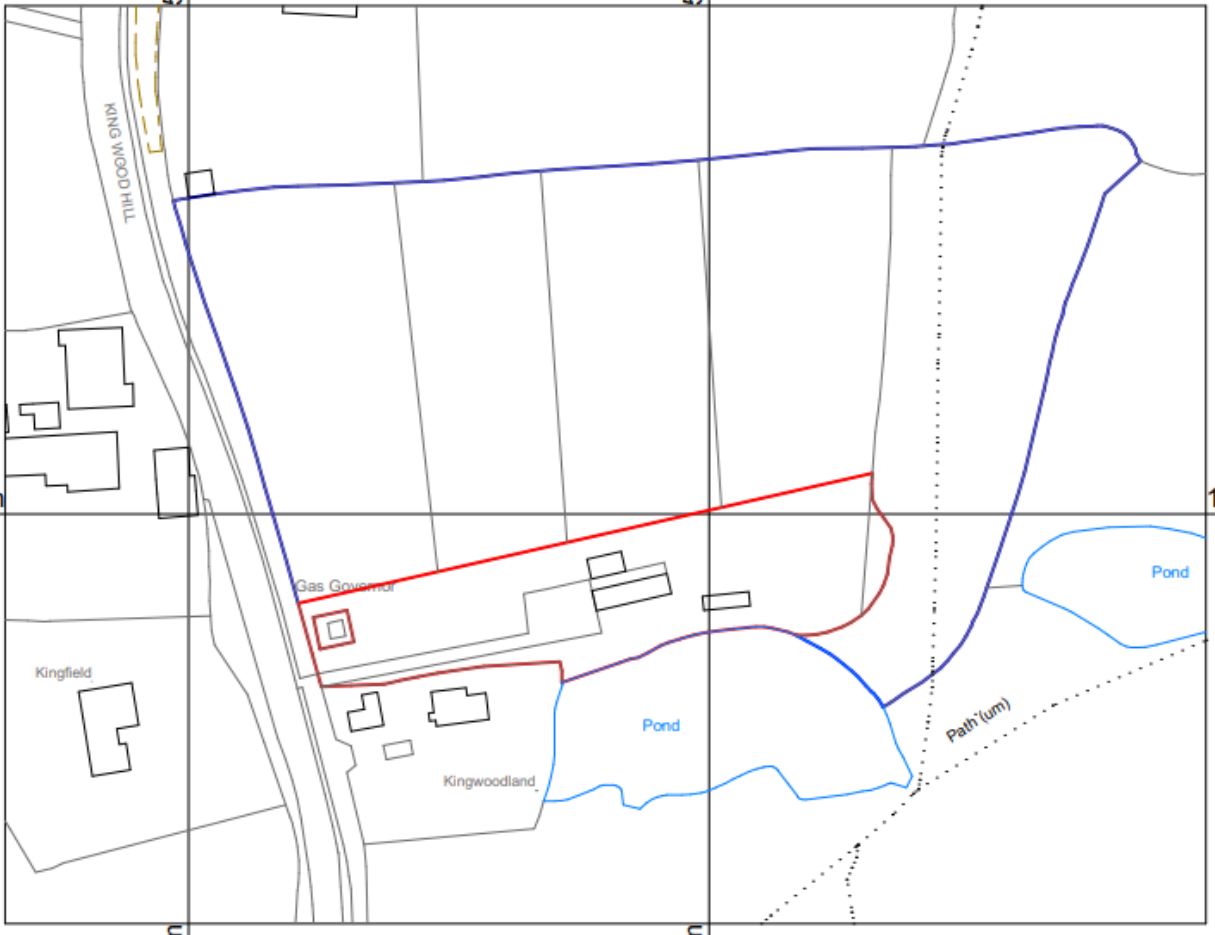


SITE PLAN

RR/2020/1613/P

BREDE

Kingwood Hill -  
Land on East side of



## Rother District Council

Report to - Planning Committee  
Date - 10 November 2022  
Report of the - Director – Place and Climate Change  
Subject - RR/2020/1613/P  
Address - Land on the East side of; Kingwood Hill,  
Broad Oak, Brede  
Proposal - Change of use of the land for the stationing of one mobile home and one touring caravan for Gypsy / Traveller occupation. Removal of existing mobile home. Associated hard and soft landscaping and proposed erection of a 'Day Room'. (Part retrospective)

[View application/correspondence](#)

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**RECOMMENDATION:** It be **RESOLVED** to **GRANT (FULL PLANNING)**

