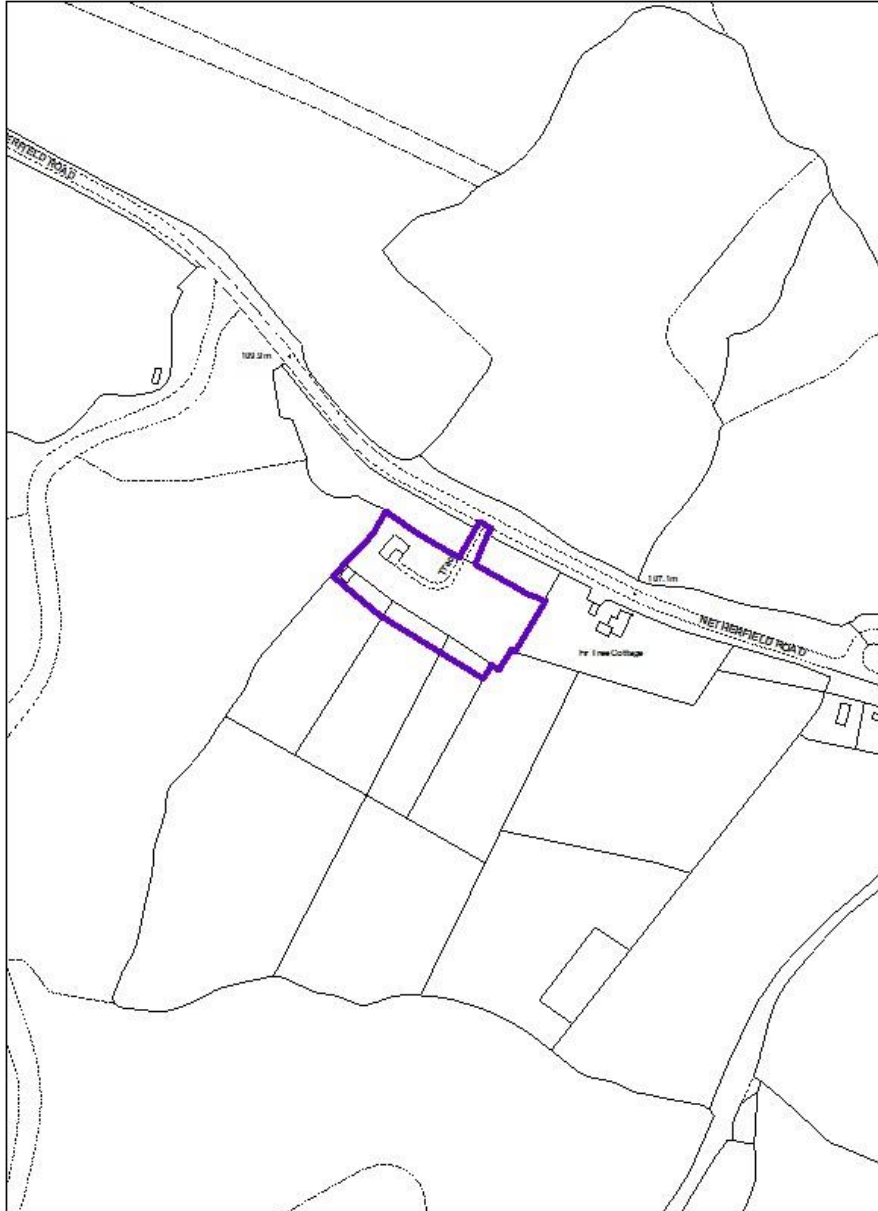


SITE PLAN

BATTLE

RR/2020/599/P

Fir Tree Cottage - Land to the rear of,



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Not To Scale

Rother District Council

Report to - Planning Committee
Date - 13 August 2020
Report of the - Executive Director
Subject - RR/2020/599/P
Address - Firtree Cottage – land to rear of
Netherfield Hill
BATTLE
Proposal - Change of Use of land for the stationing of 2 No. mobiles and 2 No. tourers and associated operational development including widening of access, for residential use by Gypsy & Traveller family (Retrospective)

[View application/correspondence](#)

RECOMMENDATIONS:

PLANNING APPLICATION: It be **RESOLVED** to **REFUSE (FULL PLANNING)**

ENFORCEMENT NOTICE: In the event that it is resolved to refuse planning permission then it be **RESOLVED** that, subject to being satisfied evidentially, the Solicitor to the Council be authorised to **ISSUE THE APPROPRIATE ENFORCEMENT NOTICE** and take any other steps necessary including legal action under Sections 179 and 181 of the Town & Country Planning Act 1990.

Head of Service: Tim Hickling

Applicant: Mr B. Smith
Agent: Ms L. Jennings
Case Officer: Mr M. Worsley
(Email: matthew.worsley@rother.gov.uk)
Parish: BATTLE
Ward Members: Councillors Mrs V. Cook and K.M. Field

Reason for Committee consideration: Member referral: Councillor K.M. Field: Overdevelopment of the site, outside the development boundary and too far away for the services etc. which traveller sites need

Statutory 8-week date: 4 June 2020
Extension of time agreed to: 21 August 2020

This application is included in the Committee site inspection list.

1.0 SUMMARY

- 1.1 On balance, it is considered that based on the information submitted, and that the two-family units are related and appear to have a form of co-dependency, the occupants of the site fall within the definition of Gypsy and Travellers (G&T) contained within the Planning Policy for Traveller Sites (PPTS). Hence their personal circumstances are material considerations. However, the site is within the countryside, outside any development boundary, as defined in saved Policy DS3 of the Rother District Local Plan (2006). The application has been assessed against the Council's policies for G&T; together with the Government's PPTS. The Council's requirement (under Policy LHN5 of the Core Strategy) to identify a further six permanent pitches to be provided between 2016 and 2028 to meet the identified need has been satisfied by the sites allocated under Policies GYP1 and BEX3 of the Development and Site Allocations (DaSA) Local Plan. The application site is not an allocated site and being outside areas allocated in the development plan, does not accord with paragraph 25 of the PPTS. Determining the application on its planning merits, the use of the site as a G&T site would cause harm to the character and appearance of the rural area.
- 1.2 The two mobile caravans, two touring caravans, parked vehicles and the presence of other external domestic paraphernalia at the site considerably harm the landscape and scenic beauty of the Area of Outstanding Natural Beauty (AONB). The caravans appear incongruous and foreign in this countryside setting and have changed the character of the site from rural to residential.
- 1.3 The site is occupied by four adults and five dependent children. In this case the best interests of the children living on the site do fall to be considered. They are a primary consideration. However, there is considered to be no reason why very similar benefits for the children occupying the application site could not be achieved on another settled site, such as the Bexhill allocation within the DaSA. For the same reason, the medical issues of two of the adults occupying the site could be catered for in a similar way on another settled site, such as the Bexhill allocation within the DaSA.
- 1.4 The site lies within an unsustainable countryside location where occupiers of the development are highly reliant on private motor vehicles and are not able to make the fullest possible use of public transport, walking and cycling to access local services and facilities.
- 1.5 In addition, the development would result in the deterioration of an irreplaceable habitat, an ancient woodland, by way of increased disturbance, lighting from the caravans, compaction of the ground where the touring caravans would be stored and the uncertainty surrounding how foul and surface water drainage would be dealt with. The impact of the development on protected species has not been assessed and therefore it has not been satisfactorily demonstrated that the development would not be harmful in this respect.
- 1.6 The overall conclusion is that the considerable harm to the AONB, harm to ancient woodland and protected species, together with the unsustainable location, outweighs the other considerations, including in particular the best

interests of the children, as very special circumstances have not been demonstrated in this case to justify granting planning permission.

- 1.7 The development does not comply with policies contained within the Core Strategy and the DaSA, or with the various provisions set out within the National Planning Policy Framework (NPPF), and therefore the application cannot be supported.
-

2.0 SITE

- 2.1 The application site lies to the southern side of Netherfield Hill. It is positioned between Firtree Cottage to the east and Ashes Wood to the west, which is designated as ancient woodland and is also covered by a 'Right to Roam'. There is a Public Right of Way around 200m east of the site linking Netherfield Hill to Ashes Wood to the south.
- 2.2 The site is served by a vehicular access onto Netherfield Hill measuring around 17m in length and 6m in width. There is a screen of trees and vegetation across the frontage, either side of the access. The remainder of the site measures around 80m in width and 37m in depth. The field to the south is owned by the Applicant and is being used to keep chickens.
- 2.3 The site is located within the countryside outside of a recognised development boundary. It is within the High Weald AONB and is within the Brede Valley Landscape Character Area.
-

3.0 PROPOSAL

- 3.1 As set out in the application, permission is sought for the retention of two mobile homes, two touring caravans, a parking area for two cars, the widening of the vehicular access from single vehicle width to around 6m, which included the removal of some roadside vegetation, a shingle track and the installation of a sewage treatment plant, for residential use by G&T families. The development is concentrated on the west side of the site. To the east of the track, an orchard is proposed to be planted.
- 3.2 One of the mobile caravans has been placed on the concrete base of a stable block that has been removed and the other is positioned to the south of this. The development has already been carried out earlier this year, save for a shingle track requiring completion. It is also the case that whilst the package treatment plant has been placed in the ground, it is not connected to an electricity supply and is therefore not operational. The Applicant has advised that the treatment plant is being used to collect waste and is being emptied manually. A licence from the Environment Agency will be sought prior to connection and any waste being discharged.
- 3.3 The site is occupied by two families. One plot (to be referred to as 'Plot 1') is occupied by a female adult with five dependent children and the second plot (to be referred to as 'Plot 2') is occupied by a female adult (married to the Applicant whom does not live on the site permanently) and two adult sons.

