

## AGENDA

### PLANNING COMMITTEE MEETING

Date: Thursday, 2 February 2017

Time: 7.00 pm

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

Membership:

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

Quorum = 6

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

2. Apologies for Absence and Confirmation of Substitutes

3. Minutes

To approve the Minutes of the Meeting held on 5 January 2017 (Minute Nos. 1090 - 1095) 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. Deferred Item

1 - 7

To consider the following application:

16/507183/FULL – Milstead Primary School, School Lane, Milstead.

Members of the public are advised to confirm with Planning Services prior to the meeting that this application will be considered at this meeting.

Requests to speak on these items must be registered with Democratic

Services ([democraticservices@swale.gov.uk](mailto:democraticservices@swale.gov.uk) or call us on 01795 417328) by noon on Wednesday 1 February 2017.

6. Report of the Head of Planning Services

8 - 188

To consider the attached report (Parts 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 1 February 2017.

**Issued on Monday, 23 January 2017**

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

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

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**PLANNING COMMITTEE – 2 FEBRUARY 2017**

**DEFERRED ITEM**

Report of the Head of Planning

**DEFERRED ITEMS**

Reports shown in previous Minutes as being deferred from that Meeting

<b>Def Item 1 REFERENCE NO - 16/507183/FULL</b>			
<b>APPLICATION PROPOSAL</b> Classroom Extension, as amended by drawings received 3 January 2016.			
<b>ADDRESS</b> Milstead Primary School School Lane Milstead Kent ME9 0SJ			
<b>RECOMMENDATION</b> Approve			
<b>SUMMARY OF REASONS FOR RECOMMENDATION/REASONS FOR REFUSAL</b> Proposal is broadly in line with National and Local Planning Policy			
<b>REASON FOR REFERRAL TO COMMITTEE</b> Objection from Parish Council and Local Residents			
<b>WARD</b> West Downs	<b>PARISH/TOWN COUNCIL</b> Milstead	<b>APPLICANT</b> Mrs Katherine Baker <b>AGENT</b> Ian Titherington	
<b>DECISION DUE DATE</b> 28/11/16	<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>
SW/14/0524	Single storey extension to rear of existing school building to accommodate reception class	SBC approval	17/06/2014
SW/00/0286	Classroom extension and provision of access ramp	KCC approval	24/05/2000

**DEFERRED ITEM**

**Introduction**

Members will recall that at the 8th December 2016 meeting the Committee resolved to defer this item pending the receipt of accurate drawings, as the drawings submitted were a mirror image of what is actually proposed.

Accurate drawings have now been received, and the original report for the item follows below.

**1.0 DESCRIPTION OF SITE**

1.01 The school comprises of a Victorian building with later extensions together with a playground to the front and a smaller area of hardstanding to the rear. The building itself is of brick and flint construction.

- 1.02 The school is approached by a narrow lane which ends shortly after the school has been reached. The lane itself is reached from Frinsted Road. The school is situated in a rural area and within the Kent Downs Area of Outstanding Natural Beauty.
- 1.03 The school is now an academy school and, in 2014, the Borough Council approved a flat roofed single storey infill extension at the rear of the building to accommodate a new reception classroom. This has been completed.

## **2.0 PROPOSAL**

- 2.01 This application proposes a single storey extension to an existing classroom, (measuring 17sqm.) The extension would comprise of brick and flint facings under a pitched tiled roof to match the existing building. White timber windows and a white coloured aluminium glazed door are also proposed. The classroom to be extended is already 43sqm in area and would be increased to 60sqm – a 39.5% increase in floor area.
- 2.02 A new external access ramp to the proposed extension is also shown, along with a black handrail and balustrade.
- 2.03 The extension will be at the rear corner of the school building away from any immediate neighbouring properties.

## **3.0 APPLICANT'S SUPPORTING INFORMATION**

- 3.01 The Head Teacher has responded to local representations about possible increase in pupil numbers arising from the extension by saying that;

*"I can confirm the proposed small extension is to increase the space in one of the main classrooms in the school, making use of what is effectively dead space. The extension is needed to enable efficient delivery of the curriculum to the existing children in the existing classroom and the storage of necessary school equipment."*

*"We currently have 96 children on roll split over 4 classes. We have maintained pupil numbers over the last few years and we are not looking to increase the planned admission numbers. The proposed new extension will not increase staffing levels and will not affect parking or traffic management arrangements."*

## **4.0 PLANNING CONSTRAINTS**

- 4.01 Area of Outstanding Natural Beauty KENT DOWNS

## **5.0 POLICY AND OTHER CONSIDERATIONS**

- 5.01 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."*
- 5.02 The 12 month period noted above has 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. 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.

- 5.03 The NPPF sets out that sustainable development should be approved, that the natural environment should be protected, and that Local Planning Authorities should recognise the intrinsic character and beauty of the countryside and supporting thriving rural communities within it. Sustainable development is defined in relation to three key roles – economic, social and environmental.
- 5.04 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. Paragraph 115 of the NPPF seeks to protect the natural beauty of Areas of Outstanding Natural Beauty.
- 5.05 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.
- 5.06 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.”*
- 5.07 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”.
- 5.08 This statement has not been cancelled by the NPPF (March 2012) or the newer National Planning Practice Guidance suite (March 2014) and remains live on the DCLG website. 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.

5.09 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 policies has not changed.

5.10 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)

**E6 (The countryside)**

**E9 (Landscape)**

E10 (Trees and hedges)

E19 (Design)

**T1 (Highway Safety)**

T3 (Vehicle parking) and

T4 (Cyclists and Pedestrians)

T5 (Public Transport)

**C1 (Existing and New Community Services and Facilities)**

5.11 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.

5.12 Saved policy E6 seeks to protect the countryside from development but has exceptions. Put simply land outside the defined urban area boundary, as the application site is, only those developments necessary for maintaining and enhancing landscape character, biodiversity, community, social and economic needs of the countryside will be considered appropriate. The specific exceptions to policy E6 include necessary community infrastructure.

5.13 Saved policy E9 seeks to protect the natural beauty of AONBs whilst encouraging suitably located and designed development necessary to facilitate the economic and social well being of their communities.

5.14 Saved policy T1 requires that new development should not generate volumes of traffic in excess of the capacity of the highway network, or result in a decrease in safety on the highway network.

5.15 Saved policy C1 encourages new or improved community facilities.

## **6.0 LOCAL REPRESENTATIONS**

6.01 I have received six letters of objection raising the following summarised grounds;



- Any extension potentially implies scope for increased pupil numbers, all of which arrive by car
- The ever-increasing pupil numbers do create infrastructure difficulties locally, especially adding to pressure on the narrow roads with speed, inconsiderate driving, parking, noise and pollution issues getting worse
- Access difficulties for emergency services at school times
- The school's kitchen and play area are too small to cater for additional pupils
- The school seeks an extension to increase classroom space every 18 months or so
- The school has previously said pupil numbers will not increase above 84 but now the numbers are around 100
- Objection to any further expansion of the school without a clear and enforceable limit on pupil numbers
- Lack of communications with/from the school
- The drawings are inverted and create confusion

## **7.0 CONSULTATIONS**

7.01 Milstead Parish Council has objected to the application, saying in summary that;

- Previous planning applications have always been sought for reasons other than increasing pupil numbers and yet the numbers have steadily increased
- There are currently 96 pupils at the school but the published admission figures pre-academy status was for only 70 pupils, an increase on 30% over the past seven years. The school's current published admission number is 105 pupils, a 50% increase
- This has been done without any public consultation
- The impact and risks to residents from so many parked cars on such narrow roads without footpaths, as well as risks from the road being impassable to emergency services are already untenable
- Parking problems will only get worse with extra pupil numbers, blocking access for large farm or goods vehicles and causing traffic congestion and people having to walk in the middle of the road
- So far, luckily, nobody has been hurt
- The need for more space is a direct result of this steady increase in pupil numbers; the only way to limit numbers seems to be to limit classroom space

## **8.0 BACKGROUND PAPERS AND PLANS**

8.01 All papers submitted with application 16/507183/FULL

## **9.0 APPRAISAL**

9.01 In my view the main issues for consideration in this application are the principle of development, design issues, impact on residential amenity and whether or not the concerns over increasing pupil numbers are material to the merits of the application.

### **The Principle of Development**

9.02 In this case I am satisfied that the principle of the expansion of an existing school is acceptable even in a rural area. Policy for rural areas allows for community facilities and the Government's policy stance is clearly to support investment in state funded schools. I see no conflict with national or local policies in the expansion of schools to provide better quality educational facilities. Having said that, I can fully appreciate

potential concerns over the expansion of schools where this might have adverse environmental consequences. I will examine these potential consequences

### **Design**

- 9.03 One obvious potential consequence of any expansion of a school is that its architectural quality or appearance might be harmed. Earlier extensions to the school are less than well designed going back to the year 2000 and beyond. The 2014 extension is not a good piece of design but it is sandwiched between existing wings of the school and has no public presence. Refusal might have been unreasonable. In contrast, this extension has all the hallmarks of a sympathetic addition to the school in matching materials. It will be modest and relatively well concealed from public views. I consider that it meets the Council's aspirations for good design in this sensitive AONB setting albeit the drawings do appear to be reversed and I am seeking clarification from the applicant.

### **Residential Amenity**

- 9.04 The school has one immediate residential neighbour and another very close nearby. In neither case do I consider the extension likely to be prominent or at all harmful to their amenity. It is set on the far end of the school from the immediate neighbour and at the back boundary of the site from the next nearest neighbour.

### **Highways**

- 9.05 In this case all the concerns over the extension relate to the potential for the school role to be increased. I am aware of the acute parking and access problems of this remote and isolated site, and can appreciate concern over any increase in pupil numbers. However, the number of pupils is not currently controlled by planning conditions and an increase in numbers would not constitute development requiring planning permission. Furthermore, the Head Teacher has confirmed in writing since submission of the application that the purpose of the extension is not to allow for an increase in pupil numbers. Accordingly, I am firmly of the view that this is not a material consideration for Members to consider when determining this application.
- 9.06 Members will be aware that planning applications should be determined on their own planning merits and the number of objections is not of itself a reason to refuse an application. Ultimately I am aware of six objections as well as the Parish Council's objection but they are all overtly based on concern over a potential increase in pupil numbers, not the actual building works involved. I do not consider that these objections would withstand the scrutiny of an appeal Inspector, and that the Council would not have a tenable case to defend should refusal be contemplated on this ground. I conclude that the matter of potential increase in pupil numbers should not be a factor in decision making here, and thus no additional impact on highway safety can be alleged.

## **10.0 CONCLUSION**

- 10.01 I am not aware of any objections to this application on material planning grounds related to the actual impact of this very small and well designed extension and I can see no reason to refuse the application.

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

**CONDITIONS**

- (1) The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which 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) Prior to the commencement of development, details in the form of samples of external finishing materials to be used in the construction of the development hereby approved shall be submitted to and approved in writing by the Local Planning Authority and works shall be implemented in accordance with the approved details.

Reason: In the interest of visual amenity and to ensure that these details are approved before works commence

- (3) Detailed drawings at a suggested scale of 1:5 of all new external joinery work and fittings together with sections through glazing bars, frames and mouldings shall be submitted to and approved by the Local Planning Authority before any development takes place. The development shall be carried out in accordance with the approved details.

Reason: In the interest of visual amenity 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 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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## SWALE BOROUGH COUNCIL

### PLANNING SERVICES

Planning Items to be submitted to the Planning Committee

**2 FEBRUARY 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 – 2 FEBRUARY 2017

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

### Deferred Item

Def Item 1 16/507183/FULL MILSTEAD Milstead Primary School, School Lane  
Pg 1 – 7

### Part 2

2.1 16/506840/FULL DUNKIRK 4 Stoney Road  
Pg 8 – 10

2.2 16/501552/FULL DUNKIRK Winterbourne Wood Quarry,  
Pg 11 – 50 Jezzards Lane

2.3 16/507575/FULL SITTINGBOURNE Excelsoir House, Ufton Lane  
Pg 51 – 61

2.4 16/504755/FULL OSPRINGE Equestrian Centre, Willow Farm,  
Pg 62 – 70 Hansletts Lane

2.5 16/508023/FULL HALFWAY 10 Western Avenue  
Pg 71 – 79

2.6 16/505788/FULL MINSTER Barton Court, New Road  
Pg 80 – 91

2.7 16/507788/FULL BOBBING Howt Green, Sheppey Way  
Pg 92 – 101

2.8 16/507789/FULL BOBBING Howt Green, Sheppey Way  
Pg 102 – 112

2.9 SW/08/1124 & SITTINGBOURNE 153 London Road  
Pg 113 – 118 SW/13/0568

2.10 16/507298/FULL QUEENBOROUGH Land at Rushenden Road  
Pg 119 – 137

### Part 3

3.1 16/508010/FULL SHELDWICH Jesmondene Oast, Newhouse Lane  
Pg 138 – 142

3.2 16/507503/FULL SITTINGBOURNE 38 Yeates Drive  
Pg 143 – 145

### Part 5 - Index Pg 146 – 147

5.1 15/500671/OUT NEWINGTON London Road  
Pg 148 – 176 15/510959/OUT

5.2 SHEERNESS land between 2 and 4 Acorn Street  
Pg 177 – 183

5.3 16/504105/FULL IWADE 25 Meadow Rise  
Pg 184 – 185





**PLANNING COMMITTEE – 2 FEBRUARY 2017**

**PART 2**

Report of the Head of Planning

**PART 2**

Applications for which **PERMISSION** is recommended

<b>2.1 REFERENCE NO - 16/506840/FULL</b>			
<b>APPLICATION PROPOSAL</b> Conversion of study/integral garage to form a bedroom with en-suite.			
<b>ADDRESS</b> 4 Stoney Road Dunkirk Kent ME13 9TN			
<b>RECOMMENDATION</b> Approve			
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b> The application would not be significantly harmful residential or visual amenity			
<b>REASON FOR REFERRAL TO COMMITTEE</b> Parish Council objection			
<b>WARD</b> Boughton And Courtenay	<b>PARISH/TOWN COUNCIL</b> Dunkirk	<b>APPLICANT</b> Mrs Emma Milburn	
<b>DECISION DUE DATE</b> 19/01/17	<b>PUBLICITY EXPIRY DATE</b> 23/12/16		
<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>
SW/03/0723	Three bedroom 2 storey house with integral single garage	Approved	30/01/2004

**1.0 DESCRIPTION OF SITE**

- 1.01 No. 4 Stoney Road is a uniquely designed two storey detached dwelling with a protruding integral garage, and hard standing in front of the garage providing off road parking for at least two cars. The property was approved under planning permission for a new property under reference SW/03/0723. Condition (10) of that permission restricts alterations to convert the garage, which this application seeks approval for.
- 1.02 The property sits in an edge of village location characterised by low density residential properties. On the opposite side of the road is open land and scattered dwellings. Stoney Road forms access to Berkeley Close and Fernleigh Close, and to the very recent Orchard Gate development of six new dwellings.

**2.0 PROPOSAL**

- 2.01 The integral garage measures 3.5m wide x 5.8m in length. This proposal is to convert the garage to a habitable room. The external garage door would be removed and replaced with a new window. The garage conversion would provide a bedroom with en-suite and utility/lobby.

- 2.02 Two off-road parking spaces would remain in the front of the property. The area of hard standing measures 9.m wide x 8.3m depth.

### **3.0 PLANNING CONSTRAINTS**

None

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

The National Planning Policy Framework (NPPF)  
 National Planning Practice Guidance (NPPG)  
 Development Plan: Saved policies E1, E19 and T3 of the Swale Borough Local Plan 2008.

### **5.0 LOCAL REPRESENTATIONS**

None

### **6.0 CONSULTATIONS**

- 6.01 Dunkirk Parish Council objects to the application as follows;

*“We do not wish see the loss of any off road parking spaces within the parish. The existing garage is described by applicant as a study/integral garage. The application form also quotes the provision of two parking spaces before and after any consent given. This indicates that the existing garage space is no longer used at all for a vehicle. These two spaces are within the property but, as with many other residences of that part of Stoney Road, it is observed that extensive parking takes place on the highway overnight and at weekends.”*

### **7.0 APPRAISAL**

- 7.01 The main considerations in the determination of this planning application concern the impact that the loss of the garage as a parking space would have upon the character and appearance of the streetscene and upon highway safety and convenience.
- 7.02 The proposed conversion would result in the loss of the property’s only single garage. The question then is what impact will that have on the streetscene and on parking provision at the property. The hardstanding to the front of garage provides off-road parking for two cars which is what the current parking standard for a three bedroom dwelling in a village location requires. Parking spaces should normally be 2.5m wide, although between walls it is recommended by Kent Highways that this width should be enlarged to 2.7m. Here the area in front of the garage is 9m wide which more than complies with this guidance for two spaces. The approval of this application is not likely to result in any erosion of soft landscaping to the front of the property, as can sometimes be the case with garage conversions. Therefore I do not consider that the proposal would be likely lead to new parking or visual amenity problems in the area as cars can already be expected to be parked across the entire frontage of the garage.
- 7.03 The parking provision available to the applicants will be the same two spaces as originally anticipated, and I do not consider that it would result in additional on-street parking potential due to the driveway for the property being adequate for the parking needs of the property. Nor do I find that the conversion of this garage will negatively

affect the streetscene as the property’s entire frontage is already paved over and used for parking.

7.04 Although granting permission for this application could encourage others to do the same, I do not consider this to be a reason for refusal. Each application should be considered on its own merits.

7.05 The application does introduce a window facing the highway in place of the existing garage door. The size and design of this window is in keeping with the other front windows and as such, I consider that the proposal is acceptable in relation to its impact upon neighbouring amenities.

## 8.0 CONCLUSION

8.01 This application for the conversion of an existing integral garage to a habitable room is considered acceptable and I therefore recommend that permission be granted.

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

### CONDITIONS

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

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

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

Reasons: In the interests of visual amenity

### 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

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>2.2 REFERENCE NO - 16/501552/FULL</b>			
<b>APPLICATION PROPOSAL</b> Revocation of quarrying use and erection of 4 No. detached dwellings with garages, associated landscaping, enlarged lake and use of existing access as amended by drawings received 3 November 2016.			
<b>ADDRESS</b> Winterbourne Wood Quarry Jezzards Lane Dunkirk Kent ME13 9PH			
<b>RECOMMENDATION – Grant SUBJECT TO :</b> Receipt of a Unilateral Undertaking as previously signed in relation to application SW/12/0077			
<b>WARD</b> Boughton & Courtenay	<b>PARISH/TOWN COUNCIL</b> Dunkirk	<b>APPLICANT</b> Mr I Fern <b>AGENT</b> DHA Planning Ltd	
<b>DECISION DUE DATE</b> 28/02/2017	<b>PUBLICITY EXPIRY DATE</b> 14/12/2016		
<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/12/0077	Single dwelling house, not implemented and expired	Refused Appeal allowed	19/1/2012 16/5/2013
SW/10/0096	Development of fourteen residential units, two holiday lodges and a woodland interpretation centre.	Withdrawn	26/4/2010
SW/06/1444	Residential development (outline)	Refused	04/04/2007
SW/05/1513	Residential development (outline)	Refused	03/02/2006

**1.0 DESCRIPTION OF SITE**

- 1.01 This site lies approximately 1.6km south of Boughton and is an approximately four hectare portion of a far wider area of woodland. It is essentially the only part of this woodland that now bears the open scars of sand and gravel extraction, the remainder not having been worked (at least not in modern times). It forms part of the wooded hills running south of Boughton and Dunkirk towards Selling, where development is scattered and roads narrow, winding and often steep. The surroundings are entirely rural in nature, isolated and with a sense of remoteness. Footpaths cross and surround the site, but there is no right of access across the site more generally.
- 1.02 The site has a road frontage to a narrow single track lane which is only reached by other similar lanes, and these lanes are not suitable for heavy traffic. Parts of the development site remain wooded, especially around the margins, but the majority appears as a sand quarry with high exposed faces of sand, but little in the way of buildings, hard-standing or plant. It shows as being “disused” on Ordnance Survey maps, and apart from recent clearance and some tipping appears deserted and unworked for some time.
- 1.03 The site lies within the Blean Woods South Local Wildlife Site as defined by the Kent Wildlife Trust. This is an extremely large area of woodland extending eastwards to Chartham Hatch, and represents a southern extension of the ancient Blean Forest,

incorporating many native tree species, and it is important for ground flora, mosses, birds, insects and badgers.

- 1.04 A Tree Preservation Order affects the northern part of the application site. This is to the north of a public footpath, which neatly divides the site into the southern, partly previously quarried area where trees are mainly Silver Birch and of limited quality surrounding regenerating areas of gorse and scrub; while to the north the area is more varied coppice woodland with larger specimen trees and Holly, which is recorded as ancient woodland. This area is crossed by a second public footpath which divides it further. From inspection, it appears that the northern area, further from the site access and beyond the footpath, is of a steeper less accessible and more difficult to quarry character, whereas the larger southern area is more accessible and of lesser landscape or ecological value.

### **Planning History of the Site**

- 1.05 In 1953 and 1956 planning permissions (NK/9/50/13 and NK/9/50/13A) were granted to extract sand, and sand and gravel, from two large adjoining areas of woodland. These areas extend to some 25 plus ha. It seems that only a very small proportion of these areas have yet been excavated, and that the excavations have been intermittent, perhaps reflecting the relatively poor quality of the materials, the difficult road access, and the economics of the operation considering the number of alternative supplies and their costs.
- 1.06 In 1986, in response to the most recent burst of activity, the County Council considered revoking the planning permissions, but it appears that partly due to the required compensation (then estimated at between £50,000 to £200,000 by various parties), and the perceived weakness of the possibility of the Secretary of State confirming this if the Order was challenged, it was resolved not to seek revocation.
- 1.07 By 1995 the eastern area was considered dormant, whilst the western area active. This development is situated in the western area. In 1997 two applications to impose new modern planning conditions were submitted and these (SW/97/579 and SW/97/580) were approved by the County Council, regulating hours of use and other operational issues and permitting the extraction until the February 2042. No restrictions on the total quantity of mineral to be extracted, or the rate that it could be excavated (which might limit the number of lorries visiting per day) were approved. This may have been because such restrictions could have given rise to a claim for compensation by the site owner. The new conditions stipulate that if excavation ceases for a period of two years (or such longer period as may be agreed by KCC) the site shall be restored and landscaped within a further year.
- 1.08 Also in 1997 an application to extract minerals over a smaller area, but to landfill the resulting space, albeit via a lengthy new access route direct to the A2 at Dunkirk, was submitted. This attracted enormous opposition, and was eventually withdrawn.
- 1.09 In April 1998 the then owners confirmed in letters to both Dunkirk and Boughton Parish Councils that it was their intention to resume quarrying. Activity since then has been extremely limited, although I understand from the County Council that the two years dormancy condition has not come into force, and that the site can still be said to be capable of being worked.
- 1.10 In 2005, an outline planning application for 19 dwellings was submitted to the Council, and refused.

- 1.11 In January 2007 a revised but similar application was received. My report at that time recorded that both Dunkirk and Boughton Parish Councils were in favour of housing as a means of seeing quarrying cease and the site being restored. I also recorded 27 letters of objection and six in support from local residents. My recommendation, which Members accepted, was that the application be refused on grounds that were largely the same as when the 2005 application was refused, but at the time an additional reason relating to loss of mineral reserves was also included.
- 1.12 In February 2010 a fully detailed application proposed a new approach to residential development of the site. This application (SW/10/0096) proposed a suite of three main features. These were; 14 detached houses; two single storey detached holiday lodges; and a woodland car park and interpretation centre. The car park would have provided a facility in connection with new public access across an area of some 20ha of woodland. Both Parish Councils and over 70 local residents opposed those plans, and I was again set to recommend refusal, but the application was withdrawn shortly prior to the Planning committee meeting in April 2010.
- 1.13 Notwithstanding all the previous decisions, a new application was submitted in 2012 (SW/12/0077). This application was to erect one very large 7 bedroom house, with associated garaging, indoor swimming pool, gymnasium, and a one bedroom flat over the garaging.
- 1.14 The application was premised on the fact that, whilst it is fully recognised that development of a new house in this remote rural location is contrary to established planning policies, planning permissions exist for quarrying of the site and adjacent woodland until the year 2042, and that planning permission would not be granted unless a planning obligation by way of a Section 106 Agreement was entered into with the following aims:
1. To restore the landscape and improve biodiversity across the 4ha area of recent quarrying on which it is proposed to build.
  2. To surrender existing planning permissions for quarrying across all the applicant's local land ownership, which extends to almost 24ha of a mainly wooded site.
  3. Transfer of the management of the remaining woodland to an appropriate management body such as the Kent Wildlife Trust, Woodland Trust or other conservation or woodland management organisation whose purpose is to preserve the woodland in perpetuity.
- A draft of such a Section 106 Agreement was submitted with the application.
- 1.15 My report noted that Dunkirk Parish Council supported the application on the basis that the development was restricted to one single dwelling; that Boughton-under-Blean Parish Council objected; and that 27 letters of objection and one of support had been submitted. My recommendation was to refuse the application on the following grounds;
- (1) The Council understands that this site is currently despoiled and that the site and adjoining land is subject to extant minerals working permissions; but that it is all land that is scheduled to be restored under the terms of its existing planning permissions which allow mineral extraction only until the year 2042. The site lies in a remote rural location, outside the built up area boundary of any settlement. Policies E1 and E6 of the Swale Borough Local Plan 2008 seek to protect the countryside for its own sake, and they provide that development will not be permitted in rural Kent except in certain specified circumstances. The proposed development will result in permanent development and occupation of the site, but the development is not one that essentially demands a rural location nor is it necessary for agricultural purposes and, in the

Council's view, the merits of the scheme do not weigh in favour of overriding a clear presumption against development in the countryside, as the short term nature of the current permissions are less harmful than the proposed long term harm resulting from unnecessary and undesirable development detrimental to, and preventing the appropriate restoration of, the character and appearance of this rural area.

(2) The site lies within the Blean Woods Special Landscape Area which is given long term protection by adopted and emerging Development Plan policies. The proposed development will appear as an incongruous and isolated development, harmful to the integrity of the landscape. For these reasons, the Council considers that the proposal is likely to be highly damaging to the character of this area and contrary to policies E1 and E9 of the Swale Borough Local Plan 2008.

- 1.16 I did not suggest any objection to the position, size, design or layout of the proposed dwelling, although the appellant did not argue that it was of outstanding design sufficient to be approved on its own merits. Rather, I focussed on the question of whether the intrinsic harm to the character of the countryside that might arise from the proposed single house was outweighed by the other potential advantages of the proposal. Members accepted this recommendation, but the decision was appealed and an appeal hearing took place in March 2013. The appeal was allowed in May 2013 after the appellant submitted a complicated Unilateral Undertaking which essentially required him to immediately suspend all future quarrying until he notified the Council of his intentions to either;
1. re-commence quarrying; which meant that the planning permission for the house would fall, or
  2. implement the planning permission; in which case all quarrying rights would fall without compensation being claimed for loss of mineral rights, and the remainder of the quarried site would be restored.

The signed Undertaking also requires the appellant not to seek compensation for loss of minerals rights; to submit a scheme for management of the wider remain woodland area before first occupation and to ensure long term management of the woodland area via Kent Wildlife Trust or another appropriate management body; and not to use the so-called wildflower meadow area as anything other than as a meadow.

- 1.17 No notification of any intention to re-commence quarrying has yet been received and the planning permission has now lapsed, which means that it cannot now be implemented.

## **2.0 THE APPEAL DECISION**

- 2.01 The appeal decision is a very important consideration in determining this application and a copy of the appeal decision is attached to this report. The appeal was allowed.
- 2.02 The appeal decision was issued following an informal hearing spread over two days and after the appellant (the current applicant) submitted the completed Unilateral Undertaking. The decision recognises the normal restraint on residential development here (see paragraph 15) but accepts the appellant's argument that he would otherwise resume quarrying on a commercial scale. The Inspector saw the visual impact of the single dwelling as largely confined to the adjacent highway and to the more open landscape to the west (paragraph 12), from where views would be filtered by the undulating landscape and intervening hedgerows. Overall, the removal of the existing building on the site and restoration of the despoiled quarried area was seen as likely to



outweigh the limited harm arising from the limited views of the proposed dwelling (paragraph 14).

- 2.03 In terms of wider countryside impact, the Inspector weighed the strict control on development within the countryside (as supported by the NPPF) against the potential harm to ancient woodland and biodiversity; accepting that the appellant had the means and intention to resume quarrying. The Inspector feared loss of important ancient woodland and permanent harm to the local landscape if quarrying resumed, and she concluded that revocation of the minerals consents would be a significant benefit (paragraph 25).
- 2.04 In relation to site restoration, the Inspector noted that the restoration scheme submitted for approval under the 1997 permissions had not been approved by the County Council and that this meant that there is no approved restoration scheme (paragraph 26). However, this was due for review by the County Council in 2015 when new conditions including site restoration could be imposed. Until then (2015) the Inspector noted that the only suggested restoration scheme involves removal of top soil from wooded areas in order to restore the site, and conditions of the 1997 permission prevent new material being brought in to restore the site. She therefore concluded that the only known plans for restoration of the site as it stands would require removal of most of the trees across the site, including significant areas of ancient woodland (paragraph 28). Nor did the Inspector consider that the opportunity to review the conditions in 2015 would be likely to result in a less damaging scheme (paragraph 29), despite my arguing that I saw no reason to assume that the County Council would see any objection to amending the conditions to allow importing topsoil material to restore the site if it meant that the ancient woodland would be protected. She therefore assumed that most trees on the site would be lost either through resumption of quarrying or as a result of site restoration, resulting in permanent loss of ancient woodland and landscape damage (paragraph 30).
- 2.05 To overcome these concerns the Inspector considered that:

*“The obligations within the undertaking would prevent further damage to the landscape and would provide for the restoration of the site. It would therefore safeguard the woodland and landscape of this part of Blean Woods Special Landscape Area in perpetuity and would be a significant benefit of the appeal proposal.”* (paragraph 32)

I pointed out to Members at the time this was inaccurate, as the obligations do not prevent further quarrying or loss of ancient woodland, unless the planning permission was implemented; which it has not been. Although the planning permission has now expired the applicant could still serve notice of intention to resume quarrying and this is his only option now; or he could do nothing.

- 2.06 The Inspector found no reason to see harm to ecology (paragraph 33) and did not impose any conditions relating to ecology. She also noted that the mineral reserves here were not of significance to the county supply (paragraph 34).
- 2.07 Overall, the Inspector was persuaded that further quarrying or restoration of the site would be harmful to the landscape and to the ancient woodland ecology; and that whilst a new house here would be contrary to normal planning policy, the advantages of preventing loss of woodland and landscape harm, and reductions in potential HGV traffic, made the proposal acceptable in terms of protecting the character and amenity of the wider countryside (paragraphs 36 to 39). She considered that the benefits of the proposal “would considerably and significantly outweigh the intrinsic harm to the

countryside arising from this proposal". Essentially, the decision sees this as a special case for approval based on the unique circumstances of the site.

### 3.0 PROPOSAL

3.01 This application is for full planning permission for the erection of four two-storey 5 bedroom detached houses, each with a double garage and additional open parking spaces. The designs feature traditional forms faced in brick, tile, timber and render under plain clay tiled or slate roofs. When the application was first submitted the houses were shown grouped closely together with modest gardens in the centre of the quarried part of the site close to the lane. The remainder of the currently open part of the site was shown as a wildflower meadow with native tree copse a lake form from enlargement of the existing pond. The existing quarry weighbridge/workshop building close to the site entrance is shown to remain, but it is also stated that it would be removed. The application has since been amended as described below.

3.02 The application was supported by the following documents when first submitted;

#### 3.03 A Planning Statement

This refers to the 2013 appeal decision and states that the site has been marketed with the planning permission for one single large detached house, but that it has been found that a ceiling has been reached for property in this locality, thereby making the scheme marginal when compared with the extant permission for quarrying the site. Marketing for the approved seven bedroom house began in late 2013, with offers received in 2014 and 2015 but no sale was completed as various deadlines for completion were not met. It is suggested that the main reason for the lack of a sale was that there are limited buyers for such a large single dwelling and it was difficult to establish a mutually acceptable price.

3.04 Hence, the current applicant seeks a solution to ensure that the site is put to good use and that the substantial ancient woodland area, which would be removed by the quarrying permission, remains. He suggests that the four detached houses now proposed would be "infinitely more marketable/saleable and which would be favourable to recommencing quarrying operations".

3.05 The Statement suggests that the remainder of the wider quarry area will be handed over to a management company or appropriate organisation, and the quarrying permissions would be revoked by legal agreement as per the recent appeal decision. It is confirmed that whilst the quarry may be more expensive to work than other quarries, extraction over up to 20ha of land, much of which is ancient woodland, would be profitable, and that this scheme could avoid that loss. Furthermore it is argued, as it was at the appeal hearing, that planning conditions on the quarrying permissions, prevent any importation of top soil for site restoration meaning that the woodland would have to be removed to provide topsoil to restore the quarried areas, with "adverse and extreme" impact on ecology.

3.06 It is again suggested that if planning permission is not granted the applicant will ramp-up excavation from its historic low levels to provide adequate financial return with loss of large swathes of woodland. Furthermore as the quarrying permissions extend until 2042, restoration would not start until after that date and would take many years to come to fruition; even then they could not re-create lost ancient woodland. In the meantime up to 20ha of the Blean Woods Special Landscape Area would be adversely affected by quarrying. It is suggested that the proposed housing will have less landscape impact than future quarrying without looking out of place in the varied styles

of Dunkirk, protecting the landscape of the area. Finally, it is suggested that removal of an estimated 75,000 tonnes of material could create 144 HGV movements per week to and from the site on narrow lanes.

3.07 The appellant argues that in the recent appeal decision the Inspector found that the benefits of the then scheme for one large house and revocation of quarrying permissions would considerably and significantly outweigh the intrinsic harm to the countryside arising from the proposal; and that since then the Council has acknowledged that it cannot demonstrate five year supply of housing sites. Accordingly, it is suggested that the development should only be refused if it can be shown that the adverse impacts of the development significantly and demonstrably outweigh the benefits. It is now argued that the case for approval is now stronger because of the contribution to housing supply that the proposal would make.

3.08 The appellant further argues that;

- The design approach now proposed is a modest bespoke country style development.
- The overall floorspace will be reduced from 16,580sq ft to 10,500sq ft.
- The new design approach for individually designed Kentish style dwellings with a single large manor house is still “entirely appropriate”.
- The visual impact of the newer scheme resulting from reduced floorspace, reduced mass, lower ridge heights and the dispersed location of units will be reduced.
- The proposal would improve the appearance of the site, although views of it would be limited and filtered by the undulating landscape and hedgerows.
- The Inspector considered that the proposed wildflower meadow would be appropriate here.
- The development is acceptable as it will avoid permanent harm from loss of ancient woodland.
- Traffic flows are expected to increase by 11 trips per day compared to the extant use of the site, and there will be a complete reduction in HGV movements.
- The ecological reports previously submitted have been submitted again as the situation has not changed, and there remains a low potential for impact on protected species. No ecological conditions were imposed on the appeal approval.
- A revised version of the Unilateral Undertaking signed at the appeal to secure those benefits is now offered.
- The changes to the proposal do not affect the conclusions reached by the Inspector.

3.09 A Design and Access Statement

This describes the site and its surroundings; explains the approved design; suggests that the new proposal is for a courtyard-style layout intended to mirror the form of farmsteads with retention and enlargement of the lake on the site; with one house being larger than the others on this isolated site.

3.10 A Transport Statement

This describes the location of the application site and the nature of the access roads thereto. IT describes local public transport options (1.5km to nearest railway station and rail replacement bus stop – 2.8km to the nearest regular bus stop)

3.11 The Statement suggests that extraction of material to be removed from the site at an extraction rate of 75,000 tonnes per annum might result in 144 HGV movements (that is 72 in and 72 out) per week equating to 13 arrivals and 13 departures per day. Add to that staff journeys and the predicted traffic to the site if quarrying is resumed in 17 arrivals and 17 departures per day.

3.12 In contrast, the Statement suggests that if the proposed houses were occupied 14 arrivals and 14 departures per day (28 movements per day) might be anticipated. The Statement concludes that an increase of 11 trips per day would result from the development, but that none of these are likely to be HGV journeys, meaning that traffic will be less of an issue on the narrow lanes involved.

3.13 A Flood Risk Assessment

This report (dated 2012) notes that “there is no reported or anecdotal evidence that the site floods” and concludes that as all rain water falling on the site will be retained on the site via a SUDS system, flood risk is not a significant issue in relation to this proposal. Members should note that this report was produced in relation to the appeal scheme and has not been updated; and they will see below that there is local concern over drainage issues now that the site has been altered in the meantime.

3.14 An Ecological Scoping Survey

This is dated November 2009 and is supplemented by a later version of the Ecological Scoping Survey Report (ESSR) (February 2012) and a Reptile Survey Report (August 2012). These reports all relate to the previous single house proposal. The general tone of these reports is that the quarried area of the site is not likely to have much wildlife interest, but the surrounding woodland will have potential for wildlife and for wildlife enhancement. For great crested newts, reptiles and invertebrates the ESSR suggests further survey work. No precautionary mitigation measures are suggested for any other protected species due to the low likelihood of them being impacted by the development. For reptiles, further survey work has been carried out and precautionary measures prior to start of construction are suggested to prevent harm to protected species. A further survey has since been submitted; see below.

3.15 Members should note that when all this original evidence was still fresh, the appeal Inspector saw no need to impose any conditions relating to ecology; see paragraph 33 of the attached appeal decision.

3.16 The Status of the Planning Permission for Quarrying

The applicant's case for the proposal is that planning permission exists to continue quarrying the site until 2042 and that, even if he did not quarry further, the only suggested (but never approved) restoration scheme might involve destroying ancient woodland across the site to secure enough topsoil to restore to worked out areas. This is because the planning permissions prohibit the importation of material to assist site restoration. These factors figured prominently in the Inspector's conclusions (paras 26 to 31 of the attached appeal decision) where she concluded that this would result in permanent loss of ancient woodland and long term damage to the area's landscape.

3.17 Given these clear pre-conditions to the Inspector's decision, and the passage of time since the decision, allied to the Unilateral Undertaking signed by the applicant over three years ago not to continue quarrying until and unless he has served notice of an intention to do so, I have sought to establish the status of the quarrying permission

after more than three years of no quarrying taking place. I contacted the County Council to establish their view about whether the quarrying permission was still extant. I also asked whether the County Council might be agreeable to a restoration scheme that might allow for the importation of topsoil that could avoid the need to remove ancient woodland.

- 3.18 The County Council has confirmed that, at the applicant's request, the expected review of the minerals planning permissions scheduled for 2015 has been put back until 2017 to allow time for the housing proposals to be considered; and so the review has not yet been carried out. Accordingly, the County Council's view is that the minerals planning permissions remain extant despite the lack of quarrying over a three year period. They also confirmed that it might now be possible to secure restoration of the site without the need to remove remaining ancient woodland because the topsoil was very thin or absent over the excavated areas. This means little will have been stored on the site for re-use, and that an application to import topsoil would be considered in terms of likely traffic impact, to which objections might be expected. However, they note that the approved plans for the single house appeared to show restoration of the worked out areas without removing further woodland.

3.19 The Need for Four Houses

The appeal scheme was based on the notion of the single large house being a more financially favourable option for the future of the site, but that permission was not implemented and the current application is for four houses. I have asked the applicant why four houses are now proposed. His response is that whilst the single house has been approved and the site marketed, it was too large/expenseive for the local market. Instead the four houses (which in total have approximately 3,000sq ft less floorspace than the approved single house) are likely to be far more attractive to the market and more likely to be delivered, and to generate a similar sum sufficient to persuade the owner to secure revocation of the quarrying permissions with the consequent protection of ancient woodland and ecological benefits.

3.20 The Amendments to the Application

Bearing in mind these comments, it seemed to me that the basis for the Inspector's conclusions i.e. the potential for continued quarrying and possible further loss of ancient woodland, remain cogent arguments to support an alternative future for the site. In that light I turned my attention to the content of the submitted scheme, which was as described above. In my view and that of Design South East (see below) the form of development first proposed was far too suburban in character for this remote rural site. The local pattern of development here is characterised more by farms and by frontage development along narrow lanes. Accordingly, I made it clear to the applicant that even if the Council were to agree that four houses were an acceptable alternative to the single house approved at appeal, or to the potential for future quarrying, it was unlikely that such an inappropriate form of development would be acceptable. The applicant quickly accepted that point and agreed to look again at the design and layout of the scheme. This has now been done and the scheme has been significantly changed.

- 3.21 These amendments were discussed over the summer and formal amendments were received in November 2016. These amendments have changed the scheme to show a new site layout that attempts to better reflect the nature of development in the local area. Instead of a courtyard style development, what is now proposed is a country lane style development with frontage development of four large detached houses; two houses having cart-lodge style detached outbuildings to serve as garaging. Two

houses are of the same basic design with differing external treatments, but the other two are individually designed. All designs attempt to reflect the rural character of the area. The amendments have been accompanied by an addendum to the original Planning Statement and a new Extended Phase 1 Habitat Survey dated September 2016.

- 3.22 The revised scheme is far more redolent of the local form of frontage development albeit it is wholly within the site rather than facing any existing highway. In this way it avoids having as much impact on views from the adjacent highway and from the more open landscape to the west which the Inspector identified as where the most significant views of the site are from. The proposed houses are all substantial detached properties facing north with plentiful parking provision and large south facing gardens running down to an enlargement of the existing pond within the site. One house (Plot 1) has a single bedroom at second floor level, but others are either of standard two storey form (with large barn-style glazed entrances), or of a semi-chalet-bungalow style (Plot 3) with multiple roof lines, gables and dormer windows in a rustic style. It is anticipated that the final palette of materials would be controlled via a planning condition. Access to the intended enlarged lake is shown from an existing informal access point on the lane running past the site rather than from the access road proposed.
- 3.23 The addendum to the Planning Statement describes the re-submission and rehearses the history of the application and previous appeal decision. It also refers to representations so far received and responds to them.
- 3.24 In relation to the status of the quarrying permission the Statement confirms that through discussions with KCC it has become clear that the quarrying permission remains extant meaning that quarrying can continue until 2042. The greater marketability of the four houses compared to the single large house is again confirmed, suggesting that the proposal now will deliver a return similar to that of the single house providing comfort to the landowner to revoke the quarrying permissions, protecting the ancient woodland across the extent of the area affected by the existing permissions. The Statement also refers to the new ecological study which shows little ecological interest within the site; to local concerns over drainage which can be addressed within the site by enlarging the lake (with maintenance access from the south); and to highway concerns pointing out that any construction traffic will be short lived and thereafter traffic from the site will be less than could be expected from a resumption of quarrying.
- 3.25 The updated Habitat Survey (which unfortunately still refers to the earlier development scheme for one house) seeks to assess the potential of the site for bats within the single building on the site and for other protected species including badgers and great crested newts. Low suitability for or presence of protected species across the largely barren former quarried development site was found.

#### **4.0 PLANNING CONSTRAINTS**

Ancient Woodland

Enforcement Notice ENF/09/036

Enforcement Notice ENF/09/036

Section 106 Agreement SW/12/0077

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

- 5.01 The Development Plan comprises saved policies of the adopted Swale Borough Local Plan 2008. The following Local Plan policies are most directly relevant to consideration of the application:-
- SP1 (Sustainable development)
  - SP2 (Environment)
  - SP4 (Housing)
  - FAV1 (Faversham area strategy)
  - SH1 (Settlement hierarchy)
  - E1 (General Development Criteria)
  - E6 (The countryside)
  - E9 (Landscape)
  - E10 (Trees and hedges)
  - E11 (Bio diversity)
  - E12 (Designated Wildlife Sites)
  - E19 (Design)
  - H2 (Housing)
  - RC7(Rural Lanes)
  - T1 (Highway Safety)
  - T3 (Parking on new developments)
- 5.02 Draft Local Plan Bearing Fruits 2031 policies largely reflect these aims and the site does not have any site specific designation in this emerging Plan. 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, some of the above policies must be considered as out of date.
- 5.03 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 this 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).
- 5.04 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.
- 5.05 Whilst I accept that the Council 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. We have now published a paper on our 5 year housing land supply which will be tested through the LP Examination in 2017. This paper shows that there is strong progress towards the achievement of a 5 year housing land supply.

- 5.06 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.
- 5.07 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.
- 5.08 As the County Council has previously stated that the mineral reserves within the site are no longer of strategic importance the provisions of minerals planning policies are not of significance.
- 5.09 The Council's Landscape and Biodiversity Appraisal (2011) sees the site within the Hernhill and Boughton Fruit Belt landscape character area, which is in good condition and has high sensitivity, making it one of the very few landscapes within the Borough that combine both qualities. This means that if one were to rank local landscapes according to their condition/sensitivity index this one would come in the highest possible bracket, meaning that this is an area to be avoided where there is a choice of location,
- 5.10 The NPPF is relevant to consideration of the application. In particular its emphasis on approving sustainable development (paragraph 14); paragraph 49 where it states that where a five housing supply is not available relevant policies for the supply of housing should not be considered up-to-date; paragraph 55 where the exception to restraint on isolated dwellings is set out – including circumstances other than where the design approach is of exceptional quality; and paragraphs 109 and 118 which seek to protect valued landscapes and biodiversity.

## **6.0 LOCAL REPRESENTATIONS**

### **Scheme as first submitted**

- 6.01 When first submitted I received ten representations from local residents opposing the application on the following summarised grounds;
- Since the owner levelled the land recently there has been increased water run-off from the quarry which funnels straight down the lane and beneath property, turning South Street into a river as the drains cannot cope with the extra water, and breaking up the road surface
  - Houses may be at flood risk if the development proceeds including new hard surfaces without infrastructure changes; the surface water drainage should be investigated before the application proceeds
  - Roads to the site are simply unsuitable for increased traffic flows; they are ancient single track-ways without passing places that struggle to cope even with current limited traffic. Entrances become muddy, and verges are rutted and eroded when used as passing places. Traffic travels too fast on the lanes on lanes increasingly used by horse riders and cyclists



- This scheme is for four times as many houses as previously approved. Traffic will not just be from occupants but by gardeners, cleaners, deliveries etc – there would be no pedestrian access from the site to shops or other amenities making it unsuitable for disabled or elderly residents
- Poor access for emergency vehicles, taxis and deliveries
- The plans are not for houses of high architectural quality, just pastiche designs of Kentish buildings better suited to a suburban or town setting
- Can we expect still greater plans if the site still does not sell?
- There is no need for this greenfield site to be built on
- These lanes are difficult to repair without complete closure
- The lanes are not suitable for construction traffic; they should be repaired after construction
- Impact on newts and other reptiles that have recently been observed on the site; the previous surveys were carried out over four years ago and may not accurately represent the wildlife on the site
- The area is of outstanding natural beauty and any development will spoil the landscape
- The offer to revoke the minerals permission has already been made; can the same offer still apply? The minerals planning permission lapses after two years of inactivity so the lack of quarrying over the last three years must mean that the site should now be restored
- The woodland should be maintained by a suitable management body such as the Kent Wildlife Trust or RSPB
- If left alone the land will return to woodland, but not if it is built on now, it will be lost forever
- How will the proposed wildflower meadow area be protected from development?
- Any houses here should be of high eco-standards and incorporate clean waste water and self generating power
- The houses will only generate a one-off income to the owner whilst a long term usage plan will bring continuous income for the area
- The plans disregard the views of local residents who moved here to be away from new developments

6.02 The applicant has responded to these initial objections noting that apart from the Parish Council, no statutory consultees object to the application and saying, in summary, that:

- Residents' concerns over surface water drainage are addressed by their Flood Risk Assessment, and could be controlled via a planning condition requiring on site attenuation
- In terms of transport concerns he points to the likely level of traffic from renewed quarrying which the local roads are unsuited to, and which the proposed development would remove the need for. He also notes the lack of objection to the application from Kent County Council
- In relation to ecology concerns the applicant notes that the Inspector imposed no conditions although a condition requiring an ecological management plan would be accepted; and that new planting would benefit flora and fauna, as would retention of the existing woodland

6.03 The Faversham Society has raised objection to the application on the basis that the application is on a greenfield site outside any settlement boundary, and there are opportunities for residential development on brownfield sites within this part of Swale.

