

## AGENDA

### PLANNING COMMITTEE MEETING

Date: Thursday, 10 November 2016

Time: 7.00 pm

Venue: Council Chamber, Swale House, East Street, Sittingbourne, Kent, ME10 3HT

Membership:

Councillors Mike Baldock, Cameron Beart, Bobbin, Andy Booth (Vice-Chairman), Roger Clark, Richard Darby, Mike Dendor, James Hall, Mike Henderson, James Hunt, Ken Ingleton, Nigel Kay, Samuel Koffie-Williams, Peter Marchington, Bryan Mulhern (Chairman), Prescott and Ghlin Whelan.

Quorum = 6

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	Pages
1. Fire Evacuation Procedure	
<p>The Chairman will advise the meeting of the evacuation procedures to follow in the event of an emergency. This is particularly important for visitors and members of the public who will be unfamiliar with the building and procedures.</p> <p>The Chairman will inform the meeting whether there is a planned evacuation drill due to take place, what the alarm sounds like (i.e. ringing bells), where the closest emergency exit route is, and where the second closest emergency exit route is, in the event that the closest exit or route is blocked.</p> <p>The Chairman will inform the meeting that:</p> <p>(a) in the event of the alarm sounding, everybody must leave the building via the nearest safe available exit and gather at the Assembly points at the far side of the Car Park. Nobody must leave the assembly point until everybody can be accounted for and nobody must return to the building until the Chairman has informed them that it is safe to do so; and</p> <p>(b) the lifts must not be used in the event of an evacuation.</p> <p>Any officers present at the meeting will aid with the evacuation.</p> <p>It is important that the Chairman is informed of any person attending who is disabled or unable to use the stairs, so that suitable arrangements may be made in the event of an emergency.</p>	

2. Apologies for Absence and Confirmation of Substitutes

3. Minutes

To approve the Minutes of the Meeting held on 13 October 2016 (Minute Nos. 938 - 946) as a correct record.

4. Declarations of Interest

Councillors should not act or take decisions in order to gain financial or other material benefits for themselves or their spouse, civil partner or person with whom they are living with as a spouse or civil partner. They must declare and resolve any interests and relationships.

The Chairman will ask Members if they have any interests to declare in respect of items on this agenda, under the following headings:

(a) Disclosable Pecuniary Interests (DPI) under the Localism Act 2011. The nature as well as the existence of any such interest must be declared. After declaring a DPI, the Member must leave the meeting and not take part in the discussion or vote. This applies even if there is provision for public speaking.

(b) Disclosable Non Pecuniary (DNPI) under the Code of Conduct adopted by the Council in May 2012. The nature as well as the existence of any such interest must be declared. After declaring a DNPI interest, the Member may stay, speak and vote on the matter.

(c) Where it is possible that a fair-minded and informed observer, having considered the facts would conclude that there was a real possibility that the Member might be predetermined or biased the Member should declare their predetermination or bias and then leave the room while that item is considered.

**Advice to Members:** If any Councillor has any doubt about the existence or nature of any DPI or DNPI which he/she may have in any item on this agenda, he/she should seek advice from the Director of Corporate Services as Monitoring Officer, the Head of Legal or from other Solicitors in Legal Services as early as possible, and in advance of the Meeting.

**Part B reports for the Planning Committee to decide**

5. Report of the Head of Planning

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To consider the attached report (Sections 2, 3 and 5).

The Council operates a scheme of public speaking at meetings of the Planning Committee. All applications on which the public has registered to speak will be taken first. Requests to speak at the meeting must be registered with Democratic Services ([democraticservices@swale.gov.uk](mailto:democraticservices@swale.gov.uk)) or call 01795 417328) by noon on Wednesday 9 November 2016.

6. Exclusion of the Press and Public

To decide whether to pass the resolution set out below in respect of the following items:

That under Section 100A(4) of the Local Government Act 1972, the press and public be excluded from the meeting for the following items of business on the grounds that they involve the likely disclosure of exempt information as defined in Paragraphs 1, 2, 3, 4, 5, 6, and 7.

1. Information relating to any individual.
2. Information which is likely to reveal the identity of an individual.
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information).  
See note below.
4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and any employees of, or office holders under, the authority.
5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
6. Information which reveals that the authority proposes
  - (a) To give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
  - (b) To make an order or direction under any enactment.
7. Information relation to any action in connection with the prevention, investigation or prosecution of crime.

7. Report of the Head of Planning

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To consider the attached report (Part 6).

**Issued on Tuesday, 1 November 2016**

The reports included in Part I of this agenda can be made available in **alternative formats**. For further information about this service, or to arrange for special facilities to be provided at the meeting, **please contact DEMOCRATIC SERVICES on 01795 417330**. To find out more about the work of the Planning Committee, please visit

[www.swale.gov.uk](http://www.swale.gov.uk)

Director of Corporate Services, Swale Borough Council,  
Swale House, East Street, Sittingbourne, Kent, ME10 3HT

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## SWALE BOROUGH COUNCIL

### PLANNING SERVICES

Planning Items to be submitted to the Planning Committee

**10 NOVEMBER 2016**

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**PART 2** Applications for which permission is recommended

**PART 3** Applications for which refusal is recommended

**PART 4** Swale Borough Council's own development; observation on County Council's development; observations on development in other districts or by Statutory Undertakers and by Government Departments; and recommendations to the County Council on 'County Matter' applications.

**PART 5** Decisions by County Council and the Secretary of State on appeal, reported for information

**PART 6** Reports containing "Exempt Information" during the consideration of which it is anticipated that the press and public will be excluded

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ABBREVIATIONS: commonly used in this Agenda

CDA Crime and Disorder Act 1998

GPDO The Town and Country Planning (General Permitted Development) (England) Order 2015

HRA Human Rights Act 1998

SBLP Swale Borough Local Plan 2008

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- Minutes of any Working Party Meetings

### Part 2

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5.3 Pg 157 – 159		LYNSTED	Tickham Cottage, Tickham Lane

**5.4**            **16/503340/FULL**            **FAVERSHAM**            **25 Preston Avenue**  
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**PLANNING COMMITTEE – 10 NOVEMBER 2016**

**PART 2**

Report of the Head of Planning

**PART 2**

Applications for which **PERMISSION** is recommended

<b>2.1 REFERENCE NO - 16/504416/FULL</b>			
<b>APPLICATION PROPOSAL</b> To erect an oak framed car port, as amended by drawings received 29 September 2016			
<b>ADDRESS</b> 1 Pile Cottages, Canterbury Road Faversham ME13 8LU			
<b>RECOMMENDATION – APPROVE</b>			
<b>REASON FOR REFERRAL TO COMMITTEE</b> Faversham Town Council objection			
<b>WARD</b> Watling	<b>PARISH/TOWN</b> Faversham Town	<b>COUNCIL</b>	<b>APPLICANT</b> Mr Benjamin Williams <b>AGENT</b>
<b>DECISION DUE DATE</b> 16/11/2016	<b>PUBLICITY EXPIRY DATE</b> 27/10/16		

**1.0 DESCRIPTION OF SITE**

1.01 1 Pile Cottages Canterbury Road, Faversham is an end of terrace property situated in a row of cottages off the main A2, behind The Windmill former public house which is a grade II listed building, within the Faversham conservation area.

1.02 The property is accessed via a driveway leading from the main A2 – Canterbury Road.

**2.0 PROPOSAL**

2.01 This is a resubmission of a previously withdrawn application. The applicant was advised that my initial concerns related to the width and design of the garage. Amendments were suggested, which have resulted in this current application, that has also since been amended by drawings received 29 September 2016. This application now seeks permission for the erection of a pitched roof open-sided and open-fronted oak framed car port to be located to the side of the property.

2.02 The car port will be attached to the side wall and, leaving pedestrian access to the rear amenity area. The roof height will be approximately 2.5m to eaves and maximum height of approximately 5.5m (ridge height of the property being 6.2m). The width being 2.7m (between the posts); the depth 4.5m. The posts to the front will be positioned 1m from the front edge of the property.

2.03 The design of the car port will complement the existing property and will use traditional materials including tiles to match those of the host property, and weatherboarding.

- 2.04 The car port will not remove any parking area associated with the property, but will provide a covered parking area to the side.

### 3.0 SUMMARY INFORMATION

	Proposed
Approximate Ridge Height (m)	5.4m
Approximate Eaves Height (m)	2.5m
Approximate Depth (m)	5m
Approximate Width (m)	3m
No. of Storeys	1
Parking Spaces	1

### 4.0 PLANNING CONSTRAINTS

- 4.01 The application site is within the Faversham conservation area.  
Potential Archaeological Importance  
Rear of The Former Windmill PH – a grade II listed building

### 5.0 POLICY AND OTHER CONSIDERATIONS

- 5.01 Swale Borough Local Plan 2008: Saved policies E1 (General Development Criteria); E15 (development affecting the conservation area), E19 (Design) and E24 (Extensions and Alterations)
- 5.02 DM14 (General Development Criteria); DM33 (development affecting the conservation area) and DM16 (Extensions and Alterations) of The Swale Borough Local Plan Proposed Main Modifications June 2016

### 6.0 LOCAL REPRESENTATIONS

- 6.01 I have not received any letters supporting or objecting to the application.

### 7.0 CONSULTATIONS

- 7.01 Faversham Town Council objected to the application as originally submitted (with a solid side wall) stating “the proposed garage would be too small to function as a garage and would therefore result in the loss of off-street parking”. Faversham Town Council has recently been re-consulted on the amended drawings but no further views have yet been received.

### 8.0 BACKGROUND PAPERS AND PLANS

- 8.01 Application papers and drawings referring to application reference 16/504416/FULL.

### 9.0 APPRAISAL

#### Principle of Development

- 9.01 The main issues to be considered in this application are the impact of the proposed car port on the character and appearance of the row of cottages, on the special character of the conservation area, and the impact on the neighbouring properties.

**Design, impact on the character and appearance of the street scene and visual amenity**

- 9.02 The car port will not be very visible from the highway due to the location of the row of cottages. In my view, it will complement the host property, using traditional materials and matching roof tiles to that of the main house. It has been appropriately designed and would not harm the character of the area or the special character of the conservation area. The car port has been designed to be one metre behind the front edge of the property in order not to be a dominant form.

**The impact on the neighbouring properties**

- 9.03 The proposed car port is on the end of the terrace of houses and I can see little or no impact resulting from it on their amenities

**Other matters**

- 9.04 I note the Town Council’s objection that the proposal would be too small to function as a garage and would therefore result in the loss of off-street parking. I can see that this concern might have applied to an enclosed garage of these dimensions, but having received amended drawings I am satisfied that the car port will not result in the loss of off-street parking, but will provide a covered parking area for the applicant.

**10.0 CONCLUSION**

- 10.01 Having received satisfactorily amended plans, I consider that the proposal is now acceptable in terms of impact upon the character of the area and is of an acceptable design. I therefore recommend that permission is granted.

**11.0 RECOMMENDATION – GRANT** Subject to the following conditions:

**CONDITIONS**

- (1) The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which permission is granted.

Reason: In pursuance of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- (2) The facing materials to be used in the construction of the external surfaces of the car port hereby permitted shall be oak, feather-edged weatherboarding and reclaimed Kent peg tiles as mentioned in the submitted Heritage Statement received 23 May 2016.

Reason: In the interests of visual amenity

- (3) The development hereby approved shall be carried out in accordance with the following approved drawings:

Plans and Elevations: Drawing Number: 016-038/004 Rev B; 016-038/005 Rev A; received 29 September 2016;

Reason: For the avoidance of doubt and in the interests of proper planning.

### **Council's approach to the application**

In accordance with paragraphs 186 and 187 of the National Planning Policy Framework (NPPF), the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and proactive manner by:

- Where possible, suggesting solutions to secure a successful outcome.
- As appropriate, updating applicants/agents of any issues that may arise in the processing of their application.

In this instance:

The applicant was advised of minor changes required to the application and these were agreed.

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.

<b>2.2 REFERENCE NO - 16/506621/FULL</b>			
<b>APPLICATION PROPOSAL</b> Demolition of existing detached garage/store and construction of a new garage with office/workshop and boiler room/store as amended by drawing no. 503/03B received 20 October 2016			
<b>ADDRESS</b> 1 Bullfinches Worlds End Lewson Street Norton Kent ME9 9JW			
<b>RECOMMENDATION</b> – Approve			
<b>REASON FOR REFERRAL TO COMMITTEE</b> Parish Council objection			
<b>WARD</b> Teynham And Lynsted	<b>PARISH/TOWN COUNCIL</b> Norton, Buckland And Stone	<b>APPLICANT</b> Mr Simon Smith <b>AGENT</b> Design & Build Services	
<b>DECISION DUE DATE</b> 27/10/16	<b>PUBLICITY EXPIRY DATE</b> 07/10/16		
<b>RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):</b>			
<b>App No</b>	<b>Proposal</b>	<b>Decision</b>	<b>Date</b>
SW/92/0683	Conservation area consent for shower room for registered disabled person (including partial removal of existing conservatory)	Granted	17/07/1992
SW/92/0682	Shower room for registered disabled person	Granted	17/07/1992
14/502863/FULL	Construction of side and rear two storey extension to semi-detached house	Granted	23/12/2014

**1.0 DESCRIPTION OF SITE**

- 1.01 1 Bullfinches is a two storey semi-detached cottage built in the mid to late 1800s. It is located towards the northern end of Worlds End Lane in Lewson Street, within the Lewson Street conservation area. Here the lane terminates and continues only as a public footpath. Across the lane stands Worlds End, a grade II listed building in generous grounds
- 1.02 The property enjoys a spacious plot fronting Worlds End with a garage at the far northern end, with access at the end of the narrow one track road. A public footpath runs alongside the northern boundary from Lewson Street to the A2 road.
- 1.03 The cottage is currently undergoing refurbishment with a two storey side and rear extension being completed following the 2014 planning permission above. An existing modern detached garage of poor design, constructed of blockwork and render, with felt roof tiles to the front and corrugated cement sheet to the rear and timber framed windows and doors stands on the far northern boundary of the site.
- 1.04 The application site is located within the countryside as defined in the Swale Borough Local Plan 2008.

## 2.0 PROPOSAL

- 2.01 This application is to replace the modern garage and as first submitted sought to construct a new double garage with office/workshop and boiler room/store to replace the existing garage; a building measuring 13m in length x 6.5m in depth x 4.5m in height. The proposal has since been modified to reduce the size of the new garage, and to provide one garage space rather than two spaces. The proposed now building has been reduced in length by 2m and is now shown as 11m long (other dimensions unchanged)
- 2.02 The existing detached garage/store will be demolished and replaced with a new garage located in the same position, close to the public footpath along the northern boundary. It will be constructed of brickwork/feather edged weatherboarding and timber framed windows and doors. The pitched roof will have a ridge height of 2m and be constructed of natural grey slates.
- 2.03 The garage would have relatively little impact on the front elevation of the building being positioned in the far northern corner and screened by proposed hedgerow planting. The south east facing side of the garage would front the highway. The existing vehicle access which is positioned at the end of the narrow one track road would be blocked up. A new vehicle entrance would be formed adjacent to the main dwelling together with a drive and turning area in the middle of the road side boundary.
- 2.04 The proposal will accommodate one garage space, a boiler room/store and office/workshop. In terms of windows, two would be provided on the north west and south west facing elevation. Two conservation style rooflights are proposed within the roof space on the north east roof slope. Photovoltaic panels in a grid system would be installed on the south west facing front roof slope.
- 2.05 The applicant sought pre-application advice before submitting the application and was advised to reduce the height of the proposed building. This application has amended the design from a two storey to a single storey building in line with the advice given.

## 3.0 SUMMARY INFORMATION

	Existing	Proposed	Change (+/-)
Approximate Ridge Height (m)	3m	4.5m	+1.5m
Approximate Eaves Height (m)	0.9m	2m	+1.1m
Approximate Depth (m)	5.6m	6.3m	+0.7m
Approximate Length (m)	6.1m	11.0m	+4.9m
No. of Storeys	1	1	0
Net Floor Area	34sq m	69sq m	+35sq m

## 4.0 PLANNING CONSTRAINTS

Lewson Street Conservation Area  
 Opposite Worlds End, a grade II listed building

## **5.0 POLICY AND OTHER CONSIDERATIONS**

- 5.01 Swale Borough Local Plan 2008: Saved policies: E1 (General Development Criteria) E6 (The Countryside) E14 (Listed Buildings) E15 (Conservation Area) E19 (Design Criteria) E24 (Alterations and extensions) and RC4 (Extensions to, and replacement of, dwellings in the rural area)
- 5.02 DM11, DM14 and DM16 of The Swale Borough Local Plan Proposed Main Modifications June 2016
- 5.03 Supplementary Planning Documents (SPD): Supplementary Planning Guidance entitled “Designing an Extension – A Guide for Householders”.

## **6.0 LOCAL REPRESENTATIONS**

- 6.01 I have received one letter of objection to the original submission on the following summarised grounds:

- The size of the new outbuilding is out of keeping with other garages in the area. The cottage has been massively developed and the proposal will dominate the area and completely change the street scene of Worlds End.
- Planning Policy seeks broadly to restrict development in the countryside and to allow reasonable levels of householder development providing it does not give rise to visually harmful impacts. I believe the proposal is poorly proportioned and intrusive in the landscape. An application for a smaller garage in the same road (SW/11/0728) was refused.
- The proximity of the new garage would have a detrimental impact on the listed building.
- The new garage would be located too close to the footpath and road.
- The proposed business use has the potential to materially change the residential character and use of the property. This location being at the end of a narrow dead end lane, is not suited for any business use.
- Access to our property has been blocked during the refurbishment works.
- If planning permission is granted, we request a condition regarding highway safety during the construction period and another prohibiting any future use of the new outbuilding as a dwelling.
- If the “garage” was of a smaller scale and set back, this would mitigate our concerns.

## **7.0 CONSULTATIONS**

- 7.01 Norton Parish Council opposes the application as submitted. Originally a small two bedroom cottage, the property has been significantly extended. The Council considers that the new garage, which has a footprint only slightly smaller than the extended cottage, is disproportionate on the site when compared to the existing dwelling. The new garage should be subservient in both size and character to the dwelling which it serves.
- 7.02 The agent has responded to the objections to say that garages of a similar footprint to the proposal are not uncommon in this area. As agreed at the pre-application advice meeting, this application as submitted proposes a single storey structure with a low pitched roof to be positioned along the boundary. There will be ample open space between 1 Bullfinches and the proposed garage/office which would allow the

occupants of Worlds End house to retain the open aspect in this location. This is in contrast to many other houses in the street.

## **8.0 BACKGROUND PAPERS AND PLANS**

8.01 Application papers and drawings referring to application reference 16/506621/FULL.

## **9.0 APPRAISAL**

9.01 The main issues to be considered in this application are the impact of the proposed garage on the character and appearance of the cottage and the countryside, the impact on the character of the conservation area and setting of the adjacent listed building.

### **Impact on the character and appearance of the street scene and visual amenity**

9.02 The existing garage has fallen into a state of disrepair, is unattractive, and the proposed works will be a considerable improvement. In my view, the scale of the double garage originally proposed would have been excessive, covering almost the same footprint as the host building and I share many of the concerns expressed about it at that time. I therefore considered that this would be harmful and unacceptable.

9.03 Accordingly, I suggested a reduction in the scale of the proposed building, and the revised proposals address this concern successfully, reducing the length of the building by 2.0m to provide a single garage as opposed to a double. I consider that the proposals now have considerable merit and will enhance the character of the street scene and the visual amenities of the area.

### **Impact on the character of the conservation area and setting of the listed building**

9.04 The proposed building, located in a conservation area, opposite a grade listed building, and surrounded by extensive countryside to the south west and north west, contributes significantly to its setting value. As a designated conservation area, it is clearly a heritage asset. Since there is a statutory duty on the Council to ensure that changes to heritage assets are not harmful it has been essential that the proposal is not of any significant harm. I consider that the building as now proposed will be of a significant improvement over the functioning of the garaging and storage provisions for the host building and its site and the additional residential orientated office and boiler room facilities.

9.05 The proposed siting of the new building is located away from the cottage it is to serve and is on the same general position as the existing garage building, close to the public footpath along the northern boundary. I note local concern over the close proximity to the footpath and highway but, whilst the proposal is a change to the landscape setting, it is acceptable in my opinion. The roof profile is specifically kept shallow with its proposed finish in natural slates and conservation style rooflights. The northern boundary facing wall will be constructed in brickwork to match that of the host building together with the use of featheredged horizontal boarding to the southern wall facing the side of the host building. I consider that the works will not adversely affect the character of the cottage or the conservation area/immediate surroundings of the listed building opposite. Instead it will complete the improvement of this site.

### **Highways**



- 9.06 The existing garage has an access at the end of a narrow one track road and as such the turning and manoeuvring of vehicles is difficult. The proposed building will have the garage door facing the main dwelling, with a new vehicle entrance and drive. Therefore access to the site will be greatly improved and I consider there would be no resulting harm to highway safety and convenience.

**Other Matters**

- 9.07 I note local concern in regards to use of the building as a dwelling. I consider that the use of this for a store/office is acceptable. I am mindful that this space is fairly substantial in size, and recommend imposing condition (4) below which restricts the use of the building to purposes ancillary and/or incidental to the use of the dwelling.

**10.0 CONCLUSION**

- 10.01 I therefore consider that the proposal is acceptable in terms of impact upon the landscape character, the conservation area and within the setting of the adjacent listed building. I therefore recommend, subject to conditions, that permission is granted.

**11.0 RECOMMENDATION – GRANT** Subject to the following conditions:

**CONDITIONS**

- (1) The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which permission is granted.

Reasons: In pursuance of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- (2) The development hereby approved shall be carried out in accordance with the following approved drawings:

Floor Plans. Elevations. Site Plan. Drawing No. 503/03B received 20 October 2016

Reasons: For the avoidance of doubt and in the interests of proper planning.

- (3) Prior to the commencement of development hereby approved, detailed drawings of all new external joinery work and fittings at a scale of 1:20 shall be submitted to and approved in writing by the Local Planning Authority, together with sections through glazing bars, frames and mouldings. Works shall proceed in accordance with the approved details.

Reasons: In the interests of preserving or enhancing the character and appearance of the conservation area and to ensure that these details are approved before works commence.

- (4) The building hereby permitted shall not be used at any time other than for purposes ancillary and/or incidental to the residential use of the dwelling known as “1 Bullfinches”.

Reasons: As its use as a separate unit of accommodation would be contrary to the provisions of the development plan for the area.

- (5) Upon completion, no alterations or extension to the garage hereby approved, whether or not permitted by Class E of Part 1 of Schedule 2 to The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking and re-enacting that Order), shall be carried out.

Reason: In the interests of the amenities of the area

- (6) No development shall take place until details of proposed hedgerow planting (which shall be native species and of a type that will encourage wildlife and biodiversity) to be installed along the eastern side of the site has been submitted to and approved by the Local Planning Authority.

Reasons: In the interests of the visual amenities of the area and encouraging wildlife and biodiversity

- (7) All hedgerow planting approved under the requirements of condition (6) above shall be carried out in accordance with the approved details. The works shall be carried out prior to the first use of any part of the development or in accordance with a programme agreed in writing with the Local Planning Authority.

Reasons: In the interests of the visual amenities of the area and encouraging wildlife and biodiversity.

- (8) Upon completion of the approved landscaping scheme, any trees or shrubs that are removed, dying, being severely damaged or becoming seriously diseased within five years of planting shall be replaced with trees or shrubs of such size and species as may be agreed in writing with the Local Planning Authority, and within whatever planting season is agreed.

Reasons: In the interests of the visual amenities of the area and encouraging wildlife and biodiversity.

**Council’s approach to the application**

In accordance with paragraphs 186 and 187 of the National Planning Policy Framework (NPPF), the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and proactive manner by:

Where possible, suggesting solutions to secure a successful outcome.  
As appropriate, updating applicants/agents of any issues that may arise in the processing of their application.

In this instance:

The application was advised of minor changes required to the application and these were agreed

- 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.

<b>2.3 REFERENCE NO - 16/506618/FULL</b>		
<b>APPLICATION PROPOSAL</b> Single storey residential annexe		
<b>ADDRESS</b> 41 Windsor Drive Sittingbourne Kent ME10 1UN		
<b>RECOMMENDATION</b> Approve		
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b> The application site lies within the built up area boundary where the principle of development is accepted and the proposal would not give rise to unacceptable harm to residential or visual amenities.		
<b>REASON FOR REFERRAL TO COMMITTEE</b> Local Objections and Called In by Cllr Truelove		
<b>WARD</b> Homewood	<b>PARISH/TOWN COUNCIL</b>	<b>APPLICANT</b> Mr P Rainer <b>AGENT</b> Richard Baker Partnership
<b>DECISION DUE DATE</b> 18/10/16	<b>PUBLICITY EXPIRY DATE</b> 23/09/16	

**1.0 DESCRIPTION OF SITE**

- 1.01 No.41 Windsor Drive is a semi detached bungalow with hardstanding to the side, hard and soft landscaping to the front and a relatively generous amount of private amenity space to the rear. The private amenity space rises gently towards the rear of the site.
- 1.02 The properties in this part of Windsor Drive are characterised by bungalows of a similar design.

**2.0 PROPOSAL**

- 2.01 This application seeks planning permission for the erection of a detached single storey annexe to be located at the back of the rear garden. The annexe will be 3.8m in height with a pitched roof, 2.6m to the eaves with a footprint of 9m in width and 5m in depth.
- 2.02 The materials proposed would be rendered walls and cement roof slates and white uPVC windows and doors.
- 2.03 Internally the annexe would provide a lounge / diner, bedroom and shower room.

**3.0 PLANNING CONSTRAINTS**

- 3.01 None

**4.0 POLICY AND OTHER CONSIDERATIONS**

- 4.01 The National Planning Policy Framework (NPPF) and the National Planning Practice Guidance (NPPG) are relevant in terms of encouraging good design standards and

minimising the potential impacts of any development upon the amenity of neighbouring residents.

- 4.02 The adopted Swale Borough Local Plan 2008 echoes a similar sentiment, and saved policies E1 and E19 in particular encourage the provision of high-quality development and minimising potential amenity impacts for local residents.
- 4.03 The emerging Local Plan, Bearing Fruits 2031 Proposed Main Modifications June 2016 is also relevant and policies CP4 (Requiring Good Design) and DM14 (General Development Criteria) have similar aims to the policies of the adopted Local Plan as set out above.
- 4.04 The Council's adopted Supplementary Planning Guidance entitled "Designing an Extension" is also relevant, and provides general design guidance. The SPG remains a material consideration, having been through a formal review and adoption process.

## **5.0 LOCAL REPRESENTATIONS**

- 5.01 Surrounding properties were sent a consultation letter, four responses were received raising objections on the following grounds:
- The design and materials not in keeping with other residential properties in the area;
  - If approved would open the door for further back garden development;
  - Greatly increase the density of residential dwellings in the area;
  - Annexe would overlook neighbouring properties causing loss of privacy;
  - Two trees that could fall across the proposed development;
  - Reduce light to surrounding properties;
  - Sun would reflect off annexe towards neighbouring property;
  - Trees would need to be removed in order for development to proceed;
  - Annexe could have been achieved by extending the property;
  - There is a Roman road at the back of the properties;
  - Light from the annexe will shine into the property;
  - Neighbours would be looking up at a tall building;
  - Concerns about what use the building will be used for when no longer required for its original purpose;
  - Contravention of Section D of Schedule 3 to the Land Certificate.

## **6.0 CONSULTATIONS**

- 6.01 Cllr Truelove stated *"I would like this to go to the Planning Committee. The neighbours raise genuine concerns about the impact on their amenity and about the appropriateness of the design and setting of this proposed development. I am not sure this is a clear cut case and I would like the local feelings to be considered by elected members."*

## **7.0 BACKGROUND PAPERS AND PLANS**

- 7.01 Application papers and correspondence relating to planning reference 16/506618/FULL.

## **8.0 APPRAISAL**

### **Principle of Development**

- 8.01 The application site lies in the built up area boundary where the principle of development is accepted. The main considerations in this case concern the impact that the proposal would have upon residential and visual amenities.

### **Residential Amenity**

- 8.02 The proposed annexe would be located at the very rear of the garden. I firstly take into account that the garden of the host property is relatively generous, measuring 27.4m in depth and 10m in width. The adjacent gardens are of a similar size. The proposed building would be limited in height to 3.8m to its ridge, with a footprint of 9m x 5m. Therefore, the very closest part of the annexe would be 21.4m away from the closest part of No.43 and approximately 23m away from the closest part of No.39. As such, when this amount of separation is combined with the limited height I am of the view that the proposal would have an extremely limited impact in terms of loss of light to these neighbouring properties. In addition, although the land levels in the garden rise towards the rear the slope is gentle. I do not believe that the height of the building is excessive and on this basis I take the view that it would not create a significantly overbearing impact.
- 8.03 I note concern has also been raised regarding overlooking from the annexe. Although the annexe is single storey I recognise that the height of the fence running along the common boundary between No.41 and 43 is limited to approximately 1m. Therefore, I consider that clear views into the private amenity space, and towards the rear elevation of this adjacent property would already be available from the garden of the host property. I also give significant weight to the separation distance of 21.4m between the annexe and the adjoining property which is in excess of the 21m minimum rear to rear distance that the Council would normally expect. Due to this assessment I am of the opinion that the proposal would not give rise to unacceptable levels of overlooking or a loss of privacy, over and above what is already achievable.
- 8.04 On the opposite side there is an existing boundary fence and an outbuilding within the private amenity space of No.39 which would screen views. Therefore, notwithstanding that the annexe is in excess of 21m away from this property I consider that the opportunities for overlooking would not be available and as such the proposal is acceptable in this regard.

### **Visual Amenities**

- 8.05 Due to the location of the annexe, at the rear of the private amenity space, views to the building from public vantage points would be extremely limited. I note the use of materials proposed and in this case, as the annexe is not attached to the dwelling consider them to be appropriate for this development.

### **Other Matters**

- 8.06 I note the comments received from neighbouring occupiers and have responded to a number of these by virtue of the discussion above. Of those that remain I make the following points. Firstly, there appears to be some confusion regarding the proposal itself but to reiterate, this is an application for an annexe rather than a separate dwelling, this is controlled by condition 3 which I have recommended below. Although not physically attached, no separate access is available and the annexe itself does not provide any kitchen facilities and therefore these would be expected to be shared with the main dwelling, as would the private amenity space. There are a number of trees within the rear garden, some of which are close to proposed location

of the annexe. However, these trees are not protected and in my view are of limited amenity value, as such their removal if required would not be controlled by the Council. Therefore I consider that the presence of the trees would not have an impact upon the recommendation. I note the comment related to the possibility of a Roman road but the site does not fall within an area of archaeological potential by the County Council and I can see no benefit in consulting the County Archaeological Officer. I do not believe that typical lighting expected within an annexe would be so significant as to cause harm to residential amenities. Furthermore, I do not consider that light reflecting off the annexe towards neighbouring properties would be so great as to be unacceptable. In terms of future uses of the building, if planning permission is required for these then that will be considered at that time, however, no regard can be had to this currently. Finally, the point relating to the land certificate is not a material planning consideration.

## 9.0 CONCLUSION

9.01 Overall I consider that the principle of development is accepted and the proposal would not give rise to unacceptable harm to residential or visual amenities. I recommend planning permission is granted.

## 10.0 RECOMMENDATION – GRANT Subject to the following conditions:

- (1) The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which the permission is granted.

Reasons: In pursuance of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- (2) The materials to be used in the construction of the external surfaces of the development hereby approved shall match those as stated on the application form.

Reasons: In the interests of visual amenities.

- (3) The annexe hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as 41 Windsor Drive.

Reasons: Its use as a separate unit would impact unacceptably upon the amenities of the area.

### The Council's approach to this application:

In accordance with paragraphs 186 and 187 of the National Planning Policy Framework (NPPF), the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and proactive manner by:

- Where possible, suggesting solutions to secure a successful outcome.
- As appropriate, updating applicants/agents of any issues that may arise in the processing of their application.

In this instance:

The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application.

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.

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<b>2.4 REFERENCE NO - 16/505212/FULL</b>			
<b>APPLICATION PROPOSAL</b>			
Demolition of an outbuilding. Erection of a two storey extension with a 1st storey dormer window to front and back and a single storey rear extension as amended by drawing DKM/6549/02 Rev 04 received 26 September 2016			
<b>ADDRESS</b> 18 Keycol Hill Bobbing Kent ME9 8ND			
<b>RECOMMENDATION</b> Approve			
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b>			
The principle of development is accepted and the scheme would not unacceptably harm the setting of the adjacent listed building, residential or visual amenities.			
<b>REASON FOR REFERRAL TO COMMITTEE</b>			
Recommendation contrary to Parish Council view.			
<b>WARD</b> Bobbing, Iwade And Lower Halstow	<b>PARISH/TOWN COUNCIL</b> Bobbing	<b>APPLICANT</b> Mr Darren Monk <b>AGENT</b> DKM Consultants	
<b>DECISION DUE DATE</b> 14/09/16	<b>PUBLICITY EXPIRY DATE</b> 30/08/16		
<b>RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):</b>			
<b>App No</b>	<b>Proposal</b>	<b>Decision</b>	<b>Date</b>
15/506844/FULL	Erection of a two storey side extension, front porch with pitched roof, double garage to the rear and gravel drive.	Withdrawn	29.10.2015

**1.0 DESCRIPTION OF SITE**

- 1.01 No.18 Keycol Hill is a two storey semi detached property with a grassed amenity space surrounding the property on three sides.
- 1.02 The property sits in an elevated position above the A2, frontage views are heavily disrupted by a row of well established planting to the front of the site.
- 1.03 Vehicular access and parking is provided to the rear of the property.
- 1.04 The surrounding area on the northern side of the A2 is largely comprised of a modern housing development. However, immediately adjacent to the application site to the east sits No.14-16 Keycol Hill which is a grade II listed pair of cottages.

**2.0 PROPOSAL**

- 2.01 This application seeks planning permission for the erection of a two storey side and single storey rear extension. The demolition of the outbuilding does not require permission and as such no further assessment is made of this.
- 2.02 The side extension would sit on the side of the site closest to the adjacent listed buildings and measure 3.4m in width and 7.2m in depth. The ridgeline of the existing pair of semi detached properties would be continued and the flat roofed dormers that exist on both the front and rear elevation would also be continued.

- 2.03 The rear extension would measure 4m in depth and 5.4m in width. It would be predominately flat roofed, measuring 3m in height for the most part but also including a roof lantern increasing the height to 3.5m.

### **3.0 PLANNING CONSTRAINTS**

- 3.01 14-16 Keycol Hill – grade II listed building – the application site is adjacent to this.
- 3.02 Potential Archaeological Importance

### **4.0 POLICY AND OTHER CONSIDERATIONS**

#### The National Planning Policy Framework (NPPF)

- 4.01 Paragraph 132 states that *“When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification. Substantial harm to or loss of a grade II listed building, park or garden should be exceptional. Substantial harm to or loss of designated heritage assets of the highest significance, notably scheduled monuments, protected wreck sites, battlefields, grade I and II\* listed buildings, grade I and II\* registered parks and gardens, and World Heritage Sites, should be wholly exceptional.”*
- 4.02 The (NPPF) and the National Planning Practice Guidance (NPPG) are relevant in terms of encouraging good design standards and minimising the potential impacts of any development upon the amenity of neighbouring residents.

#### Adopted Swale Borough Local Plan 2008

- 4.03 Saved policy E1 sets out standards applicable to all development, saying that it should be well sited and appropriate in scale, design and appearance with a high standard of landscaping, and have safe pedestrian and vehicular access whilst avoiding unacceptable consequences in highway terms;
- 4.04 Saved policy E6 sets out that the quality, character and amenity value of the wider countryside will be protected and where possible enhanced.
- 4.05 Saved policy E14 states that proposals which affect a listed building and/or its setting will only be permitted if the buildings special architectural or historic interest and its setting are preserved.
- 4.06 Saved policy E19 states that the Borough Council expects development to be of high quality design and should amongst other requirements provide development that is appropriate to its context in respect of scale, height and massing, both in relation to its surroundings, and its individual details;
- 4.07 Saved policy E24 sets out that planning permission for alterations and extensions to existing buildings will only be granted planning permission providing they are of a high quality design; are in scale with the individual building details of the building or its surroundings; maintain or enhance the character of the streetscene; preserve

architectural, landscape, or nature conservation features of interest; and protect residential amenity.

- 4.08 Saved policy RC4 states that for dwellings in the rural area with an existing ground floor area of 50 square metres or more the Borough Council will permit only modest extensions of an appropriate scale, mass and appearance to the location.

Emerging Swale Borough Local Plan ‘Bearing Fruits 2031’ – Proposed Main Modifications June 2016

- 4.09 Policies CP4, CP8, DM11, DM14, DM16 and DM32.

Supplementary Planning Documents

- 4.10 Designing an Extension – A Guide for Householders; and Listed Buildings

## **5.0 LOCAL REPRESENTATIONS**

- 5.01 Surrounding properties were sent a consultation letter and a site notice was displayed close to the site. No responses were received.

## **6.0 CONSULTATIONS**

- 6.01 Bobbing Parish Council objects to this application on the grounds that the proposal does not preserve the setting of the listed building.

- 6.02 The County Archaeological Officer states that;

*“The proposed development is located on Keycol Hill, the route of the former Roman road to the coast and adjacent to a Listed Building which may have medieval origins. Archaeological remains including Roman burials have been found alongside the road in Keycol Hill. Furthermore the site lies very close to the remains of First World War defences of the Chatham Land Front.*

*Although limited it is possible that archaeological remains may be encountered during the proposed groundworks and I would recommend that provision is made for an archaeological watching brief.”*

## **7.0 BACKGROUND PAPERS AND PLANS**

- 7.01 Application papers and correspondence relating to planning reference 16/505212/FULL.

## **8.0 APPRAISAL**

### **Principle of Development**

- 8.01 The site lies within the designated countryside where the principle of development is governed by saved policies E6, RC4 and the adopted SPG. These advise that “modest” extensions in the countryside will be acceptable subject to them not increasing the size of the dwelling by more than 60% over the floor space of the original property.

- 8.02 In this instance the application proposes an increase on the original floorspace of approximately 87%. However, I take the view that the surrounding area is suburban

in character with a developed frontage to both sides of the A2 and a relatively modern housing development sited to the rear of the application site. Furthermore, I also take into account that the host property sits 300m from the built up area boundary of Sittingbourne and close to the Key Street roundabout. As such, I am of the opinion that the location of the property is far removed from the countryside locations that the policies above are in place to protect. Therefore, I consider that an extension to the dwelling as proposed would in reality give rise to little harm to the character of the countryside. I also note that the adjoining property has been extended in a similar fashion.

- 8.03 Due to the above assessment I am of the opinion that whilst the proposed extension is in excess of what would normally be considered acceptable, it is acceptable in principle in this location.

#### **Impact upon the designated heritage asset**

- 8.04 A key consideration in the determination of this application is the Council's statutory duty to preserve the listed building or its setting, or any other features of special architectural or historic interest which it possesses, as set out in Section 16 of The Planning (Listed Buildings and Conservation Areas) Act 1990.
- 8.05 In this case the applicant sought pre application advice regarding the scheme prior to formal submission of the proposal. The side extension proposed would be set 2m away from the boundary with No.16 Keycol Hill which in turn is set approximately a further 4m from the common boundary. As such, even accounting for the extension, a gap of 6m will be retained between the properties. Additionally, an important consideration is the layout of the adjacent listed building, the front elevation of which sits forward of the host property. I also note that the proposed extensions to the property would more closely address the rear extended element of the listed building rather than the main listed building.
- 8.06 As a result of the degree of separation between the extension and the listed building, its layout and original historic features sitting in front of the host property I take the view that the proposal would not cause unacceptable harm to the setting of the listed building.
- 8.07 The proposed extensions follow the design of the existing pair of semi detached properties and the dormer windows have been reduced in scale following pre application advice with the Council. The rear single storey element has been set in from the flank wall of the main dwelling to not only lessen the impact on the existing building but also to lessen the view of this extension from the rear of the adjacent listed building and also to open up the access to the rear garden at that point.
- 8.08 Overall, despite the views of the Parish Council, I am satisfied that the design is acceptable and with suitable conditions regarding materials; dormer construction details; constructional cross section of the rear extension showing the roof light and parapet wall design; and details of the rear bi-folding door I believe harm to the setting of the listed building will be limited.

#### **Residential Amenity**

- 8.09 As set out above, No.16 to the east is separated from the flank wall of the side extension by approximately 6m. The rear extension proposed is set in from the flank wall of the side extension by 1m. The extension as a whole projects 6.8m past the rear elevation of No.16, however, due to the gap between the properties I am of the

view that the impact upon the residential amenities of this property would not be unacceptable.

- 8.10 On the opposite side the rear extension is set in from the common boundary with No.20 by 2.6m. Therefore, although the rear single storey element projects by 4m, due to the gap between the flank wall and the common boundary with No.20 I do not consider that this element of the proposal would have an unacceptable impact upon the residential amenities of this property.

### **Visual Amenities**

- 8.11 The application site is a modern style semi detached property with flat roofed dormer windows on the front and rear elevation. The adjoining property has been extended and the flat roofed dormer windows have been continued into the extended part of the property. As such, the proposed side extension would balance the properties when viewed from the front. I appreciate that generally, flat roofed dormers are not encouraged but due to the existing development any other form of first floor arrangement would in my opinion appear incongruous. As such I consider that the flat roofed design is appropriate and therefore acceptable in this case.
- 8.12 As set out above, the applicant has engaged in pre application discussions with the Council regarding this scheme. As part of this process design amendments such as setting the flank of the dormers in from the side elevation and setting the rear extension in from the flank wall of the side extension have been incorporated into the application. As such, I consider the design of the proposal to be acceptable and the result is a scheme that in my view would not give rise to harm to visual amenities.

## **9.0 CONCLUSION**

- 9.01 As set out above I consider that the principle of development is accepted in this location and that the proposal would not give rise to unacceptable harm to the setting of the listed building, residential or visual amenities. I recommend planning permission is granted.

