

**Application No:** Y18/1073/FH

**Location of Site:** Land 85 Metres South Grace Cottage, Hoad Road, Swingfield

**Development:** Change of use of land for the stationing of two caravans for gypsies.

**Applicant:** Mr John Hadley

**Agent:** Whitstable & Herne Bay Gypsie Support,  
Cartref,  
Radfall Ride  
Whitstable

**Officer Contact:** Louise Daniels

## SUMMARY

This report considers whether planning permission should be granted for the change of use of the land and stationing of two caravans for gypsies. The report recommends that planning permission be refused due to the unsustainable location, the visual impact upon the countryside and AONB and also due to inadequate visibility splays.

## RECOMMENDATION:

- a) That planning permission be refused for the reasons set out at the end of the report.
- b)i) That delegated authority be given to the Chief Planning Officer to serve an Enforcement Notice requiring the cessation of the residential use and the removal of the caravans, hardsurfacing, fencing including posts and gravel boards, portaloo, vehicles and all other equipment and paraphernalia on the site.
- ii) That the Chief Planning Officer be given delegated authority to determine the exact wording of the Notice.
- iii) That the period of compliance with the Notice be (twelve) 12 months.
- iv) That the Assistant Director - Governance, Law & Regulatory Services be authorised to take such steps as are necessary, including legal proceedings, to secure compliance with the Notice.

## 1. INTRODUCTION

1.1. The application is reported to Committee because the application is recommended for refusal and as the change of use of the land has already taken place authorisation is sought to serve an enforcement notice to require the use of the land to cease.

## 2. SITE AND SURROUNDINGS

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- 2.1. The application site is located on Hoad Road outside any defined settlement boundary, within the Kent Downs Area of Outstanding Natural Beauty (AONB) and locally designated Special Landscape Area (SLA). There are 5 trees on the site covered by Tree Preservation Order (TPO) No. 14 of 2019.
- 2.2. The site is a triangle shape with Hoad Road bordering the site to the east, and a private access road from Hoad Road to the houses to the north which include Grace Cottage and Hoad Cottages Nos.1-3.
- 2.3. Work has taken place on site, with a number of trees having been removed, hardstanding laid, two caravans placed on one half of the site and occupied by the applicant and his mother and close boarded fencing erected around one part of the site.
- 2.4. A site location plan is attached to this report as **Appendix 1**.

## 3. PROPOSAL

- 3.1 The application seeks planning permission for the change of use of the land for the stationing of two caravans for gypsies. The supporting information says that the use of the site is for the applicant's family. The applicant and his mother moved onto the site in April 2018, therefore, the application is retrospective. Since then the site has been changed over time by the provision of hardstanding, the installation of fencing and the felling of trees. However the application as submitted does not include the fencing or the hardstanding, it is solely for the change of use of the land.
- 3.2 The following reports were submitted by the applicant in support of the proposals:
  - Land registry document showing site ownership transferred to the applicant on 25 April 2018.
  - 2 x character references.

## 4. RELEVANT PLANNING HISTORY

- 4.1 None relevant

## 5. CONSULTATION RESPONSES

- 5.1 The consultation responses are summarised below.

### Consultees

**Swingfield Parish Council:** Object on two grounds,

- 1) The site is within the AONB and not suitable for the proposed use
- 2) There are TPOs on site, tarmac and fencing is not suitable for the site

**KCC Highways and Transportation:** Object. Recommend application is refused as the visibility available over land within the applicant's and/or the highway authority's control is insufficient for the development proposed, to the

detriment of highway safety. Visibility splays of 2.4m x 215m are required in both directions. These have not been demonstrated, and in a south-westerly direction they will cross third party land. Hoad Road is a 'C' class classified road, and as such it is important to ensure the safety of all drivers navigating this stretch of road.

## **Local Residents Comments**

5.2 10 neighbours directly consulted. 10 letters of objection received.

