. This application is also the subject of this report and the planning considerations apply similarly except where otherwise identified.

Site operator's strategy

2.43 The premise for all the above applications is a belief that the site can be divided into northern and southern parts that operate under different permissions.

2.44 The site operator believes that the northern part benefits from planning permission (the 1985 Permission) that allows them to use that part for an unlimited number of caravans. The site operator does not intend to make any applications for this northern part as they believe existing use rights exist.

Officers' response to site operator's strategy

2.45 The Pilgrims Retreat site is a single planning unit and the impact of the use of the planning unit as a whole ought to be considered in a single application. Nevertheless, the current applications were submitted and must therefore be considered in the terms under which they were made.

2.46 It must be noted that the site operator's present strategy and pending applications will not result in regularisation of the use of the site as a whole. In fact, if approved, the proposal will result in a position where 272 mobile homes can lawfully be stationed on the land, albeit the residential use of the units on the northern part is not lawful (except for 18 units which can already lawfully be used residentially). Even though the applicant's planning statement mentions a total of 133 caravans can be accommodated on the northern part (within caravan site licence requirements, they say), this limit cannot be controlled by planning condition as there is no application for the northern part.

2.47 Counsel advice has been clear that the 1985 Permission does not permit unlimited caravan use. In any event, it appears that the operative planning permission on the site is in fact the 1997 s78 Permission which covers the entire site and imposes conditions on caravan numbers.

2.48 The lawful fallback position against which the materiality of any change in use should be assessed, is the 1997 s78 Permission as subsequently amended by variation of conditions (s73a) applications. Essentially this permission is for stationing of 180 holiday caravans and 18 residential caravans across the whole site subject to conditions.

2.49 Aerial photography from 1990 and 2003 show a significant number of touring caravans in the northern part of the site. At the time of considering the 1997 appeals, it was assumed that some of the caravans on the northern part of the site would be touring caravans. Because touring caravans are smaller than static mobile homes, it explains why it was thought appropriate to grant permission for 180 'holiday caravans'. Furthermore, condition 1 to the 1997 s78 Permission limits the use of the site for "a maximum of 18 residential caravans plus holiday units comprising static caravans, touring caravans and tents, subject to the number of such holiday units not exceeding a total of 180.

- 2.50 The Steering Group members had determined a negotiating position on various issues including limiting numbers of caravans across the whole of the planning unit, to 198. A Landscape Strategy Plan formed part of the negotiating position, as did contributions, and requirements for foul and surface water disposal and Health and Safety Risk Assessments, amongst other things.
- 2.51 None of the submitted applications can achieve the Steering Group's negotiating position, not least of all because the site operator believes there is no need to submit a planning application for the northern part of the site, without which a limit on numbers on the site as a whole cannot be imposed.
- 2.52 The use of the site has changed so significantly over the years that the current use is materially different and represents a new chapter in the planning history. It is wholly unauthorised.
- 2.53 Unless further applications are made to regularise the planning position, the breaches of planning control persist and will in time become immune from enforcement action.

3.0 SITE DESCRIPTION

- 3.01 In the adopted Local Plan, 'Pilgrims Retreat' is within the countryside that falls within the Kent Downs Area of Outstanding Natural Beauty (AONB). The application site relates to the southern section of Pilgrims Retreat, approximately 4ha in area.
- 3.02 The site is on the south-eastern side of (unclassified) Hogbarn Lane and there are residential properties either side of the site, including 'Uplands' to north-east, and 'Broomfield' to the south-west. Pilgrims Retreat is located on the scarp slope of the North Downs escarpment, around 3.2km to the north of Harrietsham village; and more than 4.8km away from Lenham village. The local road network is of narrow (unlit) country lanes with no pavements or cycle lanes that are largely at national speed limit; the nearest bus stops are found on the A20, some 3km away.
- 3.03 The Ancient Woodland along the front of the site and on the opposite side of the road from the site's entrance, and other trees within the site, are protected under Tree Preservation Order no. 10 of 2003. There are public footpaths in the vicinity of the site, including a public footpath (KH209A) that runs to the south-west of the site; and public footpaths (KH288 and KH286) running further to the south of the site. The application site is within Flood Zone 1; the nearest listed building (known as 'Lenniker') sited some 435m to the north-east of the site (Grade II listed); and part of the site does fall within an area of archaeological potential.

4.0 PROPOSED DEVELOPMENT

- 4.01 Application ref: 21/502369/FULL is for a material change of use of the land from a holiday use to residential use (for full time residential occupation) comprising the stationing of 84 static caravans. Whilst not in the application's description, the application site also includes unauthorised terracing, hardstanding and retaining walls; and protected trees have been removed without consent. The development is accompanied by a Landscape Masterplan that shows new tree and hedge planting in the south-western corner of the site; new fastigate tree planting between the mobile homes; new wildflower grass along south-eastern boundary of the application site; and the creation of native woodland at the eastern end of the site.
- 4.02 21/500786/FULL seeks permission for engineering works to create a ditch to the south of site but otherwise includes the development the subject of 21/502369/FULL.
- 4.03 Paragraphs 4.1 and 4.2 of the submitted Planning, Design and Access Statement state:
 - 4.01 *Applicant has identified need to retain 217 caravans on site to safeguard existing households. Evidence has been provided to Steering Group in support of the required numbers.*
 - 4.02 *Applicant has sought to rationalise the site, by relocating caravans to northern part of the caravan site where unrestricted permanent residential caravan use has been demonstrated in the 1985 permission. Using Caravan Site license requirements, a total of 133 caravans can be accommodated within the northern part of the site without the requirement for further planning permission. Leaving the balance of 84 caravans to be retained on the southern area of the Pilgrims Retreat site. This southern area also benefits from lawful permission, in the 1997 Enforcement Permission for change of use of land for use as a caravan site.*

- 4.04 The assessment of this application will also focus on aspects that are normally covered by the site licence (i.e. drainage and sanitation). This is considered reasonable to do in this instance given the permanent residential uses proposed, the subjectivity and vagueness of the site licence conditions relating to such matters and the fact that the applicant is currently in breach of its site licence. There is also an obligation to ensure that the site provides adequate provisions of foul and surface water disposal for the site, particularly when the development is retrospective, and it is not known if the surface water and sewage disposal systems are adequate.
- 4.05 The submitted plans show the provision of a drainage field to the south-eastern corner of the site and this straddles both current applications that are pending consideration. The agent has confirmed this this will be installed as per Building Regulations Part H (Clauses 1.27 to 1.44).
- 4.06 The extension of Pilgrims Retreat along the south-eastern boundary is being considered under planning application ref: 21/500786.

5.0 POLICY CONTEXT

- Local Plan: SS1, SP17, SP19, SP20, ID1, DM1, DM3, DM8, DM19, DM21, DM23, DM30, DM38
- National Planning Policy Framework (2021) & National Planning Practice Guidance
- Landscape Character Assessment (2012 amended July 2013) and Supplement (saved sections of LCA and Landscape Guidelines)
- Kent Downs AONB Management Plan (2021-26) & Landscape Design Handbook
- Natural England Standing Advice; ODPM Circular 06/2005; and BS5837 (2012)
- Regulation 22 Local Plan
- Harrietsham Neighbourhood Plan: Pre-sub consultation withdrawn 5th May 2015

Maidstone Local Plan 2017

- 5.01 Local Plan policy SP17 states that new development in the countryside will not be permitted unless it accords with other policies in the Local Plan, and would not result in harm to the character and appearance of the area or residential amenity. Local Plan policy DM1 seeks high quality design and for development to respond positively to, and where possible enhance, the local and natural character of the area; it seeks new development to respect the topography and respond to the location of the site and sensitively incorporate natural features such as trees, hedges and ponds worthy of retention in the site; and it also states that new development should respect the amenities of occupiers of neighbouring properties, it should protect and enhance biodiversity and avoid inappropriate development within areas at risk from flooding. Local Plan policy DM30 states (inter alia) that new development should maintain, or where possible, enhance local distinctiveness; and ensure that associated traffic levels are acceptable. Local Plan policy DM3 seeks to protect positive landscape features such as Ancient Woodland; and Local Plan policies SP20 and ID1 relate to affordable housing and community infrastructure provision respectively. These matters are discussed in more detail later.
- 5.02 The application site is within the AONB and the statutory duty of the local planning authority requires any development to have regard for the purpose of conserving and enhancing the natural beauty of this nationally important designation. Local Plan policy SP17 requires that: *Great weight should be given to the conservation and enhancement of the AONB.*

