

AGENDA

PLANNING COMMITTEE MEETING

Date: Thursday, 2 March 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

	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 2 February 2017 (Minute Nos. 1174 - 1178) 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 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. Planning Working Group

To approve the Minutes of the Meeting held on 20 February 2017 (Minute Nos. to follow).

16/501552/FULL – Winterbourne Wood Quarry, Jezzards Lane, Dunkirk, ME13 9PH

16/508023/FULL – 10 Western Avenue, Halfway, Sheerness, Kent, ME12 3BS

6. Deferred Items

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To consider the following applications:

16/505280/OUT – Land at Swale Way, East Hall Farm, East Hall Lane, Sittingbourne

16/507789/FULL – Howt Green, Sheppey Way, Bobbing

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

Requests to speak on these items must be registered with Democratic Services (democraticservices@swale.gov.uk or call us on 01795 417328) by noon on Wednesday 1 March 2017.

7. Report of the Head of Planning Services

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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 or call 01795 417328) by noon on Wednesday 1 March 2017.

8. Exclusion of the Press and Public

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

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

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

investigation or prosecution of crime.

9. Report of the Head of Planning Services

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To consider the attached report (Part 6).

Issued on Tuesday, 21 February 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

Chief Executive, Swale Borough Council,
Swale House, East Street, Sittingbourne, Kent, ME10 3HT

DEF ITEM 1 REFERENCE NO - 16/505280/OUT			
APPLICATION PROPOSAL			
Outline Application for residential development (up to 33 dwellings), and open space; including associated access (vehicular / cycle / pedestrian), alterations to levels, surface water attenuation features (including swales), landscaping and related development.			
ADDRESS Land At Swale Way East Hall Farm East Hall Lane Sittingbourne Kent ME10 3TJ			
RECOMMENDATION Refuse			
SUMMARY OF REASONS FOR RECOMMENDATION			
The development would provide much needed housing within the built-up area boundary on part of a wider site allocated for housing development. However, the provision of solely housing as opposed to a mix of 'Neighbourhood Centre Uses' is a significant concern in respect of meeting the aims and objectives of securing sustainable development for this site and the wider Great Easthall housing development. The option of securing funds for the development of a community shop is now not viable and this was fundamental to the acceptance of the scheme. Our independent consultants – CBRE - have also highlighted the need for further evidence to support the applicant's case for not providing a convenience retail unit on this site. This additional evidence has not been forthcoming.			
REASON FOR REFERRAL TO COMMITTEE			
Strong public objection and Ward Member request.			
WARD Murston	PARISH/TOWN COUNCIL	APPLICANT Trenport Investments Limited	
		AGENT Vincent And Goring	
DECISION DUE DATE 20/09/16	PUBLICITY EXPIRY DATE 15/11/16		
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
15/510505/FULL	Construction of new community centre with adjoining changing room facilities and associated works (land opposite application site)	Approved	03/08/16
SW/07/0431	Approval of reserved matters pursuant to outline permission SW/02/1180 for the development of a neighborhood center, erection of a supermarket, local convenience store, seven shop units, a public house, twelve dwellings, veterinary surgery and associated development.	Approved but not implemented	02/05/2007
SW/02/1180	Residential development, employment development, open space and supporting facilities	Approved	16/07/2004
This application granted outline planning permission for the development of Great Easthall. Members will be aware that since the grant of outline permission, there have been numerous approvals of reserved matters applications for housing and development of the wider site has been underway for many years. Further planning permission have also been granted for Parcels F,G and H, and approximately 500 of the 860 dwellings approved at this site have been completed.			

MAIN REPORT

1.0 DESCRIPTION OF SITE

1.01 Please refer to the appended report for a full description of the site and its surroundings.

2.0 PROPOSAL

2.01 Details of the proposal are set out at paragraphs 2.1-2.4 of the appended report.

2.02 Members will be aware that this application came before them at the planning committee on 8th December 2016. The original committee report and minutes of that meeting in respect of this application are appended. Following the motion to approve being lost, the Head of Planning Services used his delegated powers to ‘call-in’ the application. The resolution is recorded as:

“That as the Planning Committee was minded to make a decision that would be contrary to officer recommendation and contrary to planning policy and/or guidance, determination of the application be deferred to the next meeting of the Committee.”

2.03 Members will also note that the recommendation put forward by Officers is now one of refusal. The reasons for this change in recommendation are set out in detail in the discussion section below.

3.0 SUMMARY INFORMATION

	Proposed
Site Area (ha)	1.4ha
Resi storeys	Max 3
Height	Min 8m max 12.5m
Parking Spaces	Not set
No. of Residential Units	Max 33
No. of Affordable Units	10%
Density	25.8 dph (not set)

4.0 PLANNING CONSTRAINTS

4.01 A medium-pressure gas pipeline runs through the southern part of the site, and its position is shown on the Illustrative Layout.

5.0 POLICY AND OTHER CONSIDERATIONS

5.01 The National Planning Policy Framework (NPPF): paras 7 (three dimensions of sustainable development), 8, 11 (presumption in favour of sustainable development), 12, 14, 17 (core planning principles), 19 (economy), 32 (sustainable transport), 34, 47 (delivering a wide choice of high quality homes), 49, 50, 55, 56, 58 (good design), 69, 70, 73 (healthy communities); 118, 119 (biodiversity), 120, 121 (contaminated land), 123 (noise), 129, 131 (heritage assets), 159 (housing), 162 (infrastructure), 186 (decision taking), 187, 196 (determining applications); 197, 204 (planning obligations) & 216 (weight to emerging policies).

- 5.02 National Planning Policy Guidance (NPPG): Design; Natural environment; Housing and Economic Development needs assessment; Planning Obligations; Use of planning conditions; transport assessments and statements in decision taking; Water supply, waste water and water quality land affected by contamination.

Development Plan:

- 5.03 The Swale Borough Local Plan 2008 saved policies SP1 (sustainable development), SP2 (environment), SP4 (housing), SP6 (transport and utilities), SP7 (community services and facilities), TG1 (Thames Gateway Planning Area) SH1 (settlement hierarchy), E1 (general development criteria), E11 (biodiversity and geological interests), E12 (designated biodiversity and geological conservation sites), E14 (Developing involving Listed Buildings) H2 (new housing), H3 (affordable housing), H7 (East Hall Farm), C1 (Community services and facilities), T1 (safe access), T4 (cyclists and pedestrians) & C3 (open space on new housing developments)
- 5.04 The emerging Swale Borough Local Plan “Bearing Fruits” – ST1 (sustainable development), ST2 (targets for homes and jobs), ST3 (settlement strategy), ST4 (meeting local plan development targets), ST5 (Sittingbourne area strategy), CP2 (sustainable transport), CP3 (high quality homes), CP4 (good design), CP5 (health and wellbeing), CP6 (community facilities and services to meet local needs), CP8 (conserving and enhancing the historic environment), DM6 (managing transport demand and impact), DM7 (vehicle parking), DM8 (affordable housing), DM14 (general development criteria), DM17 (open space, sports and recreation provision), DM21 (water, flooding and drainage), DM28 (biodiversity and geological conservation), DM23 (listed buildings), DM34 (Archaeological sites) & IMP1 (implementation and delivery plan).
- 5.05 Kent Minerals and Waste Local Plan 2013 – 2030 – Policy DM7 states that planning permission will only be granted for non-mineral development that is incompatible with minerals safeguarding where it is demonstrated, among other things, that it constitutes development on a site allocated in the adopted development plan.

Supplementary Planning Documents:

Developer Contributions (2009)

Other Planning Documents (not adopted as SPD)

East Hall Farm Development Brief March 2003

Great Easthall Development Brief Review October 2009

6.0 LOCAL REPRESENTATIONS

- 6.01 Sixty letters of representation have been received. Please refer to the appended report for a full summary of the comments received.
- 6.02 An e-petition protesting against the planning application has also been created. This is entitled – *“We want amenities not properties on the entrance to the Great Easthall estate.”* This had a total of 84 comments and 120 signatures at the time of writing this report. The comments largely reiterate the concerns set out above.

7.0 CONSULTATIONS

- 7.01 Please refer to the appended report for the full list of consultee responses.
- 7.02 In addition we have received comment from Southern Water in which they note that wastewater discharged from the proposed development will be drained to their wastewater treatment works which currently do not have capacity to accommodate flows from the proposed development. Although they are currently undertaking a capital programme to increase capacity, they ask that occupation of the development does not take place until wastewater facilities exist to effectively drain the development and suggest a condition to impose this requirement. They specify distances for tree planting and construction to ensure that public water mains and sewers are not damaged. They confirm that the site can connect to the foul sewerage system and that a formal application to them is required. They also confirm that the surface water sewer has capacity. They warn that the long term maintenance of SUDs is critical to their effectiveness and suggest that drainage details submitted to the LPA should include details of this maintenance and management. They recommend a condition to ensure that details of foul and surface water are submitted to the LPA. They confirm that they can provide a water supply to the development and that a formal application to them is required.

8.0 BACKGROUND PAPERS AND PLANS

- 8.01 The applicant has submitted the following documents to support their application:
- 8.02 Design and Access Statement; Transport Statement; Preliminary Geo-Environmental and Geotechnical Risk Assessment; Extended Phase 1 Habitat Survey; Great Crested Newt Survey and Preliminary Assessment of Trees for use by Bats; Noise Impact Assessment; Draft Heads of Terms – Section 106 agreement; Flood Risk Assessment; Cultural Heritage Desk Based Assessment; Utilities Statement; Air Quality Assessment; Assessment of Viability of a Neighbourhood Centre.
- 8.03 Appended to this report is the original committee report for 8th December 2016 along with the minutes of that meeting.

9.0 APPRAISAL

Principle of Development

- 9.01 The appended report sets out that the principle of the development of this site for housing is accepted as the site lies within the built-up area boundary and is within the Great Easthall housing allocation. However, the report concludes that the development would be sustainable, subject to the community shop contribution being provided.

Loss of Neighbourhood Centre

- 9.02 Policies C1 of the adopted Local Plan 2008 and the 2009 Development Brief for Great Easthall are of particular relevance for this issue. I consider that this policy and the Development Brief are still relevant and are not therefore 'out of date' for the purposes of paragraph 14 of the NPPF. Policy C1 states:

“Existing and New Community Services and Facilities:

The Borough Council will not permit proposals that involve the loss, or change of use, of a local community facility, where this would be detrimental to the social well being of the community, unless a suitable and equivalent replacement facility is to be provided

both in a location and period of time as agreed by the Borough Council. Before agreeing to its loss or change of use, the Borough Council will require evidence that the current use is no longer needed and is neither viable, nor likely to become viable. Additionally, in the case of private and public open space, proposals will not be permitted that would result in the erosion or loss of environmental quality or amenity.

The Borough Council will grant planning permission for new or improved community services and facilities. Additionally, where proposals would meet an identified local need in an accessible location, it will permit development proposals that will help maximise the use of existing public and private community services and facilities, including those that would make them available for wider public use, in locations where shortfalls in local public provision could be met.”

9.03 The relevant extract from the 2009 Development Brief for Great Easthall states:

“The original brief illustrated that a Neighbourhood Centre would be located on both sides of the site entrance, which is the main access and a key focal point on the site. The land area allocated for the Neighbourhood Centre/Village is 2.033 hectares, which was to be further divided into the following uses:

- *Neighbourhood Centre 1.507ha*
- *Community Hall and/or Sports Pavilion /0326ha*
- *Medical Centre Site 0.2ha.*

*...Adopted Local Plan policy C1 seeks the retention, and supports expansion, of existing community facilities. These include both the key services, commercially and publicly provided, within communities, town centres and commercial areas, together with public and private open space and school fields and sporting facilities. **Where the need exists, it applies equally to those sites where the provision of facilities has been agreed but where their physical provision has yet to be made.***

The Section 106 agreement requires that no more than 350 dwellings are occupied on site until the Community Centre can be accessed and services to the land for the Neighbourhood Centre/Village have been provided”

9.04 Both policy C1 (adopted LP) and the above mentioned Development Brief are supported by paragraphs 69 and 70 of the NPPF which seek to promote:

“opportunities for meetings between members of the community who might not otherwise come into contact with each other, including through mixed-use developments, strong neighbourhood centres and active street frontages which bring together those who work, live and play in the vicinity.”

(para. 69)

“To deliver the social, recreational and cultural facilities and services the community needs, planning policies and decisions should:

- *plan positively for the provision and use of shared space, community facilities (such as local shops, meeting places, sports venues, cultural buildings, public houses and places of worship) and other local services to enhance the sustainability of communities and residential environments;*
- *guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community’s ability to meet its day-to-day needs;”*

(para. 70)

9.05 In addition, policy C1 and the development brief are consistent with policy CP6 (community facilities and services to meet local needs) of the emerging Local Plan which can be given some weight given its advanced stages in the examination process. Within this policy context, the loss of this site for the provision for even a small convenience store to meet the day-to day needs of the Great Easthall resident's is a serious concern.

9.06 Officer's had previously considered the submitted report entitled "Assessment of the Viability of a Neighbourhood Centre" and the Marketing Report in which the consultant sets out the context within which Great Easthall sits and assesses the likely commercial viability of uses such as shops and a pub at the application site. The conclusions of these reports are set out in the appended committee report at paragraphs 9.06-9.09. Given the concerns of Members and their vote against approving this application, Officer's commissioned an independent review of the submitted viability information and marketing report. CBRE have provided their report to Officers and its conclusions are as follows:

- There may be scope to deliver a local convenience store in the area, outside the town centre;
- Example case studies provided by the applicant do not give a robust enough arguments to support the case that a neighbourhood centre is not realistic or viable;
- The applicant has not fully demonstrated that no retailer would be interested in the site with only evidence of one convenience retailer being approached and;
- The applicant has not taken account of population increases in the catchment area.

"In conclusion, after reviewing the arguments and evidence presented by Alsop Verrill, we agree that a neighbourhood centre of the scale and format proposed in the reserved matters application is unlikely to be viable in this location. Given the site's location and limited catchment area, there is unlikely to be sufficient population to support a pub on the site, or any comparison retail units.

However, we do not think that Alsop Verrill have adequately demonstrated that a local convenience store on the site, alongside a proposed residential development, would not be viable.

We are not concluding that a local convenience store is viable in this location; however we think that the opportunity for a local convenience store, alongside residential development should be explored by the applicant in more detail, to ensure their assessment is completely robust. As detailed above, this additional assessment should take account of the potential uplift in population in the surrounding area, as well as exploring the requirements of grocery retailers, other than Tesco, to determine the likelihood of them being interested in a store in this location. Alongside the main grocery retailers, we would also recommend that Alsop Verrill explore the possibility of a local convenience store being operated by an independent operator under the One-Stop, Londis or Spa fascias."

9.07 The CBRE report has been reviewed by the applicant who have clarified that the anticipated increase in population in the area was taken into account in the previously submitted Viability Assessment. CBRE acknowledge this and accepts its findings in this respect. However, the applicant is not willing to provide any further evidence in respect of other convenience retailers noting:

“We respectfully request Swale Borough Council to accept that the reasons Tesco rejected Great Easthall, and which would be repeated by other major retailers are:

- 1. There are not enough customers available in the catchment area;*
- 2. The compromised location of the site; and*
- 3. There is no possibility of pass-by trade as the site is at the end of a cul-de-sac. The road continues away from Great Easthall and passes through a very large employment area).*

Independent retail operators such as One Stop, Londis and Spar, like their larger counterparts, also continuously monitor the market for opportunities. The Great Easthall site, as CBRE acknowledges at paragraph 1.5, has been around as a potential retail location since May 2003. None of those independent retailers, like larger retailers, has ever approached any owner or potential developer of the site.

Fourteen years of inactivity must demonstrate, beyond doubt, that Great Easthall has no future for retail development of any sort. The market, shopping conditions and many other considerations have changed enormously in the last few years and the general reluctance to risk investment has increased as a consequence.

We sympathise that people want local facilities, but conditions for investment and development of retail facilities now are very different to those that obtained ten and twenty years ago. Any investor must be confident that there will be a return on investment. The many adverse circumstances of Great Easthall mean that no confidence can be had in that occurring.”

9.08 CBRE respond:

“However... whilst it is probable that other grocery retailers would not be interested in a store on the site, simply stating that Tesco are not interested therefore by default no one else is, is not in our opinion, a robust argument; rather it is an assumption.

We therefore don't think it's unreasonable to request that the applicant provides an overview of other grocery operators store requirements. This overview will likely support the applicant's argument; however as I've said previously, we think it is needed to provide a completely robust argument. We are not asking the applicant to directly approach other retailers to gauge their interest, rather to look at the different operators requirements for stores in terms of size and population catchments and make a conclusion based on these facts.”

9.09 For this reason, and given the policy context within which this development sits (as set out above), I consider that it would be unwise to recommend that Members approve this scheme which would, in all likelihood, see the loss of any opportunity to provide even a small convenience store on the site. Although I do acknowledge that it is clear that establishing a 'neighbourhood centre' on this site is highly unlikely to be a viable proposition.

9.10 Members will note that Officers set out details (paras. 9.11 – 9.13 of the appended report) of a potential community shop to be sited close, or attached to, the recently constructed community hall. It is very unfortunate but this is no longer an option because the landowner transferring the community hall land to SBC have decided not to allow it. There is currently a covenant on the community hall land that requires the

use to be for the community hall only. As such, unless the landowner was willing to amend this covenant (which they had verbally agreed with me a few months ago), then the community shop cannot be located on the community hall land. The landowner has very recently decided not to allow the covenant to be amended. As such, I have asked the applicant to re-consider siting the community shop upon the application site and including it as part of the outline planning application. However, they have refused to do this, but continue to offer the money (£180,000 with an additional £20,000 contingency) for the community shop if an appeal can be avoided. My concern is that there needs to be a realistic prospect of the community shop being established in order that we can justify requiring the money through a Section 106 agreement and to allow us to give it any weight in the balancing of the planning merits of this proposal.

- 9.11 Officers had previously given the community shop significant weight in considering the acceptability of the scheme. Now that the use of the community hall land is no longer available, it is unlikely that there would be land outside of the application site that could be used for the community shop. The land would need to be situated within the Great Easthall Estate and would need to be either owned by the applicant or Swale Borough Council with no restrictive covenants. The land would also have to be of a size and in a location that would be suitable for the shop. I am not aware of any such land. As such, I must conclude that the idea of a community shop, with funds provided by the developer to help its initial start-up, is now no longer an option. The community shop was seen to be a significant benefit of the proposed development and I cannot now give this any weight in the consideration of the merits of the scheme. The provision of a shop on the application site need not lead to a reduction in the number of dwellings on this site. The shop itself does not need to be especially large. Indeed, the community shop that would have been attached to the community hall was a modest size of 56² (600ft²). In addition, the reserved matters application could show a retail space provided at ground floor with residential above.
- 9.12 Without the provision of a convenience shop upon the Great Easthall Estate, outside or within the application site, local residents would be more likely to travel by car to meet their day to day needs and opportunities for social interaction would be reduced. This is to the detriment of promoting sustainable forms of travel and to the social well-being of the community, at odds with the social and environmental dimensions of sustainable development. I am therefore of the view that the proposed development, with the resulting loss of the opportunity for 'neighbourhood centre uses', specifically a convenience store, at this site, would be harmful to the local community and would not be a sustainable form of development. The development would be contrary to Policies C1 and SP1 of the adopted Local Plan 2008 and the Great Easthall Development Brief Review October 2009 as well as paragraphs 7, 14, 69 and 70 of the NPPF.

Other issues

- 9.13 Discussion on the impact of the proposal on residential amenities, design/visual amenities, heritage, highways, ecology/biodiversity (note appended HRA assessment), archaeology, contaminated land, air quality and minerals is set out in the appended report. In addition, paragraphs 9.25-9.27 of the appended report consider developer contributions that would be required should planning permission be approved.
- 9.14 With regards to the comments from Southern Water as set out above, I am concerned about the waste water capacity comments which suggest that the occupation of the dwellings cannot take place before capacity at their wastewater treatment works is

increased. A condition that requires no occupation prior to capacity being increased would not meet the test of reasonableness as set out at paragraph. 204 of the NPPF in my opinion. It is conceivable that the capacity works could be stalled or cancelled altogether and this would be entirely outside of the applicant's control. In such circumstances, there could be a situation where the houses are built but cannot be occupied. Southern Water do note that there is a current capital programme to increase this capacity but I have no details of this. The applicant's agent provides the following comments on this matter:

“There is an absolute right to connect to an existing public sewer under the Water Industry Act and Southern Water is required to provide treatment capacity for the planned growth in the whole STW catchment (which is agreed via their 5-year AMPs with Ofwat), so it is untenable to claim that what is only 33 dwellings can have a significant effect on this capacity. The site already has the benefit of being part of a long standing allocation for built development, with an adopted Development Brief, an outline planning permission for its development as part of the East Hall Farm / Great Easthall development area, and a reserved matters approval for a neighbourhood centre (including supermarket, local convenience/CTN store, seven shop units, a public house, twelve dwellings, and a veterinary surgery). So Southern Water should already have allowed for the development of what is a longstanding development site. We also note that they say they have sewerage capacity.”

- 9.15 I am in agreement with the applicant's stance on this matter and therefore consider that the wastewater from the development would have to be catered for by Southern Water and that it would be unreasonable to impose the condition suggested by them.

10.0 CONCLUSION

- 10.01 The proposed development would provide much needed housing on land within the built-up area boundary. This weighs significantly in favour of the development. However, this site was originally ear-marked for 'Neighbourhood Uses' serving the residents of the Great Easthall estate. Following the commissioning of an independent review (CBRE) of the evidence submitted in support of this application, the operation of a convenience shop on this site has not been sufficiently proven to be commercially unviable. Although, CBRE do accept that a 'neighbourhood centre' of the scale originally envisaged would be unlikely to be viable.
- 10.02 The applicant has refused to include a shop as part of the proposal, within the application site. Such an amendment to the scheme would not necessarily result in a reduction in the number of dwellings to be provided on the application site and so although I give significant weight to the need for houses in the Borough, it is my view that the provision of a shop on the site, whether it be commercial or a community shop, would not compromise this much needed housing provision. Moreover, the loss of the opportunity to deliver a convenience shop on the site would be harmful to the day to day needs of the local residents of the Great Easthall Estate in my view, leading to unsustainable development. Without a realistic proposition of the setting-up of a commercial or community shop, either within or outside of the application site, I cannot give this any weight in helping to mitigate this identified harm.
- 10.03 In weighing up the merits of the scheme, Members should also be mindful of my conclusions on the other issues set out in the appended committee report. It is my view that there are no benefits to the scheme that would outweigh the harm (identified at para. 9.08 of this report) to the residents of the Great Easthall Estate.

10.04 I therefore consider that the proposed development of this site for up to 33 dwellings would be contrary to the adopted Development Plan, would fail to constitute a sustainable form of development and would be significantly and demonstrably harmful to the social well-being residents of the Great Easthall Estate. I therefore recommend refusal.

11.0 RECOMMENDATION – REFUSE on the following grounds:

1. The proposed development fails to make any contribution towards the provision of a 'neighbourhood centre use', specifically a convenience shop, to the detriment of the social well-being of the residents of Great Easthall estate. This is contrary to the Great Easthall Development Brief Review October 2009 which ear-marks the application site for the provision of 'neighbourhood centre uses' in support of the wider housing estate. Local residents would be more likely to travel by car to meet their day to day needs and opportunities for social interaction would be reduced. This is to the detriment of promoting sustainable forms of travel and to the social well-being of the community, at odds with the social and environmental dimensions of sustainable development. The applicant has failed to adequately demonstrate that the provision of a convenience shop is not a viable proposition for the application site. The development would therefore be contrary to Policies C1 and SP1 of the adopted Local Plan 2008 and the Great Easthall Development Brief Review October 2009 as well as paragraphs 7, 14, 69 and 70 of the NPPF and policies CP5 and CP6 of the emerging Local Plan – Bearing Fruits 2031: The Swale Borough Local Plan Proposed Main Modifications (June 2016).

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 in the processing of their application and 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 was asked to address matters to improve the development. However, they were not able to adequately address our concerns.

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

APPENDIX A

Planning Committee Report – 8 December 2016

REFERENCE NO - 16/505280/OUT			
APPLICATION PROPOSAL Outline Application for residential development (up to 33 dwellings), and open space; including associated access (vehicular / cycle / pedestrian), alterations to levels, surface water attenuation features (including swales), landscaping and related development.			
ADDRESS Land At Swale Way East Hall Farm East Hall Lane Sittingbourne Kent ME10 3TJ			
RECOMMENDATION GRANT subject to comments from Southern Water (consultation expires 13/12/16) and any additional conditions recommended by them and also subject to a section 106 agreement requiring contributions as set out in paragraph 9.25 below.			
SUMMARY OF REASONS FOR RECOMMENDATION The development would provide much needed housing within the built-up area boundary on part of a wider site allocated for housing development. The development is considered to be sustainable in terms of its location and the social, environmental and economic impacts that it would have. The provision of housing as opposed to 'Neighborhood Centre Uses' is regrettable but the applicant has agreed to contribute towards the setting up of a community shop on the opposite site. This would go some way towards addressing the main concerns of the residents of Great Easthall.			
REASON FOR REFERRAL TO COMMITTEE Strong public objection and Ward Member request.			
WARD Murston	PARISH/TOWN COUNCIL	APPLICANT Trenport Investments Limited AGENT Vincent And Gorbing	
DECISION DUE DATE 20/09/16	PUBLICITY EXPIRY DATE 15/11/16	OFFICER SITE VISIT DATE 10/11/16	
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
SW/02/1180	Residential development, employment development, open space and supporting facilities	Approved	16/07/2004
This application granted outline planning permission for the development of Great Easthall. Members will be aware that since the grant of outline permission, there have been numerous approvals of reserved matters applications for housing and development of the wider site has been underway for many years. Further planning permission have also been granted for Parcels F,G and H, and approximately 500 of the 860 dwellings approved at this site have been completed.			
SW/07/0431	Approval of reserved matters pursuant to outline permission SW/02/1180 for the development of a neighborhood center, erection of a supermarket, local convenience store, seven shop units, a public house, twelve dwellings, veterinary surgery and associated development.	Approved but not implemented	02/05/2007
15/510505/FULL	Construction of new community centre with adjoining changing room facilities and associated works (land opposite application site)	Approved	03/08/16

MAIN REPORT

1.0 DESCRIPTION OF SITE

- 1.01 The application site is a parcel of empty land (1.4ha) to the northeast of the residential estate of Great Easthall which lies approximately 2km to the northeast of Sittingbourne town centre. The land is mainly flat with a gentle slope down from southwest to northwest, covered in rough grass and is currently enclosed by wire fencing. A medium pressure gas pipe runs through the site at its southern end with a 6m wide easement. A large attenuation pond serving the Great Easthall development lies immediately to the south of the site and there is a children's play area to the southwest. East Hall, a grade II listed farmhouse, lies 100 m to the west of the site and the community hall recently approved under 15/510505/FULL is currently under construction on the opposite parcel of land to the east. The main vehicular access into Great Easthall is immediately to the east of the site. This leads off Swale Way and the Northern Relief Road. There is no other vehicular access into the Great Easthall Estate apart from a bus route which provides access to Oak Road in Murston for buses and pedestrians only. Eurolink IV, a large site comprising of a number of commercial/industrial buildings, lies to the north of the application site. Eurolink V (further commercial/industrial development) will be developed on the land to the northeast, on the opposite side of Swale Way to the application site. Sittingbourne Golf Course lies 600m metres to the northeast of the site with agricultural fields stretching to the north (where they meet The Swale) and to the east towards Teynham.
- 1.02 The application site lies within the built-up area boundary as identified on the proposals maps for the adopted and emerging Local Plans. The site also lies 600m to the south of The Swale and Medway Estuary and Marshes SSSI, Ramsar and Special Protection Area and 800m to the south of the North Kent Marshes Special Landscape Area.
- 1.03 A footway/cycleway is immediately to the north of the site running along Swale Way. The land on the opposite side of Great Easthall Way, to the north of the community hall, is proposed to be developed as a medical centre but there has been no planning application submitted to date and its delivery will be dependent on the requirements of the NHS.

2.0 PROPOSAL

- 2.01 This is an outline planning application for which all detailed matters are reserved with the exception of the access to the site which is shown on the plans. The access would be taken from Great Easthall Way and would not alter the existing access that has already been constructed on site.
- 2.02 The application specifies that there would be up to 33 dwellings provided on site but details of the type, height and layout of the houses are only shown indicatively under this outline planning application. The indicative layout – though not necessarily showing an arrangement that the Council would accept - does demonstrate that there would be sufficient space for sustainable urban drainage in the form of swales, open space and a housing layout that would provide reasonably sized gardens and parking for each property. The indicative layout describes a housing mix of 2, 3 and 4 bedroom, 1-3 storey properties at a relatively low density of 25.8 dwelling/ha. The parameters information states that there could be some flats/apartments on the frontage to Swale Way/Great Easthall Way. The layout as shown on the indicative plan incorporates the gas main easement with no development shown within this constraint.

- 2.03 The site may have to be altered in terms of its levels to allow suitable gradients for roads and the houses. This would change the levels by 0.5m either up or down.
- 2.04 This land was included within the outline planning consent for the Great Easthall housing estate under SW/02/1180 – outline application for residential, employment, open space and supporting facilities, where it was ear-marked as a ‘Neighbourhood Centre’ as well as the land opposite, upon which the community hall is now under construction. The Section 106 agreement the subject of the outline permission requires the developer to ‘provide services to the area of land to be reserved as a Neighbourhood Centre Site’, the removal of contaminated land from the site of the Neighbourhood Centre and the levelling of the land and, the reservation of the land for ‘Neighbourhood Centre Uses’ (community hall, medical centre, small supermarket, small retail units, public house, residential accommodation (not amounting to more than 0.75ha of the ground area) and, open space) for 2 years following the completion of the residential development. Should Members resolve to approve the current planning application, this Section 106 agreement will need to be modified.

3.0 SUMMARY INFORMATION

	Proposed
Site Area (ha)	1.4ha
Resi storeys	Max 3
Height	Min 8m max 12.5m
Parking Spaces	Not set
No. of Residential Units	Max 33
No. of Affordable Units	10%
Density	25.8 dph (not set)

4.0 PLANNING CONSTRAINTS

- 4.01 As set out above, the medium-pressure gas pipeline runs through the southern part of the site, and its position is shown on the Illustrative Layout.

5.0 POLICY AND OTHER CONSIDERATIONS

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

Development Plan:

- 5.03 The Swale Borough Local Plan 2008 saved policies SP1 (sustainable development), SP2 (environment), SP4 (housing), SP6 (transport and utilities), SP7 (community

services and facilities), TG1 (Thames Gateway Planning Area) SH1 (settlement hierarchy), E1 (general development criteria), E11 (biodiversity and geological interests), E12 (designated biodiversity and geological conservation sites), E14 (Developing involving Listed Buildings) H2 (new housing), H3 (affordable housing), H7 (East Hall Farm), C1 (Community services and facilities), T1 (safe access), T4 (cyclists and pedestrians) & C3 (open space on new housing developments

5.04 The emerging Swale Borough Local Plan “Bearing Fruits” – ST1 (sustainable development), ST2 (targets for homes and jobs), ST3 (settlement strategy), ST4 (meeting local plan development targets), ST5 (Sittingbourne area strategy), CP2 (sustainable transport), CP3 (high quality homes), CP4 (good design), CP5 (health and wellbeing), CP6 (community facilities and services to meet local needs), CP8 (conserving and enhancing the historic environment), DM6 (managing transport demand and impact), DM7 (vehicle parking), DM8 (affordable housing), DM14 (general development criteria), DM17 (open space, sports and recreation provision), DM21 (water, flooding and drainage), DM28 (biodiversity and geological conservation), DM23 (listed buildings), DM34 (Archaeological sites) & IMP1 (implementation and delivery plan).

5.05 Kent Minerals and Waste Local Plan 2013 – 2030 – Policy DM7 states that planning permission will only be granted for non-mineral development that is incompatible with minerals safeguarding where it is demonstrated, among other things, that it constitutes development on a site allocated in the adopted development plan.

Supplementary Planning Documents

Developer Contributions (2009)

East Hall Farm Development Brief March 2003

Great Easthall Development Brief Review October 2009

6.0 LOCAL REPRESENTATIONS

6.01 Sixty letters of representation have been received. A summary of their comments is as follows:

- Concern about lack of shop/convenience store to serve the residents of Great Easthall. The closest store by car means travelling through the Eurolink Estate (often congested) into Sittingbourne;
- There are too many houses being built without amenities and schools;
- Great Easthall is like a giant cul-de-sac. It doesn't even have a post box;
- Development should not be allowed unless the developer helps to fund a shop unit;
- Swale Way and local infrastructure are already overcrowded with traffic;
- Many residents of Great Easthall were promised the provision of local amenities (shop/pub) within the estate when buying their properties;
- Parking in the estate is already under pressure and there is congestion on local roads with only one way in and out of the estate;
- The development should provide retail at ground floor and apartments above as a compromise;
- There seems to be space on the site to develop retail as well;

- The completion of the Northern Relief Road should be a priority and the land left available for commercial uses until such time as it is complete;
- The viability survey is bias;
- The community shop may never happen;
- Planning policies support provision of community facilities;
- The school that was planned for the estate has not been provided and the community hall took longer to deliver than expected;
- The community needs somewhere to come together and socialise.

6.02 An e-petition protesting against the planning application has also been created. This is entitled – *“We want amenities not properties on the entrance to the Great Easthall estate.”* This had a total of 84 comments and 120 signatures at the time of writing this report. The comments largely reiterate the concerns set out above.

7.0 CONSULTATIONS

7.01 The Greenspaces Manager notes that the Illustrative Layout would fit into the existing open space and surroundings. He requests a commuted sum for the maintenance of any open space, if it is to be transferred to the Council. He also seeks an off-site formal sport contribution of £511 per dwelling.

7.02 The Head of Housing confirms that in accordance with planning policy, they require 10% affordable housing with a 70:30 split of affordable rented and shared ownership respectively. Affordable housing should be evenly distributed across the site and should represent a mix of house types with some that are wheelchair adaptable.

7.03 KCC Public Rights of Way Officer have no objection noting that a public right of way passes close to the site and that this should not be obstructed

7.04 The KCC Archaeological officer notes that there is potential for prehistoric and Roman remains within part of the site and recommends a condition to ensure the implementation of a programme of archaeological works.

7.05 The Environmental Services Manager has no objection noting that the site is sufficiently far away from known areas of elevated air pollution to pose an air quality issue, levels of dust will be acceptable and, with appropriate mitigation, noise from the nearby industrial units would be at an acceptable level. Conditions are recommended to remediate contamination if found at the site and to deal with landfill gas.

7.06 The Environment Agency have no objection to the proposal noting that development is considered low risk.

7.07 Natural England (NE) have no objection to the application on the basis that the applicant has agreed to pay a contribution towards the Thames, Medway and Swale Estuaries Strategic Management and Monitoring (SAMM) Strategy. They confirm that on this basis, the development can be screened out as not having a likelihood of significant effects of the designated sites. They suggest referring to their standing advice on protected species and encourage biodiversity enhancements.

7.08 The KCC Flood Risk Project Officer acknowledges the submitted Flood Risk Assessment which proposes a surface water drainage strategy utilising a swale, attenuation basin, bioretention areas and permeable paving to provide the volume attenuation required to ensure a controlled outflow from the site. Although it has not been demonstrated how these volumes would be accommodated, it would be

expected that this will be possible within the development layout. Discharge rates and attenuated volumes should be agreed with them at detailed design stage. The applicant should discuss the proposal for porous tarmac with Kent Highways if they are going to adopt the roads. Conditions are recommended that require details of surface water drainage and details of the management and maintenance of the SUDs.

- 7.09 UK Power Networks have no objection to the proposal.
- 7.10 KCC Development Contributions team request primary and secondary education contributions at a total of £155,784.78. They also request contributions towards libraries at a total of £1584.52. They also request that the development incorporates superfast fibre optic broadband.
- 7.11 Southern Gas Networks originally objected to the proposal based on incorrect information regarding the status of the gas pipeline running through the site. Following confirmation that the pipeline is medium and not high pressure they consider the proposal to be acceptable.
- 7.12 KCC Highways and Transportation have no objection to the proposal noting that the existing roundabout is more than adequate for a vehicular access on a development of this size. In addition the pedestrian/cycle access improvements provide suitable links to the existing network.
- 7.13 Kent Police invite the applicant to consult them if the application proceeds and recommend a condition or informative to ensure that crime prevention is considered at the design stage. They also draw the applicant's attention to document "Q" building regulations for doors and windows specifications.
- 7.14 KCC Ecology required additional information in respect of the current state of the site which may have become more inviting to reptiles and birds since the ecological scoping survey was carried out. Upon receipt of this updated information, they advise that the site has limited potential for protected/notable species as all vegetation on the site has recently been cleared. It is exceptionally bad practice for sites to be cleared before ecological scoping surveys are carried out and they recommend that the site is managed to prevent suitable habitat establishing in the future. They acknowledge that the proposed pond, swale and vegetated mound will provide some habitat for biodiversity at the site. They recommend that a green corridor is created along the northern boundary of the site. These areas should be managed to the benefit of biodiversity. The applicant could also enhance habitat outside of the site i.e. the pond opposite the site. The final site plan should be designed to incorporate foraging the breeding opportunities for birds within the site. They recommend a condition to control lighting to protect bats and encourage planting that would retain foraging opportunities for bats. They also recommend a condition to encourage ecological enhancements and a management plan.
- 7.15 The Lower Medway Internal Drainage Board do not object to the proposal but recommend that surface water is appropriately managed and that the details are agreed with KCC's flood team.
- 7.16 The Health and Safety Executive confirm that the site does not lie within the consultation distance of a major hazard site or pipeline.
- 7.17 Comments from Southern Water are awaited and will be reported at the meeting.

- 7.18 The Economic Development Officer comments that they understand the issues of viability and acknowledge the lack of passing trade without the through road (NNR) but would wish to see provision of local amenities to serve an expanding local community.

8.0 BACKGROUND PAPERS AND PLANS

- 8.01 The applicant has submitted the following documents to support their application:
- 8.02 Design and Access Statement; Transport Statement; Preliminary Geo-Environmental and Geotechnical Risk Assessment; Extended Phase 1 Habitat Survey; Great Crested Newt Survey and Preliminary Assessment of Trees for use by Bats; Noise Impact Assessment; Draft Heads of Terms – Section 106 agreement; Flood Risk Assessment; Cultural Heritage Desk Based Assessment; Utilities Statement; Air Quality Assessment; Assessment of Viability of a Neighbourhood Centre.

9.0 APPRAISAL

Principle of Development

- 9.01 For the purposes of the development plan, the site is located within the built confines of the wider Sittingbourne area within the housing allocation for Easthall Farm. Policy SP4 seeks to provide sufficient land for housing need, and policies SH1 and H5 of the adopted local plan seek to concentrate this in the Thames Gateway Planning Area. Policy H2 of the adopted plan states that permission for new residential development will be granted for sites that are allocated or within defined built-up areas.
- 9.02 The NPPF was published in 2012 and is a material consideration in the determination of planning applications. It sets out a presumption in favour of sustainable development. Paragraph 7 identifies three strands to sustainable development, an economic role (supporting the economy and growth), a social role (providing strong, healthy, accessible communities), and an environmental role (contributing to protecting our natural, built and historic environment). Paragraph 14 sets out that, for the purposes of decision taking, this means where the development plan is absent, silent or relevant policies are out of date, permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits.
- 9.03 The relevant housing policies within the adopted Swale Borough Local Plan 2008 are considered to be out of date and so in accordance with the NPPF, the presumption is in favour of sustainable development. For sites outside of the built-up area boundary, special consideration must be given to the status of/weight to be given to the emerging Local Plan insofar as it directs development towards strategically sustainable sites. For this application, the site falls within allocated housing land for the adopted Local Plan and is identified as being within the built-up area in the emerging Local Plan and so the site is considered to be sustainable from a strategic point of view. The delivery of housing on this site will help towards meeting this Borough's housing need, easing pressure off of sites within rural areas. For these reasons, I consider that the development is acceptable in principle.

Loss of Neighbourhood Centre

- 9.04 Members will note from the 'proposal' section above and the concerns of local residents that this land was, under the masterplan for the Easthall Farm development and under the terms of the Section 106 agreement (both agreed pursuant to

SW/02/1180), originally ear-marked to provide ‘Neighbourhood Centre Uses’ such as shops and a public house. The 2009 Development Brief for Great Easthall states:

“The original brief illustrated that a Neighbourhood Centre would be located on both sides of the site entrance, which is the main access and a key focal point on the site. The land area allocated for the Neighbourhood Centre/Village is 2.033 hectares, which was to be further divided into the following uses:

- *Neighbourhood Centre 1.507ha*
- *Community Hall and/or Sports Pavilion /0326ha*
- *Medical Centre Site 0.2ha.*

...Adopted Local Plan policy C1 seeks the retention, and supports expansion, of existing community facilities. These include both the key services, commercially and publicly provided, within communities, town centres and commercial areas, together with public and private open space and school fields and sporting facilities. Where the need exists, it applies equally to those sites where the provision of facilities has been agreed but where their physical provision has yet to be made.

The Section 106 agreement requires that no more than 350 dwellings are occupied on site until the Community Centre can be accessed and services to the land for the Neighbourhood Centre/Village have been provided”

- 9.05 Planning permission was granted on this site in 2007 for the erection of a supermarket, local convenience site, seven shop units, a public house, twelve dwellings and, a veterinary surgery under SW/07/0431. Unfortunately, this 2007 permission was never implemented as, according to the applicant, it was not commercially viable to do so with the developers eventually going into receivership.
- 9.06 The applicant has submitted a report entitled “Assessment of the Viability of a Neighbourhood Centre” in which the consultant sets out the context within which Great Easthall sits and assesses the likely commercial viability of uses such as shops and a pub at the application site. One of the main factors that the author highlights as having a negative effect on commercial viability of shops/a pub, is the fact that the Northern Relief Road terminates at Great Easthall. There is no opportunity for passing trade therefore with the catchment area effectively limited to the residents of Great Easthall. The report does acknowledge that the workforce at Eurolink Way and the Eurolink IV and V developments could make use of a shop located at the application site, however, it notes that retailers attach very limited importance to non-residential populations as their patterns of behaviour are so unpredictable and prospects are that they will shop in their home locations. The report also notes that the location of the site, being at the edge of the housing estate, would make it less likely to be used than if it were in the centre of the development with better all-round accessibility, including by foot, with more of a community role to play.
- 9.07 The report notes the location of the Co-op in Murston with a sales area of 200 sq m. This is within 5-10 minute driving distance of the estate (approx. 10 min walk) and the proliferation of food retailers in and around Sittingbourne. According to the report, retail trends have changed significantly since the masterplan for Great Easthall was first envisaged. This change has been aided by the global financial crisis in 2007, the UK recession and, the growth in on-line retail sales, all of which could impact on the establishment of a retail business at the application site. On retail, the report concludes that:

“Our view is that whilst there might be enough retail expenditure within and close to Great Easthall to support a neighbourhood convenience store...that in today's market, operators would not be interested. This is compounded by the location's relative inaccessibility from other population centre and the fact that it is a dead-end, with no prospect of 'passing trade'.

