

**This report will be made public on 1 February 2021**

Report Number **DCL/20/47**

**To: Planning and Licensing Committee**  
**Date: 9 February 2021**  
**Status: Non key Decision**  
**Responsible Officer: Llywelyn Lloyd, Chief Planning Officer**

**SUBJECT: UNAUTHORISED CHANGE OF USE OF LAND FROM AGRICULTURAL TO USE AS A RESIDENTIAL CARAVAN SITE AND THE SITING OF RESIDENTIAL CARAVANS; UNAUTHORISED LAYING OF HARDSURFACING, ALTERATIONS TO ACCESS AND ERECTION OF FENCING AT LAND ADJOINING THE COTTAGE CANTERBURY ROAD SELSTED.**

**SUMMARY:**

This report considers the appropriate action to be taken regarding the change of use of the land and operations that have taken place on the field adjacent to The Cottage in Selsted. A planning application was submitted for the residential use of the land for four gypsy families but the necessary information required to make the application valid was never submitted and as such planning permission has not been granted for the use of the land or any of the operations. The report recommends that an Enforcement Notice be served to require the cessation of the residential use; the removal of the caravans and all vehicles and items associated with the residential use of the land; the removal of the hardsurfacing and fencing; the reinstatement of grass and; the reinstatement of the hedgerow.

**REASONS FOR RECOMMENDATIONS:**

The Committee is asked to agree the recommendations set out below because:

1. The site is located outside of the defined settlement boundary and the use constitutes unacceptable and unsustainable residential development in the countryside which has resulted 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 development is contrary to policy HB14 of the Places and Policies Local Plan, 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.
2. The site is located in the countryside, within the nationally designated Kent Downs Area of Outstanding Natural Beauty and locally designated Special

Landscape Area. The residential use of the land, the laying of the hardcore, the erection of the fencing and the alterations to the access have formalised the appearance of this previously undeveloped site and changed its character resulting in a detrimental impact on the character and setting of the rural area. As such the development is contrary to policies SS3 of the Core Strategy and Core Strategy Review and NE3 of the Places and Policies Local Plan which seek to conserve and enhance the natural beauty and locally distinctive features of the AONB and its setting, in addition to 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; and paragraph 172 of the National Planning Policy Framework that requires that great weight be given to conserving and enhancing landscape and scenic beauty in Areas of Outstanding Natural Beauty, which are given the highest status of protection in relation to these issues.

3. The development has led to the increased use of an access with substandard visibility splays, resulting in unacceptable harm to highway safety and, as such, the proposal is contrary to policy HB14 of the Places and Policies Local Plan and national planning policy which seek to ensure that adequate vehicular access and sight lines are provided and that the access is not detrimental to the safety of vehicles, cyclists or pedestrians.
4. It has not been demonstrated by means of an ecological desktop study and an appropriate assessment, as required under Conservation of Habitats and Species Regulations (2017 as amended), that the residential use will not adversely affect the Stodmarsh Special Protection Area or protected species on site.
5. It has not been demonstrated by means of a desktop contamination report that the site and the hard core material that has been brought on to the site does not contain contaminant material that would be harmful to human health. As such the use of the site is contrary to policy NE7 of the Places and Policies Local Plan.

#### **RECOMMENDATIONS:**

1. **To receive and note report DCL/20/47.**
2. **That an Enforcement Notice(s) be served requiring the cessation of the residential use; the removal of the caravans/mobile homes, hardcore and fencing; the reinstatement of the previous access and; the reinstatement of the grass and hedgerow**
3. **That the Chief Planning Officer be given delegated authority to determine the exact wording of the Notice(s).**
4. **That the period of compliance with the Notices be twelve (12) months.**
5. **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. LOCATION AND DESCRIPTION OF SITE

- 1.1 The site is located on the western side of A260 Canterbury Road, Selsted, just south of the Selsted Bends and where the boundary with Dover District Council crosses the A60. Selsted Cricket Ground is on the opposite side of the A260 immediately to the north of the site and Newlands Farm is on the opposite side of the A260 to the south. The site is located to the south of the main cluster of dwellings that constitute Selsted. A public footpath separates it from a row of seven dwellings to the north. To the south are a further three dwellings but these are much more widely separated from each other. The location of the site is shown below roughly outlined in red below at Figure 1. The whole area outlined in red is within the same ownership but the development that has taken place so far is on the front half of the site, extending to a line roughly level with the rear boundaries of the gardens of the properties to the north.



