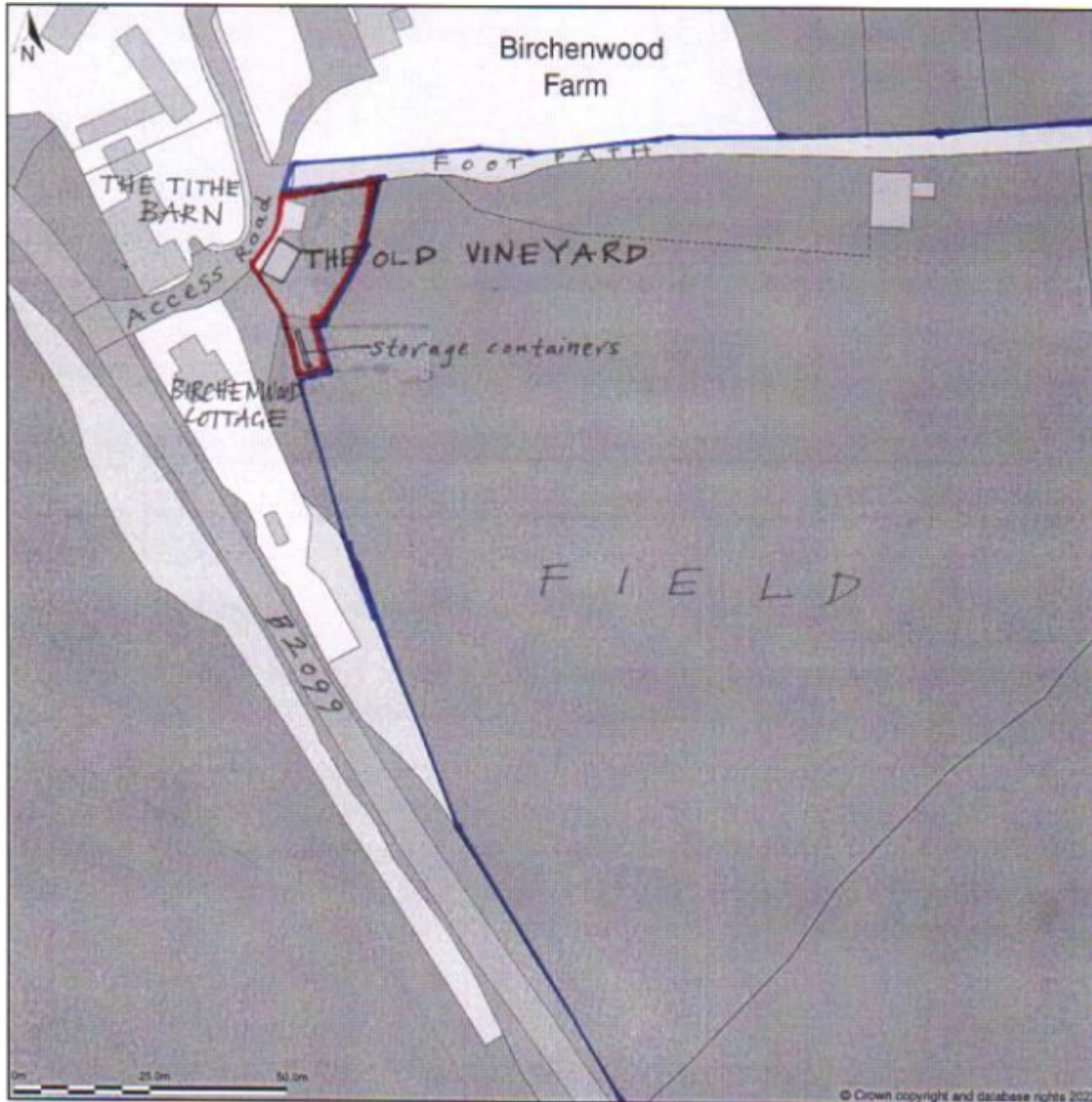


SITE PLAN

TICEHURST

RR/2023/272/P

The Old Vineyard – Land at,  
Birchenwood Farm,  
Pashley Road,



## Rother District Council

Report to	-	Planning Committee
Date	-	22 June 2023
Report of the	-	Director – Place and Climate Change
Subject	-	Application RR/2023/272/P
Address	-	The Old Vineyard – Land at, Birchenwood Farm, Pashley Road, Ticehurst
Proposal	-	Building operations and an extension to the existing shed building to provide residential accommodation for a gypsy and traveller, together with the removal of the storage containers.

[View application/correspondence](#)

---

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

---

**Director: Ben Hook**

---

**Applicant:** Ms C. Stanley  
**Agent:** Michael Hargreaves Planning  
**Case Officer:** Mrs S. Shepherd  
(Email: [sarah.shepherd@rother.gov.uk](mailto:sarah.shepherd@rother.gov.uk))

**Parish:** TICEHURST  
**Ward Members:** Councillors Mrs M.L. Barnes and T.M. Killen, MBE

**Reason for Committee consideration: Member referral: Cllr Mrs Barnes for the following reasons:**

- This is not a sustainable site for development, no public pavement, is a dangerous road, no public transport, no local facilities for approximately a mile in each direction.
- Site not in the Ticehurst Neighbourhood Plan and outside the permitted development boundary.
- It would be a new and permanent building in the countryside.

**Statutory 8-week date: 19 April 2023**  
**Extension of time agreed to: 26 June 2023**

---

This application is included in the Committee site inspection list.