5.3 I have read all of the letters received. The key issues are summarised below:

### Objections:

- Environmental damage, unlawful felling of protected trees.
- The site has no waste facilities or waste collection, no running water or electricity.
- Illegal moving of soil, no soil testing causing contamination
- No regard for planning or abiding by the rules.
- Wild plants and flowers have been cleared.
- Some trees should be replaced and the site is not suitable for multiple caravans.
- The enforcement notice served was ignored and even more trees were removed.
- The gate extends into the road and is dangerous for oncoming traffic, especially at night as the road does not have street lights.
- This was always a natural passing place for cars, now it has tree off cuts making this dangerous.
- As the site has been cleared the caravans, fencing and hardstanding is much more visible than if the trees had been left.
- Bonfires are regularly lit which causes disturbance to neighbours.
- Generator is loud and causes disturbance to nearby residents.
- Unsustainable location, badly serviced and access is problematic
- If passed more caravans would use the site which would be out of keeping with the area within the countryside and AONB.

5.4 Responses are available in full on the planning file on the Council's website:  
<https://searchplanapps.folkestone-hythe.gov.uk/online-applications/>

## **6 RELEVANT PLANNING POLICY**

6.1 The Development Plan comprises the saved policies of the Shepway District Local Plan Review (2006) and the Shepway Core Strategy Local Plan (2013)

6.2 The new Places and Policies Local Plan Submission Draft (February 2018) has been the subject to public examination, and as such its policies should now be afforded significant weight, according to the criteria in NPPF paragraph 48.

6.3 The Folkestone & Hythe District Council Core Strategy Review Submission Draft (2019) was published under Regulation 19 of the Town and Country

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Planning (Local Planning) (England) Regulations (2012) for public consultation between January and March 2019, as such its policies should be afforded weight where there are not significant unresolved objections.

6.4 The relevant development plan policies are as follows:-

Shepway District Local Plan Review (2013)

SD1 - Sustainable Development  
CO5 - Protection of Local Landscape Areas  
BE1 - Layout, design, materials of new development  
TR5 - Cycling facility provision for new developments  
TR11 - Access onto highway network  
TR12 - Vehicle parking standards  
HO1 - Housing land supply  
U4 - Protection of ground and surface water resources

Shepway Local Plan Core Strategy (2013)

DSD - Delivering Sustainable Development  
SS1 - District Spatial Strategy  
SS2 - Housing and the Economy Growth Strategy  
SS3 - Place-Shaping and Sustainable Settlements Strategy  
SS5 - District Infrastructure Planning  
CSD1 - Balanced Neighbourhoods for Shepway  
CSD2 - District Residential Needs

Places and Policies Local Plan Submission Draft (2019)

RM15 - Land adjacent to 'The Retreat', Lydd Road, Old Romney  
HB1 - Quality Places through Design  
HB2 - Cohesive Design  
HB14 – Accommodation for Gypsies and Travellers  
T1 - Street Hierarchy and Site Layout  
T2 - Parking Standards  
T4 - Cycle Parking

Core Strategy Review Submission draft (2019)

SS1 - District Spatial Strategy  
SS3 - Place-Shaping and Sustainable Settlements Strategy  
CSD4 - Green Infrastructure

6.5 The following are also material considerations to the determination of this application.

## **Government Advice**

National Planning Policy Framework (NPPF) 2019 and Planning Policy for Traveller Sites (PPTS) (Re-issued)

6.6 Members should note that the determination must be made in accordance with the Development Plan unless material considerations indicate otherwise. A significant material consideration is the National Planning Policy Framework

(NPPF). The NPPF says that less weight should be given to the policies above if they are in conflict with the NPPF.

