WA/2023/00371 – Change of use of land for stationing of 1no. static Mobile Home (Caravan) and 1no. Touring Caravan for use by 1 family; erection of day room and construction of hardstanding to provide parking (part retrospective) at LAND NORTH OF LYDIA PARK STOVOLDS HILL CRANLEIGH

Applicant:	M & A Doherty
Parish:	Bramley CP
Ward:	Bramley Busbridge and Hascombe
Case Officer:	James Kidger
Neighbour Notification Expiry Date:	12/03/2023
Expiry Date/Extended Expiry Date:	10/04/2023
RECOMMENDATION	That permission be **REFUSED**

1. Site Description

The application site comprises a square parcel of land within an open field some way beyond the established northerly boundary of the Lydia Park gypsy and traveller site. It is bound by undeveloped ground to the north-east and north-west, and unauthorised traveller development to the south-east and south-west.

2. Proposal

Permission is sought for the change of use of the land to residential and the siting of one traveller pitch with associated access provision and landscaping. Development commenced at the end of May 2021 and has been partially implemented, with both the access and hardstanding complete and a touring caravan in situ. The Council have obtained an injunction to prevent the applicants from undertaking further development pending the outcome of court proceedings, and a similar part retrospective application – WA/2021/02307 – was refused in January 2022.

3. Relevant Planning History

- WA/2023/00470 – one pitch on a site to the south-east – currently under consideration.
- WA/2023/00443 – three pitches on a site to the south-east – currently under consideration.
- WA/2022/02766 – three pitches on a site to the east – refused 7th December 2022.
- WA/2020/1382 – four pitches on a site to the north-east – appeal (ref. APP/R3650/W/22/3297332) dismissed 16th September 2022.
- WA/2021/02392 – five pitches on a site to the south-east – approved 13th July 2022.
- WA/2021/03196 – two pitches on a site to the south-east – approved 27th May 2022.

- WA/2021/02307 – four pitches on a site to the east – refused 4th January 2022.
- WA/2020/1866 – nine pitches on a site to the south-east – approved 29th November 2021.
- WA/2020/0516 – five pitches on a site to the east – approved 1st October 2021.
- WA/2020/0551 – seven pitches on a site to the east – approved 14th July 2021.
- WA/2019/1265 – nine pitches on a site to the south-east – approved 19th February 2020.
- WA/2019/0515 – four pitches on a site to the south – approved 4th October 2019.
- WA/2018/1364 – one pitch on a site to the south-east – approved 18th January 2019.
- WA/2017/0176 – three pitches on a site to the south-west – allowed on appeal 13th August 2018.
- WA/2016/0179 – three pitches on a site to the south-east – allowed on appeal 4th December 2017.

4. Relevant Planning Constraints

- Agricultural Land (Grade 3)
- Area of Great Landscape Value (AGLV)
- Countryside beyond Green Belt
- Surface Water Flooding
- Tree Preservation Order (TPO)

5. Relevant Development Plan Policies and Guidance

Waverley Borough Local Plan Part 1: Strategic Policies and Sites (February 2018)
Policies SP1, SP2, ST1, AHN4, RE1, RE3, TD1, NE1, CC1, CC2, and CC4.

Waverley Borough Local Plan Part 2: Site Allocations and Development Management Policies (March 2023)
Policies DM1, DM2, DM4, DM5, DM9, DM11, DM15, and DM37.

Bramley Neighbourhood Plan (January 2022)
Policy BNP-E3.

Other guidance
National Planning Policy Framework (NPPF)
National Planning Practice Guidance (NPPG)
Planning Policy for Traveller Sites (PPTS)
WBC Gypsy and Traveller Accommodation Assessment (GTAA) (2018)

6. Consultations and Town/Parish Council Comments

- Alfold Parish Council: Objection on the grounds that all the reasons for refusal given under WA/2022/02766 continue to apply, namely countryside and landscape harm, domination of nearby settled community, and the absence of ecological and flood risk information.
- Bramley Parish Council: Objection on the grounds that the development would expand the existing site into an undeveloped field within the AGLV, that there is no shortfall of traveller sites in the borough, and that there would be an increase in light pollution contrary to the Bramley Neighbourhood Plan.
- Private Sector Housing: No objection.

Officer note: the response from private sector housing raises various regulatory issues which are not planning matters.

