

This Report will be made public on 15 March 2021

Report Number **DCL/20/51**

**To: Planning and Licensing Committee**  
**Date: 23 March 2021**  
**Status: Non key Decision**  
**Responsible Officer: Llywelyn Lloyd, Chief Planning Officer**

**SUBJECT: UNAUTHORISED CHANGE OF USE OF LAND FROM TOURING CARAVAN AND CAMPING SITE TO USE AS A RESIDENTIAL CARAVAN SITE AND THE SITING OF RESIDENTIAL CARAVANS AND CAMPERVANS AT ELHAM VALLEY HOLIDAY PARK (ALSO KNOW AS GOLDPARK LEISURE CARAVAN AND CAMPING SITE).**

**SUMMARY:**

This report considers the appropriate action to be taken regarding the use of the camping and touring caravan site at Elham Valley Holiday Park (also known as Goldpark Leisure Caravan and Camping Site) for the siting of residential caravans and campervans. Planning permission has been refused, and an appeal dismissed, for a residential static caravan on the site and a recent application for a Certificate of Lawful Development for the siting of static caravans for permanent residential accommodation has also been refused. The report recommends that an Enforcement Notice be served to require the cessation of the residential use and the removal of the caravans, vehicles and items associated with the residential use of the land.

**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. There appears to be no special justification as to why a rural location is essential for the residential use and as such the development is contrary to Core Strategy Review policies SS1, SS3 and CSD3 which seek to direct development to sustainable rural settlements; policy E5 of the Places and Policies Local Plan, which requires diversification of touring caravan and camping sites to be compliant with the holiday use; and paragraphs 78 and 79 of the National Planning Policy Framework which seek to avoid isolated and unsustainable development in the countryside.

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 siting of residential caravans on the site and the associated residential use of the land including the associated domestic paraphernalia has changed its character and appearance from that of transient and variable use and activity to permanent use and an increased level of activity resulting in a detrimental impact on the character of the rural area. As such the development is contrary to policy CSD3 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, 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 majority of the site is located within Flood Zone 3 and permanent residential caravan sites are classed as highly vulnerable under the Environment Agency's flood risk categorisation. As such continued residential use of the site would result in risk to life, contrary to the paragraph 163 of the National Planning Policy Framework, policy SS3 of the Core Strategy which seek to direct development away from areas vulnerable to flood risk.
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.

#### **RECOMMENDATIONS:**

1. **To receive and note report DCL/20/51.**
2. **That an Enforcement Notice(s) be served requiring the cessation of the residential use and the removal of the caravans, vehicles and items associated with the residential use of the land.**
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 Elham Valley Holiday Park (also known as Goldpark) has a lawful use as a touring caravan and camping site situated on Canterbury Road, between Breach and Wingmore, in the Elham Valley. The site measures approximately 170m x 40m and runs parallel to the Elham Valley Road, which is immediately to the south-east, from which there are broad views across the site and the wider valley. There is a building at the northern end of the site, dark timber-clad with a steep tiled roof, which serves as an amenity block; this was erected under permitted development rights as a requirement of the site licence for the camping and touring caravan site. Vehicle access is located at the northern end of the site, off the Elham Valley Road via a pair of five-bar gates that lead to an informal circular hardcore road around the site. There is a low fence along the road boundary and mature hedgerow and boundary planting on the other sides. The location of the site is shown below at Figure 1.