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**Director: Ben Hook**

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**Applicant:** Mr D. Penfold  
**Agent:** Mr S. McKay  
**Case Officer:** Mr O. Hurst (Email: [oliver.hurst@rother.gov.uk](mailto:oliver.hurst@rother.gov.uk))  
**Parish:** BREDE  
**Ward Member:** Councillor N. Gordon

**Reason for Committee consideration: Member referral: Councillor Vine-Hall**

**Statutory 8-week date: 19 May 2021**

**Extension of time agreed to: 18 November 2022**

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This application was deferred at the July 2022 Committee Meeting for the consideration of whether the site was deliverable and further information regarding education provision for the Applicant's children.

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### 1.0 SUMMARY

1.1 Since consideration at the Planning Committee in July of this year, the Applicant has submitted additional information that shows that the children have attended school locally. To support the Council's new Local Plan, Rother has worked with East Sussex local authorities to commission a joint [Gypsy, Traveller and Travelling Showpeople Accommodation Needs Assessment \(GTAA, 2022\)](#). This document strengthens the position that was adopted by the Inspector at the appeal for two gypsy and traveller pitches at Highviews, Battle in 2021 (RR/2019/1656/P) that the Council may

not currently have a deliverable five year supply of pitches and that the locally set targets contained within the Rother Local Plan Core Strategy are out of date. The need for the proposed accommodation is identified in the GTAA.

- 1.2 Since the last committee meeting, the Applicant has submitted an Ecological Report. This report concludes that there would be a minimal impact on biodiversity due to the low ecological value of the site. The site is identified as falling within a 'red impact risk zone' for great crested newts (GCN). Naturespace has been consulted on the application and they consider that the impacts to GCN are considered to be very low. They have commented that the reasonable avoidance measures should be carried out to minimise impacts to GCN and common amphibians. A planning condition is recommended to secure this and the other mitigation measures contained within the Ecological Report. Also a note is suggested to remind the Applicant about the obligations in respect of GCN.
- 1.3 Based on the information submitted the occupants of the site fall within the definition of Gypsy and Travellers (G&T) contained within the National Planning Policy Framework for Traveller Sites (PPTS). Hence their personal circumstances are material considerations. However, the site is outside any development boundary, as defined in the Development and Site Allocations (DaSA). The application has been assessed against the Council's policies for G&T; together with the National PPTS. The Council's requirement (under Policy LHN5 of the Rother Local Plan Core Strategy) is to identify six permanent pitches between 2016 and 2028 and sites are allocated under Policies GYP1 and BEX3 of the DaSA. There is however doubt on the deliverability of these sites, as concluded within the recent Loose Farm Lane appeal decision (RR/2019/1565/P). 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 some limited harm to the character and appearance of the rural area.
- 1.4 The development represents a visual intrusion of caravans which harms the character and appearance of the Area of Outstanding Natural Beauty (AONB), however the site has a history of development including polytunnels and stable buildings that remain on site. The presence of external domestic paraphernalia such as vehicles, play equipment, washing and lighting at night from inside the caravans add to the harmful impact that the development has, but the harm is reduced by the natural screening of the site provided by existing vegetation and topography and the fact the mobile home and day room are well set back from the road. Although the harm identified is considered to be limited in these specific circumstances, the development still conflicts with development plan policies and national policies which seek to protect the intrinsic character and appearance of the countryside and the landscape and scenic beauty of the AONB.
- 1.5 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.....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. The children are attending local schools, and if

the family are required to move to another location this would cause disruption to the children's education. In addition to this potential disruption, it is unclear whether there is an appropriate allocated site for them to move to. This weighs heavily in favour of the application.

- 1.6 The location of the site is considered sustainable. The development is not at odds with 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 local and national policies on moving to a low carbon future.
- 1.7 Overall, significant weight can be attributed to the personal circumstances of the family, including the best interests of the children. Significant weight can also be attributed to the uncertainty regarding the deliverability of the allocated DaSA sites. The limited harm to the AONB does not in this specific case outweigh these considerations and therefore it is recommended that the application is, on balance, supported.
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## **2.0 SITE**

- 2.1 The application site lies to the eastern side of Kingwood Hill. It is positioned between Hillcrest to the north and Kingwoodland to the south, which is a Grade II listed building. The site comprises of an area of open grassland with an existing stable building used for the keeping of horses in the past. To the east of the site and within the ownership of the Applicant lies an area of woodland with a Public Right of Way running from south to north.
- 2.2 The site is served by a vehicular access onto Kingwood 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 north is owned by the Applicant and is being used to keep horses.
- 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.
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## **3.0 PROPOSAL**

- 3.1 As set out in the application, permission is sought for the stationing of one mobile home in the place of a former caravan and one touring caravan, with the erection of a day room.
- 3.2 The mobile home is positioned to the east of an existing block of stables and is close to the southern boundary. The day room is to the north of the mobile home.
- 3.3 The site is occupied by one family, with two adults and three children.
- 3.4 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.