- 6.7 The national policy position comprises the National Planning Policy Framework (NPPF) and Planning Policy for Traveller Sites (PPTS). Both documents were released in 2012 but the PPTS was re-issued in August 2015 with amendments. Together they provide national guidance for Local Planning Authorities on plan making and determining planning applications for Gypsy and Traveller sites. A presumption in favour of sustainable development runs throughout both documents and this presumption is an important part of both the plan-making process and in determining planning applications. In addition there is a requirement in both documents that makes it clear that Councils should set pitch targets which address the likely need for pitches over the plan period and maintain a rolling five year supply of sites which are in suitable locations and available immediately.
- 6.8 The National Planning Policy Framework (NPPF) and National Planning Practice Guidance (NPPG) generally support the provision of gypsy and traveller sites at appropriate locations within the countryside, recognising that it is not normally possible to provide such sites within the designated built up areas. They also aim to minimise harm to visual and residential amenity.
- 6.9 I consider that the following extracts from NPPF paragraph 8 are particularly pertinent:

*Achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives):*

- a) **an economic objective** – *to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;*
  - b) **a social objective** – *to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being; and*
  - c) **an environmental objective** – *to contribute to protecting and enhancing our natural, built and historic environment; including making effective use of land, helping to improve biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and*
- 6.10 In relation to rural housing the NPPF (at paragraph 78) states;

*To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Planning policies should identify opportunities for villages to grow and thrive,*

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*especially where this will support local services. Where there are groups of smaller settlements, development in one village may support services in a village nearby.*

## 6.11 Paragraph 79 continues:

*Planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more of the following circumstances apply:*

- a) *there is an essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work in the countryside;*
- b) *the development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets;*
- c) *the development would re-use redundant or disused buildings and enhance its immediate setting;*
- d) *the development would involve the subdivision of an existing residential dwelling; or*
  - e) *the design is of exceptional quality, in that it:*
    - *is truly outstanding or innovative, reflecting the highest standards in architecture, and would help to raise standards of design more generally in rural areas; and*
    - *would significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area.*

## 6.12 In relation to conserving and enhancing the natural environment the NPPF, at paragraph 170, states;

*Planning policies and decisions should contribute to and enhance the natural and local environment by:*

- a) *protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan);*
- b) *recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland;*
- c) *maintaining the character of the undeveloped coast, while improving public access to it where appropriate;*
- d) *minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;*
- e) *preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air and water quality, taking into account relevant information such as river basin management plans; and*
- f) *remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.*

## Planning Policy for Traveller Sites (PPTS)

6.13 The PPTS was originally published in March 2012 but it was re-issued in August 2015 with minor changes. Its main aims are set out below:

*“The Government’s overarching aim is to ensure fair and equal treatment for travellers, in a way that facilitates the traditional and nomadic way of life of travellers while respecting the interests of the settled community.” (para 3 PPTS)*

*To help achieve this, Government’s aims in respect of traveller sites are:*

- a. *that local planning authorities should make their own assessment of need for the purposes of planning*
- b. *to ensure that local planning authorities, working collaboratively, develop fair and effective strategies to meet need through the identification of land for sites*
- c. *to encourage local planning authorities to plan for sites over a reasonable timescale*
- d. *that plan-making and decision-taking should protect Green Belt from inappropriate development*
- e. *to promote more private traveller site provision while recognising that there will always be those travellers who cannot provide their own sites*
- f. *that plan-making and decision-taking should aim to reduce the number of unauthorised developments and encampments and make enforcement more effective*
- g. *for local planning authorities to ensure that their Local Plan includes fair, realistic and inclusive policies*
- h. *to increase the number of traveller sites in appropriate locations with planning permission, to address under provision and maintain an appropriate level of supply*
- i. *to reduce tensions between settled and traveller communities in plan-making and planning decisions*
- j. *to enable provision of suitable accommodation from which travellers can access education, health, welfare and employment infrastructure*
- k. *for local planning authorities to have due regard to the protection of local amenity and local environment.” (para 4 PPTS)*

6.14 In terms of plan making the PPTS advice is that;

*“Local planning authorities should ensure that traveller sites are sustainable economically, socially and environmentally. Local planning authorities should, therefore, ensure that their policies:*

- a) *promote peaceful and integrated co-existence between the site and the local community*
- b) *promote, in collaboration with commissioners of health services, access to appropriate health services*
- c) *ensure that children can attend school on a regular basis*
- d) *provide a settled base that reduces the need for long-distance travelling and possible environmental damage caused by unauthorised encampment*