Landscape Character Assessment

- 5.03 The Maidstone Landscape Character Assessment identifies the application site as falling within the Wormshill, Frinstead and Otterden Downs and Dry Valleys Landscape Character Area (Area 7). The landscape guidelines for both areas are to 'CONSERVE & REINFORCE'. The most relevant considerations are outlined below:
- *Landscape forms part of Kent Downs AONB; gently undulating landform of dry dip slope valleys and ridges; many large woodland tracts with oak and ash; chalk grassland pasture in dip slope valleys; arable fields on ridges; strong network of species rich native hedgerows; and narrow winding lanes which most often are lined by hedgerows.*
 - *Conserve & reinforce large tracts of woodland, especially where AW is present; reinforce management of historical coppice by encouraging management of areas of unmanaged coppice stools; conserve good network of hedgerows/reinforce management of hedgerows.*

NPPF (2021)

- 5.04 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, with section 12 of the NPPF referring to '*achieving well-designed places*'; and paragraph 176 of the NPPF states that great weight should be given to conserving and enhancing landscape and scenic beauty in AONB's.
- 5.05 For the purposes of paragraph 172 of the NPPF, planning judgment has taken into account all of the circumstances of the application (in light of its nature, scale and setting) and the site's local context, and this development is not considered to be a 'major development', which is to be given its ordinary meaning, as established in *High Court judgement Aston v SoS for Communities and Local Government [2013] EWHC 1936 [Admin]*.

Other relevant AONB guidance/legislation

- 5.06 Section 85 of the Countryside and Rights of Way Act 2000 places an explicit duty on relevant authorities to have regard to the purpose of conserving and enhancing the natural beauty of an AONB when exercising or performing any functions in relation to or so as to affect land in an AONB.
- 5.07 The Kent Downs AONB Management Plan does not form part of the statutory Development Plan, but the Council has adopted it and it is a material consideration when assessing any planning application. The AONB Management Plan helps to set out the strategic context for development; it provides evidence of the value and special qualities of this area; it provides a basis for cross-organisational work to support the purposes of its designation; and it details how management activities contributes to its protection, enhancement and enjoyment. The following policies within this Management Plan are considered to be of particular relevance: SD1; SD2; SD3; SD7; SD8; SD9; LLC1, LLC2, WT1, and WT7. In summary, these policies seek to conserve and enhance the natural beauty and distinctiveness of the AONB, which is recognised as the primary purpose of designation; and development or changes to land use will be opposed where they disregard or run counter to the primary purpose of Kent Downs AONB.
- 5.08 The Kent AONB Unit has confirmed the site lies in the Kent Downs landscape character area as classified in the Landscape Character Assessment of the AONB, where one of the overall landscape character objectives is identified as to seek to conserve the small scale of the roads and villages and the remote quality of the countryside and control urban fringe pressures. In the Mid Kent Downs LCA, the site lies within the Bicknor Local Character Area where specific guidelines include seeking the use of sympathetic local materials such as brick, tile and flint.

Regulation 22 Local Plan

- 5.09 The Council's Regulation 22 Local Plan is a material planning consideration, however at this time individual policies are not apportioned much weight.

Does application constitute 'major development' in the AONB

- 5.10 For the purposes of paragraphs 176 and 177 of the NPPF, this assessment is a matter for the decision maker, taking into account the development's nature, scale and setting, and whether it could have a significant adverse impact on the purposes for which the area has been designated or defined.
- 5.11 It is also important to note that the phrase 'major development' is to be given its ordinary meaning, as established in *High Court judgement Aston v SoS for Communities and Local Government [2013] EWHC 1936 [Admin]*:

Paragraph 94: I am satisfied the Inspector made no error of law when he determined that the meaning of the phrase major development was that which would be understood from the normal usage of those words.

- 5.12 It would therefore be wrong in law to:
- Apply definition of major development contained in Development Management Order to para 177 of NPPF
 - Apply any set or rigid criteria to define 'major development'
 - Restrict the definition to proposals that raise issues of national significance.

- 5.13 When making a judgement as to whether a development in the AONB is major or not, the potential for significant harm to the AONB should be a primary consideration. This however does not require (and ought not to include) a detailed assessment as to whether the development will in fact have such an impact.
- 5.14 It must be stressed again that as a matter of planning judgement, the decision maker must consider an application in its local context. This is implicit in High Court judgement *R. (Forge Field Society) v Sevenoaks DC [2014] EWHC 1895 (Admin)*, when it was noted that....“major developments would normally be projects much larger than 6 dwellings on a site the size of Forge Field”. It appears that Linblom J had considered the possibility that, depending on local context, there may be situations where a project of 6 dwellings could amount to major development for the purposes of paragraph 177 of the NPPF.
- 5.15 Specific to this application, it is important to first consider what is authorised. The appeal decision (as referenced in paragraph in 2.1 above) does authorise the lawful use of the identified land for the stationing of 198 static caravans. Notwithstanding this, planning application reference: MA/02/2056 is considered to be the most relevant permission for the southern portion of the site, and officers are of the view that only 10 static holiday units can be lawfully stationed and occupied here for tourism related purposes (and not for residential purposes). If simply considering the proposed increase in number of authorised static caravans on the southern portion of the site (which is 74), in this wider rural landscape setting and given that they would be residential in nature, the proposal constitutes major development. The authorisation of 74 additional caravans on the southern portion of the site is likely to have a significant adverse impact on the purposes for which the AONB has been designated.
- 5.16 Taking into account all of the above matters and the site’s local context, it is considered that the development does constitute major development in the AONB. It is therefore necessary to apply the two tests as informed by the three mandatory assessments referred to in paragraph 172 of the NPPF.
- 5.17 There must be both exceptional circumstances for allowing the proposal and it must also be demonstrated that the proposal is in the public interest. The judgement in *R (Mevagissey Parish Council) v Cornwall Council [2013] EWHC 3684 (Admin)* sets out the approach by which decision-takers should address the planning balancing exercise, such that: “*In coming to a determination of such a planning application under this policy, the committee are therefore required, not simply to weigh all material considerations in a balance, but to refuse an application unless they are satisfied that (i) there are exceptional circumstances, and (ii) it is demonstrated that, despite giving great weight to conserving the landscape and scenic beauty in the AONB, the development is in the public interest*”. The assessments referred to in the NPPF (paragraph 177) should be considered and these are returned to later.
- 5.18 The balancing exercise is applied in the conclusion section.

6.0 LOCAL REPRESENTATIONS

- 6.01 **Local Residents:** 24 representations received raising the following matters: Unclear what the planning history is for the site; situation is causing stress/worry for residents; there are drainage/flooding problems on site; site is not in a sustainable location; and applicant should contribute towards infrastructure.

7.0 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)

- 7.01 **Harrietsham Parish Council:** The Parish Council originally commented on application with reference 21/500786/FULL. They comment that the travel plan is not feasible as there is no apparent plan on what to do with bicycles if the elderly residents were to use a bicycle to get to the nearest bus stop 3.4km away. The transport statement is said to be inaccurate because the site is not safely accessible by foot or by cycle, that there has recently been an accident and

that the minibus service is funded and run by the residents of Pilgrims Retreat rather than the applicant. The Parish Council expresses concern about the risk of flooding and highlights that the number of homes on site exceeds the number authorised.

In response to application 21/502369FULL the Parish Council confirm their views have not changed since 21/500786 but make additional comments about risk of flooding of the mobile homes, ecology issues and the landscape masterplan which in their view will not compensate for the destruction of habitat; they request that substantial native trees are reinstated. The Parish Council are concerned that the road to Pilgrims Retreat is dangerous. They also express the view that the housing cannot in their view be classified as retirement housing and are not affordable homes. Their comments are found in APPENDIX d.