---

### **1.0 SUMMARY**

- 1.1 This is a full application that seeks to convert and extend an existing shed on the site to provide a modest 1-bedroom dwelling unit for occupation by the Applicant who is a Romany Gypsy. There are some clear parallels between

the Applicant's situation and that of Lisa Smith, (Lisa Smith Judgement is detailed below) and it appears that the Applicant has been disadvantaged by the change to the Planning Policy for Traveller Sites (PPTS) definition in the same way that Lisa Smith had. Both the Human Rights Act 1998 and Equalities Act 2010 protect Gypsies and Travellers' (G&Ts) cultural and ethnic way of life. This protection applies regardless of whether G&T have permanently ceased to travel.

- 1.2 The application also proposes the removal of three old metal storage containers from the site and additional landscape planting. No caravans are proposed. Amenity space is confined to the existing hardstanding. The adjoining field is in the same ownership and is where the Applicant keeps her horse.
- 1.3 There is uncertainty regarding the deliverability of the allocated Development and Site Allocations (DaSA) sites for G&T and the recently completed East Sussex Gypsy, Traveller and Travelling Showpeople Accommodation Needs Assessment (GTAA) (2022), which will inform the Council's emerging Local Plan, indicates the need and shortfall for such accommodation in Rother. The proposal is considered to have limited harm to the Area of Outstanding Natural Beauty (AONB) and be in a moderately unsustainable location. Its impact on the setting of the adjacent listed building is considered to be neutral. Objections on highway grounds are not supported by the Highway Authority.

---

## **2.0 SITE**

- 2.1 The site, a former vineyard, lies to the northeast side of Pashley Road accessed via a shared private unmade drive, which serves a number of houses. The site lies approximately 1km east of Ticehurst. The application site consists of an area of hardstanding containing a concrete block building/shed with a corrugated roof and three storage containers, adjacent the entrance gate. The building, hardstanding and containers were already on the site when the Applicant purchased it in 2016 and are not themselves subject of the enforcement Notice on the site. The remainder of the ownership contains a field grazed by horses, with stables incorporating a covered area under trees within the field. Public footpath 24b runs along the northern boundary within the site although separately fenced. The site is contained by hedges and trees but there are views out eastwards as the ground levels fall away in that direction.
- 2.2 The grounds of Birchenwood Farmhouse adjoin to the north side of the public footpath with the Grade II listed building, Birchenwood Cottage to the southern side of the site entrance and shed building. The site is located outside the development boundary for Ticehurst, as contained in the adopted Neighbourhood Plan and lies within the countryside of the High Weald AONB.

---

## **3.0 PROPOSAL**

- 3.1 The application details the proposed extension of the existing shed (outbuilding located adjacent the entrance gate), and conversion to a 1-bedroom residential dwelling for use by a G&T, together with removal of the old storage containers to the south of the hardstanding. The resultant building

would be single storey with a flat roof and clad with timber to the front and sides. The unit would provide a bedroom, bathroom and open plan kitchen/living room, with a footprint of only 43.32sqm, (internal floorspace would be slightly less). The width of the building would remain the same at 7.6m with the depth increased from 3.5 to 5.7m. With regard to the use for a G&T it has been confirmed that the proposal is not for the siting of any caravans and for occupation of the building by the existing owner and applicant who is a gypsy. Additional planting to the wider site is also proposed on a submitted amended plan.

- 3.2 The application is supported by a planning statement(s) detailing the Applicant's personal history and circumstances as a G&T, with health details and additional information with regard to traffic movements.

---

#### 4.0 HISTORY

- 4.1 RR/2016/2798/P Change of use of land and outbuildings from agricultural to equestrian and alterations and extension of outbuilding to form trackroom/store/wc. REFUSED.
- 4.2 RR/2016/3033/P Siting of caravan. (Retrospective). REFUSED.
- 4.3 RR/2017/930/ENF Appeal against enforcement notice issued for Material Change of Use and Operational Development. Change of use of land to residential purposes and the siting of a residential caravan and storage of a horse trailer and other materials. Appeal dismissed. (Decision attached at Appendix 1)

---

#### 5.0 POLICIES

- 5.1 The following policies of the [Rother Local Plan Core Strategy 2014](#) are relevant to the proposal:
- LHN5 and LHN6 of the Core Strategy are the Council's strategic planning policies for meeting the accommodation needs of Gypsies, Travellers and Travelling Showpeople.
  - PC1 (Presumption in favour of sustainable development)
  - OSS1 (Overall Spatial Development Strategy)
  - OSS3 (Location of development)
  - OSS4 (General Development Considerations)
  - RA2 (General Strategy for the Countryside)
  - RA3 (Development in the Countryside)
  - CO6 Community safety
  - EN1 (Landscape Stewardship)
  - 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 (The High Weald AONB)
  - DEN4 (Biodiversity and Green Space)
  - DIM2 Development boundaries
- 5.3 The following policies of the adopted Ticehurst [Neighbourhood Plan](#) are relevant to the proposal:
- R1 (Conserve the AONB)
  - R5 (Support Biodiversity)
  - H1(2) (The Spatial Plan)
  - H5 (Design).
- 5.4 The National Planning Policy Framework and Planning Practice Guidance are also material considerations. With particular reference to the PPTS (2015) (including Policy H - Determining planning applications for traveller sites) and National Planning Policy Framework paragraph 176 and Section 85 of the Countryside and Rights of Way Act 2000, with regard to conservation and enhancement of the AONB.
- 5.5 The High Weald AONB Management Plan 2019 - 2024 is also a material consideration.