They add that the site is unsustainable because of the nature of the roads needed by occupiers to access services.

- 6.04 The East Kent Badger Group has noted that the ecological survey was carried out a few years ago and they strongly advise that a further badger survey be carried out.

#### **Scheme as amended**

- 6.05 When I re-consulted locally on the amended scheme I received a further 24 objections to the application based on the following summarised grounds;

- The road infrastructure in this area is already crumbling and will not be able to cope the increased volume of traffic
- Lanes are narrow and winding with few passing places, and they flood on bad weather and are overhung by mature trees – flooding is worse since the site was disturbed recently and the roads are like rivers at times
- Local flooding will be made worse by more hard surfacing and buildings – enlarging the lake will not solve the problems as it sits on clay and will not drain away
- Fast moving traffic and poorly signed junctions with slow moving vehicles create problems and there have already been many near misses
- Lanes are now busier due to online delivery vehicles
- The lanes are used by walkers, cyclists and horse riders
- Construction traffic will create dangerous traffic conditions
- This is a greater threat than resumption of quarrying would be
- All quarrying should now have ceased after a two year gap in activity, and the land should be restored
- Each house will have at least two cars so the lanes will carry even more traffic than they do today
- The location is not sustainable and traffic will produce carbon emissions
- No local services and all movements will need to be by car
- Wildlife habitat will be destroyed for species such as badgers, deer, buzzards, adders, grass snakes, sand martins, bats, newts and lizards. Such species are present on site despite the ecological report which is out-of-date

NOTE: The survey has been updated

- The proposed houses will not be affordable, and will not benefit those that really need housing
- The local need is for smaller more affordable housing
- The Local Plan is now making adequate provision for new housing, there is no requirement for this green field site to be developed
- The houses might later be converted into flats
- The houses will not have mains drainage
- The “informal access” to maintain the lake points to intentions for further development
- The proposed manor houses are generic designs (not of exceptional merit as required by policy for such a site) and will not be in keeping with the current style of houses or area but will be visible for miles especially if trees are cleared to afford the houses better views – especially at night
- Nor are the proposed houses especially eco-friendly
- Approval will lead to pressure for more development on overstretched infrastructure as has recently happened at the Selling station area
- The impact will be felt at South Street and Selling rather than at Dunkirk
- Will there be any money for local improvements to road drainage or surfacing?
- The site is in an area of outstanding natural beauty

NOTE: This site is not within a designated AONB

- There is no guarantee that approval of this application will bring about cessation of quarrying
- The applicant has bulldozed the site to remove any vegetation or wildlife, destroying boundary trees and encouraging illegal tipping. Hardcore/tarmac material has been brought onto the site and covered with sand, and has since been spread around the site – the site is thus partly contaminated
- The applicant continues to threaten resumption of quarrying backed up by false statements affecting hundreds of local residents
- The Council was right to refuse the original application despite it being approved on appeal; the Council should stick to its principles and refuse permission
- This is simply the wrong place for a housing development

## 7.0 CONSULTATIONS

7.01 Dunkirk Parish Council objected to the application when first submitted as follows;

*“We object to the application having held a public meeting where the majority opposed the application. There are real concerns that the applicant would re-apply for further housing in the future. This could perhaps have been avoided if something like a covenant had been put in place to limit the site to 4 dwellings.*

*Council members discussed the application further and agreed to object following a majority vote.*

### **Grounds of the objection.**

#### **General.**

*DPC supported the previous application and the appeal on the presumption that the benefits of revoking the quarry licence outweighed the impact of a single development in the countryside. It is felt that the extra dwellings would significantly change the dynamics of the area.*

#### **Design.**

*The application is of poor design with the 4 houses packed together in the middle of the site. If the application was to be approved we would hope the applicant could be encouraged to re-design the layout.*

#### **Sustainability.**

*The application is unsustainable due to its location and particularly in regard to water run-off.*

#### **Highway Safety.**

*This is a major concern based upon a number of issues as below.*

#### **Traffic Generation.**

*There are currently only four houses within 200 metres of the site.*

*All other local housing would be expected to use better, larger roads, away from Winterbourne and Jezzards Lane.*

*Four new five bedroom dwellings will create between 100% (at an absolute minimum) and 200% extra traffic onto Jezzards Lane (one of the top 10% Rural Lanes as per KCC Rural Lanes study for Swale Borough 1996 -1997). Policy DM26 refers.*

*The extra traffic is calculated against number of bedrooms in current properties and the application.*

**Road access.**

*The roads leading to the site are extremely narrow, with passing extremely difficult. This level of increased traffic will make the situation worse.*

**Policy Constraints.**

*Local Designated Site of Biodiversity DM28*

*Area of High Landscape Vale (Kent Level) DM24*

*Rural Lanes DM26*

*NPPF. It is considered that the adverse impacts 'significantly and demonstrably' outweigh the benefits.*

**Drainage and Flood risk.**

*Since the site has been levelled, and the existing pond filled, there has been a noticeable increase in the amount of water flowing down Jezzards Lane and Scoggers Hill in the direction of South Street. The drains have been seen to overflow."*

The Parish Council sent photographs and map extracts to show the location and extent of this flooding.

- 7.02 In response to the amendments to the application Dunkirk Parish Council sent the following further comments along with photographs showing local flooding on nearby lanes.

*"There are still real concerns from local people that have been expressed to the Parish Council that the applicant would re-apply for more housing in the future.*

**Grounds of the objection.**

**General.**

*DPC supported the previous application (SW/12/0077) and the appeal as it felt the benefits of revoking the quarry licence outweighed the impact of a single development in the countryside.*

*We objected to the application for four houses in March and object to this amended application (dated Nov 2016) for four houses in a different configuration.*

**Policy Constraints.**

*Local Designated Site of Biodiversity DM28*

*Area of High Landscape Value (Kent Level) DM24*

*Rural Lanes DM26*

*NPPF.*

**Design.**

*The previous application was of very poor design with the 4 houses like an estate. Whilst this amended application has a better layout than the previously submitted 'estate' it is still an increase which is considered unreasonable as development in the countryside.*

**Sustainability.**

*The application is not sustainable as intended by NPPF.*

*It is outside the village envelope and, due to its location in an Area of High Landscape Value, is inappropriate development in the countryside.*

*There are no local transport links. The nearest bus service is 3.1Km and the nearest railway station is 2Km and the nearest shop is over approx. 3.5Km away. The nearest primary schools (Selling and Boughton) are both over 3.5Km away, and both are at capacity.*

*Neither Dunkirk, nor the larger service centre of Boughton, has a doctor, pharmacy or dentist.*

*NPPF states there should be a **'presumption in favour of sustainable development'**.*

*We do not feel that this application demonstrates 'sustainable development'.*

*NPPF states:*

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

**an economic role** – *contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation; and by identifying and coordinating development requirements, including the provision of infrastructure;*

*This is not the 'right type' of land. It was not included in Swale's 'call for sites', but would have been excluded by being outside the village envelope and by its position in the countryside. Swale has now completed a second 'call for sites' and has land allocated for its 5 year supply until 2031.*

**a social role** – *supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community's needs and support its health, social and cultural well-being; and*

*This is a secluded, remote site. The housing type proposed does not meet the objectively assessed needs of the community as per the emerging neighbourhood plan or Swale's Bearing Fruits 2031. It is not accessible to local services and would not be a part of the community.*

**an environmental role** – *contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy. The application has not demonstrated any biodiversity gains such as rain water harvesting, no minimising waste such as reed bed filtration or bio-digester to treat foul water, and no low carbon proposals such as solar panels or bio-mass. There would be some extra protection to the woodland areas with the unilateral undertaking, but we would note that a piece of the original land in this has been sold privately and will presumably be removed from the area to be protected.*

*NPPF para55 states:*

*Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as:*

- *the exceptional quality or innovative nature of the design of the dwelling. Such a design should:*
- *be truly outstanding or innovative, helping to raise standards of design more generally in rural areas;*

- *reflect the highest standards in architecture;*
- *significantly enhance its immediate setting; and*
- *be sensitive to the defining characteristics of the local area.*

*We would submit that the application doesn't exhibit these qualities.*

*We consider that the adverse impacts 'significantly and demonstrably' outweigh any of the benefits the scheme would deliver.*

### **Highway Safety.**

*The site is accessed via a rural lane - Bearing Fruits DM26:*

*Planning permission will not be granted for development that would either physically, or as a result of traffic levels, significantly harm the character of rural lanes. For those rural lanes shown on the Proposals Map, development proposals should have particular regard to their landscape, amenity, biodiversity, and historic or archaeological importance.*

*We appreciate that this is still an emerging plan but would suggest that it has been initially passed by the inspector and was not subject to modification.*

*For clarity, the Local Plan 2008 RC7 still applies.*

*Development will not be permitted that would either physically, or as a result of traffic levels, significantly harm the character of rural lanes. For those rural lanes shown on the Proposals Map, development proposals should have particular regard to their landscape, amenity, nature conservation, and historic or archaeological importance.*

### **Traffic Generation.**

*There are currently only four houses within 200 metres of the site.*

*All other local housing would be expected to use better, larger roads, away from Winterbourne and Jezzards Lane.*

*Four new five bedroom dwellings will create between 100% (at an absolute minimum) and 200% extra traffic onto Jezzards Lane (one of the top 10% Rural Lanes as per KCC Rural Lanes study for Swale Borough 1996 -1997). Policy DM26 refers.*

*The extra traffic is calculated against number of bedrooms in current properties and the application.*

### **Road access.**

*The roads leading to the site are very narrow, with passing extremely difficult. This level of increased traffic will make the situation worse and perhaps more dangerous.*

*This is a major concern to everyone living locally as they have felt the rising impact of vehicles from housing at both Selling Station and Haze Wood Close. This is made worse by the significant increase in HGV's to local farms and storage facilities; also in the wrong places.*

*Whilst the site is in Dunkirk, most of the access roads are in Boughton where the road surfaces and water drainage appears to be much worse, with fewer repairs, more potholes and manholes that are not cleared.*

### **Drainage and Floodrisk.**

*Since the site has been levelled, and the existing pond filled, there has been a noticeable increase in the amount of water flowing down Jezzards Lane and Scoggers Hill in the direction of South Street. This currently causes water runoff*

*along South Street for hundreds of metres. These 'rivers' flow along the roads and are a major concern to road safety.*

*The drains overflow due to the extra water, and a gain this is of great concern for road safety and pedestrians. Pictures 8th March 2016. Maps are surface water drainage from the Environment Agency.*

*There is no mitigation in the application to reverse these problems which we believe the site is already causing.*

*If consent is given we would ask for a S106 agreement to ensure improvement to the roads, gulleys and drains.*

*We note other, recent, photographs have been uploaded with other objections and would ask that they are also given significant weight.*

*We would respectfully ask for the application to be refused.”*

- 7.03 Boughton-Under-Blean Parish Council raised no objection to the application as originally submitted. Their comments fell into three areas;

**Traffic & Highways** - *Concerns were raised regarding the access to the site along the narrow country lanes which don't have passing places, in particular for construction traffic which could block the roads. It would be useful should planning permission be granted, that a planning condition be made whereby the developer arranges for the highways and verges in the vicinity of the site and those areas deemed to be damaged by site traffic to be made good at the end of construction.*

**Drainage** - *Concerns were expressed regarding the very poor drainage in the area and the water run-off from the site that affects part of South Street. The Parish Council would like to see some additional drainage in the area, either at the site or facilitated by Kent County Council.*

**Woodland** - *Manage the quarry land as woodland using an appropriate management body such as the Kent Wildlife Trust or the RSPB.*

More recently, Boughton Parish Council has written to say that they have changed their stance on the application. They now object to the application on the grounds that the access roads to the site are unsuitable for HGV construction traffic and unsustainable in their current state to cope with the volume of domestic traffic which will be generated by the development. There is no provision for vehicles to pass and the grass banks on adjacent land are being eroded by vehicles attempting to pass, and the mud associated with this erosion then sits on the highway impeding the already poor drainage in the area.

- 7.04 Kent Highways and Transportation do not consider that they need to comment on the application. They add that if there are any highway safety concerns they can be contacted for their further comments. I have asked them to look at the highway comments raised locally and to provide further advice but, despite reminders, I have not had any further response from them.
- 7.05 The Forestry Commission has forwarded details of Government policy towards ancient woodland in the NPPF (paragraph 118), which is to discourage development that will result in its loss, unless the need for, and benefits of, the development in that location clearly outweigh the loss. The Commission does not support or object to planning applications but simply refers to generic advice regarding how ancient woodland

should be dealt with in the planning process. The Commission does not confirm whether or not the site or wider woodland is classified as ancient woodland.

- 7.06 The originally submitted scheme was subject to an informal review by Design South East. Their conclusion is that whilst the appeal allowed a single large house this “was at least a rural response to this very remote site, the current application for four homes is a suburban cul de sac layout, not appropriate to this rural site. A lane with houses along it could be considered, or a farmhouse cluster.” It was partly on this basis that, notwithstanding other matters to be resolved, I asked the applicants to re-consider their design approach, and that resulted in the significant changes to the scheme to bring it to its current form.
- 7.07 Kent County Council’s Ecological Advice Service originally noted that the most recent ecological survey reports dated from 2012 and that, as a minimum a new ecological scoping survey should be carried out to provide up-to-date evidence regarding the current ecological value of the site and the potential for ecological impacts to arise from the proposals. Once the updated ecological report was received I re-consulted the Ecological Advice Service. Their response is that sufficient information has now been provided to determine the application. In more detail they say that as the site has previously been quarried there is no current tree cover and that the development would not result in loss of habitats that the area is designated for. Furthermore, as the development includes woodland planting, wildflower meadow creation and pond restoration it is unlikely that the development will result in deterioration of the local wildlife site. With regard to ancient woodland, the advice now is that the necessary 15m buffer zone is included on the proposals. However, conditions are recommended to cover;
- Lighting design strategy, to minimise adverse impact on bat foraging/commuting
  - An ecological mitigation method statement, to safeguard protected species, and
  - An ecological design strategy, to provide ecological enhancements. This essentially repeats the ecological obligations in the draft Unilateral Undertaking, and so I have not recommended imposing this condition.

I have included the first two recommended conditions below.

## **8.0 BACKGROUND PAPERS AND PLANS**

- 8.01 Application papers for applications SW/12/0077 and 16/501552/FULL and Unilateral Undertaking dated 2 April 2013.

## **9.0 APPRAISAL**

### **Principle of Development**

- 9.01 It is common ground between the applicant and myself that four houses would not normally be approved in this isolated rural location. There is much talk of five year housing supply in current applications for housing on non-allocated rural sites, but here I am satisfied that the inherent unsustainability of the site for new residential development would normally be seen to significantly and demonstrably outweigh the benefits of four new homes in this location. Nor does the applicant suggest that the principle of development here gains support from the words of paragraph 55 of the NPPF in terms of the outstanding or innovative architectural quality of the scheme.



- 9.02 However, the applicant is clear that the specific planning issues affecting the site do qualify for an exception to national and local planning policy for isolated new dwellings under paragraph 55 because of the outstanding and extant planning permissions for quarrying which have the potential for loss of ancient woodland either as a direct result of quarrying, or as a result of a restoration scheme (as yet unapproved) which might require removal of ancient woodland to accrue topsoil; if that material cannot be imported onto the site.
- 9.03 Members will be aware that the existing quarrying permissions allow extraction until the year 2042 (a further 25 years from now) and that, whilst the Council previously strongly argued that the record of virtually no recent minerals working and the relatively poor quality of the materials meant that we saw little chance of that extraction resuming, the Inspector accepted the applicant's evidence of intention, viability and ability to resume extraction. She also accepted that such resumption was likely to result in loss of valuable ancient woodland as a direct and indirect result of further quarrying. The Council must have regard to these findings now.
- 9.04 The only known (but not approved) scheme for restoration of the site indicates securing topsoil from unquarried areas of the site (potentially involving loss of further ancient woodland in areas not directly affected by quarrying) as planning conditions currently in place prohibit importation of materials for restoration. However, it seems from the County Council's recent comments that the amount of topsoil previously across, and potentially remaining on, the site may be extremely limited. This may mean that such a restoration is not practical, and that either no further areas would need to be cleared to secure site restoration, or that any necessary topsoil might be imported; this is perhaps more likely now as such material would otherwise be landfilled. Even if, as I suspect, the County Council would now be prepared to approve a site restoration scheme which had regard to the potential loss of ancient woodland, and did not require removal of woodland across unquarried areas to secure topsoil to restore previously quarried areas, any further quarrying has the potential to result in loss of ancient woodland. That might be less likely on the better preserved areas of woodland north of the footpath and further from the site access, but the potential to access this area over a 25 year period still exists. This period is obviously less than that available in 2013 when the appeal decision was made, but it is still of the same order of magnitude.
- 9.05 The above factors may mean that the whole of the Inspector's concerns might not remain realistic, but I am satisfied that faced with an appeal decision to make today, that same Inspector would still see sufficient advantage in seeing all future quarrying prohibited if the single house scheme were to be approved, and that she would still allow that appeal. Accordingly, as other circumstances have not significantly changed, I regret that I cannot conclude other than that the principle of the single house scheme on this site remains one that the Council has no option but to accept.

### **Visual Impact**

- 9.06 Notwithstanding the above conclusion, I was very concerned when this application was first submitted that the balance of advantage seen by the Inspector might not be seen to apply to this scheme. The approved single large house was explicitly not of innovative or outstanding architectural quality. However, it did at least follow in the English tradition of large country houses and could be considered to be of a form found within the countryside locally. The Council did not raise specific objection to the design then proposed. The Inspector found that the house then proposed would not in fact result in harm to the character and appearance of the surrounding countryside.

- 9.07 The current application scheme as first submitted was different. Although of a reduced overall floorspace compared to the approved single house, the general layout and building styles initially proposed appeared to speak of modern cul-de-sac style suburban development. This, I felt, was likely to have a far more adverse impact on the character of the local countryside than the approved scheme. My view was that the balance of considerations that the Inspector weighed was now materially different, and that despite all the advantages she had seen arising from the appeal scheme, this balance in favour of approval might not be the same for the current application. Specifically, I considered that the suburban nature of the current scheme (as first submitted) was far more harmful to the character of the area here, and that this more than outweighed the benefits to be derived from securing cessation of all future quarrying by approving the application. I saw no inconsistency in refusing that scheme and the Inspector's approval of the appeal scheme.
- 9.08 The applicant was good enough to accept that criticism and he agreed to look again at the form and layout of the development. In November 2016 he submitted a wholesale revision of the scheme. This still features four detached houses, but now the scheme apes local rural lanes with houses set fronting the new lane and re-designed to reflect local architectural style, without actually copying any local houses. This is the scheme now before the Council, and upon which I have consulted Parish Councils and local residents. The views received in relation to that re-consultation are set out above.
- 9.09 It is in my view realistic to consider potential additional visual impact arising from an increase in dwelling numbers, even where the total amount of floorspace is reduced. This might arise from a different siting of buildings, a greater overall silhouette of development over a wider area, or a less satisfactory standard of design or layout. Some of these factors did appear to apply to the current application as first submitted, but the applicant has now heavily revised the scheme in favour of a far more suitable style of development.
- 9.10 Despite the increase in numbers now proposed, I consider that the style of development now proposed is actually at least as appropriate to the local countryside character as the approved scheme. The area is characterised by detached former farmhouses and other frontage development. The adjacent lane to the north is also a dead-end with occasional dwellings which peters out into a footpath and, accordingly I find that the style of development now proposed is not alien to the local countryside. The site itself is fairly well visually contained and as the houses are set in a row running from west to east (rather than north to south) the views from the highway and from the west, which are the view identified by the Inspector as the most affected by the appeal scheme, will face the narrow western end of the development so minimising the degree to which the number of houses on the site will be apparent; albeit the first house will be closer to the highway than the appeal scheme house would have been.
- 9.11 In conclusion I do not believe that the visual impact of the current scheme will be less acceptable than that of the approved house.

### **Highways**

- 9.12 Many local residents have raised concern over the potential traffic from the proposed four large houses compared to the one house approved at appeal. To my mind this is the wrong comparison to make. What the Council should consider is the amount of traffic likely to be generated from the four houses compared to that likely to arise for a resumption of quarrying. The latter has been estimated to be up to a weekly average of 144 HGVs per week, whereas the four houses are estimated to produce just 28 trips per day (up to 196 trips per week if consistent over seven days), almost none of which

would be HGVs. The Inspector gave the reduction in potential heavy traffic expected over the life of the quarrying permissions from the appeal scheme moderate weight.

- 9.13 I note that Kent Highways and Transportation do not raise objection to the application and I urge Members not to get distracted by the possible traffic implications of this proposal which are nothing compared to the potential which might arise from realistic economic resumption of quarrying, which is what the Inspector accepted was a realistic possibility here.
- 9.14 Finally, there is considerable local anxiety regarding local surface water problems on local lanes leading downhill from the site. This is an existing problem which is not a result of the current proposals. Refusal of this application will not solve these problems. Conversely, approval of the application might see the site redeveloped sooner rather than later and with the potential to impose a planning condition requiring the investigation and resolution of surface water arising from the site on local highways. This would represent another positive benefit of the scheme.

### **Ecology**

- 9.15 Whilst any development of such a neglected rural site close to well known wildlife corridors raises the question of potential adverse impact on wildlife, even on protected species, the bare earth nature of this site is unusual and apparently lacking in significant ecological value. Members should note that despite this matter being dealt with at the previous appeal the Inspector imposed no conditions regarding ecology.
- 9.16 Nevertheless, site restoration and the potential for better management of adjoining woodland offers very significant potential for ecological enhancement through the requirements of the Unilateral Undertaking and Members will note that Kent County Council's Ecological Advice raises no objection to the application, but has suggested conditions (most of which are recommended below) which address the potential ecological implications of the proposal. I see the scheme as therefore having significant ecological benefits.

### **Other Matters**

- 9.17 The appeal was only allowed after the applicant signed a Unilateral Undertaking which required him to immediately suspend all future quarrying until he notified the Council of his intentions to either;
1. re-commence quarrying; which meant that the planning permission for the house would fall, or
  2. implement the planning permission; in which case all quarrying rights would fall without compensation being claimed for loss of mineral rights, and the remainder of the quarried site would be restored.
  3. to submit a scheme for management of the wider remain woodland area before first occupation and to ensure long term management of the woodland area via Kent Wildlife Trust or another appropriate management body

The applicant has now submitted a draft Undertaking in the same terms and I see no reason to set aside the Inspector's acceptance of that commitment now. Accordingly, should Members accept that the Inspector's overall conclusion that the harm arising from resumption of quarrying and potential loss of ancient woodland justifies the granting of planning permission for residential development, and that the current scheme is also acceptable in those terms, I recommend that any approval is subject to the same safeguards which are designed to ensure that this result is achieved.

**10.0 CONCLUSION**

10.01 I recognise that there is significant local concern over this application, and the increase in number of dwellings now proposed compared to the appeal decision. I note that Dunkirk Parish Council who supported the single house scheme oppose this scheme. However, the Council’s decision to refuse the previous scheme was lost on appeal and this must be recognised. I have considered whether the changes between the approved scheme and this can be said to invalidate the Inspector’s previous conclusions but I do not find that they do. My somewhat reluctant conclusion is that the Inspector’s decision will make it all but impossible to defend a refusal of this application in its amended form. Accordingly, I have recommended appropriate conditions and that the grant of planning permission be subject to completion of a Unilateral Undertaking that achieves the previous safeguards.

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

**CONDITIONS**

- (1) The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which 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 be carried out in accordance with the following approved drawings;

DHA/10274/03A, DHA/10274/04A, DHA/10274/05A, DHA/10274/06A, DHA/10274/07, DHA/10274/08, DHA/10274/09, DHA/10274/10A, DHA/10274/11A, DHA/10274/12A, DHA/10274/13A, DHA/10274/14A, DHA/10274/15A, DHA/10274/16A, DHA/10274/17 A, DHA/10274/18, DHA/10274/19, DHA/10274/20 and DHA/10274/21.

Reason: In the interest of proper planning and for the avoidance of doubt.

- (3) Prior to the commencement of development a contaminated land assessment (and associated remediation strategy if relevant), shall be submitted to and approved in writing by the Local Planning Authority, comprising:

- a. A desk study and conceptual model, based on the historical uses of the site and proposed end-uses, and professional opinion as to whether further investigative works are required. A site investigation strategy, based on the results of the desk study, shall be approved by the Local Planning Authority prior to any intrusive investigations commencing on site.
- b. An investigation, including relevant soil, soil gas, surface and groundwater sampling, carried out by a suitably qualified and accredited consultant/contractor in accordance with a Quality Assured sampling.
- c. A site investigation report detailing all investigative works and sampling on site, together with the results of analyses, risk assessment to any receptors and a proposed remediation strategy which shall be of such nature as to render harmless the identified contamination given the proposed end-use of the site and surrounding environment, including any controlled waters.

Reason: To ensure any land contamination is adequately dealt with.

- (4) Before any dwelling is occupied, all remediation works identified in the contaminated land assessment and approved by the Local Planning Authority shall be carried out in full on site under a quality assured scheme to demonstrate compliance with the proposed methodology and best practiced guidance. If, during the works, contamination is encountered which has not previously been identified, then the additional contamination shall be fully assessed and an appropriate remediation scheme agreed with the Local Planning Authority.

Reason: To ensure any land contamination is adequately dealt with.

- (5) Upon completion of the works identified in the contaminated land assessment, and before any dwelling is occupied, a closure report shall be submitted which shall include details of the proposed remediation works with quality assurance certificates to show that the works have been carried out in accordance with the approved methodology. Details of any post-remediation sampling and analysis to show the site has reached the required clean-up criteria shall be included in the closure report together with the necessary documentation detailing what waste materials have been removed from the site.

Reason: To ensure any land contamination is adequately dealt with.

- (6) Prior to the commencement of development hereby approved, full details of a drainage strategy for the site which shall ensure that surface water from the site does not drain onto the highway, and which details proposals for the disposal of foul and surface waters, shall be submitted to and approved by the Local Planning Authority. The approved details shall be implemented before the first occupation of any dwelling.

Reason: In order to prevent local flooding or the pollution of groundwater.

- (7) Prior to commencement of development details of measures to prevent mud or other debris on the highway during construction works shall be submitted to and approved in writing by the Local Planning Authority. Such measures as agreed shall be implemented in full prior to the commencement of development and retained for the duration of construction works.

Reason: In the interests of highway safety and convenience.

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

Reason: In the interests of highway safety and convenience

- (9) Prior to commencement of development, further detail of the vehicular access to the site at a scale of 1:20 shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details completed prior to the first occupation of any dwelling hereby permitted.

Reason: In the interests of highway safety and convenience

- (10) Any entrance gates erected shall be hung to open away from the highway, or from the site access road, and all gates shall be set back a minimum of 5.5m from the carriageway edge.

Reason: In the interests of highway safety and convenience

- (11) Prior to the commencement of development, details in the form of samples or manufacturers specifications of external finishing materials for the dwellings and associated buildings, including joinery, to be used in the construction of the development hereby approved shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

Reason: In the interest of visual amenity.

- (12) Prior to commencement of development constructional details of the ridges, the roof eaves and verges, dormer windows, doors, rainwater goods, window reveals, cills, brick plinths, flint or stone panelling, brickwork bond and paving, chimney detailing, and brick arches for each dwelling shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

Reason: In the interest of visual amenity.

- (13) Prior to the commencement of development details of the existing and proposed site levels, in the form of cross-sectional drawings through the site, shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

Reason: In the interest of visual amenity.

- (14) Prior to the commencement of development, full details of both hard and soft landscape works and boundary treatments shall be 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.

- (15) 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.

- (16) 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.

- (17) No development shall take place until a “lighting design strategy for biodiversity” for the site boundaries has been submitted to and approved in writing by the local planning authority. The lighting strategy shall:

- a) Identify those areas/features on site that are particularly sensitive for badgers and bats and that are likely to cause disturbance in or around their breeding sites and resting places or along important routes used to access key areas of their territory;
- b) Show how and where external lighting will be installed so that it can be clearly demonstrated that areas to be lit will not disturb or prevent the above species using their territory.

All external lighting shall be installed in accordance with the specifications and locations set out in the strategy and these shall be maintained thereafter in accordance with the strategy.

Reason: In the interests of encouraging wildlife and biodiversity.

- (18) No development shall take place (including any ground works, site or vegetation clearance) until a method statement for ecological mitigation during construction (including provision for bats, great crested newts, reptiles, nesting birds, hedgehogs, common toads) has been submitted to and approved in writing by the Local Planning Authority. The content of the method statement shall include the:

- a) Purpose and objectives for the proposed works;
- b) Detailed design(s) and/or working method(s) necessary to achieve stated objectives; informed by up-to-date surveys where necessary;
- c) Extent and location of proposed works, including the identification of a suitable receptor site, shown on appropriate scale maps and plans;
- d) Timetable for implementation, demonstrating that works are aligned with the proposed phasing of construction;
- e) Persons responsible for implementing the works, including times during construction when specialist ecologists need to be present on site to undertake / oversee works;
- f) Use of protective fences, exclusion barriers and warning signs
- g) Initial aftercare and long-term maintenance (where relevant);

The works shall be carried out strictly in accordance with the approved details.

Reason: In the interests of protecting wildlife and biodiversity during construction.

- (19) The existing concrete building on the appeal site shall be demolished and all materials removed from the site prior to the first occupation of any dwelling.

Reason: In the interest of visual amenity.

- (20) Upon completion, no alterations to the front elevations of any dwelling hereby permitted (that is the elevation fronting the site access road), whether normally permitted by Classes A, B, C or D of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking and re-enacting that Order), or not, shall be carried out.

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

### **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.



## APPENDIX 1




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## Appeal Decision

Hearing held on 6 & 27 March 2013

Site visit made on 6 & 27 March 2013

**by Lesley Coffey BA (Hons) BTP MRTPI**

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

Decision date: 16 May 2013

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**Appeal Ref: APP/V2255/A/12/2186021**

**Winterbourne Wood Quarry, Scoggers Hill, Dunkirk, Faversham, Kent ME13 9PH**

- 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 I Fern against the decision of Swale Borough Council.
  - The application Ref SW/12/0077, dated 19 January 2012, was refused by notice dated 30 April 2012.
  - The development proposed is the revocation of the quarrying use and erection of a single dwelling house with detached garage block and associated landscaping, enlarged lake and use of existing access.
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### Decision

1. The appeal is allowed and planning permission is granted for the revocation of the quarrying use and erection of a single dwelling house with detached garage block, associated landscaping, enlarged lake and use of existing access at Winterbourne Wood Quarry, Scoggers Hill, Dunkirk, Faversham, Kent ME13 9PH in accordance with the terms of the application, Ref SW/12/0077, dated 19 January 2012, and the plans submitted with it, subject to the conditions in the attached schedule.

### Procedural Matter

2. The South East Plan was partially revoked on 25 March 2013 and the policies within it referred to by the parties no longer form part of the development plan. I have therefore not taken them into account in reaching my decision.

### Main Issues

3. I consider the main issues to be :
  - The effect of the proposal on character and appearance of the countryside with particular reference to the Blean Woods Special Landscape Area; and
  - Whether having regard to the aims of national and local planning policies which seek to limit new development in the countryside, the benefits of the proposal, including the revocation of the existing minerals consents, would be sufficient to outweigh any intrinsic harm to the countryside and any other harm.

### Reasons

4. The appeal site forms part of a larger area of land owned by the appellant. Two separate mineral consents permit the extraction of sand and gravel across
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Appeal Decision APP/V2255/A/12/2186021

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the appellant's entire landholding until 2042. The appeal site lies within an area of the previously quarried land which extends to about 4 hectares. The minerals consents allow for a further 20 hectares of land to be quarried.

5. A Unilateral Undertaking under s106 of the Act covenants to surrender the minerals consents, cease mineral extraction with immediate effect, and to manage the remainder of the land owned by the appellant in perpetuity as woodland. It also covenants to restore the appeal site and the other previously quarried land, and to maintain much of the appeal site as a meadow and lake. I have taken the Unilateral Undertaking into account in reaching my decision.

*Character And Appearance Of Surrounding Countryside*

6. The appeal site is located within the open countryside close to the village of Dunkirk. The remainder of the appellant's land (the quarry site) is predominantly woodland, and much of it is ancient woodland. It would seem that some areas have been cleared in the past and these have since been colonised by silver birch.
7. The appeal site lies within the Blean Woods South Site of Nature Conservation Interest and the Blean Woods Special Landscape Area. The *Swale Landscape Character and Biodiversity Appraisal Supplementary Planning Document (SPD)* adopted in September 2011 identifies it as part of Blean Woods West. This area is typified by deciduous woodland, particularly on higher ground where it is dominated by ancient woodland. It is part of one of the most extensive areas of semi-natural ancient woodland in south-east England. The SPD states that the ecological integrity of the area is extremely strong with a number of areas designated for their nature conservation value. It seeks to conserve the largely undeveloped and heavily wooded character of the landscape and create stronger ecological networks by linking areas of ancient woodland.
8. The proposal is for a seven bedroom dwelling, with associated garaging, swimming pool and gymnasium. The proposal would also involve the enlargement of an existing lake on the appeal site. The dwelling would take the form of a large, Queen Anne style, country house arranged around a central courtyard. The southern part of the appeal site would be landscaped to provide a semi-natural appearance.
9. The Council do not object to the design or appearance of the dwelling, but consider that a large dwelling in this location would be prominent within the landscape and would harm the appearance of the Blean Woods Special Landscape Area.
10. The site is currently occupied by a single concrete building in poor condition which would be removed as part of the proposal. The previous quarrying operations have left significant scars within the landscape. Although some of these areas have, to an extent, been colonised by gorse and other vegetation, the scars are nevertheless apparent in views from the lower land to the west which forms part of the Hernehill and Boughton Fruit Belt.
11. The appellant submitted a landscape and visual assessment in support of the proposal. The Council questioned the methodology of the assessment which relies upon the appearance of the landscape at present, and fails to take account of its appearance once it has been restored in accordance with the conditions attached to the mineral consents. However, it does not dispute the extent to which the proposed dwelling would be noticeable within the wider

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Appeal Decision APP/V2255/A/12/2186021

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landscape. Therefore whilst I acknowledge the Council's concerns in relation to the landscape appraisal, I consider that it nonetheless provides a useful guide as to the extent to which the proposed dwelling would be noticeable within views from the surrounding countryside. I have therefore taken the appraisal into account in so far as it relates to the visual prominence of the dwelling within the surrounding countryside.

12. The surrounding countryside is characterised by sporadic residential development. The appeal site is enclosed to the east and south by the rising wooded land of the quarry site. Views of the dwelling would be largely confined to the adjacent highway and from the more open landscape to the west. Many of these views would be distant views and would be filtered by the undulating landscape and intervening hedgerows. From these viewpoints the proposal would have the appearance of a large country house set against a wooded backdrop and rising ground.
13. The Council consider the proposed wildflower meadow within the appeal site would appear as an alien feature within the Blean Woods Special Landscape Area. However, the open fields that characterise Boughton Fruit Belt extend up to the opposite side of Scoggers Hill. Therefore, having regard to the appearance of this previously quarried area of land, and the open fields within the locality, I am satisfied that subject to a suitable landscape scheme, the proposed meadow would not be an incongruous feature within the surrounding landscape.
14. The removal of the existing concrete building and yard area, and the restoration of the previously quarried land would improve the appearance of the existing despoiled landscape. I consider these benefits would outweigh any harm arising from the limited views of the proposed dwelling. I therefore find that the proposal would not harm the character and appearance of the surrounding countryside and would comply with policy E9 of the Swale Borough Local Plan (2008) which seeks to protect the character and amenity value of the wider landscape.

*Whether having regard to the aims of national and local planning policies which seek to limit new development in the countryside, the benefits of the proposal, including the revocation of the existing minerals consents, would be sufficient to outweigh any intrinsic harm to the countryside and any other harm.*

15. The appeal site is situated within the open countryside where local and national planning policies seek to strictly control new development. Policy SH1 of the Local Plan sets out the settlement hierarchy for the area. Together with policy H2 it states that new dwellings within the countryside will only be permitted if they accord with the exceptions within policy E6. This aims to safeguard the quality, character and amenity value of the wider countryside and to strictly control new development within the countryside. This approach is consistent with Paragraph 55 of the National Planning Policy Framework (The Framework) which seeks to avoid isolated new homes in the countryside.
16. The appellant acknowledges that the proposal does not constitute a truly outstanding or innovative design. However, he submits that the potential harm that would arise from the extant minerals consents in relation to the ancient woodland and biodiversity of the site, the constraints on the restoration of the site would together with the benefits of the proposal combine to constitute the special circumstances referred to within paragraph 55 of the Framework.

Appeal Decision APP/V2255/A/12/2186021

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17. The Council considers that it may not be economically viable for the appellant to continue to work the quarry site until the minerals permissions expire in 2042. It suggests that the steeper, more tree covered part of the site is less likely to be commercially viable for extraction. As a consequence, any future damage to the landscape, would be likely to be considerably less extensive than suggested by the appellant.
18. The appellant acknowledges that the minerals on the site are not of high quality, and that in recent years demand has been low due to the considerably greater quantities of recycled materials available. However, at the Hearing, he explained that unlike previous owners of the quarry, he would use the minerals from the site in connection with his construction company which undertakes infrastructure projects within the south-east. He operates another quarry within the county and has the necessary equipment and expertise to ensure that the operation would be both profitable and viable. He also advised that there was a demand for the clay which overlays the sand and gravel deposits, and that this would further reduce his operating costs.
19. There is no certainty as to the extent of the quarry site that will be affected by continued extraction operations. However, the extant permissions do not expire until 2042. On the basis of the submitted evidence, I have no reason to doubt the appellant's evidence that in the absence of any alternative use, the mineral extraction at the site is likely to continue for the foreseeable future.

#### *Revocation*

20. The quarry site comprises about 20 hectares of land, much of which is ancient woodland, including the higher land to the north and east. Even if some parts of the site prove not to be economically viable for extraction, the extant permissions would undoubtedly give rise to a substantial loss of woodland, including several hectares of ancient woodland. Ancient Woodlands are believed to have had a continuous woodland cover for at least 400 years. They are particularly important because they are exceptionally rich in wildlife, and include many rare species and habitats. They are an integral part of England's historic landscapes, and act as reservoirs from which wildlife can spread into new woodlands.
21. Amongst other matters, Local Plan policy E9 prioritises the long term protection and enhancement of the Blean Woods Special Landscape Area. Policy E12 states that development likely to have an adverse effect on ancient woodland will not be permitted unless the need for the development outweighs the interest of the site and any adverse effects have been adequately mitigated. These policies are consistent with the Framework which states at paragraph 118 that planning permission should be refused for development resulting in the loss or deterioration of irreplaceable habitats, including ancient woodland and the loss of aged or veteran trees found outside ancient woodland, unless the need for, and benefits of, the development in that location clearly outweigh the loss.
22. The loss of the woodland, and in particular the ancient woodland, would have a significant effect on the flora and fauna of the quarry site and the appearance of the Blean Woods Special Landscape Area in which it is located. The northern part of the quarry site is a high point within the locality and is visible from the A2 which is located about 1 km to the north. The extraction of minerals from

Appeal Decision APP/V2255/A/12/2186021

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this area of woodland would also reduce ground levels and permanently alter the appearance of the Blean Woods Special Landscape Area.

23. The Council suggest that the woodland could be replanted as part of the restoration scheme, and in the longer term the habitats could be re-established. For this reason it considers that any harm arising from the continued extraction of minerals would be short term and would be significantly outweighed by the permanent harm that would arise from the proposed dwelling. However, it would take many decades for any significant tree cover to establish, and any replanting is unlikely to occur until after the minerals consents expire in 2042. Moreover, ancient woodland is an irreplaceable resource, and the seed bed and ecology associated with it would be permanently lost.
24. In my view, the potential harm arising from the continued use of the quarry site for the extraction of minerals would be permanent. Moreover, the biodiversity of the site would be unlikely to recover within the foreseeable future, if at all. Therefore the continued extraction of minerals would be contrary to the aims paragraph 118 of the Framework and Local Plan policy E12 in that it would result in the loss of an irreplaceable landscape. No evidence has been put forward by the Council to suggest that either the need for, or the benefits of mineral extraction would outweigh the harm that would arise from the further loss of ancient and other woodland.
25. The revocation of the extant minerals consents would allow the permanent retention of the ancient woodland on the appeal site and the existing topography would remain largely undisturbed. These would be significant benefits of the proposal, particularly in relation to biodiversity and the effect on the Blean Woods Special Landscape Area. Therefore the revocation of the minerals consents would be consistent with Local Plan policies E9 and E12 and the Framework, as well as the aims of the SPD.

#### *Restoration Scheme*

26. The minerals permissions were originally granted in 1950, with a further permission allowing an additional area to be quarried in 1953. These permissions (SW/97/579/MR76 and SW/97/580/MR75) were reviewed in 1997 and conditions were imposed in relation to access, traffic movements, working hours and the restoration of the site. A restoration scheme was submitted in 1997 to comply with conditions 21 and 20 of the above consents. The County Council confirm that the conditions were not discharged. Therefore there is no approved restoration scheme in relation to the minerals permissions.
27. The parties agree that although the restoration scheme has not been approved, this does not affect the validity of the minerals consents or the appellant's entitlement to continue to extract minerals on the site. The appellant considers that due to the passage of time the County Council is unable to enforce the conditions requiring the restoration of the site. However, even if this view is correct, the County Council would have an opportunity to reconsider the conditions, including those in relation to the restoration of the site when the minerals permissions are reviewed in 2015. I have therefore considered the proposal on the basis that unless the quarrying operations cease prior to 2015, in which case the extent of any damage to the landscape would be much reduced, the County Council would be able to require the restoration of the site once extraction ceases.

Appeal Decision APP/V2255/A/12/2186021

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28. The restoration scheme submitted to the County Council in 1997 is reliant on the removal of the top soil from the wooded areas within the quarry site. This would be spread throughout the site to a depth of 150mm in order to facilitate tree planting. It would require the removal of most of the trees on the quarry site, including significant areas of ancient woodland and other woodland. Conditions 24 and 23 of the consents prohibit the importation of top soil onto the site. At the Hearing, the Council acknowledged that these conditions effectively prevent any alternative approach to the restoration of the site.
29. Although the conditions will be reviewed in 2015, any modification would need to take account of a number of factors, including the economic viability of the existing mineral extraction, the cost of restoration, and traffic movements associated with the importation of additional material. Therefore, on the basis of the available information, I am not convinced that the review of the extant consents in 2015 would facilitate a less damaging restoration scheme in relation to the trees on the site.
30. Following the cessation of extraction, it would be many decades until effective tree cover on the quarry site is restored, and the ancient woodland and biodiversity associated with it would be permanently lost. In addition the loss of the woodland and the resultant changes in level on the site would significantly harm the character and appearance of the Blean Woods Special Landscape Area.
31. Therefore the restoration scheme submitted in 1997 would not adequately mitigate the harm arising from the continued extraction of minerals, and would itself give rise to further significant harm. In these circumstances, the restoration scheme that forms part of the appeal proposal would be a considerable benefit of the proposal and would comply with policies E6 and E9 of the Local Plan.

#### *Unilateral Undertaking*

32. The Unilateral Undertaking provides for the revocation of the minerals permissions with immediate effect. Therefore the ancient woodland on the site would remain. It also covenants to manage the quarry land as woodland using an appropriate management body such as the Kent Wildlife Trust or the RSPB. In addition, it provides for the restoration of the previously quarried land. In the absence of the undertaking it is unlikely that the site would be restored prior to 2042. The obligations within the undertaking would prevent further damage to the landscape and would provide for the restoration of the site. It would therefore safeguard the woodland and landscape of this part of Blean Woods Special Landscape Area in perpetuity and would be a significant benefit of the appeal proposal.

#### *Other Considerations*

33. The ecological survey submitted on behalf of the appellant found that the appeal site had low botanical interest and found no evidence of bats, dormice, great crested newts, toads or reptiles within the appeal site. The proposal would provide an opportunity to enhance the biodiversity of the appeal site, and through the retention of the ancient woodland, would secure the preservation of the varied habitats within the quarry site as a whole. This would be a further benefit of the proposal.

Appeal Decision APP/V2255/A/12/2186021

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34. The County Council state that the Winterbourne Quarry has not contributed significantly to the supplies of land won construction aggregates for some years, although its reserves are currently included in the construction aggregate landbank. The emerging Kent Minerals and Waste Plan 2013-2030 includes the need for a sustainable supply of minerals, and seeks to identify the best and most suitable supply of minerals for the next 20 years. In view of the rural location of the appeal site, and the poor access due to the narrow rural lanes, combined with the relatively low quality of the deposits, the County Council support the revocation of the existing minerals permissions. On the basis of the available evidence, I am satisfied that the proposal would not harm the supply of minerals within Kent.

*Conclusions on Benefits of Proposal*

35. Although I have found that the proposed dwelling would not harm the character and appearance of the surrounding countryside, I nonetheless attach significant weight to the intrinsic harm that would arise from the provision of an isolated new home within the countryside.
36. The revocation of the extant minerals consents would enable the preservation of the ancient woodland and other woodland on the quarry site in perpetuity. This would preserve the appearance of the Blean Woods Special Landscape Area and the rich habitat provided by the ancient woodland. The proposal would therefore accord with Local Plan policies E9 and E12 and paragraph 118 of the Framework which resist the loss or deterioration of irreplaceable habitats, including ancient woodland. I therefore attach substantial weight to these benefits, particularly given the decline in the extent of ancient woodland in recent decades.
37. For the reasons given above, I am doubtful that following the cessation of mineral extraction, that the site could be restored without further significant and permanent damage to the existing landscape including the loss of additional areas of ancient woodland. I therefore attach considerable weight to the benefits that would result from the restoration of the previously quarried land.
38. The proposal would also result in a reduction in the number of large lorries using the narrow country lanes surrounding the appeal site. This harm would cease once the site is restored following the cessation of mineral extraction. Therefore unlike the other harm identified above, it would not be permanent in nature. Nonetheless, it could well continue until 2042, and during this period could continue to cause a significant nuisance to local residents and congestion on the narrow lanes within the local area. I therefore accord this matter moderate weight.
39. The Council considers that the short term harm from the continued extraction of minerals would be outweighed by the permanent harm arising from the proposed dwelling. However, for the reasons given above, the loss of ancient woodland and the damage to the landscape and biodiversity would represent permanent and substantial harm to the countryside. Therefore whilst the proposal would represent a new dwelling within the countryside, it would nevertheless comply with the aims of Local Plan policy E6, namely to protect the character and amenity value of the wider countryside. I therefore conclude that the benefits of the proposal, including the revocation of the extant minerals consent and the restoration of the previously quarried land, would

Appeal Decision APP/V2255/A/12/2186021

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considerably and significantly outweigh the intrinsic harm to the countryside arising from the proposal.

*Conditions*

40. I have considered the conditions put forward by the Council, in the light of the advice in Circular 11/95. Details of materials together with constructional details should be submitted in order to ensure the dwelling is satisfactory in terms of appearance. A landscape scheme, showing hard and soft landscaping is necessary to ensure that the dwelling is assimilated into the surrounding landscape. Due to the variation in levels on the site details of the proposed levels should be submitted for approval. In the interests of sustainability the dwelling should achieve at least Level 4 rating under the Code for Sustainable Homes.
41. In the interests of highway safety further details of the access should be submitted for approval, and the entrance gates should be set back from the highway by at least 5.5 metres. Details of measures to keep mud off of the roads should be submitted for approval. An assessment to establish the extent of any soil contamination should be submitted, together with measures for its remediation, in order to protect the health of future occupants. In the interests of sustainability details of drainage proposals should be submitted for approval. I agree that the garages should be retained for parking in order to minimise the effect of the proposal on the surrounding landscape.
42. In the interests of the visual amenity of the surrounding area the existing store building on the site should be demolished. For the avoidance of doubt and in the interest of proper planning the proposal should be implemented in accordance with the approved plans.