Figure 1 – Site Plan

- 1.2 The site is located within the North Downs Area of Natural Beauty and Special Landscape Area. Selsted does not have a defined settlement boundary under the Places and Policies Local Plan and the countryside protection policies in the National Planning Policy Framework (NPPF), Core Strategy (CS), Core Strategy Review (CSR) and the Places and Policies Local Plan (PPLP) are applicable, as well as those relating to Areas of Outstanding Natural Beauty.

- 1.3 Prior to the unauthorised development taking place the site comprised a grassed agricultural field surrounding on all four sides by trees and hedgerows, with a single field gate access on to the road. It is a greenfield site and is classified as Grade 3 under the Agricultural Land Classification. Public Right of Way HE116 runs along a track adjacent to and to the north of the northern boundary of the site. Immediately bordering the site to the west is part of a larger area of ancient woodland that is also a Local Wildlife Site. The site is also within a groundwater protection zone and the Stour Operational Catchment. The latter means that all applications for net new overnight accommodation that will impact on waste water infrastructure will be subject to an appropriate assessment and that planning permission should only be granted where the development would not have an adverse impact on the Stodmarsh Special Protection Area.



*Figure 2 - Aerial photograph of the site in 2008*

## **2. THE BREACH OF PLANNING CONTROL**

- 2.1 In June 2020 the Council received complaints about the access to the site being increased in size and hardcore being brought onto the site and spread across it. When a Council planning officer visited the site on 27.06.20 there was one man with a digger present. There were piles of hardcore and soil on site. The surface of the ground had been scraped flat to expose the soil and hardcore was being spread across the front part of the site when the officer arrived. Two metre high close board fencing had been erected at the entrance with four lower field gates across the entrance and set back from the road.

- 2.2 From speaking to the person on site it appeared that he was the site owner. The officer was advised that the activities constituted tidying the site which had been used as a rubbish dump and had been untidy. The officer proceeded to highlight that the laying of the hardcore was a material operation that required planning permission. This was contested by the site owner who advised that the hardcore was already in situ and it was merely being spread across the site to tidy it up. In the officer's view the piles of hardcore and soil looked new and clean with no weed growth on them and therefore that they had recently been brought onto the site. Residents had also reported hardcore being brought on to the site. The officer advised that work should cease immediately and that no further work should be carried out on the site until advice had been sought from the Council and any necessary planning permission had been granted.
- 2.3 During the site visit the officer was informed by the site owner that that the intention was to build 4 houses on the site and that a planning application had been submitted. It was further confirmed to the officer that works would cease on the Monday. The officer advised that works needed to stop immediately, that the work being carried out required planning permission and that any further work would be at owner's own risk as the Council may serve an enforcement notice requiring the hardcore to be removed and the site reinstated.
- 2.4 At that time the site contained a touring caravan in the south eastern corner that did not have the appearance of being lived in or being capable of being lived in (see Figure 4).
- 2.5 On exiting the site following the visit, the officer noted that it was difficult to see approaching traffic, particularly from the south as the new fencing obstructed visibility.
- 2.6 The laying of the hardcore continued notwithstanding advice to cease. On the following day (28.06.20) it was noted by the officer that a newer looking touring caravan had been placed in the north eastern corner of the site (see Figure 6 below). Following this a static caravan was placed on the site and this was occupied for residential purposes (Figure 7 below).
- 2.7 Below at Figures 3 and 4 are photographs taken at the time of that site visit on 27<sup>th</sup> June 2020.



