

## AGENDA

### PLANNING COMMITTEE MEETING

Date: Thursday, 5 January 2017

Time: 7.00pm

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 8 December 2016 (Minute Nos. 1058 - 1066) 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

1-117

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 4 January 2017.

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

118-119

To consider the attached report (Part 6).

**Issued on Wednesday, 21 December 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)

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## SWALE BOROUGH COUNCIL

### PLANNING SERVICES

Planning Items to be submitted to the Planning Committee

**5 JANUARY 2017**

#### Standard Index to Contents

**DEFERRED ITEMS** Items shown in previous Minutes as being deferred from that meeting may be considered at this meeting

**PART 1** Reports to be considered in public session not included elsewhere on this Agenda

**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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## INDEX OF ITEMS FOR PLANNING COMMITTEE – 5 JANUARY 2017

- Minutes of last Planning Committee Meeting
- Deferred Items
- Minutes of any Working Party Meetings

### Part 2

2.1 Pg 1 – 4	16/500862/FULL	HARTLIP	Land At Meresborough Lane & Spade Lane
2.2 Pg 5 – 8	16/500861/FULL	HARTLIP	Land At Meresborough Lane & Spade Lane
2.3 Pg 9 – 15	16/507616/FULL	MILSTEAD	Old Rectory, Frinsted Road
2.4 Pg 9 – 15	16/507617/LBC	MILSTEAD	Old Rectory, Frinsted Road
2.5 Pg 16 – 21	16/507561/FULL	MINSTER	11 Wards Hill Road
2.6 Pg 22 – 34	16/506927/FULL	EASTCHURCH	Corner Plot, Range Road
2.7 Pg 35 – 42	16/507130/FULL	DODDINGTON	Sharsted Lodge, Sharsted Road
2.8 Pg 43 – 45	16/507299/LBC	FAVERSHAM	7 Market Place
2.9 Pg 46 – 56	16/507289/FULL	SITTINGBOURNE	Lansdowne County Primary School, Gladstone Drive
2.10 Pg 57 – 70	15/508514/FULL	IWADE	Coleshall Farm, Sheppey Way

### Part 3

3.1 Pg 71– 81	16/506159/FULL	NEWINGTON	Chesley Oast Bull Lane
3.2 Pg 82 – 93	16/507038/OUT	DUNKIRK	Courtenay House, London Road

### Part 5 - Index

Pg 94

5.1 Pg 95 – 97	16/500337/FULL	BREDGAR	Water Meadow, Primrose Lane
5.2 Pg 98 – 105		NEWNHAM	Land at Seed Road
5.3 Pg 106 – 114	15/505488/OUT	BOBBING	Land at Church Farm, Sheppey Way
5.4 Pg 115 – 117	15/509499/FULL	FAVERSHAM	60-63 Preston Street

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**PLANNING COMMITTEE – 5 JANUARY 2017**

**PART 2**

Report of the Head of Planning

**PART 2**

Applications for which **PERMISSION** is recommended

<b>2.1 REFERENCE NO - 16/500862/FULL</b>		
<b>APPLICATION PROPOSAL</b> Retention of lean-to hay store to rear of existing stables.		
<b>ADDRESS</b> Land At Meresborough Lane And Spade Lane, Meresborough Lane Hartlip Kent ME9 7LZ		
<b>RECOMMENDATION - GRANT</b>		
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b> The hay store is appropriately designed and causes no harm to amenity.		
<b>REASON FOR REFERRAL TO COMMITTEE</b> Hartlip Parish Council objects.		
<b>WARD</b> Hartlip, Newington And Upchurch	<b>PARISH/TOWN</b> Hartlip	<b>COUNCIL</b> <b>APPLICANT</b> Mr J Strevens <b>AGENT</b> Woodstock Associates
<b>DECISION DUE DATE</b> 04/05/16	<b>PUBLICITY EXPIRY DATE</b> 08/04/16	<b>OFFICER SITE VISIT DATE</b> 3/3/16
<b>RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):</b>		
<b>App No</b>	<b>Proposal</b>	<b>Decision</b>
16/500861/FULL	Variation of condition 8 of SW/07/0664 (Change of use of land for the keeping of horses including erection of 4 stables, one tack room and hay and machinery store) for retention of small tourer caravan as an amenity facility for the stable worker.	Current - relevant item also reported on this agenda.
SW/13/1167	Proposed re-siting of previously approved barn, erection of four new stables with tack room and a new hay barn	Approved.
SW/07/0664	Change of use of land for the keeping of horses including erection of 4 stables, one tack room and hay and machinery store.	Approved.

## MAIN REPORT

### 1.0 DESCRIPTION OF SITE

- 1.01 The site consists of a large field used for equestrian purposes. There are two existing stable blocks on the site. A machinery barn and hay barn are currently under construction as permitted by SW/13/1167. The site is located to the north west of the junction of Spade Lane and Meresborough Lane.

### 2.0 PROPOSAL

- 2.01 Planning permission is sought to erect a lean to hay barn attached to the rear of an existing stable block. It measures 17.5m wide, 3m deep and 2.4m to ridge height. It is finished with feather edge weatherboarding and a corrugated roof. The proposal has already been built.

### 3.0 SUMMARY INFORMATION

	Existing	Proposed	Change (+/-)
Approximate Ridge Height (m)	0	2.4	+2.4
Approximate Depth (m)	0	3	+3
Approximate Width (m)	0	17.5	+17.5

### 4.0 PLANNING CONSTRAINTS

- 4.01 The site is within the countryside, the strategic gap and both nearby roads are rural lanes.

### 5.0 POLICY AND OTHER CONSIDERATIONS

- 5.01 The National Planning Policy Framework (NPPF) and the National Planning Practice Guidance (NPPG) with regard to achieving sustainable development and requiring good design, including core principle 5 “take account of the different roles and character of different areas, promoting the vitality of our main urban areas, protecting the Green Belts around them, recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it;”
- 5.02 Development Plan: Policies E1, E6, E7, E9, RC7 and RC9 of the Swale Borough Local Plan 2008; and Policies DM14, DM25, DM26 and DM27 of Bearing Fruits 2031: The Swale Borough Local Plan Proposed Main Modifications June 2016.
- 5.03 Supplementary Planning Guidance: The Erection of Stables and the Keeping of Horses.

### 6.0 LOCAL REPRESENTATIONS

- 6.01 None.

### 7.0 CONSULTATIONS

- 7.01 Hartlip Parish Council objects for the following reasons;  
*“With the new hay barn is it now the case that the lean too are not needed and can therefore come down or kept and the proposed new hay barn not needed. The*

*situation is not clear but there appears to be no justification of need and the site is becoming cluttered and over-developed for non-commercial stables. Further development should be restricted to protect the amenity of this rural area.”*

7.02 The Council's Environmental Health Manager makes no comment.

7.03 KCC Archaeology Unit requires no archaeological measures.

## **8.0 BACKGROUND PAPERS AND PLANS**

8.01 The application includes a full set of plans and elevations showing the proposal.

## **9.0 APPRAISAL**

9.01 I note the comments of Hartlip Parish Council about the existing and under construction hay stores at the site. However, the proposal provides the single existing hay store on the site and when the detached hay store is completed I consider it would be unreasonable to require the site owner to demolish the proposed hay store as it should be possible to find an appropriate alternative equestrian use for it. I do not consider there to be a need for additional justification for the proposal. There are nine stables on the site and the proposal provides the only hay store for this development. I consider that the principle of development is acceptable.

9.02 The proposal is small scale and the design fits in well with the existing stable block to which it is attached and accords with the guidance within the Council's SPG - The Erection of Stable and Keeping of Horses. The scale and design are acceptable with no harm arising to the character and appearance of the countryside or visual amenity in my opinion. The proposal would not harm the strategic gap due to its small scale in my opinion. No archaeological measures are required.

## **10.0 CONCLUSION**

10.01 The proposal is acceptable in principle, is well designed and does not harm amenity or the character and appearance of the countryside. I therefore recommend that planning permission is granted.

## **11.0 RECOMMENDATION – GRANT** Subject to the following conditions;

- 1) The development shall accord with the following approved plan numbers;  
ST/13/131.02.

Reason: For the sake of clarity.

### **INFORMATIVES**

None.

### **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:

Offering pre-application advice.

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>2.2 REFERENCE NO - 16/500861/FULL</b>		
<b>APPLICATION PROPOSAL</b> Variation of condition 8 of SW/07/0664 (Change of use of land for the keeping of horses including erection of 4 stables, one tack room and hay and machinery store) for retention of small tourer caravan as an amenity facility for the stable worker.		
<b>ADDRESS</b> Land At Meresborough Lane And Spade Lane, Meresborough Lane Hartlip Kent ME9 7LZ.		
<b>RECOMMENDATION - GRANT</b>		
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b> The use of land is acceptable as a matter of principle and would not result in visual harm or harm to the character and appearance of the countryside.		
<b>REASON FOR REFERRAL TO COMMITTEE</b> Hartlip Parish Council objects.		
<b>WARD</b> Hartlip, Newington And Upchurch	<b>PARISH/TOWN</b> Hartlip	<b>COUNCIL</b> <b>APPLICANT</b> Mr J Strevens <b>AGENT</b> Woodstock Associates
<b>DECISION DUE DATE</b> 03/05/16	<b>PUBLICITY EXPIRY DATE</b> 08/04/16	<b>OFFICER SITE VISIT DATE</b> 3/3/16
<b>RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):</b>		
<b>App No</b>	<b>Proposal</b>	<b>Decision</b>
16/500862/FULL	Retention of lean-to hay store to rear of existing stables.	Current – item also reported on this agenda.
SW/13/1167	Proposed re-siting of previously approved barn, erection of four new stables with tack room and a new hay barn	Approved.
SW/07/0664	Change of use of land for the keeping of horses including erection of 4 stables, one tack room and hay and machinery store.	Approved.

**MAIN REPORT**

**1.0 DESCRIPTION OF SITE**

1.01 The site consists of a large field used for equestrian purposes. There are two existing stable blocks on the site. A machinery barn and hay barn are currently under construction as permitted by SW/13/1167. The site is located to the north west of the junction of Spade Lane and Meresborough Lane.

**2.0 PROPOSAL**

2.01 This application seeks to vary condition 8 of SW/07/0664 (Change of use of land for the keeping of horses including erection of 4 stables, one tack room and hay and machinery store) for retention of small tourer caravan as an amenity facility for the stable worker. The caravan is already in place.

2.02 Condition 8 of SW/07/0664 reads;

*“No external storage of materials or items of any kind, including field jumps or field shelters, caravans, mobile homes, vehicular trailers shall be erected, placed or allowed to remain on the land unless the prior written approval of the District Planning Authority has been obtained.*

*Grounds: In the interests of the visual amenities of the area and in pursuance of policies of G1 and R12 of the Swale Borough Local Plan, E1 & RC9 of the Swale Borough Local Plan First Review Redeposit Draft and QL1 of the Kent and Medway Structure Plan.”*

### 3.0 SUMMARY INFORMATION

	Existing	Proposed	Change (+/-)
Number of caravans	0	+1	+1

### 4.0 PLANNING CONSTRAINTS

4.01 The site is within the countryside, the strategic gap and both nearby roads are rural lanes.

### 5.0 POLICY AND OTHER CONSIDERATIONS

5.01 The National Planning Policy Framework (NPPF) and the National Planning Practice Guidance (NPPG) with regard to achieving sustainable development and requiring good design, including core principle 5 *“take account of the different roles and character of different areas, promoting the vitality of our main urban areas, protecting the Green Belts around them, recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it;”*

5.02 Development Plan: Policies E1, E6, E7, E9, RC7 and RC9 of the Swale Borough Local Plan 2008; and Policies DM14, DM25, DM26 and DM27 of Bearing Fruits 2031: The Swale Borough Local Plan Proposed Main Modifications June 2016.

5.03 Supplementary Planning Guidance: The Erection of Stables and the Keeping of Horses.

### 6.0 LOCAL REPRESENTATIONS

6.01 None.

### 7.0 CONSULTATIONS

7.01 Hartlip Parish Council objects for the following reasons;

*“The application gives no information regarding height of the barn/machinery buildings and no information regarding refuse. The tack room could be used as an amenity space. There is already sufficient development on the site to accommodate amenity facilities. The reason for the imposition of the condition on the original planning permission should be upheld and supported. The proposed development would have a detrimental effect on the visual amenity of this rural area. The application for a caravan is not in keeping or compliant with a high quality rural development and should be refused. The site is not associated with a residence and would therefore appear to attract business rating.”*

7.02 The Council's Environmental Health Manager and KCC Highways and Transportation make no comment.

**8.0 BACKGROUND PAPERS AND PLANS**

8.01 The application includes a site layout plan indicating the position of the caravan.

**9.0 APPRAISAL**

9.01 I note the objections of Hartlip Parish Council. Its comments relating to the barn and machinery buildings are not relevant to the determination of this application as they already benefit from planning permission under SW/13/1167. Whilst it may be possible to use part of the existing buildings as an amenity facility instead of a caravan, this would displace the use within the building which may need to be accommodated elsewhere on the site. It would be unreasonable to refuse permission on this basis in my opinion. Discussion of the impact on visual amenity is set out below. Business rating is not a material planning consideration.

9.02 The caravan is being used as an amenity facility for the stable worker. I consider the nature of this use to be acceptable for the comfort of the stable worker and the use to be ancillary to the wider use of the site. I consider the principle of the proposal to be acceptable. I do not consider there to be grounds to refuse permission based on the impact of this small scale use of land in the strategic gap.

9.03 The caravan is a relatively small touring caravan positioned to the west of the existing northern stable block which helps to screen it from view. There is existing vegetation along the southern boundary of the site which helps to screen it from Meresborough Lane. Views of the caravan from the north are from long distance public vantage points such as Spade Lane. These considerations lead me to conclude that the visual impact and associated impact on the character and appearance of the countryside are acceptable.

9.04 No harm would arise to the character of the surrounding rural lanes as a result of the proposal in my opinion.

**10.0 CONCLUSION**

10.01 The proposed variation of condition to allow an amenity caravan on the site is acceptable as a matter of principle and would not result in visual harm or harm to the character and appearance of the countryside in my opinion. I conclude that the condition should be varied as applied for.

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

- 1) The use of the land hereby permitted shall be restricted to the private keeping of horses or ponies by the applicant and/or their successors and shall be not be used for commercial livery, schooling or show purposes.

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

- 2) All of the land edged red on the approved site location plan shall be available for grazing at all times that the stables are in use, and the number of horses kept on the site shall not exceed a density of one horse per acre.

Reason: So that adequate stabling is provided for the horses kept.

- 3) No burning of waste or refuse shall take place on site other than may be agreed in writing by the Local Planning Authority.

Reason: In the interests of residential amenity.

- 4) No external lighting shall be provided on the site.

Reason: In the interests of rural amenity.

- 5) No external storage of materials or items of any kind, including field jumps or field shelters, caravans (other than that shown on drawing number ST/13/131.02), vehicular trailers shall be erected, placed or allowed to remain on the land unless the prior written approval of the Local Planning Authority has been obtained.

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

- 6) Any entrance gates erected shall be hung open away from the highway only and shall be set back a minimum distance of 5.5m from the carriageway edge.

Reason: In the interests of highway safety.

- 7) The visibility splays shown on drawing number ST/13/131.02 shall be provided and remain in perpetuity with no obstruction at and above a height of 1.05m.

Reason: In the interests of highway safety.

- 8) The development shall proceed in accordance with the following approved plan numbers; ST/13/131.02.

Reason: For the sake of clarity.

**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:

Offering pre-application advice.

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>2.3 &amp; 2.4 REFERENCE NO - 16/507616/FULL &amp; 16/507617/LBC</b>			
<b>APPLICATION PROPOSAL</b> Construction of an Orangery.			
<b>ADDRESS</b> Old Rectory Frinsted Road Milstead ME9 0SA			
<b>RECOMMENDATION – Approve</b>			
<b>SUMMARY OF REASONS FOR RECOMMENDATION/REASONS FOR REFUSAL</b> Proposed development would not give rise to unacceptable harm to the special interest of the listed building or the character of the conservation area.			
<b>REASON FOR REFERRAL TO COMMITTEE</b> Parish Council objection			
<b>WARD</b> West Downs	<b>PARISH/TOWN COUNCIL</b> Milstead	<b>APPLICANT</b> Mrs J Gale <b>AGENT</b> E P Architects Ltd	
<b>DECISION DUE DATE</b> 28/12/16	<b>PUBLICITY EXPIRY DATE</b> 09/12/16		
<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>
16/506650/FULL	Construction of orangery	WITHDRAWN	27.09.16
16/506651/LBC	Listed Building Consent for the construction of an orangery	WITHDRAWN	27.09.16
SW/98/0310	Replacing the tarmac drive with garden terrace and resurfacing of track to serve stables	GRANTED	15.06.98
SW/97/1074	Listed Building Consent for alterations to insert French doors to kitchen and new detached double garage and associated external works	GRANTED	20.02.98
SW/97/1073	Alterations to insert French doors to kitchen and new detached double garage and associated external works	GRANTED	20.02.98
SW/94/1130	Stables	GRANTED	17.02.95
SW/94/0357	Change of use of land for extension of churchyard to provide Christian burials	GRANTED	17.06.94
SW/06/1022	Extension of rear single storey room including reforming of existing roof and new walls, floor, glazing and joinery. Pursuant to approval SW/06/0709 (Case 11753) (Partial demolition)	GRANTED	11.10.06
SW/06/0709	Part demolition of roof of rear single storey room and extension of room with new roof and glazing	GRANTED	08.08.06

## **1.0 DESCRIPTION OF SITE**

- 1.01 The Old Rectory is a grade II listed 19<sup>th</sup> century building located within the Milstead conservation area and the Kent Downs Area of Outstanding Natural Beauty.
- 1.02 The two storey listed building is constructed of painted brick walls with a slate roof, hipped ends and 3 chimney stacks to the rear. The windows are four glazing bar sashes with shutters on the first floor. Windows to the ground floor have gauged heads and blind hoods. There are two traceried French Doors to the centre front under a wrought iron veranda set on 4 trellised piers with a pierced floriated frieze.
- 1.03 The application site lies to the north west of the church in Milstead village. A drive leads from the main road to the house. The property is situated in a site of approximately 6.95 hectares.
- 1.04 The application site is located within the countryside as defined in the Swale Borough Local Plan 2008.

## **2.0 PROPOSAL**

- 2.01 These applications seek planning permission and listed building consent to construct an orangery to the western rear corner of the building. A small scale re-entrant type visual break with the use of full height fixed glazed windows each side would be created between the orangery and the north-west wall of the south-west side wing of the main house.
- 2.02 The orangery will be single storey and constructed of painted and rendered masonry to match the existing walls; sash windows and doors will be painted timber to also match the existing. The orangery would measure 7.2m wide, 4.1m in depth and 5m in height and would be detached from the existing building
- 2.03 The existing window to the study will be removed and the opening enlarged to provide internal access into the proposed orangery. External doors from the orangery will lead down steps into both the formal garden and the side lawn. A new gate will be formed in the garden wall to provide access into the formal garden from the side lawn.
- 2.04 The applicant withdrew the previous applications (16/506650/FULL & 16/506651/LBC) after concerns were raised with the way the orangery attached itself to the central storage building across the yard and the connection to the end elevation, failing to create a balanced composition. The current scheme does not connect to the outbuilding.
- 2.05 A site meeting was subsequently held with the applicant/agent for the construction of an orangery and various changes to the form of the new building and the overall design was discussed in depth. As a result a drawing was submitted in advance for assessment and apart from one or two small details, the scheme was considered by the design and conservation unit as significantly improved over the failed one to merit support of it. The applicant also provided an original drawing of the building dating back to 1912 which clearly illustrated how the building forms and its initial form had evolved up to that time.

### 3.0 PLANNING CONSTRAINTS

Area of Outstanding Natural Beauty KENT DOWNS

Potential Archaeological Importance

Conservation Area Milstead

Listed Buildings MBC and SBC Ref Number: 507/SW

Description: G II OLD RECTORY, FRINSTED ROAD, MILSTEAD, SITTINGBOURNE, ME

### 4.0 POLICY AND OTHER CONSIDERATIONS

- 4.01 Swale Borough Local Plan 2008: Saved policies E1 (General Development Criteria) E6 (The Countryside) E9 (Landscape) E14 (Listed Buildings) E15 (Conservation Area) E19 (Design Criteria) E24 (Extensions & Alterations) RC4 (Extensions to, and replacement of, dwellings in the rural area) of the Swale Borough Local Plan 2008.
- 4.02 DM11, DM14 and DM16 of The Swale Borough local Plan Proposed Main Modifications June 2016
- 4.03 Supplementary Planning Documents: Supplementary Planning Guidance entitled “*Designing an Extension – A Guide for Householders*” and “*Conservation Areas*”.

### 5.0 LOCAL REPRESENTATIONS

- 5.01 I received one letter neither objecting to nor supporting the application:
- The size of the orangery appears large if it is to be used purely for personal use
  - There is already a garden room which provides views and access to the formal garden
  - The orangery would detract from the character of the property and the original listing of the building

### 6.0 CONSULTATIONS

- 6.01 Milstead Parish Council raised concerns, saying;

*“Milstead Parish Council still have concerns with this application. The Rectory is listed and the outside is typical of its time and this new proposed building would be detrimental to its heritage. The size of the Orangery is a major concern with the effect that it would have on the existing property and immediate garden space plus we also believe this proposed courtyard would be devoid of sunlight?”*

*The garden room was only recently extended to provide a view and access to the formal garden and a gate in the side wall to give access to the side lawn. This much larger extension would detract and significantly alter the Rectory design and before long destroy the reasons for its listing originally.*

*The design is sympathetic but will completely change the character of the Rectory and its heritage will be lost. We do not want to see that happen.”*

## **7.0 BACKGROUND PAPERS AND PLANS**

- 7.01 Application papers and drawings referring to application reference 16/507616/FULL and 16/507617/LBC.

## **8.0 APPRAISAL**

- 8.01 The main issues to be considered in this application are the impact of the proposed orangery on the character and appearance of the listed building and the countryside, the impact on the character of the conservation area and setting of the nearby listed building. The Council's prime consideration is its statutory duty under the Act to have special regard to the desirability of preserving this heritage asset. There is also the question of design given the Council's established policy on new developments particularly those affecting the historic environment to be of a high standard befitting the special interests of that environment.

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

- 8.02 In September of this year, the previous scheme (16/506650/FULL & 16/506651/LBC) was withdrawn after the proposal was recommended for refusal. While supportive of the principle of an Orangery, the size and design, especially the way that the scheme enclosed a rear service courtyard and connected the new extension to an existing building was in need of further design consideration.
- 8.03 This listed building is one of significance in that the original building with its symmetrical double fronted appearance is a fine example of a regency style. The building is also in the centre of the village of Milstead and a focal point building not too far away from the listed church of St Mary to the south east which gives its setting significance.
- 8.04 However the rear of the building has over the years been seriously altered and architecturally is not particularly distinctive. Nevertheless there is a general evolved order to the way the plan form of the original house has been extended and a more recent single storey extension approved in 2006 extended the rear north-east cross wing to provide a garden room and playroom. At an earlier time the cross wing of the original house on the south-west side was extended to the rear formal garden area and this created an irregularly shaped overall plan form for the building. Architecturally the elevations of the rear and side of this evolved building are not particularly attractive so the idea of a further extension could enhance the existing situation as indeed has the purposely architecturally modelled single storey extension on the north-east rear wing. I now consider that the proposed orangery will be a positive contribution to the whole building that will enliven a very bland and uninspiring elevation.
- 8.05 The original drawing dating back to 1912 indicates that the existing study was built to provide a servants' wing and was enclosed by a large rear yard. The north-north-east yard wall was positioned just short of the east wing of the building. At a later time the existing central building in the yard was constructed and it is a somewhat cluttered arrangement and not at all sympathetic to the building's character and appearance across the whole of the rear building arrangement. In recent times there was an extension to the eastern wing as a family children's play room area but this is set back from the general building line across the rear so will not be seen as an extension that should inform the design of the new proposal.

- 8.06 Initially there was concern about the orangery extending beyond the side external walls of the servants' wing, but after agreeing with the architect that if this was essential in order to achieve a more dominant end to the wing (which is rather bland in appearance and lacks a concluding element at the walled garden area at the north-west end of the site) then at least there should be a small re-entrant setback detail separating the orangery element from the wing at the connection point. I am satisfied that the new design is an enhancing addition to the building and will allow the internal functions of the ground floor plan layout to be more in line with twenty-first century living.
- 8.07 Overall I am of the opinion that the proposed orangery will liven up the south-west elevation and to a large extent create a building element that will aesthetically challenge the current awkward form and positioning of the tall thinly proportioned two storey yard building.

