

- a) **DOV/21/00967 – Change of use of the land for the stationing of three static homes for gypsy/traveller accommodation, associated hard and soft landscaping including fences and gates (retrospective application) - Land South of Ferne Lane and East of Warren Lane, Alkham**

Reason for report: Number of contrary views (10)

- b) **Summary of Recommendation**

Planning permission be refused.

- c) **Planning Policies and Guidance**

Dover District Core Strategy (CS) Policies: DM1, DM11, DM15, DM16, DM17

DM7 – States that the Council will allocate sites to meet the needs of gypsies, travellers and travelling showpeople using assessment criteria, and will use this criteria to determine planning applications

Land Allocations Local Plan (LALP)

LA1 – commits to providing a Gypsies, Travellers and Showpeople Land Allocations Local Plan - but this has been superseded by the emergence of the Draft Local Plan.

Regulation 18 draft Dover District Local Plan

The Consultation Draft Dover District Local Plan is a material planning consideration in the determination of this planning application. At this stage in the plan making process however the policies of the draft Plan have little weight and are not considered to materially affect the assessment of this application, unless up to date evidence has informed policies on particular issues and these are set out further within the report.

Gypsy and Traveller Accommodation Assessment (GTAA) 2018 (updated 2020)

The latest evidence of the LPA as set out in the GTAA is that for the plan period 2020 to 2040 there is a cultural need for 26 pitches and a PPTS need for 16 pitches.

5 Year Supply of Gypsy/Traveller Sites

The LPA can currently demonstrate that it has a 5 year supply of deliverable gypsy/traveller sites.

National Planning Policy Framework 2021 (NPPF)

Section 5 – seeks to deliver a sufficient supply of homes. Paragraph 62 states that the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies (including for travellers). Footnote 27 refers to Planning Policy for Traveller Sites, which sets out how travellers' housing needs should be assessed.

Section 9 promotes sustainable transport. Paragraph 108 requires appropriate opportunities to promote sustainable transport modes to be taken up; safe and suitable access to the site to be achieved for all users; and any significant impacts from the development ...on highway safety, can be cost effectively mitigated to an acceptable degree.

Section 12 is relevant as the proposal should seek to achieve well-designed places ensuring that development will function well and add to the overall quality of an area, be sympathetic to local character and history and create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

Section 15 is relevant as it seeks to conserve and enhance the natural environment. Paragraph 176 places great weight on conserving and enhancing the landscape and scenic beauty of AONBs – giving them the highest status of protection in relation to these issues.

Paragraph 8 of the NPPF is relevant in determining whether the proposed development comprises sustainable development.

Paragraph 11 of the NPPF requires decision makers to apply a presumption in favour of sustainable development.

Footnote 7 of Paragraph 11 of the NPPF sets out that the harm to the AONB can provide a clear reason for refusing development, even if the policies which are considered most important for determining an application (or appeal) are out of date.

#### Planning Policy for Traveller Sites (2015) (PPTS):

The PPTS is a material consideration. It seeks to ensure that the needs of travellers (including gypsies) are identified and assessed to gather robust evidence to plan positively and manage development. Policy B states that LPAs should identify and update annually, a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against their locally set targets. Policy H provides guidance on determining planning applications for traveller sites and considers the following issues to be assessed amongst other relevant matters when considering planning applications for traveller sites:

- The existing level of local provision and need for sites.
- The availability (or lack) of alternate accommodation for the applicants.
- Other personal circumstances of the applicant
- 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.
- The decision-maker (sic) should determine applications for sites from any travellers and not just those with local connections.

#### Kent Downs Area of Outstanding Natural Beauty Management Plan (2021-2026)

#### The Kent Design Guide (2005)

#### National Design Guide & Code (2021)

#### d) **Relevant Planning History**

There is no relevant planning history relating to this site.