- 3.4 The application was originally accompanied by a planning statement and a confidential letter explaining the occupiers' personal circumstances. Additional information has subsequently been submitted including further confidential personal information, two separate traffic surveys, a tree report and technical details relating to the package treatment plant.
- 3.5 In relation to sensitive personal data, the Council is required to comply with the Data Protection Legislation and must not publish any personal information which would breach this legislation. To ensure compliance, information considered to be pertinent to the application has been explained in general terms only.
-

4.0 HISTORY

- 4.1 RR/2006/3158/P Erection of detached two storey dwelling house including dormer windows and rooflights – Refused.
- 4.2 RR/2005/1001/P Erection of private stable block of three stables and a hay store – Approved Conditional.
- 4.3 A/56/304 Outline: permission to erect an agricultural dwelling – Refused.
-

5.0 POLICIES

- 5.1 The following 'saved' policy of the adopted [Rother District Local Plan 2006](#) is relevant to the proposal:
- DS3: Development boundaries
- 5.2 The following policies of the [Rother Local Plan Core Strategy 2014](#) are relevant to the proposal:
- PC1: Presumption in favour of sustainable development
 - OSS1: Overall spatial development strategy
 - OSS2: Use of development boundaries
 - OSS3: Location of development
 - OSS4: General development considerations
 - BA1: Policy framework for Battle
 - RA2: General strategy for the countryside
 - RA3: Development in the countryside
 - SRM1: Towards a low carbon future (Note that part (i) was superseded by the Rother District Council Development and Site Allocations (DaSA) Local Plan)
 - SRM2: Water supply and wastewater management
 - CO6: Community safety
 - LHN5: Sites for the needs of Gypsies and Travellers
 - LHN6: Gypsies, Travellers and Travelling Showpeople criteria
 - EN1: Landscape stewardship
 - EN3: Design quality
 - EN5: Biodiversity and green space
 - TR3: Access and new development
 - TR4: Car parking

- 5.3 The following policies of the [Development and Site Allocations Local Plan](#) are relevant to the proposal:
- DEN1: Maintaining landscape character
 - DEN2: AONB
 - DEN4: Biodiversity and green space
 - DEN5: Sustainable drainage
 - DEN7: Environmental pollution
 - DIM2: Development boundaries
 - BEX3: Land at North Bexhill – infrastructure
 - BEX3c: Land east of Watermill Lane
 - GYP1: Land adjacent to High Views, Loose Farm Lane, Battle
- 5.4 In relation to the Battle Neighbourhood Plan, a pre-submission consultation (Regulation 14) was carried out between 20 January 2020 and 1 March 2020. Given the relatively early stage of the plan, it is of very limited weight in relation to this application.
- 5.5 The NPPF, Planning Practice Guidance (PPG), PPTS and High Weald AONB Management Plan 2019 - 2024 are also material considerations.
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6.0 CONSULTATIONS

6.1 Highway Authority – NO OBJECTION

- 6.1.1 Comment that Netherfield Hill (C96) is subject to the national speed limit as such visibility splays of 2.4m x 215m would usually be required. Following the results of a seven-day speed survey it has been demonstrated that visibility splays in accordance with actual speeds are achievable. Conditions relating to the reconstruction of the access, visibility splays and the provision of an on-site turning space are recommended.
- 6.1.2 By way of background, prior to the submission of the seven-day speed survey, the Highway Authority advised that there was insufficient information to determine if the proposal would lead to the intensification of a substandard access. The previous speed survey had been submitted to demonstrate that visibility splays in accordance with actual speeds are achievable; however, the data was based on a single survey which given the timing may not be an accurate representation. They requested that an additional speed survey was commissioned.

6.2 Environment Agency – GENERAL COMMENTS

- 6.2.1 More information requested regarding the sewage treatment plant that has been installed. Advise that they have no record of any application for an environmental permit, which is required for this type of foul drainage.

6.3 Forestry Commission – GENERAL COMMENTS

- 6.3.1 Letter dated 22 May 2020 - comments summarised:
- Dispute the information provided on the application forms, and specifically the claim that no trees, hedges or important/priority habitats would be affected as the woodland directly adjacent to the site is a Plantation on Ancient Woodland Site (PAWS).

- Concerned how higher numbers of residents will affect the adjacent woodland, especially with no clear indication of how sewerage is to be treated. Request more information on this and how surface water drainage will be managed.
- Would not agree to any discharge into the adjacent woodland as this would affect the hydrology and nutrient composition which could cause damage.
- Reports that a section of trees and shrubs have been cleared which they are investigating as to whether a breach of the Forestry Act 1967 has occurred.
- Request that any new fencing is only FSC and Grown in Britain certified timber and preferably locally sourced.

6.3.2 Letter dated 9 July 2020 relating to the tree survey and arboricultural impact assessment. Comments summarised:

- Encourage the Council to take account of the identified category A trees when assessing the damage that may have already occurred by the development of the site.
- Report states that the current proposals do not impact on any of the trees on-site. As the works have already been carried out, they cannot be regarded as 'proposals'.
- Additional management and protective measures are superfluous as the development has already taken place.
- The report states that the root protection area should be 8.2m from the tree line. Their joint standing advice with Natural England recommends a minimum distance of 15m from the edge of the canopy of ancient woodland and PAWS.
- In Appendix C, plate 1 it notes that the corner of one of the mobile caravans is on an existing concrete base in excess of 8m from the tree line. At least 15m should be provided. The ground between the woodland edge and the caravan appears to have been disturbed. Clarity on this point is requested.
- In summary, other than the statements testifying the true value of the trees, the report does not support the application. Most of the report references methods and protection that should be considered before work commences. As work has been completed the recommendations cannot be complied with.

6.4 Forestry England – **OBJECTION**

6.4.1 Comments summarised:

- The site falls within 500m of a PAWS/ancient woodland which forms part of the Public Forest Estate.
- The development has already been carried out.
- The site is not in an allocated area for G&T sites within the district.
- It is an inappropriate residential development within the AONB.
- The effects of increased hard standing and subsequent surface water run-off have not been dealt with adequately.
- This coupled with unregularised effluent discharge into the adjoining woodland will have a detrimental effect on the buffer zone and the ancient woodland beyond.
- Concerns that this will impact on both the ecology and the tree species selection due to nutrient imbalance.

- Concerns about waste management together with inappropriate access.

6.5 High Weald AONB Unit – **OBJECTION**

6.5.1 Comments summarised:

- Insufficient information has been provided about the potential impact on Ancient Woodland which is an irreplaceable habitat protected by objective W1 of the AONB Management Plan and paragraph 175(c) of the NPPF.

6.6 Planning Notice

6.6.1 138 objections have been received, including a letter from the Campaign to Protect Rural England (CPRE) and a letter from a solicitor on behalf of 125 residents from 70 households. The concerns raised are summarised as follows:

G&T status and current local provision

- No evidence submitted demonstrating the G&T status of the occupiers, therefore the planning policies for G&Ts should not apply.
- The occupiers of the site need to demonstrate a nomadic way of life.
- The Council cannot accept the planning agent's assessment without more evidence or simply say it has no evidence to the contrary.
- If Gypsy status is satisfactorily demonstrated, that is not itself a material consideration of sufficient weight to overrule local and national policies which are also material.
- A permanent permission should not be considered as future occupiers would need to be assessed as to whether they are within the definition of a G&T.
- A condition stating the site can only be occupied by G&Ts may not be enforceable.
- Applicant has been registered at an address in Burgess Hill since 2014.
- There is no shortfall in pitches against the objective need – allocations have been made in the Core Strategy and DaSA.
- There must be more suitable sites outside of the AONB.

Location

- Site is within the countryside, outside of a development boundary.
- The site is not allocated for G&Ts.
- The site occupies an unsustainable location and its occupiers would be reliant on private vehicles.
- Within the Battle Civil Parish proposed Battle-Netherfield Strategic Gap.