## **10.0 RECOMMENDATION – GRANT** Subject to the following conditions:

- (1) The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which the permission is granted.

Reason: In pursuance of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- (2) The materials to be used in the construction of the external surfaces of the extension hereby permitted shall match those on the existing building in terms of type, colour and texture.

Reason: In the interest of visual amenities.

- (3) The development hereby approved shall be carried out in accordance with the following approved drawings: 'Proposed elevations and floorplans' received 9 June 2016 and DKM/6549/02 Rev 04 received 26 September 2016.

Reason: For the avoidance of doubt and in the interests of proper planning.

- (4) No development shall take place until constructional details of the dormer windows at a scale of 1:20 have been submitted to and agreed in writing by the Local Planning Authority. The development shall be carried out in accordance with the details as agreed.

Reason: In the interests of visual amenities and to preserve the setting of the listed building.

- (5) No development shall take place until a constructional cross section of the single storey rear extension showing the roof light arrangement and parapet wall design to a scale of 1:20 has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the details as agreed.

Reason: In the interests of visual amenities and to preserve the setting of the listed building.

- (6) The glazing used in the dormer windows shall match the glazing details of the existing dormer windows.

Reason: In the interests of visual amenities and to preserve the setting of the listed building.

- (7) No development shall take place until joinery details of the rear bi-folding doors at a scale of 1:5 together with details of frames and mouldings have been submitted to and approved by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason: In the interests of visual amenities and to preserve the setting of the listed building.

- (8) No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a watching brief to be undertaken by an archaeologist approved by the Local Planning Authority so that the excavation is observed and items of interest and finds are recorded. The watching brief shall be in accordance with a written programme and specification which has been submitted to and approved by the Local Planning Authority.

Reason: To ensure that features of archaeological interest are properly examined and recorded.

**The Council's approach to this application:**

In accordance with paragraphs 186 and 187 of the National Planning Policy Framework (NPPF), the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and proactive manner by:

- Where possible, suggesting solutions to secure a successful outcome.
- As appropriate, updating applicants/agents of any issues that may arise in the processing of their application.

In this instance:

The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application.

- 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.

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<b>2.5 REFERENCE NO - 16/506288/OUT</b>		
<b>APPLICATION PROPOSAL</b> Outline application (all matters reserved) for the erection of a dwelling subject as amended by drawings 134/PA/001 A, 134/PA/002 A and 134/PA/003 A.		
<b>ADDRESS</b> 100 Station Road Teynham Kent ME9 9TB		
<b>RECOMMENDATION:</b> GRANT subject to conditions and comments of Teynham Parish Council.		
<b>SUMMARY OF REASONS FOR RECOMMENDATION:</b> Proposed development is acceptable in principle and would not cause adverse harm to the amenities of the area.		
<b>REASON FOR REFERRAL TO COMMITTEE:</b> Local representations and Ward Member support for referral		
<b>WARD</b> Teynham And Lynsted	<b>PARISH/TOWN COUNCIL</b> Teynham	<b>APPLICANT</b> Mr & Mrs D Hogben <b>AGENT</b> Redsquare Architects Ltd
<b>DECISION DUE DATE</b> 12/10/16	<b>PUBLICITY EXPIRY DATE</b> 09/09/16	

**1.0 DESCRIPTION OF SITE**

- 1.01 The site is located on the corner of Station Road and Amber Close in Teynham and forms part of a large area of garden which lies to the north of the host property and currently provides residential garden and an access off Amber Close to an existing parking area to the rear of the property.
- 1.02 The site is part of a row of similar dwellings which are set back from Station Road behind a broad vegetation strip, and the immediate section of the road is characterised by pairs of semi detached properties with the street scene punctuated with cul-de-sacs providing further pairs of dwellings arranged around the cul-de-sac. Detached dwellings are located south along Station Road. The opposite side of Station Road are a mixture of terraced and semi detached properties

**2.0 PROPOSAL**

- 2.01 This is an outline planning application with all matters reserved for future consideration for the erection of a dwelling on land immediately to the north of 100 Station Road. The indicative drawings show a detached two storey property with parking to the rear of the site to be accessed via the existing dropped kerb in Amber Close.
- 2.02 Amended drawings received on 4 October 2016 also show the proposal to include 2 new replacement road parking spaces for 100 Station Road immediately adjacent to the property. This has been achieved by slightly reducing the extent of the application site, all of which fall on land under the applicant's ownership.

**3.0 PLANNING CONSTRAINTS**

The site is located within the built up area boundary of Teynham

#### 4.0 POLICY AND OTHER CONSIDERATIONS

The National Planning Policy Framework (NPPF)

*“Achieving sustainable development*

*Para 14*

*At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking.....*

*For decision-taking this means:*

- approving development proposals that accord with the development plan without delay; and*
- where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:*

*– any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or*

*– specific policies in this Framework indicate development should be restricted.*

*Delivering a wide choice of high quality homes*

*Para 48*

*Local planning authorities may make an allowance for windfall sites in the five-year supply if they have compelling evidence that such sites have consistently become available in the local area and will continue to provide a reliable source of supply. Any allowance should be realistic having regard to the Strategic Housing Land Availability Assessment, historic windfall delivery rates and expected future trends, and should not include residential gardens.*

*Para 49*

*Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.*

*Para 53*

*Local planning authorities should consider the case for setting out policies to resist inappropriate development of residential gardens, for example where development would cause harm to the local area.”*

Development Plan: Saved policies SP1, SP4, TG1, SH1, E1, E19, H2 and T3 of the Swale Borough Local Plan Adopted 2008.

Policies ST1, ST3, CP3, DM7, DM14 and DM19 of the Council’s Emerging Local Plan entitled Bearing Fruits 2031: The Swale Borough Local Plan Proposed Main Modifications June 2016.

#### 5.0 LOCAL REPRESENTATIONS

Six letters were received from local residents objecting to the application, the comments are summarised below:

- Rear, side and front gardens of no 102 Station Road would be much more visible from the new property
- A new two-storey property would appear higher and closer to 102 Station Rd, than no. 100 Station Road is viewed at present
- The reduced plot width of no. 100 to that of approximately 9 metres frontage from the original 20 metres would also set a precedent of its own, in becoming the narrowest plot
- The property would create a precedent, in that it would be the only detached dwelling built within the present order of all semi-detached constructed properties
- The reduced plot would also look, when compared to the more spacious pattern of neighbouring plots and the new property as well, suddenly 'crammed in', and out of character with its frontage surroundings.
- Any parking in the service road and close to the Amber Close junction (adjacent to the new property) would certainly compromise existing lines of sight, access and exit safety considerations at that junction
- There would most probably be more vehicular traffic using the service road, and parking both on there and around the Amber Close entrance.
- Several trees at present situated on, or close to the new property footprint, would possibly have to be removed.
- The proposed property's building line on Station Road would match that of no. 100 and other properties lying further to the south, but would be greatly out of line at right-angles with the frontages of nos. 9 and 10 in Amber Close
- Both those properties would now have their properties consequently overlooked to a large degree, and the open, spacious aspect viewed westwards from within the close severely restricted to residents living there
- Whilst the corner properties on this section of road have all been extended, none of those extensions have exceeded the width of the original property and none have had an entirely new dwelling built in their garden
- There would be no off-road parking for no. 100  
NOTE: This matter has now been addressed on amended drawings
- Parking is already an issue, and an extra house will result in even more cars to find parking for Parking issues from commuter parking and vehicles parking on the pavement already exist
- Brand new house will not be visually in keeping with the houses that are already there, as they were built in the early 1960s
- A house right on that corner will be very imposing and will block light out of the Close
- Will potentially make the junction out of Amber Close more dangerous, as it will impair visibility
- Proposed detached dwelling would overlook our property and inhibit our privacy and light that we currently have the pleasure of from the windows on this side of our property

## **6.0 CONSULTATIONS**

- 7.01 Comments from Teynham Parish Council will be reported verbally to Members at the meeting.

## **7.0 APPRAISAL**

### **Principle of Development**

- 7.01 The site is located within the built up area boundary of Teynham as defined by the Proposals Map of the adopted Swale Borough Local Plan 2008
- 7.02 With regard to paragraph 53, the NPPF makes clear Council's should consider the case for setting out policies to resist inappropriate development of residential gardens, for example where development would cause harm to the local area. The Council has not adopted such a specific policy but it does have several other policies such as E1 and E19 of the adopted Local Plan that require all developments not to cause harm to amenity.
- 7.03 Whilst residential gardens have been removed from the definition of brownfield land it remains preferable to make efficient use of land within built up areas instead of developing greenfield sites in the countryside. The site is considered to be located in a sustainable central location with access to the services, facilities and transport options Teynham has to offer. For these reasons, along with my view that the proposal would not cause harm to the local area sufficient to warrant refusal of planning permission the principle of the proposal is acceptable in my opinion

### **Visual Impact**

- 7.04 The design and style of the house are matters to be considered under a reserved matters application however the indicative drawings do provide some intention of the future proposal. It appears to show a detached two storey dwelling and it is to this design that objections have been received.
- 7.05 In the immediate vicinity of the site the predominant form of development is that of pairs of semi detached houses. However, opposite the site are terraced houses, and detached houses are seen nearby. To only consider the identical replicas to existing dwellings is not an ideal way to progress in terms of evolving designs and changing styles to provide an identity to an area.
- 7.06 The principle of a detached dwelling on a plot that is approx 20m away from the nearest neighbour, and large enough to accommodate it and provide parking and amenity space for it and the existing dwelling on the site, is therefore in principle acceptable. I do, however, have some concerns over the potential impact of a new dwelling on the spacious character of Amber Close and I have recommended a condition specifying how far it must be set away from Amber Close boundary to conserve this character.

### **Residential Amenity**

- 7.07 This outline application does not provide details of the scale, appearance or layout of the proposed dwelling. Whilst indicative elevations have been provided it is reasonable to assume that the dwelling will be detached and will provide 3/4 bedrooms, and be two storey. This requires careful consideration of the potential overlooking arising.
- 7.08 I note the comments from the nearest property in Amber Close which is located to the rear of the site. These state concerns regarding being overlooked from the new house, however the existing house is separated from the new property by an attached single garage and mature tall vegetation. Although no detailed plan exists it is likely that the dwelling will be approx. 20m from the side of no 10 Amber Close and will not have direct line of sight into the property. Due to these distances and the angles involved I do not consider that overlooking would occur to a degree sufficient to cause harm to the amenity of these residents.

- 7.09 Additionally, it is claimed that neighbours will lose light from the side of the house, but due to the distances involved I do not consider this to be to a degree to affect their amenity.
- 7.10 The potential scale and position of the proposed dwelling, combined with the proposed gaps between it and the application site boundary, and the properties in Amber Close in particular, serve to reduce any potential impact from loss of light, overshadowing and overbearing, contrary to the objections received. The proposal entails accommodation that would provide an acceptable level of amenity for future occupants. The remaining garden space serving 100 Station Road is acceptable. The resulting impact on residential amenity would be acceptable in my opinion

### **Highways**

- 7.11 KCC Highways and Transportation no longer provides advice on such small scale proposals. However, I note the comments from neighbours who in the main are referring to inconsiderate parking on Station Road which on occasion impedes visibility when exiting Amber Close. Unfortunately the use of Amber Close with inconsiderately parked vehicles are not issues that can be considered during the determination of this application.
- 7.12 Additionally concern is raised about parking provision. Members will note that amended drawings show parking would be provided for not only the new house to the rear and utilising an existing dropped kerb but also 2 additional off road spaces for 100 Station Road. Therefore the provision of off street parking would be provided for both dwellings. I therefore consider the provision of off street parking for both properties will result in an improvement in the current situation. A condition to require adequate parking provision for both properties is recommended below.

## **8.0 CONCLUSION**

- 8.01 The proposal entails development within the built up area boundary which is acceptable as a matter of principle. There is sufficient space on the site to accommodate the proposal for a new dwelling and the parking demands for it and the existing property. The impact on residential amenity would be minimal and acceptable.

## **9.0 RECOMMENDATION – GRANT Subject to the following conditions:**

### **CONDITIONS**

- (1) Details relating to the layout, scale and appearance of the proposed building, the access thereto and the landscaping of the site shall be submitted to and approved by the Local Planning Authority before any development is commenced.

Reason: In pursuance of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- (2) Application for approval of reserved matters referred to in Condition (1) above must be made not later than the expiration of three years beginning with the date of the grant of outline planning permission.

Reason: In pursuance of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- (3) The development to which this permission relates must be begun not later than the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.

Reason: In pursuance of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- (4) The details submitted pursuant to condition (1) above shall show that no ground floor part of the dwelling shall be sited within 2m of the site's side boundary with Amber Close, and that no first floor part of the dwelling shall be sited within 4m of the site's side boundary with Amber Close.

Reason: In the interests of the amenities of the area.

- (5) Prior to the commencement of development, details shall be submitted to the Local Planning Authority and approved in writing, which set out what measures have been taken to ensure that the development incorporates sustainable construction techniques such as water conservation and recycling, renewable energy production including the inclusion of solar thermal or solar photo voltaic installations, and energy efficiency. Upon approval, the details shall be incorporated into the development as approved.

Reason: In the interest of promoting energy efficiency and sustainable development.

- (6) The details submitted pursuant to condition (1) above shall show adequate land, reserved for the parking of 2 cars each for the proposed new dwelling and for no.100 Station Road (in accordance with the currently adopted Kent County Council Vehicle Parking Standards) which land shall be kept available for this purpose at all times and no permanent development, whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking or re-enacting that Order) or not shall be carried out on such land or in a position as to preclude vehicular access thereto; such land and access thereto shall be provided prior to the occupation of the dwelling hereby permitted.

Reason: Development without adequate provision for the parking of cars is likely to lead to car parking inconvenient to other road users and in a manner detrimental to highway safety and amenity.

- (7) No construction work in connection with the development shall take place on any Sunday or Bank Holiday, nor on any other day except between the following times:- Monday to Friday 0800 - 1800 hours, Saturdays 0830 - 1300 hours unless in association with an emergency or with the prior written approval of the Local Planning Authority.

Reason: In the interests of residential amenity.

## Habitats Regulations Assessment

This HRA has been undertaken without information provided by the applicant. The application site is located within 6km of The Swale Special Protection Area and Ramsar site which is a European designated sites afforded protection under the Conservation of Habitats and Species Regulations 2010 as amended (the Habitat Regulations).

SPAs are protected sites classified in accordance with Article 4 of the EC Birds Directive. They are classified for rare and vulnerable birds and for regularly occurring migratory species. Article 4(4) of the Birds Directive (2009/147/EC) requires Member States to take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article. The proposal therefore has potential to affect said site's features of interest.

In considering the European site interest, Natural England advises the Council that it should have regard to any potential impacts that the proposal may have. Regulations 61 and 62 of the Habitat Regulations require a Habitat Regulations Assessment. NE also advises that the proposal is not necessary for the management of the European sites and that subject to a financial contribution to strategic mitigation, the proposal is unlikely to have significant effects on these sites and can therefore be screened out from any requirement for further assessment. It goes on to state that when recording the HRA the Council should refer to the following information to justify its conclusions regarding the likelihood of significant effects; financial contributions should be made to the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring (SAMM) Strategy in accordance with the recommendations of the North Kent Environmental Planning Group (NKEPG); the strategic mitigation will need to be in place before the dwellings are occupied.

In terms of screening for the likelihood of significant effects from the proposal on the SPA features of interest, the following considerations apply:

- Due to the scale of development there is no scope to provide on site mitigation such as an on site dog walking area or signage to prevent the primary causes of bird disturbance which are recreational disturbance including walking, dog walking (particularly off the lead), and predation birds by cats.
- Based on the past correspondence with Natural England, I conclude that off site mitigation is required. However, the Council has taken the stance that financial contributions will not be sought on developments of this scale because of the practicalities of securing payment. In particular, the legal agreement may cost more to prepare than the contribution itself. This is an illogical approach to adopt; would overburden small scale developers; and would be a poor use of Council resources. This would normally mean that the development should not be allowed to proceed, however, NE have acknowledged that the North Kent Councils have yet to put in place the full measures necessary to achieve mitigation across the area and that questions relating to the cumulated impacts on schemes of 10 or less will need to be addressed in on-going discussions. This will lead to these matters being addressed at a later date to be agreed between NE and the Councils concerned.
- Developer contributions towards strategic mitigation of impacts on the features of interest of the SPA- I understand there are informal thresholds being set by other North Kent Councils of 10 dwellings or more above which

developer contributions would be sought. Swale Borough Council is of the opinion that Natural England's suggested approach of seeking developer contributions on minor developments will not be taken forward and that a threshold of 10 or more will be adopted in due course. In the interim, I need to consider the best way forward that complies with legislation, the views of Natural England, and is acceptable to officers as a common route forward. Swale Borough Council intends to adopt a formal policy of seeking developer contributions for larger schemes in the fullness of time and that the tariff amount will take account of and compensate for the cumulative impacts of the smaller residential schemes such as this application, on the features of interest of the SPA in order to secure the long term strategic mitigation required. Swale Council is of the opinion that when the tariff is formulated it will encapsulate the time period when this application was determined in order that the individual and cumulative impacts of this scheme will be mitigated for.

Whilst the individual implications of this proposal on the features of interest of the SPA will be extremely minimal in my opinion as this is for one dwelling, cumulative impacts of multiple smaller residential approvals will be dealt with appropriately by the method outlined above.

For these reasons, I conclude that the proposal can be screened out of the need to progress to an Appropriate Assessment. I acknowledge that the mitigation will not be in place prior to occupation of the dwelling proposed but in the longer term the mitigation will be secured at an appropriate level, and in perpetuity.

#### **The Council's approach to this application:**

In accordance with paragraphs 186 and 187 of the National Planning Policy Framework (NPPF), the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and proactive manner by:

Where possible, suggesting solutions to secure a successful outcome.

As appropriate, updating applicants/agents of any issues that may arise in the processing of their application.

In this instance:

The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application.

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.



<b>2.6 REFERENCE NO - 16/501090/FULL</b>			
<b>APPLICATION PROPOSAL</b> Variation of condition 1 of 14/500986 (Removal of condition 1 of approved SW/13/0409 to allow for further use of the meat preparation premises in accordance with condition 7 of approved SW/13/0409.) - to allow for the permanent use of the meat preparation premises.			
<b>ADDRESS</b> Butcher Of Brogdale, Brogdale Farm Brogdale Road Ospringe Kent ME13 8XZ			
<b>RECOMMENDATION:</b> Grant Subject to views of the Environmental Health Manager and the Council's Economic Development Officer.			
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b> After two trial periods the Council is now satisfied that the permanent use of the meat preparation premises in accordance with conditions below would not have a detrimental impact on the surrounding residential amenity.			
<b>REASON FOR REFERRAL TO COMMITTEE</b> Parish Council concern and neighbour objections.			
<b>WARD</b> East Downs	<b>PARISH/TOWN COUNCIL</b> Ospringe	<b>APPLICANT</b> Mr L Moore <b>AGENT</b> DHA Planning	
<b>DECISION DUE DATE</b> 06/04/16	<b>PUBLICITY EXPIRY DATE</b> 29/03/16		
<b>RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):</b>			
<b>App No</b>	<b>Proposal</b>	<b>Decision</b>	<b>Date</b>
SW/11/1560	Change of use, extension and alterations to part of former cold store building to ground floor class B2 use for meat preparation and first floor class B1 business use	Approved	3/2/2012
SW/13/0409	Variation to condition 5 of approved SW/11/1560 to the following: 'The use hereby permitted shall be restricted to the hours of 5am to 6pm Mondays to Fridays including deliveries and dispatches and 7am to 2pm on any other day'.	Temporary permission granted	22/7/2013
14/500986/AMRCON	Removal of condition 1 of approved SW/13/0409 to allow for the permanent use of the meat preparation premises in accordance with condition 7 of approved SW/13/0409.	Temporary permission granted	4/3/2015

**1.0 DESCRIPTION OF SITE**

- 1.01 The site is located south of Faversham and the M2 motorway, within a Special Landscape Area and the countryside. The frontage of Brogdale Farm adjoins residential properties to the north west and south west. Immediately to the north west lies Brogdale Farm House, and to the north east open countryside.
- 1.02 The unit which is the subject of this application forms part of a former cold store building and is located to the rear of the site. The unit is located within the designated employment area under saved policy B26 of the Swale Borough Local Plan 2008.

- 1.03 The most recent and relevant planning history involves the three cases set out in detail above, but the planning history of the site also includes the following proposals: SW/12/1409- Change of use to use as demonstration gardens with incidental buildings and associated parking- (Withdrawn)

SW/10/0036 – change of use, conversion and extension of existing cold store to provide business use (Approved)

SW/08/0271 – change of use of existing cold store to catering use (food preparations) and/or B1 use and minor alterations to the external appearance of the building – (Approved)

SW/08/0194 – change of use and alterations to chemical store to plant display and sale use with ancillary office and store, outdoor plant display area, new canopy, erection of glazed link between existing glasshouses and creation of additional craft/retail unit (Approved)

SW/07/0189 – change of use and alterations to part of existing cold store to form offices and labs (B1) (Approved)

SW/06/0601 – Alterations to 2 barns to form craft/retail units etc. (Approved). This is the planning permission for the units now known as The Market Place or The Courtyard at Brogdale; the opening hours of which are restricted to not before 8.00am.

## 2.0 PROPOSAL

- 2.01 The proposal is for the removal of condition (1) of temporary permission 14/500986/AMRCON. For clarification that application was approved in March 2015 for one year, to permit a further (second) trial period for the earlier operating hours sought by the applicant in relation to food preparation which allowed a 5am (rather than an 8am) start and pre-8am deliveries on weekdays and Saturdays. Various new conditions regarding vehicle parking and deliveries were imposed for the one year trial period and it is anticipated that these would continue to apply.

- 2.02 The proposal is now to remove the one year restriction as set out by condition (1) of 14/500986/AMRCON making the recent arrangements permanent.

- 2.03 The applicant has submitted a supporting Statement to outline why he continues to seek the earlier operating hours on an on-going basis. This includes the suggestion that there have not been any complaints about breaches of any of the conditions during the second trial period, apart from one regarding a bone collection lorry that has now been dealt with. The Statement then outlines the relevant planning history and policy considerations, and then argues for approval of this application on the following summarised grounds;

- The original use was approved under SW/11/1560
- Two temporary periods have since been approved with extended hours
- The use of the site accords with the Council's planning policy for the site
- The key question now is whether or not the extended hours have had a negative impact on residential amenity
- The premises employs 13 people including four trainee butchers
- It delivers to 90 state schools in Swale and adjoining districts

- The schools contracts account for over 30% of turnover, so they are essential to the business
- To fulfil schools contracts it is essential that work starts at 5.00am with deliveries ready to go at 7.30am
- Only four cars normally arrive between 5.00am and 5.30am, with other butchers arriving from 6.00am, and delivery staff from 7.00am. Trainees arrive at 8.00am
- All meat preparation work is carried in inside the building with no noise break-out
- The use has continued without complaints so should now be approved on a permanent basis

### 3.0 PLANNING CONSTRAINTS

- 3.01 Brogdale Farm house lies to the north west and is Grade II listed. The site lies within the open countryside and falls under saved policy B26 of the Swale Borough Local Plan 2008.

### 4.0 POLICY AND OTHER CONSIDERATIONS

- 4.01 The policies most relevant to this application are saved policies E1 (General Development Criteria), E6 (The Countryside), E9 (relating to Special Landscape Areas), B1 (Supporting and Retaining Existing Employment Land and Businesses), RC1 (Helping to Revitalise the Rural Economy) and B26 (Brogdale National Fruit Centre) of the Swale Borough Local Plan 2008.

**Policy B26** states (in relation only to the built up part of the farm) that:

*“In order to help safeguard the continuation of the National Fruit Collection at Brogdale National Fruit Centre, the Borough Council will grant planning permission for a range of research, commercial, tourism and educational use. Development proposals will:*

1. *be of a scale and character appropriate to the rural setting of the site;*
2. *clearly demonstrate that the proposed uses will both relate to the existing functions of the Brogdale National Fruit Centre, and make a significant contribution to the long term viability of the National Fruit Collection;*
3. *be the subject of a satisfactory transport impact assessment; and*
4. *be limited in extent to the area identified on the proposals map.”*

- 4.02 The National Planning Policy Framework is also a material consideration in determining this application. In terms of “Supporting a prosperous rural economy”, it states at paragraph 28 that:

*“Planning policies should support economic growth in rural areas in order to create jobs and prosperity by taking a positive approach to sustainable new development. To promote a strong rural economy, local and neighbourhood plans should:*

- *Support the sustainable growth and expansion of all types of business and enterprise in rural areas, both through conversion of existing buildings and well-designed new buildings”*

### 5.0 LOCAL REPRESENTATIONS

- 5.01 The local Countryside Under Threat (CUT) group who have long campaigned against further development at Brogdale have written to oppose the application on the following summarised grounds:
- Object to the hours being made permanent
  - The butcher has right from the start broken his hours of use conditions on the shop, which is not supposed to open until 8am – the shop is normally open well before 7.30am contrary to planning conditions about access to The Courtyard
  - This is a major intrusion into the amenities of Brogdale Farmhouse and other immediate neighbours
  - The butcher took on the school meat contract before he had the necessary planning permission for early working hours; should he not have checked first, or found alternative premises
  - The major problem is noise from The Courtyard because people can access the site with vehicles before 7.30am, starting at 5.00am or before when the metal gates are opened
  - This leads to early morning access being available to numerous businesses on the wider site, but particularly the noisy bone lorry between 5.00am and 6.00am, and the first fresh meat delivery at 6.30am
  - The fact that the butchers start so early attracts further traffic at early morning times
  - Neighbours have tried to ease the problem by greasing the gate hinges and sleeping at the back of their property instead of complaining
  - The front gates should not be opened until 7.30am, preventing noisy waste vehicles early morning access
  - The early morning activity is far greater than when the site was purely a farm when only the apple harvest caused such disturbance
  - There have been complaints about the butcher's use of the site for many years but nothing has been done; information has not been shared between Council departments
  - There have been complaints within the latest temporary planning permission period
  - It is time to accept that there is a problem not just with the hours but with the attitude of the butcher and the site's landlord who appear to have no respect for the neighbours
- 5.02 CUT have followed up their original letter of objection with a note to Councillor Prescott (copied to me). This records results of their Chairman observing early morning activity at the site on 10 March 2016 from 4.45am. They say that the 5.00am opening of the site gates essentially creates an opportunity for anyone to access the site to make noisy deliveries. It is noted that the butcher continues to make the shop unit in The Courtyard his first point of call which attracts staff there well before 7.30am with loading up to an hour beforehand. They say that planning permission for the meat processing unit was supposed to take noise away from The Courtyard shop area, and that if all meat processing was done where it was proposed to be then all deliveries could be carried out there too. They again suggest that the site gates remain locked until 7.30am, although a narrow gate could allow pedestrian and car access to the site, which would allow early morning work but avoid the noisy commercial (delivery and waste) vehicles entering the site so early.
- 5.03 Finally, CUT has also written direct to me in the same vein, saying that the current activity is contrary to planning policies and represents a blatant breach of conditions against which enforcement action has not been taken. They say that the butcher uses The Courtyard shop as his base from 5.00am with noisy deliveries on trolleys and trucks from that time; and that deliveries start before 7.30am. The clear allegation is

that the permitted hours are regularly breached, and that the early morning opening of the site leads to wider use of the site during early hours to the detriment of neighbours' amenities. They close by saying that the butcher should have considered the conditions on the premises before taking on school and other meat contracts, and that Brogdale Farm is a fruit farm in a rural setting in a village and any further industrialisation should not be granted.

5.04 I have also received three letters of objection to this application from three separate addresses close to the Brogdale site, opposing the application on the following summarised grounds:

- Contrary to the applicant's claims there have been objections within the latest one year trial period about early morning use of the shop in The Courtyard area and breaching of conditions
- The applicant tries to suggest that the early morning noise issues relate to the shop unit rather than to the meat preparation premises
- The applicant has had over two years to transfer his meat preparation business for sales off-site from the shop to the dedicated meat preparation premises, before which he was using the shop for meat preparation. However, he is still using the shop for preparing meat products which are delivered off site on a daily basis
- The applicant should have considered the permitted hours of use before taking on school and other contracts
- He transfers meat between the shop and the meat preparation unit before 7.30am in breach of conditions
- The shop is used as a base from 5.00am to which noisy deliveries are made
- The temporary hours are ignored on a regular basis
- The applicant has little regard for regulation and even less for his neighbours
- Enforcement action is long overdue
- We appreciate the economic benefit of jobs in rural areas but they must comply with planning conditions
- The current arrangements are hurting the amenity of the rural setting and badly affecting neighbours
- Opening the main gates at 5am gives access for everybody, not just the butcher resulting in further early morning deliveries
- The current conditions should not be made permanent as they have never been complied with
- If the Council is to approve this application it must retain all the current conditions and any other conditions which will respect the close proximity of the shop to a private dwelling
- The main gate should stay locked until 7.30am in order to stop unacceptable early traffic and delivery noise. The gate itself is noisy and awakens those living opposite – it would be lessened if the gate was opened later
- A separate pedestrian/car gate would allow staff access to the site
- Planning policy exists to prevent such intrusion but have not been used

5.05 Arising from the correspondence on this application I have reviewed correspondence between neighbours and both Planning Enforcement and Environmental Protection Officers during the latest (second) one year trial period temporary planning permission. These complaints initially refer to the period before the renewal of permission but when the planning conditions were substantially the same. They span the period of 26 February (four days after the latest temporary planning permission was granted) to 07 July 2015 and relate to:

- early morning vehicle movements – from as early as 4.43am
- commercial vehicles being parked close to garden boundaries with engines running
- commercial vehicles parking in The Courtyard at Brogdale (which is immediately adjacent to Brogdael Farmhouse) for early morning deliveries to the butcher's shop premises
- incidents of a bone lorry arriving at around 5.00am and parking close to The Courtyard
- the use of CCTV on behalf of our Environmental Protection team from June 2015 – following which activities noticeably changed for the duration of the CCTV installation
- logging of nuisance events by neighbours
- an improvement in matters shortly after the granting of the most recent planning permission
- the overall site owner's use of CCTV to help investigations into early morning activities
- a meeting held between Planning Officers and the overall site owner in early April 2015 to try to ensure that the conditions were adhered to
- very early morning (circa 5.00am) deliveries to, and movement of meat products from, the butcher's shop premises in The Courtyard including movements between the shop unit and the meat preparation unit before 7.30am
- preparation of meat within the shop unit for off-site sales, negating the benefit of having the new meat preparation unit
- staff working in the shop rather than in the meat preparation unit at early morning times
- an incident of another shop owner on The Courtyard taking a delivery at 5.42am on one date in June 2015
- confirmation for the Council's Environmental Protection team that recordings did not support statutory noise nuisance action

5.06 I gather that some of the neighbours' original complaints are now resolved – including the noisy gate opening, lorries reversing and un-loading at The Courtyard – but they still say that the early morning use of the shop unit in The Courtyard for despatching meat products by the butcher remains a source of early morning nuisance and that planning conditions are regularly broken.

5.07 I have also received separately as part of my own investigations into the situation, logs from neighbours covering the periods of February to March 2015, June 2015 and February to March 2016. These show numerous incidents of very early morning activity on the overall site, not all of which appears to relate to the butcher's business but which indicates that once within the site it is hard to control who goes where. The principal concern is that the shop unit (approved for retail or B1 purposes and with open to the public hours of 08.00am to 18.00pm) appears to be opened very early in the morning to receive deliveries from external locations, and/or to act as a despatch point before 7.30am, and often shortly after 5am. This is creating early morning noise nuisance close to Brogdale Farmhouse which the conditions of approval were intended to minimise.

5.08 In the light of these representations and allegations of breach of condition, I have delayed reporting this application to Members in an attempt to get to the bottom of the issues involved. I have spoken at length both with neighbours and the applicant to establish what might be at stake. Having done so, it appears to me that the applicant's use of his retail outlet at The Courtyard is the main source of disturbance as this lies

directly behind Brogdale Farmhouse. Condition (10) of the latest temporary permission 14/500986/AMRCON reads as follows (with my underlining for emphasis);

- (10) *No deliveries (other than as provided for by condition 6 above) or despatches to or from the premises, including deliveries or despatches to or from this premises and any unit within the Market Place at Brogdale, shall take place before 7.30am or after 6pm on any day.*

*Reasons: In the interests of residential amenity.*

I have discussed the meaning of this condition with the applicant, and his agent has now confirmed that no transfers of any products to and from the premises to the Butchers shop will take place before 7.30am and that the applicant fully appreciates the terms of the conditions and that he will henceforth completely abide by it by not moving goods between the two buildings before 7.30am. I think this may mark the start of a new understanding of each other's' position here, but that it can be reinforced by re-wording the condition and splitting it up as set out below in recommended conditions (10) and (11) below.

## **6.0 CONSULTATIONS**

- 6.01 Ospringe Parish Council has written to say that despite the applicant stating that there has only been one complaint neighbours have been monitoring the situation and have identified various breaches of conditions including movements between the shop and cold store outside the permitted hours; but that these complaints have not been investigated or acknowledged. They ask that conditions are rigorously enforced which does not appear to have happened to date.
- 6.02 I am awaiting final comments from the Environmental Health Manager and the Council's Economic Development Officer and will update Members at the meeting.

## **7.0 BACKGROUND PAPERS AND PLANS**

- 7.01 Planning application form and Planning Statement dated February 2016.

## **8.0 APPRAISAL**

- 8.01 Members should note that planning permission has already been granted for the current use of the premises and that this application is simply for the deletion of condition 1 of 14/500986/AMRCON which gave another one year temporary permission for the extension of the hours of operation in relation to the meat preparation premises, following the original one year temporary permission of SW/13/0409. All that can be considered in determining this application is the impacts above and beyond the originally approved hours of operation (8am to 6pm on any day) but bearing in mind the additional conditions regarding parking etc that are now recommended. The Council cannot seek to control or remove the existing permission through this application.
- 8.02 Therefore, the main considerations in the determination of this application remain the potential increase in vehicular movements, particularly early in the mornings, and whether the proposed increased in operational hours would have a significantly detrimental impact on the amenity of neighbouring residents. These factors should be considered against the potential benefits of the proposal to the local economy in continuing to support this local business and ensuring its future viability. The previous applications under SW/13/0409 and 14/500986/AMRCON assessed the

impact of the increased hours and at that time Members voted to approve, both on a temporary one year basis.

- 8.03 The temporary nature of the previous approvals has given officers the chance to fully assess the impact on the residential amenity of the surrounding neighbouring properties. It is worth noting that officers have received survey data from neighbours outlining some potential breaches to the planning conditions, specifically providing dates and times of the alleged breaches. Subsequently I have had a number of discussions with the agent, the applicant and the landowner. The agent has confirmed that there is no restriction in respect of the use of the shop by staff to prepare meat for the shop counter, prior to opening and that no dispatches from these premises take place before 7.30am. Furthermore, the applicant has put a number of measures in place to limit any noise nuisance such as the collection of bones now takes place on a Wednesday afternoon; car sharing; and he has purchased trolleys for moving the meat during the day which have soft wheels and limit noise from any trolley movements. Furthermore, the applicant has made it clear that he now fully understands the situation regarding transfers to the shop unit, and will ensure that he makes no such transfers outside of the permitted hours from the premises to any unit within in The Courtyard at Brogdale Farm. It is important to note that no deliveries to the meat preparation unit are permitted before 6.30am (condition 6 below); the applicant has confirmed that the company have 5 suppliers of meat and only one of which delivers between 6.30am and 7.30am.
- 8.04 Neighbouring residents are particularly concerned about amenity issues in respect of vehicular movements at the entrance of the site before usual business hours and movements from the meat preparation unit to the Butchers shop. Whilst I fully consider and sympathise with the argument put forward by local residents that there is residential development in this rural area I am of the view that the premises is reasonably small, detached from neighbours, and does not have a large workforce, which reduces the impact on the wider residential amenity. Conditions (10) and (11) below specifically restrict any transportation of products to or from the premises to any unit within Market Place/Courtyard; I am confident that these conditions are clear and stringent enough to ensure that there is no detrimental impact on the residential amenity of the area and adequately restrict the movements to and from the site and also within the site (from the meat preparation unit to the shop) to reduce any impact on the residential amenity of the surrounding area.
- 8.05 Having taken into consideration the impact on residential amenity I am on the view that any alleged past incidences of early morning product transportation from the premises to the butchers shop in the Market Place should not warrant a further time restricted temporary permission. The stringent nature of the conditions (as outlined above) which can now been amended in the light of the experience of the trial periods ensures a great reduction in the potential impact on the most immediate residential properties, especially Brogdale Farm House and its owners. I am awaiting comments from the Council's Environmental Health Manager and will update Members at the meeting. I am aware that the Environmental Health Manager has been separately monitoring the situation.
- 8.07 In addition, the stringent conditions recommended in this report restrict the parking of staff vehicles to the rear of the site; deliveries of fresh meat shall not take place before 6.30am Monday to Saturday with no deliveries on Sundays or Bank Holidays; and no vehicles associated with the food preparation business within the premises shall be parked, loaded or unloaded in the main or overflow car park at any time.



- 8.08 With regards to the potential highway implications, I am of the view that the vehicular movements will not be significantly greater than under the approved hours of operation. In addition, the site has good access and a good surrounding road network.
- 8.09 The site lies within the land zoned by saved policy B26 of the Local Plan, which seeks to offer flexibility for novel development at Brogdale to support the National Fruit Collection (see policy wording above) over and above normal rural development saved policies such as E1, E6 and RC1 relating to commercial uses of rural buildings. These were the policies relied on in approving the current commercial use in the first place, and I consider that these are the ones that should be focussed on now. I also consider that the proposed change of hours is in principle capable of meeting the objectives of saved policy RC1 of the Local Plan which looks to provide rural jobs provided the proposal is in scale with its locality with no detriment to landscape character, biodiversity or countryside conservation; and providing it does not lead to a significant increase in traffic or unsustainable travel patterns. However, it is the issue of the impact on the amenities of the nearest dwellings (saved policy E1) that remains at the heart of the issue now and was the case under the previous application, I am firmly of the view that I have addressed these concerns above and that the impact on the neighbouring properties is limited.

## 9.0 CONCLUSION

- 9.01 I am of the view that the recommended conditions relating to parking and access arrangements and the hours of use address the potential impact on the residential amenity and that any limited impact is not sufficient to warrant a refusal of this application.
- 9.02 The additional one year temporary permission has enabled officers to fully assess the impact on residential amenity and, except for allegations of transfers of products to The Courtyard shop, I am not aware of any complaints about breaches of these conditions. As such I see no reason to refuse this application or to suggest a further temporary permission. I am of the view that the stringent conditions can ensure that there is a limited impact on the residential amenity of the surrounding area. A number of discussions have taken place with the neighbours, land owner and the application and I am firmly of the opinion that any concerns raised have now been addressed in a satisfactory manner and that permanent planning permission should now be granted.
- 9.03 Therefore after careful consideration I consider this proposal acceptable, subject to conditions and outstanding comments from the Council's Economic Development Officer and the Environmental Health Manager.

## 10.0 RECOMMENDATION – GRANT Subject to the following conditions:

### CONDITIONS

- (1) The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which the permission is granted.

Reason: In pursuance of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- (2) The use hereby be permitted shall be restricted to the preparation of food or for any uses within Class B1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) only.

Reasons: In order to prevent the development having an adverse impact on the amenities of the area.

- (3) No cooking of food shall take place within the area hereby approved for food preparation until details of a ventilation system have been submitted to and approved by the Local Planning Authority and upon approval the system shall be installed prior to any cooking of food, and thereafter maintained and operated in a manner which prevents the transmission of odours, fumes, noise and vibration to neighbouring premises.

Reasons: In the interests of residential amenity.

- (4) No external refrigeration or air conditioning unit shall be installed other than in accordance with details which shall be submitted to and approved by the Local Planning Authority and upon approval the unit shall be installed, maintained and operated in a manner which prevents the transmission of odours, fumes, noise and vibration to neighbouring premises.

Reasons: In the interests of residential amenity.

- (5) The parking of vehicles used by staff associated with the use of this premises shall be restricted to land to the east of the Market Place at Brogdale between the hours of 6pm on any day and 7.30am on the following day.

Reasons: In the interests of residential amenity.

- (6) Deliveries of fresh meat to the premises shall not take place before 6.30am on Monday to Saturdays with no deliveries on Sundays and Bank Holidays and no delivery vehicles shall park or unload in the main car park or overflow car park at Brogdale at any time.

Reasons: In the interests of residential amenity.

- (7) The uses hereby permitted shall be restricted to the hours of 8am to 6pm on any day except only for that part of the ground floor of the premises used for the preparation of food in which case that use shall be restricted to the hours of 5am to 6pm on any weekdays and Saturdays, and to 8am to 6pm on any Sunday or Bank Holiday

Reasons: In the interests of residential amenity.

- (8) No vehicles associated with the food preparation business carried on within the premises shall be parked, loaded or unloaded in the main or overflow car park at any time.

Reasons: In the interests of residential amenity.

- (9) The use of the site hereby approved for food preparation will cease if refrigerated lorries and/or vans, used in connection with the business, park or wait in the established main or overspill vehicle parking areas at Brogdale Farm. All such waiting vehicles shall park beside the unit.

Reasons: In the interests of residential amenity.

- (10) No deliveries (other than as provided for by condition 6 above) and despatches to or from the premises shall take place before 7.30am or after 6pm on any day.

Reasons: In the interests of residential amenity.

- (11) No products may be transported to or from these premises to any unit in the Market Place at Brogdale before 7.30am or after 6pm on any day.

Reasons: In the interests of residential amenity.

**The Council's approach to this application:**

In accordance with paragraphs 186 and 187 of the National Planning Policy Framework (NPPF), the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and proactive manner by:

Where possible, suggesting solutions to secure a successful outcome.  
As appropriate, updating applicants/agents of any issues that may arise in the processing of their application.

