

REPORT SUMMARY

REFERENCE NO - 23/00831/FULL		
APPLICATION PROPOSAL Removal of Conditions 2 & 3 of Planning Permission 75/00680 (Site for caravans for fruit and hop-picking machine workers) - Removal of restriction for the use of caravans to specific time period within condition 2; and removal of occupation restriction to fruit and hop-picking machine workers		
ADDRESS Grovehurst Grange Haymans Hill Horsmonden Tonbridge Kent TN12 8BX		
RECOMMENDATION To GRANT planning permission subject to conditions (please refer to section 11.0 of this report for full recommendation)		
SUMMARY OF REASONS FOR RECOMMENDATION <ul style="list-style-type: none"> • The proposal would result in the delivery of sustainable development and therefore, in accordance with Paragraph 11 of the NPPF, permission should be granted, subject to all other material considerations being satisfied; • The proposal relates to the period of time that an existing caravan site can be occupied and does not propose an increase in caravan numbers nor any further built form or physical development on the site; • The proposal would widen the permitted occupation of an existing caravan site in a rural area which can be used by both tourists and agricultural workers; • The development would not have a significantly harmful impact upon the residential amenity of any neighbouring properties; • The traffic movements generated by the development can be accommodated without detriment to highway safety; • Other issues raised have been assessed and there are not any which would warrant refusal of the application or which cannot be satisfactorily controlled by condition. 		
INFORMATION ABOUT FINANCIAL BENEFITS OF PROPOSAL The following are considered to be material to the application: Contributions (to be secured through Section 106 legal agreement/unilateral undertaking): N/A Net increase in numbers of jobs: N/A Estimated average annual workplace salary spend in Borough through net increase in numbers of jobs: N/A The following are not considered to be material to the application: Estimated annual council tax benefit for Borough: N/A Estimated annual council tax benefit total: N/A Annual New Homes Bonus: N/A Estimated annual business rates benefits for Borough: N/A		
REASON FOR REFERRAL TO COMMITTEE Called in by Cllr McMillan if recommended for approval for the following reasons; <ol style="list-style-type: none"> 1) <i>changing the use of the caravans would have an impact on the residents in terms of noise and multiple car movements on an access road that is not suitable;</i> 2) <i>changing the terms of usage on the caravans would lead to semi permanent structures an area that is outside the limits to build permanent structures;</i> 3) <i>This application does not address or support any additional housing need/ requirement.</i> 		
WARD Brenchley &	PARISH/TOWN COUNCIL	APPLICANT Mrs Victoria

Horsmonden	Horsmonden Parish Council	Buswell AGENT Mrs Vicky Bedford
DECISION DUE DATE 24/07/23 EOT	PUBLICITY EXPIRY DATE 14/06/23	OFFICER SITE VISIT DATE Various
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):		
23/00037/LDCEX	Lawful Development Certificate (Existing) - Occupation of the existing caravans within the site by persons not employed as fruit and hop-picking machine workers) between 1st August and 30th September each year in breach of condition 3 of planning permission 75/00680	Granted 03/03/23
75/00680	Site for caravans for fruit and hop-picking machine workers.	Granted 29/01/76
SW/6/70/184	Use of land as turning bay, discharge point for cesspool tankers and erection of a farm toilet	Granted 1970

Enforcement Notice history

Enforcement Notice issued 19/04/1978 against breach of condition 1 of 75/00680;

On the 29 January 1976 planning permission was granted under Part III of the Town and Country Planning Act 1971 for a site for caravans for fruit and hop-picking machine workers subject to the following condition among others:-

"The use of the site shall be confined to the stationing of six caravans."

Compliance requirement: *"Remove all caravans from the said land other than the six permitted"*

No appeal, Notice remains extant on land.

Enforcement Notice issued 19/04/1978 against breach of condition 2 of 75/00680;

On the 29 January 1976 planning permission was granted under Part III of the Town and Country Planning Act 1971 for a site for caravans for fruit and hop-picking machine workers subject to the following condition among others:-

"The use of the caravans shall be restricted to the period between 1st August and 30th September each year"

Compliance requirement: *"To cease using the permitted caravans for human habitation between 1st October and 30th September each year"*

No appeal, Notice remains extant on land.

MAIN REPORT

1.0 DESCRIPTION OF SITE

- 1.01 This application relates to an area of land 0.59ha in size in a rural location near Horsmonden, close to the junction of Haymans Hill and Grovehurst Lane. There are fishing lakes to the SE and SW, and a dwelling to the NW (Grovehurst Cottage). There is open land to the north, on the other side of Haymans Hill.
- 1.02 Within the site are five static caravans (a further 'touring' caravan was noted to be on site when it was visited in May 2023) and three former hopper huts, along with the former 'hopper oven'. The site comprises mown grassland with an access/parking area leading off Haymans Hill; surrounding the site are trees and hedges, although the frontage to Haymans Hill has a relatively open boundary and a low level gate.