## 6.0 CONSULTATIONS

### 6.1 ESCC Highways – **NO OBJECTION**

6.1.1 *This application originally attracted highway objection due to the substandard access and visibility. Further information has been provided by the Applicant in order to overcome the objection. Because the shed and field are all part of the same plot and the Applicant already visits the site to tend animals, the intensification of a 1- bedroom dwelling (4 trips) would be cancelled out by the fact the Applicant already visits the site twice a day (4 trips) to tend to horses/ dogs on the field part of the plot. Clarification has also been given about the use of the site and field, which will be retained for use by the occupier/owner of the shed building to limit potential vehicle movements. On balance, despite the access being substandard, I am now confident there would be no intensification of the access based on the current use and I wish to withdraw my objection subject to the imposition of the following conditions.*

6.2 Waste and recycling – No detailed comment.

6.2.1 It is noted that other bins are collected from the roadside in this location.

### 6.3 Planning Notice

6.3.1 153 letters of objection have been received (from 97 properties, some different residents and several duplicates). The concerns raised are summarised as follows, with some being reiterated in response to the additional information submitted:

- Inappropriate new dwelling in AONB – caravan previously dismissed on appeal as would harm the AONB.
- Harm to AONB from domestic paraphernalia.

- Site lies outside any defined development boundary and Ticehurst has allocated housing sites.
- No exceptional circumstance for a new dwelling is identified.
- Could lead to further development in future.
- Design unsuitable and not in accordance with the HW Design Guide.
- Impacts on walkers of the footpath.
- Harm to landscape character and appearance.
- Dangerous road – a number of accidents (5) are recorded by locals since 2000.
- Poor access and lack of suitable sight lines.
- No footway or lighting to road so car reliant access to/from site.
- Unsustainable location.
- Harm to neighbours and listed buildings.
- Applicant's aversion to bricks and mortar is unsubstantiated.
- Concerns regarding ethnic definition.
- Previous disregard for planning rules.
- Lack of local facilities.
- Increased pollution.
- No need for further gypsy and traveller sites as already have allocated sites.
- Rubbish on site.
- A single dwelling has no issues but would open the way for more.
- Should stay as agricultural.
- May not comply with building regulations.
- Unsuitable for caravans.
- Hardstanding harmful.

#### 6.4 Ticehurst Parish Council – **OBJECTION**

##### 6.4.1 Comments summarised:

- The parish is unable to comment on the ethnicity of the Applicant or the validity of any reliance on such ethnicity to warrant a new dwelling outside the development boundary of Ticehurst, so our comments are made without reference to the ethnicity claim. We understand that both issues are the subject of a wider legal review.
- Outside development boundary and not an application under paragraph 80 of National Planning Policy Framework
- Is in an unsustainable location.
- Is on a dangerous bend of B2099 where is a high degree of speeding traffic.
- No footway to the village so is vehicle reliant.
- Substandard visibility.
- Is a free bus service for school children as road is too dangerous to walk.
- The council do not feel that the status on its own warrants the development of a dwelling outside the development boundary and in the AONB on a site not identified as suitable for development during the Neighbourhood Plan process.
- Planning status of shed is unknown.
- The site is noted by the previous appeal inspector to not qualify as isolated in terms of National Planning Policy Framework Para 80.
- Development is inappropriate in the AONB.

- Should Rother consider the ethnicity grounds qualify as special circumstances for the application, the parish would request an explicit condition be placed on any approval to limit the number of dwellings on this site (permanent or mobile), to the single dwelling that is being applied for. A restrictive covenant ensuring that no additional occupation takes place and we would further request that this be made explicit with a restriction on overnight stays from any visitors.
- The fence to the public bridleway (footpath) has collapsed.
- There may be an existing breach of the enforcement notice.
- Design and Access Statement refers to the Applicant's 'aversion to bricks and mortar', in support of the ethnicity claim, yet the application is not seeking approval for a mobile unit, but one made partially of masonry construction, raising an inconsistency in the application.

---

## 7.0 LOCAL FINANCE CONSIDERATIONS

- 7.1 The proposal is for a type of development that is Community Infrastructure Levy (CIL) liable. The total amount of CIL money to be received is subject to change, including a possible exemption, but the development could generate approximately £11,101.

---

## 8.0 APPRAISAL

- 8.1 The main issues are: definition of G&Ts and impact of the Lisa Smith Judgement; supply of pitches; principle of development and impacts on the area including the AONB; highway matters; setting of listed buildings; enforcement notice; neighbour impacts; other matters.
- 8.2 **Whether the Applicant meets the definition of G&T, and the impact of the "Lisa Smith judgement".**
- 8.3 The PPTS defines Gypsies and Travellers at Annex 1, as:  
*Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their 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.*  
 The PPTS, and Rother Local Plan Core Strategy Policies LHN5 and LHN6, only apply to G&T who meet this definition.
- 8.4 It should be noted that prior to 2015, the PPTS definition included additional wording, to also include persons who have ceased to travel permanently for the reasons set out in the definition. However, this was removed in the 2015 version of the PPTS. This means that when the Rother Local Plan Core Strategy was adopted in 2014, the PPTS and also Policies LHN5 and LHN6 of the Rother Local Plan Core Strategy would have applied to persons who had ceased to travel *temporarily or permanently* for the reasons detailed in the PPTS definition.
- 8.5 The supporting statement submitted with the planning application confirms that the Applicant is a Romany Gypsy, and in need of culturally appropriate accommodation which meets her needs. It also contends that following the

recent “Lisa Smith judgement” in the Court of Appeal, the definition of who is a G&T for planning purposes (i.e. the PPTS definition) is in flux. It notes that the planning application is based on the Applicant coming within the terms of the definition in the light of the Lisa Smith judgement.