In this instance the application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application.

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.

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<b>2.7 REFERENCE NO - 16/506453/FULL</b>			
<b>APPLICATION PROPOSAL</b> Demolition of existing bungalow and erection of No.2 3 bed houses with parking spaces (Resubmission)			
<b>ADDRESS</b> 2 Kings Road Minster-on-sea Kent ME12 2HL			
<b>RECOMMENDATION</b> Grant subject to conditions			
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b> Recommendation contrary to Parish Council view			
<b>REASON FOR REFERRAL TO COMMITTEE</b> The application site lies within the built up area boundary where the principle of residential development is accepted and does not give rise to unacceptable harm to residential, visual or highway amenities.			
<b>WARD</b> Minster Cliffs	<b>PARISH/TOWN</b> Minster-On-Sea	<b>COUNCIL</b>	<b>APPLICANT</b> Mr E Batten <b>AGENT</b> Prime Folio
<b>DECISION DUE DATE</b> 19/10/16	<b>PUBLICITY EXPIRY DATE</b> 16/09/16		
<b>RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):</b>			
<b>App No</b>	<b>Proposal</b>	<b>Decision</b>	<b>Date</b>
16/503908/FULL	Demolition of existing bungalow and erection of 2No. 3 bed houses with parking spaces	Refused	08.07.2016
<i>Reason - The proposed dwellings would, by virtue of their bulk and scale, amount to an overdevelopment of the site, giving rise to a cramped appearance, harmful to visual amenity. In addition, the flank wall of the proposed development addressing Kings Road, by virtue of its proximity to the boundary combined with its scale would have a significantly detrimental impact upon the character and appearance of the streetscene and visual amenities in this part of Kings Road, contrary to policies E1 and E19 of the Swale Borough Local Plan 2008.</i>			

**MAIN REPORT**

**1.0 DESCRIPTION OF SITE**

- 1.01 No.2 Kings Road is a corner plot measuring 29m x 10m and located on the junction with Queens Road.
- 1.02 A bungalow currently occupies the site which is set back from the frontage with Kings Road by 4m and from Queens Road by 10m. The remainder of the site consists of the bungalow’s amenity space.
- 1.03 The surrounding area is characterised by a mixture of dwelling types and designs including bungalows, two storey dwellings and two storey dwellings with rooms in the roofspace.

## 2.0 PROPOSAL

- 2.01 This application seeks planning permission for the demolition of the existing bungalow and the erection of 2no. 3 bed dwellings.
- 2.02 The proposed dwellings would be semi detached with the main entrances located on the side of the dwellings. The principle elevations of the dwellings would front onto Queens Road.
- 2.03 The properties each measure 3.7m in width (excluding the canopy of the external doors on the flank elevations) and 10.7m in depth. The properties would be arranged in a symmetrical layout and would be two and a half stories in height with rooms in the roofspace. The dwellings measure 5.2m to the eaves and 9.2m in overall height with a pitched roof with hipped ends. 4 dormer windows are proposed, 2 on the front roofslope and 2 on the rear.
- 2.04 To the rear of the proposed dwellings private amenity space will be provided measuring 10.6m in depth and 5m – 6m in width. Further to the rear of the private amenity space lies a parking area for 4 cars. The private amenity space and the parking area will be largely screened by existing planting.

## 3.0 PLANNING CONSTRAINTS

- 3.01 None

## 4.0 POLICY AND OTHER CONSIDERATIONS

### National Planning Policy Framework

- 4.01 The NPPF was released on 27th March 2012 with immediate effect, however, para 214 states *“that for 12 months from this publication date, decision-makers may continue to give full weight to relevant policies adopted since 2004 even if there is a limited degree of conflict with this Framework.”*
- 4.02 The 12 month period noted above has now expired, as such, it is necessary for a review of the consistency between the policies contained within the Swale Borough Local Plan 2008 and the NPPF.
- 4.03 This has been carried out in the form of a report agreed by the Local Development Framework Panel on 12 December 2012. Policies E1, E19 and T3 are considered to accord with the NPPF for the purposes of determining this application and as such, these policies can still be afforded significant weight in the decision-making process.
- 4.04 Although policy H2 of the Local Plan is not considered to comply with the provisions of the NPPF in as much as it aims to prevent residential development outside the built up area (due to Swale not currently having a five year housing supply), in this case this does not have a huge bearing as the site is within the built up area boundary but still subject to the considerations of the other policies (that do comply with the NPPF).

### National Planning Practice Guidance (NPPG)

- 4.05 The NPPG also provides general guidance in relation to development. It encourages the provision of housing within sustainable areas, subject to consideration of issues

such as local and residential amenity, highways and urban design / architecture, amongst others.

Swale Borough Local Plan Adopted 2008

- 4.06 Policy E1 sets out standards applicable to all development, saying that it should be well sited and appropriate in scale, design and appearance with a high standard of landscaping, and have safe pedestrian and vehicular access whilst avoiding unacceptable consequences in highway terms;
- 4.07 Policy E19 states that the Borough Council expects development to be of high quality design and should amongst other requirements provide development that is appropriate to its context in respect of scale, height and massing, both in relation to its surroundings, and its individual details;
- 4.08 Policy H2 states that planning permission for new residential development will be granted for sites within the defined built up areas, in accordance with the other policies of the Local Plan.
- 4.09 Policy T3 states that the Borough Council will only permit development if appropriate vehicle parking is provided in accordance with Kent County Council parking standards.

The Emerging Swale Borough Local Plan 'Bearing Fruits 2031' Proposed Main Modifications 2016

- 4.10 Policies ST1 (Delivering sustainable development in Swale); ST2 (Development targets for jobs and homes 2011-2031 2014-2031); ST3 (The Swale settlement strategy); ST4 (Meeting the Local Plan development targets); CP3 (Delivering a wide choice of high quality homes) and DM14 (General development criteria) are all relevant to this application.

## **5.0 LOCAL REPRESENTATIONS**

- 5.01 One letter of objection was received raising the following summarised concerns:
- Little has changed from the recently refused application;
  - The proposed dwellings would by virtue of their bulk and scale amount to an overdevelopment of the site with a cramped and oppressive appearance, harmful to visual amenities;
  - Anything other than the height of the existing bungalow would have a significant detrimental impact upon the character and appearance of the streetscene;
  - The proposed development will lead to a loss of views;
  - The proposed dwellings will have an overbearing impact and cause overshadowing and loss of the light to neighbouring dwellings;
  - The design of the proposed development does not afford adequate privacy to the occupants of surrounding properties, including the residential property opposite, No.7 Queens Road;
  - *"The space around and between the dwellings is an important factor in the creation of a pleasant residential environment, contributing to the individual character, identity and appearance of the area"*;
  - *'This is a desirable area with outstanding natural beauty'*;
  - Concerns regarding highway safety as this a corner plot;
  - Would lead to more vehicles parking on Queens Road impeding site lines at the Queens Road / Kings Road junction;

- Proposal would be detrimental to wildlife;
- Shortage of bungalows.

## 6.0 CONSULTATIONS

- 6.01 **Minster-on-sea Parish Council** objects to the application stating that their *“position remains unchanged. On 2nd June 2016, it objected to the proposal on the following grounds: “The proposed buildings are unnecessarily too far forward of the building line in both Queens Road and Kings Road and impede the site lines for vehicles turning from Queens Road into Kings Road”. The resubmission does nothing to resolve these issues or indeed the Parish Council's associated concerns about the risks this presents to highway safety and amenity. Although the matter was dealt with under delegated authority by an officer who recommended refusal, clarification is needed as to why the Officer disagreed with the Parish Council's view. There is concern that similar actions could lead to inappropriate development which could have been prevented. There is also concern about what appears to present as a means to shortcutting the planning process where safeguards are already in place to provide only sustainable development.”*
- 6.02 The Council's **Environmental Protection** team request conditions related to construction hours, asbestos and dust suppression. Asbestos is not a matter that is dealt with through the planning process and as such I have not recommended this condition.

## 7.0 BACKGROUND PAPERS AND PLANS

- 7.01 Applications papers and correspondence relating to planning reference 16/506453/FULL.

## 8.0 APPRAISAL

### Principle of Development

- 8.01 The application site lies within the built up area boundary as defined by the Proposals Map of the Swale Borough Local Plan 2008, where the principle of residential development is accepted.

### Residential Amenities

- 8.02 As stated above, the existing property on the site is a bungalow which limits any impact upon neighbouring properties. As such the introduction of taller dwellings onto this site will need to be carefully considered as follows in terms of its impact upon neighbouring amenities.
- 8.03 Due to the rooms in the roofspace, from the perspective of overlooking the proposal would effectively introduce windows at three storey height. As the properties proposed will be located closer to Queens Road than the existing bungalow, rearward views will be available. However, in relation to the neighbouring property (No.6 Queens Road) I do not consider that these views would give rise to unacceptable levels of overlooking or a loss of privacy. The rearward views available will be consistent with a conventional streetscene and I also note that the rear windows at second floor height will serve a bathroom and would therefore be expected to be obscured. Further to this, some views will already be available from the upper windows of No.2 Queens Road towards the rear private amenity space of No.6. I note that there are two side windows proposed but these will serve a stairwell



and a bathroom. Although these will face towards the roof of No.6 I have included a relevant condition requiring these windows to be obscure glazed to stop any possible views towards this neighbouring property. As such I do not consider that this is unacceptable.

- 8.04 In relation to No.1 Kings Road, this is on the opposite side of the highway to the flank elevation of the proposed development, separated by a distance of 13.4m. Again, the two windows on the flank elevation facing this property serve a stairway and a bathroom and as such I do not consider that the relationship between the properties will give rise to overlooking to an unacceptable degree. In relation to No.7, this faces the front elevation of the proposed property. The relationship between the host property and this neighbouring property is repeated in a number of instances in the existing streetscene. I consider the levels of overlooking that would occur, even accounting for the dormer windows in the roofslope, to be as one would expect within a residential area. Finally, in relation to No.4 Kings Road at the rear, the rear to flank distance is 21.6m. This is comfortably in excess of the 11m that the Council would usually expect and therefore I take the view that the relationship between the proposed dwelling and the existing property at No.4 is acceptable.
- 8.05 In overall terms I do not consider that the proposal would give rise to unacceptable levels of overlooking or a significant loss of privacy to any of the surrounding properties. I also consider that due to the proposed properties being built on a similar building line to the other properties on this side of Queens Road, and that it projects to the rear of No.6 by only 1.2m, with a 2.4m gap between the properties that the dwellings proposed would not have an overbearing impact upon the amenities of neighbouring residents. I note that concern has been raised regarding loss of light but due to the siting of the proposal as explained above I do not consider this would be unacceptable.

#### **Visual Amenities and the Streetscene**

- 8.06 The properties in this part of Kings Road and Queens Road are characterised by a mix of property types and designs. This includes two storey dwellings with additional rooms in the roofspace, as is being proposed here. As a result I do not consider that the proposal, simply by virtue of its design would have an unacceptable impact upon visual amenities.
- 8.07 The reason for refusing the previous application (16/503908/FULL) is set out above. However, to summarise, the bulk and scale of the proposal amounted to overdevelopment of the site, giving rise to a cramped appearance and that the limited gap to the side boundary would have an unacceptably overbearing impact upon the streetscene in Kings Road, creating a dominant and oppressive environment.
- 8.08 In regards to the previously refused application the distance from the side boundary to the flank wall which was considered unacceptable was between 0.2m and 0.6m. The gap has now been increased to between 1.4m and 2m. I have noted that the overall height to the ridge of the proposed dwellings has been increased from the previous application by 0.3m to 9.2m. Furthermore I appreciate that the existing dwelling on the site is a bungalow which is set back from Kings Road by approximately 4m and as a result has a limited impact upon the streetscene. However, I also take into consideration that the proposed eaves height remains the same and the roof is hipped and therefore slopes away from Kings Road.
- 8.09 Although finely balanced, in overall terms I consider that the narrowing of the width of the dwellings and the consequent increase in the gap to the side boundary has now

led to a development which would not have a significantly overbearing impact upon the streetscene. By virtue of this I am also of the view that on balance the proposal does not amount to an overdevelopment of the site. On this basis I do not believe that the proposal would have an unacceptable impact upon visual amenities or the streetscene.

### **Highway Amenity and Parking**

- 8.10 The application proposes 2, 3 bedroom properties and a total of 4 parking spaces. I have paid regard to Kent County Council's Kent Design Guide Review: Interim Guidance Note 3 Residential Parking which states that 3 bed houses in suburban locations (which I consider this to be) are required to have 1.5 spaces per unit. As the development proposes 4 spaces I consider this to be over and above the requirements of this Guidance and therefore I believe this to be acceptable.
- 8.11 In relation to the Parish Council's comments regarding sightlines for vehicles turning from Queens Road into Kings Road I respond as follows. The site as existing has a close boarded fence and well established heavy planting on the corner of Kings Road and Queens Road. This runs hard up against the boundary of the site and extends to a height over what would be visible from the vast majority of vehicles. As such, I do not consider that the properties as proposed in this application would give rise to additional harm to highway safety or amenity.

### **Impact upon SPA and Ramsar sites**

- 8.12 I have for completeness set out a Habitat Regulations Assessment below. This confirms that whilst mitigation could be provided by way of developer contributions, this is not considered appropriate for developments under 10 dwellings. The cost of mitigation will be met by developer contributions on developments over 10 dwellings. In view of this it is not considered that the development will have a harmful impact on the special interests of the SPA and Ramsar sites.

### **Other Matters**

- 8.13 The majority of the points raised within the neighbour objection have been responded to by virtue of the discussion above. However, of those that remain I make the following points. The site comprises of an existing dwelling and its associated amenity space, as such I do not consider that the proposal would be significantly harmful to wildlife. However, if there is wildlife on the site then they are protected by virtue of the Wildlife and Countryside Act 1981. Secondly, the Council does not have a policy which requires the retention of bungalows per se and as such I do not believe that its loss would substantiate a reason for refusal.

## **9.0 CONCLUSION**

- 9.01 Overall I believe that when assessed against the previously refused application the proposal now being considered would not in my view amount to overdevelopment of the site or have an unacceptable impact upon the streetscene or visual amenities. I am also of the view that the proposal would be acceptable in relation to its impact upon residential and highway amenities. I recommend that planning permission is granted.

- 10.0 RECOMMENDATION – GRANT** Subject to the following conditions:

- 1) The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which the permission is granted.

Reason: In pursuance of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- 2) The development hereby permitted shall take place in accordance with the following drawings: 16-16-11 (received 18<sup>th</sup> August 2016); 16-16-12-A (received 24<sup>th</sup> October 2016) and 16-16-13 (received 18<sup>th</sup> August 2016).

Reason: For the avoidance of doubt and in the interests of proper planning.

- 3) No development shall take place until details have been submitted to the Local Planning Authority and approved in writing, which set out what measures have been taken to ensure that the development incorporates sustainable construction techniques such as water conservation and recycling, renewable energy production including the inclusion of solar thermal or solar photo voltaic installations, and energy efficiency. Upon approval, the details shall be incorporated into the development as approved.

Reason: In the interest of promoting energy efficiency and sustainable development and to ensure details are agreed prior to commencement of development.

- 4) Prior to the commencement of development, details of the external finishing materials to be used on the development hereby permitted shall be submitted to and approved in writing by the Local Planning Authority and shall be implemented in accordance with the approved details.

Reason: In the interest of visual amenity and to ensure details are agreed prior to commencement of development.

- 5) No development shall take place until full details of both hard and soft landscape works, have been submitted to and approved in writing by the Local Planning Authority. These details shall include existing trees, shrubs and other features, planting schedules of plants, noting species (which shall be native species and of a type that will encourage wildlife and biodiversity), plant sizes and numbers where appropriate, means of enclosure, hard surfacing materials, and an implementation programme.

Reason: In the interests of the visual amenities of the area and encouraging wildlife and biodiversity, and to ensure that such matters are agreed before work is commenced.

- 6) All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed in writing with the Local Planning Authority.

Reason: In the interests of the visual amenities of the area.

- 7) Upon completion of the approved landscaping scheme, any trees or shrubs that are removed, dying, being severely damaged or becoming seriously diseased within five years of planting shall be replaced with trees or shrubs of such size and species as may be agreed in writing with the Local Planning Authority, and within whatever planting season is agreed.

Reason: In the interests of the visual amenities of the area.

- 8) No construction work in connection with the development shall take place on any Sunday or Bank Holiday, nor on any other day except between the following times:-

Monday to Friday 0730 – 1800 hours, Saturdays 0830 – 1300 hours unless in association with an emergency or with the prior written approval of the Local Planning Authority.

Reason: In the interests of residential amenity.

- 9) The commencement of the development shall not take place until a programme for the suppression of dust during the demolition of existing buildings and construction of the development has been submitted to and approved in writing by the Local Planning Authority. The measures approved shall be employed throughout the period of demolition and construction unless any variation has been approved by the Local Planning Authority.

Reason: In the interests of residential amenity.

- 10) The area shown on the submitted layout as vehicle parking and turning space shall be provided, surfaced and drained before the use is commenced or the premises occupied, and shall be retained for the use of the occupiers of, and visitors to, the premises, and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order), shall be carried out on that area of land so shown or in such a position as to preclude vehicular access to this reserved parking space.

Reason: Development without provision of adequate accommodation for the parking and turning of vehicles is likely to lead to parking inconvenient to other road users and be detrimental to highway safety and amenity.

- 11) The access details as shown on drawing 16-16-11 (received 18<sup>th</sup> August 2016) shall be completed prior to the first occupation of the dwellings hereby approved.

Reason: In the interest of highway safety and convenience.

- 12) The windows on the flank elevation (facing towards No.6 Queens Road) shall be obscure glazed before first occupation of this dwelling and will remain so in perpetuity.

Reason: In the interests of residential amenities.

## Habitats Regulations Assessment

This HRA has been undertaken without information provided by the applicant. The application site is located approximately 5.5km north of The Swale Special Protection Area (SPA) and Ramsar site and 5.1km east of Medway Estuary and Marshes Special Protection Area and Ramsar site both of which are European designated sites afforded protection under the Conservation of Habitats and Species Regulations 2010 as amended (the Habitat Regulations).

SPAs are protected sites classified in accordance with Article 4 of the EC Birds Directive. They are classified for rare and vulnerable birds and for regularly occurring migratory species. Article 4(4) of the Birds Directive (2009/147/EC) requires Member States to take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article. The proposal therefore has potential to affect said site's features of interest.

In considering the European site interest, Natural England advises the Council that it should have regard to any potential impacts that the proposal may have. Regulations 61 and 62 of the Habitat Regulations require a Habitat Regulations Assessment. NE also advises that the proposal is not necessary for the management of the European sites and that subject to a financial contribution to strategic mitigation, the proposal is unlikely to have significant effects on these sites and can therefore be screened out from any requirement for further assessment. It goes on to state that when recording the HRA the Council should refer to the following information to justify its conclusions regarding the likelihood of significant effects; financial contributions should be made to the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring (SAMM) Strategy in accordance with the recommendations of the North Kent Environmental Planning Group (NKEPG); the strategic mitigation will need to be in place before the dwellings are occupied.

In terms of screening for the likelihood of significant effects from the proposal on the SPA features of interest, the following considerations apply:

- Due to the scale of development there is no scope to provide on site mitigation such as an on site dog walking area or signage to prevent the primary causes of bird disturbance which are recreational disturbance including walking, dog walking (particularly off the lead), and predation birds by cats.
- Based on the correspondence with Natural England, I conclude that off site mitigation is required. However, the Council has taken the stance that financial contributions will not be sought on developments of this scale because of the practicalities of securing payment. In particular, the legal agreement may cost more to prepare than the contribution itself. This is an illogical approach to adopt; would overburden small scale developers; and would be a poor use of Council resources. This would normally mean that the development should not be allowed to proceed, however, NE have acknowledged that the North Kent Councils have yet to put in place the full measures necessary to achieve mitigation across the area and that questions relating to the cumulated impacts on schemes of 10 or less will need to be addressed in on-going discussions. This will lead to these matters being addressed at a later date to be agreed between NE and the Councils concerned.
- Developer contributions towards strategic mitigation of impacts on the features of interest of the SPA- I understand there are informal thresholds

being set by other North Kent Councils of 10 dwellings or more above which developer contributions would be sought. Swale Council is of the opinion that Natural England's suggested approach of seeking developer contributions on minor developments will not be taken forward and that a threshold of 10 or more will be adopted in due course. In the interim, I need to consider the best way forward that complies with legislation, the views of Natural England, and is acceptable to officers as a common route forward. Swale Borough Council intends to adopt a formal policy of seeking developer contributions for larger schemes in the fullness of time and that the tariff amount will take account of and compensate for the cumulative impacts of the smaller residential schemes such as this application, on the features of interest of the SPA in order to secure the long term strategic mitigation required. Swale Council is of the opinion that when the tariff is formulated it will encapsulate the time period when this application was determined in order that the individual and cumulative impacts of this scheme will be mitigated for.

Whilst the individual implications of this proposal on the features of interest of the SPA will be extremely minimal in my opinion, cumulative impacts of multiple smaller residential approvals will be dealt with appropriately by the method outlined above.

For these reasons, I conclude that the proposal can be screened out of the need to progress to an Appropriate Assessment. I acknowledge that the mitigation will not be in place prior to occupation of the dwelling proposed but in the longer term the mitigation will be secured at an appropriate level, and in perpetuity.

#### **The Council's approach to this application:**

In accordance with paragraphs 186 and 187 of the National Planning Policy Framework (NPPF), the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and proactive manner by:

- Where possible, suggesting solutions to secure a successful outcome.
- As appropriate, updating applicants/agents of any issues that may arise in the processing of their application.

In this instance:

The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application.

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.

<b>2.8 REFERENCE NO - 16/506036/FULL</b>			
<b>APPLICATION PROPOSAL</b> Change of use of land into residential garden (curtilage) and creation of rear garden by erection of 1.8m fence, leaving 2m strip between fence and pathway. Area to front left open and creation of parking spaces. Removal of large conifer hedge.			
<b>ADDRESS</b> 7 Giraud Drive Faversham Kent ME13 7QT			
<b>RECOMMENDATION</b> Grant subject to conditions			
<b>REASON FOR REFERRAL TO COMMITTEE</b> Town Council Objection			
<b>WARD</b> Davington Priory	<b>PARISH/TOWN COUNCIL</b> Faversham Town	<b>APPLICANT</b> Mr DAVID MARNES <b>AGENT</b>	
<b>DECISION DUE DATE</b> 13/10/16	<b>PUBLICITY EXPIRY DATE</b> 16/09/16		
<b>RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):</b> Please also see applications 14/501632/FULL & 15/509013/FULL			
<b>App No</b>	<b>Proposal</b>	<b>Decision</b>	<b>Date</b>
14/502472/FULL	Front Porch	Approved	13.02.2015

**1.0 DESCRIPTION OF SITE**

1.01 The property is a 1960s detached house, situated on a pleasant estate of such properties to the north of Bysing Wood Road. It is situated on the corner of Giraud Drive and Sherwood Close, and is within the built-up area boundary of Faversham. There is an 8.5 metre wide grass strip to the side of the property, on which are situated two small trees.

**2.0 PROPOSAL**

2.01 The proposal is to incorporate the majority of this strip of land into the private garden of the property. An existing line of tall conifer hedge would be removed to create a new parking area to the front of the property, and the new garden area would be set back from Giraud Drive by 5.5 metres.

2.02 The new garden area would measure 6.5 metres out from the side wall of the property, leaving a two metre open strip before the pavement area, which also has a width of two metres.

2.03 The proposed garden extension would be surrounded by a 1.8 metres tall close-boarded fence (stained Woodland Green), and new trees/shrubs are proposed for planting on the 2 metre wide strip to soften the impact of the fence.

2.04 The application is accompanied by a letter explaining the reasoning behind the application. The applicants purchased the land concerned that planning approval maybe granted for housing, as was approved on land adjacent to 25 Wells Way (14/501632) and 58 Wells Way (15/509013), both approved on appeal. They have no plans or desire to build upon the land, but would like to incorporate most of the land into their garden, whilst ensuring that the two metres strip still provides an open appearance to the area, as on the opposite side of Sherwood Close.

### **3.0 PLANNING CONSTRAINTS**

3.01 None.

### **4.0 POLICY AND OTHER CONSIDERATIONS**

4.01 Swale Borough Local Plan 2008: Saved policies E1 (Development Criteria) and E19 (Design Criteria)

### **5.0 LOCAL REPRESENTATIONS**

5.01 The Faversham Society also raises objection to the proposals, noting that;

*'This application should be refused because the enclosure of the open space on the North side of the dwelling would result in an enclosure on one side of Sherwood Close which would set a precedent for the loss of similar open spaces which are characteristic of the entrances to Closes on this estate. This feature is common to the Closes off Everard Way and Churchill Way which also form part of this early 1960's development.'*

*It is noted that several sites in Wells Way, which are larger than this, have been developed for housing. However, this should not set a precedent for other developments which would add to the enclosure of spaces within this estate.'*

5.03 No representations have been received from local residents.

### **6.0 CONSULTATIONS**

6.01 Faversham Town Council raises objection to the proposal, noting that;

*'The proposed new fence and hedge would detract from the open appearance of the area and the original design intentions.'*

6.02 Kent Highways and Transportation raises no objection. However, a separate Officer from Kent Highways Enforcement Team has noted that the land, though owned by the applicant, is considered to form part of the publicly maintainable highway and, as such, the highway rights accrued over this land supersede those of any private ownership. This matter will be discussed later within this report.

### **7.0 APPRAISAL**

7.01 The main issues to consider in this case appear to be those of visual and residential amenity.

7.02 In terms of visual amenity, whilst I note that part of the land would be closed off to the public, I do not believe that this would have a significantly adverse effect on the character and appearance of the area. I note the intention to include the two metre grass strip to be located outside of the proposed fence, and also note that the existing grass strip on the northern side of Sherwood Close, at 3.6 metres wide, is not substantially wider than that proposed on the southern side, and I would contend that the street scene would still have a sense of openness and space. As such, I believe that the impact of the proposal would be fairly limited and provide an acceptable level of impact on the street scene, and far less than if a dwelling were proposed here. The removal of the existing tall conifer hedge will further assist in this matter.



- 7.03 In terms of residential amenity, no issues of overlooking or overshadowing would be raised by the proposal, and it is again noted that there would be no unacceptable effects resulting from the proposal.
- 7.04 I do not agree with the contention that to approve this application would set a precedent, as each individual planning application needs to be considered on its own merits and no two areas of open space on the estate are the same.
- 7.05 However, to ensure that the boundary treatment and landscaping of the site is acceptable, I would recommend the inclusion of suitable conditions below.
- 7.06 Finally, I note the comments from Kent Highways Enforcement, but this would constitute a separate legal matter, not a planning matter

## **8.0 CONCLUSION**

- 8.01 I therefore recommend that the application be approved, subject to strict accordance with the conditions included below.

## **9.0 RECOMMENDATION – GRANT Subject to the following conditions:**

### **CONDITIONS**

- (1) The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which the permission is granted.

Reason: In pursuance of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- (2) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority. These details shall include existing trees, shrubs and other features, planting schedules of plants, noting species (which shall be native species and of a type that will encourage wildlife and biodiversity), plant sizes and numbers where appropriate, means of enclosure, hard surfacing materials, and an implementation programme.

Reason: In the interests of the visual amenities of the area and encouraging wildlife and biodiversity and to ensure that such matters are agreed prior to the commencement of development.

- (3) All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed in writing with the Local Planning Authority.

Reason: In the interests of the visual amenities of the area and encouraging wildlife and biodiversity.

- (4) Upon completion of the approved landscaping scheme, any trees or shrubs that are removed, dying, being severely damaged or becoming seriously diseased within five years of planting shall be replaced with trees or shrubs of such size and species as may be agreed in writing with the Local Planning Authority, and within whatever planting season is agreed.

Reason: In the interests of the visual amenities of the area and encouraging wildlife and biodiversity.

- (5) The trees shown on the plans hereby approved as existing trees shall be retained and maintained. Any such trees removed, dying, being severely damaged or becoming seriously diseased within five years of the date of this permission shall be replaced with trees or shrubs of such size and species as may be agreed with the Local Planning Authority.

Reason: In the interests of visual amenity.

- (6) No fencing or other means of enclosure shall be erected within 2m of the footpaths on Sherwood Close or Giraud Drive.

Reason: In the interests of visual amenity.

**The Council's approach to this application:**

In accordance with paragraphs 186 and 187 of the National Planning Policy Framework (NPPF), the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and proactive manner by:

Where possible, suggesting solutions to secure a successful outcome.  
As appropriate, updating applicants/agents of any issues that may arise in the processing of their application.

In this instance:

The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application.

**INFORMATIVES**

- (1) The Applicant is encouraged to discuss the legal implications of the proposal with Officers at Kent Highways Enforcement before implementing this planning permission.

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.

<b>2.9 &amp; 2.10 REFERENCE NO - 16/505706/FULL and 16/505707/LBC</b>			
<b>APPLICATION PROPOSAL</b> Planning permission and listed building consent for; Demolition of outbuildings and erection of 6 new dwellings and conversion of existing stable building/cold store into a residential dwelling.			
<b>ADDRESS</b> 20-22 Ospringe Street Faversham Kent ME13 8TL			
<b>RECOMMENDATION:</b> Grant subject to the receipt of amended drawings to show a reduced height of the rear garaging and studio flat.			
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b>  There is a previous approval for residential development at this site and this new proposal preserves and protects the nationally important archaeological status of the site and the listed building within the site and wider the nearby listed building. Additionally this proposal preserves the character of the conservation area as a whole as had the previous scheme.			
<b>REASON FOR REFERRAL TO COMMITTEE:</b> Town Council objection			
<b>WARD</b> Watling	<b>PARISH/TOWN COUNCIL</b> Faversham Town	<b>APPLICANT</b> Newton Williams Properties Limited <b>AGENT</b> RDA Consulting Architects	
<b>DECISION DUE DATE</b> 19/09/16	<b>PUBLICITY EXPIRY DATE</b> 02/09/16		
<b>RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):</b>			
<b>App No</b>	<b>Proposal</b>	<b>Decision</b>	<b>Date</b>
SW/13/0700 and SW/13/0701	Demolition of outbuildings and development of 8 new dwellings and conversion of existing stable building/cold store		APPROVE

**1.0 DESCRIPTION OF SITE**

- 1.01 The site is located on Ospringe Street (A2) to the north of the junction of Water Lane with the A2. It lies within Ospringe conservation area and also forms part of the medieval Maison Dieu Hospital, the standing remains of which straddle Water Lane on the south side of Ospringe Street opposite. The Maison Dieu Museum is a scheduled ancient monument. To the rear, north of the site, lies Grove Close accommodating Waterstone Place, and to the south, west and east of the site are residential properties, a number of which have listed building status.
- 1.02 The site contains two dwellings, 22 and 20 Ospringe Street, however 22 fully and 20 partly, are excluded from the application. The primary buildings on the site are the former butchers' shop which is integral to 20 Ospringe Street, a grade II listed building and attached to this is the former butchers' cold store. The site also has a number of single storey outbuildings, a larger brick built garage lies adjacent to the pavement to Ospringe Street and stores and stables are also on the site but in some state of disrepair and of no historic or architectural merit.

## 2.0 PROPOSAL

- 2.01 These applications are submitted following the earlier grants of planning permission and listed building consent for the redevelopment of this site. However following the issuing of these, and the sale of the site, it became apparent that the scheme, particularly the terrace of four properties along Ospringe Street could not be built as approved as an easement around an underground pumping station controlled by Southern Water could not be built over.
- 2.02 Following negotiation between the applicants and Southern Water this was subsequently confirmed to be a 10m easement upon which no building could take place. This scheme needed to be redesigned to take account of this.

The scheme therefore is for the development of seven residential dwellings, which includes:

- 3 two bedroom houses
  - 2 three bedroom houses
  - A one bedroom flat
  - A one bedroom conversion
  - 7 dwelling units in total
- 2.03 The scheme involves the utilisation of the existing access as an in-only access to the site from the A2 with the all vehicular exit to the rear, as per the previous approval. Plots 1 and 2 are a pair of semi detached two storey 3 bedroom properties redesigned to accommodate the easement zone to the east. The redevelopment of the storage barn that adjoins no 20 Ospringe Street will retain the existing elevations and roofline and provides one bedroom accommodation. A terrace of three properties is proposed on Grove Place and the design has been reduced in massing from the previous approval. The garaging space and the one bedroom flat above have been located to the rear of the site and has been reduced in height further from the previously approved scheme.
- 2.04 The application is supported by comprehensive background documents including;
- A Heritage Impact Statement
  - A Statement of Significance relating to the Ospringe conservation area
  - A Design and Access Statement
  - A Site Investigation Report
  - An Ecological and Bat Survey
  - A Noise Assessment
  - An Air Quality Assessment
  - A Flood Risk Assessment
  - An Environmental Report
  - A Site Investigation Report, and
  - An Archaeological Trail Trenching Evaluation Report

## 3.0 PLANNING CONSTRAINTS

Potential Archaeological Importance  
 Conservation Area Ospringe  
 Environment Agency Flood Zone 2  
 Environment Agency Flood Zone 3

Listed Buildings MBC and SBC Ref Number: 1339/SW  
 Description: G II 20 AND 22, OSPRINGE STREET, FAVERSHAM, ME13 8TL

**4.0 POLICY AND OTHER CONSIDERATIONS**

The National Planning Policy Framework (NPPF)  
 National Planning Practice Guidance (NPPG)  
 Development Plan: Swale Borough Local Plan Adopted 2008, saved policies E1 - General Development Criteria, E14 - Development involving Listed Buildings, E15 - Dev. Affecting a Conservation Area, E16 – Scheduled Ancient Monuments and Archaeological Sites, E19 - Achieving a High Quality Design and Distinctiveness, H2 - Providing for New Housing, T1 - Providing Safe Access to new development.

Supplementary Planning Documents: Conservation Areas

**5.0 LOCAL REPRESENTATIONS**

5.01 One letter was received from a local resident commenting on overlooking issues and the historic nature of the site.

**6.0 CONSULTATIONS**

6.01 Faversham Town Council has objected to the proposal stating:

1. the width of the entrance from Ospringe Street is excessively wide which could encourage 2 way traffic
2. the proposed fibre cement weather boarding on the “stable building” would be harmful to the character of the conservation area and the setting of the listed building
3. the proposed new houses in Grove Place are of a scale which would dominate the listed building on Ospringe Street
4. the roof pitch of the houses on Grove Place is too shallow in juxtaposition with the listed building on Ospringe Street
5. the proposed soldier arches over external openings on the front elevation of the houses in Grove Place would be harmful to the character of buildings in the conservation area
6. the proposed “stable building” would appear high and out of scale with the proposed new house on the Ospringe Street frontage

They have also commented that;

- The Town Council notes that the ecological study was carried out in November whereas such studies should not be carried out after September in any given year.
- The Town Council would like to see evidence in the way in which the archaeological study has been taken into account in the design.
- The Town Council would like to be reassured that the brick boundary walls that existed on site have not been demolished without permission

6.02 The agent has responded to the Town Council comments, stating in summary that;

- The site entrance width is 3.5m as opposed to 6m in the approved scheme

- Natural timber weatherboarding is now agreed
  - The new terrace of houses on Grove Place are in fact lower than those previously approved
  - The scheme has been developed in liaison with Swale officers
  - The brick arches reflect those on nearby terraces houses
  - The “stable building” is similar to one previously approved, but is re-positioned
  - Archaeological study and trenches have informed the proposed layout, and
  - The rear wall has been partly removed and bricks cleaned ready for re-use on site
- 6.03 Natural England does not raise objection to the application assuming that Strategic Mitigation measures are secured in respect of The Swale etc SPA. As Members know the Council’s approach is not to collect such contributions for schemes of less than 10 dwellings.
- 6.04 Kent Highways and Transportation raises no objection to the application subject to conditions relating to cycle parking, car parking and turning areas, refuse storage facilities, surfacing, wheel washing, unloading and turning facilities during construction
- 6.05 KCC acting as Local Lead Flood Authority confirm that this scheme for less than 10 dwellings falls outside their remit, and do not comment on the applications
- 6.06 Southern Water has not objected to the proposal but has advised that the exact position of the nearby surface water culverted water course and its condition should be investigated before issuing a decision as to whether the development would be acceptable, and a condition requiring details of the foul and surface water drainage be attached to any permission.
- 6.07 The Environment Agency offers no objection to the proposed development provided conditions are included in any planning permission granted to ensure the use, inclusion and implementation of the use of measures that reduce surface water runoff. They also request that a sustainable drainage system plan should be submitted and approved by the lead local flood authority. Finished floor levels should be set at least 300mm above ground level and ground flood sleeping should not be permitted, as a precaution.
- 6.08 UK Power Network offered no objections to the proposed works.
- 6.09 Historic England initially objected to the proposal as it did less to enhance the streetscape in Ospringe than the approved scheme (not realising the reasons for the changes to the scheme). They also suggested seeking archaeological advice regarding the acceptability of the proposed piled foundations on buried remains on the site. They have since commented that;

*“We now understand that the change in orientation of the proposed range fronting Ospringe Street is in response to site restrictions placed by Southern Water. In our letter of 21 September 2016 we advised that this element would not preserve or enhance the character of the conservation area.*

*“In order to accommodate the site restrictions and as a way of better responding to the pattern of development that characterises Ospringe Street, we maintain that the design of the street-fronting range should as far as possible create a*

*continuous frontage in particular at roof level. Ospringe Street's strong pattern and detailing of doors and windows should also be taken into account and the current scheme could be improved by avoiding the use of unmatched windows.*

*"We reiterate our advice that given the quality and particular character of the conservation area, we recommend the use of traditional building materials, rather than fibre cement cladding and UPVC windows in this case. Similarly the final architectural detailing of these buildings will be crucial to the success of this scheme. Subject to resolution of the architectural design of the frontage range, as described above, we recommend that large-scale details of key architectural features, such as windows, doors, eaves and porch canopies are sought by condition of any consent."*

- 6.10 The Council's Environmental Health Manager (EHM) comments that noise is a major factor at this locality and in an ideal world you would not locate a residential scheme here. However, the author of the report recognises the level of noise that exists here throughout the day and night and has had to take into account extreme measures to provide sufficient acoustic protection for any future residents. Essentially what is being proposed is a closed window scenario using a combination of passive acoustic and mechanical ventilation system which will need to comply with the Building Regulations.

The EHM accepts that this is probably the only noise mitigation measure that will suffice at this location, so it is reluctantly agreed.

With regard to Air Quality, there are no particular objections to the report, though there is a fundamental disagreement in its conclusion i.e. that no mitigation measures are necessary, even though it states that pollution levels will exceed the government guidelines. However the measures suggested for noise mitigation here will also be sufficient for air quality as well, i.e. in sealing the property with closed windows and relying on mechanical ventilation.

The EHM also notes that continuous running of the adjacent Air Quality Monitoring Station is essential and the proposed position represents a better outcome for this station. It needs to be required that the applicant ensures the safety of this work and also that the station is running for the maximum period of time during any movement.

Therefore no objection is raised, provided that:

- The mitigation measures are carried out exactly as described in the noise report, which will then also satisfy air quality requirements. If so, this will provide adequate protection for future residents.
- The air pollution monitoring station is protected during the development and moved safely and securely to its new location under the control

- 6.11 The County Archaeological Officer notes that piled foundations are now proposed which allow for important remains to be avoided, and he has recommended two planning conditions aimed at safeguarding archaeological remains on the site. He does not raise any objection to the applications.

## **7.0 BACKGROUND PAPERS AND PLANS**

SW/13/0700 and SW/13/0701LB: Demolition of outbuildings and development of 7 new dwellings and conversion of existing stable building/cold store APPROVED

## 8.0 APPRAISAL

- 8.01 The key issues with these proposals are the impact on the conservation of the heritage assets on and around the site which include important archaeological assets. The layout, design and detail of each building individually and the proposal as a whole needs to be assessed in these terms along with the impact seven dwellings would have on residential amenity and on the highway network in the immediate vicinity from this prominent site.
- 8.02 The NPPF promotes sustainable development and defines this as achieving economic, social and environmental objectives in a balanced way. The presumption in favour of sustainable development that underpins the NPPF includes approving development that is in accordance with the development plan unless there are adverse impacts that outweigh any benefits, or are restricted by the NPPF.
- 8.03 The definition of sustainability in the NPPF is predicated on the application of twelve core principles one of which is to "conserve heritage assets in a manner appropriate to their significance so that they can be enjoyed for their contribution to the quality of life of this and future generations". Failure to fulfil the objective of this principle, as well as others, is a signal that development is unsustainable and therefore not in accordance with the NPPF. In relation to heritage assets the NPPF states:
- "when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification."* (para 132).
- 8.04 The importance of the heritage assets on and around this site is considerable and as such the weight given to conservation in the determination of the application is correspondingly high. In addition the site is located within the built up area of Faversham and is in a sustainable location in terms of the availability of public transport and access to services and facilities which its occupiers would use and need, as such the principle of the development is acceptable.
- 8.05 Also relevant is the previous approval on this site (SW/13/0700 and SW/07/0701LBC) for a very similar scheme for 7 houses which was approved on 12 August 2014 and remains valid, but is unable to be implemented due to a utility-related constraint.
- 8.06 The layout, design and detailing of the proposal is not only important with regard to the character of the immediate area but particularly as the site is located within the Ospringe conservation area and with a high number of listed buildings and the Scheduled Ancient Monument close by. The Council's statutory duty under the 1990 Act is to have special regard to the desirability of preserving the listed buildings and their settings and any features of special interest which they possess, and to preserving or enhancing the character or appearance of Ospringe conservation area. In relation to the extent, nature and scale of the proposed development I consider the proposals to be appropriate to the urban and historic context. In that they are designed in a way which compliments the nature of development in Ospringe which is generally two-storey development which hugs the back of pavement line.