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#### **4.0 HISTORY**

- |     |                |                                                                                                           |
|-----|----------------|-----------------------------------------------------------------------------------------------------------|
| 4.1 | RR/2009/1763/P | Replacement of existing building to be used as stable/tack room. Approved conditional                     |
| 4.2 | RR/98/1754/P   | Agricultural polytunnels. Approved (temporary)                                                            |
| 4.3 | RR/87/1645     | Outline: Erect four dwellings with garages served by proposed new access road off Kingswood Hill. Refused |
| 4.4 | A/62/511       | Outline application: residential development Refused. Appeal dismissed                                    |
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#### **5.0 POLICIES**

5.1 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)
- 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 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)
- EN2 (stewardship of the historic built environment)
- EN3 (design quality)
- EN5 (biodiversity and green space)
- TR3 (access and new development)
- TR4 (car parking)

5.2 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)
- 5.3 The National Planning Policy Framework, 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 the original submission attracted highway objection due to insufficient information in regard to whether the existing access could support the towing of a vehicle and caravan. A reconstructed access layout has been proposed with appropriate radii to accommodate manoeuvres. Conditions relating to the reconstruction of the access, visibility splays and the provision of an on-site turning space are recommended.

### 6.2 Environmental Health – **NO OBJECTION**

- 6.2.1 Officers have visited the site on three separate occasions and have found no evidence of any detrimental environmental or health concerns that warrant an investigation.
- 6.2.2 There is adequate and well-maintained provision for drainage and waste water storage and removal on site and there are no nuisance issues evidenced from the keeping of any animals.
- 6.2.3 If planning permission is granted a licence would be required under the Caravan Sites Control of Development Act 1960, to which conditions would be attached.
- 6.2.4 Details should be submitted to show how surface and foul water will be adequately disposed of, without impacting on neighbouring properties. Foul water must not enter the pond.

### 6.3 Pollution Control – **GENERAL COMMENTS**

- 6.3.1 Given the rural character and relative remoteness of the site, a condition limiting the impact of external lighting might normally be applied.

### 6.4 Planning Notice

- 6.4.1 58 objections have been received; the concerns raised are summarised as follows:

#### *Gypsy and Traveller status and current local provision*

- There is no shortfall in pitches against the objective need – allocations have been made in the Rother Local Plan 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.

## *AONB*

- National Planning Policy Framework 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 site is visible from the road and public footpaths.
- Potential for further development in the future given the size of the site.

## *Highway safety*

- Vehicular movements to and from the site will increase and due to substandard visibility, there would be increased traffic hazards.

## *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.
- 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.
- Risk of noise pollution to settled community.
- 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.
- The development would unreasonably harm the amenities of neighbouring properties.

## 6.5 Brede Parish Council – **OBJECTION**

6.5.1 The site is in the High Weald AONB.

6.5.2 It is too close to a Grade II listed building and will have an adverse impact.

6.5.3 There is provision for travellers' sites within Rother. The site does not meet the criteria for assessing suitability for a traveller's site. A mobile home does not meet the national standards for sound insulation and should not be considered suitable for this site.

6.5.4 There should be no adverse effect to environment and residential amenities. The site is behind other properties and access is between them, which will affect them. There is currently no foul water drainage on site which will affect the environment.

6.5.5 Vehicular access should accommodate larger vehicles. The access is not suitable.

6.5.6 It is outside the development boundary.

6.5.7 To allow this application in light of the reasons stated above may set a precedent for future applications.

6.5.8 Sussex Newt Officer – **NO REPRESENTATIONS RECEIVED**

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## **7.0 LOCAL FINANCE CONSIDERATIONS**

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

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## **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 In 1987 under planning application reference RR/87/1645, planning permission was refused for four residential dwellings and garages, due to impacts on visual amenities, AONB and traffic.

8.2.2 Under planning application reference RR/98/1754/P, four agricultural polytunnels were granted temporary permission which expired in 2003. The polytunnels were subsequently removed from the land.