## 9.0 CONCLUSION

- 9.01 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 planning permission and listed building consent is granted.

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

### CONDITIONS

#### 16/507616/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 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:

Proposed plan & elevations: Drawing No: 1716.P.101 Rev A

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 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) Prior to the commencement of development hereby approved, construction details of the orangery including the new opening and the proposed external steps and supporting walls and structures at a scale of 1:20 shall be submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out in complete 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.

- (5) Prior to the commencement of development hereby approved, detailed drawings of the glazed lantern light shall be submitted to and approved in writing by the Local Planning Authority. 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.

### **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:

- Offering pre-application advice
- 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.

### **CONDITIONS**

#### **16/507617/LBC**

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

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

- (2) The development hereby permitted shall not be carried out otherwise than in complete accordance with the approved plans and specifications.

Reasons: In the interest of the special architectural or historic interest of the listed building.

- (3) Prior to the commencement of development hereby approved, detailed drawings of all new 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 interest of the special architectural or historic interest of the listed building.

- (4) Prior to the commencement of development hereby approved, construction details of the orangery including the new opening and the proposed external steps and supporting walls and structures at a scale of 1:20 shall be submitted to and approved in

writing by the Local Planning Authority. The development shall then be carried out in complete accordance with the approved details.

Reasons: In the interest of the special architectural or historic interest of the listed building.

- (5) Prior to the commencement of development hereby approved, detailed drawings of the glazed lantern light shall be submitted to and approved in writing by the Local Planning Authority. Works shall proceed in accordance with the approved details.

Reasons: In the interest of the special architectural or historic interest of the listed building.

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 - 16/507561/FULL</b>			
<b>APPLICATION PROPOSAL</b> Conversion of loft with insertion of two front dormer windows and erection of single storey rear extension.			
<b>ADDRESS</b> 11 Wards Hill Road, Minster-on-Sea, Kent, ME12 2LL			
<b>RECOMMENDATION – APPROVE</b>			
<b>SUMMARY OF REASONS FOR RECOMMENDATION/REASONS FOR REFUSAL</b> The proposal would not give rise to unacceptable harm to residential or visual amenity.			
<b>REASON FOR REFERRAL TO COMMITTEE</b> Parish Council objection			
<b>WARD</b> Minster Cliffs	<b>PARISH/TOWN COUNCIL</b> Minster-on-Sea	<b>APPLICANT</b> Mr Evan Simkus <b>AGENT</b> Architek Design & Planning	
<b>DECISION DUE DATE</b> 29/12/16	<b>PUBLICITY EXPIRY DATE</b> 06/12/16		
<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>
16/507562/LAWP RO	Lawful Development Certificate (proposed) for a single rear dormer window.	Approved	30/11/16
16/506289/FULL	Conversion of loft with insertion of two front dormer windows and one rear dormer window and erection of single storey rear extension.	Refused	10/10/16
SW/02/0125	Off-road parking	Approved	02/04/02
SW/01/1206	Off-road parking	Refused	29/01/02

**1.0 DESCRIPTION OF SITE**

- 1.01 The application site is a detached, modest sized bungalow situated to the southern end of Wards Hill Road.
- 1.02 There is a small driveway to the front with larger amenity space to the rear.
- 1.03 Much like the majority of Minster, the street scene is characterised by a mixture of dwelling types. The design, size and use of materials are varied throughout.

**2.0 PROPOSAL**

- 2.01 The proposal seeks planning permission for a loft conversion to include the erection of 2 pitched roof dormer windows on the principal elevation and a single storey rear extension.
- 2.02 The overall height of the roof would increase by 0.4m, and would project no higher than the existing chimneys. The dormers would measure a maximum of 2m in width x 2.2m in height, and would be placed in line with the ground floor windows.

- 2.03 The existing rear projections would be removed and replaced a full width extension which would square the dwelling off. The maximum depth of the property would not increase, but the gap created by the existing projections would be filled in. The alterations to the rear would include the insertion of 3 roof lights.
- 2.04 The proposal would allow for additional living accommodation in the roof space, and the number of bedrooms would increase from 3 to 5.
- 2.05 The materials to be used in the construction of the external surfaces would match those on the existing dwelling.

### **3.0 PLANNING CONSTRAINTS**

- 3.01 None relevant

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

- 4.01 The National Planning Policy Framework (NPPF) and The National Planning Practice Guidance (NPPG): The NPPF and NPPG are relevant in that they encourage good design and seek to minimise serious amenity concerns.
- 4.02 Development Plan: Saved policies E1, E19, E24 and T3 of the adopted Swale Borough Council Local Plan 2008 and policies CP 4, DM 7, DM 14 and DM 16 of the emerging Swale Borough Council Local Plan Bearing Fruits 2031 are relevant in that they relate to general development criteria and design, alterations and extensions, and parking considerations.
- 4.03 Supplementary Planning Documents: The Council's adopted Supplementary Planning Guidance entitled "Designing an Extension" is also relevant, and remains a material consideration having been through a formal review and adoption process. The Adopted SPG entitled "Designing an Extension - A Guide for Householders", was adopted by the Council in 1993 after a period of consultation with the public, local and national consultees, and is specifically referred to in the supporting text for saved policy E24 of the Local Plan. It therefore remains a material consideration to be afforded substantial weight in the decision making process.
- 4.04 National Planning Policy Framework (NPPF)
- 4.05 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."
- 4.06 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.
- 4.07 This has been carried out in the form of a report agreed by the Local Development Framework Panel on 12 December 2012. Saved policies E1, E19, E24 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.

## **5.0 LOCAL REPRESENTATIONS**

5.01 The surrounding neighbours were sent letters notifying them of the application. One letter neither supporting nor objecting to the proposal was received within the consultation period. This is summarised below:

- There is a 50 foot tree which should be retained as part of the character of the neighbourhood.
- There is the potential for the rear elevation to be extended beyond reasonable proportions.
- The conversion of this small home to a family home would add to the housing problem in that the older generation have nowhere to downsize. This in turn blocks the release of their family homes for the next generation.
- The characters and car shown on the drawings are out of scale and give a false impression of the parking situation and window height.

## **6.0 CONSULTATIONS**

6.01 Minster-on-Sea Parish Council objects to the application and considers it over-intensive development of the site. It also considers that the front garden is too small to provide parking for a 5 bedroom dwelling.

## **7.0 BACKGROUND PAPERS AND PLANS**

7.01 Application 16/506289/FULL was refused because the original dormers were proposed to have flat roofs. It also proposed a large rear dormer, all of which were contrary to the adopted SPG on extensions and found to be harmful to visual amenity.

7.02 Application 16/507562/LAWPRO applied for a Lawful Development Certificate for the rear dormer. The proposal complied with all the relevant criteria and has therefore been approved. I consider this to be a fall-back position for the applicants should this application fail.

7.03 Application SW/02/0125 was an approval of planning permission for the existing parking situation (it had previously been refused under application SW/01/1206).

## **8.0 APPRAISAL**

8.01 The application site is located within the defined built up area boundary of Minster in which the principle of development is acceptable subject to amenity and other relevant policy considerations. I believe the main considerations here to be the impact of the proposal upon the residential and visual amenities of the area, including the impact upon residential parking.

### **Residential Amenity**

8.02 The dwelling would extend no further rearwards of number 13 and less than 1.5m rearwards of number 9. There would remain a gap of just under 2m to the boundary here. As such, and due to the minimal increase in overall footprint when compared to the existing situation, I consider that there would be no significant harm in terms of overshadowing or an overbearing impact upon the immediately adjacent dwellings.

- 8.03 There would be roof lights and new windows/doors to the rear, however there are no properties directly to the rear and there would be approximately 17m to the boundary with the rear garden of 1 Highview Road. The dormers to the front, being upon on a bungalow, would not be excessively high, and there would remain approximately 25m to the block of flats opposite. As such, I consider that there would no serious concern in terms of overlooking. I consider the proposal acceptable in terms of residential amenity.

### **Visual Amenity**

- 8.04 The proposed dormers to the front would now comply with the SPG in that they would have traditional pitched roofs, have a vertical emphasis, and would be only as large as necessary to allow light into the rooms that they would serve. I consider the previous reason for refusal has been overcome in this regard and that they would amount to pleasant additions to the dwelling. As a result, I am of the view that they would sit comfortably in the mixed street scene.
- 8.05 The alterations to the rear would create a traditional, symmetrical and square shaped bungalow. Though plain in design detail, there are no public views here and I consider it would be acceptable.
- 8.06 Overall, I am of the opinion that the dwelling would remain of a scale and form appropriate to its original form and surroundings, and would not amount to over intensive development. I also note the presence of other altered and variably designed bungalows within the vicinity. It would be acceptable designed in matching materials. I consider the proposal acceptable in terms of visual amenity.

### **Parking**

- 8.07 I note the objections and concerns raised in respect to parking. The existing property has 3 bedrooms, while the proposal would create 5 bedrooms. According to the Kent Vehicle Parking Standards, the parking requirements for a 5 bedroom dwelling in a suburban location would not increase over those of a 3 bedroom dwelling. I also note that the existing parking situation for the 3 bedroom dwelling was approved via planning permission in application SW/02/0125.
- 8.08 As such, while I accept that the existing parking situation is tight and not ideal, because of the fact that it was previously approved via planning permission, and the fact that the adopted parking advice states that the expected parking requirements should not increase, I do not believe the parking arrangements could reasonably amount to a reason for refusal. They were also not considered as a reason for refusal in application 16/506289/FULL.
- 8.09 I also note the recently approved LDC for a large, flat roof rear dormer as the fall-back position. This would lead to the same 5 bedroom dwelling with no consideration for parking, but with a much more poorly designed scheme than that proposed here. This is a significant material consideration, which aside from the fact that the parking provision accords with KCC standards, weighs heavily in favour of approval here.

### **Other Matters**

- 8.10 I note the comment submitted regarding the tree, which I assume is the large tree in the back garden. The retention or otherwise of this tree is not material to this application.

- 8.11 I note the comment submitted regarding the vehicle and people shown on the plans. They are purely for indicative purposes and would not amount to reasons to query the plans, in my opinion.
- 8.12 I note the comment regarding loss of a smaller house which could be used by the older generation. The Council does not have any policy basis for refusing planning permission to preserve the supply of a particular dwelling type. Members should not refuse planning permission on such a basis.
- 8.12 I note the comment regarding the potential for a much larger and unreasonable rear extension in the future. This is purely speculative and cannot be taken into account in the determination of this application.

## 9.0 CONCLUSION

- 9.01 I take the view that the proposal has overcome the previous reasons for refusal. For the reasons set out above, I do not believe the parking arrangements could amount to a reason for refusal, and I am mindful of the fall-back position, as set out above, which would result in the same number of bedrooms and the same parking provision as proposed here, but with a very poor quality design. I therefore recommend that planning permission be 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 development hereby permitted shall match those on the existing building in terms of type, colour and texture.

Reason: In the interests of visual amenity.

- (3) The development hereby approved shall be carried out in accordance with the approved drawing numbers ADP16/P02/02, ADP16/P02/05 and ADP16/P02/06.

Reason: For the avoidance of doubt.

### 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.

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 - 16/506927/FULL</b>			
<b>APPLICATION PROPOSAL</b>			
Erection of a 4 Bedroom detached dwelling with integral garage and parking space and revised scheme from previously approved application 14/506821/FULL.			
<b>ADDRESS</b> Corner Plot Range Road Eastchurch Kent ME12 4DU			
<b>RECOMMENDATION - APPROVE</b>			
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b>			
The Council does not currently have a five year supply of housing land and the site was found by the Inspector to be in a sustainable location and the benefits of one additional dwelling outweigh any harm caused to the countryside. Furthermore, the proposal would not unacceptably harm the residential amenities of future occupiers of the two properties approved under 14/506821/FULL and the additional dwelling would not cause any significant harm to residential or visual amenities.			
<b>REASON FOR REFERRAL TO COMMITTEE</b>			
Recommendation contrary to Parish Council view			
<b>WARD</b> Sheppey East	<b>PARISH/TOWN</b> Eastchurch	<b>COUNCIL</b>	<b>APPLICANT</b> Mr Lee Marshall <b>AGENT</b> Kent Design Architects
<b>DECISION DUE DATE</b> 21/11/16	<b>PUBLICITY EXPIRY DATE</b> 21/11/16		
<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>
14/506821/FULL	Erection of pair of 3 bedroom semi-detached houses with associated garages and car parking	Refused but allowed on Appeal (PINS ref: 3135783)	Application refused on 12.08.2015. Appeal allowed on 28.01.2016

**MAIN REPORT**

**1.0 DESCRIPTION OF SITE**

- 1.01 Range Road is L shaped and the application site occupies the corner plot where the road turns at 90 degrees. The site currently comprises of a pair of semi detached dwellings which are currently under construction.
- 1.02 Two storey residential dwellings are located to the north of the application site. Playing fields are immediately adjacent to the west with two storey residential development further to the west along the southern side of Range Road. To the east lies open countryside. The surrounding area in general is dominated by the Sheppey prison cluster which is situated to the south and south west.

**2.0 PROPOSAL**

- 2.01 This application seeks planning permission for the erection of a 4 bedroom detached dwelling with parking to the front and private amenity space to the rear. The

application also proposes to reduce the private amenity space associated with both the dwellings currently under construction, and to amend the parking layout of one of the properties allowed on appeal (details above) and which form part of the application site.

- 2.02 The proposed dwelling would have a pitched roof with frontward projecting gable. The property would have an attached garage with a bedroom in the roofspace. The depth of the property would range between 11.7m and 8.1m with the width ranging between 5.7m and 8.9m. The eaves height of the garage would be 2.8m on the front elevation and 3.6m on the rear, with a ridge height of 6.2m. The main dwelling would have an eaves height of 5.4m. The ridge height of the front projecting gable would measure 8m with the main ridge measuring 8.5m.
- 2.03 A parking space is indicated to the front of the dwelling with private amenity space to the rear measuring 13m in depth at its longest point, 7.5m at its shortest point and 13m in width.
- 2.04 The proposed property will result in the reduction of the private amenity space of the dwellings currently under construction on this site on plot 1 from 20m to 10.5m in depth and on plot 2 from 15.6m to 9.4m in depth. The proposed garage of the dwelling on plot 1 (under 14/506821/FULL) will be omitted and two parking spaces for this property will be provided adjacent to the additional property now being proposed.

### 3.0 PLANNING CONSTRAINTS

- 3.01 Potential Archaeological Importance

### 4.0 POLICY AND OTHER CONSIDERATIONS

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

- 4.01 The NPPF at paragraph 14 states that central to the NPPF is “a *presumption in favour of sustainable development*.”

*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.”*

- 4.02 At paragraph 49 the NPPF states that “*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.*”

#### Development Plan

- 4.03 Policies SP1 (Sustainable Development), SP2 (Environment), SP4 (Housing), SP5 (Rural Communities), SH1 (Settlement Hierarchy), E1 (General Development)



Criteria), E6 (The Countryside), E19 (Achieving High Quality Design and Distinctiveness), RC3 (Helping to Meet Rural Housing Needs), H2 (Providing for New Housing), T1 (Providing Safe Access to New Development) and T3 (Vehicle Parking for New Development) of the adopted Swale Borough Local Plan 2008

- 4.04 Policies ST1 (Delivering Sustainable Development in Swale), ST2 (Development Targets for Jobs and Homes 2011-2031 2014-2031), ST3 (The Swale Settlement Strategy), CP3 (Delivering a Wide Choice of High Quality Homes), CP4 (Requiring Good Design) and DM14 (General Development Criteria) of The Emerging Swale Borough Local Plan 'Bearing Fruits 2031' Proposed Main Modifications 2016.

## 5.0 LOCAL REPRESENTATIONS

- 5.01 No responses were received.

## 6.0 CONSULTATIONS

- 6.01 **Eastchurch Parish Council** objects to this application and made the following comments:

*"The application is an over intensification of the site and contradicts the design and access statement for the original application 14/506821 for the two houses on Range Road*

*It is considered that these two plots were intended to be developed within the original scheme which as can be seen fits perfectly into the plot size of the land forming this application.*

*Members are concerned that this would set a precedent for future development in this location."*

- 6.02 **Natural England** state that *"It is the Council's responsibility to ensure that the proposals fully adhere to the agreed approach within the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring Strategy (SAMM) to mitigate for additional recreational impacts on the designated sites and to ensure that adequate means are in place to secure the mitigation before first occupation. Subject to the above, Natural England is happy to advise that the proposals may be screened out as not having a likelihood of significant effects on the designated sites."*

- 6.03 **KCC Archaeology** state *"my comments remain the same as for the previous application at this site:*

*The proposed development is located within the area of the former First and Second World War airfields at Eastchurch which are of historical significance. An aerial photograph of 1946 indicates the presence of an airfield structure of unknown nature on the site or close to it.*

*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 16/506927/FULL and 14/506821/FULL.

## **8.0 APPLICANTS SUPPORTING COMMENTS**

- 8.01 A Design and Access Statement has been submitted with the application which sets out, amongst other details, the planning history of the site and the layout and design of the proposal.

## **9.0 APPRAISAL**

### **Principle of Development**

- 9.01 In planning policy terms the site lies outside of the built up area boundary and is therefore in the countryside. In regards to this the Council cannot currently demonstrate a five year supply of housing land and because of this the Council's policies in relation to the supply of housing are to be considered out of date, as set out in paragraph 49 of the NPPF. I also give significant weight to the appeal decision which granted planning permission on this site (see reference above) for two dwellings ,i.e. those currently under construction. I have attached this appeal decision as an Appendix for ease of reference. This decision was made in a very similar policy context regarding the Council's lack of a five year housing supply.
- 9.02 The appeal decision found that the site met the three roles of sustainable development, economic, social and environmental. The circumstances of the surrounding area remain predominately the same as when the appeal decision was made and I also note that the Inspector, in terms of sustainability found that there would be no adverse impacts arising from the development. On this basis I take the view that an additional dwelling would provide benefits in terms of the contribution towards housing supply which would outweigh what is in my view the very limited harm of the proposal. As a result I find no reason as to why a different stance should be taken from the Inspector's conclusions regarding the sustainability of the site and as a result I am of the view that the principle of development is accepted.

### **Visual Impact**

- 9.03 I appreciate that the properties in the immediate vicinity of the application site are semi detached in nature. Although, the property proposed would be detached I consider it would be of a comparative scale to surrounding dwellings with a pitched roof and side facing gables. Therefore I am of the view that the style and design of the property itself would not be so significantly out of keeping with the surrounding development as to be unacceptable.
- 9.04 The application also proposes a change to the layout of the dwellings recently approved on appeal. The result of this is that the parking arrangement for the dwelling labelled as plot 2 (occupying the very corner plot) has been amended to omit the garage and provide two independently accessible spaces adjacent to the newly proposed property. I also take into account that a parking space is shown in the frontage of the additional dwelling. The result of this would be that the parking layout for these two dwellings would be prominent in the streetscene from public vantage points. In terms of this, I again turn to the Inspector's appeal decision where it was found that frontage parking in this location would not cause unacceptable harm to visual amenities or the streetscene. This was in part due to the frontage parking that is common within other residential properties close to the application site. Furthermore, I note the large area of public open space that abuts the site and that there is an area of landscaping indicated within the frontage of the newly proposed property. As a result I do not believe that the revised parking area for one of the

dwellings already granted planning permission, or the parking layout of the newly proposed property would cause significant harm to visual amenities or the streetscene.

### **Residential Amenity**

- 9.05 The frontage of the detached property would be turned 90 degrees from the properties previously approved on this site. The result of this is the flank wall of the garage would be 10.3m from the rear of the property labelled as plot 2. In terms of separation, the Council would usually expect a flank to rear distance of 11m for two storey properties. In this case I note that the garage is limited to 6.2m in height and the full two storey element of the proposed property would be 13.5m away from the rear of the closest dwelling. As a result I believe that due to the separation distance between the two storey element and the closest dwelling that the additional property would not have an unacceptably overbearing impact upon the future occupiers of this neighbouring dwelling.
- 9.06 The first floor rear elevation of the property would be 23m away from the area directly to the rear of No.11 Range Road. In this case I take into account that the rear windows would not be angled towards the rear of this property and as a result believe that the scheme would not introduce levels of overlooking that would be significantly harmful. Views towards the rear of plot 1 would be extremely limited due to the configuration of these properties and therefore I do not believe that the proposal would introduce the possibility of harmful levels of overlooking or a significant loss of privacy.
- 9.07 Of the surrounding properties, the most direct view of the rear private amenity space of the newly proposed dwelling would be from Plot 1. The upper level windows of this property would be 16.5m away from the central part of the rear garden. As this is a side on view I consider that this distance is acceptable as to not cause significant levels of overlooking or loss of privacy to future occupiers.

### **Other Matters**

- 9.08 Due to the change in layout, the properties approved on appeal would have their private amenity space reduced. However, I am of the view that the resulting garden area would be sufficiently sized for dwellings of this size. I also note that aside from the garage only one parking space is indicated for the additional property for which permission is now sought. Notwithstanding the garage, I consider that there is enough space for two vehicles to be parked within the curtilage of the dwelling and as a result the development would in my view not give rise to unacceptable harm to highway safety or amenity.

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

- 9.09 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.

## 10.0 CONCLUSION

10.01 Due to the Council's housing policies being out of date as a result of the current five housing land supply position, the benefits that the development would bring in terms of a welcome, albeit limited contribution to the housing land supply in a sustainable location would outweigh the very limited harm that this proposal would cause. I also give significant weight to the Inspectors decision in allowing the appeal for two dwellings on this site.

10.02 In addition I believe that the additional proposed dwelling would not unacceptably harm residential or visual amenities and the altered layout would still provide adequate private amenity space and parking provision for the previously approved dwellings on the site. I recommend planning permission is granted.

## 11.0 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: 16-51-01B received 13<sup>th</sup> December 2016; 16-51-02A; 16-51-03A; 16-51-04; and 16-51-05 received 26<sup>th</sup> September 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 that such matters are agreed before work is commenced.

- 4) 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.

Reason: In the interests of visual amenities.

- 5) 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 and to ensure that such matters are agreed before work is commenced.

- 6) 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 and to ensure that such matters are agreed before work is commenced.

- 7) 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.

- 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.

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

- 9) No construction activities shall take place, other than between 0730 to 1900 hours (Monday to Friday) and 0790 to 1300 hours (Saturday) with no working activities on Sunday or Bank Holiday.

Reason: In the interests of residential amenity.

- 10) The area shown on the submitted plan as vehicle 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 (as amended) (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 approved under 14/506821/FULL and 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.

- 11) The garage 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 (as amended) (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.

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

### **Habitats Regulations Assessment**

This HRA has been undertaken without information provided by the applicant.

The application site is located approximately 3km north of The Swale Special Protection Area (SPA) and Ramsar site 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 dwellings 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:

- Offering pre-application advice.
- 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 1



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## Appeal Decision

Site visit made on 5 January 2016

by **Andrew Owen MA MRTPI**

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

Decision date: 28 January 2016

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**Appeal Ref: APP/V2255/W/15/3135783**

**Land adjacent to 11 Range Road, Eastchurch, Sheerness, Kent ME12 4DU**

- 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 Lee Marshall against the decision of Swale Borough Council.
  - The application Ref 14/506821/FULL, dated 22 December 2014, was refused by notice dated 12 August 2015.
  - The development proposed is a pair of 3 bedroom semi detached dwellings with associated garages and parking.
- 

### Decision

1. The appeal is allowed and planning permission is granted for a pair of 3 bedroom semi detached dwellings with associated garages and parking at land adjacent to 11 Range Road, Eastchurch, Sheerness, Kent ME12 4DU in accordance with the terms of the application, Ref 14/506821/FULL, dated 22 December 2014, subject to the conditions listed in the attached Schedule.

### Main Issues

2. The main issues in this appeal are the effect of the proposal on the character and appearance of the area and whether the development would constitute sustainable development.