- 1.03 Planning permission was granted in January 1976 for the use of the site as '*Site for caravans for fruit and hop-picking machine workers*'. At that time the site area was much larger and included what was then open land to the south; it formed part of a larger agricultural holding at Grovehurst Farm, on the opposite side of Grovehurst Lane. The permission was subject to three conditions;
1. *The use of the site shall be confined to the stationing of six caravans;*
 2. *The use of the caravans shall be restricted to the period between 1st August and 30th September each year;*
 3. *The use shall be restricted to the uses for which the application is made.*
- 1.04 Enforcement Notices were then issued in April 1978 against non-compliance with conditions 1 & 2. These Notices remain extant upon the land.
- 1.05 A Certificate of Lawful Existing Use or Development (CLEUD) was granted earlier this year in respect of condition 3 above, which certified that the site had been occupied by persons other than 'fruit and hop-picking machine workers' for over ten years between 1st August and 30th September each year.
- 1.06 As a result, the site can be occupied by any person between 1st August and 30th September each year, but cannot lawfully be occupied by anyone outside this period as condition 2 remains in force.
- 1.07 The caravans have however been occupied by friends and relatives of the owner since the mid-1990s in breach of the 1978 Enforcement Notice that relates to condition 2, a breach which did not come to the LPA's attention until the aforementioned CLEUD was submitted this year. Due to the presence of the Notice ongoing breach of condition 2 cannot gain immunity from enforcement proceedings under the '10-year rule'.

2.0 PROPOSAL

- 2.01 Following the grant of the recent CLEUD, this application seeks to remove both Conditions 2 & 3 of the original planning permission to allow for residential occupation of the site as either holiday accommodation or for agricultural workers for most of the year, rather than just the two summer months currently allowed by condition 2.
- 2.02 This application broadly seeks to regularise a use of the site which has been carrying on since the mid-1990s. It does not seek to change the use of the site (which is already a *sui generis* residential caravan site, in which both tourism and non-tourism uses fall); nor to increase the permitted number of caravans at the site (6); nor to introduce any physical development on to the site. The application only seeks to expand the number of months during each year that the caravans can be occupied, and to allow them to be used as holiday accommodation alongside their originally-intended purpose as agricultural workers' accommodation.
- 2.03 The applicant has agreed to a condition which restricts the use of the site to holiday accommodation and also for agricultural workers, which was its original permitted purpose.
- 2.04 The application was amended in late May 2023 as it originally proposed to only remove condition 2.

3.0 SUMMARY INFORMATION

	Existing	Proposed	Change (+/-)
Site Area	0.59ha	0.59ha	No change
Current caravan numbers	6	6	No change
Current occupancy restrictions (<i>based on planning history and 2023 CLEUD</i>)	Any person can lawfully occupy the caravans between 1 st August and 30 th September each year. No occupation permitted outside this period.		
Proposed occupancy restrictions (based on description of development and	Tourism and/or agricultural workers' accommodation all year round except in January each year. No occupation permitted in January.		

4.0 PLANNING CONSTRAINTS

- Ancient Woodland + 30M Buffer Area
- Limits to built development - outside

5.0 POLICY AND OTHER CONSIDERATIONS

The National Planning Policy Framework (NPPF) 2021
National Planning Practice Guidance (NPPG)

Site Allocations DPD (July 2016)

Policy AL/STR 1: Limits to Built Development

Tunbridge Wells Borough Core Strategy 2010

Core Policy 1: Delivery of Development

Core Policy 4: Environment

Core Policy 5: Sustainable Design and Construction

Core Policy 7: Employment Provision

Core Policy 14: Villages and Rural Areas

Tunbridge Wells Borough Local Plan 2006

Policy EN1: Development Control Criteria

Policy EN25: Development control criteria for all development proposals affecting the rural landscape

Policy T3: Tourism accommodation outside the Limits to Built Development

Policy TP4: Access to the Road Network

Policy TP5: Parking Provision with New Development

Horsmonden Neighbourhood Plan 2023

Policy 2.1: Walkable Village

Policy 2.6: Public parking

Policy 2.7: New parking

Policy 3.1 Retain and intensify the use of existing employment sites:

Policy 3.4 Business associated with vineyards and fruit growing:

Policy 5.1 Design of new development:

Policy 7.3 Biodiversity net gain:

Policy 7.4: Trees and hedgerows:

Policy 7.7 Light pollution:

Policy 7.10 Development adjacent to Ancient Woodland:

Supplementary Planning Documents:

Landscape Character Assessment 2018

Rural Lanes SPD

Tunbridge Wells Borough Submission Local Plan 2020-2038

Policy STR1: The Development Strategy
Policy STR2: Place Shaping and Design
Policy STR4: Ensuring Comprehensive Development
Policy STR6: Transport and Parking
Policy STR8: Conserving and Enhancing the Natural, Built, and Historic Environment
Policy PSTR/HO 1: The Strategy for Horsmonden parish
Policy STR/10: Neighbourhood Plans
Policy EN1: Sustainable Design
Policy EN2: Sustainable Design Standards
Policy EN3: Climate Change Mitigation and Adaptation
Policy EN8: Outdoor Lighting and Dark Skies
Policy EN9: Biodiversity Net Gain
Policy EN12: Trees, Woodland, Hedges, and Development
Policy EN14: Green, Grey, and Blue Infrastructure
Policy EN16: Landscape within the Built Environment
Policy EN21: Air Quality
Policy EN24: Water Supply, Quality, and Conservation
Policy EN26: Sustainable Drainage
Policy EN27: Noise
Policy EN28: Land Contamination
Policy ED2: Retention of Existing Employment Sites and Buildings
Policy ED3: Digital Communications and Fibre to the Premise
Policy ED7: Retention of, and improvements to existing, and the promotion of new, tourist accommodation and attractions
Policy TP1: Transport Assessments, Travel Plans, and Mitigation
Policy TP3: Parking Standards

6.0 LOCAL REPRESENTATIONS

- 6.01 The application was publicised by way of site notice in April 2023, and again in May 2023 when the description of development was amended to include both conditions 2 & 3.
- 6.02 39 comments (30 objecting – including multiple comments from the same objectors following amendment to application - and 9 supporting) have been received in response, raising the following issues;

Support:

- Site has a long term residential use;
- Residents do not cause trouble or create detrimental effect to the local area;
- Conditions no longer relevant;
- They have been used outside August/September for many years.

Object:

- Noise and disturbance from residents of the site;
- Impact on character of the countryside;
- Use has been minimal for many years;
- No on site management;
- Impact on ecology;
- Light pollution;
- Traffic increase;
- Impact on recreational use of adjoining lake;

- Unsustainable location, outside LBD;
- Not brownfield land;
- Caravans are permanent structures;
- Impact on local property values (not a planning consideration);

7.0 CONSULTATIONS

Horsmonden Parish Council

- 7.01 **(06/06/23)** - Recommend refusal as previous comments still apply with the additional observation that the Parish Council feel that if this application was to be approved it would set a precedent.
- 7.02 **(04/05/23)** - Recommend refusal on the grounds that the site is outside Limits to Build Development and is not originally a permanent development application. The existing planning conditions should still be applied.

KCC Highways

- 7.03 **(22/05/23)** - KCC Highways have submitted a response to the planning application, dated to 5th May 2023. Since this time, a substantive change has been made to the planning application, in that the application description has changed from:

"Variation of Condition 2 of Planning Permission 75/00680 (Site for caravans for fruit and hop-picking machine workers) - Removal of restriction for the use of caravans to specific time period"

To:

"Removal of Conditions 2 & 3 of Planning Permission 75/00680 (Site for caravans for fruit and hop-picking machine workers) - Removal of restriction for the use of caravans to specific time period; and removal of occupation restriction to fruit and hop-picking machine workers".

- 7.04 KCC Highways have therefore been invited to provide additional comments. In the covering letter provided by the applicant, it is stated that the reason for this change to the application description is in order to clarify the purpose of the application. This accords with KCC Highways' understanding of the scheme and reading of the revised application description.
- 7.05 KCC Highways recommended no objection is raised on highways grounds to the previous iteration of the application. As the change in application description does not affect any highways or transport matters relating to the site, this conclusion too has not changed, and KCC continue to recommend no objection to the application on highways grounds.
- 7.06 The informatives provided at the end of the previous response (dated 5th May 2023) remain relevant and should be understood by the applicant.
- 7.07 **(05/05/23)** - The application aims to vary a 1975 condition on the planning permission for the site. The condition restricts use of the caravans on the site to between 1st August and 30th September each year, and this application aims to remove this restriction, allowing use of the caravans year-round.
- 7.08 The Supporting Planning Statement sets out that the site has been used outside of these dates each year *'within regular residential use, at various points throughout the year for some 26 years, in breach of Condition 2 of the original planning permission'*.