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- e) *provide for proper consideration of the effect of local environmental quality (such as noise and air quality) on the health and well-being of any travellers that may locate there or on others as a result of new development*
- f) *avoid placing undue pressure on local infrastructure and services*
- g) *do not locate sites in areas at high risk of flooding, including functional floodplains, given the particular vulnerability of caravans*
- h) *reflect the extent to which traditional lifestyles (whereby some travellers live and work from the same location thereby omitting many travel to work journeys) can contribute to sustainability.” (para 13 PPTS)*

6.15 For sites in rural areas and the countryside the PPTS advice is that;  
*“When assessing the suitability of sites in rural or semi-rural settings, local planning authorities should ensure that the scale of such sites does not dominate the nearest settled community.” (para 14 PPTS)*

6.16 In relation to the determination of planning applications the PPTS says that;

*“Applications should be assessed and determined in accordance with the presumption in favour of sustainable development and the application of specific policies in the National Planning Policy Framework and this planning policy for traveller sites.” (para 23 PPTS)*

*“Local planning authorities should consider the following issues amongst other relevant matters when considering planning applications for traveller sites:*

- a) *the existing level of local provision and need for sites*
- b) *the availability (or lack) of alternative accommodation for the applicants*
- c) *other personal circumstances of the applicant*
- d) *that the locally specific criteria used to guide the allocation of sites in plans or which form the policy where there is no identified need for pitches/plots should be used to assess applications that may come forward on unallocated sites*
- e) *that they should determine applications for sites from any travellers and not just those with local connections”*

*“Local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. Local planning authorities should ensure that sites in rural areas respect the scale of, and do not dominate the nearest settled community, and avoid placing an undue pressure on the local infrastructure.” (para 25 PPTS).*

*“If a local planning authority cannot demonstrate an up-to-date 5 year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary permission. The exception to this is where the proposal is on land designated as Green Belt; sites protected under the Birds and Habitats Directives and / or sites designated as Sites of Special Scientific Interest; Local Green Space, an Area of Outstanding Natural Beauty, or within a National Park (or the Broads).” (para 27 PPTS).*

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6.17 Policy HB14 of the PPLP relates to accommodation for Gypsies and Travellers and states that:

*“Planning permission will be granted for gypsy and traveller accommodation which will contribute to meeting the needs of those households conforming to the definition set out in 'Planning policy for traveller sites', subject to the following:*

- 1. The development safeguards the health of occupiers and provides a satisfactory level of amenity for them, by reference to factors including but not limited to: the space available for each family; noise; odour; land contamination; other pollution or nuisance; flood risk; and the disposal of refuse and foul water;*
- 2. The site is in a sustainable location, well related to a settlement with a range of services and facilities and is, or can be made, safely accessible on foot, by cycle or public transport;*
- 3. Adequate vehicular access, sight lines and space for turning and manoeuvring can be provided;*
- 4. The development will not give rise to an unacceptable impact on amenity for residents in the vicinity of the development, or, in the case of nearby commercial users, result in the imposition of new constraints on the way in which such users can operate their businesses;*
- 5. If the proposal involves the development of land originally identified in this Local Plan for another purpose, the loss of such land is justified by the desirability of providing additional gypsy and traveller accommodation; and*
- 6. There is no adverse effect on the landscape, environmental or other essential qualities of countryside, including the Kent Downs Area of Outstanding Natural Beauty or Natura 2000 sites, Sites of Special Scientific Interest, national or local nature reserves or heritage assets.*

*The exception to the above criteria relate to applications for the expansion of existing permitted gypsy and traveller sites, in which case only criteria 1 and 4 will apply. However, it must be demonstrated that those households still conform to the gypsy and traveller definition, and that expansion will result in additional gypsy and traveller pitches”.*

## **7 APPRAISAL**

7.1 In light of the above the main issues for consideration are:

- a) Local plan policy position
- b) Sustainability
- c) Visual impact

- d) Highway safety
- e) Residential amenity
- f) Drainage
- g) Human Rights / best interests of the child