*Figure 3*



*Figure 4*

- 2.8 A Temporary Stop Notice was served on 30<sup>th</sup> June 2020 requiring the use of the land for residential purposes and all works associated with the construction of the hardstanding to cease with immediate effect. The Temporary Stop Notice ceased to have effect on 28<sup>th</sup> July 2020.
- 2.9 On 10<sup>th</sup> July, following application to the County Court, the Council was granted an injunction preventing the defendants from carrying out any further development on the land without planning permission and forbidding the stationing of any more caravans/mobile homes on the land, erecting any structure/building, importing or depositing any material (including hardcore) or excavating/digging up the land or undertaking any engineering works. That injunction remained in force until 30<sup>th</sup> July 2020 when a further court hearing took place. At that hearing a second injunction was granted to the Council prohibiting the same development as the first and that injunction has effect until 1<sup>st</sup> August 2022. The defendants were also ordered to pay the Council's costs of £4,834.80.
- 2.10 A Planning Contravention Notice has also been served to establish ownership of the land as it was in the process of being sold at the time the unauthorised works were carried out.
- 2.11 On 3<sup>rd</sup> August 2020 a planning application was submitted for the change of use of the land to use as a residential caravan site for four gypsy families, each with two caravans including no more than one static caravan/mobile home, together with laying of hardstanding, erection of four amenity buildings, improvement of access and erection of fencing. The application was invalid as it was missing a number of documents required to enable the application to be properly assessed. However, consultations were carried out on the application in order to identify any other issues relevant to the acceptability or otherwise of the development as it was anticipated that a decision may need to be taken in the future about whether or not to take enforcement action. The required documents were requested from the applicant's agent, together with further information needed to assess the application against the applicable national and local planning policies relating to traveller sites. The information was requested to be provided by 9<sup>th</sup> October 2020. A Principal Planning Officer and Planning Enforcement Officer also carried out a further site visit that was attended by the site owner/applicant and his agent. None of the requested information was received by the date given and a further email was sent to the agent given a further period of time until 1<sup>st</sup> December 2020. A response was received from the agent that the applicant had been ill for several weeks following an accident and requesting further time to submit the information. Given that originally the information had been requested to be provided by 9<sup>th</sup> October, this request was refused. As the information was still not received the application was returned as invalid on 4<sup>th</sup> December 2020.
- 2.12 Photographs of the site taken on the site visit 8<sup>th</sup> October 2020 are included below at Figures 5 - 11. At that time there was one static caravan, two touring caravans and various vehicles on the site.



*Figure 5 - Front of site, south of entrance*



*Figure 6 - Front of site, north of entrance*





*Figure 7 - Centre of site, close to southern boundary*



*Figure 8 - Rear section of site*



*Figure 9 – Southern (side) boundary*



*Figure 10 – Northern (side) boundary*



*Figure 11 - Entrance to site from A260*

- 2.13 Under section 171B (3) of the Town and Country Planning Act 1990 (as amended), immunity is given from formal enforcement action, such as against an Enforcement Notice, for changes of use of land and operational development subject to certain time limits. In this case the relevant period for the change of use of the land is 10 years and for the operational development it is 4 years. As the change of use and operational development took place in June 2020, neither are immune from enforcement action.
- 2.14 The lawful use of the site is agriculture and there are no permitted development rights for the change of use to residential caravan site, therefore the change of use requires planning permission. There are no permitted development rights for the hard surfacing that has been laid, therefore this requires planning permission. The material widening of the access onto a classified road does not constitute permitted development. The fencing that has been erected either side of the access creates an obstruction to the view of persons using the highway and is also over 1 metre in height adjacent to a highway. The gates that have been installed are also over 1 metre high and are part and parcel of the alterations to the access neither the gates or the fencing are permitted development. Therefore, all of the development referred to above constitute a breach of planning control for which no planning permission has been granted.

### **3 RELEVANT PLANNING POLICY**

- 3.1 Government guidance on enforcement is set out in the National Planning Policy Guidance on Enforcement and post-permission matters. It advises

that 'Local planning authorities have discretion to take enforcement action, when they regard it as expedient to do so having regard to the development plan and any other material considerations' and that 'In considering any enforcement action, the local planning authority should have regard to the National Planning Policy Framework (NPPF), particular paragraph 58. Paragraph 58 of the NPPF states:

*Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control.*

- 3.2 The Development Plan comprises the Places and Policies Local Plan 2020 and the Core Strategy Local Plan 2013.