7. Representations

One representation has been received neither objecting to nor in support of the proposed development, but making the following comments:

- No separation between the deposited hardcore and land belonging to Thatched House Farm. Adequate drainage needed to prevent run-off onto fields used for organic farming.
- Fencing or bunding required in order to prevent domestic material entering the fields which could harm livestock.
- Access to the site has been facilitated by filling in the watercourse adjacent the access track from Stovolds Hill. The watercourse conveys water from the ponds at Thatched House Farm toward Stovolds Hill and ultimately the River Wey, and should be restored in order to prevent the flooding of both the application site itself and nearby land including Thatched House Farm and pitches at Weeping Willows.
- Fields and woodland adjacent the site provide important wildlife habitat and should be assessed.
- Should permission be granted, conditions should be imposed to mitigate the landscape impact.

8. Planning Considerations:

Principle of development

Countryside

The intrinsic character and beauty of the countryside is recognised by local and national policy. Of the former, policy RE1 aims to safeguard countryside land, while the PPTS at paragraph 25 sets out that new traveller sites in open countryside

should be strictly limited. Though the site is adjacent to an existing traveller settlement it is not allocated in the development plan, nor is it part of the recently adopted Local Plan Part 2 (LPP2).

Unlike recent permissions in the vicinity, which comprised infill developments on land between existing pitches, the proposed development would be outside the approximate boundary – formed of the access track and watercourse on a NE-SW axis – of the wider Lydia Park site and would constitute a clear encroachment of the countryside. The drawings submitted show a mobile home and amenity building with associated space for a touring caravan and parking, hardstanding, and boundary treatments, located well beyond existing authorised development and thus accentuating the visual impact. The site would have the appearance of a caravan park and would be recognisably developed. This is considered visually harmful to the undeveloped, intrinsic beauty of the surround, while the associated intensification of use would erode its tranquil character.

The site is within the AGLV and would be visible from the wider surround, particularly in longer views from the north-west, including from Hascombe Hill within the AONB. Though it would be perceived in the context of the larger Lydia Park site, its siting toward the middle of an otherwise undeveloped* field would give it a prominence over and above that of the previously permitted infill developments. There would thus be a substantial degree of harm to the AGLV and the setting of the AONB.

The proposed development would form an extension of the wider Lydia Park site and the adjacent New Acres and Hilltops sites to the south, and would expand the developed envelope considerably. When considered as a whole, this area would be significantly greater in scale than the settled community further to the south. This would conflict with Policy C of the PPTS, which sets out that traveller sites in rural areas should not dominate the nearest settled community. The most recent traveller caravan count (January 2023) found 92 static caravans compared to approximately 20 dwellings.

*three other developments have taken place north of the track, but all are unauthorised.

<u>Need and provision</u>
The GTAA identified a need of 27 pitches for gypsies meeting the PPTS definition over the plan period 2017-32. This need has since been revised to 37 to reflect the outcome of planning appeals at Pollingfold Place* and East View Cottages**, which established that an additional 10 households (8 previously defined as unknown and 2 additional) met the definition.

Between 2017 and 2022 there was a need for an additional 26 pitches. 50 pitches – an overprovision of 24 – were granted during this period. A further 5 pitches are required between 2022 and 2027, and 7 have so far been granted. When this 2 pitch overprovision is added to the previous overprovision of 24 pitches, it results in an

overall overprovision of 26 pitches for the period 2022-27, with the majority of this period left to run.

Recent case law (*Lisa Smith v SSLUHC & Ors [2022] EWCA Civ 1391*) cast doubt on the robustness of the PPTS definition, but did not find it unlawful. Even including non-PPTS gypsies, however, the Council still considers it has an adequate supply of pitches. The GTAA identified a need for 61 pitches in total***, now considered 63 in view of the additional 2 identified at Pollingfold Place. Against this, permissions for 57 pitches have been granted 2017-22, an additional pitch remains extant at Bridge View (WA/2015/0189), and the recently adopted LPP2 allocates a further 15, for a total of 73. Even in extremis, therefore, where every unknown or non-PPTS household identified in the GTAA requires provision, this provision would be met. In fact, it would be exceeded, with an overprovision of 10 pitches in this scenario. It is noted in this context that the Inspector who recently examined LPP2 had regard to the *Smith* judgement and was content that the Council's supply position remained robust. Neither did he find the GTAA to be out of date.

The Council can thus demonstrate a 5 year supply of pitches in either scenario. This does not in itself prevent the grant of further pitches, but does mean that little weight can be given to need.