AONB

- NPPF and development plan policies require great weight to be given to protecting the AONB.
- More intensive and alien development out of character with the intrinsic landscape features of the area.
- Domestic activity and paraphernalia would be out of character with the countryside.
- Caravans are detrimental to the visual amenities of the locality.

- The unique and beautiful medieval landscape is important in attracting tourism and business to the area.
- Vegetation has been removed at the entrance with the access widened.
- Tall gates and a close boarded fence have been erected.
- Overdevelopment.
- Permission for chalets/mobile homes has previously been refused at Battle Golf Club.
- The site is visible from the road, public footpaths and the surrounding woodland.
- Potential for further development in the future given the size of the site.

Biodiversity and Ancient Woodland

- Development already carried out and therefore wildlife/ecology will have been harmed.
- No ecological survey has taken place.
- Ancient woodland is present adjacent to the site.
- Development is harmful to the ancient woodland.
- Adjacent to farmland (downstream) with risk of nitrate pollution.
- Pollution from foul and surface water.
- Risk of noise pollution to woodland.
- A deer crossing is present on the site.
- The submitted Tree Survey and Arboricultural Impact Assessment does not explain that the site is within the AONB, within a PAWS buffer zone, is adjacent to a Public Forest Estate, PAWS and Priority Habitats site.
- The submitted Tree Survey and Arboricultural Impact Assessment does not assess the impact that the development already carried out has had on the woodland.

Highway safety

- Vehicular movements to and from the site will increase and due to substandard visibility, there would be increased traffic hazards.
- There are no pavements in the vicinity of the site.
- First traffic survey was undertaken during lockdown conditions due to COVID-19 when road usage was much less.
- First speed survey was carried out in the middle of the day. In non-lockdown conditions this would have omitted the rush hours and school drop off and pick-ups.
- First speed survey did not record all the vehicles passing the site – data collection method is unreliable.
- Description of roadside vegetation within the first speed survey is unreliable.
- Conclusions within the first speed survey are unreliable.
- Site cannot be adequately accessed by vehicles towing caravans, nor does it provide adequate provision for parking, turning and access for emergency vehicles.

Other

- A precedent would be set if this development is allowed.
- The site has a lawful use for agriculture.
- Site has little by way of established infrastructure.
- Enforcement action must be taken immediately to stop any further work.
- Lack of detail on drainage and waste disposal.

- Foul drainage discharge and surface water would be harmful to the surrounding environment.
- No noise assessment, refuse disposal strategy, assessment of significance or G&T statement has been submitted.
- Inaccurate statements and information provided within the application.
- Permission has previously been refused on the site for a single dwelling – same reasons for refusal should apply for this development.
- Directly borders an Archaeological Notification Area of Medieval Quarry Pits.
- Risk of noise pollution to settled community.
- Substantial developments have planning permission at Lillybank Farm and Darvel Down – any other residential development in the area should be refused.
- No design details of the mobile homes have been provided. This is not unusual, and it is customary for applicants to accept a condition that the mobile homes must meet the legal definition of a caravan.
- Council should require details of size and appearance of the caravans and impose a condition requiring prior consent to the design of any future replacement.
- Within the planning statement it says the footprint of the site would be enlarged.
- The development would unreasonably harm the amenities of neighbouring properties.
- Little if any weight can be given to personal circumstances. There are substantial planning objections founded in local and national policy.
- Human rights are a consideration. However, nobody has a right to be granted planning permission as this would disable entirely the UK's planning control system.
- Human rights of local residents should also be considered.
- The Council should give material consideration to government planning policy on intentional unauthorised development.

6.6.2 One general online comment has been received which is summarised as follows:

- Inadequate provision of sites for Travellers.
- The site does not interfere with anyone.

6.7 Town Council – **OBJECTION**

6.7.1 *'Council note the flagrant disregard for the planning process and lack of accurate and complete documentation. It is highlighted that this is outside the development boundary in an AONB and is strongly opposed.'*

7.0 **LOCAL FINANCE CONSIDERATIONS**

7.1 The type of development for which permission is sought is not Community Infrastructure Levy liable.

8.0 APPRAISAL

8.1 Before the main issues are discussed, the planning history of the site and the necessary policy considerations are set out below.

8.2 Planning history of the site

8.2.1 Under planning application reference RR/2005/1001/P a stable block building was granted planning permission. No change of use of the land to equestrian was involved. The land and stable block had an agricultural use.

8.2.2 In 2007, under planning application reference RR/2006/3158/P, planning permission was refused for a two-storey dwelling on the site. There were three reasons for refusal which are summarised as follows:

1. The site is within the AONB where policies at the time indicated that development would be carefully controlled to protect the character of the area. The proposal was considered to have a harmful effect on the rural character of the area.
2. The site lies outside of a recognised development boundary where policies at the time restricted the creation of new dwellings.
3. *'By reason of the introduction of a new dwelling utilising the existing access point the additional development would give rise to an increase in vehicular traffic hazards and would be detrimental to the free flow and safety of persons and vehicles by reason of the slowing, stopping, turning and reversing traffic. The access point does not have adequate visibility in either direction for the classification of road...'*

8.2.3 In February 2020, the Applicant purchased the site. In March/April 2020 the stable block building granted under reference RR/2005/1001/P was demolished and replaced with the development subject to this application, which is unauthorised. The retrospective planning application was submitted on the 9 April 2020.

8.3 Policy Considerations

8.3.1 Planning legislation holds that the determination of a planning application shall be made in accordance with the Development Plan unless material considerations indicate otherwise. Specifically Section 70(2) of the Town and Country Planning Act 1990 states:

"In dealing with such an application the authority shall have regard to:

- a) The provisions of the development plan, so far as material to application,*
- b) Any local finance considerations, so far as material to the application,*
and
- c) Any other material considerations."*

Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides:

"If regard is to be had to the development plan for the purposes of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise".

Using this as the starting point, the development plan consists of the Core Strategy, the DaSA, the saved policies in the Local Plan 2006 and the 'made' Neighbourhood Plans.

8.3.2 Policy LHN6 of the Core Strategy, against which all planning applications for G&T sites will be assessed, states:

Site allocations will be made and/or planning permission granted for G&T and Travelling Showpeople sites, when all of the following criteria are met:

- (i) The site is not located in a nature conservation designated area, in an area at risk of flooding (flood zones 3a & 3b or a functional floodplain), in close proximity to a Source Protection Zone or significantly contaminated land;*
- (ii) The site should not result in an unacceptable visual or landscape impact, especially within the High Weald AONB taking account of proposed landscaping or screening;*
- (iii) The site is located within or close to an existing settlement and is accessible to local services by foot, by cycle or by public transport;*
- (iv) The site can be adequately accessed by vehicles towing caravans and provides adequate provision for parking, turning, and access for emergency vehicles;*
- (v) The site is not disproportionate in scale to the existing settlement;*
- (vi) Mixed use sites should not unreasonably harm the amenity of adjoining properties;*
- (vii) In the case of sites for Travelling Showpeople, the site must also be suitable for the storage of large items of mobile equipment;*

Where planning permission is granted, appropriate conditions or planning obligations will be imposed to ensure occupation of the site is restricted to those persons genuinely falling into the definitions of G&Ts and Travelling Showpeople.

8.3.3 Turning to national policy, which is a material planning consideration, Paragraph 23 of the PPTS (2015) sets out 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 and the PPTS.

8.3.4 When considering planning applications for Traveller sites, paragraph 24 of the PPTS explains the following issues amongst other relevant matters should be considered:

- 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 allocations 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.

8.3.5 At the end of paragraph 24 of the PPTS it is explained that "*as paragraph 16 makes clear, subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances*" (*emphasis added*). Clearly Green Belt is not relevant in this

case, but “*any other harm*” could include, for example, harm to the AONB, highway safety, ancient woodland, sustainability of location, etc.

- 8.3.6 Paragraph 25 of the PPTS explains that 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.
- 8.3.7 When considering applications, paragraph 26 of the PPTS states that local planning authorities should attach weight to the following matters:
- a) effective use of previously developed (brownfield), untidy or derelict land.
 - b) sites being well planned or soft landscaped in such a way as to positively enhance the environment and increase its openness.
 - c) promoting opportunities for healthy lifestyles, such as ensuring adequate landscaping and play areas for children.
 - d) not enclosing a site with so much hard landscaping, high walls or fences, that the impression may be given that the site and its occupants are deliberately isolated from the rest of the community.
- 8.3.8 In the event that the occupiers of the site are not considered to meet the PPTS definition of G&Ts, the application would need to be determined against Policy RA3 (iii) of the Core Strategy, which relates to the creation of new dwellings in the countryside. This policy allows the creation of new dwellings in the countryside in extremely limited circumstances including a) dwellings to support farming; b) the conversion of traditional historic farm buildings; c) the one-to-one replacement of an existing dwelling of similar landscape impact; and d) as a rural exception site to meet an identified local affordable housing need.