8.2.3 Under planning application reference RR/2009/1763/P a stable block/tack room 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.

### 8.3 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 Rother Local Plan Core Strategy, the DaSA, the saved policies in the Local Plan 2006 and the 'made' Neighbourhood Plans.



- 8.3.2 Policy LHN6 of the Rother Local Plan 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 Gypsy, Traveller 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 Gypsies, Travellers 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 National Planning Policy Framework 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, 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; and
  - 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&T, the application would need to be determined against Policy RA3 (iii) of the Rother Local Plan 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 family 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 G&T, 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 and the setting of the neighbouring listed building.
  - iv) Accessibility to services and facilities.
  - v) Highway safety.
  - vi) The impact on the living conditions of occupants of nearby residential properties.
  - vii) Personal circumstances, human rights and best interests of the children.
  - viii) Intentional unauthorised development.
  - x) Impact on Great Crested Newts
  - xi) Drainage and pollution
  - xii) 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 “gypsies and travellers” 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&T has had in terms of assessing accommodation need. It sets out a useful summary of the history behind how G&T 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&T 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 focused on individuals’ nomadic habit of life, rather than race.
- 8.5.7 The supporting information confirms that the Applicants have school age children attending school locally. The submission from the East Sussex County Council Traveller Liaison Manager (dated 14-5-21) confirms that the family are Romany Gypsies and that when they do travel, they do so independently. The appendix to the letter from the Applicant’s agent (5 March 2021) provides details of the Applicants’ personal circumstances including that they all travel as a way of life and for work, having never lived in a house before.

- 8.5.8 The evidence therefore supports the conclusion that the Applicants meet the definition of G&T in the PPTS. Consequently, Rother Local Plan Core Strategy Policies LHN5 and LHN6 apply to the determination of this application.
- 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 A recent allowed Appeal Decision at Loose Farm Lane, Battle has cast doubt over the deliverability of allocated G&T sites. The Inspector drew attention to the PPTS, which states that in order to be considered deliverable, sites should be available now, offer a suitable location for development and be achievable in the next five years. Whilst the requirements for pitches have been met in accordance with locally assessed needs, it is unclear whether all the allocated pitches have become available. The Inspector's doubts over deliverability weighed in favour of the proposal and is therefore a material consideration in this case.
- 8.6.3 To support the Council's new Local Plan, Rother has worked with the East Sussex local authorities to commission a joint [Gypsy, Traveller and Travelling Showpeople Accommodation Needs Assessment \(GTAA, 2022\)](#) for the study period between 2021 and 2040. The publication of the GTAA (2022) strengthens the position that was adopted by the Inspector at the appeal for two gypsy and traveller pitches at Highviews, Battle, in 2021 (RR/2019/1565/P): that the Council may not currently have a deliverable 5 year supply of pitches, and that the locally set targets contained within the Core Strategy are out of date.
- 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 174 of the National Planning Policy Framework 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 176 of the National Planning Policy Framework 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 Rother Local Plan Core Strategy requires that all development respects and does not detract from the character and appearance of the locality.
- 8.7.5 Policy RA2 of the Rother Local Plan 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.
- 8.7.6 Policy RA3 (v) of the Rother Local Plan 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.
- 8.7.7 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.
- 8.7.8 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 Rother Local Plan 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.
- 8.7.9 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.
- 8.7.10 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.

- 8.7.11 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 between two residential dwellings to the north and south, with open agricultural land to the east. The development for which planning permission is sought is concentrated on the southern side of the land, adjacent to a screen of vegetation which separates it from the neighbouring dwelling.
- 8.7.12 Caravans are not characteristic of the immediate landscape; however, the site is not a previously undeveloped as an existing stable building remains on site. The mobile homes and the touring caravans cannot easily be seen from the road as they are set back from the road, screened by vegetation. The development would however be visible from the public footpath to the east of the proposal, although these views would be obscured by vegetation on the eastern boundary of the site.
- 8.7.13 Although the development is considered out of character with the area, the harm to the landscape and scenic beauty of the wider AONB are somewhat limited in these specific circumstances.
- 8.7.14 Turning to the setting of the neighbouring Grade II listed building 'Kingwoodland', it is important to note that the mobile home and day room are both sited further away than the authorised modern stable block. In addition, significant boundary screening means the development and listed building are not visible with each other. For these reasons there is no harm to the setting of the listed building.