7.02 **Frinsted Parish Council:** No representations received.

7.03 **Kent Downs AONB Unit:** Raise objection to both applications and their comments for 21/502369 are found in appendix c. For 21/500786, they commented as follows (in summary):

It is understood an area of coppice woodland that existed in south-east corner of site was felled to accommodate caravan park extension that was subject of 19/502469 and arboricultural report submitted with application notes development also impacts on root protection areas of several other trees due to significant cut and fill operations that have been carried out to terrace site. Measures comprise a new area of woodland in south-east corner, more tree planting in south-west corner, some wildflower seeded margins and a 'woodland edge' along southern boundary with adjacent woodland. Only some of this mitigation is within red line of current application site. As stated in Committee report relating to previous application: "The application site is well screened from Hogbarn Lane, however, public views of development are possible from Stede Hill, Flint Lane and public footpath (KH209A) to south-west of site. In any case, NPPF advice relating to countryside is unambiguous when it states that it is the intrinsic character and beauty that should be protected, as well as landscape and scenic beauty of an AONB. It is considered that this protection is principally independent of what public views there are of the development, and associated more to protection of nature of land in itself".

It is noted application is accompanied by a Landscape and Visual Assessment (to cover both applications). This assesses effects against baseline of enforcement permission G77/E/989 (T/APP/C/96/U2235/643714). LVA considers landscape value of site is medium, with a medium sensitivity to proposed development (paras 4.56-7). As with previous application, AONB Unit disagrees with this conclusion and considers value and sensitivity of landscape should be considered as 'high' or 'very high', given its AONB location. With regard to details of proposed landscaping on site, it is considered proposed new native woodland mix planting is appropriate subject to details of species to be used. Kent Downs Landscape Design Handbook (p26) recommends following species for this area: pedunculate oak, hazel, ash, and field maple (although in view of ash die back disease, its inclusion is no longer be appropriate). These should be of local provenance stock or at least of British origin to safeguard integrity and biodiversity of landscape. Wildflower areas should also use local provenance wildflower/grass seed mixes appropriate to chalky soil type. Location of proposed ditch is not clear from plans and should be clarified. This advice is given without prejudice to issue of whether this proposed landscaping will be effective mitigation for developed part of site. However, it should be noted the rising topography means that boundary planting will not be effective in screening or filtering views of higher parts of the site.

7.04 **KCC Highways:** Raises objection to both applications (please refer to appendix f).

7.05 **Environment Agency:** Raises no objection to both applications subject to recommended conditions. They have commented as follows (in summary):

Site drainage is now proposed to split surface water and foul water, with former directed to engineered drainage ditch along south of site, and latter discharged to a British Standard-compliant engineered foul drainage field. Foul drainage will be treated via British Standard package treatment plants, including a sampling chamber prior to drainage field. In separating surface water drainage and foul water drainage, risk posed to groundwater underlying this site is significantly decreased, when compared with initial proposals outlined in application. Provided drainage is implemented in accordance with revised details submitted for this application we are able to remove our earlier objection. We will agree final detailed requirements for foul water discharge through EA's environmental permitting process but will keep you informed of progress. At present, details submitted completely align, and will be adequate for us to agree proposals. To keep planning and environmental permitting process aligned, plus to ensure that work goes ahead correctly on site, we have suggested conditions. Provided applicant continues in line with current submissions we have no concerns regarding the sign-off of these conditions.

- 7.06 **KCC Biodiversity Officer:** Raises no objection provided conditions are imposed.
- 7.07 **KCC Flood Risk Officer:** Raises no objection.
- 7.08 **MBC Landscape Officer:** Raises objection (see main report).
- 7.09 **Environmental Protection Team:** Raises no objection provided conditions are imposed.
- 7.10 **Parks and Open Space:** Requests financial contributions (see main report).
- 7.11 **KCC Education:** Requests financial contributions (see main report).
- 7.12 **NHS West Kent:** Requests financial contributions (see main report).
- 7.13 **MBC Housing:** Whilst acknowledging application differs from previous refusal (19/502469), their original comments remain valid.
- 7.14 **Building Control:** Confirm there are no outstanding/ongoing building control issues on site.
- 7.15 **Kent Police:** Have no comments to make on application.
- 7.16 **Natural England:** Raises no objection to application.
- 7.17 **Southern Water:** Raises no objection.
- 7.18 **UK Power Networks:** Raises no objection.
- 7.19 **MBC Culture and Tourism:** No representations received.
- 7.20 **Forestry Commission:** No representations received.
- 7.21 **Upper Internal Drainage Board:** No representations received.
- 7.22 **Scottish Gas:** No representations received.

8.0 APPRAISAL

Main Issues

- 8.01 The key issues for consideration are:
- Location of development and highway safety implications
 - Visual impact
 - Arboricultural/landscaping implications
 - Foul and surface water disposal
 - Biodiversity implications
 - Ancient Woodland
 - Community infrastructure contributions
 - Affordable housing provision
 - Other considerations
 - Human rights and Equality Act

Location of development and highway safety implications

- 8.02 Whilst the Pilgrims Retreat site as a whole is authorised to have 180 holiday units (which includes static caravans, touring caravans and tents) and 18 residential caravans, only 10 static caravans should be on the southern part of the site the subject of the current applications. It is not considered that the authorised 18 residential units constitutes a 'settlement' and 84 additional residential units here would be remote from any other recognisable lawful settlement in the wider countryside. Whilst the situation on the ground is different (i.e. from evidence collected from the Planning Contravention Notices there are about 193 caravans being used unlawfully as permanent residences [in addition to the 18 lawful residential caravans] as opposed to being used lawfully as a caravan for holiday purposes only), in planning terms the other static caravans on the site should only be used for bona fide tourism related purposes (albeit they can be used

12 months of the year), and whatever sense of community they may create, this should be transient and cannot be considered as a 'settlement' for the purposes of the NPPF, as they are not authorised dwellings. It is therefore a matter of fact and planning judgement that the development would add 84 isolated homes in the countryside, and not one of the circumstances set out in paragraph 79 of the NPPF applies.

- 8.03 The lawful fallback use of the northern part of the wider site is for 198 units made up of static caravans, touring caravans and tents (of which 180 are holiday units and 18 are permanent residential) minus the 10 static caravans on the southern part (if the 2002 permission has been implemented, otherwise the southern part can be used for 25 touring caravans). If the southern part is carved out by means of the present applications, the applicant will no doubt claim it could result in 188 static caravans in the northern part and a further 84 in the southern part adding up to 272 static caravans across the site. Whilst the current applications does not grant permission for the residential use of the caravans in the northern part, it also cannot impose conditions preventing residential use of the northern part.
- 8.04 The development would result in the authorisation of 84 new residential units at Pilgrims Retreat. The nearest village (Harrietsham) is approx. 3.2km away; Lenham is more than 4.8km away; the local road network is of narrow country lanes that are unlit with no pavements or cycle lanes and are largely at national speed limit; the nearest bus stops are found on the A20; and to reach the site from the A20 is via a steep hill (Stede Hill). Without evidence to the contrary, there is also no assumption made that all residents are retired and so travelling for work purposes must also be considered.
- 8.05 The agent has confirmed that Pilgrims Retreat does have an all year round swimming pool; there is a bar on site (closed Mondays); there is a restaurant in the bar that is open six days a week (10:30-16:30); a mobile fish and chip van which attends the park every Monday from 5-7pm; the currently closed shop on site is being refurbished and due to re-open in September 2019; and there are discussions about having a separate meeting hub for residents where they will be able to have tea and coffee if they do not wish to use the on-site bar facilities.
- 8.06 With the above considered, it is not realistic to say that the majority of residents (who are over 50yrs) will regularly walk and cycle to local services and facilities or places of employment; and whilst there are some facilities on site, occupants of the site are/will be heavily reliant on the private car for their day to day living. The Highways Authority are also of the view that the site is unsustainable in terms of its location.
- 8.07 Furthermore, as set out in paragraph 103 of the NPPF, "*significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes*". This development (for 84 new dwellings) is considered significant; it is in an unsustainable location; and it is not accepted that the development (even with the introduction of a minibus service running into town three times a week, as briefly suggested in the submitted Transport Technical Note [para. 4.13]) could be realistically made acceptably sustainable. So whilst it is accepted that sustainable transport opportunities are likely to be more limited in rural areas, the lack of any apparent available or achievable sustainable transport options for 84 new dwellings would see a major development unable to adequately support the objectives set out in paragraph 102 of the NPPF which seek to ensure that transport issues are considered from the earliest stages of plan-making and development proposals.
- 8.08 The Highways Officer is also of the view that the development does not meet the objectives set out in paragraphs 102 and 103 of the NPPF; and without sustainable transport options being available, a Travel Plan in their view has little merit. This weighs against the development.
- 8.09 The Highways Authority has reviewed all of the submitted information relating to transport and has raised a holding objection on the basis of the provision of insufficient evidence required to fully assess the potential impacts that the proposal may have on the public highway.

