

This Report will be made public on 15 March 2021

Report Number **DCL/20/52**

**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 AGRICULTURAL TO USE AS A RESIDENTIAL CARAVAN SITE AND THE SITING OF RESIDENTIAL CARAVANS; AND UNAUTHORISED LAYING OF HARDSURFACING AT LAND ADJOINING MARTINFIELD COTTAGE LYDD ROAD OLD ROMNEY.**

**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 Martinfield Cottage Old Romney. A planning application was submitted for the residential use of the land for four gypsy families but the necessary information required to validate the application was not supplied. As such planning permission has not been granted for the use of the land or any of the operations. Serving of an Enforcement Notice is recommended.

**REASONS FOR RECOMMENDATIONS:**

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

1. The site is located outside of any defined settlement boundary and, as such, the use results in an unsustainable development in the countryside, remote from any settlement that has a wide range of facilities. In the absence of sufficient justification demonstrating why a rural location is essential, the development is contrary to policy HB14 (2.) 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 have regard to the presumption in favour of sustainable development and 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 locally designated Romney Marsh 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. This, as an addition to the use and development of the allocated site to the west, has cumulatively resulted in a more urbanised appearance to this part of the Marsh which previously consisted of a small conclave of visually isolated dwellings, to the detriment of the character and appearance of this isolated rural location. As such the development is contrary to paragraph 25 of the Planning Policy for Traveller Sites which seeks to ensure that sites in rural areas respect the scale of, and do not dominate, the nearest settled community; paragraph 172 of the National Planning Policy Framework that requires planning decisions to protect and enhance valued landscapes; policies SS3 of the Core Strategy and Core Strategy Review and NE3 of the Places and Policies Local Plan which seek to protect or enhance the landscape character and functioning of Local Landscape Areas; and 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.

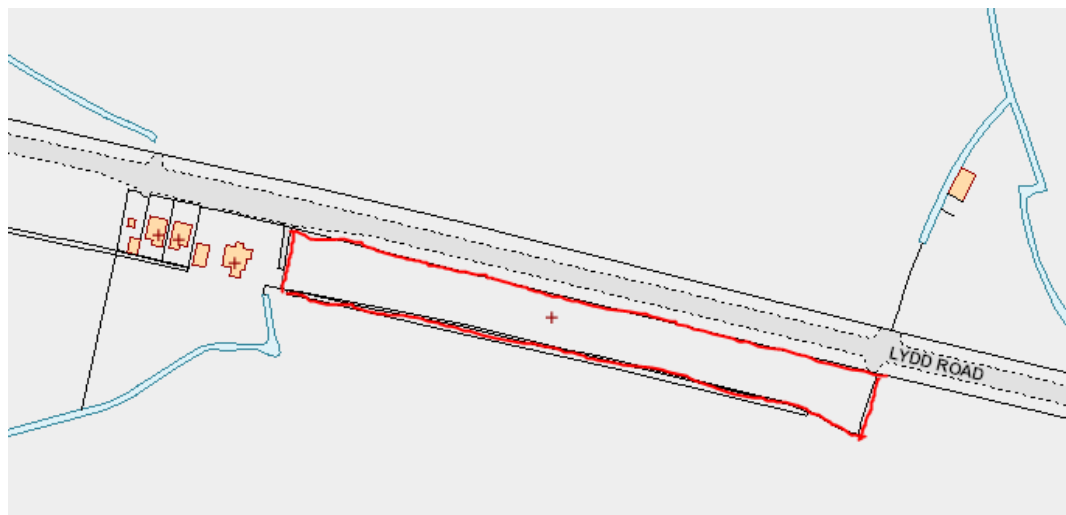
3. It has not been demonstrated by means of a desktop contamination report that the site and the hard core material that has been brought on to the site do not contain contaminant material that would be harmful to human health. As such the use of the site is contrary to policy NE7 of the Places and Policies Local Plan.
4. The site comprises Grade 1 agricultural land and its loss from agriculture is contrary to policy HW3 of the Places and Policies Local Plan and paragraph 170 of the National Planning Policy Framework. Policy HW3 seeks to resist the loss of the best and most versatile agricultural land unless there is a compelling and overriding planning reason to do so and mitigation is provided through the provision of productive landscapes on-site or in the locality.