**Conclusion**

43. For the reasons given above, and taking account of all material considerations, I conclude that the appeal should be allowed.

*Lesley Coffey*

INSPECTOR



Appeal Decision APP/V2255/A/12/2186021

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**APPEARANCES**

FOR THE APPELLANT:

John Collins	DHA Planning
Ian Fern	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Graham Thomas	Area Planning Officer Swale Borough Council
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INTERESTED PERSONS:

Jeffery Tutt

**DOCUMENTS SUBMITTED AT THE HEARING**

- 1 Undated Letter from Kent County Council in relation to minerals on site submitted by the Council
- 2 Copy of 1997 review of Mineral Permissions submitted by the Council
- 3 Letter From Kent County Council dated October 2006 in relation to extent of minerals permission submitted by the Council
- 4 Correspondence from Kent County Council in relation previous planning applications on appeal site submitted by the Council.
- 5 Unilateral Undertaking submitted by the Appellant
- 6 E mail dated 26 March 2013 from Kent County Council in relation to status of minerals consents
- 7 Note from County Council in relation to the extant minerals consent and the restoration of the appeal site
- 8 List of suggested conditions submitted jointly
- 9 Letter from Appellant relation to the extant minerals consent and the restoration of the appeal site

**PHOTOGRAPHS**

- 1 Aerial photographs of appeal site submitted by the Council

Appeal Decision APP/V2255/A/12/2186021

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**Appeal Ref: APP/V2255/A/12/2186021**

**Schedule of Conditions**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the buildings, hereby permitted, including joinery, have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 3) No development shall take place until constructional details of the ridge, the roof eaves and verges, dormer windows, glazed roof elements, rainwater goods, window reveals, cills, brick plinth, brickwork bond and paving, chimney detailing, brick arches and the orangery/sunroom 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) Prior to the commencement of development, full details of both hard and soft landscape works and boundary treatments for the site shall be submitted to and approved in writing by the Local Planning Authority. The landscaping scheme shall include a planting specification noting species, plant sizes and numbers where appropriate, hard surfacing materials, and a programme of implementation. The landscaping scheme shall be implemented in accordance with the approved details and the programme of implementation. Any trees or shrubs that fail within 5 years shall be replaced on a like for like basis, or as otherwise first agreed in writing with the Local Planning Authority.
- 5) Prior to the commencement of development details of the existing and proposed site levels, in the form of cross-sectional drawings through the site, shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 6) The dwelling shall achieve at least a Level 4 rating under the Code for Sustainable Homes. The dwelling shall not be occupied until after a final Code Certificate has been issued for it certifying that Code Level 4 has been achieved.
- 7) Prior to commencement of development, further details of the vehicular access to the site at a scale of 1:20 shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details and completed prior to the first occupation of the dwelling hereby permitted.
- 8) Any entrance gates erected shall be hung to open away from the highway only and shall be set back a minimum of 5.5 m from the carriageway edge.
- 9) Prior to commencement of development details of measures to prevent mud or other debris on the highway shall be submitted to and approved in writing by the Local Planning Authority. Such measures as agreed

Appeal Decision APP/V2255/A/12/2186021

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shall be implemented in full prior to the commencement of development and retained for the duration of construction works.

- 10) Prior to the commencement of development a contaminated land assessment (and associated remediation strategy if relevant), shall be submitted to and approved in writing by the Local Planning Authority. It shall comprise:
  - a) A desk study and conceptual model, based on the historical uses of the site and proposed end-uses, and professional opinion as to whether further investigative works are required. A site investigation strategy, based on the results of the desk study, shall be approved by the Local Planning Authority prior to any intrusive investigations commencing on site.
  - b) An investigation, including relevant soil, soil gas, surface and groundwater sampling, carried out by a suitably qualified and accredited and analysis methodology. consultant/contractor in accordance with a Quality Assured sampling.
  - c) A site investigation report detailing all investigative works and sampling on site, together with the results of analyses, risk assessment to any receptors and a proposed remediation strategy which shall be of such nature as to render harmless the identified contamination given the proposed end-use of the site and surrounding environment, including any controlled waters.
- 11) Before the dwelling is occupied, all remediation works identified in the contaminated land assessment and approved by the Local Planning Authority shall be carried out in full on site under a quality assured scheme to demonstrate compliance with the proposed methodology and best practice guidance. If, during the works, contamination is encountered which has not previously been identified, then the additional contamination shall be fully assessed and an appropriate remediation scheme agreed with the Local Planning Authority.
- 12) Upon completion of the works identified in the contaminated land assessment and before the dwelling is occupied, a closure report shall be submitted which shall include details of the proposed remediation works with quality assurance certificates to show that the works have been carried out in accordance with the approved methodology. Details of any post-remediation sampling and analysis to show the site has reached the required clean-up criteria shall be included in the closure report together with the necessary documentation detailing what waste materials have been removed from the site.
- 13) Prior to the commencement of development hereby approved, details of the method of disposal of foul and surface water shall be submitted to and approved by the Local Planning Authority. The approved details shall be implemented prior to the first occupation of the dwelling.
- 14) The garages shown on the approved drawings shall be kept available for the parking of vehicles and no permanent development, whether permitted by the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking or re-enacting that order) or not, shall be carried out in such a position as to preclude vehicular access thereto.

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11

Appeal Decision APP/V2255/A/12/2186021

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- 15) The existing concrete building on the appeal site shall be demolished and all materials removed from the site prior to the first occupation of the dwelling.
- 16) The development hereby permitted should be carried out in accordance with the following plans DHA/6696/01, DHA/9235/01, DHA/9235/02, DHA/9235/03, DHA/9235/04, DHA/9235 /05, DHA/9235/06 and DHA/9235/07.

<b>2.3 REFERENCE NO - 16/507575/FULL</b>			
<b>APPLICATION PROPOSAL</b> Conversion from B1 offices to a mixed use of A2 offices and 9 one bedroom residential apartments with external alterations			
<b>ADDRESS</b> Excelsior House Ufton Lane Sittingbourne Kent			
<b>RECOMMENDATION</b> Grant subject to conditions			
<b>SUMMARY OF REASONS FOR RECOMMENDATION/REASONS FOR REFUSAL</b> The application would not have an unacceptable impact upon residential, visual or highway amenities and would provide residential units in a sustainable location along with a limited number of additional jobs.			
<b>REASON FOR REFERRAL TO COMMITTEE</b> Called in by Cllr Truelove			
<b>WARD</b> Homewood	<b>PARISH/TOWN COUNCIL</b>	<b>APPLICANT</b> Wildwood Ltd <b>AGENT</b> Alpha Design Studio Limited	
<b>DECISION DUE DATE</b> 27/12/16	<b>PUBLICITY EXPIRY DATE</b> 30/11/16		
<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>
16/505541/FULL	Conversion from B1 offices to a mixed use of A2 offices and 9 one bedroom residential apartments with external alterations	Refused	19.10.2016
16/501387/PNOCLA	Prior Notification for change of use of existing office building into 10 residential apartments with on site parking. For its prior approval to: Transport and Highways impacts of the development. Contamination risks on the site. Flooding risks on the site.	Planning permission required (due to restrictive condition on original permission)	03.03.2016
SW/94/0098	Renewal of planning permission SW/89/96 for redevelopment for ten flats.	Approved	28.03.1994
SW/89/0096	Redevelopment of existing site with new offices and residential units.	Approved	03.05.1989

**MAIN REPORT**

**1.0 DESCRIPTION OF SITE**

- 1.01 Excelsior House is a two storey brick built building with an M shaped pitched roof located on a corner plot at the junction of Ufton lane and Addington Road. The footprint of the building measures 18.8m x 15.8m. Land levels rise from west to east resulting in the eaves height ranging between 5.3m and 6.6m from the ground level and the ridge height ranging between 8.3m and 9.6m.
- 1.02 The site has an existing car park to the rear and existing access which is taken from Ufton Lane.
- 1.03 The site is bounded on all sides by existing residential development.

## 2.0 PROPOSAL

- 2.01 This application seeks planning permission for the change of use from B1 offices to a mixed use development of 2 x A2 offices and 9 x 1 bed residential units.
- 2.02 The proposal would include 2 offices at ground floor level with associated kitchen and toilets and 3 residential units. The first floor would be comprised of a further 6 residential units.
- 2.03 Members may recall that a very similar application on this site for the same number of residential units and offices was reported to Planning Committee on 13<sup>th</sup> October 2016. Members resolved to refuse the application for the following reason:

*The development would not provide sufficient parking provision for the future occupiers of the residential units or A2 offices which would lead to an increase in on street parking levels giving rise to significant harm to the amenities of local residents. Therefore the proposal would be contrary to policies E1 and T3 of the Swale Borough Local Plan 2008.*

- 2.04 As a result of the above, the application has been re-submitted and now provides 6 x parking spaces for the proposed offices along with 9 x parking spaces for the residential units, with two shared private amenity spaces, a bike store and a bin store. The proposed internal alterations and the external alterations to the building would be similar to those proposed under 16/505541/FULL. However the external changes would involve additional openings at ground floor level and the obscuring of a number of windows on the first floor of the northern elevation of the building (facing Addington Road), additional openings on the southern elevation at ground and first floor level and at first floor level on the eastern elevation.

## 3.0 PLANNING CONSTRAINTS

- 3.01 None Relevant

## 4.0 POLICY AND OTHER CONSIDERATIONS

### The National Planning Policy Framework (NPPF)

- 4.01 The NPPF and the National Planning Policy Guidance (NPPG) both advocate provision of new residential development within sustainable urban locations close to local shops and services, subject to good design and no serious amenity issues being raised.

### Swale Borough Local Plan Adopted 2008

- 4.02 Policy E1 sets out standards applicable to all development, saying that it should be well sited and appropriate in scale, design and appearance with a high standard of landscaping, and have safe pedestrian and vehicular access whilst avoiding unacceptable consequences in highway terms;
- 4.03 Policy E19 states that the Borough Council expects development to be of high quality design and should amongst other requirements provide development that is appropriate to its context in respect of scale, height and massing, both in relation to its surroundings, and its individual details;

- 4.04 Policy B1 seeks to retain land and buildings currently in employment use unless it is inappropriately located; demonstrated by market testing that it is no longer suitable for employment use or there is insufficient demand or is allocated in the Plan for other purposes.
- 4.05 Policy H2 states that planning permission for new residential development will be granted for sites within the defined built up areas, in accordance with the other policies of the Local Plan.
- 4.06 Policy T3 states that the Borough Council will only permit development if appropriate vehicle parking is provided in accordance with Kent County Council parking standards.

#### The Swale Borough Local Plan Proposed Main modifications 2016

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

#### Supplementary Planning Guidance

- 4.08 The Conversion of Buildings into Flats & Houses in Multiple Occupation

### **5.0 LOCAL REPRESENTATIONS**

- 5.01 Objections have been received from 4 separate addresses raising the following summarised issues:
- The proposal will cause additional traffic in the surrounding area;
  - The proposal will exacerbate existing parking problems in the local area;
  - The residential units would overlook No.22 Nativity Close and No.2 Unity Street and cause a loss of privacy;
  - The proposal will lead to an increase in noise and pollution;
  - Fewer units should be proposed;
  - If approval is granted then the offices should never be allowed to be changed into residential units;
  - Obscure windows (facing Unity Street) should also be shown on the east elevation.

### **6.0 CONSULTATIONS**

- 6.01 **Kent Highways & Transportation** state that *“having considered the development proposals and the effect on the highway network, raise no objection on behalf of the local highway authority.”*

I did raise some concern in relation to the accessibility of some of the parking spaces and as such felt it prudent to clarify this. In response KCC Highways & Transportation stated *“The layout is a little tight to be fair, but acceptable. Considering that the previous application was solely refused on grounds of insufficient parking and that they have addressed this, I feel that there are no real grounds to object from a highways perspective.”*

- 6.02 **Environmental Health** raise no objection subject to an hours of construction condition.

- 6.03 **Cllr Truelove** stated *“I would like it to go to committee. It is over intensive development in a built up area, it will have an impact on neighbouring properties such as Nativity Close and despite the extra parking spaces it will add to the critical parking issues which already exist in the area.”*
- 6.04 **Cllr Horton** stated *“I am of the view that the changes largely address the original reason for refusal and this looks like a speculative second bite of the cherry. I am happy for this not to be called in and for the decision to be made under 'delegated' powers.”*

## **7.0 BACKGROUND PAPERS AND PLANS**

- 7.01 A Planning Statement has been submitted in support of the application which sets out that the one reason for refusal in the previous application has been addressed by the inclusion of 15 parking spaces. The Statement also includes an Executive Summary; Introduction; Site Appraisal; Design Strategy and Aspirations; Parking; Private Amenity Space; Sustainable Development and Conclusion.
- 7.02 Furthermore, the Statement includes a letter from Open House Kent Ltd which sets out the marketing strategy that has been undertaken in order to lease the buildings for office use. This includes advertising the building on the internet since January 2016 (this is the same letter that was submitted in support of the previous application 16/505541/FULL). The letter states that the premises are not big enough for most large companies who tend to occupy units on industrial estate. However, there has been interest expressed by a company in taking on part of the building for A2 use. This has been brought forward in the application.

## **8.0 APPRAISAL**

### **Principle of Development**

- 8.01 Policy B1 of the Swale Borough Local Plan 2008 deals with the retention of land and buildings in employment use. In this case, in order to satisfy this policy a letter from a local property agent has been submitted with the application. As set out above, this states that the property has been marketed for B1 office use, in my view for a sufficient period of time, however no firm offers have been received. The policy also sets out that in cases where changes of use are proposed for residential purposes a mixed use approach will also need to be assessed. In this case, alongside the residential element the scheme also proposes two A2 offices and as such, as referred to in the policy a mixed use approach to the site has been brought forward rather than a solely residential development. Additionally, the site lies within the built up area boundary and close to local services, amenities and public transport links. Based upon the above assessment I am of the view that the principle of development is accepted in this case.

### **Visual Impact**

- 8.02 The building on the application site will remain in situ with the external alterations being the obscuring of a number of the windows on the north elevation (discussed in more detail below relating to residential amenities), additional openings in the northern, southern and eastern elevations and the rendering of some of the external walls. There will also be some alterations to the part of the site currently occupied by the parking spaces which will involve a reconfiguration of the car park layout and the inclusion of two separate private amenity spaces, a bin store and bike store. The



entrance gates and wall will also be removed. However, the majority of these alterations to the existing layout will be largely hidden from public vantage points and would be additions typical of the surrounding residential area. Although the gates and wall are more prominent in the streetscene I do not consider the appearance of them to be of any particular significance and therefore I believe their removal is acceptable. As such, overall I do not consider that the proposal would have an unacceptable impact upon visual amenities.

- 8.03 In terms of the existing streetscene I note that the adjacent building, King Arthur Court is a development of flats. Therefore, although the majority of the remainder of the immediately surrounding area is comprised of single dwellings I do not consider that the introduction of flats into this location (along with an element of A2 use) would cause unacceptable harm to the character of the area.

### **Residential Amenity**

- 8.04 Concern has been raised locally regarding the impact that the proposal would have upon residential amenities in terms of overlooking and a loss of privacy. The application site is bounded on all sides by residential properties and therefore careful consideration is required in this regard. To the rear, the properties in Unity Street are approximately 21m away from the rear elevation of the host property. This is compliant with the Council's requirement for a rear to rear separation distance and therefore I do not believe that unacceptable levels of overlooking or a significant loss of privacy would occur between the proposed units and these properties.
- 8.05 The northern elevation of Excelsior House fronts Addington Road. However, due to the layout of Nativity Close, also located to the north, the rear elevation and private amenity space of No.22 faces towards the application site. As a result the rear elevation of No.22 Nativity Close is 19m away from the north elevation of Excelsior House. Although this is the flank elevation of Excelsior House it is noted that due to the internal layout of the building the windows at first floor level on this elevation would serve habitable rooms. At first floor level there are 9 windows on the north elevation and the drawings show that 6 of them will be obscure glazed. Although this means that 3 of the windows will remain clear glazed I have balanced this against the impact that could potentially be caused by a B1 use operating at first floor level, which could take place without requiring the benefit of planning permission. In my view, the overlooking that would be possible from the clear glazing that would remain in 3 of the windows would not be significantly worse than if the building was to be occupied by a business at first floor level and all of the windows remained as clear glazing. Furthermore, in terms of the future occupants of the development I believe that they would still have sufficient outlook due to each habitable room having at least one clear glazed window by virtue of other non obscured glazing on the other elevations and due to the 3 windows mentioned above.
- 8.06 I have assessed the proposed floor area of the residential units and they are in compliance with the overall floorspace requirements as set out in the SPG. As such I take the view that the development would provide suitable accommodation for future occupants. Due to the increase in parking provision from the previous scheme (16/505541/FULL) the private amenity space has been split into two smaller areas. This makes it slightly less usable in my view than the arrangement proposed in the previous application however, the site is only 320m away from Albany Recreation Ground. Therefore on balance, taking into account the amenity space that is being provided, along with nearby public open space I consider that this would be acceptable for the amenities of future occupiers.

- 8.07 In relation to the proposed use of part of the ground floor for A2 use I have consulted with the Environmental Protection team who raise no objection. As such, I consider that this element of the scheme would not give rise to unacceptable harm to the amenities of the occupants of the surrounding residential units. However, to ensure the Council has control over any future changes of use and the impact this might have I have recommended a condition which requires planning permission for such changes.

### Highways

- 8.08 As set out above, the previous application was refused due to a lack of parking provision. The application submitted under 16/505541/FULL included a total of 10 parking spaces (4 for the office use and 6 for the residential units). The application as now submitted includes a total of 15 parking spaces (6 for the offices and 9 for the residential units).
- 8.09 In relation to the parking spaces for the A2 use, the Kent Vehicle Parking Standards – Supplementary Planning Guidance 4 states that the *maximum* car parking standard for A2 uses is 1 space per 20sqm of floorspace. The application proposes 6 spaces for 126sqm of floorspace and in line with the comments of KCC Highways & Transportation I consider this to be an acceptable provision.
- 8.10 With regard to the residential units, I note the details contained within the *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. There is a clear distinction that can be made between town centre / edge of town centre areas and suburbs / rural areas in that *maximum* parking standards are applied to the former. The result of this is that essentially developments within the town centre / edge of town centre, as is the case with this site, would be acceptable even if no parking was proposed. Therefore, in this case, the development proposes a level of car parking for the residential units which would be acceptable even if the site was located in the least accessible rural location as set out in the Guidance.
- 8.11 I also refer to the appeal decision at 55 William Street, Sittingbourne (PINS ref 2156674) for four flats in an edge of centre location which provided no off street parking. Here the Inspector found that due to the sustainable location of the site and that as set out above, Kent County Council do not set a minimum parking requirement for this location that nil provision would be acceptable. The proposal now being considered provides 1 space per residential unit. When this is taken into account along with the adopted Guidance, the views of Kent Highways & Transportation and the Inspector's view on a similarly sustainable site I am of the very firm opinion that the reason for refusing the previous application would now not be defensible at appeal and leave the Council open to a potential claim for an award of costs if it was to refuse the application on this basis.

### Impact upon SPA and Ramsar Sites

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

### Other Matters

- 8.13 A number of the potential grounds for objection have been discussed within the assessment above however of those that remain I respond as follows. Although the site would increase vehicle movements in the area (as the site is currently vacant) I refer to the views of Kent Highways & Transportation who consider that the impact upon highway safety or amenity would not be unacceptable. Furthermore, in this built up area I do not consider the proposal would create unacceptable levels of noise or pollution. I consider that the site is able to accommodate the number of units proposed. Finally a condition has been imposed requiring permission to change the use of the A2 element of the floorspace.

### 9.0 CONCLUSION

- 9.01 As set out above, the application has now been amended from the previously refused scheme to include additional parking provision for both the A2 use and the residential units. I consider that the application would provide parking provision over and above the adopted requirements in this location and would not cause harm unacceptable harm to highway safety or amenities. The majority of the remainder of the scheme remains identical to the previous application and as a result I consider the proposal to be acceptable in relation to its impact upon residential and visual amenities. I also take the view that the application would provide residential units of a suitable size for future occupants in a sustainable location and contribute, albeit in a limited way to job creation in the Borough via the proposed A2 use. I recommend that planning permission is granted.

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

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

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

- 2) The development hereby permitted shall take place in accordance with the following drawings: 1363/P3 Rev A (received 26<sup>th</sup> October 2016) and 1363/P4 Rev B (received 7<sup>th</sup> November 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.

- 4) No development shall take place until details of the colour and type of rendering on the external walls shall be submitted to and agreed in writing by the Local Planning Authority.

Reason: In the interest of visual amenities.

- 5) Flats 7, 8 and 9 shall not be occupied until the obscure glazing as shown on drawing 1363/P4 Rev B (received 7th November 2016) has been installed. The windows shall remain obscure glazed in perpetuity.

Reason: n the interest of residential amenity.

- 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.

- 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) 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 (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 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.

- 10) 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.

- 11) Notwithstanding the Town and Country Planning (Use Classes) Order 1987 (as amended), the part of the building hereby permitted for Class A2 use (as shown on drawing 1363/P4 Rev B, received 7<sup>th</sup> September 2016) shall remain in that use in perpetuity.

Reason: In the interest of local amenity.

- 12) The opening hours of the A2 use hereby permitted shall be limited to Monday to Friday 07.00 – 19.00, Saturdays 07.00 – 17.00 and Sundays and Bank Holidays 09.00 – 16.00.

Reason: In the interests of residential amenity.

- 13) No dwelling shall be occupied or the approved A2 use commenced until space has been laid out within the site in accordance with the details shown on the submitted drawing for cycles to be parked and for bins to be stored.

Reason: To promote sustainable transport methods and in the interest of visual amenities.

### **Habitats Regulations Assessment**

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

The application site is located approximately 3.5km south-west of The Swale Special Protection Area (SPA) and Ramsar site and 5.5km south-east of Medway Estuary and Marshes Special Protection Area and Ramsar site both of which are European designated sites afforded protection under the Conservation of Habitats and Species Regulations 2010 as amended (the Habitat Regulations).

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

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

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

- Due to the scale of development there is no scope to provide on site mitigation such as an on site dog walking area or signage to prevent the primary causes of bird

disturbance which are recreational disturbance including walking, dog walking (particularly off the lead), and predation birds by cats.

- Based on the correspondence with Natural England, I conclude that off site mitigation is required. However, the Council has taken the stance that financial contributions will not be sought on developments of this scale because of the practicalities of securing payment. In particular, the legal agreement may cost more to prepare than the contribution itself. This is an illogical approach to adopt; would overburden small scale developers; and would be a poor use of Council resources. This would normally mean that the development should not be allowed to proceed, however, NE have acknowledged that the North Kent Councils have yet to put in place the full measures necessary to achieve mitigation across the area and that questions relating to the cumulated impacts on schemes of 10 or less will need to be addressed in on-going discussions. This will lead to these matters being addressed at a later date to be agreed between NE and the Councils concerned.
- Developer contributions towards strategic mitigation of impacts on the features of interest of the SPA- I understand there are informal thresholds being set by other North Kent Councils of 10 dwellings or more above which developer contributions would be sought. Swale Council is of the opinion that Natural England's suggested approach of seeking developer contributions on minor developments will not be taken forward and that a threshold of 10 or more will be adopted in due course. In the interim, I need to consider the best way forward that complies with legislation, the views of Natural England, and is acceptable to officers as a common route forward. Swale Borough Council intends to adopt a formal policy of seeking developer contributions for larger schemes in the fullness of time and that the tariff amount will take account of and compensate for the cumulative impacts of the smaller residential schemes such as this application, on the features of interest of the SPA in order to secure the long term strategic mitigation required. Swale Council is of the opinion that when the tariff is formulated it will encapsulate the time period when this application was determined in order that the individual and cumulative impacts of this scheme will be mitigated for.

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

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

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

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

- 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.

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<b>2.4 REFERENCE NO - 16/504755/FULL</b>			
<b>APPLICATION PROPOSAL</b> Erection of three agricultural buildings comprising of hay store, machinery and tractor, tool and workshop. SUBJECT TO AMENDED DRAWINGS A019-40 Rev B, A019-41 Rev A , A019-42 Rev B, A019-43 Rev A RECEIVED ON 2 <sup>ND</sup> DECEMBER 2016			
<b>ADDRESS</b> Equestrian Centre, Willow Farm, Hansletts Lane, Ospringe ME13 0RS			
<b>RECOMMENDATION</b> Grant subject to conditions and suitable amended plans			
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b> On balance the measures proposed with the attached conditions, would sufficiently screen the buildings so they would not cause harm to the landscape or the AONB and additionally the proposal would support a farming business that is thriving and contributing to the rural economy.			
<b>REASON FOR REFERRAL TO COMMITTEE</b> Parish Council Objection			
<b>WARD</b> East Downs	<b>PARISH/TOWN COUNCIL</b> Ospringe	<b>APPLICANT</b> Mr K Childs <b>AGENT</b> Urban & Rural Ltd	
<b>DECISION DUE DATE</b> 03/10/16	<b>PUBLICITY EXPIRY DATE</b> 10/01/17	<b>OFFICER SITE VISIT DATE</b> 10.01.2017	
<b>RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):</b>			
<b>App No</b>	<b>Proposal</b>	<b>Decision</b>	<b>Date</b>
SW/14/0321	Proposed renovation and extension of existing farm house, as well as replacement of existing outbuilding	Granted	14.05.2014
SW/06/1123	Equipment store	Granted	27.10.2006
SW/05/1472	Weather boarded equipment store	Granted	04.01.2006
SW/04/0284	Lawful Development Certificate (LDC) was granted for occupation of the bungalow without compliance with the original agricultural occupancy condition	Granted	
SW/01/0944	Demolition of pole barn type building and replacement with portal frame building on same site	Granted	

**MAIN REPORT**

**1.0 DESCRIPTION OF SITE**

- 1.01 Willow Farm is located on Hanslett's Lane within the Parish of Ospringe, Faversham, the site falls within the designated countryside and the Kent Downs Area of Outstanding Natural Beauty (AONB)
- 1.02 The farm as a whole covers over 43 acres (17 ha) and straddles the M2 with land on both sides being accessed by a motorway bridge in the centre of the site.

- 1.03 The main farmyard area consists of a country store, cafeteria, indoor riding school, machinery store, workshop, tool store, hay store and a few stables, some of which are currently used as storage units together with a general parking area, these are all in very close proximity to each other and accessed from Hansletts Lane.
- 1.04 The location for the proposed development is an area of land that lies just south of the M2, to the north of the main farmhouse and existing farm yard and buildings.
- 1.05 Willow Farm as a whole has evolved over a number of years and whilst it is still involved in farming practices it also offers farming supplies to the local rural community through the Gillett Cook Country Store located on the farm. Additionally there are many equestrian events now held on the farm making use of the existing indoor sand school which had undergone a major investment and renovation. This facility now provides year-round leisure and education service and the site has developed into a significant equine enterprise.

## **2.0 PROPOSAL**

- 2.01 The proposal is for the creation of a new farmyard located on an area of land that lies just south of the M2 and to the north of the main farmhouse and existing farm yard and buildings. It is proposed to comprise an area of hardstanding and the construction of a hay store measuring 60m X 15m X 4.5m to the eaves and 6.3m to the ridge, a machinery and tractor storage barn at 30m X 15m X 4.5m to the eaves and 6.3m to the ridge and a tool storage and work shop building 30m X 15m X 4.5m to the eaves by 6.3m to the ridge creating a total of 1800m<sup>2</sup> of floor space.
- 2.02 The application is accompanied by a design and access statement and additional information which set out the position at Willow Farm and the agricultural need for the proposal. Additional information was submitted later to clarify the business position and the actual requirement for the space in terms of hay and machinery storage. Additionally the design of all the buildings was amended to include a 1m overhang of the roof on all elevations.
- 2.03 It explained that the existing farm yard at Willow Farm comprises of a number of poor quality, modern agricultural buildings located in a publicly accessible area of the farm/equestrian facility. In order to minimise conflict with the horses, vehicles, machinery and the general public, this proposed scheme will move the farm storage barns away from the heart of the existing farm yard.
- 2.04 The farm currently has capacity to store up to 7500 small bales plus 300 4' rounds of dry storage with additional storage of 15,000 bales having to be rented at an alternative location at Hernhill. The applicant explains that as an expanding farm with the on-site shop they sell well over 15,000 bales per annum of small hay bales alone. Cutting hay is an income on the doorstep, and it is prudent in business terms to expand the on-site storage of both the machinery and the bales as this will make a significant improvement to both the efficiency and profitability of the farm business.
- 2.05 Additionally the buildings will provide room to reliably expand a key annual revenue to the farm as at present the farm cannot acquire the security of licences or tenancy agreements and turns away further acreage to cut as storage and handling cannot, in the present circumstances, be guaranteed, and certainly not on site.
- 2.06 The Machinery Store and the tool store and workshop will provide a secure locked store for the machines and tools necessary for the hay/straw making, the farming of the straw, bedding and hay silage which will then be stored within the proposed hay

store and for other on site farming operations. Many machines are currently stored under cover at Hernhill over the winter but cannot be kept out in the elements all year round and at present there is no covered storage of a sufficient size at Willow Farm to accommodate them.

- 2.07 The proposal is to erect three new agricultural buildings in a location away from the existing largely equestrian use of Willow Farm ,which will also represent part of the ongoing improvement to Willow Farm.
- 2.08 The applicant has future plans to utilise the existing buildings in the farmyard to refurbish them or replace them to provide additional diversification options to the farm business.

### **3.0 PLANNING CONSTRAINTS**

- 3.01 As noted above Area of Outstanding Natural Beauty KENT DOWNS

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

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

- 4.01 Para 16 advises that applications such as this should be considered in light of the need for the development, the scope for developing elsewhere and that any detrimental effects on the landscape be moderated.
- 4.02 Para 28 of the NPPF requires planning policies to promote and support the development of agricultural businesses but also gives great weight to conserving the landscape and scenic beauty of the AONB.
- 4.03 Para 115 requires that great weight should be given to conserving landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to landscape and scenic beauty.
- 4.04 Development Plan

The following policies from the Swale Borough Local Plan Adopted 2008 are relevant in the consideration of this application :

Policy E1, General Development Criteria,

Policy E6, The Countryside,

Policy E9, Protecting the Quality and Character of the Borough's Landscape, this policy relates to the Kent Downs AONB within the district and states that the Council's aim is to protect and enhance the quality, character and amenity value of the wider landscape of the borough.

However, *"suitably located and designed development necessary to facilitate the economic and social well-being of the area and its communities, will be permitted."*

Policy E19, Achieving High Quality Design and Distinctiveness

Policy RC1 Helping to Revitalise the Rural Economy relates to agriculture and recognises the need to support it and that *"the Local Plan is supportive of proposals*

*that allow farmers to diversify into new uses on the farm”* (Parag 3.130 Swale Borough Local Plan).

Policies DM3 (The Rural Economy), DM14 (General Development Criteria), DM24 (Conserving and enhancing valued landscapes), DM28 (Biodiversity) of the Emerging Swale Borough Local Plan “Bearing Fruits 2031” Proposed Main Modifications June 2016 are also relevant.

- 4.05 The Swale Landscape Character and Biodiversity Appraisal (Supplementary Planning Document Sept 2011) identifies that the site is located within the Faversham and Ospringe Fruit Belt and the area is characterised by its gently undulating landscape that steadily climbs southwards. Landscape structure is described as generally strong and intact.

Historically the large open fields are part of an open field system that was never enclosed. The field pattern is therefore described as generally intact, mixed, with irregular small to large-scale fields. Consequently intermittent long views are visible from high open areas, but are enclosed elsewhere.

The Faversham and Ospringe Fruit Belt is in a good condition with a land use mix of fruit orchards, some of which are non-intensive, and larger scale arable fields. The guidelines encourage the conservation and reinforcement of the landscape and built form.

Of relevance to this application it recommends that local and vernacular materials are used and suggests “corrugated sheeting on outbuildings and for building walls” and for new hedges and hedgerow trees - hawthorn, hazel, field maple, blackthorn, dog rose, crab apple, bullace, elder, damson and dogwood. For mixed woodland, shaws or other planting - pedunculate oak, ash, hornbeam, hazel, field maple and wild cherry.

## **5.0 LOCAL REPRESENTATIONS**

- 5.01 1 letter has been received from a neighbour. This is summarised below:

- have no objection to the construction of agricultural buildings on the site. At the moment my view of the site has the motorway in the background, with the hedge planting already completed and mature it could well be an improvement.
- I have concerns regarding the site access and the ramps either side of the motorway which are the property of the Highway Authority and their use is restricted to gaining access to the bridge. Will the applicant be using these?
- What I do not wish to find is that the farm track with which I access my caravan park and continues into the south west corner of the site becomes by default the access route.
- Given the inevitable 'usage creep' considerable heavy traffic could be generated which would be detrimental to me and my business as well as Hansletts Lane which at times struggles to cope with the school run.

## **6.0 CONSULTATIONS**

- 6.01 Ospringe Parish Council objected to the original proposal but commented again following the submission of the additional information and the revised drawings. They considered that an issue of potential concern for the Council, should be the extent of any risk as to the use of the buildings changing if, for example, the applicant were no

longer be able to secure sufficient annual licenses for making hay and baling straw to justify the building space.

- 6.02 They remain concerned that neither the need or size of the proposed buildings is justified by the landholding within the applicant's ownership or under the gentleman's agreements. They request, if planning permission is to be granted, that an enforceable condition or legal agreement is imposed specifically restricting the buildings to agricultural use.
- 6.03 They also comment that they believe Mr Lloyd-Hughes has assumed that the agricultural use of Willow Farm has ceased, which does not accord with the information submitted in support of the application which confirms that buildings and facilities within the existing farmyard are used for agricultural purposes.
- 6.04 The Council's Rural Agricultural Consultant caveats his comments on the following basis. That 1) the existing non-agricultural uses on the site are authorised, so that the buildings concerned (in the current "farmyard area") are no longer available, in practice, for agricultural use, and 2) it is considered necessary to separate out the farming activities from the diversified activities, such that the remaining agricultural uses within the existing buildings should be moved away.
- 6.05 On this basis, the proposed new buildings appear justifiable to accommodate the applicant's identified storage requirements for hay and straw, and associated machinery and equipment, arising from the applicant's particular business.
- 6.06 This business does largely rely, it appears, on continuing "gentleman's agreements" over the farmland concerned. An issue of potential concern for the Council, therefore, is the extent of any risk as to the use of the buildings changing if, for example, the applicant were no longer able to secure sufficient annual licenses for making hay and baling straw to justify the building space. He suggests a specifically agriculturally-related use could be, and should be, effectively reserved by a condition or legal agreement.
- 6.07 KCC Highways and Transportation comment that having considered the supplementary documentation provided and the effect on the highway network, raise no objection on behalf of the local highway authority.
- 6.08 KCC Public Rights of Way Officer commented that they were aware footpath ZR353 passes adjacent to the site and therefore is unlikely to have a significant impact on the path and thus raised no objections.  
But did issue informatives including, that no furniture may be erected on or across Public Rights of Way without the express consent of the Highway Authority. There must be no disturbance of the surface of the right of way, or obstruction of its use, either during or following any approved development. No hedging or shrubs should be planted within 1.5 metres of the edge of the public path.  
Finally that the applicant is made aware that the granting of planning permission confers on the developer no other permission or consent or right to close or divert any Public Right of Way at any time without the express permission of the Highway Authority.

## **7.0 APPRAISAL**

### **Principle of Development**

- 7.01 The applicant has explained in detail about the requirements on this farm for the new farm yard to be created and the construction of new buildings given the requirements of his agricultural business. I therefore accept with the advice from our independent Agricultural Consultant that there is an agricultural need and a business case for the additional buildings.
- 7.02 Para 28 of the NPPF requires, as noted above, planning policies to promote and support the development of agricultural businesses but also gives great weight to conserving the landscape and scenic beauty of the AONB. Para 116 advises that applications such as this should be considered in light of the need for the development, the scope for developing elsewhere and that any detrimental effects on the landscape be moderated.
- 7.03 Policy E9 of the Swale Borough Local Plan priorities the long-term conservation and enhancement of the natural beauty (including landscape, wildlife, and geological features) of the AONB as a national asset over other planning considerations and states that major developments will not be permitted unless there is a proven national interest and no suitable alternative sites.
- 7.04 Policy RC1 of the Swale Local Plan supports proposals that help diversify the rural economy and which provide rural jobs, particularly if they also include environmentally positive countryside management.
- 7.04 This is a thriving farming business which requires more on site storage for its farmed goods and its farming machinery to aid its viability. It will also reduce the level of travel to and from the site that currently exists through the use of other storage facilities around the borough. In addition to the farming business a successful equestrian facility on the site provides leisure activities and educational services and the businesses as a whole provides employment in this rural community.

#### **Visual & Landscape Impact**

- 7.05 A number of locations for the new farm yard were considered but the proposed position was thought to be the best location due to its natural screening to the rear of the proposed site, by the ramp to the existing motorway bridge, the existing access from the internal road system and it being a safe distance from the more public areas of the farm. However, the buildings, which are substantial will still be visible from the M2 motorway to the north and the nearby public footpath and from Hansletts Lane to the south.
- 7.06 A public footpath runs through the site across the motorway bridge to the north and then to the east of the application site and past the current main yard and towards Hansletts Lane.
- 7.07 However, the buildings will be screened to some degree from the footpath by the ramp to the bridge over the M2 motorway and by the land sloping away on the south side of the motorway and additionally by the established existing vegetation.
- 7.08 There is an existing established vegetation screen located to the rear of the proposed site adjacent to the motorway, which in time will grow to create a dense screen. In addition I have included a condition to ensure that whilst the existing field boundary is to be supplemented with new planting it will be of indigenous varieties to not only intensify the screening from the south but also to increase biodiversity at the site. The conifers in place at the moment are to be removed and whilst the design and access statement refers to Laurels being planted this will not be the case.

- 7.09 From a wider view from outside the site the buildings are likely to be visible however it is not unusual for such an arrangement of buildings to be visible in the rural area or in fact in the AONB. The area is characterised as a farming landscape and as such the proposal is appropriate.
- 7.10 The design of the buildings include a 1m overhang and are to be clad in Juniper Green (a dark green) cladding on the elevations and roof thus reducing their impact which accords with the guidance provided within the Character Landscape appraisal SPD.
- 7.11 I consider that the combination of these measures and the chosen location along with the topography of the site will sufficiently moderate the impact that the buildings would have on the AONB and the landscape in general.

### **Residential Amenity**

- 7.12 The site is in a relatively isolated position and as such the nearest residential properties are located adjacent to Hansletts Lane, over 280 m away from the site and as such the positioning of the barn to the north of the existing farm yard and buildings ensures it is a considerable distance from any residential properties as fields intervene and surround the site. I further consider that the measures outlined above and the contours of the land will serve to mitigate and screen the buildings to an acceptable degree, to not cause harm to the residential amenity of any nearby residents.

### **Highways**

- 7.13 The submission states that there will be no impact on the local highway network, in fact, as the use of other storage barns around the Borough will be reduced due to the facilities located on site this should result in a reduction in the number of trips from the site, particularly during harvesting and Members will have noted the comments of KCC Highways and Transportation on this application.

### **Landscaping**

- 7.14 The field currently has relatively sporadic vegetation screening along the boundaries, although the track up to the site, from the current main farmyard is well screened to the north. The proposed site plan shows extensive screening around the site and I have attached a condition to ensure not only that the current conifers are removed but are replaced with native species, not laurel as specified in the design and access statement, to supplement the existing vegetation but to provide adequate screening.
- 7.15 Furthermore, there is existing vegetation screening to the north adjacent to the M2 motorway which will be added to as part of the proposed landscaping scheme, which will help to provide screening to and from the motorway for the development.
- 7.16 I note the comments from the Parish Council however the advice from the Rural consultant did acknowledge that the buildings currently are in agricultural use and that this application is to move the agricultural storage away. I have however included a condition to ensure the buildings remains for agricultural use and storage by the farming business.

## **8.0 CONCLUSION**

8.01 There is a balance to be made between supporting agricultural businesses and the protection of sensitive landscapes, particularly given that the two are usually so interwoven. In this case, a strong business case has been presented by Willow Farm for the need to modernise the site and to safely ensure all the diversified uses can work together efficiently and safely. The machinery required at the farm and the capacity of hay storage the farm business requires has dictated the size of the proposed buildings and together with design and landscaping measures the impact of the barns on the landscape in general are minimised. The buildings are located to the north west of the main farmstead adjacent to the M2 motorway furthest away from any residential properties. In addition indigenous screening is to be provided along the boundaries screening the site from and to the M2 and to the surrounding land with the additional benefit of providing increased biodiversity to the area. The colouring of the materials on the building are to be appropriate and any views across the landscape and the AONB will be mitigated by this and by supplementing the existing screening around the field.

8.02 On balance I consider that the measures proposed with the attached conditions, would sufficiently screen the buildings so they would not cause harm to the landscape or the AONB and additionally the proposal would support a farming business that is thriving and contributing to the rural economy and is therefore acceptable.

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

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

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

(2) The development hereby permitted shall not be carried out otherwise than in complete accordance with the approved plans nos: A019-01 Rev A, A019-02 Rev A, A019-40 Rev B, A019-41 Rev A, A019 42 Rev B and A019-43 Rev A and specifications.

Reason: For the sake of clarity and in the interests of proper planning

(3) No development shall take place until full details of soft and hard landscaping works including details of the removal of the conifers currently planted around the application site have been submitted to and approved in writing by the Local Planning Authority .These details shall include existing trees, shrubs and other features , a planting schedule 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 surface materials and an implementation programme.

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

(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 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.

- (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 amenities of the area and encouraging wildlife and biodiversity.

- (6) Details in the form of British Standards or commercial specifications of the proposed colouring of the external facing walls, doors and roofing materials shall be submitted to and approved by the Local Planning Authority before the development is commenced.

Reason: In the interest of visual amenity.

- (7) Details in the form of cross-sectional drawings through the site, of the existing and proposed site levels shall be submitted to and approved in writing by the Local Planning Authority before work commences and the development shall be completed strictly in accordance with these approved details.

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

- (8) The hereby approved buildings shall be for the storage and use of agricultural materials and machinery associated only with the farming activities at Willow Farm

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

The Council's approach to this application:

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

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>2.5 REFERENCE NO - 16/508023/FULL</b>		
<b>APPLICATION PROPOSAL</b> Erection of new bungalow to include access.		
<b>ADDRESS</b> 10 Western Avenue Halfway Kent ME12 3BS		
<b>RECOMMENDATION</b> – GRANT subject to conditions		
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b> The proposal would represent sustainable development and would not cause any unacceptable harm to the character and appearance of the area or to neighbouring amenities, and would comply with the development plan.		
<b>REASON FOR REFERRAL TO COMMITTEE</b>  This application has been referred to committee by Cllr Beart as he shares many of the concerns raised by the objector at No 12 Western Avenue.		
<b>WARD</b> Queenborough And Halfway	<b>PARISH/TOWN COUNCIL</b>	<b>APPLICANT</b> Mr Quinton Searle <b>AGENT</b> MSD Architects
<b>DECISION DUE DATE</b> 14/02/17	<b>PUBLICITY EXPIRY DATE</b> 27/01/17	
<b>RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites): No Relevant history</b>		

**MAIN REPORT**

**1.0 DESCRIPTION OF SITE**

- 1.01 No 10 Western Avenue consists of a detached bungalow on a roughly square shaped corner plot at the junction of Western Avenue and Hilda Road. The site measures roughly 21m x 23m in area. The site is flat, with amenity space to the front and sides. The rear of the site provides a parking area with access to a double garage, and vehicular access onto Hilda Road. The property is surrounded by a low boundary wall to Western Avenue, which continues in part on Hilda Road before rising to a 1.8m high fence and gates towards the rear of the site.
- 1.02 Western Avenue is a residential road comprising a mix of dwellings, largely semi detached, with a small number of detached dwellings and a small terrace of three dwellings. The dwellings are all two storeys other than No 10. Most properties have parking to the front, although some properties are sited closer to the road and do not appear to have any off-street parking.
- 1.03 No 38 Hilda Road is sited to the rear of the property and is also a bungalow. The remainder of properties on Hilda Road are two storey dwellings.

**2.0 PROPOSAL**

- 2.01 This application proposes to erect a bungalow on land to the side of the existing bungalow and adjacent to No 12 Western Avenue. The new plot would measure 8 metres in width and 23 metres in length.
- 2.02 The proposed building would be a 1 bed bungalow, of 5.6 metres in width, 10.5 metres in length and 4.2 metres in height to the ridge. The building would be of simple

rectangular design under a hipped roof with a render finish to the elevations. It would be sited 1 metre from the side boundaries of the newly created plot and would maintain a distance of 2 metres to the flank elevations of the existing dwellings at No 10 and 12.

- 2.03 The front building line of the proposal would follow that of No's 10 and 12, and parking would be provided to the front of the site. A garden in the region of 6.3 metres depth would be provided to the rear.
- 2.04 The existing double garage to No 10 would be removed to make way for the proposal.

### **3.0 PLANNING CONSTRAINTS**

- 3.01 Within built up area
- 3.02 SSSI Impact Risk Zone

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

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

- 4.01 Paras 7, 8, 11, 12, 14 (achieving / presumption in favour of sustainable development), 17 (core planning principles), 47, 49, 50 (delivering a wide choice of high quality homes), 56, 59, 60 (good design), 186, 187 (decision taking), 196, 197 (determining applications) & 216 (weight to emerging policies).

#### National Planning Policy Guidance (NPPG)

- 4.02 Design

#### Development Plan

- 4.03 The adopted Swale Borough Local Plan 2008 – SP1 (sustainable development), SP4 (housing), SH1 (settlement hierarchy), E1 (general development criteria), E19 (achieving high quality design and distinctiveness), H2 (providing for new housing), T3 (vehicle parking).
- 4.04 The emerging Swale Borough Local Plan Bearing Fruits 2031 (Proposed Main Modifications June 2016) – ST1 (sustainable development), ST3 (the Swale settlement strategy), ST6 (Isle of Sheppey Strategy), CP3 (delivering a wide choice of homes), CP4 (requiring good design), DM7 (vehicle parking), DM14 (general development criteria), DM19 (sustainable design and construction)

### **5.0 LOCAL REPRESENTATIONS**

- 5.01 10 letters of objection have been received raising the following concerns –
- Loss of light / overshadowing to living room of no. 12
  - The proposed kitchen window would be sited close to the lounge window of no.12, and would result in overlooking, noise and smells
  - The garage to be demolished contains asbestos
  - Loss of street parking to accommodate the new vehicle access.
  - Lack of parking in area
  - Loss of parking for no 10 Western Avenue
  - A telegraph pole would need to be removed to accommodate the access
  - Existing trees, shrubs and hedges at the front of the site are not shown

- The proposed dwelling would be squeezed in between two properties and would not be in keeping with the street scene.
- Lorries and refuse vehicles often have to mount the pavement to get through the road, causing damage
- Western Avenue has taken its share of new housing developments
- Disruption during construction

## 6.0 CONSULTATIONS

### Kent County Council Highways and Transportation

- 6.01 I confirm that the new dwelling's parking requirement is 1 space; the provision of 2 spaces is indicated on the plans. In this location, the existing dwelling's parking requirement would also be 1 space (for a 2 bed house), which appears to be adequately provided for, on the hard standing at the rear of the property. Both the existing and new dwellings can provide their own off street parking facilities. KCCT Highways and Transportation do not consider the potential impact of the loss or one or two informal parking spaces on the street sufficient grounds for refusal on highway terms.

## 7.0 APPRAISAL

### Principle of Development

- 7.01 The site is located within the built confines of Halfway. Policy SP4 of the adopted plan promotes the more efficient use of land within the defined built up boundaries. Halfway forms part of the wider West Sheppey Triangle settlement area under policy ST3 of the emerging plan. Paragraph 4.3.84 which supports Policy ST6 (The Isle of Sheppey strategy) of the emerging plan recognises that a range of infill and other small scale housing opportunities will be presented at existing settlements. On this basis, the principle of development in this settlement is supported by the adopted and emerging development plan, subject to the impact of the proposal on the local environment.