The Folkestone and Hythe District Council Core Strategy Review Submission Draft (2019) was published under Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations (2012) for public consultation and has been subject to an Examination in Public in January 2021. As such its policies should be afforded weight where there are not significant unresolved objections.

- 3.3 The relevant development plan policies are as follows:

Places and Policies Local Plan 2020

- HB1 – Quality Places through Design
- HB2 – Cohesive Design
- HB14 – Accommodation for Gypsies and Travellers
- NE2 – Biodiversity
- NE3 – Protecting the District's Landscapes and Countryside
- NE7 – Contaminated Land
- CC3 – Sustainable Drainage Systems
- T2 – Parking Standards
- T4 – Cycle Parking
- RM15 - Land adjacent to 'The Retreat', Lydd Road, Old Romney

Policy HB14 of the PPLP specifically 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 relates 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”.*

Policy RM15 of the PPLP allocates land at Old Romney for Gypsy and Traveller accommodation with capacity for 4 pitches comprising amenity blocks, parking for static and touring caravans, visitor parking and storage.

#### 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  
 CSD2 - District Residential Needs  
 CSD3 – Rural and Tourism Development  
 CSD4 - Green Infrastructure

#### Core Strategy Review Submission draft (2019)

SS1 - District Spatial Strategy  
 SS2 - Housing and the Economy Growth Strategy  
 SS3 - Place-Shaping and Sustainable Settlements Strategy  
 SS5 - District Infrastructure Planning  
 CSD2 - District Residential Needs  
 CSD3 – Rural and Tourism Development  
 CSD4 - Green Infrastructure

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

### **Government Advice**

#### National Planning Policy Framework (NPPF) 2019

Paragraphs 8 & 11 - Presumption in favour of sustainable development.

*Para 8 - 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*

#### Paragraphs 78 & 79 – Rural Housing

*Para 78 -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, 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.*

*Para 79 - 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.*

Paragraphs 108 &109 – ensuring safe and suitable access and highway safety.

*Paragraph 109 - Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.*

Paragraphs 170 - 177 - protecting valued landscapes, biodiversity and protected habitats and giving highest status of protection of AONBS

Paragraph 170

*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.*

Paragraph 172

Great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to these issues.

#### Planning Policy for Traveller Sites 2015 (PPTS)

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)*

6.1 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*
- 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)*

6.2 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)*

6.3 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 NPPF (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).*

## **4 APPRAISAL**

- 4.1 The relevant issues that need to be considered in respect of whether it is expedient to take enforcement action are sustainability, the need for the site in this location; impact on the AONB, impact on neighbouring amenity, highway safety, impact on protected habitats and biodiversity, contamination.

### **Need for the site**

- 4.2 In considering the existing provision and need for sites, the NPPF (Paragraph 60) requires LPA's to determine the minimum number of homes needed, which should be informed by a local housing need assessment, conducted using the standard method in national planning guidance. Paragraph 61 continues to state that within this context, the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies (including, but not limited to, those who require affordable housing, families with children, older people, students, people with disabilities, service families, travellers, people who rent their homes and people wishing to commission or build their own homes).
- 4.3 The PPTS (Paragraph 4) requires LPA's to make their own assessment of need and develop fair and effective strategies to meet need through the identification of land for sites. The Core Strategy (2013) Policy CSD2 states that residential development should meet the specific requirements of vulnerable or excluded groups. The accommodation needs of specific groups will be addressed based on evidence of local need including Gypsies and Travellers.
- 4.4 The Folkestone & Hythe District Council Gypsy, Traveller and Travelling Showpersons Accommodation Assessment 2018 (GTAA, 2018) identified at the time of the assessment three traveller families living within the district on private site in Lydd and Brenzett. These sites are all privately owned. The GTAA concluded that there was a need for an additional five permanent residential pitches, two travelling showperson plots; and three to five transit pitches for the period to 2037. Of this requirement, three permanent pitches were identified as being required in the first 5-years of the plan. Policy RM15 allocated a site towards meeting the requirement for the permanent residential pitches. The Places and Policies Local Plan has been through

Examination in Public and has recently been adopted by the Council for Development Plan purposes.