- 9.08 The report comments on the potential for a public house at the application site and highlights the recent trend for the closure of pubs across the country. Its states:

“In new markets, those with the most prospect of continued success are family-orientated pub/restaurants. These, however, require large catchment populations that will use them regularly as 'destinations' coupled with plentiful passing trade for those that will opt to patronise them on the spur of the moment. None of this pertains to Great Easthall.”

- 9.09 In response to a request by Planning Officers, the applicant has submitted a statement regarding the marketing of the application site for commercial uses, specifically a retail convenience store. This confirms that the site was marketed widely as a commercial site with the 2007 permission for the “Neighbourhood Uses” noted. It also notes that the land had been available for neighbourhood retail development for about 10 years and at no time in that period has a scheme been viable, with insufficient interest from businesses, and there is no prospect of it becoming viable in the foreseeable future. The statement appends a letter from Tesco Stores Ltd (who may have potentially considered a Tesco Express format) which confirm that they would not be interested in pursuing a store on the site due to the lack of custom in the catchment area, the compromised location of the site effectively in a cul-de-sac and the lack of proximity to an arterial road rendering it largely inaccessible to passing trade. The presence of the Co-op in Murston means that it is highly unlikely that this retailer would consider establishing a new shop at the application site.

- 9.10 The policy position is clear that the application site should be developed as a ‘Neighbourhood Centre’ with uses such as shops and a public house. Members will have noted that the community hall is currently under construction and the site opposite is still available to be developed as a medical centre (although whether this comes to fruition is unknown at this stage and is entirely dependent on the requirements of the NHS). Indeed, when considering sustainable development, it is of course desirable to ensure that housing developments of this scale i.e. that of Great Easthall, are provided with easy access to services and facilities that meet their everyday needs. However, it is fair to conclude that many years have passed since the original masterplan for East Hall Farm was drawn up and that the retail and pub sectors have had to respond to significant changes to the UK economy. Moreover, the terminus of the Northern Relief Road at Great Easthall (which in all likelihood will remain this way for the foreseeable future) is a significant blow to the viability of any potential retail or pub use wishing to develop at the application site. I have given consideration to the evidence submitted by the applicant in respect of the likelihood of a shop or pub business being attracted to the site. The applicant can demonstrate that despite a planning permission for a Neighbourhood Centre being in place in 2007, the development could not be delivered despite the best efforts of the landowner at the time. It is highly unfortunate but the commercial realities of the situation must be acknowledged.

- 9.11 The provision of a small convenience store within the Great Easthall estate is though still highly desirable, not only for the convenience of local residents but also to cut down on the need to travel by car and to feed into the sense of community within the estate. Given the desire by many of the residents of Great Easthall for, at the very

least, a small convenience store within the estate, and given the fact that it would not seem to be commercially viable for such an operation at the site, Planning Officers have suggested to the applicant that they consider contributing towards the setting up of a community shop. Such a shop would be run by members of the local community with a paid manager and volunteers and all profits put back into the shop. The shop would sell essentials and any other goods that the community requires. Its location would be likely to be adjacent, or attached to, the community hall which would allow a concentration of community activity in one place to the mutual benefit of both the community hall and community shop (perhaps shared management responsibilities and an opportunity to utilise the community shop as part of the community hall facilities). The shop is envisaged to be no more than 56 sq m (600 sq ft) and so it is not expected to attract significant traffic with only a small additional parking requirement. The applicant has agreed to pay for the construction of the shop building, contribute towards the fit-out costs, professional fees (for architects, planning fees etc.) and, the manager's salary for up to 2 years (after which the shop will need to be self-sufficient). The total amount offered by the applicant is £180,000. Initial feedback from the local community and a Ward Member about the community shop idea has been positive.

- 9.12 It is acknowledged that a community shop of 56 sq m is a far cry from the Neighbourhood Centre detailed in the 2007 planning permission. However, it seems to me that the provision of a community shop would address the basic convenience needs of the local community and its location on the site of the community hall will be an added benefit contributing, albeit in a small way, towards the social dimension of sustainable development. I am of the view that the contribution towards the community shop would meet the CIL tests as set out at Paragraph 204 of the NPPF – necessary to make the development acceptable, directly related to the development and, fairly and reasonably related in scale and kind to the development.
- 9.13 Should the community decide that the community shop cannot/should not be executed, the applicant has agreed that some of the £180,000 can be used to fund improvements to the community hall. I am waiting for the Economy and Community Services Manager to provide information in respect of the type of improvement project needed and an estimate of the cost of this project. The applicant will then need to agree to the details of this. I will update Members at the meeting.

Residential Amenity

- 9.14 The proposal is in outline form only but the site is over 60 metres from the closest residential property. Therefore, I do not consider that the proposal would cause any undue overlooking and overshadowing to existing local residents of Great Easthall.
- 9.15 There would potentially be noise from the use of the adjacent community hall but I do not consider that it would be at a level that would potentially negatively impact upon future residents of the application site.
- 9.16 The submitted noise report highlights the potential for a noise impact from the adjacent commercial/industrial buildings and road traffic noise. It concludes that the noise climate at the site is considered to meet policy aims and is suitable for residential development, subject to the incorporation of appropriate mitigation. This would include the use of standard double glazing and mechanical ventilation (details to be agreed) with trickle vents. Consideration should be given to the noise sources/impact at the detailed design stage. Specifically, the buildings should screen the rear gardens from surrounding roads. I suggest that an updated noise report is required to be submitted as part of the reserved matters application.

Design/visual impact

- 9.17 The submitted illustrative layout shows how the 33 dwellings might be arranged within the site. I am not convinced that the proposed parking courts shown within the centre of the site follows good urban design principles, nor is the inward-facing arrangement of the dwellings on the northern part of the site likely to be acceptable. However, I consider that there is room within the site to address this at the reserved matters stage. The buildings heights would respond well to the surrounding space, particularly the 3 storey dwellings fronting onto the main entrance to Great Easthall. Establishing high quality design at this point of the site is particularly important in my view as these buildings will act as a focal point/landmark/gateway feature at the entrance to the wider housing estate. The gas pipe easement will be of benefit to the layout as it forces buildings to be set back away from the attenuation pond to the south which is a very important landscape feature of the estate. With regard to density, 33 dwellings on the site would equate to approximately 24 dwellings per hectare, which is on the low side but is considered to be acceptable for this location on the edge of the built-up area.
- 9.18 The proposal would be set against the backdrop of the existing housing development of Great Easthall and Eurolink IV, with Eurolink V soon to occupy the land opposite the application site. I do not therefore consider that there would be any detriment to the character or appearance of the landscape.

Heritage impact

- 9.19 The application site lies 100m to the east of the grade II listed Easthall Farmhouse. The proposed development will impact upon the setting of this historic building to some extent but it is clear that the existing surrounding development (housing and Eurolink IV) has already changed the context within which the listed building sits. I am also mindful of the commercial development that was approved on this site in 2007 which would have seen quite tall buildings of a very modern architecture. In comparison, the proposed houses have the potential to respect the setting of the listed building much more successfully. At this outline stage, I conclude that the development of this site is likely to be able to conserve and enhance the setting of the listed farmhouse. The reserved matters application will need to give careful consideration to the design and height of the dwellings close to the western boundary of the site but I see no reason why the proposed dwellings could not respect the historic value of the grade II listed building.

Highways

- 9.20 Kent Highways have no objection to the proposed access which is actually already in place and has been designed to cater for a high usage. It would certainly be appropriate for use by the residents of, and visitors to, the houses on this site.
- 9.21 Members will be aware that as this application is in outline form only, details of parking arrangements and road layouts within the site will be considered under a separate reserved matters application.

Ecology/biodiversity

- 9.22 Natural England do not object to the application noting that there would be no significant impact on the SPA subject to contribution towards the Thames, Medway and Swale Estuaries Strategic Management and Monitoring (SAMM) Strategy. Article 4(4) of the Birds Directive (2009/147/EC) requires *Member States to take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the*

birds, in so far as these would be significant having regard to the objectives of this Article. For proposals likely to have a significant effect on a European site, the Conservation of Habitats and Species Regulations (2010) require the Council to make an appropriate assessment of the implications for the site. An Appropriate assessment is appended.

- 9.23 The Extended Phase 1 Habitat Survey notes that the habitats within the site do not currently have high potential for reptiles, bats and species 1 birds. The submitted survey recommends that a great crested newt survey is carried out on the pond to the south of the site with further survey work if necessary. It also recommends keeping the site mown (outside of bird breeding season), further work to assess the potential for mature trees as roosting sites for bats, provision of bat boxes, nest boxes for birds, minimal lighting close to landscape features and the planting of native trees and shrubs within the site. The applicant submitted an updated ecological scoping survey as requested by KCC Ecology. They agree that the site has limited potential for the presence of protected/notable species but make it clear that it is bad practice to clear the site prior to an ecological scoping survey is carried out, which seems to have been the case here.
- 9.24 The applicant has submitted a Great Crested Newt Survey and the assessment of trees for use by bats in response to the scoping survey. This concludes that no great crested newts were recorded but smooth newts and marsh frogs were found at the site. There were no signs of bats roosting in the trees surveyed. The survey report recommends that another Great Crested Newt survey and assessment of bat roosting in trees is carried out if the development has not taken place within 2 years in case colonisation has occurred. KCC Ecology have recommended conditions to ensure that the site is designed to encourage ecology and biodiversity. Members will note condition (24) below.

Developer contributions

- 9.25 The applicant has agreed to meet the various requests for developer contributions/obligations within a Section 106 agreement. These are as follows:
- primary education contributions £77,911.68
 - secondary education contributions £77,873.40;
 - libraries at a total of £1584.52;
 - 10% affordable housing with a 70:30 split of affordable rented and shared ownership respectively;
 - £223.58 per house contribution towards the Thames, Medway and Swale Estuaries Strategic Management and Monitoring (SAMM) Strategy;
 - Community shop contribution £180,000 (some of this money to be used to fund an improvement to the community hall if the community shop does not come to fruition. Details to be agreed).
 - commuted sum for the maintenance of the open space £17,495.13;
 - Bins - £92 per dwelling and £905 per 5 flats for communal bins;
 - NHS (expanding local health services) - £864 per dwelling;
 - 2.5% (of total contributions) administration fee.
- 9.26 The applicant has disputed the need for a financial contribution towards off-site sports provision which the Greenspaces Manager confirms would be put towards changing facilities for the local sports pitches. They do not consider that this request meets the CIL tests as set out at Paragraph 204 of the NPPF – necessary to make the development acceptable, directly related to the development and, fairly and

reasonably related in scale and kind to the development. I am inclined to agree with the applicant that this request does not pass the CIL tests as the need for a changing facility cannot be directly related to this particular housing development. It is true to say that the residents of this development will make some use of the sports pitches but a direct link cannot be made between the proposed houses at this site and the provision of changing facilities off-site in my view.

- 9.27 Members should also note that the original Section 106 agreement pursuant to SW/02/1180 will require some small variations to the wording where it relates to the provision of the Neighbourhood Centre at the application site.

Other Matters

- 9.28 The KCC Archaeological officer notes that there is potential for prehistoric and Roman remains within part of the site and recommends a condition to ensure the implementation of a programme of archaeological works. The applicant notes that a large part of the site was used for brick-earth extraction and that this limits the potential for archaeological finds. However, for a small part of the site, the programme of archaeological works would be appropriate. I have recommended an appropriate condition.

- 9.29 I am content that foul and surface water drainage can be designed to meet the requirements of the relevant consultees. Surface water is to be managed so that run-off from the site is minimised via sustainable drainage methods such as swales and ponds. I therefore consider that there would be an increase in the likelihood of flooding by way of increased surface water run-off. The submitted Flood Risk Assessment confirms that there is no risk of flooding at the site.

- 9.30 The Head of Environmental Services accepts the findings of the Geo-environmental/geo-technical report in respect of contaminated land which conclude that there would be a low to medium risk to human health and recommends an appropriate condition to remediate any contamination that may be found at the site. He also recommends a condition to deal with landfill gas at the site.

- 9.31 The Air Quality Assessment concludes that the proposals would have no significant impacts on the Sittingbourne AQMA and that the site is suitable for residential use. The Environmental Service Manager accepts this conclusion and I therefore have no concerns in this respect.

- 9.32 The Utilities Statement concludes that there is sufficient capacity for the proposed development for all services.

- 9.33 Policy DM7 of the Kent Minerals and Waste Local Plan 2013 – 2030 states that planning permission will only be granted for non-mineral development that is incompatible with minerals safeguarding where it is demonstrated, among other things, that it constitutes development on a site allocated in the adopted development plan. As the application site lies within allocated land (Swale Borough Local Plan 2008), the development of this site for housing would comply with Kent policy DM7.

- 9.34 I do not intend to limit the number of dwellings allowed to be developed on this site to 33 as indicated in the application. This is because it may be possible, given the need for housing in the Borough, for a higher number of dwellings to be provided on site which would be demonstrated through the reserved matters application. However, Members should note condition (6) which sets out the building parameters for the site

which will ensure that the development has adequate landscaping and that the buildings are of an appropriate height.

10.0 CONCLUSION

- 10.01 The proposed development would provide much needed housing on land within the built-up area boundary. Whilst this site was originally ear-marked for 'Neighbourhood Uses' serving the residents of the Great Easthall estate, the operation of shops and a pub on this site have proven to be commercially unviable. Planning Officers have negotiated a contribution of £180,000 towards the setting up of a community shop that would cover the cost of construction, fit-out costs, professional fees and payment of the manager's wages for up to two years. The shop would be provided next to the community hall contributing towards a community hub within the Great Easthall estate. Subject to the community shop contribution, the development is considered to be sustainable and acceptable in principle.
- 10.02 Consideration has been given to residential amenity, design, landscape impact, highway safety/amenity, ecology and biodiversity, impact on heritage assets, flooding, contamination, air quality, brick earth extraction and utility provision. I have recommended appropriate conditions where necessary.
- 10.03 The applicant has agreed to make various financial contributions towards education, libraries, the Thames, Medway and Swale Estuaries Strategic Management and Monitoring (SAMM) Strategy, NHS (expanding local health services), bins and a commuted sum for the maintenance of open space. It is considered that these contributions met the CIL tests.
- 10.04 I therefore consider that the proposed development of this site for up to 33 dwellings would be acceptable and recommend approval subject to the conditions set out below, comments from Southern Water and the completion of a section 106 Agreement to incorporate the requirements as set out above at paragraph 9.25.

11.0 RECOMMENDATION – GRANT Subject to the following conditions:

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

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

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

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

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

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

4. The development hereby approved shall be carried out in accordance with the following approved drawing: ITL11359-SK-002 rev A, Development Parameters 006c.

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

5. The details referred to in condition (1) shall include 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.

6. The layout for the reserved matters application pursuant to condition (1) shall include open space/open land and the connecting cycle/footway as shown within the application site on the Development Parameters plan 006c. In addition, the maximum storey height shall not exceed 3 with a maximum ridge height 13 metres.

Reason: In the interests of achieving a good design and living environment for future residents.

7. No development shall take place on areas not previously excavated for brickearth (as identified in green on plan entitled “Figure 17” prepared by CgMs) until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written specification and timetable which has been submitted to and approved in writing by the Local Planning Authority.

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

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

Reason: To ensure that the development complies with the approved details in the interests of protection of Controlled Waters and human health.

9. Upon completion of the works to remediate contaminated land under condition (8), and before any part or agreed phase of the development is occupied, a closure report shall be submitted which shall include details remediation works undertaken, 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 contaminated is adequately dealt with.

10. Prior to the commencement, a detailed scheme for the investigation, recording and remediation of gas shall be carried out. Such a scheme to comprise:

A report to be submitted to and approved by the Local planning authority. The report shall include a risk assessment and detail how on site monitoring during the investigation took place. The investigation shall be carried out by a suitably qualified and accredited consultant/contractor in accordance with a methodology that complies with current best practice, and these details reported.

Detailed proposals in line with current best practice for gas protection measures (the 'Gas Protection Proposals') have been submitted to and approved by the Local Planning Authority. The Proposals shall detail sources of best practice employed.

Approved works shall be carried out in full on site prior to first occupation. Upon completion of the works, this condition shall not be discharged until a closure report has been submitted to and approved by the Local Planning Authority. The closure report shall include full details of the works and certification that the works have been carried out in accordance with the approved scheme.

Reason: To safeguard the future occupants of the site.

11. Prior to the commencement of development hereby approved, full details of the method of disposal of foul and surface waters including discharge rates and attenuated volumes, shall be submitted to and approved by the Local Planning Authority. This shall include full details for the Sustainable Urban Drainage System and how it will be maintained. 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.

12. 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.

13. No construction work in connection with the development shall take place on any Sunday or Bank Holiday, nor on any other day except between the following times:-
Monday to Friday 0730 – 1900 hours, Saturdays 0730 – 1300 hours unless in association with an emergency or with the prior written approval of the Local Planning Authority.

Reason: In the interests of residential amenity.

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

Reason: In the interests of residential amenity.

15. 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.

16. 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.

17. The details submitted pursuant to condition (1) above shall show adequate land, reserved for the parking or garaging of cars and such land shall be kept available for this purpose at all times and no permanent development, whether permitted by the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking or re-enacting that Order) or not shall be carried out on such land or in a position as to preclude vehicular access thereto; such land and access thereto shall be provided prior to the occupation of the dwelling(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 and detrimental to amenity.

18. The proposed estate road, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, accesses, carriageway gradients, driveway gradients, car parking and street furniture, as appropriate, shall be constructed and laid out in accordance with details to be submitted and approved by the Local Planning Authority in writing before their construction begins and in accordance with a schedule of house completion and an implementation programme for the agreed works, also to be submitted to the Local Planning Authority for approval in writing.

Reason: To ensure that the roads are constructed and laid-out in a satisfactory manner.

19. 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.

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

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

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

21. Upon completion of the approved landscaping scheme, any trees or shrubs that are removed, dying, being severely damaged or becoming seriously diseased within five years of planting shall be replaced with trees or shrubs of such size and species as

may be agreed in writing with the Local Planning Authority, and within whatever planting season is agreed.

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

22. 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.

23. Prior to the commencement of development hereby approved, a Noise Assessment shall be submitted to the Local Planning Authority that specifically responds to the layout of the housing development pursuant to condition (1) above. This shall include details of the double glazing and any mechanical ventilation that is to be installed within the properties and any other mitigation measures recommended as a result of the noise assessment.

Reason: In the interests of residential amenity.

24. Prior to the commencement of development pursuant to condition (1), a report demonstrating how the proposal will incorporate measures to encourage and promote biodiversity and wildlife, including details of the type and location of lighting to be provided close to landscaped area (so as not to discourage bats from foraging) and details of how the biodiversity habitat areas of the site will be managed, shall be submitted to and approved in writing. This report shall comment on the likelihood of Great Crested newts colonising the site since the last survey was undertaken at the site in March and April 2016 and suggest appropriate further survey work and mitigation if required. 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.

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

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

26. Prior to the occupation of the dwellings hereby approved, ducting / culverts and any other associated equipment to enable the provision of Broadband to each property within the application site, shall be installed as part of the layout pursuant to condition (1).

Reason: To enable the provision of Broadband to each property.

Informative

1. Prior to the submission of any reserved matters application, the applicant, agent, or successors in title, are encouraged to undertake pre-application (reserved matters) discussion with the local Planning Authority. As part of this pre-application discussion, it may well be necessary to consult with external bodies such as Kent Police Crime Prevention Design Advisors (CPDAs) to ensure that a comprehensive approach is taken to Crime Prevention and Community Safety.

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 in the processing of their application and 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 was asked to address matters to improve the development.

Case Officer: Emma Eisinger

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: HABITATS REGULATIONS ASSESSMENT

Context

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

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

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

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

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

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

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

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

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

Associated information

The applicant confirms that they are willing to commit to contributions towards the strategic mitigation noted above. Natural England’s email to SBC dated 12th September 2016 has also been considered; in particular that they have raised no objections subject to contributions towards strategic mitigation.

The Assessment of Land at Swale Way, East Hall Farm, Sittingbourne

The application site lies 600m to the south of The Swale and Medway Estuary and Marshes SSSI, Ramsar and Special Protection Area. Therefore, there is a medium possibility that future residents of the site will access footpaths and land within these European designated areas. Natural England consider that the development is unlikely to have a significant effect on the internationally designated site either alone or in combination.

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

Conclusions

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

Case Officer: Emma Eisinger

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.

Minutes of Planning Committee 8th December 2016**2.4 REFERENCE NO - 16/505280/OUT****APPLICATION PROPOSAL**

Outline Application for residential development (up to 33 dwellings), and open space; including associated access (vehicular / cycle / pedestrian), alterations to levels, surface water attenuation features (including swales), landscaping and related development.

ADDRESS Land At Swale Way East Hall Farm East Hall Lane Sittingbourne Kent ME10 3TJ
WARD Murston

PARISH/TOWN COUNCIL APPLICANT Trenport Investments Limited

AGENT Vincent and Goring

Mr Trevor Grain, an objector, spoke against the application.

Mr Chris Hall, the applicant, spoke in support of the application.

Members were given time to read the tabled statement from the applicant's agent.

The Chairman moved the officer recommendation to approve the application and this was seconded.

The Senior Planner confirmed that the applicant had offered a further £20,000 contingency fund against the costs of setting-up a community shop, and this would be specified separately within the S106 Agreement. He explained that the fund would provide a contingency for construction and related fees, and fit-out costs for the building.

Ward Members spoke against the application and raised points which included: land had been set-aside by the developer to provide a medical centre, public house, school but had not been provided; the local community must come first; strong objections to the proposal by local residents; lack of community cohesion; lack of facilities; and would add to current congestion and access problems.

Members considered the application and raised points which included: important for the local community to have a convenience store; should add a condition that a shop be provided within one year; should be no more development on the Great East Hall estate until the Northern Relief Road (NRR) was completed; local residents should have confidence that the Local Planning Authority ensured developers deliver what they have promised; the Council should have requested that the developer provide shops after so many houses had been built; need to look at the Eurolink V development and the impact it would have on the viability of a community centre; cannot build 700 properties and not have shops; should not accept the application without substantial changes; concern that the developer misled people when they were purchasing properties at the site; do not consider that residents should have to operate the shop; two or three shops would be a better proposal; the developer needs to consider the future viability of the site; as the estate increases there would be a need for shops to be provided; the developer needs to ensure they leave space for retail; and should refuse as premature application and provision of a shop will become viable in the future.

In response to queries from Members about the development of Eurolink V and its impact on the viability of a neighbourhood centre, the Senior Planner drew attention to paragraph 9.06 of the Committee report which clarified the position. He advised that the additional money that the developer was offering would not be available until the development commenced.

On being put to the vote, the motion to approve the application was lost.

At this point the Head of Planning Services used his delegated powers listed under Part 3 (Responsibility for Council Functions) of the Council's Constitution for the Planning Committee to 'call-in' the application.

Resolved: That as the Planning Committee was minded to make a decision that would be contrary to officer recommendation and contrary to planning policy and/or guidance, determination of the application be deferred to the next meeting of the Committee.

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Def Item 2 REFERENCE NO - 16/507789/FULL		
APPLICATION PROPOSAL Provision of a cold store building, extension to an existing building to provide lean-to for agricultural storage purposes, irrigation lagoon and electricity substation.		
ADDRESS Howt Green Sheppey Way Bobbing ME9 8QP		
RECOMMENDATION Grant		
SUMMARY OF REASONS FOR RECOMMENDATION 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.		
REASON FOR REFERRAL TO COMMITTEE Parish Council objection		
WARD Bobbing, Iwade And Lower Halstow	PARISH/TOWN Bobbing	COUNCIL AC Goatham AGENT Bloomfields
DECISION DUE DATE 17/02/17	PUBLICITY EXPIRY DATE 30/12/16	OFFICER SITE VISIT DATE 02.12.16
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):		
16/507788/FULL	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	Current.
16/507231/FULL	Retrospective application for extended period for temporary portable cabin for laundry use.	Approved.
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.
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.
SW/13/0728	Temporary portacabin for laundry use.	Approved
SW/13/0501	Controlled temperature fruit store with	Approved

	associated hardstanding and extension to general purpose building to provide office, WCs and laundry.	
SW/03/0201 & SW/04/0579	Fruit box and machinery store and chill store extension to this building respectively.	Approved
SW/11/0764	Erection of 65m in length close boarded fence 2-3 m height.	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/09/0386	Variation of condition to allow the storage of fruit grown in Swale, not just on A C Goatham's farms.	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/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

MAIN REPORT

1.0 INTRODUCTION

1.01 Members will recall that this application was reported to the Planning Committee on 2nd February 2017. This report is appended. The application was deferred following a question from a Member in respect of the noise impact from the chiller units to be installed on the proposed cold store building, and a suggestion that condition 10 be amended to specify that the chillers should not be audible from residential properties close by, including the seasonal workers caravans. Members are asked to refer to the minutes of this meeting for details of the discussion.

1.02 The purpose of this report is to provide clarification on the noise impact from the chillers and to recommend an appropriate condition to address this noise impact. Members are reminded that in deferring this application, the matter of concern was solely in respect of the wording of condition 10:

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 cold store hereby approved and shall be maintained as such in perpetuity.

Grounds: In the interests of residential amenities.

1.03 Members are asked to refer to the appended report for details of the site, the proposal, planning constraints, planning policies, local representation, consultees and, an appraisal of the scheme.

2.0 DISCUSSION

2.01 The previous report noted that 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.

- 2.02 In response to Members concerns about the noise impact and the robustness of condition 10, I have asked the Environmental Health Manager to provide further comment on this matter. He notes:

“I do not disagree with the report (acoustic assessment) or its choice of attenuation. My only issue with it is the mention of the old 1997 version of BS 4142, which the author of the report should have realised has been superseded by the 2014 version.

*The acoustic assessment has determined that at 10 metre distance from the two proposed chillers with the acoustic information provided by the manufacturers of the chiller, complaints are highly likely without attenuation. It has suggested a minimum noise reduction of 12 dB(A) to both chillers to achieve a figure of 31 dB(A) at the nearest residential property, which has been measured at 82 metres distance to the south of the site. The attenuation appears to consist of a combination of acoustic enclosures and a 3 metre high acoustic fence. The attenuation is seemingly **not** designed to protect the temporary workers caravans, some of which are less than 10 metres from the chillers.*

However.... this is a working farm and there are other chillers on site which may affect these and the other caravans similarly. Also, the occupants are not ‘residents’ in the truest sense, as they are only present for a few months per year. The times that they are staying at the farm corresponds to the busiest time of the year where there will be other noise sources, often at unsocial hours. The ambient noise levels on and near this site are higher than normal and will help to reduce the effect of these chillers, which will be attenuated in any case.

I think therefore that if it is felt appropriate to alter the wording of condition 10 relating to noise mitigation to include these caravans, the change should not use the word ‘inaudible’, as it is an impossibility for there to be no sound audible at these caravans from the latest chillers. There are other noise sources on the site, including the proposed electricity station, situated close to the caravans.

I see no real reason to change the wording of this condition, as to do so will introduce issues that cannot be mitigated against.”

- 2.03 As such, the noise reduction that the proposed mitigation would provide would adequately protect the residential amenities of the residential properties close by. The acoustic assessment states that the nearest affected property is ‘St Anton’ which is 82m to the south of the proposed chillers and notes:

“We would expect the local authority to specify that the total plant noise emissions should not exceed a level of background minus 5dB when measured at 1metre from the façade of the nearest affected residential property...

...In order to achieve the criterion of 31dBA (5dB below background noise level)...it will be necessary to provide a minimum noise reduction of 12dBA to both chillers.”

- 2.04 On page 9 of the submitted Environmental Noise Management Report (acoustic report), under conclusions and recommendations, it states:

“The noise emissions from the proposed development should not exceed the levels indicated in table 3 (i.e. 31dBA) when measured at 1m from the façade of the nearest affected residential property....

In order to achieve the noise criterion, it will be necessary to enclose each chiller within a suitably designed acoustic enclosure. Inlet and discharge are should be provided with suitably designed attenuators selected to provide 12dBA minimum level attenuation...”

- 2.05 The originally suggested wording of condition 10 requires the development to be carried out in accordance with the above recommendations. Should Members wish to be more specific in its requirements, I suggest an amended wording:

*10. The noise mitigation measures as set out on pages 4 and 9 of the submitted Environmental Noise Management Report, **specifically, that the noise level of the chillers hereby approved shall not exceed 31dBA when measured at 1m from the façade of St Anton and that the chillers shall be enclosed with attenuators providing 12dBA as a minimum level of attenuation and the erection of a 3m high acoustic fence as shown on drawing number 3830 DR001 & 06J7/01043, shall be implemented prior to the first use of the cold store hereby approved and shall be maintained as such in perpetuity.***

Grounds: In the interests of residential amenities.

- 2.06 31dBA is below what one might expect as the ambient noise level in a home. An empty living room generally has an ambient noise level of 20-30dB. As such, I consider that the stipulated 31dBA noise level will ensure that the residents of the closest neighbouring property, St Anton do not suffer any undue harm and that it is unlikely that noise from the chiller units would be perceptible within the property.
- 2.07 I am in full agreement with the Environmental Health Manager in respect of the need to protect the ‘residential amenity’ of the seasonal workers. It is the case that the caravans are not providing permanent residences and these are not homes where one might expect to have the same level of privacy and quiet. The workers will be fully aware that they will be living and working in the same environment and that this will be a working farm which is, by its very nature, noisy. I do not therefore consider that the proposed chillers should be attenuated to accommodate the seasonal workers caravans. However, if Members were so minded, we could require an additional acoustic fence to be provided between the chillers and the caravans. This might offer some further sound reduction.

Other Matters

- 2.08 We have now received comment from Kent Highways and Transportation and they have no objection to the proposal. They note that the access and visibility provided thereto is acceptable. They agree with the findings of the submitted Transport Assessment in respect of the likely number of trips generated by the development and note that the road is of a standard that is capable of accommodating large vehicles and does not have capacity issues. They ask for conditions to require details of parking for site operatives during construction, to guard against mud on the highway during construction and, the permanent retention of parking and turning space within the site. Conditions 5, 6 and 16 below cover these issues.
- 2.09 Since the last report was written, we have received comments from the Tree Consultant who finds the submitted landscaping details acceptable.

3.0 CONCLUSION

- 3.01 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.
- 3.02 I therefore consider that planning permission should be approved subject to the conclusions below, including the amended wording for condition (10).

4.0 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: 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, specifically, that the noise level of the chillers hereby approved shall not exceed 31dBA when measured at 1m from the façade of St Anton and that the chillers shall be enclosed with attenuators providing 12dBA as a minimum level of attenuation and the erection of a 3m high acoustic fence as shown on drawing number 3830 DR001 & 06J7/01043, shall be implemented prior to the first use of the cold 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 1st March and 31st 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.

16. The area shown on the submitted plan as 'concrete apron' shall be used for or be available for loading and off-loading and vehicle parking at all times when the premises are in use and no 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 that area of land or in such a position as to preclude vehicular access to this reserved area; such land and access thereto shall be provided prior to the commencement of the use hereby permitted.

Reason: The development without the provision of the loading, off-loading and parking space would be detrimental to amenity and likely to lead to inconvenience and danger to road users by virtue of vehicles parked on the public highway amenity

Informative:

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

APPENDIX A

Planning Committee Report – 2 February 2017

REFERENCE NO - 16/507789/FULL		
APPLICATION PROPOSAL Provision of a cold store building, extension to an existing building to provide lean-to for agricultural storage purposes, irrigation lagoon and electricity substation.		
ADDRESS Howt Green Sheppey Way Bobbing ME9 8QP		
RECOMMENDATION Grant subject to the comments of the Tree Consultant		
SUMMARY OF REASONS FOR RECOMMENDATION 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.		
REASON FOR REFERRAL TO COMMITTEE Parish Council objection		
WARD Bobbing, Iwade And Lower Halstow	PARISH/TOWN Bobbing	COUNCIL AC Goatham AGENT Bloomfields
DECISION DUE DATE 17/02/17	PUBLICITY EXPIRY DATE 30/12/16	OFFICER SITE VISIT DATE 02.12.16
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):		
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 as 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 2nd 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.

Reasons: 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 1st March and 31st 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:

- c) 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;
- d) 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:

2. The applicant is advised to give careful consideration to the comments of Southern Gas Networks as set out in their letter of 2nd 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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SWALE BOROUGH COUNCIL

PLANNING SERVICES

Planning Items to be submitted to the Planning Committee

2 MARCH 2017

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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

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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PLANNING COMMITTEE – 2 MARCH 2017

PART 2

Report of the Head of Planning

PART 2

Applications for which **PERMISSION** is recommended

2.1 REFERENCE NO - 16/508465/FULL		
APPLICATION PROPOSAL Proposed two storey rear extension (to replace existing single storey element) to the existing dwelling and erection of an outbuilding for parking and ancillary accommodation.		
ADDRESS 1 Fairview Cottages Frinsted Road Milstead Kent ME9 0SB		
RECOMMENDATION - Approve subject to conditions		
SUMMARY OF REASONS FOR RECOMMENDATION The proposed development would not have a significant detrimental impact upon the character of the existing dwelling nor upon the streetscene or surrounding AONB, and that its layout and design are appropriate. It is considered that, the proposed outbuilding and rear extension will sit comfortably within the curtilage of Fairview Cottages.		
REASON FOR REFERRAL TO COMMITTEE Parish council objection and four letters of objection received.		
WARD West Downs	PARISH/TOWN COUNCIL Milstead	APPLICANT Mr James Boucher AGENT Mrs Klaire Lander
DECISION DUE DATE 17/02/17	PUBLICITY EXPIRY DATE 27/01/17	

1.0 DESCRIPTION OF SITE

- 1.01 The site is located within the southern part of the village of Milstead and it is surrounded by residential properties. 1 Fairview Cottages is a two storey; semi-detached dwelling built over 100 years ago. The front elevations of the pair of cottages are symmetrical, with pairs of casement windows, exposed timber beams at first floor, porch features and simple roof line. The side and rear elevations of 1 Fairview Cottages consist of an existing single storey element projecting to the rear.
- 1.02 To the north of the application site is a more modern detached two storey dwelling, known as Roslyn, of red brick construction which has a gable end facing the application site. Fairview Cottages and Roslyn are set back from the road with garden space located at the front. The village of Milstead has a number of local services such as Red Lion pub, Milstead pre-school, Milstead and Frinsted Primary School, a village hall, Manor Farmhouse Holiday Cottages and cricket club. The town of Sittingbourne is 3.6 miles away offering a wide range of services.

2.0 PROPOSAL

- 2.01 The application proposes a two storey extension to the rear of 1 Fairview Cottages. The extension replaces an existing single storey element in the same location. The extension is proposed to be constructed with materials to match the existing house,

with red stock brickwork at ground floor and render with exposed timber beam detailing at first floor. The extension measures 3.8m deep by 3.8m wide.

- 2.02 The application also proposes a detached outbuilding to accommodate two car parking spaces as well as ancillary accommodation, with the retention of one existing car parking space outside of the proposed outbuilding. The outbuilding will be accessed via the existing vehicular drive off Frinsted Road. The existing parking for the house is situated to the rear of the dwelling and it is proposed that the new parking is retained in this location.
- 2.03 The proposed outbuilding is one and a half storeys in height and is clad with dark-stained timber weatherboarding. It is traditionally designed to respect the visual amenities of the existing houses and the locality generally. The design, layout and scale of the proposed rear extension and outbuilding are generally characteristic of Fairview Cottages and the village setting.

3.0 PLANNING CONSTRAINTS

- 3.01 Area of Outstanding Natural Beauty KENT DOWNS

4.0 POLICY AND OTHER CONSIDERATIONS

- 4.01 The following policies and paragraphs of the National Planning Policy Framework (NPPF) (March 2012) are considered to be the most relevant:
- 4.02 Paragraphs 7 and 8 set out that there are three mutually dependent facets to sustainable development – economic, social and environmental including protecting and enhancing the historic environment.
- 4.03 Paragraph 14 explains the Framework's presumption in favour of sustainable development, stating that Local Planning Authorities should: '*positively seek opportunities to meet the development needs of their area*' and that decision takers should approve development proposals that accord with the development plan (or where development plan policies are out of date) without delay.
- 4.04 Paragraph 15 states that Local Plans should follow the approach of the presumption in favour of sustainable development.
- 4.05 Paragraph 17 outlines the overarching roles/core principles of the planning system, including to: take into account the needs of the residential and business communities; to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings and to encourage the effective use of brownfield land by re-using it. Planning should conserve heritage assets in a manner appropriate to their significance.
- 4.06 Section 4 promotes sustainable transport for new development.
- 4.07 Paragraphs 56 and 58 outline the importance and principles of good design in new development.
- 4.08 Paragraph 109 states that the natural and local environment should be contributed to by protecting and enhancing valued landscapes and minimising the impact on biodiversity for example.

- 4.09 Paragraph 115 outlines that great weight should be given to conserving landscape and scenic beauty in Areas of Outstanding Natural Beauty.
- 4.10 Paragraph 131 outlines a ‘*desirability of sustaining and enhancing the significance of heritage assets*’. The guidance outlines that great weight should be given to the conservation of a designated heritage asset (paragraph 132). The more important the asset, the greater the weight should be.
- 4.11 Paragraph 132 states that any harm or loss to a designated heritage asset must be justified and it is outlined that the principle of proportionality is fundamental to the decision making process so that the level of justification which is required depends on the relative significance of the designated Heritage Asset concerned.
- 4.12 Paragraph 134 relates to proposals that will result in ‘less than substantial harm’ to the significance of a designated heritage asset, stating that this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.
- 4.13 Paragraph 135 states that in considering applications that affect non-designated heritage assets: “a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset”.
- 4.14 Paragraph 137 outlines that LPAs should look for opportunities for new development within conservation areas to enhance or better reveal their significance. Paragraph 138 notes that not all elements of a conservation area will contribute to its significance.
- 4.15 Paragraph 186 outlines that LPAs should approach decision taking in a positive way to foster the delivery of sustainable development.
- 4.16 Paragraph 187 states that LPAs should look for solutions rather than problems, and decision-takers at every level should seek to approve applications for sustainable development where possible. LPAs should work proactively with applicants to secure developments that improve the economic, social and environmental conditions of the area.
- 4.17 Paragraph 215 states that due weight should be given to development plan policies adopted since 2004, according to their degree of consistency with the Framework.
- 4.18 National Planning Practice Guidance (March 2014)

On 6 March 2014 the Department for Communities and Local Government (DCLG) launched a planning practice guidance web-based resource called National Planning Practice Guidance (PPG). This Guidance sets out criteria for new developments, including in relation to: design, conservation areas and Areas of Outstanding Natural Beauty for example. Paragraph 001 of the ‘Rural Housing’ section states that rural housing is essential to ensure viable use of rural services. It also states that:

“A thriving rural community in a living, working countryside depends, in part, on retaining local services and community facilities such as schools, local shops, cultural venues, public houses and places of worship. Rural housing is essential to ensure viable use of these local facilities.”

- 4.19 The adopted Swale Borough Local Plan 2008 saved policies are:

- SP1 - Sustainable Development

- SP5 – Rural Communities
- SP6 – Transport and Utilities
- E1 - General Development Criteria
- E6 – The Countryside
- E9 – Protecting the Quality and Character of the Borough’s Landscape
- E15 – Development affecting a Conservation Area
- E19 - Achieving High Quality Design and Distinctiveness
- E24 – Alterations and extensions
- RC4 – Extensions to, and replacement of dwellings in the rural area
- T3 – Vehicle Parking
- T4 – Cycle Parking

4.20 Swale Local Plan Proposed Main Modifications Submission Version (June 2016) policies:

- ST1 – Delivering sustainable development in Swale
- ST3 – The Swale settlement strategy
- CP4 – Requiring Good Design
- CP8 – Conserving and enhancing the historic environment
- DM6 – Managing Transport demand and impact
- DM7 – Vehicle Parking
- DM11 - Extensions to, and replacement of dwellings in the rural area
- DM14 - General Development Criteria
- DM19 – Sustainable Design and Construction
- DM24 – Conserving and enhancing valued landscapes
- DM33 – Development affecting a conservation area

5.0 LOCAL REPRESENTATIONS

5.01 Four local residents have raised the following summarised objections;

- The barn for parking and the accommodation above is in consideration for the residents of the dwellings north of Fairview cottages that maybe the glass in the North facing window in the top of the barn should be frosted or the like to respect the privacy of the adjacent gardens.
- Overcrowding within dwelling, an possible use as a separate dwelling
- Set a precedent for other dwellings to increase car parking/use in area
- Reduced highway visibility
- Loss of privacy
- Ambiguity about whether rooflights are proposed in outbuilding

5.02 One local resident supports the application because;

- In character with surrounding area
- Modest scale with existing house
- The proposal represents a high quality design, with the use of high quality materials.
- There would be no undue impacts upon residential amenities as a result of the proposal.
- The proposal preserves the setting
- In character with surrounding area
- Modest scale with existing house

- The proposal represents a high quality design, with the use of high quality materials.
- There would be no undue impacts upon residential amenities as a result of the proposal.
- The proposal preserves the setting of the Conservation Area and the Area of Outstanding Natural Beauty.
- Currently, parking to the rear of the dwelling appears cluttered and the proposed outbuilding will provide visual screening to this parking area, thus improving the appearance of the area.
- There are other examples locally of similar outbuildings and extensions so the proposals would respond to their wider context.
- The scale, height and massing of the proposals are appropriate.

6.0 CONSULTATIONS

6.01 Milstead Parish Council raise the following concern;

“Milstead Parish Council have some concerns with this proposal. The rear extension to the existing dwelling is acceptable, however the erection of an outbuilding for parking and ancillary accommodation is causing concerns. The large proposed window in this outbuilding would overlook all the neighbouring properties and certainly should not be permitted. All the present properties would lose their privacy. The Council also feel this is not an ancillary building but a completely separate stand-alone property. The position implies it is not connected to 1 Fairview Cottage, it is spread across two properties/gardens fenced off from these properties/gardens with no access from these. The access appears to be from the rear drive way. At the moment this agricultural track is used by two cars, with these plans the number could rise to four times that coming out on a narrow road with limited views from the left side.”