*APP/R3650/W/19/3230531
**APP/R3650/A/13/2206225
***27 pitches for gypsies meeting the definition, 24 where the definition status was unknown, and 10 for gypsies not meeting the definition

Alternative accommodation and personal circumstances

The submitted personal statements set out that the applicants bought the land because it was affordable, located near members of extended family living on the wider Lydia Park site, and would give them a settled base. Subsequent to the grant of the injunction the applicants left the site and spent some time with friends and relatives, as well as at the roadside, returning on account of a damaged caravan.

It is accepted that the applicants require a permanent base and that this would be beneficial for them and their family. However, given the substantial supply of pitches as set out above, and in particular the 28 pitches granted at Lydia Park within the last two years, the Council does not accept that alternative accommodation – likely in the immediate vicinity – could not be found. Moreover, the Council considers that some further infill opportunities remain within the existing site envelope, for example those currently under consideration as part of WA/2023/00443.

Other matters

Policies AHN4 and DM37

The proposed site is considered safe and convenient both for vehicular and pedestrian access, would link with the strategic road network, and would not

generate an inappropriate level of traffic. There would be adequate space for vehicles, storage, amenity, a utility building, a degree of landscaping, and waste management. Local services would not be excessively distant and essential services could be provided. The remaining criteria identified in policies AHN4 and DM37 would thus be broadly met, though in itself this is a neutral factor in the balance.

Agricultural land

It is considered the location, current use, and context of the site would mean the proposal would not result in the loss of the best and most versatile agricultural land, nor result in the fragmentation of an agricultural holding.

Amenity

The proposed pitches would provide an adequate standard of accommodation for future occupiers and would not be unduly detrimental to the amenity of neighbours.

Ecology

No ecological appraisal has been submitted. Although no ecological information was requested for previous permissions on land to the south and east, information from a third party received in relation to the previous application at the site (WA/2021/02307) suggests the presence of Wood White butterflies in the vicinity. As this is a protected species under the Wildlife and Countryside Act 1981 it is not considered unreasonable to require that its presence or otherwise is ascertained prior to any grant of permission. Consequently, in the absence of such information it is not possible to conclude the development to be acceptable on ecological grounds.

Flood risk

The site is within an area at low (1 in 1000 year) risk of surface water flooding, and an ordinary watercourse flows across the southerly element. Policy CC4 requires the submission of a site-specific flood risk assessment for developments in such areas. In the absence of this, it is not possible to conclude the proposed development to be acceptable from a flood risk standpoint. It is further noted that the watercourse appears to have been obstructed as part of the development already carried out, leading to an increase in flood risk elsewhere.

Trees

The site is covered by an area TPO which was made shortly after development commenced. By this point, however, most of the trees in the vicinity – essentially those adjacent the access track from Stovolds Hill – had already been removed by the applicants. Given that the majority of the development has already taken place it is no longer possible to assess the impact from an arboricultural perspective, or to require protective measures. However, damage to any remaining trees may leave the landowner(s) liable under the relevant legislation.

Submitted planning statement

The bulk of the submitted planning statement critiques previous planning decisions at Lydia Park, with the applicants considering the Council’s use of the access track as

the de facto boundary to be arbitrary and leading to what they describe as inconsistent decisions. In the Council's view, however, there is a clear distinction as a matter of fact and degree.

There are three areas of land pertinent here. The first is that of the original Lydia Park development, application reference WA/1994/0128, which was granted by the Secretary of State in 1997. The second is the field to the north, previously separated from the original Lydia Park site by substantial hedging, which was undeveloped until the grant of permissions on appeal in 2017 and 2018 (APP/R3650/W/17/3169996 and APP/R3650/W/17/3180635 respectively). This field terminates at the access track and subsequent permissions upon it have been granted by the Council. The third is the land north of the access track, of which the application site forms part, which extends from the track to the Dunsfold Road. This land is undeveloped apart from the unauthorised sites currently subject to enforcement action.

The Council did not consent to the initial developments on the land south of the track (the second area described above), which were allowed on appeal at a time when the Council could not demonstrate an adequate pitch supply. These developments extend up to the track, which in turn is bound on its northerly side by the watercourse and tree line*. Together, these three features – track, watercourse, and trees – clearly distinguish the more developed land to the south from the undeveloped land to the north.