8.4 Main Issues

- 8.4.1 The main issues to consider in the determination of this application include:
- i) Whether the families occupying the site meet the PPTS definition of a “G&T” and consequently, whether the policies of the PPTS and those relevant policies in the Development Plan apply to them.
 - ii) The need for sites for Gypsies and Travellers, the provision of sites and the availability of alternative sites.
 - iii) The impact of the development on the character and appearance of the area, including the landscape and scenic beauty of the AONB.
 - iv) Accessibility to services and facilities.
 - v) Highway safety.
 - vi) The effect on the adjacent ancient woodland and protected species.
 - vii) The impact on the living conditions of occupants of nearby residential properties.
 - viii) Personal circumstances, human rights and best interests of the children.
 - ix) Intentional unauthorised development.
 - x) The overall balance and whether any harm identified would be clearly outweighed by other considerations. If so, whether this would amount to very special circumstances which would justify the proposal.

8.5 G&T Status

- 8.5.1 It is important to establish the G&T status of the occupiers of the site to determine whether the policies of the PPTS and those relevant policies in the Development Plan apply to them.
- 8.5.2 Within the glossary of the PPTS, paragraph 1 states that for the purposes of the PPTS “G&Ts” means:
‘Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own family’s or dependants’ educational or health needs or old age have ceased to travel temporarily, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.’
- 8.5.3 Paragraph 2 of the glossary in the PPTS explains that in determining whether persons are “gypsies and travellers” for the purposes of the PPTS, consideration should be given to the following issues amongst other relevant matters:
- a) whether they previously led a nomadic habit of life;
 - b) the reasons for ceasing their nomadic habit of life; and
 - c) whether there is an intention of living a nomadic habit of life in the future, and if so, how soon and in what circumstances.
- 8.5.4 The definition provided in the 2015 PPTS is a departure from the previous definition as it now no longer includes those who have ceased travelling permanently for any reason.
- 8.5.5 By way of background, the Equality and Human Rights Commission recently (September 2019) published a research report on the impact that the revised planning definition of G&Ts has had in terms of assessing accommodation need. It sets out a useful summary of the history behind how G&Ts have been defined in planning policy. It explains that for the past 50 years aspects of law and policy in England have sought to address a shortage of G&T sites to compensate for the closure of traditional stopping places on common land since 1960 (Caravan Sites and Control of Development Act, section 23). To restrict the use of such sites to those who have a genuine need for them, a definition of G&Ts as ‘persons of a nomadic habit of life, whatever their race or origin’ was introduced (Caravan Sites Act 1968, section 6).
- 8.5.6 The research report explains that ‘nomadic habit of life’ has been subject to significant interpretation in the higher courts. For instance, there needs to be a recognisable connection between travelling and how someone makes their living and that nomadism can be held in abeyance for a considerable amount of time. It also explains that the definition has been through several iterations since it was introduced but it has consistently focussed on individuals’ nomadic habit of life, rather than race.
- 8.5.7 From the information submitted, it is indicated that the current female adult occupants of the plots are married, and their partners still travel for work and therefore have a nomadic lifestyle. Confirmation that this remains the position has been requested from the agent and is awaited. It has further

been submitted that the two-family units that occupy the site are related and are often referred to as a singular family.

- 8.5.8 The occupant of Plot 1 has 5 dependent children (all understood to be of school age). Information accompanying the application explains that the female adult on Plot 2 grew up on a Gypsy site with her parents and has a cultural bias to live on a Gypsy site. It is stated that the different family members often travel together as a unit with extended family members and close friends. In terms of work, it is explained that the family are principally involved with building, landscaping and horse trading and that they have worked in various locations across the United Kingdom. It is explained that a settled base is sought temporarily for both healthcare and educational reasons. However, the family would still travel during school holidays. It is explained that the female adult occupant on Plot 2 and her two elder sons are unable to travel unless the family travel all together due to health issues.
- 8.5.9 Information submitted explains that during the COVID-19 pandemic, horse fayres were cancelled and work became very sparse. It is stated that living by the roadside would have a severe detrimental effect on the health and wellbeing of the family, so they had no choice but to move on to the site. They were finding it impossible to self-isolate living by the roadside. It is further explained that their nomadic lifestyle would cease during lockdown but would recommence once restrictions were lifted. This is taken to mean that the occupiers would only travel in school holidays but would otherwise reside at the site whilst the children require education.
- 8.5.10 Whilst the application has been under consideration the Local Planning Authority has written to the planning agent to request additional information and evidence on how each of the occupiers meets the PPTS definition of Gypsies and Travellers.
- 8.5.11 A G&T Liaison Officer from another County within the United Kingdom has confirmed that they have known the current adult occupier of Plot 1 and her husband for five years and that her parents lived a nomadic way of life up until they were offered a plot on one of that Council's Traveller sites. The officer also confirms that the adult occupier of Plot 1 has been brought up and has followed a nomadic way of life. This form of independent verification, from a Gypsy and Liaison Officer, is usually accepted as adequate to confirm an individuals G&T status.
- 8.5.12 In respect of the current occupants of Plot 2, the Local Planning Authority has been unable to verify their G&T status with any Traveller Liaison Team. However, two separate letters have been submitted by a recognised Travellers rights activist who resides outside of the district together with one from someone who works in Robertsbridge who know the adult female occupant and her parents as Travellers. The recognised Travellers rights activist explains they have known the family for many years and has stopped with them at the roadside on many occasions. They explain they are aware of them being constantly moved from car parks and school playing fields and have nowhere to live due to a national shortage of sites. In respect of the person who works in Robertsbridge, they explain that they have known the adult female occupant for over 30 years and has always known her and her parents to be Travellers.

- 8.5.13 Whilst this additional supporting evidence backs up the information submitted with the application, the Local Planning Authority still has reservations over whether the occupants of Plot 2 meet the PPTS definition and have lived a nomadic way of life, with the information being somewhat vague. The family are not known to either East or West Sussex Traveller Liaison Teams, and despite requesting that the planning agent provides details of a G&T Liaison Team within the United Kingdom that could independently verify their status, no such evidence has been forthcoming. In addition, having carried out a Land Registry search on the application site, the Applicant's address was listed as a bricks and mortar dwelling in another County. This was queried with the planning agent who explained this was a 'care of' address only.
- 8.5.14 The information provided on the status of the site occupants is considered limited. Information submitted describes how the family have lived a nomadic way of life however the Local Planning Authority has not been able to independently verify this in relation to Plot 2. On balance, it is considered that based on the information submitted, and that the two-family units are related and appear to have a form of co-dependency, the occupants of the site fall within the definition of G&Ts contained within the PPTS. Hence their personal circumstances are material considerations.
- 8.6 The need for sites for G&T, the provision of sites and the availability of alternative sites
- 8.6.1 In terms of development plan policies, Policy LHN5 of the Rother Local Plan Core Strategy (2014) requires provision to be made for five permanent pitches within Rother for G&T over the period 2011-2016, and a further six pitches between 2016 and 2028. These requirements have been met either through implemented planning permissions or through the allocation of two sites (totalling six pitches) within the DaSA (Policies BEX3, BEX3c & GYP1). The DaSA sites are currently unoccupied and do not have extant planning permission.
- 8.6.2 For the reasons set out above, it is considered that sufficient land for G&Ts has been provided through allocations. The Applicant has not provided any evidence to demonstrate that these sites will not come forward and thus there is currently no unmet need for sites for G&Ts in the area.
- 8.7 Character and Appearance
- 8.7.1 Section 85 of the Countryside and Rights of Way Act 2000 provides that, in exercising or performing any functions in relation to, or so as to affect, land in an AONB, a relevant authority shall have regard to the purpose of conserving and enhancing the natural beauty of the AONB. The essential landscape character of the High Weald AONB that makes it special is described within the Statement of Significance within the AONB Management Plan 2019-2024. The plan also sets objectives for the management of the AONB relating to geology, landform and water systems; settlement; routeways; woodland; field and heath; land-based economy and related rural life; and other qualities.
- 8.7.2 Paragraph 170 of the NPPF states that decisions should contribute to and enhance the natural and local environment by a) protecting and enhancing

valued landscapes and b) recognising the intrinsic character and beauty of the countryside.