## 8.8 Accessibility to services and facilities

- 8.8.1 The application site is just outside the Development Boundary for Cackle Street, as defined in the DaSA Local Plan. It is within 250m of Brede Village Hall and bus stops on the A28 to the south, and 500m of services in Broad Oak to the north, which can all be reached by pedestrian footway.
- 8.8.2 Policies PC1, OSS3 (v), SRM1 (vii), LHN6 (iii) and TR3 of the Rother Local Plan Core Strategy and paragraph 8 of the National Planning Policy Framework seek to minimise the need to travel and to support the transition to a low carbon future. The development meets 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.

## 8.9 Highway safety

- 8.9.1 Policy CO6 (ii) of the Rother Local Plan Core Strategy requires all development avoids prejudice to road and/or pedestrian safety. Policy LHN6 (iv) of the Rother Local Plan 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 eastern side of Cackle Street along a section of the road that is subject to a 30mph speed limit. The land is served by an existing access with a driveway as well as parking and turning area. No further works to the access are proposed as part of this application.
- 8.9.3 The Highway Authority has advised that visibility splays of 2.4m x 90m should be provided in each direction. The subsequently submitted drawings demonstrate that this would be achievable, and the access is set back 12m from the A28 which would allow vehicles to wait within the driveway whilst the gate is opened and shut, thus preventing the carriageway from being obstructed.
- 8.9.4 Based on the information provided by the Applicant 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 Rother Local Plan Core Strategy.

8.10 Living conditions of occupants of nearby residential properties

- 8.10.1 The immediate neighbouring property to the south, 'Kingwoodland', 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.
- 8.10.2 The mobile home is around 30m from the shared boundary with Kingwoodland to the south, and the southern boundary of the application site benefits from mature screening. Given the substantial separation, no unacceptable overlooking, loss of outlook or loss of light occurs. The development comprises one residential unit which is 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 'Kingwoodland'.

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

- 8.11.1 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; and*

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

8.11.2 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

- 8.11.3 The Local Planning Authority is advised that the site is occupied by a single-family unit consisting of two adults with their three children, with two of the children attending a local primary school since September 2020. The eldest child attends a local secondary school.
- 8.11.4 If planning permission is refused, and any subsequent appeal is dismissed, it is likely that the family 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.
- 8.11.5 The best interests of the children living on the site are to remain on the site and for the proposed 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 and opportunities for play and personal development.
- 8.11.6 Further information has been provided by the Applicant regarding the education of the children. Confirmation has been received from a local primary school and secondary school that all the children are in attendance.

## 8.12 Impacts on Great Crested Newts (GCN)

- 8.12.1 A Preliminary Ecological Report (PEA) has been submitted by the Applicant following the deferral of this application in order to determine the likely significance of ecological impacts of the development.
- 8.12.2 The findings of the PEA suggest that it is unlikely that GCN are present in the adjacent pond.



### 8.13 Drainage and pollution

8.13.1 Additional information from the Applicant has been submitted, confirming that a septic tank is in place on site and is emptied monthly.

### 8.14 Intentional Unauthorised Development

8.14.1 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.

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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 National Planning Policy Framework.

9.2 Based on the information submitted the occupants of the site fall within the definition of G&T contained within the PPTS. Hence their personal circumstances are material considerations. However, the site is outside any defined development boundary, as defined in the DaSA. 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 Rother Local Plan 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. There is however doubt on the deliverability of these sites, as concluded within the recent Loose Farm Lane appeal decision. 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 some limited harm to the character and appearance of the rural area, and therefore 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 DaSA, saved Policy DS3 of the Local Plan (2006) and paragraph 176 of the National Planning Policy Framework.

9.3 The development represents a visual intrusion of caravans which harms the character and appearance of the AONB, however the site has a history of development including polytunnels and stable buildings that remain on site. The presence of external domestic paraphernalia such as vehicles, play equipment, washing and lighting at night from inside the caravans add to the