In terms of the application under determination, when the application was first submitted in June 2021 the land was not developed. In August 2021, the site was occupied by the applicant and works to accommodate development and the stationing of 3 caravans on the site were carried out. A Temporary Stop Notice was issued, but upon its expiration, the development of the site continued and the applicant, family and associates occupied the land.

An email was sent to the agent in September 2021 setting out that copies of the human rights questionnaires had been received from an adviser working with the applicant, which provided information as to the occupiers and their details. The agent was chased for a response in October 2021. Confirmation of details sought was received from the agent in November 2021.

The Paddocks (land adjoining):

There have been two Appeals against Enforcement Notices affecting land at The Paddock (on land adjoining the current application site). In June 2020, the first appeal was allowed for a temporary period subject to conditions and the second was dismissed. These related to the siting of caravans and operational development on that land. The Inspector opined that the stationing of the mobile homes on the land, the paraphernalia associated with the residential occupation of those mobile homes and the erection of the entrance gates/close boarded timber panel fencing would cause harm to the AONB. In addition, the Inspector opined that the location of the development would be contrary to Policies DM1, DM7 and DM11 and would not be supported by Section H of the PPTS. The Inspector took into account the personal medical circumstances of the child living with the appellants and the lack of suitable alternative sites and granted a temporary planning permission for a 3 year period (this expires in June 2023).

e) **Consultee and Third-Party Responses**

Parish Council: Objects. The parish council contends that this proposed intensification will have unacceptable impacts on the character, appearance and visual amenity of the locality. The site is not going to be used as a touring site for the benefit of all sectors of the travelling community. This site at Ewell Minnis is within the AONB of the Kent Downs (North Downs). This is application clearly contrary to both the spirit and the letter of the PPTS. We do not believe the applicant has demonstrated a clear foul drainage strategy.

Kent Downs AONB Unit: Objects to the harm caused to the AONB.

Environment Agency: No objections are made subject to the imposition of a planning condition to confirm the foul drainage strategy.

KCC Highways: Does not meet the criteria to warrant involvement from the Highway Authority in accordance with consultation arrangements.

Third Party Representations: There have been 10 responses - 4 objecting to and 6 supporting the application. In addition, with the submission of further information 4 more letters in support have been submitted by the applicant.

The objections are concerned with harm to the AONB and appearance of the countryside, residential activity and domestic paraphernalia would give rise to further harm, harm to highway safety, the development is outside the settlement confines, the development is not located close to or is not accessible to amenities, public transport or facilities, there is likely to be an intensification of the use of the land, no information on the impacts on the ecology on the site has been submitted, the proposal would set a precedent, there is insufficient evidence submitted to demonstrate the need for the development, the proposal does not provide information on drainage, the proposal is contrary to policy and gypsy policy guidance (PPTS).

The responses in support of the application recognise the contribution the applicant makes and has made along with his family to the local community/village. The development is not visible behind the boundary vegetation and the proposal relates well to the landscape.