7.0 BACKGROUND PAPERS AND PLANS

7.01 Application papers for application 16/508465/FULL

8.0 APPRAISAL

8.01 This appraisal sets out the main planning considerations in the determination of the application for the proposed two storey rear extension and outbuilding to accommodate parking for two cars, and ancillary accommodation on land at 1 Fairview Cottages, Frinsted Road, Milstead ME9 OSB. The main planning considerations in relation to this application are discussed within this section and are as follows: The principle of development: Sustainable development; Streetscene and Layout; Scale and Design; Amenities of neighbouring properties; The Conservation Area; Landscape Assessment – The Area of Outstanding Natural Beauty; New House proposal on land adjacent 1 Fairview Cottages; and Transport.

The principle of development

8.02 Saved Local Plan policy RC4 states that the Council will permit modest extensions to dwellings in the rural area where they are of an appropriate scale, mass and appearance to the location. Emerging Local Plan policy DM11 similarly states that the Council will permit extensions to existing dwellings in the rural areas where they are of an appropriate scale, mass and appearance. Saved Local Plan policy E24 outlines

similar requirements for extensions to existing buildings. The application proposals are of an appropriate scale in the context of the existing house and the locality. The design of the proposal is considered appropriate and therefore, the principle of development is acceptable.

Sustainable Development

- 8.03 Paragraph 14 of the NPPF outlines a presumption in favour of sustainable development. It states that LPA's should '*positively seek opportunities to meet the development needs of their area*' and decision takers should approve development proposals that accord with the development plan (or where development plan policies are out of date) without delay.
- 8.03 The NPPF at paragraph 186 outlines that LPAs should approach decision taking in a positive way to foster the delivery of sustainable development. Paragraph 187 of the NPPF states that LPAs should look for solutions rather than problems, and decision-takers at every level should seek to approve applications for sustainable development where possible. LPAs should work proactively with applicants to secure developments that improve the economic, social and environmental conditions of the area. In accordance with paragraphs 7 and 8 of the NPPF, there are three mutually dependent facets to sustainable development – economic, social and environmental. These elements of the development proposal are considered within this section.
- 8.04 The materials used in the construction of the development is stated to be locally sourced, contributing to a reduction in environmental impact of the proposal. The provision of ancillary accommodation to include office space is to allow the residents of 1 Fairview Cottages to work from home thus reducing the need to travel or develop office space elsewhere in the village, having environmental benefits.
- 8.05 The proposed development is designed to enhance the existing dwelling. It is stated within the submitted planning statement that, the proposals will improve the quality of the housing stock available in the village of Milstead which will have a social benefit, and, the potential use of the ancillary floorspace for office space will help to financially support the residents of 1 Fairview Cottages and the proposal will also support construction jobs which will have economic benefits. It is considered that there is some merit in this statement.
- 8.06 There are some social, environmental and economic benefits to the proposal, all of which comprise the individual facets of sustainable development in accordance with the NPPF. Therefore, on some level, the proposal is thus considered to constitute sustainable development in accordance with the NPPF, saved Local Plan policy SP1 and emerging Local Plan policy ST1.

Streetscene and Layout

- 8.07 The proposed extension and outbuilding are located to the rear of 1 Fairview Cottages and will therefore be largely hidden from view from Frinsted Road. As a result, there will be no significant detrimental harm to the streetscene. Instead, the prominence of Fairview Cottages within the local streetscene will be retained.
- 8.08 The proposed outbuilding is proposed to be sited within the residential curtilage of 1 Fairview Cottages and it is rectangular in shape - running adjacent to the rear boundary of the application site. The siting of the outbuilding is considered appropriate since it provides covered parking spaces in the location of existing parking spaces to

the rear of the property. The garden space to the rear of the site can comfortably accommodate the proposed outbuilding, whilst maintaining separation with the proposed extension and neighbouring properties.

- 8.09 The two storey rear extension is situated on the northern side of the rear elevation, maintaining adequate separation with neighbouring properties. The proposed block plan demonstrates that the footprint of the proposed rear extension and outbuilding sits comfortably within the prevailing urban grain and character of the settlement.

Scale and Design

- 8.10 Saved Local Plan policies E1 and E19 require development to be of high quality design and to be appropriate to its context, in respect of scale, height and massing. This is echoed by saved Local Plan policies E24 and RC4 as well as emerging Local Plan policies CP4, DM14 and DM19.
- 8.11 The proposed extension is considered to be in scale and relative to the existing dwelling, being 3.8m deep and 3.8m wide. The ridge of the extension is set below the ridge line of the main house. The scale of the outbuilding reflects its function for the parking of two cars plus for the provision of additional ancillary accommodation to the house, which is currently limited in terms of its provision, with no garden storage facilities or study. The outbuilding is stated to provide ancillary floorspace for the main dwelling. The scale of the building is appropriate to its context at one and a half storeys in height. The scale, height and massing of the two-part proposals are therefore considered to be appropriate.
- 8.12 The application being considered represents a high quality design, with the use of high quality materials. The materials proposed for the rear extension will match those found on 1 Fairview Cottages, with clay roof tiles, rendered and exposed timber beams at first floor and red stock brick at ground floor level'. The materials for the outbuilding will reflect an agricultural barn-style, with timber featheredge weatherboarding, timber doors and windows. The outbuilding features half hip detail to the roof and exposed timber beam details.
- 8.13 It appears that the proposed rear extension reflects similar developments at Milstead Manor to the north and Hoggeshaws to the north-west of the site which, reinforce the acceptability of an extension in this location. The proposals are therefore appropriate in terms of their scale and design and respond and reflect the positive characteristics and features of the locality. The proposal thus complies with saved and emerging Local Plan policies as well as the NPPF.

Amenities of neighbouring properties

- 8.14 It is considered that there would be no undue detrimental impacts upon residential amenities because of the proposal. There is more than adequate separation between the proposed extension and outbuilding and the two neighbouring properties. There are no first floor windows proposed in the side elevations of the extension, thus ensuring that overlooking of neighbouring properties will not present a problem and therefore considered not to result in overshadowing or overbearing of this property. The proposal therefore complies with saved Local Plan policy E1 and emerging Local Plan policy DM14. With regard to the windows in the outbuilding proposed, these only face towards the far ends of neighbours gardens, not their more private amenity areas close to the rear walls of the houses. To that extent I do not consider that any

unacceptable loss of privacy will result. As far as rooflights are concerned I have recommended a condition to resolve the ambiguity in the drawings.

The Conservation Area

- 8.15 The site is located to the south of the Milstead conservation area. There is currently no conservation area appraisal available for Milstead, and as such, an informed judgement needs to be made regarding any impact upon the conservation area of any proposed new development. The Council's conservation area guidance, however, does state: 'A high standard of development therefore will be required for all buildings in conservation areas and for extensions to existing buildings'.
- 8.16 In this instance, it is considered that the proposal will have no significant detrimental impact upon the setting of the conservation area. The proposed rear extension and outbuilding will sit comfortably within the streetscene and the prevailing urban grain; are of a traditional and high quality design, with the use of high quality materials; and the design reflects the positive characteristics and features of the existing dwelling and will respect the scale and design of the property. The proposal thereby responds to and reflects the positive characteristics and features of the locality.
- 8.17 Therefore, the proposed development will preserve the character and appearance of the conservation area, in accordance with saved Local Plan policy E15 and emerging Local Plan policies CP8 and DM33 of Swale Local Plan Proposed Main Modifications Submission Version (June 2016).

Landscape Assessment – The Area of Outstanding Natural Beauty

- 8.18 Paragraph 115 of the NPPF, saved Local Plan policy E9 and emerging Local Plan policy DM24 relate to development within an Area of Outstanding Natural Beauty (AONB). Great weight should be given to conserving landscaping and scenic beauty within AONBs. Saved Local Plan policy E6 requires the character and amenity value of the wider countryside to be protected and enhanced.
- 8.19 The proposed development is not set entirely within the context of open countryside, but flanked by houses to the north and south. The AONB in this location is built up and not open in character. The proposed extension and garage on the application site would not detract from any special qualities of the AONB.
- 8.20 The proposed outbuilding will provide covered parking and garden storage space for 1 Fairview Cottages – the application site. Currently, the existing parking arrangements to the rear of the dwelling, appears cluttered and the proposed building will provide visual screening to this parking area, thus improving the appearance of the area. The internal storage space will allow space to store garden items, cycles etc. This is also to replace the existing shed which is currently located adjacent to the rear elevation of the property.
- 8.21 It is considered that the scale and layout of the proposed development is appropriate in this location. There are no long range views of the site from the neighbouring area.
- 8.22 In respect of the guidelines contained in the Council's Landscape Character Assessment, the site lies within the 'Bicknor: Mid Kent Downs'. The guidelines for this landscape type relate to dense belts of woodland and views across the Swale Estuary. The Assessment refers to 'historic parkland, hops and orchards' which require protection and enhancement. The proposed garage and extension will not harm the

landscape character of Milstead. The Kent Downs AONB's Management Plan 2014-2019 outlines the aim of protecting the special character of the AONB and locates the site within the 'Mid Kent Downs'. In accordance with the Management Plan, the proposed development utilises quality materials and is of a high quality design. None of the 'special characteristics and qualities of the AONB' as outlined on page 7 of the Management Plan will be prejudiced by the proposed development. The proposal therefore protects the aims of the Management Plan.

- 8.23 The character of the Area of Outstanding Beauty will therefore be protected by the proposals. The proposal thus complies with the NPPF, saved Local Plan policy E9 and emerging Local Plan policy DM24.

New House proposal on land adjacent 1 Fairview Cottages

- 8.24 This application for a two storey extension and outbuilding at 1 Fairview Cottages is submitted alongside an application for proposed new house adjacent to 1 Fairview Cottages. The Masterplan (drawing number 16-10-22) submitted with this application illustrates how all of the proposals would be laid out on the overall site. Approval of this application is not dependant on the decision on that application.

Transport

- 8.25 The existing vehicular access to the proposed outbuilding will be utilised, off Frinsted Road. This access currently provides vehicular access to the parking spaces to the rear of 1 Fairview Cottages. It is considered that the proposal will not generate any additional traffic, as such the amenities of the designated 'rural lane' and the safety of the highway network will be protected, in accordance with emerging Local Plan policy DM6.
- 8.26 Parking spaces will be located to the rear of 1 Fairview Cottages, in the proposed outbuilding which will meet the parking provision necessary for the occupiers of the property, in accordance with saved Local Plan policy T3 and emerging Local Plan policy DM7.

9.0 CONCLUSION

- 9.01 It has been established that the proposed rear extension and outbuilding is in accordance with saved Local Plan policy, emerging Local Plan policies and the NPPF. There is clear policy support at local and National level for the provision of extensions to existing dwellings within rural locations. The proposal is supported by local and national policy which sets a presumption in favour of sustainable development.
- 9.02 It has been outlined that the proposal would not have a significant detrimental impact upon the streetscene and that its layout and design are appropriate. It is considered that, the proposed outbuilding and rear extension will sit comfortably within the curtilage of Fairview Cottages. The space between the proposals and the neighbouring property is adequate and the residential amenities of neighbouring properties will be protected.
- 9.03 The proposals will protect the character and appearance of the Milstead Conservation Area and there will also be no harm caused to the Area of Outstanding Natural Beauty because of the proposal. None of the 'special characteristics and qualities of the AONB' as outlined within the AONB Management Plan will be prejudiced by the

proposed development. The proposal therefore protects the aims of the Management Plan, as well as Swale’s Landscape Character Assessment.

- 9.04 It is concluded that the proposals accord with Development Plan policies as well as other material considerations and that planning permission is recommended for the proposed rear extension and outbuilding at 1 Fairview Cottages, Frinsted Road, Milstead.

10.0 RECOMMENDATION – GRANT Subject to the following conditions

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

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

- (2) The materials to be used in the construction of the external surfaces of the extension hereby permitted shall match those on the existing building in terms of type, colour and texture. The roofing materials used on the outbuilding shall match those used on the house/extension. All external boarding on the outbuilding shall be featheredged weatherboarding.

Reason: In the interests of visual amenity.

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

Reason: In the interests of residential amenity

- (4) Notwithstanding the indication shown on drawing 16_09_10 no rooflights or any additional windows, doors, voids or other openings shall be inserted, placed or formed at any time in the detached outbuilding, or in the extension to the main dwelling hereby permitted.

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

- (5) The outbuilding hereby permitted shall be used for purposes ancillary and/or incidental to the main dwelling at all times and it shall not be used as a separate unit of living accommodation.

Reason: In the interests of residential 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 considered by the Planning Committee where the applicants 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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2.2 REFERENCE NO - 16/506511/FULL		
APPLICATION PROPOSAL New vehicular access drive with double gates and detached garage, as amended by drawing nos. WC1652.01A, WC1652.02B, WC1652.03A, WC1652.04A, WC1652.05 and WC1652.06 received on 06 December 2016.		
ADDRESS 1 Wheelwrights Cottages, Lewson Street, Norton Kent ME9 9JN		
RECOMMENDATION: Approve subject to conditions		
SUMMARY OF REASONS FOR RECOMMENDATION The proposal, with the attached conditions, would not cause any unacceptable harm to the listed building or its setting nor to the character and appearance of the area and would comply with the development plan.		
REASON FOR REFERRAL TO COMMITTEE: Parish Council Objection		
WARD Teynham And Lynsted	PARISH/TOWN COUNCIL Norton, Buckland And Stone	APPLICANT Mr Ian Mynott AGENT Wyndham Jordan Architects
DECISION DUE DATE 26/10/16	PUBLICITY EXPIRY DATE 06/01/17	
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):		
App No	Proposal	Decision
16/501625/NMA	Non Material Amendment-lateral repositioning of 2 rooflights	GRANTED
15/505023/FULL	Erection of detached 1 ½ storey 2 bedroom barn style dwelling	GRANTED
14/501478/FULL	Erection of detached 1 ½ storey 3 bedroom barn style dwelling	REFUSED
SW/12/0666	Erection of fences, gates and shed	GRANTED
SW/11/0310 & SW/11/0311	First floor rear extension, internal alterations, installation of flue, first floor dormer window and removal of west roof slope dormer window.	GRANTED

1.0 DESCRIPTION OF SITE

- 1.01 1 Wheelwrights Cottage, a Grade II listed building, one of a pair, located on the corner of Lewson Street and Norton Lane in Norton. The site is located within the built up area boundary for the village and falls within the Lewson Street conservation area.
- 1.02 Planning permission was recently granted for a separate dwelling within the garden, to the south of the dwelling on the site of a former single storey barn style workshop building that was destroyed by fire. This was shown to share the current gated access to the house, but this application essentially now seeks to provide a new vehicular entrance for the main house, leaving just the new house (not yet built) to use the original existing access.
- 1.03 The site adjoins open fields to the south west and to the east and south east across Norton Lane, other residential properties and the village of Lewson Street lie to the north and north west.

2.0 PROPOSAL

- 2.01 The original submission was for a new driveway adjacent to the property featuring tall solid entrance gates close to the highway boundary. This would replace the pedestrian entrance at this point.
- 2.02 However, following discussions, the application has been amended to show traditional five bar gates set back from the highway, but the application also now includes a new detached single garage building. The pair of timber 5 bar gates are shown to be set back over 5.0m into the site. Hazel fencing at a height of 0.9m is shown to line the brick paving which will provide the driveway to the gates, with the new garage set well to the rear of the house.
- 2.03 Within new visibility splays shown on drawing no WC1652.02B the existing front fencing and hedge are to be reduced to 0.9m tall.
- 2.04 The proposed new garage is located at the end of the brick drive in the rear of the garden of 1 Wheelwrights and is to be positioned adjacent to the proposed new dwelling.
- 2.05 The garage is to measure 6m in length and 3m in width and will have a single pitched plain tiled roof, timber windows and doors with stained weatherboarding and galvanised iron gutters and downpipes
- 2.06 The application is supported by a Design and Access Statement and a Heritage Asset Assessment. An accompanying listed building consent application (16/506512/LBC) has been found not to be necessary and is not being considered further. However, comments submitted in relation to that application are dealt with below.

3.0 PLANNING CONSTRAINTS

Conservation Area Lewson Street
Listed Buildings MBC and SBC Ref Number: 1082/SW

4.0 POLICY AND OTHER CONSIDERATIONS

- 4.01 The National Planning Policy Framework (NPPF)
- 4.02 Development Plan: Swale Borough Council Adopted Local Plan 2008: Saved policies E1, E14, E15 and T1.
- 4.03 Emerging Swale Borough Local Plan "Bearing Fruits 2031" Proposed Main Modifications June 2016 Policies DM14, DM32, DM33

5.0 LOCAL REPRESENTATIONS

- 5.01 Four letters from two local residents have been received, their comments in relation to this application are summarised below:
- This application builds upon the applicant's ambition to derive two quite separate and independent properties out of the existing site at 1 Wheelwrights Cottages. To that end, this application is logical, but it is not without problems

- The approved new dwelling is not shown on the submitted drawings, but this will considerably reduce the area available for parking
- Given the intention to retain the existing hedging and the height of the proposed new fencing, the location of the proposed access drive will not afford the driver any sight of oncoming traffic in either direction as he exits into Lewson Street, whether travelling forward or backwards
- This must represent a significant safety hazard on this, one of the narrowest parts of Lewson Street, particularly since it is so close to the junction with Norton Lane
- The applicant previously promised in 2015 to remove a caravan parked on their current driveway due to lack of parking space, but it is still there. Any caravan parked adjacent to the cottage will greatly impact upon and detract from the visual amenity of the listed building in the conservation area – a condition should be imposed that no caravan may be parked on the site of the proposed access
- The applicant's argument that the proposed access will alleviate the hazard of the existing access is unfounded as the new access is only a few yards away on the same blind corner; it will be a double hazard as two cars will be able to leave at the same time which cannot happen with just one access
- The suggestion is made to close the existing access and just use this new proposed access, including opening up the access and reducing the hedging, possibly with electric gates
- House nearby had conditions imposed in 1993 when permission was granted for a new house and query whether the same condition, sight lines, gates set back from the highway and a parking spot for deliveries should apply here too

6.0 CONSULTATIONS

- 6.01 Norton Buckland and Stone Parish Council commented by letter dated 14/09/16 following consultation on the original scheme, opposing the application, stating that;

“The Council believes that the access shown on the plans submitted would create an unnecessary hazard. As submitted on the plan the proposed entrance is bordered one one (sic) side by a 1.8 metre hedge and on the other by a close boarded fence of the same height. Further one side of the driveway has a close boarded fence along part of it's length, to the gateway. These factors result in the exit through the proposed gateway being completely blind to the driver of any vehicle exiting the site either in reverse or going forward.

“The Council were a little surprised that the current proposal is presented on the site plan prepared prior to that for the new dwelling on the site approved under permission 15/505023/FULL which has different fencing arrangements. However the proposed street scene presented with this application appears to show hedging in place of equal heights (1.8 metres) to both sides of the new opening with the same resultant obstruction to visibility.

“The Council also notes that in previous design and access statements submitted by the applicants when submitting plans for approval of the new dwelling the following statements were made.

'By maintaining the existing access serving the cottage there will be no detrimental effects upon the existing street scene with the formation of new openings' (Design and Access statement submitted with application 14/501478/FULL Aug 2014)'

'Referring to her (The Planning Officer) email of 15/01/15, she remained of the view that retaining the existing access was the best solution, but with parking moved to the south side of the existing garage building.' (Design and access statement with 15/505023/FULL July 2015)'

"Clearly the subject of access has been considered throughout the planning process and the Council sees no reason why a previously rejected, and potentially hazardous change should now be accepted.

"Norton Buckland & Stone Parish Council therefore opposes this application and urges that it be refused."

- 6.02 Following re consultation with the amended drawings, the Parish Council did not initially respond. However, following a request for clarification of their position from the case officer an email was received which stated;

"To clarify matters, our letter of 24th September 2016 (copy attached) is the only communication you have from the Parish Council, regarding resolutions of the Council and therefore formally, on which you can base your decisions.

"The revised application was briefly noted at our meeting of 9th Jan 2017 when it was concluded that the revised driveway plans now met the conditions recommended by Highways and that therefore no objection to the **configuration** of the proposed plan should be raised. No resolution of the Council was made.

"However, you will note that the other objection is to the very principal of a second driveway from the premises (which the Council considers to be hazardous, and which you have previously rejected on a number of occasions (note quotes in our letter of 24/09/16)."

By this, I assume the Parish Council is in fact referring to their letter dated 14/09/16 which is quoted in full above.

- 6.03 Kent Highways and Transportation (KHT) commented on the original application and stated that

"The existing access to 1 Wheelwrights Cottage is even closer to the Norton Road/Lewson Street junction than that which is proposed in this application, as such the new access is considered safer in terms of proximity to the junction"

They did, however, ask that the gates be set back 5.5m from the edge of the public highway and be inward opening. They further required evidence of the visibility splays and considered the brick paving to be suitable.

- 6.04 Following submission of the amended details KHT were satisfied with the location of the access gates and the fact they are inward opening. They raised no objection provided that the visibility splays were provided and maintained under 0.9m, the use of a bound surface for at least the first 5 metres of the access from the edge of the

carriageway and that the gradient of the access to be no steeper than 1 in 10 for the first 1.5 metres from the highway boundary and no steeper than 1 in 8 thereafter.

7.0 BACKGROUND PAPERS AND PLANS

7.01 Application papers and plans for application 16/506511/FULL

8.0 APPRAISAL

8.01 This application needs to be considered on a number of issues, the principle of the development including the Council's statutory duty to have special regard to the desirability of preserving the listed building and its setting and to preserving or enhancing the character or appearance of the Lewson Street conservation area, visual amenity, residential amenity, highway safety, landscaping, and finally the design of the proposal needs to be assessed.

Principle of Development

8.02 In determining this application the Council has a statutory duty to have special regard to the desirability of preserving the listed building and its setting and to preserving or enhancing the character or appearance of the Lewson Street conservation area. There is a strong statutory presumption towards preserving heritage assets and their settings and against development which falls short of these objectives.

8.03 Furthermore the NPPF requires that "*great weight should be given to the assets conservation. The more important the asset, the greater the weight should be, significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. As Heritage Assets are irreplaceable, any harm or loss should require clear and convincing justification.*"

8.04 With the above in mind I consider that this is a relatively simple application for a detached garage and a new vehicular access to it. Given the location, design and size of the garage and the proposed use of traditional timber 5 bar gates, and the access arrangements the proposal does not have a detrimental impact on the listed building itself, nor on the conservation area as a whole.

Visual Impact

8.05 The garage building is set back within the site and is of a design and size, with appropriate materials to be acceptable and thus will have minimal impact on the listed building specifically and the conservation area and streetscene generally. Additionally the alterations required to the front of the site to enable the new brick driveway and gates, which in themselves are acceptable, are relatively minor given the expanse of the frontage of the site. The reduction in the hedgerow and the fencing to enable adequate visibility will be a benefit of the scheme and will enable a greater view of the listed property.

Residential Amenity

8.06 The proposal would have no impact on residential amenity.

Highways

- 8.07 Kent Highways and Transportation has re-assessed the application following the amended drawings and remain of the view that the access is considered safe in terms of proximity to the junction of Norton Road and Lewson Street. They have raised no objection and were clear in their satisfaction with the scheme. I have attached the conditions they recommend regarding the gates, the maintenance of the visibility splay and the gradient and surfacing of the driveway.

Landscaping

- 8.08 The site currently benefits from an existing high hedgerow and fencing. However, part of this is within the visibility splays for the new access and will be retained but reduced and maintained at 0.9m. The driveway will be lined with matching hazel fencing as current exists on the site and reclaimed bricks are proposed for the driveway, for which I have included a condition to ensure they are appropriate.

Other Matters

- 8.09 I note the comments from the local residents but I must clarify that when Members granted planning permission for the 1 ½ storey 2 bedroom dwelling (15/505023/FULL) at the site, it was in the knowledge that this was to be a separate independent dwelling, this is not “an ambition”; it is what has been granted planning approval. I consider their additional comments regarding the visibility splays and the gates being set back etc were all addressed by the amended drawings.
- 8.10 I note the comments from the Parish Council who are satisfied with the configuration of the proposal. However, they refer to comments in relation to two different planning applications and conclude that “*the subject of the access has been considered and see no reason why a previously rejected, and potentially hazardous change should now be accepted*”. In fact the arrangement as per this application had not been previously considered. It has now been given support by Kent Highways and Transportation and I do not consider this to be a potentially hazardous access.

9.0 CONCLUSION

- 9.01 This is a relatively minor scheme for a new garage and vehicular access to serve it. The proposal has been considered in the context of the nearby listed building and the sites setting within the conservation area and from a highway safety and design viewpoint. Given the details of the proposal and the attached conditions I consider there would be no demonstrable harm to the streetscene or the character and appearance of the area and nor would it cause harm to the setting of the nearby listed building. I note the concern of the Parish Council but the access has judged to be safe and the amendments have addressed the other raised concerns. Therefore I recommend that planning permission be granted.

10.0 RECOMMENDATION – GRANT Subject to the following conditions:

CONDITIONS

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

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

- (2) The development hereby permitted shall be carried out in accordance with the following approved drawings: WC1652.01A, WC1652.02B, WC1652.03A, WC1652.04A, WC1652.05, and WC1652.06 including the provision of a timber 5 bar gate.

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

- (3) Prior to the commencement of development, details in the form of samples of the garage roof tiles and the reclaimed bricks for the driveway 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.

- (4) The entrance gates are to open away from the highway and to be set back a minimum of 5.5 metres from the edge of the carriageway.

Reason: In the interests of highway safety and convenience.

- (5) Prior to the first use of the new access the provision of the areas between the carriageway edge and the sight lines shown in red on approved drawing WC1652.02B shall be cleared of any obstructions over 0.9 metres above carriageway level, and thereafter these areas shall be kept clear of any such obstruction in perpetuity.

Reason: In the interests of highway safety and convenience.

- (6) The gradient of the access shall be no steeper than 1 in 10 for the first 1.5 metres from the highway boundary and no steeper than 1 in 8 thereafter.

Reason: To ensure that a satisfactory means of access is provided for the site.

- (7) The first 5 metres of the access from the edge of the highway shall be formed in a bound surface to prevent deposition of loose material on to the carriageway.

Reason: In the interests of highway safety and convenience.

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.

2.3 REFERENCE NO - 17/500511/TNOT56		
APPLICATION PROPOSAL Telecommunications application for installation of 1no. tower, 3no. antennas, 3no. equipment cabinets, 2no. dishes and ancillary development thereto.		
ADDRESS Down Court Farm Down Court Road Doddington Kent ME9 0AT		
RECOMMENDATION – Prior Approval Not Required		
SUMMARY OF REASONS FOR RECOMMENDATION The proposed shared mast is sited away from the village conservation area and residential properties, is screened by trees from the village, and will help to improve digital telecommunications services to the community.		
REASON FOR REFERRAL TO COMMITTEE To enable Members to determine the matter within the 56 day time limit relevant to this Prior Notification and to avoid it being approved by default.		
WARD East Downs	PARISH/TOWN COUNCIL Doddington	APPLICANT Telefonica UK Ltd. AGENT Harlequin Group Ltd.
DECISION DUE DATE 22/03/17	PUBLICITY EXPIRY DATE 28/02/17	

1.0 DESCRIPTION OF SITE

- 1.01 This site lies within the Kent Downs Area of Outstanding Natural Beauty and sits at the edge of a very large, relatively level, and generally featureless arable field high above the northern side of Doddington. The field offers long uninterrupted views to the north, towards the M2, but does not feature in charismatic views along the Newnham Valley, or in views out from the village street in Doddington.
- 1.02 The precise location is close to a bend in the field boundary, and on the northern side of this boundary. At this point the field boundary is characterised by a line of mature deciduous trees and the site is in the shadow of these trees. A public footpath runs on the opposite, southern, side of the tree line in a meadow which runs down toward The Street and to the heart of the village.
- 1.03 The tree line features trees which, by the applicant’s information measure between 14m to 18m above ground level.
- 1.04 To the north of the site across the large field lies Down Court Farm, although this is visual shielded from the site by a large modern grain store at the farm. Scattered residential properties are visible in the far distances, but none are so close as to be significantly affected by, or to have close views of the proposed mast. Across the field there runs a prominent line of telegraph poles. To the south, across the village in the valley, the tops of a row of major electricity pylons which crosses the Downs can be seen above tree lines. Public footpaths run to and from Down Court Farm and towards Great Higham Farm (to the north-west), and from these the site can be seen set against the tree line when crossing the open field.
- 1.05 Doddington is already served by a separate modern telecommunications mast to the south of the village which is disguised as a conifer tree, and which has been in place for some years. This is shared by three other mobile operators under plans approved in 2016; and was originally approved in the form of a tree on a site which is visible from the heart of the village to reflect other conifer trees visible around the village,

including those at Doddington Place Gardens which lie within the Doddington and Newnham conservation area. Such trees are not prevalent close to the current application site.

2.0 PROPOSAL

- 2.01 This is a notification to the Council of the applicant's intention to exercise their Permitted Development rights (under Part 16 of the Town and Country Planning (General Permitted Development)(England) Order 2015, as amended in November 2016) to erect a new telecommunications mast and associated cabinets within a fenced compound. As the mast does not exceed 20m tall its erection does not require a planning application as it is to be erected by a licensed telecommunications operator. The Council's role is not to determine whether or not the mast can or cannot be erected, but only to be consulted on its precise siting and appearance. The regulations merely require the operator to submit to the Council a plan showing the proposed location and a written description of the mast and equipment. This procedure then allows the Council to ask for further information and to require that this be submitted to and agreed by the Council before the permitted right to erect the mast can be implemented. The limit for the Council's decision is 56 days from submission failing which the applicant is free to proceed with the installation. In this case the 56 day period expires on 22 March 2017.
- 2.02 As is often the case, the operator has gone well beyond their legal minimum duty and this application encloses full details of the proposed works. They have submitted a comprehensive report, a fully detailed location and site layout plan and full plans of the intended mast and cabinets. They have also provided details to show that the installation will work within the ICNIRP guidelines for such technology. They have also explained that they require a mast here to improve local mobile communications services and what alternatives they have considered.
- 2.03 I have not included a full copy of the applicants' report here as it is lengthy and, as the Council is only concerned with the siting and appearance of the installation, much of it is superfluous. What is perhaps most important to note is that this notification relates to the erection of a mast to address a need for better local coverage between existing installations.
- 2.04 The proposal is to erect a 17.0m high galvanised steel lattice style telecommunications mast within a fenced compound, with ancillary equipment housing at ground level. This mast would be operated by Vodafone and Telefonica UK Ltd (who operate the O2 mobile 'phone service) and the intention is to improve mobile communications services to the area, including 4G data services to allow customers to use ultra-fast broadband speeds when browsing the internet, streaming videos and sending emails.
- 2.05 The mast would support up to six 2.5m tall vertical antennae (starting at 17.4m above ground level) and two 0.6m diameter dish antennae at 16.5m above ground level. As such the mast would be barely higher than the tree line and only the antennae will be visible above the tree line.
- 2.06 The applicants have explained that they have examined nine other possible positions around Doddington for the proposed mast (including further sharing of the existing tree mast), but that none offer the visual advantages, the separation from the conservation area, listed buildings and residential properties, or the speed of delivery, that this site can provide. They have also stated that any alternative would

require a larger structure for the same coverage. The site also has access to a power supply.

- 2.07 The applicants have referred to the Government’s commitment to improving communications technology as follows;

“Recognising the vital importance of mobile connectivity for residents and local economies, the urgent delivery of the required network improvements continues to be a Government priority. As recently as 9th March 2016 former Prime Minister David Cameron stated:

‘Ten years ago, we were all rather guilty of leading campaigns against masts and all the rest of it. Our constituents now want internet and mobile phone coverage. We need to make sure that we change the law in all ways necessary, that the necessary wayleaves are granted, that the masts are built, that we increase coverage and that everyone is connected to the information superhighway.’

This is substantiated in the most recent budget announcement of 16th March 2016, which commits to provisions for *‘greater freedoms and flexibilities for the deployment of mobile infrastructure’*.

The proposed telecommunications base station at Down Court Farm forms part of this greater drive to access the deficit in mobile phone coverage and capacity.”

3.0 SUMMARY INFORMATION

	Existing	Proposed	Change (+/-)
Approximate Height (m)	n/a	17.0m	+17.0,
Approximate Length of site compound (m)	n/a	8.0m	+8.0m
Approximate Width of site compound (m)	n/a	6.0m	+6.0m

4.0 PLANNING CONSTRAINTS

- 4.01 Area of Outstanding Natural Beauty KENT DOWNS

5.0 POLICY AND OTHER CONSIDERATIONS

- 5.01 The National Planning Policy Framework (NPPF)
National Planning Practice Guidance (NPPG)

The NPPF promotes sustainable development suggesting that modern communications can promote home working and reduce the need to travel and, at paragraph 42, it states that;

“Advanced, high quality communications infrastructure is essential for sustainable economic growth. The development of high speed broadband technology and other communications networks also plays a vital role in enhancing the provision of local community facilities and services.”

At paragraph 44, the NPPF states;

“Local planning authorities should not impose a ban on new telecommunications development in certain areas, impose blanket Article 4 direction over a wide area or a wide range of telecommunications development or insist on minimum distances between new telecommunications development and existing development.”

Finally, at paragraph 46, the NPPF states;

“Local planning authorities must determine applications on planning grounds. They should not seek to prevent competition between different operators, question the need for the telecommunications system, or determine health safeguards if the proposal meets international Commission guidelines for public exposure.”

5.02 Development Plan: Saved policies of the Swale Borough Local Plan 2008;

E1 (General Development Criteria)
E6 (Countryside)
E9 (Landscape)
E19 (Design)

Policy U2 regarding telecommunications was not saved in 2010 and no longer forms part of the Development Plan.

5.03 Policies ST1 (Delivering sustainable development in Swale), CP1 (Building a strong, competitive economy) to “...facilitate the delivery of digital infrastructure...” and DM3 (The rural economy) of the emerging Plan Bearing Fruits 2031 Proposed Main Modifications June 2016 are also relevant.

6.0 LOCAL REPRESENTATIONS

6.01 The application has been publicised by letters to nearest residential properties and by two site notices at Dully Hill (top and bottom). The publicity period extends until 28 February and so I may need to update Members regarding representations at the meeting. However, in order that the matter can be properly considered within the 56 day Prior Notification period the matter is being reported to this meeting.

7.0 CONSULTATIONS

7.01 I have consulted Doddington Parish Council and their views are awaited.

7.02 The Kent County Council Public Rights of Way Service notes that access to the site would involve crossing two rights of way (ZR228 and ZR283) but that the proposed installation is not likely to have a significant impact upon the paths. They do not raise objection to the proposal.

7.03 Swale Footpaths Group has asked me to note the proximity of the nearby footpath, but they have not expressed any views on the application.

8.0 BACKGROUND PAPERS AND PLANS

8.01 Application papers and plans for application 17/500511/TNOT56

9.0 APPRAISAL

Principle of Development

- 9.01 As this is a Prior Notification proposal the principle of the development is already approved by national regulations.

Visual Impact

- 9.02 As this site lies within the Kent Downs AONB visual impact is the key consideration here. Some parts of the AONB are acutely sensitive to such development and there have been many occasions when such considerations have been very difficult. Without in any way wishing to minimise the weight to be given to conservation of the natural beauty of the AONB, this site is not especially sensitive, forming part of a vast open arable field. The site has been carefully chosen alongside an established tree line, in its shadow and on the far side from the village and the adjacent footpath. At this time of year the tree line is at its barest, and this allows a very good idea of the worst possible visual impact scenario. However, even now, the tree line does mark the break in the slope and to its northern side the land is far flatter. This means that the mast will be screened from the village and will not be prominent from the north.
- 9.03 The lattice style mast proposed is, in my view, well suited to the location chosen as its slim frame members (as opposed to a thick monopole design) will allow views through it, and it will not dominate views. A neutral galvanised steel finish will dull over time and will recede against the tree line and skies, whereas a painted finish will often be more reflective and will, in any case will often stand out more in times when the trees are without leaves.

Residential Amenity

- 9.04 The site is set high up above the village generally away from residential properties or their general direction of view. The proposal comes with appropriate certification regarding health safeguards and I see no adverse impact on residential amenity arising.

Overall impact

- 9.05 This site is well suited to this proposal, being close to the village but not within or adjacent to the conservation area, and not close to housing. It is clear that Government guidance (see NPPF guidance above) and regulations are strongly seeking to promote and facilitate the growth of faster telecommunications infrastructure and this is perhaps one of a new wave of such installations. Having visited the site and walked the adjacent footpath I am struck by the relative remoteness and suitability of the site, for this design and height of mast. I do not believe that a tree mast design would be less conspicuous here as the location is not in plain sight from the village, and the modest appearance of the lattice mast will be lost behind trees throughout the year, with only the antennae being seen from afar, as they must be.

10.0 CONCLUSION

- 10.01 Although the Council has been very successful in containing the impact telecommunications mast development within the AONB I am aware that the deep nature of the Newnham Valley in which Doddington lies has long been a source of difficulty in providing mobile phone coverage. With new high speed data services now

being seen as vital to rural users I welcome this proposal as a sustainable way of improving such services in this isolated area, and I do not believe that the Council would have a strong case to reject this proposal.

11.0 RECOMMENDATION – Prior Approval Not 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.

2.4 REFERENCE NO - 16/506986/FULL			
APPLICATION PROPOSAL Demolition of no. 116 Oak Lane and construction of 2 no. three bedroom houses and 1 no. four bedroom with associated garages and parking.			
ADDRESS 116 Oak Lane Upchurch Kent ME9 7AY			
RECOMMENDATION Grant subject to conditions			
SUMMARY OF REASONS FOR RECOMMENDATION The application site lies within the built up area boundary where the principle of residential development is acceptable and does not give rise to unacceptable harm to residential, visual or highway amenities.			
REASON FOR REFERRAL TO COMMITTEE Proposal contrary to Parish Council view and local objections			
WARD Hartlip, Newington And Upchurch	PARISH/TOWN Upchurch	COUNCIL	APPLICANT Gransden Construction AGENT Kent Design Partnership
DECISION DUE DATE 17/11/16	PUBLICITY EXPIRY DATE 28/10/16		
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
16/504900/FULL	Demolition of no. 116 Oak Lane, construction of 3 four bedroom houses - one detached and a pair of semi-detached with integral garages.	Withdrawn	16.08.2016

MAIN REPORT

1.0 DESCRIPTION OF SITE

- 1.01 The application site comprises a corner plot fronting Oak Lane and Wallbridge Lane. There is currently a detached bungalow on the site with amenity space surrounding the property. The existing access is taken from Wallbridge Lane.
- 1.02 The site is surrounded to the east, west and south by two storey residential properties of a mixture of designs and styles whilst to the south lies the Upchurch River Valley golf course.

2.0 PROPOSAL

- 2.01 This application seeks planning permission for the demolition of the existing bungalow and the erection of a pair of 3 bed semi detached dwellings and a detached 4 bedroom dwelling with associated parking and amenity space.
- 2.02 The principle elevation of the semi detached dwellings front Oak Lane. Both semi detached properties would measure 9m in depth and 5.9m in width. In addition to this each property would have an attached garage measuring 6.9m in depth and 3m

in width. The properties would measure 5.2m to the eaves and 8.8m in overall height. The garages measure 2.8m to the eaves and 5.5m to the ridge.

- 2.03 Both semi detached dwellings have vehicular access taken from Oak Lane with two parking spaces for each provided to the front of the properties. To the rear would be private amenity space measuring 10.8m – 11.7m in depth and 10m in width. The properties would be symmetrical in design with pitched roofs and gable ends on each flank.
- 2.04 The principle elevation of the detached property would front Wallbridge Lane and would have a floor area of approximately 8m x 9m. It would measure 5m to the eaves and 8m in overall height. The property would have a pitched roof with gable ends on each flank. The design would also include a frontward projecting gable.
- 2.05 Vehicular access to the detached property would be taken from Wallbridge Lane with two parking spaces provided. A detached garage is indicated close to the western boundary of the site, adjacent to the existing property at No.2 Wallbridge Lane. The garage would have a footprint of 3.15m x 6m and would measure 2.5m to the eaves and 3.9m in overall height. Due to the layout of the site, with the detached property fronting Wallbridge Lane, the amenity space would be provided beyond each flank wall of the property providing a total area of 217sqm.
- 2.06 A visitor parking space is indicated in the southern part of the site, accessed from Wallbridge Lane and a 1.8m footpath is proposed along the perimeter. A row of planting is indicated to run along the majority of the eastern and southern boundary.

3.0 PLANNING CONSTRAINTS

- 3.01 None

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.

Development Plan

- 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 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.

- 4.05 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.
- 4.06 The Swale Borough Local Plan Proposed Main modifications 2016 policies 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) are also relevant.

5.0 LOCAL REPRESENTATIONS

- 5.01 A site notice was displayed close to the application site and surrounding properties were sent a consultation letter. Subsequent to this consultation it was noted that there were inconsistencies between the drawings submitted in terms of the site boundary and as a result amended details were received. On receipt of these drawings neighbours were re-consulted and an additional site notice displayed. In total, objections have been received from 10 separate addresses and raise the following points:

- The existing road layout in Oak Lane and the speed that vehicles travel along this section of the highway means that an additional access will cause danger to vehicles and also pedestrians using the footpaths;
- The development should not be able to go ahead without traffic calming measures being firstly installed or the road widened;
- The proposal provides inadequate parking spaces;
- The submitted drawings are inaccurate;
- Sufficient visibility splays can not be achieved from the newly proposed access into Oak Lane;
- The new properties will be overbearing and will cause unacceptable levels of overlooking to neighbouring properties;
- Removal of trees will result in the loss of important landscape features;
- The site is subject to flooding;
- Surrounding infrastructure and services can not cope with the additional residents;

6.0 CONSULTATIONS

- 6.01 Upchurch Parish Council object to the application and made the following comments: *“Councillors have considered the application and have expressed reservations about access and egress onto Oak Lane. This is also the view of local residents who point out that Oak Lane carries the highest volume of traffic into the village centre and at this point is effectively a single lane road. Also it is only some 50 yards after a speed reduction of 30 m.p.h. from 60 m.p.h. is signed.”*
- 6.02 KCC Highways & Transportation state *“Whilst I have previously advised you that the application does not meet the criteria to warrant comment from Kent County Council, for your assistance I can confirm that the revised details do now demonstrate that the layout does provide sufficient parking provision for the proposed dwellings and visitor demand, and adequate turning space is included to allow vehicles to enter and exit the development in a forward gear from Oak Lane itself.*

The visibility sightlines proposed for the new access are adequate, and the provision of a footway around the site to cater for pedestrian movement between the visitor parking space and the proposed dwellings has enabled improvement to the junction with Wallbridge Lane, as a visibility splay to the north will now be available.