*Figure 1 – Site location plan*

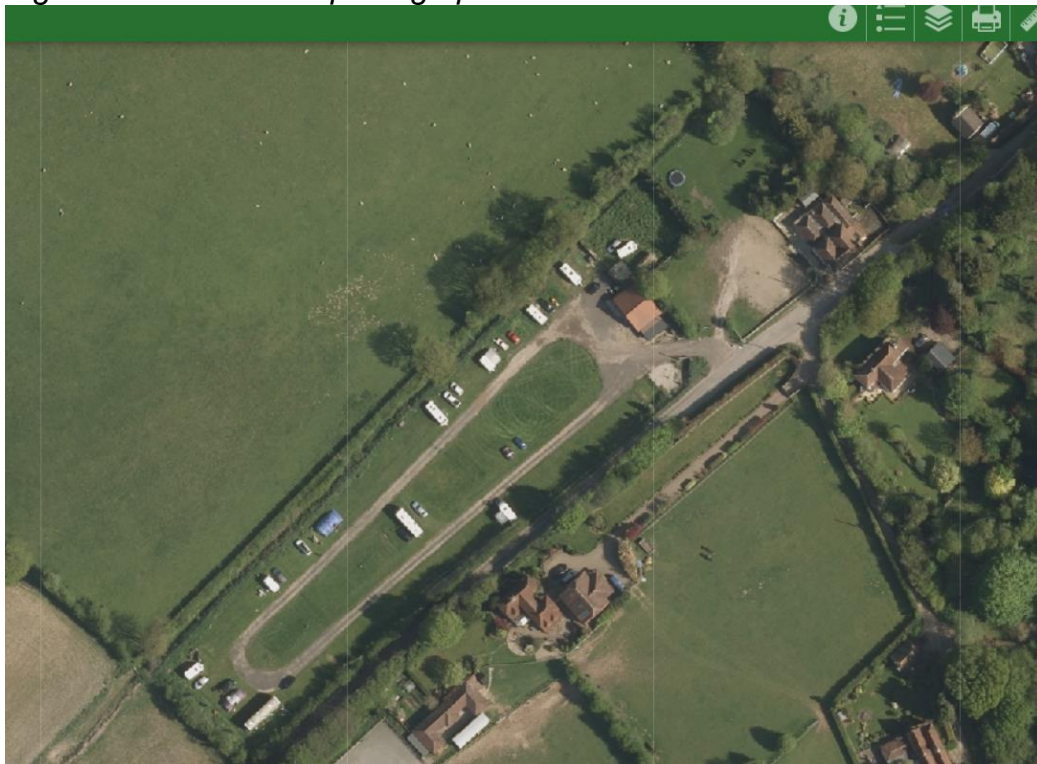


- 1.2 The site is located within the North Downs Area of Natural Beauty and Special Landscape Area. It is located outside of any defined settlement boundary under the Places and Policies Local Plan and, as such, the countryside protection policies in the National Planning Policy Framework (NPPF), Core 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 To the north east of the site is the residential dwelling and curtilage of the Grade 2 Listed Building, the Palm Tree House (formerly the Palm Tree Inn) and the surrounding area comprises agricultural land classified as Grade 3 under the Agricultural Land Classification. Public Right of Way HE69 lies

approximately 50 metres to the north of the site and runs in a north westerly direction. There are dwellings opposite the site on the other side of the Elham Valley Road.

- 1.4 The Nail Bourne runs along the north western boundary of the site. This is a dry river that only flows during excessively wet periods when the water table is sufficiently high. However, when this does happen it can burst its banks, with the Holiday Park site forming part of the flood plain. For this reason, the site lies within Flood Zone 3 on the Environment Agency Flood maps, within the only the access off the public highway and the part of the site closest to the highway being in Flood Zone 1.
- 1.5 The site is also 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.
- 1.6 Figure 2 below is an aerial photograph of the site in 2018.

*Figure 2 – 2018 Aerial photograph.*



## **2. PLANNING HISTORY OF SITE**

- 2.1 The site was originally within the ownership of the Palm Tree Public House, which is now a dwelling in separate ownership. In 2007 a Certificate of Lawful Use was granted for the continued use of the land as a camping and touring caravan site (Y07/0039/SH).

2.2 In 2016 a planning application was submitted for the siting of a static caravan for use by a warden (Y16/0431/SH). This was refused on the grounds of inappropriate residential use in the countryside; detrimental visual impact; and flood risk to occupants, being a highly vulnerable form of development within Flood Zone 3. An appeal against the refusal of planning permission was dismissed.

2.3 In December 2020 the Council received an application (reference: 20/1966/FH) for a Certificate of Lawful Development for the siting of static caravans for permanent residential accommodation. This was refused for the following reason:

‘The stationing of static caravans for permanent residential occupation would represent a material change in the character and appearance of the site and activity thereon, resulting in a material change of use of the site. The proposed works would therefore constitute development for which express planning permission is required’

### 3. THE BREACH OF PLANNING CONTROL

3.1 In January 2018 a complaint was made to the Council that the site was being used for residential purposes, with a converted coach and a caravan being used as dwellings. Figure 3 below shows the site in January 2018. Further investigations by Council Officers, including the serving of the first of two Planning Contravention Notices, confirmed that at least one unit on the site was being used as a full time residence. A further visit in June 2018 confirmed that 3 units appeared to be being lived in.

