

# MID SUSSEX DISTRICT COUNCIL

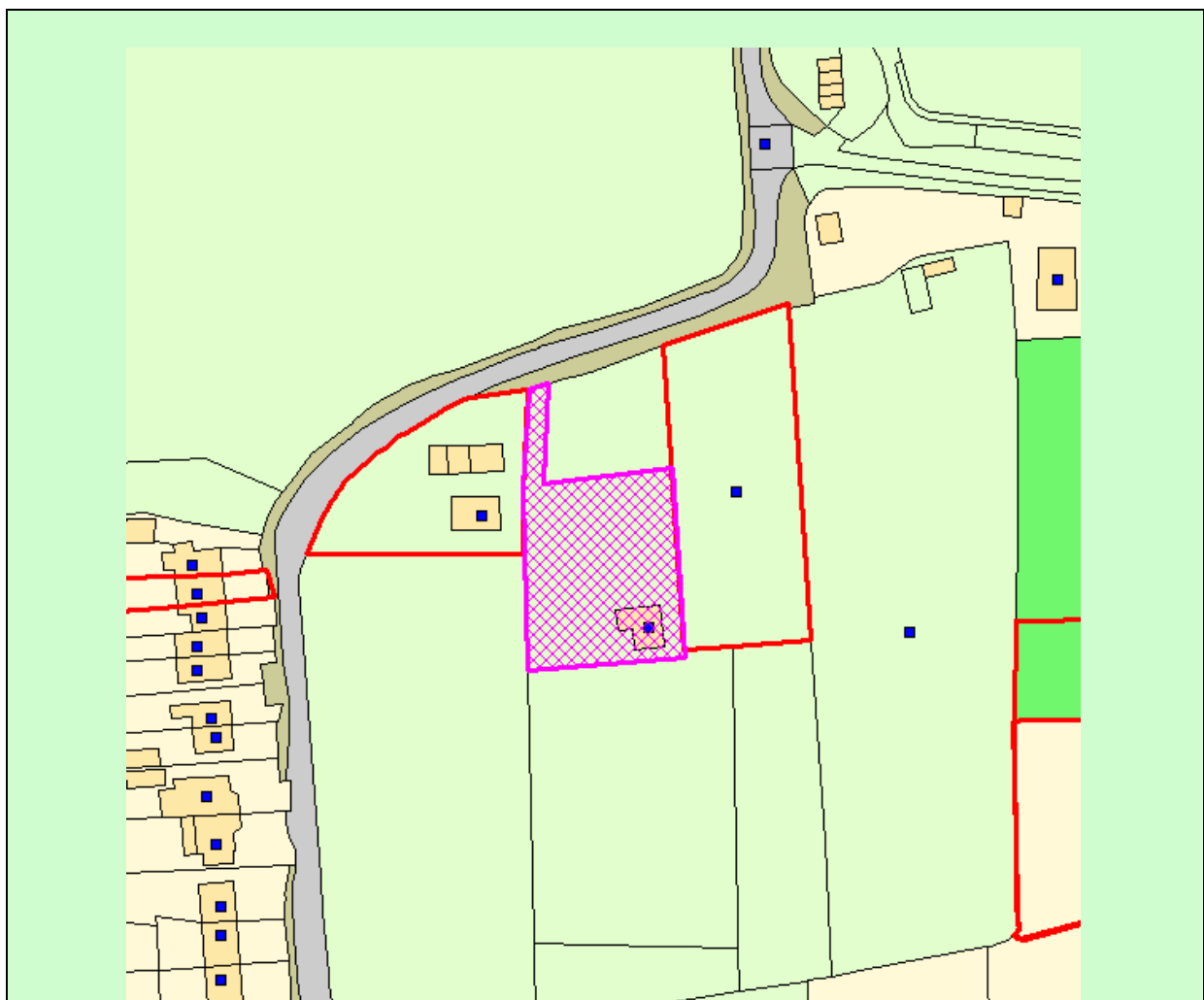
PLANNING COMMITTEE B

19 NOV 2015

PART III – OTHER MATTERS

FULKING

4. SDNP/15/04159/FUL



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**MARKET GARDENS CLAPPERS LANE FULKING HENFIELD WEST SUSSEX BN5 9NH**

**THE USE OF LAND FOR THE STATIONING OF CARAVANS FOR RESIDENTIAL PURPOSES FOR 1 NO. GYPSY PITCH TOGETHER WITH A UTILITY/DAYROOM ALONG WITH THE RETENTION OF EXISTING STORAGE SHEDS ANCILLARY TO THAT USE AT MARKET GARDENS, CLAPPERS LANE, FULKING, HENFIELD BN5 9NH.**

**MRS GEORGINA HEARNE**

**GRID REF: EAST 525012 NORTH 111696**

**Executive Summary**

This application seeks planning permission for the use of land for the stationing of caravans for residential purposes for 1 no. gypsy pitch together with a utility/dayroom along with retention of existing storage sheds ancillary to that use.