#### **RECOMMENDATIONS:**

- 1. To receive and note report DCL/20/52.**
- 2. That an Enforcement Notice(s) be served requiring the cessation of the residential use; the removal of the caravans/mobile homes and associated materials and paraphernalia; removal of the hardcore; and the reinstatement of the grass.**
- 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 southern side of A259 Lydd Road, between Old Romney and Lydd on part of the marsh know as Rhee Wall. Immediately to the west of the site are 3 residential dwellings and immediately to the west of them is an allocated gypsy site which was granted planning permission in 2019 for five mobile homes and a community hall to provide travellers' accommodation. The location of the site is shown below roughly outlined in red below at Figure 1.



*Figure 1 – Site Plan*

- 1.2 The site is located within the locally designated Romney Marsh Local Landscape Area and outside of any defined settlement boundary under the Places and Policies Local Plan. 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 the Local Plan policies relating to the Local Landscape Area are relevant.
- 1.3 Prior to the unauthorised development taking place the site comprised an agricultural field, open on all four sides with a short stretch of hedgerow along the roadside boundary. On the 2018 aerial photograph (Figure 2 below) it is shown to have been grassed. It is a greenfield site and is classified as Grade 1 under the Agricultural Land Classification.
- 1.4 The site also falls within a Site of Special Scientific Interest (SSSI) Impact Risk Zone where Natural England are a statutory consultee on all non householder applications affecting greenfield sites outside of settlements. It is within an Archaeological Notification Area which requires KCC consultation on all planning applications. In terms of flood risk, the site falls outside Flood Zones 2 and 3 as shown on the Environment Agency flood maps. They border the site and overlap the boundaries but for the most part the site is outside. The site is not shown as being at risk under the Council's Strategic Flood Risk Assessment, apart from a very small section shown to be a low risk in 2115.

*Figure 2 - Aerial photograph of the site in 2018*



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

- 2.1 In June 2020 the Council received complaints about an access being formed, the land being subdivided into plots, motorhomes on the land and the erection of fencing and works to provide water and electricity to the plots. The Enforcement Officer was advised (during initial inspection) that a planning application would be submitted for the works within 6 weeks. No application was submitted and subsequent complaints were received about hardcore being laid. A subsequent inspection found three mobile homes had been installed on the land, this was followed by a fourth. In addition, ranch style post and rail fencing was erected within the site and stock proof fencing around boundaries, together with hedging plants.
- 2.3 Below at Figures 3 and 4 are photographs taken in August 2020.

*Figure 3 – Site entrance August 2020*



*Figure 4 Site August 2020*



- 2.4 In August 2020 a Planning Contravention Notice was served to obtain information necessary to investigate the breach and to inform any subsequent enforcement action. A Temporary Stop Notice was also served requiring the use of the land for residential purposes and all works associated with the construction of the hardstanding and access to cease with immediate effect. The Temporary Stop Notice ceased to have effect on 18<sup>th</sup> September 2020.
- 2.5 On 28<sup>th</sup> August, 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 14<sup>th</sup> October 2020 when a further court hearing took place. Due to difficulties encountered by the Process Server in tracing all relevant persons on whom the injunction had to be served, the full hearing was adjourned until 27<sup>th</sup> January 2021 and a further interim injunction was served. At the January hearing a third injunction was granted to the Council prohibiting the same development as the first and that injunction has effect until 27<sup>th</sup> January 2024. The defendants were also ordered to pay the Council's costs of £3,546.60. The injunction has only just been issued by the Court at the time of writing and arrangements are being made for its service.
- 2.6 On 10<sup>th</sup> August 2020 a planning application was submitted for the change of use of land for 4 pitch Gypsy & Traveller site with associated operational development including 2no new entrances, installation of 2 water treatment plants, hardstanding and landscaping. 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. None of the requested information was received by the date given and despite further requests and extra time given to provide the information, only some of it was submitted. The application was finally returned as invalid on 25<sup>th</sup> February 2021.

- 2.11 By early October 2020 the number of mobile homes on the site had increased to 4 and repositioned on the site with work appearing to have been undertaken to lay out the site and subdivide it. See Figures 5 and 6 below.