I would consider that the proposals are acceptable, and trust this is of assistance to you in your assessment of the application.”

After the receipt of amended drawings I again consulted with KCC Highways & Transportation who provided the following response:

“I would consider that the proposed development on balance provides a betterment to the operation of the public highway, as it gives the opportunity to create appropriate visibility sightlines for the junction of Oak Lane with Wallbridge Lane, which will be more active than the new vehicular access to the proposed dwellings.

The new access will be afforded better visibility than the neighbouring property that actually controls the hedge to the north of that existing dwelling, and there is no record of any problems identified with the use of that current access.”

6.03 Natural England state *“The above consultation relates to proposals for new dwellings within the zone of influence (6km) of the Thames Estuary and Marshes, Medway Estuary and Marshes, and The Swale Special Protection Areas (SPAs) and Wetlands of International Importance under the Ramsar Convention (Ramsar Sites). It is the Council’s responsibility to ensure that the proposals fully adhere to the agreed approach within the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring Strategy (SAMM) to mitigate for additional recreational impacts on the designated sites and to ensure that adequate means are in place to secure the mitigation before first occupation. Subject to the above, Natural England is happy to advise that the proposals may be screened out as not having a likelihood of significant effects on the designated sites.”*

6.04 I have consulted verbally with the Council’s Environmental Protection Team who raise no objection subject to conditions relating to construction hours and suppression of dust.

6.05 Health and Safety Executive *“does not advise, on safety grounds, against the granting of planning permission in this case.”*

7.0 BACKGROUND PAPERS AND PLANS

7.01 Application papers and correspondence relating to planning reference 16/506986/FULL.

8.0 APPLICANTS SUPPORTING COMMENTS

8.01 A Design & Access Statement has been submitted with the application and in addition to this I set out the applicant’s supporting comments:

“The proposed development will improve the width and visibility of the existing road in this area, as it the intention to cut back the existing shrubs, trees and bushes that currently overhang into the road to install the proposed new driveway.

The road is well within a 30 MPH zone and has very good visibility in both directions. The new proposal means there is now only one access from the site on Oak lane, the other is an existing access.

There are already existing driveways closeby on this road and to our knowledge no serious accidents have occurred at this point in the road.

The road is also wide enough for 2 cars to pass side by side at this point, this will be aided by the clearing of shrubs etc.

The proposed driveways will have the appropriate vision splays installed and will be in full compliance with Kent highways requirements.

Also in support of the application, we feel that the proposed development will significantly enhance the street scene, as the existing dilapidated bungalow is the first thing seen on entry to the village.”

9.0 APPRAISAL

Principle of Development

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

Visual Impact

- 9.02 The existing dwelling on the site is a detached bungalow with amenity space surrounding the entirety of the property. Upon approaching the site, especially travelling north along Oak Lane the site has a verdant appearance which I believe any development upon this site should seek to retain. The layout of the site shows planting along the majority of the southern and eastern boundary of the site. As a result of this I am of the view that the character of the site would be sufficiently retained. The exact type of landscaping will be achieved via the inclusion of a relevant landscaping condition. As a result I am of the view that this element of the proposal is acceptable.
- 9.03 The three dwellings on the site will largely follow the building line of the properties to the north of the application site in Oak Lane. The surrounding properties are a mixture of single storey, two storey and two and a half storeys. The majority of surrounding properties are detached or semi detached. Therefore I am of the view that the design of the properties proposed are acceptable and would be in keeping with the surrounding pattern of development.
- 9.04 The proposal will introduce two separate parking areas, one in front of the semi detached properties and one accessed from the existing access to the site from Wallbridge Lane. Parking arrangements in the surrounding area are mixed with some areas of hardstanding prominent in the streetscene. I am of the view that the parking layout as proposed would not be significantly out of keeping with the surrounding area and consider this not to have an unacceptable impact upon visual amenities.

Residential Amenity

- 9.05 The closest proposed dwelling to No.114 Oak Lane would be separated from the main side elevation of this property by 4.4m and set back from the main rear elevation of this property by 2m. Due to this separation distance and the limited projection past the rear of this adjacent dwelling I do not consider that this would have an unacceptable impact upon the residential amenities of this property.

- 9.06 Due to the layout of the proposed properties the semi detached dwellings would be turned at a 90 degree angle from No.2 Wallbridge Lane. The result of this is that the property located in the northern most part of the application site would have sideways views into the rear private amenity space of No.2. The distance between the rear elevation of the proposed property and the central part of the private amenity space directly to the rear of No.2 would be 18m. I consider this distance to be acceptable as to not cause an unacceptable loss of privacy to neighbouring occupiers. The rear of the remaining semi detached property would be angled toward the flank wall of No.2 rather than the rear private amenity space and therefore I consider that unacceptable levels of overlooking from this property would not occur.
- 9.07 The private amenity space of the proposed detached dwelling would be located either side of the property. Opportunities for overlooking from the windows of the closest proposed property to the north would be heavily disrupted due to the angle of the view and as such I believe that the layout in this respect is acceptable.

Highways

- 9.08 I appreciate that this application has attracted a number of objections from local residents with the concern largely based around highway safety, the width of the existing road and the new access to the semi detached properties from Oak Lane. As a result of this, on receipt of the original application I gained the views of Kent Highways & Transportation and have set these out above in full. Subsequent to receiving these comments it was noted that the drawings did not fully correspond in relation to the site boundary and as a result the agent has submitted amended details. Due to both the level of interest that the application has attracted in relation to this issue and the amendments I considered it prudent to again consult Kent Highways & Transportation. I have set out their subsequent comments in full above and on this basis am of the view that the impact of the access upon highway safety or amenity would not be unacceptable. It has been taken into consideration that the development will allow for increased visibility at the Oak Lane / Wallbridge Lane junction (this will be ensured by condition 2 requiring compliance with the drawings). Furthermore, although it is appreciated that there is an existing hedge located within the curtilage of No.114 (which would be outside the control of applicant), the proposed access in Oak Lane would have better visibility than the current access of No.114 of which there is no record of any problems. As a result, as set out above it is considered that the development as a whole provides a betterment to the operation of the public highway.
- 9.09 The proposal also includes two independently accessible parking spaces for each property and turning space within the site boundary. As such, vehicles will be able to enter and exit the site in forward gear. There is also a visitor parking space indicated in the southern most part of the site. I refer to the comments of Kent Highways & Transportation who state that there is sufficient parking provision provided. I also note that there is a footpath indicated around the site which will provide safe pedestrian routes. I have included relevant conditions in relation to highway safety and convenience.

Other Matters

- 9.10 I note the further grounds of objection and respond as follows. In regards to the consistency between the drawings I have liaised with the agent and amended drawings have been received. None of the trees or vegetation on the site are protected and in my view are not of special amenity value, as such their removal required would not be controlled by the Council. The site does not lie within Flood

Zone 2 or 3 and as such the possibility of flooding is not considered to be an unacceptable risk. Finally, the application is for 3 dwellings and as such although there will be some additional use of local services I do not consider that this would be so significant as to be unacceptable. I also take into account that the development is below the threshold for developer contributions and as such these can not be requested.

10.0 CONCLUSION

10.01 I consider that the scheme is acceptable in terms of its impact upon residential and visual amenities. As set out above, the application has attracted a relatively large amount of objection, predominately in relation to the new access into Oak Lane, however KCC Highways & Transportation are of the view that the development is acceptable in terms of its impact upon highway safety and amenity. As a result I recommend that planning permission is granted.

11.0 RECOMMENDATION – GRANT Subject to the following conditions:

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

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

2) The development hereby permitted shall take place in accordance with the following drawings: 16.30.105 (received 21st September 2016); 16.30.106A (received 11th January 2017); 16.30.102AB (received 13th January 2017); 16.30.103AB (received 13th January 2017) and 16.30.104B (received 16th January 2017).

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

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

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

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

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

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

appropriate, means of enclosure, hard surfacing materials, and an implementation programme.

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

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

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

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

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

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

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

Reason: In the interests of residential amenity.

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

Reason: In the interests of residential amenity.

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

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

- 11) The garage hereby approved shall be kept available for the parking of vehicles and no permanent development, whether permitted by the Town and Country Planning

(General Permitted Development) (England) Order 2015 (or any order revoking or re-enacting that Order) or not, shall be carried out on the land or in such a position as to preclude vehicular access thereto.

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

- 12) The access details as shown on drawing 16.30.104B (received 16th January 2017) shall be completed prior to the first occupation of the dwellings hereby approved.

Reason: In the interest of highway safety and convenience.

- 13) The 1.8m wide footpath as shown on drawing 16.30.104B (received 16th January 2017) shall be completed prior to the first occupation of the dwellings hereby approved.

Reason: In the interest of highway safety and convenience.

Habitats Regulations Assessment

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

The application site is located approximately 2km south west of the Medway Estuary and Marshes Special Protection Area and Ramsar site which is a European designated sites afforded protection under the Conservation of Habitats and Species Regulations 2010 as amended (the Habitat Regulations).

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

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

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

- Due to the scale of development there is no scope to provide on site mitigation such as an on site dog walking area or signage to prevent the primary causes of bird disturbance which are recreational disturbance including walking, dog walking (particularly off the lead), and predation birds by cats.

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

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

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

The Council's approach to this application:

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

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

In this instance:

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

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

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2.5 REFERENCE NO - 16/508208/FULL			
APPLICATION PROPOSAL New Aluminium framed warehouse			
ADDRESS Antolin Interiors Spade Lane Upchurch Kent ME9 7TT			
RECOMMENDATION – Grant subject to conditions, and the comments of the Economic Development Officer			
SUMMARY OF REASONS FOR RECOMMENDATION/REASONS FOR REFUSAL The development would result in a modest addition to the existing industrial premises, with little impact on the surrounding rural and landscape character and appearance of the area. It would provide a facility to meet the business needs of the applicant. The impact of the development on the amenities of neighbouring properties has been considered and found to be acceptable. The proposal would represent sustainable development and would accord with the NPPF and the Local Development plans (adopted and emerging)			
REASON FOR REFERRAL TO COMMITTEE The officer recommendation is contrary to that of Hartlip Parish Council			
WARD Hartlip, Newington And Upchurch	PARISH/TOWN COUNCIL Upchurch / Hartlip	APPLICANT Antolin AGENT ARV Design Limited	
DECISION DUE DATE 09/03/17	PUBLICITY EXPIRY DATE 08/02/17	OFFICER SITE VISIT DATE 17/01/17	
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
SW/11/0672	Application to extend the time limit for the implementation of the planning permission granted under SW/06/1345 - removal of condition 6 (VI) of SW/89/1248 (restriction use) and change of use to allow the Spade Lane Depot (including existing and unbuilt phase) to be used for general class B1C (light industrial), B2 (general industrial) or B8 (storage or distribution uses)	Granted	18/05/12
SW/07/0096	Variation of legal agreement to allow site to be used for B1c, B2 or B8 uses	Refused – allowed on appeal	01/08/07
SW/06/1345	Removal of condition 6 of SW/89/1248 and change of use to allow the entire building to be used for B1c, B2 or B8 purposes	Refused – allowed on appeal	02/08/07
SW/01/0876	Change of use of part of premises from storage and distribution purposes to industrial use, with additional car parking	Granted	16/05/02
SW/00/0986	Removal of condition 6 of SW/89/1248 to allow	Granted	05/03/01

	for the storage and distribution of non-agricultural related products and items	(temporary)	
SW/97/0441	Approval of reserved matters for phase 2 & 3 cold stores	Granted	14/07/97
SW/93/0936	Amendment to existing permission to extend one building and re-order phasing of development	Granted	14/01/94
SW/91/0720	Approval of reserved matters pursuant to SW/89/1248	Granted	24/12/91
SW/89/1248	Outline permission for fruit packing station and cold stores (with ancillary facilities including offices and weighbridge) together with irrigation reservoir.	Granted	03/09/90
<i>Condition 6 of the permission stated - The use of the site and buildings hereby permitted shall be restricted to the following activities: (a) the grading storage packaging and distribution of agricultural produce, (b) purposes ancillary thereto, (c) agricultural purposes</i>			

MAIN REPORT

1.0 DESCRIPTION OF SITE

- 1.01 The site consists of a large modern building, originally built as a cold store, packing and distribution centre. The building is some 29,195 sqm in floor area, and in excess of 13 metres in height. The building measures approximately 195 metres in length and 155 metres in width.
- 1.02 Antolin Interiors occupy the north half of the building, over an area of around 13,470sqm. The remainder of the building is occupied by IPL – a fresh produce distributor.
- 1.03 A lorry circulation route runs around the perimeter of the building, with two large car parks and a landscaped bund to the north. Land to the east of the building is used as an open storage area by Antolin Interiors.
- 1.04 The site is located on the junction of Spade Lane and the A2 London Road. It lies outside of any defined settlement boundary and falls to be considered as within the countryside. The land to the east of the site is in active agricultural use, and slopes upwards towards Mill Lane to the east beyond a belt of landscaping on the perimeter of the site.
- 1.05 Land to the south of the site is occupied by a small business park. The closest residential properties are New Oast Cottages to the south west of the Oast business park, although the proposed development would be obscured from these properties by existing buildings at Oast Park and by the main cold store building itself. The closest properties with a potential line of sight to the proposed warehouse building would be those on Dane Lane (approx. 460m distance), Mill Lane (approx. 600m distance) and on the north side of the A2 (approx. 260m distance)

2.0 PROPOSAL

- 2.01 This application seeks permission for the erection of a warehouse building on the south east side of the site. The building would measure 35 metres in length 30 metres in depth, and 8.5 metres in height. The building would be bolted onto an existing hardstanding with no foundation works required. The walls would be clad in composite steel panels and the roof in UPVC sheeting. The colour is shown as “off-white” although the applicant has confirmed that this is negotiable.
- 2.02 The building is required in connection with the operation at Antolin Interiors. This business manufactures interior parts for the car industry, and the Hartlip facility provides middle to high-end components for Jaguar, Landrover and Bentley. The main building is used for the manufacturing process with little room for storage. Currently, deliveries of components and raw materials are taken in at the site, and those materials not immediately required are taken from the site to a warehouse in Snodland for storage, before being brought back to the site when needed.
- 2.03 The business is also now required by clients to store components under cover that would previously have been stored in the open. The proposed warehouse building would provide a facility to store these products under cover as well as eliminating the need to use warehousing in Snodland. The applicant states that this would result in a reduction of approximately 15 HGV movements per week that currently shuttle between the site and the Snodland warehouse.
- 2.04 The business operates for 24 hours a day, typically over a 5 day week (from 6am on a Monday to 3am on a Saturday. Although there is less activity at night, access to and from the warehouse building would be required during these hours. It employs 430 staff in total.

3.0 SUMMARY INFORMATION

	Existing Building	Proposed Warehouse
Site Area (ha)	Approx 10 Ha	Approx 10 Ha
Approximate Ridge Height (m)	13m	8.5m
Approximate Eaves Height (m)	10m	6m
Approximate Depth (m)	155m	30m
Approximate Width (m)	195m	35m
No. of Storeys	1	
Net Floor Area	29,195	1,050
Parking Spaces	Approx 360	
No. of Residential Units	N/A	
No. of Affordable Units	N/A	

4.0 PLANNING CONSTRAINTS

SSSI Impact Risk zone
 Groundwater source protection zone
 An overhead power cable cuts through the site
 Potential Archaeological Importance

5.0 POLICY AND OTHER CONSIDERATIONS

The National Planning Policy Framework (NPPF) – the NPPF was published in 2012 and is a material consideration in planning decisions. The following paragraphs are most relevant:

Para 7 (the three dimensions to sustainable development – economic, social, and environmental), Para 14 (the presumption in favour of sustainable development), Para 17 (core planning principles), Paras 18-21 (building a strong competitive economy), Paras 29-32 (promoting sustainable transport), Para 216 – weight to be given to emerging policies.

Development Plan:

The adopted Swale Borough Local Plan – Policies SP1 (sustainable development), SP2 (environment), SP3 (economy), SP5 (rural communities), TG1 (Thames Gateway planning area), SH1 (settlement hierarchy), E1 (general development criteria), E6 (the countryside), E9 (protecting the quality and character of the landscape), B1 (supporting and retaining existing employment land and businesses), RC1 (helping to revitalise the rural economy), T1 (safe access to new development), T3 (vehicle parking)

The Emerging Swale Borough Local Plan (Proposed Main Modifications June 2016) - ST1 (sustainable development), ST3 (Swale settlement strategy), CP1 (building a strong competitive economy), CP4 (requiring good design), CP7 (conserving / enhancing the natural environment), DM3 (the rural economy), DM6 (managing transport demand and impact), DM14 (general development criteria), DM19 (sustainable design / construction), DM21 (water, flooding and drainage), DM24 (conserving / enhancing valued landscapes)

This plan is at an advanced stage and as such weight can be given to the policies contained within it as part of the decision-making process.

6.0 LOCAL REPRESENTATIONS

The application has been advertised in the local paper and by way of a site notice.

4 letters of objection have been received

- The site causes noise pollution
- The site causes light pollution
- Lorries connected to the site park in the local area which is dangerous / inconsiderate
- Litter / rubbish is left by lorry drivers
- Lack of lorry parking within the site causes overspill parking in the local area
- Traffic congestion, impact of traffic passing on a narrow road
- The factory has recently begun to exceed specified noise limits
- Fork lift trucks should be fitted with alternative reversing alarms to those that “beep”

A representation has been submitted by Cllr Wright, raising the following issues –

- Noise pollution especially at night
- Lorry parking takes place on the A2, with associated rubbish
- Lack of landscaping / landscaping would be further eroded by the development
- The site is not a good neighbour
- The design of the building would not be in keeping with the rural landscape

7.0 CONSULTATIONS

Hartlip Parish Council

7.01 Object to the application on the following grounds –

- Concern raised over consultation process
- The site is overlooked by a number of houses in the village of Hartlip

- The landscaping plan for the site has never been carried out or enforced. The proposed building would further erode the landscape barrier and affects many people in Hartlip
- Disturbance to residents at night through noise
- Off site parking of lorries in a nearby lay-by on the A2 is dangerous and the area is regularly littered and spoiled by waste.
- The application provides no justification for the building and there is no landscape and visual impact assessment to consider the impacts on views from the village of Hartlip.
- Point 3.4 of the planning statement is about machinery to be installed yet point 22 of the application states that none is to be installed.
- Point 3.2 of the planning statement indicates "there would be no impact on the overall appearance to the front" but no consideration has been given to the impact it would have on the properties to the side and rear which is overlooked by residential properties.

Kent County Council Highways and Transportation

- 7.02 In respect to highway matters, it is evident that the floorspace to be occupied by the proposed storage building is currently used as open storage, and not car parking as suggested in the Planning Statement. The application form also confirms that the number of parking spaces on the site will remain the same, so there will be no loss of parking provision as a consequence of this development.
- 7.03 As stated above, the use of the land in question will remain as storage, and it is therefore not expected that the development will lead to an increase in vehicle movements associated with the business as a whole. Furthermore, with an internal floorspace of just 1,050m², this falls below the 4,000m² threshold for when a Transport Assessment would be required for B8 storage use.
- 7.04 Consequently, no objections are raised to the proposals in respect of highway matters (subject to the planning conditions listed)

Swale Footpaths Group

- 7.05 No objection raised

Environmental Health

- 7.06 The use of the warehouse will be 24 hours and there is potential for a noise issue if machinery is operating within this open warehouse. I would recommend a condition to ensure that the warehouse is only used for storage.

KCC Drainage

- 7.07 The development proposal locates a new warehouse of 1,050 m² on an area of existing hardstanding which connects to the existing drainage network. The development location is shown to have potentially a low risk (i.e. less than 300 mm flood depth) of surface water flooding which is assessed to not be a significant hazard but is worth noting to the applicant.
- 7.08 The development proposal is not anticipated to result in any change to the amount of surface water which leaves the site as there is no associated change in impermeable

area; however it is usual that new development does mitigate the effects of climate change.

- 7.09 In this instance given the magnitude of the development proposal, we would recommend that the Council consider requiring inclusion of rainwater harvesting which would offset the climate change allowance and which would also provide for additional benefits in reduction to potable water demands. Overall, we consider this development proposal to have a low risk in relation to surface water and have no further comments.

Environment Agency

- 7.10 No comments received

Southern Water

- 7.11 There is no public foul and surface water sewer in the vicinity of the site. The applicant is advised to examine alternative means of foul and surface water sewage disposal. The Environment Agency should be consulted directly regarding the use of a private wastewater treatment works or septic tank drainage which disposes of effluent to sub-soil irrigation. The owner of the premises will need to empty and maintain the works or septic tank to ensure its long term effectiveness. The Council's Building Control officers/technical staff and the environment agency should be consulted regarding the surface water disposal.

Natural England

- 7.12 Comment that the proposed development lies close to the AONB and that local and national policies together with local landscape expertise should be used to determine the proposals, with a statutory requirement to address impacts on the AONB.
- 7.13 Refer to standing advice and procedures regarding the effects of development on protected species and SSSI's.

Scotia Gas Networks

- 7.14 Advise of the proximity of gas pipes to the application site (these are in fact under the A2 and well away from the proposed development)

Kent Police

- 7.15 Having reviewed the on line plans and documentation, I note that the proposed building will be secured and is within the current site boundary fencing and as such, I have no immediate concerns from a CPTED aspect.
- 7.16 Members should note that the National Grid have been consulted in respect of the proximity of the development to the overhead power line, but that no response has been received.
- 7.17 The comments of the Economic Development Officer are awaited, and I will update Members at the meeting.

8.0 BACKGROUND PAPERS AND PLANS

- 8.01 All papers as submitted under 16/508208

- 8.02 The applicant has submitted a further supporting statement, summarised as follows –
- The company manufactures interior parts / high end components for Jaguar, Landrover and Bentley and employs 430 local people
 - The facility is a shared site with IPL – a fruit processing and packing plant. The majority of vehicle movements associated with the site relate to this business.
 - The warehouse is required to meet current business needs which require goods to be stored under cover
 - The site of the warehouse is used for open storage to a height of 6 metres
 - Lack of storage on site means that the company currently uses an off-site warehouse in Snodland and has to shuttle between sites
 - The litter and inconsiderate HGV parking noted by residents is not related to this company
 - Issues regarding FLT beepers is being dealt with through purchasing of a new fleet with light warnings.
 - The visual appearance of the site would be improved through removal of open storage.

9.0 APPRAISAL

Background

- 9.01 This site has a long and detailed recent planning history which is listed at the start of this report. In summary, outline permission granted in 1990 allowed the erection of a fruit packing station and cold stores at Spade Lane, as part of a proposal to relocate the facility as it then existed from Horsham Lane. A section 52 Agreement (which was later changed to become Section 106 Agreements) limited the use to grading, storage, packaging and distribution of agricultural produce, ancillary purposes or agriculture. Various reserved matters applications were submitted and approved subsequently which allowed the erection of the buildings in three phases, and phase 1 and 2 are those seen on site today. The reserved matters also showed an additional building fronting the A2 which was never built (phase 3) but which could still be implemented.
- 9.02 Permission was granted in 2002 for the change of use of part of the site to allow Intier Automotives (now known as Antolin Interiors) to operate an industrial use in approximately half of the building. The remaining half of the building is occupied by IPL – a fresh produce distributor.
- 9.03 Planning permission was then granted on appeal (Ref SW/06/1345) to change the use of the entire site to allow it to be used for a number of uses rather than for those specified in the original outline approval, and to, in effect, remove the condition imposed on the 2002 permission which limited the use of half of the main building to Intier Automotives (now Antolin Interiors). This allowed the whole site to be used for any light industrial or general industrial purpose, or for the storage and distribution of any goods from any part of the site. The Planning Permission subsequently granted by the Council in 2012 (under ref SW/11/0672) extended the time limit for the implementation of SW/06/01345, and this permission may be commenced up to the 19th January 2019. This permission also maintained the original restriction for use of the unimplemented phase 3 development to grading, storage, packaging and distribution of agricultural produce, ancillary purposes or agriculture

Principle of Development

- 9.04 Policy B1 of the adopted local plan supports proposals to expand existing businesses on site or onto adjoining land, subject to consideration of impacts such as landscape

and biodiversity. Policy ST3 of the emerging plan sets out a settlement strategy for the Borough and the supporting text to this states that only development that is essential to the social, economic or environmental well being, as set out in local and national planning policies, will be permitted in the countryside where consistent with the primary objective of protecting or enhancing the countryside. Policy CP1 of the emerging plan seeks to build a strong, competitive economy, and sets out that unanticipated needs may be accommodated through the extension of an existing employment site, and where sites are well related to primary road networks (such as the A2).

- 9.05 In this instance, the site is located within the countryside, but consists of previously developed land being within the built apron of the existing operating industrial premises. The proposal seeks further space to support the existing business operation on the site. In my opinion, the above policies could lend support to the proposal, provided that it can be demonstrated that such growth would be sustainable and would not cause unacceptable harm to the countryside and landscape. Such impacts are considered in greater detail below

Visual / Landscape Impact

- 9.06 The proposed building would be sited within the developed confines of the industrial premises, and would replace an existing area of open storage on a large hardsurfaced apron adjacent to the eastern boundary of the site. The proposed warehouse would, in isolation, be a large structure at 1,050 sqm in floor area and up to 8.5 metres in height. However, it would be sited adjacent to the existing cold store building, which is of significantly greater size at 29,000 sqm floor area and 13 metres in height – and would represent a very small increase to the existing premises.
- 9.07 The proposed building would be totally screened from the west by the existing cold store building. The existing site is visible from the south and east across the adjacent farmland, from viewpoints on Dane Lane, Mill Lane, and from public footpaths. However such views are at distances of some 460-600 metres, and are in part screened or obscured by existing landscaping, although there are some points where uninterrupted views at distance of the building can be gained. The proposed warehouse building would be a very modest addition to the extent of built form on the site and would be significantly smaller in scale and height. In such views from the south and east, I consider that the visual impact of the proposed warehouse would be very low, when seen against the context and/or backdrop of the significantly larger main building, and would make very little difference to the appearance and visual impact of the site.
- 9.08 In addition to this, Members will note that the site of the proposed warehouse is used for open storage, and that such storage does extend to some 6 metres in height, which is not dissimilar to the scale of the building proposed.
- 9.09 In landscape terms, the site falls within the Newington Fruit Belt under the Swale Landscape Character and Biodiversity Appraisal SPD (2011). The appraisal notes that the presence of large commercial buildings within the A2 corridor detract from the quality of the landscape, and it is evident that the existing building does create a alien feature in the landscape. The site is landscaped on the eastern boundary with tree planting both inside the boundary of the site and beyond it. The proposals do not seek to remove any existing trees, and it is noted that the building would not require any foundation works and would be sited on the existing hardsurfaced apron of the site. There is no real scope for further landscaping in the vicinity of the proposed warehouse building. However given my opinion that the building would have very little visual impact on views of the site or across the landscape, and that the development would

take place within the confines of the existing site on land already developed as a hardstanding and open storage area, I consider that it would be very difficult to substantiate a case that the development would materially worsen the existing visual impact of the site within the landscape.

- 9.10 The AONB boundary (defined by the M2) lies approximately 1 mile to the south of the site. At this distance, I do not consider that any views of the proposed development, against the context of the existing building, would be harmful to the setting of the AONB.
- 9.11 Policies E9 of the adopted plan and DM24 of the emerging plan seek to ensure that the quality, character and amenity of landscapes are protected and where possible enhanced. The emerging policy states that for non-designated landscapes permission will be granted subject to the minimisation and mitigation of adverse landscape impacts and, where significant impacts remain, that the social and economic benefits of the proposal significantly and demonstrably outweigh the harm to landscape character. In this instance, I consider the landscape impact of the proposal to be low for the reasons specified above, and that the quality, character and amenity of the landscape would not be materially harmed by the proposal.

Residential Amenity

- 9.12 The site is, as noted above, generally well away from neighbouring properties. The closest properties to the site are New Oast Cottages to the south of the site. The proposed warehouse would be sited around 260 metres from these properties, and views would be screened by the existing building as well as buildings at the Oast business park. The warehouse would be sited a similar distance from Orchard House to the north of the A2, but would be screened at least in part by landscaping and the raised bund within the application site. As specified earlier in the report, the warehouse building would be sited around 460 metres from Dane Lane to the south and 600m from Mill Lane to the east. There are dwellings on both roads that have a line of sight to the existing building on site and the proposed warehouse. At such distance, I do not consider any views of the warehouse from surrounding properties could be considered to be harmful to amenity or outlook.
- 9.13 A number of objectors have raised concern over existing noise and light pollution arising from the existing site. Both businesses operate over a 24 hour period and there would be a degree of noise related to this. The proposed warehouse would not contain any machinery and would be used solely for storage purposes and on this basis the Council's Environmental Health manager raises no objection on noise grounds. A planning condition can be used to ensure that the building is only used for storage to prevent any noise-generating activities taking place within it.
- 9.14 There would be some external activity as goods would be transferred between the main building and the warehouse. The Environmental Health Manager has not raised any objection to noise arising from forklifts operating between the two buildings. The applicant has also stated that they are replacing their fleet of forklift trucks and the new vehicles would use light beams as a warning system which would reduce the need for reversing beepers.
- 9.15 The site is necessarily lit by floodlighting columns within the grounds, as well as lighting on the main building. There is no suggestion that the side or rear elevations of the new warehouse building would require any additional lighting – and the entrance into the building would face into the site – meaning that any lighting on the main entrance would face away from the direction of any neighbours. In my opinion, the proposal

would not be likely to cause any additional light pollution. However, as a precaution detail of any external lighting of the building can be controlled by a suitable planning condition.

- 9.16 Policies E1 of the adopted local plan and DM14 of the emerging plan seek to ensure that developments cause no significant harm to amenity. I acknowledge that the existing premises (including the fruit packing business) causes some issues for existing residents in terms of noise, pollution and disturbance, however this would appear to relate more to the fruit packing business (which generates far more vehicular activity). I do not consider that the proposed warehouse would be likely to cause any additional or unacceptable light or noise pollution impacts, and I do not consider that the proposal would be in conflict with the above policies.

Highways / Traffic generation

- 9.17 The proposal seeks to erect a warehouse to store materials and components prior to and upon completion of the manufacturing process that takes place within the main building. As set out in Section 2 of the report, the warehouse would provide covered accommodation for materials that have previously been stored in the open, and would also negate the need to use a warehouse in Snodland for storage, as is current practice. There is no suggestion in the application that the development would lead to a greater output in production from the facility, rather that it would provide convenient on-site storage for products and raw materials that are otherwise stored in the open or off-site.
- 9.18 As a result, there would be no increase in vehicle movements associated with the warehouse building. In fact, the applicant has pointed out that the proposal would remove the need for HGV's to shuttle goods between this site and the Snodland warehouse, which in turn would be likely to reduce the number of HGV movements by around 15 per week.
- 9.19 KCC Highways and Transportation do not raise any objection to the proposal on the basis that the building will be used for storage. Members will also note that a planning condition is proposed to restrict use of the building to storage only, so that it cannot be used for manufacturing purposes.
- 9.20 KCC Highways and Transportation have recommended a number of "standard" conditions relating to construction. Given the size of the site and the location of the proposed warehouse at some distance from the highway, I do not consider it is necessary to control loading / offloading operations carried out by construction vehicles. As the building would be erected on the existing hard surfaced slab, I do not consider it is necessary to include measures to control the deposit of mud or debris on the highway.
- 9.21 Members will note that a number of objectors have raised highways related issues. Notwithstanding that the number of vehicle movements arising from the Antolin Interiors business is likely to reduce as set out above, the applicant has been keen to clarify that the vast majority of HGV movements from the site are related to the fruit packing business that operates from the other half of the building. As a snapshot of vehicle movements from the site, the applicant has set out that 1000 vehicle movements were recorded from the site between the 16th – 23rd January, with 856 vehicles associated with the fruit packing business (IPL) and 144 associated with Antolin Interiors (of this, 85 were HGV's and 59 were light vans). This suggests that only 10% of vehicle movements from the whole site are associated with Antolin.

- 9.22 The applicant has also been keen to point out that the indiscriminate parking of HGV's in the local area, and associated litter and verge damage relate to a company used by IPL, and who have been banned from parking overnight by IPL due to past bad behaviour on the site.
- 9.23 Policy T1 of the adopted plan and DM6 of the emerging plan seek to ensure that development proposals do not have adverse impacts upon the local highway network that cannot be mitigated. In this instance I do not consider that the proposal would lead to any increase in vehicular movements – and it is likely to decrease movements. On this basis, I do not consider that the development would conflict with the above policies.

Other Matters

- 9.24 Members will note that an electricity line crosses the site and that the proposed warehouse building would be sited underneath this line. The applicant has designed the building to accord with National Grid guidelines for building in close proximity to electricity lines. The National Grid was consulted on the application, although no response has been received.
- 9.25 The Kent County Council drainage team has identified that the proposed could provide an alternative scheme for treatment of surface water as part of a sustainable urban drainage scheme. The applicant has confirmed that they are willing to address this, and this can be secured via a planning condition.
- 9.26 Members will note from the background section that the original permission included a further phase of development and this can still be implemented. This phase would be built to the north of the existing building, within the car park area currently allocated to Antolin Interiors. In the event that phase 3 was built, the area of land where the proposed warehouse would be built is shown to accommodate car parking.
- 9.27 Without suitable control, there is a risk that if the warehouse and phase 3 development were both built out, then there would be a shortfall in car parking for the site. To avoid this, the applicant has confirmed that firstly, they would not retain an interest in the site if their current parking facility was removed. Secondly, that the warehouse would be a structure bolted to the ground that could be dismantled in a period of around 7 days. Taking this into account, I consider that a planning condition could be used to ensure that, if phase 3 of the development is commenced, then the warehouse building shall be dismantled and removed from the site.

10.0 CONCLUSION

- 10.01 The site is located within the countryside where impacts relating to rural and landscape character and matters relating to sustainability often preclude many forms of development. However in this instance, the proposal would result in a modest addition in the context of the existing industrial premises, and would be sited within the built apron of the existing premises. In my opinion, the impact on the rural character of the area and the landscape would be limited. The proposal would cater for the business needs of a local employer, providing an on-site storage facility that would negate the current practice of shuttling between the site and a storage unit in Snodland, with a subsequent reduction in associated traffic. The proposal would not lead to any direct increase in traffic movements or employment and would not encourage unsustainable practices or patterns, despite the divorced location of the site from surrounding built settlements. In fact it could be argued that the on-site warehouse facility would make the business more sustainable.

10.02 It may be possible to pick out the proposed building from surrounding vantage points. However these would be mid to long range views, seen against the context of the significantly larger existing building. I do not consider this would be materially harmful to visual / landscape amenity or to the outlook of any residential properties in the surrounding area. Nor do I consider that any noise or increased activity arising from the proposal would be of sufficient impact to harm residential or rural amenity.

10.03 Taking the above into account, I consider that the development would meet the business needs of the operator, with little environmental impact, and would represent a sustainable form of development under the NPPF. It would not be in conflict with the development plan policies identified in the sections above.

10.04 As a result, I would recommend that planning permission should be granted.

11.0 RECOMMENDATION – GRANT Subject to the comments of the Economic Development Officer and 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 (including colour finish) 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 building hereby permitted shall only be used for the storage of goods and materials ancillary to any business operating from the main building, and shall not be used for any other purpose.

Reason: To accord with the terms of the application, to ensure that no industrial process is carried out within the building, or any independent occupation of the building without proper consideration through a formal application of any noise or highway related impacts, in the interest of aural amenity and highways safety.

(4) In the event that phase 3 of the site development is implemented (as approved under outline permission SW/89/01248 (subsequently amended by SW/06/1345 and SW/11/0672) and the reserved matters SW/97/0441), the proposed building hereby approved shall be dismantled and removed from the site within 3 months from the date of any such commencement of phase 3.

Reason: To ensure that the delivery of additional parking provision associated with the phase 3 development is not compromised by the building hereby approved, in the interest of highways safety.

(5) Prior to the works commencing on site details of parking for site personnel / operatives / visitors shall be submitted to and approved by the Local Planning Authority and

thereafter shall be provided and retained throughout the construction of the development. The approved parking shall be provided prior to the commencement of the development.

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

- (6) Before development commences, details of measures to incorporate a sustainable surface water drainage scheme shall be submitted to and approved in writing by the Local Planning Authority. Upon approval, the details shall be incorporated into the development as approved.

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

- (7) Before development commences, details of measures to protect existing trees on the north and east boundaries of the site, in accordance with BS5837:2012 – “Trees in relation to design, demolition and construction”, shall be submitted to and approved in writing by the Local Planning Authority. All protection measures shall be installed on site prior to any construction and retained until completion of the development. Nothing shall be stored or placed, nor fires lit, within any of the protected areas in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written consent of the Local Planning.

Reason: To protect existing landscaping, in the interests of the visual amenities of the area.

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

- A statement of why lighting is required, the proposed frequency of the use and the hours of illumination.
- A site plan showing the area to be lit relative to the surrounding area, indicating parking or access arrangements where appropriate, and highlighting any significant existing or proposed landscape or boundary features.
- Details of the number, location and height of the lighting columns or other fixtures.
- The type, number, mounting height and alignment of the luminaries.
- The beam angles and upwards waste light ratio for each light.
- An isolux diagram showing the predicted illuminance levels at critical locations on the boundary of the site and where the site abuts residential properties.

Reason: In the interests of visual amenity and the residential amenities of occupiers of nearby dwellings.

Council’s Approach

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 in the processing of their application and 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 was found to be acceptable.

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.

2.6 REFERENCE NO - 16/507706/FULL		
APPLICATION PROPOSAL Demolition of former residential care home building and erection of 21 new dwellings, associated new access road, car parking and amenity areas		
ADDRESS Doubleday Lodge Glebe Lane Sittingbourne Kent ME10 4JW		
RECOMMENDATION Grant subject to further comments from Kent Highways and Transportation on the amended plans, and a Section 106 agreement seeking contributions towards primary and secondary education, libraries, open space improvement, NHS, bins a monitoring fee and SAMM.		
SUMMARY OF REASONS FOR RECOMMENDATION The development of this site for housing would involve the loss of a care home for the elderly. Whilst this is regrettable, KCC took the decision to close it in January 2014. The site has been vacant since September 2014 with alternative care homes found for existing residents. Its use for housing would go some way towards meeting the housing needs of the Borough. In addition, the scheme would offer much needed affordable housing. These factors weigh heavily in favour of the development. The density, layout and design of the scheme has been carefully considered and amendments provided to address officer's concerns. The scheme is now considered to offer a good quality environment for the future residents of the scheme, whilst protecting the residential amenities of the existing properties that are adjacent to the site. The proposal would be of a good design that would add to the visual amenities of the area. The parking provision would be adequate in number and layout. Other considerations such as contaminated land, drainage and ecology are adequately deal with. The developer has agreed to pay the various development contributions that are required for this scheme.		
REASON FOR REFERRAL TO COMMITTEE Section 106 agreement		
WARD Roman	PARISH/TOWN COUNCIL	APPLICANT Stonechart Property Ltd AGENT Ubique Architects
DECISION DUE DATE 13/02/17	PUBLICITY EXPIRY DATE 30/01/17	OFFICER SITE VISIT DATE 02.12.16
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites): There is no relevant planning history for this site.		

MAIN REPORT

1.0 DESCRIPTION OF SITE

- 1.01 The application site totals 0.41 ha and lies within a residential area, bounded to the north, south and west by existing dwellings, predominantly terraced, and flats. The front of the site faces onto Glebe Lane and there are currently two vehicular accesses onto this road. Rectory Playing Field (6.04ha) lies a walking distance of 130 m to the west of the application site. There is a difference in ground levels of approximately 3m from the northwest corner to the southeast corner which represents a gradual fall across the site from west to east. The site is currently occupied by a large two storey care home with single storey projections to the front. This building is sited close to the north and west boundaries of the site. The building has been boarded-up and the site is overgrown with evidence of trespass and vandalism.

- 1.02 The front of the site is roughly the same ground level as the adjacent property - 40 Glebe Lane and the houses opposite. The application site is though at a lower level than the properties to the rear at Wadham Place by 2m. There are a number of mature Larch, Birch and Ash trees within the site, along its boundaries as well as Beech hedges.

2.0 PROPOSAL

2.01 The proposal is to demolish the existing derelict care home and erect 21 no. 2.5 storey 3 bedroom dwellings. The applicant is in partnership with Moat Housing and as such, all of the dwellings are intended to be affordable with 2 as affordable rented and 19 shared ownership. Each dwelling would have a reasonably sized rear garden and there would be 38 parking spaces in total (1.8 spaces per dwelling). The layout would consist of five separate blocks of terraced properties, blocks A-E. Blocks A and B would front onto Glebe Lane, either side of the new central access into the site. Fourteen parking spaces would be provided to the front of these blocks in groups of 2 and 3 interspersed with hedges and trees. Block C, a row of three terraced properties, is to the rear of block B, orientated northeast-southwest, at right-angles to block B. Blocks D and E are to the rear of block A and are orientated east-west, to match the orientation of blocks A and B. The parking for blocks C-E is provided off-plot in groups/parking courts. All properties are similarly designed with simple architecture, brick work, cladding and rendering and modestly sized flat roof rear dormers to the rear roof slopes.

2.02 The scheme has been amended by increasing distance between the dwellings and existing neighbouring properties. The amendments have resulted in the loss of one of the dwellings so the scheme has reduced from 22 to 21 units. Additional landscaping has been introduced to the parking areas and efforts made to improve the appearance of the hard-surfaced area. The architect has added different finishing materials to the elevations and has changed the design of the canopies to add interest to the appearance of the dwellings. Where possible, existing trees and hedges are to be retained.

3.0 SUMMARY INFORMATION

	Existing	Proposed	Change (+/-)
Approximate Ridge Height (m)	Approx. 8m	8.8m	+800mm
Approximate Eaves Height (m)	Approx. 6m	4.8m	-1.2m
No. of Storeys	2	2.5	+0.5
Net Floor Area	1035m ²	883m ²	-152m ²
Parking Spaces	Approx. 15	38	+23
No. of Residential Units	N/A	21	21
No. of Affordable Units	N/A	21	21

4.0 PLANNING CONSTRAINTS

There are no planning constraints for this site.