The submitted plans show the existing static caravan in its existing position on the eastern side of the site. The touring caravan is positioned to the west of the static caravan. The proposed utility/day room would be located at the northern end of the site. It would be a permanent building with a footprint measuring 6.5m by 3.4m with a pitched roof 3.8m in height. Internally this would contain a kitchen, bathroom and toilet. This would have brick elevations with an interlocking clay tile roof.

It is considered that the main issues in this case are as follows.

The proposed use of the land would have some harmful impact on the character and appearance of the area. This conclusion remains the same as when the Inspector dealt with the appeal on this site in 2006.

The evidence that is available to the District Council indicates that there is a need for one traveller pitch within the part of Mid Sussex that is within the National Park. The waiting lists for pitches in East and West Sussex indicate that there may be a wider unmet need within the area.

Government policy is that Local Planning Authorities (LPAs) should undertake an assessment of the need for traveller sites and then plan to meet that requirement. Government policy also advises that LPAs should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. LPAs should ensure that sites in rural areas respect the scale of, and do not dominate, the nearest settled community, and avoid placing an undue pressure on the local infrastructure.

There has been a delay in allocating sites for gypsies and travellers since the Planning Inspector granted a temporary planning permission for this site in 2006. The South Downs National Park as the LPA for the area is not in a position to allocate any sites for gypsies and travellers at the present time.

If the Council were to refuse this planning application and undertake enforcement action to require the cessation of the unauthorised use of the site this would interfere with the applicants human rights.

Government advice is that it is rarely justifiable to grant a second temporary planning permission; further permissions should normally be granted permanently or refused if there is clear justification for doing so.

Taking all of the above points into account it is your officers view that there is a justification for a permanent planning permission to now be granted at this site. It is considered that the harm to the landscape of the area is outweighed by the need to provide a pitch in this part of the District. In light of the above it is recommended that planning permission is granted.

### **Site Description**

The site is on the southern side of Clappers Lane and is broadly rectangular in shape. There is an access point at the northern end of the site. A 1.8m fence has been erected around the site. Beyond the site to the north is Clappers Lane and then open countryside. To the east there are trees on the boundary and beyond this is an area land that is the subject of an ongoing appeal against the refusal of the Council to grant planning permission for the use of the site as a private gypsy and traveller caravan site consisting of two pitches, each of which to contain one mobile home and one touring home and open amenity building (reference SDNP/15/03055/FUL). To the south there are some trees beyond the fence line with views of the Downs beyond this. To the west there is an area of unused land and then the houses on the western side of Clappers Lane. There are two storage buildings to the northwest of the site.

The site is outside the built up area of Fulking and lies within the countryside area of development restraint and the South Downs National Park. Following the designation of the National park the site is no longer designated as an area of outstanding natural beauty (AONB). The site is visible from the top of the Downs at Devils Dyke.

### **Relevant Planning History**

There is an extensive planning history to the site which is set out below.

(a) F/64/802. The siting of a residential caravan. Approved on 23 February 1965. This was subject to the following condition.

1. This permission is for a period expiring on 31 March 1970, after which date the caravan shall be removed from the site and the use of the land hereby permitted discontinued unless prior application is made to and permission is granted by the Local Planning Authority.

Reason: To enable the Local Planning Authority to regulate and control the development of the property.

(b) F/65/659. Agricultural store shed. Approved on 26 November 1965.

(c) FK/7/74. Stationing of caravan. Granted planning permission on 27 January 1975. This was subject to the following two conditions.

1. The building hereby permitted shall be removed and the use hereby authorised shall be discontinued permanently and the land reinstated to its former condition at or before the expiration of the period ending on 31 December 1979.

Reason: To enable the Local Planning Authority to review the special circumstances under which this permission is granted.

2. This permission shall not be exercised by any other person than Mr J E Huet.

Reason: To enable the Local Planning Authority to regulate and control the development of the area.

(d) FK/4/79. Renewal of temporary permission FK/7/74 for residential caravan. Granted planning permission on 2 January 1980. This was subject to the following two conditions.

1. The use of the land for the stationing of one caravan hereby permitted shall be discontinued permanently and the land reinstated to its former condition at or before the expiration of the period ending on 31 December 1984.

Reason: To enable the Local Planning Authority to review the special circumstances under which this permission is granted.

2. This permission shall enure for the benefit of Mr J E Huet only and shall not enure for the benefit of the land.

Reason: To enable the Local Planning Authority to regulate and control the development of the area.