f) **1. The Site and the Proposal**

- 1.1 Prior to the submission of the application and the carrying out of the works on, and occupation of the site, the application site formed part of a continuous area of open land with the land adjoining. This appears to have been used either for agricultural purposes or for grazing/as a paddock.
- 1.2 The application land is an approximate rhombus shape, with its western boundary fronting Warren Lane and its northern boundary fronting Ferne Lane. Along both these boundaries there are hedgerows/vegetation that limit the visibility of the site and the development on it, from these roads. However, views can still be achieved, and the caravans, development and residential activity remain visible behind the vegetation. On Warren Lane, the fence and gates are fully visible.
- 1.3 PROW ER150 runs across the paddock on the land to the south of the site and connects Warren Lane and Ferne Lane. This PROW connects to the highway at either end which also connects with the wider PROW network. From this PROW, the application site, the development on it, and the use of the land are clearly visible from a short distance.
- 1.4 To the east of the application site (and to the south) is "The Paddocks" - this is an area of land in use for stabling/grazing and currently contains two mobile buildings in use for residential accommodation, which has the benefit of temporary planning permission. This matter is addressed further in this Report.
- 1.5 The application site forms part of the Kent Downs AONB. The site is on a relatively flat parcel of ground, on the plateau, in the context of the prevailing fall of the topography of the land southwards towards the Alkham Valley.
- 1.6 There are a limited number of farm buildings and residential properties within the immediate area, and the visual context and prevailing rural character and appearance of the area is open, comprising farming land and paddocks, with trees and hedges along field boundaries.
- 1.7 The application is for retrospective planning permission as the development has commenced following the submission of the planning application.
- 1.8 The application proposal seeks to accommodate 3 gypsy pitches – comprising 3 mobile homes and 3 touring caravans, hardsurfacing and parking for 6 cars. The access to the site is from Warren Lane and the driveway runs along the southern boundary of the site serving the three pitches.
- 1.9 The development is now supplemented by 2m high timber gates and fences fronting Warren Lane, with a concrete apron from the highway leading to the gates. Two metre high timber close boarded fences are also located, although not shown on the drawings, between plots.
- 1.10 A post and rail fence is proposed along the southern boundary of the site which is also proposed to be landscaped. The currently erected fence is a post and wire fence. This boundary has not yet been landscaped. This fence separates the land from the land adjoining – which is in use as a paddock.
- 1.11 A refuse storage/recycling area is proposed within the site close to the entrance gates.

- 1.12 At the time of the submission of the application forms, the site was grassed, and stated as being in use for grazing. The application forms state that a septic tank is proposed for foul drainage.
- 1.13 The submitted Planning Statement states the land is/was in agricultural use. The submitted Planning Statement states that the accommodation is proposed for three brothers and their dependents. The mobile homes would be placed on concrete bases (solid bases) whereas the remainder of the hard surfacing would be permeable surfaces. The submitted Planning Statement states that the site would accommodate a sewage treatment plant and electric charging points.

## 2. **Main Issues**

2.1 The main issues are:

- Whether the proposal is acceptable in principle
- Whether the proposal would conserve or enhance the Kent Downs AONB
- Other material considerations

### **Assessment**

#### **Principle of Development**

- 2.2 This main issue is concerned with whether the proposal would be in a suitable location, with reference to the Development Plan's spatial strategy and the accessibility of services and facilities.
- 2.3 It is accepted that the current Development Plan policies DM1 and DM11 are not up to date with the NPPF – although the need to achieve sustainable development is a shared objective between policy and the NPPF. When policies that are most important for determining the application are out of date with the NPPF planning permission for sustainable development should be granted unless the application of policies in the NPPF that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or, any adverse impact of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole. This is known as the 'tilted balance'. However, if it is considered that the proposed development harms the AONB and provides a clear reason for refusing the application, then this would mean that the 'tilted balance' is dis-engaged. (As referred to in Footnote 7 in the NPPF, as set out above.)
- 2.4 The site is situated outside of the rural settlement confines and in the AONB. It is some distance to the nearest settlement (Alkham) and even further to access schools, shops and other public amenities and facilities. The proposal is therefore contrary to Policy DM1.
- 2.5 Policy DM11 of the Core Strategy indicates, amongst other things, that development that would generate travel will not be permitted outside the urban boundaries and rural settlement confines unless justified by development plan policies. This policy does not set a threshold level of travel beyond which the policy is triggered: the supporting text to this policy indicates how this issue should be addressed according to the travel demand generated by development proposals. In this case, there is no dispute that the increase in use of the site would generate travel, both in terms of travelling for work and for day-to-day living. On a straightforward reading of Policy DM11, the use of the site as a caravan site for residential additional occupation is contrary to Policy DM11.