5.0 POLICY AND OTHER CONSIDERATIONS

5.01 The National Planning Policy Framework (NPPF): paras 7 (three dimensions of sustainable development), 8, 11 (presumption in favour of sustainable development), 12, 14, 17 (core planning principles), 32 (sustainable transport), 34, 47 (delivering a wide choice of high quality homes), 49, 50, 55, 56 (good design), 58, 69 (healthy communities), 131, 159 (housing), 162 (infrastructure), 186 (decision taking), 187, 196 (determining applications); 197, 204 (planning obligations) & 216 (weight to emerging policies).

- 5.02 National Planning Policy Guidance (NPPG): Design; Natural environment; Housing and Economic Development needs assessment; Planning Obligations; Use of planning conditions; Water supply, waste water and water quality land affected by contamination.

Development Plan:

- 5.03 The Swale Borough Local Plan 2008 saved policies SP1 (sustainable development), SP2 (environment), SP4 (housing), SP7 (community services and facilities), SH1 (settlement hierarchy), E1 (general development criteria), E11 (biodiversity and geological interests), E12 (designated biodiversity and geological conservation sites), H2 (new housing), H3 (affordable housing), T1 (safe access), T3 (parking), T4 (cyclists and pedestrians), C3 (open space on new housing developments) & C1 (community services and facilities).
- 5.04 The emerging Swale Borough Local Plan “Bearing Fruits” – ST1 (sustainable development), ST2 (targets for homes and jobs), ST3 (settlement strategy), ST4 (meeting local plan development targets), ST5 (Sittingbourne area strategy), CP3 (high quality homes), CP4 (good design), CP6 (community facilities and services to meet local needs), DM7 (vehicle parking), DM8 (affordable housing), DM14 (general development criteria), DM17 (open space, sports and recreation provision), DM21 (water, flooding and drainage), DM28 (biodiversity and geological conservation) & IMP1 (implementation and delivery plan).

Supplementary Planning Documents

Developer Contributions (2009)

6.0 LOCAL REPRESENTATIONS

- 6.01 Four representations have been received from local residents. A summary of their comments is as follows:
- The site should be redeveloped as a residential home for the elderly;
 - The extra traffic would be too much for this small road;
 - Overlooking of gardens;
 - Noise and mess during construction;
 - There is currently an overbearing beech hedge within the site that is not maintained. The owners of no. 26 Wadham Place ask for a wall along their boundary instead;
 - Anything on this site will be an improvement on its current state;
 - Potential overshadowing;
 - Not enough parking, causing on-street parking problems for existing residents.

7.0 CONSULTATIONS

- 7.01 The Environmental Services Manager has no objection to the proposal subject to conditions to restrict hours of construction, to minimise the risks from asbestos and, to require the submission of a code of construction practice.
- 7.02 The NHS Strategic Estates Advisor asks for a contribution of £19,008 (based on the original scheme of 22 units) towards the Chestnuts Practice.

- 7.03 KCC Ecology note that there is a low risk of bats being present within the existing building to be demolished and recommended a condition to ensure the submission of a detailed bat mitigation strategy informed by an up to date valid bat surveys. They also ask for a condition to control details of external lighting in order to protect bats. Informatives advising the applicant of the protection of breeding birds are recommended. Biodiversity enhancements are also recommended.
- 7.04 The Greenspaces Manager requests that £861 per dwelling is sort for contributions towards improving capacity and play value of the play facilities at Rectory Playing Field. He also notes that there is no open space provision on the application site but that it is within walking distance of Rectory Playing Field.
- 7.05 The Environment Agency has no comment.
- 7.06 Southern Water note that a foul sewer is in the vicinity of the site and provide advice on the distances necessary for development, soakaways and tree planting. They also note that there is a communication pipe within the site. They confirm that they can provide sewage disposal to the development and recommend an informative to alert the applicant to the need for their consent to connect to the sewage system. There is no need for additional infrastructure but ask for a condition to require the submission of a drainage strategy dealing with surface water disposal and also foul sewage. Long-term maintenance of the SUDs is necessary.
- 7.07 KCC Development Contributions Team seek contributions towards primary and secondary education and libraries (details set out at para 9.13 below). They also recommend that Broadband is provided for the site and recommend an informative to encourage this.
- 7.08 Kent Highways and Transportation are satisfied with the overall level of parking provision for the site but are concerned that there could be overspill onto Glebe Lane which could lead to an impact on highway amenity for local residents. They note that on-street parking would be displaced by the new drives at the front of the site. In order to address these concerns, they recommended that one space per dwelling is allocated for blocks A and B so that each dwelling has a parking space immediately in front of them. They also ask that suitable lighting is provided to the parking areas. They also query the width of some of the spaces where they are next to fences, walls or hedges. They ask for secure cycle parking for each property and details of bin storage.
- 7.09 The Head of Housing considered that the mix of affordable housing proposed – 2 social rented and 20 shared ownership is acceptable (the scheme has since been amended to 21 units with 2 social rented and 19 shared ownership).
- 7.10 Kent Police have considered the commitment of the developer to achieve ‘secure by design’ and therefore have no immediate concerns regarding the proposal.
- 7.11 UK Power Networks have no objection to the proposal.
- 7.12 Natural England note that the site lies within 6km of the SPAs and Ramsar sites. They consider that subject to payment of the SAMM contribution, the site can be screened out as not having a likelihood of significant effects on the designated sites.
- 7.13 Southern Gas Networks provide information about safe digging practices close to gas pipes that may be close to the site.

- 7.14 Lower Medway Internal Drainage Board note that the site is outside of their district but seek to ensure that surface water runoff is attenuated to no more than 5l/s with on-site storage provided to accommodate the 1 in 100 year rainfall event.
- 7.15 KCC Flood Risk and Drainage are generally satisfied with the majority of the drainage strategy. However, they recommend that there should be no discharge to foul sewage. They recommend a condition to require a details surface water drainage strategy to preclude discharge to foul sewage. Also, a condition to require details of the implementation, maintenance and management of the SUDs. Lastly a condition to prevent surface water drainage into ground without the permission of the LPA (in consultation with the EA) due to the risk to controlled ground waters.

8.0 BACKGROUND PAPERS AND PLANS

- 8.01 Existing and proposed plans and elevations; Tree Constraints Plan; Drainage Strategy & Maintenance Statement; Contaminated Land Report; Tree Report; Planning, Design and Access Statement; Details of KCC's decision to close the care home; Ecology Survey; Minerals Assessment; Ecology Assessment Update.

9.0 APPRAISAL

Principle of Development

- 9.01 The application site lies within the built-up area boundary and is surrounded by residential properties. The development of this site for housing would be in line with the aims and objectives of the Development Plan and National Policy in so far as much needed affordable housing is being provided on a brownfield site. The loss of the care home facility should though be considered against policy C1 of the Swale Borough Local Plan 2008 which seeks to retain existing community facilities and services. This policy states:

“The Borough Council will not permit proposals that involve the loss, or change of use, of a local community facility, where this would be detrimental to the social well being of the community, unless a suitable and equivalent replacement facility is to be provided both in a location and period of time as agreed by the Borough Council. Before agreeing to its loss or change of use, the Borough Council will require evidence that the current use is no longer needed and is neither viable, nor likely to become viable.”

- 9.02 The applicant has submitted information about the closure of Doubleday Lodge care home. This details the circumstances under which KCC decided to close the facility which was primarily as a consequence of low occupancy and also its inability to meet the national minimum standards of the Care Standards Act 2000. KCC carried out a public consultation on the closure of the home in September 2013 and the decision to close the home was made at the KCC Social Care & Public Health Committee on 16th January 2014. The care home would have required significant investment to bring it up to standard and it was noted that there was adequate capacity to relocate the existing residents in existing homes nearby. The new care home – Regis Gate in Milton Regis, Sittingbourne was considered to provide a much better quality of accommodation to meet the needs of existing and future residents. At the time KCC are quoted in a local newspaper as stating that *“within 10 miles of the home (Doubleday Lodge) there are 15 care homes, with 629 beds, and 153 more care home beds are planned in the area.”* The minutes of the committee meeting referred to above noted that Officer's considered that *“better value for public money could be achieved by purchasing equivalent services from the independent sector”*.

- 9.03 KCC have now sold the site to private developers and it is therefore highly unlikely that the use of the site will be for a care home once again. I am of the view that the applicant has demonstrated that a suitable replacement facility has been provided in line with policy C1 of the adopted local plan. Indeed, all residents were relocated over 2 years ago and the new care home at Milton Regis offers 45 bedrooms. Doubleday lodge offered 36 bedrooms but in 2013, there were only 2 permanent residents and 8 short-term (respite) residents. An extract from the committee report by KCC referred to above is as follows:

“Respite (short term) residents: Data from Swift (KCC Case management systems) indicate that for the period 1 December 2012- 30 November 2013, there have been a total of 68 short term (respite) placements in the home (an average of between 1-2 people per week Respite bed days total 2,690 over the same period. Most people have had one period of stay during this year (76%) and have stayed for between 1-2 weeks (26 out of 68 or 38%). On this basis, it is estimated that KCC would need to secure three respite beds within the Swale area to replace the existing provision. All residents have been referred from either Swale or Canterbury case management teams.

KCC has secured the use of one short term bed for respite at the new Extra Care Housing development at Wyllie Court/Regis Gate, Sittingbourne. This facility will be opening in September 2014.

Two additional respite beds will be secured via a competitive tendering process to secure high quality, best value services. From a soft market testing exercise undertaken by Strategic Commissioning in November 2013, there is sufficient interest from care homes within a five mile radius of Doubleday Lodge to indicate that KCC would not face barriers to securing these services. There are two other residential care homes in Swale that offer short term services of which case managers promote the use of. Kiln Court is seven miles away from Doubleday Lodge and Blackburn Lodge is eleven miles away. These beds could be used should there be no interest from the market in Sittingbourne to provide short term beds as a contingency arrangement.”

- 9.04 Balanced against the loss of the care home is the significant need for houses, in particular affordable housing, in the Borough. This brownfield site will go some way towards reducing pressure from greenfield sites being developed for housing. I therefore consider that the proposed development is acceptable in principle.

Visual Impact

- 9.05 The housing surrounding the application site is of a medium-high density and the architecture is of a simple, typically suburban design. It is my view that the proposed development at a density of 51 d/ha, would sit comfortably within this environment. The elevations of the dwellings have been amended to improve the detailing to the front and side elevations as they were considered to be too bland. The gable ends and terraced form would reflect the properties opposite and adjacent to the site. Although dormer windows are not a common feature of the street scene, the proposed dwellings would have dormers to the rear roof slopes meaning that they would not be prominent features when viewed from the Glebe Lane. The proposed dormers would be of a size that would sit comfortably within the roof slopes in my view and their flat roof design would not be offensive to the overall architectural design of the dwellings. Exact finishing materials are to be agreed but the drawings indicate that brickwork, cladding and render would be predominant which would be appropriate for this residential area in my view.

- 9.06 The scheme has been amended to increase the amount of soft landscaping within the public areas, including the parking bays which would be interspersed with street trees. I also note that many of the existing trees are to be retained as part of the development. The Tree Survey indicates that there are no category A trees (best quality) within the site but that there are a number of category B and C trees (trees of moderate to low quality respectively). The submitted tree constraints plan shows that although a number of lower grade trees and 3 category B trees would be removed from the site, 9 category B trees would be retained. These include Larch, Birch and Ash trees. The comments of the Tree Consultant are awaited and will be reported at the meeting. The retained trees would add to the amenity value of the area, support ecology and biodiversity and would also offer some level of privacy between the application site and the surrounding residents. The amended scheme also introduced a more varied hard-surface to the access and parking areas in an attempt to improve the appearance somewhat. I consider that overall, the amendments to the scheme have improved the environment within which the future residents would live. The development would be of a good design that would assimilate well into the existing suburban environment and would certainly be a vast improvement on the appearance of the site as it currently stands.

Residential Amenity

- 9.07 Very careful consideration has been given to the impact of the development on the existing surrounding residents, of which there are 12 whose boundaries adjoin the application site as well as the flats that are adjacent to the southern boundary. In addition, the different site levels meant that section drawings were required to adequately assess the relationship between the proposed and existing dwellings. Following the submission of the section drawings the scheme was amended to address a number of instances where there would have been overlooking, overshadowing and an overbearing effect. The unit adjacent to no. 40 Glebe Lane was taken out of the scheme and blocks D and E moved forward within the site. I am now confident that the scheme provides adequate separation distances of 21m for back to back relationships and avoids any harmful overlooking as a consequence. The separation distance also now ensure that instances of harmful overshadowing are avoided. I also consider that there would be no instances of an overbearing effect.
- 9.08 As well as assessing the impact of the proposal on existing surrounding properties, I have considered the relationships between the dwellings within the scheme. Flank to rear distances of 11m are now met and where I had identified overlooking from unit 11 into the rear garden of unit 12, the amended plans show a pergola to be positioned to the rear of unit 12 thereby creating a private area immediately to the rear of this property. There may be some overlooking into the development from the existing flats to the south of the site but I do not consider that this would be materially harmful to the residents of block C or unit 11 (the most affected), noting that some overlooking from the flats would be unavoidable if this site is to be developed and also the presence of tall trees that are to be retained along the southern boundary. Tree planting would be provided within the rear garden of unit 11 along the southern and western boundaries and there would be a tree within the rear garden of unit 12. This planting will help to protect the private amenity space to these properties.
- 9.09 It must also be acknowledged that the two storey element of Doubleday Lodge would have overlooked the surrounding properties to some extent and, at points, this building is closer to the neighbouring properties than the current dwellings would be. I therefore consider that for nos. 37, 39 and 41 Wadham Place in particular, the new development would offer more privacy than before. I note the request of no. 26 Wadham Place to remove the beech hedge along their boundary and replace it with a

wall. I have asked the applicant to consider this but do not consider that difficulties with maintaining the hedge is a material planning concern.

- 9.10 The proposed dwellings would all have reasonably sized gardens, some with larger than average gardens for this area and all of which would have a depth of no less than the standard 10m. The internal spaces provided within the proposed dwellings would offer a good living environment in my view.

Highways

- 9.11 I note the concerns of local residents in respect of potential for overspill of parking from this development onto Glebe Lane. Being realistic, I do not disagree with this conclusion. However, the key consideration here is whether on-street parking would be increased by this development to the extent that there would be significant harm to the amenity of local residents. Quite a high number of properties along Glebe Lane do not have frontage parking but have access to a garage court or parking to the rear. This has the advantage of a number of cars being able to park on the street without blocking driveways. Glebe Lane is also fairly wide and able to cope with cars parked on the street. As such, it is my view that there is good capacity to accommodate on-street parking along Glebe Lane. I note that Kent Highways and Transportation do not object to the proposal but ask that the parking that comes directly off Glebe Lane is allocated so that there is at least one space per dwelling for blocks A and B. I have recommended a suitably worded condition to address this. I have also imposed a condition requiring the provision of cycle parking for each property. The site is also a 10/15minute walk (0.8mile) from the town centre/East Street and therefore, close enough to local amenities to enable a reduced reliance on the car.
- 9.12 The parking provision and layout within the site is considered to be adequate and I note the comments from Kent Highways and Transportation in this respect. The applicant has amended the scheme to increase the width of the parking bays where they are adjacent to fences, wall and hedges as was requested. I therefore consider that the development would cause no material harm to highway safety and amenity.

Developer Contributions

- 9.13 The applicant is required to pay the following contributions which have been adjusted to account for the reduction in the number of proposed dwellings:

SAMM SPA recreational disturbance	£223.58/dwelling: -£4,694.42
Bins	£92/dwelling: -£1,932.00
KCC Primary education	£49,580.16
KCC Secondary education	£49,555.80
Libraries	£1,008.33
NHS	£18,144.00
Off-site open space contribution	£861/dwelling: - £18,081.00
Sub Total	£142,095.71
Administration fee - 5% of total contributions	£7,104.79
Total	£149,200.50

- 9.14 The applicant has agreed to pay these contributions as well as committing to securing 10% affordable housing (2 social rented) through the Section 106 agreement. Although, Members will have noted that the scheme is being provided in partnership with Moat Housing who will be securing all of the dwellings as affordable. Members may wonder why we are not securing all 21 of the dwellings as affordable through the Section 106. This is because the emerging planning policy DM8 (Bearing Fruits

2031) only requires sites within Sittingbourne to provide 10% affordable housing. I consider that it is therefore reasonable to apply 10% to this scheme given the advanced stages of the emerging local plan noting that the development would actually be providing 100% affordable housing at least initially.

- 9.15 I am content that the above contributions meet the tests for planning obligations as set out at paragraph 204 of the NPPF and that a section 106 Agreement is the best mechanism for addressing the SAMM contribution, the details of which are set out with the appended Habitat Regulations Assessment.

Other issues

- 9.16 With regards to surface water drainage, KCC ask for a condition that would prevent all surface water from discharging to the foul sewer. The applicant is resisting such a condition stating that if the development does need to resort to this form of drainage, the permission would be rendered undeliverable. KCC point out that the condition could be varied under such circumstances. It is my view that there would have to be material and demonstrable harm arising from surface water drainage to foul sewers for such an imposition to be reasonable. I have no evidence that this would be the case here and Members will also note that Southern Water do not require this. As such, I am inclined to apply a condition that would encourage other forms of drainage but that does not prevent drainage to foul sewers.
- 9.17 The potential for contamination on the site has been assessed and the Head of Environmental Services has no concerns in this respect.
- 9.18 A Minerals Assessment has been submitted with the application as the site has potential for brickearth. This concludes that the site is too small to be a viable extraction site, the mineral has been sterilised and lies within a residential area which would make it difficult to extract from. The site also lies within the built up area boundary and is therefore compliant with Policy DM7 of the Kent Minerals and Waste Local Plan.
- 9.19 An Ecology Survey has been submitted with the application. This concludes that there is low potential for protected species at the site but that it is possible that bats might be present within the existing building. KCC Ecology acknowledge this and given the very low potential for this, accept that further survey work can be carried out after the permission is issued with appropriate mitigation put in place if necessary. I have included all of the conditions suggested by KCC Ecology below.
- 9.20 Article 4(4) of the Birds Directive (2009/147/EC) requires *Member States to take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article.* An Appropriate assessment is appended with details of the likely impact of the development on the SPA and the applicant's agreement to pay the Strategic Access Management and Monitoring Strategy.

10.0 CONCLUSION

- 10.01 The proposed development would provide much needed housing within the built-up area of Sittingbourne. Members will also note that the site is within reasonable walking distance of the town centre. It is therefore considered to be sustainable development on a sustainable site. The loss of the elderly care home is regrettable but the site has been vacant for in excess of two years. In deciding to close the site, KCC were able to demonstrate that there was sufficient care home provision elsewhere

within the Borough. I consider that the proposal would not therefore disadvantage the local community through the loss of the care home. Moreover, I consider that the need for affordable housing weighs strongly in favour of the proposal. The proposal has been amended to address concerns regarding the quality of the design and the impact on adjacent dwellings. I consider that the scheme would be of a good quality design that would not lead to material harm to residential amenities. The scheme would be likely to increase on-street parking in Glebe Lane but I consider that this road can accommodate some additional on-street parking and would not materially harm the amenities of local residents in this respect. The applicant has committed to the payment of the developer contributions as set out above and I have no concerns in respect of drainage, contaminated land and ecology.

10.02 I therefore consider that planning permission should be granted for this development subject to the conditions set out below and a Section 106 to include all matters set out at paragraph 9.13 above.

11.0 RECOMMENDATION – GRANT Subject to the signing of a Section 106 agreement to include all the measures set out at Paragraph 9.13 above 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: to be completed.

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

3. Notwithstanding the provisions of Class A, Part 2, Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (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 without the consent in writing of the Local Planning Authority.

Reason: In the interests of residential amenity.

4. 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 (with the exception of demolition) 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.

5. No demolition or construction work in connection with the development shall take place on any Sunday or Bank Holiday, nor on any other day except between the following times:-
Monday to Friday 0730 - 1900 hours, Saturdays 0730 - 1300 hours unless in association with an emergency or with the prior written approval of the District Planning Authority.

Reason: In the interests of residential amenity.

6. The development shall be carried out in accordance with the submitted Code of Construction Practice, Site Waste Management Plan and on site car parking plan (for contractor parking during construction) submitted on 7th February 2017. The construction of the development shall be carried out in accordance with BS5228 Noise Vibration and Control on Construction and Open Sites and the Control of dust from construction sites (BRE DTi Feb 2003) unless previously agreed in writing by the Local Planning Authority.

Reason: In the interests of residential amenity.

7. The area shown on the submitted plan – namely Proposed Site Plan, no.005 Revision N as car parking and turning space shall be kept available for such use at all times and no permanent development, whether permitted by the Town and Country Planning (General Permitted Development) 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 access thereto. In addition, the parking to the front of Blocks A and B shall be allocated so that each dwelling within these blocks has at least one of these parking spaces. Such land and access thereto shall be provided (and allocated where necessary) prior to the occupation of the dwelling(s) 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.

8. Lighting shall be provided to the parking areas as shown on the approved plans, the details of which shall be submitted to the Local Planning Authority for approval in writing. The approved details shall be implemented prior to the first use of the parking area.

Reason: In the interests of highway amenity.

9. Prior to the occupation of the dwellings hereby approved, details of a covered secure cycle parking facility shall be submitted to the Local Planning Authority for approval in writing and the approved facility shall be provided prior to the occupation of the dwellings hereby approved and shall be retained in perpetuity.

Reason: To ensure that there is sufficient cycle parking at the site in the interests of sustainable development.

10. Prior to the demolition of any building a detailed bat mitigation strategy must be submitted to the Local Planning Authority for approval. The bat mitigation strategy must include the following:
- Bat Emergence survey (following best practice guidelines)
 - Details of the bat roosting features to be incorporated in to the site and buildings
 - Building plans demonstrating the bat roosting features will be incorporated in to the site
 - Methodology of soft strip of the building (map showing the areas where an ecologist needs to be present for the works)
 - Time of year the works to be carried out
 - Follow up monitoring

The works must be implemented as detailed within the approved mitigation strategy.

Reason: In the interest of ecology and biodiversity.

11. Prior to occupation a lighting design strategy for biodiversity shall be submitted to and approved in writing by the Local Planning Authority. The 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 used to access key areas of their territory, e.g., for foraging.
 - b) Show how and where external lighting will be installed (through the provision of appropriate lighting contour plans and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent the above species using their territory or having access to their breeding sites and resting places.

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. Under no circumstances should any other external lighting be installed without prior to consent from the Local Planning Authority.

Reason: In the interests of ecology and biodiversity.

12. The biodiversity enhancements as set out on page 30 of the submitted Preliminary Ecological Appraisal shall be implemented on site prior to the occupation of the 1st of the dwellings hereby approved.

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

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

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

14. No development (with demolition being permitted to commence) 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, the pergola to unit 12, hard surfacing materials, and an implementation programme.

Reasons: 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.

Reasons: 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.

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

17. Prior to the commencement of development (with demolition being permitted to commence) 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.

18. Development shall not commence (with the exception of demolition) until a detailed sustainable surface water drainage strategy been submitted to (and approved in writing by) the local planning authority. The detailed drainage scheme shall demonstrate that the surface water generated by this development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100yr storm) can be accommodated and disposed of within the curtilage of the site. The sizing and functionality of the system shall be determined through site-specific infiltration testing.

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

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

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

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

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

21. Prior to the commencement of development hereby approved, full details of the method of disposal of foul 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 pollution of water supplies.

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

Reason: In the interests of visual amenity.

23. All trees to be retained must be protected by barriers and ground protection at the recommended distances as specified in BS5837: 2012 'Trees in relation to design, demolition and Construction - Recommendations' before any equipment, machinery or materials are brought on to the site and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed, nor fires lit, within any of the area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written consent of the Local Planning Authority.

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

INFORMATIVES

1. The applicant is advised to consider the contents of Southern Gas Networks comments dated 30th November 2016 and the Southern Water letter of 14th December 2016.
2. Adequate and suitable measures should be carried out for the minimisation of asbestos fibres during demolition, so as to prevent airborne fibres from affecting workers carrying out the work, and nearby properties. Only contractors licensed by the Health and Safety Executive should be employed. Any redundant materials removed from the site should be transported by a registered waste carrier and disposed of at an appropriate legal tipping site.

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 changes required to the application and these were agreed.

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

APPENDIX: HABITATS REGULATIONS ASSESSMENT

Context

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

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

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

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

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

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

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

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

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

Associated information

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

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

The Assessment of Doubleday Lodge, Glebe Lane, Sittingbourne

The application site is located 2.2km to the south The Swale Special Protection Area (SPA) and 5km from the Medway Estuary and Marshes SPA. Therefore, there is a medium possibility that future residents of the site will access footpaths and land within these European designated areas.

Natural England consider that providing the development contributes towards the SAMM, the development is unlikely to have a significant effect on the internationally designated site either alone or in combination.

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

Conclusions

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

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2.7 REFERENCE NO - 16/506716/FULL			
APPLICATION PROPOSAL Variation of condition 12 and 14 attached to SW/13/0394 to facilitate the use of two barns for general agricultural purposes and for the storage of grains grown on and off the holding and to amend the list of approved drawings respectively; amendment to external appearance of eastern barn including an increase in ridge height to 14.5m			
ADDRESS Wallend Farm Lower Road Minster-on-sea Kent			
RECOMMENDATION Grant subject to no objection being raised by Highways England.			
SUMMARY OF REASONS FOR RECOMMENDATION The variation of condition 12 will allow the use of the new buildings at Wallend Farm to contribute to the local economy through agricultural diversification. The impact of this altered use on residential amenity and highway safety has been assessed and any identified harm would be addressed through appropriate conditions. The change to the design of the building has been assessed as having an immaterial impact on visual amenities and the character and appearance of the landscape, subject to the provision of appropriate landscaping and bunds offering some screening.			
REASON FOR REFERRAL TO COMMITTEE Parish Council objection			
WARD Sheppey Central	PARISH/TOWN COUNCIL Minster-On-Sea	APPLICANT S W Attwood & Partners AGENT Paul Sharpe Associates LLP	
DECISION DUE DATE 23/12/16	PUBLICITY EXPIRY DATE 24/11/16		
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
16/507030/FULL	Replacement of fire damaged western building with alterations to its external appearance to include an increase in ridge height to 14.5m. Extension of existing bund to the south with landscaping to screen views into the yard; additional bund with landscaping to west of Wallend Farmhouse. Minor widening and realignment of access track to Sheppey Way.	Current	Also on this agenda
14/501044/FULL	Variation of condition 3 of application SW/09/1038 to allow the inclusion of servicing vehicles and an MOT station (unit 4)	Approval	October 2014
SW/13/0394	Variation of condition 2 to allow the landscape mounds to be constructed within 2 years of the first use of the agricultural buildings approved under SW/12/0165	Approval	July 2013
SW/12/0165	2 no: general purpose agricultural buildings and erection of landscaping mounds	Approved	April 2012
SW/10/0470	Replacement building for fire damaged dutch barn and for B2/B8 use together with a work at home office unit replacing an existing pole barn at same location.	Approved	June 2010
SW/09/1038	Retrospective change of use of former redundant agricultural buildings to B2/B8 as part of agricultural diversification scheme. Unit D – car/van bodyshop and spraying. Unit E – general storage.	Approved	December 2009

MAIN REPORT

1.0 DESCRIPTION OF SITE

- 1.01 Wallend Farm lies to the east of Cowstead Corner roundabout and is visible when coming onto the Island from the A249, Sheppey Way and Lower Road. Members will have no doubt seen the large fire-damaged building within the landscape. There are two accesses to the farm, one from Lower Road and one from Sheppey Way. Currently, the Lower Road access is used most frequently. The farm forms part of the 1242 hectares that the applicant farms for grain on the Isle-of-Sheppey.
- 1.02 As well as the fire-damaged building (known as the western building), there are a number of other smaller former agricultural buildings within the farm complex currently used as an MOT testing centre, general storage and B2 uses. Wallend Farmhouse, a residential property, lies to the south of the main farm complex and the buildings the subject of this application. The resident of this property is not connected to the farm operations but does own the land opposite that is used as a storage yard and office for his double glazing business.
- 1.03 The concrete base for the eastern approved building is currently under construction and the 4m high earth bunds that were also approved under SW/12/0165 and SW/13/0394 appear to have been largely completed (although not landscaped).
- 1.04 A Special Landscape Area lies to the east of the site with the eastern building and eastern bund lying within it. The site also lies 400m to the north of the SPA and RAMSAR site and is outside of the SSSI impact zone.

2.0 PROPOSAL

- 2.01 This application seeks to vary condition 12 of planning permission SW/13/0394 which currently states:

“The buildings hereby approved shall only be used for purposes ancillary to the agricultural activities taking place at Wall End Farm and for no other purpose.

Reason: To retain control over the use of the buildings in the interests of amenity and highway safety.

- 2.02 The varied condition would allow the use of the buildings to store grains, oilseeds and pulses grown on farms in the South East region, not just on Wallend Farm. The condition would be worded such that a minimum of 570m² (or 18% of the floor area) would have to be reserved for agricultural purposes associated with the applicant's agricultural enterprise in each building. The varied condition would read:

“The buildings hereby approved shall be used for purposes ancillary to the agricultural activities taking place at SW Attwood and Partners holdings on the Isle of Sheppey, with an area of no less than 570m² reserved for this specific use within each building, and for the storage of raw grains, oil seeds and pulses grown on farms in the South East region.

Reason: To retain control over the use of the buildings in the interests of amenity and highway safety.”

- 2.03 The applicant's agent sets out a case for the change to the condition noting that the need for the storage of straw has reduced at the farm because the price of straw has

reduced. However, the applicant has acquired a further 200 acres (or 81 hectares) of land to the west of the Island and the approved buildings at Wallend Farm would still be required to store straw and wheat grown on this land as well as New Hook Farm and other Attwood farms on the Isle of Sheppey. The approved buildings would also be used for the storage of farm machinery and fertilizer associated with Wallend Farm. As such, they seek to demonstrate that the buildings at Wallend Farm are still required for the successful operation of the applicant’s farming enterprise. However, in addition to meeting the applicant’s agricultural needs, they are looking to diversify in respect of allowing a separate company – Glencore (the world’s largest commodity trader) to use the two storage buildings at Wallend Farm as part of their supply chain. Glencore are intending to start up a new venture exporting circa 150,000 tonnes of grains per annum from Sheerness Docks. These grains would then be exported to EU countries with potential future markets in North Africa and the Middle East. Details of the operational activities associated with Glencore’s use of Wallend Farm are provided in the discussion section below.

- 2.04 The design of the buildings would need to be adapted to meet the requirements for grain storage and this is the reason for the request to vary condition 14 of SW/13/0394. This condition lists the approved drawing numbers of this planning permission. The applicant can make minor material changes to the design of a scheme by varying the drawing numbers so that the new design is shown on the varied drawing numbers. The changes to the design of the buildings include an increase in the ridge height by 1.5m to 14.5m above ground level as a consequence of a slightly steeper pitch to the roof. In addition, the buildings would be provided with grain elevators resulting in a relatively small box projection above the ridge and a central projection to the front of the buildings. There would also be some minor alterations to elevations in respect of the position of the roller shutter doors and vents and there would be a small ancillary office would be provided to the eastern building.
- 2.05 Members will note that there is another planning application on this agenda (16/507030/FULL) that overlaps this application in respect of the rebuilding of the western building. Due to a technicality insofar as construction of the western building had already commenced and also the fact that the access onto Sheppey Way was not included in the original planning applications, two separate applications were necessary rather than one submission.
- 2.06 The intention is to use the Sheppey Way access in connection with the Glencore activities because most of the Glencore traffic will then have direct access onto the A249. Also, the use of the access onto Sheppey Way will ensure that traffic onto Lower Road is minimised. The access onto Sheppey Way will require some works to widen it in places and also to provide two passing bay. It would also be re-routed where it runs close to Wallend Farmhouse to minimise the impact on this residential property.
- 2.07 As part of the linked application (16/507030/FULL), there would be an additional bund provided between the access track and Wallend Farmhouse as well as an extension to the larger bund surrounding the western building.

3.0 SUMMARY INFORMATION

	Approved	Proposed	Change (+/-)
Approximate Ridge Height (m)	13m	14.5m	+ 1.5m
Approximate Eaves Height (m)	8.3m	8m	+ 300mm

Approximate Depth (m)	61m	61m	0
Approximate Width (m)	50.8m	50.8m	0
Net Floor Area (of each building)	3,099m ²	3,108m ²	+ 9m ²
Storage capacity for the buildings combined:		16,000 tonnes of grain	

4.0 PLANNING CONSTRAINTS

The site is located partly in Environment Agency Flood Zone 2 and partly in Flood Zone 3.

Special Landscape Area (covering the eastern building and eastern bund).

5.0 POLICY AND OTHER CONSIDERATIONS

The National Planning Policy Framework (NPPF) paragraphs: 7 (sustainable development); 14 (presumption in favour of sustainable development); 17 (core planning principles); 28 (supporting a prosperous rural economy); 32 (Transport Assessments) 56 (good design); 109 (conserving and enhancing the natural environment); 123 (noise); 186-187 (decision taking); 203 & 206 (conditions).

National Planning Practice Guidance (NPPG) – Design; Determining a planning application; Natural Environment; Noise; Travel Plans, Transport Assessments and Statements and; Use of Planning Conditions.

Swale Borough Local Plan 2008 – E1 (general development criteria); E6 (countryside); E9 (protecting the quality and character of the borough’s landscape); E9 (high quality design); RC1 (helping to revitalise the rural economy); T1 (safe access to new development).

Bearing Fruits 2031: The Swale Borough Local Plan June 2016 – DM3 (rural economy); DM6 (managing transport demand and impact); DM14 (general development criteria); DM24 (conserving an enhancing valued landscapes);

Supplementary Planning Documents: Swale Landscape Character and Biodiversity Appraisal 2011. The application site lies within the Elmley Marshes Character Area with a Marshland landscape type. Its condition is ‘good’ and sensitivity to change is high. The guidelines for this landscape type are to conserve.

6.0 LOCAL REPRESENTATIONS

No representations have been received from local residents.

7.0 CONSULTATIONS

7.01 Minster-on-Sea Parish Council notes that they would only support the application if there is a condition applied which requires traffic associated with the proposal to be routed through Sheppey Way, avoiding the use of Lower Road. If this condition cannot be applied, then they object.

7.02 The Rural Planning Consultant notes that the original planning permission was granted on the basis that the buildings were required to store straw for later sale at higher prices. The two buildings together would hold 16,000 tonnes of grain. The applicant’s home-grown grain would require no more than 10,000 tonnes for storage capacity (which would be reduced further if the proposal for the anaerobic digester

plant is approved at New Hook Farm 16/507943/FULL) and this could be provided on the applicant's other farms such as New Hook Farm. The Glencore operation would potentially occupy most of the buildings and he expresses concern that the buildings would be mostly used for storage of produce not grown on the applicant's own farms and that therefore, the majority of the building would be taken out of an agricultural use. He notes that the use of the site for this purpose involves planning considerations outside of his remit but he does question whether there would be pressure for further agricultural buildings on the applicant's farms as a consequence of allowing the condition to be varied.

- 7.03 The Environmental Services Manager has no comment on the application.
- 7.04 Kent Highways and Transportation have no objection noting that the site is in the immediate proximity of the strategic highway network and is well situated to handle the additional HGV movements between the site and Sheerness. It is acknowledged that the proposal would reduce traffic to the south of the Sheppey crossing as a consequence of allowing deliveries to be transported gradually to the Island over the course of the year rather than concentrated at times when a ship is ready to load at Sheerness.
- 7.05 KCC Flood Risk and Drainage do not consider that there are any surface water or local flood risk management implications arising from the proposal.
- 7.06 The Environment Agency have no comment on the application.
- 7.07 The comments of Highways England are awaited and I will update Members at the meeting.

8.0 BACKGROUND PAPERS AND PLANS

- 8.01 This application is accompanied by the following documents: Planning, Design and Access Statement; Flood Risk Assessment; elevations and floor plans.

9.0 APPRAISAL

Principle of Development

- 9.01 Officers have given very careful consideration to the proposed use of the buildings, particularly given the comments of the Rural Planning Consultant. He considers that the use of the buildings to store grains for export by Glencore would not be an agricultural use. This is primarily because the grains are grown from farms outside of the applicant's control. Effectively, his view is that the buildings would become warehouses falling within use class B8. In response, the applicant's agent argues that the buildings are not being taken out of agriculture, nor out of agriculture for this holding. He also notes that it is important for the buildings to retain a storage function for Wallend Farm and other Attwood farms because they require the flexibility to respond to market conditions. For this reason, the applicant is very happy to accept a condition to ensure that at least approximately ¼ of the buildings storage capacity is retained for use associated with the agriculture operation of his farms in the Isle of Sheppey. Members will note paragraph 2.02 above.
- 9.02 Policy DM3 of the emerging Local Plan states:
"Planning permission will be granted for the sustainable growth and expansion of business and enterprise in the rural area...Development proposals for rural based employment will:

...For the agricultural/forestry sectors:

- a) *enable the diversification of a farm; or*
- b) *extend the growing season or improve the reliability and availability of local crops;*
or
- c) **provide for the storage, distribution or added value activities in central hubs located close to crop sources and the primary and secondary road networks;** *or*
- d) *increase the availability of locally grown food sold direct to the consumer; or*
- e) *increase the sustainable management of woodlands; or*
- f) *increase the use of renewable energy sources in accordance with Policy DM20.”*

9.03 The supporting text to this policy states:

*“For the agriculture sector, the industry has highlighted the need for it to keep pace with the changing context brought about by climate change, food security, food miles, the decline in pollinators, global markets, major food retailers and changing legislation/guidance. **These may bring about demands for facilities such as large scale crop storage facilities** and new growing technologies.”*

9.04 Paragraph 28 of the NPPF also promotes the development and diversification of agriculture and other land-based rural businesses. I therefore consider that there is strong policy support for farm diversification such as that proposed at Wallend Farm. I acknowledge that this proposal takes on many of the traits of a general B8 storage use. However, in respect of the Glencore use, the varied condition would only allow grains, oilseed or pulses to be stored within the buildings – all agricultural produce. Also, the retention of approximately ¼ of the buildings storage capacity for agricultural use associated with the applicant’s farms will ensure that the buildings retain an agricultural use in my view. The concern of the rural consultant in respect of future pressure for more agricultural buildings upon Atwood’s farms as a consequence of the proposal is noted. However, any proposal for comparable buildings of a similar scale would require planning permission and we would consider any such proposal on its merits at the time.

9.05 I have given some thought to the location of the Glencore proposal from a strategic point of view insofar as we might want to steer such a use to one of the regeneration areas on the Island, perhaps at Neats Court or Queenborough, or indeed, Sheerness Docks. However, the Council’s Economic Development team are of the opinion that there are unlikely to be any readily available sites that could offer the same level of control over the storage of grain on such a large scale. The proposal would be of great benefit to the local economy, helping to support the continued use of Sheerness Port and I give this significant weight. I am of the view therefore that the development would be acceptable in principle, and in accordance with Policy E6 of the Local Plan, which restricts development in rural locations.

Visual and Landscape Impact

9.06 This proposal would see minor changes to the approved buildings in the form of a slightly higher ridge, a relatively small box projection above the ridge, a front projection to house the grain elevator and very minor alterations to the elevations. The impact on visual amenities and the character and appearance of the landscape was given careful consideration under the original application – SW/12/0165. It must be acknowledged that part of this site lies within a Special Landscape Area and that this landscape is identified as being sensitive to change within Swale Landscape Character and Biodiversity Appraisal 2011. However, the original application includes the creation of 4m high earth bunds which will be planted with trees including Oak, Ash, Sycamore and Field Maple and other vegetation. These bunds wrap around the

buildings so that in the medium to long-term, the buildings would be heavily screened from view. It is acknowledged that the western fire-damaged building is very conspicuous within the landscape at present. However, once the bunds have been planted and given time to mature, the impact on the landscape would be reduced. I consider that the proposed change to the height of the eastern building would be imperceptible from long and medium-range views given the large size of the buildings as originally approved. The other changes to the appearance of the buildings would be largely screened by the earth mounds and tree planting. I therefore consider that the minor changes to the design and height of the building would be acceptable.

Highways

- 9.07 The proposal would change the pattern of activity at the site from the use envisaged under the original application. This is because it is anticipated that the majority of the buildings would be used to store the grains, oilseed and pulses associated with the Glencore operation. Such an operation would require the buildings to be gradually filled, most likely outside of peak congestion time, over the course of a few months. The Transport Statement (TS) concludes that there would be 6 HGV movements per day (3 in/3out) for importing the grain to the site. During times of emptying/export, the frequency of HGVs visiting the site would significantly increase. This is in response to the need to fill a ship that docks at Sheerness over a 36 hour period. This would result in 14-15 HGVs visiting Wallend Farm (30 movements) per hour (1072 HGV movements over 36 hrs). The TS notes that it would be feasible for the buildings at Wallend Farm to be able to fill a ship 3-4 times per year [this is based on a worst case scenario and, as noted elsewhere in the report, this is likely to happen 2 to 3 times a year].
- 9.08 The TS is clear that the main impact on the highway network would be on the roads between Wallend Farm and Sheerness Port and assesses the capacity of the junctions along this route. Sheppey Way links directly to the A249, therefore avoiding congestion at Lower Road. HGVs associated with the Glencore export operation would use an existing access from the farm onto Sheppey Way during the hours of 0700 and 2300 with the use of the Lower Road access only permitted between 2300 and 0700 (this is to avoid passing close to Wallend Farmhouse as explained below). The use of the Lower Road access at night would avoid peak times, thereby not leading to an increase in congestion on this road. The TS considers that the Lower Road access already offers adequate visibility also.
- 9.09 The existing access onto Sheppey Way is already very wide and the TA considers that there are no safety concerns and that visibility would be adequate. As such, it is not necessary to make any improvements to the access where it meets Sheppey Way. The access track leading to Wallend Farm does need widening at two points to enhance existing passing places, one close to the junction with Sheppey Way and one about halfway along the track. The TA considers that this will be sufficient to cater for peak usage.
- 9.10 Kent Highways and Transportation accept the findings of the TS and do not consider that the impact on the highway network would be harmful. They also note the potential reduction in traffic impact to the south of the Sheppey Crossing as a consequence of Wallend Farm being used to store the grain. The alternative being that the grain is transported from another less well located storage facility or direct from the farms over the critical 36 hour period. Kent Highways and Transportation accept the access arrangements as proposed. I therefore consider that the impact of this proposal on the highway network would be acceptable causing no material harm to highway safety or amenity. I do not therefore consider that the request by the Parish

Council to prohibit all traffic from using the Lower Road access is necessary. Although Members will note that the use of this access would only be allowed at times of low impact - 2300 and 0700 hours.