(e) FK/7/84. Renewal of temporary planning permission for residential caravan. Granted planning permission on 21 December 1984. This was subject to the following two conditions.

1. The use of the land hereby permitted shall be discontinued permanently and the land restored to a condition satisfactory to the Local Planning Authority as confirmed in writing at or before the expiration of the period ending on 31 December 1990.

Reason: Reason: To enable the Local Planning Authority to review the special circumstances under which this permission is granted.

2. This permission shall enure for the benefit of Mr J E Huet only and shall not enure for the benefit of the land.

Reason: Permission would not normally be granted for such development in this location but in granting permission exceptionally the Local Planning Authority have had regard to the particular circumstances relating to the proposal.

Your officers understand that Mr Huet died on 28 August 1997.

The officers report to committee on the application reference FK/7/84 states

"The applicant and his late parents moved onto this land in 1934. Since 1967 temporary permissions have been granted for the caravan. Although the holding has been worked as a market garden, it has been a very modest livelihood only and there is no agricultural justification for the continued use of the caravan. However, the applicant is now aged 62 and considerable hardship would be caused if the application were refused. In the circumstances a personal and temporary permission was granted in 1979 (FK/4/79) and matters have not changed since then."

Your officers have been unable to locate neither permission for the caravan prior to the application reference F/64/802, nor any permission after FK/7/84.

Looking through old enforcement files it is clear that the Council were aware that the last temporary planning permission at the site expired on 31 December 1990. It states that Mr Huet was a recluse who rarely ventured out and was not fully aware of what was happening around him. He was either 75 or 78 years of age at the time. It was decided that it would not be expedient to issue an enforcement notice when the permission FK/7/84 lapsed.

An application on the site was made by Mr And Mrs J. Hearne under reference 05/01874/FUL. This sought retrospective consent for the use of the land as a private caravan site for one gypsy family. The application was refused at the south area planning committee on 22 December 2005 for the following reasons:

1. The proposal would be obtrusive, damaging and harmful to the visual quality of the designated Area of Outstanding Natural Beauty, in conflict with Policy CH2 of the

adopted West Sussex Structure Plan 2001-2016 and Policies C4 and H14 of the Mid Sussex Local Plan.

2. The Local Planning Authority is not satisfied that the applicant has submitted sufficient evidence to demonstrate that they satisfy the criteria set out in Circular 1/94 and Policy H14 of the Mid Sussex Local Plan in respect of their lifestyle.

This decision was subject to an appeal. Following a Public Inquiry the Planning Inspectorate granted a temporary planning permission for the proposal, which expired on 26 September 2011.

Planning permission was granted under reference 11/03936/FUL for the use of land for the stationing of caravans for residential purposes for 1 no. gypsy pitch together with a utility/ dayroom along with retention of existing storage sheds ancillary to that use. This was a temporary planning permission that expired on 2 July 2015.

### **Proposal**

This application seeks planning permission for the use of land for the stationing of caravans for residential purposes for 1 no. gypsy pitch together with a utility/ dayroom along with retention of existing storage sheds ancillary to that use.

Whilst the site is in the South Downs National Park (SDNP), under the delegation agreement that has been entered into between the National Park Authority and Mid Sussex District Council, (MSDC), applications such as this can be dealt with by MSDC under delegated authority. The SDNP Authority has confirmed that this is not a significant development for national park purposes and therefore MSDC can determine the application.

The submitted plans show the existing static caravan in its existing position on the eastern side of the site. The touring caravan is positioned to the west of the static caravan. The proposed utility/day room would be located at the northern end of the site. It would be a permanent building with a footprint measuring 6.5m by 3.4m with a pitched roof 3.8m in height. Internally this would contain a kitchen, bathroom and toilet. This would have brick elevations with an interlocking clay tile roof.

The plans show the existing hard standing at the site to be retained, along with two storage sheds to the southeast of the static caravan.

A caravan by definition is a use of the land rather than operational development. As long as a caravan conforms to the definitions within Section 29 (1) of the Caravan Sites and Control of Development Act 1960 and Section 13 of the Caravan Sites Act 1968 then it would be classed as a caravan and not a building. As such there are no elevations of the two caravans as a caravan by definition is not a building.

## **Consultations**

### **Highway Authority**

This proposal has been considered by means of a desktop study, using the information and plans submitted with this application, in conjunction with other available WSCC map information. A site visit can be arranged on request.

I refer to your consultation in respect of the above planning application and would provide the following comments.

Based on the submitted information no concerns would be raised to this application from the highway point of view.