### Reasons

#### *Character and Appearance*

3. The site is within a small settlement dominated by three prisons forming the Sheppy prison cluster and also including a fire station and around 70 dwellings. It effectively comprises an undeveloped corner plot as it faces Range Road to its south and east. The adjacent development to the north is a row of two-storey, semi-detached properties and the dwellings to the west are of a similar form, design and appearance. There is a playing field to the rear of the site, Swaleside prison car park to the south and a paddock opposite. The paddock and the car park are visually separated from the site by bushes and hedgerows of around five metres in height and hence contribute little to the visual context of the site. As a result the site relates more strongly to the neighbouring residential development than to the rural land opposite. Consequently the development would have little impact on the character or appearance of the countryside.
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## APPENDIX 1

Appeal Decision APP/V2255/W/15/3135783

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4. The dwellings on Range Road are of a regular form, scale and appearance being exclusively semi-detached, two-storey properties constructed of red or yellow brick and accompanied in parts by hanging tiles or weatherboarding. The development would reflect this form and scale and would incorporate weatherboarding at first floor level. The building would differ from the adjacent units by being marginally higher, incorporating dormers and having half hipped roofs. However these differences would not result in the development appearing incongruous in its setting.
5. The garage to the rear of plot 1 would be detached from the main house and would front the part of Range Road that runs parallel to the south boundary of the site. The garage would be largely screened from views from the west by the boundary fence and by a large tree that is positioned just beyond the south west corner of the site. The driveway in front of this garage would project forward of the rest of the development and would be visible in the street scene. However even when a car is parked on here, the driveway would not appear unduly prominent in the street scene. Indeed many of the other properties along Range Road have driveways forward of the dwelling. As such, in this respect the development would also not appear incongruous in its setting.
6. Consequently the development would not harm the character and appearance of the area, including the countryside, and would comply with Policy E1 of the Swale Borough Local Plan (SBLP) which seeks to ensure development is appropriate to its location, and Policy E19 of the SBLP which requires development to be of a high quality design.

*Sustainable Development*

7. It is not disputed that the Council cannot demonstrate a five year supply of housing land. In such circumstances, paragraph 49 of the National Planning Policy Framework advises that relevant policies for the supply of housing should not be considered up to date. Policies H2 and RC3 of the SBLP relate to the provision of housing and so should not be considered up to date. Policy E6 of the SBLP relates to development generally in the countryside and should also be considered out of date in so far as it relates to housing supply. As such, I can give these policies only limited weight.
8. The presumption in favour of sustainable development is set out in Paragraph 14 of the Framework. It adds that where relevant policies are out of date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the Framework as a whole, or where specific policies in the Framework indicate development should be restricted.
9. The Framework identifies three dimensions to sustainable development: economic, social and environmental, and states that planning needs to perform roles in all three dimensions. It is necessary to consider the proposal in terms of all three roles to establish whether it constitutes sustainable development.
10. The site is located outside the defined settlement of Eastchurch, being approximately  $\frac{3}{4}$  mile from the settlement boundary and around 1 mile from the village centre and the goods and services available there. Church Road, which links the Sheppy prison cluster to the village centre, does have a footway along its length and some lighting and so provides a safe pedestrian access to the village centre. Furthermore, on Church Street there is a bus stop around

## APPENDIX 1

Appeal Decision APP/V2255/W/15/3135783

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300 metres from the site which is served by three bus services providing links to the village centre and larger towns further afield. Accordingly because of the site's accessibility to goods, services and public transport links, the provision of housing in this location would support the well-being of the village and help to perform the social role in sustainable development.

11. The prison cluster dominates the context of the site, and the appellant has commented that the neighbouring houses were originally built to house prison staff and their families. It is not unreasonable to consider that the prisons could provide employment opportunities for future residents of the dwellings which would be accessible by walking or cycling. Furthermore there may also be a short term gain for the local economy during the construction period. Consequently, the development would contribute to the local economy and fulfil the economic role.
12. As set out above, the immediate area has a primarily domestic character and therefore no harm would be caused to the character or appearance of the countryside as a result of the development. As such the development would protect the countryside and the environmental role would be met.
13. In terms of complying with specific policies in the Framework, Paragraph 55 advises that isolated homes in the countryside should be avoided. However due to the size of the settlement within which the site is located and the links to the village centre, I do not consider that the development would be isolated.
14. In summary, there would be no adverse impacts arising from the proposed dwelling, there would be benefits when considered against the Framework as a whole and there are no specific policies in the Framework which indicate that development should be restricted. For all the above reasons, I find that the proposed dwelling would constitute sustainable development as defined in the Framework. The development would also accord with Policy H2 of the SBLP which supports sustainable forms of development, and Policy E6 of the SBLP which requires development to protect the character of the countryside.

#### Conditions

15. I have considered the conditions put forward by the Council against the requirements of the national Planning Practise Guidance and the Framework. Where necessary and in the interests of clarity and precision, I have altered the conditions to better reflect this guidance.
16. In addition to the standard timescale condition, I have attached conditions for the avoidance of doubt, to protect the character and appearance of the area, in the interests of sustainable development, in the interests of highway safety and in the interests of the residential amenity of neighbouring residents. Some conditions require compliance prior to the commencement of development so that the effects of the development are properly mitigated for.

#### Conclusions

17. For the reasons given above, and taking account of all other considerations, I conclude that the appeal should be allowed and planning permission granted subject to the conditions in the attached Schedule.

## APPENDIX 1

Appeal Decision APP/V2255/W/15/3135783

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**Schedule of Conditions**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 14.48.01B, 14.48.02B and 14.48.03A.
- 3) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) No development shall take place until details have been submitted to and approved in writing by the local planning authority which set out what measures have been taken to ensure that the development incorporates sustainable construction techniques such as water conservation and recycling and energy efficiency. Such measures shall be carried out as approved.
- 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 and these works shall be carried out as approved before the occupation of the development. These details shall include existing trees, shrubs and other landscape features; schedules of plants noting species (which shall be native species), plant sizes and proposed numbers/densities where appropriate, means of enclosure, hard surfacing materials and an implementation programme.
- 6) If within a period of five years from the date of the planting of any tree or shrub that tree or shrub, or any tree or shrub planted in replacement, is removed, uprooted, destroyed, dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree or shrub of the same species and size as that originally planted shall be planted in the same place, unless the local planning authority gives its written approval to any variation.
- 7) No dwelling shall be occupied until the garages and vehicle parking and manoeuvring areas have been provided within the site in accordance with drawing No 14.48.01B.
- 8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), the garages, vehicle parking and manoeuvring areas shall be kept available for vehicle parking and manoeuvring at all times.
- 9) Construction works shall not take place outside 0730 hours to 1900 hours Mondays to Fridays and 0730 hours to 1300 hours on Saturdays nor at any time on Sundays or Bank Holidays, unless with the prior written approval of the Local Planning Authority.
- 10) No development shall take place until a programme for the suppression of dust during the construction of the development has been submitted to and approved in writing by the local planning authority. The approved Statement shall be adhered to throughout the construction period unless any variation has been approved by the local planning authority.

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<b>2.7 REFERENCE NO - 16/507130/FULL</b>			
<b>APPLICATION PROPOSAL</b>			
Detailed application for the use of the existing lawful structure which is laid out as two apartments, for the use as two holiday let units at the Annexe at Sharsted Lodge			
<b>ADDRESS</b> Sharsted Lodge Sharsted Road Doddington Kent ME9 0JS			
<b>RECOMMENDATION</b> Grant, subject to completion of a Unilateral Undertaking by the applicant to restrict occupation of the building to holiday accommodation only, and subject to the conditions below.			
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b>			
The application is in accordance with the NPPF and adopted and emerging local development plan policies.			
<b>REASON FOR REFERRAL TO COMMITTEE</b>			
The recommendation is contrary to the views of the Parish Council.			
<b>WARD</b> East Downs	<b>PARISH/TOWN COUNCIL</b> Doddington	<b>APPLICANT</b> Mr A Connor <b>AGENT</b> DHA Planning	
<b>DECISION DUE DATE</b> 30/11/16	<b>PUBLICITY EXPIRY DATE</b> 18/11/16		
<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>
16/504653	Demolition of existing single storey rear extension. Erection of a single storey rear extension with a basement. Formation of new basement area under existing structure. New boiler flue and oil tank storage with screening. Retrospective application for existing wrought iron gates to entrance bellmouth.	Pending consideration	
16/504654	Listed Building Consent for demolition of existing single storey rear extension. Erection of a single storey rear extension with a basement . Formation of new basement area under existing structure. New boiler flue and oil tank storage with screening. Retrospective application for existing wrought iron gates to entrance bellmouth.	Pending consideration	
16/500336	Enforcement notices served against conversion and extension of the garage outbuilding to create 2 self contained flats, installation of entrance gates, the construction of internal fencing and sheds, construction of a timber and plastic extension to Sharsted Lodge, and installation of a metal flue to Sharsted Lodge. (3 enforcement notices cover the above works in total)	The enforcement notices were served on 24 May 2016 and currently the subject of appeals.	
SW/08/0826	Garage outbuilding	Approved	18/08/09

*This revised scheme was for a smaller garage building, located closer to the main house, but at enough distance so as not to harm its setting. The building fronted an existing access within the site, and was considered to be of appropriate design, form and siting.*

SW/08/0418	Garage outbuilding	Refused	19/06/08
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*This application proposed a large 5 bay garage structure with first floor accommodation, sited to the far south of the property. The size and scale of the building, impact / distance from Sharsted Lodge, and extent of works required for the driveway were considered to be unacceptable.*

**1.0 DESCRIPTION OF SITE**

- 1.01 Sharsted Lodge is a grade II listed building set within large grounds. It was formerly part of the wider Sharsted Court estate, but was separated from it when the M2 motorway was built. The site and surrounding area are covered by a Woodland Tree Preservation Order.
- 1.02 The site falls within the countryside and is around 1.4km from Lynsted village to the north and 1.5km to Newnham to the south. It is not part of a designated landscape, although Sharsted Road is designated as a rural lane.
- 1.03 The building subject to this application is sited around 35 metres to the south of Sharsted Lodge. This building lies around 30 metres from the southern boundary of the site, with the M2 motorway immediately beyond.
- 1.04 The building in question is currently the subject of the above enforcement notices concerning its use for two self-contained flats and unauthorised extensions.

**2.0 PROPOSAL**

- 2.01 This application seeks to use the building to the south of Sharsted Lodge as two holiday let units, each consisting of a 1 bed self-contained property.

**3.0 PLANNING CONSTRAINTS**

- 3.01 Sharsted Lodge is Grade II listed  
The site and surrounding area are covered by Tree Preservation Order No. 50-1  
The Kent Downs AONB lies immediately to the south of the M2 motorway

**4.0 POLICY AND OTHER CONSIDERATIONS**

The National Planning Policy Framework (NPPF)

- 4.01 Paragraphs 14 and 15 set out the presumption in favour of sustainable development, whereby proposals for development which accord with the development plan should be approved without delay.
- 4.02 Paragraph 17 sets out a list of core planning principles. This includes support for sustainable economic development, recognition of the intrinsic character and beauty of the countryside, and conservation of heritage assets.
- 4.03 Paragraph 28 supports the rural economy, and the sustainable growth and expansion of all types of businesses in rural areas, both through conversion of existing buildings



and well-designed new buildings, and through sustainable rural tourism which respect the character of the countryside.

- 4.04 Paragraphs 30-41 promote sustainable transport and set out that developments should be located where there are choices in transport modes, although this recognises that account needs to be taken of other policies, particularly in rural areas.
- 4.05 Paragraph 55 restricts housing development in isolated countryside locations unless there are special circumstances. This can include the re-use of redundant or disused buildings.
- 4.06 Paragraphs 126-141 seek to protect heritage assets and their settings.

#### The adopted Swale Borough Local Plan

- 4.07 Saved policy SP3 seeks to improve the local economy including support for tourism proposals, particularly those that increase the quality and supply of visitor accommodation.
- 4.08 Saved policy E6 protects the countryside and limits development to specified exceptions, including the re-use of an existing rural building.
- 4.09 Saved policy B5 states that the Council will permit proposals for new serviced and self-catering tourist accommodation in accordance with the local plan.
- 4.10 Saved policy RC1 gives support to proposals that help diversify the rural economy, provided the proposal is appropriate in scale, retains rural character, would not significantly increase traffic, makes use firstly of existing buildings, and does not detract from the appearance / interest of such buildings.
- 4.11 Other relevant saved policies include SP1 (sustainable development), FAV1 (development in the Faversham and Rest of Swale Planning Area), SH1 (Settlement Hierarchy), E1 (general development criteria), E10 (trees), E14 (development involving listed buildings) and RC7 (rural lanes)

#### The emerging Swale Borough Local Plan

- 4.12 Policy ST3 sets a settlement hierarchy for the borough. It states that at locations in the countryside development will not be permitted unless supported by national policy and able to demonstrate that it would contribute to protecting and, where appropriate, enhancing the intrinsic value, landscape setting and beauty of the countryside.
- 4.13 Policy DM3 supports the sustainable growth of the rural economy. It requires larger scales of development to be provided at rural service centres, supports the re-use of existing buildings, and the expansion of tourist and visitor facilities in appropriate locations.
- 4.14 Other relevant policies include ST1 (sustainable development), DM14 (general development criteria), DM16 (alterations and extensions), DM26 (rural lanes), DM29 (woodlands, trees and hedges), and DM32 (development involving listed buildings).

## **5.0 LOCAL REPRESENTATIONS**

- 5.01 **Neighbour comments** – none received

## 6.0 CONSULTATIONS

- 6.01 Doddington Parish Council - objects to the planning application on the following grounds;
- The proposed use will have a detrimental effect on the heritage asset Sharsted Lodge.
  - It does not represent a diversification of an existing rural business rather the introduction of a completely new business use to the curtilage of this listed cottage located in a rural setting
  - It is not a sustainable development in its location due to the lack of local facilities and effect on the landscape and environment
  - The location is affected by noise and air pollution from the nearby M2
- 6.02 Kent Highways and Transportation comment that *“this development proposal does not meet the criteria to warrant involvement from the Highway Authority in accordance with the current consultation protocol arrangements. If there are any material highway safety concerns that you consider should be brought to the attention of the HA, then please contact us again with your specific concerns for our consideration.”*
- 6.03 The Council's Economy and Community Services Manager comments that *“There is limited tourism infrastructure of this type and quality for visitors to Swale. The location of the proposal is such that it will have appeal for those using the area for rural holidays or as a base for wider travelling in the county or near Europe.”*
- 6.04 The Council's Environmental Health Manager has raised no objection to the scheme and comments that *“if people are not residing in a property, and only there for a short time, we are not as concerned, whether it be for exposure no noise or associated air pollution. We have no information concerning air pollution levels on the M2, despite what the actual levels might be.”*

## 7.0 BACKGROUND

- 7.01 Members will note from the planning history above that permission was granted for a detached garage with accommodation on the first floor under SW/08/0826, to serve Sharsted Lodge. I understand that the structure was built as approved, but was then subsequently extended by adding two single storey flat roofed extensions at each end of the building, and that it was converted from a garage to two flats. In addition, boundary gates have been installed together with the erection of fencing and sheds within the grounds of Sharsted Lodge. A timber and plastic structure has been erected next to Sharsted Lodge, and a metal flue has been installed to this building as well.
- 7.02 Three enforcement notices have been served to deal with the above breaches. The owner has agreed to remove the structure next to Sharsted Lodge and the metal flue from the listed building, together with the fencing and sheds erected. However an appeal has been made against the requirements of the notice to remove the entrance gates, to demolish and remove the side extensions to the garage outbuilding, to remove the UPVC windows installed in the rear elevation of the garage outbuilding, and to cease use of the outbuilding for purposes other than that ancillary to the use of Sharsted Lodge.
- 7.03 An appeal Hearing is due to take place in the new year in respect of the above matters still under dispute between the Council and the appellant. However, since the Notices were served, the appellant has provided information on the construction of the side extensions to the garage outbuilding, and the Council's own aerial photographs



indicate that these extensions were built more than 4 years prior to the issue of the relevant enforcement notice. On this basis, officers have accepted that the operational development to erect the side extensions is immune from enforcement action, and this element of the enforcement notice is no longer being pursued. This then leaves the residential use of the building and the installation of UPVC windows as the outstanding matters to be considered at the Hearing, together with the boundary gates.

- 7.04 The applicant has submitted separate planning and listed building consent applications to extend Sharsted Lodge and these are currently under consideration. This includes a proposal to retain the front boundary gates and, if approved, this will resolve this element of the unauthorised development referred to in the enforcement notices.
- 7.05 The applicant has submitted the current application now on the basis that the use of the building as holiday accommodation may be considered to comply with policy . If planning permission is granted then the applicant is likely to withdraw the appeal against the enforcement notice and will cease use of the building as two residential flats. They will also replace the UPVC windows with timber.

## **8.0 APPRAISAL**

### **Principle of Development**

- 8.01 The site lies in an isolated location within the countryside where development plan policies generally seek to limit development in order to protect the appearance and functioning of the countryside and for reasons of sustainability. Saved policy RC1 of the adopted plan and policy DM3 of the emerging plan seek to promote development that can diversify / grow the rural economy, provided that such development is not harmful to the countryside and is appropriately located. The re-use of rural buildings and expansion of tourist facilities including visitor accommodation is also given support under these policies, as well as under saved policy B5 of the adopted plan.
- 8.02 The existing building was originally constructed as a garage (with permission) and then subsequently extended, and Members will note from above that these physical works are lawful (other than the UPVC windows). It is an existing building and the application does not seek to extend or alter this. The building is of modern construction and is sound and the proposed development could be accommodated without any material alteration to it. Vehicular access and parking already exist.
- 8.03 The use of the building as holiday accommodation would expand the provision of such facilities in the District, which is an aim of the above development plan policies. This is supported by the Council's Economy and Community Services Manager. The site is relatively isolated from any defined settlement and it is recognised that occupants of the cottage would most likely be reliant on cars. Policy DM3 of the emerging plan specifies that larger scale development of rural businesses should be located at rural local service centres and urban areas. However as the development would be a small scale holiday cottage enterprise, some flexibility can be used under the above stated policies. In my opinion, and despite the relatively isolated location of the site, the development would provide for the re-use of an existing building for economic / business purposes and provision of additional tourism facilities, and would not be in conflict with the above policies which recognise that such buildings may not be within existing defined towns and villages.
- 8.04 There is a clear local policy position that seeks to prevent permanent residential occupation of rural buildings unless evidence can demonstrate that they are not

suitable for employment / economic use. In this respect, the applicant has agreed to enter into a legal agreement to prevent use of the two units as sole or main dwellings, and to restrict use as holiday accommodation with a maximum length of stay by an individual or group to 28 days per calendar year.

### **Visual Impact**

- 8.05 The visual impact of the development would be little changed from the existing visual impact of the building, the form and size of which would remain unchanged. The building is located some distance along a private drive to the south of Sharsted Lodge and is not visible from public locations. The applicant would agree to replace the UPVC windows on the rear of the building with timber framed windows, as part of the approved scheme.

### **Residential Amenity**

- 8.06 Other than Sharsted Lodge, the development would be isolated from other dwellings and as such would not harm neighbouring amenities. It is sited some 35 metres from Sharsted Lodge and I consider this distance to be sufficient to avoid any unacceptable amenity impacts on this property.
- 8.07 Members will note that the Parish Council has objected due to noise and air quality issues arising from the motorway. The applicant has not provided any noise or air quality assessments with the application – nor have these been sought by the Council – and the site does not fall within an Air Quality Management Area. The Environmental Health Manager has advised that any noise or pollution issues arising from the motorway would not be a cause for concern in relation to the proposed use as holiday let accommodation – due to the nature of use as short-stay accommodation.

### **Highways**

- 8.08 The holiday accommodation would be provided with parking facilities and access onto the local lane is acceptable. No objections have been raised by Kent Highways and Transportation.
- 8.09 Sharsted Road is a rural lane afforded protection under saved policy RC7 of the adopted plan and policy DM26 of the emerging plan. However the extent of traffic arising from 2 x 1 bed holiday cottages is considered to be low, and I do not consider that this would lead to any material damage to the lane.

### **Landscaping**

- 8.10 The site is surrounded by trees which are protected by a Woodland Tree Preservation Order.

### **Impact on setting of a Heritage Asset**

- 8.11 Sharsted Lodge is a Grade II Listed Building, and national and local development plan policies (saved policy E14 of the adopted plan and policy DM32 of the emerging plan) require development to preserve or enhance such assets and their settings. In this instance, the garage outbuilding is located 35 metres to the south of the listed building, with mature trees and landscaping between the buildings. The outbuilding, as approved in 2008, was also considered at this time to be acceptable in terms of its impact on the setting of Sharsted Lodge. Given that this application only seeks permission for the use of the building (other than the replacement of UPVC windows

on the ground floor), I do not consider that such use as holiday let accommodation would harm the setting of Sharsted Lodge, given the distance and landscaping between buildings.

## 9.0 CONCLUSION

9.01 The site would represent an appropriate use for an existing rural building, and would increase the stock of holiday accommodation in the Borough. Despite the relatively unsustainable location of the site, these factors are considered sufficient to provide policy support for the development under saved policies B5 and RC1 of the adopted plan and policy DM3 of the emerging plan.

9.02 The recommendation to approve is subject to completion and submission of a legal agreement to secure the use of the units as holiday accommodation only and for short-term occupation.

**10.0 RECOMMENDATION** – That planning permission is GRANTED Subject to the completion of a legal agreement as set out in the report, and 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 existing UPVC windows serving the ground floor bathroom and kitchen shall be replaced with timber framed windows. Within three months from the date of this permission, detailed drawings at a suggested scale of 1:5 of the replacement windows together with sections through glazing bars, frames and mouldings shall be submitted to and approved by the Local Planning Authority. The windows shall be installed in accordance with the approved details within three months from the date of such approval in writing by the Local Planning Authority.

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

(3) Upon completion, no further development, whether permitted by Classes A, B, C, D or 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) or not, shall be carried out.

Reason: To protect the rural character and to preserve the setting of the adjacent listed building.

(4) Notwithstanding the provisions of Class A, Part 2, Schedule 2, of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) or any order revoking and re-enacting that Order, no fences, gates walls or other means of enclosure shall be erected within the application site.

Reason: To protect the rural character and to preserve the setting of the adjacent listed building.

- (5) The use of the building shall be restricted to occupation as holiday let accommodation, and shall not to be used as any person's sole or main residence. The accommodation shall not be occupied by the same individual or group of persons for a period of more than 28 days in any calendar year.

Reason: In order to prevent the permanent residential use of the buildings and having regard to the rural location of the site.

### **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

- Offering pre-application advice.
- 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 - 16/507299/LBC</b>			
<b>APPLICATION PROPOSAL</b> Listed Building Consent for 1 x Non Illuminated Aluminum Fascia Letters			
<b>ADDRESS</b> 7 Market Place Faversham Kent ME13 7AG			
<b>RECOMMENDATION:</b> Grant subject to clarification from the agent regarding removal of the existing lamp units			
<b>SUMMARY OF REASONS FOR RECOMMENDATION:</b> the proposal meets the clear advisory guideline that the design should reflect the character of the building and that appropriate materials must be used and be of a high standard			
<b>REASON FOR REFERRAL TO COMMITTEE:</b> Faversham Town Council objection			
<b>WARD</b> Abbey	<b>PARISH/TOWN COUNCIL</b> Faversham Town	<b>APPLICANT</b> Mr Blyth <b>AGENT</b> Blaze Signs Ltd	
<b>DECISION DUE DATE</b> 06/12/16	<b>PUBLICITY EXPIRY DATE</b> 25/11/16		
<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>
16/504648ADV & 16/504649/LBC	Applications for installation of 1x set of halo illuminated Connells letters and 1x set of non illuminated Connells letters	REFUSED	04.08.16

**1.0 DESCRIPTION OF SITE**

- 1.01 7 Market Place is a grade II listed building centrally located within the town centre of Faversham. It is currently occupied by Connells Estate Agents (who have erected a temporary sign on the building). It has been in this use since 2003 to the ground floor with residential accommodation above.
- 1.02 The site is within the built-up area boundary and within the Faversham conservation area.

**2.0 PROPOSAL**

- 2.01 1 x set of red CONNELLS letters attached to the existing white rendered background of a maximum 400mm in height and 1855mm in width central within the 4635mm background. The existing cowl lights are shown to be retained.
- 2.02 The lettering proposed is formed in 3mm deep cut letters set 6mm off the fascia fabricated in aluminium.
- 2.03 The application simply seeks listed building consent for the lettering as express advertisement consent is not required for the non-illuminated signage proposed. The application drawings still show the existing lamp units either side of the fascia and I am therefore seeking clarification from the applicant that these will now be removed, as was proposed in the previous refused applications.

### 3.0 PLANNING CONSTRAINTS

Potential Archaeological Importance  
Conservation Area Faversham

Listed Buildings MBC and SBC Ref Number: 1199/SW

Description: G II 7 AND 7A, MARKET PLACE, FAVERSHAM, ME13 7AG

Listed Buildings MBC and SBC Ref Number: 1198/SW

Description: G II\* 5 AND 6, MARKET PLACE, FAVERSHAM, ME13 7AG

Section 52 S52-5

### 4.0 POLICY AND OTHER CONSIDERATIONS

National Planning Practice Guidance (NPPG): in relation to adverts

Development Plan: Saved policies E1, E14, E15 and E23 of the Swale Borough  
Local Plan 2008

Supplementary Planning Documents (SPG): The design of shopfronts, signs and  
advertisements.

### 5.0 LOCAL REPRESENTATIONS

5.01 None received

### 6.0 CONSULTATIONS

6.01 Faversham Town Council object as they consider that a hand painted sign would be  
more fitting in the town centre conservation area.