*Figure 3 – January 2018*



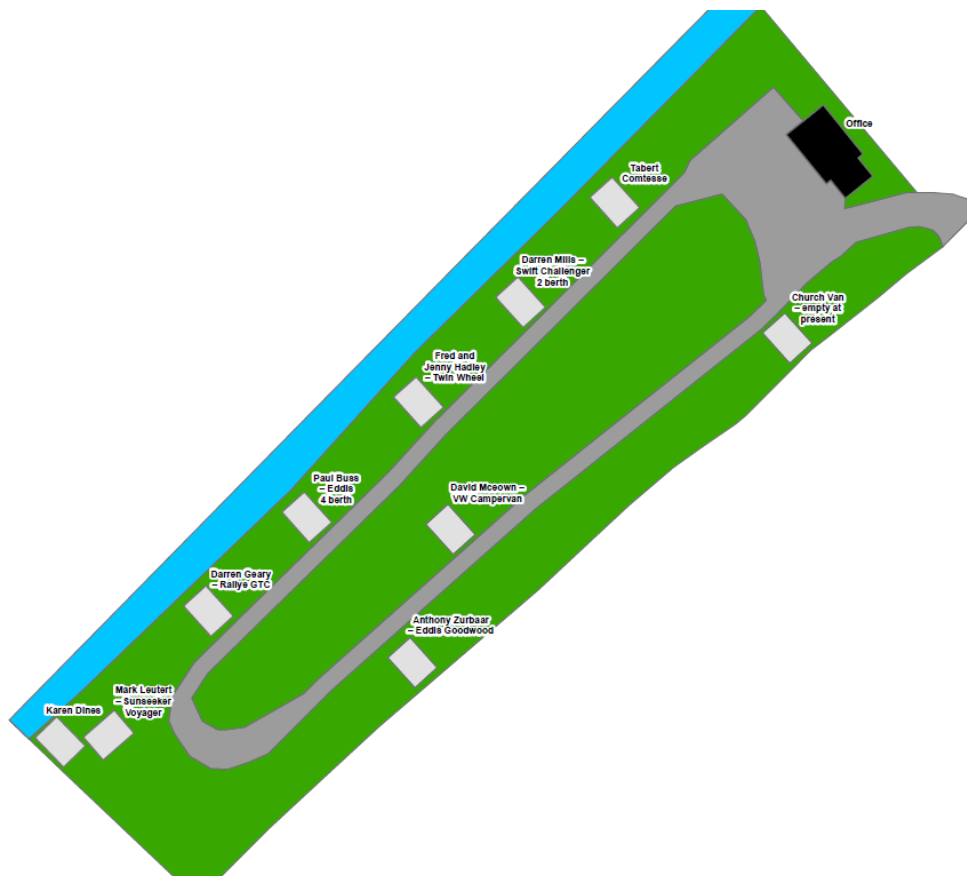
3.2 The owners of the site disputed that the residential use was in breach of planning control and correspondence with the owners regarding this matter continued for some time. This culminated in the Council’s Legal Department writing to the owners’ solicitor in June 2019 advising them that the Council



was satisfied that such a use was a breach of planning control and that this use should cease by August 2019. The use continued.

- 3.3 Subsequently, the Council was informed that the ownership of the site had changed in November 2019. The Council wrote to the new owners in February 2020 and advised them to ensure that the residential use ceased by 31<sup>st</sup> May 2020. However, the Council took no further action immediately after this deadline due to the restrictions of movement that were in place at the time under the Covid regulations.
- 3.4 In July 2020 the Council was informed that the coach which had been converted and being used as a dwelling had been removed but that other touring caravans and campervans were still being permanently occupied. In this way. The Council again wrote to the owners in July and August 2020 requesting that the residential use cease. Despite these requests, the unauthorised residential use continued.
- 3.5 On the 8<sup>th</sup> January 2021 a second Planning Contravention Notice was served in regard to the residential use. This Notice was served on the new owners of the property, Yieldcom Limited. A response was received to the Planning Contravention Notice (PCN), including a plan, on the 2<sup>nd</sup> February 2021, which confirmed that 9 individuals were living on the site at in touring caravans and campervans at that time. Figure 4 below shows the plan received in response to the PCN and highlights the location on the site of the residential caravans and campervans.