7.09 If the planning condition had been held to, the proposed change in condition would have a minimal-to-negligible effect on transport and highways conditions related to the site. As it stands, this application appears to seek to formalise an arrangement that has been present on the site for 26 years, and thus would have nil impact on the transport and highways conditions related to the site.

7.10 There is also no known record of highways concerns or incidents related to the site access, and the Supporting Planning Statement states that *'There are no proposed changes to the access and it is not considered that the removal of this condition, enabling the site to continue to be utilised in the same manner as it has been for a number of years, will be detrimental to highway safety'*. This is agreed.

7.11 It is therefore recommended that no objection is raised to this application on highways grounds.

Mid Kent Environmental Protection

7.12 **(22/05/23)** - MAIN POINTS CONSIDERED: Noise. Amenity. Air Quality. Land contamination. Asbestos. Lighting. Odour. Accumulations. Sewage. Private Water Supplies.

7.13 COMMENTS: Condition 2 restricts the use of the 6 mobile homes to August and September in any calendar year. It is unclear how foul sewage is dealt, so further information should be provided in this respect as a condition of any planning permission granted. The Council has no record of any known Private Water Supplies in the vicinity.

7.14 RECOMMENDATIONS: No objections subject to comments above and condition regarding foul sewage.

Principal Conservation Officer

7.15 **(05/07/23 – verbal comments)** – Proposal involves no additional buildings/increase in built development and the site was traditionally used as short-term accommodation for farm workers. The site still appears as an outlier of the farmstead, the change in intensity of use does not affect the significance of the listed buildings to the SE nor the setting of the farmstead.

8.0 APPLICANT'S SUPPORTING COMMENTS (conclusions of Planning Statement at Part 8)

8.01 *Planning permission was granted in 1976 for the continuous siting of up to 6 caravans on the land for residential use by fruit and hop pickers during specified months of the year.*

8.02 *Whilst initially used as approved, it is understood that hop and fruit picking ceased at the site during the 1980s. The site was purchased by the applicant's late-mother in 1996 and then used regularly by the applicant and her family and friends for residential purposes at various times throughout the year for in excess of 26 years.*

8.03 *The use of the site for residential use is not considered to be a breach of the approved use, although it is acknowledged that there is a condition limiting the period of time for which the caravans can be occupied.*

8.04 *To this end, as detailed throughout this Statement, planning policies and requirements at both a local and national level are supportive of the sustainable*

growth and expansion of businesses in rural areas and the re-use of existing buildings. Within the borough it is further recognised that tourism makes a vital contribution to the economy and that existing tourism uses should be retained. Users of the caravans will undoubtedly make use of local facilities and services when visiting the area, contributing to the rural economy.

- 8.05 *In terms of the local countryside, the caravans are undoubtedly part of the local vernacular, having been on the site for almost half a century. Furthermore, it is clear from the evidence provided within the recent Certificate of Lawfulness application that the caravans have been occupied at various times consistently throughout the year for many years, without raising any local concerns.*
- 8.06 *The only matter for consideration within this application is therefore the removal/variation of the condition restricting the months of the year that the caravans can be occupied. In this regard, it is submitted that authorising the use of the caravans and land outside of the months of August and September would not have a detrimental impact on the surrounding area of neighbouring residential amenity.*
- 8.07 *The continued residential use of the site supports the overarching objectives of sustainable development, enabling the site to consistently support the local community, including boosting economic growth and supporting strong and healthy communities, through meeting the needs of present and future generations. Furthermore, it is considered that should the Council consider that the use of the site should continue to be restricted to two months of the year that this would have a detrimental impact on the benefits that it can offer the area and its overall sustainability.*

9.0 BACKGROUND PAPERS AND PLANS

Application form
Planning Statement
P.2896.010.A Site Location Plan
Letter from agent 18 05 23 and description change

10.0 APPRAISAL

- 10.01 The main issues are therefore considered to be:
- Whether the existing conditions (by reference to the stated reasons for their imposition) are reasonable, with reference to the PPG and NPPF;
 - The impacts of removing or varying the condition (including economic benefits, the impact on the landscape; residential amenity; highways/parking);
 - Other matters.

Whether the existing conditions (by reference to the stated reasons for its imposition) are reasonable, with reference to the PPG and NPPF
NPPF/PPG conditions policy/guidance

- 10.02 Para 55 of the NPPF states that LPAs should consider whether otherwise unacceptable development could be made acceptable through the use of conditions. Para 56 states that conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. All conditions must satisfy these six tests.
- 10.03 The PPG also includes guidance on the use of conditions (<https://www.gov.uk/guidance/use-of-planning-conditions>). It states that when used properly, conditions can enable development proposals to proceed where it would otherwise have been necessary to refuse planning permission. Whether it is

appropriate for the Local Planning Authority to impose a condition on a grant of planning permission will depend on the specifics of the case (Paragraph: 004
Reference ID: 21a-004-20140306.