### 7.0 BACKGROUND PAPERS AND PLANS

Application papers for application 16/507299/LBC

### 8.0 APPRAISAL

8.01 This submission is made following the earlier refusal for a scheme for illuminated  
signage on this building. The reason for refusal stated that "The proposed halo  
illuminated fascia sign by virtue of its scale, location and method of illumination would  
be harmful to amenity by virtue of the harm caused to the character and appearance  
of the listed building"

8.02 The halo lighting has now been removed, and the sign consists purely of individual  
3mm thick letters set on the rendered background.

8.03 An important consideration in determining this application is the impact of the  
proposal on the listed building and the Council's adopted Supplementary Planning  
Guidance: "The design of shopfronts, signs and advertisements". The Council has a  
statutory duty to pay special attention to protecting the listed building and the  
conservation Area and there is a strong presumption against granting consent for  
proposals which cause harm.

8.04 The SPG states that "the use of hand painted signage will normally be required upon  
listed buildings or within conservation areas"

8.05 I note the objection from the Town Council on the grounds that a "*hand painted sign  
would be more fitting.*" However, in this case the building is one comprising more  
than one shopfront and is not of an architectural style that relates to the various

illustrations in the SPG which are primarily of wood construction with delicate wood detailing for the fascias, pilasters, capitals, cornices, cappings and other external features. Therefore in my view a more flexible interpretation of this position is appropriate here.

- 8.06 The shopfronts that the guidelines were primarily drafted to refer to were Regency, Georgian Edwardian or Victorian and in such cases it is expected that the fascia signage would normally be painted. However this does allow for a degree of flexibility to be allowed since the guidelines do also encourage the design of shopfronts of commercial premises to be of a high standard and for corporate images to be discretely interpreted and other solutions to be considered when different materials are used in the design and construction of shopfronts and their host buildings of a more modern style of architecture.
- 8.07 The host building comprises more than one shopfront and at the shopfront level the shopfront is recessed well behind the rear of pavement line and visually defined by simple classically influenced heavily detailed rusticated rendered piers.
- 8.08 The fascia is continuous across the subject shopfront and the adjacent unit. The use of individual letters, as now proposed not backed by the corporate red colour normally associated with the company concerned, is in my view acceptable as the letters will be of a simple clear form on a plain background and the relief offered by this design compliments the bold character and appearance of the building.
- 8.09 The simple design of the sign is reinforced by the sign being set in a central position and this respects the symmetry of the shopfront whereas the existing fascia sign offers an awkwardly composed set of messages on a coloured background that negates the value of the simple plain uncluttered continuous rendered fascia.

## 9.0 CONCLUSION

- 9.01 In conclusion, the proposal meets the clear advisory guideline that the design should reflect the character of the building and that appropriate materials must be used and be of a high standard.

- 10.0 RECOMMENDATION** – Grant consent subject to clarification from the agent regarding removal of the existing lamp units and the following condition.

### CONDITION

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

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

- 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>2.9 REFERENCE NO - 16/507289/FULL</b>		
<b>APPLICATION PROPOSAL</b> New dual use netball court/drop-off area; access from land to the east and new footway between Gladstone Drive and land to the east of the school (Stones Farm development).		
<b>ADDRESS</b> Lansdowne County Primary School, Gladstone Drive, Sittingbourne, Kent ME10 3BH		
<b>RECOMMENDATION – Grant SUBJECT TO</b> referral of the application to the Secretary of State to Sport England’s objection.		
<b>REASON FOR REFERRAL TO COMMITTEE</b> Objection from Sport England		
<b>WARD</b> Murston	<b>PARISH/TOWN COUNCIL</b> Bapchild	<b>APPLICANT</b> G H Dean & Company Limited <b>AGENT</b> Paul Sharpe Associates LLP
<b>DECISION DUE DATE</b> 05/12/16	<b>PUBLICITY EXPIRY DATE</b> 09/12/16	
<b>RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites)</b>		
<b>App No</b>	<b>Proposal</b>	<b>Decision</b>
14/501588/OUT	Hybrid application for 550-600 houses and countryside gap, Stones Farm, Bapchild	Pending determination

**1.0 DESCRIPTION OF SITE**

- 1.01 The site of this application is a small part of the school grounds in the north eastern tip of the site. To the east lies an open field which is part of the allocated Stones Farm housing site and subject to the current hybrid planning application 14/501588/OUT which Members have resolved to approve subject to a Section 106 Agreement being completed (including reference to parking close to Lansdowne School). To the north lies a row of modern terraced houses with the nearest one (2 Gladstone Drive) having its flank wall and garden running along the school boundary. This flank wall contains a window at ground floor level, but both this window and the garden are screened by a 1.8m tall solid timber fence. The school’s own parallel chain link fence (running the full length of the adjacent house and garden) and a palisade fence also mark this boundary, and these fences are to remain.
- 1.02 The area to be developed as a dual use netball pitch/drop-off area is at a significantly higher level than the main school playing pitches which lie to the south of the school buildings, separated from the pitches by a line of mature trees growing on a steep bank, and is not big enough to contain a playing pitch. At the moment it contains some fixed climbing and fitness equipment which renders it incapable of use for ball games. In my view it represents more an equipped area for play rather than part of any playing field.
- 1.03 Trees to the west of the application site and along the school’s northern boundary consist of groups of silver birch and beech, but none are of special significance in their own right, and some have been badly affected by tree surgery reducing their value still further.

**2.0 PROPOSAL**

- 2.01 The proposal arises from anticipating the potential for traffic congestion should children from the Stones Farm development attend Lansdowne School. There are different interpretations of when this might happen (if at all) but based on proximity alone these children will eventually be some of the closest residents to the school and I expect at

- least some of them to wish to attend this school, and to have a high priority for admission.
- 2.02 Accordingly, access to the school will be important. At present the Stones Farm scheme provides for pedestrian only access to the estate in which the school stands and I can foresee parking issues at access points, akin to the problems that currently affect Gladstone Drive at school times. Alternatively, the problems of Gladstone Drive may be made worse still if Stones Farm parents drive pupils to school via Gladstone Drive.
- 2.03 To plan effectively for this potential, and to prevent current problems simply being repeated, I have suggested to the Stones Farm developer that he should provide scope for parking close to the school. He has instead offered to provide a dual use netball court and drop-off area within the school grounds, and he has obtained the school's agreement to do so. This application is made by the developer for that dual use area with due notice served on the school.
- 2.04 The application proposes the creation of a hard surfaced netball court (38m x 23.3m) which is also capable of providing 24 car parking spaces (for use outside school hours) accessible both from Stones Farm and from Gladstone Drive. The route to Gladstone Drive will be to the existing school gates, and the idea is that access to the drop-off area will only be available at school opening and closing times. At other times, pedestrian only access from Stones Farm to the school gate will be via a separate new footpath within the current school boundary, but separated from the remainder of the grounds by a new fence running parallel to the current boundary. The new footpath will thus be outside the secure school grounds and open for use at all times; and it will include a motorcycle barrier.
- 2.05 The new pedestrian route and the vehicular access to and from Gladstone Drive will run close to the new fence and the creation of these parallel routes requires removal of some trees close to the school's current boundary. These trees are not of special importance and the large open space outside the boundary contains better and larger trees. Nevertheless scope remains for new planting within the school grounds to replace the trees lost.
- 2.06 It is suggested by the applicant that the arrangements for access to the new drop-off area will be for the school to decide in terms of whether access to and from Gladstone Drive or Stones Farm will be one-way or two-way, and that in the longer term the access to Stones Farm might become the main school access, reducing traffic movements in Gladstone Drive.
- 2.07 In relation to timing of construction, the applicant has agreed to provide this facility in association with the implementation of the Stones Farm development and has provided for a route to the proposed gate within the indicative layout of the Stones Farm scheme. This is all within Phase 1 of the scheme and it is anticipated that if planning permission is granted here the Stones Farm Section 106 Agreement (and a related contract between the developer and the school) will require this drop-off area to be built alongside phase 1 of Stones Farm i.e. before 200 houses are occupied. If this application is not approved, the Stones Farm Section 106 Agreement will require an alternative parking area to be built within Stones Farm.
- 2.08 The applicant does not see the development as affecting an existing playing field as the area concerned contains play equipment not useable in wet weather, whereas the new netball court will be an all-weather area suitable for a number of sports. Nevertheless,

they see the logic in the Council consulting Sport England on the application on the basis of the scheme's potential effect on playing fields.

- 2.09 The application is supported by a tree survey which indicates the trees affected by the development are of limited quality and replacement planting can be provided. In any case the applicant explains that the benefits of the scheme outweigh the loss of these trees.

### 3.0 POLICY AND OTHER CONSIDERATIONS

- 3.01 The NPPF was released on 27<sup>th</sup> 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.”*
- 3.02 The 12 month period noted above has expired. As such, it was necessary for a review of the consistency between the policies contained within the Swale Borough Local Plan 2008 and the NPPF. This was carried out in the form of a report agreed by the Local Development Framework Panel on 12 December 2012. All saved policies cited below 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.
- 3.03 The NPPF sets out that sustainable development should be approved. Sustainable development is defined in relation to three key roles – economic, social and environmental.
- 3.04 The NPPF specifically encourages plan-led development providing a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency. It also seeks that planning be creative and support infrastructure necessary for thriving local places, protecting the countryside whilst preferring use of land of lesser environmental value and making the fullest possible use of public transport, walking and cycling.
- 3.05 The guidance encourages sustainable transport patterns and choice of travel modes, minimising journey lengths, and specifically suggests that where practical (particularly within large-scale developments) primary schools should be located within walking distance of most properties.
- 3.06 With regard to school development the NPPF (paragraph 72) is very clear. It states that:
- “The Government attaches great importance to ensuring that a sufficient choice of school places is available to meet the needs of existing and new communities. Local planning authorities should take a proactive, positive and collaborative approach to meeting this requirement, and to development that will widen choice in education. They should:*
- *give great weight to the need to create, expand or alter schools, and*
  - *work with school promoters to identify and resolve key planning issues before applications are submitted.”*
- 3.07 In August 2011 the Secretary of State for Communities & Local Government and the Secretary of State for Education issued a policy statement on planning for schools development which took immediate effect, designed to facilitate the delivery and expansion of state-funded schools through the planning system. This statement makes

clear that the Government is firmly committed to ensuring sufficient provision to meet growing demand for state schools, increasing choice and opportunity and raising educational standards. The Government's view as stated is that the creation and development of state-funded schools is in the national interest and that planning decision-makers should support that objective; with the answer to proposals for such development being "yes".

3.08 This statement has not been cancelled by the NPPF (March 2012) or the newer National Planning Practice Guidance suite (March 2014). It contains the following points;

- The Secretary of State will attach significant weight to the need to establish and develop state-funded schools when determining applications and appeals.
- Local authorities should engage in pre-application discussions with promoters of school development.
- The Secretary of State will be minded to consider refusal of permission for a state-funded school development as unreasonable conduct, unless supported by clear and cogent evidence.
- Any refusal may result in the appeal being dealt with by the Secretary of State himself.

3.09 The Development Plan comprises the saved policies of the adopted Swale Borough Local Plan 2008. This Plan was intended to cover the period to 2016 so is not out of date. It is soon to be replaced by the emerging Plan Bearing Fruits; although the emphasis of relevant polices has not changed.

3.10 The following saved Local Plan policies are relevant to this proposal and whilst it is important to remember that the Local Plan should be read as a whole, without focussing on any individual policy, I have highlighted below those policies most directly relevant to consideration of the application in bold type and which I will discuss these in more detail below.:-

- SP1 (Sustainable development)
- SP2 (Environment)
- SP7 (Community Services and Facilities)**
- TG1 (Thames Gateway Planning area)
- SH1 (Settlement hierarchy)
- E1 (General Development Criteria)
- E10 (Trees and hedges)
- E19 (Design)
- T1 (Highway Safety)
- T3 (Vehicle parking) and
- T4 (Cyclists and Pedestrians)
- C1 (Existing and New Community Services and Facilities)**

3.11 Saved policy SP7 seeks to meet the social needs of the Borough by, amongst other things, ensuring that services and facilities (including schools) are provided in as timely a fashion as possible.

3.12 Saved policy C1 encourages new or improved community facilities.

#### 4.0 LOCAL REPRESENTATIONS

4.01 Having consulted over a wide area adjacent to the school I have received just two letters of objection to the application from residents adjoining the school grounds opposing the application on the following summarise grounds;

- Loss of privacy to 2 Gladstone Drive from the proposed footpath which will be within 10 metres of the boundary
- Noise, inconvenience and security concerns
- The footpath should be away from the boundary
- Felling of trees to provide the footpath
- A drop-off area within the school grounds is a step in the right direction and has been needed for many years
- The problem at present is one of parking by those collecting/dropping off children at the school with up to 100 vehicles involved causing severe congestion in surrounding roads, and this proposed drop-off area will not solve the problem; it will only get worse with expansion of the school
- A new entrance will just move the problem from one area to another, so there must be parking provision on Stones Farm or there will be parking on the A2
- A site meeting with planners is requested

#### 5.0 CONSULTATIONS

5.01 Bapchild Parish Council were consulted on the application as the site adjoins the Stones Farm site which they have expressed strong views over, but have not sent any comments.

5.02 Sport England were consulted on the basis that they are a statutory consultee on any planning application that;

- *“is likely to prejudice the use, or lead to loss of use, of land being used as a playing field; or*
- *is on land which has been –*
  - *used as a playing field at any time in the 5 years before the making of the relevant application and remains undeveloped; or*
  - *allocated for use as a playing field in a development plan or in proposals for such a plan or its alteration or replacement; or*
- *involves the replacement of the grass surface of a playing pitch on a playing field with an artificial, man-made or composite surface.”*

This was done on a safety first basis because although the area of land concerned is not at the moment used as a playing pitch the Sport England definition of a playing field is “the whole of a site which encompasses at least one playing pitch”, which could be read as including the entire school grounds.

5.03 Sport England initially objected to the application, saying that they understood the site forms part of, or constitutes a playing field, or prejudices the use of a playing field, on the grounds that:

*“Sport England’s policy is to oppose the granting of planning permission for any development affecting playing fields unless it meets one or more of the five exceptions stated in its policy.*

*The proposed development would appear to be sited an existing area of playing field. Locating this aspect of the proposed development on the existing playing field would prejudice the use of that playing field.”*

The five exceptions to Sport England’s policy of objection relate (in summary) to;

- where there is an excess of local pitch provision
- development ancillary to playing pitches
- where the land concerned is incapable of forming part of a playing pitch
- where replacement pitch provision is proposed, or
- where an indoor sports facility will be a replacement for a sports pitch

Sport England pointed out that any decision to approve the application in the face of their objection should be referred to the Secretary of State (SofS) under the Town and Country Planning (Consultation) (England) Direction 2009. What this actually states is that an application that the Council does not intend to refuse must referred to the SofS as Sport England has objected on any of the following three grounds:

*“(i) that there is a deficiency in the provision of playing fields in the area of the local authority concerned;  
(ii) that the proposed development would result in such a deficiency; or  
(iii) that where the proposed development involves a loss of a playing field and an alternative or replacement playing field is proposed to be provided, that alternative or replacement does not match (whether in quantity, quality or accessibility) that which would be lost.”*

5.04 In my view this objection did not appreciate the full context or potential benefits of the application, nor does it contain grounds that correspond to the three grounds referred to above for referral of the application to the SofS. Accordingly, I sought further advice from Sport England, attaching photographs of the site (which they had not previously had access to) to show its current nature and position relative to the school’s actual playing pitches, and saying that I did not consider that the proposal would prejudice the use of any playing pitch, and that their grounds for objection did not appear to trigger referral of the application to the SofS should the Council wish to approve it.

5.05 The response from Sport England reads as follows;

*“Further to Sport England’s consultation response dated 29th November 2016, Sport England is of the view that no new information has been provided and that all relevant considerations set out in the email and attached document recently provided were taken into account within Sport England’s formal consultation response dated 29th November 2016. To clarify, the area of the site proposed for development is playing field and if the hard play equipment was removed and the playing field restored this raised area is big enough to accommodate a playing pitch. This development therefore prejudices the use of the playing field and it is for this reason that Sport England is objecting and why the application should be referred.*

*Sport England therefore maintains its objection to this planning application.*

*Should your Council be minded to grant planning permission for the development then in accordance with The Town and Country Planning (Consultation) (England) Direction 2009, the application should be referred to the Secretary of State, via the National Planning Casework Unit.*

*Please note that Sport England has assessed the application and commented accordingly and it is our view that this application does not comply with Sport England's Policy. It is the role of the local planning authority to determine the application taking into account Sport England's comments and all other material considerations. If other material considerations exist which the local planning authority considers outweigh the loss of playing field then the LPA should feel empowered to make this judgement."*

- 5.06 The Council's Tree Consultant has inspected the site and made the following comments;

*"The arb report by Lloydbore appears to accurately show the trees that will be directly affected by the proposal. As discussed on site most of the trees shown for removal (particularly the Silver Birch near the existing entrance) have recently been poorly topped which has significantly reduced their long-term amenity. In light of this, I have no objection to their removal as part of the scheme. The loss of the multi-stemmed Beech at the entrance will have more direct impact to the visual character although due to its multi-forked habit it has a higher risk of branch failure in the future as it matures so its long-term retention is questionable.*

*If you are minded to approve the application I would want to see suitable conditions (as drafted below) attached for a more detailed arboricultural method statement to be submitted together with new landscaping to mitigate the loss of the tree cover particularly near the main entrance to the north."*

## **6.0 BACKGROUND PAPERS AND PLANS**

- 6.01 All papers submitted with application 16/507289/FULL

## **7.0 APPRAISAL**

- 7.01 In my view the main issues in determining this application are the potential benefits to the sustainability of the Stones Farm development set against any harm arising from the proposal.
- 7.02 The proposal has arisen out of concerns for potential congestion either in Gladstone Drive or on Stones Farm from school related traffic, and a desire not to ignore the very obvious current problems that affect Gladstone Drive. It is clear to me that children from Stones Farm will eventually be accepted as pupils at Lansdowne School, and that a direct access to the school from that site will be beneficial. However, without some parking provision it is likely that local roads will suffer congestion at peak school times that ought to be anticipated and made the subject of plans to mitigate the problem. This proposal seeks to make such provision within the school grounds, in a way which means that the works provide a dual benefit of an additional hard surfaced play area for the school, and where the school can control access to the drop-off/pick up area.
- 7.03 The area of ground concerned is set away from the school's playing pitches at a higher level, with a steep bank, mature trees and a mobile classroom standing between the two areas. It is currently occupied by fixed wooden play equipment that cannot be used safely in wet weather and which can be re-located to suit the school's wishes. Vehicular access can be controlled to school opening and closing hours by the school, but an additional pedestrian only path is also proposed allowing school visits during the school day from Stones Farm via the existing main school gates with its current access security controls. This means that the new development will have ready access to primary school facilities, which I welcome.

7.04 The potential disbenefits of the scheme seem to me to fall in to three areas;

- possible loss of playing field
- loss of trees
- impact on the amenity of neighbours

#### **Possible loss of playing field**

7.05 Taking these in turn, I am inclined to the view that the school will benefit from the new all-weather surface and that it is clear that Sport England's initial objection is based on an assumption that the proposal will affect an existing playing field. I do not see that as a realistic assumption. The area concerned is within the school grounds, as are the school building and the staff car park, but in my view the area of the proposed works is no more a part of any playing field that they are. The area is distinctly separate from any playing field or playing field margin, will not affect any such playing field or any opportunity to re-arrange pitches within the playing field. I am unconvinced by the way Sport England have responded to this application, and do not consider that their grounds for objection are realistic or based on a rounded understanding or consideration of the benefits of the application. Given this response I have already set in motion the referral of the application to the Secretary of State even though I am not at all sure that this is strictly necessary. Should Members resolve to approve the application we will still need to await the SofS response before the planning permission can be issued, but I will be able to clarify the timescale for this at the meeting.

#### **Loss of tress**

7.06 One impact of the proposed new footpath and access to the netball court/drop-off area is that nine trees will need to be removed. These all lie within the school grounds and are not currently subject to any form of statutory protection. Nor are they especially large or well shaped trees. From outside the site, they are mainly seen behind far larger trees on the open space outside the school gates, apart from a multi-stemmed beech which stands immediately behind the school gates. A number of the silver birch trees in particular along the school boundary have been badly topped and are now exhibiting poor shapes. I do not believe that the loss of these trees will be especially significant in wider views of the school, but I do see potential for new planting to compensate for the losses. Overall, I do not consider that this matter is one that should provide any reason to refuse the application.

#### **Impact on amenity**

7.07 The immediate neighbour to the north of the school, who has a flank wall facing the proposed works, has objected on grounds of loss of privacy and amenity. I can appreciate his concern over a change to what happens alongside his boundary, and I have considered this question carefully. The neighbour's house has only one window in the flank wall and this is already screened by a tall solid fence so that only the very top part of the window is exposed. The garden is also bounded by the same solid fencing which should provide a high degree of protection from people seeing into the house or garden from the proposed path or dual use area.

7.08 The existing school chain link fence is shown to be retained alongside the property's boundary, and an area which could be planted with attractive but thorny plants is shown alongside the proposed path. With this additional planting to deter trespass, and with the planned motorcycle barrier at this end of the path, I do not believe that the path will create unacceptable levels of potential nuisance. The actual netball court/drop-off area



will be behind a further fence and only used for access at either end of the school day and for sports during the day. This retains the sense of part time activity associated with living next to a school and should not be much different to the current experience of being adjacent to the existing wooden play equipment. Therefore, subject to a requirement for planting alongside the footpath I do not believe that the impact on residents will be unacceptable.

### **Timing of Development**

- 7.09 The normal commencement period for planning applications is three years. However, in this case this may mean that the permission will expire before the reserved matters for the estate or any houses are actually built. The applicant is prepared to construct the dual use facility at an early stage in the Stones Farm development i.e. before the occupation of 200 houses. The timing of such occupation cannot yet be known, but my view is that it is inevitable that it will be beyond a three year period from now. Accordingly, whilst the Section 106 Agreement will require completion of this facility by the occupation of the 200<sup>th</sup> house the commencement date for this permission should allow that to be possible. I am therefore recommending that a 10 year commencement period be allowed to prevent the need to re-apply for this permission when the scheme is due for completion, with attendant delays.

## **8.0 CONCLUSION**

- 8.01 Overall, and having had regard to the objection from Sport England, I welcome this proposal and consider it a well-designed solution to the rather obvious potential traffic issues arising from the Stones Farm development. I understand that the applicant is entering into a contract with the school to commit the school to allowing them to carry out the work should planning permission be granted, and I anticipate that this will be completed in tandem with the main Section 106 Agreement to accompany the outline planning application on Stones Farm. If this planning permission is not granted, I will ensure that the Section 106 Agreement requires the developer to make alternative parking provision within their site.
- 8.02 Finally, I understand that the school may wish to consider a one-way system of traffic control through the grounds to and from the drop-off area either from Gladstone Drive to Stones Farm, or vice versa. I do not wish to see such an arrangement, as this will either add more traffic to Gladstone Drive or be likely to result in parking immediately outside the gates on Stones Farm by those from Stones Farm (or further east) seeking to avoid a long detour; largely negating the point of the facility. I therefore consider it essential that a planning condition requires that access to and from the Stones Farm site is available whenever the drop-off area is in use. I have recommended such a condition 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 10 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) Whenever the dual use netball court/drop-off area is in use for dropping off or collecting pupils from the school the eastern access to the site shall allow vehicles to enter and exit the site from that direction.

Reason: To minimise parking problems within the adjacent Stones Farm development.

- (3) No development shall take place until full details of both hard and soft landscape works including proposals for replacement tree planting and of defensive shrub planting alongside the boundary of 2 Gladstone Drive have been submitted to and approved in writing by the Local Planning Authority. These details shall include 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, and an implementation programme.

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

- (4) 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 first use 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 and residential amenities of the area and encouraging wildlife and biodiversity.

- (5) 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 and residential amenities of the area and encouraging wildlife and biodiversity.

- (6) No development shall take place until a site specific arboricultural method statement in accordance with the recommendations of BS 5837:2012 have been submitted to and approved in writing by the local planning authority. The method statement shall detail implementation of any aspect of the development that has the potential to result in the loss of or damage to trees, including their roots, and shall take account of site access, demolition and construction activities, foundations, service runs and level changes. It shall also detail any tree works necessary to implement the approved scheme.

Reason: To safeguard existing trees to be retained and to ensure a satisfactory appearance to the development.

### **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:

Offering pre-application advice

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 acceptable as submitted and no further information 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.