### **Parish Council Consultee**

Fulking Parish Council held a planning meeting on 9 September 2015. The outcome was a unanimous vote to object to this application as it goes against the MSDC Local Plan:

- Policy aims 3.20
- Protection of the Countryside 3.23
- Areas with special qualities 3.25
- Areas of outstanding natural beauty (AONBs) 3.32
- Management of the AONBs 3.41
- H14 criteria.

It also contravenes the National Planning Policy Framework

- 11-Conserving and enhancing the local environment 115

It was further noted that permission was granted in the previous application, over 3 years ago, to build a utility block-this has not happened and so is currently considered to be quite unnecessary.

All comments made in respect of previous applications still stand.

FPC also noted that MSDC have been very slow to issue the 'call for sites' over many years which has contributed directly to the current situation. MSDC should be encouraged to rectify this ongoing situation as a matter of some urgency.

## **Representations**

3 Letters of objection

- site is in the SDNP in full view of the Devils Dyke beauty spot
- mobile home was placed illegally on the site
- question the need for the utility block
- only one of the applicants children remain at school
- applicants have not put their names down for a legal site

- granting permission would set a precedent for other gypsy families to use this route again to get planning permission
- application conflicts with Mid Sussex Local Plan policy
- Fulking is a small village that is not well served with services and there is no public transport serving the village
- utility building has not been built which shows that it's not needed
- family has not travelled for the last ten years

### **Policy Context**

Applications must be determined in accordance with the Development Plan unless material considerations indicate otherwise. The statutory development plan in this area is the Mid-Sussex Local Plan (2004). The relevant policies to this application are set out in section 7, below.

### **National Planning Policy Framework (NPPF) and Circular 2010**

Government policy relating to National Parks is set out in English National Parks and the Broads: UK Government Vision and Circular 2010 and The National Planning Policy Framework (NPPF) which was issued and came into effect on 27 March 2012. The Circular and NPPF confirm that National Parks have the highest status of protection and the NPPF states at paragraph 115 that great weight should be given to conserving landscape and scenic beauty in the National Parks and that the conservation of wildlife and cultural heritage are important considerations and should also be given great weight in National Parks.

### **National Park Purposes**

The two statutory purposes of the SDNP designation are:

To conserve and enhance the natural beauty, wildlife and cultural heritage of their areas;

To promote opportunities for the public understanding and enjoyment of the special qualities of their areas.

If there is a conflict between these two purposes, conservation takes precedence. There is also a duty to foster the economic and social wellbeing of the local community in pursuit of these purposes.

### **Relationship of the Development Plan to the NPPF and Circular 2010**

The Mid Sussex Local Plan 2004 forms part of the Development Plan, however policies contained within should also be considered against the National Planning Policy Framework introduced in 2012, in particular paragraphs 7 and 14 where emphasis is placed on a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking.

### **The South Downs Partnership Management Plan**

The South Downs Partnership Management Plan (SDPMP) was adopted on 3 December 2013. It sets out a Vision and long term Outcomes for the National Park, as well as 5 year Policies and a continually updated Delivery Framework. The SDPMP is a material consideration in planning applications and has some weight pending adoption of the SDNP Local Plan.



The following Policies and Outcomes are of particular relevance to this case:

Policy 1: Conserve and enhance the natural beauty and special qualities of the landscape and its setting, in ways that allow it to continue to evolve and become more resilient to the impacts of climate change and other pressures.

The South Downs National Park Local Plan is now a material planning consideration in the determination of planning applications, though the plan is of limited weight. The following policies are therefore deemed relevant:

Strategic Policy SD26: Gypsies and Travellers and Travelling Showpeople

### **Planning Policy**

The following policies of the Mid-Sussex Local Plan (2004) are relevant to this application:

C1 Development in the countryside

H14 Traveller sites

T4 Highways

### **Planning Assessment**

#### **Development Plan Policy**

Planning legislation holds that the determination of a planning application shall be made in accordance with the Development Plan unless material considerations indicate otherwise.

Specifically Section 70 (2) of the Town and Country Planning Act 1990 states:

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

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

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

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

Using this as the starting point the development plan in Mid Sussex consists of the Small Scale Housing Allocations Document (2008) and the Mid Sussex Local Plan (MSLP) (2004).