### Visual Impact

- 7.02 Western Avenue is an established residential road, consisting largely of two storey semi detached dwellings but with a number of exceptions to this, including the existing bungalow at No 10. This property also occupies a significantly wider plot than other dwellings on the road, at some 22 metres, with a separation gap of around 10 metres between the existing bungalow and the flank wall of No 12. Typically, the semi detached dwellings to the north of No 10 occupy plots of 6-7 metres in width, with visual gaps between buildings of 2-2.5 metres. The small visual gaps between buildings are also a feature elsewhere in the road.
- 7.03 The proposed development would create a plot for the new bungalow of 8 metres in width. The position of the bungalow on the plot would provide a separation distance of 2 metres to the flank wall of No.s 10 and 12. This would be comparable to and in keeping with many plot widths and separation distances between buildings elsewhere on the road – as set out above. The front building line of the dwellings on the eastern side of the road from No.s 10 to 24 is very regular – and the proposed bungalow would also follow this line.

- 7.04 The design of the building as a bungalow would not follow the prevailing two storey character of the road. Nonetheless, it would form a small group of three bungalows together with 10 Western Avenue and 38 Hilda Road, and given the existence of these two buildings I do not consider that the erection of a further bungalow could be held to cause unacceptable harm to the appearance of the road. The proposed bungalow would incorporate a hipped roof which would follow the roof form of Western Avenue, and the elevations would be rendered as is the case with No 10.
- 7.05 The plot would be much shorter in length than surrounding plots. However it would provide a modest rear garden for a 1 bed unit, which would be acceptable in amenity terms. I do though recommend removing permitted development rights for alterations, extensions and outbuildings in order to preserve this garden space. The smaller length of the garden, being screened to the rear of the plot, would not have any material effect on the appearance or perception of the plot size when viewed from Western Avenue, and on this basis I do not consider this would create a harmful visual impact.
- 7.06 The proposal would accommodate parking at the front of the property, and this is a common feature on the road.
- 7.07 Policies E1 and E19 of the adopted plan, and policies CP4 and DM14 of the emerging plan seek for developments to be well designed and of appropriate scale, design and appearance. In my opinion, the form and scale of the building would be in keeping with the two adjacent bungalows, and the plot width and separation distance between the proposed bungalow and two existing dwellings on either side would be comparable with other properties on the road. On this basis I consider the impact of the development on the character and appearance of the area to be acceptable and in accordance with the above policies.

### **Residential Amenity**

- 7.08 Policies E1 of the adopted plan and DM14 of the emerging plan state that all development will cause no demonstrable / significant harm to amenity.
- 7.09 No 12 Western Avenue is sited immediately to the north and the proposed development would be sited 2 metres from the flank wall of this property. At ground floor level, there is a window in this elevation serving the lounge to No 12. The lounge is also served by another window in the rear elevation of the property.
- 7.10 The proposed bungalow, at 2 metres distance from this window, would be likely to impact upon light provision. However given the low height and form of the bungalow, I consider such impact would be relatively limited. Taking into account the presence of another window in the rear elevation that serves the lounge to No 12, I do not consider that the impact on light provision to No 12 would be unduly harmful.
- 7.11 The proposed dwelling would incorporate a kitchen window in the side elevation. This would not directly face towards the lounge window at 12, but would be sited close to it. Although there would be an intervening fence between the two properties, the windows would rise above the fence line. In this instance, I consider that overlooking between windows could be possible, but that this could be mitigated by requiring the kitchen window to be of obscure glazing.
- 7.12 As the proposed bungalow would not project beyond the front of rear building line of No 12, it would have no impact on windows on any other elevations of this property.

- 7.13 Similarly, No 10 has a ground floor window facing towards the proposed building at a separation distance of 2 metres. This window currently serves a bedroom. The level of light reaching this window would also be impacted by the development, however again the effect of this would be limited by the single storey nature of the development. On balance I consider this impact to be acceptable.
- 7.14 No 38 Hilda Avenue is sited to the rear of the plot and at a 90 degree angle to the proposed dwelling. As a result, the windows in the rear elevation of No 38 would not face towards the proposal. A gap of around 7 metres would be maintained between the rear elevation of the proposed bungalow and No 38. Given the siting and orientation of the buildings, the single storey nature of the proposed bungalow and the distance involved, I do not consider it would cause any unacceptable loss of light or outlook to No 38. Standard boundary treatments between buildings would prevent any overlooking relationships in this instance.
- 7.15 Taking the above into account, I am of the opinion that the development would not unacceptably harm residential amenities and would comply with the above development plan policies.

### **Highways**

- 7.16 The proposed bungalow would be served by a single parking space via a new access onto Western Avenue. The garage to the existing bungalow at No 10 would be removed as part of the scheme, however two parking spaces are shown to be retained to this property, using the existing access onto Hilda Road. The level of parking shown would accord with the Kent County Council Interim Guidance note 3 on residential parking, which requires 1 space (per unit) to be provided for 1 and 2 bed units in such locations.
- 7.17 A number of objections have been received by local residents relating to parking / parking pressure. The development would provide appropriate off-street parking in accordance with the above-mentioned standards. The creation of a new access would result in the potential loss of a parking space on the roadside, and it is acknowledged that the local roads are relatively heavily parked as a number of properties do not benefit from off-street parking. However, the impact of removing a street space would be low and I do not consider it would justify refusal of this application. Likewise KCC Highways and Transportation do not consider the loss of street parking that would arise to be objectionable.
- 7.18 A number of objections also refer to issues of refuse lorries and other large vehicles needing to mount pavements to negotiate the road, due to its limited width. As the proposal would provide / retain vehicle parking, I do not consider that the development would be likely to worsen any existing highways conditions.

### **Landscaping**

- 7.19 The site benefits from some landscaping although local residents have pointed out that this landscaping is not shown on the submitted plans. From my site visit I have noted that the landscaping is accommodated to the front and side of the dwelling. Whilst it is likely that most, if not all the existing landscaping within the application site would be removed, this is generally ornamental landscaping and not of high amenity value. An area for new landscaping at the front of the property is shown on the submitted plans, and I consider this to be acceptable.

### Other Matters

- 7.20 Matters raised by local residents regarding asbestos removal are not controlled under the planning legislation. The relocation of the telegraph pole would be a matter for the developer to agree with the relevant utilities company.
- 7.21 The development would add to the stock of dwellings in proximity to the Swale Special Protection Area. Policy DM28 of the emerging plan provides the highest level of protection to such sites and requires that such developments shall only proceed when in accordance with relevant Directives, Conventions and Regulations. Residential development is identified as increasing recreational impacts upon birds within the SPA. In this instance, the development has been screened out of the need for contributions towards the Strategic Management and Monitoring Strategy in accordance with the Council's agreed strategy. This is set out in the HRA attached to this report.

## 8.0 CONCLUSION

- 8.01 This is a relatively small plot, but in my opinion there would be no demonstrable harm to the street scene and character / appearance of the area through the development proposed. Some impact would arise on light provision to neighbouring windows, although this would be limited, and would also be offset in the case of No 12 by the presence of another window in the rear elevation serving the lounge. The development would provide and retain off street parking for both the proposed and existing house. Whilst the proposal would lead to the loss of on street parking I do not consider this would be of such effect to make the scheme unacceptable, particularly when weighed against the presumption in favour of sustainable development within the NPPF. Overall, I do not consider that the proposal would be in conflict with the development plan.

## 9.0 RECOMMENDATION – GRANT Subject to the following conditions

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

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

- (2) Prior to the commencement of development, details in the form of samples of external finishing materials to be used in the construction of the development hereby approved shall be submitted to and approved in writing by the Local Planning Authority and shall be implemented in accordance with the approved details.

Reason: In the interest of visual amenity.

- (3) The development hereby permitted shall be carried out in accordance with the following approved plans: 1291 001C

Reason: To ensure the development complies with the terms of the planning permission.

- (4) 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: In the interests of the amenities of the area, due to the constrained size of the plot.

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

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

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

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

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

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

- (8) The area shown on the submitted plan as car parking space shall be provided prior to first occupation of the development and 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.

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

- (9) The development hereby permitted shall not be occupied until vehicle parking for the existing dwelling at No 10 Western Avenue, as shown on the approved drawings, has been provided and made available for such use.

Reason: To ensure the existing dwelling is provided with car parking, as without so is likely to lead to car parking inconvenient to other road users.

- (10) Before the development hereby permitted is first used, the proposed kitchen window in the north facing elevation of the dwelling hereby permitted shall be obscure glazed and shall be incapable of being opened except for a high level fanlight opening of at least 1.7m above inside floor level and shall subsequently be maintained as such.

Reason: To prevent overlooking of adjoining properties and to safeguard the privacy of neighbouring occupiers.

## INFORMATIVES

- (1) Any asbestos present on site must be removed in accordance with the Control of Asbestos Regulations 2012

### **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.

### **Habitat Regulations Assessment**

This HRA has been undertaken without information provided by the applicant. The application site is located approximately 2Km from The Swale Special Protection Area and Ramsar site which is a European designated site, 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 where the proposal is not necessary for the management of the European sites and that subject to a financial contribution to strategic mitigation, proposals are 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 past correspondence with Natural England, I conclude that off site mitigation is required. However, the Council has taken the stance that financial contributions will not be sought on developments of this scale because of the practicalities of securing payment. In particular, the legal agreement may cost more to prepare than the contribution itself. This is an illogical approach to adopt; would overburden small scale developers; and would be a poor use of Council resources. This would normally mean that the development should not be allowed to proceed, however, NE have acknowledged that the North Kent Councils have yet to put in place the full measures necessary to achieve mitigation across the area and that questions relating to the cumulated impacts on schemes of 10 or less will need to be addressed in on-going discussions. This will lead to these matters being addressed at a later date to be agreed between NE and the Councils concerned.
- Developer contributions towards strategic mitigation of impacts on the features of interest of the SPA - I understand there are informal thresholds being set by other North Kent Councils of 10 dwellings or more above which developer contributions would be sought. Swale Borough Council is of the opinion that Natural England's suggested approach of seeking developer contributions on minor developments will not be taken forward and that a threshold of 10 or more will be adopted in due course. In the interim, I need to consider the best way forward that complies with legislation, the views of Natural England, and is acceptable to officers as a common route forward. Swale Borough Council intends to adopt a formal policy of seeking developer contributions for larger schemes in the fullness of time and that the tariff amount will take account of and compensate for the cumulative impacts of the smaller residential schemes such as this application, on the features of interest of the SPA in order to secure the long term strategic mitigation required. Swale Council is of the opinion that when the tariff is formulated it will encapsulate the time period when this application was determined in order that the individual and cumulative impacts of this scheme will be mitigated for.

Whilst the individual implications of this proposal on the features of interest of the SPA will be extremely minimal in my opinion as this is for a single 1 bed dwelling, cumulative impacts of multiple smaller residential approvals will be dealt with appropriately by the method outlined above.

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

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>2.6 REFERENCE NO - 16/505788/FULL</b>			
<b>APPLICATION PROPOSAL</b>			
Alteration and extension of existing care home comprising demolition of existing plant room, 2 storey annexe and part of northern wing. New single storey south extension, single storey north extension and, erection of 3 storey annexe facing Minster Road.			
<b>ADDRESS</b> Barton Court New Road Minster-on-sea Kent ME12 3PX			
<b>RECOMMENDATION</b> Grant subject to conditions			
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b>			
The proposal would provide much needed improved care facilities for the elderly within the built-up area boundary and is therefore acceptable in principle. The design of the extensions would be of a modern architecture and the element facing Minster Road has been amended to complement the character of the street scene. The development would therefore be of an acceptable design with no detriment to the visual amenities of the surrounding area. The scheme would also have no undue impact on residential amenities or highway safety and amenity.			
<b>REASON FOR REFERRAL TO COMMITTEE</b>			
Parish Council objection.			
<b>WARD</b> Sheppey Central	<b>PARISH/TOWN</b> Minster-On-Sea	<b>COUNCIL</b>	<b>APPLICANT</b> Mr & Mrs Gilmour <b>AGENT</b> Jhd Architects
<b>DECISION DUE DATE</b> 27/10/16	<b>PUBLICITY EXPIRY DATE</b> 21/12/16	<b>OFFICER SITE VISIT DATE</b> 09.11.16	
<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/12/0265	Demolition of existing care home, residential property (451 Minster Road) and part of garage court to rear. Proposed erection of a phased new-build care home.	Approval	28.05.2012

**MAIN REPORT**

**1.0 DESCRIPTION OF SITE**

- 1.01 Barton Court Care Home is a 34-bed care home facility for the elderly. The site is 0.56 ha and is bordered to the north by Minster Road and to the south by New Road. New Road provides the main vehicular access into the site and the car park. Visitors can only access the site from this entrance. There is a secondary access from Minster Road with a very small parking area to the front of the existing building and only staff can access the building from this entrance.
  
- 1.02 The Minster Road side frontage comprises 453 Minster Road, a two-storey building dating from early 1900s. The building is architecturally pleasing though in somewhat of a poor state of repair. The building is in use at ground floor as office accommodation ancillary to the care home but much of the building is unused. Attached to this building on its rear elevation on the eastern side is a single-storey corridor constructed circa 1950s leading to the remainder of the care home site; this

comprises a central two-storey section and three single-storey annexes leading from the main central core section.

- 1.03 The topography of the site is notable. The land inclines from west to east, meaning that the properties either side of the care home and fronting Minster Road, are set lower and higher than the site by some 1.5-2m. The land also inclines from south to north meaning that the rear part of the site is lower by 1.6m. The land then slopes downwards again by approximately 0.5m towards the car park.
- 1.04 On the eastern side is no.455 Minster Road, which is a care home for people with learning disabilities. It has a large single storey extension stretching along almost the entire boundary with a ground level that is approximately 2m higher than the application site. To the south of the site is 451 Minster Road. It is currently owned by the applicant but is being sold as a separate dwelling and does not form part of the proposal for the expansion of the care home.
- 1.05 The wider area is predominately residential comprising a mix of residential property styles, designs and ages.

## **2.0 PROPOSAL**

- 2.01 This proposal is for two new single storey extensions and a replacement three storey annexe to an existing care home that would be specifically designed for elderly dementia care. The concept of the design would allow improved, flexible communal and living space for the residents with a new reception area. Five external safe and secure courtyard areas would be provided to allow residents to access these outdoor spaces. The two single storey extensions would provide 17 additional bedrooms and the proposed three storey annexe fronting Minster Road would provide an additional 25 bedrooms. Six bedrooms would be lost as a consequence of this development. In total the proposal would provide 70 bedrooms, a net increase of 36 bedrooms. All bedrooms would exceed the minimum standard of 12 sq m suggested by the Care Quality Commission. The proposal would add 635 sq m to the footprint of the care home.
- 2.02 The proposal would create 30 new jobs for the local community. Unlike the previous scheme that was approved in 2010, the building would not be entirely demolished and would allow the care home to remain open during construction works. The submitted landscaping plan shows that 30 parking spaces would be provided within an extended parking area. Six trees (mostly old fruit trees and none that are of particularly good amenity value) would have to be removed to enable this parking provision but some replacement tree planting is proposed. A new hedge would also be planted along the eastern boundary and the boundary to the south would be planted with a mixed hedge to add to the existing trees.
- 2.03 The ground floor of the three storey annexe would be at a lower ground level than the existing two storey annexe that is to be demolished. This means that the ridge height of the proposed annexe would be approximately 300mm lower than the existing building. The existing plant room would be demolished and a new plant room provided at basement level.
- 2.04 The proposed finishing materials would be brick, metal cladding and synthetic slate tiles to the roofs. The single storey elements of the design would have low pitched roofs concealed behind parapet walls. The design of the annexe facing onto Minster Road has been amended to better complement the character of the street scene. It would have a central flat roof area with two hipped roofs either side. The windows

would be brown uPVC. This annexe is required to be self-contained because it *may* be used to accommodate those in need of assessment/rest-bite care following a stay in hospital. Such accommodation is likely to be required more and more in the future (as a consequence of the general ageing of the population) and Barton Court care home is seeking to pre-empt this need.

**3.0 SUMMARY INFORMATION**

	<b>Existing</b>	<b>Proposed</b>	<b>Change (+/-)</b>
Site Area (ha)	0.56 ha	No change	0
Approximate Ridge Height (m)	Max 8m	Max 9.6 m from lowered ground level	+ 1.6m but 300mm lower than exiting building based on existing ground level
Approximate Eaves Height (m)	5.4m	8m from lowered ground level	2.6m
No. of Storeys	Max 2	3	+1
Footprint	1,689 sq m	2,342 sq m	+ 653 sq m
Parking Spaces	Approx. 10	28	18
No. of bedrooms	34	70	36

**4.0 PLANNING CONSTRAINTS**

Potential Archaeological Importance

**5.0 POLICY AND OTHER CONSIDERATIONS**

5.01 Swale Borough Local Plan 2008: SP1 (sustainable development); SP7 (community services and facilities); E1 (general development criteria); E19 (high quality design); E24 (alterations and extension); T3 (vehicle parking); C1 (existing and new community services and facilities).

5.02 Bearing Fruits 2031 Swale Borough Local Plan Proposed Main Modifications June 2016: ST1 (sustainable development); ST6 (The Isle of Sheppey area strategy); CP4 (good design); CP6 (community facilities and services to meet local needs); DM7 (vehicles parking); DM14 (general development criteria); DM16 (alterations and extensions).

5.03 National Planning Policy Framework and National Planning Policy Guidance.

**6.0 LOCAL REPRESENTATIONS**

6.01 No representations have been received from local residents.

**7.0 CONSULTATIONS**

7.01 Minster-on-Sea Parish Council had originally objected to the application on the grounds that the design is overbearing and not in keeping with the street scene of Minster Road on the approach to the historic centre of Minster. They have since commented on the amended plans and support the application but this support is

subject to the provision of double yellow lines along the part of Minster Road outside the application site and a sign preventing staff from parking there. They do acknowledge the need for the facility.

- 7.02 Kent Highways and Transportation have no objection to the proposal subject to conditions to: retain the 30 parking spaces shown on the amended plans; retain the cycle spaces shown on the amended plans; wheel washing facilities during construction and; provision of loading and turning facilities for construction vehicles.
- 7.03 Kent Police recommend that the applicant contacts them to discuss the crime prevention aspects of the scheme and highlights the need to consider BREEAM and Secure by Design at the design stage.
- 7.04 Kent Flood and Water Management note that the proposed development is served by a public water sewer and would have a low flood risk.
- 7.05 Southern Water comment that the exact position of the public sewers much be determined on site before the layout of the proposed development is finalised. Should the applicant wish to divert sewers, there must be a clearance of 3-5m provided. They recommend a condition to ensure the protection of the foul sewer and note that if a sewer is found during construction, an investigation of its condition will be required. They do not consider that there is sufficient sewage capacity in this area for the development and recommend a condition for a drainage strategy detailing the means of foul disposal. They also recommend an informative to ensure that the developer enters into formal agreement with them to provide the necessary sewage infrastructure. In commenting on the proposed basement, they recommend a condition to ensure that the drainage takes into account the possibility of surcharging. They request that a wastewater grease trap is provided on the kitchen waste pipe or drain and that the details of surface water drainage are submitted. They confirm that they can provide a water supply to the site and recommend an informative to alert the applicant to the need to formally apply to them for connection to the water supply.

## **8.0 BACKGROUND PAPERS AND PLANS**

Planning Statement; Design and Access Statement; proposed plans and elevations; existing plans and elevations.

## **9.0 APPRAISAL**

### **Principle of Development**

- 9.01 This development would provide much needed additional accommodation for the elderly who require specialise dementia care. A total of 36 additional bedrooms would be provided at the existing care home. The Planning Statement notes that there will be an increasing need for this type of elderly care in the future and that there is currently a limited supply of dementia care facilities in Kent. It is also worth noting that the additional 36 bedrooms can count towards housing supply for the Borough which will help in demonstrating that we can meet local need.
- 9.02 The entire demolition of the 2.5 storey building fronting Minster Road (no. 453) is necessary to ensure that the additional accommodation can be provided at this site. The existing building is not able to provide the space required for the additional bedrooms and would require a lot of internal and external alterations to enable it to be used for accommodation associated with the care home. This would be uneconomical.



- 9.03 Members should note that under the previous planning approval for the redevelopment of the entire site, the demolition of no. 453 was accepted. Although it is an old building with a pleasant architecture, it is not of sufficient merit to warrant retention in my view and I am mindful of the significant limitations that its retention would impose on the care home site.
- 9.04 The application site is located within the urban area and is close to local amenities and is within the relatively large population of Minster. I consider that the development would be sustainable in this respect. The acute need for dementia accommodation and housing in general is noted. I therefore consider that the development would be acceptable in principle.

### **Visual Impact**

- 9.05 The proposal has been amended to address concerns about the impact of the proposed three storey annexe on the street scene of Minster Road. The annexe as initially proposed had a very modern appearance with a very shallow pitched roof hidden behind parapet walls. Officers (and the Parish Council) felt that this design did not relate well to the properties either side of the site and the street scene in general along this part of Minster Road. It would have been a very imposing building and the architect was asked to address these concerns. The amended design has introduced more brick to the elevations, has set the building back within the site by 1m and has added two hipped pitched roofs either side of a central flat roof section. I consider that this design respects the form of the properties either side and would successfully add to the mix and quality of architecture within the street scene. It is acknowledged that the design of the annexe would be different and of a more modern architecture than the adjacent buildings but Minster Road does have a mix of building types and designs and I consider that this development will simply add to this mix successfully. It would add a 21<sup>st</sup> Century architecture to the area, which will add interest to the street scene in my view.
- 9.06 In terms of the scale of the proposed annexe fronting Minster Road, owing to the changes in ground level within the site and also the land either side of the site, the building would sit comfortably within the site in my view. The ridge height would actually be 300mm lower than the existing building and would be the same height as the adjacent chalet bungalow to the east and only slightly higher than the two storey property to the west. The annexe would also be positioned so that its front elevation would be in line with the property to the east and behind the dwelling to the west. The front and flank elevations have a good amount of articulation to break-up these façades and create shadow lines. I consider that all of these factors combine to ensure that the scale and bulk of the proposed annexe is appropriate.
- 9.07 The proposed extensions to the existing building would be single storey only. They would be of a modern architecture with the shallow pitched roofs hidden behind parapet walls, with metal cladding and roof lantern features. The design of these elements of the proposal would be different to the surrounding houses but would be much less prominent within the street scene than the annexe as they would be single storey and would only be glimpsed from New Road and not seen at all from Minster Road. The design of the extensions would complement the now amended design of the three storey annexe and would enhance the overall appearance of the care home when viewed from the main entrance point. I consider that these elements of the proposal would be of a good design that would have no detriment to the visual amenities of the surrounding area.

- 9.08 The proposal would see the loss of some trees within the site (as described at paragraph 2.02 above), primarily to enable the enlargement of the car park. This is a shame but I note that additional trees and hedges would be planted within the site and I have recommended a condition to ensure that the soft (and hard) landscaping details are submitted to the Council. There would still be a substantial area of green space to the front of the building and this will ensure that there is a good quality setting for the care home as well as encouraging some wildlife. Members will note condition (19) below.

### **Residential Amenity**

- 9.09 The proposed annexe would be adjacent to a residential home for people with learning disabilities to the east. This neighbouring property is set on a higher ground level than the application site by approximately 2m. Given the use of this adjacent property which will tend to have a more flexible internal arrangement than a domestic house, and the difference in ground levels, I do not consider that the proposed annexe would have a significant or unacceptably harmful impact on the amenities of this adjacent property in terms of overshadowing, overlooking or an overbearing impact. It is acknowledged that the proposed annexe would be 7m closer to this adjacent property than the existing building and that there would be a greater impact as a consequence. However, the annexe would still be 4 m from this adjacent building and I do not consider that this impact would result in material harm to amenities of the users of this adjacent property. The proposed single storey extension would be 3m from the eastern boundary and would be set at a much lower ground level than the adjacent building. As such, it would have no undue harm to the windows within the long rear extension to this neighbouring care home. I have asked for a hedge to be planted along this boundary to improve the outlook for the future residents of the scheme and also the residents of the adjacent care home. This will also provide some privacy between the two homes.
- 9.10 The dwelling to the west is currently owned by the applicant but is being sold as a domestic dwelling. This property has its garden to the west and southwest side, which is the other side of the dwelling to the proposed annexe and would therefore have relatively little impact on this amenity space in terms of an overshadowing, overlooking or an overbearing impact. The part of this neighbouring property closest to the proposed annexe is a double garage and there are no windows within the flank elevation as a consequence. I consider that the proposed annexe would be a sufficient distance from the windows within the rear elevation of the neighbouring property to ensure that there would be no undue impact on residential amenities. I am also mindful that the proposed annexe will be set at a lower ground level than the current site levels and that this will reduce the impact further.
- 9.11 The proposed single storey extension to the south of the site would form the reception area and provide some bedrooms with windows looking out towards the open space and the car park. I have carefully considered the relationship between this extension and no. 94 New Road. This is a domestic dwelling that fronts onto New Road and has a fairly short rear garden, the side of which bounds the grounds of the care home. The proposed extension, although single storey, would be set on a higher ground level than no. 94 New Road by approximately 0.5m. As such, there would be some elevated view of the rear of no. 94 from the propose extension. However, this neighbouring property has at least two fairly large sheds in the rear garden which would limit views of the rear garden and I have asked the applicant to plant some small-medium sized trees adjacent to the boundary of this property which would limit views even further. Moreover, there would be a distance of 18 m between

the proposed extension and the rear of no. 94, again limiting the impact of overlooking even further.

- 9.12 I have also asked the applicant to provide further planting along the southern boundary of the site with no. 98 New Road as the car parking is to be extended in this area and extra the landscaping here will limit the noise from cars and limit the impact from headlights.
- 9.13 In terms of the overall intensity of the use of this site, I do not consider that this would be significantly increased, or increased to the extent that there would be demonstrable harm to local residents. The nature of the use is relatively low-key with residents remaining within the buildings or the small courtyards for the majority of the time. The main increase in activity would be from an increase in visitors and staff arriving at the site. The majority of this activity would be concentrated within the car park area/New Road entrance to the site. Such activity would be unlikely to be so intense that it would cause undue disturbance to local residents in my view and would be likely to be concentrated during the day as opposed to the evenings or during the night when background noise levels would be lower. I therefore consider that there would be no undue harm to the residential amenities of the residents living close to the site as a consequence of this proposal.

### **Highways**

- 9.14 The proposal will see the creation of an enlarged parking area within the site with 30 parking spaces (28 from the New Road access and 2 from Minster Road) formally laid-out with an additional disabled parking space. At present there are no formal parking spaces set out within the site, although there is space for roughly ten cars to park on a concrete hardstanding. As such, there would be a good increase in the number of parking spaces to cater for the additional visitors and members of staff. Kent Highways and Transportation are supportive of the application providing that these 30 spaces are provided and retained (Members will note condition 11 below). They consider that this number of spaces is sufficient to cater for the increased use. They also recommend the provision of cycle parking which the applicant has shown on the plans.
- 9.15 The Parish Council have asked for double yellow lines to be provided outside the property along Minster Road. This is in response to their concern about existing staff associated with the care home parking along this part of Minster Road and "adding to the serious congestion problem in that area." They also ask for signage to prevent staff from parking along this part of Minster Road. I have given this suggestion due consideration but do not consider that such a requirements would be necessary or reasonable. The need for an extension of the double yellow lines at this point has not been identified by Kent Highways and Transportation. On my site visit I noted that the majority of cars parked along this part of Minster Road were associated with the school and not the care home. That is not to say that care home staff have not parked here in the past. However, given the fact that the proposal includes the extension of the parking area with access from New Road and that this additional parking is considered to cater sufficiently for the increased number of staff, I do not consider that the request by the Parish Council is necessary. Moreover, such a requirement for double yellow lines would be the subject of a Traffic Regulation Order which is a process outside of the planning system with works required to land outside of the applicant's ownership and could not simply be added as a condition to the planning permission.

- 9.16 Kent Highways and Transportation have not raised concerns in respect of an increase in traffic using the local roads as a consequence of this expansion and I do not anticipate that there would be any significant highways safety or amenity issues in this case.

### Other Matters

- 9.17 Members will have noted the comments from Southern Water in respect of the impact on sewage pipes, sewage capacity and surface water drainage. I have incorporated their requests for further information into condition (18) below.
- 9.18 The Parish Council mention the proximity of the site to the historic centre of Minster. The application site is some 257m from Minster Abby, a Grade I listed building. I therefore consider that the proposal would have no impact on the setting of this designated heritage asset.

## 10.0 CONCLUSION

- 10.01 The proposal would provide much needed dementia accommodation for the elderly with 36 additional bedrooms provided. The development has been designed to improve the living and working environment for the care home staff and residents at the same time as increasing the capacity to accommodate new residents. The site has two frontages with accesses from Minster Road and New Road. The proposed building fronting onto Minster Road is of a modern design and has been amended to better reflect the character and form of the buildings along this stretch of the road. I consider that the amended design will successfully complement the street scene while the modern design of the proposed single storey extensions would improve the appearance of the care home overall with little impact on the street scene along New Road.
- 10.02 The proposal would have no undue impact on the residential amenities of adjacent properties in my view and the parking would be increased to adequately cater for the increase in visitors and members of staff as a consequence of this proposal.
- 10.03 Drainage and surface water can be adequately dealt with by the submission of additional details which have been required by condition. I therefore consider that subject to the conditions below, planning permission should be 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 approved shall be carried out in accordance with the following approved drawings: 232B-PA.02-A; 232B-PA.03-D; 232B-PA.07-A; 232B-PA.08; 232B-PA.09; 232B-PA.10-A; 232B-PA.11; 232B-PA.12-A; 232B-PA.13; 232B-PA.14-A; 232B-PA.15-A; 232B-PA.16-A; 232B-PA.17-A.

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

3. Details in the form of cross-sectional drawings through the site, of the existing and proposed site levels shall be submitted to and approved in writing by the Local

Planning Authority before work commences and the development shall be completed strictly in accordance with the approved levels.

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

4. Prior to the commencement of development hereby approved, the applicant, or their agents or successors in title, shall secure 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 specification and timetable which has been submitted to and approved in writing by the Local Planning Authority.

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

5. The premises shall be used for the purpose of a residential care home or nursing home and for no other purpose, including any other purposes in Class C2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended).

Reason: In the interests of the amenities of the area

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

Reason: In the interests of residential amenity.

7. No construction work in connection with the development shall take place on any Sunday or Bank Holiday, nor on any other day except between the following times:- Monday to Friday 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.

8. 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.

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

Reason: In the interests of highway safety and convenience in accordance with policy T1 of the Swale Borough Local Plan 2008.

10. Adequate precautions to be previously agreed in writing by the Local Planning Authority, shall be taken during the period of demolition and construction to prevent the deposit of mud and/or other debris on the public highway.

Reason: In the interests of highway safety and convenience.

11. The area shown on the submitted plan as car parking, turning space and cycle parking 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) Order 1995 (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/cycle access thereto; such land and access thereto, and the cycle shelter as shown on drawing no. 232B-PA.03-D shall be provided prior to the first use of the extensions/annexe 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 detrimental to amenity.

12. 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, where possible), 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.

13. 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.

14. 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.

15. Prior to the commencement of development hereby approved, details in the form of samples of external finishing materials to be used in the construction of the development hereby approved shall be submitted to and approved in writing by the Local Planning Authority and shall be implemented in accordance with the approved details.

Reason: In the interest of visual amenity.

16. No dust or fume extraction or filtration equipment, or air conditioning, heating or ventilation equipment shall be installed until full details of its design, siting, discharge points and predicted acoustic performance have been submitted to and approved by the Local Planning Authority.

Reason: To safeguard the amenities of nearby residential properties.

17. The extensions/annexe hereby approved shall be constructed to BREEAM 'Very Good' Standard or an equivalent standard and prior to the use of the building the relevant certification shall be submitted to the Local Planning Authority confirming that the required standard has been achieved unless otherwise agreed in writing by the Local Planning Authority.

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

18. Prior to the commencement of development hereby approved, full details of the method of disposal of foul and surface waters, including details of: any requirement to divert/protect public foul sewers within the site; an implementation timetable for foul drainage; details of how the proposal take into account the possibility of surcharging within the public sewerage system; the provision of a wastewater grease tap to the kitchen waste pipe or drain; shall be submitted to and approved by the Local Planning Authority. The approved details shall be implemented before the first use of the development hereby permitted.

Reason: In order to prevent pollution of water supplies and localised flooding.

19. Prior to the commencement of development hereby approved, a report demonstrating how the proposal will incorporate measures to encourage and promote biodiversity and wildlife shall be submitted to and approved in writing. Development shall be carried out in accordance with those approved details and shall thereafter be retained.

Reason: In the interests of promoting wildlife and biodiversity and wildlife in urban areas.

## INFORMATIVES

1. The applicant is advised to consider the information contained with the Southern Water letter dated 23<sup>rd</sup> August 2016, the letter from Kent Highways and Transportation dated 8<sup>th</sup> December 2016 and, the letter from Kent Police dated 2<sup>nd</sup> August 2016.

### 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 amended to address Officer's concerns regarding design.

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>2.7 REFERENCE NO - 16/507788/FULL</b>		
<b>APPLICATION PROPOSAL</b>		
Change of use of land for the creation of hardstanding and siting of 16 mobile homes for 52 weeks of the year for occupation by seasonal rural workers and associated engineering works		
<b>ADDRESS</b> Howt Green Sheppey Way Bobbing Kent ME9 8QP		
<b>RECOMMENDATION</b> That Members delegate to Approve the application subject to Southern Gas Networks removing its objection and any subsequent requirements it may have.		
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b>		
The development would be acceptable in principle given the agricultural need and as this proposal is an alternative to the caravans allowed under appeal reference APP/V2255/W/15/3133538. Subject to appropriate landscaping and the provision of fences along the boundaries, the impact on visual and residential amenities would be limited. The impact on highway safety/amenity would be insignificant in my view.		
<b>REASON FOR REFERRAL TO COMMITTEE</b>		
Parish Council objection		
<b>WARD</b> Bobbing, Iwade And Lower Halstow	<b>PARISH/TOWN COUNCIL</b> Bobbing	<b>APPLICANT</b> AC Goatham And Son <b>AGENT</b> Bloomfields
<b>DECISION DUE DATE</b> 02/01/17	<b>PUBLICITY EXPIRY DATE</b> 9/1/17	<b>OFFICER SITE VISIT DATE</b> 9/12/16
<b>RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):</b>		
<b>App No</b>	<b>Proposal</b>	<b>Decision</b>
SW/03/0201 & SW/04/0579	Fruit box and machinery store and chill store extension to this building respectively.	Approved
SW/07/1388	Erection of a steel frame building to the rear of the site containing long-term storage for English Apples and Pears under.	Approved
SW/08/1321	Variation of condition to allow the storage of fruit grown in Swale, not just on A C Goatham's farms.	Refused
SW/09/0386	Variation of condition to allow the storage of fruit grown in Swale, not just on A C Goatham's farms.	Approved
SW/10/1570	Increase in hardstanding area, soil bund with additional landscaping and provision of 16 no. seasonal workers caravans including hardstanding and vehicular parking.	Approved
SW/11/0764	Erection of 65m in length close boarded fence 2-3 m height.	Approved
SW/13/0501	Controlled temperature fruit store with associated hardstanding and extension to general purpose building to provide office, WCs and laundry.	Approved
SW/13/0728	Temporary portacabin for laundry use.	Approved
14/505985/FULL	Proposed change of use of land for the creation of hardstanding to site 16 mobile homes for 52 weeks of the year for occupation by seasonal	Refused and allowed on appeal under reference APP/V2255/W/15/31335

	agricultural workers along with associated engineering works.	38
16/501913/PNQCL A	Prior notification for the change of use of a building and land within its curtilage from an agricultural use to a use falling within Class C3 (dwelling-houses) and building operations reasonably necessary to convert the building For it's prior approval to: - Transport and Highways impacts of the development. - Contamination risks on the site. - Flooding risks on the site. - Noise impacts of the development. - Whether the location or siting of the building makes it otherwise impractical or undesirable for the use of the building to change as proposed. - Design and external appearance impacts on the building.	Prior approval granted.
16/507231/FULL	Retrospective application for extended period for temporary portable cabin for laundry use.	Approved.
16/507789/FULL	Provision of a cold store building, extension to an existing building to provide lean-to for agricultural storage purposes, irrigation lagoon and electricity substation.	Current.

## MAIN REPORT

### 1.0 DESCRIPTION OF SITE

- 1.01 The application site lies within the countryside and within the Strategic Gap between Sittingbourne and the Medway Towns. There are no special landscape designations that cover the application site. It is to the northwest of Sittingbourne and to the south of Iwade. It lies opposite the entrance to a small cluster of industrial units. To the south west of the proposal is the site of a proposed cold store and to the north a lagoon and a lean-to extension to an existing cold store as proposed under current application 16/507789/FULL which is also on this agenda.
- 1.02 The site of the proposed caravans would be adjacent to Sheppey Way and within the eastern corner of a complex of buildings associated with the farming activities at Howt Green Farm (see planning history above).

### 2.0 PROPOSAL

- 2.01 This following proposal is an alternative to the caravans allowed under appeal reference APP/V2255/W/15/3133538. This application seeks planning permission for the change of use of land for the creation of hardstanding and siting of 16 mobile homes for 52 weeks of the year for occupation by seasonal rural workers and associated engineering works. The workers will undertake general horticultural operations on farms in the Swale area including; harvesting, packing, tree pruning and topping. Mowing, spraying, replanting and orchard maintenance. The total number of workers would not exceed 50 persons.

- 2.02 The proposed caravans were in place at the time of my site visit.
- 2.03 A typical mobile home on the site will measure 3.3m high and will have a length of approximately 10m and a width of 3.7m. The size of each unit will fall within the definition set out in the Caravan Act. Each unit will be at least 6m apart. The mobile homes will be painted dark green.
- 2.04 The location of the proposed mobile homes is approximately 15m to the north east of those approved under appeal APP/V2255/W/15/3133538. The proposal mobile homes have been positioned where they are directly away from the main working yard but close enough to group together with the built form of the site and still make them easily accessible and within easy reach of the surrounding orchards.
- 2.05 A 2m high timber fence will be built to the north east of the mobile homes with retained orchards beyond. A 3m high acoustic fence would be erected on the Sheppey Way frontage with proposed reinforcement planting. The collection and drop off point for staff will remain to the north west of the site by the mobile homes approved under application SW/10/1570. The position of the mobile homes will allow connection to mains power and mains sewer.

### **3.0 PLANNING CONSTRAINTS**

- 3.01 The application site is approximately 11m from a High Pressure Gas Pipeline.

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

- 4.1 The National Planning Policy Framework (NPPF) sets out at paragraph 14 that at the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking.
- 4.2 Paragraph 18 states that the Government is committed to securing economic growth in order to create jobs and prosperity, building on the country's inherent strengths, and to meeting the twin challenges of global competition and of a low carbon future.
- 4.3 Paragraph 22 states that planning policies should support economic growth in rural areas in order to create jobs and prosperity by taking a positive approach to sustainable new development. To promote a strong rural economy, local and neighbourhood plans should:
- support the sustainable growth and expansion of all types of business and enterprise in rural areas, both through conversion of existing buildings and well designed new buildings;
  - promote the development and diversification of agricultural and other land-based rural businesses.
- 4.4 National Planning Practice Guidance (NPPG) – Natural Environment; Noise; Travel plans, transport assessments and statements in decision-making and; Use of planning conditions.

#### Swale Borough Local Plan Adopted 2008:

- 4.5 Policies E1 - general guidance regarding design and amenity, E6 – countryside, E7 – strategic gap, E9 – protection of landscape, E10 – trees and landscaping, E11 - biodiversity, E14 – development involving listed buildings, E19 – high quality design, B1 – supporting and retaining existing employment land and businesses, B2 –

providing new employment, RC1 – helping to revitalise the rural economy, RC5 – agricultural dwellings, T1 – vehicular access and T3 – vehicular parking.

- 4.6 Supplementary Planning Document – Swale Landscape and Biodiversity Appraisal (adopted 2011).

Emerging Local Plan Bearing Fruits 2031 Main Modifications version June 2016

- 4.7 ST1; CP1; CP7; DM3; DM7; DM12; DM14 & DM32.

**5.0 LOCAL REPRESENTATIONS**

- 5.01 Four letters of objection have been received which are summarised as follows;
- The caravans are already in place therefore permission should be refused.
  - The application form has not been completed accurately with regards to trees.
  - Concerns have been raised about the site access and evidence provided but the applicants business is politically powerful so harm to residential amenity and road safety is ignored.
  - Harm to highway safety.
  - Some workers have vehicles- complaints have been made to the Police and Council re anti social behaviour in vehicles being raced on the farm.
  - Contrary to Policy E9.
  - Harm to flora and fauna.
  - Harm to amenity and noise pollution.
  - The farm overwhelms the local population.
  - Local services cannot cope with additional population.
  - The workers overwhelm to local population fourfold and do they pay National Insurance/ Council Tax/ Business Rates?
  - Noise pollution from farm vehicles.
  - Crop spraying is a health hazard for all and is not eco-friendly.
  - No other industry would be allowed to ride roughshod over the well being of its neighbours and justify it on the grounds of its economic benefit.
  - The site stores fruit from farms other than those owned and managed by Gotham's therefore permission should be refused.
  - The applicants' vulnerability in the market place is not a material planning consideration. Other companies are in this situation and do not benefit from favourable decisions by the planning officers.
  - The scale of the wider site is too large compared to Howt Green and should lead to refusal.
  - The traffic predictions are misleading therefore permission should be refused.
  - The applicant has destroyed woodland recently.
  - Existing farm activities cause disturbance to locals.
  - Applicant convicted for occupation of caravans without gas safe certificate.
  - Comments relating to other current application provided including store and lagoon.
  - Ribbon development should be refused.
  - Officers should not make their recommendation known. Councillors should vote, then officers defend that decision. Officers decision to not defend an overturned recommendation is a cop out and evidence of corruption within the planning office.
  - There is a large water bowser on site that may need permission.
  - Councillors should not be intimidated by planning officers or the application. They will be supported by the public provided they do what is right, as under the last

application despite being allowed by the Inspector which was down to lack of support from officers.

## 6.0 CONSULTATIONS

6.01 Bobbing Parish Council objects to the application “on the grounds of further loss of agricultural land. This is a retrospective application as the caravans are already in situ.”

6.02 The Council’s Environmental Health Manager comments;

*“the proposal has the potential for behavioural noise to affect the amenity of neighbouring residential properties, especially considering the location of the caravans close to the front boundary of the site. The increase in the number of seasonal workers has the potential to increase noise levels. Further consideration should be given to the management of the site and the workers and the continuation of the 3m high acoustic fence along the boundary of the site including the new hardstanding proposed for the seasonal workers. It may also be beneficial to move the area designated for staff collection and drop off to a point further away from residents to protect them from early morning disturbances. In addition they recommend a condition to control the hours of construction. They have confirmed that there have been no complaints from local residents to their department in respect of noise from the existing seasonal workers caravan at this site.”*

6.03 Hours of construction and noise mitigation conditions are recommended.

6.04 The Council’s Agricultural Adviser confirms his advice in his letter dated 9/1/15 under the previous application applies to this proposal as follows;

*“As previously explained regarding SW/10/1570, the applicants rely heavily on a large workforce of Eastern European temporary student labour, and it is common for larger, intensive fruit farms to have organised “camps” for such seasonal harvest workers. The permitted camps are a convenient way for UK growers and packers to temporarily accommodate necessarily large numbers of short-term workers from abroad.*

*The context is that agricultural workers may occupy caravans on farms as “permitted” development during a particular season (e.g. for fruit picking), but planning consent is required for any out-of-season storage of vacant caravans (as opposed to moving them off site), or for any longer periods of occupation that would be regarded as work “out-of-season”.*

*As indicated in the submissions, the need for A.C. Goatham & Son to have additional seasonal workers’ accommodation, based at Howt Green Farm, appears to genuinely arise from its increasing labour requirement as referred to above. It is understood that the applicants would accept equivalent conditions regarding the nature and periods of occupancy, to those applied to SW/10/1570.”*

6.05 KCC Ecology advises a contribution towards mitigation of the impact on the Swale SPA, SSSI and Ramsar Site is required (The site is located 1.8km away). It confirms no further information is required prior to determination of the application. Advice relating to breeding birds, lighting and enhancements is provided.

6.06 KCC Highways and Transportation note the similarities with the allowed appeal. Given the lack of change regarding highway matters no objection is raised subject to the appeal decision conditions being imposed.

- 6.07 The Health and Safety Executive does not advise against the grant of planning permission on safety grounds.
- 6.08 The Environment Agency makes no comment.
- 6.09 Southern Water requires an informative regarding a formal application for connection to the public foul sewer system and a condition regarding the means of foul and surface water drainage.
- 6.10 Southern Gas Networks formally objects to the application until such time as its local engineer has commented on the application.

## **7.0 BACKGROUND PAPERS AND PLANS**

- 7.01 The application includes;
- Planning, Design and Access Statement.
  - Preliminary Ecological Appraisal.
  - Biodiversity Enhancement Strategy.
  - Landscape and Visual Appraisal.
  - Flood Risk Assessment and Surface Water Design.
  - Environmental Noise Measurement Report.
  - Traffic Statement

## **8.0 APPRAISAL**

### **Principle of Development**

- 8.01 Allowed appeal APP/V2255/W/15/3133538 is a very significant material consideration in the determination of this application. Whilst the Inspector did not discuss the principle of development in detail, the fact that the appeal was allowed demonstrates that he considered the principle of development innately acceptable otherwise the appeal would not have been allowed. This proposal is an alternative to that allowed on appeal. In my view, there is a clear need for this additional season workers accommodation given the increase in the area farmed by this enterprise and the subsequent increase in labour demands as follows. AC Goatham & Sons farm 1925 acres of top fruit in Kent with an additional 1850 acres worth of top fruit from 20 partner farms. At the time the proposed caravans were first proposed under application 14/505985/FULL, as refused and allowed at appeal, the business comprised 1750 acres of top fruit in Kent together with its partner farms. At the time of the appeal the applicant and its partner farms produced 75000 bins of top fruit and it was forecast that by 2019 this will have increased to just short of 120000 bins. Adopted Local Plan Policy E6 permits agricultural development within the countryside and the NPPF seeks to secure a prosperous rural economy in order to create jobs and prosperity via growth and expansion of business and enterprise. The NPPF requires local plans to promote development of agricultural businesses. For these reasons the principle of development is acceptable.

### **Character and Appearance**

- 8.02 The Inspector's decision focusses primarily on the effect of the proposal on the character and appearance of the area. I will follow suit whilst taking into account the repositioning of the proposal slightly further to the north east.

- 8.03 The application site is located adjacent to Sheppey Way and the caravans are in place. There are a number of larger warehouse type buildings on the site which are used to store agricultural produce and equipment from the enterprise. The area surrounding the buildings is used for the storage of produce in wooden crates and for the turning and storage of tractors and other vehicles with areas of hardstanding. To the rear of the site there are 16 existing mobile homes, with associated parking area. Public vantage points are provided from Sheppey Way and the restricted Byway ZU48A, from which, it is clear that the site is used for agricultural purposes.
- 8.04 The proposed location of the mobile homes would be in the south-eastern corner of the site. This is partially screened by an established hedge along the road. Indeed, as the mobile homes are already in place and painted dark green it is possible to assess the actual visual impact from Sheppey Way. The officer site visit was conducted in December when very few leaves were left on the trees and bushes along the road frontage. Despite this, the presence of the mobile homes is not immediately apparent from roadside vantage points to the south west such as the Dancing Dog Public House and north east such as the FloPlast Depot. The caravans are visible through the gaps in the existing vegetation when one is stood at a perpendicular angle to the site. The reinforced soft landscaping and 3m high acoustic fence proposed along this frontage would certainly mitigate the visual impact from the road, help to reduce noise pollution and disturbance issues and is necessary in my opinion. The 2m high fence that would run perpendicular to the road would also be beneficial to visually contain the site. I consider that a planning condition could reasonably be used in order to ensure that the current landscaping is reinforced, which would lessen the visual impact from the road and byway.
- 8.05 The visibility of the proposal also needs to take account of the backdrop of the larger agricultural buildings to their rear; which would also lessen their prominence within the street scene. Both of these factors would help to reduce the visual impact, and would mean that the proposed development would not appear as an incongruent feature at odds with the agricultural and rural landscape adjacent to the Sheppey Way .
- 8.06 In my opinion, the provision of 16 mobile homes for seasonal agricultural workers and associated engineering works would not result in material harm to the character and appearance of the area. Accordingly the proposed development would accord with Policies E1, E9 and E19 of the Swale Borough Local Plan 2008, which, amongst other aims, seek to ensure that developments are well sited and of a scale, design and appearance that is appropriate to the location with a high standard of landscaping. It would also accord with the aims of the National Planning Policy Framework, which seeks to ensure that planning policies support economic growth in rural areas in order to create jobs and prosperity.