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<b>2.10 REFERENCE NO - 15/508514/FULL</b>			
<b>APPLICATION PROPOSAL</b> Demolition of existing building and erection of 6 No. 4-bed detached houses and 2 No. 3-bed semi-detached houses with garaging, access and landscaping			
<b>ADDRESS</b> Coleshall Farm, Sheppey Way, Iwade, Kent, ME9 8QY.			
<b>RECOMMENDATION</b> Grant subject to conditions and the views of Council's Environmental Health Manager and Southern Water			
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b> Application will provide 8 dwellings within a sustainable location immediately adjacent to the built up area boundary and a new housing estate, and within walking distance of the amenities within Iwade village centre. It would not give rise to any serious amenity concerns.			
<b>REASON FOR REFERRAL TO COMMITTEE</b> Parish Council objection.			
<b>WARD</b> Bobbing, Iwade & Lower Halstow	<b>PARISH/TOWN</b> Iwade	<b>COUNCIL</b>	<b>APPLICANT</b> Mr Tom Ledger <b>AGENT</b> DHA Planning
<b>DECISION DUE DATE</b> 17/12/15	<b>PUBLICITY EXPIRY DATE</b> 17/12/15		
<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/08/1127	Development of housing, employment up to 3000sqm, public open space and pavilion (up to 110sqm), with access from School Lane and Sheppey Way, including roads, cycle paths, footpaths, stream crossings, landscaping and ancillary works.	Outline permission granted.	06.06.11
This application granted outline permission for development of the wider Coleshall Farm site, including the parcel of land subject to the current application. The decision notice is appended to this report.			
SW/11/1537	Approval of all reserved matters, pursuant to outline permission SW/08/1127, for erection of 187 dwellings on part of the site.	Approved.	08.03.12
Reserved matters approved for development of the first phase, at the School Lane end of the site. Members will note that construction has been underway for some months and progressing southeastwards from School Lane – a number of units are now completed and occupied.			
^ SW/12/1392	Erection of a 60-bed care home with associated access, parking and landscaping.	Approved.	05.02.13
Grant of outline permission for the erection of a two-storey care home on land adjoining the southwestern boundary of the current application site.			
14/504557/REM	Reserved Matters permission including details of access, appearance, landscaping, layout and scale for the erection of 43 dwellings pursuant to outline application SW/08/1127	Approved.	16.03.15

Reserved matters approval for the erection of 43 dwellings on land immediately to the north of the current application site.			
15/505910/REM	Approval of Reserved Matters including details of access, appearance, landscaping, layout and scale for the erection of 86 dwellings pursuant to outline application SW/08/1127	Approved.	05.11.15
Reserved matters approval for the erection of 86 dwellings on land to the north of the spine road.			

**MAIN REPORT**

**1.0 DESCRIPTION OF SITE**

- 1.01 The application site sits immediately to the south of the Coleshall Farm allocated housing site in Iwade, between the farmhouse and the new housing development currently under construction. It is roughly square, generally flat, extends to approximately 0.35ha, and contains a number of surplus agricultural buildings of a standard modern design and some mature trees. The land is currently accessed via the unmade farm track off Sheppey Way. It lies outside but immediately adjacent to the built up area boundary, and is surrounded to the north, north west, east and south east by the existing Coleshall Farm development.
- 1.02 Members may find it helpful to consider the history of the wider area. The land immediately to the north, north-west and south-east is part of an allocation in the Swale Borough Local Plan 2008, and a development brief for the allocation was agreed pursuant to policy AAP9. In June 2010 outline planning permission for the provision of housing, employment and public open space, with vehicle access from Sheppey Way and School Lane, on land to the southwest of Iwade village was granted under reference SW/08/1127. All matters of detail, except access, were reserved.
- 1.03 Members resolved to approve that application and the accompanying Section 106 agreement in January 2011, and the final phases (approved last year under applications 15/505910/REM) are currently under construction to the north.
- 1.04 The current application site does not lie within the housing allocation site, but is surrounded by it on 3 sides.

**2.0 PROPOSAL**

- 2.01 The application seeks planning permission for demolition of the existing farm buildings and erection of 6 four-bed detached houses and 2 three-bed semi-detached houses with associated garages, access, and landscaping. The dwellings will be laid out in a rough L-shape following the line of the road, with a pair of semis (plots 7 and 8) set behind at the back corner of the site.
- 2.02 The houses are all of a modern design similar to those that have been approved (or are currently under construction) on adjacent parcels. They are to be marketed as “executive homes” and the drawings therefore show a high standard of finish, featuring render, tile hanging, weatherboard, and exposed quoins in various combinations across the properties. The dwellings will have a maximum height of approximately 9m and a minimum height of roughly 7m.
- 2.03 The submitted Planning statement explains that the development comprises:

- Plots 1, 2, 4, and 5: four-bed detached houses;
- Plots 3 and 6: four-bed detached houses with rooms in the roof; and
- Plots 7 and 8: three-bed semi-detached houses.

2.04 Each unit includes a generous garden, two parking spaces, and a single garage (except plots 3 and 6 which will have double garages). The submitted planning statement comments:

*“The proposal includes private amenity space to the rear of each unit with sufficient space for new native species landscaping. The land immediately to the north west adjacent to the Iwade stream will be undeveloped to provide a green backdrop and separation from the umping station and housing to the north west. The existing trees/hedgerow on the south west boundary will be retained and reinforced with new native species tree planting to screen the development from the neighbouring property and any views toward Coleshall Farmhouse.”*

2.05 It continues to note that access to the development will be provided from the spine road and estate roads which are being constructed as part of the adjacent Iwade expansion development. An existing public right of way through the site (ref. ZR92) will be diverted for a short section along the new estate road.

### **3.0 PLANNING CONSTRAINTS**

3.01 The site lies within an Area of Potential Archaeological Importance, and Environment Agency Flood Zone 3.

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

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

4.01 The NPPF was adopted on 27<sup>th</sup> March 2012 and is a material consideration in determining planning applications. It offers general advice in respect to proposed development, rather than the more detailed and often site-specific guidance of the Local Plan (discussed below).

4.02 Local Plan policies must be assessed against the advice of the NPPF, and those with a “limited degree” of conflict can be considered to comply and thus remain a material consideration in the determination of planning applications.

4.03 Paragraph 46 of the NPPF requires Local Planning Authorities (LPA) to have an up-to-date five year housing supply, i.e. sufficient housing to cover demand for the next five years.

4.04 Swale did not have a five-year supply at the time of the initial emerging Local Plan review, which put us in a difficult position in terms of being able to resist inappropriate development for several months. The Council has since worked towards meeting the supply target and is fast-approaching a stage where it can demonstrate compliance with the NPPF, but a very recent appeal decision at Church Farm, Bobbing (ref. 15/505488) has set out that SBC can not demonstrate a five-year supply until the current figures have been formally adopted by the Local Plan Inspector at inquiry (set for January 2017). It therefore currently remains the position that policy H2 is non-NPPF compliant, and sites within the countryside need to be assessed on their individual suitability rather than on principle.

National Planning Practice Guidance (NPPG)

- 4.05 National Planning Practice Guidance (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, and ecology, amongst others.

Swale Borough Local Plan 2008

- 4.06 Policies SP1 (sustainable development), SP4 (Housing), E1 (general development criteria), E6 (countryside), E9 (Landscape), E14 (listed buildings), E19 (design), H2 (new housing), H5 (housing allocations), H8 (Thistle Hill), T1 (safe access to new development), T3 (vehicle parking), T4 (cyclists and pedestrians) and U4 (placing services underground) of the Swale Borough Local Plan 2008 are all relevant in the consideration of the application.

- 4.07 Policy AAP9 relates to the adjacent Coleshall Farm development site. It states:

*“An Area Action Plan is designated at Iwade, as shown on the Proposals Map. Within this area, planning policies and proposals will aim to provide the existing and new communities the services and mix of uses that ensures that the village functions as a more sustainable settlement. In addition to the development, and provision of new and improved community facilities comprising the first phase of development as outlined in the currently approved Development Brief, planning permission will be granted for development comprising:*

1. *housing, for approximately 400 additional dwellings on sites in the south-western and eastern parts of the village respectively;*
2. *expansion of the recreation ground in School Lane; and*
3. *the provision of some 3,000 square metres of employment floorspace.*

*Planning permission will not be granted for the additional 400 dwellings proposed until:*

- a. *a revised Development Brief has been approved by the Borough Council.*
- b. *It is demonstrated to the Council’s satisfaction that flooding problems arising from the Iwade Stream can be resolved as part of the additional development.*
- c. *The construction of the Ridham and Kemsley employment area has commenced; and*
- d. *An assessment of the likely significant effects of development upon nearby European Sites for nature conservation and other important areas of biodiversity has been undertaken and its recommendations implemented.”*



## 5.0 LOCAL REPRESENTATIONS

- 5.01 Two letters of support from neighbouring residents commenting that removal of the disused farm buildings will improve the appearance of the area, and noting that the site abuts the adjacent residential development on 3 sides.
- 5.02 The Swale Footpaths group notes the footpath running through the site and question whether a diversion or extinguishment will be sought.
- 5.03 No other representations received.

## 6.0 CONSULTATIONS

- 6.01 Iwade Parish Council objects, commenting:

*“1. The proposed development will damage the natural environment due to the possible loss of trees on the site and the Parish Council request that the Tree Officer, Paul Hegley, is consulted.*

*2. Councillors request that as generally garages are not used for cars anymore these be replaced with car ports to ensure that vehicles are sited off the road, thus avoiding many parking problems.*

- 6.02 Natural England has no comments, noting that contributions towards the SSSI mitigation are only required on developments of 10 or more units.
- 6.03 The Environment Agency has no objection.
- 6.04 The KCC Ecologist initially objected to the scheme but, further to receipt of additional information, is now satisfied that the development will not give rise to serious harm, subject to the conditions below.
- 6.05 The KCC Public Rights of Way officer notes the footpath across the site, and advises that a formal application to divert or close the footpath must be submitted and determined before development commences [NB: the applicant has submitted an application to divert the footpath along the estate road for a short section to KCC].
- 6.06 Kent Highways & Transportation initially objected on the grounds that tandem parking is not acceptable and overall provision was insufficient. Further to an amended layout showing individually-accessible parking spaces they now have no objection, subject to conditions as set out below.
- 6.07 The County Archaeologist notes that the site is within an archaeologically sensitive area with potential form prehistoric, Bronze Age, Roman, and medieval remains. He raises no objections, however, subject to the condition below.
- 6.08 The views of the Council's Environmental Health Manager and Southern Water are still awaited and Members will be updated on this at the meeting.

## 7.0 BACKGROUND PAPERS AND PLANS

- 7.01 The previous applications for development of the surrounding land, as noted above, are relevant, and Members may care to note that this application arises from pre-application discussions with officers.

## 8.0 APPRAISAL

### Principle of Development

- 8.01 The site lies within the countryside, where established rural restraint policies seek to prevent new residential development unless it's for the purposes of meeting an identified affordable housing need, or providing agricultural worker's accommodation. This application proposes neither. However, as at 4.04 above, the Council has an identified housing supply shortfall, policy H2 is considered out of date, and we therefore need to consider sites that may have been unacceptable in principle.
- 8.03 Firstly the Council has an identified housing need (776 dwellings per annum set by Local Plan Inspector) that needs to be met and the scheme would provide 8 units towards that need, which is a modest but not inconsiderable amount.
- 8.04 Secondly the site is well located, being directly adjacent to the built up area boundary, close to the village centre (with its associated facilities), and surrounded on 3 sides by the existing Coleshall Farm housing development. The site is thus highly sustainable, and a small extension to the adjacent housing development would largely go unnoticed in terms of impact upon the countryside (discussed further below).
- 8.05 Taking this into account I consider that development here is acceptable in principle in light of the Council's identified housing supply requirement, the thrust of adopted local and national policy to provide new housing within sustainable locations, and the specific location of this site in relation to neighbouring developments.

### Visual Impact

- 8.06 The application site currently comprises a number of disused agricultural buildings and associated areas of hard standing. The removal of these elements is a positive gain in my opinion.
- 8.07 The proposed houses and garages are of a good standard of design in my opinion, and would sit comfortably within the context of the area, i.e. immediately abutting a modern housing estate, and close to the existing farm dwellings (Chestnut House and Coleshall Farmhouse).
- 8.08 Due to the site's relationship with the surrounding development, and the way in which it is largely enclosed by the Iwade expansion on the NW, N, E, and SE sides I do not consider the development of this site would cause serious harm to the character, appearance, or amenity value of the wider countryside. Due to this relationship with the existing development this site is somewhat unique in its circumstances and I do not consider that development here would give rise to any precedent for the Council to permit further development on the countryside.
- 8.09 I note the Parish Council's comments regarding possible loss of trees on site, and have some sympathy with their concerns, as there is a mature hedgerow along the site boundary with Chestnut House and a windbreak row of poplars along the north western boundary of the site, which are mature and well established.
- 8.10 However, having discussed this objection with the agent for the scheme he has confirmed that only two trees within the centre of the site will be lost:

*"I have reviewed the drawings and it appears to me that apart from some bushes and scrub only two trees are proposed to be removed. These are*

*located immediately adjacent to the north east and north west elevation of the existing building. The existing trees on the south west boundary are to be retained and reinforced with new native tree planting. We are also proposing significant new tree planting thorough out the entire site including new tree planting adjacent to the estate road and beyond the proposed residential curtilages”.*

- 8.11 I do not consider that the loss of these two trees would be a serious drawback to this development, and note that the site has been laid out in such a way as to provide space for a substantial landscaping scheme (which the applicant recognises should be of native planting, as at 2.04 and the agent’s response, above). The conditions below will secure such planting and officers can negotiate with the developer to secure semi mature trees for key areas, such as along the spine road.
- 8.12 Therefore, although the two trees will be lost, in real terms I consider that this development would actually represent a positive gain for tree planting and biodiversity, and therefore do not have a significant concern in this respect.

#### Residential Amenity

- 8.13 The site is well positioned in relation to existing (or under construction) dwellings and the proposed houses are laid out in a sensible and spacious manner. The front windows of plots 7 and 8 are a minimum of 24m from the rear of Chestnut House, and any flank windows on plot 6 would only overlook the front garden of Chestnut House. I therefore do not consider that there would be any serious amenity concerns, or issues of overlooking or loss of privacy, arising from this development.
- 8.14 The proposed dwellings themselves are well-proportioned and each will have a generous garden. Future occupants would therefore benefit from a high standard of amenity themselves.

#### Highways

- 8.15 The development will provide two independently-accessible parking spaces – in addition to a garage space – per dwelling (plot 4 has space for 3 vehicles). This is in accordance with current adopted parking guidance and would not give rise to highway safety or amenity concerns, in my opinion. Space is also available within the development for visitor parking. I would also reiterate that, as above, Kent Highways & Transportation do not object now that an amended layout has been received.

#### Heritage

- 8.16 Coleshall Farmhouse, to the south west of the application site, is Grade II listed. It sits approximately 60m from the closest part of the application site boundary, however, and beyond Chestnut House. Because of this relationship, and in combination with the quantum of surrounding development at Coleshall Farm, I do not consider that the proposed dwellings would harm the special architectural or historic interest of the listed building, or impact significantly upon its setting.

Ecology

- 8.17 The submitted ecological assessment identified that grass snakes, slow worms and common lizards were present on the site, and that the development would result in the loss of suitable reptile habitat. The application details that reptiles would be removed from the site and placed on woodland/scrub to the NW/W of the site, and that an area of brambles to the N would be enhanced.
- 8.18 The KCC Ecologist, further to receipt of additional information to show how these areas would be managed to ensure suitable receptor site habitat, is now satisfied that there would be no significant adverse impacts upon ecology. They have recommended the conditions below to secure the agreed improvements and timescales.
- 8.19 The development may have impacts upon the SSSI but these are unlikely to be significant and, further to Natural England’s comments, I have screened the development out of the need for contributions towards the SAMMS in accordance with the Council’s agreed strategy (HRA appended below).

**9.0 CONCLUSION**

- 9.01 The application seeks to provide 8 dwellings within a sustainable location, and filling in a small corner left over following the Coleshall Farm Iwade expansion development. The development would not give rise to any serious amenity concerns, and whilst the Parish Council has objected to the loss of trees a suitable landscaping scheme within the site would help to mitigate against this.
- 9.02 Taking the above into account I recommend that planning permission should be granted.

**10.0 RECOMMENDATION – GRANT** Subject to the views of the Council’s Environmental Health Manager and Southern Water and 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) No development shall take place until details have been submitted to, and approved in writing by the Local Planning Authority, which set out what measures will be taken to ensure that the development incorporates sustainable construction techniques such as rainwater harvesting, water conservation, energy efficiency and, where appropriate, the use of local building materials; and provisions for the production of renewable energy such as wind power, or solar thermal or solar photo voltaic installations. Upon approval, the details shall be incorporated into the development as approved.

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

- (3) 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.

- (4) No development shall take place until all reptiles within the site have been translocated in accordance with the ecology migration plan shown on drawing 2115/16/B/1 and the details provided within the submitted Reptile Presence or Absence Survey.

Reason: To minimise harm to protected species.

- (5) No development shall take place until details have been provided of when the meadows within the identified receptor site will be cut. It is advised that each of the meadow areas are divided in two 2/3 sections and cut on rotation each year to create areas of tussocky grassland.

Reason: To ensure suitable receptor habitat and to minimise harm to protected species.

- (6) No development shall take place until details of the external finishing materials to be used on the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority and shall thereafter be implemented in accordance with the approved details.

Reason: In the interest of visual amenity.

- (7) No development shall take place until details of parking for site personnel / operatives / visitors have been submitted to and approved in writing by the Local Planning Authority and thereafter shall be provided and retained throughout the construction of the development.

Reasons: To ensure provision of adequate off-street parking for vehicles in the interests of highway safety and to protect the amenities of local residents.

- (8) 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, and shall make provision for the planting of medium or heavy standard, native species, trees along the spine road frontage.

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.

- (9) 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.

- (10) 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.

- (11) 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.

Reasons: In the interests of amenity and road safety.

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

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

- (13) 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 – 1900 hours, Saturdays 0730 – 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.

- (14) 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 any other day except between the following times:

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

Reason: In the interests of residential amenity.

- (15) Provision shall be made within the site for the disposal of surface water so as to prevent its discharge onto the highway, details of which shall have been submitted to and approved in writing by the Local Planning Authority prior to installation.

Reasons: In the interests of highway safety and convenience.

- (16) The garages and vehicle parking and turning spaces shown on drawing DHA/10013/01 Rev. D shall be provided, surfaced and drained before dwellings hereby permitted are first occupied, and shall thereafter 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) 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.

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

- (17) Notwithstanding the provisions of Class A, Part 2, Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) no gates, fences, walls or other means of enclosure shall be erected or provided in advance of any wall or any dwelling fronting on a highway.

Reason: In the interests of visual amenity.

- (18) Any other conditions requested by the SBC Environmental Health Manager or Southern Water.

### **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:

Offering pre-application advice.

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.

### **Habitat Regulations Assessment.**

This HRA has been undertaken without information provided by the applicant.

The application site is located approximately 1.1km to the southwest of The Medway Estuary and Marshes Special Protection Area (SPA) 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. For similar proposals NE also advise that the proposal is not necessary for the management of the European sites and that subject to a financial contribution to strategic mitigation and site remediation satisfactory

to the EA, the proposal is unlikely to have significant effects on these sites and can therefore be screened out from any requirement for further assessment.

It is the advice of NE 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) and; 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 of birds by cats. However, mitigation in the form of public open space is available within the local area, as part of an adjoining, associated development.
- 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 would cost substantially 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, the North Kent Councils have yet to put in place the full measures necessary to achieve mitigation across the area and there are questions relating to the cumulated impacts on schemes of 10 or less that will need to be addressed in on-going discussions with NE.** 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 single dwellings upwards 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 what is acceptable to officers as a common route forward. Swale 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.



## Habitat Regulations Assessment

This HRA has been undertaken without information provided by the applicant.

The application site is located approximately 1.1km to the southwest of The Medway Estuary and Marshes Special Protection Area (SPA) 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. For similar proposals NE also advise that the proposal is not necessary for the management of the European sites and that subject to a financial contribution to strategic mitigation and site remediation satisfactory to the EA, the proposal is unlikely to have significant effects on these sites and can therefore be screened out from any requirement for further assessment.

It is the advice of NE 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) and; 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 of 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 would cost substantially 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, the North Kent Councils have yet to put in place the full measures necessary to achieve mitigation across the area and there are questions relating to the cumulated impacts on schemes of 10 or less that will need to be addressed in on-going discussions with NE. 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 single dwellings upwards 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 what is acceptable to officers as a common route forward. Swale 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.

**PLANNING COMMITTEE – 5 JANUARY 2017**

**PART 3**

Report of the Head of Planning

**PART 3**

Applications for which **REFUSAL** is recommended

<b>3.1 REFERENCE NO - 16/506159/FULL</b>			
<b>APPLICATION PROPOSAL</b>			
Retrospective application for variation of condition 12 of SW/04/1320 to allow for full time year round occupation			
<b>ADDRESS</b> Chesley Oast Bull Lane Newington Kent ME9 7SJ			
<b>RECOMMENDATION</b> Refuse			
<b>SUMMARY OF REASONS FOR REFUSAL</b>			
<ul style="list-style-type: none"> <li>- The application site lies within an unsustainable countryside location and the applicant has failed to sufficiently demonstrate that there is no demand for an alternative use of the building for employment or community purposes or that the building would be undesirable or unsuitable for a non residential use in its own right.</li> <li>- The units are within extremely close proximity of industrial buildings and uses and the noise impacts upon the residential amenities of occupiers of the dwellings have not been addressed.</li> </ul>			
<b>REASON FOR REFERRAL TO COMMITTEE</b>			
Called in by Cllr John Wright			
<b>WARD</b> Hartlip, Newington And Upchurch	<b>PARISH/TOWN</b> Newington	<b>COUNCIL</b>	<b>APPLICANT</b> Asset Sky Limited <b>AGENT</b> Direct Planning Limited
<b>DECISION DUE DATE</b> 04/11/16	<b>PUBLICITY EXPIRY DATE</b> 28/10/16		
<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>
16/502418/LDCEX	Lawful development certificate (Existing) use of building as 5 full time residential flats.	Refused	16.05.2016
SW/08/0550 (adjacent site)	Application for deletion of condition (i) of application SW/05/0646, to allow use of building for B8 storage and distribution and ancillary office accommodation without restrictions relating to occupier or type of B8 use.	Approved	11.07.2008
SW/07/0864 (adjacent site)	Change of use from agriculture former cold stores to storage or workshop.	Approved	18.04.2008
SW/04/1320	Change of use of agricultural building to 5,	Approved	28.02.2005

	holiday homes including new works and alterations.		
SW/03/1084	Change of use from agricultural building to six holiday homes and building works including reinstatement of historic features and conversion of part of an adjoining building to provide parking area.	Refused and Dismissed at Appeal	7.11.2003
SW/03/0116	Conversion of barns into two semi-detached houses and demolition of store.	Refused	14.05.2003
SW/02/1406	Conversion of barns into 2 semi-detached houses and creation of new access.	Withdrawn	27.01.2003

## MAIN REPORT

### 1.0 DESCRIPTION OF SITE

- 1.01 The application site comprises a two storey former agricultural building which was granted planning permission for conversion to holiday lets under SW/04/1320 as set out above.
- 1.02 The footprint of the building is largely rectangular with a projecting element on the eastern side of the building. The footprint measures 19m in depth and 12.9m in width. The projecting element measures a further 6.3m in width and 6.7m in depth. The building measures 5.8m to the eaves and 7.9m in overall height.
- 1.03 Two of the units have an associated private outdoor amenity space and a gravelled parking area is located in the western part of the site. The property also benefits from a shared amenity area and use of a washing line. Cycle storage is also provided.

### 2.0 PROPOSAL

- 2.01 This application seeks to vary condition 12 of SW/04/1320 to allow for full time year round occupation of the units. Condition 12 of SW/04/1320 states:

*“The holiday lets hereby permitted shall be used solely for the purpose of holiday accommodation and shall not be let or occupied by any person or group of persons for more than four weeks in any calendar year.*

*Grounds: In order to prevent the permanent residential use of the building and having regard to rural location of the site in pursuance of Policy E9 of the Swale Borough Local Plan.”*

- 2.02 The application has been submitted retrospectively as the units are currently being occupied on a full time year round basis.
- 2.03 The proposal includes 5 units as follows:
- 1 x 1 bed;
  - 3 x 2 bed;
  - 1 x 3 bed

2.04 No alterations to the building or its associated amenity / parking area are proposed.

### 3.0 PLANNING CONSTRAINTS

3.01 None

### 4.0 POLICY AND OTHER CONSIDERATIONS

4.01 The NPPF at paragraph 14 states that central to the NPPF is “a presumption in favour of sustainable development.

*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.”*

4.02 At paragraph 49 the NPPF states that “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.” Further to this, paragraph 17 states that we need to take account of the different roles and characters of different areas.