- 9.11 I have recommended a condition to require the submission of details for vehicle parking and turning within the site. Whilst I acknowledge that the parking and turning arrangements were agreed under the terms of the original application, the use of the buildings by Glencore and the use of the access track onto Sheppey Way will be likely to require new parking and turning arrangements within the site.

Residential Amenity

- 9.12 Given the pattern of vehicle movements set out above, the proposal has the potential to create noise and disturbance to the residents at Wallend Farmhouse. This is particularly in respect of the high intensity exporting operation which would happen over a 36 hour period 2-3 times a year. The noise and general disturbance from HGV headlights, smells and reverse warning alarms could have a significant impact on the residential amenities of Wallend Farmhouse. The application has been amended to address these issues. Firstly, the access track heading towards Sheppey Way has been realigned so that it is further away from the farmhouse. It would now be 60m from this residential property. In addition, the small bund that currently separates the house from the track would be enlarged to create a more substantial buffer, 3m in height. Originally, the application would have seen all of the HGVs associated with the Glencore operation routed via the track onto Sheppey Way. However, the application has been amended so that at night, between the hours of 2300 and 0700, all traffic associated with Glencore would only be permitted to use the Lower Road Access. This would mean that HGVs do not pass the farmhouse in order to load and unload, thereby reducing the impact on the resident further. I have also recommended a condition to prevent the use of reverse warning alarms on vehicles during the night time hours of 2300 and 0700 to coincide with the access restrictions. The applicant's agent confirms that a banksman can be used instead of the alarms. I consider that these measures will ensure that the residents of Wallend Farmhouse would not be significantly harmed by the noise and activity associated with the proposed development. I also give some weight to the fact that the periods of most significant noise and disturbance would be limited to 2-3 times a year and it must be acknowledged that there are no current restrictions on the use of the access track leading to Sheppey Way in association with the farm activities.

Other Matters

- 9.13 I have re-applied conditions in respect of surface water drainage, landscaping, ecology, lighting, wheel-washing and hours of construction.

10.0 CONCLUSION

- 10.01 Having considered the proposal against local and national planning policies and the comments of the Parish Council and consultees, I am of the view that the proposal would be acceptable in principle. It would be of great benefit to the local economy, both rural and urban in respect of Sheerness Port. The proposal to make minor changes to the appearance of the buildings would have a very limited impact on the visual amenities of the area and the landscape character and appearance over and above the impact assessed under the original approval. In time, the planting to the earth bunds will help to screen the buildings. The impact on the local highway network has been assessed and, providing that the Sheppey Way access is used during the daytime, with the Lower Road access only used at night, there would be no

increase in congestion at the identified junctions as a consequence of the proposal. The design of the accesses onto Sheppey Way and Lower Road do not need to be altered and the changes to the access track would ensure that HGVs can safely pass each other. The proposal has been amended to address concerns about the impact of the proposal, specifically the impact from HGVs at peak times of export from the site, on the residents of Wallend Farmhouse. I am satisfied that there would be no material harm to these residents as a consequence of the proposal, subject to compliance with the conditions set out below.

10.02 I therefore ask that Members approve this proposal subject to the conditions set out below.

11.0 **RECOMMENDATION** – GRANT Subject to no objection being raised by Highways England and to the following conditions:

1. The external treatments of the buildings hereby approved shall be carried out in accordance with the details shown on the approved plans.

Reason: In the interests of visual amenity and landscape character and appearance.

2. Prior to the first use of the buildings hereby approved, a plan showing the arrangements for vehicle parking and turning within the site (both red and blue land) shall be submitted to the Local Planning Authority for approval in writing. The approved parking and turning arrangement shall be implemented prior to the first use of the buildings hereby approved and shall be retained for such use in perpetuity.

Reason: In the interests of highway amenity.

3. The landscape mounds hereby permitted shall be constructed and completed within 1 year of the date when the general purpose agricultural buildings are completed.

Reason: To minimise the impact of the development on the landscape.

4. Before first occupation/use of the development hereby approved, details of:
 a) Proposed tree screening along the north east boundary of Wallend Farm as shown on drawing no: 11.98.06 rev B;
 b) Hedgerows to replace those removed to enable sight line improvements to the site access onto Lower Road and;
 c) Details of a tussocky grass mix for the screening bunds

Shall be submitted to and approved by the Local Planning Authority. The approved schemes pursuant to (a) and (b) above shall be carried out within 12 months of the completion of the buildings hereby approved. Scheme (c) shall be carried out within 12 months of the completion of the landscaping mounds hereby approved. Any trees or shrubs or grasses removed, dying, being severely damaged or becoming seriously diseased within five years of planting shall be replaced with trees, shrubs or grasses 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.

5. The details of surface water drainage submitted and approved under 14/503227/SUB must be implemented and fully operational before water from the development discharged into it.

Reason: To minimise flood risk and in the interests of water quality.

6. The details of wheelwashing facilities submitted and approved under 14/503227/SUB must be implemented for the entire period of construction of the development hereby approved.

Reason: In the interests of highway safety and amenity.

7. The habitat enhancements set out in paragraph 4.9 of the ecological scoping survey relating to the provision of bird/bat boxes and planting a grassland mix for the proposed bunds shall be carried out within 12 months of completion of the approved development.

Reason: In the interests of biodiversity.

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

- A statement of why lighting is required, the proposed frequency of the use and the hours of illumination.
- A site plan showing the area to be lit relative to the surrounding area, indicating parking or access arrangements where appropriate, and highlighting any significant existing or proposed landscape or boundary features.
- Details of the number, location and height of the lighting columns or other fixtures.
- The type, number, mounting height and alignment of the luminaries.
- The beam angles and upwards waste light ratio for each light.
- An isolux diagram showing the predicted illuminance levels at critical locations on the boundary of the site and where the site abuts residential properties.

Reason: In the interests of visual amenity.

9. The scheme of tree planting and landscaping shown on the submitted plans drawing no: 11.98.06 rev. B shall be carried out within 12 months of the completion of the landscaping mounds hereby approved. Any trees or shrubs or grasses removed, dying, being severely damaged or becoming seriously diseased within five years of planting shall be replaced with trees, shrubs or grasses 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.

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. The buildings hereby approved shall be used for purposes ancillary to the agricultural activities taking place at SW Attwood and Partners holdings on the Isle of Sheppey, with an area of no less than 570m² reserved for this specific use within each building.

And the remainder of each building shall be used for the storage of raw grains, oil seeds and pulses grown on farms in the South East region.

Reason: To retain control over the use of the buildings in the interests of amenity and highway safety.

12. The delivery and dispatch of grains, oil seeds and pulses at the permitted buildings (grown off the SW Attwood & Partners holdings) via the access track to Sheppey Way (within the blue land) shall not take place between 2300 hours and 0700 hours. Between these times deliveries or dispatches shall take place via the access track to Lower Road. At all other times, deliveries or dispatches to the permitted buildings of grains, oil seeds and pulses (grown off the SW Attwood & Partners holdings) shall not take place other than via the access track to Sheppey Way.

Reason: In the interests of highway safety and the residential amenities of Wallend Farmhouse.

13. The use of reverse alarms to vehicles associated with the delivery or dispatch of grains, oil seeds and pulses (grown off the SW Attwood & Partners holdings) to the buildings hereby approved shall be strictly prohibited between the hours of 2300 hours and 0700 hours.

Reason: In the interests of the residential amenities of Wallend Farmhouse.

14. The development hereby approved shall be carried out in accordance the following approved drawings: WM/44/BS/04; WM/44/BS/05; WM/44/BS/06

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

Informative:

1. The applicant is advised to consider the contents of the letter from Kent Highways and Transportation dated 31st October 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 applicant/agent was advised of minor changes required to the application and these were agreed.

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

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2.8 REFERENCE NO - 16/507030/FULL			
APPLICATION PROPOSAL Replacement of fire damaged western building with alterations to its external appearance to include an increase in ridge height to 14.5m. Extension of existing bund to the south with landscaping to screen views into the yard; additional bund with landscaping to west of Wallend Farmhouse. Minor widening and realignment of access track to Sheppey Way.			
ADDRESS Wallend Farm Lower Road Minster-on-sea Kent			
RECOMMENDATION Grant, subject to no objection being raised by Highways England.			
SUMMARY OF REASONS FOR RECOMMENDATION The change to the design of the building has been assessed as having an immaterial impact on visual amenities and the character and appearance of the landscape, subject to the provision of appropriate landscaping and bunds offering some screening. The alterations to the access track would be minor and would have an insignificant impact on visual amenities and landscape character and appearance in my view. The extension to the bunds and provision of the new bund will offer mitigation to the development and would be the subject of a tree and shrub planting.			
REASON FOR REFERRAL TO COMMITTEE Parish Council objection			
WARD Sheppey Central	PARISH/TOWN COUNCIL Minster-On-Sea	APPLICANT S W Attwood And Partners AGENT Paul Sharpe Associates LLP	
DECISION DUE DATE 04/01/17	PUBLICITY EXPIRY DATE 20/01/17		
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
16/506716	Variation of condition 12 and 14 attached to SW/13/0394 to facilitate the use of two barns for general agricultural purposes and for the storage of grains grown on and off the holding and to amend the list of approved drawings respectively; amendment to external appearance of eastern barn including an increase in ridge height to 14.5m	Current	Also on this agenda.
14/501044/FULL	Variation of condition 3 of application SW/09/1038 to allow the inclusion of servicing vehicles and an MOT station (unit 4)	Approval	October 2014
SW/13/0394	Variation of condition 2 to allow the landscape mounds to be constructed within 2 years of the first use of the agricultural buildings approved under SW/12/0165	Approval	July 2013
SW/12/0165	2 no: general purpose agricultural buildings and erection of landscaping mounds	Approved	April 2012
SW/10/0470	Replacement building for fire damaged dutch barn and for B2/B8 use together with a work at home office unit replacing an existing pole barn at same location.	Approved	June 2010
SW/09/1038	Retrospective change of use of former redundant agricultural buildings to B2/B8 as part of agricultural diversification scheme. Unit D – car/van bodyshop and spraying. Unit E – general storage.	Approved	December 2009

MAIN REPORT

1.0 DESCRIPTION OF SITE

- 1.01 Wallend Farm lies to the east of Cowstead Corner roundabout and is visible when coming onto the Island from the A249, Sheppey Way and Lower Road. Members will have no doubt seen the large fire-damaged building within the landscape. There are two accesses to the farm, one from Lower Road and one from Sheppey Way. Currently, the Lower Road access is used most frequently.
- 1.02 As well as the fire-damaged building (known as the western building), there are a number of other smaller former agricultural buildings within the farm complex currently used as an MOT testing centre, general storage and B2 uses. Wallend Farmhouse, a residential property, lies to the south of the main farm complex and the buildings the subject of this application. The resident of this property is not connected to the farm operations but does own the land opposite that is used as a storage yard and office for his double glazing business.
- 1.03 The concrete base for the eastern approved building is currently under construction and the 4m high earth bunds that were also approved under SW/12/0165 and SW/13/0394 appear to have been largely completed (although not landscaped).
- 1.04 A Special Landscape Area lies to the east of the site with the eastern building and eastern bund lying within it. The site also lies 400m to the north of the SPA and RAMSAR site and is outside of the SSSI impact zone.

2.0 PROPOSAL

- 2.01 The proposal is for the re-building of the fire-damaged 'western' building which sits within a cluster of buildings at Wallend Farm. Planning permission is required for this because the replacement building would be of a materially different design to that which was approved under the original application – SW/12/0165. The changes to the design include an increase in the ridge height by 1.5m to 14.5m above ground level as a consequence of a slightly steeper pitch to the roof. In addition, the building would be provided with grain elevators resulting in a small box projection above the ridge and a central projection to the front of the buildings. There would also be some minor alterations to elevations in respect of the position of the roller shutter doors and vents and there would be a small ancillary office would be provided to the eastern building.
- 2.02 The proposal is also to widen, in two places, an existing access track from the farm which leads out onto Sheppey Way. The widening is required to provide two passing places. The track would also be re-routed where it runs close to Wallend Farmhouse to minimise the impact on this resident. This access would be mainly used in connection with the use of the buildings by Glencore (the world's largest commodity trader) as part of their supply chain. Members will note that there is another planning application on this agenda (16/50716/FULL) that overlaps this application in respect of the variation of the condition which restricts the use of the western and eastern buildings the subject of the original planning application (SW/12/0165) and also the minor changes to the design of the building.
- 2.03 As part of this application there would be an additional 3m high bund provided between the access track and Wallend Farmhouse as well as an extension to the larger bund surrounding the western building. This extension would add 50m in length to the bund at its southwest end and would be the same height as the existing bund at 4m.

3.0 SUMMARY INFORMATION

	Approved	Proposed	Change (+/-)
Approximate Ridge Height (m)	13m	14.5m	+ 1.5m
Approximate Eaves Height (m)	8.3m	8m	+ 300mm
Approximate Depth (m)	61m	61m	0
Approximate Width (m)	50.8m	50.8m	0
Net Floor Area	3,099m ²	3,172.5m ²	+ 73.5m ²

4.0 PLANNING CONSTRAINTS

The site is located partly in Environment Agency Flood Zone 2 and partly in Flood Zone 3.

Special Landscape Area (covering the eastern building and eastern bund).

5.0 POLICY AND OTHER CONSIDERATIONS

The National Planning Policy Framework (NPPF) paragraphs: 7 (sustainable development); 14 (presumption in favour of sustainable development); 17 (core planning principles); 28 (supporting a prosperous rural economy); 32 (Transport Assessments) 56 (good design); 109 (conserving and enhancing the natural environment); 123 (noise); 186-187 (decision taking); 203 & 206 (conditions).

National Planning Practice Guidance (NPPG) – Design; Determining a planning application; Natural Environment; Noise; Travel Plans, Transport Assessments and Statements and; Use of Planning Conditions.

Swale Borough Local Plan 2008 – E1 (general development criteria); E6 (countryside); E9 (protecting the quality and character of the borough's landscape); E9 (high quality design); RC1 (helping to revitalise the rural economy); T1 (safe access to new development).

Bearing Fruits 2031: The Swale Borough Local Plan June 2016 – DM3 (rural economy); DM6 (managing transport demand and impact); DM14 (general development criteria); DM24 (conserving an enhancing valued landscapes);

Supplementary Planning Documents: Swale Landscape Character and Biodiversity Appraisal 2011. The application site lies within the Elmley Marshes Character Area with a Marshland landscape type. Its condition is 'good' and sensitivity to change is high. The guidelines for this landscape type are to conserve.

6.0 LOCAL REPRESENTATIONS

6.01 No representations have been received from local residents.

7.0 CONSULTATIONS

7.01 Minster-on-Sea Parish Council comment that their support is subject to improvements being made to the design of the entrance to Sheppey Way to accommodate passing vehicles to avoid congestion at this point. This should include reconfiguration of the access road by virtue of bunding to protect the quality of life of the occupant of Wall

End Farm. They also ask for a condition to prohibit all use of the access road onto Lower Road for the purpose of the Glencore activities. Without these safeguards, an objection applies.

- 7.02 KCC Archaeology comment that no archaeological measures are required for the site.
- 7.03 Kent Highways and Transportation have no objection noting that the site is in the immediate proximity of the strategic highway network and is well situated to handle the additional HGV movements between the site and Sheerness.
- 7.04 Natural England have no objection to the proposal noting that the proposal is not likely to have a significant effect on the interest features for which the Swale SPA and Ramsar sites and the Medway Estuary and Marshes SPA and Ramsar have been classified. An Appropriate Assessment is not required.
- 7.05 Kent Flood Risk and Drainage consider the scheme to be acceptable providing that the detailed drainage design is as per the approved details under 14/503227/SUB.
- 7.06 The Environment Agency were consulted, but no response has been received.
- 7.07 The comments of Highways England are awaited, and I will update Members at the meeting.

8.0 BACKGROUND PAPERS AND PLANS

Existing and proposed plans and elevations; Transport Statement (with addendum); Planning, Design and Access Statement and; Flood Risk Assessment.

9.0 APPRAISAL

Principle of Development

- 9.01 The proposal is for a replacement building that would be slightly taller than the original building and with other minor alteration as detailed above and at paragraph 9.02 below. The principle of the siting of a building in this position and its general scale has already been accepted under the original application SW/12/0165 (approved in April 2012 and with the benefit of input from the Agricultural Consultant, who raised no objection) and I see no reason why this should change. The existing bund surrounding the proposed building would need to be extended to the southwest by 50m to account for a gap that is required to continue using the track that leads onto Sheppey Way. This was not necessary for the original permission because all traffic would have used the Lower Road access. There would also be a new bund provided to the west of Wallend Farmhouse. The bunds are necessary to lessen the impact of the proposed building and the increased use of the access track and in this case, I consider that they would be acceptable in principle. The proposal also includes alterations to an existing access track onto Sheppey Way. This track has historically been used in association with the farm, although it is acknowledged that the majority of vehicles visiting the farm use the Lower Road access. The use of the track does not therefore require planning permission in its own right. It is simply the alterations to it, which are minor, that require the permission. I therefore see no objection in principle to this element of the proposal.

Visual and Landscape Impact

- 9.02 This proposal would see minor changes to the approved building in the form of a slightly higher ridge, a small box projection above the ridge, a front projection to house the grain elevator and very minor alterations to the elevations. The impact on visual amenities and the character and appearance of the landscape was given careful consideration under the original application – SW/12/0165. It is only the eastern building that lies within a Special Landscape Area, not the building the subject of this planning application. However, the Swale Landscape Character and Biodiversity Appraisal 2011 identifies that the landscape within which the proposed building sits is identified as being sensitive to change. However, the original application includes the creation of 4m high earth bunds which will be planted with trees including Oak, Ash, Sycamore and Field Maple and other vegetation. These bunds wrap around the buildings so that in the medium to long-term, the buildings would be heavily screened from view. The extension of the bund and the smaller new bund would have some impact on the character and appearance of the landscape, even though they are required as mitigation measures, because they introduce unnatural features within this flat landscape. However, I am of the view that set within the context of the existing bunds and large buildings already on this site, the proposed extension to the bund and new bund would have an insignificant visual and landscape impact. I am of the view that the visual impact of the bunds will be reduced with the implementation of a good landscaping scheme and I have suggested a suitably worded condition to ensure that this provided.
- 9.03 It is acknowledged that the current fire-damaged building is very conspicuous within the landscape at present. However, once the bunds have been planted and given time to mature, the impact on the landscape would be reduced. I consider that the proposed change to the height of the building would be imperceptible from long and medium-range views given the large size of the buildings as originally approved. The other changes to the appearance of the buildings would be largely screened by the earth mounds and tree planting. I therefore consider that the changes to the design and height of the building would be acceptable.
- 9.04 The access track would be realigned for a length of 130m so that there is an increased separation between the track and Wallend Farmhouse. The realignment is therefore along the part of the track close to the existing buildings, thereby limiting the impact on the open countryside as far as possible. The remaining 160m length of track would continue along the same alignment as existing and the junction onto Sheppey Way would remain the same. Two passing places would be provided at 20m and 105m from the Sheppey Way access. The track would be widened by 2.5m and 1.7m at these points respectively. They would be surfaced with type 1, as per the existing surface of the track. These changes would have little impact on the wider landscape in my view and no undue harm to visual amenities.

Residential Amenity

- 9.05 I have explained above that the use of the access track does not require planning permission and I have assessed the impact of the proposed use of the buildings, with resulting increase in HGV movements, under the linked application for the variation of conditions – 16/506716/FULL. This application on its own does not lead to any harm to residential amenities in my view.

Highways

- 9.06 The proposal considered under the other application – 16/506716/FULL would change the pattern of activity at the site from the use envisaged under the original application – SW/12/0165. The highway discussion for the linked application (16/506716/FULL) is set out in detail in the corresponding report. The proposed alterations to the access track are required as a consequence of the anticipated increased use of it. The existing access onto Sheppey Way is already very wide and the Transport Assessment (TA) considers that there are no safety concerns and that visibility would be adequate. As such, it is not necessary to make any improvements to the access where it meets Sheppey Way, despite the comments from the Parish Council. The TA considers that the proposed passing places will be sufficient to cater for peak usage.
- 9.07 Kent Highways and Transportation accept the findings of the TA and do not consider that the impact on the highway network would be harmful. Kent Highways and Transportation have no objection to the access improvements and changes and note that there are not changes required to the junction with Sheppey Way.
- 9.08 As noted above, the comments of Highways England in respect of possible impacts on traffic flow on the trunk road network (notably the A249) are awaited, and I will update Members at the meeting.

Other Matters

- 9.09 I have considered the imposition of a condition that would only allow this permission to be implemented if the variation of the condition application (16/506716/FULL) is implemented. However, I am not convinced that this is necessary as there would have to be harm arising from this application that would otherwise not be accepted unless associated with the Glencore use. I have not identified such harm and moreover, consider that the use of the track onto Sheppey Way as an alternative to the Lower Road access would be advantageous in respect of allowing direct access onto the strategic highway network and taking traffic off Lower Road.
- 9.10 I have suggested conditions which relate to the current proposal but also cover the proposed new use as set out in the other application.

10.0 CONCLUSION

- 10.01 Having considered the comments of the Parish Council and consultees as well as the relevant planning policies, I am of the view that the development would be acceptable in principle. This is because the building was approved under the 2012 application and the current proposal would simply alter its height and appearance in a minor way. In addition, the use of the access track does not require planning permission, it is simply the realignment and the passing places that require planning permission. The alterations to the building, changes to the access track, extension to the bund and provision of a new bund would have an insignificant impact on visual amenities and landscape character and appearance in my view. The alterations to the access track have been assessed by Kent Highways and Transportation as being acceptable and I therefore consider that the proposal would not cause any harm to highways safety or amenity. This proposal on its own would not cause any harm to the residential amenities of the residents of Wallend Farmhouse, although the impact of the linked application - 16/506716/FULL has given this due consideration.

11.0 RECOMMENDATION – GRANT Subject to no objection being raised by Highways England and 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: WM/444/BS/251; WM/444/BS/100; WM/444/BS/30; WM/44/BS/03; WM/44/BS/01; H-01 rev P1 and; WM/44/BS/02.

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

3. The landscape mounds hereby permitted shall be constructed and completed within one year of the date when the general purpose agricultural buildings are completed.

Reason: To minimise the impact of the development on the landscape.

4. The scheme of tree planting and landscaping shown on the submitted plan – WM/444/BS/100 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.

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

5. The details of surface water drainage submitted and approved under 14/503227/SUB must be implemented and fully operational before water from the development discharged into it.

Reason: To minimise flood risk and in the interests of water quality.

6. The details of wheelwashing facilities submitted and approved under 14/503227/SUB must be implemented for the entire period of construction of the development hereby approved.

Reason: In the interests of highway safety and amenity.

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

- A statement of why lighting is required, the proposed frequency of the use and the hours of illumination.
- A site plan showing the area to be lit relative to the surrounding area, indicating parking or access arrangements where appropriate, and highlighting any significant existing or proposed landscape or boundary features.
- Details of the number, location and height of the lighting columns or other fixtures.
- The type, number, mounting height and alignment of the luminaries.
- The beam angles and upwards waste light ratio for each light.

- An isolux diagram showing the predicted illuminance levels at critical locations on the boundary of the site and where the site abuts residential properties.

Reason: In the interests of visual amenity.

8. No construction work in connection with the development shall take place on any Sunday or Bank Holiday, nor on any other day except between the following times:- Monday to Friday 0730 – 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

9. The buildings hereby approved shall be used for purposes ancillary to the agricultural activities taking place at SW Attwood and Partners holdings on the Isle of Sheppey, with an area of no less than 570m² reserved for this specific use within each building, and for the storage of raw grains, oil seeds and pulses grown on farms in the South East region.

Reason: To retain control over the use of the buildings in the interests of amenity and highway safety.

10. The delivery and dispatch of grains, oil seeds and pulses at the permitted buildings (grown off the SW Attwood & Partners holdings) via the access track to Sheppey Way (within the blue land) shall not take place between 2300 hours and 0700 hours. Between these times deliveries or dispatches shall take place via the access track to Lower Road. At all other times, deliveries or dispatches to the permitted buildings of grains, oil seeds and pulses (grown off the SW Attwood & Partners holdings) shall not take place other than via the access track to Sheppey Way.

Reason: In the interests of highway safety and the residential amenities of Wallend Farmhouse.

11. The use of reverse alarms to vehicles associated with the delivery or dispatch of grains, oil seeds and pulses (grown off the SW Attwood & Partners holdings) to the buildings hereby approved shall be strictly prohibited between the hours of 2300 hours and 0700 hours.

Reason: In the interests of the residential amenities of Wallend Farmhouse.

12. The habitat enhancements set out in paragraph 4.9 of the ecological scoping survey relating to the provision of bird/bat boxes and planting a grassland mix for the proposed bunds shall be carried out within 12 months of completion of the approved development.

Reason: In the interests of biodiversity.

Informative:

1. The applicant is advised to consider the contents of the letter from Kent Highways and Transportation dated 31st October 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 applicant/agent was advised of minor changes required to the application and these were agreed.

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

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PLANNING COMMITTEE – 2 MARCH 2017

PART 3

Report of the Head of Planning

PART 3

Applications for which **REFUSAL** is recommended

3.1 REFERENCE NO - 16/505471/FULL			
APPLICATION PROPOSAL			
Application for the removal of condition 1 of SW/09/1142 (One caravan for traveller family) - to allow for the permanent permission of one caravan for traveller family.			
ADDRESS The Meads Farm Elverland Lane Ospringe Kent ME13 0SP			
RECOMMENDATION – Refuse			
SUMMARY OF REASONS FOR RECOMMENDATION/REASONS FOR REFUSAL			
The use of the site as a caravan site for residential use will result in an unsustainable pattern of development, contrary to national and local planning policies. The need to provide gypsy and traveller sites and the personal circumstances on the applicant and their family do not outweigh the harm caused through the unsustainable location of the site.			
REASON FOR REFERRAL TO COMMITTEE			
To allow Members to consider future policy for gypsy and traveller sites in this area which has seen a number of temporary planning permissions.			
WARD East Downs	PARISH/TOWN COUNCIL Ospringe	APPLICANT Mr And Mrs Eli Smith	
DECISION DUE DATE 31/08/16	PUBLICITY EXPIRY DATE 12/08/16		
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
SW/12/0096	Variation of condition 1 of SW/09/1142 to allow permanent permission for one caravan for a Romany family	Granted for four years	28/05/2012
SW/09/1142	One caravan for traveler family	Granted temporary permission until 01/03/2012	08/02/2010
SW/08/0216	Siting of caravan for an agricultural worker	Withdrawn	15/05/2008
SW/05/0387	Erection of stable, new site entrance and keeping of horses.	Approved	18/05/2005

1.0 DESCRIPTION OF SITE

- 1.01 The application site relates to an irregular shaped plot of land of around 1.6 hectares in total, which slopes down from Elverland Lane towards a woodland immediately to the rear of the site. The northern section of the site closest to Elverland Lane site is laid to rough grassland, the central area is part in use as a paddock, and the southern end is in residential use, with a static caravan and a touring caravan sited on this land. A stable building and smaller building of agricultural form appearance are also sited on the land.
- 1.02 The land has an open appearance from Elverland Lane, with planting and landscaping generally used to define field and site boundaries. On the roadside, the land is enclosed by a post and rail fence and low metal five bar gates. Although the land slopes down, the woodland to the rear forms an impressive backdrop to the landscape. The access into the site snakes along the western boundary, and is informal in appearance consisting of loose stone tracks and a central grassed verge.
- 1.03 The site falls within the Kent Downs AONB and within highly attractive isolated countryside. The site connects to local roads and lanes which link Faversham to many rural communities, but it is located in a remote location well away from any local services or amenities. The built settlements of Faversham and Teynham are approx. 5kms from the site (using local roads).
- 1.04 Elverland Lane is designated as a rural lane. Due to the topography of the site and some intermediate trees, the caravans are not readily visible from the lane.

2.0 PROPOSAL

- 2.01 This application seeks permission to remove condition 1 of planning permission SW/09/1142. This condition granted permission for residential use of the site for a temporary period, which was further extended under application SW/12/0096 to allow residential use of the site until 28 May 2016. Effectively this application is retrospective, given that both temporary permissions have now expired.
- 2.02 The terms of the temporary planning permissions previously issued were to limit the number of units to 1 x static caravan and 1 x touring caravan, and that the site could only be occupied by persons of Gypsy / Traveller status. Such terms could be carried forward under the current application, if deemed acceptable.
- 2.03 Members should note from the planning history that a separate and permanent permission exists for the stable building and access permitted under SW/05/0387, and which has been built.
- 2.04 The applicants have submitted some confidential personal information during the course of the application process, which can be best summarised as follows:
- A letter from a specialist speech and language unit at The Malling School, East Malling, where their youngest son (aged 12 years) attends.
 - Letters from Kings College Hospital, London, and from Newton Place Surgery, Faversham in respect of Mr Smith.
- 2.05 Mrs Smith has also stated that this site is her home that she has lived on for 10 years. If permission was not granted, she would go back on the road but would not stop far away as she has horses and other animals on the site.

3.0 PLANNING CONSTRAINTS

Kent Downs Area of Outstanding Natural Beauty

4.0 POLICY AND OTHER CONSIDERATIONS

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

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

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

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

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

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

- To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. For example, where there are groups of smaller settlements, development in one village may support services in a village nearby. Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as:
 - the essential need for a rural worker to live permanently at or near their place of work in the countryside; or
 - where such development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets; or

- where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting; or
- the exceptional quality or innovative nature of the design of the dwelling. Such a design should:
 - be truly outstanding or innovative, helping to raise standards of design more generally in rural areas;
 - reflect the highest standards in architecture;
 - significantly enhance its immediate setting; and
 - be sensitive to the defining characteristics of the local area.

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

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

- protecting and enhancing valued landscapes, geological conservation interests and soils;
- recognising the wider benefits of ecosystem services;
- minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the Government's commitment to halt the overall decline in biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;
- preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water or noise pollution or land instability; and
- remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.

4.05 The NPPF prioritises the safeguarding of AONBs at paragraph 115.

Planning Policy for Traveller Sites (PPTS)

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

“The Government’s overarching aim is to ensure fair and equal treatment for travellers, in a way that facilitates the traditional and nomadic way of life of travellers while respecting the interests of the settled community.” (para 3 PPTS)

To help achieve this, Government’s aims in respect of traveller sites are:

- a. that local planning authorities should make their own assessment of need for the purposes of planning*
- b. to ensure that local planning authorities, working collaboratively, develop fair and effective strategies to meet need through the identification of land for sites*
- c. to encourage local planning authorities to plan for sites over a reasonable timescale*
- d. that plan-making and decision-taking should protect Green Belt from inappropriate development*
- e. to promote more private traveller site provision while recognising that there will always be those travellers who cannot provide their own sites*

- f. *that plan-making and decision-taking should aim to reduce the number of unauthorised developments and encampments and make enforcement more effective*
- g. *for local planning authorities to ensure that their Local Plan includes fair, realistic and inclusive policies*
- h. *to increase the number of traveller sites in appropriate locations with planning permission, to address under provision and maintain an appropriate level of supply*
- i. *to reduce tensions between settled and traveller communities in plan-making and planning decisions*
- j. *to enable provision of suitable accommodation from which travellers can access education, health, welfare and employment infrastructure*
- k. *for local planning authorities to have due regard to the protection of local amenity and local environment.” (para 4 PPTS)*

4.07 In terms of plan making the PPTS advice is that;

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

- a) *promote peaceful and integrated co-existence between the site and the local community*
- b) *promote, in collaboration with commissioners of health services, access to appropriate health services*
- c) *ensure that children can attend school on a regular basis*
- d) *provide a settled base that reduces the need for long-distance travelling and possible environmental damage caused by unauthorised encampment*
- e) *provide for proper consideration of the effect of local environmental quality (such as noise and air quality) on the health and well-being of any travellers that may locate there or on others as a result of new development*
- f) *avoid placing undue pressure on local infrastructure and services*
- g) *do not locate sites in areas at high risk of flooding, including functional floodplains, given the particular vulnerability of caravans*
- h) *reflect the extent to which traditional lifestyles (whereby some travellers live and work from the same location thereby omitting many travel to work journeys) can contribute to sustainability.” (para 13 PPTS)*

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

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

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

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

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

- a) *the existing level of local provision and need for sites*
- b) *the availability (or lack) of alternative accommodation for the applicants*

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

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

“Local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. Local planning authorities should ensure that sites in rural areas respect the scale of, and do not dominate the nearest settled community, and avoid placing an undue pressure on the local infrastructure.” (para 25 PPTS). I note that the word “very” was added to this paragraph in the 2015 re-issue of PPTS.

“If a local planning authority cannot demonstrate an up-to-date 5 year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary permission. The exception to this is where the proposal is on land designated as Green Belt; sites protected under the Birds and Habitats Directives and / or sites designated as Sites of Special Scientific Interest; Local Green Space, an Area of Outstanding Natural Beauty, or within a National Park (or the Broads).” (para 27 PPTS). I note that the last sentence above was added to this paragraph in the 2015 re-issue of PPTS.

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

“Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family’s or dependants’ educational or health needs or old age have ceased to travel temporarily, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.”

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

- 4.10 The Council has responded positively and quickly to the changes in the national policy position in respect of Gypsy and Traveller accommodation. The Local Development Framework Panel quickly supported the commissioning of a new Gypsy and Traveller Accommodation Assessment (GTAA), which was completed in June 2013 and identified a need for 82 pitches to be provided during the plan period (adjusted down from 85 pitches in reflection of those sites granted permanent permission whilst the document was under preparation). This need figure was incorporated within the draft Bearing Fruits Swale Borough Local Plan: Part 1 alongside a policy introducing provision for pitches on certain major development sites. An additional net 47 permanent pitches (some with personal use conditions) had also been approved up to March 2015, reducing the outstanding need to 35 pitches over the Plan period. Further permanent permissions have since been granted. A further number of pitches enjoy temporary permissions.

- 4.11 Shortly after publication of the GTAA in 2013 the Council began work on Part 2 of the Swale Borough Local Plan which was intended to deal with site allocations for Gypsy and Traveller pitch provision only. This process began with a call for sites between September and December 2013, and the publication of an issues and options paper which was subject to public consultation (this finished on 25 April 2014). The Local Plan was subject to examination in November 2015 and the latest position on this is referred to below.

Saved Policies of Swale Borough Local Plan 2008

- 4.12 Saved policy E1 (General Development Control Criteria) sets out standards applicable to all development, saying that it should be well sited appropriate in scale, design and appearance with a high standard of landscaping, and have safe pedestrian and vehicular access whilst avoiding unacceptable consequences in highway terms.
- 4.13 This site lies in an isolated position within the countryside where saved policy E6 (The Countryside) seeks to protect the quality, character and amenity of the countryside, and states that development will not be permitted outside rural settlements in the interests of countryside conservation, unless related to an exceptional need for a rural location.
- 4.14 Within Areas of Outstanding Natural Beauty saved policy E9 (Protecting the Quality and Character of the Borough's Landscape) gives priority to the long term protection and enhancement of the quality of the landscape, whilst having regard to the economic and social well being of their communities. Saved policy E9 seeks to protect the quality, character and amenity value of the wider landscape of the Borough. Within the countryside it expects development to be informed by local landscape character and quality, consider guidelines in the Council's landscape character and assessment, safeguard distinctive landscape elements, remove detracting features and minimise adverse impacts on landscape character. Protection of AONBs is a high priority in the NPPF and they are now afforded recognition in the PPTS, see below.
- 4.15 Saved policy E19 (Achieving High Quality Design and Distinctiveness) requires development proposals to be well designed.
- 4.16 Saved policy RC7 (Rural Lanes) seeks to protect the physical features and character of rural lanes, of which Elverland Lane is one.
- 4.17 Saved policy H4 explains that the Borough Council will only grant planning permission for the use of land for the stationing of homes for persons who can clearly demonstrate that they are gypsies or travelling showpersons with a genuine connection with the locality of the proposed site, in accordance with 1 and 2 below.
1. For proposals involving the establishment of public or privately owned residential gypsy or travelling showpersons sites:
 - a) there will be a proven need in the Borough for the site and for the size proposed;
 - b) the site will be located close to local services and facilities;
 - c) there will be no more than four caravans;
 - d) the site will be located close to the primary or secondary road networks
 - e) in the case of a greenfield site there is no suitable site available on previously developed land in the locality;
 - f) the site is not designated for its wildlife, historic or landscape importance;

- g) the site should be served, or capable of being served, by mains water supply and a satisfactory means of sewage disposal and refuse collection;
- h) there is no conflict with pedestrian or highway safety;
- i) screening and landscaping will be provided to minimise adverse impacts;
- j) no industrial, retail, commercial, or storage activities will take place on the site.
- k) use of the site will not give rise to significant adverse impacts upon residential amenity, or agricultural or commercial use, of surrounding areas; and
- l) the land will not be in a designated flood risk area.

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

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

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

4.19 Saved policy T1 (Providing Safe Access to New Development) states;

“The Borough Council will not permit development proposals that;

1. *generate volumes of traffic in excess of the capacity of the highway network, and/or result in a decrease in safety on the highway network, unless these issues can be addressed by environmentally acceptable improvements to the highway network that have been agreed by the Borough Council and the appropriate Highway Authority in accordance with Policy T2; and*
2. *lead to the formation of a new access, or the intensification of any access, onto a primary or secondary road or route, unless it can be created in a location that it acceptable to the Borough Council, or where an access can be improved to an acceptable standard and achieve a high standard of safety through design.*

Where appropriate, the Borough Council will require the submission of a comprehensive Transport Assessment and Travel Plan with a planning application.”

Swale Landscape Character and Biodiversity Appraisal SPD 2011

4.20 This site is within the Doddington and Newnham Dry Valleys landscape character areas as defined in the March 2011 Swale Landscape Character and Biodiversity Appraisal, areas which are seen as of high and moderate sensitivity respectively and in good condition.

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

4.21 The Council's Publication version of the draft Local Plan, entitled *Bearing Fruits 2031*, was published in December 2014 and underwent examination in November 2015. The Local Plan Inspector's relevant interim findings are set out below.

4.22 Policy CP 3 of the draft Local Plan aimed to provide pitches for gypsies and travellers as part of new residential developments. Policy DM10 set out criteria for assessing windfall gypsy site applications. These policies are now being significantly revised or abandoned as appropriate according to the Council's re-assessment of site need in the

light of the changes to PPTS and local progress on site supply. This is discussed below. Draft policy DM10 will now be a criteria based policy for assessing windfall planning applications and this includes the following points. It seeks to retain existing permanent sites, and favours expansion of existing sites. Further criteria for approval are exceptional mitigating or personal circumstances where there is no overriding harm to the locality or the need for affordable housing. Beyond these points the policy suggests that new sites should;

- be for applicants who have previously led a nomadic lifestyle, or those who can show why they have stopped travelling, or show intentions for future travelling
- provide opportunity to integrate with communities
- be of an appropriate scale without landscape harm or overloading services
- accommodate living and working
- cause no significant harm to occupants or others
- cause no harm to AONB, other national or local landscape or biodiversity designations
- provide landscaping to enhance the environment in a way that increases openness
- provide for health lifestyles
- be safe from flooding
- have safe and convenient access and parking
- provide transit or visitor pitches where appropriate

Site Assessment

- 4.23 The Council's February 2014 Gypsy and Traveller Site Allocations: Issues and Options consultations document recommended a new methodology for how to assess site suitability for determining whether or not to allocate a site. Although this was primarily intended to rank potential site allocations, it was agreed by Members of the LDF Panel in June 2014 to be used as a material consideration in planning applications. Even though this is normally done in relation to the potential suitability of a fresh site, a site assessment exercise has been carried out in relation to this site and I have taken this into account in considering this application. The assessment is a Red/Amber/Green staged approach to site suitability, with any site scoring Red in any stage not being progressed to the next stage.
- 4.24 The assessment starts with Stage 1: Availability. The applicant is in occupation of the site. Here the site scores green. This means that the site should proceed to Stage 2.
- 4.25 Stage 2: Suitability/Constraints. The site is not in a flood risk zone (assessment green); it is in an AONB and the position of the caravans are at the base of a slope, against a woodland backdrop, and screened from the road. I consider the landscape impact to be amber (capable of mitigation); it has no unacceptable impact on biodiversity (green); no dominating effect on settlements on its own but there are already three private gypsy sites nearby on temporary permissions. These sites indicate sustained pressure for sites here which taken together will have a significant effect on such a sparsely populated and otherwise unspoilt area (amber); no adverse impacts on heritage/archaeology (green); is not known to be contaminated (green); will not be subject to unacceptable noise or disturbance (green); does not have a dangerous access (based on comments from Kent Highways under previous applications on the site) (green); but is remote and not within walking distance to any significant facilities at approx. 5km from Faversham and Teynham (red). This red score means that it is not a site considered to be suitable as a permanent site, and that the site should not proceed

to Stage 3 and will not be a candidate site for any future allocations policy (if such a policy were now to be produced).

- 4.26 The arrangements for production of Part 2 of the new Local Plan included consultation upon a preferred options document in summer 2014. The future of and need for Part 2 of the Local Plan was expected to be dependent upon the successful adoption of Part 1 of the Local Plan. It was intended that should the Local Plan Inspector find problems with Part 1 of the Local Plan, Officers were likely to suggest that all pitch provision matters be deferred to Part 2 to enable Part 2 of the Local Plan to progress independently of Part 1. The latest position on this issue is referred to below.

Five year supply position

- 4.27 The PPTS has since 2012 introduced a need for Council's to maintain a rolling five year supply of sites which are in suitable locations and available immediately. The Council put measures into place to deal with the PPTS requirements very quickly, but have only recently started down the route of trying to maintain a rolling five year supply.
- 4.28 The GTAA (2013) set a target of 85 pitches to be provided by the year 2031, with a suggested provision of 35 pitches in the first five years (to 2018). Three pitches were approved during the course of the GTAA's production so the final target was in fact 82 pitches. Since the publication of the GTAA and up to the end of March 2015 a total of 47 permanent pitches were approved in Swale, almost exclusively without an appeal, of which 33 pitches had been implemented. Evidence presented to the recent Local Plan examination (November 2015) shows that at the end of March 2015 the need for pitches identified from the GTAA thus stood at 82 pitches minus the 33 permanent pitches approved and implemented, including the personal permissions granted in the interim. This reduced the need to 49 pitches. These mostly comprised extensions to, or more intensive use of, existing sites and were awaiting occupation. Since then six more wholly new permanent sites (comprising eight (8) pitches) were approved in 2015/2016 including two fresh pitches on a large mixed use development site at Faversham. A further two (2) pitches as an extension to an existing well located site were approved in November 2016, with another wholly new pitch (previously approved only on a temporary basis) was approved in December 2016. This provision of 58 permanent pitches (47 in 2013 to 2015 plus eight (8) in 2015/2016 and three (3) further pitches in 2016/2017) is a very considerable achievement and indicates the Council's positive attitude to such development in the right location. As at July 2016, monitoring shows that 41 new permanent pitches have been implemented with 13 pitches yet to have their permission implemented. Based on these figures the Council has already met two thirds of the original pitch target to 2031 and the number of pitches completed exceeds any residual requirement for the five year period. The Council is able to demonstrate a five year supply and has in fact exceeded a 10 year supply of pitches. However, the situation has since changed considerably.