Policy H14 states

*"Proposal for sites for gypsies (defined as persons of nomadic habit of life) will be permitted provided that all of the following criteria can be satisfied:*

*(a) the proposal would have minimal impact on the character and appearance of the countryside and in particular would not conflict with policies for the protection of those areas of the countryside with special characteristics;*

*(b) the proposal would not result in uses which would adversely affect the residential amenity of nearby properties and could not be alleviated, in particular by reason of noise, fumes and dust arising from vehicular movements and the storage of machinery and materials;*

*(c) a convenient and safe means of access can be provided to serve the site and the surrounding highway network is adequate to serve the use;*

*(d) the site is readily capable of being serviced, and is within a reasonable distance of local services and facilities, i.e. shops, school; and*

*(e) a demonstrable local need exists.*

*Where permission is granted this may be subject to planning conditions to regulate the proportion of the site which may be used for commercial operations or hours of working, as appropriate.*

*A condition or legal agreement to control of the future use of sites for gypsies may be imposed, as appropriate".*

In accordance with paragraph 215 of the NPPF, it is a matter for the decision maker to determine what weight can now be attached to policy H14 as there is now much more recent Government policy on Gypsy and Travellers (published in March 2012 and updated in August 2015).

It is considered that some limited weight can still be given to policy H14, as it is still consistent with parts a to h of paragraph 13 of Planning Policy for Traveller Sites (PPFTS) which states

*Local planning authorities should ensure that traveller sites are sustainable economically, socially and environmentally. Local planning authorities should, therefore, ensure that their policies:*

*a) promote peaceful and integrated co-existence between the site and the local community*

*b) promote, in collaboration with commissioners of health services, access to appropriate health services*

*c) ensure that children can attend school on a regular basis*

*d) provide a settled base that reduces both the need for long-distance travelling and possible environmental damage caused by unauthorised encampment*

*e) provide for proper consideration of the effect of local environmental quality (such as noise and air quality) on the health and well-being of any travellers that may locate there or on others as a result of new development*

*f) avoid placing undue pressure on local infrastructure and services*

*g) do not locate sites in areas at high risk of flooding, including functional floodplains, given the particular vulnerability of caravans*

*h) reflect the extent to which traditional lifestyles (whereby some travellers live and work from the same location thereby omitting many travel to work journeys) can contribute to sustainability.*

In respect of criteria a of policy H14, it is still considered that there would be some conflict as there would be some harm to this designated landscape. The proposed utility/day room is modest in size and is comparable to a single garage . It will be relatively well screened from the road frontage. Due to its modest size and the materials that are proposed to be used it should not stand out as a prominent feature when viewed from the ridge of the Downs. The overall harm to the landscape is from the same urbanising effect that the Inspector identified in 2006.

In respect of criteria b and c, the Inspector did not consider that the proposal would conflict with these parts of the policy. There are no grounds to depart from that assessment now. In respect of criteria d the Inspector considered that there would be some conflict as facilities in Fulking are limited. This remains the case now.

The key part of policy H14 is part e. The Inspector was in no doubt that there was a clear need for gypsy accommodation in the locality. There are no reasons to depart from this assessment now.

Overall, policy H14 can still be given some weight as there is a degree of conformity with the aims of current National Policy. The key issue remains the need for Traveller accommodation within the area and Government policy emphasises that LPAs must plan properly to meet this need and to allocate sites.

Policy SD26 in the South Downs National Park Local Plan states

*1) Existing lawful permanent sites for Gypsies and Travellers and Travelling Showpeople that are required to meet the identified needs of these communities will be safeguarded, unless it can be established that the site is no longer necessary based on identified local need.*

*2) Development proposals for the provision of permanent or transit accommodation, or temporary stopping places, to meet the needs of Gypsies and Travellers and Travelling Showpeople will be supported where they meet a proven need, as identified by a Gypsy and Traveller Accommodation Assessment.*

*3) In addition to proving a need for either permanent or transit accommodation, development proposals for both types of sites will only be permitted where they comply with other relevant policies and they:*

*a) are well related to existing settlements and do not harm the character and appearance of the area;*

*b) avoid sites being over-concentrated in any one location or disproportionate in size to nearby communities;*

*c) are capable of being provided with adequate infrastructure such as power, water supply, foul water drainage and recycling/waste management;*

*d) are accessible to education and healthcare facilities;*

*e) have clearly defined physical boundaries and, where appropriate, include suitable additional landscaping and any surfacing or boundary treatments;*

*f) provide sufficient amenity space for residents;*

- g) do not cause unacceptable harm to the amenities of neighbouring uses and occupiers;*
- h) have a safe vehicular access from the public highway and adequate provision for parking, turning and safe manoeuvring of vehicles within the site;*
- i) restrict any permanent built structures in rural locations to essential facilities;*
- j) demonstrate there is no alternative empty lawful pitch which could be used and confirmed by the local housing authority; and*
- k) demonstrate that occupiers of the site satisfy either the definition of a Gypsy and Traveller or Travelling Showpeople as outlined in Planning Policy for Traveller Sites (2012) or any subsequent policy.*

*Development proposals that would have an unacceptable adverse impact on the special qualities of the National Park will be refused.*

Little weight can be attached to this policy due to the early stage in the preparation of the South Downs National Park Local Plan. When assessed against this emerging policy it is considered that the evidence that is available to the Council indicates that part 2 of this policy is met. In respect of part 3 of this policy, it is considered that criteria b, c, e, f, g, h, i, j and k are met. As mentioned above there would be some harm to the appearance of the area so part a of this policy is not fully met and Fulking is not well served by services so part d is also not met.