*Figure 4 – Location of residential caravans and campervans.*



- 3.6 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 subject to certain time limits. In this case the relevant period for the change of use of the land is 10 years. As the change of use took place in late 2017 or early 2018, it is not immune from enforcement action.
- 3.7 The lawful use of the site is as a camping and touring caravan site and there are no permitted development rights for the change of use to a residential caravan site, therefore the material change of use that has occurred requires planning permission. The change of use constitute a breach of planning control for which no planning permission has been granted.

#### **4 RELEVANT PLANNING POLICY**

- 4.1 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.*

- 4.2 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.

- 4.3 The relevant development plan policies are as follows:

##### Places and Policies Local Plan 2020

- HB1 – Quality Places through Design
- HB2 – Cohesive Design
- NE2 - Biodiversity
- NE3 – Protecting the District's Landscapes and Countryside
- E5 - Touring and Static Caravan, Chalet and Camping Sites

### Shepway Local Plan Core Strategy (2013)

DSD - Delivering Sustainable Development

SS1 - District Spatial Strategy

SS3 - Place-Shaping and Sustainable Settlements Strategy

CSD3 – Rural and Tourism Development

CSD4 - Green Infrastructure

### Core Strategy Review Submission draft (2019)

SS1 - District Spatial Strategy

SS3 - Place-Shaping and Sustainable Settlements Strategy

CSD3 – Rural and Tourism Development

CSD4 - Green Infrastructure

4.4 The following are also material considerations in regarding to the expediency of taking formal enforcement action.

#### **Government Advice**

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

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

Paragraphs 78 & 79 – Rural Housing

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

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.

## **5 APPRAISAL**

5.1 The relevant issues that need to be considered in respect of whether it is expedient to take enforcement action are:

- (a) sustainability of residential use in this location;
- (b) diversification of the touring caravan and camping site;
- (c) impact on the AONB;
- (d) neighbouring amenity;
- (e) flood risk
- (f) impact on protected habitats and biodiversity
- (g) highway safety

#### **(a) Sustainability**

5.2 The Council's Settlement Hierarchy seeks to maintain the character and integrity of the countryside. 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.



- 5.3 The site is outside any settlement boundary and is located between Breach and Wingmore, in the Elham valley. Wingmore is not a rural centre or a primary or secondary village. There are no shops or community facilities in Wingmore with the nearest small shops being over 2 miles away in Elham. There are no supermarkets nearby. Although there is a primary school in Elham, the nearest secondary schools are in Canterbury and Folkestone. The only easily accessible public transport is the bus route along the Elham Valley Road. As such, residents of the site are principally reliant on their own private transport to access shops and limited local amenities in Elham. Therefore, it is considered that this site is in an unsustainable location for residential accommodation.
- 5.5 Planning policies seek to resist isolated development in the countryside such as this, which is particularly isolated in regard to necessary facilities.

#### **(b) Diversification of the touring caravan and camping site**

- 5.6 The lawful use of this site is a camping and touring caravan site. Although there aren't any restrictions on this use under the Certificate of Lawful Use and Development, there is case law that this use does not include permanent residential occupation of the site. Touring caravan and camping sites are more likely to be used by visitors to the district and involve a turnover of occupants. Policy E5 of the PPLP relates to the proposals for the infilling, expansion and diversification of existing lawful touring and static caravan, chalet and camping sites and is, therefore applicable to this site. It is not known whether the intention of the site owners is to have a purely residential site or a mix of permanent residential and touring/camping uses. The policy requires that any diversification of touring caravan and camping sites is compliant with the holiday use. This is in order to safeguard the important role such sites play in the provision of tourism accommodation in the district, to prevent residential uses in unsustainable locations, to safeguard the landscape against the greater visual impacts that permanent residential sites can have and to safeguard occupants in areas that are at higher risk of flooding, as caravans are classed as highly vulnerable to flood risk.
- 5.7 In terms of policy E5, permanent residential occupation is not compliant with the holiday use and for the reasons set out in the remainder of this report, residential use on this site is not considered acceptable in respect of the reasons for the policy.