- 4.5 In 2018 planning permission was granted under application Y18/0303/SH for the intensification of one of the existing sites at Brenzett from one to two pitches – reducing the overall permanent pitch requirements to four. Following that planning permission Y19/0958/FH was granted in early 2020 for 5 pitches on Land adjacent to The Retreat' Lydd Road Old Romney. The Old Romney permission has been implemented and it is believed the Brenzett one has as well. Consequently, the permanent pitch requirement identified by the GTAA is considered to have been met in full and exceeded by one.
- 4.6 Nevertheless, the PPLP does state at Paragraph 9.96 that “should a need arise over and above that identified in the GTAA 2018, or proposals come forward in advance of any future allocation, a criteria-based policy will be used to provide flexibility in the location. Development proposals will be supported by the local planning authority subject to Policy HB14 and other relevant policies”.
- 4.7 A Design and Access (D&A) Statement submitted in support of the invalid planning application states that *“the annual traveller count’ has just been completed and that there is a clear unmet need in the district”*. However, no quantifiable evidence to support this claim has been provided and as such the GTAA (2018) has to be considered the most up-to-date evidence of traveller pitch needs for the Folkestone and Hythe District.
- 4.8 Despite a request no information has been provided on where the family currently occupying the site were living before and no evidence was provided with the invalid application to demonstrate that they were a local family in need of accommodation. Therefore, it is considered that there is insufficient justification of need for further pitches to accommodate families within the district such that enforcement action should not be taken in this instance.

### **Sustainability**

- 4.9 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.
- 4.10 The application site is outside any settlement boundary and is located on the edge of Selsted, which is not a rural centre or a primary or secondary village. There are no shops or community facilities in Selsted with the nearest shop being a newsagents in Densole. The closest supermarket is further away in Hawkinge. Although there is a primary school in Selsted close to the site, the nearest secondary schools are in Canterbury and Folkestone. The only easily accessible public transport is the bus route along the A260 between Folkestone and Canterbury. Therefore, occupants of the application site are predominantly reliant on their own private transport to access shops and local amenities in Densole and Hawkinge. Therefore, it is considered that

this site is in an unsustainable location for residential accommodation and as such is not supported by local or national planning policy in this respect as there would likely be other sites in more sustainable locations which could support permanent G&T residential pitches.

- 4.11 Planning policies seek to resist isolated development in the countryside and while this is not isolated physically as it is close to the main built up part of Selsted, it is isolated in relation to necessary facilities. 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, no justification has been provided as to why the occupants cannot locate a more suitable site on the edge of a rural service centre or primary or secondary village or why they require to live in this particular location. The information submitted with the invalid planning application was that the site would be for four families with nine children in total, two of which would be teenagers and the remainder under 10 years of age and that a couple of the children go to school in Canterbury. As far as Officers are aware the current occupants of the site are one couple who have two children under 5 years of age. None of the information submitted provides sufficient justification as to why they need to live in this location and despite a request for further information none was provided. On the basis of the information available it is considered that the residential use fails 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".

#### **Impact on AONB**

- 4.12 The site comprises an undeveloped green field between dwellings on the edge of the hamlet of Selsted where the slightly denser development of the core transitions to more sporadic less dense buildings before becoming open countryside. It is an important visual gap between dwellings that contributes to the setting of Selsted within the countryside and AONB. The unauthorised development that has taken place has completely changed the rural character and appearance of the site from a grassed agricultural field with an established hedgerow boundary on the road frontage to an urbanised appearance with a considerable area of hard surfacing, a much wider access opening up the frontage and visually prominent 2 metre high close boarded fencing more suited to urban areas. This formalisation of the site has changed its character and visual appearance to the detriment of the rural character of the area and resulted in it becoming visually prominent and incongruous with the surrounding landscape character. The continued residential use, with its associated residential paraphernalia would extend the domestication of the landscape outside of the existing built area, which would adversely impact on the visual amenity of the landscape. As such, the development is considered to be detrimental to the character and appearance of the landscape, failing to preserve and enhance this part of the Area of Outstanding Natural Beauty and contrary to national and local planning policies which give priority to protecting the AONB over other material planning considerations.