## **a) Local plan policy position**

- 7.2 The Gypsy and Traveller Accommodation Assessment (GTAA) was completed in June 2013 and identified a need for 5 x permanent residential pitches and 2-5 transient pitches in the district. An additional pitch was subsequently granted planning permission on an existing site in Brenzett, which has reduced the overall need to 4x permanent pitches.
- 7.3 During the examination of the Places and Policies Local Plan (PPLP), the Planning Inspector instructed the Council to put forward a Gypsy and Traveller site(s) to address the permanent residential pitch requirements as identified by the Gypsy and Traveller Accommodation Assessment (2018) for the period to 2036/37.
- 7.4 As a consequence, officers undertook a Gypsy and Traveller (G&T) Site Identification Study which concluded that land adjacent to 'The Retreat' Old Romney, was the only available and suitable site in the district. This was consulted on as the Council's preferred site under Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012; between the 2nd September and 14th October 2019. A total of 47 representations were received on the proposed site allocation and the accompanying Sustainability Appraisal. Following the close of the consultation, the proposed site allocation, supporting evidence and representations were all submitted to the Planning Inspector for his attention. It has recently been confirmed that site will form part of the Planning Inspector's Main Modifications to the Places and Policies Local Plan. It is expected that the Main Modifications will be published for public consultation in early January 2020.
- 7.5 Any representations on the Main Modifications will be sent to the Planning Inspector for consideration before he issues his final report. On receipt of the Inspector's final report, the Council can then proceed to formally adopt the Places and Policies Local Plan. It is therefore considered that the identified permanent G&T residential pitch requirements for the district are met by the emerging PPLP Policy RM15 which has now gained significant weight in accordance with NPPF paragraph 48. Therefore, as the Council can now demonstrate a 5 year supply of deliverable sites, policy HB14 forms the basis for the assessment of this application, as to whether this site is an appropriate location for an additional permanent G&T residential pitch in accordance with policy HB14.

## **b) Sustainability**

- 7.6 The Council's Settlement Hierarchy seeks to maintain the character and integrity of the countryside, and protect small rural places and the extent of settlements is defined through boundaries separating settlements from open countryside. Focusing development at these existing settlements underpins not only the protection of the district's open countryside, but also seeks the achievement of sustainable places.
- 7.7 The application site is outside any settlement boundary and Swingfield Minnis, (which this site is located just outside of) is not a rural centre or a primary or secondary village. Hoad Road is a rural road which joins with the A260 (Canterbury Road) which is the most direct route to Densole to the south (the closest settlement boundary at 0.64 miles away) and there are no pedestrian footpaths. Therefore, occupants of the application site would be solely reliant on their own private transport to access local amenities in Densole and the town of Hawkinge which is further south. There is a bus stop located on the A260 where services (every 20 minutes) travel north to Canterbury and South to Densole, Hawkinge and Folkestone but the bus stop it is a 6 minute walk away from the application site with no public footpaths. Therefore, it is considered that this site is in an unsustainable location for residential accommodation and as such would not be supported by local policy as there would likely be other sites in more sustainable locations which could support a permanent G&T residential pitch.
- 7.8 It is acknowledged that some gypsies and travellers may require a rural location for their pitches as land values within the built up area make such locations unattainable. However, it has not been demonstrated within the application submission why the permanent G&T residential pitch cannot be located within or on the edge of an existing settlement and why it is required to be located in this particular location in the open countryside. The proposal would therefore fail part 2 of HB14 which requires sites to be within "a sustainable location, well related to a settlement with a range of services and facilities and is, or can be made, safely accessible on foot, by cycle or public transport".