It has been confirmed by both East and West Sussex County Councils that all of the traveller sites that they operate are full and have waiting lists. It is clear that there may be an unmet need for additional traveller accommodation. The full extent of this unmet need will be quantified through a Gypsy and Travellers Accommodation Assessment.

## **National Guidance**

In association with the NPPF the Government published a document entitled Planning Policy for Traveller Sites (PPFTS) in March 2012. This statement must be taken into account in the preparation of development plans and is a material planning consideration in planning decisions. The PPFTS was revised in August 2015.

The PPFTS defines gypsies and travellers as follows

*“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.”*

It goes on to state

*“In determining whether persons are “gypsies and travellers” for the purposes of this planning policy, consideration should be given to the following issues amongst other relevant matters:*

- a) whether they previously led a nomadic habit of life*

- b) the reasons for ceasing their nomadic habit of life*
- c) whether there is an intention of living a nomadic habit of life in the future, and if so, how soon and in what circumstances.”*

The applicant's agent has confirmed that applicant continues to lead a nomadic habit of life and falls within the definition of a gypsy and traveller. The Council has no reason to dispute the statement made by the applicant's agent and as such the application can be dealt with on the basis that the applicants are gypsies and travellers.

In relation to the overall aim of Government policy the PPFTS states

*“The Government's overarching aim is to ensure fair and equal treatment for travellers, in a way that facilitates the traditional and nomadic way of life of travellers while respecting the interests of the settled community.*

*4. To help achieve this, Government's aims in respect of traveller sites are:*

- a. that local planning authorities should make their own assessment of need for the purposes of planning*
- b. to ensure that local planning authorities, working collaboratively, develop fair and effective strategies to meet need through the identification of land for sites*
- c. to encourage local planning authorities to plan for sites over a reasonable timescale*
- d. that plan-making and decision-taking should protect Green Belt from inappropriate development*
- e. to promote more private traveller site provision while recognising that there will always be those travellers who cannot provide their own sites*
- f. that plan-making and decision-taking should aim to reduce the number of unauthorised developments and encampments and make enforcement more effective*
- g. for local planning authorities to ensure that their Local Plan includes fair, realistic and inclusive policies*
- h. to increase the number of traveller sites in appropriate locations with planning permission, to address under provision and maintain an appropriate level of supply*
- i. to reduce tensions between settled and traveller communities in plan-making and planning decisions*
- j. to enable provision of suitable accommodation from which travellers can access education, health, welfare and employment infrastructure*
- k. for local planning authorities to have due regard to the protection of local amenity and local environment”*

It goes on to state:

*“10. Local planning authorities should, in producing their Local Plan:*

- a) identify and update annually, a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against their locally set targets*
- b) identify a supply of specific, developable sites, or broad locations for growth, for years 6 to 10 and, where possible, for years 11-15*
- c) consider production of joint development plans that set targets on a cross authority basis, to provide more flexibility in identifying sites, particularly if a local*

*planning authority has special or strict planning constraints across its area (local planning authorities have a duty to cooperate on planning issues that cross administrative boundaries)*

*d) relate the number of pitches or plots to the circumstances of the specific size and location of the site and the surrounding population's size and density*

*e) protect local amenity and environment."*

In relation to determining planning applications the document states

*"Local planning authorities should consider the following issues amongst other relevant matters when considering planning applications for traveller sites:*

- a) the existing level of local provision and need for sites*
- b) the availability (or lack) of alternative accommodation for the applicants*
- c) other personal circumstances of the applicant*
- d) that the locally specific criteria used to guide the allocation of sites in plans or which form the policy where there is no identified need for pitches/plots should be used to assess applications that may come forward on unallocated sites*
- e) that they should determine applications for sites from any travellers and not just those with local connections"*

*"Local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. Local planning authorities should ensure that sites in rural areas respect the scale of, and do not dominate, the nearest settled community, and avoid placing an undue pressure on the local infrastructure."*

In relation to the PPFTS, it is clear that the Government's policy is that LPAs should undertake an assessment of the need for traveller sites and then plan to meet that requirement. The basis for assessing the level of need in the District will be a Gypsy and Traveller Accommodation Assessment.