#### **Impact on residential amenity**

- 4.13 In terms of scale the development that has taken place on the site is unlikely to have a significant detrimental impact on neighbouring residents in terms of physical impact or noise and disturbance, over and above what would reasonably be expected from a single residential use. However as the residential use of the site has taken place without planning permission it is unrestricted and the invalid application that was submitted was for four plots for four families. Therefore if an Enforcement Notice is not issued there is potential for the number of occupants on the site to increase after the injunction expires.

### **Highway Safety**

- 4.14 The use of the site for one residential caravan results in an increased use of the access than the previous agricultural use and the intended use of the site for four residential caravans would result in a significant increase in the use of the access. The access is directly onto the A260 which is the main route between Canterbury and Folkestone. Even with the unacceptable removal of a large length of hedgerow and the setting back of the access gates into the site, the visibility for vehicles when leaving the site is very poor, especially to the south. The comments received from Kent Highways and Transportation relating to the invalid application stated that the visibility splays of 2.4m x 43m are only suitable for a 30mph speed limit. This part of the A260 has a national speed limit of 60mph, which requires visibility splays of 2.4 x 203m. Although this may be achievable over land within the applicant's ownership it would necessitate the removal of even more of the existing hedgerow, which is not considered acceptable. Although the applicant has installed a mirror at the site entrance in an attempt to improve visibility this is not considered an acceptable solution by the Highway Authority. As such the increased use of the access resulting from the use of the site is considered to result in unacceptable harm to highway safety.

### **Protected Species & Biodiversity**

- 4.15 No ecological desktop study was submitted with the application to identify any protected species or habitat on the site. Despite a request for one as part of the required documentation to validate the application none was received. Without this the impact of the development on protected species cannot be appropriately assessed. Given the mature trees and nature hedgerow bordering the site it is likely there are protected species present that could be harmed by the development taking place.
- 4.16 In addition, the site falls within the Stour Operational Catchment. This means that all applications for net new overnight accommodation that will impact on waste water infrastructure will be subject to an appropriate assessment and that planning permission should only be granted where the development would not have an adverse impact on the Stodmarsh Special Protection Area. Stodmarsh lies to the east of Canterbury and is a Special Protection Area (SPA) Ramsar site, Special Area of Conservation (SAC) and a Site of Special Scientific Interest (SSSI) and parts are a National Nature Reserve (NNR). During 2017/18, a review of the internationally designated sites at Stodmarsh identified that some of the lakes had raised nitrogen and phosphate levels, leading to eutrophication of the lakes which occurs when an excessive amount of nutrients within a water body are present, which

makes it difficult for aquatic insects, invertebrates or fish to survive, in turn removing a food source from the food cycle. Natural England issued advice last July to all authorities in Kent, and it covers all areas within the Stour Valley river catchment, and which discharge to amongst others, Sellindge Wastewater Treatment Works. The consequence of this advice is to avoid the potential for any further deterioration in the water quality of the Stodmarsh European designated site pending further investigations as to the cause of the eutrophication. The advice applies to all types of development where a net additional population would be served by a wastewater system. Although the application form for the invalid planning application stated that waste water would be disposed of to a septic tank, this would need emptying and the waste water disposed of somewhere. Therefore this requirement applies to this development.

- 4.17 Under the Conservation of Habitats and Species Regulations (2017 as amended), there are significant responsibilities conferred on the Council as “competent authority”. Mainly, it requires the Council only to approve plans or projects (such as new development) if there is no likelihood of a significant effect on any European designated nature conservation site. A significant effect could be caused by a number of potential impacts including direct or indirect habitat loss, air pollution, water quality, increase in recreation, light pollution or construction activity. In order to assess whether this development would lead to a “likely significant effect” an Appropriate Assessment would need to be carried out which the Council would consult Natural England on. As this is unauthorised development and the invalid application did not contain sufficient information for an appropriate assessment to be carried out, it is not possible for the Council to be satisfied that there would not be an impact on the SPA and as such the development is contrary to policies NE2 and CC3 of the PPLP.