- 8.07 Facing onto Grove Place the small terrace of three houses is of a simple and restrained design. I note the comments from the Town Council that these proposed new houses are of a scale which would dominate the listed building on Ospringe Street. However a new drawing submitted on 5 October shows the previously approved semi-detached units dotted in red over the new scheme graphically illustrates the new scheme is lower and has less of a dominant effect than the previously approved scheme and therefore I find it to be acceptable, and that it does not dominate the existed listed building.
- 8.08 I note the additional comment from the Town Council that the roof pitch of these houses is too shallow in juxtaposition with the listed building on Ospringe Street however such an amendment would contradict the earlier point regarding the relationship between the new houses and the existing house on Ospringe Street and I consider the proposed design to be acceptable.
- 8.09 The houses also have soldier arches over external openings on the front elevation which reflect the brick arches that are on existing terraces within the immediate vicinity of the site.
- 8.10 The main Ospringe Street elevation retains the character of the area by being close to the pavement with its design being required to change due from the previous approval due to the utility restrictions. However, the street elevation is attractive and retains the many detailed design features that characterise the area. The pair of houses are of a design and style to be in keeping with the area and are thus acceptable.
- 8.11 At 20 Ospringe Street the proposals involve the replacement of the damaging shopfront on the listed building with a restored elevation. The elevation shown on drawing no 16.117.14 P1 shows 4-pane casement windows on both the ground and first floor and a 4 panel front door. These details were required under the previous approval and are therefore acceptable and the value in the restored façade is accepted and a great benefit of the proposal. The former butchers ' cold store is the weather boarded building immediately adjacent to the former butchers' shop where relatively minor works required to the building and the conversion is considered acceptable in principle as it secures a sustainable future for the building.
- 8.12 The final building is the 3 car garage and studio flat over located to the rear of the site tucked behind the new properties on Ospringe Street. It is therefore quite removed from the historic character of the front of Ospringe Street and related more to the modern buildings of Waterstone Place to the rear and those in Grove Place.
- 8.13 I note the Town Council consider it to be high and out of scale with the proposed new house on the Ospringe Street frontage. Following discussions with the agent a revised drawing is expected showing a lower ridge and eaves line and an increased pitch in the roof so the accommodation can largely sit in the roof space. Additionally the parking spaces underneath have been enclosed by double opening timber doors dark stained to match the timber-boarded finish to the walls. Additionally, subject to compliance with the Building Regulations, access to the unit to be provided by a simple, black-painted (non-slip) external metal stair, with access to the garden area for the flat to be provide around the northern end of the building, and the space underneath equally divided into 3 covered, secure parking spaces.

- 8.14 The revised details additionally show the removal of some of the tarmac hardstanding and the use of hard wearing resin-bound shingle surface and the replacement of the close boarded fencing around the perimeter of the parking area/court with brick walling, a condition has been recommended to ensure these details are to be agreed.
- 8.15 I note the scheme detail originally showed the use of artificial “Cedral” boarding however the applicant has confirmed that timber weatherboarding will be used on the buildings. I have recommended a condition to ensure this.
- 8.16 The masterplan and vision for the site and the design and detailing of the buildings individually and the site as a whole have been considered in relation to the historic nature of the site’s location and the character and appearance of the area. Furthermore the distinction between the value of the heritage assets and the resultant pressure on the design to fit in along Ospringe Street is contrasted by the more modern buildings and approach taken to the rear of the site to link with the character to the north and has in my view been successful.
- 8.17 Whilst the previously approved layout was preferable in townscape terms, the revised layout in my view achieves a good and acceptable result in this respect that would with high quality materials and detailing, lead to a scheme that would enhance the character and appearance of the Ospringe Conservation Area at the location, as well as improving the setting of the adjacent listed buildings.
- 8.18 I am satisfied that the residential amenity of those not only to the north but also on Ospringe Street and Grove Place would not be adversely affected by the proposal. The windows in the new dwellings are of an appropriate distance from the existing development and the high level windows in the garage block/studio would not result in overlooking to the residents in Waterstone Place. Furthermore, whilst the site is largely currently unoccupied and the level of activity would increase in the site, I do not consider this would cause an adverse impact.
- 8.19 The site is located on a busy stretch of the A2, particularly being opposite Water Lane. However, I am aware that the existing site entrance had been used for many years in connection with the butchers’ shop for deliveries and customers. This is now closed and the conversion of the shop to residential accommodation is included within the application.
- 8.20 The applicant proposes that the site will only be accessed from the A2 as an “in-only” route as the entrance is currently not wide enough to accommodate two-way traffic and will be 3.5m in width. This is less than the existing available entrance space between the two buildings and less than the 6m approved with the previous application. The vehicles would then leave the site to the north, (rear) via a newly created “out-only” exit into Grove Close (using the applicant’s unencumbered Right of Way) over land that is already used by residents, staff and visitors to Waterstone Place and into Grove Place. Kent Highways and Transportation has required, and I have recommended a condition, to provide the details to enforce this arrangement to ensure abuse does not take place, this was also acceptable under the previously approved scheme. Additionally the car parking and cycle parking are all acceptable
- 8.21 The hard landscaping for the scheme is much improved by the use of a hard wearing resin-bound shingle surface and the harshness of the parking court be broken up by the introduction of a feature tree and associated planting bed. The proposed removal of some of the tarmac surface being substituted with a hard-wearing resin-bound

shingle surface is agreeable. A suggestion of granite setts sunk into this to discreetly to indicate the position of the parking spaces and the bin storage zone for collection days has been made. The recommended condition will deal with the detail of this.

- 8.22 Also the replacement of close boarded fencing around the perimeter of the parking area/court with brick walling is a welcomed design improvement to the scheme.
- 8.23 The sensitive nature of the site in terms of the potential impact on the archaeological value of National Importance was a significant factor in the assessment of the application. I note the concern from Faversham Town Council regarding the suitability of the foundation design. However, given the extensive discussions and liaison with the County Archaeological Officer and the applicant's experts and I am satisfied that, with the attached conditions, the proposal is acceptable and that the archaeological significance of the site will be maintained and protected.

**9.0 CONCLUSION**

- 9.01 The principle of dwellings on this site is to my mind acceptable as supported by Members' approval of a similar scheme for seven units on the site in 2014. As then, the main issues are whether the new proposal would preserve and protect the nationally important archaeological status of the site and the listed building within the site and wider the nearby listed buildings and whether this proposal preserves the character of the conservation area as a whole as had the previous scheme.
- 9.02 I am satisfied that the agreed foundation design, along with the attached conditions will sufficiently protect the archaeological value on the site, and that the new layout, design and detailing, again along with the attached conditions, will produce a scheme that will preserve and enhance the listed buildings on the site and in the locality and preserve and enhance the character of the conservation area as a whole.

**10.0 RECOMMENDATION – GRANT** Subject to the following conditions;

**CONDITIONS - 16/505706/FULL**

- (1) The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which the permission is granted.

Reasons: In pursuance of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004

- (2) The development hereby approved shall be carried out in accordance with the following approved drawings:

16.117.09 P1, 16.117.10 P1, 16.117.11 P1, 16.117.12 P1, 16.117.13 P1, 16.117.14 P1, 16.117.15 P1, 16.117.16 P1, 16.117.17 P1, 16.117.19 P1, 16.117.19 P1, 16.117.29 P1, 16.117.21 P1, 16.117.22 P1 and 16.117.23 P1,

Reasons: For the avoidance of doubt and in the interests of proper planning

- (3) No demolition of the garage and stores building situated to the eastern side of the site's frontage to Ospringe Street shall be begun unless and until a contract has been let for development which includes the erection of the two semi-detached dwellings shown as Plot 1 and Plot 2 on approved drawing 16.117.11 P1.

Reasons; In order to prevent along term gap in the street frontage in order to preserve the character and appearance of the conservation area

- (4) Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater. The development shall be carried out in accordance with the approved details.

Reasons: Piling or other penetrative methods of foundation design can potentially result in unacceptable risks to underlying principal aquifer by, for example, drilling through different strata and creating preferential pathways for contaminants. Thus it should be demonstrated that any proposed piling will not result in contamination of groundwater.

- (5) Prior to the commencement of development detailed plans for finished floor levels for Plots 1 and 2 shall be submitted to and approved by the Local Planning Authority. Upon approval, the details shall be incorporated into the development as approved.

Reasons; To reduce flood risk.

- (6) Prior to the commencement of development hereby approved full details of foul and surface water drainage arrangements shall be submitted to and approved by the Local Planning Authority. Upon approval, the details shall be incorporated into the development as approved.

Reasons; To prevent any increased risk of local flooding and to protect water quality.

- (7) Prior to the commencement of the development a programme for the suppression of dust during the demolition of existing buildings and construction of the development shall be submitted to and approved in writing by the Local Planning Authority. The measures approved shall be employed throughout the period of demolition and construction unless any variation has been approved by the Local Planning Authority.

Reasons: In the interests of residential amenity and to ensure that these details are agreed before works commence.

- (8) Prior to the commencement of development hereby approved, details shall be submitted to the Local Planning Authority and approved in writing, which set out what measures have been taken to ensure that the development incorporates sustainable construction techniques such as water conservation and recycling, renewable energy production, and energy efficiency. Upon approval, the details shall be incorporated into the development as approved.

Reasons: In the interest of promoting energy efficiency and sustainable development and to ensure that these details are agreed before works commence..

- (9) Prior to the commencement of development hereby approved, constructional details at a scale of 1:1 or 1:2 of the roof ridge and hips and eaves (also showing guttering design) and verges, dormer windows, flat arches, door hoods, chimneys shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reasons: In order to preserve the special architectural or historic interest of the listed building and to preserve or enhance the character and appearance of the conservation area and to ensure that these details are agreed before works commence.

- (10) Prior to the commencement of the development joinery details for all new and replacement windows and doors shall be submitted and agreed (1:10 scale for elevations and 1:1 or 1:2 part vertical and plan sections-to show architraving, window head and cill/sub cill plus adjoining masonry/joinery so the reveal depths are ascertained). The development shall be carried out in accordance with the approved details.

Reasons: In order to preserve the special architectural or historic interest of the listed building and to preserve or enhance the character and appearance of the conservation area and to ensure that these details are agreed before works commence.

- (11) Prior to the commencement of the development hereby approved, samples of facing materials (despite the details in the submission no Cedar boarding shall be used on any building on the site) including the use of timber weatherboarding, and of proposed finishing colours, and or proposed roofing materials are to be submitted to and approved in writing by the Local Planning Authority.

Reasons: In order to preserve the special architectural or historic interest of the listed building and to preserve or enhance the character and appearance of the conservation area and to ensure that these details are agreed before works commence.

- (12) Prior to the commencement of the development details of the sliding gate shall be provided and details agreed by the Local Planning Authority.

Reasons: In order to preserve the special architectural or historic interest of the listed building and to preserve or enhance the character and appearance of the conservation area and to ensure that these details are agreed before works commence.

- (13) Prior to the commencement of the development a specification for repointing works shall be submitted to and agreed and approved in writing by the Local Planning Authority.

Reasons: In order to preserve the special architectural or historic interest of the listed building and to preserve or enhance the character and appearance of the conservation area and to ensure that these details are agreed before works commence.

- (14) No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written specification and timetable which has been submitted to and approved by the Local Planning Authority.

Reasons: To ensure that features of archaeological interest are properly examined and recorded.

- (15) No development shall take place until details of foundations designs and any other proposals involving below ground excavation have been submitted to and approved by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

Reasons: To ensure that due regard is had to the preservation in situ of important archaeological remains.

- (16) Prior to the commencement of the development to prevent problems of excessive noise to rooms on the south façade of the development facing the A2 Ospringe Street, the glazing units shall be non-opening and acoustically glazed, details of which are to be submitted to and approved in writing by the Local Planning Authority. Fresh air from the rear of the development shall be drawn into the whole house by means of mechanical ventilation.

Reasons: In the interests of residential amenity and to ensure that these details are agreed before works commence.

- (17) Prior to the commencement of the development details of the mechanical ventilation systems that will be installed in Plots 1 and 2 (the semi detached houses on Ospringe Street), shall be submitted to and approved by the Local Planning Authority and upon approval the approved equipment shall be installed, maintained and operated in a manner which prevents the transmission of noise and vibration to neighbouring premises. A scheme of annual maintenance shall be agreed to ensure that the continuing ventilation of the houses is assured.

Reasons: In the interests of residential amenity and to ensure that these details are agreed before works commence.

- (18) Prior to the commencement of the development details for the necessary protection of the Council's Air Quality Monitoring Station or temporary re-siting and its subsequent reinstatement are to be submitted and agreed in writing from the Local Planning Authority

Reasons: In the interests of continued monitoring of the local air quality and to ensure that these details are agreed before works commence.

- (19) Details for the provision of wheel washing facilities on site and the provision of construction vehicle loading/unloading and turning facilities shall be submitted and approved in writing by the Local Planning Authority prior to the commencement of work on site and for the duration of construction.

Reasons: In the interests of highway safety and the amenities of the area and to ensure that these details are agreed before works commence.

- (20) No development shall take place until full details of both hard and soft landscape works including the disposition of various hard surfaces within the site and the marking out of car parking and refuse bin storage spaces for collection days, have been submitted to and approved in writing by the Local Planning Authority. These details shall include existing trees, shrubs and other features, planting schedules of plants, noting species (which shall be native species and of a type that will encourage wildlife and biodiversity), plant sizes and numbers where appropriate, means of enclosure, hard surfacing materials, and an implementation programme.

Reasons: In the interests of the visual amenities of the area and to ensure that these details are agreed before works commence.

- (21) A 2m square sample panel of brick and flint walling shall be erected on site on the line of the proposed brick and flint boundary wall on Ospringe Street for inspection and approval by the Local Planning Authority prior to completion of the remainder of the wall. The development shall be carried out in accordance with the approved sample panel.

Reasons: In order to preserve or enhance the character and appearance of the conservation area

- (22) All rainwater goods to be used as part of the development hereby permitted shall be of cast iron.

Reasons: In order to preserve the special architectural or historic interest of the listed building and to preserve or enhance the character and appearance of the conservation area.

- (23) All facing brickwork on the development hereby permitted shall be constructed in Flemish bond.

Reasons: In order to preserve the special architectural or historic interest of the listed building and to preserve or enhance the character and appearance of the conservation area.

- (24) Chimney stacks shall be built in traditional brickwork and not using applied slips or other false work.

Reasons: In order to preserve or enhance the character and appearance of the conservation area

- (25) No impact pile driving in connection with the construction of the development shall take place on the site on any Saturday, Sunday or Bank Holiday, nor on any other day except between the following times :-

Monday to Friday 0900 - 1700 hours unless in association with an emergency or with the prior written approval of the District Planning Authority.

Reasons: In the interests of residential amenity.

- (26) No construction work in connection with the development shall take place on any Sunday or Bank Holiday, nor on any other day except between the following times:-

Monday to Friday 0730 - 1800 hours, Saturdays 0830 - 1300 hours unless in association with an emergency or with the prior written approval of the District Planning Authority.

Reasons: In the interests of residential amenity

- (27) No burning of waste or refuse shall take place on site during demolition or construction works other than may be agreed in writing by the Local Planning Authority.

Reasons: In the interests of the amenities of the locality.

- (28) During the approved works the applicant, or their agents or successors in title, shall secure the recording of any historic fabric that will be removed as part of the demolition and conversion works. In particular, the remains of a small brick wall on the street frontage which may be the location of a loop embrasure in WW2 covering the nearby pillbox at the Ship Inn.

Reasons: To ensure appropriate assessment of the archaeological implications of any development proposals and the subsequent mitigation of adverse impacts through preservation in situ or by record.

- (29) If during development, contamination not previously identified is found to be present at the site, then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted and obtained written approval from the Local Planning Authority, details of how this unsuspected contamination shall be dealt with.

Reasons: To ensure any unsuspecting contamination encountered during development is dealt with in line with the principles of the NPPF to protect groundwater in the underlying principal aquifer.

- (30) During construction of the development adequate space shall be provided on site, in a position previously agreed by the Local Planning Authority to enable all employees and contractors vehicles to park, load and off load and turn within the site.

Reasons: In the interests of highway safety and convenience

- (31) All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed in writing with the Local Planning Authority.

Reasons: In the interests of the visual amenities of the area.

- (32) For the first 5 metres of the access from the edge of the highway the use of a bound surface is required, the details of which shall be agreed in writing by the Local Planning Authority.

Reasons: In the interests of highway safety

- (33) The provision of 14 secure, covered cycle parking facilities shall be made prior to the use of the site commencing in accordance with details to be submitted to and approved by the Local Planning Authority, these shall then be permanently retained.

Reasons: In the interests of promoting means of travel other than the private car.

- (34) Prior to the occupation of any of the dwellings details of a scheme of signage and physical measures to effect the one-way in and out traffic arrangement for the site shall be submitted to and approved by the Local Planning Authority. Upon approval, the approved signage and other measures shall be installed prior to the occupation of the first of any new dwellings, and the signage shall be retained and maintained in accordance with the approved details at all times.

Reasons: In the interests of highway safety.



- (35) Upon completion, no further development, whether permitted by Classes A, B, C or D of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking and re-enacting that Order) or not, shall be carried out without the prior permission in writing of the Local Planning Authority.

Reasons: In the interests of the amenities of the area

- (36) No infiltration or surface water drainage into the ground is permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to controlled waters

Reasons: To prevent pollution of groundwater within underlying Principal Aquifer

- (37) The garages hereby approved shall be kept available for the parking of vehicles and no permanent development, whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking or re-enacting that Order) or not, shall be carried out on the land or in such a position as to preclude vehicular access thereto.

Reasons: Development without adequate provision for the parking or garaging of cars is likely to lead to car parking inconvenient to other road users and detrimental to amenity.

- (38) The areas shown on the submitted drawing 16.117.11 P1 as car parking and turning space shall be kept available for such use at all times and no permanent development, whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking or re-enacting that Order) or not, shall be carried out on the land so shown or in such a position as to preclude vehicular access thereto; such land and access thereto shall be provided prior to the occupation of the dwellings hereby permitted.

Reasons: Development without adequate provision for the parking of cars is likely to lead to car parking inconvenient to other road users and detrimental to amenity

- (39) Upon completion of the approved landscaping scheme, any trees or shrubs that are removed, dying, being severely damaged or becoming seriously diseased within five years of planting shall be replaced with trees or shrubs of such size and species as may be agreed in writing with the Local Planning Authority, and within whatever planting season is agreed.

Reasons: In the interests of the visual amenities of the area.

- (40) No pipework, ducts, vents, trickle vents, tile vents, ridge vents, flues, meter boxes, alarm boxes, grilles, overhead cables or other appendage shall be attached to any elevation of the buildings without the prior written consent of the Local Planning Authority.

Reasons: In order to preserve the special architectural or historic interest of the listed building and to preserve or enhance the character and appearance of the conservation area

**Habitats Regulations Assessment**

This HRA has been undertaken without information provided by the applicant. The application site is located within 6km The Swale Special Protection Area and Ramsar site which is a European designated sites afforded protection under the Conservation of Habitats and Species Regulations 2010 as amended (the Habitat Regulations).

SPAs are protected sites classified in accordance with Article 4 of the EC Birds Directive. They are classified for rare and vulnerable birds and for regularly occurring migratory species. Article 4(4) of the Birds Directive (2009/147/EC) requires Member States to take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article. The proposal therefore has potential to affect said site's features of interest.

In considering the European site interest, Natural England advises the Council that it should have regard to any potential impacts that the proposal may have. Regulations 61 and 62 of the Habitat Regulations require a Habitat Regulations Assessment. NE also advises that the proposal is not necessary for the management of the European sites and that subject to a financial contribution to strategic mitigation, the proposal is unlikely to have significant effects on these sites and can therefore be screened out from any requirement for further assessment. It goes on to state that when recording the HRA the Council should refer to the following information to justify its conclusions regarding the likelihood of significant effects; financial contributions should be made to the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring (SAMM) Strategy in accordance with the recommendations of the North Kent Environmental Planning Group (NKEPG); the strategic mitigation will need to be in place before the dwellings are occupied.

In terms of screening for the likelihood of significant effects from the proposal on the SPA features of interest, the following considerations apply:

- Due to the scale of development there is no scope to provide on site mitigation such as an on site dog walking area or signage to prevent the primary causes of bird disturbance which are recreational disturbance including walking, dog walking (particularly off the lead), and predation birds by cats.
- Based on the correspondence with Natural England, I conclude that off site mitigation is required. However, the Council has taken the stance that financial contributions will not be sought on developments of this scale because of the practicalities of securing payment. In particular, the legal agreement may cost more to prepare than the contribution itself. This is an illogical approach to adopt; would overburden small scale developers; and would be a poor use of Council resources. This would normally mean that the development should not be allowed to proceed, however, NE have acknowledged that the North Kent Councils have yet to put in place the full measures necessary to achieve mitigation across the area and that questions relating to the cumulated impacts on schemes of 10 or less will need to be addressed in on-going discussions. This will lead to these matters being addressed at a later date to be agreed between NE and the Councils concerned.
- Developer contributions towards strategic mitigation of impacts on the features of interest of the SPA- I understand there are informal thresholds being set by other North Kent Councils of 10 dwellings or more above which developer contributions would be sought. Swale Borough Council is of the opinion that Natural England's suggested approach of seeking developer contributions on minor developments will not be taken forward and that a

threshold of 10 or more will be adopted in due course. In the interim, I need to consider the best way forward that complies with legislation, the views of Natural England, and is acceptable to officers as a common route forward. Swale Borough Council intends to adopt a formal policy of seeking developer contributions for larger schemes in the fullness of time and that the tariff amount will take account of and compensate for the cumulative impacts of the smaller residential schemes such as this application, on the features of interest of the SPA in order to secure the long term strategic mitigation required. Swale Council is of the opinion that when the tariff is formulated it will encapsulate the time period when this application was determined in order that the individual and cumulative impacts of this scheme will be mitigated for.

Whilst the individual implications of this proposal on the features of interest of the SPA will be extremely minimal in my opinion as this is for less than 10 dwellings, cumulative impacts of multiple smaller residential approvals will be dealt with appropriately by the method outlined above.

For these reasons, I conclude that the proposal can be screened out of the need to progress to an Appropriate Assessment. I acknowledge that the mitigation will not be in place prior to occupation of the dwelling proposed but in the longer term the mitigation will be secured at an appropriate level, and in perpetuity.

#### **The Council's approach to this application:**

In accordance with paragraphs 186 and 187 of the National Planning Policy Framework (NPPF), the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and proactive manner by:

- Where possible, suggesting solutions to secure a successful outcome.
- As appropriate, updating applicants/agents of any issues that may arise in the processing of their application.

In this instance:

The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application.

#### **CONDITIONS - 16/505707/LBC**

- (1) The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which the permission is granted.

Reasons: In pursuance of Section 18 of the Listed Building Act 1990 as amended by the Planning and Compulsory Purchase Act 2004

- (2) Prior to the commencement of the development joinery details for all new and replacement windows and doors shall be submitted and agreed (1:10 scale for elevations and 1:1 or 1:2 part vertical and plan sections-to show architraving, window head and cill/sub cill plus adjoining masonry/joinery so the reveal depths are ascertained). The development shall be carried out in accordance with the approved details.

Reasons: In order to preserve the special architectural or historic interest of the listed building and to preserve or enhance the character and appearance of the conservation area.

- (3) Prior to the commencement of the development hereby approved, samples of facing materials, and of proposed finishing colours, and or proposed roofing materials are to be submitted to and approved in writing by the Local Planning Authority.

Reasons: In order to preserve the special architectural or historic interest of the listed building and to preserve or enhance the character and appearance of the conservation area.

- (4) All rainwater goods to be used as part of the development hereby permitted shall be of cast iron.

Reasons: In order to preserve the special architectural or historic interest of the listed building and to preserve or enhance the character and appearance of the conservation area.

- (5) All facing brickwork on the development hereby permitted shall be constructed in Flemish bond.

Reasons: In order to preserve the special architectural or historic interest of the listed building and to preserve or enhance the character and appearance of the conservation area.

- (6) During the approved works the applicant, or their agents or successors in title, shall secure the recording of any historic fabric that will be removed as part of the demolition and conversion works. In particular, the remains of a small brick wall on the street frontage which may be the location of a loop embrasure in WW2 covering the nearby pillbox at the Ship Inn.

Reasons: To ensure appropriate assessment of the archaeological implications of any development proposals and the subsequent mitigation of adverse impacts through preservation in situ or by record.

NB For full details of all papers submitted with these applications 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.

<b>2.11 REFERENCE NO - 16/504575/OUT</b>			
<b>APPLICATION PROPOSAL</b>			
Outline application for residential development including access and parking, together with public open space and drainage (all matters reserved for future consideration).			
<b>ADDRESS</b> Land To The East Of Ham Road Faversham Kent ME13 7ER			
<b>RECOMMENDATION</b> Grant subject to the signing of a suitably worded Section 106 Agreement and to comments from Kent Highways and Transportation and Kent Public Rights of Way Officer			
<b>SUMMARY OF REASONS FOR RECOMMENDATION/REASONS FOR REFUSAL</b>			
Proposal is broadly in line with national and local planning policy, and Members will note that the application site has the benefit of an allocation in the emerging local plan, Bearing Fruits 2031 – see Policy A14.7			
<b>REASON FOR REFERRAL TO COMMITTEE</b>			
Town Council comments; and for authority to enter into a Section 106 Agreement			
<b>WARD</b> Priory	<b>PARISH/TOWN</b> Faversham Town	<b>COUNCIL</b>	<b>APPLICANT</b> GBH Wheler Will Trust <b>AGENT</b> DHA Planning
<b>DECISION DUE DATE</b> 05/09/16	<b>PUBLICITY EXPIRY DATE</b> 08/07/16	<b>OFFICER SITE VISIT DATE</b>	
<b>RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):</b>			
<b>App No</b>	<b>Proposal</b>	<b>Decision</b>	<b>Date</b>
SW/14/0257	Application on Oare Gravel Works site for 330 dwellings and change of use from storage and vacant uses of the former Gunpowder Works Listed buildings to provide 873 square metres of offices, workshop-studios, storage, and 714 square meters of community uses (with retention of the 2 existing dwellings) and the formation of associated parking areas, earth bund engineering works, country park, landscaping, demolition of plant & buildings	Members resolved that permission should be granted at the Planning Committee meeting on 3 <sup>rd</sup> September 2015	Ongoing

**MAIN REPORT**

**1.0 DESCRIPTION OF SITE**

- 1.01 The site lies approximately a mile from the centre of Faversham town, towards the Oare Marshes, just outside the built-up area boundary (indeed, the western and eastern boundaries of the site follow the line of the boundary). To be able to understand the configuration of the site, it should be noted that the site is, from north to south, in a diamond shape.
- 1.02 The site, which fronts Ham Road, is located north and east of the existing properties to be found within Springhead Road and Fostall Road. To the north is open countryside, and the Oare Gravel Works site is located immediately to the west, facing this site across Ham Road. To the south is the existing development now

known as Goldfinch Close. The site is covered by vegetation at the present time, and there are a number of trees on the site, some quite mature, but none of which are covered by any form of Protection Order. Those trees on the perimeters of the site are likely to be retained, although it must be remembered that this is an outline application only, with all rights reserved.

- 1.03 It should be noted that the site is near to a former landfill site at the northern end of the site which now forms an area of improved grassland.
- 1.04 The land is fairly level, rising approximately two metres between the northern end of the site and the southern end of the site; as such, the site dips very slightly on a south/north gradation. There is a steep bank at the north-western (Ham Road) side of the site
- 1.05 The application site is the subject of Policy A14 Main Modification 166 of Bearing Fruits 2031: The Swale Borough Local Plan Proposed Main Modifications 2016, being allocated as a site for a minimum of 35 new dwellings.
- 1.06 The nearby Oare Gravel Works site is subject to a long-running pending application (SW/14/0257) for the construction of 330 dwellings and associated highways improvements. These improvements include widening Ham Road to a width of 5.5 metres, with a new junction leading to the site.
- 1.07 A Public Right of Way runs along the southwestern boundary of the site, connecting with Ham Road. The PRow is adjacent to but outside the site.
- 1.08 The site is near to, but not within, a Zone 3 Flood Zone, which begins approximately 100 metres to the north of the site.

## **2.0 PROPOSAL**

- 2.01 Outline planning permission is sought for residential development with all matters (namely appearance, landscaping, layout, scale and access) reserved for future consideration. All reserved matters are to be considered only in terms of the principle of the development at this stage, and not in detail.
- 2.02 The layout drawings submitted with the application are therefore only intended to illustrate how the development could be accommodated within the site. Whilst an indicative layout has been submitted, along with indicative design drawings, the actual detail of these, including the ultimate number of dwellings to be built will not be assessed, as this will be the subject of a further reserved matters application, should the current outline be granted approval. The principle of the proposed housing is to be assessed at this stage. It is worth noting though that the maximum number of dwellings will not exceed thirty-five as imposed by an appropriate planning condition.
- 2.03 The application originally proposed only up to 30 dwellings, however, concerns were raised by Officers as the site is allocated for 35 dwellings under Policy A14 as noted above. It is intended that the development shall be of detached and semi-detached houses and flats. The site has an area of approximately 1.1 hectares or 2.72 acres, making a site density of approximately 31 dwellings per hectare.
- 2.04 Although the application is outline with all matters, including access, being reserved the only possible access to the site would seem to be from Ham Road.

- 2.05 The indicative layout (layout plan drawing no. DHA/10622/20) shows the proposed dwellings arranged around a central island; somewhat surprisingly, rather than being open green space, three proposed dwellings are shown upon the central island. A pedestrian footpath link is shown within the development together with a footpath linking the development to Goldfinch Close to the south.
- 2.06 The submitted details (which are for thirty properties only) suggest an indicative dwelling mix as follows: 4 x One bedroom flats; 3 x Two bedroom flats; 10 x Two bedroom houses; 10 x Three bedroom houses; and 3 x Four bedroom houses.
- 2.07 To minimise adverse landscape and visual effects of this edge of settlement boundary development, a buffer of soft landscaping is proposed around the northern perimeter boundary of the application site to enclose the development on those boundaries.
- 2.08 The application is supported by a number of reports including the following:-
- Planning Statement
  - Design and Access Statement
  - Ecology Report
  - Foul and Surface Water Management Strategy
  - Transport Assessment
  - Flood Risk Assessment
  - Contamination Report
  - Tree Survey
- 2.09 From the above listed reports, I draw the following key points:-
- Delivery of up to 30 dwellings (since revised to 35; the agent has been asked to supply a revised indicative layout, which I will report to Members at the meeting)
  - Application is in outline form with all matters reserved
  - Access would be taken from Ham Road
  - Site is in a sustainable location: Bus services from Priory Row connect with Ashford, Sheldwich, Gaversham and Oare; Davington Primary School and a small convenience store are situated nearby
  - Site is allocated for housing within 'Bearing Fruits'.
  - The dwellings will be a mix of detached and semi-detached houses and flats
  - Full Flood Risk Assessment submitted, conclusion that site is safe
  - Full Ecology and Contamination reports; these will be addressed later in this report.

### 3.0 SUMMARY INFORMATION

	Existing	Proposed	Change (+/-)
Site Area (ha)	1.1	1.1	-
No. of Storeys	N/A	No data available	
No. of Residential Units	N/A	Up to 35	+ Up to 35
No. of Affordable Units	N/A	12	+12

Car parking spaces	N/A	No data available	-
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#### 4.0 PLANNING CONSTRAINTS

- The entire site lies just outside the defined built up area boundary of Faversham within the countryside, as set out in the adopted Local Plan. However, the application site is within land designated for housing under Policy A14 of Bearing Fruits 2031 (Main Modifications, June 2016).
- The site is located within 2km of the Swale Special Protection Area (SPA), Ramsar site and the Swale Site of Special Scientific Interest (SSSI).

#### 5.0 POLICY AND OTHER CONSIDERATIONS

The National Planning Policy Framework (NPPF)

The NPPF was adopted on 27<sup>th</sup> March 2012 and is a material consideration in determining planning applications. Also of importance to the determination of this application is the guidance as set out in the National Planning Practice Guidance (NPPG).

The NPPF relates in terms of achieving sustainable development, building a strong competitive economy, supporting a prosperous rural economy, promoting sustainable transport, delivering a wide choice of quality homes, requiring good design, promoting healthy communities, conserving and enhancing the natural environment, and sustainable drainage systems.

The NPPF sets out the Governments position on the planning system explaining that “The purpose of the planning system is to contribute to the achievement of sustainable development. The policies in paragraphs 18 to 219 of the NPPF, taken as a whole, constitute the Government’s view of what sustainable development in England means in practice for the planning system. At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development (paragraph 14), which should be seen as a golden thread running through both plan-making and decision taking. For decision taking this mean:

- Approving development proposals that accord with the development plan without delay; and
- Where the development plan is absent, silent or relevant policies are out of date granting permission unless:-
  - Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or
  - Specific policies in this Framework indicate development should be restricted.”

Paragraph 14 the NPPF makes it clear that there is a presumption in favour of sustainable development, which has three dimensions: economic, social and environmental.

At Paragraph 47 it states that *“planning authorities should meet local housing needs and identify five year housing land supply with an additional 5% buffer”*. Paragraph 49 states *“that housing application should be considered in the context of the presumption in favour of sustainable development”* and that *“Relevant policies for the supply of housing should not be considered up to date if the local planning authority cannot demonstrate a five year supply of deliverable housing sites.”*



Regarding housing provision, in paragraphs 47-55 the NPPF requires a significant boost in housing supply and states Council's should "identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements with an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. Where there has been a record of persistent under delivery of housing, local planning authorities should increase the buffer to 20%". Paragraph 49 states that housing supply policies should be considered out of date if the Council cannot demonstrate a five year supply of deliverable housing sites.

Paragraph 55 states "To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. For example, where there are groups of smaller settlements, development in one village may support services in a village nearby. Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances".

Paragraph 109 requires the planning system to; contribute to and enhance the natural and local environment by minimising impacts on biodiversity and providing gains where possible; prevent new development from contributing to or being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil or water pollution and remediating and mitigating contaminated land where appropriate.

Paragraph 118 requires Councils to aim to conserve and enhance biodiversity and apply numerous principles including; incorporating biodiversity in developments; affording substantial protection to Special Protection Areas and affording Ramsar sites the same protection as European sites.

#### National Planning Practice Guidance (NPPG)

The NPPG also provides general guidance in relation to development. It encourages the provision of housing within sustainable areas, subject to consideration of issues such as local and residential amenity, highways, contamination, noise, urban design / architecture, and ecology, amongst others.

#### Development Plan:

##### The Local Plan

The Development Plan for Swale comprises the adopted 2008 Local Plan as amended by paragraph 1(3) of Schedule 8 to the Planning and Compulsory Purchase Act 2004 in respect of those policies directed to have expired as of 20<sup>th</sup> February 2011. The emerging Local Plan (Bearing Fruits 2031 Main Modifications, June 2016), is at an advanced stage and having been subjected to an Inquiry by an independent Planning Inspector carries some weight.

##### The Swale Borough Local Plan 2008 (saved policies)

Also of relevance to the determination of this application are the following saved Local Plan policies;

- SP1 (Sustainable Development and steers development to previously developed land within urban areas)
- SP2 (Environment)
- SP3 (Economy)
- SP4 (Housing)

- SP7 (Transport and Utilities)
- E1 (General Development Criteria)
- E6 (The Countryside, amongst other things seeks to restrict development outside built-up areas)
- E9 (Protecting the Quality and Character of the Boroughs Landscape)
- E10 (Trees and Hedges - requires proposals to retain trees as far as possible and provide new planting to maintain the character of the locality)
- E11 (Protecting and enhancing the Borough's Biodiversity and Geological Interest)
- E12 (Sites designated for their importance to biodiversity or geological conservation)
- E19 (Achieving High Quality Design and Distinctiveness)
- T1 (Providing Safe Access to the Highway Network)
- T3 (Vehicle Parking for New Development)
- T2 (Essential Improvements to the Highway Network)
- T4 (Cyclists and Pedestrians)
- T5 (Public Transport - T5 requires proposals to be well located in relation to public transport.)
- C2 (Housing Developments and the Provision of Community Services and Facilities - requires developer contributions towards community services and facilities on developments of 10 or more dwellings via an appropriate legal agreement.)
- C3 (Open Space within Residential Development)
- H2 (Providing for New Housing – advises that permission will be granted for residential development on allocated sites or within built up areas but that outside such areas such development will be restricted in accordance with policies E6 and RC3.
- H3(Providing Affordable Housing- requires 30% affordable housing on developments of 15 dwellings or more which are to be of a suitable size and tenure, including rented housing)
- H5 (Housing allocations)

Bearing Fruits 2031: The Swale Borough Local Plan Part 1 (Main Modifications – June 2016)

The emerging Local Plan has been submitted for examination and so carries significant weight. Policies include:-

- ST1 (Delivering sustainable development in Swale)
- ST2 (Development targets for jobs and homes 2011-2031)
- ST4 (Meeting the Local Plan Development targets)
- CP3 (Delivering a wide choice of high quality homes)
- CP4 (Requiring Good Design)
- CP7 (Conserving & Enhancing the Natural Environment – Providing for Green Infrastructure)
- DM6 (managing transport demand and impact)
- DM7 (Vehicle Parking)
- DM8 (Affordable Housing)
- DM19 (Sustainable Design and Construction)
- DM21 (Water, flooding and drainage)
- DM28 (Biodiversity and Geological Conservation)
- DM29 (Woodlands, trees and hedges)
- A14 (Smaller allocations as extensions to settlements)

## 6.0 LOCAL REPRESENTATIONS

- 6.01 Faversham Town Council raises no objection to the proposal, on the Condition that permission is only granted for up to 35 properties, as envisaged in Bearing Fruits 2031, rather than up to thirty as originally proposed under this application.
- 6.02 One email of objection has been received from a local resident. The comments contained therein may be summarised as follows:
- 300 houses already outlined on the gravel works site
  - Planners told the developer for the gravel works site to reduce the number
  - Present infrastructure cannot support this development

## 7.0 CONSULTATIONS

- 7.01 The Kent County Council Flood and Water Management Officer advises that the general principles outlined in the submitted surface water drainage strategy are acceptable subject to the inclusion of a condition controlling same, and that there shall be no infiltration of surface water into the ground other than with the express consent of the Borough Council.
- 7.02 Southern Water raises no objection to the application. They advise that a formal application for a connection to the public sewer is required and recommend a condition to be attached if planning permission is given to the proposed development. Conditions should require that development should not commence until details of the proposed means of foul and surface water sewerage disposal have been submitted to and approved in writing by the Borough Council, and an informative advising that a formal application for connection to the public sewerage system is required to service this development.
- 7.03 I await comments from KCC Highways and Transportation, and will report these to Members at the meeting
- 7.04 Natural England advises that the site lies in close proximity to European designated sites and has the potential to affect their interest features. However, Natural England is satisfied that the proposed development would not be likely to damage or destroy the interest features for which the SSSIs have been notified.
- 7.05 The Environment Agency raises no objection to the proposed development, subject to the inclusion of Conditions noted below.
- 7.06 The Kent Police Crime Prevention Adviser has raised no objection.
- 7.07 Scotia Gas networks have submitted a plan suggesting that there are no gas mains on the site.
- 7.08 UK Power Networks raises no objection.
- 7.09 I have received no response from Kent Public Rights of Way. I shall report any response received to Members at the meeting.
- 7.10 Swale Footpaths Group raises no objection, but request that the legal status of and the responsibility for the upkeep of the adjacent footpath be made clear to the applicant.

- 7.11 KCC Ecology raises no objection, subject to conditions regarding the provision of reptile and bat surveys, and protection of nesting birds; wording should also be included in the S106 agreement to secure developer contributions to mitigate potential impact on the SPA.
- 7.12 The Greenspaces Manger raises no objection, subject to the receipt of developer contributions towards play equipment and sports facilities via the s106 agreement. He also requests that 10% of developable land be allocated as open space provision, preferably to the rear of Goldfinch Close, allowing a larger and more usable open space.
- 7.13 I await the comments of the Council's Tree Consultant, and will report these to Members at the meeting. There are clearly implications for existing trees on the site margins, which are shown as being retained on the submitted indicative drawings.

## **8.0 BACKGROUND PAPERS AND PLANS**

Application papers and correspondence relating to planning application reference 16/504575/OUT.

## **9.0 APPRAISAL**

- 9.01 I consider that the key material considerations in the assessment of this application are as follows:-
- The principle of development
  - Impact on the surrounding landscape quality and visual amenity
  - Residential amenity implications
  - Biodiversity and Ecology implications
  - Highway network impact
  - Developer contributions
  - Other material considerations

### **Principle of Development**

- 9.02 The key issue for consideration is whether planning permission should be granted for a residential development on a site that lies outside the defined urban confines of Faversham. However, as noted above, the site is allocated for new dwellings under Policy A14 of Bearing Fruits and, as such, the proposal must therefore be acceptable in principle, having gone through all mandatory tests and having been found suitable for residential development.

### **Impact on the surrounding landscape quality and visual amenity**

- 9.03 At this stage, the visual impact of the proposal can only be considered in very broad terms due to the uncertainty of all matters of design, height of buildings, materials and layout. Whilst an open field would be lost as a result of the development, the land that would be lost is relatively small as compared to the considerable adjoining countryside. In addition, it is considered that given the informal arrangement of the indicative housing layout, and given the use of spaces and soft landscaping to soften the appearance of the dwelling, the development would be seen as a natural extension of the built-up area boundary. Given this, it is considered that any impact of the development on landscape quality would be moderate in scale and would not seriously harm the character and quality of the landscape. Therefore, in this instance,

the lack of an identifiable harm to the character and quality of the landscape is a positive factor because of the contribution this makes to the environmental strand of sustainable development, and should be afforded weight.

### **Residential Amenity**

- 9.04 The precise impact on residential amenity arising from the design of the dwellings will be dealt with as part of any subsequent reserved matters application(s), should Members decide to grant outline planning permission.