- 10.04 Conditions 2 & 3 of the 1976 permission were imposed '*to enable the District Planning Authority to regulate and control the use of the land*'.

Background

- 10.05 This site lies in a rural location and is not previously developed land (as defined by the NPPF Annex). The original permission was granted in January 1976; at that time the site formed part of a larger agricultural holding based at Grovehurst Farm to the south-east. Back then there was sufficiently demonstrable agricultural justification for the caravans to grant a conditional planning permission. The seasonal residential use of the site pre-dates the 1970s as the hopper huts would have been used for a similar purpose earlier in the 20th Century, until the 1960s when these structures generally began to fall out of use for seasonal workers.

- 10.06 Subsequently, the land was sold away from the Grovehurst Farm holding in 1996 and has not been used or occupied by 'fruit and hop pickers' since. Since then the caravans and land have been used solely and continuously for short term residential use, as holiday accommodation, for the owners' family and their friends. Albeit this has been in breach of conditions 2 & 3 of the 1976 permission (and also the 1978 Enforcement Notice directed at a breach of condition 2, which remains extant on the land).

Assessment of conditions

- 10.07 Planning policies in force at both local and national level are very different to those in force in 1976; the current Local Plan and Core Strategy were adopted in 2006 and 2010 respectively, whilst the first NPPF was published in 2012. Nevertheless the general thrust of policy as it relates to residential uses in unsustainable, rural areas remains broadly the same: that such uses are restricted and generally permitted in exceptional circumstances only. These include where the development is necessary for agriculture. In this instance it is considered that imposing Conditions 2&3 on the original 1976 permission would have been reasonable at the time.
- 10.08 However, 47 years have passed since that grant of permission and 45 years since the issue of the Enforcement Notice. In that time guidance on the use of conditions has become stricter and more comprehensive, particularly as it relates to their wording and specificity. Likewise, the nature of the accommodation now provided for rural workers has changed; they are often accommodated in mobile homes which are available for occupation most or all year round for a wide variety of agricultural tasks (not just fruit picking) and not just during a few months, or for a particular season. The hop picking industry in this area has contracted significantly since then too.
- 10.09 Poorly worded or reasoned conditions risk becoming unenforceable, as do conditions which are outdated and no longer reflect the context of the site. It is unlikely that the 1976 conditions now meet the 'six tests' stated in the NPPF and PPG. As noted in the Officer Report to the CLEUD earlier this year (para 16) condition 3 is badly worded and unclear. The meaning of the word 'Use' in the context of this condition is unclear. It is not certain whether it refers to planning land use (which is residential regardless of the occupation of the residents); or the occupation of the site by a particular group of persons. If it is meant to refer to occupation only by fruit and hop workers, it does not explicitly say so.

- 10.10 Condition 3 is also very narrowly worded, in that it restricts occupation to fruit and hop workers only (by reference to the description of the development) – modern agricultural occupancy conditions restrict use more widely, to any agricultural purpose. As stated above the site no longer forms part of an agricultural land holding. Condition 3 is highly unlikely to ever be complied with again for these reasons.
- 10.11 In addition, the reason given for both the 1976 conditions on the decision notice is ‘*to enable the District Planning Authority to regulate and control the use of the land*’. This only refers to a functional purpose for the conditions – this is the reason all conditions are attached to planning permissions. It does not cite any specific planning reason relating to this site. Nor does it refer to any harmful impacts that would arise if the conditions were breached. Whilst the wording of the condition is likely to be linked to the need to control and restrict occupation of the caravans to prevent unrestricted residential use where it would be contrary to policy, it does not specifically say this.
- 10.12 However, the enforceability of the conditions is only one issue to be taken in to account in determining the current application. As set out below, the impacts arising from their removal/variation must be considered too.