- 8.6 The supporting statement provides detailed information about the Applicant’s way of life, throughout her life, indicating that she formerly led a nomadic habit of life, and she temporarily ceased travelling on account of her children’s education. In more recent years she continued to live a gypsy way of life and until recently she had not permanently ceased travelling. However, she is now elderly and has been diagnosed with a health condition and is awaiting treatment. She is now in a position where she has permanently stopped travelling because of her age and health.
- 8.7 Consequently, the Applicant no longer meets the PPTS definition of G&Ts because she has permanently ceased travelling. On this basis (and setting aside the implications of the Lisa Smith judgement), neither the policies of the PPTS nor Rother Local Plan Core Strategy Policies LHN5 and LHN6 would apply to the determination of this application (note that under the previous PPTS definition (pre2015), the Applicant would have still met the definition).
- 8.8 However, the implications of the Lisa Smith judgement must be considered. In short, the judgement found that the definition of G&T contained within the PPTS was discriminatory in that case because G&T who have permanently ceased to travel due to age or disability are excluded from the definition. While it has been suggested by many sources that this will mean the PPTS definition will need to change, this has not (yet) taken place. In the absence of any guidance from the Government on this point, it is necessary to continue to determine planning applications in accordance with the development plan, unless material considerations indicate otherwise.
- 8.9 This means that the adopted version of the PPTS (2015) must be taken into account in the preparation of development plans and remains a material consideration in planning decisions. This includes its definition of G&Ts. However, the recent judgement is also a significant material consideration in planning decisions. It is necessary to consider the specifics of every proposal on its individual merit, taking into account all relevant material considerations. This approach is supported by the last paragraph of the Lisa Smith judgement (also noted at paragraph 5.2 of the submitted supporting statement):  
*‘139. ...The consequences ... for future decision-making on applications for planning permission and appeals in which the relevant exclusion is engaged will inevitably depend on the particular circumstances.... In every such case it will be for the decision-maker – whether a local planning authority or an inspector – to assess when striking the planning balance what weight should be given, as material considerations, to the relevant exclusion and to its discriminatory effect as obtains at the time, and also to undertake such assessment as may be required under Article 8 of the [European] Convention [on Human Rights]. As is always so, the result of that process of decision-making will emerge from the facts and circumstances of the individual case’.*
- 8.10 In terms of the weight that should be given in determining the current planning application, to “the relevant exclusion” (i.e. the exclusion from the PPTS definition of G&Ts who have permanently ceased to travel) and to its discriminatory effect, it should be noted that the Applicant is: (1) a Romany



Gypsy, (2) elderly and (3) potentially disabled within the definition of the Equality Act 2010, due to the health condition. Race, age and disability are all protected characteristics under the Equality Act. The Lisa Smith judgement found that Lisa Smith, as a Romany Gypsy, had “suffered indirect discrimination, on the basis of age, race and disability, which had not been justified” (paragraph 132). Paragraph 65 of the judgement notes: *“Romany Gypsy is an ethnicity... The relevant defining feature of that ethnicity is not ‘being nomadic’:..., it is the act of living in caravans which is an integral part of the Gypsy/Traveller way of life. The aversion of G&T to “bricks and mortar” has been noted in numerous cases...”* The submitted supporting statement notes (para 5.6) that when the Applicant lived in a house surrounded by other dwellings for a period in the 1990s, *“she experienced acute feelings of claustrophobia. In explaining how she felt she compares living in the house to being like a wild bird in a cage.”*

- 8.11 As to the weight to be given to the various material considerations in this case, there are some clear parallels between the Applicant’s situation and that of Lisa Smith, and it appears that the Applicant has been disadvantaged by the change to the PPTS definition in the same way that Lisa Smith had. Both the Human Rights Act 1998 and Equalities Act 2010 protect G&Ts’ cultural and ethnic way of life, including living in a caravan. This protection applies regardless of whether G&Ts have permanently ceased to travel and is a material consideration.
- 8.12 **The need for and supply of pitches for gypsies and travellers who meet and who do not meet the PPTS definition**
- 8.13 As noted above, the adopted Local Plan only applies to those G&Ts who meet the PPTS definition (“PPTS-compliant gypsies and travellers”). However, the recently completed East Sussex Gypsy, Traveller and Travelling Showpeople Accommodation Needs Assessment (GTAA) (2022), which will inform the Council’s emerging Local Plan, also considered the accommodation needs of those “cultural” gypsies and travellers who have permanently ceased to travel (those who are “non-PPTS compliant”).
- 8.14 Policy LHN5 of the Rother Local Plan Core Strategy confirms that, to meet the identified need for (PPTS compliant) G&T accommodation, provision will be made for five permanent pitches within Rother over the period 2011-2016, and a further six pitches between 2016 and 2028. Paragraph 13.3 of the DaSA Local Plan confirms that five pitches were granted planning permission between 2011-2016, and that the outstanding need of six pitches (as at 2018, the base date of the DaSA Local Plan), is to be met through the allocation of two sites: Land adjacent to High Views, Loose Farm Lane, Battle (1 pitch) and Land at North Bexhill (5 pitches). Both of these sites remain undeveloped although outline planning permission has been granted for two pitches at Land at North Bexhill (RR/2020/1672/P).
- 8.15 Since 2018 (the base date of the DaSA Local Plan), four permanent pitches have been approved at Bramble Farm, Staplecross (RR/2020/1181/P), two permanent pitches have been allowed on appeal at Land adjoining High Views, Loose Farm Lane, Battle (RR/2019/1565/P), with two further pitches granted permission at High Views (RR/2023/311/P & 317/P) and one temporary pitch has been approved at Kingwood Hill, Brede (RR/2020/1613/P). Therefore, through the site allocations and (on different

sites) the planning permissions detailed, the need for six pitches between 2016-2028, as identified in the Core Strategy, has been met and exceeded. However, the allowed appeal decision for two G&T pitches at High Views, Battle, in 2021 (RR/2019/1565/P), considered the need for gypsy and traveller pitches and the allocated sites in the district, concluding:

*34. ... the Council has set a local pitch target and allocated sites to meet this. It also has a five-year supply of pitches. However, there are some doubts regarding the deliverability of the allocated pitches and the locally set target was based on seriously out of date evidence. These latter factors weigh in favour of the proposal.*

- 8.16 While the appeal at Land at High Views was allowed, it should be noted that another appeal at Land to the rear of Fir Tree Cottage, Netherfield Hill, Battle, was dismissed (RR/2020/599/P, Nov 2021). The Inspector in that appeal found that the need for additional sites and lack of alternative sites had not been demonstrated and that harm to the AONB, ancient woodland and the unsustainability of the location weighed against the proposal. However, the subsequent more recent East Sussex assessment of the need for pitches indicates that there is a clear lack of sites.
- 8.17 The East Sussex GTAA (2022) also considers the needs of non-PPTS compliant gypsies and travellers, in line with the National Planning Policy Framework requirement for strategic policies in Local Plans to meet local housing needs, including through addressing the needs of groups with specific housing requirements (National Planning Policy Framework paras 61-62). The GTAA (para S9) notes: *“There is an expectation that whilst calculating the level of additional accommodation need for G&Ts who meet the PPTS 2015 planning definition and identifying how that need will be met (i.e. additional land supply), that local authorities also need to identify the level of need and means by which they have considered and will address the additional accommodation needs of those who do not meet this definition. This related to all who are ethnically recognised as G&Ts (in line with the Humans Rights Act 1998 and the Equalities Act 2010).”*
- 8.18 Therefore, the GTAA identifies the accommodation needs of G&Ts in three ways:
1. *Ethnic definition* - Accommodation need figures for G&Ts based on their ethnic identity (not taking into account whether they have permanently ceased to travel or not).
  2. *PPTS 2015 definition* - Accommodation need figures for G&Ts who meet the definition set out in the PPTS (those who travel with a caravan for work or other purposes and including those who have temporarily ceased to travel).
  3. *Work definition* - A narrower interpretation of the PPTS definition with only accommodation need figures for G&Ts who travel with a caravan for work purposes, including those who have temporarily ceased to travel (but does not take account of G&Ts who travel for other purposes).
- 8.19 The accommodation need identified for Rother, in the East Sussex GTAA (2022), is as follows:

Period	Ethnic definition	PPTS 2015 definition	Work definition
Total 2021-26	12	4	2
Total 2026-31	4	3	3
Total 2031-36	5	5	4
Total 2036-40	5	4	4
Total 2021-40	26	16	13

Source: GTAA 2022

- These figures assume that the two pitches at Watermill Lane, Bexhill with outline planning permission (RR/2020/1672/P) are built during the period 2021-2026. No reserved matters application has been received for this site, and the outline permission expires in December 2023.
- If these two pitches are not delivered, then the need for that period will increase by two pitches.
- The figures do not take account of the four other pitches allocated through adopted DaSA policy but not yet permitted or delivered (three others at Watermill Lane, Bexhill and one at High Views, Battle – the deliverability of which were questioned in the High Views appeal decision).
- As the base date of the GTAA is April 2021, the figures also do not take account of the two pitches permitted in December 2021 at High Views, Battle, or the temporary permission for one pitch at Kingwood Hill, Brede.
- If all three recently permitted pitches are taken into account (although the temporary permission at Kingwood Hill is only for three years) but the two pitches at Bexhill are *not* delivered, this leaves an outstanding requirement in Rother for three pitches for 2021-2026 for PPTS-compliant G&Ts, or 11 pitches if the needs of non-PPTS compliant G&Ts are also taken into account. Clearly, the three pitches could be met through the existing DaSA allocations, but there is some doubt as to the deliverability of these pitches.

8.20 The publication of the GTAA (2022) strengthens the position that was adopted by the Inspector at the High Views appeal in 2021 (RR/2019/1565/P): that the Council may not currently have a deliverable 5-year supply of pitches for PPTS-compliant G&Ts, and that the locally set targets contained within the Rother Local Plan Core Strategy are out of date. These factors will need to be given weight in determining planning applications for new G&T pitches on unallocated sites, meaning that a lack of need for pitches could not be the sole reason for refusing a planning application for a PPTS-compliant gypsy or traveller site.

8.21 As is clear from the figures above, the GTAA (2022) also identifies a significant accommodation need for G&Ts in Rother who do not meet the PPTS definition. The Council's emerging Local Plan will need to address this need, and this is likely to be through a criteria-based policy along the lines of Policy LHN6 of the Rother Local Plan Core Strategy. The emerging Local Plan is not, however, at any consultation stage, and any emerging policies can currently be given no weight. If the PPTS definition of G&Ts were to change, in response to the Lisa Smith judgement, then it is likely that (in addition to a criteria based policy for any "windfall" sites), the new Local Plan would also be required to identify land to accommodate the needs of all "cultural" G&Ts, i.e. make sufficient site allocations.