#### **(c) Impact on AONB**

- 5.8 The site is a grassed field in the Elham Valley, with the only permanent development on it being the access road and amenity block. It is in an area of open countryside surrounding by fields, hedgerows and wooded areas. A small number of residential properties border the Elham Valley Road in the vicinity of the site. The site is highly visible within the countryside and AONB. Where previously the visual impact of touring caravan and tents would have been expected for part of the year only, with the level of activity and the number of touring caravans on the site being variable, the unauthorised development that has taken place has resulted in a year round visual impact on the AONB. The continued residential use, with its associated residential

paraphernalia has resulted in the domestication of the landscape outside of any built area, which adversely impacts on the visual amenity of the landscape above and beyond that of the lawful touring caravan and camping use, which by its nature is more seasonal and transient. 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.

#### **(d) Residential amenity**

- 5.9 The activity both on site and from vehicles coming and going is not likely to be any greater with a residential site than with a touring caravan and camping site. It is accepted that residential use would be more likely to take place year round rather than just within the holiday and summer seasons. However, given there are no restrictions on occupation under the Lawful Development Certificate for the site, there is nothing to stop year round occupation taking place under the lawful use of the site.

#### **(e) Flood Risk**

- 5.10 The site is located within Flood Zone 3. National planning policy and Core Strategy policies seek to direct inappropriate development away from areas at highest flood risk. Paragraph 163 of the NPPF requires that development should only be allowed in areas at risk of flooding, where the sequential test and, if appropriate, the exception test have been passed. National Planning Policy Guidance (NPPG) sets out how and when to apply these tests. Under the Environment Agency (flood risk vulnerability classification, while holiday and short let caravan and camping sites are classified as more vulnerable, permanent residential sites have a higher vulnerability classification of highly vulnerable. National planning guidance is clear that highly vulnerable development should not be permitted in Flood Zone 3, due to the risk to life. Therefore, residential use on this site is not acceptable and is contrary to national policy.

#### **(f) Protected habitats and biodiversity**

- 5.11 Given the lawful and existing use of the site as a touring caravan and camping site, residential touring caravan use on the site is unlikely to have any additional on-site impacts on protected species or biodiversity. However, 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. The current waste water system on site is a septic tank and this requires emptying and the waste water disposing of. Although the site has a lawful use as a touring caravan and camping site, permanent residential use would have occupancy over longer periods of time and occupancy levels could be higher over longer periods of time. This would result in an increase in the amount of waste water being generated and disposed of. Therefore Natural England's requirement applies to this development.

- 5.12 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.

### **(g) Highway Safety**

- 5.13 In terms of vehicle movements, the permanent residential use of the site has potential to result in increased car movements in terms of day to day trips, but the number of caravan movements in and out of the site is likely to be lower as there would be lower turnover of caravans entering and leaving the site. Therefore, it would be difficult to justify the residential use as being detrimental to highway safety, when compared to the lawful use of the site.

## **6 CONCLUSION**

- 6.1 The use of this site as a residential caravan site results in unsustainable development, detrimental to the rural character of the area and the landscape character of the AONB and Special Landscape Area. As the majority of the site falls within Flood Zone 3 and residential caravan sites are categorized as highly vulnerable uses, the residential use of the site results in unacceptable flood risk/ risk to life to the occupants. Due to the likely increase in waste water generation from the site as the result of the residential use it needs to be demonstrated that the continued use will not have an adverse impact on protected species or an internationally designated wildlife site. As such this is

unsustainable development in the countryside, contrary to the requirements of national and local planning policies relating countryside protection policies. Therefore it is recommended that an Enforcement Notice be served to require the unauthorised residential use to cease and the caravans, vehicles and items associated with the residential use of the land to be removed.

## **7 HUMAN RIGHTS**

- 7.1 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 no children living on the site.
- 7.2 Having regard to the previous paragraphs of this report, it is not considered that there is any infringement of the relevant Convention rights.

## **8 PUBLIC SECTOR EQUALITY DUTY**

- 8.1 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.

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

## **9 RISK MANAGEMENT ISSUES**

A summary of the perceived risks follows:

| <b>Perceived risk</b>   | <b>Seriousness</b> | <b>Likelihood</b> | <b>Preventative action</b> |
|---|--------------------|-------------------|----------------------------|
| Development becomes immune from Enforcement Action and level of use of site increases | High               | High              | Serve Enforcement Notice   |

## **10 LEGAL/FINANCIAL AND OTHER CONTROL/POLICY ISSUES**

### **10.1 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

### **10.2 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.

### **10.3 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 7 and 8.

## **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