- 8.10 The proposed offsite highways improvements in the form of installing and upgrading passing places along Hogbarn Lane and Stede Hill are not supported by the Highways authority as they are not considered likely to be successful in their aims and would likely represent a detriment to road safety as a result of increased driver uncertainty.
- 8.11 The Highways Authority requires the following information:
- Evidence of a robust trip generation assessment
 - Evidence to support the suitability of the access junction (including visibility splay diagrams)
 - Evidence of the impact that the proposals would have on road safety on the surrounding highway network and appropriate proposals to mitigate any significant impacts.
 - Details of the proposed parking provision.

Impact on character and appearance

- 8.12 The s78 1997 appeal permission granted permission for 198 'units' (18 of which for permanent residential use, the remainder to be split between static caravans, touring caravans and tents), but restricted the area to which these could be stationed on to the northern part of Pilgrims Retreat. Permission MA/02/2056 then permitted the stationing of 10 caravans on the southern part of the site for touring purposes only but did not increase the overall numbers permitted on the whole site.
- 8.13 MA/13/1435 granted permission for 60 static holiday caravans to be stationed in the southern end of site (leaving 138 in the northern section), and included operational works and an area of land in the southern corner to be planted with new woodland, and the retention of the coppice in the south-eastern corner of the site. However, as previously explained, heart of the matter conditions on this permission have not been discharged; notwithstanding this, what has been stationed/constructed on site is not as per the approved drawings; and whilst this permission remains extant, it remains incapable of full implementation and the majority of development relying upon this permission is not authorised.
- 8.14 As such, in terms of fallback the majority of the engineering works undertaken in the southern part of the site are unauthorised; and planning permission MA/02/2056 is considered to be the most relevant permission for the southern portion of the site (in terms of what can be lawfully stationed on this part of the site). The submitted Landscape and Visual Assessment (LVA) considers the baseline to be that at which planning permission was allowed in 2013, but as set out this is considered to be incorrect. The 2013 permission is a material consideration but not a fallback. The Council's Landscape Officer has commented that they would have liked to see a Landscape Visual and Impact Assessment rather than the Landscape and Visual Appraisal that has been submitted, following the GLVIA3 principles.
- 8.15 This application should be tested against the purpose of the AONB designation, which is to conserve and enhance the natural beauty of the AONB (in accordance with Local Plan policy and the NPPF), whilst having due regard to the fallback position.
- 8.16 In general terms, the submitted LVA draws conclusions that the landscape sensitivity of the site as being '*low to medium*'. However, both the Council's Landscape Officer and the Kent Downs AONB Unit disagree with this conclusion. Instead, the sensitivity of the landscape should be considered as '*high*' or '*very high*', given its AONB location. Indeed, whilst not prescriptive, the Landscape Institute's *Guidelines for Landscape and Visual Impact Assessment* makes it clear that landscapes that are nationally designated (such as AONB's) will be accorded the highest value in the assessment. The Landscape Officer does not consider the LVA to have reached an appropriate conclusion because it has not considered the true baseline; and it has not attached adequate weight to the importance of the nationally designated AONB.

8.17 The Kent Downs AONB Unit's comments are summarised below:

- *Such development rarely constitutes appropriate development, as utilitarian design of caravans fails to conserve or enhance local character, qualities and distinctiveness of AONBs. Therefore it fails to meet key requirement of conserving & enhancing landscape & scenic beauty within AONBs.*
- *Significant extension in number & density of caravans, in remote location, would fail to comply with guidelines for development in Mid Kent Downs LCA - would clearly be in conflict with objectives of KD AONB Management Plan as well as national & local plan policies.*
- *Clearance and levelling of 0.8ha of coppiced valley side with artificially engineered platforms to accommodate expanded area of permanently stationed caravans does not constitute a 'minor' change to landscape, nor would it be a 'low to medium' magnitude of change to landscape character.*
- *Harm is exacerbated by removal of existing vegetation/trees; & remodelling of land levels to form artificial terraces & retaining walls, introducing suburban features in rural location.*
- *Harm arises given increase in lighting & caravan numbers and their permanent occupation.*
- *Increase in amount & density of caravans doesn't allow for significant planting between units to help assimilate them into rural surroundings; & shown landscape mitigation is very meagre, failing to adequately compensate for substantive harm resulting from proposal.*

8.18 The application site is well screened from Hogbarn Lane, however, public views of the development are gained from Stede Hill, Flint Lane and the public footpath (KH209A) to the south-west of the site. In any case, NPPF advice relating to the countryside is unambiguous when it states that it is the intrinsic character and beauty that should be protected, as well as the landscape and scenic beauty of an AONB. It is considered that this protection is principally independent of what public views there are of the development, and associated more to the protection of the nature of the land in itself.

8.19 This view is echoed by the Kent Downs AONB Unit, who also considers it incorrect to assess a lower impact on the landscape character on the basis of a lack of wider visibility of site:

We consider high sensitivity of site and a high magnitude of change would give rise to a major adverse (i.e. significant) effect on landscape character. Furthermore, reducing assessed levels of harm on basis of small scale of an area affected, and its visual dissociation with the surrounding area is wholly inappropriate. Whilst site is relatively contained within wider landscape and development may not affect wider long-distance views, this is not the sole test for acceptability of development in an AONB. AONB is a wide and large expanse of area and any development which significantly detracts from elements which contribute to that wider natural and scenic beauty would not conserve or enhance it. This development would have a detrimental impact on many of special characteristics and qualities of Kent Downs, including landform and views; tranquillity (through introduction of additional lighting); and biodiversity rich habitats and woodland and trees. This is contrary to conclusion of submitted LVA that states: '...there would only be a very minor impact on very few elements of the special qualities and characteristics of the AONB.

8.20 To summarise, with regards to the Maidstone Landscape Character Assessment, the Landscape Officer does not consider the development to be appropriate in terms of the relevant recommended actions for landscape character area in which it sits; and further to this, proposed mitigation planting is considered to be wholly inadequate and inappropriate to the location. The Kent Downs AONB Unit also conclude by stating that the development weakens the characteristics and qualities of the natural beauty, having a significant detrimental impact on the landscape character; and the development disregards the primary purpose of AONB designation, namely the conservation and enhancement of its natural beauty, contrary to paragraph 172 of NPPF and Local Plan policy SP17.

8.21 It should also be stressed that the whole southern section of the site is covered by TPO no. 10 of 2003. As MA/13/1345 is valid but not capable of further implementation, the baseline for assessment should be with the trees in position on this part of the site (shown on plan APPENDIX B). Whilst the loss of some trees was accepted under MA/13/1345, as is evident on the plan, it was important to retain the large coppice of TPO trees and to establish substantial (and appropriate) new tree planting on the site, in terms of mitigating the landscape impact of the development. The development now being considered has largely removed the trees on site, and poor/limited mitigation planting has been proposed. As explained in more detail below, the loss of this swathe of trees is to the detriment of the scheme in visual amenity terms; and the application fails to provide adequate mitigation to compensate against the loss of these positive landscape features.