### **Highway network impact**

- 9.05 It is noted that highway improvements were proposed under planning reference SW/14/0257, as discussed earlier in this report. These highway improvements will also have a positive effect on the present scheme if approved. However, this development would not rely on these improvements to achieve acceptable vehicular access. As noted above, I await further comments from Kent Highways and Transportation, and will report these at the meeting.

### **Developer contributions**

- 9.06 Developer Contribution Requests:

- KCC Contributions Team has requested contributions of £1,680.70 towards library funding; £178,500 towards Primary Education; and £70,204.05 towards Secondary education, making a total of £250,384.75.
- SBC's Waste Team requests a contribution of £1,740 to allow four 1,100 litre wheeled bins for the proposed flats and £2,674 for the houses to serve the entire development, making a total of £4,414, though the wording of the legal agreement will need to allow for other possible dwelling mixes
- The Greenspaces Manager has requested contributions of £30,163.00 (£861.80 per dwelling) towards play equipment and £16,940 (£484.00 per dwelling) for sports provision, totalling £46,653. He also requests that 10% of developable land be allocated as open space provision, preferably to the rear of Goldfinch Close, allowing a larger and more usable open space.
- Developer Contribution to mitigate impact on the nearby Special Protection Area would be £7,825.30 (£223.58 per dwelling)
- SBC administration charge (5% of £309,276.75) - £15,463.84
- Total = £324,740.59

- 9.07 Given that the site is located in close proximity to the Medway and Marshes Special Protection Areas (SPA) and as such it is likely that there will be some impact on the SPA which would need to be addressed through appropriate mitigation measures.

## 10.0 CONCLUSION

- 10.01 Whilst the proposed development is outside the settlement confines and is in a countryside location, the site is allocated for housing under Policy A14 of Bearing Fruits, and the proposal would have no unacceptable negative impact, whilst making a significant contribution to the Borough's housing supply.
- 10.02 It is therefore recommended that planning permission be granted subject to conditions as recommended.

## 11.0 RECOMMENDATION – GRANT Subject to the following conditions:

- (1) Details relating to the layout, access, scale and appearance of the proposed buildings, and the landscaping of the site shall be submitted to and approved by the Local Planning Authority before any development is commenced.

Reason: In pursuance of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- (2) Application for approval of reserved matters referred to in Condition (1) above must be made not later than the expiration of three years beginning with the date of the grant of outline planning permission.

Reason: In pursuance of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- (3) The development to which this permission relates must be begun not later than the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.

Reason: In pursuance of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- (4) Pursuant to Condition (1) above, the reserved matters application shall show no more than a total of 35 dwellings, and the dwellings shall be no more than 2.5 storeys in height

Reason: In order to comply with Policy A14 of Bearing Fruits 2031 and in the interests of safeguarding the local landscape.

- (5) The details submitted pursuant to condition (1) above shall provide full details of how the residential part of the development will meet the principles of 'Secure by Design'. The development shall be implemented in accordance with the approved details.

Reason: In the interests of public amenity and safety.

- (6) The details submitted pursuant to condition (1) above shall include cross-sectional drawings through the site, of the existing and proposed site levels. The development shall then be completed strictly in accordance with the approved levels.

Reason: In order to secure a satisfactory form of development having regard to the nature of the site.

- (7) The details submitted pursuant to condition (1) shall show a buffer strip of no less than 10 metres in width retained (for strategic planting) where the site adjoins the northern boundary to the site. The approved landscaping shall be planted in full before the first dwelling is occupied. Thereafter the approved landscaping shall be implemented and maintained as approved.

Reason: In the interests of visual amenity and landscape quality.

- (8) The landscaping details submitted pursuant to condition (1) shall include full details of both hard and soft landscape works including existing trees, shrubs and other features, planting schedules of plants, noting species (which shall be native species and of a type that will encourage wildlife and biodiversity), plant sizes and numbers where appropriate, means of enclosure, hard surfacing materials, and an implementation programme. All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed in writing with the Local Planning Authority. Upon completion of the approved landscaping scheme, any trees or shrubs that are removed, dying, being severely damaged or becoming seriously diseased within five years of planting shall be replaced with trees or shrubs of such size and species as may be agreed in writing with the Local Planning Authority, and within whatever planting season is agreed.

Reason: In the interests of the visual amenities of the area and encouraging wildlife and biodiversity.

- (9) No development approved by this planning permission shall take place until a remediation strategy that includes the following components to deal with the risks associated with contamination of the site shall be submitted to and approved in writing by the Local Planning Authority:
1. A preliminary risk assessment which has identified:
    - a) All previous uses
    - b) Potential contaminants associated with those uses
    - c) A conceptual model of the site indicating sources, pathways and receptors
    - d) Potentially unacceptable risks arising from contamination at the site.
  2. A site investigation scheme, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
  3. The results of the site investigation and the detailed risk assessment referred to in (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
  4. A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these components require the express written consent of the local planning authority. The scheme shall be implemented as approved.

Reason: To prevent pollution of controlled waters and comply with the National Planning Policy Framework.

- (10) No occupation of any part of the permitted development shall take place until a verification report demonstrating completion of works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a “long-term monitoring and maintenance plan”) for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan. The long-term monitoring and maintenance plan shall be implemented as approved.

Reason: To prevent pollution of controlled waters and comply with the NPPF.

- (11) If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until the developer has submitted a remediation strategy to the local planning authority detailing how this unsuspected contamination shall be dealt with and obtained written approval from the local planning authority. The remediation strategy shall be implemented as approved.

Reason: To prevent pollution of controlled waters and comply with the NPPF

- (12) Prior to the commencement of the development hereby approved full details of the method of disposal of foul and surface waters as part of a detailed drainage strategy shall be submitted to (and approved in writing by) the local planning authority. This detailed drainage scheme shall demonstrate that the surface water generated by this development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100yr storm) can be accommodated and disposed of within the curtilage of the site. The risk of ground instability associated with discharge of surface water into the underlying soils should be assessed and the infiltration rates confirmed with a suitable ground investigation.

Reason: To ensure that the principles of sustainable drainage are incorporated into this proposal and to ensure ongoing efficacy of the drainage provisions.

- (13) No building hereby permitted shall be occupied until details of the implementation; maintenance and management of the sustainable drainage scheme have been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details. Those details shall include:
- i) a timetable for its implementation, and
  - ii) a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage system throughout its lifetime.

Reason: To ensure that the principles of sustainable drainage are incorporated into this proposal and to ensure ongoing efficacy of the drainage provisions.



- (14) No infiltration of surface water drainage into the ground is permitted other than with the express written consent of the Local Planning Authority (in consultation with the Environment Agency); this may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to controlled waters. The development shall be carried out in accordance with the approval details.

Reason: To protect vulnerable groundwater resources and ensure compliance with the National Planning Policy Framework.

- (15) No development shall take place until:
- a) a site investigation has been carried out to determine the nature and extent of any reptile or bat population within or adjacent to the building in accordance with the advice of Natural England
  - b) a written report of the site investigation has been prepared by a competent person. The report shall include the investigation results and details of a scheme to ensure the long-term health and well being of any reptile or owl population within or adjacent to the building. The report shall be submitted to and approved by the Local Planning Authority in writing.
  - c) the development shall then be implemented in accordance with the approved scheme

Reason: In order to safeguard protected species that may be present within or adjacent to the building.

- (16) As an initial operation on site, adequate precautions shall be taken during the progress of the works to guard against the deposit of mud and similar substances on the public highway in accordance with proposals to be submitted to, and agreed in writing by the Local Planning Authority.

Reason: In the interests of amenity and road safety and to ensure that such matters are dealt with before development commences.

- (17) Prior to the commencement of development details of parking for site personnel / operatives/visitors shall be submitted to and approved by the Local Planning Authority and thereafter shall be provided and retained throughout the construction of the development. The approved parking shall be provided prior to the commencement of the development.

Reason: To ensure provision of adequate off-street parking for vehicles in the interests of highway safety and to protect the amenities of local residents and to ensure that such matters are dealt with before development commences.

- (18) During construction provision shall be made on the site, to accommodate operatives' and construction vehicles loading, off-loading or turning on the site.

Reason: To ensure that vehicles can be parked or manoeuvred off the highway in the interests of highway safety.

- (19) The details submitted in pursuance of condition (1) shall show adequate land reserved for parking in accordance with the Approved County Parking Standards and, upon approval of the details this area shall be provided, surfaced and drained before any building is occupied and shall be retained for the use of the occupiers of, and visitors to, the dwellings. Thereafter, no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development)

(England) Order 2015 (or any Order revoking and re-enacting that Order), shall be carried out on the land so shown or in such a position as to preclude vehicular access to the reserved vehicle parking area.

Reason: Development without provision of adequate accommodation for the parking of vehicles is likely to lead to parking inconvenient to other road users and detrimental to highway safety and amenity.

- (20) None of the dwellings shall be occupied until space has been laid out within the site in accordance with details to be submitted and approved in writing by the Local Planning Authority for cycles to be securely stored and sheltered.

Reason: To ensure the provision and retention of adequate off-street parking facilities for cycles in the interests of sustainable development and promoting cycle visits and to ensure that such matters are dealt with before development commences.

- (21) The proposed estate roads, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, accesses, carriageway gradients, drive gradients, car parking and street furniture shall be constructed and laid out in accordance with details to be submitted and approved by the Local Planning Authority in writing before their construction begins. For this purpose, plans and sections, indicating as appropriate, the design, layout, levels, gradients, materials and method of construction shall be submitted to the Local Planning Authority.

Reason: To ensure that the roads are laid out and constructed in a satisfactory manner and to ensure that such matters are dealt with before development commences.

- (22) No impact pile driving in connection with the construction of the development shall take place on the site on any Saturday, Sunday or Bank Holiday, nor on any other day except between the following times :-  
Monday to Friday 0900 - 1700 hours unless in association with an emergency or with the prior written approval of the Local Planning Authority.

Reason: In the interests of residential amenity.

- (23) No demolition or construction work in connection with the development shall take place on any Sunday or Bank Holiday, nor on any other day except between the following times :-  
Monday to Friday 0730 - 1800 hours, Saturdays 0830 - 1300 hours unless in association with an emergency or with the prior written approval of the Local Planning Authority.

Reason: In the interests of residential amenity.

- (24) Prior to the commencement of development a programme for the suppression of dust during the demolition of existing buildings and construction of the development has been submitted to and approved in writing by the Local Planning Authority. The measures approved shall be employed throughout the period of demolition and construction unless any variation has been approved by the Local Planning Authority.

Reason: In the interests of residential amenity and to ensure that such matters are dealt with before development commences.

- (25) Before any work is commenced on site, a Construction Management Plan, including details of delivery routes and the timing of these, shall be submitted to and approved in writing by the Local Planning Authority and the development shall not proceed other than in accordance with the approved programme.

Reason: In the interests of highway safety and amenity.

- (26) Prior to the first occupation of a dwelling / premises the following works between that dwelling / premises and the adopted highway shall be completed as follows:  
 (A) Footways and/or footpaths shall be completed, with the exception of the wearing course;  
 (B) Carriageways completed, with the exception of the wearing course, including the provision of a turning facility beyond the dwelling together with related:  
 (1) highway drainage, including off-site works,  
 (2) junction visibility splays,  
 (3) street lighting, street nameplates and highway structures if any.

Reason: In the interests of highway safety.

(27) Before the dwellings hereby permitted are first occupied, the area between the nearside carriageway edge and lines drawn between a point 2.4m back from the carriageway edge along the centre line of the access and points on the carriageway edge 43m from and on both sides of the centre line of the access shall be cleared of obstruction to visibility at and above a height of 900mm above the nearside carriageway level and thereafter maintained free of obstruction at all times.

Reason: In the interests of highway safety.

- (28) Any further conditions requested by KCC Highways and Transportation; the KCC Public Rights of Way Officer, and SBC's Tree Consultant.

#### INFORMATIVES

- (1) Waste to be taken off site  
 Contaminated soil that is, or must be disposed of, is waste. Therefore, its handling, transport, treatment and disposal is subject to waste management legislation, which includes:
- Duty of Care Regulations 1991
  - Hazardous Waste (England and Wales) Regulations 2005
  - Environmental Permitting (England and Wales) Regulations 2010
  - The Waste (England and Wales) Regulations 2011

Developers should ensure that all contaminated materials are adequately characterised both chemically and physically in line with British Standard BS EN 14899:2005 'Characterization of Waste - Sampling of Waste Materials - Framework for the Preparation and Application of a Sampling Plan' and that the permitting status of any proposed treatment or disposal activity is clear. If in doubt, the Environment Agency should be contacted for advice at an early stage to avoid any delays.

If the total quantity of waste material to be produced at or taken off site is hazardous waste and is 500kg or greater in any 12 month period the developer will need to register with us as a hazardous waste producer.

- (2) KCC wishes to make the applicant aware that Superfast Fibre Optic Broadband 'fibre to the premises' should be provided to each dwelling of adequate capacity (internal minimum speed of 100mb) for current and future use of the buildings.
- (3) The applicant should enter into a formal agreement with Southern Water to provide the necessary sewerage infrastructure and water supply required to service this development. Please contact Southern Water, Sparrowgrove House, Sparrowgrove, Otterbourne, Hampshire, SO21 2SW (tel: 0330 303 0119) or [www.southernwater.co.uk](http://www.southernwater.co.uk) .
- (4) A formal application for connection to the public sewerage system is required to service this development, and that should any sewer be found during construction works, Southern Water should be contacted as an investigation of the sewer will be required to ascertain its condition, the number of properties served, and potential means of access before any further works commence on site. (Southern Water, Sparrowgrove House, Sparrowgrove, Otterbourne, Hampshire, SO21 2SW (tel: 0330 303 0119) or [www.southernwater.co.uk](http://www.southernwater.co.uk)).
- (5) It is the responsibility of the applicant to ensure, before the development hereby approved is commenced, that all necessary highway approvals and consents where required are obtained and that the limits of highway boundary are clearly established in order to avoid any enforcement action being taken by the Highway Authority. The applicant must also ensure that the details shown on the approved plans agree in every aspect with those approved under such legislation and common law. It is therefore important for the applicant to contact KCC Highways and Transportation to progress this aspect of the works prior to commencement on site.
- (6) All nesting birds and their young are legally protected under the Wildlife and Countryside Act 1981 (as amended) and as such any vegetation must be removed outside the breeding bird season, and if this is not possible an ecologist must examine the site prior to works starting and if any nesting birds are recorded all works must cease within that area.

#### **The Council's approach to this application:**

In accordance with paragraphs 186 and 187 of the National Planning Policy Framework (NPPF), the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and proactive manner by:

Where possible, suggesting solutions to secure a successful outcome.

As appropriate, updating applicants/agents of any issues that may arise in the processing of their application.

In this instance:

The applicant/agent was advised of changes required to the application and these were agreed.

The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application.

<b>2.12 REFERENCE NO - 15/510676/FULL</b>			
<b>APPLICATION PROPOSAL</b>			
Change of use of land to extend an existing gypsy caravan site to provide for two additional pitches and addition of a dayroom.			
<b>ADDRESS</b> Jack Russell Place, Halstow Lane, Upchurch, Kent, ME9 7AB.			
<b>RECOMMENDATION</b> Grant subject to conditions			
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b>			
Proposal would provide additional pitches on an existing gypsy site to cater for family growth, and without causing serious harm to the character or amenity of the countryside.			
<b>REASON FOR REFERRAL TO COMMITTEE</b>			
Parish Council objection.			
<b>WARD</b> Hartlip, Newington And Upchurch	<b>PARISH/TOWN</b> Upchurch	<b>COUNCIL</b>	<b>APPLICANT</b> Mr & Mrs Beaney <b>AGENT</b> Mr Ronald Perrin
<b>DECISION DUE DATE</b> 12/02/16	<b>PUBLICITY EXPIRY DATE</b> 15/02/16		
<b>RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):</b>			
<b>App No</b>	<b>Proposal</b>	<b>Decision</b>	<b>Date</b>
SW/08/0917	Use of the site for the stationing of a touring caravan, two mobile homes, the erection of a stable block and a shed, for residential use by a gypsy family.	Temporary permission granted	18.06.2009
Approved by Planning Committee for a temporary period of 2 years to allow further consideration of the acceptability of permanent permission, with particular regard to the (then ongoing) GTAA and pitch provision need.			
SW/10/0433	Variation of condition to allow parking of a single work vehicle on site.	Approved	01.06.2010
Considered to have no significant detrimental impact on the visual amenities and character of the surrounding rural area.			
SW/11/0496	Removal of condition (1) of SW/08/0917 to allow permanent occupancy of the site.	Approved	24.06.2011
Approved by Planning Committee as the site is considered suitable for permanent gypsy/traveller occupation, would not give rise to any serious amenity concerns or landscape impacts, subject to suitable mitigation by way of landscaping, and would contribute positively to the Council's pitch provision target.			

**MAIN REPORT**

**1.0 DESCRIPTION OF SITE**

1.01 Jack Russell Place is a permanent gypsy/traveller site currently occupied by one family. The site is currently occupied by three static caravans (one of which is unauthorised – discussed further below), two tourers, two wooden sheds, and a number of small timber chicken coops and dog kennels. There is a vehicle access

running through the centre of the site, and the previous rear fence has been removed and new fence erected as per the submitted drawing to pre-emptively enclose the current application site.

- 1.02 The site lies in open countryside between Lower Halstow and Upchurch, approximately one kilometre from the centre of Upchurch. Halstow Lane is designated as a 'rural lane' under the adopted Local Plan, and the site is also located within the Coastal Zone and the Strategic Gap between the Medway Towns and Sittingbourne. It is not in an area considered by the Environment Agency to be at risk of flooding.
- 1.03 The wider area is generally rural in character, and despite the surrounding fields being subdivided into paddocks and a number of residential caravans within the vicinity, the area generally retains an open appearance. Planting and soft landscaping to the front of the existing site has taken hold, and provides an effective screen in views from the road. Planting along the side boundaries has also matured and now rises above the boundary fencing to help soften the visual impact of the site in longer views.
- 1.04 Application SW/08/0917, which sought permission for the use of the site for the stationing of a touring caravan, two mobile homes, the erection of a stable block and a shed, was approved on a temporary basis for two years by Planning Committee at its meeting on 18th June 2009. A subsequent application to allow the parking of a single transit van at the site (reference SW/10/0433) was approved by Members.
- 1.05 In 2011 application reference SW/11/0496 granted permission for removal of condition (1) of SW/08/0916 to allow permanent occupation of the site. This was approved by Members in recognition of the sites' generally acceptable location and the low impact of the development upon the open and rural character of the area. Furthermore the site contributed positively towards the Council's (then) inadequate pitch provision figures.

## 2.0 PROPOSAL

- 2.01 This application seeks planning permission for change of use of land to the rear of the existing site to allow stationing of two additional static caravans (for a total of five), and erection of a dayroom. The additional pitches will provide for the applicant's children who currently live in with their parents / older siblings, but are getting older and need their own private accommodation.
- 2.02 The submitted Design & Access Statement explains:

*"They envisage extending the existing site...and positioning the two proposed pitches to the immediate rear of the existing static caravans... Each would comprise a further static caravan plus touring caravans, to be served by a footpath, with a gate to allow access for the tourers. A grassed area would be left for amenity purposes, and a field gate inserted to give access to the residue of the land.*

*Additionally a dayroom is proposed to serve the needs of this family unit. It is to be finished in brick with a plain tiled roof, and would measure 10 metres by 7 metres, with a ridge height of 4.5 metres. It would be a single storey and provide this family unit with a communal area, plus areas for the children to use, together with kitchen and bathroom facilities... I would also stress the dayroom would be ancillary to the use of the site, and is not intended to be a separate residential dwelling."*

- 2.03 The D&A explains that the applicant has four children, the eldest two of whom have their own households elsewhere, but that the youngest two live with their parents / grandparents and are now of an age where they require their own caravans. It is these two children, Jack and Matilda, which the new caravans will serve.
- 2.04 Further to discussions with the agent additional information was submitted, which notes:

*"I am told by Mrs Beaney that Jack will be 17 in July [2016] and is already going steady with a gypsy girl, and they plan to marry. As you will be aware gypsies tend to marry at a young age, so this couple now have a need for independent accommodation in the very near future, let alone a need arising from any issues of 'inconvenience', real as that is. Jack and his partner will travel, but they aim to do so from a settled base, which is the way of the modern gypsy.*

*Similarly, his sister, Rita Matilda, needs her own space, as she currently shares a caravan with her older sister, Emily Jane. Emily Jane, however, is already 19, and she, too, is courting strongly with a gypsy boy, and they intend to marry. She also requires a further pitch, leaving Rita Matilda to live in the caravan they currently share. Emily Jane will travel with her new partner, but, they, too, wish to do so from their own settled base.*

*...Jack Russell Place is the existing family site. These children are direct descendants of an established gypsy family. Emerging policy aims to safeguard this site. It also supports the extension of existing sites. The proposal has been carefully conceived to minimise its impact on its surroundings. These surroundings are comparatively ordinary countryside, and have no special environmental designations, unlike much of the Borough. There is no evidence of any other harm."*

### **3.0 PLANNING CONSTRAINTS**

- 3.01 None.

### **4.0 POLICY AND OTHER CONSIDERATIONS**

#### **POLICY AND OTHER CONSIDERATIONS**

##### **National Planning Policy Framework (NPPF) and Planning Policy for Traveller Sites (PPTS) (Re-issued)**

- 4.01 The national policy position comprises the National Planning Policy Framework (NPPF) and Planning Policy for Traveller Sites (PPTS). Both documents were released in 2012 but the PPTS was re-issued in August 2015 with amendments. Together they provide national guidance for Local Planning Authorities on plan making and determining planning applications for Gypsy and Traveller sites. A presumption in favour of sustainable development runs throughout both documents and this presumption is an important part of both the plan-making process and in determining planning applications. In addition there is a requirement in both documents that makes clear that Councils should set pitch targets which address the likely need for pitches over the plan period and maintain a rolling five year supply of sites which are in suitable locations and available immediately.

4.02 I consider that the following extracts from paragraph 7 are particularly pertinent:

“There are three dimensions to sustainable development: economic, social and environmental. These dimensions give rise to the need for the planning system to perform a number of roles:

- an economic role – contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation; and by identifying and coordinating development requirements, including the provision of infrastructure;
- a social role – supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community’s needs and support its health, social and cultural well-being; and
- an environmental role – contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy.”

4.03 In relation to rural housing the NPPF (at paragraph 55) states;

- To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. For example, where there are groups of smaller settlements, development in one village may support services in a village nearby. Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as:
  - the essential need for a rural worker to live permanently at or near their place of work in the countryside; or
  - where such development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets; or
  - where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting; or
  - the exceptional quality or innovative nature of the design of the dwelling. Such a design should:
    - be truly outstanding or innovative, helping to raise standards of design more generally in rural areas;
    - reflect the highest standards in architecture;
    - significantly enhance its immediate setting; and
    - be sensitive to the defining characteristics of the local area.

4.04 In relation to conserving and enhancing the natural environment the NPPF, at paragraph 109, states;

The planning system should contribute to and enhance the natural and local environment by:

- protecting and enhancing valued landscapes, geological conservation interests and soils;
- recognising the wider benefits of ecosystem services;
- minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the Government’s commitment to halt the overall decline in biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;



- preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water or noise pollution or land instability; and
- remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.

### **Planning Policy for Traveller Sites (PPTS)**

- 4.05 The PPTS was originally published in March 2012 but it was re-issued in August 2015 with minor changes. Its main aims now are:

*“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.” (para 3 PPTS)*

*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.” (para 4 PPTS)*

- 4.06 In terms of plan making the PPTS advice is that;

*“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 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.” (para 13 PPTS)*

4.07 For sites in rural areas and the countryside the PPTS advice is that;

*“When assessing the suitability of sites in rural or semi-rural settings, local planning authorities should ensure that the scale of such sites does not dominate the nearest settled community.” (para 14 PPTS)*

4.08 In relation to the determination of planning applications the PPTS says that;

*“Applications should be assessed and determined in accordance with the presumption in favour of sustainable development and the application of specific policies in the National Planning Policy Framework and this planning policy for traveller sites.” (para 23 PPTS)*

*“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”*

*“However, as paragraph 16 [relating to Green Belts] makes clear, subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances.” (para 24 PPTS).* I note that the mini paragraph above was added in the 2015 re-issue of PPTS

*“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.” (para 25 PPTS).* I note that the word “very” was added to this paragraph in the 2015 re-issue of PPTS.

*“If a local planning authority cannot demonstrate an up-to-date 5year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary permission. The exception to this is where the proposal is on land designated as Green Belt; sites protected under the Birds and Habitats Directives and / or sites designated as Sites of Special Scientific Interest; Local Green Space, an Area of Outstanding Natural Beauty, or within a National Park (or the Broads).” (para 27*

*PPTS*). I note that the last sentence above was added to this paragraph in the 2015 re-issue of *PPTS*.

Finally, the definition of gypsies and travellers has been amended in the re-issued *PPTS* to remove the words “or permanently” from after the word “temporarily” in the following definition;

*“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 as such.”*

The implications for this change in definition has affected the issue with regard to defining need and this matter is the subject to some very recent changes regarding the Council’s emerging Local Plan, which are referred to below.

- 4.09 The Council has responded positively and quickly to the changes in the national policy position in respect of Gypsy and Traveller accommodation. The Local Development Framework Panel quickly supported the commissioning of a new Gypsy and Traveller Accommodation Assessment (GTAA), which was completed in June 2013 and identified a need for 82 pitches to be provided during the plan period (adjusted down from 85 pitches in reflection of those sites granted permanent permission whilst the document was under preparation). This need figure was incorporated within the draft Bearing Fruits Swale Borough Local Plan: Part 1 alongside a policy introducing provision for pitches on certain major development sites. An additional net 47 permanent pitches (some with personal use conditions) had also been approved up to March 2015, reducing the outstanding need to 35 pitches over the Plan period. Further permanent permissions have since been granted. A further number of pitches enjoy temporary permissions.
- 4.10 Shortly after publication of the GTAA in 2013 the Council began work on Part 2 of the Swale Borough Local Plan which was intended to deal with site allocations for Gypsy and Traveller pitch provision only. This process began with a call for sites between September and December 2013, and the publication of an issues and options paper which was subject to public consultation (this finished on 25 April 2014). The Local Plan was subject to examination in November 2015 and the latest position on this is referred to below.

#### **Saved Policies of Swale Borough Local Plan 2008**

- 4.11 Policy E1 (General Development Control Criteria) sets out standards applicable to all development, saying that it should be well sited appropriate in scale, design and appearance with a high standard of landscaping, and have safe pedestrian and vehicular access whilst avoiding unacceptable consequences in highway terms.
- 4.12 This site lies within the countryside where policy E6 (The Countryside) seeks to protect the quality, character and amenity of the countryside, and states that development will not be permitted outside rural settlements in the interests of countryside conservation, unless related to an exceptional need for a rural location.
- 4.13 Within the countryside policy E9 (Protecting the Quality and Character of the Borough’s Landscape) gives priority to the long term protection and enhancement of the quality of the landscape, whilst having regard to the economic and social well being of their communities. Policy E9 seeks to protect the quality, character and

amenity value of the wider landscape of the Borough. Within the countryside it expects development to be informed by local landscape character and quality, consider guidelines in the Council's landscape character and assessment, safeguard distinctive landscape elements, remove detracting features and minimise adverse impacts on landscape character.

4.14 Policy E19 (Achieving High Quality Design and Distinctiveness) requires development proposals to be well designed.

4.15 Policy RC7 (Rural Lanes) seeks to protect the physical features and character of rural lanes, of which Halstow Lane is one.

4.16 Policy H4 explains the Borough Council will only grant planning permission for the use of land for the stationing of homes for persons who can clearly demonstrate that they are gypsies or travelling showpersons with a genuine connection with the locality of the proposed site, in accordance with 1 and 2 below.

1. For proposals involving the establishment of public or privately owned residential gypsy or travelling showpersons sites:

- a) there will be a proven need in the Borough for the site and for the size proposed;
- b) the site will be located close to local services and facilities;
- c) there will be no more than four caravans;
- d) the site will be located close to the primary or secondary road networks
- e) in the case of a greenfield site there is no suitable site available on previously developed land in the locality;
- f) the site is not designated for its wildlife, historic or landscape importance;
- g) the site should be served, or capable of being served, by mains water supply and a satisfactory means of sewage disposal and refuse collection;
- h) there is no conflict with pedestrian or highway safety;
- i) screening and landscaping will be provided to minimise adverse impacts;
- j) no industrial, retail, commercial, or storage activities will take place on the site.
- k) use of the site will not give rise to significant adverse impacts upon residential amenity, or agricultural or commercial use, of surrounding areas; and
- l) the land will not be in a designated flood risk area.

2. Additionally to 1, for proposals for short term stopping places:

- m) there will be a planning condition to ensure that the length of stay for each caravan will be no longer than 28 days with no return to the site within 3 months."

4.17 This policy was criticised by the 2008 Local Plan Inspector who saw it, as a criteria based rather than site allocations policy, as inconsistent with the then Circular 01/2006 - which itself has since been superseded by PPTS and its emphasis of a five year supply of sites - and the policy can only be of limited significance to this application.

#### **Swale Landscape Character and Biodiversity Appraisal SPD 2011**

4.18 This site is within the Upchurch Fruit Belt landscape character area as defined in the March 2011 Swale Landscape Character and Biodiversity Appraisal, areas which are seen as of moderate condition and sensitivity.

**Bearing Fruits 2031: 2014 Publication version of the Swale Borough Local Plan: Part 1**

- 4.19 The Council's Publication version of the draft Local Plan, entitled *Bearing Fruits 2031*, was published in December 2014 and underwent examination in November 2015. The Local Plan Inspector's relevant interim findings are set out below.
- 4.20 Policy CP 3 of the draft Local Plan aimed to provide pitches for gypsies and travellers as part of new residential developments. Policy DM10 set out criteria for assessing windfall gypsy site applications. These policies are now being significantly revised or abandoned as appropriate according to the Council's re-assessment of site need in the light of the changes to PPTS and local progress on site supply. This is discussed below.

**Site Assessment**

- 4.21 The Council's February 2014 Gypsy and Traveller Site Allocations: Issues and Options consultations document recommended a new methodology for how to assess site suitability for determining whether or not to allocate a site. Although this was primarily intended to rank potential site allocations, it was agreed by Members of the LDF Panel in June 2014 to be used as a material consideration in planning applications. Even though this is normally done in relation to the potential suitability of a fresh site a site assessment exercise has been carried out in relation to this site and it is enclosed with this statement (see coloured sheets enclosed). The assessment is a Red/Amber/Green staged approach to site suitability, with any site scoring Red in any stage not being progressed to the next stage.
- 4.22 The assessment starts with Stage 1: Availability. The applicant is in occupation of the site. Here the site scores green. This means that the site should proceed to Stage 2.
- 4.23 Stage 2: Suitability/Constraints: The site is not in a flood risk zone (assessment green); it is not within a designated landscape (green); it has no unacceptable impact on biodiversity (green); no dominating effect on settlements on its own but there are already other private gypsy sites elsewhere within the Parish that are a cause for concern to local residents, but an appeal is lodged this will indicate sustained pressure for sites here which taken together will have a significant effect on such a sparsely populated and otherwise unspoilt area (green); no adverse impacts on heritage/archaeology (green); is not known to be contaminated (green); will not be subject to unacceptable noise or disturbance (green); good access to the highway (green); and within walking distance of many facilities within both Upchurch and Lower Halstow (green). The site "scores" green in every category and is therefore considered to be a good site.
- 4.24 The arrangements for production of Part 2 of the new Local Plan included consultation upon a preferred options document in Summer 2014. The future of and need for Part 2 of the Local Plan was expected to be dependent upon the successful adoption of Part 1 of the Local Plan. It was intended that should the Local Plan Inspector find problems with Part 1 of the Local Plan, Officers were likely to suggest that all pitch provision matters be deferred to Part 2 to enable Part 2 of the Local Plan to progress independently of Part 1. The latest position on this issue is referred to below.

### **Five year supply position**

- 4.25 The PPTS has since 2012 introduced a need for Council's to maintain a rolling five year supply of sites which are in suitable locations and available immediately. This is a relatively new requirement for Council's and the Council could only start attempting to meet this requirement following the commissioning and publication of the GTAA which provided the need figure and a base date. As such, the Council put measures into place to deal with the PPTS requirements very quickly, but have only recently started down the route of trying to maintain a rolling five year supply.
- 4.26 The GTAA sets out a target of 85 pitches to be provided by the year 2031, with a suggested provision of 35 pitches in the first five years (to 2018). Three pitches were approved during the course of the GTAA's production so the final target was in fact 82 pitches. Since the publication of the GTAA and up to the end of March 2015 a total of 47 permanent pitches were approved in Swale almost exclusively without an appeal, of which 33 pitches had been implemented. Evidence presented to the recent Local Plan examination shows that at the end of March 2015 the need for pitches identified from the GTAA thus stood at 82 pitches minus the 33 permanent pitches approved and implemented, including the personal permissions granted in the interim. This reduced the need to 49 pitches. These mostly comprised extensions to, or more intensive use of, existing sites and were awaiting occupation. Since then six more wholly new permanent sites (comprising eight pitches) have been approved including two fresh pitches on a large mixed use development site at Faversham. This provision of 55 permanent pitches (47 in 2013 to 2015 plus eight (8) in 2015/2016) is a very considerable achievement and indicates the Council's positive attitude to such development in the right location. As at July 2016 monitoring shows that 41 new permanent pitches have been implemented with 13 pitches yet to have their permission implemented. Based on these figures the Council has already met two thirds of the target to 2031 and the number of pitches completed exceeds any residual requirement for the five year period. The Council is able to demonstrate a five year supply and has in fact exceeded a 10 year supply of pitches.

### **The latest position of site provision**

- 4.27 The revised PPTS (2015) has resulted in considerable uncertainty as it changed the planning definition of a traveller and gypsy, and therefore what number of required pitches need to be identified. Evidence to the recent Local Plan examination was that the Council has re-interrogated the GTAA data to determine the appropriate level of pitch provision based on the new 2015 PPTS revised definition of gypsies and travellers. The data revealed that for all but unauthorised sites some two-thirds of households surveyed for the GTAA either never travel or travel not more than once a year. Overall, only 31% of respondents travel a few times a year, and 55% never travel, meaning that in Swale the gypsy and traveller population is quite settled, slightly more so than elsewhere in the country. Many of the borough's Gypsy/Traveller population no longer meet the new PPTS definition of having a nomadic habit of life
- 4.28 Accordingly, the need for pitches in Swale has been re-evaluated, resulting in a reduced estimate of pitch need of 61 pitches over the Plan period to 2031; this being the most generous of the possible reduced pitch numbers scenarios considered. Of these, 55 have already been granted permanent planning permission meaning that the outstanding need is six (6) pitches to 2031. The Council considers that on the basis of past trends this need could easily be met from windfall proposals. Moreover it indicates that by proper engagement with the Council appropriate sites can be found in sustainable and acceptable locations in Swale (outside of the AONB or other

designated area) without an appeal, meaning that there is a high probability of being able to find an acceptable alternative site with minimal delay.

- 4.29 As a result of this analysis, the Council is suggesting through Main Modifications to its draft Local Plan (published in June 2016) that the future need be based on a figure of 61 pitches, leaving a need per year of less than one pitch and, that no formal pitch allocations will be needed. Policy DM10 has been revised to deal with these windfall applications and the element of policy CP3 on pitch allocations is to be removed from the Plan. Accordingly, a Part 2 Local Plan would not be required.
- 4.30 The Local Plan Inspector's third interim report (March 2016) fully supports the Council's proposed position regarding gypsy and traveller site provision, accepting that the remaining need for sites can be managed by windfall applications and without a Part 2 Local Plan. The Inspector also accepts that the Council should revise draft Plan policies to reflect progress on site provision whereupon the Plan will be effective and consistent with national policy. In June 2016 the Council published Main Modifications to the draft Local Plan to confirm these intentions and these are due to be considered at the resumption of the Local Plan EIP in January 2017.

## 5.0 LOCAL REPRESENTATIONS

- 5.01 Upchurch Parish Council object to the application on the following grounds:

- *"We continue to object to the ever expanding population of travellers homes in and around the village. It is felt by the nature of this application that this particular site will continue to expand."*
- *"Following our previous comments on this application. Upchurch Parish Council would like to add that the application does not appear to adhere to the Travelers site policy implemented in August 2015 which states that the applicant must prove that they are of nomadic existence."*

- 5.02 Lower Halstow Parish Council (the neighbouring Parish) object to the application on the following grounds:

- *"The site is on the narrowest part of Halstow Lane and the exit sight lines from the site are limited and further traffic using the access will increase the risk of accidents."*
- *"There has been a disproportionate increase of traveller sites to the west of the A249 compared to other parts of Swale and this puts increased pressure on local services and amenities."*
- *"Planning permission for permanent structures in this area has been refused by the Borough Council."*
- *"There is no justification given for increasing the number of caravans on this site."*
- *"The site lies in the green belt land between two villages."*

- 5.03 The Swale Footpaths Group has no objection.

- 5.04 Two letters of objection received from local residents, raising the following summarised concerns:

- The applicants run a dog breeding business from the site, with a consequent increase in vermin and noise;
- There are a number of unauthorised structures on the site;
- The proposed caravans are for the applicant's children who have never travelled for work and do not fit the definition of gypsies and travellers;

- The application for neighbouring Ridgedale Stables was refused and the Council should be consistent;
- Increased traffic and parking requirement;
- Additional caravans will “detract from current view;” and
- Loss of tranquillity.

## 6.0 CONSULTATIONS

6.01 None.

## 7.0 APPRAISAL

### Principle

- 7.01 In terms of the status of the applicants, it was considered at the time of the original application in 2008 that the family fell within the definition of gypsies/travellers as set out in circular 01/2006. I initially had concerns that the applicant’s children may not fit the description of gypsies / travellers, but on discussing the case with their agent, and receipt of further information, I am satisfied that the children are actually of an age where they would be starting to follow the family’s traditional lifestyle – they are both starting their own families, and travel for work in the traditional manner. No evidence has been provided to dispute this position.
- 7.02 As noted above the Council’s GTAA recognises that most of the additional pitch need within the Borough comes from family expansion and “hidden households” such as in this instance.
- 7.03 I note reference to the Ridgedale Stables refusal within local objections. Members should be aware that that site differs from this in that the Ridgedale caravans need to be situated close to the road in order to be out of the flood risk zone, which increases their prominence and consequent visual harm. I therefore do not consider that there are any parallels to be drawn in terms of principle of development between Ridgedale and Jack Russell due to the particular site circumstances.
- 7.04 The site is within close proximity of both Lower Halstow and Upchurch, between which offer a full range of services including primary school, GP surgery, supermarket, takeaways, bus stops, pubs, etc. Taking all of this into account I consider the principle of additional pitches / caravans to be acceptable here.

### Amenity

- 7.05 The site remains well removed from dwellings. The closest dwelling is Alqueira LaRana situated roughly 240m to the north of the extended site boundary. As such there is likely to be very little, if any, significant impact upon residential amenity over and above the current situation.
- 7.06 I note local comments in regards noise, disturbance and vermin, particularly from dogs on the site. Having visited the site on a number of occasions I have not seen any evidence of commercial dog breeding – there are a number of kennels within the site but these seem to house the applicant’s 3 dogs, which are ostensibly there for site security. Furthermore these matters are not material planning considerations and could be investigated by the Council’s environmental response team if complainants wished to pursue their concerns.



Landscape character / visual amenity

- 7.07 Whilst there is a close-boarded fence around the site perimeter the hedgerow planting within the site has established itself and towers up above the top of the fence panels. Due to surrounding land levels and roadside planting the fence is not a prominent feature of the landscape until you are almost immediately adjacent to the site, and it is the planting that is more noticeable within the landscape.
- 7.08 If this is repeated within the extended site area to the rear (which can be achieved through conditions as recommended below) I consider that the development would not be overly prominent or seriously intrusive within the context of the local landscape. The adopted Swale Landscape Character and Biodiversity Appraisal does refer to a “strong sense of enclosure” within the area, particularly from field divisions and hedgerow planting, which I consider his development would fit in with.
- 7.09 The existing planting to the front of the site provides an effective screen in views from the highway, and I do not consider a site extension or additional caravans would seriously affect this.
- 7.10 The applicant has pre-emptively erected a close-boarded fence around the new site area, and whilst this is generally not encouraged it has given me the opportunity to consider the proposal in real terms. I do not consider the additional fencing to be significantly more harmful than that around the approved site area.

Other matters

- 7.11 I note that there is currently an unauthorised caravan on the site, situated close to the site entrance. This was reported to the Council’s planning enforcement team by a number of complainants. I mentioned this to the applicant during my most recent site visit, and they were aware of the bad press this could bring to their application, but explained that the unit (which will be used as one of the new units applied for under this application) had been offered to them at a price too good to pass up and they elected to take a chance.
- 7.12 The agent has confirmed this, and comments:
- “She also advises me that there is an additional caravan at the front of the site at the present time. It is intended as one of the new caravans, and is simply stored there. It is not connected and it is not used. She had purchased it in anticipation of approval, but because of the high cost of storage elsewhere felt it necessary to bring it onto the land. Whilst I appreciate this is not ideal, you will know that the application has taken a lengthy time to determine, and she felt pressured by the circumstances. No disregard for the decision process has been intended.”*
- 7.13 The above notwithstanding, Members must be clear that the presence of this unauthorised caravan is not a material consideration in the determination of this application, and officers would not be able to defend an appeal if permission were refused for this reason as the proposal is otherwise considered to be acceptable.
- 7.14 I do not consider that the development would give rise to any significant additional vehicle movements to the extent that permission could be refused on highway safety and amenity grounds. The existing access serves the site well and provides sightlines in both directions.

7.15 I note the two Parish Council's objections in regards the number of gypsy and traveller sites within their areas, but reiterate that the caravans here would provide accommodation for people already living on the site. This application therefore would not result in an additional site, or introduce more people into the area (to make use of local services).