*Figure 5 – Early October 2020*



*Figure 6 – Early October 2020*





- 2.7 Later in October 2020 several of the mobile homes on the site were irreparably damaged in high winds and the majority of the resultant debris has been cleared from the site, although some does remain. Since then there have only been two mobile homes on the site. Photographs of the site taken in October 2020 after the storm are included below at Figures 7 and 8.

*Figure 7*



*Figure 8*



- 2.8 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 commenced in June 2020, neither are immune from enforcement action.
- 2.9 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. Therefore, all of the development referred to above constitute a breach of planning control for which no planning permission has been granted.
- 2.10 The fencing that has been erected along the site boundaries and within the site appears to be within the height necessary to be permitted development.

### **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

HW3 - Development That Supports Healthy, Fulfilling and Active Lifestyles

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 to the west of this site for Gypsy and Traveller accommodation with capacity for 4 pitches comprising amenity blocks, parking for static and touring caravans, visitor parking and storage.

Policy HW3 includes a requirement that proposals should not result in the loss of the best and most versatile agricultural land (Grades 1, 2 and 3a) unless there is a compelling and overriding planning reason to do so and mitigation is provided through the provision of productive landscapes either on-site or in the locality.

#### 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, protected habitats and the best and most versatile agricultural land.

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.*

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:

- a) the need for the site
- b) sustainability;
- c) impact on the Local Landscape Area,
- d) impact on the residential amenity of neighbours,
- e) highway safety,
- f) impact on protected habitats, biodiversity,
- g) contamination and;
- h) loss of best and most versatile agricultural land.

### **(a) Need for the site**

4.2 In considering the existing provision and need for sites, the NPPF (Paragraph 60) requires LPAs 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 Planning Policy for Traveller Sites (PPTS) (Paragraph 4) requires LPAs 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 sites 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 the allocated site at 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 The Planning 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. However, the existing traveller pitch provision in the district is currently met through privately owned family sites and as such there is no alternative accommodation in the district available to the occupants of this site.
- 4.7 In these circumstances 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".
- 4.8 A confidential statement was submitted with the invalid planning application which made reference to the gypsy traveller status of the site occupants and set out the reasons for their need for a site. A planning statement submitted with the invalid application stated that each of the 4 pitches would contain one mobile home and one touring caravan and there would be 2 Klargester sewage treatment plants for the whole site, each serving 6-8 people. In terms of occupants, it stated that the plots will all be occupied by members of the same family or family members that are associated by marriage, that the women on the site have been left in extreme conditions through no fault of their own and that they cannot be expected to live by the roadside with children. This would have negative and long lasting detrimental impact on the family.
- 4.9 Despite requests no information has been provided with the invalid application on the family's connections to the district, whether they have stayed in the district before or to demonstrate that they are 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.

### **(b) Sustainability**

- 4.10 The Council's Settlement Hierarchy seeks to maintain the character and integrity of the countryside, and protect 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.
- 4.11 The application site is outside any settlement boundary and the nearest supermarket, shops, schools and other services are in the town of New Romney, the centre of which is approximately 3km from the site. The majority of the journey is along an A road with no footpaths and subject to the national speed limit of 60mph. Although the site is on a bus route the occupants of the site would be predominantly reliant on their own private transport to access shops and other facilities in New Romney and Ashford. Therefore, it is considered that the site is in an unsuitable location for residential accommodation and, as such, it not supported by local or national planning policy in this respect. Although there is an allocated traveller site to the west of the neighbouring dwellings, this was the only site that had been put forward and was available to meet the need identified in the GTAA following a thorough process by the Council to identify a suitable, available and deliverable site.
- 4.12 While 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, no justification has been provided in this case as to why the occupants cannot locate at 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.