### **c) Visual impact**

- 7.9 As accepted previously, it is acknowledged that some gypsies and travellers may require a rural location for their pitches as land values within the built up area make such locations unattainable, although not demonstrated as such within this application submission. However in these circumstance, Councils always try to direct such applicants to land which is less harmful visually, such as sites within or on the edge of settlements or well screened locations in less sensitive landscapes for sites in the open countryside. The application site by contrast is within the Kent Downs Area of Outstanding Natural Beauty and locally designated Special Landscape Area. The NPPF at paragraph 11 seeks to protect areas such as the AONB which are assets of particular importance.
- 7.10 The Kent Downs AONB Unit identifies the AONB as a designated exceptional landscape whose distinctive character and natural beauty are precious enough to be safeguarded in the national interest. On par with National Parks, they are protected and enhanced for nature, people, business and culture.

- 7.11 Policy NE3 of the PPLP states that development within the AONB should conserve and enhance the natural beauty and locally distinctive features of the AONB and its setting, proposals to reinforce and respond to, rather than detract from the distinctive character and special qualities including tranquillity of the AONB. The design, scale, setting and materials of new development must be appropriate to the AONB and must not undermine the integrity of the predominantly open and undeveloped, rural character of the AONB and its setting.
- 7.12 The locally designated Special Landscape Area (SLA) is protected for its natural beauty and proposals should enhance SLAs in accordance with policy CO4 of the Local Plan.
- 7.13 A large number of the trees which were previously on site have been removed and this change is evident from aerial photography from 2015 – 2019 (fig. 1 and 2). 1.8m high close boarded fencing has been erected surrounding the site and separating it into two. In addition, the site has been gravelled and 2 caravans placed on it in addition to a portable toilet. Prior to any works taken place the site comprised of an unmanaged small woodland where views through the site from Hoad Road to the fields to the rear were not previously possible. The formalisation of the site, particularly with close boarded fencing and hardstanding, has completely changed the character and visual appearance of the site. The site was previously densely covered by trees whereas now in comparison, the site is open and views into and out of the site are now possible, changing the character of the site completely. This change is considered to have resulted in the site becoming visually prominent and in doing so has resulted in a harmful impact upon the character and appearance of the countryside, AONB and SLA in a manner contrary to adopted local and national policies.
- 7.14 The development is therefore considered to be contrary to part 6 of HB14 which requires sites to have “*no adverse effect on the landscape, environmental or other essential qualities of countryside, including the Kent Downs Area of Outstanding Natural Beauty or Natura 2000 sites, Sites of Special Scientific Interest, national or local nature reserves or heritage assets*”. The development is also be contrary to policies NE3 of the PPLP and policy SS1 of the Core Strategy which seek for development to not materially impact upon or to undermine the integrity of the predominantly open and undeveloped, rural character of the AONB and its setting and policy CO4 which seeks to protect the natural beauty of locally designated SLAs.



(Figure 1) 2015 Council's Ariel photograph



(Figure 2) 2019 Ariel photography: Google Maps

7.15 Individual TPO protections have been placed on some of the remaining trees within the site with the intention of retaining the remaining trees.

#### **d) Highway safety**

7.16 Kent Highways and Transportation object to the application due to the lack of required visibility splays as the required visibility splays for this road cannot be achieved over land within the applicants and/or the highway authority's control. Hoad Road is a national speed limit road and as such, speed limits are for 60mph. Use of the access without adequate visibility splays is detrimental to highway safety. Kent Highways stated in their comments dated 26th June 2019 that visibility splays of 2.4m x 215m are required in both directions. These have not been demonstrated, and in a south-westerly direction they will cross third party land. Hoad Road is a 'C' class classified road, and as such it is important to ensure the safety of all drivers navigating this stretch of road.

7.17 Planning Officers have met with the Kent Highways Officer on site to assess the splays further and to discuss the application in detail.

7.18 No speed survey has been submitted to demonstrate that the actual speeds along Hoad Road are any less than the 60mph speed limit which the road allows. However, Kent Highways have taken a pragmatic approach and state that they would be happy to accept visibility splays of 2.4m x 103m, based on a speed survey that was carried out near to this application site on Hoad Road for a separate planning application, which demonstrated driven speeds of 37mph. However, even when taking account of these potentially reduced speeds, the sightlines required would cross 3rd party land to the south-west of the proposed location and as such, these required vision splays are unachievable and their provision cannot be safeguarded.