## 8.0 CONCLUSION

8.01 The application proposes an extension to an existing permanent gypsy / traveller site to provide two additional pitches for the applicant's children, who now require their own accommodation. The Council's GTAA recognises such circumstances as the main driver behind the need for additional pitches within the Borough, and the proposal is supported by local and national policy.

8.02 I have considered local objections but, on balance, consider this to be an acceptable scheme that would not give rise to any significant or serious impacts. I therefore recommend that planning permission should be granted.

## 9.0 RECOMMENDATION – GRANT Subject to the following conditions

- (1) The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which the permission is granted.

Reason: In pursuance of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- (2) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1 to the DCLG Planning Policy for Traveller Sites.

Reasons: In recognition of the terms of the application, and because an uncontrolled use of the land would be unacceptably detrimental to the character and amenities of the area.

- (3) No more than five mobile homes and three touring caravans shall be stationed on the site at any one time, laid out in accordance with drawing JRP 2 A, received 10 December 2015.

Reasons: In recognition of the terms of the application, and because an uncontrolled use of the land would be unacceptably detrimental to the character and amenities of the area.

- (4) The site shall only be used for residential purposes and it shall not be used for any business, industrial or commercial use. In this regard no open storage of plant, products or waste may take place on the land, no vehicle over 3.5 tonnes and no more than one 3.5 tonne vehicle shall be stationed, parked or stored on the land.

Reasons: In recognition of the terms of the application, and because an uncontrolled use of the land would be unacceptably detrimental to the character and amenities of the area.

- (5) No floodlighting, security lighting or other external lighting shall be installed or operated at the site, other than in accordance with details that have first been submitted to and agreed in writing by the Local Planning Authority.

Reasons: To minimise light pollution.

- (6) The access details shown on the approved plans shall be maintained in accordance with these details.

Reasons: In the interest of highway safety and convenience.

- (7) The use hereby permitted shall cease and any caravans, shed, other structures, hard standings, fences, materials and equipment on the site and connected with the use, together with all ancillary vehicles and equipment, shall be removed within 28 days of any one of the following requirements not being met:

- (i) within 3 months of the date of this decision there shall have been submitted for the approval of the Local Planning Authority a landscaping scheme comprising full details of both hard and soft landscape works. These details shall include existing trees, shrubs and other features, planting schedules of plants, noting species, plant sizes and numbers where appropriate, means of enclosure, hard surfacing materials, and an implementation programme.
- (ii) within 11 months of the date of this decision the landscaping scheme shall have been approved by the Local Planning Authority or, if the Local Planning Authority fail to approve such a scheme, or fail to give a decision within the prescribed period an appeal shall have been lodged and accepted as validly made, by the Secretary of State.
- (iii) if an appeal is made in pursuance of requirement (ii) above, that appeal shall have been finally determined and the submitted landscaping scheme shall have been approved by the Secretary of State.
- (iv) all works comprised in the landscaping scheme as approved shall have been implemented, and completed within the timetable set out in the approved scheme.

Reasons: In the interest of visual amenity.

- (8) Upon completion of the approved landscaping scheme, any trees or shrubs that are removed, dying, being severely damaged or becoming seriously diseased within five years of planting shall be replaced with trees or shrubs of such size and species as may be agreed in writing with the Local Planning Authority, and within whatever planting season is agreed.

Reasons: In the interest of visual amenity.

**The Council's approach to this application:**

In accordance with paragraphs 186 and 187 of the National Planning Policy Framework (NPPF), the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and proactive manner by:

Where possible, suggesting solutions to secure a successful outcome.  
As appropriate, updating applicants/agents of any issues that may arise in the processing of their application.

In this instance the application was acceptable as submitted and no further assistance was required.

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.

APPENDIX A – pages 106, 107 & 108

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**PLANNING COMMITTEE – 10 NOVEMBER 2016**

**PART 3**

Report of the Head of Planning

**PART 3**

Applications for which **REFUSAL** is recommended

<b>3.1 REFERENCE NO - 16/505118/OUT</b>		
<b>APPLICATION PROPOSAL</b>		
Outline Application with access being sought for mixed-Use development comprising up to 77 residential dwellings with associated commercial (B1) and retail (A1) units, hard and soft landscaping, and associated infrastructure.		
<b>ADDRESS</b> Land North Of Canterbury Road Dunkirk Kent		
<b>RECOMMENDATION</b> Refuse subject to the expiration of the consultation period for the adjacent landowner (8 <sup>th</sup> November 2016) and the further views of KCC Highways and Transportation.		
<b>SUMMARY OF REASONS REASON FOR REFUSAL</b>		
The proposed development falls outside of the built-up area boundary and is not identified as one of this Council's preferred housing allocations within the emerging Local Plan. The emerging Local Plan can now be given significant weight owing to its advanced stages in the examination process. The social and economic benefits of the proposal have little weight within this policy context and moreover, there would be significant and demonstrable harm to the character and amenity value of the countryside and harm to the landscape which is designated as a Special Landscape Area within the adopted Local Plan and an Area of High Landscape Value in the emerging Local Plan. This harm would outweigh the benefits of the proposal and as such, the proposal would not constitute sustainable development.		
<b>REASON FOR REFERRAL TO COMMITTEE</b>		
Request made by Cllrs Bowles (Leader) for the application to be reported to the Planning Committee for their consideration.		
<b>WARD</b> Boughton And Courtenay	<b>PARISH/TOWN</b> Dunkirk	<b>COUNCIL</b>
		<b>APPLICANT</b> Quinn Estates Limited <b>AGENT</b> Montagu Evans
<b>DECISION DUE DATE</b> 23/09/16	<b>PUBLICITY EXPIRY DATE</b> 02/11/16	<b>OFFICER SITE VISIT DATE</b> 13.10.16
<b>RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):</b>		
SW/98/0189 – erection of poly tunnels – approved SW/00/0080 - Outline Application for residential development of four dwellings with garages – refused SW/00/0698 - Outline application for four dwellings with garages - refused SW/01/0845 - Renewal of temporary planning permission SW/98/0189 for erection of polytunnels – approved SW/01/0066 - Erection of 2 greenhouses – approved		

## MAIN REPORT

### 1.0 DESCRIPTION OF SITE

- 1.01 The site lies on the edge of Dunkirk village within the eastern part of the Borough. Dunkirk village is small with approximately 110 houses set out in a linear pattern which follows Canterbury Road and Courtenay Road and is rural in character. It comprises of mainly detached and semi-detached houses and bungalows, a former school building (recently closed), a farm shop, public house, a caravan park, two plant nurseries and, village hall. There are also some commercial/industrial buildings/land to the east of the site. Dunkirk village lies to the west (approx. 1km) of Boughton under Blean. This neighbouring village is identified as a Local Service Centre within the adopted Local Plan (Rural Local Service Centre in the Emerging Local Plan) and is a larger settlement than Dunkirk with amenities such as a convenience shop, post office, comparison retail units, restaurants, public house, medical centre (although it is reported that this closed on 30<sup>th</sup> September 2016), village hall (with library) and primary school. There are bus stops within Dunkirk along Canterbury Road with services to Canterbury and Faversham. The site is approximately 5 miles from Faversham and 5 miles from Canterbury.
- 1.02 The site is bounded to the west by the rear gardens of detached and semi-detached houses. Further to the west, beyond the houses, is the Scheduled Monument site of Dunkirk Radar Tower which is also a grade II listed building. Blean Woods Nature Reserve (National Nature Reserve) which is also a Site of Special Scientific Interest (SSSI) lies to the northeast. The northeast corner of these woods (approx. 1 mile from the application site) is designated as a Special Area of Conservation (SAC). This is ancient semi-natural woodland managed by the RSPB with public access. There are pathways through the woods which can be accessed from various different points. Notably, there is an access point 215m to the east of the proposed access to the application site. The closest designated car park for recreational access to the woods is some 2.5 miles to the east. The eastern boundary of the application site lies approximately 50m from the edge of the ancient woods at its closest. The north of the site is bounded by horse paddocks. Residential properties lie immediately to the east of the site fronting Canterbury Road. A car/motorhome sales garage, Dunkirk Industrial Park and Agrii – suppliers of agricultural equipment and services also lie to the east of the site with access from Canterbury Road. Larger parcels of agricultural land lie to the south on the other side of Canterbury Road and the Boughton Bypass.
- 1.03 The application site is identified as a Special Landscape Area under the adopted Local Plan and an Area of High Landscape Value (Kent level) under the Emerging Local Plan. Blean Woods is identified as an Area of High Landscape Value (Swale level) under the Emerging Local Plan and as a Special Landscape Area under the adopted Local Plan. Canterbury Road is identified as a Rural Lane under the adopted Local Plan.
- 1.04 The application site area totals 3.3ha (or 8.2 acres). It has an irregular shape which can be described as a smaller rectangle fronting Canterbury Road and a larger rectangle forming the rear section of the site. There is a small extended narrow point at the northeast corner of the site that adjoins Blean Woods Natural Reserve (necessary for drainage from a proposed attenuation pond). The front part of the application site is currently used informally (and without consent) for the parking of HGVs. There are some piles of waste material scattered around and a small patch of fruit growing adjacent to a 19m x 6m greenhouse. The remaining land (the larger of the two rectangles) within the application site is overgrown, rough grassland with



some evidence of cauliflower growing. Some hedgerows exist along the southern and eastern boundaries.

- 1.05 The land is largely flat with a gentle slope down from west to east so that there is a difference of 3.5m (in height above Ordnance Datum, AOD level) between the western and eastern boundaries. A water main easement runs along the western boundary of the site.
- 1.06 The site is 2.5 miles to the south of The Swale Special Protection Area (SPA) Ramsar site and SSSI.

**2.0 PROPOSAL**

- 2.01 The application seeks outline planning permission for the residential development of the site with some business use (B1 Use Class) measuring 278sqm and retail (village shop) requiring 167sqm. The applicant suggests that the site could accommodate 77 dwellings. The only detailed matter to be considered at this stage is the access to the site. This access is shown to be taken from Canterbury Road.
- 2.02 The indicative plans show that the business and retail uses would be located towards the front of the site, within the southeast corner. Two units are shown on the plans in one building of 13m x 23m. Parking would be provided to service these units. The remainder of the site would be for the housing with a mixture of terraced, semi-detached and detached dwellings. Each house is shown to be provided with off-street parking and medium to large sized gardens. The application form suggests a total of 157 car parking spaces would be provided, though layout including car parking is a reserved matter. The houses and commercial buildings are shown to be of a traditional design. An attenuation pond would be provided within the northeast corner of the site and a pumping station would be located on the eastern boundary. The access would continue into a main service road (looks to be to adoptable standard) but would then narrow and splinter off into smaller streets serving the residential properties.
- 2.03 Additional soft landscaping is shown to be provided in the form of trees and shrubs placed at strategic points within the site and along the boundaries. A small play area is shown adjacent to the eastern boundary. The water mains easement is incorporated into the indicative landscaping scheme.
- 2.04 The applicant has offered to provide 40% of the dwellings as affordable housing, equating to 31 affordable dwellings based on a total of 77.

**3.0 SUMMARY INFORMATION**

	<b>Proposed</b>
Site Area (ha)	3.3ha
Resi ridge height	min 8m/max 11m
Resi storeys	Max 2
Parking Spaces	Not set
No. of Residential Units	77 (not set)
No. of Affordable Units	40%
Density	28 dph (not set)

#### 4.0 PLANNING CONSTRAINTS

- 4.01 Potential Archaeological Importance
- 4.02 Dunkirk Airfield
- 4.03 Adjacent Site Of Special Scientific Interest Church Woods, Blean

#### 5.0 POLICY AND OTHER CONSIDERATIONS

- 5.01 The National Planning Policy Framework (NPPF): paras 7 (three dimensions of sustainable development), 8, 11 (presumption in favour of sustainable development), 12, 14, 17 (core planning principles), 19 (economy), 28 (rural economy), 32 (sustainable transport), 34, 47 (delivering a wide choice of high quality homes), 49, 50, 55, 56 (good design), 58, 69 (healthy communities), 70, 73, 75, 109 (conserving and enhancing the natural environment); 112 (agricultural land); 118, 119, 120, 121, 123, 125, 129 (heritage assets), 131, 159 (housing), 162 (infrastructure), 185 (neighbourhood plans), 186 (decision taking), 187, 196 (determining applications); 197, 204 (planning obligations) & 216 (weight to emerging policies).
- 5.02 National Planning Policy Guidance (NPPG): Design; Natural environment; Housing and Economic Development needs assessment; Noise; Planning Obligations; Use of planning conditions; transport assessments and statements in decision taking; Water supply, waste water and water quality land affected by contamination; light pollution; natural environment; neighbourhood planning; rural housing.

#### Development Plan:

- 5.03 The Swale Borough Local Plan Adopted 2008, saved policies SP1 (sustainable development), SP2 (environment), SP3 (economy), SP4 (housing), SP5 (rural communities), SP6 (transport and utilities), SP7 (community services and facilities), FAV1 (the Faversham and the rest of Swale planning area), SH1 (settlement hierarchy), E1 (general development criteria), E6 (countryside), E9 (landscape), E10 (trees and hedges), E11 (biodiversity and geological interests), E12 (designated biodiversity and geological conservation sites), E16 (scheduled ancient monuments), B2 (new employment), B4 (new retail), H2 (new housing), H3 (affordable housing), RC1 (rural economy), RC2 (rural services and facilities), RC3 (rural housing needs), RC7 (rural lanes), T1 (safe access), T4 (cyclists and pedestrians) & C3 (open space on new housing developments).
- 5.04 The emerging Swale Borough Local Plan "Bearing Fruits" – ST1 (sustainable development), ST2 (targets for homes and jobs), ST3 (settlement strategy), ST4 (meeting local plan development targets), ST7 (Faversham and Kent Downs strategy), CP2 sustainable transport), CP3 (high quality homes), CP4 (good design), CP5 (health and wellbeing), CP6 (community facilities and services to meet local needs), CP7 (natural environment), CP8 (conserving and enhancing the historic environment), DM2 (main town centre uses), DM6 (managing transport demand and impact), DM7 (vehicle parking), DM8 (affordable housing), DM9 (rural exceptions housing), DM14 (general development criteria), DM17 (open space, sports and recreation provision), DM21 (water, flooding and drainage), DM24 (valued landscapes), DM26 (rural lanes), DM28 (biodiversity and geological conservation), DM29 (woodlands, trees and hedges), DM31 (agricultural land), DM34 (Scheduled monuments) & IMP1 (implementation and delivery plan).

Supplementary Planning Documents

Swale Landscape Character and Biodiversity appraisal (2011)

Developer Contributions (2009)

**6.0 LOCAL REPRESENTATIONS**

6.01 Thirty-three representations – all of which raise objection have been received from local residents. A summary of their responses is as follows:

- Increased traffic would cause safety concerns at the access point, pollution, noise and congestion through Boughton village, particularly at school run time;
- Housing here is not needed as Swale has a 5 year housing supply. The application disregards the Local Plan;
- The primary school in Boughton is at capacity already;
- Secondary schools are also at capacity;
- Disruption to protected wildlife;
- View from house spoiled and negative impact on property values;
- Desire to keep village small;
- Proposed houses are not in keeping with the single storey dwellings currently in the village;
- The underlying soil is clay and the development would add to the instability of the ground causing possible subsidence and sinkholes. Work to stabilise Boughton Hill has already been necessary and additional traffic will cause further disruption;
- Potential increased risk of flooding;
- Negative impact on nearby Blean Woods and the wildlife;
- Commercial building would increase traffic;
- The land has always been used for agriculture and shouldn't change;
- Negative impact on water supply and foul waste system;
- The development will change the character of the village. It would effectively double the size of the village;
- There is no need for a village shop, the one in Boughton is sufficient;
- The village already has a lovely atmosphere and there is no need to improve it;
- The Neighbourhood Plan proposes suitable sites for housing in Dunkirk/Boughton and this site is not included. The number of houses proposed under this application is more than the Neighbourhood Plan proposes;
- Concerns from adjacent land owner – Timber Tasks about surface water drainage from the site onto his land. Adequate controls need to be put in place;
- Density of housing is too high;
- Light pollution;
- The affordable housing is unlikely to go to local people;
- The development is well-designed that will enhance this part of the borough and bring jobs for local people and new facilities.

6.02 The RSPB object to the proposal on the grounds that the development would have an adverse impact on the protected sites, Blean and Church Woods. They are concerned that it is not clear from the documents whether the mitigation proposed will be sufficient. The use of fencing will not mitigate the impact of domestic cats as the planning statement suggests. It is unclear whether the contribution towards the Strategic Access Management and Monitoring (SAMM) will mitigate against impact on the Special Protection Area (SPA). In 2014, the RSPB alongside advisors from NE, the Forestry Commission and Woodland Trust developed a long term vision for Blean

Woods forecasting forward to 2053. The Bossenden end of the woods is under a Tree Preservation Order and has traditionally received very little disturbance as it is far from any dense residential areas and has no car park. It was therefore decided that this should be left as a largely non intervention area of high forest for the benefit of high forest specialist species. With housing adjacent, it could become a high use zone which could disturb specialist bird species (red listed) and its value as a historically quiet, undisturbed area of woodland would be compromised. Any potential increase in visitors to the woods in general would be a concern. Potential impacts include:

- Increased disturbance from dog walkers, especially during breeding season;
- Damage to the ride and track network by cyclists and horse riders;
- Increased strain on the car park and associated track;
- Risk of increased anti-social behaviour.

They note that the consultant states that *“the woodland is not specifically designated for features likely to be particularly sensitive to recreational disturbance (such as ground nesting birds or rare woodland flora)”*. However this is not correct, as the SSSI designation lists by name several scarce bird species that nest on or close to the ground and are which are likely to be impacted by recreational disturbance. These are: nightingale, woodcock, nightjar and wood warbler (wood warbler, which is particularly prone to disturbance, is already absent from the site). Furthermore, the citation also lists a number of rare woodland plants that might be vulnerable to disturbance or destruction with greater public access. They consider that effective mitigation could potentially require the RSPB to close the Bossenden permissive pathway and then upgrade the visitor infrastructure around the car park area to include a stronger track surface, stronger footpaths, gated ‘dogs on leads’ areas and signage explaining the ecological significance of the reserve so that visitors treat the site respectfully. The developer could be required to cover the costs of this additional work. They do not consider that the applicant has provided enough information to adequately carryout an Appropriate Assessment as required by regulation 21 of the Conservation of Habitats and Species Regulations 2010.

- 6.03 An adjacent landowner to the east of the site is currently disputing the ownership of a parcel of land which is included within the application site. For the purposes of considering this application, such a dispute would only be material in respect of the notices served on persons with an interest in the land. I note that the required notice has been served on the adjacent landowner in question and as such, the application site does not need to be amended.

## 7.0 CONSULTATIONS

- 7.01 The Greenspaces Manager comments on the indicative plans and encourages usable green open space within the site and discourages ‘corridor’ green spaces around the boundaries as this leaves rear fences vulnerable. The location of the attenuation pond within the corner of the site is a missed opportunity as it has no setting and the ‘recreation’ area would be too close to the dwellings, pond and road. He requests a commuted sum for the maintenance of any open space.
- 7.02 The Head of Housing confirms that in accordance with planning policy, they require 40% affordable housing with a 70:30 split of affordable rented and shared ownership respectively. The site may be suitable for starter homes. Affordable housing should be evenly distributed across the site and should represent a mix of house types with some that are wheelchair adaptable.

- 7.03 The Economic Development Manager welcomes any additional employment space and would wish to secure a local labour agreement through the Section 106.
- 7.04 The KCC Archaeological officer notes that the site is 100m to the east of the Scheduled Monument Dunkirk Chain Radar Station but finds no historic evidence to link the application site to it. There is moderate potential for archaeology (Roman and Neolithic) on this site and he therefore recommends a condition to secure a programme of geophysical survey and trial trenching as an initial step to inform the extent of further investigation.
- 7.05 The Environmental Services Manager has no objection subject to conditions to remediate contamination if found at the site; require the submission details of the mechanical ventilation system to be installed within the houses; submission of a Code of Construction Practice and; that the recommendations set out in the MRL Acoustic Report are submitted in the form of a verification report prior to occupation of the dwellings.
- 7.06 The Environment Agency have no objection to the proposal noting that the site lies in Flood zone 1 and is on clay geology.
- 7.07 Southern Water state that the exact position of foul raising main, sewer and water main must be determined on site before the layout of the proposed development is finalised and that a diversion might be possible. They request a condition to ensure that the LPA is informed of the diversion/protection of the main. They conclude that they cannot accommodate the needs of this application without providing additional local infrastructure. The proposed development would increase flows into the wastewater sewerage system and as a result increase flooding in and around the area. There are no public water sewers in the area and alternative means of draining water from the development are required. A drainage strategy should therefore be approved by the LPA. Any use of SUDs will need to be maintained in perpetuity and managed properly.
- 7.08 Natural England (NE) has no objection to the application. They note that the site is in close proximity to European designated sites - Blean Complex Special Area of Conservation (SAC) and The Swale Special Protection Area (SPA) and Ramsar site. These sites are also identified as SSSIs at a national level. The LPA should produce a Habitats Regulations Assessment (HRA) for the proposal. NE has assumed that the LPA will adopt the applicant's findings in their ecological assessment as its HRA. The ecological assessment concludes, subject to mitigation measures, that the proposal is unlikely to have a significant effect on the internationally designated sites, either alone or in combination. On the basis of the information provided, NE concurs with this view and request a contribution towards the Thames, Medway and Swale Estuaries Strategic Management and Monitoring (SAMM) Strategy and should take measures to ensure that the dwellings covered by this planning application are not occupied until this strategic mitigation is in place. NE is satisfied that the proposed development being carried out in strict accordance with the details of the application, will not damage or destroy the interest features for which the site is notified. The SSSI does not therefore represent a constraint in determining the application. They suggest referring to their standing advice on protected species and encourage biodiversity enhancements.
- 7.09 The KCC Flood Risk Project Officer acknowledges the submitted Flood Risk Assessment/Drainage Strategy and notes how it aims to dispose of surface water in a manner that seeks to mimic the runoff from the existing site whilst providing

improvements to any existing local flood risk problems. Confirmation of the exact location of attenuation features, calculations of runoff and a maintenance strategy are expected at the reserved matters stage. The use of pumps should be avoided and all attenuation provided in open, above ground/conveyance features that can drain by gravity alone. Conditions are recommended that require the submission of a detailed sustainable surface water drainage scheme and no infiltration of surface water drainage into the ground without the consent of the LPA.

- 7.10 UK Power Networks confirm that they hold a LV overhead wire and underground cable within the application site. A quote should be obtained from them for the removal of this network should the development go ahead.
- 7.11 KCC Development Contributions team request primary and secondary education contributions at a total of £593,545. They also request contributions towards libraries at a total of £3697.22 and that 1 wheelchair adaptable home is provided on site. They also request that the development incorporates superfast fibre optic broadband.
- 7.12 Southern Gas Networks note that there is a low/medium pressure gas main near the application site. They state that there should be no mechanical excavations taking place above or within 0.5m of the low/medium pressure main or within 3m of an intermediate pressure system.
- 7.13 KCC Highways and Transportation have requested an up to date traffic survey for Canterbury Road, details of visibility splays and forward visibility at the proposed right turn lanes, vehicle tracking to show turning movements in and out of the proposed junction and an amendment to the submitted Transport Statement to address the closure of Dunkirk Primary School and amalgamation with Boughton Primary School. The applicant has submitted the requested information and we are awaiting the response from Kent Highways and Transportation. Members will be updated at the meeting.
- 7.14 Kent Police invites the applicant to consult them if the application proceeds. They note the intention to deliver the equivalent of Code 4 of the Code for Sustainable Homes and BREEAM good on the commercial space. They also draw the applicant's attention to document "Q" building regulations for doors and windows specifications. They recommend Secure by Design and recommend a condition to ensure that the development incorporates measures to minimise the risk of crime.
- 7.15 KCC Ecology consider that the 20m buffer between the housing and ancient woodland is adequate to protect the woodland and that as long as there is no direct access to the woods from the site, the mitigation measures should ensure that there is no undue recreational pressure on the woodland. They recommend conditions to control lighting, the disposal of invasive species on the site, to ensure no harm to protected species, and to ensure biodiversity enhancements. They also ask for additional information in respect of a map showing the location of the reptile receptor site detailing reptile fencing and reptile enhancements features.
- 7.16 Dunkirk Parish Council objects to the application on the following grounds:
- Dunkirk is the largest parish in Swale and is noted for being open with low density housing, all of which is surrounded by open countryside;
  - The development cannot be described as an 'infill'. The scale of the proposal would 'dwarf' the existing community;
  - The design of the development is better suited to an urban area/brownfield site. It is 'alien' to the character of the village;

- The site is outside of the built-up area boundary and is therefore unacceptable in principle. The applicant fails to meet key policies within the adopted and emerging local plan;
- The site was submitted to Boughton and Dunkirk Neighbourhood Plan and the recommendation will be not to allocate in order to preserve views of the woods. The housing needs of the village can be accommodated on other identified sites and the village does not need the type of housing proposed;
- Boughton and Dunkirk are specifically excluded from housing allocations as part of the Local Development Framework;
- It is in an unsustainable location outside acceptable walking distance of local services. Boughton Medical Centre has recently shut. The closest doctors surgeries are now either in Blean or Faversham;
- The appeal decisions provided by the applicant are not comparable to this site and the emerging local plan can now be given sufficient weight to enable a robust defence at appeal;
- Any economic gains would be small and do not equate to sustainable development as all three aspects of sustainable development – social, economic and environmental, need to be satisfied;
- Detrimental impact on the designated site at Blean Woods and the scheduled monument;
- Air, noise and light pollution will be increased by the development;
- The use of deep piling methods of construction will potentially damage the environment;
- The closest school and pre-schools are in Boughton. The footpath from the site to Boughton is in a poor state of repair and it unlit;
- The predicted traffic levels from the site seem to be unduly low. There is often congestion through Boughton and this development will exacerbate the situation;
- Boughton primary school is oversubscribed and residents will have to travel outside of the area for their children to attend school, most likely Faversham, exacerbating the congestion through Boughton;
- Demand for the small business unit is questioned;
- The development will have a harmful effect on wildlife and protected species. The landscaping and pond will not adequately compensate for this impact;
- The development will increase recreational use of Blean Woods to its detriment;
- The development will have a 'substantial' negative impact on the SSSI, Nature Reserve, Area of High Landscape Value and Special Area of Conservation;
- The development will result in overshadowing/loss of outlook to the detriment of residential amenity for the properties along Courtenay Road;
- The local community do not support the application, despite the conclusions set out in the Statement of Community Involvement;
- The development would 'blight the countryside';
- The Swale Rural Sustainability Study (December 2011) identifies Dunkirk as having no capacity for residential development due to extremely limited facilities and services and the linear form of settlement and surrounding countryside would be adversely affected;
- The indicative plans do not seem to provide enough parking spaces for residents;
- The details of water, gas and electricity supply should be finalised at this stage of the development process;
- The attenuation pond would not be sufficient to protect the adjacent ancient woodland;
- The proposal to provide powered ventilation to the properties to address noise issues is difficult to understand;
- Questions the safety of the visibility splays;

- This is not sustainable development.

They also note that there are inaccuracies in the application documents.

- 7.17 Boughton under Blean Parish Council objects to the proposal. They fully support the objections made by Dunkirk Parish Council and highlight the concern regarding an increase in traffic through their village. They also express concern about the oversubscription of the primary school at Boughton and note that there would be more congestion caused by parents needing to travel to schools further away. They are concerned about the supply of utilities to the area and note that there is already disruption on a frequent basis. They acknowledge that there may be a requirement for some housing in the area but consider the proposal to be of a scale that would be unacceptable development in the Countryside.

## 8.0 BACKGROUND PAPERS AND PLANS

- 8.01 The applicant has submitted the following documents to support their application:

Design and Access Statement; Transport Statement; Report on Landscape and Visual Matters; Phase One Environmental Desktop Study; Flood Risk Assessment; Ecological Statement; Preliminary Services Appraisal; Noise Impact Assessment; Economic Benefits Statement; Archaeological Desk-based Assessment and a Statement of Community Involvement.

- 8.02 The applicant has submitted a new site location plan very slightly realigning the narrow point at the northeast corner of the site. This is to better accommodate the drainage from the SUDs pond. The adjacent landowner has been consulted.

## 9.0 APPRAISAL

### Principle of Development

#### Planning Policy and the Housing Land supply position

- 9.01 For the purposes of the development plan, the site is located outside of the built confines of Dunkirk and falls to be considered as within the countryside. Policy E6 of the adopted local plan seeks to protect the quality, character and amenity of the countryside. Policy SP4 seeks to provide sufficient land for housing need, and policies SH1 and H5 of the adopted local plan seek to concentrate this in the Thames Gateway Planning Area, with limited development to meet local needs in the Faversham and rest of Swale area. Policy H2 of the adopted plan states that permission for new residential development will be granted for sites that are allocated or within defined built-up areas. Outside of these, new residential development will only be granted for certain limited exceptions.
- 9.02 The application site being outside of the built-up area boundary would be contrary to the above policies and not in accordance with the development plan.
- 9.03 The NPPF was published in 2012 and is a material consideration in the determination of planning applications. It sets out a presumption in favour of sustainable development. Paragraph 7 identifies three strands to sustainable development, an economic role (supporting the economy and growth), a social role (providing strong, healthy, accessible communities), and an environmental role (contributing to protecting our natural, built and historic environment). Paragraph 14 sets out that, for the purposes of decision taking, this means where the development plan is absent,



silent or relevant policies are out of date, permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits.

- 9.04 Paragraph 47 of the NPPF seeks to significantly boost housing supply, and requires LPA's to meet full objectively assessed needs for housing in their area, and to identify and update a supply of deliverable sites to provide a five year housing supply. Paragraph 49 of the NPPF sets out that policies for the supply of housing should be considered out of date if the LPA cannot demonstrate a 5 year supply.
- 9.05 Based on current Objectively Assessed Needs (OAN) for housing within the Borough, the Council cannot currently demonstrate a 5 year housing supply. Given that the Council cannot demonstrate an existing 5 year housing supply, and the above policies for housing delivery pre-date the OAN, they must be considered as out of date.
- 9.06 The emerging local plan has been through an Examination in Public, and following the Inspector's findings, the Council has sought to significantly boost its housing allocations to meet objectively assessed housing needs. A further examination will take place early next year with the Council seeking to demonstrate that it can meet its full identified housing needs and a 5 year supply. A number of policies within the emerging plan seek to deliver housing development in order to meet the OAN for housing in the Borough. These policies are ST1 (sustainable development including delivery of homes to meet OAN), ST2 (delivery targets), ST3 (Swale settlement strategy), ST4 (site allocations to meet OAN), and ST7 (Faversham area strategy to provide housing at allocations or other appropriate locations where the role and character of Faversham and rural communities can be maintained / enhanced).
- 9.07 The background evidence base on housing allocations has been endorsed by the Local Plan Inspector in her Interim findings as a sound basis for the council to deliver additional sites to meet OAN. On this basis, there is a high likelihood that the additional site options that will form the basis for discussion when the Examination in Public is re-opened, will be acceptable to the Inspector given the soundness of this evidence base.
- 9.08 It is the Council's intention to publish its five-year supply of deliverable sites prior to the Local Plan Examination's resumption and this should be available at the end of November 2016. The Council will show, at that point, a five-year supply which will be subject to Examination by the Local Plan Inspector in January 2017. Whilst a five-year supply cannot be currently demonstrated, it is the progress towards and prospects of achieving that supply within a reasonable timeframe that is an important consideration and one which has been upheld on Appeal. (Norton Ash decision).
- 9.09 Paragraph 216 of the NPPF sets out that decision makers may give weight to emerging plans, depending on the stage of preparation of the plan (the more advanced, the greater the weight), the extent to which there are unresolved objections, and the degree of consistency of relevant policies to policies in the NPPF. Given the endorsements made by the Local Plan Inspector and despite outstanding objections to the new allocations proposed in the plan, I am of the opinion that the soundness of the evidence base means that material weight can be given to the emerging plan and demonstration of a five year housing supply, to be published in the near future.
- 9.10 When considering the NPPF test as to whether this application constitutes sustainable development and whether any harm arising from the proposal would significantly

outweigh the benefits, the position of the emerging plan as set out above, should be taken into account.

Is the proposal sustainable development?

- 9.11 Within the Emerging Local Plan, Dunkirk is a fifth-tier settlement and is therefore ranked at the bottom in terms of where this Council wishes to direct new homes and jobs. As such when tackling the housing need in the Borough on a strategic level, this Council has identified sites that would be far more sustainable i.e. those adjacent to the towns of Sittingbourne and Faversham and other much larger settlements. We are able to demonstrate through the housing allocations identified in the emerging local plan that there are many more sites within the borough that can meet the housing need in a sustainable way. The application site is therefore not necessary to meet the housing needs of this borough. Developing the application site for housing would be at odds with the strategic and sustainable approach to delivering housing that this Council has shown it can achieve through the emerging local plan (to be given significant weight). I therefore consider that the development would be unsustainable in this respect.
- 9.12 On a local level, it is my view that this development would not constitute sustainable development. Economically, the proposal would offer some benefit in terms of a small amount of job creation and a boost to the local economy by introducing additional residents to the area who will hopefully support local businesses. However, I am not convinced that this economic benefit would be so great as to outweigh the harm that I identify below in terms of harm to the environment. The applicant also highlights benefits to the economy in respect of the New Homes Bonus, job creation during construction, and council tax. However, it is arguable that these particular benefits to the economy could equally be matched by other more strategically sustainable sites.
- 9.13 The applicant has submitted a letter from an independent estate agent commenting on the viability of the commercial units and this sets out a good case. In addition, the applicant provides a Heads of Terms for the purchaser of the business unit and a letter of intent from the potential retailer. Mixed-use development such as this is inherently more sustainable than just purely residential because of a reduced need to travel by car. However, in this case, the benefits of one small shop and one business unit on site would have only a limited impact on reducing car usage and does not therefore outweigh the harm identified below. There are already a number of commercial units close to the application site. I question the need for one more business unit which would be likely to demand a higher rent than the established units. I also attach less weight to the economic benefits of the development given our strong position on the 5 year supply of housing as set out above.
- 9.14 In terms of the social aspect of sustainable development, the potential provision of much needed housing is of course a positive impact as well as the fact that 40% of these houses would be 'affordable'. However, as discussed above, the emerging local plan demonstrates that the housing needs of this borough can be met in locations that are far more sustainable than the application site. Dunkirk and Boughton under Blean Parish Councils are currently in the early stages of producing a Neighbourhood Plan within which the housings need of the villages have been identified. Despite being in its early stages, the Parish Councils have identified other sites within their parishes for housing and have ruled out the application site. The implication being that even at a local level, better, more sustainable, sites for housing can be identified. Members should though only attach very limited weight to this owing to the very early stages of the Neighbourhood Plan process.



- 9.15 The application site would be located in the settlement that has very limited amenities and use of the car is highly probable in order to access necessary services and facilities such as a doctor's surgery, primary and secondary schools. I acknowledge that there is a fairly frequent bus service to Canterbury and Faversham with a bus stop very close to the site. However, whilst it might make the site slightly more sustainable from a transport point of view, it does not mean that the application site is sustainably located.
- 9.16 In terms of the environmental aspect of sustainable development, I note the intention of the applicant to build houses to the equivalent of code level 4 of the Code for Sustainable Homes and the commercial units to BREEAM 'Good'. However, the proposal would cause significant and demonstrable harm to the environment for the reasons set out below. I therefore consider that the proposal does not constitute sustainable development.

### **Rural character and appearance/impact on Special Landscape Area**

- 9.17 Policy E9 of the adopted Local Plan identifies the site as a Special Landscape Area. The applicant attempts to argue that this policy is 'out-of-date' as it relates to the supply of housing/precludes development. This argument is not accepted as the policy does not relate to the supply of housing but instead seeks to protect the special quality, character and amenity value of the particular landscape. Policy E9 can therefore be given significant weight. Within North Kent Marshes Special Landscape Areas (SLAs), the priority is the long-term protection and enhancement of the quality of the landscape of these county assets, whilst having regard to the economic and social wellbeing of their communities. Policy E9 goes on to state:

*"Within the countryside and rural settlements, the Borough Council will expect development proposals to:*

- *be informed by and sympathetic to local landscape character and quality;*
- *consider the guidelines contained in the Council's Landscape Character Assessment and Guidelines Supplementary Planning Document, so as to contribute to the restoration, creation, reinforcement and conservation, as appropriate, of the landscape likely to be affected;*
- *safeguard or enhance landscape elements that contribute to the distinctiveness of the locality or the Borough;*
- *remove features which detract from the character of the landscape; and*
- *minimise the adverse impacts of development upon landscape character."*

- 9.18 Policy DM24 of the Emerging LP identifies the site as an Areas of High Landscape Value (Kent and Swale Level). These areas are designated as being of significance to Kent or Swale respectively, where planning permission will be granted subject to the: conservation and enhancement of the landscape being demonstrated; avoidance, minimisation and mitigation of adverse landscape impacts as appropriate and, when significant adverse impacts remain, that the social and or economic benefits of the proposal significantly and demonstrably outweigh harm to the Kent or Swale level landscape value of the designation concerned.
- 9.19 This particular landscape is identified within the Swale Landscape Character and Biodiversity appraisal (2011) (SPD) as falling within the "Woodland Landscape Types" category and the Blean Wood West character area. The landscape is described as follows:

*“Deciduous woodlands are dominant on the higher ground and these include many areas of managed hornbeam and chestnut coppice....The domed high ground is dominated by ancient woodland...*

*This remains one of the most extensive semi-natural woodlands in the south east of England contained many varied habitats of national and international importance reflected in their designations. However, significant areas have been cleared to make way for horse related activities, grazing livestock and dairy farming....*

*This is an area largely enclosed by topography and woodland but views are present from the higher domed open grazing land...*

*The A2 divides the area north-south and immediately north of this major trunk road lays the main settlement of Dunkirk. This is a linear village located on the high grounds east of Boughton under Blean. Many of the residential dwellings of Dunkirk are of mixed vernacular character. Otherwise the area possesses a sense of remoteness, accessible only by quiet lanes. Settlement is limited to isolated farms and cottages, many dating back from 1800s are, built in brick and of a vernacular style.*

*At Dunkirk there are a number of structures that were part of a chain of radar stations that played an important roll in the Battle of Britain. These are Scheduled Ancient Monuments.”*

9.20 The SPD concludes that the Western Blean woodland character should be “conserved and reinforced”. Importantly, it recommends conserving the woodland fringe which provides the unique interface between open and wooded area and conserve the largely undeveloped and heavily wooded character of the landscape which forms part of the wider Blean Woods complex.

9.21 The submitted Landscape Assessment notes that there are limited views of the site from middle to longer distances. It suggests that although the development would lead to the loss of open space, this would be counterbalanced by a range of positive effects associated with the proposal including improvements to biodiversity and habitats on the site and managed planting. The applicant has also commissioned a landscape-led design to demonstrate that the housing would sit well within the landscape. The Landscape Assessment concludes that:

*“It is considered that the above changes to the site will result in a ‘medium’ adverse magnitude of change...to the landscape patterns within the site and immediate area. As a consequence of the Site’s very limited visibility and contribution to the surrounding area, it is considered that the proposed development is likely to have minimal landscape and visual effects on the locality (and wider surrounding area) as the Site is not prominent and its contribution to the wider rural landscape is limited.”*

9.22 Despite the conclusions of the Landscape Assessment, the proposed development would be visible from Canterbury Road, Courtenay Road and from Blean Woods. There is no doubt, in my view, that the presence of buildings on this site will have a significant impact on the character of the landscape. The proposal would represent a substantial extension of the existing village envelope representing an incursion into open countryside. It would interrupt views towards Blean Woods from Courtenay Road in a way that would be significantly harmful to the character and visual amenities of the area. The scale of the development and the likely layout of houses would be at odds with the existing linear pattern of well-spaced houses within Dunkirk village. The application site creates a buffer that is open and rural in character between the

houses along Courtenay Road and Blean Woods. This relationship is important as Blean Woods adds significantly to the special character of the landscape. There would be some view of the application site from Blean Woods. The proposed development would lead to a deterioration of the special setting of Blean Woods and the isolated/remote nature of Dunkirk village in my view.

- 9.23 The proposal would introduce landscape screening to the adjacent industrial use which would be of benefit to the visual amenities of the area and the character of the landscape to a certain extent. I also acknowledge that the development would provide soft landscaping to limit its visual presence in the long-term. However, I do not consider that this soft landscape would go far enough to reduce the harm that I have identified to the Special Landscape Area. In addition, I note that the Greenspaces Manager is critical of the submitted indicative landscaping plan and as such, very limited weight should be given to it as it would be likely to be subject to significant change.

### Ecology/biodiversity

- 9.24 Natural England are satisfied that the development would have no adverse effect on The Swale Special Protection Area, Blean Complex Special Area of Conservation and SSSIs having regard to the following measures that the scheme would incorporate:

- tree protection fencing;
- secure boundary along woodland edge to deter access;
- additional native planting (incorporating thorny species) along woodland edge forming a buffer to the woodland and;
- contribution towards the Thames, Medway and Swale Estuaries Strategic Management and Monitoring (SAMM) Strategy.

- 9.25 I note that the RSPB have raised an objection and are concerned about increased recreational use of the woods as a consequence of this proposal. I also note the comments from the Parish Council in respect of deep piling. However, I am mindful of comments from Natural England who accept the mitigation measures proposed by the applicant. The applicant notes that there would also be a 20m wide buffer between the woods and the housing as a way of minimising disturbance during construction as well as once the houses are built. However, the RSPB consider that there would be harm to the woods on a local level and suggest that the applicant could contribute to appropriate mitigation which would involve works to the trackways through the woods (as detailed in their comments above). I am awaiting a response to this suggestion from the applicant and will update Members at the meeting.