The impacts of removing or varying the conditions

- 10.13 Whether variation/removal is appropriate now depends on the reasons it was originally imposed and the planning merits of the case. The LPA can either vary the wording of the condition; or to substitute it with a new one.
- 10.14 The applicant has agreed to new conditions 2 & 3 below which allows the site to be occupied as holiday accommodation or by agricultural workers falling within the definition of agriculture at s.366 of the 1990 Act. Therefore the applicant is not seeking a completely unrestricted residential occupation of the site, and the site is available should there be a demand for rural workers’ accommodation in the area.
- 10.15 The impacts of removing these conditions include tourism and associated rural economic considerations, the impact of the development on the landscape; residential amenity; and highways/parking. Removing the conditions would not affect the site’s lawful status as a residential caravan site, nor make the caravans ‘buildings’.
- 10.16 It is important to underline that the site, which is outside the LBD, already benefits from a planning permission for residential use (albeit restricted to two months a year) where any person can now occupy it; the caravans are already on site and have been for many years. This will remain the case even if this current application is refused. Furthermore no physical changes are proposed to the site (to the access or the hopper hut buildings, for example).
- 10.17 A further material consideration is that the restricted occupation permitted in 1976 was in connection with an agricultural holding (Grovehurst Farm) to which the application site no longer has any functional or ownership connection. This is not to dismiss the potential future occupation of the site by workers employed in agriculture in the locality beyond Grovehurst Farm, however there is unlikely to be a need for the caravans to be occupied by just workers from that holding alone.
- 10.18 The letter from the agent dated 18th May 2023 states ‘*The applicant, her family and friends have used the site for many years throughout the year and does not wish to make any changes to the way in which the site and caravans are used*’. Paragraph 8 of the applicant statutory declaration that supported the Lawful Development Certificate earlier this year expands upon this; it stated that since 1996 the site has

only used by the owners' family and friends during school holidays and for extended weekend stays. They are described in the same para as holiday lets.

- 10.19 The concerns raised by neighbours is that granting permission as sought by this application will result in the site being able to be used in a different and more intensive way, with use by non-family and friends on a more commercial basis and possible through companies such as AirBNB. However the caravans have been let for many years and there is no differentiation in planning legislation between caravan sites let on an ordinary commercial basis, and those which are commercially let to family/friends only. In both cases, the site owner's management of the facility is a matter that falls outside the control of the planning system.

Rural tourism and economic issues

- 10.20 NPPF Para 84 (c) supports '*sustainable rural tourism and leisure developments which respect the character of the countryside*'. Paragraph 85 of the NPPF also notes that "*sites to meet local business needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport*" while ensuring "*that development is sensitive to its surroundings, does not have an unacceptable impact on local roads and exploits any opportunities to make a location more sustainable*".
- 10.21 Core Policy 7 seeks to promote '*the development and retention of, and enhancing the quality and attractiveness of, tourism accommodation and attractions across the Borough*'. Policy T3 of the Local Plan is consistent with the NPPF and broadly supports provision of tourism facilities in rural areas, but in this case is of less relevance as it refers to extension/re-use of buildings, which caravans are not. Tourism policy within the Submission Local Plan at ED7 carries only limited to moderate weight at best as the SLP is only mid-examination and has not been formally adopted.
- 10.22 This site is already benefits from planning permission for a residential use (albeit limited to two months a year) and is already sited in an unsustainable location. Although there are public transport facilities and local village centres within the wider area given the location of the site, the distance to these facilities and the proposed use as holiday accommodation mean that it is highly likely that the majority of future users would be most likely to access the site by car. This is likely to be the case at the moment too, and would reflect the current pattern of access and usage of the site during August and September each year.
- 10.23 Holiday accommodation users would also potentially wish to explore the wider area. This type of accommodation by its very nature tends to be located where there is limited access to services, outside the LBD. Policy at local and national level does not restrict tourism development to LBDs nor to areas close to/within villages (as per NPPF Para 85, referred to above). Therefore whilst the site's location could be classed as unsustainable, on balance the benefits that the scheme would provide in supporting the rural economy and providing access to the countryside would outweigh the harm resulting from the accessibility of its location. This stance is consistent with appeal decisions received by this authority concerning other tourism development in rural areas.
- Highway safety*
- 10.24 KCC Highways do not consider that the occupation for a longer period would cause harm to highway safety. They do not consider that there would be any significant impacts from the development on the transport network, nor that there would be an unacceptable impact on highway safety, nor the residual cumulative impacts on the

road network would be severe. There is already an informal parking area on the site. One objector has provided their own estimates of likely numbers of traffic movements to and from the site which results in an alleged 40-fold increase. However this is not underpinned by any professional opinion; ignores the fact that the site is already occupied for more than two months a year (which, when assessing comparative highways impacts is material, whether or not the current occupation is lawful); does not assume full occupation of the site at present; and is not a view shared by professional transport planners at KCC Highways.

- 10.25 On this basis (and given that the application does not propose any alterations to the access point) the proposal complies with NPPF paras 110 and 111, along with Local Plan policy T4.