### **Residential Amenity**

- 8.07 The proposal is located on the opposite side of Sheppey Way from the nearest residential dwellings, St Anton and Layfield Cottages, a distance of approximately 40m, and following the completion of the proposed landscaping scheme there would be an intervening 3m high acoustic fence with additional soft landscaping to the road frontage. Howt Green Cottages are approximately 60m to the north east and there would be an intervening 2m high fence and orchards. The drop off and collection point would remain to the north-west near the first group of workers caravans. As per the appeal, a condition requiring this to be the sole pick up and drop off point would be reasonable in order to protect nearby residential amenity. The impact on residential amenity would be acceptable in my opinion.

## Highways

- 8.08 KCC Highways and Transportation raises no objection to the proposal subject to the imposition of the conditions attached to the appeal decision. Given the scale of development is the same as that allowed at appeal, I repeat the Inspectors findings that *“the local highways authority is satisfied that the proposal would have more than an insignificant impact on the highway, and I see no reason not to concur given the scale of the development proposed.”* The impact on highway safety and convenience acceptable in my opinion.

## Other Matters

- 8.09 The preliminary ecological appraisal recommends no further species specific surveys. The submitted Biodiversity Enhancement Strategy details appropriate enhancement measures. These assessments are acceptable to KCC Ecology. I note the Inspector allowed the previous appeal subject to lighting and enhancement conditions which are adapted below. The Inspector did not mention a need for a SAMM contribution, and as this development is not a major development I do not consider it necessary in this instance. I consider ecological matters acceptable.
- 8.10 Foul water would be connected to mains sewers and surface water would simply drain to the surrounding ground. Both measures are acceptable in my opinion. I do not consider the foul and surface water condition Southern Water recommends necessary given that a foul connection has previously been agreed by Southern Water and that surface water would drain to the surrounding ground. I do attach the recommended informative.
- 8.11 The Health and Safety Executive raises no objection to the proximity and number of mobile homes in relation to the high pressure gas pipeline to the north east. The risk to human life is acceptable in my opinion. Southern Gas Networks objects until its local engineer has been able to consider the proposal, which is in the process of happening. I seek delegation to approve the application subject to SGN removing its objection and any subsequent requirements it may have.
- 8.12 I do not consider the proposal to result in a significant loss of best and most versatile agricultural land. The proposal would enable the efficient farming of the wider agricultural unit therefore the small loss of BMV is entirely justified in my opinion. The nature of the development does not sterilize the land beneath, as in bricks and mortar development, and could return to agricultural use in the future.
- 8.13 The Council’s Environmental Health Manager raises no objection on noise grounds. He has considered the submitted noise assessment and recommends the mitigation condition below.

## 9.0 CONCLUSION

- 9.01 The development would be acceptable in principle given the agricultural need and as this proposal is an alternative to the caravans allowed under appeal reference APP/V2255/W/15/3133538. Subject to appropriate landscaping and the provision of fences along the boundaries, the impact on visual and residential amenities would be limited. The impact on highway safety/amenity would be insignificant in my view.

- 10.0 RECOMMENDATION** – That Members delegate to approve the application subject to Southern Gas Networks removing its objection and any subsequent requirements it may have and the following conditions;



- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 07, 10, 12 and 06 J7/01043.

Reason: For the sake of clarity and in the interests of proper planning.

- 2) The 2m high timber fence to the north east of the mobile homes and the 3m high acoustic fence, soft landscaping reinforcements, log pile and owl box to the south east of the mobile homes as shown on drawing numbers 3830/DR 001 "Plan showing ecological enhancements" and 3830\_DR\_002, and as described in the submitted Biodiversity Enhancement Strategy shall be constructed, installed and planted within 3 months of the date of this decision, and shall thereafter be retained. Any trees, shrubs or other plants that die, is removed or becomes seriously diseased within 10 years of planting shall be replaced with one of an original similar size and type.

Reason: To ensure appropriate ecological enhancements and landscaping measures are implemented.

- 3) No construction work, including demolition or engineering operations, shall take place outside 08:00 hours to 18:00 hours Mondays to Fridays and 08:00 hours to 13:00 hours on Saturdays, nor at any time on Sundays or Bank or Public Holidays.

Reason: In the interests of residential amenity.

- 4) The mobile homes hereby permitted shall be used for the purpose of seasonal workers accommodation in association with agriculture as defined by Section 336(i) of the Town and Country Planning Act 1990, as amended (or any definition which replaces it) and for no other purpose including Class C3 (residential) of the Use Classes Order 1987, as amended. The total number of seasonal agricultural workers accommodated within the mobile homes hereby permitted shall not exceed 50 persons (including immediate family members). Such accommodated seasonal workers should undertake work for AC Goatham & Son only (or any successor in title).

Reason: To reflect the terms of the application and prevent the unfettered use of the development hereby permitted.

- 5) Prior to occupation of the mobile homes hereby permitted, details of the dates of occupation of the mobile homes shall be submitted to the local planning authority. Such details shall include a period of five months in any year during the apple and pear harvest between 1 July and 30 November where all 16 mobile homes may be occupied. It shall also contain details of which of the four of the mobile homes shall be used for human habitation until 31 December of that same year. Thereafter, none of the mobile homes should be used for human habitation until the start of the next harvest season, unless stated otherwise in the submitted details. The submitted details should also include details of how occupancy would be monitored so as to ensure that the condition is reasonably complied with, such as a log book of occupation dates and this shall be made available for inspection by the local planning authority.

Reason: To reflect the terms of the application and prevent the unfettered use of the development hereby permitted.

- 6) Should any of the mobile homes become redundant or unused for two consecutive years for the purposes set out in Condition 4, they shall be removed from the site and the land restored to its original conditions; that is the hardstanding removed and the land restored to its natural state as farmed land.

Reason: To secure the removal of unnecessary development.

- 7) At no time shall there be more than 16 mobile homes stationed or stored within the application site.

Reason: To reflect the terms of the application and prevent the unfettered use of the development hereby permitted.

- 8) The mobile homes shall be coloured dark green in colour as set out in the Landscape and visual impact assessment and thereafter retained in such colour.

Reason: To minimise the impact on visual amenity and landscape character.

- 9) No floodlighting, security lighting or other external lighting shall be installed or operated at the site, other than in accordance with details submitted and agreed in writing by the local planning authority. Such details shall include a statement as to the need for the lighting, the hours and frequency of operation, the areas of illumination and beam angles, and the number and location of any lighting. Thereafter any lighting details shall be installed as agreed and retained in that condition.

Reason: In the interests of amenity and bat protection.

- 10) The development allowed under appeal reference APP/V2255/W/15/3133538 shall not be implemented.

Reason: The development hereby permitted is an alternative to that allowed on appeal therefore only one of these planning permissions should be implemented.

### **Informatives**

The applicant should contact Southern Water on 0330 303 0119 to discuss services for this development.

### **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.

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 - 16/507789/FULL</b>		
<b>APPLICATION PROPOSAL</b>		
Provision of a cold store building, extension to an existing building to provide lean-to for agricultural storage purposes, irrigation lagoon and electricity substation.		
<b>ADDRESS</b> Howt Green Sheppey Way Bobbing ME9 8QP		
<b>RECOMMENDATION</b> Grant subject to the comments of the Tree Consultant		
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b>		
The development is considered to be reasonably necessary for the agricultural operation at this site. It is therefore acceptable in principle. The proposal would cause no significant harm to visual amenities and there would be no significant increase in traffic as a consequence of the proposal. Therefore, the impact on landscape character, visual amenities and highway safety and amenity is accepted. Noise and activity at the site would not increase to a significant degree and I therefore consider that there would be no undue impact on local residents in this respect.		
<b>REASON FOR REFERRAL TO COMMITTEE</b>		
Parish Council objection		
<b>WARD</b> Bobbing, Iwade And Lower Halstow	<b>PARISH/TOWN</b> Bobbing	<b>COUNCIL</b> AC Goatham <b>AGENT</b> Bloomfields
<b>DECISION DUE DATE</b> 17/02/17	<b>PUBLICITY EXPIRY DATE</b> 30/12/16	<b>OFFICER SITE VISIT DATE</b> 02.12.16
<b>RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):</b>		
SW/03/0201 & SW/04/0579	Fruit box and machinery store and chill store extension to this building respectively.	Approved
SW/07/1388	Erection of a steel frame building to the rear of the site containing long-term storage for English Apples and Pears under.	Approved
SW/08/1321	Variation of condition to allow the storage of fruit grown in Swale, not just on A C Goatham's farms.	Refused
SW/09/0386	Variation of condition to allow the storage of fruit grown in Swale, not just on A C Goatham's farms.	Approved
SW/10/1570	Increase in hardstanding area, soil bund with additional landscaping and provision of 16 no. seasonal workers caravans including hardstanding and vehicular parking.	Approved
SW/11/0764	Erection of 65m in length close boarded fence 2-3 m height.	Approved
SW/13/0501	Controlled temperature fruit store with associated hardstanding and extension to general purpose building to provide office, WCs and laundry.	Approved
SW/13/0728	Temporary portacabin for laundry use.	Approved
14/505985/FULL	Proposed change of use of land for the creation of hardstanding to site 16 mobile homes for 52 weeks of the year for occupation by seasonal agricultural workers along with associated engineering works.	Refused and allowed on appeal.

<p>16/501913/PNQCL A</p>	<p>Prior notification for the change of use of a building and land within its curtilage from an agricultural use to a use falling within Class C3 (dwelling-houses) and building operations reasonably necessary to convert the building For it's prior approval to: - Transport and Highways impacts of the development. - Contamination risks on the site. - Flooding risks on the site. - Noise impacts of the development. - Whether the location or siting of the building makes it otherwise impractical or undesirable for the use of the building to change as proposed. - Design and external appearance impacts on the building.</p>	<p>Prior approval granted.</p>
<p>16/507231/FULL</p>	<p>Retrospective application for extended period for temporary portable cabin for laundry use.</p>	<p>Approved.</p>
<p>16/507788/FULL</p>	<p>Change of use of land for the creation of hardstanding and siting of 16 mobile homes for 52 weeks of the year for occupation by seasonal rural workers and associated engineering works</p>	<p>Current.</p>

**MAIN REPORT**

**1.0 DESCRIPTION OF SITE**

1.01 The application site lies within the countryside and within the Strategic Gap between Sittingbourne and the Medway Towns. There are no special landscape designations that cover the application site. It is to the northwest of Sittingbourne and to the south of Iwade. It lies opposite the entrance to a small cluster of industrial units. Residential properties lies on the opposite side of Sheppey Way, including Nethertoës and White House, both Grade II listed buildings. The surrounding land comprises of agricultural fields.

1.02 The application site lies within the larger farm complex of Howt Green where there are already three large agricultural buildings, two of which are cold stores. Also within the farm complex are two parcels of land used to site caravans for agricultural workers associated with the applicant’s farming business. Members will note that an application for the relocation of some of these caravans is on the same agenda (Ref: 16/507788/FULL) but the two applications are not dependant on each other and so can be considered separately.

**2.0 PROPOSAL**

2.01 The proposed cold store would be sited 30 metres from Sheppey Way. It would be rectangular in footprint and would be 1,974 sq m with a ridge height of 11.2m. A 10m concrete apron would be provided around the building to ensure access to the site to load and unload fruit bins. The cold store would contain 12 chambers to store apples and pears grown and handled by the applicant.

- 2.02 The proposed lean-to extension would be to cold store no. 2 which is situated 85m from Sheppey Way. This would be 70m in length, running the entire length of the building and would be used to store machinery and farm equipment that is currently stored in the open air.
- 2.03 The irrigation lagoon would be located 70m from Sheppey Way to the north of the proposed re-located caravans. This would be 1,350 sq m in area with a cubic capacity of 900 cubic metres. The lagoon would be used to capture rain water (once filtered) and hold it for use as irrigation to the surrounding orchards.
- 2.04 The substation would be sited 15m from Sheppey Way just to the west of the re-located caravans. This would be a small stand-alone building with a maximum height of 3 metres and a footprint of 25 sq m. I understand that the substation has already been installed.
- 2.05 Submitted with the planning application is a landscaping masterplan. This proposes the provision of a 3m high acoustic fence along Sheppey Way and reinforced planting along this boundary also with an Alder tree belt.

### **3.0 PLANNING CONSTRAINTS**

- 3.01 The application site is approximately 11m from a High Pressure Gas Pipeline.

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

- 4.01 The National Planning Policy Framework (NPPF) sets out at paragraph 14 that at the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking.
- 4.02 Paragraph 18 of the NPPF states that the Government is committed to securing economic growth in order to create jobs and prosperity, building on the country's inherent strengths, and to meeting the twin challenges of global competition and of a low carbon future.
- 4.03 Paragraph 22 of the NPPF states that planning policies should support economic growth in rural areas in order to create jobs and prosperity by taking a positive approach to sustainable new development. To promote a strong rural economy, local and neighbourhood plans should:
- support the sustainable growth and expansion of all types of business and enterprise in rural areas, both through conversion of existing buildings and well designed new buildings;
  - promote the development and diversification of agricultural and other land-based rural businesses.
- 4.04 National Planning Practice Guidance (NPPG) – Natural Environment; Noise; Travel plans, transport assessments and statements in decision-making and; Use of planning conditions.

#### Swale Borough Local Plan Adopted 2008:

- 4.05 Policies E1 - general guidance regarding design and amenity, E6 – countryside, E7 – strategic gap, E9 – protection of landscape, E10 – trees and landscaping, E11 - biodiversity, E14 – development involving listed buildings, E19 – high quality design, B1 – supporting and retaining existing employment land and businesses, B2 –

providing new employment, RC1 – helping to revitalise the rural economy, T1 – vehicular access and T3 – vehicular parking.

- 4.06 Supplementary Planning Document – Swale Landscape and Biodiversity Appraisal (adopted 2011). The site lies within the Iwade Arable Farmlands which is identified as a Fruit Belt Landscape Type. The condition of this landscape is classed as ‘poor’ with a moderate sensitivity to change. The guidelines for this landscape type are to restore and conserve.

Emerging Local Plan Bearing Fruits 2031 Main Modifications version June 2016

- 4.07 Policies ST1 (sustainable development); CP1 (economy); CP7 (natural environment); DM3 (rural economy); DM6 (transport demand); DM14 (general development criteria) & DM32 (listed building); DM34 (archaeological site) are also relevant in the consideration of this application.

## 5.0 LOCAL REPRESENTATIONS

- 5.01 Five representations of objection have been received from local residents. A summary of their comments is as follows:

- Caravans and substation are already on site;
- This is an industrial use not agricultural as there is now an operator’s license to park HGVs on the land;
- The building would be an eyesore;
- Surface waters will drain from the site onto the road;
- The submitted transport assessment is incorrect;
- Speed limits on Sheppey Way are exceeded and HGVs overtaken;
- The access to the site is shared with the adjacent business and this has expanded recently, leading to more vehicles using the access;
- HGVs often reverse up Sheppey Way and cause congestion along the road;
- the number of vehicles going to and from the site is underrepresented in the transport assessment and the cumulative impact of this site with new housing will be detrimental to highway safety;
- the buildings would detract from the Hamlet of Howt Green;
- detrimental impact on the grade II listed building - Nethertoës;
- the site has expended considerably since 2008 and there is noise and pollution as a result;
- fruit is imported from other farms, contrary to planning conditions;
- there is a new water tank provided on site without permission;
- detrimental to local flora and fauna;
- additional noise in the early hours of the morning and late at night;
- no need for the lean-to extension as machinery and equipment can be stored elsewhere;
- regular crop-spraying and;
- there are a number of traffic movements from the residents of the caravans.

- 5.02 The Swale Footpaths Group comment that the adjacent footpath would be unaffected by the proposal.

## 6.0 CONSULTATIONS

- 6.01 Bobbing Parish Council object on the grounds that there would be increased traffic and noise. However, they understand that the machinery shed is being moved to the back of the site. If this is done then it will reduce the noise in their opinion. They also note that there is no mention of hours of work on the application form and query what this would be.
- 6.02 The Health and Safety Executive no not advice against the development.
- 6.03 UK Power Networks have no objection.
- 6.04 The Rural Planning Consultant notes that the farm itself is some 60ha but also acts as the main farming base for the applicants' farms in the Swale area. The farmstead has approved controlled atmosphere storage facilities and a general purpose storage building. After storage at Howt Green Farm, the fruit is dispatched to Flanders Farm, Hoo, a new site approved by Medway Council as the applicants' main packing facility, dealing with the applicants' own fruit and that of other local farms. The applicant has provided details of the expected cropping from their own orchards in the Swale area from 2017 and 2019. The figures support the agricultural case for a third controlled atmosphere fruit storage building of the size now proposed. The new store would avoid the need to use an equivalent amount of storage in off-lying rented facilities, of poorer standard, and with limited ongoing security of tenure. The lagoon and the lean-to and substation are also considered to be necessary for agriculture.
- 6.05 Natural England consider that subject to consideration of the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring Strategy (SAMM), the proposal may be screened out as not having a likelihood of significant effects on the designated sites. As this proposal is not for residential use, no contributions are required for the SAMM.
- 6.06 Southern Gas Networks had objected subject to the comments of their local engineer (which we have now received). They note that the pipeline in the vicinity of the development is a Major Accident Hazard Pipeline. Guidance is provided on development close to such pipelines. Comments from the local engineer have been received. They note that there is a building proximity distance of 9 metres either side of the pipeline. No mechanical excavation is allowed within 3m either side of the pipeline. Other details guidance in respect of building close to the pipeline is provided. I note that the local engineer does not object to the proposal.
- 6.07 The Environmental Health Manager has no objection subject to conditions to ensure that the mitigation measures set out in the acoustic report are implemented, notably the enclosure of each chiller in a suitably designed acoustic enclosure and the provision of a 3m high acoustic fence to the southern boundary and, restrictions of times of construction.
- 6.08 KCC Ecology consider that sufficient ecological information has been submitted in support of the application. They note that the proposal is not for residential development and therefore there would be no increase in recreational disturbance on the SPA as a consequence of the proposal. They advise that any work to vegetation should be carried out outside of the bird breeding season. A condition to secure a precautionary mitigation methodology is recommended. In addition a condition to control lighting is suggested as well as a condition to secure biodiversity enhancements.

- 6.09 The Lower Medway Internal Drainage Board note that the site is outside of their district and provided that off-site water runoff rates are not increased by the development, their interests should not be affected.
- 6.10 Southern Water note that a formal application for connection to the public sewer is required and suggest an appropriate informative.
- 6.11 The KCC Surface Water Drainage and Flood Risk engineer has no objection to the proposal but recommend that any volumes of storage for rainwater are kept separate to the attenuation pond. It is important that the development is resilient to flash flooding. There are significant flooded volumes during 1 in 100 year storm events and therefore seek confirmation in detailed design that these volumes will be contained within the site boundary and not have a significant effect upon access and egress in a significant rainfall event. They recommend a condition to require the submission of this detail.

## 7.0 BACKGROUND PAPERS AND PLANS

- 7.01 Planning Design and Access Statement; Landscape and Visual Appraisal; Flood Risk Assessment and Surface Water Design; Traffic Statement; Environmental Noise Measurement Report; Landscape Masterplan and; Preliminary Ecological Appraisal.

## 8.0 APPRAISAL

### Principle of Development

- 8.01 Planning permission was granted in 2009 (SW/09/0386) and 2013 (SW/13/0501) for the provision and use of buildings at this site for the storage of fruit grown in Swale (not exclusively for fruit grown on A C Goatham's farms). The current cold store proposal is to provide an additional building for the storage of fruit that is handled by A C Goatham and Son and grown in Swale. The applicant accepts that the same condition applied to SW/13/0501 can be applied to the current application. This states:

*"The controlled atmosphere fruit store hereby permitted, shall be utilised for accommodating fruit grown within the Swale Borough Only. The store shall not be used for intermediate holding over of fruit for short term periods but instead operate a single filling operation per year.*

*Grounds: In order to secure the use of the building for the purposes set out in the application particulars."*

- 8.02 As well as having their own storage facilities, the applicant currently rents facilities for the storage of fruit. They would like to secure an additional building on Howt Green to ensure that they can continue to store fruit in the future with the added security of owning their own buildings. The approval of this building will help the applicant to continue to develop their agricultural business in the borough. This complies with policy RC1 of the Swale Borough Local Plan 2008 and emerging Local Plan policy DM3. This draft policy encourages provision for the storage, distribution or added value activities in central hubs located close to crop sources and the primary and secondary road networks. The proposal at Howt Green Farm would fulfil this aspect of policy DM3.
- 8.03 The lean-to extension, lagoon and substation are all considered to be necessary for this agricultural enterprise.



8.04 I therefore consider that the proposal would be acceptable in principle.

### **Visual Impact**

8.05 The application is accompanied by a Landscape and Visual Impact Assessment (LVIA). The most noticeable element of this proposal will be the cold store. This has been sited close to Sheppey Way and so would be seen from this highway as well of from the residential properties opposite the site and the public right of way RU48 and RU48A to the north. It would be a large and tall building but would be set within the context of the farm complex at Howt Green as well as against the backdrop of a number of existing large agricultural and industrial buildings. The building would be contained within this setting and would therefore have a limited impact on the character of the landscape in my view. The building is proposed to be olive green thereby limiting the visual impact further as well as the proposed Alder tree belt along the southern boundary. I am assessing the acceptability of the proposed Alder belt and other landscaping proposed and will update Members at the meeting.

8.06 The LVIA concludes that the development would have an adverse impact in terms of visual amenity from Sheppey Way but suggests that mitigation measures will lessen this impact. The LVIA concludes that there would be neutral effects from other viewpoints. In terms of landscape character, the effects are assessed as being highly localised, of low magnitude and on a site scale only. I therefore consider that the visual and landscape impacts of the development would be acceptable, provided that landscape as shown indicatively on the Landscaping Masterplan is implemented in full.

### **Residential Amenity**

8.07 The proposal for the cold store would increase activity at the application site to some extent. However, as the proposed use is for storage of fruit, the activity would be concentrated at particular times and would be associated with the filling of the fruit bins within the building and then emptying the fruit bins via HGVs. The filling of the bins will happen over a 12 week period between July and October. The fruit bins are then mostly emptied to supply supermarkets during the Autumn and Winter when fresh fruit is not available. This equates to 3 HGV trips per day over the 12 week filling period and less than 2 HGV trips per day for the rest of the year. In terms of the general noise and activity that this pattern of use would generate, I consider that this would be negligible in respect of the impact on the residential properties opposite.

8.08 There are no existing restrictions on the hours of operation at this farm complex and it would be unusual for an agricultural enterprise to have to operate with such restriction. Imposing a restriction on the hours of operation now would be unreasonable and unnecessary in my view.

8.09 The new cold store building would have two chiller cabinets, each measuring 4.1m x 1.1m x 2.8m in height, sited immediately outside to the eastern elevation on a concrete plinth. There would be some noise emitted from these chiller cabinets and the applicant has submitted a noise measurement report to assess the impact of this noise on residential properties close by. The noise assessment notes that it is necessary for the chillers to be enclosed with a suitably designed enclosure. The assessment also notes that there would be a 3m high fence along the southern boundary constructed of superior quality double overlapping slats which would provide a 5dBA attenuation. The Council's Environmental Health Manager raises no objection on noise grounds. He has considered the submitted noise assessment and recommends the mitigation condition below. I therefore consider that there would be no undue impact on residential amenities.

### Highways

- 8.10 The applicant has submitted a Traffic Statement with the application. The predicted traffic levels associated with the proposed new development are set out at paragraph 8.07 above. I consider that this level of traffic associated with the cold store building would have a minimal impact on the highway network and Sheppey Way. There would be no increase in traffic as a result of the other elements of this application. I acknowledge the concerns of local residents and the Parish Council in respect of highway concerns and congestion at the access to the site. However, I do not consider that the number of HGVs predicted to be attracted to the site as a consequence of this new cold store would have a detrimental impact on highway safety and amenity. Neither do I consider that the additional HGVs using the access would increase congestion at this point.

### Other Matters

- 8.11 The Health and Safety Executive raises no objection to the proximity and number of mobile homes in relation to the high pressure gas pipeline to the north east. The risk to human life is acceptable in my opinion.
- 8.12 The preliminary ecological appraisal recommends no further species specific surveys. The submitted Biodiversity Enhancement Strategy details appropriate enhancement measures. These assessments are acceptable to KCC Ecology. I have recommended a suitably worded condition to ensure that these ecological enhancements are implemented.
- 8.13 I have no concerns in respect of surface water drainage. KCC Surface Water Drainage and Flood Risk have requested further details in this respect and consider that this can be controlled by condition. I have recommended a suitably worded condition below.
- 8.14 The proposed cold store, lean-to extension, substation and lagoon would all be contained within the existing farm complex, on the otherside of Sheppey Way to the closest listed building - Nethertoës, which is 75m to the south. I consider that this distance and the intervening Sheppey Way would ensure that the setting of this listed building is preserved. I have applied an archaeological condition given the fact that a similar condition was applied to the 2013 application for the 2<sup>nd</sup> cold store on the site.

## 9.0 CONCLUSION

- 9.01 Having considered the comments from local residents, the parish council and the relevant consultees as well as the relevant planning policies, I consider that the development would be acceptable in principle. It would help to sustain an established agricultural enterprise to the benefit of the rural economy. The proposals would have some impact on visual amenities and the character of the landscape but I do not consider that this would be harmful, especially with the planting of the Alder trees along the boundary with Sheppey Way by way of mitigation. The proposals would not increase noise levels to the extent that there would be any significant harm to local residents in my view. Traffic levels would be increased by a small degree but this would not be harmful to highway safety or amenity in my view. Kent Highways and Transportation raise no objection in this respect.
- 9.02 I therefore consider that planning permission should be approved subject to the comment of the Council's Tree Consultant.

**10.0 RECOMMENDATION – GRANT** Subject to the comments of the Council's tree consultant 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. The development hereby approved shall be carried out in accordance with the following approved drawings: 04, 09a, 05, 06, 08, 11, 16009\_600\_01 rev OR, 3830\_DR\_002, 3830\_DR\_001, 8223/03 A.

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

3. Prior to the commencement of development hereby approved, the applicant, or their agents or successors in title, shall secure the implementation of a programme of archaeological work in accordance with a written specification and timetable which has been submitted to and approved in writing by the Local Planning Authority.

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

4. 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.

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

Reason: In the interests of highway safety and convenience

6. Adequate precautions to be previously agreed in writing by the Local Planning Authority, shall be taken during the period of demolition and construction to prevent the deposit of mud and/or other debris on the public highway.

Reason: In the interests of highway safety and convenience.

7. The scheme of tree planting and landscaping shown on the submitted landscaping masterplan and planting plan shall be carried out within 12 months of the completion of the development. Any trees or shrubs 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.

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

8. Details in the form of British Standards or commercial specifications of the proposed colouring of the cold store building materials (which shall be olive green) shall be submitted to and approved by the Local Planning Authority before the development is commenced.

Reason: In the interest of visual amenity.

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

Reason: In the interests of visual amenity.

10. The noise mitigation measures as set out on pages 4 and 9 of the submitted Environmental Noise Management Report shall be implemented prior to the first use of the close store hereby approved and shall be maintained as such in perpetuity.

Reason: In the interests of residential amenities.

11. Prior to the commencement of development hereby approved, full details of the method of disposal of surface waters shall be submitted to and approved by the Local Planning Authority. The approved details shall be implemented before the first use of the development hereby permitted.

Reason: In order to prevent localised flooding.

12. The ecological recommendations as set out at Chapter 4 of the submitted Preliminary Ecological Appraisal, including the ecological enhancements, shall be implemented on site in accordance with a timetable to be submitted to Swale Borough Council for approval in writing.

Reason: In the interests of the preservation and enhancement of ecology and biodiversity on the site.

13. No removal of hedgerows, trees or shrubs that may be used by breeding birds shall take place between 1<sup>st</sup> March and 31<sup>st</sup> August inclusive, unless a competent ecologist has undertaken a careful, detailed check of vegetation for active birds' nests immediately before vegetation is cleared and provided written confirmation that no birds will be harmed and/or that there are appropriate measures in place to protect nesting birds interest on site. Any such written confirmation should be submitted to the local planning authority.

Reason: In the interests of the preservation of nesting birds on site.

14. No development shall take place until a "lighting design strategy for biodiversity" for the site boundaries has been submitted to and approved in writing by the Local planning authority. The lighting strategy shall:

- a) Identify those areas/features on site that are particularly sensitive for bats and that are likely to cause disturbance in or around their breeding sites and resting places or along important routes to access key areas of their territory;
- b) Show how and where external lighting will be installed so that it can be clearly demonstrated that area to be lit will not disturb or prevent that above species using their territory.

All external lighting shall be installed in accordance with the specifications and locations set out in the strategy and these shall be maintained thereafter in accordance with the strategy.

Reason: In the interests of the preservation of bats on site.

15. The controlled atmosphere fruit store hereby permitted, shall be utilised for accommodating fruit grown within the Swale Borough Only. The store shall not be used for intermediate holding over of fruit for short term periods but instead operate a single filling operation per year.

Reason: In order to secure the use of the building for the purposes set out in the application particulars.

Informative:

1. The applicant is advised to give careful consideration to the comments of Southern Gas Networks as set out in their letter of 2<sup>nd</sup> December 2016.

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.

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.

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<b>2.9 REFERENCE NO - SW/08/1124 &amp; SW/13/0568</b>			
<b>APPLICATION PROPOSAL</b>			
Modification of Section 106 agreement to allow removal of on-site affordable housing with a viability re-assessment submitted upon occupation of the 21 <sup>st</sup> unit and a commuted sum payable at a maximum of £31,000 for off-site affordable housing. Original application - to replace an extant planning permission SW/08/1124 (Demolition of existing buildings and redevelopment of site to provide 12, two bedroom apartments, 14, one bedroom apartments, amenity space, 26 parking spaces and cycle store and new vehicular access) in order to extend the time limit for implementation.			
<b>ADDRESS</b> 153 London Road, Sittingbourne, Kent, ME10 1PA			
<b>RECOMMENDATION</b> Grant modification			
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b>			
On-site affordable housing would be difficult to provide. Allowing a viability re-assessment once the development has commenced and upon occupation of the 21 <sup>st</sup> unit, would ensure that a commuted sum is secured for off-site affordable housing, subject to there being a profit above 17%. This modification of the Section 106 agreement responds to the changing financial and property markets in difficult economic times. The modification would allow the development of much needed housing to be provided within an urban and sustainable site. It would also significantly improve the appearance of the site which is an eyesore in a prominent position.			
<b>REASON FOR REFERRAL TO COMMITTEE</b>			
Modification of Section 106 agreement			
<b>WARD</b> Grove Ward	<b>PARISH/TOWN COUNCIL</b> Sittingbourne	<b>APPLICANT</b> Clarity Properties Ltd <b>AGENT</b> Mr Keith Plumb	
<b>DECISION DUE DATE</b> 08/08/13	<b>PUBLICITY EXPIRY DATE</b>	<b>OFFICER SITE VISIT DATE</b> 09/01/17	
<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>
16/507631/LDCEX	Certificate of Lawful development to establish that works commenced under the approved planning permission, SW/13/0568, in the form of demolition of the existing buildings on 23rd May 2016.	Approval	08.12.16
16/508336/NMAMD	Non material amendment to alter the description of application SW/08/1124 to reflect the approved drawings which show 13 one bedroom apartments and 13 two bedroom apartments.	Approval	08.12.16
SW/13/0568	to replace an extant planning permission SW/08/1124 (Demolition of existing buildings and redevelopment of site to provide 12, two bedroom apartments, 14, one bedroom apartments, amenity space, 26, parking spaces and cycle store and new vehicular access) in order to extend the time limit for implementation.	Approval	08.08.13

SW/08/1124	Demolition of existing buildings and redevelopment of site to provide 12, two bedroom apartments, 14, one bedroom apartments, amenity space, 26, parking spaces and cycle store and new vehicular access.	Approval	18.05.10
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## MAIN REPORT

### 1.0 DESCRIPTION OF SITE

- 1.01 The application site is 0.09ha and is rectangular in shape. It is directly adjacent to the Wickes car park and fronts onto London Road (the A2). On the site is a partially demolished two ½ storey building and a single storey flat roof building to the rear of the site.
- 1.02 The site lies to the west of Sittingbourne Town Centre. Residential properties lie opposite and to the west of the site. There is a Petrol Filling Station on the opposite side of London Road slightly to the east. The site is currently messy and unsightly.

### 2.0 PROPOSAL

- 2.01 Planning permission was originally granted under SW/08/1124 for the demolition of existing buildings and redevelopment of the site to provide 12, two bedroom apartments, 14, one bedroom apartments with amenity space and parking and a new vehicular access. Permission to extend the time limit for implementation of the development was granted under SW/13/0568. Application reference 16/508336/NMAMD later corrected the description to accurately reflect the approved plans which showed 13 one bedroom and 13 two bedroom apartments.
- 2.02 An application for a Lawful Development Certificate (16/507631/LDCEX) was later submitted to establish that the 2008/2013 permissions had been implemented by virtue of development commencing prior to the expiration of the time limit imposed. In this case, the partial demolition of the property constituted the commencement of development. The certificate was issued confirming that the permission was extant. We are currently considering the details submitted pursuant to conditions attached to the 2008/2013 permissions. Upon approval of these details, the approved development can continue.
- 2.03 I understand that the applicant was required to start the demolition process due to the unsafe state of the building fronting onto London Road. This Council served a Stop Notice on the applicant once this demolition was started because the work did not have the benefit of prior approval or planning permission. There has been no work on site since then. The applicant is aware that the conditions details, including contaminated land, will need to be agreed before any further work is carried out on site. I am informed by the planning agent that the required contaminated land surveys are being carried out and will be submitted shortly.
- 2.04 The current proposal is to modify the Section 106 agreement attached to the original permissions (SW/08/1124 & SW/13/0568) to allow removal of the requirement for on-site affordable housing. Among other things, the requirement of the Section 106 agreement is currently for the provision of 30% affordable housing on site (8 units), though a tenure split was not specified.



- 2.05 In addition, the Section 106 agreement required the following developer contributions:
- i) £227 per dwelling for library improvements;
  - ii) an open space contribution of £17,940;
  - iii) an adult social services contribution of £2362.85;
  - iv) a community learning contribution of £981.05;
  - v) a primary education contribution of £590.24 per dwelling; and
  - vi) a secondary education contribution of £589.95 per dwelling.
- 2.06 We have negotiated with the applicant that a viability re-assessment would be submitted upon the practical completion of the 21<sup>st</sup> unit and a commuted sum payable at a maximum of £31,000 (plus an adjustment for inflation) for off-site affordable housing. This would be paid in three installments: 1<sup>st</sup> – practical completion of 21<sup>st</sup> unit, 2<sup>nd</sup> - practical completion of the whole scheme and 3<sup>rd</sup> – sale of 26<sup>th</sup> unit or 6 months after the 2<sup>nd</sup> instalment, whichever is sooner. The wording of the Section 106 agreement will need to be modified to enable this change, the precise wording of which would be agreed under the instruction of the Head of Legal Services.

### 3.0 POLICY AND OTHER CONSIDERATIONS

- 3.01 The National Planning Policy Framework (NPPF) – paragraph 173 is quoted below.
- 3.02 National Planning Practice Guidance (NPPG): Viability & Planning Obligations
- 3.03 Swale Borough Local Plan 2008: SP1 (sustainable development); SP4 (housing) and; H3 (affordable housing).
- 3.04 Bearing Fruits 2031 The Swale Borough Local Plan Proposal Main Modifications June 2016: ST1 (sustainable development); ST2 (development targets for jobs and homes); CP3 (delivering a wide choice of high quality homes) and; DM8 (affordable housing).
- 3.05 Supplementary Planning Documents: Developer Contributions 2009
- 3.06 Section 106A of the Town and Country Planning Act 1990 allows the modification and discharge of planning obligations.

### 4.0 CONSULTATIONS

- 4.01 The Head of Housing has been involved in the discussions and negotiations throughout and is in agreement with the commuted sum approach in this case and to the payment being capped at £31000 plus indexation. This is in response to a number of viability assessments that have been submitted - one in 2012, one in 2015 and the most recent in 2016. Each appraisal has shown that the scheme would be unviable if affordable housing were to be provided on site. They have agreed since 2012 that a commuted sum in lieu of on-site affordable housing would be acceptable.
- 4.02 With regard specifically to the possible availability of grant funding, she comments as follows:

*“The current grant programme (Shared Ownership Affordable Homes Programme 2016-21) is for the delivery of shared ownership product only with limited affordable rent tenure for specialist/supported housing. Therefore our current affordable homes delivery programme is based solely around shared ownership with zero affordable*

*rent. This also means that our 'new' policy split of 90% affordable rent tenure with 10% shared ownership will be difficult to meet, as has been the case so far."*

## 5.0 BACKGROUND PAPERS AND PLANS

5.01 Draft Section 106 agreement & application documents and plans for SW/08/1124 & SW/13/0568.

## 6.0 APPRAISAL

### Principle of Development

6.01 As noted above, Section 106A of the Town and Country Planning Act 1990 allows the modification and discharge of planning obligations. NPPG – Planning Obligations states:

*"Planning obligations can be renegotiated at any point, where the local planning authority and developer wish to do so. Where there is no agreement to voluntarily renegotiate, and the planning obligation predates April 2010 or is over 5 years old, an application may be made to the local planning authority to change the obligation where it "no longer serves a useful purpose" or would continue to serve a useful purpose in a modified way".*

6.02 In this case the planning obligation is over 5 years old, being completed on 18<sup>th</sup> May 2010, and so the developer could have applied formally to the council for this modification. However, all negotiations to date have been successfully undertaken without the need for the formal application.

6.03 In April 2013, the Government produced guidance on Section 106 Affordable Housing Requirements. This introduced a new temporary procedure, with the ability to appeal, for the review of planning obligations where it relates to affordable housing under Section 106BA of the Town and Country Planning Act. The guidance notes at paragraph 2 that:

*"Unrealistic Section 106 agreements negotiated in differing economic conditions can be an obstacle to housing building. The Government is keen to encourage development to come forward, to provide more homes to meet a growing population and to promote construction and economic growth. Stalled schemes due to economically unviable affordable housing requirements result in no development, no regeneration and no community benefit. Reviewing such agreements will result in more housing and more affordable housing than would otherwise be the case."*

6.04 Although this procedure was repealed in April 2016, the guidance referred to above and the change in legislation sets the tone for negotiations on the loosening of requirements to provide affordable housing on schemes that were approved at a time of economic difficulty and for schemes that are proving difficult to get off the ground, such as 153 London Road.

6.05 Now that the temporary change in legislation has come to an end, the modification of planning obligations can still take place under Section 106A but, arguably, under a less, streamlined process and without the right to appeal.

6.06 NPPG - Viability, notes that viability can be important where planning obligations or other costs are being introduced. In these cases decisions must be underpinned by an understanding of viability, ensuring realistic decisions are made to support

development and promote economic growth. The guidance states that where the viability of a development is in question, local planning authorities should look to be flexible in applying policy requirements wherever possible. Where an applicant is able to demonstrate to the satisfaction of the local planning authority that the planning obligation would cause the development to be unviable, the local planning authority should be flexible in seeking planning obligations. This is particularly relevant for affordable housing contributions which are often the largest single item sought on housing developments. These contributions should not be sought without regard to individual scheme viability. The financial viability of the individual scheme should be carefully considered in line with the principles in this guidance.

6.07 Paragraph 173 of the NPPF states:

*“...To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable.”*

6.08 In the case of 153 London Road, the guidance is clear that we should be flexible in terms of the provision of affordable housing. The applicant has submitted three separate viability assessments, one in 2012, one in 2015 and the most recent in October 2016. All of these assessments demonstrate that the scheme would be unviable with affordable housing provided on site. It is my strong view that the proposed modification would allow the development of the site to come forward much more quickly than it would do if affordable housing was required to be provided on site at 30%. The requirement for a viability re-assessment, which would be independently assessed, will ensure that if the developer makes a profit above 17% (which is considered to be a reasonable % for developer profit and has been similarly applied to other schemes), a contribution of £31,000 (index linked) will be paid to the Council. This would be used towards the provision of affordable housing elsewhere within the Borough. The capping of the contribution at £31,000 gives the developer the certainty that they require in order to secure the necessary funds to develop the site. I consider that this is reasonable in this case.

6.09 The figure of £31,000 has been arrived at following extensive negotiations. The developer had originally offered a much smaller figure of £19,800 based on their calculations of the value of the market value of the 8 affordable units. We queried this figure based on our knowledge of larger commuted sums that had been secured on sites within close proximity to 153 London Road. The developer has agreed to pay this higher figure on the terms set out at paragraph 2.06 above.

6.10 Allowing the planning obligation to be modified in the way proposed will enable the provision of much needed housing and would improve the appearance of the site which I consider is, at present, an eyesore.

## **7.0 CONCLUSION**

7.01 The proposal to modify the planning obligation in respect of the affordable housing provision on site would enable the development of much needed housing to come forward and would result in a significant visual improvement of the site. These factors weight significantly in favour of the modification which would see the loss of all on-site affordable housing. However, the scheme would still be subject to a viability re-assessment which would see £31,000 secured towards off-site affordable housing, should the developer make a profit of more than 17%.

**8.0 RECOMMENDATION** – To Grant modifications to the existing Section 106 as set out above and delegation to agree the precise wording of the modified planning obligation under the instruction of the Head of Legal Services.

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>2.10 REFERENCE NO - 16/507298/FULL</b>			
<b>APPLICATION PROPOSAL</b> Phase 1 of the redevelopment of Land off Rushenden Road, comprising 101 dwellings and associated access, parking and landscaping.			
<b>ADDRESS</b> Land At Rushenden Road Queenborough Kent ME11 5HP			
<b>RECOMMENDATION</b> Approve subject to completion of a S106 agreement to secure financial contributions towards SAMMS, wheelie bins, open space provision / maintenance, education, libraries, social services, Public Right of Way improvements, and the provision of 31 starter home units within the development; receipt of comments from Kent Highways & Transportation, the Council's Green Spaces Manager; receipt of further comments from the EA; resolution of the LMIDB's objection, and any minor amendments required as a result of the above comments.			
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b> Proposal represents the first phase of the Queenborough & Rushenden Regeneration project and would provide 101 dwellings on an allocated site within a sustainable urban location, without given rise to any serious amenity concerns.			
<b>REASON FOR REFERRAL TO COMMITTEE</b> Require delegation to enter into S106 agreement to secure financial contributions and provision of starter homes.			
<b>WARD</b> Queenborough And Halfway	<b>PARISH/TOWN COUNCIL</b> Queenborough	<b>APPLICANT</b> Keepmoat Homes <b>AGENT</b> IBI Group	
<b>DECISION DUE DATE</b> 17/01/17	<b>PUBLICITY EXPIRY DATE</b> 28/11/16		
<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>
16/504873/ENVSCR	EIA Screening Opinion for erection of 109 dwellings.	ES not required	21.07.16
SW/11/0601	Engineering operations comprising land raising and creation of a development on southern part of site, 300mm excavation on northern part of site, the demolition and clearance of all buildings, structures and hardstanding areas and installation of flood gates at north west corner of site.	Approved	09.07.12

**MAIN REPORT**

**1.0 DESCRIPTION OF SITE**

1.01 The application site comprises a parcel of made-up ground immediately to the north of First Avenue, Rushenden. It is roughly rectangular, measuring roughly 97m wide by a maximum of 295m deep, and extends to approximately 2.4ha. The site is bordered by Rushenden Road to the east, First Avenue to the south, the Swale to the west, and remaining parcels of the Queenborough and Rushenden (Q&R) regeneration area allocation to the north (beyond a drainage ditch).

- 1.02 The land was formerly in industrial uses (mainly as part of the Twyford works) but was cleared several years ago as part of an initial phase of works on the Q&R regeneration. Following clearance the land level was raised by between 1.5 and 3m through the deposit of clean soil, and the site now stands taller than the surrounding land. Land levels are highest at the eastern (Rushenden Road) end of the site, and taper downwards towards the west, and the ground is generally level and clear across the site.
- 1.03 First Avenue is a residential street with terraced houses running the full length on the southern side of the application site. There are two blocks of 4 terraced houses and a small light industrial building (a remnant of the former works) on the northern side of First Avenue, roughly halfway along the length, and the application site wraps around these buildings on three sides.
- 1.04 At the western end of First Avenue the road becomes unmade and provides access to a campsite and private moorings. A public footpath runs through the site from this point and turns eastwards to link up with Rushenden Road – the footpath is currently subject to a temporary closure order while hoardings have been erected around the development site. A drainage ditch runs along the northern boundary. The shops at Neatscourt are approximately 1km to the east, and Queenborough train station is roughly 700m to the north.

## **2.0 PROPOSAL**

- 2.01 The application seeks full permission for the erection of 101 dwellings and associated access, parking and landscaping.
- 2.02 The existing site access on Rushenden Road will be moved slightly to the north to be more central on the site, and a central estate road will run from there through to the far western end – it will rise up from Rushenden Road to meet the current site level. Three short internal estate roads will spur off from this: two at the front of the site and one at the far rear (the layout will ultimately resemble a trident pointing eastwards). Two-storey dwellings will be arranged on either side of these roads, and a three-storey block of flats will be positioned in the north-eastern corner of the site.
- 2.03 The two-storey dwellings (which will be a maximum of 8.2m tall) will be of a simple, plain design, with pitched roofs and some with projecting front porches, and will feature a mix of facing brick, timber cladding, render, and tiled roofs. Each dwelling will have 2 parking spaces to either the front or the side. Those dwellings fronting First Avenue will have frontage parking at the same level as and accessed from First Avenue, with communal bin stores interspersed between some of the spaces. A new pedestrian footpath will be created along the majority of the First Avenue frontage (in front of plots 44 to 59), with steps and DDA-compliant paths providing pedestrian access up to the development.
- 2.04 Each dwelling will have a generous rear garden. Some gardens will be less than 10m deep but with compensatory width. An informal play area with natural play features (logs, boulders, etc.) sits roughly central on the site and will form a gap in the built form to provide access to the drainage ditch to the north (although access to this area will not be encouraged in the interests of protecting wildlife and biodiversity). Planting and soft landscaping will take place throughout the site and the boundaries, and the sloping ground at the site boundaries will be grassed and planted.
- 2.05 A three-storey block of six, two-bed flats is positioned in the north-eastern corner of the site by the junction of Rushenden Road and Thomsett Way. This will also be of a

simple design with a steep pitched roof and dark timber cladding reminiscent of traditional seaside buildings, and with a ridge height of 12m. Parking for these flats will be provided in a courtyard to the rear, with amenity space and bike / bin stores also to the rear. The flats were originally positioned in the south-east corner, and as a result of their relocation a dwelling has been lost from the wider scheme, reducing the numbers from 102 to 101.

- 2.06 The application has been reviewed by the Design South East design review panel, who suggested a number of amendments. This is discussed in greater detail below.