- 2.6 Paragraph 105 of the NPPF identifies that different conditions can apply between rural and urban locations in how 'genuine choice' for travel should be measured. The proposed scheme represents a scale of development which is considered to be counter to Policy DM11 and Paragraph 105 of the Framework which requires the active management of patterns of growth to ensure that new development (in this case housing) is well located to allow a genuine choice.
- 2.7 Policy DM7 does not specifically preclude development in the countryside and outside of settlement boundaries, but neither does it explicitly justify a departure from the approach adopted in Policy DM1. However, if the proposal satisfies the criteria for assessment under Policy DM7, then on the basis that the proposal "is specifically justified by other development plan policies" this would meet the requirements of, and override the conflict with, Policy DM1. One of the criterion to assess the proposal against in Policy DM7 is whether the application site is accessible to local services and facilities and by public transport. Given the distance to the nearest settlement and proximity to local services and facilities, and that there is no genuine choice as a means of transport (other than by private car), the proposal is considered to be contrary to Policy DM7.
- 2.8 Policy H (paragraphs 14 and 25) of the PPTS indicates that new traveller site development in open countryside, away from existing settlements or outside areas allocated in the development plan, should be very strictly limited.
- 2.9 There are some aspects of Policy DM7 that are out of kilter with the PPTS and the NPPF. As such, it should be given less weight in the determination of the application.
- 2.10 The conclusions of the appeal Inspector for the site adjoining the application site, (The Paddocks) carry some weight, as the Inspector also assessed the location of that site against the development plan strategy and policy guidance. He came to the conclusion that the appeal proposal was contrary to Policies DM1, DM7 and DM11 of the Core Strategy and also Policy H of the PPTS.
- 2.11 In conclusion, it is considered that the application proposal is not in a suitable location and is contrary to the spatial strategy in the development plan and Policy H of the PPTS.

#### Would the Proposal Conserve or Enhance the AONB?

- 2.12 The proposed development is in the open and exposed countryside – within the AONB. It is located on a plateau above the north slope of the Alkham Valley, separated from the nearest hamlets. The proposed development and associated residential activity are visible from public vantage points. The open, remote, isolated location of the site forms part of the existing landscape character and its scenic beauty, surrounded by open pasture.
- 2.13 Originally a greenfield, open site, the proposed development as carried out (and proposed) introduces an alien and intrusive form of development and residential activity within the open countryside and landscape. The development is not discreet and neither does it assimilate with the natural environment.
- 2.14 This section of the AONB has a distinct character area – with features such as open farmland and pastures, areas of woodland and very few buildings. The proposal significantly changes the character of this area and its scenic beauty and would fail to meet the AONB Management Plan's landscape management objectives of protection of features and views, and promotion of high standards of new design.

- 2.15 The combination of the mobile homes stationed on the land, the paraphernalia associated with the residential occupation of those mobile homes, the residential activities on the land and the erection of further development in terms of boundary enclosures and access gates result in a marked change in the character and appearance of the site.
- 2.16 The use introduces caravans with an overt residential appearance that compounds the harm along with the levels of residential activity around them. The introduction of the fencing and gates compounds the urbanisation of the site. The land has taken on a character more typically associated with a residential environment.
- 2.17 It is considered therefore that the proposal is contrary to Policies DM15 and DM16 of the Core Strategy, the principle of the Kent Downs AONB Management Plan and paragraph 176 of the NPPF.

### Other Considerations

#### Need and Supply of Sites:

- 2.18 It is necessary to clearly distinguish between, and deal separately with, the need for gypsy sites generally within the area and the needs of the intended occupiers of the site as individuals or as a family or group.
- 2.19 In terms of the general need for gypsy sites within the wider area, the LPA can demonstrate a 5 year supply of gypsy sites. Notwithstanding, meeting the (5-year) accommodation needs of gypsies should not be considered to be a 'ceiling' or veto to allowing other sites that are considered acceptable on their planning merits. However, purely on this issue, there is not a lack of gypsy sites within the district.
- 2.20 With regard to the proposed occupiers, although no details were submitted to supplement the application, officers have sought details of the circumstances of the occupation of the site and the personal need and circumstances of the occupiers.

#### Personal Circumstances:

- 2.21 These details are available for Members of the Planning Committee to view in a confidential paper as they contain personal and sensitive data. They have therefore been withdrawn from the public document.