The latest position on site provision

- 4.29 The revised PPTS (2015) has resulted in considerable uncertainty as it changed the planning definition of a traveller and gypsy, and therefore what number of required pitches need to be identified. Evidence to the recent Local Plan examination was that the Council has re-interrogated the GTAA data to determine the appropriate level of pitch provision based on the new 2015 PPTS revised definition of gypsies and travellers. The data revealed that for all but unauthorised sites some two-thirds of households surveyed for the GTAA either never travel or travel not more than once a year. Overall, only 31% of respondents travel a few times a year, and 55% never travel, meaning that in Swale the gypsy and traveller population is quite settled, slightly more

so than elsewhere in the country. Many of the borough's Gypsy/Traveller population no longer meet the new PPTS definition of having a nomadic habit of life

- 4.30 Accordingly, the need for pitches in Swale has been re-evaluated, resulting in a reduced estimate of pitch need of 61 pitches over the Plan period to 2031; this being the most generous of the possible reduced pitch numbers scenarios considered. Of these, 58 pitches have already been granted permanent planning permission meaning that the outstanding need is three (3) pitches to 2031. The Council considers that on the basis of past trends this need could easily be met from windfall proposals. Moreover it indicates that by proper engagement with the Council, appropriate sites can be found in sustainable and acceptable locations in Swale (generally outside of the AONB or other designated area) without an appeal, meaning that there is a high probability of being able to find an acceptable alternative site with minimal delay.
- 4.31 As a result of this analysis, the Council is suggesting through Main Modifications to its draft Local Plan (published in June 2016) that the future need be based on a figure of 61 pitches, leaving a need per year of less than one pitch and, that no formal pitch allocations will be needed. Policy DM10 has been revised to deal with these windfall applications and the element of policy CP3 on pitch allocations is to be removed from the Plan. Accordingly, a Part 2 Local Plan would not be required.
- 4.32 The Local Plan Inspector's third interim report (March 2016) fully supports the Council's proposed position regarding gypsy and traveller site provision, accepting that the remaining need for sites can be managed by windfall applications and without a Part 2 Local Plan. The Inspector also accepts that the Council should revise draft Plan policies to reflect progress on site provision whereupon the Plan will be effective and consistent with national policy. In June 2016 the Council published Main Modifications to the draft Local Plan to confirm these intentions and these were considered at the resumption of the Local Plan EIP in January 2017. Finally, a new appeal decision at Bredgar dated 6 February 2017 (based on data available in September 2016) has confirmed that "*...in view of the now significantly reduced level of need combined with the reasonably substantial increase in the number of permitted sites, many of which have now been implemented, overall I consider that that the Council has now demonstrated that it does have a five year supply of deliverable sites. On this basis there is no apparent need for further sites in the short term and in the longer term any outstanding need that might be established would be likely to be dealt with through the provisions of the emerging development plan*".
- 4.33 At a more local level the Council is a contributor to the Kent Downs AONB management unit which has recently published its second revision to the Kent Downs AONB Management Plan (2014 – 2019). This includes policies SD1, SD2, SD3, SD7, SD8 and LLC1 of the Plan, which refer to the need to conserve and enhance the natural beauty, tranquillity and remoteness of the AONB being the prime purpose of the designation, with new development respecting the area's character, quality and distinctiveness, with development that runs counter to the primary purpose of the AONB, or its distinctive landform, special characteristics or qualities being opposed.

5.0 LOCAL REPRESENTATIONS

- 5.01 Thirteen letters of objection have been received on the following summarised grounds:
- The site is in an AONB and is detrimental to the area, which the council has a duty to preserve
 - The site is not in a sustainable location

- The Council no longer has a shortfall of Gypsy sites, and the need issue which formed the basis for the temporary permission no longer exists
- The applicants have not produced any evidence to demonstrate that they lead a nomadic lifestyle
- The site is remote and not close to any local services
- The council should take enforcement action to remove this site and others in the locality
- It would set a precedent for other applications if permitted
- Access onto the lane is dangerous
- The lane is single track with poor visibility
- The harm to the AONB outweighs any argument of need for sites.
- No pedestrian routes exist for the occupants
- The application is not supported under the NPPF or the PPTS

6.0 CONSULTATIONS

- 6.01 Ospringe Parish Council has been consistently and strongly opposed to the grant of permission for all the sites in the Elverland Lane area, and this remains the case; there is also strong local opposition from residents. They say that their views have not changed and they see no reason for the permanent permission to be granted.
- 6.02 They say that the original four year temporary permission was given on the understanding that it made a valid compromise between the need for gypsy traveller accommodation and Swale BC's then incomplete gypsy traveller allocation. It is their understanding that under part 2 of Swale's emerging local plan there are now sufficient gypsy and traveller pitches available within the borough and therefore there is no need to grant any temporary or permanent permission for gypsy and traveller sites outside of those allocated pitches, particularly in an Area of Outstanding Natural Beauty.
- 6.03 Newnham Parish Council say that the original four year temporary permission was given on the understanding that it made a valid compromise between the need for gypsy traveller accommodation and Swale Borough Council's then incomplete gypsy traveller allocation. It is also their understanding that under Part 2 of Swale's emerging Local Plan there are now sufficient gypsy and traveller pitches available within the borough and therefore there is no need to grant any temporary or permanent permission for gypsy and traveller site outside of these allocated pitches, particularly in an area of outstanding natural beauty.
- 6.04 Kent Highways and Transportation say that it would appear that this development proposal does not meet the criteria to warrant involvement from the Highway Authority in accordance with the current consultation protocol arrangements. They suggest that if there are any material highway safety concerns that you consider should be brought to the attention of the HA, then please contact us again with your specific concerns for our consideration.

7.0 BACKGROUND PAPERS AND PLANS

- 7.01 Application papers for application 16/505471/FULL

8.0 APPRAISAL

- 8.01 In my opinion, the main considerations in this matter are the degree of conformity with policy towards development in the countryside and matters of sustainability; the visual impact of the site and impact of the development on the objectives of designation of the

Area of Outstanding Natural Beauty; the Council's current position regarding the supply of gypsy and traveller sites; whether a permanent permission should be granted and if not, whether a temporary permission is appropriate. If I do not conclude that the other merits of the application warrant the grant of a permanent or temporary permission I believe that it would be proper to go on to consider whether the applicant's personal circumstances are sufficient to warrant the granting of a permanent or temporary planning permission and then, whether a refusal of permission would constitute an infringement of the applicant's human rights.

- 8.02 My starting point for consideration of this application is the provisions of the saved policies of the Swale Borough Local Plan 2008 and the Council's published site assessment criteria for gypsy and traveller sites. Saved policies E6, E9 and RC7 seek to resist development in the countryside and to protect valued landscapes and rural lanes. In my opinion, there is no doubt that the location of the site is not generally suitable for residential development or use as a caravan site, being located in open countryside, well outside any defined settlement designated as suitable for residential development. Saved policy E6 seeks to protect the wider countryside from development except in specific exceptional circumstances. It follows that the granting of planning permission for the proposal would seriously undermine the effectiveness of local rural settlement policy and would have adverse implications for the intrinsic value and character of the countryside, unless it satisfies at least one of the exceptions that justify a departure from the development plan.
- 8.03 The site lies in open countryside and on an attractive rural lane, where established policy at local and national level is to restrict non-essential development. At NPPF para 115 it is made clear that in AONBs great weight should be given to conserving the landscape and scenic beauty. The objectives of AONB designation are to conserve and enhance the natural beauty of the area. This is therefore a key policy test here, which is closely linked with visual impact. PPTS (2015) at para 25 states that local planning authorities "should very strictly limit new traveller site development in open countryside this is away from existing settlements", meaning that such a site is no longer acceptable in principle. In my view this reference has three purposes which are to minimise visual harm to the countryside, ensure sites are not isolated from the settled community and, to ensure sites are sustainably located.
- 8.04 The weight to be given to AONB landscape protection remains a strong national policy. The site falls within particularly attractive isolated countryside and would normally be a significant barrier to development. However, in this instance, there are matters which reduce the landscape harm of the proposal which need to be considered. Firstly, the mobile units are located against the backdrop of a woodland and sited well away from the roadside – and due to site topography there is very little, if any, visual impact arising from the caravans. Secondly, the site access serves the stable building and is a lawful access, being permitted in 2005. In my opinion and for the above reasons, it would very difficult to construe an argument that the existing development causes significant detriment to the landscape, notwithstanding the high level protection afforded to the AONB. The site is discreet and well kept.
- 8.05 Overall, I consider that the landscape impact of this site is minimal, and that there would not be sufficient grounds to warrant a refusal of planning permission on such grounds alone, despite the site being located within the AONB. However the use does add to the stock of residential units in the AONB with associated activity and this would have some impact upon the remoteness and tranquillity of the AONB, despite it being well screened. This would result in some conflict with policy DM24 of the emerging plan.

- 8.06 Elverland Lane is designated as a rural lane to which saved policy RC7 applies. This specifies that development proposals should have particular regard to, amongst other things, the landscape importance of such lanes. The lane is distinctly rural in character and evocative of the essence of the AONB, making an important contribution to the character of the area. It is particularly attractive in its own right by reason of its narrow carriageway and long stretches of unbroken roadside vegetation. The existing access does puncture through this enclosed lane but, as specified earlier, this is a lawful access that would not be removed if residential use of the site were to cease. The use does generate additional traffic on the lane, but I consider such traffic movements from one site would be limited and would be insufficient to cause any harm to the rural character of the lane.
- 8.07 In terms of location, the site is very remote from services and sited within open countryside where journeys will almost always require the use of a car, due to travelling distances and the lack of any real alternatives (walking / cycling long distances on unlit rural lanes is not considered to be a realistic feasible option). This site is some 5-6km from Faversham, which is the nearest settlement with reasonable educational, health and social facilities. Nor is the site well located for integration with any local community. There are few facilities close to the site and any access to amenities will involve the use of private transport. Saved policy SH1 of the adopted Local Plan identifies a settlement hierarchy for the Borough where various levels of development might be appropriate. This isolated location is not one where there is ready access to amenities. It thus fails to meet the second stage of the Council's published site assessment criteria.
- 8.08 In this regard the nature of the site is far more remotely located than one at Spade Lane close to the Medway conurbation that was subject of an appeal decision regarding a proposed gypsy or traveller site in October 2014. In that case (APP/V/2255/C/14/2220447) the Inspector considered whether the use of that site close to a major population centre with a wide range of facilities as a gypsy or traveller site constituted sustainable development. He noted that locational sustainability depends on a range of factors which are neither constant nor easy to measure with confidence. Nevertheless, he concluded that the site was "in a location where the overwhelming majority of journeys to shops, to school, to the doctor or to most other facilities and services would be undertaken by car." He added that "The distances involved, the absence of any public transport in easy reach, the character of the lanes along which people would travel, and the unattractiveness at night, in winter or in bad weather of any short cuts provided by local PROWs, would obviate journeys on foot other than for the fittest and/or most enthusiastic of walkers." His conclusion was that the sustainability benefits of the proposed development were minimal and more than outweighed by significant and demonstrable disadvantages. I consider that similar conclusions apply with even greater force here where the site is far further from amenities and where the roads and lanes in question are also without footpaths or street lighting.
- 8.09 If further evidence were needed, there have been three recent appeal decisions relating to private gypsy and traveller sites in Elverland Lane close to the current application site in 2007, 2011 and 2012. In the 2007 appeal decision at the site then known as Tootsie Farm, now Hill Top Farm, the Inspector commented that;

"I am also not convinced that this is a particularly sustainable location for a Gypsy site. I appreciate that Billy seems to have coped with school in Faversham on his bike and proposes to use bike and train to go to college in Canterbury. While it meets the current needs of the family it is in a relatively remote and sparsely populated location some distance from services which in the main are to be found in Faversham. However, I do

not consider it so unsuitable a location as to rule it out were that the only area of concern.”

Nevertheless in January 2012 (pre PPTS), a different Inspector commenting on the same site said that;

*“As to **sustainability** the evidence strongly suggests that there are more sustainable locations for G&T development than the appeal site, which in effect adds to the scatter of residential development in the open countryside. There is no reason to doubt that the eventual allocation of sites to meet G&T pitch needs, whether within the Borough or within this area of Kent as part of a joint effort by a group of local authorities complying with their duty to cooperate, will be in more sustainable locations and circumstances than the appeal site. This has considerable weight as an objection to the grant of a permanent permission for the appeal use. On the other hand, until adequate pitch provision is made elsewhere account should be taken of the advantages of providing, even on a temporary basis, for those who lack alternative accommodation and would therefore otherwise be moving between potentially more unsatisfactory temporary locations. This point is referred to in paragraph 64 of ODPM Circular 1/2006, and in this case I consider it to balance harm to sustainability objectives in the short term.”*

Finally, at Horseshoe Farm, also higher up Elverland Lane (above the current application site) an Inspector in May 2012 (post PPTS 2012) stated that;

“19. Paragraph 11 of the PPTS requires traveller sites to be sustainable economically, socially and environmentally. The appeal site is remote from all services and facilities and is not well located in relation to any settlement so as to foster social inclusion. It is isolated, in a sparsely populated area and there is environmental harm as identified above. Although there are two other gypsy sites nearby, they are not lawful.

20. A positive factor is that the Applicant has his horse keeping and breeding business based on the land on which he lives which reduces daily travel. There are also the recognised benefits arising from having a permanent base, such as being able to access health services more readily and reducing any need to move around on unauthorised sites. But those are benefits which arise in the provision of any permanent site and do not outweigh the disbenefits arising from the isolated location in this case.”

- 8.10 On the basis of this consistent view from recent Planning Inspectors, and bearing in mind the results of the Council’s own site assessment criteria (see above) I consider that this location is too remote from services and amenities to be acceptable as a permanent gypsy or traveller site. I consider that the limited remaining need for sites in the Borough can more properly be met in far more suitable locations and that use of this site fails to meet the environmental role necessary to be considered sustainable development in terms of the NPPF definition.
- 8.11 In this context, I consider that a strong case would again need to be made for a decision to favour a permanent use of this site. The approach being brought forward through the emerging Local plan does not require a separate site allocations DPD to allocate gypsy and traveller sites. The Council has made very significant progress on site provision. A new GTAA has been completed and all but a few sites from the entire site supply need identified up until 2031 have been provided. The Local Plan Inspector has very recently agreed that the remaining site need can be managed by windfall applications. I accept that this site is capable of being a windfall application but this would be judged against the new criteria based policy DM10. I have already discussed how this site falls well short of the Council’s current site assessment criteria which

would have been used to allocate sites under DM10 as originally drafted. It is therefore no surprise to find that the site fails to meet the criteria of DM10 as proposed to be modified. In particular the site fails on the following points;

- The remote location of the site fails the sustainability criteria of DM10 as it falls within category 6 of policy ST3 being in open countryside and not protecting the intrinsic value or beauty of the countryside
- Its isolation does not achieve integration between communities

8.12 Taking the above factors into account, I would conclude that the policy harm arising from this development relates to the unsustainable and isolated location of the site, together with harm to the intrinsic value, tranquillity and beauty of the countryside and AONB by virtue of placing residential development within such a rural location. However I do not consider the development causes any unacceptable landscape harm to the AONB, or harm to the character of the rural lane due to its discreet location and lack of visual impact.

Whether a temporary permission might be appropriate if a permanent permission is not.

8.13 Planning permission was originally granted for the applicants to occupy this site on a temporary basis, and was subsequently extended in 2012. On both occasions, the policy position was somewhat different as was the need for sites within the Borough – with a much greater identified need in the past which weighed significantly in favour of a temporary permission.

8.14 This was in line with previous Government advice in the past that local planning authorities should consider favourably planning applications for housing where a five year supply was lacking. PPTS 2012 continued that theme, stating that the lack of a five year site supply should be a significant material consideration in relation to a potential temporary permission.

8.15 However, PPTS 2015 has re-written this advice, now saying that the exception to this advice is where a site lies in a designated area such as an AONB. My conclusion now is that the Government's intention is to safeguard AONBs from temporary site development (presumably when a site is not acceptable on a permanent basis) even where site supply might be lacking. In this conclusion I am supported by the findings of a very recent appeal Inspector regarding site at Bredgar (February 2017) where he found that *"the PPTS has been amended such that where a five year supply of deliverable sites cannot be demonstrated, this cannot be a significant material consideration when considering applications...where the land is within an AONB"*. As a result, I consider that the tide has now firmly turned against the possibility of a further temporary planning permission here. There is in my view no case for granting temporary permissions pending policy production and the possibility of sites being allocated. Nor is there a shortage of site supply here. I have already concluded that the site is not suitable for a permanent permission. I have now also concluded that there is no case for a temporary permission based on waiting for emerging policy and a specific site allocations DPD, or on the basis of a lack of site supply.

8.16 In taking this approach, it is difficult not to have sympathy for the applicants. They have occupied the site for around 10 years and have benefited from two temporary planning permissions. However the same circumstances that lead the Council to grant temporary planning permission in the past no longer hold the same degree of weight. The position on site need is very much different today (see paras 4.27-4.32 above) – and in any case the latest PPTS advice does not give significant weight to lack of a 5 year site supply for proposals on land within the AONB.

The applicants' own circumstances.

- 8.17 The Council has made relevant enquiries regarding personal circumstances during the course of this application. The applicants have submitted a number of documents and details, and previous applications have also been used to resource information. I have had regard to this information in the following sections.

Gypsy status.

- 8.18 The applicants have previously submitted details of their Gypsy status under the previous applications, and there is no dispute that he has followed a Gypsy lifestyle. The applicants have two children who attend college / school in the wider area (see below) and the applicants have also submitted information relating to on-going health issues, confirmed by letters from Kings College Hospital and the local medical surgery, which would no doubt restrict a nomadic lifestyle at present. In my opinion, the applicants would fall under the definition of a gypsy / traveller under the PPTS.

Health and Education issues.

- 8.19 The applicants have set out health issues with supporting evidence from the local medical surgery and Kings College hospital. In addition, the applicant has confirmed that an older son attends college and a younger son attends a specialist school in East Malling.
- 8.20 The revised PPTS now makes it very clear that personal circumstances are unlikely to clearly outweigh harm to the AONB sufficient to grant a temporary permission, even where the supply of sites is inadequate. The exception here is where the best interests of a child might indicate otherwise (see Article 3 of the United Nations Convention on the Rights of the Child (UNCRC)). It is quite clear to me that in taking a decision which affects children the decision maker should understand and take proper account of the best interests of the child involved. This issue also relates to Article 8 of the European Convention on Human Rights (Right to a Private and Family Life). On the one hand, a permanent permission would provide a settled base for the family, and particularly their children – whilst a temporary permission would provide shorter-term certainty. On the other hand, there are no obvious reasons why such a base can only be provided from the site subject to this application – particularly as the youngest son is schooled from well outside the Borough. It is therefore not clear to me how the best interests of the family and particularly the children can only be served by settling on this remote site.
- 8.21 Even taking the best interests of the children involved here to have a settled base, I ask whether this can be outweighed by any combination of other factors. I find that the combination of significant factors including the impact of the development on policies to protect the countryside and AONB, and the remote location and lack of accessibility to vital social, health and educational, facilities; create powerful counter arguments for the need for a settled base to be met on this site. That is not to say that the need cannot or should not be met elsewhere in the Borough (or beyond) where all these factors might not be present.
- 8.22 National policy is not to grant temporary planning permissions in an AONB and, given that the Council will not be allocating the application site or any other sites for the foreseeable future, the applicants will be best served by finding an alternative permanent site elsewhere sooner rather than later. There seems to me to be no benefit in extending the applicants' current occupation of the appeal site as this will simply drag out the inevitability of relocation.

- 8.23 The applicants' evidence of a need to live on the site for personal, health, or educational reasons is understood. Having considered whether a personal permission might be appropriate I can find insufficient reason to grant one, and I consider that a decision not to grant a personal permission is proportionate to the interference with the applicants' human rights and the Council's need to consider the best interests of the child as a primary consideration.

Equality and Human Rights issues

- 8.24 It is quite clear that in taking a decision which may affect children the decision maker should understand and take proper account of the best interest of the child involved. Article 8 of the European Convention of Human Rights requires respect for family and private life, and I am also mindful of the entitlement of gypsies and travellers to their traditional way of life which involves living in caravans.
- 8.25 Refusal of the planning permission would have been an infringement of the appellants' rights under the ECHR. Even taking the best interests and the Human Rights of the applicants and their family into account, however, that infringement is, in my view, proportionate and necessary in the public interest to avoid permanent harm to the countryside and landscape, which is supported by the above local and national policies. The Council has supported the family when the supply of sites was short, but they have not sought an alternative site despite it being clear that their permission as only ever temporary, and the Council has made significant provision in the meantime. To that extent I firmly believe that the Council has been more than fair in its approach to their needs, much to the chagrin of the local community. The circumstances are now far different and I am certain that a different approach is now appropriate and proportionate.
- 8.26 I consider that that the combination of significant factors, including the remote location within the AONB and lack of accessibility to vital social, health and educational facilities, now create powerful arguments against the need for a settled base to be met on this site. That is not to say that this need cannot or should not be met elsewhere in the Borough (or beyond) where all these factors might not be present.

The balance between the above issues

- 8.27 The appeal site is in an unsustainable location, very remote from social, health and educational facilities, and is not a site where a permanent planning permission ought to be granted on the basis of current policies. Whilst the site causes little visual impact to the landscape, it does add to development within the AONB with resultant harm to the tranquillity and sense of remoteness of the area.
- 8.28 The personal circumstances relating to health and education needs have been considered. Overall, I find that the harm identified is not outweighed by the applicants' family's personal circumstances. Rather, I conclude that the inappropriate location of the site far away from any amenities, when considered against current PPTS advice and the comparative lack of need for sites in the Borough, all weigh against a further personal or temporary planning permission.
- 8.29 Any refusal of planning permission for someone's place of residence is potentially a breach of their human right to a home. However, this right is to a home, not to a particular site. There is nothing to suggest that the applicants' family's need for a permanent site can be met only on the appeal site or only within the AONB, and in fact there may be equally suitable sites closer to amenities and services in Faversham or

other larger settlements that do not fall within the AONB. Such sites are more likely to be acceptable to the Council. To that extent I do not consider that there would be a disproportionate interference with the applicant's rights under the Convention if permission were refused.

9.0 CONCLUSION

- 9.01 This site falls within the Kent Downs AONB. Whilst the PPTS makes clear that gypsy and traveller sites in rural areas without special planning constraints are acceptable in principle, it does state that sites in open countryside should be very strictly controlled and that sites that compromise the objectives of designation should not be permitted in AONBs. I have concluded that the use of the site has a very limited visual impact upon the AONB landscape, but it would erode to a small degree the sense of remoteness and tranquillity that helps to define such areas. The site falls within isolated open countryside with no access to local services or facilities and no alternative to travel other than by car, and in this respect is unsustainable.
- 9.02 The Council has been working to provide new sites across the Borough, and this has resulted in a substantial number of permanent pitches being approved. There are also substantial suitably located rural areas where a gypsy and traveller caravan sites would be acceptable in principle, and closer to settlements and related services and facilities.
- 9.03 The position regarding site supply is currently one where it is not necessary to consider setting aside serious environmental constraints to meet any deficiency in supply. I have considered the applicants' personal circumstances, but have concluded that there is nothing to suggest that his need can be met only on the appeal site or only within the AONB.
- 9.04 In balancing the competing issues of the need for and potential availability of alternative sites against the serious objections to the use of this site as a private gypsy site in terms of harm to sustainability, I believe that the balance weighs against permission being granted on this site.
- 9.05 I have considered the applicants' gypsy status and the need for sites, but have concluded that site supply is well advanced and as the area is very poorly served by amenities; it would be unsustainably located in contravention of planning policy, and that the site does not score well enough in relation to the Council's gypsy and traveller site assessment criteria to be suitable for a permanent planning permission. I have considered whether a personal or temporary planning permission would be appropriate and have concluded that it would not. I therefore conclude that the proposed development should not be granted planning permission.

10.0 RECOMMENDATION – REFUSE for the following reason.

REASONS

- (1) The application site lies in a remote and unsustainable location far from shops, services, public transport, or other amenities, and the site occupants would be heavily reliant upon private vehicles for transport. In addition, the site is located within the Kent Downs AONB and the activity associated with residential use would erode the sense of remoteness and tranquillity within this designated landscape. The Council has taken account of the position in terms of the supply of gypsy and traveller sites, the health and education issues of the applicants and their family, and considered whether a permanent or temporary planning permission should be granted. Despite appreciating the personal circumstances of the applicants' family, the Council does not consider

that a permanent or temporary planning permission represents an acceptable balance between the need for gypsy and traveller sites in the Borough and the personal circumstances of the applicants' family, and the harm that occupation of the site causes to planning policy for the appropriate location of gypsy or traveller sites in terms of remoteness and access to services and amenities. In taking account of all these factors the Council's considers that this proposal does not represent sustainable development, and that planning permission should be refused. The development would therefore be contrary to the provisions of the National Planning Policy Framework; saved policies E1 and E9 of the Swale Borough Local Plan 2008; and Policies ST3, DM10 and DM24 of Bearing Fruits 2031: The Swale Borough Local Plan Proposed Main Modifications Draft June 2016.

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 applicants 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.

16/505471/FULL
The Meads Farm

Gypsy and Traveller Site Allocations Assessment Methodology

Stage 1 - Is the site available?

Site Assessment Table: Stage 1 - Site availability

Criteria and Issues	Assessment references	Red – Does not meet criteria	Amber – May be capable of meeting criteria	Green – Fully meets criteria
Availability		Owner confirmed site not available, nor is likely to become available over plan period	Site availability uncertain	Willing landowner
Is the site available and deliverable?				✓

IF RED THE SITE SHOULD BE DISCOUNTED AT THIS STAGE. ALL OTHER SITES SHOULD PROCEED TO STAGE 2.

Stage 2 – Suitability/ Constraints

Site Assessment Table: Stage 2 - Suitability

Criteria and Issues	Assessment references in addition to National Planning Policy Framework (NPPF), National Planning Guidance (NPG)	Red – Does not meet criteria	Amber – May be capable of meeting criteria	Green – Fully meets criteria
Flood Zone	Swale Strategic Flood Risk Assessment (SFRA) and Environment Agency guidance	Flood zone 3/ cannot be mitigated	Flood zone 2 or 3 but with acceptable mitigation to the satisfaction of the Council and Environment Agency	Flood zone 1
Impact on designations or on landscape character/quality	Kent Downs AONB Management Plan 2009. Landscape Character and Biodiversity Appraisal SPD. Advice from Natural England and other environmental bodies	Site is within 1. a landscape designation, or will affect the setting of a designation, or 2. is within an Area of High Landscape Value with unacceptable detrimental impact or where landscape impact cannot be mitigated including cumulative impacts	Within close proximity of a designated area but, and where landscape impact may be mitigated	Outside designated area and not affecting the setting of a designation/ No impact
Impact on biodiversity of known protected species	Advice from KCC Archaeology Officers, UK/ Kent/ Swale BAP, advice from Natural England and environmental bodies	Site is within or affecting international, national or locally designated sites with unacceptable detrimental impact or where impact cannot be mitigated including cumulative impacts	Site is within, close proximity to or affecting international, national or locally designated sites where impact could be mitigated	Outside of any designation and not affecting the setting of a designation/ No impact
Scale of site or multiple sites	Officer assessment - considering quantity of existing sites against scale and form of existing settlement/settled community and advice from service providers	Has significant dominating effect	Scale has some impact	Scale has little or no impact
Scale dominating nearest settled community				✓
Archaeology and	Heritage asset list and advice from heritage	Unacceptable detrimental impact on scheduled	Possible impact /minor impact on scheduled	Not in close proximity to Scheduled Ancient

Conservation Impact on Scheduled Ancient Monument or other heritage asset/non designated heritage asset	advisors	ancient monument/other heritage asset/non designated heritage assets	ancient monument/other heritage asset/non designated heritage assets	Monument/other heritage asset/non designated heritage assets ✓
Contamination Unacceptable living conditions	Consult Land Contamination Planning guidance Document 2013 and Contaminated Land Strategy 2010	Site is contaminated and cannot be mitigated	Site is or is potentially contaminated - potential impact likely to be mitigated	No known contamination issues ✓
Noise and disturbance issues Unacceptable living conditions	Consult Noise and Vibration: Planning Guidance Document 2013	Site located adjacent to noisy land use – cannot be mitigated	Site located adjacent to noisy land use – potential impact likely to be mitigated or low level	No noisy adjacent land uses ✓
Site access and safety Access/Proximity to major roads and pedestrian routes	Any transport information submitted and Kent Highways Services assessment/advice	Remote location accessed by unmade roads/ poor roads or unresolvable highway safety issue	Some access to road network and site – potentially requiring mitigation or highway safety issue and possibly capable of mitigation	Good site and road access and no significant highway safety concerns ✓
Accessibility to facilities GP surgery, Primary School, Shops, Public Transport	Desk top review	None or few within reasonable distance ✓	Reasonable distance to most services	All within reasonable travelling distance

IF ANY SCORE RED THE SITE SHOULD BE DISCOUNTED AT THIS STAGE. ALL OTHER SITES SHOULD PROCEED TO STAGE 3.

Stage 3 - More detailed site suitability

Site Assessment Table: Stage 3 - Detailed suitability

Criteria and Issues	Assessment references	Red – Does not meet criteria	Amber – May be capable of meeting criteria	Green- Fully meets criteria
Topography Uneven or unsafe ground levels and structures	Site survey by Officers and landscape evidence submitted	Steep slope which makes site unsuitable	Sloping land which may require works to make site suitable for use	Level or gently sloping site
Residential Amenity Impact on amenity of proposed and existing residents	Officers' assessment - same as housing, overlooking, disturbance from vehicle movements, loss of light, overcrowding etc	Close proximity to existing adjacent uses especially residential properties where any potential impact (light, visual, other disturbance). Has unacceptable impact which cannot be mitigated	Some impact on residential amenity – likely to be mitigated or low level	No impact on residential amenity
Utilities Electricity, Gas, Water, Drainage/ Sewers (mains or cesspit)	Site visit and utility providers advice	Not applicable as a reason for discounting a site	Yes – most (3 or 4)	Yes – all
Site capable of live/ work mix Priority for sustainable	Site visit/ submitted details	Not applicable as a reason for discounting a site	No or maybe	Yes

locations				
Parking Sufficient parking and turning space	Site visit and Kent Highways Services advice	No parking/ turning and no potential to provide parking and turning space	Inadequate parking/ turning or limited potential to provide parking and turning space	Sufficient parking and turning space
Landscaping Sufficient landscaping for amenity/impact on landscape character	Site visit and Swale Landscape Character and Biodiversity Assessment 2010, Planting on New Developments: A Guide for Developers	Not applicable as a reason for discounting a site	No soft landscaping/ landscaping could impact on landscape character area	Site has existing soft landscaping/ option to provide soft landscaping

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3.2 REFERENCE NO - 15/509545/FULL			
APPLICATION PROPOSAL			
Removal of condition 1 of SW/10/1446 (Application to vary condition 1 of planning permission SW/05/1316 (personal & temporary condition) to make the planning permission permanent or vary the condition for a further temporary permission for 4 years.			
ADDRESS Hill Top Farm Elverland Lane Ospringe Kent ME13 0SP			
RECOMMENDATION - Refuse			
SUMMARY OF REASONS FOR RECOMMENDATION/REASONS FOR REFUSAL			
The use of the site as a caravan site for residential use will adversely affect the natural beauty of the Kent Downs Area of Outstanding Natural Beauty, will result in an unsustainable pattern of development, and will adversely affect highway safety in a manner contrary to national and local planning policies, factors which outweigh the need to provide gypsy and traveller sites and the personal circumstances on the applicant and his family.			
REASON FOR REFERRAL TO COMMITTEE			
To allow Members to consider future policy for gypsy and traveller sites in this area which has seen a number of temporary planning permissions.			
WARD East Downs	PARISH/TOWN COUNCIL Ospringe	APPLICANT Mr John Howard AGENT Philip Brown Associates	
DECISION DUE DATE 08/01/16	PUBLICITY EXPIRY DATE 24/05/16		
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
YEAR/App No	Proposal	Decision	Date
2011			
SW/10/1446/CCA	Application for compliance with conditions 7 (site development scheme) and 9 (maintenance) of planning permission granted by appeal decision dated 23 February 2012	Refused	27/07/2012
Enforcement Notice served 15/08/2011	Use as a caravan site and for keeping horses, and erection of w.c., fencing and hard-surfacing and new access	3 appeals allowed on ground (g) only with new two year period for compliance. So:- EN confirmed but overridden by temporary permission above issued on same date	23/02/2012

<i>Reasons: Impact on AONB, highway safety</i>			
2010			
SW/10/1446	Application to vary condition 1 of planning permission SW/05/1316 (personal & temporary condition)	Refused Appeal allowed; non-personal permission for 4 years	04/02/2011 23/02/2012
<i>Reasons: Impact on AONB, highway safety</i>			
2007			
Enforcement Notice served 06/03/2007	Use as a caravan site and for keeping horses, and erection of w.c., fencing and hard-surfacing and new access	Appeal allowed; personal permission for 3 years	15/11/2007
2005			
SW/05/1316	Use of land for one mobile home and one tourer for gypsy family.	Refused Appeal allowed; personal permission for 3 years	05/01/2007 15/11/2007
<i>Reasons: Impact on AONB, Lack of gypsy evidence, highway safety</i>			

1.0 DESCRIPTION OF SITE

- 1.01 The site is a small, relatively level and hard surfaced area at the top of a field running down the side of the Newnham Valley. The lower part of the field also owned by the applicant was granted planning permission for keeping horses on appeal in 2007 although this is subject to a separate enforcement notice served in 2011 alleging non-compliance with the terms of that enforcement notice appeal (not appealed), effectively ending that permission.
- 1.02 Whilst the site is not visible from the east as it is below the level of the adjoining land, it is very prominent across the valley from the west. From the M2 travelling eastwards, and the overbridge to the west, and from other public vantage points, the site is prominent and, the laurel hedging planted to screen the caravan now on it gives the site an intrusive appearance. Because of its contours, the site is difficult to landscape from this point of view as any planting has to be on lower ground, so not having any impact unless quite tall. The laurel bushes were planted along the western side of the hard-surfaced area at the time of a 2007 appeal hearing and these have now grown significantly. Unfortunately they appear quite alien to their surroundings and in fact do little to limit the long distance landscape impact of the site from high ground to the west.

- 1.03 The site access onto Elverland Lane has very limited visibility to the left/east (uphill) and there do not appear to have been any improvements to the visibility at the site entrance since the previous appeal hearings. The site access, hard standing, fencing, laurel hedging and use of the site have a distinct impact on the character of the lane.

Planning history

- 1.04 In November 2005 a retrospective application for “Use of land for one mobile home and one tourer for gypsy family” was made to the Council (SW/05/1316). This was refused in January 2007 on grounds of visual intrusion, landscape impact, remoteness, the applicant’s apparent lack of gypsy status, and lack of safe access due to poor visibility at the site entrance. This was immediately appealed, as was an enforcement notice against the use of land as a caravan site and for keeping horses which had been served shortly thereafter. This notice required cessation of use of the site as a caravan site and removal of associated physical works and access; but not removal of a stable type building pre-dating the applicant’s ownership of the site. All appeals were heard via an informal hearing held on 16 October 2007.
- 1.05 The Inspector’s decision (15 November 2007 and appended to this report) is a complicated one which essentially grants a permanent permission for keeping horses (subject to conditions) but grants only a temporary and personal permission for use as a caravan site, due to the Council’s then uncertain gypsy and traveller site policy position, and on personal grounds.
- 1.06 The Inspector simplified the terms of the enforcement notice to refer simply to an alleged change of use as a caravan site and for keeping horses (paragraph 4) and then granted planning permission for that use on Appeal A (para 31) with 12 conditions (para 32). These conditions do not limit the duration of the approved horse keeping, but limit other commercial uses (4), lighting (5), numbers of horses to be kept (8), the holding of shows (9), burning of manure (10), external storage (11) and field subdivision (12). Condition (6) also requires the submission and approval of certain details including drainage, manure storage, landscaping and modification of the access to serve post caravan site use of the site for keeping horses. These details were never approved and this, combined with the 2011 enforcement notice essentially means that this permission no longer exists, at least not in relation to the current application site where the other planning permission (based on application SW/05/1316) was the one implemented.
- 1.07 The second Appeal B decision (paragraph 33) granted a separate permission solely for the use of land for one mobile home and one tourer for a Gypsy family, with six conditions, based on the appeal against refusal of application SW/05/1316. Conditions (1) to (3) provided for only a personal and temporary permission. Conditions (4) to (6) related to no commercial use, no lighting and to drainage matters. It was only for variation of condition (1) of this permission that approval was sought in 2010 (personal and temporary use of the land for two caravans); not for keeping the related caravans or physical works (condition 2) although both are highly interrelated.
- 1.08 It is worth reviewing the reasoning behind the Inspector’s 2007 decision (what I will refer to as the first Inspector’s decision). This decision was issued after a hearing held the day after the original GTAA figures for Swale were published, and when the Council (quite understandably) had no plans or timetable to respond to them.
- 1.09 The Inspector heard new evidence and accepted the then appellant’s gypsy status.

- 1.10 The Inspector examined the site's suitability as a caravan site where he recorded that being in the AONB was not necessarily a reason for refusal (para 13), but that it was necessary to demonstrate that the objectives of the designation will not be compromised. He saw this as a particularly high test, as planning policy is intended to protect landscape character and natural beauty. He noted that the site was visible from close to its entrance and from more distant views, two of which provided wide views of the essence of this dry valley landscape, and in which the site appeared alien and incongruous (para 14) despite the new laurel hedging - which was not seen as in keeping with the natural qualities of this landscape (para 16). The access was also seen as intrusive (para 15). The Inspector concluded that the site was harmful to the landscape and undermined the objective of AONB designation (para 17).
- 1.11 On sustainability, the Inspector felt that the site was relatively remote and some distance from services, but that this on its own was not sufficient to rule it out as an acceptable site (para 18). However, the Inspector found the access lacking in adequate visibility to the east, where it cannot be improved, and said that there would have to be "a pressing need for this site to be used as a Gypsy site to outweigh the highway objection" (para 19).
- 1.12 In terms of the need for sites, the Inspector saw this as a "fundamental material consideration" (para 20) and noted the need to see more sites provided. He considered there was at that time a significant unmet need, and that there was a pressing need for more sites to be brought forward as a matter of urgency in Swale, and that this had been known for some time (para 22). He criticised the Council, unfairly in my view, for pursuing the adoption of its Local Plan which did not incorporate the then new Circular's (01/2006) site allocations policy requirement – even though the long process for production of the Plan (by then well advanced) had started long before the new Circular was published.
- 1.13 He then considered whether there might be a case for a temporary permission and stated that this type of permission could be granted without any implied commitment or precedent for the determination of future applications (para 23).
- 1.14 The Inspector then considered the personal circumstances of the case which included the appellant's son's (Billy) forthcoming spine operation and on-going full time education, which he gave weight to (para 24). He concluded that both matters would only be assisted by having a settled base, and that it was not acceptable to have the family return to the road whilst these issues were on-going. He held that the educational needs of Billy were a cogent reason to allow the family to remain on the site for the next two years (para 25) and that those personal circumstances weighed heavily in support of a period of stability and temporary continuation of the use (para 26).
- 1.15 In conclusion, the Inspector was satisfied that the site was inappropriate for a permanent Gypsy site given, in particular, the impact on the landscape of the AONB despite the clear case of general need for more Gypsy sites. He also made clear that the risk to highway safety was real, but acceptable in the short term (para 26). However, he felt that the competing tensions could at that time be met by granting a two year temporary permission, although a three year permission would not be inconsistent with the objectives of national guidance (para 27). He had concluded by emphasising that the site was unacceptable as a permanent Gypsy site because of its landscape impact, relative remoteness and access (para 28). He granted a three year temporary and personal permission which authorised use of the site until November 2010.

- 1.16 In 2010 the original appellant applied to remove condition (1) of the appeal decision (Appeal B above) to remove the personal and temporary limit on the planning permission. This application SW/10/1446 was submitted in November 2010 but refused by the Council in February 2011. After an attempt by the Council to negotiate a voluntary vacation of the site with the appellant a further enforcement notice was served in August 2011 (with a 12 month compliance period) after the appellant appealed the February 2011 planning refusal. The enforcement notice was appealed in three names (the appellant and his two sons) and a combined hearing for all four appeals was held on 11 January 2012. The fee for the enforcement appeals was not paid so the enforcement notice appeals proceeded only on grounds (f) and (g). Ground (f) appeals were dismissed but ground (g) appeals succeeded as follows.
- 1.17 The complicated result of that hearing, issued on 23 February 2012 (decision appended to this report), was that the enforcement notice was confirmed with a longer (two year) period for compliance, whilst the planning appeal was granted with a four year temporary permission, which was not personal to the appellant. This decision (that of the second Inspector) bears further careful analysis, especially as it forms the basis for the current application, which is to remove condition (1) of that decision to make the use permanent, or at least longer.
- 1.18 The second Inspector considered the appellants to be gypsies with no clear alternative site to go to should they have to leave the application site (paragraph 4). He noted the then PPS3 (pre- NPPF and PPTS) requirement for a 5 year supply of sites and was told that as the 2007 GTAA had not been updated the future pitch need was not known – the Council's current 2013 GTAA was published after this decision was made. The Inspector was faced with a need for 62 pitches to 2011 which had not been provided, and with further pitches likely to be needed in the 2011 to 2016 period with a new GTAA to be carried out. Pitch allocations were expected in either a Core Strategy or DPD (para 6).
- 1.19 In relation to the AONB the Inspector noted (para 10) that the laurel hedging had grown to become a more effective screen since 2007, but that some previous hard surfacing evident from Elverland Lane had been removed and the caravan re-positioned behind the stable building, reducing the site's visual impact on the lane (para 11), but not removing any impact entirely. Overall, he saw the site as visible in the wider landscape, with the caravans being out of keeping with traditional rural buildings and the laurel hedge not being a natural feature of this landscape. He concluded (as the first Inspector had) that the development was "harmful to the landscape and undermines the objective of AONB designation, as it fails to conserve or enhance the natural beauty of the landscape". He gave this matter substantial weight as an objection to the proposal (para 12).
- 1.20 In terms of sustainability, the Inspector concluded that any likely allocations of new sites would be in more sustainable locations, and that this was a considerable objection to the proposal; albeit that until adequate pitch numbers had been reached the benefit of not seeing the appellants moving temporarily to a more unsatisfactory location meant that this objection could be set aside over the short term (para 12).
- 1.21 In relation to highway safety (para 14) the Inspector concluded that the access remained substandard, particularly with regard to visibility to the left, and that the use of the site would be likely to generate more movements than a non-residential use. This he afforded considerable weight to; but less so over a temporary period.
- 1.22 On site supply, the evidence at that time was that the Council had not provided all the pitches required to 2011 nor did it have a forward looking five year supply, meaning

that there was then a clear unmet need for sites. This meant that favourable consideration should be given to an application for housing giving weight to unmet need. The Inspector then considered how a temporary permission might sit with the unmet need issue, and he concluded that substantial weight should be afforded to the need where a temporary permission is envisaged; and he concluded on that basis that a temporary permission would be appropriate (paras 17, 18 and 21). This was prior to the latest guidance in PPTS (2015) regarding temporary permissions in AONBs.