There is thus a clear distinction between development south of the track, on an already partially developed field, where additional development would be bound on two or three sides by existing pitches and would not further extend the overall site envelope, and development on a separate and hitherto undeveloped area of land, which would expand the site envelope considerably. This distinction was accepted by the Inspector who dealt with the recent appeal** on land to the north-east of the application site.

*many of the trees in the vicinity were removed by the applicants when the development commenced. Those that remain have been protected via TPO.
**APP/R3650/W/22/3297332, paragraph 13 of the appeal decision.

Human rights

Article 8 (1) of the Human Rights Act 1998 provides that everyone has the right to respect for his private and family life, his home and his correspondence. Article 8 (1) is balanced by Article 8 (2), which allows interference with those rights where the interference accords with the law and is necessary in a democratic society in the wider public interest, in terms of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of rights and freedoms of others.

Article 8 does not give a right to be provided with a home, nor does it go so far as to allow an individual's preferences for their place of residence to override the general

interest and the right is thus not absolute. Interference with the right can be justified if the interference is for a legitimate aim, in accordance with the law and necessary in the public interest. The aim of preventing development which is on balance harmful is considered legitimate, and would both be in accordance with planning law and necessary in the public interest. Whether the interference is justified is dependent upon whether it is proportionate to the legitimate aims pursued.

Planning balance

The proposed scheme would introduce a permanent residential form of development into the countryside which would be harmful to its intrinsic character and beauty. This would clearly conflict with policy RE1 and attracts substantial weight. Moreover, there would be harm to the AGLV and the setting of the AONB contrary to policy RE3 (substantial weight), and the additional pitch would expand the envelope of a traveller site which is already greater in scale than the nearby settled community (substantial weight). In addition, further information is required in respect of ecology and drainage/flood risk, in the absence of which it is not possible to conclude the development to be acceptable.

Set against these harms is the provision of one additional pitch, and the improvement in quality of life which would accrue to the applicants resulting from a settled base. Little weight is attached to the former given that the Council can demonstrate a considerable oversupply of pitches. In view of the further information within the submitted personal statements, significant weight is now attached to the latter. However, this is tempered by the large number of pitches recently granted at Lydia Park itself, which gives the applicants options for alternative accommodation which would achieve a similar benefit.

No other consideration thus outweighs the identified harms. Moreover, a temporary permission is not considered suitable as the needs of the applicants are not obviously short-term. Interference with the human rights of the applicants via the refusal of planning permission is therefore pursuant to a legitimate aim, necessary in the public interest, and a proportionate response in the circumstances.

Recommendation

That permission be REFUSED for the following reasons:

1. The proposed development would encroach into the countryside and would be harmful to its intrinsic character and beauty. Moreover, the substantial projection into an otherwise undeveloped field would be harmful to the visual amenity of the Area of Great Landscape Value and the setting of the nearby Area of Outstanding Natural Beauty. Other considerations do not outweigh

these harms, which would be contrary to policies RE1 and RE3 of the Local Plan (Part 1) 2018, and to paragraphs 174 and 176 of the NPPF 2021.

2. The proposed development would sit outside the established Lydia Park site boundary and would constitute an extension of this site. The scale of the resulting enlarged site, when taken together with the adjacent New Acres site to the south, would dominate the nearby settled community contrary to Policy C of the PPTS 2015.

3. In the absence of a site-specific ecological survey it is not possible to conclude that the impact of the proposed development to protected species would be acceptable. The proposed development would therefore conflict with policy NE1 of the Local Plan (Part 1) 2018, and paragraph 180 of the NPPF 2021.

4. In the absence of a site-specific flood risk assessment it is not possible to conclude that the proposed development would be safe for future occupiers, nor that there would be no increased flood risk elsewhere. The proposed development would therefore conflict with policy CC4 of the Local Plan (Part 1) 2018, and paragraph 167 of the NPPF 2021.

Informatives:

1. The Council confirms that it seeks when assessing planning applications to work with applicants in a positive and proactive way, in line with the requirements of Paragraph 38 of the National Planning Policy Framework. In this case the development proposed is unacceptable in principle.

Case Officer James Kidger Signed: Date: 03 April 2023

Agreed by Team or DC Manager……Beth Howland-Smith....Date: 06/04/2023……..

Time extension agreement in writing seen by signing off officer:

N/A

This report has been agreed under the delegated authority by the Head of Planning Services.
Decision falls within …1q.(*number reference)* of the Scheme of Delegation

…BHS…….. (initialled by Authorising officer)