### **Need for accommodation**

A key issue in this appeal is the need for Traveller accommodation within the area (criteria e of policy H14). Opinion Research Services (ORS) and Peter Brett Associates (PBA) were commissioned by the Mid Sussex District Council and the South Downs National Park Authority (SDNPA) to undertake a Gypsy and Traveller and Travelling Showpeople Accommodation Assessment. The report was published in March 2013. This report was subsequently updated in May 2014. The updated report from May 2014 states that the requirement for pitches for the South Downs National Park Authority inside of Mid Sussex is one pitch. This is the site that had the now expired planning permission at the Market Garden.

The emerging planning policy position of the SDNP as the Local Planning Authority for the area is set out in the South Downs Local Plan: Preferred Options document. The text of the South Downs Local Plan states in relation to the assessment work that has been carried out, *"These studies and future site assessment work will inform how future need is addressed, in accordance with paragraphs 8 and 9 of the PPFTS. The SDNPA may decide to allocate sites where appropriate, such as in the Brighton area where there is a high need. A joint study is already being undertaken with East Hampshire and Winchester for the Hampshire area of the National Park. Discussions*

*are being held with other local authorities regarding joint site assessment studies through the Duty to Cooperate. However, prior to any further studies, the SDNPA considers it wise, as part of this consultation, to use this opportunity as a 'call for sites' exercise to find any potentially suitable sites for Gypsies and Travellers. These should be submitted to the Authority with supporting evidence along with any other representations on the Local Plan. The assessment of these sites by the SDNPA will adopt a landscape led approach."* As such the SDNP is not in a position to allocate sites for gypsies and travellers at the present time.

The evidence of need in the wider locality that is available is that there are no current vacancies on sites in East Sussex or on sites in West Sussex (sites in West Sussex are managed by Home Space Sustainable Accommodation CIC (HSSA)). It is considered that this infers that there may be an unmet need for additional traveller accommodation in East and West Sussex as a whole.

### **Landscape impact**

The site is visible from Clappers Lane. The Inspector, in dismissing the previous appeal, considered that the proposal would consolidate development along this part of Clappers Lane and represent encroachment into the countryside and impinge on the attractive setting of Fulking. The Inspector considered it would not be consistent with conserving and enhancing the natural beauty of the AONB (as it was designated in 2006).

It is considered that there are no reasons to depart from that conclusion now. The introduction of a further permanent building on the site would represent a further consolidation of development on Clappers Lane. The mobile homes are not characteristic of the landscape and do detract from the character of the area. The caravan site with the accoutrements of residential activity have an urbanising effect beyond the built up area boundary of the village.

### **Inspectors decision letter**

The contents of the Inspectors decision letter on the 2006 planning appeal remain an important material consideration in the determination of this application. The Inspector considered that the main issues in the appeal were as follows:

1. The impact of the development on the character and appearance of the Sussex Downs AONB
2. Whether the proposal would be consistent with the policies concerning the provision of gypsy sites
3. Whether personal circumstances supported the proposal

In summary the Inspector came to the following conclusions. Firstly the proposal would harm the natural beauty of the AONB and detract from its character and appearance. Secondly, there was a clear need for gypsy accommodation within the locality. Thirdly the proposal would comply with many of the provisions of Circular 01/2006 and policy H14 in the MSLP. The Inspector concluded by stating

*"Given the harm to the AONB, I do not consider that permanent occupation of the site at Clappers Lane would be appropriate, notwithstanding the extent of policy compliance."*

He went on to state

*"The appellant's family does, though, have a clear need for a base, and there is no alternative accommodation available at the present time. This situation alters the balance to support continued use for a limited period, which would enable land for gypsy sites to come forward in accordance with the approach established by the Circular."*

The Inspector granted a temporary planning permission from 26 September 2006 to 26 September 2011 on the clear basis that this timescale would allow the Council sufficient time to allocate sites for gypsy sites as part of the planning policy process. Due to delays in progressing the then Core Strategy and the subsequent changes in National Planning Policy, the District Council did not allocate any sites for gypsies and travellers.

It was as a result of the above circumstances that a further temporary permission was granted under reference 11/03936/FUL. Further delays to the progress of the District Plan and the creation of the South Downs National park as the LPA for the area have resulted in further delays which has meant that the District Council has not allocated any sites within the District for gypsies and travellers in an adopted Development Plan Document and the South Downs National Park has not allocated any sites within the part of Mid Sussex that is within the National Park.

### **Other matters**

In seeking to determine the availability of alternative sites for residential gypsy use, there is no requirement in planning policy or case law for an applicant to prove that no other sites are available or that particular needs could not be met from another site. The onus is on the LPA to allocate sites in the manner set out in the PPFTS.