**3.0 SUMMARY INFORMATION**

	<b>Proposed</b>
Site Area (ha)	2.4
No. dwellings	101
Dwellings per ha (dph)	42.5
Parking Spaces	203 (inc. 22 visitor)
No. of Affordable Units	30 (30%) starter homes

**4.0 PLANNING CONSTRAINTS**

- 4.01 The site lies within an area of Potential Archaeological Importance and Environment Agency Flood Zone 3 (but it should be noted that the land raising works take the site up out of flood risk).

**5.0 POLICY AND OTHER CONSIDERATIONS**

- 5.01 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. 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.
- 5.02 Paragraph 47 of the NPPF requires Local Planning Authorities (LPA) to have an up-to-date five year housing supply otherwise policies that restrict the supply of housing can be considered out of date. However, in this instance the Council is confident that it has addressed housing recent supply issues, and in any case this site lies on an allocated site within the built up area and therefore benefits from a presumption in favour of development in any instance.
- 5.03 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.
- 5.04 Policies AAP6 (Q&R), SP1 (sustainable development), SP4 (Housing), E1 (general development criteria), E9 (Landscape), E14 (listed buildings), E19 (design), H2 (new housing), H5 (housing allocations), T1 (safe access to new development), T3 (vehicle parking), T4 (cyclists and pedestrians) and U4 (placing services underground) of the adopted Swale Borough Local Plan 2008 are all relevant in the consideration of the application.

- 5.05 Policy AAP6, in particular, establishes the principle of development here and sets the Council's aims and visions for the wider allocation site:

*“Within this area planning policies and proposals will aim to ensure a co-ordinated and phased development that maximises benefits to the existing and new communities; the removal of unsightly industry and traffic; and the creation of healthy living environment that improves quality of life whilst maintaining and enhancing the quality of the natural habitat.”*

- 5.06 AAP6 continues on to state that planning permission will be granted for new housing, as well as employment and community uses (to come in following phases and on adjacent parcels). It also notes the need for the Rushenden Link Road to facilitate such development, which is now complete.
- 5.07 The emerging Local Plan, Bearing Fruits 2031, is at main modifications stage (with the Examination in Public reopening on 31<sup>st</sup> January) and can thus be afforded significant weight. Policies ST1 (sustainable development), ST2 (development targets), Cp3 (choice of homes), Regen 2 (Q&R), DM7 (parking), DM8 (affordable housing), DM14 (general), DM17 (open space and recreation), DM19 (sustainable design and construction), and DM21 (water, flooding and drainage) are relevant.
- 5.08 Policy Regen 2, in particular, states:

*“A regeneration area for Queenborough and Rushenden is designated as shown on the [Proposals Map](#). Within this area, proposals will support the objective of regenerating the area for residential, employment and community uses to achieve the integration of communities. Development proposals will, as appropriate:*

- 1. Accord with the adopted Masterplan Supplementary Planning Document and its addendum;*
- 2. Contribute towards the creation of a distinctive sense of place for the planned new settlement that also reflects the area's waterside location and historic environment;*
- 3. Demonstrate sensitive and innovative design, which responds to the challenge of creating new townscape and be subject to scrutiny by the Swale Design Panel;*
- 4. Achieve high standards in terms of sustainable design and construction, including the design and specification of the buildings and sustainable urban drainage;*
- 5. Accord with an integrated landscape strategy through the creation of a new landscape structure for the area, supporting the creation of a network of areas for play, walking and informal recreation, as well as achieving a net gain in biodiversity overall;*
- 6. Assess biodiversity interests, including a Habitats Regulations Assessment. Proposals will ensure that, through both on and off site measures, any significant adverse impacts on European sites through recreational pressure will be mitigated in accordance with Policies CP7 and DM28, including a financial contribution towards the Strategic Access Management and Monitoring Strategy;*
- 7. Improve the quality of the environment and housing choice to restore the local housing market area;*
- 8. Achieve a mix of housing in accordance with Policy CP3, including provision for affordable housing, in accordance with Policies Policy DM8;*



9. *Provide, at Neatscourt, commercial floorspace unless this would adversely impact upon the vitality of Sheerness town centre or compromise the achievement of meeting industrial floorspace needs as required for the Local Plan period;*
10. *Secure those improved services and facilities necessary for a sustainable community;*
11. *Where appropriate, assist with alternative accommodation for the displacement of existing businesses;*
12. *Through physical, environmental and economic measures, integrate the existing and new communities;*
13. *Assess the need for, and provide such transport initiatives and improvements as are necessary;*
14. *Assess and respond to any risk from flooding; and*
15. *Provide infrastructure needs arising from the development, including those matters identified by the Local Plan Implementation and Delivery Schedule, in particular those relating to transport, education and health.”*

5.09 The Queenborough & Rushenden Masterplan (2010) shows the site as a proposed residential area, sitting adjacent to community uses to the north, and open space to the west. Page 49 of the plan states that *“the residential component of the scheme is intended to provide a variety of housing types and... these will be set within an exemplary public realm of traffic calmed streets and squares well connected to greenspace and community facilities.”* The plan sets out that 200 new homes should be provided within the wider allocation area, with a range of tenures, and allows for high density development. In relation to the application site in particular the plan sets out that buildings should be 2/3 stories and key views should be retained through the centre of the site out to the Swale.

5.10 Further to the Masterplan, the Masterplan Addendum (2015) has revised the indicative land use plan to account for market circumstances and the need to make delivery viable. In this regard it revises the housing requirement down to 1,180 units, and identifies the current application site as being within phase one of development which will include up to 250 dwellings, and a health centre. The Addendum also introduces a number of key changes:

- *The Marina proposals have been removed, and replaced by a new Primary School. This places the school in the heart of the new community;*
- *In light of the removal of the marina, the densities applied to development have been revised, and are arguably more in keeping with the local context. Potential exists, however, for greater densities adjacent to the creek and this is also reflective to the generally more “tight” urban grain of Queenborough;*
- *The safeguarding of the creekside area for future development of a “Waterside Hub” to the South of Queenborough Creek – this could take the form of a visitor centre and/or leisure facilities; and*
- *Former Istil and Thompsett Way site now included for potential residential development.*

## 6.0 LOCAL REPRESENTATIONS

6.01 One letter of broad support has been received, but raising the following concerns:

- Bin stores situated away from houses are unlikely to be used, and the layout should be changed to accommodate wheelie bins on driveways;

- First Avenue should be widened to cater for additional traffic and existing parking; and
  - The houses on the western end should be set further into the site to allow for road access and vehicle parking to the front.
- 6.02 The Swale Footpaths Group notes the presence of footpath ZB49, and suggests the developer be reminded of its presence in case a diversion is required.
- 6.03 No other letters have been received, but I have had a meeting with one resident who had several questions in regards design and layout of houses, and raised a number of concerns that were not planning considerations.

## **7.0 CONSULTATIONS**

- 7.01 Highways England, following an initial request for additional information, have no objection to the development.
- 7.02 The Environment Agency have objected on the grounds that the Flood Risk Assessment was not sufficient, and noted that the site was not defended by existing coastal defence works. The agent has prepared additional information to address this objection (also noting that they had pre-application discussions with the EA from which the Agency raised no concerns) and I await further comment from the EA but expect the issue to be resolved.
- 7.03 The County Flood Officer has no objection subject to conditions.
- 7.04 The LMIDB has objected as the development would be within 8m of the drainage ditch to the north of the site, which is the maintenance margin protected by LMIDB byelaw. They comment, however, that the applicant needs to apply for formal drainage consent for the works from the LMIDB Board, and it may be the case that their Board takes the view that access from the north only would be acceptable, but this is not known until such an application is made. I am liaising with the agent on this point and will update Members at the meeting.
- 7.05 Southern Water state that the existing sewerage network cannot accommodate the outflow from the proposed development, and that additional infrastructure may be required. They therefore suggest that the condition and informative below should be attached to any grant of permission.
- 7.06 Natural England have no objection subject to conditions as set out below, and the securing of financial contributions towards 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.
- 7.07 The KCC Ecologist has no objection subject to the conditions below, and the securing of financial contributions towards 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.
- 7.08 UK Power Networks have no objections.
- 7.09 Southern Gas Networks note that there are gas pipelines near the site and recommend that their position is properly identified before construction, and care exercised during development. I have attached an informative to this end.

- 7.10 The County Public Rights of Way officer notes that footpath Z49 runs along the western site boundary, and requests a contribution totalling £11,500 to secure improvements to and maintenance of the footpath to compensate for increased usage as a result of both this development and future phases (from which contributions will be sought at the time).
- 7.11 The Council's Strategic Housing and Health Manager comments that *"we are concerned that all of the affordable units on this site will all be starter homes as this will not meet local housing need, but may well meet the need of households from out of area, therefore it would be preferable to have a mix of intermediate and affordable rented homes."* I have clarified this position with the Housing Manager, who has further commented that she does not formally object to the application, but felt it necessary to *"reiterate that starter homes won't meet affordable housing need of the area and that the new affordable housing policy does not support need particularly on the Island."* This is addressed in more detail below.
- 7.12 The KCC Development Contributions officer requests a number of financial contributions towards local services, as detailed at 9.24 below. He also requests a wheelchair accessible home be secured as part of the affordable housing provision, which is discussed at 9.15—9.17 below.
- 7.13 The Council's Environmental Health Manager has reviewed the case in regards to air quality, noise, and land contamination. He is generally complimentary about the level of information submitted, and raises no objection subject to the conditions set out below.
- 7.14 I await comments from Kent Highways & Transportation and the Council's Green Spaces Manager and will update Members at the meeting.

## **8.0 BACKGROUND PAPERS AND PLANS**

- 8.01 Members may care to note that the application has been through pre-application discussions with officers, a public consultation exercise at Castle Connections, Queenborough over summer, and has been reviewed by the Design: South East design review panel.

## **9.0 APPRAISAL**

### Principle

- 9.01 The application site is a sustainable urban location situated within the built up area boundary, and forms part of the wider allocation (under both the adopted and emerging Local Plans) for residential development as part of the Q&R regeneration works. Furthermore the proposal will contribute 101 dwellings towards the Council's housing supply. In these regards I consider the scheme to be acceptable in principle.

### Layout

- 9.02 The layout of the site is, in my opinion, generally acceptable. It provides for a pleasant frontage that addresses Rushenden Road and longer views from the top of the rise on Thomsett Way. The dwellings and flats fronting First Avenue will create a landmark arrival point within a well-spaced street scene in my opinion, and within the interior of the site the layout provides sufficient space for adequate gardens, vehicle parking spaces, public amenity space, and tree planting / landscaping.

- 9.03 The design review panel suggested some minor amendments to the layout that I have discussed with the applicant. In particular I have requested that:
- the internal road network be less formal and provide greater opportunities for tree planting and landscaping;
  - a footpath be included to link the frontage area to First Avenue;
  - the use and long-term management of the land between units 18 to 28 and the existing dwellings at Sunset Terrace needs to be considered;
  - units 14 to 17 should face outwards;
  - position the play area closer to First Avenue;
  - Using external materials to reference each unit's location within the site, i.e. close to the sea, internal, or closer to the industrial part of Rushenden; and
  - It was also requested that the developer examine the possibility of relocating the flats to the north-eastern corner of the site to create an entrance feature / end-stop at the Thomsett Way junction, which has been done and the amended drawings now show this.
- 9.04 Amended drawings have been received showing the land rear of units 18-28 being incorporated into those gardens; a linking footpath, rough "character areas" within the site, and the inclusion of more street trees along the main spine road which serve to narrow the highway intermittently. I consider these to be acceptable and in accordance with the design panel's suggestions. I have, however, requested that the street trees be continued further eastwards to the edge of the internal crossroads, and await the developer's response.
- 9.05 As noted above the applicant has submitted amended drawings showing the flat block repositioned into the NE corner of the site, at officer's request. The flats now form an end-stop to Thomsett Way and serve as a landmark block at the entrance to Rushenden. This will, in my opinion, really help to create a strong frontage to the site and a sense of place within the wider allocation parcel. The parking area to the rear of the flats abuts the garden for plot 90 – if that were an existing dwelling I would have some concern about this but any purchasers would be aware of the layout. Furthermore the Council has had appeal decisions concluding that such relationships between parking and gardens are acceptable.
- 9.06 The applicant has also explored my request to turn units 14 to 17 to face First Avenue, but this has not been possible due to level changes which would require a substantial amount of space to be lost to retaining walls and an access footpath. It would be preferable to have these units facing outwards, but their location "behind" the houses fronting on to Rushenden Road means that they are not particularly prominent, and a good landscaping scheme (secured by condition below) on the boundary here would soften the visual impact of the rear wall at this point.
- 9.07 I note, as set out at paragraph 7.04 above, that the LMIDB have objected to the scheme on the basis that the proposed layout will infringe upon their 8m byelaw maintenance margin for the drainage channel to the north of the site. I am discussing this with the applicant and will update Members accordingly at the meeting.

#### Design and Landscaping

- 9.08 The architectural treatment of the proposed dwellings, including the flats, was praised by the design review panel. The buildings are of a simple form and each pair of semis is generally of a square footprint with a pitched roof. The use of recessed (sometimes vertically proportioned) windows and simple projecting porches / porch canopies with flat roofs, as well as the use of simple but high-quality external materials, will result in a

clean, crisp streetscape appropriate to this seaside setting and of a benefit to Rushenden as a whole in my opinion. It is this resultant streetscape that I consider to be the lasting benefit of this development. If constructed as per the approved drawings and landscaped appropriately – which the conditions below seek to ensure – the appearance of the estate in terms of individual unit design and external materials could be used to set the benchmark for development on future parcels of the Q&R allocation.

- 9.09 The proposed flat block is also acceptable in my view and Members may care to note that its siting was generally suggested by the design review panel. The position and height of the building will create a prominent corner feature at the entrance to Rushenden, and would punctuate the point of arrival at the end of Thomsett Way. The building also features a simple plan with vertical windows, dark external cladding, and a steeply pitched roof that, together, will give it a similar appearance to traditional seaside / coastal buildings from elsewhere in the Borough and Kent.
- 9.10 The submitted landscaping scheme is, in my opinion, appropriate and acceptable. Intermittent tree planting along the Rushenden Road frontage will soften the impact of the development in long distance views from the higher level of Thomsett Way, and native coastal and wildflower planting beneath these will help to create an attractive development and encourage local biodiversity. I consider however that there is some room for improvement in the landscaping scheme such as appropriate defensive hedgerow planting (holly, roses, hawthorn, etc.) along the northern boundary to add security to the rear boundary walls and to discourage graffiti. The conditions below will enable officers to secure such planting through discussion and submission of details.
- 9.11 The use of a green wall along the First Avenue elevation (in front of the proposed parking spaces at plots 44 to 59 inclusive) is appropriate in my opinion, and subject to maintenance (secured by condition below) it could form an attractive feature similar to that along the Mill Way frontage of the Sittingbourne Morrison's store.
- 9.12 A 2.5m bund is to be erected (as part of, and within, the wider landscaping scheme) to the front of unit 94 and the flat block to help reduce noise and disturbance from nearby industrial units. Due to the location of the bund and the sloping nature of the site / existing level changes, I have no serious visual concerns with these particular aspects of the proposed development .
- 9.13 Taking both landscaping and design into account, I consider that this development would sit comfortably within the landscape and would not cause serious harm to the character or visual amenity of the wider area.
- 9.14 I await comments from the Council's Green Spaces Manager to determine the amount of contributions to be provided under a S106 agreement for long-term maintenance of the open spaces and landscaping.

#### Affordable Housing

- 9.15 I note the Strategic Housing Manager's comments, but would draw Member's attention to policy DM8 of the emerging Local Plan, which states that no affordable housing provision will be sought on the Island. This is in direct response to market conditions making the provision of affordable housing unviable and thus discouraging developers from investing on the Island when it is a requirement for larger sites. In this regard Members may care to note that officers have recently had requests on other developments (former HBC site on Power Station Road, for example) to reconfigure

affordable housing tenure in response to market testing / conditions. On this basis, and while I recognise that this may be an emotive issue, I do not consider that it would be appropriate or justified to request intermediate or affordable rent units to be provided here.

9.16 The proposal does, nevertheless, propose 30% of the dwellings on site to be starter homes in accordance with recent Government advice. The submitted Design and Access Statement provides a breakdown of the units put forward as starter homes:

- 6 no. 2 bedroom apartments
  - 4 no. 2 bedroom houses
  - 17 no. 3 bedroom houses
  - 4 no. 4 bedroom houses
- Total: 31 dwellings

9.17 Whilst this may not be beneficial to the community of Rushenden who are, I understand, in need of affordable housing, starter homes are generally in need throughout the Borough and this development would cater to first time buyers from within Swale as well as possibly further afield. I consider this to be acceptable in accordance with the agreed emerging Local Plan.

9.18 With this in mind it would also, regrettably, not be possible to secure a wheelchair accessible unit as requested by KCC. However, I consider the other benefits of this scheme (funding towards local schools, for example) to outweigh this matter, in the balance.

#### Highways

9.19 I have not yet had a response from the KCC Highways officers but do not expect them to object significantly to the current layout. Parking provision is generally in accordance with adopted standards (2 spaces per dwelling minimum, and 22 visitor spaces across the site) and the road layout appears to be safe and sensible. I will update Members of their views at the meeting.

9.20 Highways England have, as above, no objection to the scheme.

#### Ecology

9.21 The site lies adjacent to the Swale SSSI / Ramsar site, where the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring Strategy (SAMMS) aims to accrue financial contributions towards mitigation of increased access and recreational use of the SSSI from new householders. As noted above, both NE and the County Ecologist have no objection to this application subject to receipt of such a contribution, which would amount to £22,805.16 and is included within the draft S106 agreement currently being progressed.

9.22 The site itself is fairly barren and offers little in the way of habitat in my opinion. Nevertheless the conditions below will ensure that any birds or reptiles within the site are adequately protected before and during construction. Appropriate planting in public areas and an appropriate landscaping scheme, which are secured by condition, will enhance biodiversity across the site and encourage a greater abundance of wildlife to the area (particularly in contrast to the site's previous industrial uses) upon completion of development.

9.23 A Habitat Regulations Assessment is set out at the end of this report.

S106 Contributions

9.24 Various contributions have been requested, or are required, in association with this proposal. The Council's solicitors are in the process of drafting a S106 agreement to secure the following:

- £22,805.16 SAMMS contribution @ £223.58 per dwelling;
- £390,000.00 Primary Education (towards the cost of a new Q&R primary school);
- £197,556.65 Primary school land (towards the cost of a new 2FE Rushenden primary);
- £6163.54 Community learning (expansion of Adult Education Centre at Oasis Academy);
- £3,833.46 Youth Service (Ladybird Children's Centre);
- £4,897.61 Library books;
- £6,220.98 Social care (facilities and Sheppey Healthy Living Centre);
- £11,500.00 towards Public Right of Way improvements; and
- £9,737 for wheelie bin provision (£92 per house, 2 x £435 + £35 (food bin) for the flats);
- **Total: £719,106.43**

Plus:

- Contribution for open space / play area provision (awaiting SBC Green Spaces Manager's comment); and
- Administrative / monitoring fee (negotiating amount at time of writing).

9.25 With regard to the above points I consider these amounts to be reasonable in kind and necessary to make the development acceptable in planning terms. The developer has, however, raised concern in regards to the requested amounts, particularly those requested by KCC towards the provision of new schools. The developer considers these to seriously impinge upon the viability of the development, and to this end KCC will be meeting with the HCA to discuss the matter. I will update Members on this point at the meeting.

## 10.0 CONCLUSION

10.01 The application proposes the erection of 101 dwellings with associated parking, amenity space, and landscaping, as phase 1 of the Queenborough & Rushenden generation. The scheme is of a good standard and would not give rise to any serious amenity concerns in my opinion.

10.02 Taking the above into account, and subject to the items listed below, I recommend that the application should be approved and that Members grant officers delegation to complete a S106 agreement to secure financial contributions towards SAMMS, wheelie bins, open space provision / maintenance, education, libraries, social services, and Public Right of Way improvements and the provision of 30 starter home units within the development; and

- Receipt of comments from Kent Highways & Transportation and the Council's Open Spaces Manager;
- Receipt of further comments from the EA;
- Further amendments to resolve the LMIDB's objection; and
- Any minor amendments required as a result of the above comments.

**11.0 RECOMMENDATION – GRANT** Subject to receipt of comments from Kent Highways & Transportation and the Council's Green Spaces Manager; receipt of further

comments from the EA; and any minor amendments required as a result of the above comments; 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 be carried out other than in complete accordance with the following drawings:

50623\_3D(90)001 rev 9, 50623\_3D(90)002 rev 9, 50623\_3D(90)003 rev 8,  
 50623\_DT(90)001 rev 1, 50623\_DT(90)002 rev 03, 50623\_DT(90)003 rev 1,  
 50623\_DT(90)05 rev 01, 50623\_DT(90)06 rev 2, 50623\_DT(90)07 rev 2,  
 50623\_DT(90)08 rev 1, 50623\_EL(20)01 rev 2, 50623\_EL(20)02 rev 3,  
 50623\_EL(20)03 rev 2, 50623\_EL(20)04 rev 3, 50623\_EL(20)05 rev 2,  
 50623\_EL(20)06 rev 2, 50623\_EL(20)07 rev 2, 50623\_PL(20)01 rev 2,  
 50623\_PL(20)02 rev 2, 50623\_PL(20)03 rev 2, 50623\_PL(20)04 rev 2,  
 50623\_PL(20)05 rev 2, 50623\_PL(20)06 rev 2, 50623\_PL(20)07 rev 2,  
 50623\_PL(20)11 rev 02, 50623\_SE(90)001 rev 10, 50623\_SE(90)002 rev 8,  
 50623\_SE(90)003 rev 8, 50623\_SE(90)101 rev 1, 50623\_SP(90)001 rev 25,  
 50623\_SP(90)002, 50623\_SP(90)01 rev 18, 50623\_SP(90)101 rev 6,  
 50623\_SP(90)102 rev 4.

Reason: For the avoidance of doubt.

- (3) No development shall take place other than in accordance with the recommendations of the submitted air quality and noise reports, including measures for dust suppression during construction and the erection of a bund to minimise noise reaching the flat block and plot 95, details of which shall be submitted as part of the landscaping conditions set out below.

Reason: In the interest of local and residential amenity.

- (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 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.

- (5) The development hereby permitted shall not be commenced until the following components of a scheme to deal with the risks associated with contamination of the site shall have been submitted to and approved, in writing, by the local planning authority:

- a) A preliminary risk assessment which has identified:
  - all previous uses
  - potential contaminants associated with those uses
  - a conceptual model of the site indicating sources, pathways and receptors



- potentially unacceptable risks arising from contamination at the site.
- b) A site investigation, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
- c) A remediation method statement (RMS) based on the site investigation results and the detailed risk assessment (2). This should give full details of the remediation measures required and how they are to be undertaken. The RMS should also include a verification plan to detail the data that will be collected in order to demonstrate that the works set out in the RMS are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.
- d) A Closure Report is submitted upon completion of the works. The closure report shall include full verification details as set out in 3. This should include details of any post remediation sampling and analysis, together with documentation certifying quantities and source/destination of any material brought onto or taken from the site. Any material brought onto the site shall be certified clean.

Reason: To minimise the contamination and consequent risk to health.

- (6) Prior to the commencement of development, details in the form of samples of external finishing materials to be used in the construction of the development hereby approved shall be submitted to and approved in writing by the Local Planning Authority and shall be implemented in accordance with the approved details.

Reason: In the interest of visual amenity.

- (7) Details in the form of cross-sectional drawings through the site, of the existing and proposed site levels shall be submitted to and approved in writing by the Local Planning Authority before work commences and the development shall be completed strictly in accordance with the approved levels.

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

- (8) No development shall commence until a drainage strategy detailing the proposed means of foul disposal and an implementation timetable have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the agreed scheme and timetable.

Reason: As the existing sewerage network is unable to accommodate the proposed development.

- (9) No development shall take place until details of the proposed means of foul and surface water sewerage disposal have been submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure the site is adequately drained / serviced.

- (10) (i) Development shall not begin until a detailed sustainable surface water drainage scheme for the site has been submitted to (and approved in writing by) the Local Planning Authority. The detailed drainage scheme shall be based on the recommendations of the FRA prepared WSP|Parsons Brinkerhoff (October 2016) and shall demonstrate that both the rate and volume of run-off leaving the site post-development will be restricted to that outlined within the approved FRA (i.e. close to greenfield run-off rate), with the final rate of runoff for any rainfall event agreed in advance with the Lower Medway IDB, Natural England, and Swale Borough Council

(for all storms up to, and including, the climate change adjusted 100yr critical storm); and (ii) No building hereby permitted shall be occupied until details of the implementation, maintenance and management of the sustainable drainage scheme have been submitted to and approved in writing by the local planning authority. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details. Those details shall include:

- a) a timetable for its implementation, and
- b) a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage system throughout its lifetime.

Reason: To ensure that the principles of sustainable drainage are incorporated into this proposal, to ensure ongoing efficacy of the drainage provisions, and to ensure excess water does not need to be pumped into the SPA / Ramsar as this would increase scour of intertidal habitats.

- (11) No development shall take place (including ground works, vegetation clearance) until a construction environmental management plan (CEMP (Biodiversity)) has been submitted to and approved in writing by the local planning authority. The plan shall focus on preventing any detrimental effects on the nearby designated sites and shall be based around the recommendations outlined in the submitted Ecological Assessment (Section 5.2.26, Ecological Solutions, September 2016). The CEMP (Biodiversity) shall include the following:

- a) Risk assessment of potentially damaging construction activities;
- b) Identification of 'biodiversity protection zones';
- c) Practical measures (both physical measures and sensitive working practises) to avoid or reduce impacts during construction (may be provided as a set of method statements);
- d) The location and timing of sensitive works to avoid harm to biodiversity features;
- e) The times during construction when specialist ecologists need to be present on site to oversee works;
- f) Responsible persons and lines of communication;
- g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person;
- h) Use of protective fences, exclusion barriers and warning signs.

The approved CEMP (Biodiversity) shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the local planning authority.

Reason: To minimise disturbance of / harm to protected species.

- (12) No development shall take place, including site clearance, until the reptiles within the application site have been captured and relocated to the identified receptor site in accordance with the details provided in the submitted Ecological Assessment (Section 5.3.11, Ecological Solutions, September 2016) and in accordance with best practise guidelines. Details of management regimes, enhancements and monitoring must be provided and approved in writing by the Local Planning Authority.

Reason: To minimise harm to protected species.

- (13) No development shall take place until a Construction Environment Management Plan, which sets out measures to minimise noise and visual disturbance to birds as set out in

paragraph 5.3.25 of the submitted Ecological Assessment, has been submitted to and approved in writing by the Local Planning Authority. Development shall thereafter be carried out in accordance with those agreed details.

Reason: To minimise harm to / disturbance of birds.

(14) No development shall take place until a “lighting design strategy for biodiversity” for the site boundaries has been submitted to and approved in writing by the local planning authority. The lighting strategy shall:

- a) Identify those areas/features on site that are particularly sensitive for breeding birds and bats and that are likely to cause disturbance in or around their breeding sites and resting places or along important routes used to access key areas of their territory;
- b) Show how and where external lighting will be installed so that it can be clearly demonstrated that areas to be lit will not disturb or prevent the above species using their territory.

All external lighting shall be installed in accordance with the specifications and locations set out in the strategy and these shall be maintained thereafter in accordance with the strategy.

Reason: To minimise disturbance to bats, and other species within the adjacent SPA / SSSI.

(15) No development shall take place until a programme for the suppression of dust during the demolition of existing buildings and construction of the development has been submitted to and approved by the Local Planning Authority. The measures shall be employed throughout the period of demolition and construction unless any variation has been approved by the Local Planning Authority

Reason: In the interests of residential amenity.

(16) Notwithstanding the submitted details 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. Such details shall also include the provision of a native species hedgerow along the northern boundary of the site, adjacent to the wall referred to in condition 28 below.

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.

(17) 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.

- (18) 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.

- (19) 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.

- (20) 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.

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

Reason: In the interests of highway safety and convenience.

- (22) Adequate precautions shall be taken during the period of demolition and construction to prevent the deposit of mud and/or other debris on the public highway.

Reason: In the interests of highway safety and convenience.

- (23) No removal of hedgerows, trees or shrubs shall take place between 1st March and 31st August inclusive, unless a competent ecologist has undertaken a careful, detailed check of vegetation for active birds' nests immediately before the vegetation is cleared and provided written confirmation that no birds will be harmed and/or that there are appropriate measures in place to protect nesting bird interest on site. Any such written confirmation should be submitted to the local planning authority.

Reason: To minimise disturbance to nesting or breeding birds.

- (24) Prior to the occupation of the first dwelling, details of a scheme for the enhancement of biodiversity, including bat and bird boxes, use of native species in landscaping and incorporation of features beneficial to wildlife wherever possible within and around the perimeter of the site, together with details of the timing/phasing of the respective elements forming the scheme and proposed management arrangements, shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be fully implemented prior to the occupation of the first dwelling and thereafter maintained.

Reason: To enhance biodiversity and to encourage wildlife.

- (25) Adequate underground ducts shall be installed before any of the buildings hereby permitted are occupied to enable telephone services and electrical services to be connected to any premises within the application site without resource to the erection of distribution poles and overhead lines, and notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) no distribution pole or overhead line shall be erected other than with the express consent of the Local Planning Authority.

Reason: In the interests of residential amenity

- (26) The informal play area shown on the approved layout shall be reserved for the general amenity of the area, and shall be surfaced and equipped with play equipment in accordance with a schedule to be agreed in writing by the Local Planning Authority before development is commenced, and shall be provided before the last dwelling is occupied; no permanent development whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) or not shall be carried out in the area so shown without the prior written approval of the Local Planning Authority.

Reason: To ensure that these areas are made available in the interests of the amenities of the area.

- (27) The car parking spaces shown on the submitted plans 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 dwelling(s) hereby permitted.

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

- (28) Notwithstanding the submitted details the garden boundary walls to the rear of plots 14 to 17 (inclusive), 69 to 77 (inclusive), 89, 90, 94 to 97 (inclusive); the southern garden wall to plots 81, 82, 91 and 101; the western side boundary walls of plots 43 and 59; the eastern and northern boundary walls to plot 60; the southern (side/rear) boundary walls to plot 61 and 62; and the northern side boundary walls of plots 1, 5, 78, 88, and the flat block, shall be constructed of brick, samples of which shall have been agreed in writing by the Local Planning Authority prior to commencement of development in accordance with condition 4, above.

Reason: In the interest of visual amenity.

- (29) 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.

- (30) In respect of the bin stores shown on drawing 50623(SP)90 001 revision 25, details of external materials shall be submitted to and approved in writing by, the Local Planning Authority. The development shall subsequently be implemented in accordance with the agreed details.

Reason: In the interest of visual amenity.

### **INFORMATIVES**

1. The applicant / owner is advised that there may be gas pipelines near to the development site, and safe digging practices in accordance with HSE publication HSG47 "Avoiding Danger from Underground Services" must be used to verify and establish the actual position of mains, pipes, services and other apparatus before any mechanical plant is used. It is therefore recommended that the applicant / owner contact the Southern Gas Networks Plant Location Team (0800 9121722) prior to commencement of development.
2. The applicant / developer is reminded that planning permission does not confer a right to disturb or divert any public right of way at any time without the express permission of Kent County Council's Public Rights of Way and Access Service (03000 418193).
3. The applicant / owner should enter into a formal agreement with Southern Water to provide the necessary sewerage infrastructure required to service this development, and a formal application for connection to the water supply is required in order to service this development. It is advised that they contact Southern Water (0330 3030119 or [www.southernwater.co.uk](http://www.southernwater.co.uk)) in order to progress the required infrastructure.

### **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 applicant/agent was advised of minor changes required to the application and these were agreed. The application was also considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application.

### **Habitat Regulations Assessment.**

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

The application site sits a minimum of 42m to the east 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 scope to provide mitigation in the form of public open space, planting / soft landscaping, and ecological enhancements.
- Based on the correspondence with Natural England, I conclude that off-site mitigation is required in the form of a standard, per dwelling tariff (£232.58 per dwelling) in accordance with the agreed Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring (SAMM) Strategy.
- Natural England has confirmed that, subject to securing the above SAMMS payment by way of a S106 legal agreement, the development can be screened out of the need for an Appropriate Assessment.

For these reasons I acknowledge that the mitigation will be secured at an appropriate level, and in perpetuity, and I conclude that the proposal can be screened out of the need to progress to an Appropriate Assessment.

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.  
The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.

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**PLANNING COMMITTEE – 2 FEBRUARY 2017**

**PART 3**

Report of the Head of Planning

**PART 3**

Applications for which **REFUSAL** is recommended

<b>3.1 REFERENCE NO - 16/508010/FULL</b>			
<b>APPLICATION PROPOSAL</b> Erection of rear conservatory			
<b>ADDRESS</b> Jesmondene Oast Newhouse Lane Sheldwich Kent ME13 9QS			
<b>RECOMMENDATION - REFUSE</b>			
<b>SUMMARY OF REASONS FOR REFUSAL</b> The proposed rear extension with a pitched roof and upvc fenestrations would have a detrimental impact on this simple, traditional farm building and would undermine the original conversion which successfully retained the original form and character of this agricultural oast building. The rearward projection would have a detrimental impact on the neighbouring property and would be contrary to planning policy.			
<b>REASON FOR REFERRAL TO COMMITTEE</b> Parish Council support.			
<b>WARD</b> Boughton And Courtenay	<b>PARISH/TOWN COUNCIL</b> Sheldwich, Badlesmere And Leaveland	<b>APPLICANT</b> Mr Weston <b>AGENT</b> Anglian Home Improvements	
<b>DECISION DUE DATE</b> 18/01/17	<b>PUBLICITY EXPIRY DATE</b> 30/12/16	<b>OFFICER SITE VISIT DATE</b> 6 <sup>th</sup> December 2016	
<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/94/0659	Replacement side and rear doors and windows in white upvc	Refused	19.08.1994
<i>Summarise Reasons: The proposal to replace the existing timber windows and front door of this converted oast house with white PVC units would detract from its character as an example of a traditional agricultural building and would detract from the character of this part of the Kent countryside which is designated as Area of Outstanding Natural Beauty.</i>			
SW/81/0040	Conversion into two dwellings with single integral garage and double garage.	Approved	11.08.1981
<i>Summarise Reasons: Acceptable development in line with planning policy.</i>			
SW/78/0500	Conversion of building into two dwellings.	Approved.	29.06.1978
<i>Summarise Reasons: Acceptable development in line with planning policy.</i>			
SW/79/0247	Conversion into 3 dwellings with 6 private garages.	Refused.	23.04.1979

*Summarise Reasons: The proposal would detract from the appearance of the oasthouses and would be contrary to Local Planning Authority’s policy of only permitting the conversion of oasthouses to dwellings where the conversion preserves the visual character of the typical Kentish oasthouse.*

**1.0 DESCRIPTION OF SITE**

- 1.01 The isolated property is located in the countryside and within the Kent Downs Area of Outstanding Beauty. Planning permission for the conversion of the traditional Oast house into two dwellings was approved under SW/81/0040 following refusal of a more intensive scheme.
- 1.02 The dwelling has not been extended in the past and permitted development rights for alterations have been removed under SW/81/0040, condition (iv), “In order to preserve the visual character of a typical Kentish oasthouse”.
- 1.03 Planning permission was refused for the installation of uPVC windows in 1994 in order to conserve the character of the building.

**2.0 PROPOSAL**

- 2.01 Planning permission is sought for a white uPVC Victorian style fully glazed rear conservatory to the rear elevation of the converted house.
- 2.02 The conservatory would measure 3.750m x 3.250m, with a ridge height of 2.8m and an eaves height of 2.1m. The conservatory would be sited to the rear of the existing lounge area. The extension would be set 0.2m away from the common boundary to the adjacent converted Oast house known as ‘Badgers Oast’.

**3.0 SUMMARY INFORMATION**

	Existing	Proposed	Change (+/-)
Net Floor Area	0	5.9m <sup>2</sup>	+5.9m <sup>2</sup>
Approximate Ridge Height (m)	0	2.8m	+2.8m
Approximate Eaves Height (m)	0	2.135m	+2.135m
Approximate Depth (m)	0	3.750m	+3.750m
Approximate Width (m)	0	3.250m	+3.250m

**4.0 PLANNING CONSTRAINTS**

- 4.01 Kent Downs Area of Outstanding Natural Beauty.

**5.0 POLICY AND OTHER CONSIDERATIONS**

- 5.01 Swale Borough Local Plan 2008: Saved policies  
 E1 (General Development Criteria)  
 E6 (Countryside)  
 E9 (The countryside)  
 E19 (Design)  
 E24 (Alterations and extensions)  
 RC4 (Extensions to dwellings in rural area)  
 RC7 (Rural Lanes)  
 RC6 (Re-use of agricultural buildings for housing)

- 5.02 Supplementary Planning Guidance 3 ‘*The conversion of traditional farm buildings*’ (adopted 1993)

Paragraph 5.2 states ‘*the sole purpose of allowing agricultural buildings of architectural or historical interest to be converted to a new use is to ensure the preservation of structures recognised as symbolic of rural life. If the conversion changes the character of the building for example to that of a suburban dwelling, this policy is undermined.*’

Paragraph 5.10 states that ‘*the purpose of converting a traditional building will be to adapt it with the minimum of alteration for the purpose required. As such it will not normally be considered appropriate to extend the existing building to accommodate the use.*’

- 5.03 Supplementary Planning Guidance 5; Designing an Extension, which seeks to safeguard the amenity of neighbours from overlarge extensions, suggesting that single storey extensions on the boundary should not exceed 3m in length.

## **6.0 LOCAL REPRESENTATIONS**

- 6.01 No comments have been received.

## **7.0 CONSULTATIONS**

- 7.01 Sheldwich Parish Council “fully support the application and have no objections”.

## **8.0 BACKGROUND PAPERS AND PLANS**

- 8.01 Application papers to 16/508010/FULL including a Design and Access Statement.

## **9.0 APPRAISAL**

- 9.01 I consider the main issue for consideration in this case is whether the proposed changes would undermine the aims of the original conversion and whether the changes would successfully retain the agricultural and historic character of the building.
- 9.02 This former oast house building is of historic interest and the square kilns mark this building out as one of architectural and historic interest within the Kentish landscape. In my opinion the overtly domestic character of the extension has a detrimental impact on the original simple and rustic form of this building conversion and in particular on the agricultural character of the oast.
- 9.03 Whilst planning permission was granted for the conversion from an oast house to two dwellings, as a means of retaining its contribution to the Kentish landscape of hopfields and orchards, the original form and character of the barn was protected, and any further changes from this built form were deliberately controlled at that stage. The building therefore still retains the recognisable historic pattern and simple character of this type of building. This simple character is very evident in the traditional form of Jesmondene Oast and Badgers Oast and was reflected in the conversion.
- 9.04 The current rear elevation retains the buildings original simple character, and the proposal which would create an uncompromisingly domestic style of extension on this simple rear elevation. The extension would fail to retain the simple agricultural

character of the barn conversion by the introduction of a prominent extension with a necessarily complex and domestic roof form. The end result would be a cluttered rear elevation contrary to the aims of protecting the simple traditional agricultural character of the oast house, which will compromise its current character.

- 9.05 Not only would the visual impact have a severe impact on the rear elevation, the entire character and appearance of the barn conversion would be changed and the agricultural character of the original barn would be harmed. The pitch of the roof and the height will have a significant impact on the uninterrupted rear elevation of the existing barn.
- 9.06 I consider the extension to the otherwise successful conversion to undermine the original reason for approving the conversion which was to preserve the historic and architectural character of the building. The proposal conflicts with the advice set out within the Council's adopted SPG for the conservation of traditional farm buildings which states "*the sole purpose of allowing agricultural buildings of architectural or historical interest to be converted to a new use is to ensure the preservation of structures recognised as symbolic of rural life and that it will not normally be considered appropriate to extend the existing building to accommodate the use*". In this instance the change to the existing conversion would result in a conversion that would appear as a suburban dwelling and is therefore contrary to policy guidance. It should be noted that uPVC windows and doors have been installed without planning permission. This is a matter that the Council's Enforcement Team can investigate without prejudice to the result of this application.
- 9.07 A similar application for a rear pitched roof extension at Flint Barn, Stailsfield (ref SW/09/0137) was refused and subsequently dismissed at appeal in 2010. The Inspector noted that '*the harm to the integrity of the former agricultural building from the proposal would be such that planning permission should be refused*' and that '*the conversion was done sympathetically so that the agricultural form of the building was retained*'. In the current instance I suggest that the proposal would also have a detrimental impact on the agricultural form of the building and its retention would be compromised by the introduction of a clearly domestic extension.
- 9.08 Furthermore we have recently refused a similar extension to The Stables at Hanslett Farm for similar reasons under 15/502337/FULL as the '*rear extension with a pitched roof would have a detrimental impact on this simple, traditional farm building and would undermine the original conversion which successfully retained the original form and character of this agricultural building. Loss of the historic form would have a detrimental impact on the character and historic value of this building which made it a suitable building for conversion originally, with corresponding harm to the character and appearance of the countryside and the Kent Downs Area of Outstanding Natural Beauty.*'
- 9.09 The proposed rear extension would measure 3.750m metres in length and in my opinion would have a detrimental impact on the amenity of the neighbouring property. Due to its scale there would be a negative impact on the outlook from the neighbouring property which is contrary to the advice give in Paragraph 5.6 of SPG5 which states that '*to minimise this impact, the Borough Council limits the amount of outward projection on the extension*'. The SPG provides additional further guidance for single storey rear extensions which are located close to the common boundary '*a maximum projection of 3 metres will be allowed*'. In this instance the extension would project by 3.780m metres which is clearly contrary to policy advice and in my view harmful.

## 10.0 CONCLUSION

10.01 The introduction of a domestic conservatory to the rear of this simple and traditional former oast house would have a detrimental impact on the agricultural character of the building and would not result in a sympathetic addition. The proposal is considered contrary to the aims of protecting the agricultural character of traditional farm buildings and creating sympathetic and appropriate conversions. I consider the proposal to be fundamentally contrary to the aims of the Swale Borough Local Plan 2008 policies. I also find the extension harmful to the amenities of the immediate neighbour by reason of its size. I therefore recommend that planning permission is refused.

**11.0 RECOMMENDATION –REFUSE** for the following reasons:

- (1) The proposed rear extension with a pitched roof and upvc fenestrations would have a detrimental impact on this simple, traditional farm building and would undermine the original conversion which successfully retained the original form and character of this agricultural oast building. Loss of the historic form would have a detrimental impact on the character and historic value of this oast building which made it a suitable building for conversion originally, with corresponding harm to the character and appearance of the countryside and the Kent Downs Area of Outstanding Natural Beauty. The proposal is therefore contrary to Policies E1, E6, E9, E19, E24, RC4 and RC6 of the Swale Borough Local Plan 2008 and the Council's adopted Supplementary Planning Guidance entitled '*The Conservation of Traditional Farm Buildings*' (which was adopted by the Council following public consultation, is a material planning consideration in determining applications, and which is referred to in paragraph 3.132 of the adopted Swale Borough Local Plan 2008)
- (2) The proposed rear extension, by virtue of its scale and length on the common boundary would have a detrimental impact on the residential amenity of Badgers Oast contrary to Policies E1, E19 and E24 of the Swale Borough Local Plan 2008 and the advice given in the Supplementary Planning guidance entitled '*Designing an Extension- A Guide for Householders*' (which was adopted by the Council following public consultation, is a material planning consideration in determining applications, and which is referred to in paragraph 3.71 of the adopted Swale Borough Local Plan 2008).

**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 - 16/507503/FULL</b>		
<b>APPLICATION PROPOSAL</b> Demolition of existing conservatory and erection of a single storey rear extension.		
<b>ADDRESS</b> 38 Yeates Drive Sittingbourne Kent ME10 2UH		
<b>RECOMMENDATION - REFUSE</b>		
<b>SUMMARY OF REASONS FOR RECOMMENDATION/REASONS FOR REFUSAL</b> The proposed extension, by virtue of its depth, bulk and massing would have a significantly overbearing and oppressive impact upon the occupiers of 40 Yeates Drive, and would be contrary to the Councils SPG 'Designing an extension – A guide for householders and the development plan.		
<b>REASON FOR REFERRAL TO COMMITTEE</b> This application has been called in by Cllr Mike Dendor		
<b>WARD</b> Kemsley	<b>PARISH/TOWN COUNCIL</b>	<b>APPLICANT</b> Mr M Cook <b>AGENT</b> NFA Architects Limited
<b>DECISION DUE DATE</b> 26/12/16	<b>PUBLICITY EXPIRY DATE</b> 25/11/16	<b>OFFICER SITE VISIT DATE</b> 23/11/16
<b>RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):</b>		
<b>App No</b>	<b>Proposal</b>	<b>Decision</b>
SW/01/0536	Conservatory (Retrospective)	GRANTED

**1.0 DESCRIPTION OF SITE**

- 1.01 No. 38 Yeates Drive is a two storey semi-detached dwelling within the defined built up area boundary of Sittingbourne. There is a small amenity space to the front and a large garden to the rear. The property lies within a cul-de-sac.
- 1.02 The application site is characterised by similar residential properties within this cul-de-sac.

**2.0 PROPOSAL**

- 2.01 The proposal seeks planning permission for the demolition of the existing fully glazed conservatory and the erection of a 3.975m deep brick built single storey rear extension in its place. It will measure 7.045 in width and would have a pitched roof measuring 2.3m to the eaves with an overall height 3.4m
- 2.02 The materials proposed match the main dwelling.

**3.0 PLANNING CONSTRAINTS**

None

**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 and E24 of the adopted Swale Borough Council Local Plan 2008, and Policies CP4, DM14 and DM16 of the emerging Swale Borough Council Local Plan Bearings Fruits 2031 are relevant in that they relate to

general development criteria, require good design and state that developments should not cause unacceptable harm to amenities.

- 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. It is specifically referred to in the supporting text to saved policy E24 of the adopted Swale Borough Local Plan 2008 and to policy DM16 of the emerging plan. As such it should be afforded significant weight in the decision making process.

## **5.0 LOCAL REPRESENTATIONS**

- 5.01 One representation has been received in support of the application from no.36 stating:
- Gives this young family the added extra living space
  - Properties face south and there will be absolutely no impact on blocking daylight or over bearing

## **6.0 APPRAISAL**

### **Principle of Development**

- 6.01 The site is situated within the defined built up area boundary of Sittingbourne in which the principle of development is acceptable subject to other relevant policy considerations.

### **Visual Impact**

- 6.02 The proposed extension is largely to the rear and would not be of a form that would harm the character and appearance of the existing dwelling. There would be a small part of the extension to the side but the visual impact is limited and there would be no harm to the streetscene.

### **Residential Amenity**

- 6.03 The existing conservatory is 3.4m in depth and is of light construction with a fully hipped roof pitching away from the neighbouring property, no.40, so minimising its impact on the outlook from next door.
- 6.04 No.40 is set slightly rearwards of no.38. The proposed extension would though still project 3.8m past the rear of this dwelling. It would have a gable brick elevation facing the neighbour and would be greater in depth, mass and bulk than the existing conservatory. In my opinion the proposed development would be likely to result in significant additional loss of light and outlook to the neighbouring property. In this instance the circumstances of the site do not warrant departure from the Council's established guidance which limits such extensions to 3m to allow the development proposed, given the very close proximity of the extension to no.40.
- 6.05 The proposed extension would project 4.275m beyond the rear wall of no.36 but due to the separation of approximately 1m to the boundary and 3m to the dwelling, the impact upon neighbouring amenity will not be unacceptable in this respect.
- 6.06 As such, I take the view that the 3m guidance in the SPG should be applied here and, whilst the current conservatory exceeds this dimension (not having needed planning permission) the additional impact would be significantly harmful to the residential amenity of 40 Yeates Drive by virtue of having an overbearing and oppressive impact



and leading to an unacceptable sense of enclosure and loss of light. This amounts to a reason for refusal. While I accept that the current occupiers of no.40 have made no comment on the application, I do not consider this to sufficiently outweigh the harm identified.