- 8.7.3 Paragraph 172 of the NPPF sets out that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs, which have the highest status of protection in relation to these issues. It explains that the conservation and enhancement of wildlife and cultural heritage are also important considerations.
- 8.7.4 Policy OSS4 (iii) of the Core Strategy requires that all development respects and does not detract from the character and appearance of the locality.
- 8.7.5 Policy BA1 of the Core Strategy states that proposals for development and change in Battle will (i) maintain the essential physical form, local distinctiveness, character and setting of the town, particularly in and adjacent to the Conservation Area.
- 8.7.6 Policy RA2 of the Core Strategy sets out the overarching strategy for the countryside outside the main confines of settlements, including: (viii) generally conserving the intrinsic value, locally distinctive rural character, landscape features, built heritage, and the natural and ecological resources of the countryside.
- 8.7.7 Policy RA3 (v) of the Core Strategy requires that all development in the countryside is of an appropriate scale, will not adversely impact on the landscape character or natural resources of the countryside and, wherever practicable, support sensitive land management.
- 8.7.8 Policy EN1 provides for the protection, and wherever possible enhancement, of the district's nationally designated and locally distinctive landscapes and landscape features including (i) the distinctive identified landscape character, ecological features and settlement pattern of the AONB and (v) open landscape between clearly defined settlements, including the visual character of settlements, settlement edges and their rural fringes.
- 8.7.9 Turning to the DaSA, Policy DEN1 provides that the siting, layout and design of development should maintain and reinforce the natural and built landscape character of the area in which it is to be located, based on a clear understanding of the distinctive local landscape characteristics, in accordance with Core Strategy Policy EN1. Particular care will be taken to maintain the sense of tranquillity of more remote areas, including through maintaining 'dark skies' in accordance with Policy DEN7.
- 8.7.10 In respect of the distinctive local landscape characteristics, the site is located within the Brede Valley Landscape Character Area, which the East Sussex Landscape Character Assessment describes in detail. Within the assessment the landscape evaluation of the current condition explains that Brede Valley is a largely unspoilt and tranquil rural landscape with few intrusive features. The landscape is in generally good condition and well managed as farmland with a strong historic structure. Orchards have declined and many disappeared so that associated Oast houses have been converted to residential uses. Agricultural change has led to some gentrification of the rural landscape and villages. As with most of the High

Weald landscape the historic field patterns of small fields and significant hedgerows remain intact.

- 8.7.11 Policy DEN2 of the DaSA states that all development within or affecting the setting of the High Weald AONB shall conserve and seek to enhance its landscape and scenic beauty, having particular regard to the impacts on its character components, as set out in the High Weald AONB Management Plan. Development within the High Weald AONB should be small scale, in keeping with the landscape and settlement pattern; major development will be inappropriate except in exceptional circumstances.
- 8.7.12 The High Weald AONB is characterised by green rolling countryside, of a pastoral nature, punctuated by small areas of woodland, small towns, villages and hamlets. The application site lies in an open countryside setting, away from any established settlement. Much of the application site is open agricultural land mainly laid to grass, surrounded by ancient woodland. In terms of AONB features, the boundaries of the site and field to the south, together with the adjoining field to the east (in separate ownership), are identified as historic field boundaries. The development for which permission is sought is concentrated towards the northwest corner of the field, behind a screen of vegetation which separates it from the road.
- 8.7.13 Caravans are not characteristic of the immediate landscape. The mobile homes and the touring caravans can be seen from the road and the surrounding ancient woodland which is covered by a Right to Roam. Views would change with the seasons as the trees and hedgerows come in and out of leaf and for this reason the development is likely to be more visible in the winter months. Whilst a stable block has been demolished, this, together with the previous use of the site, was rural in character. The caravans, on the other hand, appear incongruous and foreign in this countryside setting and change the character of the site to one of residential use. On top of this is the inevitable presence of external domestic paraphernalia such as vehicles, play equipment, washing and lighting at night from inside the caravans which will add to the harmful impact that the development has.
- 8.7.14 For the reasons set out, the development is viewed as representing a visual intrusion of caravans in a rural, countryside setting which considerably harms the character and appearance of the AONB, contrary to Rother Local Plan Core Strategy Policies OSS4 (iii), BA1 (i), RA2 (viii), RA3 (v), EN1 (i) (v) and LHN6 (ii) and Rother District Council Development and Site Allocations (DaSA) Local Plan Policies DEN1 and DEN2.

8.8 Accessibility to services and facilities

- 8.8.1 The site is within the countryside around 1.5km from the development boundary of Battle and around 2.5km from the centre of the market town, where most of the services are found. The village of Netherfield is also in excess of 2km from the site. The occupants of the development are dependent on the use of private vehicles for day-to-day requirements, with limited alternatives being available to access any shops, transport or other facilities due to the nature of the lane and its length together with a lack of pavements. These issues have also been identified by the Highway Authority in relation to the site's inaccessibility.

8.8.2 The development undermines the aims of local and national planning Policies, which seek to direct development, and that of residential accommodation, to settlements where there is ready access to facilities. The development is contrary to Policies PC1, OSS3 (v), SRM1 (vii), LHN6 (iii) and TR3 of the Core Strategy and paragraph 8 of the NPPF which seek to minimise the need to travel and to support the transition to a low carbon future.

8.9 Highway safety

8.9.1 Policy CO6 (ii) of the Core Strategy requires all development avoids prejudice to road and/or pedestrian safety. Policy LHN6 (iv) of the Core Strategy requires the site to have adequate access by vehicles towing caravans and provides adequate provision for parking, turning and access for emergency vehicles.

8.9.2 The site access is on the southern side of Netherfield Hill (C96) along a section of the road that is subject to the national speed limit (60mph). The stable block granted in 2005 was served by an access only capable of accommodating one vehicle in one direction at any given time. That access has been widened to around 6m by the current owner and forms part of the development for which permission is sought to retain.

8.9.3 The Highway Authority has advised that visibility splays of 2.4m x 215m should be provided in each direction. The subsequently submitted speed surveys and observations made by officers on site show that to the northwest of the site only 2.4m x 95m is achievable and to the southeast 2.4m x 155m.

8.9.4 Two separate speed surveys have been carried out by the Applicant. The first was very limited in scope. It was carried out on Tuesday 26 May 2020 between the hours of 12.15 and 15.25 using a radar. To put this into context, the survey was carried out for just over three hours, covering part of an off-peak period for one weekday during a time when there were severe restrictions on movement due to the COVID-19 pandemic.

8.9.5 Due to the limitations of the speed survey, the Highway Authority raised an objection and advised that insufficient information had been provided to determine whether the proposal would lead to the intensification of a substandard access. The Highway Authority advised that they generally require a seven-day speed survey, taken in a typical month, where the variation across a day and week is evident. This feedback was passed to the Applicant and a seven-day speed survey was subsequently carried out week commencing 13 July 2020.

8.9.6 The Highway Authority has commented that the seven-day speed survey has been carried out to determine visibility in accordance with actual speeds. They note that traffic volumes may have been reduced on a few of the days surveyed but considering the survey covers seven days, overall, the speed data is likely to give an accurate representation of normal conditions on Netherfield Hill. They advise that the results of the speed survey indicate 85%tile speeds of 40mph westbound and 37.1mph eastbound. They state that the submitted report indicates that visibility splays of 2.4m x 54.1m to the northwest and 93.3m to the southeast should

therefore be provided; however, this is based on wet weather speeds. The Highway Authority advise that CA185 updated the guidance on the use of wet and dry weather speeds when determining visibility splays and advise it is now considered more appropriate to add on 4kph (2.5mph) should the survey be carried out during wet weather periods. On this basis they state that the original 85%tile speeds should be used to determine visibility splays as these speeds were observed during dry conditions. Using dry weather speeds the Highway Authority advise the visibility requirement is 2.4m x 92m to the northwest and 2.4 x 103m to the southeast. They state that the available visibility splays of 2.4m x 95m to the northwest and 2.4m x 155m to the southeast exceed the visibility requirements set out in Design Manual for Roads and Bridges and on this basis are accepted.

8.9.7 In respect of the widened access, the Highway Authority advise that it is suitable to accommodate two-way traffic. However, they explain that it requires reconstruction to accommodate the additional trips generated by the change of use. The access gates are positioned 16m from the carriageway and as such there is sufficient distance for a touring caravan to wait clear of the highway whilst the gates are operated.

8.9.8 In respect of turning, the Highway Authority advise that a vehicle tracking plan has not been provided to demonstrate that the touring caravans can turn within the site. However, given the size of the site it is expected that turning within the site is achievable.

8.9.9 Based on the seven-day speed survey and the advice provided by the Highway Authority, it has been satisfactorily demonstrated that adequate visibility splays in accordance with actual vehicle speeds can be provided. The access is also considered satisfactory for vehicles towing caravans to enter and egress and there is sufficient space to park and turn vehicles on site. There would be no increased risk to highway safety and therefore the development complies with Policies CO6 (ii) and LHN6 (iv) of the Core Strategy.

8.10 Ancient woodland and protected species

8.10.1 Paragraph 175 (c) of the NPPF states that development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists. Objective W1 of the High Weald AONB Management Plan requires the existing extent of woodland and particularly ancient woodland to be maintained.