- 8.22 While the emerging Local Plan currently has no weight, the fact the East Sussex GTAA (2022) has identified a current need for pitches for both PPTS-compliant and non-PPTS compliant G&Ts, above the need identified and planned for in the Rother Local Plan Core Strategy, is a material consideration in the determination of the current planning application.
- 8.23 There are no G&T policies within the Ticehurst Neighbourhood Plan and hence the application falls to be considered against the Local Plan policies and other material considerations as set out above.
- 8.24 The principle of development at this location and impacts on the AONB**
- 8.25 The proposal is for a new dwelling in the countryside and therefore should be assessed against Policy RA3 of the Rother Local Plan Core Strategy. The 2021 High Views appeal (RR/2019/1565/P) considered Policy RA3 in relation to G&T sites:
- 19. Policy RA3 of the Rother Local Plan Core Strategy allows the creation of new dwellings in the countryside in extremely limited circumstances. The policy includes reference to four such circumstances. The appellant and Council agreed at the hearing that this list is not closed and therefore other extremely limited circumstances not listed could occur and be consistent with Policy RA3.*
- 20. In this respect Policy LHN6 of the CS provides a potential pathway for permitting G&T sites in the countryside. It sets out several criteria and if these are met then it is reasonable to conclude that an 'extremely limited circumstance' for the purposes of Policy RA3 would have occurred. The criteria address several matters such as being close to a settlement, appropriate in scale and accessible by sustainable transport.*
- 8.26 However, as considered above, strictly speaking, Policy LHN6 does not apply to this planning application because the Applicant does not meet the PPTS definition of a G&T. However, given the Lisa Smith judgement, it may be appropriate to take a different view and give Policy LHN6 some weight, particularly because when it was adopted in 2014, it would have applied to those who have temporarily or permanently ceased travelling.
- 8.27 Policy LHN6 is a criteria-based policy to be used in assessing both planning applications and site allocations for GTTS sites. Permission may be granted when all of the criteria are met. Whether or not all the criteria are met is essentially a matter for the decision maker, but the criterion which potentially presents the most difficulty for this planning application is (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"*. While this does not mean that sites must be within existing settlements (as per para 15.50 of the Rother Local Plan Core Strategy), it does set a clear test that sites must be sustainably located and accessible to local services. This is in line with the Overall Spatial Strategy generally and other relevant Local Plan policies and National Planning Policy Framework paragraphs. The application seeks to address this issue at paragraph 7.10 of the Supporting Statement by pointing out that the Applicant while subject to the use of the car, given a lack of footway and bus stop, would be driving fewer miles to the village centre and its services than she currently undertakes in her daily visits to the site. It is however noted that the current proposal is probably less sustainably located compared to recently permitted G&T sites (High Views and Kingwood Hill),

which are accessible to local services by walking via footway, or public transport. It is also worth noting that the location is adjacent existing dwellings and as noted within the appeal at paragraph 34 the site does not represent an isolated site in the countryside. This is particularly pertinent with regard to paragraph 80 of the National Planning Policy Framework which seeks to avoid new isolated dwellings in the countryside but hence there is no conflict with this aspect of the proposal. Given that the proposal relates only to a single small unit of accommodation moderate weight is given to the lack of sustainability in this case.

- 8.28 Clearly, another consideration is the effect of the proposal on the landscape and character of the High Weald AONB, as per criteria (ii) of Policy LHN6 which states: *“The site should not result in an unacceptable visual or landscape impact, especially in the High Weald AONB taking account of proposed landscaping and screening;”*. It is noted that the effect on the AONB was a consideration in the appeal at this site in 2017 and while the Inspector references the caravan, which was particularly incongruous by reason of its colour and siting, she also references domestic paraphernalia and comments at para 35: *“The caravan, while located close to the boundary, results in encroachment of development into open countryside and the wider landscape. Furthermore, domestic paraphernalia adds to the effect of the residential use of the AONB, such as the washing line, plant pots, picnic bench and table. The caravan and its residential use increases the development on the site and, in my view, harms the landscape and natural beauty of the AONB.”*
- 8.29 The application seeks to mitigate any harm by proposing to timber clad the extended building for residential use, remove the metal containers from the land and undertake further planting to screen the development. To date a few infill native trees have been planted to the field boundaries with a collection of fruit trees to the southeast of the hardstanding and building. The block plan indicates additional tree planting to the fruit tree area and also to the northeast of the hardstanding/building. All of these changes would aid enhancement of the existing site and reflect the location within the landscape. The question remains as to whether these improvements would be sufficient to fulfil the policy requirement which clearly advises at LHN6(ii) that we must take account of proposed landscaping and screening. The building itself as proposed is not considered to be harmful in its form, material finish or siting, tucked as it is adjacent the boundary and sited with other more prominent (higher) buildings to its backdrop and reflecting materials suitable in the AONB. Residential paraphernalia may, however, be more visible but would it be to such a degree with the proposed planting such as to justify refusal of the proposal and when weighed with the other policy, Equality Act and Lisa Smith judgement issues raised in the proceeding paragraphs? Any such residential paraphernalia could be conditioned to the hardstanding area only with planting to screen.
- 8.30 If weight is to be given to gypsy and traveller policies in the determination of this application, paragraphs 16 and 24 of the PPTS are relevant: paragraph 16 notes: *“inappropriate development is harmful to the Green Belt and should not be approved, except in very special circumstances... 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.”* While this area is not Green Belt, if harm is

identified to the AONB then this would fall within the meaning of “any other harm” as per the PPTS.

8.31 Some harm is identified to the AONB but landscaping is proposed and Policy LHN6(ii) indicates that landscaping should be considered in assessing whether unacceptable visual or landscape impacts will occur. The appeal decision is clear about the harm identified in the proposals in 2017 but no landscaping was proposed at that time and there were no other material considerations before the Inspector with regard to the Applicant’s age, ethnicity or health. This proposal does not include any caravan on the site and conditions can be imposed to restrict further development by way of removing permitted development rights. While limited harm to the AONB is found with regard to domestic paraphernalia, it is not considered in this instance having regard to all the pertinent material considerations, to reflect a high degree of harm as to justify a refusal for this reason.