Residential amenity

- 10.26 Criterion 2 of Local Plan Policy EN1 requires that proposals do not cause significant harm to the residential amenities of adjoining occupiers and would provide adequate residential amenities for future occupiers of the development when assessed in terms of daylight, sunlight, and privacy. EN1(1) requires that *'The nature and intensity of the proposed use would be compatible with neighbouring uses and would not cause significant harm to the amenities or character of the area in terms of noise, vibration, smell, safety or health impacts, or excessive traffic generation'*.
- 10.27 There would be no loss of privacy, light or outlook from the extended occupation of the caravans. Whilst almost-year round occupation may be more noticeable to local residents, this alone does not equate to 'significant harm'. Noise from sites in residential use is rarely ever a matter that would lead to refusal of an application.
- 10.28 At this juncture, it is relevant that to highlight that the site has been used in breach of conditions 2 & 3 for nearly three decades without complaint to the LPA from neighbouring residents on the basis of noise/disturbance. Objections to the current pattern of occupation at the site only began when the CLEUD application was submitted in January 2023. This does indicate the site can (and has been) used for longer periods each year without causing significant harm to residential amenity of adjoining occupiers. In their comments on the CLEUD earlier this year many local residents expressed surprise that the site was occupied at all. Highlighting this does not mean that the recommendation on this application is a *fait accompli* to simply regularise the current occupation; nor does the ongoing breach of the condition 2/the 1978 Enforcement Notice itself justify its removal.
- Impact of the development upon listed buildings, the landscape and visual impact*
- 10.29 NPPF Paragraph 127 states that developments should *'function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development'*. LP Policy EN1(1) requires that *'The nature and intensity of the proposed use would be compatible with neighbouring uses and would not cause significant harm to the amenities or character of the area in terms of noise, vibration, smell, safety or health impacts, or excessive traffic generation'*.
- 10.30 Core Policy 4: Environment; seeks amongst other things that the *'Borough's urban and rural landscapes will be conserved and enhanced'*. Policy EN25 also relates to development in rural areas, requiring that proposal would have a minimal impact on the landscape character of the locality; would have no detrimental impact on the landscape setting of settlements; nor would result in unsympathetic change to the character of a rural lane which is of landscape, amenity, nature conservation, or historic or archaeological importance.

- 10.31 As stated earlier, this application relates only to the length of time that the caravans are used each year. No other development is proposed. Clearly this is a quiet and rural location, and the proposal would extend the period of time that residential noise, traffic movements etc could lawfully occur from the site along with the presence of domestic paraphernalia and parked vehicles that would be associated with residential occupation.
- 10.32 However, such impacts are commonplace with rural residential uses and there are other dwellings in the vicinity which are used in the same way. The site has been occupied at various times during the year outside July/August for many years (albeit unlawfully) without significant impact on its surroundings. Objectors have expressed concerns about additional development within the site, such as extended parking areas and fencing around the plots. Such fencing could be installed up to 2m height at the moment without the need for planning permission. Extended parking areas may well be noticeable but are unlikely to create a significantly harmful impact on the wider landscape as their impacts would be localised only.
- 10.33 Therefore it is not considered that the impacts of the extended occupation from two to 11 months of the year would result in impacts such that 'significant' harm would be caused in terms of noise, traffic generation or visual impact.
- 10.34 The nearest listed buildings to the site are a minimum of 100m away to the SE (Grovehurst Oast, The Granary, Willow Barn and Grovehurst). The nature of the proposal, and the intervening distance and features are such that there would be no impact upon the significance of these heritage assets.

Enforcement and non-compliance with extant 1978 Enforcement Notice

- 10.35 As stated earlier, the caravans have been occupied in breach of condition 2 of the 1976 permission and the 1978 Notice for many years. This only came to light recently when the CLEUD in respect of condition 3 was determined.
- 10.36 Paragraph 59 of the NPPF states that '*Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should **act proportionately** in responding to suspected breaches of planning control*'. (Officer emphasis)
- 10.37 Some of the submitted comments suggest that the application should be refused on the basis that it is retrospective and because there is an existing Enforcement Notice in place. This is not a reason in itself to refuse planning permission; mechanisms exist within planning legislation to allow an applicant or landowner to attempt to regularise unlawful development. Any decision to refuse solely because the development has already been carried out (or is in breach of an existing Notice) is contrary to NPPF and PPG guidance and would be likely indefensible at appeal (or in the face of a costs claim against the LPA).
- 10.38 Careful regard has been given to the provisions of Section 70C of the Town and Country Planning Act 1990 (as amended). This gives LPAs the discretionary power to decline to determine retrospective planning applications granting permission, whether in relation to the whole or any part of the land to which a pre-existing enforcement notice relates. However the use of such powers here is unlikely to be considered proportionate or reasonable for the reasons set out in paras 10.07 - 10.12 of this report.
- 10.39 Whilst it is a criminal offence to undertake development in breach of an extant Enforcement Notice it would be disproportionate to seek immediate prosecution in

the courts where the landowner is currently taking steps to regularise the breach. The reasons for this are because if the LPA were to instigate prosecution proceedings for non-compliance with the Notice now the Magistrates Court would defer any judgment until the current planning application had been determined (or, where applicable, any appeal to the Planning Inspectorate had been determined).