4.03 Paragraph 109 states that “The planning system should contribute to and enhance the natural and local environment by.... 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;”.

#### Swale Borough Local Plan 2008

4.04 The “saved” Local Plan policies have been reviewed by the LDF Panel and assessed for compliance against the National Planning Policy Framework. The below policies are considered to accord with the guidance of the NPPF for the purposes of determining this application.

E1, E6, E7, E19, E24, H2, RC3, RC6 and T3

Policy RC6 – Re-use of rural buildings for housing - is central to this application and I set it out in full as follows:

*“To help secure the diversification of the rural economy, as promoted by Policy RC1, planning permission will not be permitted for the conversion of buildings in the rural area to residential use, or a mixed-use including residential, unless:*

1. *the Borough Council is satisfied that the applicant has made a reasonable and sustained effort to secure an alternative acceptable re-use of the building for employment or community purposes (at a price that reflects that use), and has provided a statement of such action; or*

2. the Borough Council is satisfied that the building would be undesirable or unsuitable for a non-residential use in its own right or by way of its location or the scale of use that would otherwise result; or

3. a residential use, or a mixed-use including residential is the preferred way in which a historic building could be retained and/or restored.

*In all cases, the building should be suitable for the proposed use, structurally sound and capable of conversion without: (a) the need for significant extension, alteration, or reconstruction; (b) significantly adversely affecting the countryside; and (c) without creating scales of residential use that would lead to unsustainable travel patterns.”*

Emerging Local Plan – Bearing Fruits 2031 (Proposed Main Modifications June 2016)

- 4.05 Due to the current advanced stage of the emerging Local Plan I also consider that policies ST1, ST3 and DM14 are relevant in the determination of this application.

Supplementary Planning Guidance

- 4.06 The Conversion of Buildings into Flats & Houses in Multiple Occupation - This is referred to in the supporting text to saved Policy H2 of the Swale Borough Local Plan 2008 as a material consideration, was subject to public consultation prior to publication and as such is afforded significant weight.

**5.0 LOCAL REPRESENTATIONS**

- 5.01 One letter of support was received from a neighbouring business raising the following summarised points:
- The full time residential occupation of these units provides an additional layer of security;
  - If the units were used as holiday rentals then the occupiers would not be familiar with the business which would be to its detriment.

**6.0 CONSULTATIONS**

- 6.01 **Newington Parish Council** wished to make no comment aside from concern that the number of car parking spaces appears to be insufficient.
- 6.02 The **Environmental Protection Team** objects to the proposal due to the close proximity of the industrial buildings to the application site and the impact this could have upon residential amenities.
- 6.03 **Cllr John Wright** made the following comments:

*“Like the parish council I have no objection to this application and sympathise with the applicant. Having 5 holiday lets all together, attached and right next door to a industrial unit and yard does not lend itself for a rate of occupation that would justify the spend in conversion particularly during the down turn.*

*I would not wish those 5 families to be turned out and made homeless, also an issue within Swale. Also I suspect that if not granted this would also occupy the*

*enforcement teams time, at a time when old agricultural buildings are being given permission for housing, which this was prior to the change of use.*

*Therefore I would not wish this be Refused on a technical issue particularly as the probability and evidence already submitted points to the holiday lets not being profitable or sustainable. If it was to be recommended for Refusal I would like to see it come to the planning committee for a final decision. Particularly as there are no objections to this change of use."*

## **7.0 BACKGROUND PAPERS AND PLANS**

7.01 Application papers and correspondence related to 15/506513/FULL.

## **8.0 APPLICANT'S SUPPORTING DOCUMENTS**

8.01 The application includes two supporting documents, one entitled "The Resurrection of Chesley Oasts". This sets out the recent history of the building and the restoration works that were carried out to bring the building back into use. There is also photographic evidence of the works that were carried out.

8.02 The document sets out that holiday rentals were unviable and that the only way to break even was to let the units out on a full time residential basis. A 'rental breakeven analysis' is set out and the supporting document states that *"the financial analysis of the building also highlights the case and need to make the change from holiday accommodation to full time residential use. With low occupancy rates and high agent's costs it is very difficult for the holiday lettings to get close to break even."*

8.03 A further point is made that the full time residential occupation of the site means that the residents are able to act as an informal neighbourhood watch scheme and that if the application was refused then the five families will be required to find alternative accommodation.

8.04 A letter from two local sales and lettings agents state that they advertised the units for holidays lettings in 2011. One agent states that *"the response to this offering was almost nil"* whilst the other states that *"we did not receive any requests from potential holiday tenants for these properties during the period for which they were being promoted by us."*

8.05 A letter from a neighbouring stables owner sets out that since the units have been let for full time residential occupation the number of burglaries that the site has been subject to has reduced.

## **9.0 APPRAISAL**

### **Principle of Development**

9.01 The application site lies outside of the defined built up area boundary and is therefore considered to lie within the countryside where the Council's established policies of rural restraint apply. In this case policy RC6 of the Local Plan as set out above relates to the re-use of rural buildings for housing and sets out the criteria that will need to be satisfied in order for this type of development to be considered by the Council to be acceptable.

9.02 Policy RC6 requires that firstly, evidence will need to be provided to demonstrate that there is no demand for the building for employment or community purposes. In this

case the building was granted planning permission for change of use to 5 holiday homes under reference SW/04/1320. However, according to the supporting statement, the building after being converted, despite attempts to, was never let out to holiday makers. As a result, these units have only ever been occupied on a full time residential basis. The application sets out that due to a lack of demand for the units as holiday rentals, full time residential occupation was the only viable option. However, it is notable and surprising that the only marketing which apparently took place, was by two local estate agents (not companies where, I consider, one would normally look for holiday accommodation) and not by any specialist holiday letting firms. Nor is there any evidence that the holiday lets were ever marketed on the internet with any specialist holiday websites. As such, I give this information very little weight.

- 9.03 In any case, regardless of the viability of holiday lets in this location, before full time residential occupation can be considered to be acceptable the proposal is still required to be assessed against the criteria of the policy. In relation to this, no information has been provided to demonstrate that there has been a reasonable and sustained effort to secure an alternative acceptable re-use of the building for employment or community purposes. As a result of this lack of information the application fails to satisfy the first requirement of this policy. In addition, put simply, that holiday let use may not be viable is a matter for the applicant, who should have properly considered this in advance of implementing the planning permission. It is not a material consideration which weighs in favour of the grant of planning permission.
- 9.04 In terms of the second requirement of policy RC6 the site is located adjacent to storage and employment uses. As a result I take the view that both the location of the building and its scale would not be undesirable or unsuitable for a non-residential use as these uses already operate in the vicinity. Therefore, as well as failing to meet criteria 1 of policy RC6, the application also fails to meet criteria 2. Finally, with regards to criteria 3, I pay regard to SW/03/0116 which related to the host property (as set out above). Within the reason for refusal for this scheme it stated that "*the building is not considered to have significant historic or architectural value*". Since this time the building has been largely re-constructed and due to this I take the view that the building is not of historic merit. Therefore I do not believe that this criteria is relevant in this case. As such, I am of the opinion that the application fails to demonstrate that there is no demand for an alternative use of the building or that the building would be unsuitable for non residential use. As a result I am of the view that the application is contrary to policy RC6.
- 9.05 However, it must also be considered as to whether the application can be considered acceptable in light of the Council's current housing supply position. As Members will be aware, the Council can not currently demonstrate a five year housing supply and as such paragraph 49 of the NPPF as set out above is relevant. Although this states that relevant policies for the supply of housing can not be considered up to date it must also be taken into account the advanced stage that the Council has reached in terms of this and the likelihood that this supply will be met in the short to medium term. I also, as required by the NPPF pay regard to whether this proposal constitutes sustainable development. The site is approximately 1.5km away from the centre of Newington (via existing highways and not as the crow flies). It is also noted that Bull Lane, in the area close to the application site does not have a footpath. I do not consider this distance to be sustainable and as such take the view that the harm caused by the location of the proposal, which is for five open market dwellings (nothing has been submitted to state otherwise) would outweigh any benefits that this development would bring. Therefore, with the site outside of the built up area



boundary and due to the above assessment I take the view that the proposal is contrary to paragraph 14 of the NPPF and is unacceptable in principle.

### **Residential Amenity**

- 9.06 The site is set apart from the closest neighbouring residential units. As a result I do not believe that the proposal would have any negative impact upon other existing residential dwellings.
- 9.07 I have assessed the internal floorarea of the dwellings and am of the view that in line with the SPG it would provide adequate living space for the occupants. I also note that two of the units have access to their own private amenity space. There is a separate amount of amenity space which is shared between the other units. These units also have access to an outside washing line in order to dry clothes. As a result I am of the opinion that on balance the proposal provides sufficient amenity space for the occupiers of the units.
- 9.08 I note that there are surrounding industrial units / uses and the closest industrial building abuts Chesley Oast. This building was the subject of planning application SW/08/0550 which granted permission *“to allow use of building for B8 storage and distribution and ancillary office accommodation without restrictions relating to occupier or type of B8 use”*. At the current time the unit is operated by a company called Star Leisure which according to its website provides gaming machines for venues across Kent, Sussex, Surrey, London and Essex. There are also buildings opposite the front elevation of the host property which gained planning permission (under SW/07/0864) for *“change of use from agriculture former cold stores to storage or workshop”*. As a result of the close proximity of these industrial buildings I have consulted with the Council’s Environmental Protection Team. They have raised an objection on the grounds that the industrial buildings and associated uses have the potential to be noisy and have an unacceptable impact upon residential amenities. It is noted that an objection would not have been raised if the application site was being occupied in accordance with its permission (holiday lets) as the occupants would not reside within them for long enough to be unreasonably affected. However, as I am now considering the impact upon year round full time residential occupation I take the view that the impact upon residential amenities has the potential to be significant, this has not been addressed and I believe the application should also be refused on this basis.

### **Visual Amenities**

- 9.09 This application proposes no alterations to the current appearance of the building. I consider that the works to the former agricultural building were carried out in a careful and considered manner with the appropriate choice of materials. As a result I take the view that the impact upon visual amenities is acceptable.

### **Highways**

- 9.10 The application site includes a dedicated parking area. I have paid regard to *Kent Design Guide Review: Interim Guidance Note 3, 20<sup>th</sup> November 2008 – Residential Parking* which divides areas into four categories – town centre, edge of centre, suburbs and rural. I am firmly of the view that the location of the application site is rural. Therefore, as required by the above guidance, the proposal as a whole would be required to provide 6 car parking spaces. Although the car park does not have marked bays (to its visual benefit in my opinion) I am of the view that the car park would be able to adequately accommodate 6 cars. I therefore believe that the

proposal would not give rise to significant harm to highway safety or amenities. It is also noted that a cycle storage area is located on the site which notwithstanding the recommendation is welcomed.

### **Impact upon SPA and Ramsar Sites**

- 9.11 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**

- 9.12 The support received for this application also relates to the reduction of crime, that the refusal of planning permission would result in the current occupiers having to find alternative accommodation and that other agricultural buildings have been converted under permitted development rights.
- 9.13 In terms of the first point, the evidence provided that instances of crime in the locality have reduced is entirely anecdotal. No crime reference numbers of offences that occurred prior to the full time residential occupation of the units have been provided. In any case, I do not consider that this reason should outweigh the harm that the proposal causes to the countryside as set out above.
- 9.14 Secondly, it is of course unfortunate that existing occupiers would be required to find alternative accommodation. However, it is worth reiterating that their occupation of the holiday lets amounts to a breach of planning control, and an intentional breach on the part of the applicant. Members may be aware that intentional unauthorised development now amounts to a material consideration which weighs against the grant of permission, and I do not consider that the fact this breach has occurred should be given any weight whatsoever in favour of the grant of permission. To determine the application on such a basis would fundamentally undermine the planning process and reward and encourage unauthorised development.
- 9.15 Equally, whilst I have sympathy with the occupiers of the holiday lets, the Council would have a responsibility to house them if they were homeless, and beyond this, any responsibility for their situation lies with the applicant, who let these holiday lets to them knowing it amounted to a breach of planning control, and not with the Council. Finally, in this regard, this Planning Committee has in the past had to make difficult decisions relating to the enforcement of holiday occupation periods imposed on many of the holiday sites on the Isle of Sheppey.
- 9.16 This Committee has taken the, at times unpopular, decision to robustly defend the occupancy periods of these sites, and this position has been endorsed and supported time and again by the Planning Inspectorate, with the Council having an almost universally successful record of defending appeals. Action in those cases would have been more likely to result in the occupiers of holiday chalets or caravans having less opportunity to find alternative accommodation, and it is unlikely that the refusal of this application would result in the occupiers of these holiday lets being made homeless overnight. Any action taken to enforce the occupancy period could include a period of time sufficient for the occupiers to seek alternative accommodation. As such, I do not believe that this should have any weight in the decision making process.

- 9.17 Finally, permitted development rights in relation to agricultural buildings are not relevant here and carries no weight as the use of the building on 20<sup>th</sup> March 2013 was residential rather than agricultural (as set out in the application seeking a Lawful Development Certificate - 16/502418/LDCEX).

## 10.0 CONCLUSION

- 10.01 The application has not provided any information to demonstrate that there is no demand for an alternative use of the building or that the building would be unsuitable for non residential use. As such, as the site lies within the countryside, in an unsustainable location and taking into account the currently advanced stage of the emerging Local Plan I believe that the full time residential occupation would be unacceptable in principle. Further to this, due to the extremely close proximity of industrial buildings I believe that these uses have the potential to cause unacceptable harm to the amenities of the occupiers of the units. For these reasons I recommend that planning permission is refused.

## 11.0 RECOMMENDATION – REFUSE for the following reasons:

- 1) The development site lies outside of any built up area settlement, as defined by the Swale Borough Local Plan 2008, where policies of rural restraint state that development will not be permitted unless a reasonable and sustained effort to secure an alternative re-use of the site for employment or community purposes has been demonstrated; that the building would be undesirable or unsuitable for a non residential use or where residential use is the preferred way to retain the historic building. Equally, it has not been adequately demonstrated that the use of the properties as holiday lets is not viable. Furthermore, given the currently advanced stage of the Emerging Local Plan, Bearing Fruits 2031, the limited benefits of the development would not outweigh the harm caused and would result in unsustainable and unjustified residential development in the countryside in a manner harmful to its character, appearance and wider amenity value. The proposal is therefore contrary to policies E1, E6, RC6 and H2 of the Swale Borough Local Plan 2008; policies ST1, ST3 and DM14 of the Emerging Local Plan (Bearing Fruits 2031 – Proposed Main Modifications June 2016) and to the wider aim of achieving sustainable development as set out in the National Planning Policy Framework.
- 2) The proposal introduces full time year round residential development within extremely close proximity of industrial buildings and uses and fails to demonstrate that the noise impacts on the residential amenities of the occupiers of the dwellings would be acceptable, contrary to policy E1 of the Swale Borough Local Plan 2008 and bullet point 4 of paragraph 109 of the National Planning Policy Framework.

### Habitats Regulations Assessment

This HRA has been undertaken without information provided by the applicant. The application site is located approximately 4.1km south east of the Medway Estuary and Marshes 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 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 five 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:

- Offering pre-application advice.
- 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>3.2 REFERENCE NO - 16/507038/OUT</b>			
<b>APPLICATION PROPOSAL</b>			
Outline application for the erection of a single dwelling with associated access and parking. (Access only being sought).			
<b>ADDRESS</b> Courtenay House London Road Dunkirk ME13 9LF			
<b>RECOMMENDATION - Refuse</b>			
<b>SUMMARY OF REASONS FOR RECOMMENDATION/REASONS 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, the adjacent buildings 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 for the application to be reported to the Planning Committee to clarify policy.			
<b>WARD</b> Boughton And Courtenay	<b>PARISH/TOWN</b> Dunkirk	<b>COUNCIL</b>	<b>APPLICANT</b> Mr & Mrs Datlen <b>AGENT</b> The JTS Partnership
<b>DECISION DUE DATE</b> 24/11/16	<b>PUBLICITY EXPIRY DATE</b> 07/11/16		
<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/07/0168	Two storey dwelling & single storey garage building for 4 cars.	Refused and subsequent appeal dismissed in January 2008	02.04.2007
<i>Summarise Reasons:</i>			
<i>Development in the countryside outside settlements, disadvantages of the location away from shops and facilities and the impact on the character and appearance of the area.</i>			
SW/87/0741	Erection of a detached bungalow	Refused and subsequent appeal dismissed in 1988.	24.07.1987
<i>Summarise Reasons:</i>			

*Development in the countryside outside settlements and that the development would spoil the appearance and pleasant open character of the area.*

## **1.0 DESCRIPTION OF SITE**

- 1.01 The application site lies outside Dunkirk a small village which comprises of approximately 110 houses set out in a linear pattern along Dunkirk Road and Courtenay Road and is rural in character.
- 1.02 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 the village hall. There are some commercial/industrial buildings/land to the east of the site. Dunkirk village lies to the east (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.
- 1.03 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.
- 1.04 The site is located adjacent to Courtenay House, a former coaching inn, which has been converted to flats. The site itself measures approximately 0.24 hectares. Dunkirk Farm Bungalow is located immediately east adjacent to the site boundary.
- 1.05 The site is currently used as informal domestic garden space - an application has not been submitted for this use and as such the Council's enforcement team are looking into this matter. A new access driveway with a gated entrance, enclosed by a timber boundary fence has also been constructed.
- 1.06 The site has an extensive planning history which has been outlined above. Planning permission has been previously refused for single dwellings on the application site and in each case were also dismissed at appeal.

## **2.0 PROPOSAL**

- 2.01 Outline planning permission, with all matters reserved except for access, is sought for the erection of a single dwelling with associated access and parking.
- 2.02 The access has already been constructed so that part of the application can be treated as retrospective.
- 2.03 The application has been submitted with a detailed Planning, Design and Access Statement, site location plan and a proposed site plan and elevation for illustrative purposes only. The illustrative plans show a two storey dwelling sited in line with the rear of Courtenay House and further to the rear of Dunkirk Farm.



- 2.04 The Planning, Design and Access Statement confirms, at paragraph 4.04 that there is *'opportunity to retain all important trees on the site and to provide landscape enhancements that will contribute to the framing of Courtenay House.'*
- 2.05 The agent has provided an additional response which is as follows:

***'5 Year Housing Land Supply***

*During our call you advised that a single dwelling would not make a significant contribution to the supply of housing in the Borough. I would respectfully advise that it is the wrong approach. There are a number of benefits that follow from this particular single house development, which must be considered in the context of the National Planning Policy Framework.*

*The erection of a single dwelling does make a positive but limited contribution to the supply of housing and to local building services in the Borough and should be given weight to reflect this. Where the LPA cannot demonstrate an up to date housing supply, paragraphs 14 and 49 of the NPPF are enacted. These policies state where the LPA cannot demonstrate an up to date 5 year housing supply of site, the housing policies of Development Plan are out of date and applications should be assessed against policies set out in the NPPF and proposals should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.*

*It is incumbent of the LPA to find that the adverse impacts would **significantly** and **demonstrably** outweigh the benefits which is a high threshold, if it intends to refuse and this is, without doubt, a case where significant harm cannot be shown.*

***The Principle of Development***

*During our conversation, you advised the principle of development is unlikely to be supported given the site is located outside the built confines of the village. To reinforce our own assessment, I draw to your attention a planning appeal at The Firs, Dunkirk Road South referenced in our Planning Statement (Paragraphs 6.24 to 6.26 and Appendix A) which sought outline consent for the erection of a detached single storey dwelling. The Planning Inspector, Christine Thorby found that;*

*"The proposal would provide a new house, to which I attach positive weight in helping to provide housing in the borough. In this case, the adverse effects would be limited and would not outweigh the benefits of the proposal. The scheme would, therefore, be sustainable development complying with the provisions of the NPPF when taken as a whole".*

*The Inspector concluded;*

*"There would be an additional house and access point which would increase the built form in the area, but having regard to my previous comments, I consider the impact to be small and the local character and appearance would not be unacceptably altered".*

*The Dunkirk Road South appeal site is in the same village as the proposed development and there are strong similarities between the application site and the appeal site. Both plots are located outside the settlement confines of Dunkirk Village, both have generous size plots capable of accommodating development without altering the character of the area. It is considered that the application site comprises a*

*more urban character and the proposed dwelling is appropriate within the loose grain of development in this part of the village.*

*The degree of harm for our proposal would be very limited and a building of the right design reflecting, for example, some of the traditional form and materials will be seen as contributing to the character of this part of the village. Other benefits, than just additional housing, flow with potential contribution to landscape character and ecology, framing of Courtenay House through appropriate tree planting and better screening of Dunkirk Farm bungalow.'*

### 3.0 SUMMARY INFORMATION

	Existing	Proposed	Change (+/-)
Site Area (ha)	0.24 hectares	0.24 hectares	0
No. of Residential Units	0	1	+1

### 4.0 PLANNING CONSTRAINTS

Special Landscape Area

The Countryside

Potential Archaeological Importance

### 5.0 POLICY AND OTHER CONSIDERATIONS

The National Planning Policy Framework (NPPF)

- 5.01 Paras 7 (three dimensions of sustainable development), 8, 11 (presumption in favour of sustainable development), 12, 14, 17 (core planning principles), 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); 135 (non-designated heritage assets); 159 (housing), 162 (infrastructure), 186 (decision taking), 187, 196 (determining applications) & 216 (weight to emerging policies).

National Planning Policy Guidance (NPPG): Design; Natural environment; Housing and Economic Development needs assessment; Noise; Use of planning conditions; transport assessments and statements in decision taking; Water supply, light pollution; natural environment and neighbourhood planning.

Development Plan:

- 5.02 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), E16 (scheduled ancient monuments), H2 (new housing), H3 (affordable housing), T1 (safe access) and T4 (cyclists and pedestrians).
- 5.03 The emerging Swale Borough Local Plan "Bearing Fruits" Main Modifications June 2016 – 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), CP7 (natural environment), CP8 (conserving and enhancing the historic environment), DM7 (vehicle parking), DM14 (general development criteria), DM21 (water, flooding and drainage), DM24 (valued landscapes) and IMP1 (implementation and delivery plan).

- 5.04 SPD entitled *'The Swale Landscape Character and Biodiversity Appraisal'* September 2011

## 6.0 LOCAL REPRESENTATIONS

- 6.01 Four letters of objections have been received making the following summarised comments:

- The building would alter the open nature of the area immediately to the east of Courtenay House and garden
- Strong possibility of further development of this area cramming up with small piece of rural land
- There is no shortage of housing at the high end of the market
- Disruption caused by dust and noise during the construction phase of this scheme is unwished for
- Courtenay House is a country house in a country setting
- Courtenay House sits adjacent to 2 grade II listed buildings, the Old School and Christ Church adding to the characterful nature of the area
- The site used to form part of the garden of Courtenay House and has retained features of natural beauty in the form of woodland and large trees forming the characterful nature of the setting
- The owners have removed trees and plants altering the character of and exposing the area
- Amenity in the form of drains are already an issue
- The indicative plans provided with the application show a building that would be out of keeping with the general line of properties in this area
- The plot is considered too narrow to accommodate the size of the indicate two storey building
- Direct overlooking onto Dunkirk Farm Bungalow would be caused by this development
- The access sought is not acceptable and would cause noise disturbance

## 7.0 CONSULTATIONS

- 7.01 Dunkirk Parish Council has objected to the application on the following summarised grounds:

1. The site is located outside of the village envelope
2. The members were not against the possible residential use, but had a number of reservations with this particular scheme, albeit accepted that it is an outline proposal
3. Design was felt to be creative

- 7.02 Natural England have made the following comments:

*'The above 3 consultations relate to proposals for new dwellings within the zone of influence (6km) of the Thames Estuary and Marshes, Medway Estuary and Marshes, and The Swale Special Protection Areas (SPAs) and Wetlands of*

*International Importance under the Ramsar Convention (Ramsar Sites). It is the Council's responsibility to ensure that the proposals fully adhere to the agreed approach within the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring Strategy (SAMM) to mitigate for additional recreational impacts on the designated sites and to ensure that adequate means are in place to secure the mitigation before first occupation. Subject to the above, Natural England is happy to advise that the proposals may be screened out as not having a likelihood of significant effects on the designated sites.'*

7.03 Kent Highways and Transportation have made the following comments:

*'It would appear that this development proposal does not meet the criteria to warrant involvement from the Highway Authority in accordance with the current consultation protocol arrangements. If there are any material highway safety concerns that you consider should be brought to the attention of the HA, then please contact us again with your specific concerns for our consideration.'*

7.04 I am awaiting comments from the Council's Tree Consultant and will update Members at the meeting.

## **8.0 BACKGROUND PAPERS AND PLANS**

8.01 Application papers for application 16/507038/OUT

## **9.0 APPRAISAL**

### 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. Saved policy E6 of the adopted local plan seeks to protect the quality, character and amenity of the countryside. Saved policy SP4 seeks to provide sufficient land for housing need, and saved 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. Saved 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 this and that 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 Whilst the Council accepts that it does not currently have a 5 year supply of housing, it is working to rectify this through the allocation of extra sites through the Main Modifications Document to the emerging Local Plan and therefore the other policies within the emerging LP can now hold more weight. It has now published a paper on our 5 year housing land supply which will be tested through the LP Examination next January/February. This paper shows that there is strong progress towards the achievement of a 5 year housing land supply.
- 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, the 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. The Council is 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 little benefit in terms of job creation and a boost to the local economy by introducing additional residents to the area who will hopefully support local businesses, as only a single dwelling is proposed.
- 9.13 In terms of the social aspect of sustainable development, though the proposal would provide one additional house in the area, 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. 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.
- 9.14 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.