- 8.22 In considering the consultation responses, it is agreed that the site's extension; the level of engineering works undertaken within the southern section of the site; the additional caravans; the loss of protected trees; and the increased light pollution resulting from more static caravans that are occupied permanently, will not conserve and enhance the landscape and scenic beauty of the Kent Downs Area of Outstanding Natural Beauty, and it would not positively recognise the intrinsic character and beauty of the countryside hereabouts. The adverse impact upon this nationally designated landscape of the highest value weighs against this development.

Arboricultural/landscaping implications

- 8.23 As previously set out, planning application reference MA/13/1435 has now expired.
- 8.24 The development submitted under MA/13/1435 included the retention of the protected coppice woodland in the south-eastern corner of the site; the retention of existing trees on the lower section of the site; the planting of interspersed specimen trees and a new hedgerow along the southern boundary of the site; and the creation of a new woodland area in the south-western corner of the site (stated at some 400 new trees). It is clear that the protected trees that were found in the lower section of the site have largely been removed; and the new woodland, specimen trees and hedgerow have not been planted. Instead, the lower section of Pilgrims Retreat is densely populated with static caravans and associated roads/hardstanding.
- 8.25 Ref MA/13/1435 was recommended for approval on the basis of the importance of substantial mitigation as shown on the approved plans. The development approved under MA/13/1435 did not increase the number of caravans on the site, which remained at 198, allowing for a softer less intense development of caravans across the whole site. Indeed, the committee report's conclusion states:

Proposed scheme includes stationing of 58 additional caravans, 11 lower than previously proposed, and which when combined with those already on site would be below the 198 permitted. Proposal includes significant amount of landscaping with a mixture of approximately 400 new native trees and shrubs that are in keeping with the landscape character of the area. A significant woodland area is now proposed in the southwest corner which would soften public views from the west and south here. The mix of new species would also result in an enhancement in biodiversity from the previous hawthorn scrub.

6.3 Application would allow unambiguous control over remaining landscape areas through conditions and landscape management and maintenance regimes.

6.4 Site is an existing caravan site which is visible and out of place in the Kent Downs AONB. The proposal, whilst extending the site southwards, due to the extensive new landscaping and changes to the banks to soften their appearance would not result in significant additional harm to the character and appearance of the Kent Downs AONB.

6.5 Overall, I consider that the proposed reduction in caravans and increases in landscaping are sufficient to overcome the previous reasons for refusal and on this balanced case I consider that the harm caused is not so significant to warrant refusal when balanced against the landscape replacement, biodiversity improvements and future control over the site, and permission is recommended.

- 8.26 The current layout of the site has retained some existing trees. However, the Council's Landscape Officer questions their suitability for long-term retention, given the significant encroachment into the root protection areas during construction works; the significant changes in levels likely to lead to premature decline; and the inappropriate proximity of protected trees to occupied units that are resulting in applications for works to protected trees because of safety fears as the trees are 'too close to park homes'. In summary, the Landscape Officer objects for the following reasons:

Landscape: Landscaping scheme drawing No. P18-2071.208B titled Landscape Masterplan depicts fastigate trees to be planted. However, native species of fastigate form are available such as Quercus robur 'Fastigiata' and Carpinus betulus 'Fastigiata'. The Landscape and Visual Appraisal (LVA) drawing No. 102 Rev A created by Pegasus Group has been produced in accordance with the principles of the Landscape Institutes Guidelines for Landscape Visual & Impact Assessment Third edition (GLVIA3). The Landscape Institutes own guidance on the difference between an LVIA and LVA is: 'The main difference between an LVIA and LVA is that in an LVIA the assessor is required to identify 'significant' effects in accordance with the requirements of Environmental Impact Assessment Regulations 2017, as well as

type, nature, duration and geographic extent of the effect whilst an LVA does not require determination of 'significance' and may generally hold less detail.'

Conclusion: As site location and surrounding study area lies within the Kent Downs AONB I would have liked to have seen a Landscape Visual & Impact Assessment following the GLVIA3 principles.

Arboriculture: Following previous comments made on past applications the site has continued to expand with additional park homes now covering what was protected scrub woodland to the south-eastern part of the park. The current layout of the site has retained some existing trees which are identified within the arb impact assessment report (by Southern Ecological Solutions, dated 10.05.2019) that accompanies the application. The report confirms that most of the trees that have been retained have suffered significant encroachment into the root protection areas during construction works with significant changes in levels likely to lead to premature decline; and the inappropriate proximity of protected trees to occupied units. From an arboricultural perspective the considerable loss of tree cover on this site for the provision of static closely built homes has in our view eroded the mature and verdant landscape of the area by a marked degree, giving rise to significant harm to its sylvan character and appearance.

Direct loss of trees and woodland: Whilst an assessment cannot be made on the quality of the trees/woodland lost, the retention of this planting was key in the determination past applications in terms of screening the development and to safeguard amenity space for residents. Retained mature tree stock is an important visual element of large sites, acting as a foil to built forms, filtering views and providing some screening in longer views to ensure developments sit well in surrounding countryside.

Indirect loss of trees & pressure for inappropriate pruning/removal: The current site layout has not respected the location of existing trees, which has resulted in development that is inappropriately close; and development has clearly taken place within RPAs, contrary to advice contained within BS5837:2012. This includes not only the siting of park homes within RPAs, but extensive ground level changes, excavations that have resulted in root severance, and ground compaction from the use of heavy machinery. It is clear that most of retained tree stock is suffering as a result, with many trees showing signs of premature decline.

The inappropriate relationship between retained trees and park homes has already led to works, some of which have been subject of applications under the TPO, to prune or remove trees simply on the basis they are too close to homes, or because the trees are showing signs of decline. Such applications are particularly difficult to resist when the juxtaposition of mature trees and park homes mean that even minor deadwood failures could result in building and property damage, or injury to occupiers. Occupants are clearly concerned about fear of failure in our experience of dealing with applications, and also complain about other problems such as leaf litter and shading. The result of this situation is any retained mature trees will either die or be pruned to such an extent they have little, if any, public amenity value.

Inadequate space for mitigation planting: The current cramped site layout and lack of space around and between the park homes does not allow for new planting of a type appropriate to the landscape character of area to mitigate extensive tree loss on the site. This includes the trees already lost, and likely to be lost as a result of premature tree decline and pressure to prune or fell. The many Chusan Palms planted are not considered to be adequate mitigation, as these are not trees, but woody herbs and certainly not a species that are appropriate to the character of area. Replacement tree planting should be in accordance with Council's Landscape Character guidance, with species of a suitable ultimate size to ensure the development sits well in surrounding landscape, with sufficient space to ensure they can reach mature size without conflict. I note that this application shows the creation of a woodland area to the SE corner of the site returning it to its previous wooded form before the current homes that now cover it were built. This is welcomed although the creation of the new woodland will require the removal of numerous existing park homes and extensive ground/soil amelioration before the area can be suitable for planting. Further details on how this area will be re-landscaped needs to be provided.

Summary: In its current form the development on this site has resulted in permanent tree loss on a scale that is harmful to the amenity of park home users and the wider landscape; and there is insufficient space to be able to provide mitigation planting to help screen and integrate the development into the surrounding countryside. Whilst this application goes some way in providing the creation of a woodland block to the south-eastern side of the site the general layout fails to provide a suitable juxtaposition from existing trees contrary to the recommendations given in BS5837:2012.

Foul and surface water disposal

8.27 The development site is within Flood Zone 1 and the Environment Agency has assessed the application as having a low environmental risk and has raised no objections (notwithstanding the applicant may be required to apply for other consents directly from the Environment Agency). Southern Water has also raised no objection; and the Environmental Protection Team would seek details of the packaged treatment plant. The KCC Drainage Team has also assessed the development as a low risk development and require no further information but do comment that the proposed improvements to the ditch, through incorporating check dams, should be applied to the trench as the attenuation volume within the ditch would be increased.