#### Alternative Sites:

- 2.22 For the reasons set out above, there is a surplus of alternative sites and pitches within the district, which carry significant weight in the determination of the application. The LPA has a development strategy to accommodate the needs of the gypsy and traveller communities, which has already produced an over supply of sites and is likely to lead to a further increase in provision following the Reg 19 Consultation and the emergence of the new Local Plan. There are also other family members in the immediate area that might be able to provide accommodation – even on a temporary basis. This would need to be explored and taken into account.
- 2.23 At present, the Meadows caravan site, in Alkham, currently has vacant pitches that could accommodate the applicant and his family. Notwithstanding, no information has been submitted to explain why the applicant moved onto the site from his previous site (the circumstances under which he moved). No information has been provided

as to why the applicant has not been able to be accommodated on a site owned or controlled by another member of the family, within Ewell Minnis or the Alkham area.

#### Previously Developed Land:

- 2.24 Paragraph 26 of the PPTS explains that LPA's should attach weight to certain matters – such as the effective use of previously developed untidy or derelict land. The original site was not previously developed – it formed part of and contributed towards the open character of the area and the quality of the landscape. Other matters set out in Paragraph 26 can be assessed as follows - the site's appearance does not positively enhance the environment and increase the site's openness, the site does not have any significant areas for landscaping or the provision of play areas (it has some play areas but this is not significant), and the site is visually isolated from the closest communities.

#### Temporary Planning Permission:

- 2.25 Weighing the proposal in the planning balance, it is considered that the personal circumstances do not outweigh the harm to the spatial strategy of the Development Plan, planning policies and guidance, and the harm to the AONB. Having considered and discounted the option of a permanent planning permission it is necessary to undertake a second balancing exercise in the decision.
- 2.26 The Local Planning Authority has a five year supply of gypsy and traveller pitches and there are alternative sites available and the applicant could explore other alternatives that might be available through family members.
- 2.27 There are significant personal circumstances that carry significant weight in relation to one family member and there are other circumstances around the other occupiers of the site that carry moderate weight.
- 2.28 With the current information and detail so far submitted, it is considered that a temporary permission is not justified. However, should the application be refused and further consideration is then given around the need to undertake enforcement action, any assessment would be able to take into account expediency, human rights and the personal circumstances of the occupiers at the time when wording any Enforcement Notice. At that time, there may also be further information available and advice from Practitioners as to the accommodation and locational needs of the occupiers of the pitches.

#### Planning Conditions:

- 2.29 It is important to determine whether the harm caused by the development could be mitigated by a landscaping scheme or the imposition of planning conditions.
- 2.30 It is not considered that further landscaping could mitigate the visual harm. This would appear contrived on the land, as it is important to retain the open landscape. The southern boundary seems to be a randomly chosen boundary line, that does not follow any natural field boundary or landscaped/vegetative screen. Such a landscaped boundary would appear contrived, act as an unnecessary physical barrier and would not in any event remove the visibility of the site and the development and activities on it.
- 2.31 As such, it is considered that the proposal would not be compatible with criterion iii of Policy DM7 (in that it could not be screened from wider view or be capable of this through additional measures). It is also considered that the proposal would not be



compatible with criterion b of paragraph 26 of the PPTS in that the site is and cannot be well planned or soft landscaped in such a way as to positively enhance the environment and increase its openness.