- 10.40 The purpose of enforcement measures is to prevent/reverse development that the LPA deems unacceptable (when judged against local and national policy) and for which it cannot grant planning permission. It is not there for the purpose of taking punitive action against landowners regardless of the level of actual harm an unlawful development creates.
- 10.41 In this case a broader use of the site is now likely to be acceptable and compliant with current Development Plan/NPPF policy. This is consistent with the requirements of the NPPF that enforcement is discretionary and proportionate; and also that permission is only refused where the harmful impacts of the development are so great that the application must be refused. That is not the case here.

Summary

- 10.42 Based on the above the additional impacts of the proposal (over and above the potential impacts of the existing use) are considered to be minimal and can be appropriately controlled by the imposition of new conditions relating to the use of the site.

Conditions

- 10.43 Condition 1 of the 1976 permission (which restricts the number of caravans to six) is not proposed to be removed/varied and is still considered to serve a useful purpose (as without it there would be no other restriction on unit numbers). Conditions 2 & 3 are proposed to be removed.
- 10.44 As set out earlier conditions 2 & 3, which restrict the occupation of the site, have been drafted by the LPA and agreed by the applicant.
- 10.45 Given the site will be used for longer around the year, it is considered appropriate to secure the existing hedging/trees on the site and to restrict future installation of lighting (given the use would take place in the winter months). It is also considered reasonable to restrict the use of the hopper huts on the site to incidental purposes related to the wider caravan site.
- 10.46 The Environmental Health team have recommended a condition regarding sewage provision. However this is an existing residential site with an existing waste water infrastructure via mains sewers, and such conditions are therefore unnecessary.

11.0 RECOMMENDATION – GRANT subject to the following conditions:

- 1) The use of the site shall be confined to the stationing of six caravans.

Reason: To enable the District Planning Authority to regulate and control the use of the land.

- 2) The site shall either;
 - be used for holiday accommodation, where the site shall not be used at any time as a sole and principal residency by any occupants. No caravan on the site shall be occupied for more than six weeks at a time and no caravan shall be used for

purposes other than holiday accommodation as detailed above (including any other purpose within class C3 of the Schedule of the Town and Country Planning (Use Classes) Order 1987 or in any provision equivalent to that class in any statutory instrument revoking and re-enacting that order with or without modification); or

- shall be occupied by persons solely or mainly working or last working in the locality in agriculture (as defined in Section 336 of the Town and Country Planning Act 1990) or forestry or a widow or widower of such a person and to any resident dependents.

Reason: To maintain the availability of the site as short term holiday accommodation and to maintain available accommodation for local needs of agriculture or forestry

- 3) No caravan on the site shall be occupied during the month of January in each year. Any caravan stationed on the site shall be as defined in the Caravan Sites Control of Development Act 1960 and the Caravan Sites Act 1968.

Reason: To maintain the availability of the site as short term holiday accommodation and to maintain accommodation for local needs of agriculture or forestry

- 4) The hopper hut structures shall only be use for purposes incidental to the wider caravan site and shall not be used as primary living accommodation any time.

Reason: To prevent further intensification of the use of the land and in the interests of preventing additional harm to the character of the countryside and the wider landscape

- 5) All existing trees, hedges or hedgerows shall be retained. Any trees, or parts of hedges or hedgerows removed without the Local Planning Authority's prior written permission or which die or become, in the opinion of the Local Planning Authority, seriously diseased or otherwise damaged within five years following contractual practical completion of the approved development shall be replaced as soon as is reasonably practicable and, in any case, by not later than the end of the first available planting season, with plants of such size and species and in such positions as may be agreed in writing with the Local Planning Authority.

Reason: To ensure the continuity of amenity afforded by existing hedges or hedgerows

- 6) No external lighting shall be installed on the site without the prior written planning permission of the Local Planning Authority.

Reason: In the interests of mitigating light pollution in the countryside

Case Officer: Richard Hazelgrove

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.

The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.