### **(c) Impact on Local Landscape Area**

- 4.13 The site comprises a formerly undeveloped green field immediately adjacent to the road. The hardstanding, mobile homes/caravans etc on the site are clearly visible from the road in what is a very flat and open landscape. The unauthorised development that has taken place has completely changed the rural character and appearance of the site from a grassed agricultural field to an urbanised appearance with a considerable area of hard surfacing. 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. Planting has taken place along the road boundary which would in time provide some screening, however, it is not known whether the species planted are native and if not they too would appear alien in the landscape. It is accepted that there is an allocated site to the west of the neighbouring dwellings which is also visible from the road, however, that site was allocated to meet an identified need and it has a planning permission in place which is subject to conditions requiring the implementation of a landscaping scheme and removing permitted development rights, in order to mitigate impacts as

much as possible. It is a larger site, with the majority of mobile homes set back from the road frontage, so the visual impact from the road is slightly less than this site. The continued residential use of this site, with its associated residential paraphernalia would further consolidate the domestication of the landscape which already exists from the existing neighbouring development and this would adversely impact on the visual amenity of the landscape. This site in such close proximity to the existing one has had a greater impact on the overall character of this part of the Local Landscape Area as it has cumulatively resulted in a more urbanised appearance to this part of the Marsh which previously consisted of a small conclave of visually isolated dwellings. This is contrary to paragraph 25 of the Planning Policy for Traveller Sites which seeks to ensure that sites in rural areas respect the scale of, and do not dominate, the nearest settled community. Without sufficient justification of need and why the accommodation has to be provided in this particular location it is not considered that there is sufficient justification for accepting further visual impact on the countryside. As such, the development is considered to be detrimental to the character and appearance of the landscape, failing to protect or enhance this part of the Romney Marsh Local Landscape Area and contrary to national and local planning policies which seek to protect valued landscapes.

#### **(d) Impact on residential amenity**

- 4.14 This is a site of four traveller pitches on an elongated site fronting an A road. As such the activity associated with the residential pitches is spread out along the site, rather than being concentrated adjacent to the nearest residential dwelling adjoining the site to the west. Given this, it is not considered that the activity associated with the use of the site for four residential pitches is such that it has a significant adverse impact on the amenity of the existing residents.

#### **(e) Highway safety**

- 4.15 The use of the site for four residential caravan pitches results in an increased use of the access than the previous agricultural use. The access is directly onto the A259 which is the main route between New Romney/Lydd and Ashford. However, the entrance is on a straight section of road with good visibility in both directions.
- 4.16 KCC Highways and Transportation comments on the invalid planning application were that, although further information was required, visibility splays for the two access points should be achievable. Therefore it is considered that the increased use of the access resulting from the use of the site is unlikely to result in an objection from KCC Highways and Transportation on grounds of highway safety. In light of this the use is not considered to be detrimental to highway safety

#### **(f) Protected species & biodiversity**

- 4.16 No ecological desktop study was originally submitted with the invalid application to identify any protected species or habitat on the site. However,

one has subsequently been submitted which concludes there is no requirement for protected species surveys. Given the agricultural nature of the field and the lack of hedgerows and trees around the site it is considered that the development that has taken place is unlikely to have resulted in any significant adverse ecological impacts. Natural England were consulted on the application as it falls within an SSSI Impact Risk Zone and did not raise any objection.

#### **(g) Contamination**

- 4.17 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.

#### **(h) Loss of best & most versatile agricultural land**

- 4.18 Paragraph 170 of the NPPF requires planning decisions to recognise the economic and other benefits of the best and most versatile agricultural land and policy HW3 of the PPLP seeks to resist the loss of such land unless there is a compelling and overriding planning reason and unless mitigation is provided through the provision of productive landscapes on site or in the locality. This site is shown to be Grade 1 agricultural land which is land of the highest agricultural quality. For all the reasons set out at paragraphs 4.2 – 4.9 above, it is not considered that there is a need for this site and as such there is no overriding or compelling need for the loss of this Grade 1 land.

### **5 CONCLUSION**

- 5.1 The site is in an unsustainable location in the countryside. The formalisation of the site and the visual impact of the mobile homes/caravans and hard core is detrimental to the rural character of the area and the special landscape character of the Local Landscape Area. The development has resulted in a loss of Grade 1 agricultural land and it is not possible to demonstrate that there is no contamination on the site which would cause a hazard to occupants. As such this is considered to be unacceptable development in the countryside for which no need has been demonstrated, contrary to the requirements of national and local planning policies relating to gypsies and travelers and countryside and agricultural land 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 and hard core and the reinstatement of the grass.

### **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 would be children of various ages living on the site. No information was provided with the invalid planning application on whether they attend schools locally. However, given the short length of time that they would have been living on the site, the fact that schools have been closed for long periods of time during this period due to Covid 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:

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