### 8.32 **Highways**

8.33 The site is served from an existing access point from the B2099 that currently serves four existing dwellings. The B2099 at the point of access is subject to a 40mph speed limit, which changes to a derestricted limit a short distance to the southeast of the site access. This means visibility splays of 2.4m X 120m are required either side of the access point in accordance with Design Manual for Roads and Bridges. After conducting a site visit, the Highway Authority noted that the visibility falls short of the required standard either side of the access point with limited scope to improve it as the land falls outside of the Applicant’s control. Furthermore, because the access serves multiple dwellings, it should be at least 4.5m wide for at least 6m in order to accommodate two-way flow traffic. The access is therefore substandard for what it already serves and cannot support any further intensification without improvement.

8.34 The Highway Authority note that accident data over a 5-year period only demonstrates one accident in the immediate vicinity of the access. However, this was attributed to driver error. They are satisfied that sufficient parking can be provided on site without overspilling onto the highway and note that at least one secure accessible and covered cycle storage space should also be provided.

8.35 While a highway objection was initially noted due to the substandard access, on consideration of further submissions the recommendation was changed. It was concluded that *“the intensification of a 1- bedroom dwelling (4 trips) would be cancelled out by the fact the Applicant already visits the site twice a day (4 trips) to tend to horses/ dogs on the field part of the plot.”* Given that the use of the site by the Applicant or another landowner, would not potentially alter the number of trips and use of the access, a highway reason for refusal is not substantiated.

### 8.36 **Setting of listed building(s)**

8.37 The conclusions of the Inspector in the appeal decision are pertinent and reflect the site’s location adjacent the listed building of Birchenwood Cottage, on its western boundary and the converted Tythe Barn to its north. The Inspector notes that the significance of Birchenwood Cottage is derived from

its architectural interest and its historic setting having been predominantly agricultural in character. She concludes that *“The introduction of a caravan for residential use does erode the agricultural setting of the listed building, which has previously been eroded by the conversion of the Thythe barn. This additional harm to the agricultural setting is limited.”*

8.38 This current proposal does not propose a caravan and the proposed appearance and presence of the timber clad building is considered to be less harmful. It would reflect the appearance of an agrarian outbuilding and as such is considered to have a neutral impact on the setting of the listed building having regard to the setting adjoining the former farmstead. As such the setting is preserved.

#### 8.39 **Enforcement Notice**

8.40 There is an active enforcement notice on the site which requires:

- (i) Cease the use of the land for residential purposes.
- (ii) Remove the caravan from the land.
- (iii) Restore the land to the condition before the breach took place.
- (iv) Remove the horse trailer from the land.

8.41 The caravan and horsebox have been removed from the land. Residential use is argued to have ceased also but this remains a matter with the enforcement officer.

8.42 The existence of an Enforcement Notice prohibiting use of the land for residential purposes does not prohibit the submission of, nor consideration of a planning application for such an activity. Any such application falls to be considered in the light of the current development plan and any other material considerations including the National Planning Policy Framework and High Weald Management Plan. Additionally, this application relates to part of the site only and hence the remainder of the site would still be covered by the enforcement notice with regard to any residential use, in the event that residential use of the shed and hardstanding were found to be acceptable. It is noted that the Applicant does not require a caravan on the land and has offered to accept a condition to preclude this.

#### 8.43 **Neighbour impacts**

8.44 The proposal is for a small residential unit adjacent other residential units. The use itself, as concluded by the Inspector at the appeal, *would not be likely to result in significant harm, through noise and disturbance relating to the normal comings and goings connected with the use, to the living conditions of the occupiers of those adjacent properties.*

#### 8.45 **Other matters**

8.46 Comments have been made with regard to the Applicant's *‘aversion to bricks and mortar’*. This phrase is noted to have been taken out of context. The full sentence at paragraph 7.8 within the supporting statement says: *Reflecting her upbringing living in caravans in the countryside, Ms Stanley has a psychological aversion to bricks and mortar housing surrounded by other dwellings. In such situations she has experienced strong feelings of claustrophobia.* It is not merely the masonry construction but its location within

a built area that presents the aversion to the Applicant. The proposed small one-bedroom unit as proposed would not be located surrounded by other dwellings but on the edge of a group of dwellings within and looking out onto the countryside.

- 8.47 With regard to drainage, the site already contains a septic tank and additional information with regard to surface water drainage from the enlarged shed could be conditioned.

---

## **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 Assessing the application solely against Policy RA3 of the Rother Local Plan Core Strategy and other policies unrelated to gypsy and traveller accommodation is likely to result in a recommendation for refusal in principle, because none of the “extremely limited circumstances” which would allow for the creation of a new dwelling in the countryside apply, as set out in Policy RA3 (iii), and the site is in arguably an unsustainable location.
- 9.3 However, the Lisa Smith judgement, and the fact that the Applicant has protected characteristics under the Equalities Act 2010 are material considerations. The accommodation needs in Rother and the potential shortfall in supply (2021-2026) for both PPTS-compliant and non-PPTS compliant G&Ts, as identified in the East Sussex GTAA (2022), is also a material consideration.
- 9.4 These material considerations must be weighed against the harm arising from the creation of a new dwelling in the countryside, for a non-PPTS compliant gypsy or traveller, in terms of development in a moderately unsustainable location and the limited harm to the landscape and character of the AONB taking into account the proposed landscaping and the neutral impact on the setting of the listed building.
- 9.5 Overall, significant weight can be attributed to the personal circumstances of the Applicant, given there are some clear parallels between the Applicant’s situation and that of Lisa Smith, and it appears that the Applicant has been disadvantaged by the change to the PPTS definition in the same way that Lisa Smith had. Both the Human Rights Act 1998 and Equalities Act 2010 protect G&Ts’ cultural and ethnic way of life. This protection applies regardless of whether G&Ts have permanently ceased to travel. Significant weight can also be attributed to the uncertainty regarding the deliverability of the allocated DaSA sites. The limited harm to the AONB and moderate weight to unsustainability does not in this specific case outweigh these considerations and therefore it is recommended that the application is, on balance, supported.