## **7.0 CONCLUSION**

7.01 This application would fail to comply with the development plan and the SPG and would result in unacceptable harm to the amenity of no.40 and I therefore recommend that permission be refused

**8.0 RECOMMENDATION** – REFUSE for the following reasons:

### **REASONS**

(1) The proposed extension, by virtue of its depth, massing, scale and siting on the boundary, would have a significantly overbearing and oppressive impact upon the occupiers of 40 Yeates Drive, leading to an unacceptable sense of enclosure and loss of light. The proposal would therefore be harmful to residential amenity in a manner contrary to saved policies E1, E19 and E24 of the adopted Swale Borough Council Local Plan 2008, policies CP 4, DM 14 and DM 16 of the emerging Swale Borough Council Local Plan Bearing Fruits 2031 and the adopted Supplementary Planning Guidance entitled "Designing an Extension A Guide for Householders".

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

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

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

In this instance:

The applicant/agent was advised of changes required to the application and these were not forthcoming.

This application was not considered to comply with the provisions of the Development Plan and NPPF as submitted.

**NB** For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.  
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**PLANNING COMMITTEE – 2 FEBRUARY 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 – London Road, Newington**

**Appeal A – 330 dwellings and 60 units of extra care**

**Appeal B – 140 dwellings and 60 units of extra care**

**APPEALS DISMISSED**

**Observations**

**APPEALS AGAINST NON-DETERMINATION**

Following a lengthy and very thorough Inquiry (which tested both developments against 11 main issues), the Inspector has concluded that both the proposed developments would amount to unacceptable development contrary to both the NPPF and the Development Plan.

In the absence of a five-year housing land supply, both development proposals were subjected to the relevant tests under the NPPF and both were found not to amount to sustainable development. In each case, the key areas of harm identified related to landscape character and air quality. The Inspector concluded that the identified harm in these two areas could not be adequately minimised or mitigated. In each case, this harm would outweigh the considerable social, economic and environmental benefits that he identified, and amounted to the basis for each appeal to be dismissed.

- **Item 5.2 – Land and building between 2 and 4 Acorn Street, Sheerness**

**APPEAL ALLOWED – COSTS REFUSED**

**Observations**

**ENFORCEMENT APPEAL**

The Inspector considers it appropriate to impose conditions requiring noise mitigation measures to be submitted and approved, despite being unclear on whether noise from the building is capable of being mitigated.

- **Item 5.3 – 25 Meadow Rise, Iwade**

**APPEAL DISMISSED**

**Observations**

DELEGATED REFUSAL

Full support for the Council's decision.

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

**APPEAL DISMISSED**

**Observations**

DELEGATED REFUSAL

Full support for the Council's concerns over the impact of the extension on the character of the area.

THIS APPEAL DECISION NOTICE REFERS TO BOTH APPLICATIONS (15/500671/OUT & 15/510595/OUT)




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## Appeal Decisions

Inquiry held on 1, 2, 3, 8, 9 & 22 November 2016

Site visit made on 4 November 2016

by **Roger Clews BA MSc Dip Ed DipTP MRTPI**

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

Decision date: 9 January 2017

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### Appeal A – Ref: APP/V2255/W/15/3067553

**London Road, Newington, Kent ME9 7NL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
  - The appeal is made by Gladman Developments Ltd against Swale Borough Council.
  - The application Ref 15/500671/OUT is dated 26 January 2015.
  - The development proposed is described on the application form as: *Residential development of up to 330 dwellings plus 60 units of Extra Care (including a minimum of 30% Affordable), an allocated ¼-acre of serviced land for potential doctor's surgery, demolition of farm outbuildings, planting and landscaping, informal open space, children's play area, surface water attenuation, a vehicular access point from London Road and associated ancillary works.*
- 

### Appeal B – Ref: APP/V2255/W/16/3148140

**London Road, Newington, Kent ME9 7NL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
  - The appeal is made by Gladman Developments Ltd against Swale Borough Council.
  - The application Ref 15/510595/OUT is dated 23 December 2015.
  - The development proposed is described on the application form as: *Residential development of up to 140 dwellings plus 60 units of Extra Care (including a minimum of 30% Affordable), an allocated ¼-acre of serviced land for potential doctor's surgery, demolition of farm outbuildings, planting and landscaping, informal open space, children's play area, surface water attenuation, a vehicular access point from London Road and associated ancillary works.*
- 

## Decisions

### Appeal A – Ref: APP/V2255/W/15/3067553

1. The appeal is dismissed and planning permission is refused for the development which is the subject of planning application Ref 15/500671/OUT, dated 26 January 2015.

### Appeal B – Ref: APP/V2255/W/16/3148140

2. The appeal is dismissed and planning permission is refused for the development which is the subject of planning application 15/510595/OUT, dated 23 December 2015.
- 

[www.planningportal.gov.uk/planninginspectorate](http://www.planningportal.gov.uk/planninginspectorate)

Appeal Decisions APP/V2255/W/15/3067553 & APP/V2255/W/16/3148140

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### **Procedural matters**

#### *Rule 6 party*

3. The Kent branch of the Campaign to Protect Rural England [CPRE Kent] appeared at the inquiry as a Rule 6 party.

#### *Planning obligations*

4. I made arrangements to allow the appellants to submit two executed unilateral undertakings, one for Appeal A and one for Appeal B, after the close of the inquiry. Each is dated 1 December 2016. I consider their contents further below.

#### *Reserved matters*

5. The applications which are the subject of Appeal A and Appeal B were both made in outline, with all detailed matters apart from access reserved for future consideration. I shall consider the appeals on the same basis.

#### *The appeal sites*

6. The Appeal A site is made up of three adjacent rectangular fields, each over 300m in length and around 125m-135m wide, lying just to the south of the A2 London Road. The fields are separated by shelterbelts running roughly at right-angles to the road. For convenience I shall call the eastern field Field A, the middle one Field B and the western one Field C. Fields B and C are currently used for intensive apple-growing while Field A is planted with blackcurrant bushes. A group of farm outbuildings at the north-western corner of Field A is also part of the Appeal A site. The Appeal B site comprises Fields A and B, but excludes Field C and the farm outbuildings.

#### *Description of the Appeal A proposals*

7. During the inquiry the appellants submitted a letter requesting that the access details submitted as part of the Appeal B proposals should also apply to the Appeal A proposals, replacing the original Appeal A access details. Neither the Council nor CPRE Kent objected to this substitution. Since interested persons were able to comment on the Appeal B access details during the appeal process, in my view no-one's interests would be prejudiced by the change. I shall therefore consider Appeal A on that basis.
8. Consequently it is necessary to revise the description of the Appeal A proposals to take account of the replacement access details. It is also necessary to move the words "(including 30% Affordable)" so that they qualify the proposed dwellings as intended, and not the extra care accommodation; and to make three further minor adjustments, which do not materially alter the proposals. These are to add the word "accommodation" after "Extra Care" for clarity; to change "¼ acre" to "0.1ha" to ensure consistency in the use of metric units; and to change "doctor's surgery" to "healthcare facility" to more accurately reflect the terms of the unilateral undertaking (see below). The parties to the inquiry agreed to all these changes.
9. I shall therefore consider the **Appeal A** proposals on the basis of the following description:

Appeal Decisions APP/V2255/W/15/3067553 & APP/V2255/W/16/3148140

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**Residential development of up to 330 dwellings (including a minimum of 30% Affordable) plus 60 units of Extra Care accommodation, an allocated 0.1ha of serviced land for potential healthcare facility, demolition of farm outbuildings, planting and landscaping, informal open space, children's play area, surface water attenuation, a vehicular access point from London Road including the widening and realignment of the A2, and associated ancillary works.**

*Description of the Appeal B proposals*

10. While the Appeal B application was still before the Council, it was amended to remove the proposed demolition of the farm outbuildings and to reduce the maximum number of dwellings to 126. Those revised proposals were considered by the Council on 26 May 2016, when they resolved against officers' recommendations that they would have refused planning permission if they still had jurisdiction over the application. Interested persons have had the opportunity to make representations on the revised proposals during the appeal process.
11. In my view, therefore, no person's interests would be prejudiced by my considering Appeal B on the basis of the revised proposals. For consistency, it is also necessary to make the same further changes to the description of the Appeal B proposals as are set out in paragraph 8 above for the Appeal A proposals. The parties to the inquiry agreed to these changes.
12. I shall therefore consider the **Appeal B** proposals on the basis of the following description:

**Residential development of up to 126 dwellings (including a minimum of 30% Affordable) plus 60 units of Extra Care accommodation, an allocated 0.1ha of serviced land for potential healthcare facility, planting and landscaping, informal open space, children's play area, surface water attenuation, a vehicular access point from London Road including the widening and realignment of the A2, and associated ancillary works.**

*Withdrawn appeal for listed building consent*

13. Originally a third appeal, Ref APP/V2255/Y/15/3067567, was to be considered the inquiry. It was a listed building consent appeal submitted alongside Appeal A. However, it subsequently emerged that the outbuildings at Pond Farm to which the appeal – and the earlier refused listed building consent application – applied are not in fact listed buildings. Hence listed building consent is not required for their demolition. On that basis the appellants withdrew the third appeal by letter dated 31 October 2016.

**Main issues**

14. At the opening of the inquiry I identified 10 main issues for both appeals and, following representations from CPRE Kent, I agreed to consider an eleventh. In the Reasons section below I consider each main issue in turn before reaching my overall conclusions on each appeal. In some cases I have modified my original definition of the main issue in the light of the evidence I heard at the inquiry.

Appeal Decisions APP/V2255/W/15/3067553 & APP/V2255/W/16/3148140

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### Reasons

*First main issue – Whether or not the Council can demonstrate a current five-year supply of housing land and, if not, what is the extent of the shortfall?*

15. The development plan for the area comprises the *Swale Borough Local Plan 2008* [SBLP], adopted in February 2008, and the *Kent Minerals and Waste Local Plan 2013-2030* [KMWLP], adopted in July 2016. It is common ground between the Council and the appellants that the SBLP does not provide a robust and up-to-date objectively-assessed housing need figure, and there is no evidence that leads me to take a different view.
16. The emerging *Swale Borough Local Plan: Bearing Fruits 2031* [ELP] is at examination. Initial hearings were held in November 2015 and the inspector subsequently issued her Interim Findings. In them she supported the Council's proposal that the ELP should be based on a Plan period of 2014-2031 with an objectively-assessed housing need figure of 776 dwellings per annum [dpa]. While there are outstanding representations to the ELP examination that the figure should be different, the Council and the appellants agreed that it represents an appropriate basis against which to measure housing land supply for the purposes of this inquiry.
17. A different objectively-assessed housing need figure may yet be arrived at through the ELP examination. But at this stage 776 dpa represents the most authoritative assessment of that figure, having been discussed at the initial examination hearings and endorsed by the inspector in her Interim Findings. Based on that figure, the Council and the appellants agree that the current housing land supply in Swale borough, based on figures in the latest available Housing Information Audit 2014/15, amounts to some 3.8 years' worth. No substantive evidence supporting any different need or supply figure was put to me and so I shall consider the appeals on that basis.
18. NPPF paragraph 49 advises that housing applications should be considered in the context of the presumption in favour of sustainable development, and that relevant policies for the supply of housing should not be considered up-to-date if a five-year supply of deliverable housing sites cannot be demonstrated. I shall consider the implications of this when dealing below with relevant policies.
19. I conclude on the first main issue that the Council cannot demonstrate a current five-year supply of housing land and that the shortfall amounts to about 1.2 years' supply.

*Second main issue – Whether or not granting planning permission for either appeal proposal would undermine the plan-making process to the extent that the appeal should be dismissed on grounds of prematurity*

20. Guidance on the circumstances in which refusal of planning permission on grounds of prematurity might be justified is given in the national *Planning Practice Guidance* [PPG] at ref 21b-014-20140306. They are likely, the PPG says, to be limited to situations where the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging Local Plan, and where that emerging plan is at an advanced stage. While the PPG is careful to emphasise that those



Appeal Decisions APP/V2255/W/15/3067553 & APP/V2255/W/16/3148140

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circumstances are not exclusive, the evidence before me specifically on this issue did not seek to go beyond them.

21. The ELP is at a relatively advanced stage, since initial hearings have been held and Interim Findings issued by the inspector. Newington is identified in ELP policy ST3 as one of the Rural Local Service Centres. These form the third tier of the ELP's settlement hierarchy. Development is to be focussed at a tertiary scale, supporting each settlement's role as the primary focus for the rural area. This contrasts with the settlement hierarchy defined in SBLP policy SH1, in which Newington is identified as a fourth-tier settlement. The examination inspector concluded in her Interim Findings that the ELP settlement hierarchy is soundly based and consistent with national policy, subject to the allocation of additional sites and clarification of the monitoring approach. It is reasonable therefore to consider it unlikely that the settlement hierarchy, and Newington's position in it, will have changed substantially by the time the ELP is adopted.
22. On the other hand, over 400 main modifications to the ELP have been published for consultation in response to the inspector's Interim Findings. The proposed main modifications include an uplift of over 2,000 in the housing requirement, new site allocations and increases in existing allocations. Some 2,220 representations have been made on the main modifications and will need to be considered by the inspector. Further hearings are also to be held before she completes her report and recommendations. As a result, substantial uncertainty remains about exactly which site allocations will appear in the adopted ELP and at what scale.
23. As the larger of the two schemes before me, the Appeal A proposal for 330 dwellings would represent about 2.5% of the total objectively-assessed need figure for Swale over the ELP period. It is true that the proposed main modifications to the policy ST3 reasoned justification envisage only 1.3% of the total housing requirement being provided at Newington. But even with the addition of the Appeal A proposal figure, the proportion assigned to Newington would remain comfortably within the range envisaged for the Rural Local Service Centres as a whole. (The range set out in the proposed main modifications is from less than 1% at three of the settlements to 4% at Teynham and 6% at Iwade.)
24. From the above points I make the following findings. The Appeal A proposal can be seen as substantial in the context of the ELP, representing about 2.5% of its overall housing requirement. But in respect of the overall scale of development at Newington the proposal would conform to the emerging settlement hierarchy, which the examination inspector has endorsed. Therefore granting planning permission for it at this stage would not prejudice the plan-making process, in which final decisions are in any case yet to be made on many site allocations. The same applies to the smaller Appeal B proposal.
25. I am aware that the proposed reasoned justification to policy ST3, at paragraph 4.3.35.3, qualifies the role of Newington and the other Rural Local Service Centres as the primary focus for the rural area by saying that this role must be achieved *without harm to their character and separation with [sic] other settlements*. But that qualification is not a reason to conclude that granting permission for either appeal proposal would undermine the plan-making

Appeal Decisions APP/V2255/W/15/3067553 & APP/V2255/W/16/3148140

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process. Rather it draws attention to certain other considerations which I will deal with under the third main issue.

26. I conclude on the second main issue that granting planning permission for either appeal proposal would not undermine the plan-making process. Neither appeal should therefore be dismissed on grounds of prematurity.

*Third main issue – The effect of the appeal proposals on landscape character and on the form of Newington*

27. Of the SBLP policies that are relevant, in whole or part, to this main issue, I regard policies SP5, TG1, SH1, E6, E7 and H2 as policies for the supply of housing in the terms of NPPF paragraph 49. This is because, by promoting development within defined settlement limits and restricting it in the countryside outside those limits, their effect is to confine housing development to a level that broadly equates to the SBLP requirement. That requirement, however, is significantly below what the Council and the appellants agree (for the purposes of this appeal) is the current objectively-assessed need. In the current situation where the Council has a supply of only 3.8 years' worth of housing land, those policies would inevitably prevent the Council from demonstrating a five-year supply of deliverable housing sites and they must therefore be regarded as therefore as out-of-date.
28. That is not to say that setting development boundaries is unsound in principle, and indeed ELP policy ST3 proposes to retain that policy designation. But it is evident from the process of the ELP examination to date that neither its overall housing requirement nor the current five-year housing land requirement could be met if the SBLP's development boundaries and Strategic Gaps were retained in their current form. Consequently, although the appeal sites lie outside a development boundary and within a Strategic Gap defined in the SBLP, the policy conflicts resulting from this carry very limited weight in these appeals. In this context I note that the appeal sites do not lie in any of the Important Local Countryside Gaps defined in ELP policy DM25, which has been endorsed by the examination inspector.
29. Although revised development boundaries are defined in the main modifications to the ELP, they, and the consultation representations on them, are subject to consideration by the examination inspector. Thus it cannot be assumed that they will survive unchanged and so they also carry very limited weight in the appeals.
30. SBLP policies E1, E9(a)-(e) and E19 are not policies for the supply of housing. Instead they set out general development management criteria that apply to development both in the countryside and in rural settlements (in the case of E9(a)-(e)) or to all development in Swale (E1 and E19). The criteria are relevant when considering the effect of the appeal proposals on landscape character and on the form and setting of Newington. These policies generally accord with national policy in the NPPF and therefore carry their full statutory weight. ELP policy DM24, the soundness of which has been endorsed by the examination inspector, has similar objectives to E9. Also specifically relevant are NPPF paragraph 17, bullet point 5, which requires recognition of the intrinsic character and beauty of the countryside, and paragraph 109 which advises that valued landscapes should be protected and enhanced.

31. At a national level, the appeal sites lie in the North Kent Plain landscape character area, as defined by Natural England. Natural England's character area profile, published in 2015, describes its key characteristics as including an *open, low and gently undulating landscape ... dominated by agricultural land uses. [...] Orchards and horticultural crops characterise central and eastern areas, and are often enclosed by poplar or alder shelter belts and scattered small woodlands. [...] Large settlements and urban infrastructure ... are often visually dominant in the landscape.*
32. The 2004 *Landscape Assessment of Kent [LAK]*, prepared for the County Council [KCC], places the appeal sites in the Fruit Belt Landscape Character Area, which it describes as *... predominantly a rural, agricultural landscape characterised by a complex landscape pattern of orchards, shelterbelts, fields of arable and pasture and horticultural crops, and divided by small blocks of woodland. [...] The A2 and A249 route corridors, and associated ribbon development, run through the area and have a localised urbanising effect.*
33. At the local level, the *Swale Landscape Character and Biodiversity Appraisal and Guidelines [SLCBA&G]*, produced for the Council in 2011, defines a Newington Fruit Belt extending west and south-west from Newington itself. The appeal sites lie right at the north-eastern edge of this area. The document comments that *It is surprising within the local vicinity to find that this function [fruit production] and the integrity of the landscape structure are very much intact and in good condition. It is a small-scale, enclosed landscape with a strong and regular field pattern. Mature and over-mature hedgerows of mixed native species and mature statuesque shelterbelts of poplar and alder emphasise the landscape pattern and intimated [sic] nature of this area. [...] Along the A2 over large commercial buildings are poorly designed and not well screened. These features have a major impact on the quality of the landscape and the A2 corridor.*
34. In making my assessment of the landscape quality of the appeal sites, as well as referring to these character area appraisals, it is helpful also to consider the *Range of factors that can help in the identification of valued landscapes*, set out in Box 5.1 of the Landscape Institute's *Guidelines for Landscape and Visual Impact Appraisal*, 3<sup>rd</sup> edition (2013). Neither the sites nor their zone of visual influence are subject to any landscape designations, nor do the sites have any known associations with public figures or historical events. Nonetheless, in themselves they are fully representative of key characteristics of the landscape character area in which they lie, whether that is considered at the national, county or borough level. They are a very good example of a small-scale orchard and horticultural landscape, with a strong and regular field pattern enclosed by poplar and alder shelterbelts.
35. The fact that landscape of this type is not rare in the local area does not lessen its potential value, in my view. On the contrary, it derives value from the fact that it is representative of the typical local landscape character. Indeed, a landscape type that is locally rare could hardly be characteristic of an area. The fields are used for commercial fruit-growing, and not managed as traditional orchards like the one next to the village church that I saw during my site visit. But in itself that does not mean they cannot constitute a valued landscape.

Appeal Decisions APP/V2255/W/15/3067553 & APP/V2255/W/16/3148140

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36. A more significant consideration is the context in which the appeal sites are set. Along the busy London Road there are urbanising elements, particularly the continuous strip of mostly residential development that runs along the north side of the road, the car sales premises opposite the sites and the continuous street lighting. But rural elements, including the tall, evergreen roadside hedge to Fields B and C with its grass verge to the roadside, the open grassed area in front of the agricultural outbuildings and the adjacent former Pond Farmhouse, are equally prominent. The big glasshouses opposite the north-western corner of Field C are a further rural element, while the industrial estate to the west does not significantly impinge on views from London Road close to the appeal sites due to boundary screening and a difference in levels.
37. There are views over the appeal site fields from the north, along the public footpath which climbs over Mill Hill. While the edge of development in Newington, along the eastern edge of Field A, is clearly seen from the footpath, the buildings on the north side of London Road are almost entirely concealed by the topography and by a belt of trees along the railway line that runs parallel to the road. From this viewpoint the appeal site fields appear as an integral part of the rural landscape to the west and south-west of Newington. There are scattered groups of buildings in this landscape but they are subsidiary features in the predominantly rural scene.
38. Another public footpath runs from London Road across the north-western corner of Field B and Field C. Once one is behind the boundary hedge the traffic noise begins to recede and the fields are experienced as an almost entirely rural landscape, heavily enclosed by the closely-spaced rows of apple trees and the surrounding shelterbelts.
39. During my site visit it was difficult to obtain clear views into the appeal sites from other nearby public viewpoints. However, it is reasonable to suppose that when the leaves are off the surrounding hedges, there are filtered views into the sites from London Road and from the sports field to the south. From both these viewpoints the sites would be seen in the context of neighbouring development.
40. Drawing all these points together, I find that the scenic quality of the appeal site fields is not substantially diminished by the presence of predominantly residential development along London Road to the north and Playstool Road to the east, or by the proximity of London Road itself. Certainly these are urbanising factors in the overall landscape, but they do not significantly detract from the intrinsically attractive rural character of the fields themselves. Indeed, in views from the public footpaths over Mill Hill and across the appeal site the reduced prominence of urbanising factors enables the fields' attractive rural character to be experienced all the more.
41. In itself, this intrinsic attractiveness would not lift the appeal sites out of the category of ordinary countryside. The more important consideration is that, as I have shown, they constitute a very good example of the small-scale orchard and horticultural landscape that is a key characteristic of the area. In combination, I find that these considerations justify regarding the appeal sites as constituting a valued landscape that should be protected and enhanced, in the terms of NPPF paragraph 109.
42. In reaching this view I have taken account of the assessment, in the SLCBA&G, of the landscape sensitivity of the Newington Fruit Belt as "low". That change

from the "moderate" ranking it was given in the corresponding 2005 assessment is explained as being due to urbanisation along the A2 and the expansion of the settlement of Hartlip interrupting the landscape pattern more significantly than previously considered. But I have shown why, in the specific context of the appeal sites, urbanising factors do not significantly detract from their landscape character and value. Indeed the deterioration in the assessed sensitivity of the area underlines the importance of the SLCBA&G's objective of reinforcing the surviving elements of its typical landscape character.

43. I have also taken account of the "moderate" ranking that the SLCBA&G gives to the landscape in the Newington Fruit Belt as a whole. Again, it appears that it is urbanising factors that are seen as the main degrading features. Against that, the assessment records that *the strong network of mature field boundaries provides visual coherence and largely screens any discordant buildings*, a finding which accords with my assessment of the appeal sites. The LAK's description of the landscape condition of the Fruit Belt Landscape Character Area as "very poor", with an incoherent pattern of elements, applies to a very much larger and more diverse area than the Newington Fruit Belt. In my view it is not an accurate description of the character area to the south and south-west of Newington identified in the SLCBA&G.
44. The Appeal A proposals would result in most of the three appeal site fields being taken up with built development. Only the north-western part of Field C is shown as open space on the indicative development framework plan. The trees and hedges along the southern and western boundaries would be retained, as would the shelterbelts separating the three fields, albeit that the latter would need to be broken through in places to create access ways. However, almost all of the tall hedge along the frontage of Fields B and C would be removed, together with its grass verge, to create the new vehicular access and visibility splays. There would also be substantial widening of London Road to create a right-turn lane into the access with ghost islands to east and west.
45. The effects of these changes on the appeal site fields would be clearly seen from the public footpaths over Mill Hill and within the appeal site. They would take away both the locally typical, small-scale orchard and horticultural landscape characteristics of the appeal sites and their intrinsically attractive rural character. In views from London Road, the changes would have the effect of extending and reinforcing urbanisation along the A2, which is identified as having an important negative impact on landscape quality in both the LAK and the SLCBA&G.
46. The Appeal B proposals would directly affect only Fields A and B, leaving Field C undeveloped except for a short length of the vehicular access from London Road. The indicative development framework plan shows a substantial area of open space to the east and west of the farm outbuildings and a wide landscaped strip next to the southern site boundary. Nonetheless, most of Fields A and B would be taken up with development, and the same amount of hedgerow removal and road widening on the London Road frontage would take place as for the Appeal A scheme.
47. These changes, which would be evident from the public footpaths over Mill Hill and across part of Field B, would take away almost all the locally typical, small-scale orchard and horticultural landscape characteristics of Fields A and B

Appeal Decisions APP/V2255/W/15/3067553 & APP/V2255/W/16/3148140

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together with their intrinsically attractive rural character. In views from London Road the changes would have a similarly harmful urbanising effect as the Appeal A proposals. The retained areas of landscaping and open space, including a small proposed community orchard, and the replacement frontage hedgerow would not overcome these effects, as they would be experienced in the context of the new housing development rather than as part of a wider rural landscape. Even if Field C were retained in fruit production, it would appear as an isolated remnant of the existing, coherent enclave of fruit fields separated by shelterbelts.

48. A green infrastructure strategy for each appeal proposal could secure the creation of additional landscaping features, including a replacement frontage hedgerow for the Appeal A scheme. But they would not compensate for the loss of a very good surviving example of exactly the local landscape characteristics that the SLCBA&G seeks to reinforce. Both appeal proposals would therefore conflict with SBLP policies E1 and E9, in that they would fail to safeguard landscape elements that contribute to the distinctiveness of the locality and the natural environment more generally. They would also conflict with national policy in NPPF paragraph 109, as they would fail to protect or enhance a valued landscape.
49. Were planning permission to be granted for either of the appeal proposals in spite of these policy conflicts, I am sure that a residential development consistent with the design requirements of SBLP policy E19 could be created. With the Appeal B scheme in particular there is potential to provide a softer and more satisfactory western edge to Newington than the rather stark edge currently provided by rear boundaries along Playstool Road. That would be rather more difficult to achieve with the Appeal A scheme because of the proximity of the industrial estate to the western boundary of Field C.
50. Nonetheless, I conclude on the third main issue that, while there could be some modest benefit in respect of settlement form, both appeal proposals would cause substantial harm to landscape character.

*Fourth main issue – The effect of the appeal proposals on the significance of the Grade II listed Pond Farmhouse and on the adjacent farm outbuildings which are non-designated heritage assets*

51. The Grade II listed Pond Farmhouse, which probably dates from the late 18<sup>th</sup> century, stands between London Road and the northern boundary of Field A. The farm outbuildings, most of which were built in the mid-19<sup>th</sup> century to replace earlier buildings, stand at the north-western corner of Field A, a short distance away from the former farmhouse. Pond Farmhouse used to be part of the same farmstead as the outbuildings and the appeal site fields, but has been in separate ownership since 1963 and now has its own residential curtilage, separated from the fields and outbuildings by a wall, hedge and fence. Neither appeal proposal involves any works to Pond Farmhouse or within its curtilage, but the Appeal A development involves the demolition of the outbuildings. Under the Appeal B proposals they would be retained.
52. SBLP policy E14, which is not a policy for the supply of housing, is specifically relevant to this main issue. It states that proposals affecting a listed building and/or its setting will only be permitted if the building's special architectural or historic interest and its setting are preserved. This is similar to, albeit somewhat more stringent than, the statutory requirement that I should have

Appeal Decisions APP/V2255/W/15/3067553 & APP/V2255/W/16/3148140

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special regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses<sup>1</sup>.

53. Also directly relevant are NPPF paragraphs 132 to 135, which set out a structured approach to the consideration of development proposals affecting the significance of heritage assets. This requires an assessment of the scale of any harm that a development may cause to the significance of a designated heritage asset. Different responses are then prescribed, according to whether any harm will be substantial or less than substantial. Because SBLP policy E14 is expressed in absolute terms, and does not allow for this more fine-grained assessment process, the weight I can accord to any conflict with it is reduced. I shall therefore follow the NPPF approach in my consideration of this main issue.
54. In the absence of any direct effect on the physical fabric of Pond Farmhouse, it is the appeal proposals' effect on the house's setting, and any resulting harm to its significance, that fall to be assessed. The house's symmetrical two-storey façade, built in a classical idiom typical of the late 18<sup>th</sup> and early 19<sup>th</sup> centuries, faces London Road. It stands out from the rest of the houses along this stretch of London Road, virtually all of which date from the 20<sup>th</sup> century, because of its age, its size and its fine proportions. Its prominence is enhanced by the wide gaps that separate it from the neighbouring houses to either side.
55. To the west of the former farmhouse, separated from it by a hedge and fence, is a flat grassed area with a post-and-wire boundary fence to the road. Behind that grassed area, and also clearly visible from the footway on the northern side of the road, is the front range of the farm outbuildings. It is built in a simple vernacular style with brick walls, timber doors and window frames, and weatherboarding to the upper parts of the taller western end. Immediately behind that taller section, but not clearly visible from the road, is the circular brick wall of a former oast building, but the distinctive cowl which would have stood on top of the wall is missing.
56. The building range is poorly maintained, with shabby paint on the woodwork, patchy whitewash on the walls and corrugated metal and asbestos sheeting on the roofs, presumably in place of the original tiles. All this considerably reduces any intrinsic attractiveness it might possess. Nonetheless, I regard it as an important element in the setting of Pond Farmhouse. Even though there is no longer any functional relationship between them, its proximity to the listed building enables one to appreciate the historical function of the former farmhouse, and indeed the reason why the farmhouse was built in this location at all. Without the presence of these functional outbuildings to complement the more elegant farmhouse, such an appreciation would be much more difficult, if not impossible.
57. In taking this view I acknowledge that the list entry for Pond Farmhouse, made in 1967, refers only to its external architectural details and makes no mention of the outbuildings or of any historical significance it may have. Indeed, by the time of the listing the outbuildings and the former farmhouse were already in separate ownership. But those facts do not relieve me of the responsibility of assessing its historical significance and the role its setting plays in establishing that. Without doing so I would be unable to meet the statutory duty of "special regard" or to carry out the assessment process set out in the NPPF.

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<sup>1</sup> *Planning (Listed Buildings and Conservation Areas) Act 1990, s.66(1)*

58. Clearly the 20<sup>th</sup>-century development along London Road also contributes to the setting of Pond Farmhouse. But the ensemble created by the former farmhouse, the front range of the outbuildings and the grassed area in front of them has a historic agricultural character quite distinct from that surrounding development. The section of gravel track in front of the outbuildings does not create any significant sense of separation between them and the farmhouse. Without the outbuildings the listed building might well appear as just an unusually attractive older residence among all the other dwellinghouses. With them, its historical *raison d'être* is plain to see.
59. There is a stand of tall trees behind the group of outbuildings that, in combination with the shelterbelts, cuts off views of them and Pond Farmhouse from most parts of the appeal site fields. Views of the rear of the farmhouse can be obtained from the eastern edge of Field A, but the backs of the houses in Playstool Road are a far more prominent visual influence in this location. Moreover, this part of the field is not publicly accessible. From the public footpath that crosses the north-western corner of Fields B and C only the roof of the farmhouse can be seen, and from the Mill Hill footpath the farmhouse is almost completely hidden by the topography and foreground vegetation.
60. Because of the very limited intervisibility between them, I find that the appeal site fields are not a significant element in the setting of Pond Farmhouse. From the point of view of assessing the contribution its setting makes to the listed building's significance, therefore, its setting is confined to the surrounding development and other features along this part of London Road. While the surrounding 20<sup>th</sup>-century development, including the prominent car sales outlet opposite, has a negative impact on Pond Farmhouse's special historic interest and significance, this is far outweighed by the positive contribution made by the adjacent front range of outbuildings and the grassed area in front of them.
61. Because they would involve the demolition of all the farm outbuildings, I consider that the Appeal A proposals would result in substantial harm to the historic significance of Pond Farmhouse. In reaching this view I have taken into account the possibility that a condition could require new buildings very similar in form and design to the outbuildings to be built in their place, as part of the new residential development. But even if it were possible to replicate the historic appearance of the existing buildings, it is difficult to see how their functional character – which is an essential part of their contribution to the historic significance of the former farmhouse – could realistically be preserved in view of the likely desire of future residents to domesticate both the buildings themselves and the area around them.
62. However, Pond Farmhouse's historic significance is only part of its overall significance as a designated heritage asset. Its equally, if not more, important architectural qualities would be unaffected by the proposals and so I find that the demolition of the outbuildings would cause less than substantial harm to its significance overall.
63. Turning to the effect of the Appeal A proposals on the farm outbuildings as non-designated heritage assets, as I have already made clear the front range is in a fairly poor condition overall. If anything the rear range is in a worse condition: while its brickwork and roof retain more of their original appearance and materials, it has suffered fairly extensive fire damage. Neither building range appears to contain evidence of any noteworthy building techniques or



Appeal Decisions APP/V2255/W/15/3067553 & APP/V2255/W/16/3148140

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historic agricultural innovations. The other, smaller outbuildings are more modern blockwork structures of no obvious architectural or historic value.

64. In my view, therefore, the farm outbuildings have very limited significance as non-designated heritage assets in their own right. Considered purely in this context, therefore, their demolition as part of the Appeal A proposals would not lead to any material harm. However, because their demolition would cause less than substantial harm to the significance of Pond Farmhouse, the proposals would conflict with SBLP policy E14 and with the more general requirement in policy E1 to protect the built environment.
65. Because the farm outbuildings are retained under the Appeal B proposals, those proposals would not affect the significance of the listed former farmhouse or the outbuildings themselves and so no policy conflicts would arise.
66. I conclude on the fourth main issue that the Appeal A proposals only would cause less than substantial harm to the significance of the Grade II listed Pond Farmhouse. There would be no other harm to any heritage asset.

*Fifth main issue – The effect of the appeal proposals on the availability of best and most versatile agricultural land*

67. The appeal sites (apart from buildings and tracks) are made up entirely of Grade 1 and Grade 2 agricultural land – amounting to around 12.9ha in all three fields and around 8ha in Fields A and B. These are the top two grades and they put the sites into the category of best and most versatile (BMV) land.
68. NPPF paragraph 112 advises that local planning authorities should take into account the economic and other benefits of BMV land. Where significant development of agricultural land is demonstrated to be necessary, they should seek to use areas of poorer quality land in preference to that of a higher quality.
69. The NPPF does not define what is “significant” development of agricultural land. Natural England must be notified of any developments leading to the loss of more than 20ha of BMV land<sup>2</sup>, but although that threshold has been accepted in some appeal decisions as a yardstick to measure significance, in others it has not. Natural England themselves advise that *The [BMV] land protection policy is relevant to all planning applications, including those on smaller areas, but is for the planning authority to decide how significant the agricultural land issues are.* That is the approach I shall follow.
70. While BMV land is ultimately a national if not an international resource, in assessing the significance of any loss it is relevant, in my view, to consider how prevalent BMV land is in the local area. Indeed, to some extent this is implicit in the NPPF’s advice, since it effectively requires local planning authorities to assess the relative availability of poorer and higher quality land when significant development is necessary.
71. In this context, there is persuasive evidence that the appeal sites are typical of a belt of predominantly high-quality agricultural land stretching all the way from Gillingham to Faversham. Overall, the ELP indicates that some 70% of the 23,000ha of agricultural land in Swale borough is BMV land. While there are of course variations in this general picture, it means that it would probably

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<sup>2</sup> By the *Town and Country Planning (Development Management) (England) Order 2015*

Appeal Decisions APP/V2255/W/15/3067553 & APP/V2255/W/16/3148140

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be difficult to find large developable sites of lower-quality land not only around Newington but around Sittingbourne as well. This is borne out by the fact that greenfield development sites around both settlements that are proposed for allocation in the ELP contain substantial areas of BMV land.

72. Drawing these points together, it is self-evident that in absolute terms both appeal proposals would lead to a loss of BMV land. However, the respective site areas of 12.9ha and 8ha of BMV land would represent a very small proportion of the extensive resources of BMV land in this part of Kent. Moreover, it seems likely that finding alternative sites of lower-quality land in the local area for developments of the scale required to meet the objectively-assessed need for housing would be difficult. Against this background, I find in these particular cases that the loss of BMV land could not be said to be significant.
73. I conclude on the fifth main issue that, although the proposals would lead to the loss of BMV land, that loss would not be significant when assessed against national planning policy.

*Sixth main issue – The effect of the appeal proposals on the supply of brickearth*

74. The appeal sites lie in a Mineral Safeguarding Area [MSA] defined in the KMWLP under policy CSM 4 because of its resources of brickearth. KMWLP policy DM 7 states that in MSAs, planning permission for non-minerals development that is incompatible with minerals safeguarding will only be granted in certain circumstances. These include where the mineral is not of economic value or its extraction would not be viable or practicable. Unsurprisingly, given their recent adoption date, these policies are consistent with national policy in NPPF section 13 and so carry their full statutory weight.
75. KCC are considering a planning application for extraction of brickearth on an extensive area of land at Paradise Farm, to the west and south of the appeal sites. The applicants are Wienerberger, who own the only remaining brick manufacturing plant in the county, Smeed Dean at Sittingbourne.
76. From the land levels on the appeal sites, it seems clear that brickearth has been extracted from Fields A and B in the past. In April 2016 the appellants invited Wienerberger to assess the likely quality of the remaining brickearth on the sites. Wienerberger reported that *we have carried out sample boreholes and confirm there are very little brickearth deposits remaining ... [and] there is a lot of chalk present which is not suitable for our process. They added that the material was cross contaminated with flint so not only was the seam very thin it is also unusable in our process due to the presence of flint.*
77. At the inquiry Cllr Wright argued that Wienerberger had failed to investigate the parts of the sites, including Field C, where most brickearth is likely to be present, and that other brickmakers could use the material despite it containing chalk and/or flint. Cllr Wright's family owned the Sittingbourne brickworks prior to its purchase by Wienerberger and he has substantial knowledge of brick-making. However, he did not suggest any particular alternative brickmaker that might make use of the brickearth.
78. As Wienerberger are the only brickmakers in the area I consider it most unlikely that any other firm would come forward to extract the material. They were invited to assess all three appeal site fields and although they did not dig

Appeal Decisions APP/V2255/W/15/3067553 & APP/V2255/W/16/3148140

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any boreholes in Field C, it is clear from their responses that they do not consider the brickearth here to be suitable for their process. On the evidence before me I therefore find that it is unlikely to be of economic value and that its extraction is unlikely to be viable. The appeal proposals would not conflict with KMWLP policies CSM 4 or DM 7.

79. I conclude on the sixth main issue that the appeal proposals would have no materially harmful effect on the supply of brickearth.

*Seventh main issue – The effect of the appeal proposals, including any proposed mitigation measures, on the use of sustainable forms of transport and on the safe and efficient operation of the road network*

80. The appeal sites are within walking distance of the shops and other amenities in the centre of Newington. Newington Primary School is further away, at the northern end of the village, but it would still be feasible for parents and children to walk there – though of course parents might choose to drive instead. The access proposals for both appeal schemes include a new footway along the site frontage and widening of the footway on the northern side of London Road, with pedestrian crossing facilities (a refuge and a puffin crossing) on each side of the site access. The appellants also propose to provide tactile paving at the junction of London Road and Wykeham Close, and localised carriageway narrowing at the junction of Church Lane and High Oak Hill to control vehicle speeds near the school. The existing public right of way across parts of Fields B and C would be retained.
81. Newington has good public transport links to Sittingbourne, the Medway towns, eastern Kent and London. It is possible to travel by bus or train to all those places for work, shopping, leisure and other purposes. Existing bus stops and the railway station are within walking distance of the appeal sites, and the appellants propose to provide new bus stops and shelters closer to the site access and additional cycle parking spaces at the station.
82. Either appeal scheme, if permitted, would also be subject to a Travel Plan. This would involve the appointment of a co-ordinator to promote and monitor the use of sustainable modes of transport by residents, with the aim of reducing peak hour vehicle use below a prescribed target level.
83. All these measures, which could be secured by means of conditions and the unilateral undertakings, would benefit those residents of the new developments reliant on sustainable modes of transport and would encourage the use of those modes by other residents. Some of the measures would also benefit existing residents of Newington. The proposals would therefore comply with the guidance in section 4 of the NPPF on maximising sustainable transport solutions and giving people a real choice about how they travel.
84. The vehicular access arrangements for both appeal schemes would provide visibility splays appropriate to the existing 40mph speed limit along this section of London Road. A new eastbound right-turn lane, protected by ghost islands, would be provided for vehicles waiting to enter the site access. The access design has been subject to safety audit and has been approved by KCC, the local highway authority.
85. The impact of traffic generated by the new developments on key junctions in the surrounding area has been assessed using a methodology approved by KCC

Appeal Decisions APP/V2255/W/15/3067553 & APP/V2255/W/16/3148140

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and Highways England (HE). It found that there would be adequate spare capacity at all junctions where the development traffic would have a significant impact, apart from the junction between the A2 and A249 at the eastern end of Keycol Hill. Here the modelling showed that the junction would operate significantly over capacity in the assessment year, even without the addition of traffic from the proposed developments. The addition of that traffic would lead to further deterioration in performance.

86. Accordingly the appellants have agreed with KCC and HE that no more than half the dwellings proposed under Appeal A may be occupied until a defined scheme of improvements to the junction has been completed. For Appeal B, a financial contribution to the same junction improvement scheme has been agreed. These measures, which could be secured by condition and unilateral undertaking respectively, are proportionate to, and would provide the necessary mitigation of, the impact of traffic from each appeal proposal on the A2/A249 junction. They would thereby accord with SBLP policy T2.
87. During the inquiry I was made aware of the high degree of local concern about highway safety and congestion on local roads, and especially on the A2 through Newington. Tragically, the father of one person who spoke had been killed in an accident on London Road near the appeal sites some years ago. I do not underestimate the scale of these concerns, and indeed I saw for myself that London Road is very busy at most times of day. I have no doubt that when exceptional events occur, such as the closure of the M2 or the implementation of Operation Stack on the M20, congestion along it becomes very severe. Moreover, where the A2 passes through the centre of Newington there are choke points that can cause temporary delays to the passage of vehicles.
88. However, I am satisfied from the evidence before me that, with the implementation of the measures I have described, neither proposed development would materially worsen any existing congestion on the highway network or lead to a material deterioration in highway safety. Both appeal proposals would therefore comply with the safe access requirements of SBLP policy T1 and with relevant guidance in section 4 of the NPPF.
89. I conclude on the seventh main issue that the appeal proposals, including any proposed mitigation measures, would have a positive impact on the use of sustainable forms of transport and would not materially detract from the safe and efficient operation of the road network.

*Eighth main issue – The effect of the appeal proposals, including any proposed mitigation measures, on air quality, particularly in the Newington and Rainham Air Quality Management Areas*

90. SBLP policy SP2, which is not a policy for the supply of housing, is relevant to this issue. Among other things, it states that adverse environmental impact of development will be avoided, but where there remains an incompatibility between development and environmental protection, and development needs are judged to be greater, the Council will require adverse impacts to be minimised and mitigated. NPPF paragraph 120 requires the effects of pollution and the potential sensitivity of the area to its effects to be taken into account in planning decisions. Paragraph 124 advises that any new development in Air Quality Management Areas (AQMAs) should be consistent with the local air quality management plan.

Appeal Decisions APP/V2255/W/15/3067553 & APP/V2255/W/16/3148140

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91. National air quality standards, based on a 2008 European directive, are set out in the *Air Quality Standards and Objectives Regulations 2010*. They include a limit value of 40 micrograms per cubic metre ( $\mu\text{g}/\text{m}^3$ ) for the annual mean concentration of nitrogen dioxide ( $\text{NO}_2$ ). Limit values are also set for particulate matter and other pollutants. The Government is responsible for ensuring that these limit values are met. In practice, most of the actions necessary to achieve this are devolved to local authorities. They are required to carry out regular reviews and assessments of air quality to identify areas where the limit values are, or are likely to be, exceeded. They must declare AQMAs and prepare action plans to improve air quality in such areas.
92. Added emphasis to the urgency of meeting the limit values for air pollutants was given by the decision of the High Court in November 2015<sup>3</sup> quashing the Government's 2015 Air Quality Plan. The court found that the plan should have sought to achieve compliance by the earliest possible date rather than selecting 2020 as its target date. It also found that the Government had adopted too optimistic a model for future vehicle emissions.
93. An AQMA was declared along a section of London Road and High St in Newington in 2009 because the annual mean  $\text{NO}_2$  objective was exceeded. Another AQMA has been declared in High St, Rainham, some 3km west of Newington in the adjacent Medway Council area, for the same reason. The latest available monitoring data, from 2015, shows that the annual mean objective of  $40\mu\text{g}/\text{m}^3$  for  $\text{NO}_2$  was exceeded at two monitoring sites on the High St in the centre of Newington and at one site in Rainham High St.
94. The appellants' evidence to the inquiry includes an assessment of the air quality impacts of each appeal proposal, carried out in September 2016. These assessments supersede earlier work done by the same consultants. Each assessment models five main scenarios for the Newington and Rainham AQMAs: "without development" scenarios for the base year (2015) (Scenario 1) and for an assumed opening year for the development (2020) (Scenario 2) and a "with development" scenario for the opening year modelling the impact of the development traffic (Scenario 3). The impact of the development traffic taking into account the cumulative effect of other nearby proposed developments is then assessed using the same methodology (Scenarios 4 & 5).
95. For both appeal schemes, both Scenarios 3 & 5 find "moderate adverse" impacts at only one of the 16 receptor sites that were assessed – this is located in the centre of Newington a short distance from the monitoring site at which the highest annual mean  $\text{NO}_2$  concentrations were recorded in 2015. Two other receptor sites, also in Newington High St, receive "slight adverse" impacts while the other 13 show "negligible" change.
96. However, it is noteworthy that the "without development" scenario for the opening year (Scenario 2) forecasts a substantial reduction in annual mean  $\text{NO}_2$  concentrations compared with the 2015 base year. For example,  $\text{NO}_2$  concentrations at receptor site ES4 are shown as falling from  $48.85\mu\text{g}/\text{m}^3$  in 2015 to  $37.43\mu\text{g}/\text{m}^3$  in 2020. Reductions almost as great are predicted at many of the other receptor sites in Newington.
97. It is true that annual mean  $\text{NO}_2$  concentrations in Newington reduced significantly between 2010 and 2014 – by around  $6\mu\text{g}/\text{m}^3$  across all monitoring

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<sup>3</sup> [2016] EWHC 2740 (Admin)

Appeal Decisions APP/V2255/W/15/3067553 & APP/V2255/W/16/3148140

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sites combined. But most of that reduction occurred between 2010 and 2012: from 2012 to 2014 the reduction was only around  $1\mu\text{g}/\text{m}^3$ . Against that background, it seems optimistic on the face of it to expect that  $\text{NO}_2$  concentrations will fall by the substantial amounts predicted in Scenario 2.