8.10.2 Policy EN5 of the Core Strategy states that biodiversity, geodiversity and green space will be protected and enhanced, by multi-agency working where appropriate, to (viii) ensure that development retains, protects and enhances habitats of ecological interest, including ancient woodland, water features and hedgerows, and provides for appropriate management of these features.

8.10.3 Policy DEN4 of the DaSA sets out:

Development proposals should support the conservation of biodiversity and multi-functional green spaces in accordance with Core Strategy Policy EN5 and the following criteria, as applicable:

- (ii) development proposals should seek to conserve and enhance:*
 - (a) The biodiversity value of international, national, regional and local designated sites of biodiversity and geological value, and irreplaceable habitats (including ancient woodland and ancient or veteran trees).*
 - (b) Priority Habitats and Species; and Protected Species, both within and outside designated sites.*

Depending on the status of habitats and species concerned, this may require locating development on alternative sites that would cause less or no harm, incorporating measures for prevention, mitigation and (in the last resort) compensation.

- 8.10.4 Standing advice produced by the Forestry Commission and Natural England states that the direct impacts of development on ancient woodland or ancient and veteran trees include:
 - Damaging or destroying all or part of them (including their soils, ground flora or fungi).
 - Damaging roots and understorey (all the vegetation under the taller trees).
 - Damaging or compacting soil around the tree roots.
 - Polluting the ground around them.
 - Changing the water table or drainage of woodland or individual trees.
 - Damaging archaeological features or heritage assets.
- 8.10.5 The standing advice explains that nearby development can also have an indirect impact on ancient woodland or ancient and veteran trees and the species they support. These can include:
 - Breaking up or destroying connections between woodlands and ancient or veteran trees.
 - Reducing the amount of semi-natural habitats next to ancient woodland.
 - Increasing the amount of pollution, including dust.
 - Increasing disturbance to wildlife from additional traffic and visitors.
 - Increasing light or air pollution.
 - Increasing damaging activities like fly-tipping and the impact of domestic pets.
 - Changing the landscape character of the area.
- 8.10.6 The standing advice states that local planning authorities and developers should identify ways to avoid negative effects on ancient woodland or ancient and veteran trees. This could include selecting an alternative site for development or redesigning the scheme.
- 8.10.7 In terms of the recommended separation of development from ancient woodland, the standing advice states that a buffer zone of at least 15m should be provided to avoid root damage. Where assessment shows other impacts are likely to extend beyond this distance, a larger buffer zone is likely to be required. For example, the effect of air pollution from development that results in a significant increase in traffic.

- 8.10.8 Ashes Wood adjoins the west boundary of the application site. It is designated as ancient woodland, a PAWS. A tree survey and arboricultural impact assessment dated June 2020 has been submitted during the application. It explains that a desktop study and field survey were undertaken. The general condition of the woodland is described as fair to good. The structural condition of the trees is assessed as good and no major signs of disease, pathogen, fungal bodies or insect infestations were observed. In terms of specimen value, the trees in the woodland are categorised as Category A trees/woodland and are considered of high cultural, historical, ecological and environmental value.
- 8.10.9 The assessment states that the development does not impact on the woodland as there are no construction or excavation works planned. It explains that the mobile caravans already present on site have been positioned on an already existing concrete base or away from the woodland edge and outside of any root protection areas. Within the recommendations it states that no vehicular activity, construction or excavation activities take place within 8.2m of the tree line.
- 8.10.10 Whilst a tree survey and arboricultural impact assessment has been submitted, it does not fully assess the impact of the development on the ancient woodland, especially in relation to increased activity and lighting. Before the tree survey and arboricultural impact assessment were commissioned, the Local Planning Authority advised the planning agent that any development should be at least 15m from the edge of the ancient woodland and therefore any caravans and parking areas within the 15m buffer zone should be moved. In this respect, no amendments have been proposed.
- 8.10.11 One of the mobile caravans has been placed on the concrete base of the former stable block which is around 8.2m from the edge of the woodland. Whilst this may not have resulted in any additional damage to tree roots, the impact of increased activity and lighting has not been assessed. It is appreciated that a stable block once occupied the same position as one of the mobile caravans but this would not have had lights shining into the woodland at night and in the darkness of winter, with the potential to disturb wildlife, including protected species, which are a key component of ancient woodlands.
- 8.10.12 The tree survey and arboricultural impact assessment recommends that no vehicles are parked within 8.2m of the woodland. In line with the standing advice, the buffer zone should be at least 15m. Nevertheless, the area to park the touring caravans remains in very close proximity to the woodland and would result in compaction of the root protection area of trees which would be harmful to the ancient woodland.
- 8.10.13 Turning to foul drainage, a package treatment plant has been placed in the ground, but it is not connected to an electricity supply and is therefore not operational. The Applicant has advised that the treatment plant is being used to collect waste and is being emptied manually. The planning agent has advised that a licence from the Environment Agency will be sought prior to connection and any waste being discharged.

8.10.14 In terms of surface water drainage, the application form states that surface water would be discharged to an existing watercourse. However, this is not detailed on the submitted plans and it is not clear where this existing watercourse is located. The gutters from the mobile caravans are currently discharging straight onto the ground.

8.10.15 The development has been carried out and therefore it is not known whether the ancient woodland was adequately protected when the caravans were delivered to the site. Nevertheless, the mobile home positioned on the base of the former stable block and the storage area for the touring caravans are within the 15m buffer zone of the ancient woodland, contrary to standing advice from the Forestry Commission. The development would result in the deterioration of an irreplaceable habitat, an ancient woodland, by way of increased disturbance, lighting from the caravans, compaction of the ground where the touring caravans would be stored and the uncertainty surrounding how foul and surface water drainage would be dealt with. Additionally, the impact of the development on protected species has not been assessed and therefore it has not been satisfactorily demonstrated that the development would not be harmful to them. In line with paragraph 175 of the NPPF, permission should be refused, given that no wholly exceptional reasons or a suitable compensation strategy has been provided.

8.11 Living conditions of occupants of nearby residential properties

8.11.1 The immediate neighbouring property to the east, 'Firtree Cottage', is the only nearby residential property that is likely to be directly impacted by the development. Whilst other local residents may see glimpses of the development as they drive past or walk by the site, they should not be impacted in any other way.

8.11.2 The mobile caravan positioned closest to Firtree Cottage is around 50m from the shared boundary. An orchard is proposed to be planted next to shared boundary. Given the substantial separation, no unacceptable overlooking, loss of outlook or loss of light occurs. The development comprises two residential units and are unlikely to generate significant or harmful levels of activity or noise. There are no adverse impacts on the living conditions of the occupants of the neighbouring property 'Firtree Cottage'.

8.12 Personal circumstances, human rights and the best interests of children

8.12.1 Local planning authorities must consider all the circumstances including the personal circumstances of those living on the site. Consideration must be given to Convention rights protected under the Human Rights Act 1998 (in particular Article 8 in the case of development that is someone's home), the best interests of any children affected in accordance with the Children Act 2004, and regard must be had to the Public Sector Equality Duty (set out in Section 149 of the Equality Act 2010). Section 149 provides as follows:

A public authority must, in the exercise of its functions, have due regard to the need to—

(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

8.12.2 The PPG contains the following guidance:

Should children's best interests be taken into account when determining planning applications?

Local authorities need to consider whether children's best interests are relevant to any planning issue under consideration. In doing so, they will want to ensure their approach is proportionate. They need to consider the case before them, and need to be mindful that the best interests of a particular child will not always outweigh other considerations including those that impact negatively on the environment or the wider community. This will include considering the scope to mitigate any potential harm through non-planning measures, for example through intervention or extra support for the family through social, health and education services.

Paragraph: 028 Reference ID: 21b-028-20150901

Revision date: 01 09 2015

- 8.12.3 The Local Planning Authority is advised that two of the adults and two of the children living on the site have significant medical conditions and learning difficulties. In respect of one of the adults, evidence has been provided to substantiate their health issues. It demonstrates that they have significant medical needs and they are not able to live independently. In respect of the other adult and two children, no evidence has been provided by way of letters from medical or educational practitioners to support the claims made in the submitted statements, although the planning agent has been asked to provide this.
- 8.12.4 If planning permission is refused, and any subsequent appeal is dismissed, it is likely that the families would have to leave the site. This would result in the interference with their human rights regarding Article 8 of the European Convention on Human Rights. It encompasses respect for family life and the home. It is consistent with relevant caselaw that the best interests of children should be a primary consideration in any decision on the application, although is not necessarily the determining factor.
- 8.12.5 The best interests of the children living on the site are to remain on the site and for the development to be retained as provided. An ordered and settled site would afford them the best opportunity of a stable, secure and happy family life, opportunities for education, ready access to health and other services (albeit the site is not considered to be sustainably located) and opportunities for play and personal development.
- 8.12.6 However, there is considered no reason why very similar benefits could not be achieved on another settled site, such as those allocated in the DaSA. Whilst the single pitch site allocated under Policy GYP1 of the DaSA would not be sufficient in size to accommodate the two-family units, the one allocated under BEX3c would be. On this basis there is an alternative site available which reduces the weight which can be given to the families' personal circumstances.