## **RECOMMENDATION: GRANT (FULL PLANNING)**

---

### **CONDITIONS:**

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.  
Reason: In accordance with section 91 of the Town and Country Planning Act 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).
2. The development hereby permitted shall be carried out in accordance with the following approved plans and details:  
CS01 v2, Location Plan, Dated February 2023  
CS04 v3, Proposed Site Plan, dated May 2023  
CS03 v2, Proposed alterations to shed building, dated February 2023  
Reason: For the avoidance of doubt and in the interests of proper planning.
3. The site shall not be occupied by any persons other than Gypsies and Travellers, defined as persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling showpeople or circus people travelling together as such. The occupation of the site shall also be restricted to only Celia Stanley and her dependants.  
Reason: The proposed development is only acceptable due to the personal circumstances of the Applicant and their way of life, which mean that they meet the definition of a "gypsy or traveller".
4. No development above ground level shall take place until samples/details of the materials and colour to be used in the construction of the external surfaces of the dwelling unit hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.  
Reason: To ensure that the development reflects the character and/or appearance of an agrarian building and to preserve the visual amenities of the area within the countryside of the High Weald Area of Outstanding Natural Beauty, in accordance with Policy OSS4(iii) of the Rother Local Plan Core Strategy and Policies DEN1 and DEN2 of the Development and Site Allocations Local Plan.
5. No development above ground level shall take place on any part of the site until the soft landscaping details for additional and new planting along the eastern edge of the hardstanding, (as indicated on the approved plan), have been submitted to and approved by the Local Planning Authority, which shall include:
  - a) indications of all existing trees and hedgerows on the land including details of those to be retained, together with measures for their protection in the course of development;
  - b) planting plans;
  - c) written specifications (including cultivation and other operations associated with plant and grass establishment);
  - d) schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate; and

e) implementation programme

Landscaping shall be completed in accordance with the approved details.

Reason: To ensure the creation of planting to enhance the landscape setting and provide natural screening within the landscape of the High Weald Area of Outstanding Natural Beauty, in accordance with Policies LHN6, OSS4 (iii), EN1 and EN3 of the Rother Local Plan Core Strategy and Policies DEN1 and DEN2 of the Development and Site Allocations Local Plan.

6. No caravans are to be sited or stored within the site and adjoining field.  
Reason: To maintain the rural landscape and to conserve and enhance the landscape character and scenic beauty of the High Weald Area of Outstanding Natural Beauty, in accordance with Policies OSS4 and EN1 of the Rother Local Plan Core Strategy, Policies DEN1 and DEN2 of the Development and Site Allocations Local Plan and paragraph 176 of the National Planning Policy Framework.
7. No floodlighting or other external means of illumination of the building hereby permitted, shall be provided, installed or operated at the site without a further planning permission.  
Reason: To safeguard the special character, dark skies and ecology of the rural area within the High Weald Area of Outstanding Natural Beauty, in accordance with Policies OSS4 (iii) and EN1 of the Rother Local Plan Core Strategy and Policies DEN1, DEN2, DEN7 of the Development and Site Allocations Local Plan.
8. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, (or any order revoking or re-enacting this Order with or without modification), no extensions, alterations, buildings, structures or other installations, as defined within classes A, B, C, D and E of Part 1 of the Schedule 2 of the order, shall be carried out on the site otherwise than in accordance with a planning permission granted by the Local Planning Authority.  
Reason: To ensure that the satisfactory rural appearance of the development and area is maintained and to preserve the natural landscape quality and character of the High Weald Area of Outstanding Natural Beauty, in accordance with Policies OSS4 (iii) and EN1 of the Rother Local Plan Core Strategy and Policies DEN1 and DEN2 of the Development and Site Allocations Local Plan.
9. Residential paraphernalia including but not exclusively, washing line, garden seating, garden planters, shall be restricted to location within the existing hardstanding area only.  
Reason: To ensure that the satisfactory rural appearance of the development and area is maintained and to preserve the natural landscape quality and character of the High Weald Area of Outstanding Natural Beauty, in accordance with Policies OSS4 (iii) and EN1 of the Rother Local Plan Core Strategy and Policies DEN1 and DEN2 of the Rother Development and Site Allocations Local Plan.
10. The parking of vehicles shall only take place within the area of existing hardstanding and space for parking shall thereafter be retained for that use and shall not be used other than for the parking of motor vehicles.  
Reason: To ensure the safety of persons and vehicles entering and leaving the access and proceeding along the highway, in accordance with Policy TR4 of the Rother Local Plan Core Strategy.

11. The development shall not be occupied until a cycle parking area has been provided in accordance with the approved plans which will have been submitted to and approved in writing by the Planning Authority and the area[s] shall thereafter be retained for that use and shall not be used other than for the parking of cycles.

Reason: In order that the development site is accessible by non-car modes and to meet the objectives of sustainable development in accordance with Policy TR4 of the Rother Local Plan Core Strategy.

**NOTE:**

1. The development is subject to the Community Infrastructure Levy (CIL). Full details will be set out in the CIL Liability Notice which will be issued in conjunction with this decision. All interested parties are referred to <http://www.rother.gov.uk/CIL> for further information and the charging schedule.

**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 within the application (as originally submitted) and negotiating, with the Applicant, acceptable amendments to the proposal to address those concerns. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal, in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.