98. In the light of this, sensitivity versions of scenarios 2 to 5, in which the "without development" and "with development" scenarios are based on emission factors that remain unchanged between 2015 and 2020, were modelled for both the stand-alone and cumulative effects of the proposals. These show that for both appeal schemes in both "with development" scenarios there would be "substantial adverse" effects at three receptor sites in Newington. There are also "moderate adverse" and "slight adverse" effects at between three and five other receptor sites in each of these scenarios. In each case the limit value for annual mean  $\text{NO}_2$  concentrations would be exceeded at five receptor sites, in some cases by a considerable amount.
99. The sensitivity scenarios are probably too pessimistic: as the appellants' witness pointed out, tightening of emission standards for new vehicles should, over time, bring about substantial further reductions in  $\text{NO}_2$  emissions from traffic. But I was given no firm data on the rate at which this is likely to occur. In the absence of any conclusive evidence on this point, I consider it would be unsafe to rely on emission levels falling between 2015 and 2020 to the extent that informed the modelling of original Scenarios 2 to 5. My view is reinforced by the High Court's finding on the excessive optimism of future emissions modelling. This means that original Scenarios 3 and 5 cannot be taken as reliable projections of the likely impacts of the appeal proposals on air quality.
100. In my view the likelihood is that the impacts of the appeal proposals will fall somewhere between the best case original Scenarios 3 and 5 and the worst case sensitivity versions of those scenarios. Without further modelling it would be unwise to try to assess those impacts too precisely, but it seems safe to say that the possibility of "substantial adverse" impacts on receptors in Newington cannot be ruled out, and that "moderate adverse" impacts and exceedance of the limit value at a number of receptors in both Newington and Rainham are almost certain. This would be the case whether or not the cumulative impacts of other developments are factored in.
101. It might well be that, on this analysis, the limit values for  $\text{NO}_2$  concentration levels would be exceeded in Newington and Rainham in 2020 even without the proposed developments. But this would not justify the further worsening of air quality that the modelling indicates would arise were either development to go ahead.
102. Both "moderate adverse" and "substantial adverse" impacts are considered likely to have a significant effect on human health, according to the 2015 publication *Land-Use Planning & Development Control: Planning for Air Quality*<sup>4</sup>. In accordance with guidance in that publication, the appellants propose to fund measures to mitigate the adverse impacts of the developments on both the Newington and Rainham AQMAs. Contributions to fund those measures are calculated using the DEFRA Emission Factors Toolkit and secured by the unilateral undertakings.

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<sup>4</sup> Produced by Environmental Protection UK and the Institute of Air Quality Management

Appeal Decisions APP/V2255/W/15/3067553 & APP/V2255/W/16/3148140

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103. However, the level of contribution for each appeal scheme is based on 2020 emission factors. As I have found, on the evidence before me it would be unsafe to rely on emission levels falling between 2015 and 2020 to the extent assumed in the modelling of original Scenarios 2 to 5. Consequently the contributions may well not reflect the true impacts of the developments.

104. Proposed mitigation measures are outlined in the unilateral undertakings and the final mitigation scheme is subject to the approval of the Council. The proposed measures include electric vehicle charging points for each dwelling, green travel measures and incentives to encourage the use of walking, cycling, public transport and electric or low emission vehicles. No specific evidence has been provided, however, to show how effective those measures are likely to be in reducing the use of private petrol and diesel vehicles and hence in reducing forecast NO<sub>2</sub> emissions.

105. Drawing all this together, I find that it is more probable than not that both appeal proposals would have at least a moderately adverse impact on air quality in the Newington and Rainham AQMAs, and thus a significant effect on human health. While measures are proposed to mitigate those adverse impacts, there is no clear evidence to demonstrate their likely effectiveness, and it may well be that the contributions to fund the measures fail to reflect the full scale of the impacts.

106. I therefore conclude on the eighth main issue that, even after taking into account the proposed mitigation measures, the appeal proposals are likely to have an adverse effect on air quality, particularly in the Newington and Rainham AQMAs. I reach this conclusion for the reasons set out above, notwithstanding that the Council raise no objection to the proposals on air quality grounds. Both proposals would thereby conflict with the guidance in NPPF paragraphs 120 and 124.

*Ninth main issue – Whether or not the appeal proposals make adequate provision to mitigate the effects of the proposed developments on the Thames Estuary & Marshes, Medway Estuary & Marshes and The Swale Special Protection Areas and RAMSAR sites*

107. The unilateral undertaking submitted for each appeal provides for a contribution to be made, if planning permission is granted, towards the implementation of the *Thames, Medway and Swale Estuaries Strategic Access and Monitoring Strategy*. In each case the contribution would be proportionate to the scale of the proposed development and would provide adequate mitigation for the effects of each proposed development on the Thames Estuary & Marshes, Medway Estuary & Marshes and The Swale Special Protection Areas and RAMSAR sites. Neither appeal proposal therefore conflicts with SBLP policy E12, which seeks to protect sites designated for their importance to biodiversity.

*Tenth main issue – Whether or not the appeal proposals make adequate provision for the infrastructure necessary to support the developments proposed*

108. I have considered transport infrastructure provision under the seventh main issue. For each appeal proposal, the unilateral undertakings also make provision for contributions towards education, youth services, library services, social care, healthcare, and provision of recycling and waste containers. I am satisfied that these contributions are necessary to make each development

Appeal Decisions APP/V2255/W/15/3067553 & APP/V2255/W/16/3148140

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acceptable in planning terms, and that they are directly related and fairly and reasonably related in scale and kind to each development. The Council have confirmed that none would breach the "pooling" limit contained in the *Community Infrastructure Levy Regulations 2010* (as amended).

109. The unilateral undertakings provide for the laying out, management and maintenance of the public open space within each appeal scheme. The provision of adequate sustainable drainage, estate roads and parking spaces, foot- and cycle-paths and other on-site infrastructure could be secured by conditions if planning permission were granted for either scheme. Accordingly there is no substantial evidence of any unmet infrastructure requirements that would arise as a result of the proposals.
110. I conclude on the tenth main issue that the appeal proposals would make adequate provision for the infrastructure necessary to support the developments proposed.

*Eleventh main issue – What benefits would arise from the appeal proposals?*

111. The appeal proposals would provide up to 330 and 126 dwellings respectively, of which at least 30% would be affordable housing. These represent very substantial benefit in a situation where the Council can demonstrate a housing land supply of only 3.8 years' worth and where there is a pressing local need for affordable housing. Newington is a strong housing market area without the risk factors that apply to some of the sites proposed for allocation in the ELP. On the evidence I heard there is no reason to doubt that the appeal sites could begin to deliver housing within two years of a grant of outline permission, thereby making a valuable contribution to the five-year housing supply.
112. The provision of 60 units of extra-care housing would also be a valuable benefit in the context of an acute and growing shortage of such accommodation in Swale and forecast growth of 46% in the number of residents over 65 years of age in the borough during the ELP period. On the other hand, I see only limited benefit in the proposed allocation of land for the provision of an on-site healthcare facility, as there is no clear evidence that any healthcare provider would actually come forward to develop the facility.
113. Both schemes would generate substantial economic benefits in terms of construction jobs (at least 300 full-time equivalent (FTE) for six years for Appeal A or at least 150 FTE for five years for Appeal B); additional spending by the new residents which would benefit the borough's economy (£8.7 million for Appeal A or £3.3 million for Appeal B); employment opportunities at the extra-care housing; a substantial increase in the local labour force; additional Council tax revenue of some £4.8 million over 10 years (Appeal A) or £1.8 million over 10 years (Appeal B); and New Homes Bonus payments of about £3.1 million over six years (Appeal A) or £1.2 million over six years (Appeal B). The full implementation of improvements to the A2/A249 junction in connection with the Appeal A scheme would have positive economic benefits over a wider area.
114. As noted under the seventh main issue above, some of the transport measures to be provided in connection with the appeal schemes would also benefit existing residents of Newington and encourage the wider use of sustainable forms of transport. Those measures include new and improved



Appeal Decisions APP/V2255/W/15/3067553 & APP/V2255/W/16/3148140

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pedestrian footpaths, bus stops and shelters and crossing facilities on London Road, additional cycle parking at the railway station, and proposed traffic-calming measures near Newington Primary School.

115. Finally, the public open space in each appeal scheme would be available for use by the general public, not just the scheme's residents.

**Overall conclusions on Appeal A – Ref: APP/V2255/W/15/3067553**

116. Section 38(6) of the *Planning and Compulsory Purchase Act 2004* requires that I determine the appeal in accordance with the development plan unless material considerations indicate otherwise. The Appeal A proposals would conflict with SBLP policies SP5, TG1, SH1, E6, E7 and H2 because they involve residential development outside a development boundary and within a Strategic Gap, both defined in the SBLP, and none of the policy exceptions that would permit such development apply. The proposals would also conflict with SBLP policies E1 and E9 because of the substantial harm they would cause to landscape character, and with SBLP policies E1 and E14 because they would fail to preserve the special historic interest and the setting of the listed Pond Farmhouse.
117. I have found no conflict with SBLP policies E12, E19, T1 or T2 or with KMWLP policies CSM 4 or DM 7. Although SBLP policy E15, dealing with Conservation Areas, is mentioned in the Council's putative reasons for refusal it is not relevant to this appeal. SBLP policies SP1 and SP2 also feature among the Council's putative reasons for refusal. Neither is a policy for the supply of housing: instead they deal with the broad issues of sustainable development and the impact of development on the environment.
118. SBLP policy SP2 requires a judgment to be made as to whether development needs are greater than the interests of environmental protection. The shortfall of 1.2 years' worth of housing land in the Council's current five-year supply undoubtedly creates a pressing need for additional housing development, including affordable housing, and the rapidly growing number of older people in the borough means there is also a strong need for housing for that age group in particular. The development proposals would make a substantial contribution to meeting each of those categories of need. But I consider that this contribution would be outweighed by the harm that the proposals would cause to the visual, historical and atmospheric environments of the borough, through their effects on landscape character, on the significance of Pond Farmhouse and on air quality. That harm could not be adequately minimised or mitigated and so there would be conflict with policy SP2.
119. Policy SP1 requires a broader balance to be drawn between positive and negative aspects of the proposals. In the terms of this policy the proposed development would provide for physical, social and community infrastructure, provide a very substantial number of new dwellings in a mix and range of housing types, including affordable housing, support existing local services and provide opportunities to reduce the need to travel by car. But in my judgment those benefits would be outweighed by the detrimental impact that the proposals would have on areas of environmental importance and on human health and well-being. Therefore, while the proposals would increase local self-sufficiency and satisfy human needs for housing, their greater weight that I give to their adverse environmental impact means that they would conflict with policy SP1.

Appeal Decisions APP/V2255/W/15/3067553 & APP/V2255/W/16/3148140

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120. Thus the Appeal A proposals would conflict with the development plan as a whole. That said, their conflicts with SBLP policies SP5, TG1, SH1, E6, E7 and H2 carry very limited weight in my decision because those policies are out of date for the reasons given under the third main issue above. Their conflict with policy E14 also carries limited weight because that policy is not consistent with guidance in the NPPF.
121. Where relevant development plan policies are out of date, NPPF paragraph 14 advises that permission should be granted unless **either** any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the NPPF's policies as a whole (Limb 1); **or** specific NPPF policies indicate that development should be restricted (Limb 2). Having reached a conclusion on those tests, it is also necessary to consider whether there are other material considerations that would lead to a different conclusion (footnote 10 to NPPF paragraph 14).
122. That whole process, to which I now turn, leads to an outcome which reflects the presumption in favour of sustainable development that lies at the heart of the NPPF. Although not all the relevant development plan policies in this case are out of date, I shall conduct the paragraph 14 process as if they were in order to ensure that the presumption is robustly applied.
123. Policies relating to designated heritage assets are specifically listed in the NPPF's footnote 10 as indicating that development should be restricted, and so Limb 2 of paragraph 14 applies to the Appeal A proposals. I have found that the proposals would lead to less than substantial harm to the significance of the listed Pond Farmhouse. NPPF paragraph 134 requires that harm to be weighed against the proposals' public benefits. There would be substantial benefits from the supply of a large amount of new housing, including affordable housing and housing for older people for which there is a high level of need, in the context of a significant shortfall in the Council's five-year housing land supply. There would also be substantial benefits to the borough's economy, and some benefits to non-residents from transport infrastructure and open space provision.
124. I find that, in combination, these benefits of the proposals would outweigh the harm the proposals would cause to the significance of the designated heritage asset. Thus the Limb 2 test does not indicate that permission should be refused.
125. I shall structure the broader Limb 1 assessment by assessing the benefits and adverse impacts of the Appeal A proposals in terms of the three dimensions of sustainable development. Substantial **social** benefits would arise from the delivery of 330 new dwellings and 60 extra-case housing units, beginning in about two years from the grant of planning permission. This would make a significant contribution to meeting demonstrated needs for market, affordable and older persons' housing and to addressing the shortfall of 1.2 years in the housing land supply for the borough. It would provide support for local businesses and services in the village and help to rebalance its ageing demographic profile. Housing development at the scale proposed would accord with the settlement hierarchy in the ELP, which is unlikely to be altered. All this would accord with NPPF paragraphs 28, 47 and 50.
126. The proposed development would be well served by means of transport other than the car and residents would have a genuine choice when deciding

Appeal Decisions APP/V2255/W/15/3067553 & APP/V2255/W/16/3148140

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how to travel to a wide range of destinations. Additional benefits would accrue to non-residents from the transport infrastructure provided in association with the development – most notably including the full implementation of improvement works to the A2/A249 junction. In these ways the proposals are consistent with section 4 of the NPPF.

127. The public open space and retained public right of way within the development would be available to non-residents and so would contribute to their health and well-being in accordance with NPPF paragraph 73. Provision of land for an on-site healthcare facility would be consistent with the objectives of NPPF paragraphs 69 and 70, but because there is considerable uncertainty over whether the facility would actually be delivered, this benefit carries only limited weight.
128. Against all these social benefits, however, must be set the strong likelihood that, notwithstanding the proposed mitigation measures, the appeal proposals would contribute to at least "moderate adverse" impacts on air quality in both the Newington and Rainham AQMAs. Thus they would be likely to have a significant adverse effect on human health. These effects of the proposals would conflict with the guidance in NPPF paragraph 124.
129. I have set out the substantial **economic** benefits of the Appeal A proposals under the eleventh main issue. While there would also be some loss of BMV land, that loss would not be significant when assessed against national planning policy, and the proposals would have no materially harmful effect on the supply of brickearth. Thus the economic impacts of the proposals are strongly positive and carry significant weight in accordance with NPPF paragraphs 18 and 19.
130. Turning to the **environmental** dimension, the Appeal A proposals would have no harmful consequences for ecology or flood risk. Indeed there is the potential for some on-site biodiversity enhancement in accordance with NPPF paragraph 118.
131. For the reasons I have given under the third main issue, however, and notwithstanding any potential benefit they might have in respect of settlement form, the proposals would cause substantial harm to landscape character. By failing to protect or enhance what I have found to be a valued landscape they conflict with NPPF paragraph 109.
132. The proposals would also cause less than substantial harm to the significance of the listed Pond Farmhouse. Although I found in applying the Limb 2 test that, in itself, that harm is outweighed by the benefits of the appeal proposal, it is nonetheless a negative factor to be considered in the overall Limb 1 balance.
133. Drawing all this together, I conclude on the Limb 1 assessment that, even after considerable weight is given to the social, economic and environmental benefits that I have set out above, the substantial harm that the appeal proposals would cause to the character of a valued landscape and their likely significant adverse effect on human health would significantly and demonstrably outweigh those benefits. The less than substantial harm the proposals would cause to the significance of the listed Pond Farmhouse adds a small amount of additional weight to the negative side of the balance but does not affect the overall outcome of the assessment.

Appeal Decisions APP/V2255/W/15/3067553 & APP/V2255/W/16/3148140

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134. No other material considerations that would lead me to a different conclusion in respect of the NPPF paragraph 14 assessment or in any other respect have been drawn to my attention. I find therefore that there are no material considerations which indicate that Appeal A should be determined other than in accordance with the development plan. Accordingly, I conclude that Appeal A should be dismissed.

**Overall conclusions on Appeal B – Ref: APP/V2255/W/16/3148140**

135. I shall follow the same assessment process for the Appeal B proposals as for Appeal A. The Appeal B proposals would conflict with SBLP policies SP5, TG1, SH1, E6, E7 and H2 because they involve residential development outside a development boundary and within a Strategic Gap, both defined in the SBLP, and none of the policy exceptions that would permit such development apply. The proposals would also conflict with SBLP policies E1 and E9 because of the substantial harm they would cause to landscape character. There would be no conflict with SBLP policies E12, E19, T1 or T2 or with KMWLP policies CSM 4 or DM 7.
136. The shortfall of 1.2 years' worth of housing land in the Council's current five-year supply creates a pressing need for additional housing development, including affordable housing, and the rapidly growing number of older people in the borough means there is also a strong need for housing for that age group in particular. The development proposals would make a significant contribution to meeting each of those categories of need. But I consider that this contribution would be outweighed by the harm that the proposals would cause to the visual and atmospheric environments of the borough, through their effects on landscape character and on air quality. That harm could not be adequately minimised or mitigated and so there would be conflict with SBLP policy SP2.
137. In the terms of SBLP policy SP1 the proposed development would provide for physical, social and community infrastructure, provide a significant number of new dwellings in a mix and range of housing types, including affordable housing, support existing local services and provide opportunities to reduce the need to travel by car. But in my judgment these benefits would be outweighed by the detrimental impact that the proposals would have on an area of environmental importance and on human health and well-being. Therefore, while the proposals would increase local self-sufficiency and satisfy human needs for housing, the greater weight that I give to their adverse environmental impact means that they would conflict with policy SP1.
138. Thus the Appeal B proposals would conflict with the development plan as a whole. That said, their conflicts with SBLP policies SP5, TG1, SH1, E6, E7 and H2 carry very limited weight in my decision because those policies are out of date for the reasons given under the third main issue above.
139. Although the other relevant development plan policies in this case are not out of date, I will conduct the NPPF paragraph 14 process as if they were in order to ensure that the presumption in favour of sustainable development is robustly applied.
140. The Limb 2 test does not apply to the Appeal B proposals. I shall structure the Limb 1 assessment by assessing the benefits and adverse impacts of the Appeal B proposals in terms of the three dimensions of sustainable

Appeal Decisions APP/V2255/W/15/3067553 & APP/V2255/W/16/3148140

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development. Significant **social** benefits would arise from the delivery of 126 new dwellings and 60 extra-care housing units, beginning in about two years from the grant of planning permission. This would make a valuable contribution to meeting demonstrated needs for market, affordable and older persons' housing and to addressing the shortfall of 1.2 years in the housing land supply for the borough. It would provide support for local businesses and services in the village and help to rebalance its ageing demographic profile. Housing development at the scale proposed would accord with the settlement hierarchy in the ELP, which is unlikely to be altered. All this would accord with NPPF paragraphs 28, 47 and 50.

141. The proposed development would be well served by means of transport other than the car and residents would have a genuine choice when deciding how to travel to a wide range of destinations. Some additional benefits would accrue to non-residents from the transport infrastructure provided in association with the development. In these ways the proposals are consistent with section 4 of the NPPF.
142. The public open space and retained public right of way within the development would be available to non-residents and so would contribute to their health and well-being in accordance with NPPF paragraph 73. Provision of land for an on-site healthcare facility would be consistent with the objectives of NPPF paragraphs 69 and 70, but because there is considerable uncertainty over whether the facility would actually be delivered, this benefit carries only limited weight.
143. Against all these social benefits, however, must be set the strong likelihood that, notwithstanding the proposed mitigation measures, the appeal proposals would contribute to at least "moderate adverse" impacts on air quality in both the Newington and Rainham AQMAs. Thus they would be likely to have a significant adverse effect on human health. These effects of the proposals would conflict with the guidance in NPPF paragraph 124.
144. I have set out the substantial **economic** benefits of the Appeal B proposals under the eleventh main issue. While there would also be some loss of BMV land, that loss would not be significant when assessed against national planning policy, and the proposals would have no materially harmful effect on the supply of brickearth. Thus the economic impacts of the proposals are strongly positive and carry significant weight in accordance with NPPF paragraphs 18 and 19.
145. Turning to the **environmental** dimension, the Appeal A proposals would have no harmful consequences for ecology or flood risk. Indeed there is the potential for some on-site biodiversity enhancement in accordance with NPPF paragraph 118.
146. For the reasons I have given under the third main issue, however, and despite the benefit they could provide in respect of settlement form, the proposals would cause substantial harm to landscape character. By failing to protect or enhance what I have found to be a valued landscape they conflict with NPPF paragraph 109.
147. Drawing all this together, I conclude on NPPF paragraph 14 assessment that, even after considerable weight is given to the social, economic and environmental benefits that I have set out above, the substantial harm that the

Appeal Decisions APP/V2255/W/15/3067553 & APP/V2255/W/16/3148140

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appeal proposals would cause to the character of a valued landscape and their likely significant adverse effect on human health would significantly and demonstrably outweigh those benefits.

148. No other material considerations that would lead me to a different conclusion in respect of the NPPF paragraph 14 assessment or in any other respect have been drawn to my attention. I find therefore that that there are no material considerations which indicate that Appeal B should be determined other than in accordance with the development plan. Accordingly, I conclude that Appeal B should be dismissed.

*Roger Clews*

Inspector

Appeal Decisions APP/V2255/W/15/3067553 & APP/V2255/W/16/3148140

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## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Mr W Upton, of Counsel	instructed by Mid-Kent Legal Services
<i>He called</i>	
Mr D Huskisson DipLA CMLI	Principal, Huskisson Brown Associates
Mr S Algar BA MSc MRTPI	Design & Conservation Manager, Swale Borough Council
Mr R Lloyd-Hughes BScEstMan MRICS	Director, Rural Planning Ltd
Mr M Goddard BA DipTP DMS MRTPI	Director, Goddard Hester Planning Practice
Mr K Bown BSc MPhil MRTPI	Spatial Planning Manager, Highways England

### FOR KENT CPRE:

Mr R Knox-Johnston	instructed by CPRE Kent
<i>He called</i>	
Ms J Barr BSc LLM PGCert MA MRTPI	Planner, CPRE Kent
Cllr J Wright	Swale Borough Councillor
Ms E Rouse MCifA MA BA	Principal, Wyvern Heritage and Landscape
Mrs M Milsted-Williamson	Swale Local Footpaths Officer, Ramblers' Association
Cllr S Harvey	Chair of Planning Committee, Newington Parish Council
Cllr M Baldock	Kent County and Swale Borough Councillor
Prof S Peckham	Director, University of Kent Centre for Health Service Studies

### FOR THE APPELLANTS:

Mr P Cairnes, QC	instructed by Gladman Developments Ltd
<i>He called</i>	
Mr P Rech BA BPhilD CMLI	Director, FPCR Environment & Design Ltd
Mr J Clemons BA MA MSc MRTPI IHBC	Director and Head of Built Heritage, WYG
Mr S Helme BEng MSc CIHT	Director, Ashley Helme Associates Ltd
Mr A Walton BSc DipAc&NC MCIEH AMIOA	Technical Director & Principal Environmental Scientist, Wardell Armstrong LLP
Mr J Mackenzie BSc DipTP MRTPI	Planning & Development Manager, Gladman Developments Ltd

Appeal Decisions APP/V2255/W/15/3067553 & APP/V2255/W/16/3148140

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**INTERESTED PERSONS:**

Mr M Buttle	Resident of London Road, Newington
Mr R Palmer	Resident of Station Road, Newington
Mr Harrington	Resident of Playstool Road, Newington
Mrs C Buttle	Resident of London Road, Newington
Mrs A Fagg	Resident of London Road, Newington
Mr N Hudson	Resident of Bull Lane, Newington

**DOCUMENTS SUBMITTED DURING AND AFTER THE INQUIRY**

- 1 Letter from Mr Mackenzie to PINS case officer, withdrawing the listed building consent appeal
- 2 Draft Unilateral Undertaking for Appeal A
- 3 Draft Unilateral Undertaking for Appeal B
- 4 Signed Statement of Common Ground on heritage issues between the Council and the appellants
- 5 Opening Statement for Gladman Developments Ltd (Mr Cairnes)
- 6 Swale Borough Council Core documents:
  - CDS1 Adopted Swale Borough Local Plan
  - CDS2 Emerging Swale Local Plan, Bearing Fruits, Main Modifications June 2016
  - CDS3 Inspector's Interim Findings on Swale Local Plan, Parts 1, 2 & 3
  - CDS4 SBC/PS/115: Summary of main issues arising from consultation on main modifications, October 2016
- 7 Peter Brett Associates October 2016 OAN Advice Note
- 8 Supplementary Statement on Best & Most Versatile Agricultural Land (Mr Lloyd-Hughes)
- 9 Rebuttal of Evidence – Planning (Ms Barr) with two attached appeal decisions
- 10 Appeal decision Ref APP/G2435/W/15/3005052
- 11 Secretary of State appeal decision Ref APP/R0660/W/15/3136524
- 12 CPRE Kent Opening Statement (Mr Knox-Johnston)
- 13 Appendices A-E to Councillor Wright's evidence
- 14 Anonymous response written on reverse of A4 leaflet entitled "Wake Up Newington"
- 15 1976 Soil Survey Land Use Capability classification table and plan of Newington and surrounding area
- 16 Agricultural Land Classification and Soil Resources report for Persimmon Homes site at Land north of High St, Newington (April 2015)
- 17 Signed Statement of Common Ground on highways matters between Kent County Council & Ashley Helme Associates Ltd
- 18 Design & Access Statement and site layout plan for Persimmon Homes site at Land north of High St, Newington
- 19 Kent Minerals & Waste Local Plan, policies CSM 4 & DM 7
- 20 Page of additional information on air quality monitoring 2015-16 and plan of air quality monitoring points in Newington
- 21 Signed Statement of Common Ground on planning issues between the Council and the appellants
- 22 Signed Statement of Common Ground Supplementary No 1 on highways matters between Highways England, Kent County Council & Ashley Helme



Appeal Decisions APP/V2255/W/15/3067553 & APP/V2255/W/16/3148140

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- Associates Ltd
- 23 School roll figures for Newington CE Primary School, 7 November 2016
- 24 Judgment in *Client Earth (No 2) v SoS for Environment, Food & Rural Affairs and others* [2016] EWHC 2740 (Admin)
- 25 Extract from *Guidelines for Landscape and Visual Impact Assessment*, including Box 5.1
- 26 DCMS, *Principles of Selection for Listing Buildings*
- 27 *Kent Farmsteads Guidance, Part 1 – Farmsteads Assessment Framework*
- 28 *Further observations on air quality following the High Court judgement 2<sup>nd</sup> November 2016* (Prof Peckham)
- 29 Lists of draft conditions for Appeal A & Appeal B
- 30 Letter from Mr S Barker of Gladman to PINS requesting that the Appeal B access arrangements should also apply to Appeal A
- 31 Table and plan showing Correlation of Swale Borough Council monitoring locations with Existing Sensitive Receptors modelled by Mr Walton
- 32 Highways England, *Information regarding the Government's Road Investment Strategy as it relates to M2 junction 5*
- 33 Extract from Ricardo Energy & Environment. *Kent & Medway Air Quality Monitoring Network*, p60, Figures 49 & 50
- 34 Track-changed version of draft Unilateral Undertaking for Appeal A showing comments from the Council
- 35 Track-changed lists of draft conditions for Appeal A & Appeal B showing comments from the Council and the appellants
- 36 SBLP Implementation and Delivery Schedule 2016/17
- 37 Council's note and tables regarding proposed developer contributions
- 38 Email correspondence between the appellants and Kent County Council regarding education contributions, with attached tables
- 39 Closing Statement for CPRE Kent (Mr Knox-Johnston)
- 40 Closing Submissions for the Council (Mr Upton)
- 41 Closing Statement for Gladman Developments Ltd (Mr Cairnes)
- 42 Email exchange between Mr Mackenzie and the Council, dated 30 November and 1 December 2016, setting out agreed wording for a proposed affordable housing condition
- 43 Certified copy of executed Unilateral Undertaking for Appeal A
- 44 Certified copy of executed Unilateral Undertaking for Appeal B
- 45 Email from Kent County Council dated 6 December 2016 concerning the executed Unilateral Undertaking for Appeal A
- 46 Email from Kent County Council dated 6 December 2016 concerning the executed Unilateral Undertaking for Appeal B

#### PLANS SUBMITTED DURING THE INQUIRY

- A Drawing No 6363-SK-01 rev A: *Proposed Redevelopment of Pond Farm Outbuildings – Indicative Sketch*
- B Kent Minerals & Waste Local Plan, plan showing Mineral Safeguarding Areas in Swale
- C Plan showing suggested accompanied site visit itinerary

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## Appeal Decision

Site visit made on 6 December 2016

by **Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)**

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

Decision date: 13 January 2017

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**Appeal Ref : APP/V2255/C/16/3152534**

**Land and building between 2 and 4 Acorn Street, Sheerness, Kent, ME12 2ST.**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Mirian Gashi against an enforcement notice issued by Swale Borough Council.
- The notice was issued on 22 April 2016.
- The breach of planning control as alleged in the notice is without planning permission the change of use of the land for the purposes of fitting, repair and or providing sales, selling of tyres, car servicing and associated storage, shipping containers and material which in the opinion of the Council requires the benefit of planning permission.
- The requirements of the notice are (i) cease the use of the land as identified in paragraph 3 of the notice: (ii) remove the storage containers and any other equipment from the land including signage identifying the activity.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (b) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: The appeal is allowed, the enforcement notice is quashed and planning permission is granted in the terms set out below in the Formal Decision.**

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### Application for costs

1. The Appellant has made an application for costs against the Council. This is the subject of a separate decision.

### Preliminary Matters

2. An enforcement notice shall specify the precise boundaries of the land to which the notice relates whether by reference to a plan or otherwise. The Appellant argues that the land he describes as 'the hatched land' should not be included in the plan attached to the notice. I agree that the plan attached to the notice does not accurately depict the layout of buildings currently on site but that is not a requirement. I saw at my site visit that the single storey workshop on the site is linked to the store currently used by the service station and can be accessed through it. Whilst I recognise that the hatched land is not owned by the Appellant I find as a matter of fact and degree that the land edged red on the plan (including the hatched land) comprises the planning unit in this case and accordingly, I find the plan to be sufficiently precise as not to warrant variation.

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Appeal Decision APP/V2255/C/16/3152534

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3. The Appellant states that historic evidence indicates there is no change of use of the workshop or storage area and refers to information obtained from a local resident. But there is no ground (d) appeal before me to determine.
4. Reference is made in the papers before me to use of the site for car washing, a planning application concerning the Acorn Street boundary walls and an earlier withdrawn enforcement notice. But the notice is not concerned with these matters and therefore these are not issues that I address in this decision. Comments about the accuracy of the Council's website are also not matters for me to comment upon.
5. The Appellant initially lodged a ground (e) appeal but this was withdrawn in correspondence during the course of the appeal.

#### **Ground (b) appeal**

6. This ground of appeal is that the alleged breach has not occurred as a matter of fact. The Appellant's arguments refer solely to the hatched land.
7. The onus of proof rests upon the Appellant with the test of evidence being on the balance of probabilities. The Appellant states that the hatched land is not within his ownership and has not been used in connection with the alleged breach of planning control. The Council disputes this and believes that at the time of issue of the notice the alleged breach was occurring as a matter of fact. Whilst it is not necessary for the Appellant's version of event to be independently corroborated in order to be accepted in this case the Council's submissions do not support his assertion. In the absence of any supporting evidence I cannot conclude with any certainty that the alleged breach has not occurred as a matter of fact on the hatched land. The Appellant has not discharged the burden of proof that rests upon him in this ground of appeal.
8. The ground (b) appeal therefore does not succeed.

#### **Ground (a) appeal and deemed application**

##### **Main issue**

9. The main issue in determining this appeal is the effect of the development on the living conditions of occupiers of nearby residential premises with particular regard to noise and disturbance.

##### **Living conditions**

10. The development plan includes the Swale Borough Local Plan (the Local Plan). Policy E1 of the Local Plan provides that development should satisfy a number of criteria. One of these criteria is that it should cause no demonstrable harm to residential amenity. I have taken into account the emerging local plan but as this is not adopted this limits the weight I can attach to it.
11. The appeal site is located between a service station with associated car wash operation and residential properties in Acorn Street. The site can be accessed via the service station and Acorn Street. The surrounding area is in mixed residential and commercial/industrial use. Residential properties are near the site with No 4 Acorn Street in very close proximity.
12. I saw at the site visit that the single storey workshop on the site is equipped to undertake tyre repairs and vehicle servicing with associated storage. It is

Appeal Decision APP/V2255/C/16/3152534

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linked to another single storey store on the adjacent service station site and can be accessed through it. The workshop has roller shutter doors. To the rear of the site, adjacent to Acorn Street, are two shipping containers that I saw being used for tyre storage.

13. The representations from neighbours describe how their daily lives are adversely affected by noise, including the opening and closing of container and roller doors and the inflating of car tyres. They describe the need to keep their windows closed and in some cases to changing sleeping arrangements. Their complaints about noise from the car wash facility nearby are however not the subject of this appeal.
14. The complaints of local residents are consistent with the findings of the acoustic assessment report submitted by the Appellant. This assessment concludes that the use of the site in its current format will result in an adverse impact should work be undertaken with the shutter doors open. It recommends that shutter doors and windows be closed and no activities take place in the yard area. The assessment is based on no more than one vehicle being serviced or having tyres changes in any one hour period.
15. I conclude that in the context of the close proximity of the site to residential properties and the likely noise to be generated from the unauthorised use the development causes undue harm to the living conditions of occupiers of nearby residential properties (in particular no 4 Acorn Street) with regard to noise and disturbance contrary to the development plan.
16. I have taken into account the economic benefits of the unauthorised use and the location of the site in an edge of town location but these matters do not outweigh the identified harm.
17. I have considered whether conditions could overcome the identified harm. I have taken into account the Planning Practice Guidance and the conditions suggested by the Council and the Appellant.
18. The parties agree that preventing the opening of shutter doors and windows when noise creating activities are taking place would control the identified harm. I agree that noise mitigation measures are reasonable and necessary. But I also agree with the Council that a condition requiring that shutter doors and windows are closed and limiting the level of activity to one vehicle per hour would be difficult to enforce. I am not persuaded that the detection of a contravention of such a condition would be practically possible to monitor and may pose severe difficulties for the Council in proving any future contravention. There is nothing before me to suggest that neighbours affected would be able to provide clear evidence of any contravention.
19. I therefore wrote to the parties during the course of this appeal seeking comments as to whether a condition could be imposed that would require the parties to agree a detailed scheme to control the levels of noise emissions and noise mitigation measures. The Council responded that planning permission should not be granted as it has not been demonstrated that the harm can be mitigated. The Appellant raised no objection and stated that a scheme would be submitted in the event that such a condition was imposed.
20. Whilst I agree with the Council that appropriate noise mitigation measures have not yet been identified I am not satisfied on the evidence before me that

Appeal Decision APP/V2255/C/16/3152534

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a solution cannot be agreed. The Appellant has suggested that further noise mitigation measures could be considered (such as sound insulation) although there is no assessment of such measures before me. Requiring a scheme would enable the parties to explore further potential noise mitigation measures and provide certainty to local residents. I therefore conclude that an appropriate condition requiring agreement of a scheme to control noise emissions would address the identified harm. I have considered the comments of the parties concerning timescales and process and consider the condition to be reasonable and precise.

21. The Council proposes a condition controlling hours of operation. I agree this is necessary and reasonable. The Council suggests hours of operation which reflect the current hours of operation as set out by the Appellant. I consider the proposed hours reasonable and that weekend and holiday hours reflect the proximity to residential properties. But the suggested condition is not specific about the activities being controlled and I have amended it so that it covers both use of machinery and delivery.
22. I conclude that it is both reasonable and necessary to control the location of noise creating activity. I consider that the Council's suggested condition to restrict activity to the workshop is appropriate. I consider that a condition restricting use to the workshop will prevent the use taking place in the external yard area and therefore this does not require a separate condition.
23. The Council proposes a condition requiring that the shipping containers be removed after three years to enable a more appropriate and better designed long term solution to be found. This appeal concerns the use of the land. There is nothing before me to support an argument that the appearance of the containers causes harm to the character and appearance of the area. I therefore do not find this condition to be reasonable or necessary.
24. The Appellant in his grounds of appeal suggests that vehicular access to the appeal site be restricted to through the filling station to avoid use of the Acorn Street access. I find this to be necessary and reasonable.
25. For the reasons given above, I conclude that the appeal should succeed on ground (a) and planning permission will be granted subject to conditions.

#### **Formal Decision**

26. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the use of the land and buildings between 2 and 4 Acorn Street, Sheerness, Kent, ME12 2ST as shown on the plan attached to the notice for the purposes of fitting, repair and/or providing sales, selling of tyres, car servicing and associated storage subject to the following conditions:
  - 1) Unless within 1 month of the date of this decision a scheme to demonstrate that the level of noise emitted from the development shall comply with the latest British Standard for assessment of industrial and commercial sound at all times that the use hereby permitted is in operation is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 1 month of the local planning authority's approval, the use of the site for the purposes of fitting, repair and/or providing sales, selling of

Appeal Decision APP/V2255/C/16/3152534

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tyres, car servicing and associated storage including shipping containers shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented. Upon implementation of the approved scheme specified in this condition the scheme shall thereafter be retained.

- 2) If a scheme in accordance with condition 1 is not approved within 3 months of the date of this decision the use hereby permitted shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.
- 3) Machinery shall be operated, processes shall be carried out and deliveries shall be taken at or despatched from the site only between 08:00 and 19:00 on Monday – Friday (inclusive), 09:00 – 17:00 on Saturdays and 10:00 – 16:00 on Sundays and Bank or Public Holidays;
- 4) Activity associated with the use hereby permitted shall not take place anywhere on the site except within the workshop;
- 5) There shall be means of vehicular access to the site from the Sheerness filling station only which shall be retained thereafter.

*S. Prail*

**Inspector**




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## Cost Decision

Site visit made on 6 December 2016

by **Sandra Prail, MBA, LLB (Hons), Solicitor (non practising)**

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

Decision date: 13 January 2017

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**Costs application in relation to Appeal Ref: APP/V2255/C/16/3152534  
Land and buildings between 2 and 4 Acorn Street, Sheerness, Kent, ME12  
2ST.**

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Mr Mirian Gashi for a partial award of costs against Swale Borough Council.
  - The appeal was against the enforcement notice alleging without planning permission the change of use of the land for the purposes of fitting, repair and or providing sales, selling of tyres, car servicing and associated storage, shipping containers and materials which in the opinion of the Council requires planning permission.
  - The requirement of the notice is to (i) cease the use of the land and (ii) remove the storage container and any other equipment from the land including signage identifying the activity.
  - The period for compliance with the notice is one month.
- 

### Decision

1. The application for an award of costs is refused.

### Reasons

2. The *Planning Practice Guidance* (the Guidance) advises that irrespective of the outcome of the appeal, 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.
3. The Guidance indicates that a local planning authority is likely to be at risk of an award of costs where it withdraws an enforcement notice without good reason.
4. The Appellant asserts that the Council has acted unreasonably by withdrawing an enforcement notice after the submission of appeal statements by the Appellant. The assertion concerns an enforcement notice which he says involved an allegation of car washing activities and was withdrawn by letter dated 13 May 'due to drafting errors'. No response from the Council is before me nor do I have any documentation concerning that notice.
5. I have determined the appeal in relation to the enforcement notice issued on 22 April 2016. The earlier notice was not within my remit and therefore not within the remit of this decision. In any event there is insufficient information

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Appeal Decision APP/V2255/C/16/3152534

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before me to enable me to draw any conclusions about whether an earlier notice was withdrawn without good reason.

6. The Guidance indicates that a local planning authority is likely to be at risk of an award of costs where it provides information that is shown to be manifestly incorrect or untrue.
7. The Appellant asserts that in relation to the appeal before me car wash activities have needed to be addressed unnecessarily. He refers to the Council's website which he says incorrectly describes an earlier appeal which concerned car washing as 'in progress' and that this has caused confusion. No response from the Council is before me.
8. It is correct that third parties have referred to car wash facilities in their representations. In my appeal decision I state that these are not relevant to the appeal. But even if the Council's website was not clear as to the appeals being determined the notice itself and the notification letters provide an accurate description of the development the subject of the appeal. The notification letter sent by the Council to neighbours does not refer to car wash facilities and accurately describes the development attacked by the notice. In any event the Appellant's submissions before me on the matter of the car wash are minimal and I cannot conclude on the evidence before me that the website entry caused the Appellant to incur any unnecessary or wasted costs.
9. The Guidance indicates that a local planning authority may be at risk of an award of costs where prior investigations would have ensured the accuracy of an enforcement notice.
10. The Appellant argues that the plan attached to the enforcement notice includes an incorrect boundary and that this is a drafting error. In my decision I concluded that the plan was sufficiently precise and did not require variation. I therefore do not find unreasonable behaviour in this regard.

#### **Conclusion**

11. For the reasons given I find that unreasonable behaviour resulting in unnecessary expense as described in the Guidance has not been demonstrated. I therefore conclude that the award of costs sought by Mr Mirian Gashi against Swale Borough Council is not justified in whole or part.

*S. Prail*

**Inspector**

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## Appeal Decision

Site visit made on 19 December 2016

by Timothy C King BA(Hons) MRTPI

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

Decision date: 16<sup>th</sup> January 2017

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**Appeal Ref: APP/V2255/D/16/3155632**

**25 Meadow Rise, Iwade, ME9 8SB**

- 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 M Hancock against the decision of Swale Borough Council.
  - The application Ref 16/504105/FULL dated 11 May 2016, was refused by notice dated 26 July 2016.
  - The development proposed is *'first floor side extension.'*
- 

### Decision

1. The appeal is dismissed.

### Preliminary Matter

2. Although the development applied for states only a proposed first floor side extension the scheme also involves the erection of two separate dormer roof extensions to the rear roofslope. The Council raises no objections to this element of the proposal and I agree with this approach. As such I will limit my assessment to that of the side extension.

### Main Issue

3. The main issue in this appeal is the proposal's effect on the character and appearance of the surrounding area.

### Reasons

4. The appeal dwelling is a two-storey detached post-war property that sits off a hammer-head at the end of Meadow Rise. At my site visit I observed the general development pattern in the immediate vicinity and noted the characteristic gaps between the dwellings and their side boundaries, at least at first floor level. In illustration, the appeal property has a side garage, albeit recessed behind a car port which sits almost flush with the front building-line. Its neighbour, No 27 also has a side garage, but set further back along the common boundary in accordance with the recessed footprints of Nos 27 and 29.
  5. The proposal would involve the introduction of a side extension, two-storey in height, part of which would sit directly above the line of the existing car port. At first floor level it would be flush with the dwelling's frontage, then follow the angled boundary line rearwards before straightening up to accord with the dwelling's existing flank.
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Appeal Decision APP/V2255/D/16/3155632

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6. I consider that the extension would be of significant width, relative to the dwelling's main frontage and, with the absence of any set back at first floor level, the extension would lack subordination to the host dwelling. Indeed, the effect would be compounded by the intention to build partly along the angled boundary which would give it a rather awkward appearance.
7. In the above connection the appellant, in his grounds of appeal, mentions that a similar extension for the property was granted planning permission in 2007 and, having been supplied with the Council's ref. no, I have examined the plans approved at that time. In comparison the approved two-storey extension was set back from the frontage with its roof also set down from the dwelling's main ridge, lessening any impact. Notwithstanding this, I also note that the date of the planning permission precedes the adoption of the Swale Borough Local Plan (LP) and also the Council's Supplementary Planning Guidance 'Designing an Extension: A Guide for Householders' (SPG) which, for proposed domestic additions, mentions that a gap of 2m between a first floor side extension and the boundary is normally required. The proposal does not fully comply with this guideline.
8. Directly related to the above I have had regard to LP Policies E1, E19 and E24 which together, amongst other things, indicate that development should be of a high quality design, responding to its local context and maintaining the character of the streetscene. In this instance I consider that the extension's siting and design would impact on the general feeling of openness, unduly affecting the streetscene.
9. Although the proposed dormer extensions are considered acceptable I have considered the possibility of a split decision. However, given that the roof conversion appears intrinsically linked with the proposed side extension I am of the view that the proposal's two elements are not severable.
10. The appellant suggests that he has concerns at the manner in which the Council dealt with his application. My remit, though, is only to examine the planning merits, or otherwise, of the proposal. Any grievance as to procedural matters relating to the original planning application should be taken up with the Council itself. He also mentions that there are other similar extensions in the area. However, I was not provided with details of such and did not witness any developments similar to that proposed. Besides, each case must be taken on its individual merits.
11. I conclude that the proposal would be harmful to the character and appearance of the surrounding area, contrary to the aims of LP Policies E1, E19 and E24 and also relevant advice contained within the Council's SPG.
12. For the above reasons, and having had regard to all matters raised, the appeal does not succeed.

*Timothy C King*

INSPECTOR




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## Appeal Decision

Site visit made on 19 December 2016

by Timothy C King BA(Hons) MRTPI

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

Decision date: 16<sup>th</sup> January 2017

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**Appeal Ref: APP/V2255/D/16/3161478**

**25 Preston Grove, Faversham, ME13 8JY**

- 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 Timothy Keen against the decision of Swale Borough Council.
  - The application Ref 16/504192/FULL dated 14 May 2016, was refused by notice dated 26 July 2016.
  - The development proposed is *'Demolition of existing conservatory and erection of proposed two storey side extension together with single storey front and rear extensions.'*
- 

### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The Council raises objections only to the proposed two-storey side extension and I agree with this approach. As such, I will limit my assessment to this element of the proposal only.
3. I note that the property lies within the locally designated Faversham Conservation Area. Although the Council has not referred to this as an issue in its reason for refusal I have a statutory duty under S72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to regard this as a material consideration.

### Main Issue

4. The main issue in this appeal is the proposal's effect on the character and appearance of the surrounding area.

### Reasons

5. The appeal dwelling is a two-storey semi-detached property set in from its common boundary with No 23. The proposal seeks to build a two-storey side addition which would extend the dwelling to approximately 1m from the side boundary. The development, which would have the single storey front and rear additions attached, would rise to the host dwelling's ridge height but would be slightly recessed at first floor level.
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Appeal Decision APP/V2255/D/16/3161478

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6. From my site visit I observed that the properties along the eastern side of Preston, although of varying style, are similarly semi-detached in form with significant spaces between the dwellings' flank walls and side boundaries and this is an important characteristic of the general development pattern. It is this feature which the proposal seeks to partly infill.
7. Such instances are specifically addressed in the Council's Supplementary Planning Guidance 'Designing an Extension: A Guide for Householders' (SPG) which, for such developments, indicates that a gap of 2m between the first floor flank wall side extension and the boundary is normally required. The appellant, in his grounds of appeal, counters this asserting that the appeal dwelling is set back from No 23, the first floor of the extension would also be set back from No 25's main frontage, and a gap of some 1m would still remain.
8. Whilst I agree that these are mitigating measures to be taken into account I also consider that the extension's design, without any step-down from the main ridge height, would not make for a sufficient degree of subordination to the host dwelling. This, to my mind, overrides the measures already mentioned, and is particularly important given the general building pattern and the conservation area location.
9. Directly related to the above I have had regard to Policies E1, E19 and E24 of the Swale Borough Local Plan (LP) which together, amongst other things, indicate that development should respond to its local context and maintain the character of the streetscene. In this instance I consider that the extension's form and appearance would impact on the general feeling of openness, unduly affecting the streetscene.
10. In relation to the area's designation, and with regard to the statutory test I have referred to earlier, I do not therefore consider that the proposal would preserve or enhance the character or appearance of the Conservation Area. Although I find that the harm would be less than substantial there are insufficient public benefits arising from the proposal which would outweigh the degree of harm identified.
11. The appellant has indicated that other similar extensions have been built along the street. However, I have not been provided with details of such and was unable to earmark any parallel examples from walking along the street. I have also had regard to the appellant's personal circumstances which, he considers, necessitates the development. However, I do not consider these as so significant as to outweigh the visual harm I have identified would result from the proposal.
12. Finally, whilst the single storey front and rear extensions might be considered acceptable in themselves the rear addition, although extending across the main dwelling, would also be partly attached to the proposed side extension whilst the front extension is wholly dependent on the side extension's erection. As such, I am unable to issue a split decision as the scheme's individual elements are not fully severable.
13. I conclude that the proposal would be harmful to the character and appearance of the surrounding area, contrary to the aims of LP Policies E1, E19 and E24 and also relevant advice contained within the Council's SPG.

Appeal Decision APP/V2255/D/16/3161478

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14. For the above reasons, and having had regard to all matters raised, the appeal does not succeed.

*Timothy C King*

INSPECTOR

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