8.28 Following the receipt of further information, the Environment Agency advised as follows:

Site drainage is now proposed to split surface water and foul water, with the former directed to engineered drainage ditch along south of site, and latter discharged to a British Standard-compliant engineered foul drainage field. Foul drainage will be treated via British Standard package treatment plants, including a sampling chamber prior to drainage field. In separating surface water drainage and foul water drainage, risk posed to groundwater underlying this site is significantly decreased, when compared with initial proposals outlined in planning application. Provided drainage is implemented in accordance with revised details submitted for this application we can remove our earlier objection to this planning application.

Biodiversity implications

8.29 Under 19/502469, the KCC Biodiversity Officer confirmed that because the site had already been cleared, it was accepted that the submitted Preliminary Ecological Appraisal (PEA) was sufficient to determine application, and no further ecological information is required. The same PEA (dated April 2019) has been submitted again for this application that in part assesses the impact of the vegetation clearance on the site. The submitted information has detailed that this woodland may have qualified as a Habitat of Principal Importance under the mixed lowland deciduous woodland categorisation, and it is likely to have provided suitable habitat for a range of protected and notable species such as bats, birds, reptiles, dormice and badger. The Biodiversity Officer has commented on application with reference 21/502369FULL as follows:

We understand proposal is for replacement planting of a woodland and wildflower grassland area and if it is created, established and managed appropriately, proposal is likely to end up creating habitat which can provide suitable habitat for a range of protected species previously expected to be present on site. We advise, if permission is granted, a detailed habitat creation, management and monitoring plan must be submitted to the LPA as a condition of planning permission.

8.30 If the application were to be approved, the recommended condition for a habitat creation, management and monitoring plan would be considered reasonable, in the interests of biodiversity enhancement (and net gain).

8.31 Under 19/502469, it was noted that the habitats within and adjacent to the site area are likely to experience high recreational pressure and impacts from development (including increase in lighting). On this basis, the Biodiversity Officer recommended the need for a Landscape and Ecological Management Plan to be produced and implemented. This is still considered relevant and again, if this application were to be approved, imposing such a condition is considered reasonable. Suitable conditions would also be imposed for a bat sensitive lighting plan, and for further ecological enhancements as set out in the submitted preliminary ecological appraisal.

8.32 The KCC Biodiversity officer's response on 21/500786 were as follows:

Application is for creation of a drainage ditch and the planting plan details that planting of ditch will be a mixture of wildflower grassland and woodland planting – from a biodiversity point of view we are supportive of principle of this proposal. However we advise MBC must be satisfied that proposed planting is appropriate from a drainage prospective and once established the woodland planting will not prevent the free flowing of water through the drainage ditch. We highlight that it is not clear from the submitted plans the extent to which the woodland planting is within the ditch or if it is just on the edge of the drainage ditch.

Plan details that wildflower meadow grassland will be EM3 - Special General Purpose Meadow Mixture by Emorsgate (or similar approved), however if ditch is likely to be wet for majority of the year we

recommend that species planted are those which are suited to that environment such as EP1 Pond Edge Mixture. There is a need to ensure that species planted in those areas will be able to establish and retained in long term. We suggest that a plan is submitted confirming where grassland/woodland planting will be implemented and provides clarification on the proposed grassland planting. Proposed planting can benefit biodiversity and still function as a drainage ditch if managed appropriately – therefore we advise that if planning permission is granted a management plan condition is included. We will provide suggested wording once the additional information requested above is submitted.

- 8.33 In respect of 21/500786 a further condition would need to be imposed requiring a plan of the woodland and grassland planting.

Ancient woodland

- 8.34 Ancient Woodlands are irreplaceable, and the NPPF (paragraph 180[d]) is clear in that *"...development resulting in loss or deterioration of irreplaceable habitats (such as ancient woodland) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists."*
- 8.35 The woodland that runs along the northern (roadside) boundary of Pilgrims Retreat and the woodland found on the opposite side of Hogbarn Lane is designated Ancient Woodland; and there is other Ancient Woodland to the south-east of the site. For clarification purposes the development is not within 15m of any Ancient Woodland, including that found to the south-east of the site (that is on land not in the ownership of the applicant).
- 8.36 As identified by the Council's Landscape Officer response, the trees that have been retained have suffered significant encroachment into the root protection areas during construction works with significant changes in levels likely to lead to premature decline. The Landscape Officer notes that the proposed creation of the new woodland will require the removal of numerous existing homes and extensive ground/soil amelioration before the area can be suitable for planting. Further details on how this area will be re-landscape needs to be approved.

Community infrastructure contributions

- 8.37 This development is excluded from the CIL Regulations because the mobile homes are not buildings. This does not mean that financial contributions cannot be sought via s106 of the Town and Country Planning Act 1990. Financial contributions through s106 are used to mitigate the specific requirements of a development site, in order to make the development acceptable in planning terms. Any request for such contributions needs to be scrutinised in accordance with Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010. The Reg 122 criteria sets out that a planning obligation may only constitute a reason for granting planning permission for the development if the obligation is –
- (a) Necessary to make development acceptable in planning terms;
 - (b) Directly related to development; and
 - (c) Fairly and reasonably related in scale and kind to development.
- 8.38 In this regulation "*planning obligation*" means a planning obligation under s106 of the TCPA 1990 and includes a proposed planning obligation.
- 8.39 The Council's Regulation 123 List identifies the infrastructure types and/or projects which it intends will be, or may be, wholly or partly funded through s106 planning obligations. The Infrastructure Delivery Plan (IDP) provides the analysis for how specific infrastructure delivery requirements will be met.
- 8.40 Specific to this application, the development is for 84 new residential units on the southern portion of Pilgrims Retreat, to be occupied by persons of 50yrs of age and over. A development of this scale will clearly place extra demands on local services and facilities and it is important to ensure that this development can be assimilated within the local community. As such, suitable financial contributions to make the development acceptable in planning terms should be sought in line with the relevant policies of the Maidstone Local Plan (2017), if the application were to be approved.

8.41 The KCC Development Contributions Team has requested the following (for 84 units):

- *Secondary education: £381,360.00 towards expansion of Lenham School to provide additional capacity*
- *Libraries: £4,657.80 towards additional resources, services and stock for mobile library service attending Harrietsham and fixed Libraries at Lenham and Maidstone to increase capacity to meet needs of development.*
- *Community learning: £1,379.28 towards additional resources (including portable teaching and mobile IT equipment), and additional sessions and venues for delivery of additional Adult Education courses both locally and at Maidstone Adult Education Centre.*
- *Youth services: £5,502.00 towards additional resources and upgrade of existing youth facilities to accommodate additional attendees, as well as resources and equipment to enable outreach services in vicinity of development.*
- *Social Care: £12,337.92 towards Specialist care accommodation, assistive technology and home adaptation equipment, adapting existing community facilities, sensory facilities, and Changing Places Facilities within Borough.*
- *Waste: £4,575.48 towards increases in capacity at Maidstone Household Waste Recycling Centre at Burial Ground Lane, Maidstone.*

8.42 Based on 84 residential mobile homes, the NHS Primary Care Team has requested a contribution of £72,576 to go towards the refurbishment, reconfiguration and/or extension of Len Valley Practice and/or towards new GP premises development in area. They explain that the development will generate approximately 202 new patient registrations when using the average occupancy of 2.4 people per dwelling; and the site falls within the current practice boundary of Len Valley Practice. The NHS Primary Care Team go on to comment that there is currently limited capacity in existing GP premises to accommodate growth in this area; and the need from this development, along with other new developments, will therefore need to be met through creation of additional capacity in GP premises. It is not possible at this time for them to set out a specific premises project for this contribution, but they confirm that based on current practice boundaries they would expect contributions to be utilised as set out above.