- 8.12.7 The Local Planning Authority has asked the planning agent to explain how the allocated DaSA sites have been considered and if they are not suitable and/or available, why this is the case. In response the agent has explained that it is traditionally accepted that Romany Gypsies will only settle with people who marry into the family or are related by a direct bloodline. The intended occupants also must take into consideration the health issues of the children. The agent explains that it would not be appropriate for them to share a site with an unknown family and the children would be extremely unsettled.
- 8.12.8 The comments from the agent are noted but they have not been supported by any evidence, such as correspondence from a medical practitioner, to explain that the health of the occupiers would prevent them living with other families. The five pitches at land east of Watermill Lane, Bexhill allocated within the DaSA are not occupied and therefore sharing with other families would not currently be an issue. It is not considered that these allocated pitches have been adequately considered. It is not considered reasonable for such alternative provision to be dismissed solely due to the potential for other families to occupy them in the future. Further, there is the possibility that family or friends of the current occupants of the site could occupy them.
- 8.13 Intentional Unauthorised Development
It is Government policy that intentional unauthorised development is a material consideration that should be weighed in the determination of planning applications and appeals. The written ministerial statement announcing this policy expressed concern that where the development of land has been undertaken in advance of obtaining planning permission there is no opportunity to appropriately limit or mitigate the harm that may have been caused. However, it is considered relevant to note that planning legislation allows for retrospective planning applications and that guidance on how much weight the aforementioned policy should be given is not clear. Furthermore the planning system is not intended to be punitive but to secure compliance with legitimate planning objectives. It is also considered relevant to have regard to the specific circumstances of this matter and the challenges posed by COVID-19.
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9.0 PLANNING BALANCE AND CONCLUSION

- 9.1 Planning legislation holds that the determination of a planning application shall be made in accordance with the Development Plan unless material considerations indicate otherwise. It is therefore necessary for the planning application to be assessed against the policies in the Development Plan and then to take account of other material planning considerations including the NPPF.
- 9.2 On balance, it is considered that based on the information submitted, and that the two-family units are related and appear to have a form of co-dependency, the occupants of the site fall within the definition of G&Ts contained within the PPTS. Hence their personal circumstances are material considerations. However, the site is within the countryside outside any defined development boundary, as defined in saved Policy DS3 of the Rother District Local Plan (2006). The application has been assessed against the Council's policies for G&Ts; together with the Government's

Planning Policy for Traveller Sites (PPTS). The Council's requirement (under Policy LHN5 of the Core Strategy) to identify a further 6 permanent pitches to be provided between 2016 and 2028 to meet the identified need has been satisfied by the sites allocated under Policies GYP1 and BEX3 of the DaSA Plan. The application site is not an allocated site and being outside areas allocated in the development plan, does not accord with paragraph 25 of the PPTS. Determining the application on its planning merits, the use of the site as a G&T site causes harm to the character and appearance of the rural area, and the proposal conflicts with Policies OSS4 (iii), RA2 (iii) (viii), RA3 (v), LHN6 (ii), and EN1 (i) of the Core Strategy, Policies DEN1 and DEN2 of the DaSA, saved Policy DS3 of the Local Plan (2006) and paragraph 172 of the National Planning Policy Framework.

- 9.3 The development represents a visual intrusion of caravans in a rural, countryside setting which considerably harms the character and appearance of the AONB. On top of this is the presence of external domestic paraphernalia such as vehicles, play equipment, washing and lighting at night from inside the caravans which add to the harmful impact that the development has. For these reasons the development conflicts with Policies OSS4 (iii), BA1 (i), RA2 (viii), RA3 (v), EN1 (i) (v) and LHN6 (ii) of the Core Strategy, Policies DEN1 and DEN2 of the DaSA, paragraphs 170 and 172 of the NPPF and Policy H, paragraph 25 of the PPTS. In accordance with paragraph 172 of the NPPF, great weight must be given to the harm that the development has on the landscape and scenic beauty of the AONB.
- 9.4 At the end of paragraph 24 of the PPTS it is explained that *“as paragraph 16 makes clear, subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh.....any other harm so as to establish very special circumstances”*. In this case the best interests of the children living on the site do fall to be considered. They are a primary consideration. However, as explained earlier in the report, there is no reason why very similar benefits for the children staying on the application site could not be achieved on another settled site, such as the Bexhill allocation within the DaSA. Given the availability of another site, only moderate weight in the occupiers' favour can be given to this matter. For the same reason, only moderate weight can be given to the medical issues of the two adults on the site as they too could be catered for in a similar way on another settled site, such as the Bexhill allocation within the DaSA.
- 9.5 The location of the site is unsustainable. The development undermines the aims of local and national planning policies, which seek to direct development, and that of residential accommodation in particular, to settlements where there is ready access to facilities; as well as being contrary to local and national policies on moving to a low carbon future. The development conflicts with Core Strategy Policies PC1, OSS3 (v), SRM1 (vii), LHN6 (iii) and TR3, which are broadly consistent with the NPPF's aim to promote and encourage sustainable transport. Given that the development consists of just two residential units, the harm is somewhat limited, but should still be afforded moderate weight.
- 9.6 Turning to the impact of the development on the ancient woodland, it would result in the deterioration of an irreplaceable habitat, by way of increased disturbance, lighting from the caravans, compaction of the ground where the touring caravans would be stored and the uncertainty surrounding how foul

and surface water drainage would be dealt with. Additionally, the impact of the development on protected species has not been assessed and therefore it has not been satisfactorily demonstrated that the development would not be harmful to them. The development conflicts with Policies EN1 (vi) and EN5 (viii) (ix) of the Core Strategy, Policy DEN4 (ii) of the DaSA together with standing advice produced by the Forestry Commission and Natural England relating to ancient woodlands. In line with paragraph 175 of the NPPF, permission should be refused, given that no wholly exceptional reasons or a suitable compensation strategy has been provided. Harm to ancient woodland, an irreplaceable habitat, should be afforded significant weight.

- 9.7 Taking all matters into consideration, the overall conclusion is that the considerable harm to the AONB, harm to the ancient woodland and protected species, together with the unsustainable location, outweighs the other considerations as set out in this report, including in particular the best interests of the children. As very special circumstances have not been demonstrated there is no justification granting planning permission.

RECOMMENDATION: REFUSE (FULL PLANNING)

REASONS FOR REFUSAL:

1. The site is within the countryside outside any defined development boundary, as defined in saved Policy DS3 of the Rother District Local Plan (2006). The application has been assessed against the Council's policies for G&Ts; together with the Government's Planning Policy for Traveller Sites (PPTS). The Council's requirement (under Policy LHN5 of the Core Strategy) to identify a further six permanent pitches to be provided between 2016 and 2028 to meet the identified need has been satisfied by the sites allocated under Policies GYP1 and BEX3 of the DaSA Plan. The application site is not an allocated site and being outside areas allocated in the development plan, does not accord with paragraph 25 of the PPTS. Determining the application on its planning merits, the use of the site as a G&T site causes harm to the character and appearance of the rural area, and the proposal conflicts with Policies OSS4 (iii), RA2 (iii) (viii), RA3 (v), LHN6 (ii), and EN1 (i) of the Rother Local Plan Core Strategy, Policies DEN1 and DEN2 of the Rother Development and Site Allocations (DaSA) Local Plan, saved Policy DS3 of the Rother District Local Plan (2006) and paragraph 172 of the NPPF.
2. The development represents a visual intrusion of caravans, vehicles and other external domestic paraphernalia in a rural, countryside setting which considerably harms the character and appearance of the High Weald AONB, contrary to Policies OSS4 (iii), BA1 (i), RA2 (viii), RA3 (v), EN1 (i) (v) and LHN6 (ii) of the Rother Local Plan Core Strategy, Policies DEN1 and DEN2 of the Rother District Council DaSA Local Plan, paragraphs 170 and 172 of the NPPF and Policy H, paragraph 25 of the Planning Policy for Traveller Sites.
3. The site lies within an unsustainable countryside location where occupiers of the development are highly reliant on private motor vehicles and are not able to make the fullest possible use of public transport, walking and cycling to access local services and facilities. The development is contrary to Policies

PC1, OSS3 (v), SRM1 (vii), LHN6 (iii) and TR3 of the Rother Local Plan Core Strategy and paragraph 8 of the NPPF which seek to minimise the need to travel and to support the transition to a low carbon future.