7.19 In addition there are a number of trees on the application site, fronting the highway, which are protected by the TPO which cannot therefore be cut down and which obstruct sight lines for both plots within the site.

7.20 Kent County Council therefore continues to recommend refusal of this application as the visibility available over land within the applicants and/or the highway authority's control is insufficient for the development proposed, to the

detriment of highway safety. The development is therefore contrary to policy TR11 of the Local Plan which requires that development involving the formation of a new access does not have a detrimental impact to the safety of vehicle traffic, cyclists and pedestrians

- 7.21 In addition, part 3 of HB14 for assessing new gypsy and traveller accommodation sites states that “Adequate vehicular access, sight lines and space for turning and manoeuvring can be provided”. The proposal would also therefore conflict with this element of the policy for gypsy and traveller accommodation.

## **e) Residential amenity**

- 7.22 The site is located at the entrance to a private access road to properties to the north which include Grace Cottage and Hoad Cottages. Although a number of objections have been received, it is not considered that use of the site for residential accommodation would give rise to unacceptable impacts upon neighbouring amenity in terms of noise and disturbance, being overbearing, loss of light or loss of privacy, due to the low scale nature of the development together with the separation distance between, which is approximately 50m to Grace Cottage. As such, the application is not considered to be in conflict with policy SD1 of the Local Plan which seeks to safeguard and enhance the amenity of residents or policy HB1 of the PPLP which seeks for development to not have an adverse impact on the amenity of future occupiers, neighbours, or the surrounding area, taking account of loss of privacy, loss of light and poor outlook.

## **f) Drainage**

- 7.23 The caravans are not proposed to be connected to any mains drainage with the application stating within the waste collection section of the application form that a portable toilet would be used on site. There are no details of how this waste will be disposed of, but if planning permission were to be granted this could be dealt with by a condition requiring the provision of a septic tank or other suitable method.

## **g) Human Rights / best interests of the child**

- 7.24 It is noted that the applicant plans for his family, including children, to live on the site with him. It is recognised the substantial benefits are to be gained from the applicant's children having access to regular schooling that is afforded by a settled base. However it has not been demonstrated that such access can only be provided from this site, and that it cannot be provided from other sites elsewhere that are in a more sustainable location and with a less sensitive landscape. It is therefore considered that the wider public harm from this unsustainable development and to the AONB and SLA arising from occupation of this site outweighs these benefits.

## **Environmental Impact Assessment**

7.25 In accordance with the EIA Regulations 2017, this development has been considered in light of Schedules 1 & 2 of the Regulations and it is considered to fall within Schedule 2 and although under the threshold for screening schedule 2 projects, it requires screening as the application site is within a sensitive area (AONB). A screening opinion has been carried out by the Council and has concluded that the development is not EIA development and as such an Environmental Statement was not required. Please see formal screening opinion on the planning file for further detail).

## **Local Finance Considerations**

7.26 Section 70(2) of the Town and Country Planning Act 1990 (as amended) provides that a local planning authority must have regard to a local finance consideration as far as it is material. Section 70(4) of the Act defines a local finance consideration as a grant or other financial assistance that has been, that will, or that could be provided to a relevant authority by a Minister of the Crown (such as New Homes Bonus payments), or sums that a relevant authority has received, or will or could receive, in payment of the Community Infrastructure Levy. There is no CIL requirement for this development.

## **Human Rights**

7.27 In reaching a decision on a planning application the European Convention on Human Rights must be considered. The Convention Rights that are relevant are Article 8 and Article 1 of the first protocol. The proposed course of action is in accordance with domestic law. As the rights in these two articles are qualified, the Council needs to balance the rights of the individual against the interests of society and must be satisfied that any interference with an individual's rights is no more than necessary. Having regard to the previous paragraphs of this report, it is not considered that there is any infringement of the relevant Convention rights.

## **Public Sector Equality Duty**

7.28 In determining this application, regard has been had to the Public Sector Equality Duty (PSED) as set down in section 149 of the Equality Act 2010, in particular with regard to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it. It is considered that the application proposals would not undermine objectives of the Duty.