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

- 9.15 Saved 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. Saved policy E9 can therefore be given significant weight. Within the Blean Woods 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. Saved 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.”*
- 9.16 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.
- 9.17 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.”*
- 9.18 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.
- 9.19 The site and the proposed new dwelling would be visible from Canterbury Road. 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. It is important to pay regard to the previous appeal decisions which dismiss proposals for a single dwelling on this site.

- 9.20 Though the indicative plans show some landscaping I do not consider that this soft landscaping would go far enough to reduce the harm that I have identified to the Special Landscape Area.

Residential amenity

- 9.21 The proposal is in outline form only, except for the access arrangement, and so the impact on existing local residents in terms of overlooking and overshadowing cannot be fully known 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.

Impact on the surrounding area

- 9.22 It is important to consider the impact on Courtenay House which, although it is not a designated heritage asset or indeed in a conservation area, is an imposing building of some architectural distinction in an important position along London Road in the particular area in which it is located. This building is set well back from the road and with its architectural style, historic form and bold white rendered finish, set amongst a dark setting of matured trees. This whole visual effect is reinforced by an attractive open grassed frontage space and a visually dominant driveway access into and around the frontage with two access and egress points at both the west and east ends. Overall it is a building worthy of being defined as an important non-designated heritage asset in the area and as such forms an important part of the scheme appraisal. I acknowledge that there are a number of buildings in the wider vicinity around Courtenay House but the primary character and appearance of the overall environment is a spacious one and an area combined with considerable matured landscaping.
- 9.23 This spatial environment associated with, what is, a very large building, which includes Courtenay Cottage positioned at an awkward angle close to the north-west corner of the building, has been an important setting context for the main house. This is particularly in regards to the frontage space with its imposing driveway arrangement set well back from London Road.
- 9.24 The proposed new access drive from the London Road main driveway access point, a design, totally out of character with the main house and is alien in design to the character of the driveway formation of the site. This general intervention of an additional driveway to the house and the driveway itself, is not only a confusing driveway design, especially with a turning area close to the south-east corner of Courtenay House, separated from the main driveway by a post and rail fence arrangement and with the proposed future new house is an alien development in my view and one which in my view definitely harms the setting of the non-designated Heritage Asset that Courtenay House clearly is.
- 9.25 Overall I am firmly of the view that any dwelling on this plot would have a significant detrimental impact on Courtenay House, a non-designated heritage asset, of which there are only a few located in Dunkirk, making it even more important to protect this setting.
- 9.25 Whilst this is the recommendation, one further matter deserves comment. This site is within 6km of The Swale SPA meaning that additional recreational pressure can be expected from the creation of any new dwellings in close proximity to the seawall footpath/dog walking routes. Accordingly, an adverse effect on the Habitats of the SPA can be expected without adequate mitigation. The Council is committed to the Natural England backed Strategic Mitigation (SAMM) strategy which seeks financial



contributions for mitigation from all new housing in this area, albeit the Council's own approach is not to seek contributions from schemes of less than 10 dwellings. This approach is not what Natural England prefer and as a refusal it may ultimately be for an Inspector to decide if that is appropriate in this case – and if he/she finds it inadequate no planning permission should be granted unless that SAMM contribution (currently £223.58 per dwelling) is paid and spent on mitigation before the house is occupied. Otherwise the decision could be considered to be a breach of Habitat regulations.

## **10.0 CONCLUSION**

10.01 This outline application seeks permission for housing development on land outside of the built-up area boundary of Dunkirk. Saved 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, impact on the setting of Courtenay House 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 for the following reason:**

### **REASON**

1. The proposed development would be located outside of the defined urban boundaries of Dunkirk (as established by Local Plan saved 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, the quality and character of the landscape which is designated as being within a Special Landscape Area and the historic character of Courtenay House, a non designated heritage asset. 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 saved 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 and Paragraph 135 of the National Planning Policy Framework.

**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:

Offering pre-application advice.

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.

**PLANNING COMMITTEE – 5 JANUARY 2017**

**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 – Water Meadow, Primrose Lane, South of Motorway, Bredgar**

**APPEAL DISMISSED**

**Observations**

DELEGATED REFUSAL

A disappointing decision regarding a poorly designed rear extension that appears to completely ignore the particularly distinctive character of the rear elevation of this building in the heart of Bredgar.

- **Item 5.2 – Land at Seed Road, Newnham**

**TWO ENFORCEMENT APPEALS DISMISSED**

**Observations**

Notwithstanding the Inspector's tinkering with the wording of the enforcement notice he has fully supported the Council's actions and arguments.

- **Item 5.3 – Land at Church Farm, Sheppey Way, Bobbing**

**APPEAL DISMISSED AND COSTS REFUSED**

**Observations**

DELEGATED REFUSAL

A good decision that focusses on the harm the proposal would have caused to the sense of openness along this section of Sheppey Way; to a lesser degree the loss of BMV agricultural land; and in conclusion that the proposal would harm the character and appearance of the area contrary to adopted policies E6, E7, SH1(6) and emerging policies DM24, DM25, DM31 and ST3(6).

- **Item 5.4 – 60 – 63 Preston Street, Faversham**

**APPEAL DISMISSED**

**Observations**

DELEGATED REFUSAL

Full support for the Council's decision.

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## Appeal Decision

Site visit made on 22 November 2016

by R J Jackson BA MPhil DMS MRTPI MCMI

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

Decision date: 29 November 2016

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**Appeal Ref: APP/V2255/D/16/3152443**

**Water Meadow, Primrose Lane, South of Motorway, Bredgar ME9 8EH**

- 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 & Mrs White against the decision of Swale Borough Council.
  - The application Ref 16/500337/FULL, dated 16 January 2016, was refused by notice dated 15 April 2016.
  - The development proposed is a two storey rear extension with part single storey extension.
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### Decision

1. The appeal is allowed and planning permission is granted for a two storey rear extension with part single storey extension at Water Meadow, Primrose Lane, South of Motorway, Bredgar ME9 8EH in accordance with the terms of the application, Ref 16/500337/FULL, dated 16 January 2016, subject to the following conditions:
  - 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 following approved plans: BDS-1369-01 Revision A, BDS-1369-02, BDS-1369-03, BDS-1369-04, BDS-1369-05, BDS-1369-06.
  - 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.
  - 4) Before any above ground construction works takes place details of the external doors and windows to be used on the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The development shall take place in accordance with the approved details.

### Main Issue

2. The main issue is the effect on the character and appearance of the area being within the Kent Downs Area of Outstanding Natural Beauty (AONB).

### Reasons

3. The appeal property is located on the west side of Primrose Lane a short distance back from the street. It is an imposing two storey detached property with a single storey side extension on the northern side providing a garage and
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Appeal Decision APP/V2255/D/16/3152443

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- utility room. The property has three pitched and gabled outriggers on the rear elevation; the outer two extending further into the rear garden than the central one.
4. The proposal would extend the most northerly of the three outriggers at two storeys and add a single storey rear extension across the width of the two northern outriggers. This would include replacing and extending the existing utility room part of the existing single storey extension.
  5. The property to the north, Wheelwrights, is set at a slightly lower level than Water Meadow, but is located so that it restricts oblique views of the side and rear of Water Meadow from the street, particularly of the ground floor. Currently the single storey extension has a partial pitched and partial flat roof and the proposed rear extension would have a pitched roof from the rear. This means that the junction between the two roof forms would be resolved by use of a parapet. This would be a slightly awkward junction but, because it would be set towards the rear and partially obscured by Wheelwrights from one direction and the appeal property from the other, this would not be intrusive into the street scene.
  6. While the single storey rear extension would extend across the width of the northern two outriggers and the side extension, the historic form of the three gables on the rear elevation would still be clearly seen and the proposal would be seen as a later addition. Subject to matching materials, which could be secured by condition including of doors and windows which I will discuss below, the proposal would be in keeping with the overall design approach of the existing property.
  7. The garden of Water Meadow extends some distance to the rear and narrows approximately one-third along its length from the appeal property on both sides. There are reasonably tall boundary treatments on either side. This restricts views of the rear elevation and means that the proposal would only have a neutral effect on the wider landscape of the AONB, conserving its scenic beauty, where great weight is to be afforded to conserving landscape and scenic beauty in line with paragraph 115 of the National Planning Policy Framework (the Framework).
  8. Therefore, the proposal would be in keeping with the character and appearance of the area being within the AONB. As such it would comply with Policies E1, E9, E19 and E24 of the Swale Borough Local Plan 2008 which require development to protect and enhance the natural and built environments, be of a scale, design and appearance that would be appropriate to the location, protect the quality, character and amenity value of the AONB, would provide development that is appropriate to its context in respect of scale, height and massing, would be of a high quality design, and would preserve landscape features. It would also comply with paragraphs 58 and 115 of the Framework in that it would respond to local character and conserve landscape and scenic beauty.

#### **Conditions**

9. I have considered the conditions put forward by the Council against the requirements of the national Planning Practice Guidance and the Framework. In addition to the standard timescale condition, I have imposed a condition specifying the relevant drawings as this provides certainty.

Appeal Decision APP/V2255/D/16/3152443

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10. While the exterior materials for the walls and roof should match those of the existing building, there are currently different styles and materials for the windows. In order to ensure that the windows and patio doors are of an appropriate design in keeping the existing property and the character and appearance of the area, I have imposed a condition requiring details of the external joinery to be used to be submitted and approved.

**Conclusion**

11. For the reasons given above, and taking into account all other matters raised, I conclude that the appeal should be allowed.

*RJ Jackson*

INSPECTOR

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## Appeal Decisions

Site visit made on 18 October 2016

by Alan Woolnough BA(Hons) DMS MRTPI

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

Decision date: 1 December 2016

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### Appeals A & B: APP/V2255/C/16/3149567 & APP/V2255/C/16/3149568 Land at Seed Road, Newnham, Faversham, Kent ME9 0NN

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Paul Mead (3149567, Appeal A) and Mrs K Mead (3149568, Appeal B) against an enforcement notice issued by Swale Borough Council.
- The enforcement notice, numbered ENF/NEM/13/002, was issued on 18 April 2016.
- The breach of planning control as alleged in the notice is: 'Without planning permission, the alterations to an existing field entrance and the laying of hard-surfacing to form a new access on to land immediately adjacent to Seed Road, the approximate position of which is highlighted in 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 metal entrance gates;
  - (ii) Remove the hard-surfacing material from the Land;
  - (iii) Remove all debris from the Land caused by complying with paragraphs 5 (i) and (ii) above;
  - (iv) Restore the Land to its previous condition similar to the surrounding land within the site.
- The period for compliance with the requirements is three months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the 1990 Act as amended. Since the prescribed fees have not been paid within the specified period for Appeal B, the appeal on ground (a) and application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not fall to be considered in that case. Appeal B is therefore proceeding on grounds (c), (f) and (g) only.

**Summary of Decisions: The appeals are dismissed and the enforcement notice is upheld with corrections.**

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#### Procedural matter

1. The Appellants are critical of the Council's pre-application service and the manner in which enforcement action has been pursued. However, these are not matters for me and, if necessary, fall to be addressed by other means separate from the appeal process. They have not therefore informed my decisions.

#### The notice

2. The Appellants have not appealed against the enforcement notice on ground (b) on the basis that matters stated therein have not in fact occurred. Nonetheless, there is no dispute between the main parties that before the subject development took place there was already a gated field entrance at this point. Indeed, this is acknowledged in the alleged breach of planning control
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Appeal Decisions APP/V2255/C/16/3149567 & APP/V2255/C/16/3149568

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set out at section 3 of the notice and, having viewed an historic photograph of the site, I concur. Reference in the allegation to the formation of a new access as well as alterations to an existing access is therefore contradictory and should be deleted.

3. Additionally, in the interests of consistency within the notice the metal entrance gates targeted by requirement (i) should be included in the allegation. The phrase 'which in the opinion of the Council would require the benefit of planning permission' at the end of the allegation is superfluous, the perception that permission is required already being evident through conclusion of the words 'Without planning permission' at the beginning.
4. Also, requirement (iv) lacks sufficient precision for enforcement purposes, the term 'similar to the surrounding land within the site' being open to wide interpretation. I will correct the notice accordingly and am satisfied that no injustice to any party arises as a result.

#### **The appeals on ground (c) – Appeals A & B**

5. In appealing against the enforcement notice on ground (c), the onus of proof is firmly on the Appellants to demonstrate on the balance of probabilities that matters stated in the enforcement notice did not amount to a breach of planning control. The Appellants' case in this regard is confined to a contention that removal of the previous fencing and gate and re-orientation of the field access did not require planning permission.
6. I acknowledge that removal of the gate and fencing would have benefitted from deemed planning permission by reason of Class B of Part 31 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 as amended (the GPDO)<sup>1</sup>. I give little credence to the notion that 'permitted development' status in this regard is precluded on the basis that removal took place as part of a single operation that included works requiring express permission. Whether this was the case is a matter of fact and degree and requires a judgment to be made on the facts available.
7. On the limited evidence before me I find, having regard to the judgment in *Garland v MHLG* [1968] 20 P&CR 93, that the removal of the gates and fence would more reasonably be interpreted as 'building operations' separate and distinct from any 'engineering operations' associated with alterations to the access and creation of the hardstanding. This being so, and as that specific action of removal is not targeted by the enforcement notice, it cannot form a valid basis for any ground (c) appeal.
8. Nonetheless, from the historic photograph before me it appears in the absence of evidence to the contrary, bearing in mind where the burden of proof lies, that the access into the field has been both widened and resurfaced. Such works amount to 'development' for the purposes of section 55 of the 1990 Act as amended, there being no specific exclusion to the contrary from the meaning of the term 'engineering works'. Moreover, I am satisfied that they

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<sup>1</sup> The 1995 GPDO was replaced on 15 April 2015 by the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended, in which Class C of Part 11 of Schedule 2 makes the same provision. However, as the Appellants indicate that the works took place in July 2013 (and I have seen no evidence to the contrary), the 1995 GPDO remains the relevant legislation for the purposes of my decisions on ground (c).

Appeal Decisions APP/V2255/C/16/3149567 & APP/V2255/C/16/3149568

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also amount to 'alterations to an existing field access' and thus fall within the scope of the allegation.

9. Class B of Part 2 of Schedule 2 to the GPDO provides for the 'laying out' of a means of access to an unclassified road with the benefit of deemed planning permission in certain circumstances, which term is generally interpreted in planning law as including changes to the layout of an existing access. However, this provision is confined to situations where the access is required in connection with other development permitted by any Class in Schedule 2 (with the exception of Class A of Part 2).
10. The Appellants have not demonstrated that the alterations to the field access were required in connection with any other form of permitted development. Accordingly, these works would not in themselves have benefitted from permitted development rights and would have required express planning permission. Such permission never having been granted, I conclude on the balance of probabilities that all the matters stated in the allegation amount to a breach of planning control and that the appeals on ground (c) should fail.

### **The appeal on ground (a) – Appeal A only**

#### ***Main issue***

11. The main issue in determining the appeal on ground (a) is the effect of the development on the character and appearance of Seed Road and the surrounding area, including whether it conserves and enhances the natural beauty of the Kent Downs Area of Outstanding Natural Beauty (AONB) in which the site is located.

#### ***Planning policy***

12. The development plan includes certain policies of the Swale Borough Local Plan 2008 (LP) which have been saved following a Direction made by the Secretary of State. Paragraph 215 of the National Planning Policy Framework (the Framework) records that due weight should be given to relevant policies in existing plans according to their degree of consistency with it. I find no significant conflict between the Framework and the development plan policies cited in this case. Accordingly, I will give them full weight insofar as they are relevant to the appeal scheme.

#### ***Reasoning***

13. The appeal development currently provides the sole means of vehicular access to an equestrian livery yard, stables and associated paddocks. Formerly tenants of the land, the Appellant and his wife purchased it in 2013. I found this part of the AONB to be characterised by undulating land comprised for the most of part large open fields devoted to arable farming or pasture but bounded by substantial tree belts and high hedgerows. Pockets of woodland and isolated dwellings and agricultural buildings pepper the landscape.
14. Additionally, Seed Road is designated as a rural lane to which saved LP Policy RC7 applies. This specifies that development proposals should have particular regard to, amongst other things, the landscape importance of such lanes. I acknowledge that topography and vegetation effectively preclude long distance views of the appeal development across the wider AONB. Nonetheless, the lane is resolutely rural in character and makes an important,



Appeal Decisions APP/V2255/C/16/3149567 & APP/V2255/C/16/3149568

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albeit localised, contribution to the natural beauty of the area. Moreover, it is particularly attractive in its own right by reason of its narrow carriageway and long stretches of unbroken roadside vegetation, even when considered in isolation from its wider context.

15. The extensive hardsurfacing subject to the enforcement notice is very much at odds with the prevailing character of the lane as a whole. Although neither a new break in the roadside continuum nor the only one to have an unwelcome urbanising effect, the appeal development is nonetheless particularly harsh in terms of its visual impact and, unlike its predecessor, draws the eye as an intrusion that detracts markedly from the qualities that saved Policy RC7 is intended to safeguard. The re-orientation of the access renders this even more open to view than it would otherwise have been.
16. The Appellant suggests that it is quite common for fields to have hardstandings on approaches to accesses. However, these are not necessarily alongside protected lanes. In any event, this is not the case in Seed Road, where nothing of similar function and incongruity had been drawn to my attention. Certainly, installations of this kind are not so commonplace as to be characteristic of the area or subsume the impact of the appeal development. Nor does the appeal development read in juxtaposition with the stables on the Appellant's land or the nearby village and, consequently, arguments that it has a negative impact in relation thereto are effectively irrelevant.
17. Turning to consider the unauthorised gates, I find these merely to exacerbate the visual harm caused by the revised access and hardstanding by reason of their uncompromising appearance. The rudimentary and utilitarian nature of these very basic metal constructions is such that it is difficult to conceive of a design that would be less sympathetic to the prevailing character of the rural lane. Again, they draw the eye as incongruous intrusions that should not be tolerated in such a sensitive location.
18. I note that the Appellant cites a lawful fallback position whereby replacement means of enclosure up to 1 metre in height could be erected with the benefit of deemed planning permission (Class A of Part 2 of Schedule 2 to the GPDO refers). However, a fallback position only carries significant weight in circumstances where it is likely to be implemented in the wake of successful enforcement action.
19. In this case, the design of the existing installations is such that they do not lend themselves readily to a reduction in height through alterations or adaptation. Moreover, I have seen nothing to suggest that any replacement at only 1 metre in height would either meet the Appellant's functional requirements (to ensure the security of horses) or be likely to replicate such poor visual quality. I therefore attach little weight to this possibility.
20. I conclude that the appeal development in its entirety causes harm to the character and appearance of the rural lane and the natural beauty of the AONB over and above anything likely to arise from a lawful fallback position. Its retention would therefore be contrary to saved LP Policies E1, E6, E9 and RC7 and the relevant provisions of the Framework.

Appeal Decisions APP/V2255/C/16/3149567 & APP/V2255/C/16/3149568

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***Other matters***

21. I have considered all the other matters raised. Two accesses to the north-east which once served the Appellant's land are not currently available for use in connection with the appeal site. One of these, via a steep unmade track set at an oblique angle to the road, is considered by the Appellant to be unsafe and, having viewed it for myself, I find no reason to disagree. However, I note that the planning permission granted in 2006<sup>2</sup> for the livery yard within the appeal site was conditional upon sole access thereto being via the former Tapster car park entrance, located closer to the village and linked to the appeal site by a long off-road track.
22. Whilst it is evident that the track is not currently fit for purpose, subject to legal considerations I see no reason why it could not be improved so as to comply with the planning permission and thus provide a far more visually acceptable solution to the access dilemma. The Appellant advises that this route has been blocked by a third party and that the right of way over it is disputed. However, I have seen no documentation to that effect.
23. Nor is there any explanation before me of how or why such a situation has arisen or any report of the progress made in resolving the purported dispute. This being so I have no sound reason to suppose that any legal difficulties there may be in this regard are insurmountable, such that the Appellant's equestrian undertaking could once more comply with saved LP Policy RC9 and contribute to the rural economy in accordance with saved LP Policy RC1 (both currently contravened by reason of the detrimental impact on landscape character caused by the subject development). I therefore give the matter little weight.
24. Reference is made to a further potential fallback position in that, should the appeal fail, the land served by the subject access might be used for agricultural purposes and benefit from the permitted development rights associated with such use which, in certain circumstances, can include the creation of extensive hardstandings with the benefit of deemed planning permission<sup>3</sup>. However, I have seen nothing to substantiate the view that active agricultural use is likely to transpire should the enforcement notice be upheld or that, if it did, the farmer would choose to create an agricultural hardstanding at this particular point. Saved LP Policy E6 is therefore of limited relevance in this regard.
25. I appreciate that the hardstanding helps to prevent mud and debris being dragged onto the public highway and enables the access to be used in all weathers. However, that in itself does not justify use of this entrance point to serve the whole site in the first place. Nothing before me suggests that, were an alternative access to be used to serve the livery yard then the subject field entrance would continue to be used so extensively.

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<sup>2</sup> Planning permission ref no SW/05/1405, granted by the Council on 3 February 2006 for 'Change of use to keeping and grazing of horses, and as a livery yard with single storey stable block and storage area'.

<sup>3</sup> The Appellant points out that the grazing of horses can constitute agriculture for planning purposes. However, this would only benefit from associated permitted development rights if used for agriculture for the purposes of a trade or business (paragraph D.1(1) of the GPDO refers). On the evidence before me, the appellant's business is first and foremost an equestrian undertaking to which the grazing of horses is incidental, rather than an agricultural one. Permitted development rights for hardstandings do not therefore apply at present.

Appeal Decisions APP/V2255/C/16/3149567 & APP/V2255/C/16/3149568

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26. The Appellant points out that the changes to the subject access and installation of the hardstanding have not increased traffic generated by the site overall. Nonetheless, I am mindful that the unavailability of the access stipulated by the 2006 permission will have drawn large vehicles and trailers further along this narrow rural lane than would previously have been the case when heading to and from the north-east and will have increased vehicular use of the field entrance itself. Having said that, I note that the Council have not pursued a highway safety objection to the scheme and, this being so, I see no reason to do so either.
27. However, neither this nor any other matter is of such significance as to outweigh the considerations that have led to my conclusion on the main issue. The appeal on ground (a) therefore fails.

#### **The appeals on ground (f) - Appeals A & B**

28. It is readily apparent from the wording of the enforcement notice that its intended statutory purpose is to remedy the breach of planning control in full, in accordance with the provisions of section 173(4)(a) of the 1990 Act as amended. This being so, in pursuing appeals on ground (f) the Appellants must show that the steps required by the notice exceed what is necessary to remedy the breach.
29. The Appellants' case in this regard is confined to requirement (iv) of the notice. In their initial grounds of appeal they pursue the argument that they were entitled to erect a new fence and gate in this location of up to a height of 1 metre if abutting<sup>4</sup> the highway and 2 metres if not and that, accordingly, it is not reasonable that requirement (iv) should stipulate restoration of the land to its previous condition. However, as I have already pointed out in the context of the appeals on ground (c), the notice does not go so far as to target the removal of the pre-existing gate and fencing, which amounted to permitted development. Nor does requirement (iv) specify their reinstatement.
30. In my view, it can only reasonably be interpreted as requiring restoration of the previous land surface and access layout (alterations to which I have found to be unlawful in considering ground (c)), with the latter to be secured either by physical barriers that mirror those that were removed or, alternatively, replacements that do not in themselves require express planning permission. The planting of hedging, which is not in itself development, would therefore satisfy the requirement, as would any means of built enclosure that did not exceed 1 metre in height.
31. The notice as issued does not have the effect of removing or overriding permitted development rights, that being beyond its lawful scope. In any event, as touched on in the context of the appeal on ground (a), the replacement gates are not of a design that readily lends itself to height reduction. It follows that rewording requirement (iv) to make reference to permitted development allowances is neither necessary nor appropriate.
32. The Appellants approach ground (f) slightly differently in their main statement, there suggesting that requirement (iv) is not sufficiently precise in stipulating

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<sup>4</sup> This is a partly erroneous reference to the provisions of Class A of Part 2 of Schedule 2 to the 2015 GPDO which, subject to certain conditions and limitations, provides for the erection of means of enclosure of up to 1 metre in height adjacent to a highway used by vehicular traffic [my italicised emphasis] as permitted development with the benefit of deemed planning permission.