4. The development is located within 15m of an ancient woodland, contrary to standing advice produced by the Forestry Commission and Natural England. The development would result in the deterioration of an irreplaceable habitat, an ancient woodland, by way of increased disturbance, lighting from the caravans, compaction of the ground where the touring caravans would be stored and the uncertainty surrounding how foul and surface water drainage would be dealt with. Additionally, the impact of the development on protected species has not been assessed and therefore it has not been satisfactorily demonstrated that the development would not be harmful to them. Paragraph 175 of the NPPF directs that permission should be refused, given that no wholly exceptional reasons or a suitable compensation strategy has been provided. The development also conflicts with Policies EN1 (vi) and EN5 (viii) (ix) of the Rother Local Plan Core Strategy, Policy DEN4 (ii) of the Rother District Council DaSA Local Plan together with standing advice produced by the Forestry Commission and Natural England relating to ancient woodlands.

NOTE:

1. This decision notice relates to the following set of plans:
1:1250 Site Location Plan dated 7 April 2020
1:500 Block Plan dated 7 April 2020 (includes a sewage treatment plant)

NATIONAL PLANNING POLICY FRAMEWORK: In accordance with the requirements of the National Planning Policy Framework (paragraph 38) and with the Town and Country Planning (Development Management Procedure) (England) Order 2015, the Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and discussing those with the Agent. However, the issues are so fundamental to the proposal that it has not been possible to negotiate a satisfactory way forward and due to the harm which has been clearly identified within the reasons for the refusal, approval has not been possible.

10.0 ENFORCEMENT

10.1 Introduction

- 10.1.1 As set out within paragraph 58 of the NPPF, 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. If it is resolved to refused planning permission in line with the recommended reasons for refusal, it is considered proportionate to take enforcement action in order to remedy the breach of planning control.

10.2 Breach of Planning Control

- 10.2.1 Without planning permission, the material change of use of the land from agricultural to residential and the stationing of two mobile caravans, parking areas for two touring caravans and two cars, storage of two touring

caravans, parking of two cars, installation of a package treatment plant with connections to the mobile caravans and laying of hard surfacing. The change of use and associated operational development was carried out in March/April 2020.

10.3 The steps to be taken

- 10.3.1 Cease the residential use of land. Remove from the land the mobile caravans and any related operational development, including foul drainage connections and any hard surfacing (excluding the base to the stable block granted planning permission under RR/2005/1001/P). Remove from the land the touring caravans. Remove from the land the cars. Remove from the land the package treatment plant and the connections to the mobile caravans. Remove from the land the parking areas for the touring caravans and cars. Return the land to its former condition prior to the material change of use and carrying out of operational development.

10.4 Reasons for Taking Enforcement Action

- 10.4.1 The reasons for taking enforcement action would be in line with the recommended reasons to refuse planning permission which are as follows:

1. The site is within the countryside outside any defined development boundary, as defined in saved Policy DS3 of the Rother District Local Plan (2006). The application has been assessed against the Council's policies for G&Ts; together with the Government's Planning Policy for Traveller Sites (PPTS). The Council's requirement (under Policy LHN5 of the Core Strategy) to identify a further six permanent pitches to be provided between 2016 and 2028 to meet the identified need has been satisfied by the sites allocated under Policies GYP1 and BEX3 of the DaSA Plan. The application site is not an allocated site and being outside areas allocated in the development plan, does not accord with paragraph 25 of the PPTS. Determining the application on its planning merits, the use of the site as a G&T site causes harm to the character and appearance of the rural area, and the proposal conflicts with Policies OSS4 (iii), RA2 (iii) (viii), RA3 (v), LHN6 (ii), and EN1 (i) of the Rother Local Plan Core Strategy, Policies DEN1 and DEN2 of the Rother DaSA Local Plan, saved Policy DS3 of the Rother District Local Plan (2006) and paragraph 172 of the NPPF.
2. The development represents a visual intrusion of caravans, vehicles and other external domestic paraphernalia in a rural, countryside setting which considerably harms the character and appearance of the High Weald AONB, contrary to Policies OSS4 (iii), BA1 (i), RA2 (viii), RA3 (v), EN1 (i) (v) and LHN6 (ii) of the Rother Local Plan Core Strategy, Policies DEN1 and DEN2 of the Rother District Council DaSA Local Plan, paragraphs 170 and 172 of the NPPF and Policy H, paragraph 25 of the Planning Policy for Traveller Sites.
3. The site lies within an unsustainable countryside location where occupiers of the development are highly reliant on private motor vehicles and are not able to make the fullest possible use of public transport, walking and cycling to access local services and facilities. The development is contrary to Policies PC1, OSS3 (v), SRM1 (vii),

LHN6 (iii) and TR3 of the Rother Local Plan Core Strategy and paragraph 8 of the NPPF which seek to minimise the need to travel and to support the transition to a low carbon future.

4. The development is located within 15m of an ancient woodland, contrary to standing advice produced by the Forestry Commission and Natural England. The development would result in the deterioration of an irreplaceable habitat, an ancient woodland, by way of increased disturbance, lighting from the caravans, compaction of the ground where the touring caravans would be stored and the uncertainty surrounding how foul and surface water drainage would be dealt with. Additionally, the impact of the development on protected species has not been assessed and therefore it has not been satisfactorily demonstrated that the development would not be harmful to them. Paragraph 175 of the NPPF directs that permission should be refused, given that no wholly exceptional reasons or a suitable compensation strategy has been provided. The development also conflicts with Policies EN1 (vi) and EN5 (viii) (ix) of the Rother Local Plan Core Strategy, Policy DEN4 (ii) of the Rother District Council DaSA Local Plan together with standing advice produced by the Forestry Commission and Natural England relating to ancient woodlands.

10.5 Period for Compliance

- 10.5.1 Local planning authorities must consider all the circumstances including the personal circumstances of those living on the site. Consideration must be given to Convention rights protected under the Human Rights Act 1998 (in particular Article 8 in the case of development that is someone's home), the best interests of any children affected in accordance with the Children Act 2004, and regard must be had to the Public Sector Equality Duty (set out in Section 149 of the Equality Act 2010). Section 149 provides as follows:
A public authority must, in the exercise of its functions, have due regard to the need to—
(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 10.5.2 The Local Planning Authority is advised that two of the adults and two of the children living on the site have significant medical conditions and learning difficulties. In respect of one of the adults, evidence has been provided to substantiate their health issues. It demonstrates that they have significant medical needs and they are not able to live independently. In respect of the other adult and two children, no evidence has been provided by way of letters from medical or educational practitioners to support the claims made in the submitted statements, although the planning agent has been asked to provide this.
- 10.5.3 If planning permission is refused, enforcement action is taken and any subsequent appeals are dismissed/upheld, it is likely that the families would have to leave the site. This would result in the interference with their human rights regarding Article 8 of the European Convention on Human Rights. It

encompasses respect for family life and the home. It is consistent with relevant caselaw that the best interests of children should be a primary consideration in any decision.

- 10.5.4 The best interests of the children living on the site are to remain on the site and for the development to be retained as provided. An ordered and settled site would afford them the best opportunity of a stable, secure and happy family life, opportunities for education, ready access to health and other services (albeit the site is not considered to be sustainably located) and opportunities for play and personal development.
- 10.5.5 However, there is considered no reason why very similar benefits could not be achieved on another settled site, such as those allocated in the DaSA. Whilst the single pitch site allocated under Policy GYP1 of the DaSA would not be sufficient in size to accommodate the two-family units, the one allocated under BEX3c would be. On this basis there is an alternative site available which reduces the weight which can be given to the families' personal circumstances.
- 10.5.6 The Local Planning Authority has asked the planning agent to explain how the allocated DaSA sites have been considered and if they are not suitable and/or available, why this is the case. In response the agent has explained that it is traditionally accepted that Romany Gypsies will only settle with people who marry into the family or are related by a direct bloodline. The intended occupants also must take into consideration the health issues of the children. The agent explains that it would not be appropriate for them to share a site with an unknown family and the children would be extremely unsettled.
- 10.5.7 The comments from the agent are noted but they have not been supported by any evidence, such as correspondence from a medical practitioner, to explain that the health of the occupiers would prevent them living with other families. The five pitches at land east of Watermill Lane, Bexhill allocated within the DaSA are not occupied and therefore sharing with other families would not currently be an issue. It is not considered that these allocated pitches have been adequately considered. It is not considered reasonable for such alternative provision to be dismissed solely due to the potential for other families to occupy them in the future. Further, there is the possibility that family or friends of the current occupants of the site could occupy them.
- 10.5.8 For the occupiers of the site to find a suitable alternative site to suit the family's needs, which may involve selling the current site, a compliance period of 12 months is recommended.

RECOMMENDATION: In the event that it is resolved to refuse planning permission then it be **RESOLVED** that, subject to being satisfied evidentially, the Solicitor to the Council be authorised to **ISSUE THE APPROPRIATE ENFORCEMENT NOTICE** in line with the above requirements and take any other steps necessary including legal action under Sections 179 and 181 of the Town & Country Planning Act 1990.