- 9.26 With regards to the potential impact on wildlife within the site, the applicant has submitted an Ecology Appraisal which details surveys that have taken place on the site and identifies measures to minimise the impact on protected species and wildlife in general. This includes the translocation of reptiles from the site to a suitable open space which is likely to be within the western part of the site. KCC Ecology accept the mitigation measures proposed but have asked for additional information in respect of a map showing the location of the reptile receptor site detailing reptile fencing and reptile enhancements features. The applicant is providing this and I will update Members at the meeting. However, I do not anticipate any matters that could not be adequately addressed through appropriate conditions.

- 9.27 Article 4(4) of the Birds Directive (2009/147/EC) requires *Member States to take appropriate steps to avoid pollution or deterioration of habitats or any disturbances*

*affecting the birds, in so far as these would be significant having regard to the objectives of this Article.* An Appropriate assessment is appended.

### **Residential Amenity**

- 9.28 The proposal is in outline form only and so the impact on existing local residents in terms of overlooking and overshadowing cannot be considered at this stage. In terms of noise from the residential use of the site, I do not consider that there would be any harmful increase in this respect.
- 9.29 It is anticipated that noise from the proposed commercial units could be adequately controlled with the use of appropriate conditions and through their design to ensure that there would be no undue impact on future residents of the development and/or the residential properties directly adjacent to the eastern boundary of the site.
- 9.30 The proposed dwellings would experience some noise impact from the road and a 'significant adverse' impact from the industrial units. However, the applicant has proposed mitigation in the form of double glazing to all living, dining and bedroom windows within dwellings throughout the development, with upgraded double glazing (no trickle vents) to habitable rooms that face the industrial park. Only specially designed trickle vents should be allowed to living and bedroom windows within the south, east and west facing elevations and located within 100m of Canterbury Road. In addition, 2m high acoustic fencing to properties adjacent to the industrial park. Since opening windows would reduce insulation of the buildings, mechanical ventilation is proposed to all rooms with windows facing the industrial units. The Environmental Services Manager has reviewed the submitted noise assessment and is satisfied that these mitigation measures will ensure there is no material harm to future residents of the development.

### **Highways**

- 9.31 I am awaiting comments from KCC Highways and Transportation on the additional highways information submitted by the applicant and will update Members at the meeting. It is anticipated that these comments will consider the safety and amenity of the new access onto Canterbury Road. A section 278 agreement will be required to make changes/improvements to the highways network close to the proposed access to the site.
- 9.32 Whilst it is acknowledged that this development would increase the number of vehicles using local roads, it is not considered that this would cause material harm to highway safety or amenity. I acknowledge that there is often congestion through Boughton under Blean but there is no evidence to suggest that this development would add significantly or demonstrably to this congestion. The submitted Transport Statement concludes that the local road network has sufficient capacity to accommodate the proposed development.
- 9.33 I have considered the proposal against adopted Local Plan policy RC7 – Rural Lanes but do not consider that this proposal would have a detrimental effect on the character of this part of Canterbury Road by way of significant traffic levels or the appearance of the new access/highway improvements.
- 9.34 Members will be aware that as this application is in outline form only, details of parking arrangements and road layouts within the site will be considered under a separate reserved matters application.

### Developer contributions

9.35 The applicant has agreed to meet the various requests for developer contributions/obligations within a Section 106 agreement. These are as follows:

- primary and secondary education contributions at a total of £593,545;
- libraries at a total of £3697.22;
- 1 wheelchair adaptable home is provided on site;
- 40% affordable housing with a 70:30 split of affordable rented and shared ownership respectively;
- £223.58 per house contribution towards the Thames, Medway and Swale Estuaries Strategic Management and Monitoring (SAMM) Strategy;
- commuted sum for the maintenance of the open space (exact figure to be confirmed by Greenspaces Manager);
- Section 278 agreement for improvements to junction of Canterbury Road with London Road and provision of ghost island for right hand turn off Canterbury Road;
- Local labour agreement.

9.36 The agreement by the applicant to enter into a section 106 agreement covering the above requirements should be honoured if the application is determined at appeal.

### Other Matters

9.37 With respect of the loss of agricultural land, I have considered paragraph 112 of the NPPF and policy DM31 of the emerging Local Plan which states:

*“Development on agricultural land will only be permitted when there is an overriding need that cannot be met on land within the built-up area boundaries. Development on best and most versatile agricultural land (specifically Grades 1, 2 and 3a) will not be permitted unless:*

- *The site is allocated for development by the Local Plan; or*
- *There is no alternative site on land of a lower grade than 3a or that use of land of a lower grade would significantly and demonstrably work against the achievement of sustainable development; and*
- *The development will not result in the remainder of the agricultural holding becoming not viable or lead to likely accumulated and significant losses of high quality agricultural land.”*

9.38 The application site is shown on the Provisional Agricultural Land Classification (ALC) map as Grade 4 - which is poor quality agricultural land. The applicant has submitted evidence of soil analysis at the application site and this indicated that the land falls within Grade 3b and is not therefore classified as ‘best and most versatile’ for the purposes of applying policy DM31 and paragraph 112 of the NPPF. I also acknowledge that this site is relatively small and cut-off from other agricultural land. This would limit its potential contribution to the agricultural economy further. I therefore consider that the loss of agricultural land should not prevent its redevelopment in this case.

9.39 Archaeological desk-based study confirms (see paragraph 7.04 above) that the application site has moderate potential for archaeological finds. KCC confirm that they have no objections to this development subject to a condition to secure a programme of geophysical survey and trial trenching as an initial step to inform the extent of further investigation. In terms of the impact of this proposal on the setting



of the Scheduled Monument Dunkirk Chain Radar Station, no historic link has been identified between the two sites. The separation of the application site and Scheduled Monument by way of distance and the line of houses along Courtenay Road also reduces the impact on the setting of this designated heritage asset in my view. On this matter, I conclude that there would be no harm to the setting of the Scheduled Monument.

- 9.40 In respect of the pressure that this development would have on local schools, I note that KCC have asked for a contribution towards a new primary school and an extension to the secondary school within Faversham. This is a strategic issue that KCC and Swale Borough Council are tackling at a borough and county level. It is not therefore a matter upon which this application should fail.
- 9.41 I am content that foul and surface water drainage can be designed to meet the requirements of the relevant consultees. I note that a pumping station is proposed, the details of which would require further approval under the reserved matters application. Surface water is to be managed so that run-off from the site is minimised. This is via the attenuation pond and an existing drainage ditch. I therefore consider that there would be no harm to the adjacent woods or an increase in the likelihood of flooding by way of increased surface water run-off.
- 9.42 Despite the concerns of local residents in respect of water supply issues, Southern Water have not identified this as a potential problem. Similarly, with respect of gas and electricity supply, the various providers have not objected. I therefore consider that connection and supply of utilities to this site would be adequate.
- 9.43 The submitted phase 1 contaminated land report concludes that there is moderate potential for contamination at the site. The Head of Environmental Services accepts the findings of this report and recommends an appropriate condition to remediate contamination that may be found at the site.
- 9.44 I acknowledge the concerns of local residents and the Parish Council in terms of ground stability and note the subsidence issue locally in the past. However, there is no evidence to suggest that development of this site would worsen existing ground conditions in the area.

## **10.0 CONCLUSION**

- 10.01 This outline application seeks permission for housing and commercial development on land outside of the built-up area boundary of Dunkirk. Policies within the adopted Local Plan that relate to the supply of housing are considered to be out of date for the purposes of paragraph 14 of the NPPF. As such, there is the presumption in favour of sustainable development unless harm is identified that would significantly and demonstrably outweigh the benefits. The weight attached to the benefits of the proposal will be affected by the progress of the emerging local plan towards demonstrating a five year housing land supply. It is my strong view that this Council can now attach significant weight to the policies within the emerging local plan that relate to housing land supply due to its advanced stages in the examination process.
- 10.02 The benefits of the proposal can be identified as economic and social as discussed above. However, it is argued that these benefits can be given less weight given the status of the emerging local plan. In addition, the harm to the environment as set out above, specifically the character and amenity of the landscape, significantly and demonstrably outweighs the benefits. It is my view that this development does not constitute sustainable development and should therefore be refused.

**11.0 RECOMMENDATION** – REFUSE subject to any further consultation responses and the views of KCC Highways and Transportation ,for the following reason:

1. The proposed development would be located outside of the defined urban boundaries of Dunkirk (as established by Local Plan Policy SH1 and Emerging Local Plan Policy ST3 which place emphasis on the use of previously developed land within the defined built up areas and on sites allocated by the Local Plan) and is not proposed as an allocated housing site within the emerging local plan. The proposed development would detract from the intrinsic value, tranquillity and beauty of the countryside and the quality and character of the landscape which is designated as being within a Special Landscape Area. Given the advanced status of the emerging plan, the allocation of further sites to meet objectively assessed housing needs for the Borough, and the progress made by the Council in achieving a 5 year housing land supply as part of the local plan process, the development of this site is unnecessary and the harm it would cause, as identified above, would significantly and demonstrably outweigh the benefits of the development and would fail to result in a sustainable form of development. This would be contrary to policies SP1, SH1, E6 and E9 of the Swale Borough Local Plan Adopted 2008; policies ST1, ST3, ST7 and DM24 of the emerging Swale Borough Local Plan “Bearing Fruits 2031” (Proposed Main Modifications June 2016), and the National Planning Policy Framework.

## **APPENDIX: HABITATS REGULATIONS ASSESSMENT**

### **Context**

SPAs are protected sites classified in accordance with Article 4 of the EC Birds Directive. They are classified for rare and vulnerable birds and for regularly occurring migratory species. Article 4(4) of the Birds Directive (2009/147/EC) requires *Member States to take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article.*

For proposals likely to have a significant effect on a European site, the Conservation of Habitats and Species Regulations (2010) requires the Council to make an appropriate assessment of the implications for the site. Para. 119 of the NPPF states that *“The presumption in favour of sustainable development ... does not apply where development requiring appropriate assessment under the Birds or Habitats Directives is being considered, planned or determined.”*

Given the scales of housing development proposed around the North Kent SPAs, the North Kent Environmental Planning Group (NKEPG) commissioned a number of reports to assess the current and future levels of recreational activity on the North Kent Marshes SPAs and Ramsar sites. NKEPG comprises Canterbury, Dartford, Gravesham, Medway and Swale local authorities, together with Natural England and other stakeholders. The following evidence has been compiled:

- Bird Disturbance Study, North Kent 2010/11 (Footprint Ecology).
- What do we know about the birds and habitats of the North Kent Marshes? (Natural England Commissioned Report 2011).
- North Kent Visitor Survey Results (Footprint Ecology 2011).
- Estuary Users Survey (Medway Swale Estuary Partnerships, 2011).
- North Kent Comparative Recreation Study (Footprint Ecology 2012).
- Recent Wetland Bird Surveys results produced by the British Trust for Ornithology.
- Thames, Medway and Swale Estuaries – Strategic Access Management and Monitoring Strategy (Footprint Ecology 2014).

In July 2012, an overarching report summarised the evidence to enable the findings to be used in the assessment of development. The report concluded (in summary):

- There have been marked declines in the numbers of birds using the three SPAs.
- Disturbance is a potential cause of the declines. The bird disturbance study provided evidence that the busiest locations support particularly low numbers of birds.
- Within the Medway, the areas that have seen the most marked declines are the area north of Gillingham, including the area around Riverside Country Park. This is one of the busiest areas in terms of recreational pressure.
- Access levels are linked to local housing, with much of the access involving frequent use by local residents.
- Bird disturbance study - dog walking accounted for 55% of all major flight observations, with a further 15% attributed to walkers without dogs along the shore.
- All activities (i.e. the volume of people) are potentially likely to contribute to additional pressure on the SPA sites. Dog walking, and in particular dog walking with dogs off leads, is currently the main cause of disturbance.
- Development within 6km of the SPAs is particularly likely to lead to increase in recreational use.

Natural England's advice to the affected local authorities is that it is likely that a significant effect will occur on the SPAs/Ramsar sites from recreational pressure arising from new housing proposals in the North Kent coastal area.

The agreed response between Natural England and the local authorities is to put in place strategic mitigation to avoid this effect – a ‘strategic solution.’ This provides strategic mitigation for the effects of recreational disturbance arising from development pressure on international sites and will normally enable residential development to proceed on basis of mitigation provided avoiding a likely significant effect.

This strategic approach is set out in the Thames, Medway and Swale Estuaries – Strategic Access Management and Monitoring Strategy (Footprint Ecology 2014). It will normally require the creation of on-site mitigation, such as the creation of open space suitable for dog walking and, secondly, via payment of a dwelling tariff for off-site impacts. The money collected from the tariff would be used by the North Kent Councils and its partners for mitigation projects such as wardening, education, diversionary projects and habitat creation. The policy context for such actions is provided by policies CP7 and DM28 of the Emerging Local Plan.

### **Associated information**

The applicant’s ecological appraisal dated June 2016 contains information to assist the HRA. Importantly, it clarifies that the applicant is willing to commit to contributions towards the strategic mitigation noted above.

Natural England’s letter to SBC dated 3<sup>rd</sup> August 2016 has also been considered; in particular that they have raised no objections subject to contributions towards strategic mitigation.

### **The Assessment of Land north Canterbury Road, Dunkirk**

The application site is located 1.8km to the southwest of Blean Complex Special Area of Conservation (SAC) and 4km to the south of The Swale Special Protection Area (SPA). Therefore, there is a medium possibility that future residents of the site will access footpaths and land within these European designated areas.

Measures are to be taken to reduce the impact on the SAC and SPA and these would be built into the development. Natural England agree with the conclusions set out in the submitted Ecological Assessment, that the development is unlikely to have a significant effect on the internationally designated site either alone or in combination.

This assessment has taken into account the availability of other public footpaths close to the site and to a much lesser extent, the open space proposed within the site. Whilst these would no doubt supplement many day-to-day recreational activities, there would be some leakage to the SPA. However, the commitment of the applicant to contribute £223.58 per house to address SPA recreational disturbance towards through strategic mitigation in line with recommendations of the Thames Medway and Swale Estuaries SAMM as detailed above, will off-set some of the impacts. This mitigation will include strategies for the management of disturbance within public authorised parts of the SPA as well as to prevent public access to privately owned parts of the SPA.

### **Conclusions**

Taking the above into account, the proposals would not give rise to significant effects on the SPA/SAC. At this stage it can therefore be concluded that the proposals can be screened out for purposes of Appropriate Assessment.

**The Council's approach to this application:**

In accordance with paragraphs 186 and 187 of the National Planning Policy Framework (NPPF), the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and proactive manner by:

- o Where possible, suggesting solutions to secure a successful outcome.
- o As appropriate, updating applicants/agents of any issues that may arise in the processing of their application.

In this instance, the development gave rise to fundamental concerns, which could not be overcome.

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.

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**PLANNING COMMITTEE – 10 NOVEMBER 2016**

**PART 5**

Report of the Head of Planning

**PART 5**

Decisions by County Council and Secretary of State, reported for information

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- **Item 5.1 – Slips Cottage, Painters Forstal Road, Ospringe**

**APPEAL DISMISSED**

**Observations**

DELEGATED REFUSAL

Full support for the Council's decision.

- **Item 5.2 – Land and Buildings situated rear of Seager Road, Sheerness**

**ENFORCEMENT NOTICE APPEAL ALLOWED**

**Observations**

ENFORCEMENT APPEAL & COMMITTEE REFUSAL – against officer recommendation:

Whilst the Inspector has agreed with the Council that the development has not been built in accordance with the approved drawings, he has allowed the appeal on the basis that a) the additional height is not significantly more harmful than the approved scheme, and b) privacy / overlooking concerns can be addressed by the use of obscure glazing and tree planting within rear gardens.

- **Item 5.3 – Tickham Cottage, Tickham lane, Lynsted**

**ENFORCEMENT NOTICE APPEAL ALLOWED**

**Observations**

The Inspector has dismissed two of the appellant's legal grounds of appeal, but concluded that the works alleged including a new fence (which does require planning permission) do not require planning permission, so partially allowing the last legal ground to succeed. The decision letter also refers to a non-response from the Council to a request from the Inspector. This was due to the Inspectorate's email not being forwarded to the Planning Officer dealing with the appeal. Steps have now been taken to try to ensure that this does not happen again. I do not believe that this matter has had a significant effect upon the eventual decision.

- **Item 5.4 – 25 Preston Avenue, Faversham**

**APPEAL DISMISSED**

**Observations**

DELEGATED REFUSAL

Full support for the Council’s decision based on the so-called terracing effect, which is referred to in our established Supplementary Planning Guidance note entitled “Designing an Extension - A Guide for Householders”.

- **Item 5.5 – 6 Sheerstone, Iwade**

**APPEAL ALLOWED**

**Observations**

COMMITTEE REFUSAL – Against Officer Recommendation

Members may recall that this application was recommended for approval. The Inspector concluded that the proposed dwelling would not harm the character and appearance of the area, and allowed the appeal.





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## Appeal Decision

Site visit made on 13 September 2016

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 28 September 2016

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**Appeal Ref: APP/V2255/D/16/3154898**

**Slips Cottage, Painters Forstal Road, Ospringe, Kent ME13 0EW**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Malcolm Whale against the decision of Swale Borough Council.
  - The application Ref 16/501870/FULL, dated 3 March 2016, was refused by notice dated 27 April 2016.
  - The development proposed is the erection of rear infill and conservatory extension and rooflights, first floor extension & separate workshop extension to garage.
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### Decision

1. The appeal is dismissed.

### Main Issue

2. The main issue raised in respect of the appeal is the effect of the proposal on the character and appearance of the dwelling.

### Reasons

3. Slips Cottage is one of a pair of traditional cottages with dormer windows to both the front and the rear roof slopes. The host dwelling has previously been extended by a pitched roof single storey extension to the rear, off-set from the common boundary with the adjoining property. I observed on site that this pair of cottages are small scale and are of a local vernacular style and materials.
  4. The Council has indicated that planning permission is in place for an infill extension to enlarge the kitchen and to extend the garage. These would comprise additions to previous extensions to the rear of the host dwelling. The Council is concerned that by including a first floor roof and conservatory extension, collectively these later additions are excessive and would be disproportionate to the original dwelling.
  5. The appellant asserts that the extensions are small in scale and subservient to the original dwelling. The appellant maintains that the proposed conservatory would be small and the design, including a hipped roof and matching materials, would be in-keeping with the other extensions added to the dwelling. It is also suggested that the conservatory would not be much larger than what could be achieved under permitted development.
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6. Whilst the pitch of the roof and gable elevation of the proposed roof extension may be designed to replicate those already at the appeal property, the proposal before me would add considerable bulk to the roofscape, despite the ridge not exceeding that of the original dwelling. It would be a large projecting feature and a substantial addition that would significantly change the appearance of the host property's rear roof slope.
7. Overall, the proposed first floor roof and conservatory extensions would increase the amount of development being added to this host property. Whilst the conservatory extension would be of modest size in itself, the existing extension to the dwelling, in addition to the garage erected in close proximity to the dwelling, and approved extensions to these structures, when taken together would be a significant enlargement of this modest cottage. These cumulative additions would change the appearance of the cottage and harmfully alter its small scale nature and the simple character. This conflicts with the guidance of Supplementary Planning Document (SPD) 'Design of Extension – A Guide for Householders' which indicates that the extension of a small cottage in the countryside to create a large house will normally be resisted in order to maintain the attractive character of rural areas.
8. Despite the extensions not being readily visible from Painters Forstal Road or Hanslett's Lane and the presence of boundary trees and vegetation to the rear that screens the site to some extent, glimpsed views of the roof extension can be achieved from the adjacent countryside. Collectively the extensions would, in addition, be readily apparent to the occupiers of the adjacent property.
9. The appellant suggests that there are examples of planning permissions for extensions granted which are considered not to be in keeping with the original building characteristics but are suggested to be subservient to the original building. I have insufficient information before me to be able to determine the planning circumstances of these developments and the similarities, if any, to the proposed development. The appeal before me relates to a different site and therefore can and should be considered in its own right.
10. For these reasons, I conclude that the proposal would have a harmful effect on the character and appearance of the dwelling. The proposal conflicts with Policies E1, E19 and E24 of the Swale Borough Local Plan which seek extensions to existing buildings to respond positively by reflecting the positive characteristic and features of the site and to be of a high quality design and of a scale appropriate to the location, amongst other matters. The proposal would also be contrary to the Council's SPG that advises that in the countryside the extension of a small cottage to create a large house will normally be resisted to maintain the attractive character of rural areas.

### **Conclusions**

11. For the reasons given above, I conclude that the appeal should be dismissed.

*Nicola Davies*

INSPECTOR




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## Appeal Decisions

Inquiry held on 24, 25 and 26 May 2016

Site visits made on 23 and 26 May 2016

by **Chris Preston BA (Hons) BPI MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 7 October 2016

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### APPEAL A:

**Appeal Ref: APP/V2255/C/15/3133113**

**The land and buildings situated at the rear of Seager Road, Sheerness, Kent ME12 2BG**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Moat Homes Ltd against an enforcement notice issued by Swale Borough Council.
  - The Council's reference is PH/ENF/GEN.
  - The notice was issued on 27 July 2015.
  - The breach of planning control as alleged in the notice is: Planning permission was granted under reference SW/10/0050 for the development of 35 dwellings and for the provision of open space, landscaping, car parking, cycle storage and for a footpath link to access Marine Parade. The development has, however, not been carried out in accordance with the plans submitted and approved under planning permission SW/10/0050, with significant variations to the details referred to in those approved plans. In the opinion of the Council, the development does not have the benefit of planning permission.
  - The requirements of the notice are: (i) demolish the dwellings and all ancillary buildings on the land; (ii) remove all engineering operations associated with the dwellings including the roads and hardstanding on the Land; (iii) remove all supporting services and infrastructure within the Land; (iv) remove any materials or debris etc from the Land resulting from compliance with the requirements of (i)-(iii) above; and (v) restore the Land to its original condition.
  - The period for compliance with the requirements is within 6 months from the date that the notice takes effect.
  - The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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### APPEAL B:

**Appeal Ref: APP/V2255/W/15/3133112**

**The land and buildings situated at the rear of Seager Road, Sheerness, Kent ME12 2BG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Moat Housing against the decision of Swale Borough Council.
  - The application Ref 15/500955/FULL, dated 10 February 2015, was refused by notice dated 26 May 2015.
  - The development proposed was described on the application form as: Residential development to provide 35 dwellings, comprising 27 houses and 8 flats; access to Marine Parade; Open Space; Landscaping; Car Parking; Footpath link to Beckley Road and cycle storage.
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## **Decisions**

### **Appeal A**

1. The enforcement notice is corrected: by the deletion of the description of the alleged breach of planning control at section 3 and the substitution of the following description; "without planning permission, the erection of 35 dwellings, comprising 27 houses and 8 flats; access to Marine Parade; open space; car parking and cycle storage". Subject to these corrections the appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the development already carried out, namely the erection of 35 dwellings, comprising 27 houses and 8 flats; access to Marine Parade; open space; car parking and cycle storage on land at the rear of Seager Road, Sheerness, Kent ME12 2BG, referred to in the notice, subject to the conditions set out in the schedule attached to this decision.

### **Appeal B**

2. The appeal is allowed and planning permission is granted for the erection of 35 dwellings, comprising 27 houses and 8 flats; access to Marine Parade; Open Space; Landscaping; Car Parking; and cycle storage on land at the rear of Seager Road, Sheerness, Kent ME12 2BG in accordance with the terms of the application, Ref 15/500955/FULL, dated 10 February 2015, subject to the conditions set out in the schedule attached to this decision.

## **Procedural Matters**

### *The Nature and Description of the Alleged Breach*

3. The enforcement notice issued by the Council described the breach of planning control in the manner set out in the banner heading, above. That description is, to some extent, a narrative describing the planning history of the site and setting out the Council's view that the development, as built, does not benefit from planning permission by virtue of the 'significant variations' from the plans approved in relation to application SW/10/0050 (the 2011 permission).
4. Although the description refers to non-compliance with the approved plans it is clear, from the evidence presented, that the Council considers that the development, in its entirety, is unauthorised as a result of the difference between what has been erected and the details previously approved. In other words, they do not allege that the breach of planning control amounts to a breach of condition 2 of the 2011 permission but that it amounts to unauthorised operational development.
5. Prior to the Inquiry, the appellant had not raised the suggestion, through the evidence submitted, that the breach should be described as a breach of condition. In seeking to regularise the position regarding the disparity between what had been constructed and what had planning permission they had submitted a retrospective application which sought planning permission to retain the development, as built. From the information presented, they had not sought to argue that the changes amounted to minor material amendments to the approved scheme, nor had they applied to vary the details agreed under condition 2. To my mind, the fact that the appellant submitted a retrospective application for the development was an indication that they accepted, at that

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point, that the development was substantially different from that approved and that the alterations were not simply a breach of condition.

6. Within closing submissions the appellant suggested that the as built development matches the description of the approved development in all respects, save for the non-provision of the footpath link to Beckley Road. It was also suggested that what has been built is essentially the same development in terms of layout, orientation, access, number of units and that the overall design is substantially the same. However, the appellant accepted that a planning judgement<sup>1</sup> is required to determine whether the differences between the as built scheme and the 2011 permission are so significant that the development would fall outside the scope of the approved scheme.
7. The differences between the as built scheme and the details approved by the 2010 permission are set out within the proof of Mr McCardle<sup>2</sup>. The houses are 1.44m higher to the ridge and 1.7m higher to the eaves; the flats are 1.2m higher to the ridge; the window design has been altered; balconies have been removed; the footprint of the houses is smaller by 1 square metre; the internal garages have been altered making them narrower; ground floor toilet and utility rooms have been removed from the dwellings; and the footpath link to Beckley Road has been removed. The appellant accepts all of those differences, with the exception of the footprint of the houses which, in their view, is the same as approved. It is not clear how the Council calculated the difference but, in any event, a reduction in 1 square metre is not material given the overall scale of the dwellings.
8. I also noted that the internal arrangement of certain dwellings has been altered such that first floor living rooms are now situated at the rear and not the front of the properties. In addition, it is accepted that the internal floor heights have been amended, such that the finished floor level of the first floor is 5.2m above ordnance datum (AOD) and not 4.9m AOD as approved.
9. The as built development is similar to the 2011 permission in a number of respects, including the number of residential units, the layout of the units, the split between houses and flats, the location and design of the access arrangements, with the exception of the footpath link to Beckley Road. With that exception, the development would match the description of development on the application form and decision notice for the 2011 permission. However, the description of development is merely one element of a planning permission and, in determining whether a proposal falls within the scope of a planning permission, it is also necessary to consider whether the development complies with the approved plans and details and any associated conditions.
10. In my view, there is a significant divergence from the approved plans in terms of the design and height of the units. That divergence does not relate to a limited number of units but applies to all 35 dwellings, none of which comply with the approved plans. The scale of the units is greater than approved in terms of ridge height and eaves height. In relation to the dwellings, the ridge height is 11.19m, compared to 9.75m as approved, and the eaves height is 7.9m, compared to 6.2m. Those changes represent a significant increase when viewed in proportion to the height of the approved scheme. All of the buildings are therefore taller, with a different profile and greater overall mass. In

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<sup>1</sup> Paragraph 58 of the appellant's closing submissions

<sup>2</sup> Paragraph 5.2

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assessing those changes I think it is reasonable to take account of the location of the site which is closely adjacent to neighbouring residential properties. It does not sit in isolation. I have viewed the materiality of the changes in that context.

11. In addition, the fenestration has been altered such that windows are of a different design and appearance. The first floor windows of the dwellings are set below the eaves line, as opposed to the approved scheme where the 'head' of the windows was set within the roofline, following the profile of the roof. Atrium windows have been introduced within the roofspace, giving the outward impression of an additional storey, a design alteration which emphasises the additional height of the buildings. The windows are not any larger than those approved but their design and position do not correspond to the approved details and that has given the buildings a markedly different outward appearance.
12. Other alterations, such as the removal of balconies from the flats and changes to the ground floor garage layout are relatively minor and have not resulted in any significant change from the approved scheme. The failure to provide a footpath link is a departure from the approved description of development and the approved plans, albeit that no condition was attached to the consent to require that the link was provided.
13. When taken in the round, I consider that the variations from the approved scheme are of such magnitude that the development, as constructed, is essentially a different scheme to that approved. Although the development matches the description of development given in relation to the approved scheme, save for the footpath link, the changes in design and scale are significant. The development is materially different from that approved and those differences are not of a minor nature. Thus, in my view the as built scheme represents unauthorised development which falls outside the scope of the 2011 permission and, as such, does not benefit from planning permission. It represents unauthorised operational development.
14. Accordingly, I have corrected the notice to ensure that the description of the breach accurately reflects the development that has taken place and I have considered the ground (a) appeal in relation to Appeal A in that context. The Council and the appellant were able to make submissions on the nature of the breach at the Inquiry and I am satisfied that neither will be prejudiced as a result of my decision to correct the notice as described. I have used the description given on the 2011 permission as the basis for that description but have removed reference to the footpath link to Beckley Road and the reference to landscaping because neither of those elements form part of the development as built.
15. In my decision relating to Appeal B, I have used the description of development given within the application form but have removed reference to the footpath link to Beckley Road as it is clear that this did not form part of the development considered by the Council<sup>3</sup>.

#### *Section 106 Agreements*

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<sup>3</sup> Plan number 604-P05 revision A identified that the footpath link was omitted, as identified in paragraph 2.01 of the officer report to committee dated 21 May 2015

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16. Final draft versions of two section 106 agreements were submitted on the last day of the Inquiry and the obligations within those agreements were considered during a round table discussion at the event<sup>4</sup>. One of those agreements related to the 'as built' scheme of 35 dwellings, as is under consideration in relation to the ground (a) appeal in Appeal A and Appeal B. The same agreement covers both appeals and the obligations are identical in relation to both. The other related to an 'alternative scheme' of 29 dwellings, being the scheme as built with the exception of blocks B and C. The 'alternative scheme' was put forward by the appellant as a lesser step to complete demolition if I were to find that the 'as built' scheme was unacceptable.
17. I agreed that fully completed and executed versions of the two agreements could be submitted following the close of the Inquiry in line with an agreed timetable. The completed agreements were duly submitted on 02 June. Following the submission of the agreements I sought clarification with the main parties on the detailed provisions of the agreements with regard to the proposed mitigation in respect of ecological matters, children's play equipment, recycling and library facilities. The Council responded in writing to my queries on 28 June and the appellant on 01 July.
18. Both parties were in agreement that the submitted agreements needed to be amended to ensure that the library contributions would be used specifically for the provision of additional books at Sheerness Library, as opposed to any library within the Council's administrative area, in order to comply with the tests set out within regulation 122 of the Community Infrastructure Levy (CIL) Regulations (2010). In order to restrict the library contributions in that manner, executed deeds of variation, dated 21 July 2016, were submitted in relation to both agreements. Those deeds of variation also place obligations on the Council to use the contributions with respect of ecological matters, children's play equipment and recycling for their intended purpose, within a set timeframe; obligations that were missing from the originally executed agreements.
19. I have taken the agreements, as amended, into account in reaching my decisions and have provided detailed comments on the content of those agreements below.

#### **Appeal A on ground (a) and Appeal B**

20. An appeal on ground (a) is made on the basis that planning permission should be granted, in whole or in part, for what is alleged in the notice. In this case, the scheme is largely complete, with the exception of landscaping, some boundary treatments and the top surfaces to roads and pavements. The dwellings are unoccupied and development has been put on hold pending the outcome of the appeals.
21. The appellant's principal submission under ground (a) is that planning permission should be granted for the 'as built' scheme, subject to necessary conditions and s106 obligations. Similarly, they consider that Appeal B, which was submitted against the refusal to grant planning permission for the as built scheme, should be allowed.

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<sup>4</sup> With reference to s106 of the Town and Country Planning Act 1990

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22. A second scenario was also presented by the appellant in the event that I were to find that the impact of the scheme, as built, was unacceptable having undertaken the appropriate planning balance. Having noted that the reasons for issuing the notice and refusing to grant planning permission related to the impact of blocks B and C the appellant suggested that planning permission could be granted for part of the development under ground (a) – excluding those blocks – and that a split decision could be issued in respect of Appeal B to the same effect. That would see planning permission granted for an 'alternative scheme' of 29 units and, as noted above, a s106 agreement has been submitted in relation to that scenario.
23. If planning permission were to be granted for the alternative scheme, the enforcement notice would remain in force but, having regard to the provisions of s180 of the Act, would only have effect so far as it was inconsistent with any planning permission. In other words, the enforcement notice would only continue to have effect insofar as it required the demolition of Blocks B and C and not the remainder of the development.
24. I shall consider the two scenarios separately.

***Appeal A on ground (a) and Appeal B – the 'as built' scheme***

25. The reason for refusal in relation to the retrospective application and the reasons given by the Council for issuing the enforcement notice are essentially the same. Those reasons relate to the effect of the development on the living conditions of Nos 15, 17 and 19 Seager Road, with particular regard to the alleged overbearing impact resulting from the height of the development.
26. The Council also considered that the development would be unacceptable in the absence of appropriate mitigation in the form of a s106 agreement. As set out above, s106 agreements relating to Appeals A and B have been provided. The Council was involved in the drafting of those agreements and is satisfied that the obligations contained are sufficient to overcome the reasons for issuing the notice/ the refusal to grant planning permission. Consequently, the absence of a s106 agreement is no longer an area of dispute between the main parties.
27. In that context, the main issues in the determination of Appeal A on ground (a) and Appeal B are the same and I have considered both appeals together within the same decision. From the information presented, the main issue is:
- i) The effect of the development on the living conditions of neighbouring residents, particularly those residing at Nos 15, 17 and 19 Seager Road with regard to any overbearing impact resulting from the height and scale of the development;

***The Effect on the Living Conditions of Neighbouring Residents***

28. As noted above, the reason for refusal in relation to Appeal B and the reasons for issuing the enforcement notice refer to the effect of the development on the living conditions of the residents of 15, 17 and 19 Seager Road, with particular regard to overbearing impact. The closest blocks to those dwellings are blocks B and C. Block B is set at right angles to the rear boundary of Nos 13 and 15 Seager Road such that the side of the block faces onto those properties.
29. The rear of Block C runs parallel with the rear of Seager Road, and is located opposite from the dwellings at Nos 17, 19 and 21. The rear windows of that



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block face directly onto the rear windows of the dwellings at Seager Road. That 'back to back' arrangement is replicated in Blocks D, E, F and G. However, the rear gardens of the dwellings at Seager Road get progressively longer as one moves in a southerly direction with the result being that the back to back distances between the new houses and the existing houses becomes greater. The distance between the rear of Block C and the rear of the houses opposite represents the closest point at which respective rear elevations face one another. The closest separation distance is 19.8m from the rear of Block C and the ground floor extension to the rear of No. 19 Seager Road. The distance to first floor bedroom windows at No. 19 is approximately 21.5m. The flank wall of Block B is approximately 13.6m from the rear elevation of No. 15 and 12.5m from No. 13, the closest dwelling<sup>5</sup>.

30. There is no disparity between the footprint of the blocks as built and the footprint of the blocks as previously approved. In other words, the separation distances were considered to be acceptable by the Council in relation to the approved scheme. Having stood within the gardens and rear facing rooms of surrounding dwellings, including No. 19, I have no doubt that the development has significantly altered the outlook from those homes and their respective gardens. The flank wall of Block B and the dwellings within Block C are a dominant presence in the view from the rear of the houses opposite. That change in outlook has undoubtedly had a detrimental impact upon the living conditions enjoyed by adjacent residents, particularly when compared to the open outlook that was available prior to the development.
31. However, the site is an allocated housing site and it is inevitable, to my mind, that any new development would affect the outlook from adjacent dwellings. The main body of the site is roughly rectangular, being narrow but extending backwards from Marine Parade by some distance. I concur with the evidence of Mr Pardey that any development would be likely to contain dwellings set either side of a central access road in order to make efficient use of the land. Thus, any development of the site would be likely to result in housing that would back onto the dwellings at Seager Road. The flooding constraints exclude living accommodation at ground floor level and such accommodation would need to be situated at first and second floor level in any scheme; a constraint that has inevitable consequences for the form and height of any development at the site.
32. Therefore, as in most cases where new housing is accommodated in an urban environment, any scheme would be visible from neighbouring properties and would have an impact upon the outlook from those dwellings. The question in this case is whether the scale and proximity of the development, particularly Blocks B and C, is such that it has an unacceptable and overbearing impact upon the living conditions enjoyed by neighbouring residents, beyond what could reasonably be expected.
33. In terms of what may be considered as an acceptable separation distance I have been referred to a number of supplementary planning documents which provide guidance on the issue. The Council's *Designing and Extension – A Guide for Householders* recommends that a minimum distance of 21m is maintained between windows in rear elevations. The guidance goes on to state that extensions reducing the distance below 21m would need to be carefully

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<sup>5</sup> Distances shown on Drawing number 604-P03 revision C

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considered. That guidance relates to the matter of overlooking from extensions and not to the issue of whether a new development would have an overbearing impact. It was also published in 1993 and pre-dates the development plan and the National Planning Policy Framework (the Framework) by some distance.

34. One of the core planning principles of the Framework is to ensure the effective use of land by reusing land that has been previously developed and that aim is mirrored by policy SP4 of the Swale Borough Local Plan (2008) (the Local Plan) which seeks to promote the efficient use of urban land in order to limit the development of Greenfield sites to a minimum. In other words, since the Council's guidance was published there has been a change in local and national policy to make best use of urban land. The guidance needs to be considered in that context and the change in emphasis in policy terms regarding the way in which urban land is developed has, in my experience, resulted in a more flexible approach to the issue of separation distances across the country.
35. The appellant has referred to the Castle Point Borough Council Residential Design Guidance Supplementary Planning Document (2013) (SPD) which recommends a minimum separation distance of 9m for windows at first floor level, 15m for windows at second floor level and 18m for windows at third floor level. That document relates to another local authority and it has no statutory weight as a planning document in relation to Swale Borough Council's administrative area. Neither can I be certain of the character of the urban environment in Castle Point or the circumstances that led to the adoption of the guidance. I give the SPD very little weight in that regard. However, the guidance does provide an example of a flexible approach to the consideration of separation distances in the urban environment and that tallies with my experience of the approach to such matters in the context of current planning policy.
36. Taking account of the urban location, the constraints of the site, the fact that it is allocated for housing development, and the planning policy imperative to make best use of land, I consider that the separation distance between Blocks B and C and the neighbouring houses at Seager Road is within the confines of what can be considered acceptable. In my view, that distance is sufficient to prevent an unduly overbearing impact on the closest dwellings (Nos 13, 15, 17, 19 and 21 Seager Road) as a result of the scale and mass of the buildings within Blocks B and C. Given that the relationship between other blocks and the surrounding houses is less acute the same conclusions would apply to the rest of the development. I have noted the relationship between blocks F and A with the dwelling at 4 Barnsley Close. The flats in block F are set 28m from the rear conservatory of No. 4 and the dwellings in Block A face the rear garden of that property. Given the distances and orientation I am satisfied that the development does not lead to an undue loss of outlook or have an overbearing impact from number 4.
37. The officer report to committee, dated 21 May 2015, acknowledged that the Council has approved many housing developments with separation distances similar to those achieved at the appeal site and identified that the relationship between the new development and existing dwellings is 'compliant with generally applied standards'<sup>6</sup>. I concur with that view and consider that the

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<sup>6</sup> Paragraph 2.12 of the report to committee, dated 21 May 2015

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separation distances between the development and neighbouring dwellings are within the limits of what is generally considered acceptable for new development in an urban area and are sufficient to avoid an excessive or overbearing impact.

38. Mr McCardle referred to a number of other appeal decisions where Inspectors have considered the matter of appropriate separation distances and overbearing impact. I cannot be certain that any of those cases is comparable to the appeal site in terms of the constraints of the sites, the orientation and relationship with adjoining houses, the design of the schemes in question, whether the sites were allocated for housing development or whether previous schemes had been approved on those sites. Consequently, reference to those decisions does not affect my conclusions with regards to the current appeals.
39. I have also had regard to the orientation of the development and the effect in terms of overshadowing and loss of sunlight, taking account of the Daylight, Sunlight and Overshadowing Reports<sup>7</sup> submitted by the appellant and my own observations on site. Blocks B to G run to the west of Seager Road and, as a result, will not affect the levels of sunlight or create overshadowing for much of the day. Overshadowing into adjacent gardens will occur in late afternoon and early evening to a greater or lesser extent depending upon the time of year. That will impact negatively on adjacent residents when compared to the pre-development scenario of an undeveloped site.
40. However, for the reasons set out, any development to the west of Seager Road would have an impact to some extent in terms of overshadowing and loss of light. The additional height of the as built scheme will result in an increase in the extent of overshadowing; as the sun begins to set in the west the additional ridge height will prevent direct sunlight from reaching gardens, causing overshadowing for slightly longer than would have been the case in the previously approved scheme. However, that difference is limited in extent and the reports demonstrate that the gardens will receive full sun for much of the day. Whilst I appreciate that any overshadowing will be seen as a negative intrusion by existing residents I am satisfied that the development has not resulted in an excessive level of overshadowing or loss of sunlight beyond what could reasonably be expected.
41. The reason for refusal and the reason for issuing the enforcement notice related specifically to the alleged overbearing impact and not to the loss of privacy resulting from overlooking. Notwithstanding that point, Mr McCardle raised the issue of overlooking in his evidence and the matter was considered at the Inquiry.
42. Whilst I am satisfied that the separation distances between the development and neighbouring dwellings are acceptable, I find that the design of the windows pays little regard to the constrained nature of the site and the need to respect the privacy of neighbouring residents. In particular, the floor to ceiling height windows within the rear elevation of the blocks facing Seager Road creates a wide open expanse of glass and a feeling of mutual overlooking between dwellings.
43. The fact that accommodation is situated at first and second floor level adds to the feeling of being overlooked when stood within the rear rooms and gardens

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<sup>7</sup> Daylight, Sunlight & Overshadowing Reports, Syntegra Consulting, dated February 2015 and April 2016

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of neighbouring dwellings, particularly those closest to the rear of Block C. When stood at first and second floors within Blocks C and D the scale of the windows provides an uninterrupted and clear view into adjacent gardens. Whilst the degree of overlooking is greatest to the rear of the dwellings directly opposite Block C (Nos 17 to 21), the scale and design of the windows creates a strong sense of being overlooked to the rear of all dwellings at Seager Road.