8.43 The Council's Parks and Open Spaces Team comment that whilst the application does not specifically indicate how much publicly accessible space there is on the application site, it appears that approximately a quarter of the area will be woodland which they have taken as some 0.14ha; and they also assume that the woodland will be accessible. For a development of this size, the Parks and Open Spaces Team would expect a minimum onsite provision of 1.85ha of open space and as there is a shortfall due to the constraints of the site they would seek an off-site contribution to cover this. On this basis, an off-site open space contribution of £122,284 is made (based on 84 units), to be used for: Developing, refurbishing or maintaining existing infrastructure in publicly accessible open space within a two-mile radius of the development. If open space is not available, the contribution would be used for purchasing land for publicly accessible open space. Again these requirements have not been evidenced.

8.44 It is considered that the requested contributions relating to the NHS, parks and open space, and economic development (excluding primary and secondary education) do meet the tests of Regulations 122 of the Act and as such should be provided by the applicant if this application were to be approved.

8.45 The agent has questioned the necessity for financial contributions towards education and youth services, as they do not consider this to wholly relate to, or be reasonable for the units that are occupied by persons over 50yrs old; and it has previously been suggested that a condition is attached to any potential permission which requires occupants (or at least one occupant per caravan) to be over 50 years old. However, whilst national advice is to take a positive approach to schemes that might address the provision of specialist housing for older people, other than some communal facilities, there is little to suggest that the caravans offer specialist housing for older people. Furthermore, the location is remote and not particularly well suited to provide permanent accommodation for older people. Moreover, as the application is retrospective, the condition would not regulate the occupancy of the existing residential caravans or those used unlawfully as residential caravans. The caravan occupants generally own the caravans and pay rent under the Licence Agreement to station the caravan on the plot. The Licence Agreement requires sellers to obtain approval from the Park Owner to a prospective buyer of the caravan (unless a family member) but it does not restrict the onward sale of the caravan to solely persons

over 50. If the Park Owner does not purchase the caravan, it appears that it can be sold to persons under 50. It is therefore not clear how the requirement could be lawfully or reasonably imposed on existing or on all future caravan owners. Such potential restrictive condition is likely to be disproportional and unenforceable. Notwithstanding this, it is not entirely out of the question that residents may have children, or adopt or foster children, or are/become legal guardians of children. However, considering that it is unlikely that children are living on site, financial contributions towards education and youth services will not be required.

- 8.46 To clarify, the agent has not presented an analysis or counter-offer to the CIL compliant financial requests, and they have not submitted a legal mechanism to secure any planning obligations to mitigate the development's impact. Based on the impact to the landscape character, and the inability to mitigate/compensate for this, further negotiations on acceptable contributions have not been progressed. If Members were minded to approve the application, a resolution on the appropriate contribution which met the 122 test would need to be negotiated.

Affordable housing provision

- 8.47 The Council's Housing Team have reviewed this current submission, with respect to affordable housing provision, and have commented as follows (in summary):

Whilst acknowledging this application differs from that previously refused (19/502469), our original comments (APPENDIX E - paragraphs 7.77 to 7.85 inclusive) do not appear to have been addressed in this application and therefore remain valid.

- 8.48 An argument has been presented that the development should be classed as a retirement housing scheme and as such 20% affordable housing should be provided. Firstly, this development is not considered to be a retirement housing scheme in the strictest sense. Such housing developments are similar to sheltered housing, but built for sale, usually on a leasehold basis, where all the other residents are older people (usually over 55). Properties in most schemes are designed to make life a little easier for older people - with features like raised electric sockets, lowered worktops, walk-in showers, and so on. Some will usually be designed to accommodate wheelchair users; and are usually linked to an emergency alarm service (sometimes called 'community alarm service') to call help if needed. Many schemes also have their own 'manager' or 'warden', either living on-site or nearby, whose job it is to manage the scheme and help arrange any services residents need. Managed schemes will also usually have some shared or communal facilities such as a lounge for residents to meet, a laundry, guest accommodation etc. It is appreciated that this is not a bricks and mortar scheme, but there appears to be limited or no such facilities/services of this nature offered to the occupants on site and no presumption that all occupants are retired or over 55.
- 8.49 In exceptional circumstances, the Council will consider off-site contributions towards affordable housing where on-site provision is not feasible. The Housing Manager has previously commented that a registered provider would be reluctant to take on permanent residential caravans as affordable housing. This application raises a number of management concerns and queries for the Housing Manager, such as licence/site fees and the length of licence (it is understood owners would pay a licence fee for the siting of the caravan which may be moved within the site at the site owners discretion), and security of tenure etc. Furthermore, no information has been provided regarding the specific management arrangements in this respect. It is considered that the appropriate way to deal with affordable housing provision would be an off-site contribution.
- 8.50 The development should provide 40% affordable housing provision, in compliance with adopted Local Plan policy SP20. A commuted sum towards an off-site contribution (for 84 units) has been calculated at £1,444,793. No counter offer or analysis of this figure has been submitted by the agent.

- 8.51 The agent is also proposing that the 'affordable caravans' would fall under the NPPF definition for Discounted Market Sale housing which is that sold at a discount of at least 20% below local market value. Eligibility for this is determined with regard to local incomes and local house prices; and that provisions should be in place to ensure housing remains at a discount for future eligible households. No evidence has been submitted to demonstrate that there are the relevant eligibility mechanisms in place (for now or the future) for Pilgrims Retreat.
- 8.52 The agent states that they have assessed the local housing market and the value of the properties (2-bed bungalows) in comparison to the price of a new park home site based on market sales at the site. This demonstrating that the site is affordable and is at least 25% lower in price than the market value for new build properties. As such, the agent considers the park homes meet the definition for discounted market sales housing, being sold at a discount of at least 20% below local market value. However, no evidence of market sales comparisons has been submitted.
- 8.53 The principle behind this type of affordable housing is that the market value of the actual property itself is given a 20% discount, not that it can be demonstrated that the market value of the property is 20% or more lower than comparable local properties. The price of a caravan is the price of a caravan. Therefore, it is not a fair comparison for the market value of these caravans to be compared against the local market value of 2-bed new-build properties.
- 8.54 The agent also proposes that the caravans will remain affordable in perpetuity since the market will preserve them at a discounted price given the more restrictive nature of ownership suppressing prices, with provision within the s106 . Furthermore, the agent has suggested attaching an age occupancy restricted planning condition to ensure that the proposal is providing permanent accommodation for older persons. However (as previously established) it is not reasonable to impose such a condition, and in any case the Housing Manager considers this alone does not make the development acceptable with respect to affordable housing given the above concerns. Notwithstanding the above, the proposal has no affordable rented provision proposed which is contrary to being a policy compliant scheme.
- 8.55 In summary, the submitted details state that the development will provide accommodation for older people in homes which are affordable in relation to the wider housing market in locality. Meeting the housing need for older people is not only identified by the National Planning Guidance to be critical, but also meets the objectives of the Housing Act, the SHMA and the Local Plan. In addition, the number of older people is expected to increase in the future and the Council does need to consider providing opportunities for households to downsize and allow larger properties to be made available for younger families with children. However, the Housing Manager does not consider this development will provide a better choice of specialist accommodation for a group of older people with specific needs, that purpose built accommodation for the elderly would provide. It is also not considered that the development should be considered as retirement housing or Discounted Market Sale housing, and the management arrangement for the caravans remains a cause for concern. As such, the development does not accord with policy and should not be given substantial weight.

Other considerations

- 8.56 The Environmental Protection Team has raised no objections to the development in terms of noise; air quality; land contamination; amenity; asbestos; radon; external lighting; odour; accumulations; sewage; and private water supplies.
- 8.57 If the application were to be approved, then details relating to external lighting and the provision of electric vehicle charging points could be considered; and the recommended precautionary land contamination condition would be duly imposed. On this occasion, the recommended conditions relating to dust, odour and vapour emissions; and hours of construction working are not considered to be necessary or reasonable. Part of the site falls within an area of archaeological potential, but given the nature of the submission it is not considered necessary to request any further details in this respect.