### **Contamination**

- 4.18 Given the previous agricultural use of the land there is potential for ground contamination resulting from that use. A requirement for a valid planning application is the submission of a desktop contamination report to identify previous uses and the likelihood of ground contamination that could be harmful to human health. Despite a request, no such report was submitted. The unauthorised use of the site is residential and as such there is potential for harm to users of the site from cultivation of the ground, children being exposed to soil while playing etc. Although a large area of the site is covered in hardcore, this could contain contaminated material. As it is not possible to confirm that there is no risk to occupants from contamination on the site the development is contrary to policy NE7 of the PPLP.

## **5 CONCLUSION**

- 5.1 The site is in a remote rural location outside of any settlement with poor access to services and facilities. As such, occupants will be highly reliant on the private motor car to meet their day to day needs. The formalisation of the site, laying of hard core, removal of a section of hedgerow and installation of close boarded fencing is detrimental to the rural character of the area and the special landscape character of the AONB and Special Landscape area. The

increased use of a vehicular access with substandard sight lines onto an A class road creates a hazard to highway safety which is likely to increase if the existing use intensifies. It is not possible to demonstrate that there is no contamination on the site which would cause a hazard to occupants or that the development is not having an adverse impact on protected species or an internationally designated wildlife site. If left to continue the use of the site has potential to intensify which would be likely to have an adverse impact on the amenity of neighbouring residents. As such this is unsustainable development in the countryside, contrary to the requirements of national and local planning policies relating to gypsies and travelers and countryside protection policies. Therefore it is recommended that an Enforcement Notice be served to require the unauthorised use to cease, the removal the caravans/mobile homes, hard core fencing and gates and the reinstatement of grass and hedgerow.

## **6 HUMAN RIGHTS**

- 6.1 In reaching a decision on a planning matter 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. As far as Officers are aware there are two children under 5 years of age. No information was provided with the invalid planning application on whether they attend school yet or where, despite this information being requested. However, given their ages, even if they are at school, it is unlikely it would be of significant detriment to their best interests if they have to change schools as a result of their parents having to leave this site. In addition a compliance period of 12 months for the Enforcement Notice is recommended which would provide ample time for alternative residential and school accommodation to be found.
- 6.2 Having regard to the previous paragraphs of this report, it is not considered that there is any infringement of the relevant Convention rights.

## **7 PUBLIC SECTOR EQUALITY DUTY**

- 7.1 In assessing this planning matter 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.
- 7.2 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.

It is considered that the proposed enforcement action would not conflict with objectives of the Duty.

## 8 RISK MANAGEMENT ISSUES

A summary of the perceived risks follows:

Perceived risk	Seriousness	Likelihood	Preventative action
Development becomes immune from Enforcement Action and level of use of site increases	High	High	Serve Enforcement Notice

## 9. LEGAL/FINANCIAL AND OTHER CONTROL/POLICY ISSUES

### 9.1 Legal Officer Comments (TH)

There are no legal implications arising directly out of this report which are not already stated therein. For the information of the Committee, section 171B of the Town and Country Planning Act 1990 (as amended) states that;

Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed..

Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

The Council is working within those statutory time limits and therefore can take appropriate enforcement action.



Where there is a breach of planning control, failure to take enforcement action within the statutory time limits will result in the unauthorised use becoming immune from enforcement action

**9.2 Finance Officer Comments (LK)**

The financial implications regarding the issuing of the Enforcement Notice are contained within the Council's budget. However if further enforcement action is required then there may be additional legal costs which may require additional resource.

**9.3 Equalities & Diversity Officer Comments (GE)**

Considerations to Human Rights and the Public Sector Equality Duty in relation to this issue are set out in main body of the report within sections 6 and 7.

**CONTACT OFFICER AND BACKGROUND DOCUMENTS**

Councillors with any questions arising from this report should contact the following officer prior to the meeting.

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The following background documents have been used in the preparation of this report:

None.