44. I am mindful that the development is unoccupied and that future residents would be likely to install blinds and/or curtains, as would the residents of the houses opposite, if they have not done so already. Those measures would mitigate the impact to some degree. However, without any other mitigation the windows to the rear of Blocks C to G would continue to afford clear views of the gardens of dwellings at Seager Road and a strong perception of overlooking would remain by virtue of the scale and elevated position of the windows.
45. In mitigation, the appellant has proposed a landscaping scheme which includes a run of Japanese Privet trees along the rear boundary of Blocks C to G<sup>8</sup>. Those trees would have a mature height of 5-7m and would be at a height of 3.5m when planted to provide an instant screen. Information presented indicates that the trees are considered evergreen in the south of England, only losing leaves in harsh winters. Similar trees are proposed on the shared boundary with 4 Barnsley Close. I am satisfied that the proposed planting would provide a significant degree of mitigation. The trees would not exclude all views between properties but would filter views and mitigate against the oppressive feeling of being overlooked as a result of the full height windows. In time, I have no reason to doubt that the trees would grow into an effective screen, without being overly dominant of themselves due to their relatively compact mature height. That habit would be appropriate for the location and should avoid undue pressure to remove or prune trees along the majority of the boundary of the site.
46. For most of the development I am satisfied that the trees would provide adequate mitigation from the effects of overlooking. However, I do have concerns regarding the effectiveness of the tree planting to the rear of Block C. Not only is that block closer to the houses opposite than other blocks but the depth of gardens of the three houses within the block is just 7m. Given that the trees would have a spread of 3-6m that may lead to pressure for removal in future if the trees take up a significant proportion of the garden. I note that the proposed trees appear to be spaced further apart to the rear of Block C than is the case in other blocks, perhaps in recognition of the limited size of the gardens. Therefore, despite the commitment to on-going maintenance of any planting through the s.106 agreement, I am not satisfied that tree planting alone would mitigate against the overlooking from windows to the rear of Block C.
47. The appellants have put forward a scheme of mitigation in the form of obscured glazing for certain windows within the rear of Block C and the front of Blocks A and L, which overlook 4 Barnsley Close, albeit that they made clear that they do not consider the mitigation to be necessary to make the development acceptable in planning terms. In the absence of obscure glazing I remain of the view that the rear windows of Block C would have an unacceptable effect on the levels of privacy enjoyed by the residents of opposing dwellings, due to

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<sup>8</sup> As shown on landscaping plan, numbered 0713-01 revision D

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the limited distance between the two and my concerns regarding the future effectiveness of tree planting as a result of the limited size of the gardens.

48. I am also mindful that the living rooms of the units in Block C are situated at the rear of the first floor, as opposed to the layout approved in the 2011 permission which contained kitchen and dining areas at the rear. To my mind, those using a living room are more likely to spend longer periods within the room for recreational purposes. It would be logical to locate an armchair or sofa next to the windows for light and to allow views onto the garden whilst reading or relaxing. Thus, even though the windows are of a comparable size to those approved in the 2011 permission, the as built layout is likely to result in more frequent use and overlooking than would be the case for a kitchen where domestic tasks are being undertaken.
49. Consequently, I consider that the obscure glazing proposed to the rear of Block C would be necessary to ensure that acceptable levels of privacy are maintained for those residing opposite. The proposed glazing would retain a window through which residents could see out but would obscure the lower section of each window and a side panel above. That arrangement would maintain a reasonable living environment for future residents whilst being effective in reducing overlooking to the rear of Block C.
50. Due to the comparatively greater distance between existing dwellings and other blocks to the rear of Seager Road the proposed tree planting and landscaping would provide adequate mitigation. Due to the separation distance between Blocks A and L and No. 4 Barnsley Close, and the orientation of those units, I am satisfied obscure glazing within those blocks is not necessary in order to maintain acceptable levels of privacy.
51. In view of the above, whilst I recognise neighbouring concerns regarding the size and design of the windows the separation distances are within normal planning standards and the effects can be mitigated through a combination of tree planting and the use of obscured glazing to the rear of Block C, in addition to any curtains and/or blinds that householders are likely to install. Those measures will not prevent overlooking between neighbouring properties but will minimise the extent of that overlooking and bring it in line with what could reasonably be expected in an urban environment.
52. Therefore, I am satisfied that the development, as constructed, will maintain acceptable living conditions for existing residents, subject to the mitigation measures described above being secured through the imposition of conditions and through the s.106 agreement. For those reasons I conclude that the development complies with the aims of policies E1 (8) and E19 (8) of the Local Plan in terms of scale, height, massing, and the effect on the living conditions of existing and future residents.

*Other Matters*

53. The Council and the appellant dispute whether development approved by the 2011 permission was commenced and, as a consequence, whether it represents a legitimate fall-back position. However, I have considered the impact of the development on its own merits and find it to be acceptable for the reasons given. As such, it is unnecessary for me to reach a conclusion on whether the 2011 permission was commenced or to reach a finding on the legitimacy of the suggested fall-back scenario.

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54. It is common ground that the Council cannot demonstrate a five-year supply of deliverable housing land and that there is a pressing need for affordable housing within the Borough as a whole and particularly on the Isle of Sheppey<sup>9</sup>. The comments of the Head of Housing in the report to Committee of 21 May 2015 identified the lack of new affordable homes on Sheppey and commented on growing numbers of low income households competing for increasingly unaffordable housing in the private rented sector. Proposals within the emerging local plan for a zero percentage contribution of affordable housing from new build schemes on the Island were also noted; a factor due to the lack of viability of new housing as opposed to the lack of a defined need. The Head of Housing concluded that it was imperative that the 35 homes within the development were provided to ensure at least some of the existing need is met.
55. In the face of that combination of a lack of supply, high demand, and the difficulty in securing new affordable housing as part of future housing schemes, the contribution that the scheme would make towards meeting local housing need is a matter that attracts significant weight in its favour.
56. Due to their height, the dwellings and flats on the site are taller than neighbouring dwellings at Seager Road, Barnsley Close and Marine Parade. However, although of a greater scale than neighbouring properties, I am satisfied that the design of the scheme, in terms of its outward appearance, is well suited to the coastal location of the site, particularly the use of steeply pitched roofs and weatherboarding. The dwellings are largely surrounded by existing built development and are not overly prominent in the wider area although the development can be seen on the skyline when looking across open countryside from Minster. However, from distance the roofline blends into the rest of the townscape of Sheerness and the scheme has not caused harm to the character of the wider area.
57. The development has been constructed without providing the access to Beckley Road, as previously approved. I have noted correspondence submitted with regard to private rights of access over the land to the rear of Beckley Road, including a suggestion that part of the land on which the dwellings fronting Beckley Road have been constructed is not within the ownership of the appellant. Matters relating to private access rights and land ownership fall outside the scope of the planning system and it would be inappropriate for me to comment on those matters within my decision. In planning terms the Council has not objected to the omission of the link to Beckley Road and it does not appear to be essential in terms of providing access to any particular services or destination. As such, the absence of the footpath link is not a matter that weighs against the development in planning terms.
58. Similarly, reference has been made to works that have altered the surface of the private footpath which serves properties to the rear of Seager Road. Any works to that path fall outside the application site and are private matters that fall outside the scope of my decision.
59. A number of third party letters have referred to the level of car parking within the development. The level of car parking is the same as the approved scheme and I am satisfied that it is sufficient to meet the needs of the development. The size of the ground floor garages is relatively generous and, although the

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<sup>9</sup> Paragraphs 11 to 13 of the Statement of Common Ground

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dimensions of those garages have been altered in comparison to the previously approved plans I am satisfied that there is sufficient width for residents to park and access their vehicles.

60. In terms of foul drainage, Southern Water wrote to the Council in relation to the retrospective planning application and requested that a condition be attached to any permission to secure full details of foul and surface water discharge<sup>10</sup>. Following that response to the Council Southern Water wrote to the appellant's civil engineering consultant to confirm that an application to connect to the existing foul sewer had been approved<sup>11</sup>. Surface water drainage is required to be separated from foul water and the site will be drained via a Sustainable Urban Drainage system (SUDs). Details of the proposed system have previously been approved by the Council in relation to condition 7 of the 2011 scheme and the approved details involved surface water drainage being collected in a large swale on the site<sup>12</sup>. The system was designed to ensure that run off levels into adjacent drainage ditches would be lower than the pre-development run off rates. Therefore, the evidence before me indicates that the development will not increase the likelihood of flooding within the local area or increase discharge into local drainage ditches, subject to full details being approved by condition, as requested by Southern Water.
61. There was much discussion at the Inquiry as to why the design of the scheme was altered, with particular regard to the increase in height. The flood risk assessment (FRA) requires that first floor accommodation is a minimum of 4.9m AOD and the development has been constructed with a first floor level of 5.2m AOD. That increase was driven by the decision of the appellant and not as a result of the requirement of the FRA. Whilst the FRA requires any sleeping accommodation to be at least 5.2m AOD, that does not apply to living rooms.
62. The appellant indicated that the first floor living rooms were intended to be adaptable to accommodate sleeping for people whose mobility may be temporarily impaired by way of illness or accidents, hence the construction to a height of 5.2m AOD. That aim reflected the requirements of the Lifetime Homes standard which sought to provide entrance level bed space. Accommodation at first floor level could constitute 'entrance level' for the purpose of Lifetime Homes if accessed by an 'easy going stair'. However, the staircase to the first floor of the dwellings does not comply with the design requirements for an easy going stair and sleeping accommodation at first floor would not constitute entry level on that basis.
63. Thus, I am not satisfied that the increase in finished floor level was justified on the basis of either the requirement of the FRA or other design criteria. The change in floor level led to further alterations due to the fact that second floor ceiling height was more restricted within the roof space, resulting in a higher eaves and ridge height. There is no evidence to suggest that those incremental changes came about as a deliberate attempt to breach the planning approval and, however the changes came about, I am required to consider the development on its merits.

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<sup>10</sup> Southern Water letter to Swale Borough Council, dated 05 March 2015, produced at Inquiry Document 3

<sup>11</sup> Appendix 9 to the proof of Mr Rhodes

<sup>12</sup> As explained in a letter from the Civil Engineering Practice, dated 19 April 2016, produced at Appendix 9 of Mr Rhodes' proof

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64. At the Inquiry I heard from a number of interested parties who expressed concern that a dangerous precedent would be set if the development were to be approved on the grounds that it would indicate that it was acceptable to erect new development without complying with the terms of a planning permission. Enforcement of the planning system is intended to be remedial rather than punitive. In other words, if an unauthorised development is considered to be acceptable in planning terms, planning permission should be granted. Enforcement action should not be taken simply because a development does not have permission or fails to comply with the terms of a planning permission. That was explained to the planning committee in the officer report of 21 May 2015 which stated that members should not let the fact that the application was retrospective influence their decision.
65. Clearly, any unauthorised development faces the risk of enforcement action if found to be unacceptable in planning terms but that is a judgement that needs to be taken on the merits of each individual case. As such, my decision in relation to this development does not set a precedent or indicate that any other breach of planning control would necessarily be immune from the threat of enforcement action.

*Conditions*

66. Suggested conditions, if I were minded to allow the appeal, were considered at a round table discussion at the Inquiry. The conditions attached to the 2011 permission formed the basis of that discussion. I have attached those conditions that meet the tests set out at paragraph 206 of the Framework making amendments to the suggested wording, where necessary, in the interests of precision and enforceability.
67. Although the Council suggested that the conditions attached to the 2011 permission should be attached to any approval it was clear in the discussion that a number of those conditions would no longer be necessary. As the development is retrospective and largely complete I am satisfied that a condition to ensure that it is built in accordance with the approved plans is unnecessary – permission is being sought for the development as built. The development has been constructed in materials approved previously by the Council and there is no need for details of materials to be submitted and agreed. Bin storage areas have been incorporated at ground floor level of the flats and ample room is available within dwellings for domestic storage and I am satisfied that no further details are necessary in that respect.
68. The majority of construction activity has been completed and I am satisfied that conditions are no longer necessary to control the parking arrangements for site personnel/ visitors and construction vehicles, wheel washing facilities, measures for the suppression of dust and noise or the control of working hours for construction activity. Similarly, the condition relating to measures to address any unexpected contaminated land found during construction is no longer necessary.
69. Conditions are necessary to secure the implementation of a landscaping scheme in accordance with details that should first be submitted to and approved in writing by the Council. The landscaping scheme should include measures to provide screen planting in accordance with the details shown on the revised landscaping plan, numbered 0713-01 revision D. In order to ensure that the landscaping scheme is managed and retained in perpetuity the



s.106 agreement requires that a landscape management plan is submitted to and approved in writing by the Council setting out how the landscaping scheme secured through condition would be managed. That management scheme would also make provision for the replacement of any trees and plants that die or become seriously damaged or diseased during the lifetime of the development. Thus, I am satisfied that the imposition of a condition to secure the implementation of the scheme and the planning obligation to secure on-going maintenance will provide sufficient surety that the required screen planting will be maintained.

70. A condition to ensure that obscured glazing is fitted to the rear windows of Block C, in line with details that shall first be submitted and agreed by the Council, is also required for the reasons set out above.
71. Not all of the boundary treatments have been erected on the development and a condition to secure appropriate boundary treatments is necessary, in the interests of neighbouring amenity and to ensure a satisfactory appearance. Condition 14 of the 2011 permission removed permitted development rights for the erection of any walls or means of enclosure between the front of any dwelling and the edge of the highway. That condition was imposed in the interests of visual amenity. The estate is a cul-de-sac and the front gardens and driveways have little visual impact outside the site. Government advice is that permitted development rights should only be removed in exceptional circumstances and I am not satisfied that the erection of low walls or other means of enclosure to the front of dwellings, in line with normal permitted development rules, would harm the character of the estate. No compelling reason for the condition has been advanced and I consider it to be unnecessary.
72. A condition is required to ensure that the development complies with the requirements of the FRA in the interests of flood prevention and the safety of future occupants. It is also necessary to remove permitted development rights to prevent the future conversion of garages to living accommodation in the interests of the flood prevention and the safety of future residents.
73. The estate road, visibility splays and footpaths are largely complete, including the manhole covers/ drains. However, it is not clear exactly which elements of the road network, footpaths and associated drains and services remain to be completed. I have therefore attached a condition, in line with condition 9 of the 2011 permission to ensure that the roads and services are completed, in line with details to be agreed in writing by the Council, prior to the occupation of any of the dwellings. In the interests of securing adequate parking provision and highway safety a condition is necessary to ensure that the visitor parking is provided in line with details on plan number 604-P05 revision A. A separate condition relating to the design of public street lighting to be installed within the development is also required, in line with condition 20 of the 2011 permission.
74. For the reasons set out above, conditions are required to ensure that the means of surface and foul water drainage are submitted, approved and provided prior to the occupation of any of the dwellings, in the interests of flood prevention and the quality of the water environment. The surface water drainage will be managed through a SUDs system and the information

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submitted to discharge the condition in that respect will also need to identify how the system will be maintained in future.

75. Details of a habitat mitigation strategy were submitted to and approved by the Council in relation to the 2011 permission on 21 January 2015. The on-site works and relocation of reptiles has taken place in accordance with that strategy. However, part of the approved strategy was to monitor the receptor site for a period of 5 years following the occupation of the development and, in the interests of habitat and wildlife conservation, a condition is required to ensure compliance with the details previously approved.
76. From the information presented, and in the absence of any local planning policy that would require it, I am not satisfied that a condition relating to the provision of superfast fibre optic broadband is necessary to make the development acceptable in planning terms.

*S106 Agreement*

77. As set out above, a single s.106 agreement has been submitted in relation to the ground (a) appeal and Appeal B. The provisions are the same in relation to both.
78. The contributions relating to the provision of primary education and library books have been calculated using standard formulae in line with the approach outlined within Kent County Council's guide to developer contributions. I am satisfied that the contributions are fairly and reasonably related in scale based on the increased level of demand for those services that would be generated by the development. The contributions would be used towards the construction of the new Thistle Hill Primary School; a school required because the level of demand for primary accommodation cannot be met in existing schools. The assessment provided by Kent County Council also confirms that there is a deficiency in the stock of books at Sheerness library and the contribution would be used towards meeting the additional demand generated by the development.
79. The County Council have confirmed that the identified projects are not already being funded by 5 or more s106 agreements. Therefore, based on the information presented, the obligations in those respects comply with the terms of regulation 122 of the CIL Regulations (2010) and paragraph 204 of the Framework.
80. The s106 agreements also contain obligations on the appellant to make a financial contribution of £7825.30 towards ecological mitigation of the effect of the development on nearby areas which have designation as Special Protection Areas. The Council and the appellant have confirmed that the contribution would be used towards Strategic Access and Management Mitigation (SAMMs) in relation to the Swale Site of Special Scientific Interest. The development is within a 6km radius of the SSSI where additional residential development would add pressure on the protected asset. The parties have confirmed that the contribution would be for management and maintenance of existing areas, as opposed to the provision of new 'infrastructure' in the form of Suitable Alternative Natural Greenspace (SANGs). From the information before me, I have no reason to depart from the agreed position between the parties and am satisfied that the contribution is necessary to mitigate against the effect of the development on the site of ecological importance; that the contribution would

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not be used for the provision of infrastructure; and also that the contribution is reasonably related in scale and kind, based upon the locally agreed approach.

81. The proposed 'recycling contributions' have been calculated on the pro-rata cost of providing recycling bins and facilities for each dwelling and I am satisfied that the contribution is proportionate, necessary to make the development acceptable in planning terms and directly related to the needs of the development. Moreover, I am satisfied that the obligations to secure the provision and maintenance of open space within the development are necessary to make the development acceptable in planning terms and that those open spaces are proportionate, having regard to the scale of development and the needs of future occupants. Similarly, the development will generate additional use of children's play equipment and the contributions in that respect are related to the impact of the development, necessary to make it acceptable in planning terms and proportionate in scale and kind. For reasons explained above, the on-going maintenance of landscaping, as secured by the landscaping management plan, is necessary, related to the impact of the development and reasonable, having regard to the need to protect neighbouring privacy.
82. In addition, the s106 agreement requires that a minimum of 30% of the units will be provided as affordable housing. That would equate to 11 units; 3 two bedroom houses and 8 three bedroom houses. Eight of those units would be available for rent with three 'intermediate' or shared ownership units. In reality, the appellant is a social housing provider and their intention is that all of the dwellings would be occupied as affordable housing, 32 as affordable rented units and 3 as shared ownership dwellings. However, that is a matter of choice for the appellant. In terms of local planning policy, a s106 agreement that required the entirety of the scheme to be occupied as affordable housing would be disproportionate and not related in scale and kind to the development. The 30% requirement in the s106 is derived from the s106 agreement of the 2011 permission which itself was based upon policy H3 of the Local Plan. The Council and the appellant are in agreement that the requirement of 30% conforms to local planning policy and I am satisfied that the requirements of the s106 agreements are proportionate in that respect.

**Conclusion on Ground (a) in relation to Appeal A and Appeal B – in relation to the scheme 'as built'**

83. Subject to appropriate mitigation measures that can be secured through conditions and the terms of the s106 agreement I am satisfied that the effect of the development on the living conditions of neighbouring residents will be acceptable.
84. Necessary contributions can also be secured towards the provision of community facilities and services, to off-set the environmental impact of the development, and to secure affordable housing. The social benefits of the scheme in terms of the provision of housing and specifically the provision of much needed affordable housing are matters that weigh strongly in favour of the development, particularly considering the absence of a demonstrable five-year supply of housing land and the acute shortage of affordable housing in the area. Having regard to the balance of economic, social and environmental factors identified at paragraph 7 of the Framework I conclude that the scheme

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represents sustainable development. No adverse impacts have been identified that would demonstrably outweigh the benefits of the scheme.

85. In view of the above I conclude that Appeal A should succeed on ground (a) and that Appeal B should be allowed. I shall therefore grant planning permission in relation to both appeals.

***Ground (a) on Appeal A and Appeal B – the alternative scheme***

86. Given my conclusions above, and the fact that I intend to grant planning permission for the development as built it is unnecessary for me to consider the merits of the alternative scheme.

**Appeal A on Grounds (f) and (g)**

87. Given that the appeal will succeed on ground (a) and planning permission will be granted it is unnecessary for me to consider the appeal on grounds (f) and (g).

*Chris Preston*

INSPECTOR



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**List of Documents Submitted at the Inquiry:**

- 1) Layout sketches prepared by Ubique Architects, covering note, extract from Building Regulations approved Document K, extract from Lifetime Homes Standard and extract from Moat Housing Employers Requirements in relation to minimum room standards.
- 2) Code for Sustainable Homes Pre-Assessment Report, Ubique Architects, dated 10 October 2013
- 3) Transcript of the comments of Mr G Smith, including Appendices 1-23
- 4) Transcript of the comments of Mr P MacDonald

**Appendix: Conditions in Relation to Appeal A & B**

- 1) Full details of a landscaping scheme comprising both hard and soft landscape works shall be submitted to the Local Planning Authority within 2 months of the date of this decision. Those details shall include existing trees, shrubs and other features, planting schedules of plants, noting species (which should be native species where possible and of a type that will enhance or encourage local biodiversity and wildlife), plant sizes and numbers where appropriate, details of hard surfacing materials, and shall include a timetable for implementation. The tree planting within the landscaping scheme submitted to the Council shall be in accordance with the planting shown on the soft landscape plan numbered 0713-01 revision D.
- 2) None of the dwellings hereby permitted shall be occupied until the landscaping scheme has been approved in writing by the Local Planning Authority and, thereafter, the approved scheme shall be implemented in accordance with the approved timetable.
- 3) Prior to the occupation of any of the dwellings hereby approved boundary treatments shall have been erected, planted or installed in accordance with details that shall first have been submitted to and approved in writing by the Local Planning Authority.
- 4) The development hereby approved shall be carried out in accordance the following mitigation measures:
  - i) The eventual occupants shall be made aware of the flood risk to the site and should ensure they are registered with the Agency's Flood Warning service;
  - ii) All appropriate flood-proofing measures shall be incorporated into the proposed development up to a level of at least 5.2m AOD;
  - iii) The finished floor level for all living accommodation shall be no lower than 4.9m AOD with all sleeping accommodation above 5.2m AOD. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking or re-enacting that Order) the garages hereby approved shall not be converted to living accommodation and no living or sleeping accommodation shall be provided below the heights specified above;
  - iv) An effective means of escape shall be provided at the first-floor level or above.
- 5) Before any part of the development hereby approved is first occupied details of the public street-lighting columns within the development shall be submitted to and approved in writing by the Local Planning Authority. Details shall also include which columns, if any, shall incorporate the "Hawkeye" surveillance system at the time of their installation. The details submitted to and agreed by the Local Planning Authority shall include a timetable for implementation. Thereafter, the street lighting columns shall be erected/ installed in accordance with the approved details, in line with the approved timetable.
- 6) Prior to the occupation of any of the dwellings hereby approved the estate roads, footways, footpaths, verges, junctions, retaining walls,

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service routes, vehicle overhang margins, embankments, visibility splays, accesses, driveways, car parking and street furniture shall be completed in accordance with details that shall first have been submitted to and approved in writing by the Local Planning Authority, such details to include the design, layout, levels, gradients, materials and method of construction.

- 7) The areas indicated on drawing no. 604-P05 revision A as vehicle parking space shall be provided, surfaced and drained before any of the dwellings are occupied, and shall be retained thereafter for the use of the occupiers of, and visitors to, the premises. No permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order), shall be carried out on that area of land so shown or in such a position as to preclude vehicular access to this reserved parking space.
- 8) Before any of the dwellings within block C are first occupied, the fixed panes of first and second floor windows in the rear elevation (with the exception of the top windows to the vaulted ceiling), shall be obscure glazed to a level of obscurity that shall first be agreed in writing by the Local Planning Authority, in accordance with details shown on drawing number 604-SK-20. Thereafter the obscured glazing within those windows shall be maintained as such and any replacement glazing shall be fitted with glass of the same level of obscurity.
- 9) None of the dwellings hereby permitted shall be occupied until a Sustainable Urban Drainage System (SUDS) has been constructed in accordance with details that shall first have been submitted to and approved in writing by the Local Planning Authority. The details submitted to the Local Planning Authority for approval shall include measures to secure the on-going maintenance of the SUDS following the completion of the development. Thereafter, the SUDS shall be maintained in accordance with the approved details.
- 10) None of the dwellings hereby approved shall be occupied until a drainage system to allow for the disposal of foul and surface water sewerage has been completed in accordance with details that shall have first been submitted to and approved in writing by the Local Planning Authority.
- 11) Any further work at the site shall be carried out in accordance with the details previously approved by the Council on 21 January 2015 in relation to condition 11 of application SW/10/0050 including the Habitat Management Plan, Reptile Survey and Mitigation Strategy, and Receptor Site Report. In line with the approved details, the receptor site shall be monitored for a period of 5 years following the first occupation of the development.






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## Appeal Decision

Site visit made on 30 August 2016

by V F Ammoun BSc DipTP MRTPI FRGS

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 3 October 2016

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**Appeal Ref: APP/V2255/C/15/3132013**

**Tickham Cottage, Tickham Lane, Lynsted, Sittingbourne, ME9 0HS**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Ms Angela Darling against an enforcement notice issued by Swale Borough Council.
  - The enforcement notice was issued on 19 July 2015.
  - The breach of planning control as alleged in the notice is *Without planning permission, the creation of a new entrance and the laying of gravel hard surfacing, the approximate positions of which are highlighted in blue and yellow on the plan which in the opinion of the Council would require the benefit of planning permission.*
  - The requirements of the notice are (i) *Remove the gravel material used to create the driveway from the Land, the approximate location and extent of which is highlighted in yellow on the plan;* (ii) *Remove the brick paviors in front of the gravel surfacing, the approximate location and extent of which is highlighted in blue on the plan;* (iii) *Restore the curtilage of the Property to the condition it was in prior to the creation of the new access and driveway.*
  - The period for compliance with the requirements is six months.
  - The appeal is proceeding on the grounds set out in sections 174(2) (a) (b) (c) (d) and (f) of the Town and Country Planning Act 1990 as amended.
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**Summary of Decision: The appeal succeeds and the notice is quashed, as set out in the Formal Decision**

### Preliminary matters

1. The allegations refers to *gravel hard surfacing* but it is clear from the reference to blue and yellow areas corresponding to gravel and *brick paviors* that the word "and" has been left out between "gravel" and "hard surfacing. As it is clear from the representations that both parties are in no doubt as to what was being referred to, no injustice would be done if I correct this drafting error.
2. The parties having agreed that everything necessary to my site decision could be seen from public land, I made an unaccompanied inspection.

### Main issues

3. The appeal is made in the alternative – firstly that the notice should be quashed on legal grounds [the appeals on (b), (c) and (d)], but that if these fail, then secondly that planning permission should be granted or the notice should have less onerous requirements [the appeals on grounds (a) and (f)]. I will therefore deal with the legal grounds first, and only if these fail will it be necessary to consider the grant of planning permission.

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4. As is well established legal grounds are to be decided on the facts and law involved, without consideration of planning merits. While considering these grounds, therefore, I can therefore only take into account the representations made against the development to the extent that they relate to the matters of fact and law at issue.

#### **The legal grounds of appeal**

5. It is not in dispute that there was previously a fence across a long extant gap in frontage hedging, that this fence has been removed and replaced by a gate that is used for access to the site, and that an area of hardstanding behind the fence has been replaced by gravel and hard surfacing. As a matter of fact, therefore, what is alleged in the notice has taken place. The arguments supporting ground (b) for the Appellant relate rather to the previous existence of an entrance at this point, a matter which falls to be considered under other legal grounds. **The appeal on ground (b) fails.**
6. An appeal on ground (d) turns on whether a development has been substantially completed long enough to be protected from enforcement action<sup>1</sup>, in this case the relevant period is four years. The appeal works were evidently substantially completed in 2012, so even if as suggested by the Appellant some works were done earlier, the four year immunity period at the time the enforcement notice was issued is not achieved. The Appellant refers to the fence that was replaced as temporary, but it was evidently of a wooden lattice form which I saw is still used to close off a further gap in the frontage hedge to the north west, and which did not appear to be of temporary construction. Nor is there any evidence to show that its presence was of such short duration as to call into question the reality of the earlier access having been closed. **The appeal on ground (d) fails.**
7. An appeal on ground (c) seeks to establish that what has been done had or did not require planning permission. The Appellant states that no more was done than reopen a pre-existing access, but does not refer to any planning legislation either to establish that this did not constitute development, or that it was within the category of "permitted development". The Council has referred to an absence of permitted development rights within the curtilage of a listed building<sup>2</sup>, which is relevant as Tickham Cottage is Grade II listed. The provision referred to removes permitted development rights to alter or erect fences, walls, gates and other means of enclosure. It follows that the formation of the present gate cannot have been permitted development.
8. The appeal development is not, however, limited to the new gate, nor indeed does the enforcement notice expressly refer to it in either allegation or requirements. There are two other matters involved – the formation of a hardstanding within the curtilage of a dwelling, and the formation of a means of access. Both of these matters are subject of permitted development rights, and though these are variously limited, being within the curtilage of a Listed Building is not one of these limitations. It followed that the Council's representations did not constitute, without further enquiry, sufficient support for their position. The Council was therefore invited to comment on whether and if so why it considered that these rights did not apply to the appeal

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<sup>1</sup> Section 171B of the Act relates.

<sup>2</sup> GPDO Schedule 2, Part 2, Class A at A1(d).

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development. The Council did not reply to this request within the period allowed, nor did it seek an extension of time in which to prepare a reply.

9. Turning to the terms of the permitted development rights relating to formation of accesses and of hardstandings<sup>3</sup>, in summary the former is allowable to serve other permitted development within a curtilage, and the hardstanding's provision for the parking of vehicles associated with the use of the house was such permitted development. As stated above there is no evidence from the Council as to why they should not benefit from these rights, nor is a reason self-evident. I have concluded that these aspects of the development did benefit from permitted development rights. I have considered whether the gate being without permission renders the other elements of the development unlawful, but as the various permitted development rights referred to are separate entitlements, have concluded that they should be dealt with on that basis.
10. I have also considered whether having regard to my findings on ground (c) it would be appropriate to amend the enforcement notice so that it did not relate to the making of an access and a hardstanding, but only to the new gate. This would, however, result in a completely different enforcement notice from that issued by the Council, and it cannot be assumed that the Council would have issued such a notice if it had appreciated that formation of the access and hardstanding did not constitute a breach of control. This approach is supported by that fact that it was the formation of an access and of a hardstanding that are referred to in the notice allegation, and that the gate was not mentioned<sup>4</sup>. In these circumstances I have concluded that the **partial success of the appeal on ground (c)** requires that the notice be quashed<sup>5</sup>.
11. In these circumstances the appeal on ground (f) and the appeal on ground (a) seeking planning permission are no longer before me for decision. The Appellant indicated concerns at how the decision to take enforcement action had been arrived at, but this matter was not pursued by either party later in the appeal process, and there is no evidence before me in this regard. I have taken into account all the other matters raised in the representations, including the removal of a coniferous hedge within the curtilage, but do not find that they alter or are necessary to my conclusions on this case.

#### FORMAL DECISION

12. The enforcement notice is corrected in paragraph 3 by adding the word "and" between the words "gravel" and "hard surfacing". Subject to this correction the appeal is allowed and the enforcement notice is quashed.

*V F Ammoun*

INSPECTOR

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<sup>3</sup> GPDO Schedule 2 at Part 1, Class F conditionally permits hard surfaces incidental to the enjoyment of a dwellinghouse, and the Schedule at Part 2, Class B conditionally permits the formation of a means of access to a highway.

<sup>4</sup> Though the requirements of the notice to *Restore the curtilage of the Property to the condition it was in prior to the creation of the new access and driveway* would have required the removal of the gate and reinstatement of the previous fence.

<sup>5</sup> It will be for the Council to consider whether having regard to the provisions of the development plan and other material considerations it is expedient to take enforcement action against the gate.

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## Appeal Decision

Site visit made on 4 October 2016

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 24 October 2016

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**Appeal Ref: APP/V2255/D/16/3154729**  
**25 Preston Avenue, Faversham ME13 8NH**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Mark Foster against the decision of Swale Borough Council.
  - The application Ref 16/503340/FULL, dated 18 April 2016, was refused by notice dated 15 June 2016.
  - The development proposed is a first floor side extension.
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### Decision

1. The appeal is dismissed.

### Main Issue

2. The main issue is the effect of the proposal on the character and appearance of the area.

### Reasons

3. Preston Avenue is a residential street characterised by a mix of single storey and two-storey detached and semi-detached properties of different architectural styles and plot sizes. Whilst there is no general uniformity to the appearance of the area the mix in heights and scale of properties give the street scene a sense of openness at first floor level. These interspersed gaps are an important element of the character of this part of the street scape which differs to that of the terraces to the north.
  4. The extension would be erected above the existing garage and would be built along the common side boundary of the adjoining property, No.27 Preston Avenue. Thus the development would conflict with the Council's Supplementary Planning Guidance (SPG) 'Designing an Extension – A Guide for Householders', which states that a 2m gap is normally required between a first floor extension and the side boundary. The purpose of this guidance is to preserve a sense of openness in areas comprising detached and semi-detached housing; and to avoid terracing or visual linking. This is a valid objective to which I have had regard, notwithstanding that a gap of less than 2m has been found to suffice in some instances.
  5. In the case before me, the proposed side extension would be a subservient addition with a lower ridge height than the host dwelling. It would maintain the existing eaves line and detailing of the original roof and would match the materials of the appeal property itself. However, the first floor element, by
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virtue of its proximity to the side elevation of No.27, would erode the gap between the appeal property and its neighbour and have a visually enclosing effect. This would reduce the perception of space and openness between these two properties and would appear at odds with the character and appearance of the street scene above ground floor level.

6. The Council is concerned that if the adjacent property, No.27, is also extended to the side above its existing single storey side projection there would be very limited visual gap between the properties. Whilst it is conceivable such a proposal could occur I have no evidence before me that would indicate it would, or that other properties in the street would be extended above ground floor to the side. Nevertheless, I consider that the proposal before me would itself cause a negative terracing effect.
7. My attention has been drawn to a first floor side extension that has been constructed at No.26. However, I observed that this extension has been stepped in from the side boundary and, as such, this development is not directly comparable to the appeal proposal.
8. My attention has also been drawn to another appeal decision at Peach House, 109 Ashford Road (ref 14/500150) relating to a first floor extension over an existing garage. In this case the extension would have an off-set from the side common boundary. The circumstances clearly differ to that of this proposal, therefore I can only afford this appeal decision very limited weight. In any event, the appeal before me relates to a different site and therefore can and should be considered in its own right.
9. I therefore conclude that the proposal would have a harmful effect on the character and appearance of the area. It would be in conflict with Policies E1, E19, and E24 of The Swale Borough Local Plan and the SPD which seek extensions and additions to buildings to be in scale in relation to the buildings surroundings and maintain or enhance the character of the street scene, amongst other matters. In reaching my decision, I have had regard to the provisions of the National Planning Policy Framework in respect of requiring good design and, on balance, I find that the proposed development would conflict with them.

#### **Other Matters**

10. I note the appellant wishes to provide extended bedroom accommodation for his growing family, and this would be a benefit of the development. However, the harm I have identified would be permanent and is not outweighed by the appellants' particular circumstances

#### **Conclusions**

11. For the reasons given above, I conclude that the appeal should be dismissed.

*Nicola Davies*

INSPECTOR



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## Appeal Decision

Site visit made on 4 October 2016

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 26<sup>th</sup> October 2016

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**Appeal Ref: APP/V2255/W/16/3154385**

**6 Sheerstone, Iwade, Kent ME9 8RN**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Kelly McCarthy of Whitby Building Solutions Ltd against the decision of Swale Borough Council.
  - The application Ref 15/508144/FULL, dated 1 October 2015, was refused by notice dated 8 June 2016.
  - The development proposed is the erection of a linked 3 bedroom dwellinghouse with private garden and associated landscaping.
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### Decision

1. The appeal is allowed and planning permission is granted for the erection of a linked 3 bedroom dwellinghouse with private garden and associated landscaping at 6 Sheerstone, Iwade, Kent ME9 8RN in accordance with the terms of the application, Ref 15/508144/FULL, dated 1 October 2015, subject to the conditions set out in the Schedule to this decision.

### Preliminary Matters

2. The application was amended during the course of the Council's consideration of the application. I have considered this appeal on the basis of the revised plans referenced 2516-15-PL001 Revision P8 and 2516-15-PL002 Revision P7.

### Main Issue

3. The main issue is the effect of the proposal on the character and appearance of the area.

### Reasons

4. The street scene in this part of Sheerstone and Ferry Road is characterised by a mix of two-storey detached, semi-detached and terraced properties. Although the properties adjacent to the appeal site have a similarity in form, appearance and siting in the plot, properties close by are of differing architectural styles with varied front building lines. A number of those properties that front onto the landscaped green island at the highway junction of Sheerstone, including the existing host dwelling, No.6, have larger side gardens than other properties in the area. Overall however, the existing development in the area is generally close knit.
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5. The proposal would be positioned marginally forward of the front building line of the adjoining property, No.4. The development would have a similar appearance to that of No.6 to which it would be attached, and reflect its ridge, eaves, materials, and to some extent, its fenestration. The proposal would create the appearance of a terrace of properties, although at an angle to No.6. In view of the mixed nature of the development in the area, the proposal would not appear at odds with the existing varied street scene which includes a residential terrace close by. Whilst the development would reduce the space to the side of No.6, this openness does not significantly contribute to the character and appearance of the area. Nor would the resulting space between the new house and No.4 be out of keeping with the overall pattern of development in the locality.
6. Overall, I conclude that the proposed development would not harm the character and appearance of the area. The proposal complies with Policies E1, E19 and E24 of the Swale Borough Local Plan which seek development to be well sited and be of a scale, design and appearance appropriate to the location, amongst other matters.

#### **Other Matters**

7. I acknowledge the neighbouring occupier of 79 Springvale has raised concerns in respect of overlooking. The proposal would have a similar relationship to this property as existing neighbouring development has, and therefore I do not consider that the addition of one further dwelling would create overlooking that would be harmful to the occupiers of this property.
8. In reaching my decision, I have considered various concerns raised by interested parties. In respect of parking provision, the proposal has been amended during the course of the application and would allow for three parking spaces within the appeal site. The Council considers that the parking situation would be no worse as a result of the development and I agree with this view. I have also taken into account property values, other development in the area, inconvenience, and potential damage to water pipes running under the appeal site. However these matters do not lead me to a different overall conclusion.

#### **Conditions**

9. I have considered the planning conditions suggested by the Council in light of the tests in paragraph 206 of the National Planning Policy Framework and the advice in the Planning Practice Guidance. In addition to the standard time limit conditions and in the interests of certainty it is appropriate that there is a condition requiring that the development is carried out in accordance with the approved plans.
10. Conditions relating to materials and hard and soft landscaping are appropriate in the interests of the character and appearance of the area. The hard and soft landscaping condition is fundamental to the acceptability of the proposal and therefore is necessary to be agreed before development takes place. I agree that a condition relating to parking and provision of the access is necessary to prevent inconvenience to road users and to ensure highway safety. This condition would ensure highway safety is not compromised following occupation of the development. I agree that a condition relating to construction work is necessary to ensure the protection of the living conditions of adjoining occupiers. I consider a condition relating to sustainable



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construction techniques to be reasonable and consistent with the Government's move toward a low carbon future. Again, this condition is fundamental to the acceptability of the proposal and therefore is necessary to be agreed before development takes place.

11. I do not, however, find it necessary to regulate construction related traffic or the deposit of mud or similar material on the public highway as this would be out of proportion to the small scale of the proposed development. The Council considers that the removal of Class A or Class E permitted development rights to be appropriate. I refer to the advice in the Planning Practice Guidance which state that conditions restricting the future use of permitted development rights or changes of use will rarely pass the test of necessity and should only be used in exceptional circumstances. I do not consider there to be exceptional circumstances here. Legislation pertaining to the diversion of the public sewers would have to be complied with to enable the development to be constructed, therefore I do not consider such a condition to be necessary.

#### **Conclusions**

12. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

*Nicola Davies*

INSPECTOR

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## SCHEDULE

### CONDIITONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the approved plans listed 2516-15-PL001 Revision P8 and 2516-15-PL002 Revision P7.
- 3) The external surfaces of the development hereby permitted shall be constructed in materials that match those of the existing building, No.6 Sheerstone, Iwade.
- 4) No development shall commence until a scheme of both hard and soft landscaping and implementation programme have been submitted to and approved in writing by the local planning authority. All hard and soft landscaping shall be carried out in accordance with the approved details. The landscaping scheme shall be implemented in the first planting season following the first occupation of the building or the substantial completion of the development, whichever is the sooner. Any trees or plants which within a period of 5 years from planting die, are removed or become seriously damaged or diseased shall be replaced in the next planning season with others of similar size and species to those originally planted.
- 5) Prior to the occupation of the dwelling hereby permitted the area shown on the submitted plan as vehicle parking and the access thereto, shall be completed in accordance with the approved plans and thereafter shall be kept available for such use. No development, whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification) or not, shall be carried out on the land or parking spaces indicated or in such a position as to preclude vehicular access to the land or parking spaces.
- 6) Construction works shall take place only between 07:30 to 19:00 on Mondays to Fridays and 07:30 to 13:00 on Saturdays, and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 7) No development shall take place until details have been submitted to the local planning authority and approved in writing, which set out what measures have been taken to ensure that the development incorporates sustainable construction techniques, such as, water conservation and recycling, renewable energy production, including the inclusion of solar thermal or solar photo voltaic installations, and energy efficiency. The details shall be incorporated into the development as approved.

By virtue of paragraph(s) 1, 2, 3, 4, 5, 6, 7 of Part 1 of Schedule 12A of the Local Government Act 1972.

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