Human rights and Equality Act

- 8.58 Article 8 of the European Convention on Human Rights, as incorporated into UK law by the Human Rights Act 1998, states everyone has the right to respect for (amongst other things) his private and family life, and his home. Refusing this application could be interpreted as an interference with the rights of the property owners to use their property as they see fit and the right to private and family life as set out in Article 8. It could also be seen as interference with owners' property rights under article 1, protocol 1. Such interference is permitted by the European Convention if it is in the general interest, but the interference must be 'proportionate', which means that it must not be in excess of what is needed to prevent harm to the general interest. Whether any actual interference ensues would ultimately be an enforcement matter. However, any interference with those human rights should be in accordance with the law and necessary in a democratic society, applying the principle of proportionality. If homes are lost then it is considered that the cumulative harms that would result from the application would be such that refusal of permission is a necessary and proportionate response.
- 8.59 The Council must also have regard to its public sector equality duty (PSED) under s149 of the Equalities Act. The duty is to have due regard to the need (in discharging its functions) to:
- *Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.*
 - *Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing, minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s).*
 - *Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.*
- 8.60 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. It is considered that although the majority of occupants on site are likely to be older persons, the equality duty is not sufficiently weighty to sway the planning balance towards granting permission for the proposed scheme.

9.0 CONCLUSION

- 9.01 It is a matter of fact and planning judgement that the development would add 84 isolated homes in the countryside; and occupants on the site are/will be heavily reliant on the private car for their day to day living, making the site unsustainable in terms of location. The Highways Officer also considers the development does not meet the objectives of promoting sustainable transport, as set out in paragraphs 102 and 103 of the NPPF; and the application has failed to demonstrate that the residual cumulative vehicle movements associated to 84 new residential homes on this site would not have a severe impact on the local road network. This weighs against the development.
- 9.02 The development will not conserve and enhance the landscape and scenic beauty of the Kent Downs AONB; and it would not positively recognise the intrinsic character and beauty of the countryside hereabouts. The adverse impact upon this nationally designated landscape of the highest value weighs against this development.
- 9.03 The development has and will result in permanent tree loss on a scale that is harmful to the amenity of park home users and the wider landscape; and there is insufficient space to be able to provide appropriate mitigation planting to help screen and integrate the development into the surrounding countryside. This weighs against the development.
- 9.04 Through the submission of additional documents, the applicant has satisfied the Council that surface water and sewage disposal can be dealt with appropriately on the site. This is considered to be neutral matter, neither weighing against or in favour of the development.

- 9.05 There are no specific objections raised to the development in terms of its biodiversity impact; and the proposed enhancements, whilst not completely mitigating for the loss of the woodland, would be of some benefit in this regard. This is considered to be neutral matter.
- 9.06 There are no specific objections raised to the development in terms of its impact upon Ancient Woodland; and so this is considered to be neutral matter.
- 9.07 The requested financial contributions relating to the NHS, parks and open space, and economic development are considered to meet the tests of Regulations 122 of the Act and as such should be provided by the applicant if this application were to be approved. The agent has not submitted a legal mechanism to secure these planning obligations to mitigate the development's impact, and this weighs against the development.
- 9.08 The development is not considered to formally provide for retirement housing and/or extra care homes, or Discounted Market Sale housing, in planning policy terms; and the Housing Manager considers the most appropriate way to deal with affordable housing provision to be by way of an off-site contribution. The agent has not submitted a legal mechanism to secure off-site affordable housing provision, and this weighs against the development.
- 9.09 Whilst the proposed scheme would increase the supply of homes and would provide an additional choice to bricks and mortar homes, the Council has a 5 year housing land supply. Only moderate weight should be attached to the increased supply and choice of a home.
- 9.10 The issue of intentional unauthorised development is a material consideration in the determination of this appeal, and this does weigh against the development.
- 9.11 Specific to this development, human rights are qualified rights, and so there needs to be a balance between the rights of the residents and the rights of the wider community. In this case, the interference would be due to pursuing the legitimate aim of protecting the countryside in a nationally designated AONB; and it is considered that the recommendation in this report would not have a disproportionate impact upon any protected characteristic in terms of the Equality Act. To quantify further, this is a part retrospective application whereby some 193 protected persons are already living permanently on site. In purely planning terms, purchasers of the caravans should have been aware that the lawful position on the site was for 18 permanent and 180 tourist accommodation units; and that the site licence at that time set out the licensing conditions on the site. It should also be pointed out that this recommendation does not commit the Council to any particular course of action.
- 9.12 The proposed scheme constitutes "major development" in terms of paragraph 172 of the NPPF. Great weight must be given to conserve and enhance this landscape of scenic beauty of the AONB. It is not simply a matter of weighing all the material considerations in a balance, but to refuse this application unless satisfied that (i) there are exceptional circumstances, and (ii) it is demonstrated that, despite giving great weight to conserving the landscape and scenic beauty in the AONB, the development is in the public interest. In terms of the assessments referred to in paragraph 172 of the NPPF, the need for the development is not so great that it could be concluded that it is in the public interest to grant it, or that it would be particularly exceptional. There would be detrimental effects on the environment and on the landscape which could not be adequately moderated. Overall there are no exception circumstances for allowing the development and it has not been demonstrated that it would be in the public interest.

10.0 RECOMMENDATION: REFUSE 21/502369FULL for the following reasons:

1. The development, by virtue of the site's extension and the level of engineering works undertaken to create terracing, hardstanding, and retaining walls within the southern section of the site; the loss (and further potential loss) of woodland and protected trees; the inadequate and inappropriate mitigation planting proposed; the 84 proposed static caravans; and the increased light pollution resulting from more static caravans that are occupied permanently, fails to conserve and enhance the landscape and scenic beauty of the Kent Downs Area of Outstanding Natural Beauty, as well as the intrinsic character and beauty of the countryside hereabouts. The adverse impact upon this nationally designated landscape of the highest value is contrary to policies SS1, SP17, DM1, DM3 and DM30 of the Maidstone Local Plan (2017); the Maidstone Landscape Character Assessment (March 2012 amended July 2013) and 2012 Supplement; the National Planning Policy Framework (2021); and the Kent Downs AONB Management Plan (2021-26) and its Landscape Design Handbook.
2. The development is considered to be a major development in the Kent Downs Area of Outstanding Natural Beauty, and there are no exceptional circumstances to permit this development, and it has not been demonstrated that the development is in the public interest. The development is therefore contrary to paragraph 172 of the National Planning Policy Framework (2021).
3. The development would authorise 84 residential units in an isolated location that would also have poor access to public transport and be remote from local services and facilities, resulting in occupants being reliant on the private motor vehicle to travel to settlements to access day to day needs. In the absence of any overriding justification or need for the development demonstrated in the application, this is contrary to the aims of sustainable development as set out in policies SS1, SP17 and DM1 of the Maidstone Local Plan (2017) and the National Planning Policy Framework (2021).
4. The application has failed to demonstrate that the residual cumulative vehicle movements associated to 84 new residential homes on this site would not have a severe impact on the local road network in terms of sustainability, access, road safety and off-site highway works required. This is contrary to policies DM1 and DM30 of the Maidstone Local Plan (2017) and the National Planning Policy Framework (2021).
5. In the absence of an appropriate legal mechanism to secure necessary contributions towards community infrastructure in the borough, the impact of the development would place unacceptable demands on local services and facilities. This would be contrary to policies SS1, ID1 and DM19 of the Maidstone Local Plan (2017); and the National Planning Policy Framework (2021).
6. In the absence of an appropriate legal mechanism to secure a financial contribution towards affordable housing provision, the development would fail to contribute to the proven significant need for affordable housing in the borough. This would be contrary to policies SS1, SP20, and ID1 of the Maidstone Local Plan (2017); and the National Planning Policy Framework (2021).

REFUSE 21/500786 for the following reason:

1. The development, by virtue of the extension of the unauthorised caravan site fails to conserve and enhance the landscape and scenic beauty of the Kent Downs Area of Outstanding Natural Beauty, as well as the intrinsic character and beauty of the countryside hereabouts, contrary to policies SS1, SP17, DM1, DM3 and DM30 of the Maidstone Local Plan (2017); the Maidstone Landscape Character Assessment (March 2012 amended July 2013) and 2012 Supplement; the National Planning Policy Framework (2021); and the Kent Downs AONB Management Plan (2021-26) and its Landscape Design Handbook.