harmful impact that the development has, but the harm is reduced by the natural screening of the site provided by existing vegetation and topography and the fact the mobile home and day room are well set back from the road, behind an existing stable block. Although the harm identified is considered to be limited in these specific circumstances, the development still conflicts with Policies OSS4 (iii), RA2 (viii), RA3 (v), EN1 (i) (v) and LHN6 (ii) of the Rother Local Plan Core Strategy, Policies DEN1 and DEN2 of the DaSA, paragraphs 174 and 176 of the National Planning Policy Framework and Policy H, paragraph 25 of the PPTS. In accordance with paragraph 176 of the National Planning Policy Framework, 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. The children are attending local schools, and if the family are required to move to another location this would cause disruption to the children’s education. In addition to this potential disruption, it is unclear whether there is an appropriate allocated site for them to move to. This weighs heavily in favour of the application.
- 9.5 The location of the site is considered sustainable. The development is not at odds with 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 local and national policies on moving to a low carbon future. The development complies with Rother Local Plan Core Strategy Policies PC1, OSS3 (v), SRM1 (vii), LHN6 (iii) and TR3, which are broadly consistent with the National Planning Policy Framework’s aim to promote and encourage sustainable transport.
- 9.6 Overall, significant weight can be attributed to the personal circumstances of the family, including the best interests of the children. Significant weight can also be attributed to the uncertainty regarding the deliverability of the allocated DaSA sites. The limited harm to the AONB does not in this specific case outweigh these considerations and therefore it is recommended that the application is, on balance, supported.

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**RECOMMENDATION: GRANT (FULL PLANNING)**

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1. The development hereby permitted shall be carried out in accordance with the following approved plans:  
Location Plan, Drawing No. 2020-080v1-Location, dated 24/09/21  
Existing Block Plan, Drawing No. 2020-080v1-ExistBlock, dated 13/01/22  
Proposed Block Plan, Drawing No. 2020-080v1-PropBlock, dated 13/01/22  
Caravan Tracking Plan, Drawing No. 2020-080v1-Tracking, dated 24/09/21  
Reason: for the avoidance of doubt and in the interests of proper planning.

2. The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1 of DCLG "Planning Policy for Traveller Sites" (revised version published August 2015) and restricted to only Mr Danny Penfold and Mrs Louisa Penfold and their dependants.  
When the land ceases to be occupied by those named above, the use hereby permitted shall cease and all caravans, structures, materials and equipment brought on to or erected on the land, and/or works undertaken to it in connection with the use, shall be removed and the land shall be restored in accordance with a scheme and timetable that has first been submitted to and approved in writing by the Local Planning Authority.  
Reason: The proposed development is only acceptable due to the personal circumstances of Mr Penfold and Mrs Penfold and their family and their habit of life, which mean that they meet the definition of a "gypsy or traveller" as detailed in Annex 1 of the Planning Policy for Traveller Sites and in accordance with Policies LHN5 and LHN6 of the Rother Local Plan Core Strategy.
3. The access shall not be used until visibility splays of 2.4m by 90m are provided in both directions and maintained thereafter.  
Reason: To ensure the safety of persons and vehicles entering and leaving the access and proceeding along the highway.
4. The development shall not be occupied until a turning space for vehicles has been provided and constructed in accordance with the approved plans which shall have been submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority and the turning space shall thereafter be retained for that use and shall not be obstructed.  
Reason: To ensure the safety of persons and vehicles entering and leaving the access and proceeding along the highway.
5. No more than one static caravan and one tourer, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 shall be stationed on the site at any time.  
Reason: To conserve the natural beauty of the High Weald Area of Outstanding Natural Beauty in accordance with Policies EN1(i) and LHN6 of the Rother Local Plan Core Strategy.
6. No vehicles over 3.5 tonnes shall be stationed, stored or parked on the site and no commercial activities, including burning, shall take place on the land, including the storage of materials, plant or waste.  
Reason: To preserve the amenities of the locality, in accordance with Policy OSS4(ii) of the Rother Local Plan Core Strategy.
7. The development hereby approved shall be implemented in accordance with the recommendations/measures stated in section 4.2 of the supporting document, Preliminary Ecological Appraisal for the Land to the East of Kingwood Hill (Arbtech, Sept. 2022).  
Reason: To minimise the impacts of development on biodiversity, in accordance with paragraphs 174 and 180 of the National Planning Policy Framework.

**NOTE:**

1. The Applicant is reminded that, under the Conservation of Habitats and Species Regulations 2017 (as amended) and the Wildlife and Countryside Act 1981 (as amended), it is an offence to: deliberately capture, disturb, injure, or kill great crested newts; damage or destroy a breeding or resting place; deliberately obstructing access to a rest or sheltering place. Planning consent for a development does not provide a defence against prosecution under these acts. Should great crested newts be found at any stages of the development works, then all works should cease and Natural England should be contacted for advice.

**NATIONAL PLANNING POLICY FRAMEWORK:** In accordance with the requirements of the 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 assessing the proposal against all material considerations, including planning policies and any representations that have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.