The applicants have stated that in their view a further temporary planning permission would not be appropriate and that there is no justified reason for the permission to be personal as any perceived harm to the South Downs National Park has been already been outweighed by the failure of policy. They state that in the absence of alternative sites, the failure of policy to allocate sites as required by government policy and the interference with the applicants Article 8 human rights that would result from an immediate cessation of the unauthorised use of the site are material considerations that outweigh any harm to the character and appearance of the area and therefore permission should be granted.

The Planning Policy Guidance Note provides Governments guidance on the planning system. In relation to the use of temporary planning permissions it states:

*Circumstances where a temporary permission may be appropriate include where a trial run is needed in order to assess the effect of the development on the area or where it is expected that the planning circumstances will change in a particular way at the end of that period.*



It goes on to state:

*It will rarely be justifiable to grant a second temporary permission – further permissions should normally be granted permanently or refused if there is clear justification for doing so. There is no presumption that a temporary grant of planning of planning permission should be granted permanently.*

In this particular case there has been a failure to allocate sites since the Planning Inspector granted a temporary planning permission in 2006 on the clear basis that this would allow the LPA time to carry out this work. Given this background and the policy context outlined above it is considered that it would not be appropriate to grant a third temporary planning permission on the site. The evidence of need for a pitch in this locality and the points outlined above lead your officers to the view that it would be very difficult to justify a further temporary planning permission.

It is considered that given the above policy context that it is not necessary for a planning permission at the site to be personal to the applicants. The evidence that is available to the LPA indicates that there is a need for one pitch in the part of Mid Sussex that is in the National Park and this proposal would meet that need.

### **Personal circumstances**

As the previous planning permission that was granted under reference 11/03936/FUL has now expired, the current use of the site is unauthorised. If the Council were to refuse this planning application and undertake enforcement action to require the cessation of the unauthorised use of the site this would interfere with the applicants human rights.

The relevant human rights are:

#### Article 8

- Everyone has the right to respect for his private and family life and his home.
- There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

#### Article 1 of Protocol 1

- Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
- The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

In this case due to the factors that have been outlined above, it is your officer's view that a full permanent planning permission is now justified. Such permission would mean that there would be no interference with the applicants Article 8 rights.

### **Planning Balance and Conclusion**

To summarise it is considered that the main issues in this case are as follows.

The proposed use of the land would have some harmful impact on the character and appearance of the area. This conclusion remains the same as when the Inspector dealt with the appeal on this site in 2006.

The evidence that is available to the District Council indicates that there is a need for one traveller pitch within the part of Mid Sussex that is within the National Park. The waiting lists for pitches in East and West Sussex indicate that there may be a wider unmet need within the area.

Government policy is that LPAs should undertake an assessment of the need for traveller sites and then plan to meet that requirement. Government policy also advises that LPAs should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. LPAs should ensure that sites in rural areas respect the scale of, and do not dominate, the nearest settled community, and avoid placing an undue pressure on the local infrastructure.

There has been a delay in allocating sites for gypsies and travellers since the Planning Inspector granted a temporary planning permission for this site in 2006. The South Downs National Park as the LPA for the area is not in a position to allocate any sites for gypsies and travellers at the present time.

If the Council were to refuse this planning application and undertake enforcement action to require the cessation of the unauthorised use of the site this would interfere with the applicants human rights.

Government advice is that it is rarely justifiable to grant a second temporary planning permission; further permissions should normally be granted permanently or refused if there is clear justification for doing so.

Taking all of the above points into account it is your officers view that there is a justification for a permanent planning permission to now be granted at this site. It is considered that the harm to the landscape of the area is outweighed by the need to provide a pitch in this part of the District. In light of the above it is recommended that planning permission is granted.

### **Conditions**

1. The permission does not authorise use of the land as a caravan site by any persons other than gypsies and travellers as defined in Planning Policy for Traveller Sites (updated August 2015).

Reason: To protect the character of the area as planning permission would not normally be granted for this development and to comply with Policy H14 of the Mid Sussex Local Plan.

2. No more than two caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, and of which no more than one shall be a static caravan or mobile home, shall be stationed on the site at any one time.

Reason: To protect the character of the area and to comply with Policy H14 of the Mid Sussex Local Plan and the aim of the NPPF to conserve this designated landscape.

3. No commercial activities shall take place on the site including the storage of materials, except for activities associated with the keeping and breeding of horses.

Reason: To protect the character of the area and to comply with Policies H14 and B3 of the Mid Sussex Local Plan and the aim of the NPPF to conserve this designated landscape.

4. No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.

Reason: To protect the character of the area and to comply with Policies H14 and T4 of the Mid Sussex Local Plan and the aim of the NPPF to conserve this designated landscape.