*Thanet Coast/Sandwich Bay SPA/Environmental Impact*

- 2.32 The decision of the CJEU in *People Over Wind and Sweetman v Coillte Teoranta* was issued in April 2018 and is required to be taken into account. The application site falls within an area of the District where development has the potential to have a significant effect on the Thanet Coast/Sandwich Bay Special Protection Area (SPA) – within the District. In this instance, The Conservation of Habitats and Species Regulations 2017 SI 2017/1012 and article 6(3) of Directive 92/43/EEC apply.
- 2.33 Applying a pre-cautionary approach and with the best scientific knowledge in the field, it is not currently possible to discount the potential for all new housing development within the district to have an adverse effect on the integrity of the protected SPA and Ramsar sites. Following consultation with Natural England, the identified pathway for such an adverse effect is an increase in recreational activity which causes disturbance, pre-dominantly by dog-walking, to the species which led to the designation of the sites and the integrity of the sites themselves.
- 2.34 The Thanet Coast and Sandwich Bay SPA and Ramsar Mitigation Strategy was agreed with Natural England in 2012 and is still considered to be effective in preventing or reducing the harmful effects of housing development on the SPA and Ramsar sites. For proposed housing developments in excess of 14 dwellings the agreement with Natural England is that those applications are required to contribute to the Strategy in accordance with a published schedule to mitigate against harmful effects. This mitigation comprises several elements, including monitoring and wardening.
- 2.35 The mitigation measures will ensure that the harmful effects on the designated site, caused by recreational activities from existing and new residents, from all housing developments in the district, will be effectively managed. Having regard to the proposed mitigation measures and the level of contribution currently acquired from these larger developments, it is considered that the application proposal would not have an adverse effect on the integrity of the SPA and Ramsar sites.
- 2.36 The application site falls within the AONB. Officers have considered the application in accordance with Regulation 14(1) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017.
- 2.37 The development proposed falls within the description at 10 (b) of Schedule 2 to the above Regulations but does not meet the threshold criteria for Schedule 2 development due to the scale of development and the size of the site. Having taken into account the selection criteria in Schedule 3 to the above Regulations namely: the characteristics of the development; the location of the development; and the types and characteristics of the potential impact, the proposal would not be likely to have significant effects on the environment for the reasons set out in the report and the development is small scale and there would be no likely significant impacts.
- 2.38 Given the nature, scale and location of the proposal, the impacts of the development are unlikely to be significant. Consequently, while there may be some impact on the surrounding area and the designated sensitive area as a result of this development, it would not be of a scale and nature likely to result in significant environmental impact. The proposed development is not therefore Environmental Impact Assessment (EIA) development and an EIA is not required.

### 3. **Conclusion**

- 3.1 It is considered that the site is not in a suitably sustainable location and is not accessible to local services and facilities and by public transport. This would be contrary to the objectives behind the Development Plan policies, the NPPF and the PPTS.
- 3.2 There would be significant harm to the landscape character and scenic beauty of the AONB and the prevailing character and appearance of the countryside. As such, in accordance with Paragraph 11 of the NPPF and footnote 7, this represents a clear reason for refusal and a reason to dis-engage the 'tilted balance'.
- 3.3 Whilst additional gypsy pitches would count towards the overall need for gypsy pitches for the lifetime of the emerging Local Plan, it is not considered that this outweighs or justifies what is an unacceptable form of development. At present, the Council has a 5 year supply of gypsy pitches.
- 3.4 The personal circumstances that have been provided and submitted in support of the proposal do not outweigh the harm caused and the conflict with the development plan and policy guidance, on a permanent or temporary basis.

### g) **Recommendation**

#### I PERMISSION BE REFUSED

1. The proposed development by reason of the scale of the site, development and associated works on and around the site gives rise to significant harm to the open, landscape character, appearance and scenic beauty of the countryside contrary to Policies DM1, DM15 and DM16 of the Core Strategy, the principles of SD2, SD3, SD7 and LLC1 of the Kent Downs AONB Management Plan and Paragraphs 130, 174 and 176 of the National Planning Policy Framework.
2. The proposed development would be over-reliant on the use of the private motor car to reasonably access education, health, welfare and employment and social infrastructure contrary to Policies DM1, DM7 and DM11 of the Core Strategy, Paragraph 25 of the Planning Policy for Traveller Sites and Paragraphs 110 and 112 of the National Planning Policy Framework.

- II Powers be delegated to the Head of Planning and Development to settle any necessary wording in line with the recommendations and as resolved by the Planning Committee.

#### **Case Officer:**

Vic Hester