Appeal Decisions APP/V2255/C/16/3149567 & APP/V2255/C/16/3149568

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restoration of the land to its previous condition. They instead promote the more specific alternative that it should require reseeded of the area coloured yellow on the plan with grass.

33. However, this would not remedy the breach of planning control in its entirety so as to fulfil the statutory purpose of the notice. Moreover, section 173(4)(a) of the 1990 Act as amended is explicit in defining one of the statutory purposes as 'restoring the land to its condition before the breach took place'. This being so, it is not surprising that the Courts have long held that a remedial step framed in the manner of requirement (iv) (subject to the necessary correction identified earlier) is adequate in most cases.
34. The underlying principle is that it is reasonable for the perpetrator of a breach to know what condition the land was in previously, so that a requirement thus worded should leave them in no doubt as to what needs to be done. In any event, in this case there is uncontested photographic evidence to assist in this regard. I conclude that the requirements of the enforcement notice are not excessive and, accordingly, the appeals on ground (f) fail.

#### **The appeals on ground (g) - Appeals A & B**

35. The Appellants have appealed against the enforcement notice on ground (g) on the basis that the period prescribed for complying with its requirements falls short of what should reasonably be allowed. Their argument is that the entrance in question is the only one currently available as a means of gaining access to all the land in their ownership and that securing an acceptable alternative would take longer than three months. Although not stated explicitly, the implication seems to be that reinstatement of the former access layout and removal of the hardstanding as required by the notice would render it unfit for that purpose, despite the fact that it would remain available for vehicular use.
36. I have already set out the shortcomings of the Appellants' case to the effect that this is now the only access available to serve their land in the context of the appeal on ground (a) and need not repeat those points here. Nonetheless, I must briefly address their additional argument under ground (g) that they would need 12 months in which to secure alternative access options. Information as to why this should take so long is scant indeed.
37. Insufficient evidence has been provided to persuade me that resolution of any legal obstacles so as to enable reinstatement of the access arrangements specified in the 2006 planning permission should take more than three months. Nor is there anything of substance before me that addresses any difficulties there may be in establishing a safe and visually acceptable alternative within the period specified.
38. I conclude in the absence of any substantiated indication to the contrary that the period for compliance prescribed in the notice as issued is not too short. The appeals on ground (g) therefore fail. It remains within the Council's power to further extend the period for compliance under section 173A(1)(b) of the 1990 Act as amended in the event that this is shown to be necessary or desirable.

Appeal Decisions APP/V2255/C/16/3149567 & APP/V2255/C/16/3149568

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### **Conclusion**

39. For the reasons given above I conclude that the appeals should not succeed. I will uphold the enforcement notice with corrections and refuse to grant planning permission on the deemed application.

### **Formal decisions**

40. It is directed that the enforcement notice be corrected by:
- (i) in section 3, the insertion of the words ', the installation of metal entrance gates' after the word 'entrance' and the deletion of the words 'to form a new access on to land immediately adjacent to Seed Road' and 'which in the opinion of the Council would require the benefit of planning permission'; and
  - (ii) in requirement (iv) in section 5, the deletion of the words 'similar to the surrounding land within the site'.
41. Subject to these corrections, the appeals are dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*Alan Woolnough*

INSPECTOR






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## Appeal Decision

Hearing held on 18 October 2016

Site visit made on 18 October 2016

by **D J Board BSc (Hons) MA MRTPI**

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

Decision date: 06 December 2016

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**Appeal Ref: APP/V2255/W/16/3153537**

**Land at Church Farm, Sheppey Way, Bobbing, Kent, ME9 8RJ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Crabtree & Bobbing Ltd against the decision of Swale Borough Council.
  - The application Ref 15/505488/OUT, dated 6 July 2015, was refused by notice dated 10 June 2016.
  - The development proposed is residential development for 98 houses.
- 

### Decision

1. The appeal is dismissed.

### Application for costs

2. At the Hearing an application for costs was made by Crabtree & Bobbing Ltd against Swale Borough Council. This application will be the subject of a separate Decision.

### Procedural Matters

3. The application was made in outline with all matters except access reserved for future approval. The application was formally amended from '100' to '98' dwellings. I have therefore considered the appeal on this basis and my description of the development reflects this change. The application was accompanied by 'sketch layout' drawings which I have considered as purely indicative.
4. A legal agreement containing planning obligations pursuant to section 106 of the Act was submitted at the hearing.

### Main Issue

5. The main issue in this case is whether the site is suitable for housing.

### Reasons

#### *Planning Policy*

6. The development plan includes the saved policies from the Swale Borough Local Plan (2008) (LP). The policies referred to in this case are SH1, SP1, SP4, E6, E7 and H2. Policy SH1 refers to the settlement hierarchy whilst E6 refers to the countryside and in particular land falling outside of the defined built up
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Appeal Decision APP/V2255/W/16/3153537

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area boundaries. E7 refers specifically to the separation of settlements. H2 identifies where permission for new residential development will be granted. SP1 and SP4 require proposals to accord with the principles of sustainable development and ensure that sufficient land is available for the timely provision of new housing. The proposal would be for residential development outside of a built up area in the countryside. It would not meet any of the exceptions identified in the relevant policies. As such it would not be in accordance with the development plan.

7. The National Planning Policy Framework (The Framework) sets out a presumption in favour of sustainable development. Paragraph 14 indicates that, for decision-taking, this means, 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 the Framework indicate development should be restricted.
8. The Framework sets out an aim in paragraph 47 to boost significantly the supply of housing. It requires that local planning authorities should use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in the Framework. They 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. The Framework indicates that the buffer should be increased to 20% where there has been a record of persistent under delivery of housing.
9. According to paragraph 49 of the Framework, 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. Local Plan policies SH1, SP4, and policy H2 would be such policies on the basis of their potential effect in influencing the supply of housing land by restricting the locations where new housing may be developed. Policies E6 and E7 have elements that relate to the supply of housing. There is no dispute that the Borough is unable to demonstrate a five-year housing land supply, so that paragraph 49 is engaged. Having regard to this paragraph, the above policies are not up-to-date. Accordingly in considering these policies in relation to housing supply they attract very little weight in view of the acknowledged shortfall in the borough.
10. The Council argues that progress on the emerging Swale Local Plan (Bearing Fruits 2031) (SLP) is relevant to the weight that should be given to these policies. This was submitted for examination on 20 April 2015, and the examining Inspector has produced Interim Findings, including an increase in the housing requirements to meet the objectively assessed need (OAN) of 776 dwellings per annum. The Council accepts that in its submitted form the plan has in essence been found to be unsound, but relies on the Inspector's indication that the shortcomings can be dealt with by way of the main modifications. It is argued that this process has identified a clear pathway and timetable for the modifications to be achieved, with a realistic adoption date for

Appeal Decision APP/V2255/W/16/3153537

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the plan in 2017, as set out in its report regarding the updated Local Development Scheme.

11. In particular, reliance is placed on the Inspector's endorsement in the Interim Findings of the emerging settlement strategy. This strategy is set out in emerging policy ST3. The essence of the strategy is an approach to development based on a hierarchy of settlements, therefore carrying forward that of the currently adopted plan which includes restraint on development in this location. The Council argues that the proposal is not in accordance with the strategy, in the same way as it conflicts with the adopted development plan.
12. The Council explained that this strategy ranks settlements in the district. It is clear that in those below 'Rural Local Service Centres' and outside of the built up area development would not be permitted unless supported by national planning policy and that would protect or enhance the countryside location. This is a matter I consider further under the second main issue.
13. I understand that the Council consider that policy ST3 is at an advanced stage and have drawn my attention to an appeal decision where this factor was taken into account<sup>1</sup> and their revised Local Development Scheme. Nevertheless the plan has not yet been examined and found sound. Further the example provided relates to a nearby authority and I do not have the detailed information informed the inspectors conclusions in that case. As such it is not directly comparable and I afford it very limited weight.
14. Taking this policy position into account the appellants submit that the appeal site should be developed in order to assist in addressing what they identify as a 'severe' shortfall in housing supply. The appeal site is not proposed to be allocated. The appellants point out that the site did rank favourably within the site allocations process but was then removed. The appellants have also drawn my attention to the Councils Annual Monitoring Report (AMR) for 2013-2014. In particular that the rate of delivery is slow. In doing so the assertion is that the 'severity' of the Council's shortfall weighs in favour of the proposal which is deliverable and could make a contribution to boosting the supply of housing in the district.
15. I understand that the Council has shown that it is making progress towards having a five-year supply of deliverable housing sites. However, it remains the case that one does not exist. In addition whilst there is a clear timetable in place for adoption of the SLP its examination remains to be completed. Therefore, overall, having carefully considered all the various elements relating to the Council's housing supply position, I consider that the provision of additional dwellings in this case would weigh in favour of the proposal.

*Character and appearance*

16. There is no dispute that the site is located in an area that is identified as an 'important local countryside gap' within the LP policy E7 and SLP policy DM25. The aim of the countryside gaps is to prevent settlement coalescence. LP policy E6 also seeks to protect the quality, character and amenity of the countryside. This is consistent with an aim of the Framework which is to the intrinsic character and beauty of the countryside.

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<sup>1</sup> APP/J2210/A/14/2227624



Appeal Decision APP/V2255/W/16/3153537

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17. Within the Swale Landscape Character and Biodiversity Appraisal (LCA) the site is located within the 'Iwade Arable Farmlands'. The LCA describes the area as a gentle undulating rural landscape. It also identifies that housing is clearly evident in views across the surrounding landscape and that several major transport routes cut through the area. One of these routes is the A249 which is adjacent to the appeal site. Nevertheless it goes on to set out that '...in spite of the intrusive effects of these heavily trafficked routes, many parts of this character area retain a sense of isolation and tranquillity...'
18. The LCA identifies that the landscape is generally in 'poor' condition and that this is in part to residential ribbon development that has taken place in a number of styles thus creating an incoherent character. However, this does not alter the importance of the site as a gap. In addition the LCA is clear that the areas strength and character should be restored.
19. The A249 runs along the south eastern site boundary. It provides a clear physical barrier adjacent to the main area of Sittingbourne, marking a transition to the countryside beyond. The appellant contends that the development would be hugely influenced by its urban neighbour and that there would not be an issue of coalescence.
20. I appreciate that the area known as the 'Bobbing Apple' at the junction with the A249 contains a number of buildings and services. Nevertheless, when travelling toward the appeal site from this location or Quinton Way there is a distinct change in character. The buildings, whether domestic or commercial, become more sporadic and are set amongst large areas of open countryside. Even taking into account some other developments further along Sheppey Way toward Iwade, the predominantly rural feel remains, particularly when entering this part of Bobbing from Sittingbourne.
21. The proposed development either side of the existing dwellings and commercial buildings would completely remove this sense of openness which is currently experienced along this section of Sheppey Way. This would be in direct conflict with LP policies E6, E7 and SH1 which seek to protect the countryside and SLP policy ST3 in so far as it sets out that development proposals outside of built up areas should enhance the intrinsic value, landscape setting, tranquillity and beauty of the countryside.
22. It was confirmed at the Hearing that the site is Grade I agricultural land. I appreciate that it is irregular in shape and split by buildings. In addition the appellant submits that there is no alternative at lower grade and that the Council has proposed allocations that would use best and most versatile agricultural land. Nevertheless, this site is not allocated and I have no detailed evidence before me regarding the impact of developing the land on the wider holding. Taken alone this point would not be decisive but adds weight to the harm to character and appearance. The scheme would conflict with emerging SLP policy DM31 which is consistent with the Framework in so far as it seeks to direct development to areas of poorer quality land in preference to that of higher quality.
23. I note that the appellants submit that the Council's screening opinion offers support in so far as it refers to the proposal being 'well related' to the nearby built up area. Whilst worded in this manner the statement is made under the considerations of 'character of the potential impact' when coming to a view on whether any subsequent application would require an environmental

Appeal Decision APP/V2255/W/16/3153537

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statement. The correspondence goes onto suggest that further advice should be sought before an application is made. Therefore I accord this very limited weight in assessing the impact of the proposal on character and appearance. I have in any event judged the scheme before me based on the evidence and its individual merits.

24. I therefore conclude that the development of the site for 98 dwellings would harm the character and appearance of the area. It would be in conflict with LP policies E6, E7, SH1(6) and SLP policies DM24, DM25, DM31 and ST3(6).

*Other Matters*

25. The appellant referred be to two appeal decisions<sup>2</sup>. I have considered these decisions carefully. However, neither scheme is directly comparable, having different main issues, therefore I attach only limited weight to them.
26. The presence of Brickearth on the site was raised at the hearing. The Council confirmed that the site coverage shown on the indicative map is marginal. The Minerals Authority did not object to the scheme and the Council confirmed, if planning permission were granted, that a condition regarding prior extraction would not be necessary in this case.

**Planning Balance**

27. The Framework indicates in paragraphs 6, 7 and 8 that the purpose of planning system is to contribute to the achievement of sustainable development. Sustainable development has three roles economic, social and environmental which cannot be undertaken in isolation.
28. As noted above the policies of the LP, in so far as they related to the supply of housing land, cannot be considered up to date. This includes those restricting development in the countryside and those setting the overall strategy for housing development. Therefore in line with paragraph 49 and 14 of the Framework planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.
29. There would be economic benefits of housing and affordable housing both during construction and occupation. There would also be social benefits from the provision of open space and affordable housing as well as other community benefits secured through the planning obligation. These benefits weigh in favour of the scheme.
30. There is no dispute that the development would be reasonably well located in terms of access to services and that there would be no harm to nearby heritage assets. However, there would be a need to travel to higher order facilities beyond Bobbing. As such I attach only limited weight to this.
31. In addition I have found that there would be harm to the character and appearance of the area if the development were to go ahead. LP policies E6 and E7 seek to protect landscape character. In this regard they are not out of date and relevant to the consideration of character and appearance. As such I have attached significant weight to the significant and demonstrable harm that the development of 98 dwellings would cause to the character and appearance of the area and the conflict with the development plan in this regard.

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<sup>2</sup> APP/V2255/A/14/2224509; APP/V2255/W/15/313552

Appeal Decision APP/V2255/W/16/3153537

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32. Therefore in this case the adverse impact of granting planning permission would significantly and demonstrably outweigh the benefits such that the proposal would not represent sustainable development when assessed against the policies in the Framework as a whole.

**Conclusion**

33. For the above reasons and having regard to all other matters raised I conclude that the appeal should be dismissed.

*D J Board*

INSPECTOR

Appeal Decision APP/V2255/W/16/3153537

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### **APPEARANCES**

#### **FOR THE APPELLANT:**

Michael Drury BA MRTPI                      Agent for the appellants

#### **FOR THE LOCAL PLANNING AUTHORITY:**

Anna Stonor BA MSc MRTPI                  Swale Borough Council  
Martin Evans MPlan (Hons)                  Swale Borough Council  
MRTPI

#### **INTERESTED PERSONS:**

Cllr James Hunt                                  Swale Borough Council  
Cllr Mike Baldock                                Swale Borough Council  
Robert Ball                                        Bobbing Parish Council  
Gerald Lilley                                      Local Resident

### **DOCUMENTS SUBMITTED AT THE HEARING**

- 1    Comprehensive list of plans
- 2    Update on Local Development Scheme dated 5 October 2016
- 3    Extract from Annual Monitoring Report 2013-2014
- 4    SBC/PS/109b – Existing and additional allocations – Sittingbourne Area
- 5    Extract from Bearing Fruits 2031
- 6    Letter from Mr Lilley dated 17 October
- 7    Copy of emerging policy CP6
- 8    Council's cost rebuttal supporting information
- 9    Extract from Kent Minerals and Waste Local Plan
- 10  Copy of planning obligation dated 18 October 2016.






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## Costs Decision

Hearing held on 18 October 2016

Site visit made on 18 October 2016

by **D J Board BSc (Hons) MA MRTPI**

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

**Decision date: 06 December 2016**

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### **Costs application in relation to Appeal Ref: APP/V2255/W/16/3153537 Land at Church Farm, Sheppey Way, Bobbing, Kent, ME9 8RJ**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Crabtree & Bobbing Ltd for a full award of costs against Swale Borough Council.
  - The hearing was in connection with an appeal against the refusal of planning permission for residential development for 98 houses.
- 

#### **Decision**

1. The application for costs is refused.

#### **The submissions for Crabtree & Bobbing Ltd**

2. The application was made verbally at the hearing. The applicants submitted the scheme to the Council on 7 July 2015. There was every indication that it would be recommended for approval. Therefore an appeal was not made against non-determination. Once the twelve weeks had passed the applicants hands were tied. The decision was issued on 10 June 2016 after 11 months. The applicants claim is for a return of fee dues to the proposal not being determined in a reasonable time.

#### **The response by Swale Borough Council**

3. The Council submitted its rebuttal verbally and provided extracts from the Planning Practice Guidance (PPG) and an email exchange regarding and extension of time. Its submission is that the costs section of the PPG relates to the appeal process. Nevertheless, even if a claim was allowed regarding the application process, the applicants agreed to an extension of time in any event. Therefore there are no grounds for costs.

#### **Reasons**

4. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
  5. Paragraph 033 of the PPG is clear that costs cannot be claimed for the period during the determination of the planning application. Behaviour and action at the time of the application can be taken into account when considering whether costs should be awarded.
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Costs Decision APP/V2255/W/16/3153537

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6. I understand that the applicants are frustrated at the length of time taken to make a decision and what they consider to be conflicting advice from the officers. However, there is nothing to suggest that the appeal could be avoided altogether. Further, the applicants did agree to the extension to the application deadline to the 10 June 2016. Therefore, this delay in the application process would not in itself amount to unreasonable behaviour as set out in the PPG in this case.
7. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has not been demonstrated. Therefore, for the reasons given above, I refuse the application for an award of costs.

*D J Board*

INSPECTOR

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## Appeal Decision

Site visit made on 17 October 2016

by Kevin Gleeson BA MCD MRTPI

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

Decision date: 12 December 2016

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**Appeal Ref: APP/V2255/W/16/3153288**  
**60/63 Preston Street, Faversham, Kent ME13 8PG**

- 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 Roland Yeung against the decision of Swale Borough Council.
  - The application Ref 15/509499/FULL dated 16 November 2015, was refused by notice dated 2 March 2016.
  - The development proposed is described as conversion of part of the existing premises to residential (6 x 1 bed and 8 x 2 bed) retaining the takeaway.
- 

### Decision

1. The appeal is dismissed.

### Main Issue

2. The main issue is the effect of the proposed use on the character of Preston Street and the wider town centre of Faversham.

### Reasons

3. The appeal site is a large commercial property which occupies a frontage on Preston Street. It is proposed to retain the existing takeaway unit which forms the northernmost part of the frontage. However, the restaurant which is currently closed but previously occupied most of the remainder of the ground floor frontage is proposed to be converted to residential use. Two flats would have direct access from the street whilst one other and most of the upper floor flats would be accessed from a central entrance on Preston Street.
  4. Preston Street, from the northern side of Stone Street to 6 Limes Place and between 23a and 37 Preston Street opposite, is defined as a Secondary Shopping Area in the Swale Borough Local Plan, 2008 (the adopted Local Plan). The Swale Borough Local Plan Publication Version, 2014: Bearing Fruits 2031 (the emerging Local Plan) also confirms that the site is within a secondary shopping frontage forming part of a primary shopping area. Having regard to paragraph 216 of the National Planning Policy Framework (the Framework) I attach considerable weight to the relevant policies of the emerging Local Plan.
  5. The western side of Preston Street south of Stone Street has a mix of ground floor uses including residential, retail, offices, leisure and other commercial and community uses. On the opposite side of the street can be found a range of retail, office and restaurant uses. The restaurant frontage of the appeal property is longer than most other units within the secondary shopping
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Appeal Decision APP/V2255/W/16/3153288

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frontage and occupies a significant proportion of the secondary shopping frontage.

6. The preamble to Policy B3 of the adopted Local Plan emphasises the importance of uses which are important to the health of commercial areas or underpin an area's primary shopping function. It indicates that the Council will seek to retain key town centre uses where a change of use would lead to a lesser contribution to the vitality or viability of the area. It also states that within defined secondary shopping areas a wider mix of uses will be permitted although vital and viable uses, including retail, should be retained. The vitality of these areas should continue, and where possible, be improved to provide attractive shopping environments. The same preamble applies to Policy DM1 of the emerging Local Plan.
7. Policy B3 of the adopted Local Plan and Policy DM1 of the emerging Local Plan state that within secondary shopping areas non-retail uses, including residential, will be permitted provided that they would not lead to a significant concentration of non-retail floor space or housing or the loss of significant retail frontage.
8. Policy B3 and Policy DM1 indicate that the proposed change of use should be considered in terms of vitality and viability. A residential frontage would contribute less to the vitality of the town centre than a restaurant use and would fail to provide an attractive shopping environment. No evidence has been presented to demonstrate that a restaurant use on the site would no longer be viable and the loss of restaurant floorspace would in my view affect the vitality of the secondary shopping frontage. It has also not been demonstrated that alternative town centre uses would not be viable in this location.
9. Although the ground floor use of the premises to be converted to residential is restaurant rather than A1 retail it is a town centre use and forms part of the secondary shopping frontage. Due to the amount of residential proposed at ground floor level and the length of the frontage the conversion of the property to residential would result in a significant frontage of residential development.
10. The appellant suggested that a residential use would be no more harmful to the vitality of a frontage than a professional services use. Whilst appearance and activity are aspects of vitality I nevertheless find that the proposal would have a detrimental impact upon the vitality and character of the secondary shopping frontage and the attractiveness of the town centre's primary shopping function.
11. I therefore find that the proposal would be contrary to Policy B3 of the adopted Local Plan and Policy DM1 of the emerging Local Plan because it would result in a significant concentration of residential use in this part of Preston Street. Furthermore, it would not be in accordance with Policy FAV1 of the adopted Local Plan because it would fail to support activities to enhance the economic health of the town centre. It would also be contrary to both Policy E1 of the adopted Local Plan and Policy DM14 of the emerging Local Plan in that the proposals would fail to reflect the positive characteristics of the town centre locality.
12. The proposal would also be contrary to paragraph 23 of the Framework which recognises the importance of town centres and supports their viability and vitality including through the definition of primary and secondary frontages.

Appeal Decision APP/V2255/W/16/3153288

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*Other Matters*

13. The appeal property is within the Faversham Conservation Area and to the immediate north is the grade II listed Army Cadet Force Association Drill Hall, also known as the Faversham Assembly Rooms. Whilst the effect of the proposals on the conservation area has not been raised as an issue by the main parties the use of the listed building and its relationship to the proposed development was highlighted by interested parties. In reaching my decision I have had regard to the statutory duty to have special regard to the desirability of preserving the listed building and its setting and preserving or enhancing the character or appearance of the conservation area which derives its character from in part from the medieval street network.
14. The appellant has indicated that as the Council does not have a five year supply of housing land the provision of much needed housing in a sustainable location should be a consideration in favour of the proposal. Even if the Council did not have an appropriate supply of housing land I consider that the harm to the vitality of the town centre justifies the appeal being dismissed. The appellant has also made reference to Policy B1 of the adopted Local Plan but as the Council did not refer to this in its reason for refusal I have not taken this into account in my decision.
15. Reference was made by the appellant to the decision in 1996 to grant planning permission for redevelopment for residential use without retail or restaurant use at ground floor level. However, this approval was reflective of different circumstances and therefore has minimal relevance to the current proposal. The fact that Union Street would not be required for the servicing of the restaurant and that servicing of the takeaway could occur from Preston Street is also of very limited benefit to the proposal overall.
16. The Council has also raised the issue of the living conditions of future occupiers of the proposed flats. Particular concerns were the proximity of residential accommodation to a neighbouring live music venue as well as the proximity to other noise generating town centre uses. The appellant has responded that there is already residential adjoining the music venue. However, as I am dismissing the appeal for other reasons I have not come to a conclusion on this matter.
17. I have also taken into account the concerns of neighbouring occupiers about parking, loss of employment and the effect on neighbouring living conditions. However, they have not led me to any different overall conclusion.

**Conclusion**

18. For the reasons set out above, the appeal is dismissed.

*Kevin Gleeson*

INSPECTOR

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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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