7.29 In considering this application regard has been had to the Public Sector Equality Duty (PSED), as set out in Section 149 of the Equality Act 2010 in the absence of appropriate mitigation, there is considered to be a risk of negative impacts in relation to the following groups, Gypsy and Travellers. Nonetheless, the application has been considered in relation to overall

provision for Gypsy and Travellers within the district and therefore I am satisfied that the PSED will not be undermined as consideration has been given to this minority group.

## **Working with the applicant**

- 7.30 In accordance with paragraphs 38 of the NPPF, Folkestone and Hythe District Council (F&HDC) takes a positive and creative approach to development proposals focused on solutions. F&HDC works with applicants/agents in a positive and creative manner.

## **8 CONCLUSION**

- 8.1 It is considered that the application should be refused due to the inappropriate location for a new gypsy and traveller site given the unsustainable location and due to, the negative visual impact upon the Kent Downs AONB and locally designated SLA, and the lack of visibility splays being achievable and the risk to highway safety as a result. I therefore consider the scheme to be unacceptable and recommend that planning permission should be refused.
- 8.2 As development has already taken place on the site and given that the recommendation is to refuse planning permission, it is also recommended that an enforcement notice be served requiring the cessation of the residential use and the removal of the caravans, hardsurfacing fencing including posts and gravel boards, portaloo, vehicles and all other equipment and paraphernalia on the site. As this is a residential use it is recommended that the period of compliance with the notice be 12 months in order to enable the occupants sufficient time to find an alternative site and obtain the necessary planning permission..

## **9 BACKGROUND DOCUMENTS**

- 9.1 The consultation responses set out at Section 5.0 are background documents for the purposes of the Local Government Act 1972 (as amended).

## **10. RECOMMENDATIONS**

### **a) That planning permission be refused for the following reasons:**

1. The application site is located outside of the defined settlement boundary, where the proposal would result in an unacceptable and unsustainable residential development in the countryside which would result in the erosion of the established rural character of the area. No special justification has been given as to why a rural location is essential and as such the proposal would be contrary to saved policies SD1 and CO1 Shepway District Local Plan Review and emerging policy HB14 of the Places and Policies Local Plan and paragraph 79 of the National Planning Policy Framework and paragraph 25 of the Planning Policy for Traveller Sites which requires local planning authorities to strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan.

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2. The proposed development would change the character of the site and formalise the site which is located in the countryside and which is designated Kent Downs Area of Outstanding Natural Beauty and locally designated Special Landscape Area resulting in a detrimental impact to the character and setting of the rural area contrary to emerging policy NE3 of the Places and Policies Local Plan which seeks to conserve and enhance the natural beauty and locally distinctive features of the AONB and its setting and local plan policy CO4 which seeks to protect the natural beauty of Special Landscape Areas in addition to emerging policy HB14 of the Places and Policies Local Plan which seeks for new gypsy and traveller sites to not result in an adverse effect on the landscape, environmental or other essential qualities of countryside, including the Kent Downs Area of Outstanding Natural Beauty.
3. The development is unable to demonstrate the required visibility splays to ensure there would be no detriment to highway safety and as such the proposal would be contrary to saved Local Plan Review policy TR11, which seeks to ensure that proposals which involve the formation of a new access will only be permitted where the access is not detrimental to the safety of vehicles, cyclists or pedestrians.

**b)i) That delegated authority be given to the Chief Planning Officer to serve an Enforcement Notice requiring the cessation of the residential use and the removal of the caravans, hardsurfacing, fencing including posts and gravel boards, portaloo, vehicles and all other equipment and paraphernalia on the site.**

**ii) That the Chief Planning Officer be given delegated authority to determine the exact wording of the Notice.**

**iii) That the period of compliance with the Notice be (twelve) 12 months.**

**iv) That the Assistant Director - Governance, Law & Regulatory Services be authorised to take such steps as are necessary, including legal proceedings, to secure compliance with the Notice.**

## Annexe 1 – Site Location Plan