- 1.23 The personal circumstances of the appellants included one occupant needing a back operation, another having a young child, and one of the appellants needing a settled base to comply with his prison release licence; but these were not deemed to add significant weight to the decision, or to be so compelling that a personal planning occupancy condition was necessary (para 19).
- 1.24 In the overall planning balance (para 20) the second Inspector gave substantial weight to the harm to the AONB, and considerable weight to objections on sustainability and highway safety. Against this, he attached considerable weight to the need for additional pitches and the personal circumstances of the appellants, with the harm outweighing the need for pitches and personal circumstances other than on a temporary basis. He decided that a four year temporary permission should be granted, which would not be a precedent to a permanent consent (para 21), to allow adoption of a DPD by 2014 and a further 18 months to allow for a planning application. The planning permission granted ran from 23 February 2012 to 23 February 2016 and effectively superseded the extension of the compliance period on the related enforcement notice appeals, as that only ran for two years.
- 1.25 It seems that the current applicant purchased the site from the successful appellants in September 2012, shortly after the appeal decision granting temporary permission was issued in February of that year.

2.0 PROPOSAL

- 2.01 The current application, originally submitted well ahead of the end date of the latest temporary permission, is essentially to renew/extend the temporary permission either permanently or temporarily (for another four years) by the current owners who purchased the site under the temporary planning permission. The application is supported simply by a site plan (not showing any adjoining land edged blue to indicate that it is in the applicant's ownership) and a letter from the agent which states, in summary, that;

- The requirements of condition (7) of the 2012 appeal decision have been discharged.

NOTE: the submission was in fact refused on 26 July 2012 and remains outstanding

- No changes to any of the appeal conditions other than condition (1) (the four year time limit) are sought
- The applicant is Mr John Howard who solely owns the land (see below for more on this)
- Mr Howard lives with his wife Sarah and their two children Annabel (7 years) and Darcy (5 years, now 6 years)
- The applicant and his family are Romany gypsies who continue to have a nomadic habit of life during school holidays, whilst ensuring that the children attend Ospringe Primary School, and they have no intention of abandoning a travelling lifestyle

- Mt Howard also owns seven acres of land where he keeps seven horses which he buys and sells at horse fairs throughout 6-8 weeks a year
- At other times Mr Howard will be laying tarmac and trading in vehicles – presumably travelling from the site daily
- The latest GTAA sees a need for a further 35 pitches in Swale, especially for small rural sites
- The Local Plan is not likely to bring forward new sites until after expiry of the temporary planning permission
- The site could contribute towards pitch supply
- The site has been occupied for over 10 years and this “provides exceptional mitigating circumstances” in the absence of alternatives to meet the family’s needs
- The Council has not brought forward any alternative sites
- The applicant has already integrated with other sites in Elverland Lane, and these sites do not dominate Painters Forstal, but comply with criteria in draft Local Plan policy DM10
- Although in the AONB, the site is small and well screened from Elverland Lane, yet the Inspector considered it visible in the wider landscape and the caravans to be out of keeping with traditional rural building forms
- However, it is argued that viewpoints are distant and that the site is below the skyline, screened by a mature hedgerow
- The site will not materially harm the landscape character of the area or compromise the objectives of AONB designation

2.02 Since submission of the application I have asked for information about the site occupants, and any particular personal or medical issue that they might suffer from. No new information was revealed.

2.03 Latterly, local residents submitted to me Land Registry details indicating that the applicant is not the sole land owner, and that at the time of purchase of the site and adjoining land (jointly with an Anne Howard) he had a permanent address (terraced house) in the Medway Towns which he (or another John Howard) jointly owns with Anne Howard, and which was purchased in 1983. I put this information to the agent and he has since confirmed that the applicant is the joint owner of the application site with his mother Ann Howard, and that he has now served formal notice of the application on his mother (September 2016) at the address in the Medway Towns. This regularises the legal status of the application.

3.0 PLANNING CONSTRAINTS

Area of Outstanding Natural Beauty KENT DOWNS

Enforcement Notice ENF/07/016

Enforcement Notice ENF/11/023

Enforcement Notice ENF/11/024

4.0 POLICY AND OTHER CONSIDERATIONS

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

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

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

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

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

This emphasis on sustainable development post-dates the previous appeal decisions on this site, even though both previous Inspectors had already raised doubts over the sustainability of the site.

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

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

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

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

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

- protecting and enhancing valued landscapes, geological conservation interests and soils;
- recognising the wider benefits of ecosystem services;
- minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the Government's commitment to halt the overall decline in biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;
- preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water or noise pollution or land instability; and
- remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.

4.05 The NPPF prioritises the safeguarding of AONBs at paragraph 115.

Planning Policy for Traveller Sites (PPTS)

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

"The Government's overarching aim is to ensure fair and equal treatment for travellers, in a way that facilitates the traditional and nomadic way of life of travellers while respecting the interests of the settled community." (para 3 PPTS)

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

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

- j. *to enable provision of suitable accommodation from which travellers can access education, health, welfare and employment infrastructure*
- k. *for local planning authorities to have due regard to the protection of local amenity and local environment.” (para 4 PPTS)*

4.07 In terms of plan making the PPTS advice is that;

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

- a) *promote peaceful and integrated co-existence between the site and the local community*
- b) *promote, in collaboration with commissioners of health services, access to appropriate health services*
- c) *ensure that children can attend school on a regular basis*
- d) *provide a settled base that reduces the need for long-distance travelling and possible environmental damage caused by unauthorised encampment*
- e) *provide for proper consideration of the effect of local environmental quality (such as noise and air quality) on the health and well-being of any travellers that may locate there or on others as a result of new development*
- f) *avoid placing undue pressure on local infrastructure and services*
- g) *do not locate sites in areas at high risk of flooding, including functional floodplains, given the particular vulnerability of caravans*
- h) *reflect the extent to which traditional lifestyles (whereby some travellers live and work from the same location thereby omitting many travel to work journeys) can contribute to sustainability.” (para 13 PPTS)*

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

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

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

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

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

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

“However, as paragraph 16 [relating to Green Belts] makes clear, subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly

outweigh harm to the Green Belt and any other harm so as to establish very special circumstances.” (para 24 PPTS). I note that the mini paragraph above was added in the 2015 re-issue of PPTS

“Local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. Local planning authorities should ensure that sites in rural areas respect the scale of, and do not dominate the nearest settled community, and avoid placing an undue pressure on the local infrastructure.” (para 25 PPTS). I note that the word “very” was added to this paragraph in the 2015 re-issue of PPTS.

“If a local planning authority cannot demonstrate an up-to-date 5 year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary permission. The exception to this is where the proposal is on land designated as Green Belt; sites protected under the Birds and Habitats Directives and / or sites designated as Sites of Special Scientific Interest; Local Green Space, an Area of Outstanding Natural Beauty, or within a National Park (or the Broads).” (para 27 PPTS). I note that the last sentence above was added to this paragraph in the 2015 re-issue of PPTS.

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

“Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family’s or dependants’ educational or health needs or old age have ceased to travel temporarily, but excluding members of an organised group of travelling showpeople or circus people travelling together as as such.”

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

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

was subject to examination in November 2015 and the latest position on this is referred to below.

Saved Policies of Swale Borough Local Plan 2008

- 4.12 Saved policy E1 (General Development Control Criteria) sets out standards applicable to all development, saying that it should be well sited appropriate in scale, design and appearance with a high standard of landscaping, and have safe pedestrian and vehicular access whilst avoiding unacceptable consequences in highway terms.
- 4.13 This site lies in an isolated position within the countryside where saved policy E6 (The Countryside) seeks to protect the quality, character and amenity of the countryside, and states that development will not be permitted outside rural settlements in the interests of countryside conservation, unless related to an exceptional need for a rural location.
- 4.14 Within Areas of Outstanding Natural Beauty saved policy E9 (Protecting the Quality and Character of the Borough's Landscape) gives priority to the long term protection and enhancement of the quality of the landscape, whilst having regard to the economic and social well being of their communities. Saved policy E9 seeks to protect the quality, character and amenity value of the wider landscape of the Borough. Within the countryside it expects development to be informed by local landscape character and quality, consider guidelines in the Council's landscape character and assessment, safeguard distinctive landscape elements, remove detracting features and minimise adverse impacts on landscape character. Protection of AONBs is a high priority in the NPPF and they are now afforded recognition in the PPTS, see below.
- 4.15 Saved policy E19 (Achieving High Quality Design and Distinctiveness) requires development proposals to be well designed.
- 4.16 Saved policy RC7 (Rural Lanes) seeks to protect the physical features and character of rural lanes, of which Elverland Lane is one.
- 4.17 Saved policy H4 explains that the Borough Council will only grant planning permission for the use of land for the stationing of homes for persons who can clearly demonstrate that they are gypsies or travelling showpersons with a genuine connection with the locality of the proposed site, in accordance with 1 and 2 below.
1. For proposals involving the establishment of public or privately owned residential gypsy or travelling showpersons sites:
 - a) there will be a proven need in the Borough for the site and for the size proposed;
 - b) the site will be located close to local services and facilities;
 - c) there will be no more than four caravans;
 - d) the site will be located close to the primary or secondary road networks
 - e) in the case of a greenfield site there is no suitable site available on previously developed land in the locality;
 - f) the site is not designated for its wildlife, historic or landscape importance;
 - g) the site should be served, or capable of being served, by mains water supply and a satisfactory means of sewage disposal and refuse collection;
 - h) there is no conflict with pedestrian or highway safety;
 - i) screening and landscaping will be provided to minimise adverse impacts;
 - j) no industrial, retail, commercial, or storage activities will take place on the site.
 - k) use of the site will not give rise to significant adverse impacts upon residential amenity, or agricultural or commercial use, of surrounding areas; and

l) the land will not be in a designated flood risk area.

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

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

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

4.19 Saved policy T1 (Providing Safe Access to New Development) states (most relevant bit in **bold**);

“The Borough Council will not permit development proposals that;

1. *generate volumes of traffic in excess of the capacity of the highway network, and/or **result in a decrease in safety on the highway network**, unless these issues can be addressed by environmentally acceptable improvements to the highway network that have been agreed by the Borough Council and the appropriate Highway Authority in accordance with Policy T2; and*
2. *lead to the formation of a new access, or the intensification of any access, onto a primary or secondary road or route, unless it can be created in a location that it acceptable to the Borough Council, or where an access can be improved to an acceptable standard and achieve a high standard of safety through design.*

Where appropriate, the Borough Council will require the submission of a comprehensive Transport Assessment and Travel Plan with a planning application.”

Swale Landscape Character and Biodiversity Appraisal SPD 2011

4.20 This site is within the Doddington and Newnham Dry Valleys landscape character areas as defined in the March 2011 Swale Landscape Character and Biodiversity Appraisal, areas which are seen as of high and moderate sensitivity respectively and in good condition.

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

4.21 The Council’s Publication version of the draft Local Plan, entitled *Bearing Fruits 2031*, was published in December 2014 and underwent examination in November 2015. The Local Plan Inspector’s relevant interim findings are set out below.

4.22 Policy CP 3 of the draft Local Plan aimed to provide pitches for gypsies and travellers as part of new residential developments. Policy DM10 set out criteria for assessing windfall gypsy site applications. These policies are now being significantly revised or abandoned as appropriate according to the Council’s re-assessment of site need in the light of the changes to PPTS and local progress on site supply. This is discussed below. Draft policy DM10 will now be a criteria based policy for assessing windfall planning applications and this includes the following points. It seeks to retain existing permanent sites, and favours expansion of existing sites. Further criteria for approval are exceptional mitigating or personal circumstances where there is no overriding

harm to the locality or the need for affordable housing. Beyond these points the policy suggests that new sites should;

- be for applicants who have previously led a nomadic lifestyle, or those who can show why they have stopped travelling, or show intentions for future travelling
- provide opportunity to integrate with communities
- be of an appropriate scale without landscape harm or overloading services
- accommodate living and working
- cause no significant harm to occupants or others
- cause no harm to AONB, other national or local landscape or biodiversity designations
- provide landscaping to enhance the environment in a way that increases openness
- provide for health lifestyles
- be safe from flooding
- have safe and convenient access and parking
- provide transit or visitor pitches where appropriate

Site Assessment

- 4.23 The Council's February 2014 Gypsy and Traveller Site Allocations: Issues and Options consultations document recommended a new methodology for how to assess site suitability for determining whether or not to allocate a site. Although this was primarily intended to rank potential site allocations, it was agreed by Members of the LDF Panel in June 2014 to be used as a material consideration in planning applications. Even though this is normally done in relation to the potential suitability of a fresh site a site assessment exercise has been carried out in relation to this site and I have taken this into account in considering this application The assessment is a Red/Amber/Green staged approach to site suitability, with any site scoring Red in any stage not being progressed to the next stage.
- 4.24 The assessment starts with Stage 1: Availability. The applicant is in occupation of the site. Here the site scores green. This means that the site should proceed to Stage 2.
- 4.25 Stage 2: Suitability/Constraints. The site is not in a flood risk zone (assessment green); it is in an AONB and it has previously been recognised by two Inspectors as having a negative impact on the natural beauty of the area and compromising the objective of AONB designation (red); it has very harmful landscape impact (red); it has no unacceptable impact on biodiversity (green); no dominating effect on settlements on its own but there are already two other private gypsy sites nearby on temporary permissions on the otherwise unpopulated Elverland Lane. Furthermore, a recent planning application for a further private site on adjoining land was recently refused by the Council, and that application has now been resubmitted since the original appeal was submitted too late. If another appeal is lodged (the site is currently also subject to a Ground (g) enforcement notice appeal) this will indicate sustained pressure for sites here which taken together will have a significant effect on such a sparsely populated and otherwise unspoilt area (amber); no adverse impacts on heritage/archaeology (green); is not known to be contaminated (green); will not be subject to unacceptable noise or disturbance (green); has dangerous access which the highway authority have raised formal objection to and which previous Inspectors have found to be unacceptable (red); and is remote and not within walking distance to any significant facilities at 6km from Faversham station, 4.6km to Ospringe School and 4.5km to Eastling School (red). This significant number of red scores means that it is not a site considered to be suitable as a permanent site, and that the site should not proceed to

Stage 3 and will not be a candidate site for any future allocations policy (if such a policy were now to be produced).

- 4.26 The arrangements for production of Part 2 of the new Local Plan included consultation upon a preferred options document in summer 2014. The future of and need for Part 2 of the Local Plan was expected to be dependent upon the successful adoption of Part 1 of the Local Plan. It was intended that should the Local Plan Inspector find problems with Part 1 of the Local Plan, Officers were likely to suggest that all pitch provision matters be deferred to Part 2 to enable Part 2 of the Local Plan to progress independently of Part 1. The latest position on this issue is referred to below.

Five year supply position

- 4.27 The PPTS has since 2012 introduced a need for Council's to maintain a rolling five year supply of sites which are in suitable locations and available immediately. The Council put measures into place to deal with the PPTS requirements very quickly, but have only recently started down the route of trying to maintain a rolling five year supply.
- 4.28 The GTAA (2013) set a target of 85 pitches to be provided by the year 2031, with a suggested provision of 35 pitches in the first five years (to 2018). Three pitches were approved during the course of the GTAA's production so the final target was in fact 82 pitches. Since the publication of the GTAA and up to the end of March 2015 a total of 47 permanent pitches were approved in Swale, almost exclusively without an appeal, of which 33 pitches had been implemented. Evidence presented to the recent Local Plan examination (November 2015) shows that at the end of March 2015 the need for pitches identified from the GTAA thus stood at 82 pitches minus the 33 permanent pitches approved and implemented, including the personal permissions granted in the interim. This reduced the need to 49 pitches. These mostly comprised extensions to, or more intensive use of, existing sites and were awaiting occupation. Since then six more wholly new permanent sites (comprising eight (8) pitches) were approved in 2015/2016 including two fresh pitches on a large mixed use development site at Faversham. A further two (2) pitches as an extension to an existing well located site were approved in November 2016, with another wholly new pitch (previously approved only on a temporary basis) was approved in December 2016. This provision of 58 permanent pitches (47 in 2013 to 2015 plus eight (8) in 2015/2016 and three (3) further pitches in 2016/2017) is a very considerable achievement and indicates the Council's positive attitude to such development in the right location. As at July 2016, monitoring shows that 41 new permanent pitches have been implemented with 13 pitches yet to have their permission implemented. Based on these figures the Council has already met two thirds of the original pitch target to 2031 and the number of pitches completed exceeds any residual requirement for the five year period. The Council is able to demonstrate a five year supply and has in fact exceeded a 10 year supply of pitches. However, the situation has since changed considerably.

The latest position on site provision

- 4.29 The revised PPTS (2015) has resulted in considerable uncertainty as it changed the planning definition of a traveller and gypsy, and therefore what number of required pitches need to be identified. Evidence to the recent Local Plan examination was that the Council has re-interrogated the GTAA data to determine the appropriate level of pitch provision based on the new 2015 PPTS revised definition of gypsies and travellers. The data revealed that for all but unauthorised sites some two-thirds of households surveyed for the GTAA either never travel or travel not more than once a year. Overall, only 31% of respondents travel a few times a year, and 55% never travel, meaning that in Swale the gypsy and traveller population is quite settled, slightly more

so than elsewhere in the country. Many of the Borough's Gypsy/Traveller population no longer meet the new PPTS definition of having a nomadic habit of life

- 4.30 Accordingly, the need for pitches in Swale has been re-evaluated, resulting in a reduced estimate of pitch need of 61 pitches over the Plan period to 2031; this being the most generous of the possible reduced pitch numbers scenarios considered.. Of these, 58 have already been granted permanent planning permission meaning that the outstanding need is three (3) pitches to 2031. The Council considers that on the basis of past trends this need could easily be met from windfall proposals. Moreover it indicates that by proper engagement with the Council appropriate sites can be found in sustainable and acceptable locations in Swale (outside of the AONB or other designated area) without an appeal, meaning that there is a high probability of being able to find an acceptable alternative site with minimal delay.
- 4.31 As a result of this analysis, the Council is suggesting through Main Modifications to its draft Local Plan (published in June 2016) that the future need be based on a figure of 61 pitches, leaving a need per year of less than one pitch and, that no formal pitch allocations will be needed. Policy DM10 has been revised to deal with these windfall applications and the element of policy CP3 on pitch allocations is to be removed from the Plan. Accordingly, a Part 2 Local Plan would not be required.
- 4.32 The Local Plan Inspector's third interim report (March 2016) fully supports the Council's proposed position regarding gypsy and traveller site provision, accepting that the remaining need for sites can be managed by windfall applications and without a Part 2 Local Plan. The Inspector also accepts that the Council should revise draft Plan policies to reflect progress on site provision whereupon the Plan will be effective and consistent with national policy. In June 2016 the Council published Main Modifications to the draft Local Plan to confirm these intentions and these were considered at the resumption of the Local Plan EIP in January 2017. Finally, a new appeal decision at Bredgar dated 6 February 2017 (based on data available in September 2016) has confirmed that *"...in view of the now significantly reduced level of need combined with the reasonably substantial increase in the number of permitted sites, many of which have now been implemented, overall I consider that that the Council has now demonstrated that it does have a five year supply of deliverable sites. On this basis there is no apparent need for further sites in the short term and in the longer term any outstanding need that might be established would be likely to be dealt with through the provisions of the emerging development plan"*.
- 4.33 At a more local level the Council is a contributor to the Kent Downs AONB management unit which has recently published its second revision to the Kent Downs AONB Management Plan (2014 – 2019). This included policies SD1, SD2, SD3, SD8 and LLC1 of the Plan, which refer to the need to conserve and enhance the natural beauty of the AONB being the prime purpose of the designation, with new development respecting the area's character, quality and distinctiveness, with development that runs counter to the primary purpose of the AONB, or its distinctive landform, special characteristics or qualities being opposed.

5.0 LOCAL REPRESENTATIONS

- 5.01 I have received 33 letters of objection to this application from the wider local area despite it being thinly populated. These object to the application on the following summarised grounds;
- If the children living at the site are attending school regularly the occupants cannot have a nomadic habit of life

- Nor does attendance at horse fairs demonstrate a nomadic habit of life as many members of the settled community attend such fairs
- Why do the applicants need a a permanent site if they have a travelling lifestyle
- The application should not be determined on gypsy policy grounds, in which case it is contrary to many Local Plan policies including saved policies E1 and E9, draft policies ST1 and DM24, and paragraphs 13, 16, 24, 25 and 27 of PPTS
- It also fails the tests in draft policy DM10 for harming the AONB, failing to show integration with communities, dominating the settled community, and having non-native landscaping
- The site is clearly visible from multiple viewpoints and detracts very obviously from what is a lovely wood/field setting. The caravans are out of character with the surroundings
- Previous factors in favour of the site have been removed as the Council has now satisfied most of the outstanding pitch need, and because any remaining need can be met over the plan period meaning such unsuitable sites need no longer be tolerated
- Permanent permission has twice been refused here on appeal
- The site has changed hands just after the latest appeal decision and the applicant must have been aware of the temporary nature of the permission
- The reasons for the previous approvals no longer exist and the careful balancing decision of the Inspector needs to be re-assessed
- There is now no presumption in favour of a temporary permission in an AONB if site supply is short
- Only personal circumstances can possibly justify a planning permission now but PPTS says that these are unlikely to constitute very special circumstances BUT these, including educational need, did not override the harm identified in the latest appeal decision on this site
- It is highly unlikely that a third appeal would be successful
- More reasonably, an extended period of compliance (six months) to re-locate should be allowed
- Approval would set a dangerous precedent, as witnessed by recent unauthorised occupation of an adjoining site
- The horses being in foal should not lend weight to approval of the application
- The Council has so far failed to make sure that the land was returned to grazing land as the Inspector decided, this should be done now to avoid any more public money being spent
- The Council should not even been considering the application but may have been pressurised into finding sites
- There are often not water or sewage facilities at such sites, making them unsuitable for human habitation
- We support the comments of the Kent Downs AONB Unit
- Road access can be dangerous and has not always been approved
- The cumulative impact of so many sites so close together will encourage the development of an enormous encampment

6.0 CONSULTATIONS

- 6.01 Ospringe Parish Council remains opposed to the application and only wishes to see a temporary permission if the appellant would be likely to secure permanent permission on appeal. They do not see any exceptional mitigating circumstances to approve the application, nor do they agree that the development does no material harm to the AONB. They understand that site supply is now sufficient and that there is no need to grant temporary or permanent permission here.

- 6.02 The Parish Council has responded to the applicant's information regarding their gypsy status, noting that what is important is not their birth or cultural background but whether they have a nomadic habit of life. They say that the information provided does not demonstrate that the applicant and his family have a nomadic habit of life nor is there any supporting evidence to back up the limited claims. Finally, they note that the applicant purchased the site with only a temporary permission which was at best speculative, but that horses could still be kept at the site even if residential permission is denied.
- 6.03 The Kent Downs AONB Unit has written opposing the application on the following summarised grounds;
- The site lies within the Kent Downs AONB and the application should be tested against the purpose of designation, to conserve and enhance natural beauty
 - The site lies in a particularly attractive, undeveloped and remote part of Swale within the Mid Kent Downs Landscape Character Area where their Landscape Design handbook advises that one of the overall objectives is to maintain the remote quality of the countryside and control urban fringe pressures
 - They consider that permanent use for the stationing of a residential caravan and associated activities detracts from the landscape character of the locality failing to conserve the natural beauty of the AONB
 - The application is contrary to policies SD1, SD3, SD8 and LLC1 of the current AONB Management Plan which is a material consideration which should attract considerable weight
 - The application is also contrary to draft Local Plan policy DM24 which requires development to conserve and enhance the special qualities and distinctive character of the AONB, and to para 115 of NPPF which provides that great weight should be given to conserving landscape and scenic beauty in AONBs
 - They refer to the 2012 appeal decision on this site where the Inspector found harm to the AONB and they consider that this remains the case and that a permanent permission would be "wholly inappropriate"
- 6.04 The Environment Agency does not raise objection to the application even though the site lies within a groundwater source protection zone as they consider there is a low risk of pollution.
- 6.05 Kent Highways and Transportation recommend refusal of the application on highway grounds because the site has insufficient frontage within the applicant's control to the south-east to enable an access to be satisfactorily laid out incorporating visibility splays which are essential in the interests of highway safety. They note that these same concerns were acknowledged in the 2007 and 2012 appeal decisions on this site.

7.0 BACKGROUND PAPERS AND PLANS

- 7.01 Application papers for application 16/509545/FULL

8.0 APPRAISAL

- 8.01 I believe that the main considerations in this matter are the degree of congruence with policy towards development in the countryside; visual impact of the site; the impact of the development on the objectives of designation of the Area of Outstanding Natural Beauty; highway safety; the Council's current position regarding the supply of gypsy and traveller sites; whether a permanent permission should be granted and if not,

whether a temporary permission is appropriate. If I do not conclude that the other merits of the application warrant the grant of a permanent or temporary permission I believe that it would be proper to go on to consider whether the applicant's personal circumstances are sufficient to warrant the granting of a permanent or temporary planning permission and then, whether a refusal of permission would constitute an infringement of the applicant's human rights.

- 8.02 The site lies in open countryside and on an attractive rural lane, where established policy at local and national level is to restrict non-essential development. At NPPF para 115 it is made clear that in AONBs great weight should be given to conserving the landscape and scenic beauty. The objectives of AONB designation are to conserve and enhance the natural beauty of the area. This is therefore the key policy test here, which is closely linked with visual impact. PPTS (2015) at para 25 states that local planning authorities "should very strictly limit new traveller site development in open countryside this is away from existing settlements", meaning that such a site is no longer acceptable in principle.
- 8.03 In this respect, the site remains high on the valley side within the Newnham Valley. Despite, and perhaps partly because of, the growth of laurel bushes the site remains quite clearly visible for the other side of the valley, from the M2 and from the public road overbridge to the west. These are all points that the first appeal Inspector viewed the site from. His conclusion (at paragraph 14 of his letter) was that "the mobile home is prominently situated towards the top of the valley side and appears alien and incongruous in the landscape". At para 16 he noted the laurel hedge, but recognised that the long distance viewpoints were elevated and that "the hedge would need to be some height to effective", and even then it would not be "in keeping with the natural qualities of this landscape". He also found (at para 15) that the mobile home in a fenced off area of a field complete with domestic artefacts, and the formalised tarmac bellmouth access were intrusive. His overall conclusion on landscape impact (at para 17) was that "the development is harmful to the landscape and undermines the objective of AONB designation. It fails to conserve or enhance the natural beauty of the landscape"
- 8.04 In the later appeal decision, when the laurel hedging had grown into the inappropriate hedge that the first Inspector saw as likely to be harmful to the natural qualities of the landscape, the second Inspector noted changes within the site aimed at reducing the site's visual impact from the lane but still concluded that the site was visible in the wider landscape, with the caravans being out of keeping with traditional rural buildings and the laurel hedge not being a natural feature of this landscape. He concluded (as the first Inspector had) that the development was "harmful to the landscape and undermines the objective of AONB designation, as it fails to conserve or enhance the natural beauty of the landscape". He gave this matter substantial weight as an objection to the proposal (para 12).
- 8.05 I share the Inspectors' earlier conclusion that this site is harmful to the objectives of AONB designation, and conclude that it is contrary to established planning policy and the aims of the NPPF and PPTS. Accordingly, I remain convinced that this site has a harmful impact on the AONB and that this matter should be afforded great weight in the decision making process. Ultimately, I am satisfied that this site is not acceptable on a permanent basis for this reason.
- 8.06 In terms of highway safety, the current objection from Kent Highways and Transportation reaffirms the unsuitability of the site access and the consistency of the position from the time of the previous appeal hearings. The first Inspector concluded (para 19) that although the lane is lightly trafficked and serves only local needs the 10m visibility splay available to the east is unacceptably substandard, particularly on a narrow lane where approaching vehicles will not be on the far side of the carriageway.

He also noted that there was no scope for vehicles leaving the site to edge forward without encroaching onto the carriageway. Finally, he noted that a family gypsy site is likely to generate significantly more traffic than the previous agricultural use of the access or use for keeping horses. The second Inspector echoed those concerns, saying (para 14) that the access remained substandard, particularly with regard to visibility to the left, and that the use of the site would be likely to generate more movements than a non-residential use. This he afforded considerable weight to; but less so over a temporary period.

- 8.07 I am not aware of any improvements to the access since the most recent appeal decision, I can only conclude that the safety aspects of this site, bearing in mind the family's need for transport including regular school day traffic, will create a substantial threat to safety at this very poor access. This reinforces to my concern over the suitability of the site, especially in the longer term. I conclude that this site is not acceptable on a permanent basis for this reason.
- 8.08 The site is also very remote from services, 4.5km to the nearest school and 6km from facilities in Faversham, and does not provide a convenient location for access to educational, health or social facilities. Nor is the site well located both for integration with any local community, or for a sustainable form of development. There are few facilities close to the site and any access to amenities will involve the use of private transport. Saved policy SH1 of the Local Plan identifies a settlement hierarchy for the Borough where various levels of development might be appropriate. This isolated location is not one where there is ready access to amenities. It thus fails to meet the second stage of the Council's published site assessment criteria.
- 8.09 In this regard the nature of the site is far more remotely located than one at Spade Lane close to the Medway conurbation that was subject of an appeal decision regarding a proposed gypsy or traveller with a wide range of facilities as a gypsy or traveller site constituted sustainable development. The Inspector there (October 2014) noted that locational sustainability depends on a range of factors. In that case (APP/V/2255/C/14/2220447) the Inspector considered whether the use of that site close to a major population centre with a wide range of facilities as a gypsy or traveller site constituted sustainable development. He noted that locational sustainability depends on a range of factors which are neither constant nor easy to measure with confidence. Nevertheless, he concluded that the site was "in a location where the overwhelming majority of journeys to shops, to school, to the doctor or to most other facilities and services would be undertaken by car." He added that "The distances involved, the absence of any public transport in easy reach, the character of the lanes along which people would travel, and the unattractiveness at night, in winter or in bad weather of any short cuts provided by local PROWs, would obviate journeys on foot other than for the fittest and/or most enthusiastic of walkers." His conclusion was that the sustainability benefits of the proposed development were minimal and more than outweighed by significant and demonstrable disadvantages. I consider that a similar conclusion applies with even greater force here where the site is far further from amenities and where the roads and lanes in question are also without footpaths or street lighting, and where the site has significant landscape and highway objections.
- 8.10 If further evidence were needed, the two appeal decisions on this site both point to the unsuitable location of this site in relation to access to amenities. The first appeal Inspector said (para 18);

"I am also not convinced that this is a particularly sustainable location for a Gypsy site. I appreciate that Billy seems to have coped with school in Faversham on his bike and proposes to use bike and train to go to college in Canterbury. While it meets the current needs of the family it is in a relatively remote and sparsely populated location some

distance from services which in the main are to be found in Faversham. However, I do not consider it so unsuitable a location as to rule it out were that the only area of concern.”

Nevertheless in January 2012 (pre PPTS), the second Inspector (at para 13) said that;

*“As to **sustainability** the evidence strongly suggests that there are more sustainable locations for G&T development than the appeal site, which in effect adds to the scatter of residential development in the open countryside. There is no reason to doubt that the eventual allocation of sites to meet G&T pitch needs, whether within the Borough or within this area of Kent as part of a joint effort by a group of local authorities complying with their duty to cooperate, will be in more sustainable locations and circumstances than the appeal site. This has considerable weight as an objection to the grant of a permanent permission for the appeal use. On the other hand, until adequate pitch provision is made elsewhere account should be taken of the advantages of providing, even on a temporary basis, for those who lack alternative accommodation and would therefore otherwise be moving between potentially more unsatisfactory temporary locations. This point is referred to in paragraph 64 of ODPM Circular 1/2006, and in this case I consider it to balance harm to sustainability objectives in the short term.”*

In addition, at Horseshoe Farm, Elverland Lane (opposite the current application site) an Inspector in May 2012 (post original PPTS) stated that;

“19. Paragraph 11 of the PPTS requires traveller sites to be sustainable economically, socially and environmentally. The appeal site is remote from all services and facilities and is not well located in relation to any settlement so as to foster social inclusion. It is isolated, in a sparsely populated area and there is environmental harm as identified above. Although there are two other gypsy sites nearby, they are not lawful.

20. A positive factor is that the Appellant has his horse keeping and breeding business based on the land on which he lives which reduces daily travel. There are also the recognised benefits arising from having a permanent base, such as being able to access health services more readily and reducing any need to move around on unauthorised sites. But those are benefits which arise in the provision of any permanent site and do not outweigh the disbenefits arising from the isolated location in this case.”

- 8.11 On the basis of this consistent view from recent Planning Inspectors, and bearing in mind the results of the Council’s own site assessment criteria (see above) I consider that this location is too remote from services and amenities to be acceptable as a permanent gypsy or traveller site. I consider that the limited remaining need for sites in the Borough can and is being more properly be met in far more suitable locations and, that use of this site fails to meet the environmental role necessary to be considered sustainable development in terms of the NPPF definition. I also note that the question of sustainability is central to NPPF which has been published since both appeal decisions and which, to my mind, means that this issue assumes far greater significance than at the time of either appeal decision at this site. I am satisfied that this unsustainable location is now a major obstacle to seeing this site as acceptable on a permanent basis.
- 8.12 In this context, I consider that a strong case would again need to be made for a decision to favour a permanent use of this site. The Council’s policy position is now far different from that at the time of the appeal decisions. Whilst the Council has not produced a site allocations DPD for gypsy and traveller sites it has made very

significant progress on site provision since the 2012 appeal decision. A new GTAA has been completed and all but a few sites from the entire site supply need identified up until 2031 have been provided. The site policy and supply situation could hardly be more different from that at the time of the previous appeal decisions on this site, and the Local Plan Inspector has very recently agreed that the remaining site need can be managed by windfall applications. I accept that this site is capable of being a windfall application but this would be judged against the new criteria based policy DM10. I have already discussed how this site falls well short of the Council's current site assessment criteria which would have been used to allocate sites under DM10 as originally drafted. It is therefore no surprise to find that the site fails to meet the criteria of DM10 as proposed to be modified. In particular the site fails on the following points;

- The remote location of the site fails the sustainability criteria of DM10 as it falls within category 6 of policy ST3 being in open countryside and not protecting the intrinsic value or beauty of the countryside
- Its isolation does not achieve integration between communities
- It causes harm to the objective of designation of the AONB
- The site landscaping does not and could not reasonably increase openness
- Does not provide safe access

8.13 Accordingly, I see no justification for a permanent planning permission here. Both previous Inspectors have so concluded, but both have decided that a temporary planning permission was justified, one on personal grounds. At that time Government advice was that local planning authorities should consider favourably planning applications for housing where a five year supply was lacking. PPTS 2012 continued that theme saying that the lack of a five year site supply should be a significant material consideration in relation to a potential temporary permission. However, PPTS 2015 has re-written this advice, now saying that the exception to this advice is where a site lies in a designated area such as an AONB. My conclusion now is that the Government's intention is to safeguard AONBs from temporary site development (presumably when a site is not acceptable on a permanent basis) even where site supply might be lacking. In this conclusion I am supported by the findings of a very recent appeal Inspector regarding site at Bredgar (February 2017) where he found that *"the PPTS has been amended such that where a five year supply of deliverable sites cannot be demonstrated, this cannot be a significant material consideration when considering applications...where the land is within an AONB"*. As a result, I consider that the tide has now firmly turned against the possibility of a further temporary planning permission here. There is in my view no longer a case for granting temporary permissions pending Local Plan policy production. I have already concluded that the site is not suitable for a permanent permission. I have now also concluded that there is no case for a temporary permission based on waiting for emerging policy and a specific site allocations DPD.

8.14 The temporary planning permission granted on appeal at this site was in my view primarily in recognition of the educational need evident at that time, and latterly the strong need for sites. The proposed occupants of the site now are the applicant and his partner, and their two school age children. No unusual circumstances over and beyond attending school have been advanced. These facts in themselves do not in my view constitute special circumstances to outweigh what is now a very small need for sites, and not one that should be met in a location such as this one.

8.15 I note that the second appeal Inspector did not give weight to more significant personal circumstances than this in setting out the length of the temporary permission he granted on this site in 2007. Accordingly, I do not consider that the applicant's current

circumstances amount to a factor which ought to weigh in favour the grant of permanent, temporary or personal planning permission to live on this site.

- 8.16 Any refusal of planning permission for someone's place of residence is potentially a breach of their human right to a home. However, this right is to a home, not to any particular home. There is nothing to suggest that the applicant's family's need for a permanent site can be met only on the appeal site or only within the AONB, and in fact there may be equally suitable sites closer to Ospringe School which itself is not within the AONB. A site nearer to that school would also be far closer to the wider amenities of Faversham itself and in a location which the Council would be more likely to approve. Paragraph 70 of Circular 1/2006 states that the obligation on public authorities to act compatibly with the European Convention on Human Rights does not give gypsies and travellers a right to establish sites in contravention of planning control. To that extent I do not consider that there would be a disproportionate interference with the applicant's rights under the Convention if permission were refused.
- 8.17 Finally, I have had regard to the advice in paragraphs 71 and 72 of Circular 01/2006 concerning the Council's duties to actively seek to eliminate unlawful discrimination and to promote equality of opportunity and good race relations in all they do. I do not consider that those duties support the grant of permission in the present case.

9.0 CONCLUSION

- 9.01 This site is prominent within the Kent Downs AONB and has unacceptable access arrangements. Whilst PPTS makes clear that gypsy and traveller sites in rural areas without special planning constraints are acceptable in principle, it does state that sites in open countryside should be very strictly controlled and that sites that compromise the objectives of designation should not be permitted in AONBs. I share the view of the appeal Inspectors that the use of this site is harmful to the AONB, that it does not have safe access, and that the site is too poorly related to services and amenities to be acceptable as a permanent gypsy site.
- 9.02 The Council has been working to provide new sites across the Borough, and this has resulted in a substantial number of permanent pitches being approved. There are also substantial suitably located rural areas where a gypsy and traveller caravan site would be acceptable in principle, and significantly less harmful to the landscape than the appeal site. The policy position and site supply could not be more different than that which applied at the time of the previous appeal hearings.
- 9.03 Appeal decisions have not yet indicated that the local need for new sites is so great as to override serious environmental constraints, apart from two cases (including the temporary permission on this site) when they were combined with special personal grounds. I have considered the applicant's personal circumstances, but have concluded that there is nothing to suggest that this need can be met only on the appeal site or only within the AONB.
- 9.04 In balancing the competing issues of the need for and potential availability of alternative sites against the previously identified serious objections to the use of this site as a private gypsy site in terms of harm to the landscape character and to the objectives of designation of the AONB, to highway safety and to sustainability, I believe that the balance remains strongly against permission being granted on this site. The need to maintain safe access, and the fact that the landscape is not conserved by introducing incompatible development and then attempting to screen it with planting, as has been attempted here, are to my mind powerful arguments against even a temporary permission on this site. The previous Inspectors only granted a temporary permission in explicit recognition of the severity of harm to the AONB and highway

safety from use of this site as a caravan site, and at a time when the need for sites was strong. Site need is far from strong now.

- 9.05 I have considered whether a temporary planning permission is appropriate in this case, and explained why I do not believe that it is. I have also considered the personal circumstances of the applicant and his family but have not found them to warrant a permanent, temporary or personal planning permission. I do not believe that there would be a disproportionate interference with the applicant's human rights if planning permission were refused, especially if a reasonably generous period were allowed for him to vacate the site. I consider that such an approach would balance the rights of the applicant with those of the wider community. Accordingly, I recommend that planning permission is refused.

10.0 RECOMMENDATION –REFUSE for the following reasons:

REASONS

- (1) Notwithstanding the Council's appreciation of the need for it to respond positively to the accommodation needs of gypsies and travellers, and the guidance in DCLG's Planning Policy for Traveller Sites (2015), the Council considers that this site is unacceptable as a gypsy or traveller site. The site is isolated in open countryside away from any social, health, educational or other amenities, and lies within the Kent Downs Area of Outstanding Natural Beauty and the siting of caravans and the associated hardsurfacing creates an alien and intrusive appearance to the site which harms the natural beauty, character and appearance of the area. The proposal to use the site for the stationing of caravans compromises the objectives of designation of the Area of Outstanding Natural Beauty which are the conservation and enhancement of the area's natural beauty, and is contrary to the advice in paragraph 12 of the NPPF, paragraphs 4, 23, 25 and 27 of the PPTS, to saved policies E1, E9 and RC7 of the Swale Borough Local Plan 2008, and to policies SD1, SD2, SD3, SD8 and LLC1 of the AONB Management Plan 2014 to 2019, which refer to the need to conserve and enhance the natural beauty of the AONB being the prime purpose of the designation. The Council has taken account of the position in terms of the supply of gypsy and traveller sites, the personal circumstances of the applicant and his family, and considered whether a permanent or temporary planning permission should be granted. Despite appreciating the personal circumstances of the applicant's family, the Council does not consider that a permanent or temporary planning permission represents an acceptable balance between the need for gypsy and traveller sites in the Borough and the personal circumstances of the applicant's family, and the very substantial harm that occupation of the site causes to planning policy for the appropriate location of gypsy or traveller sites in terms of access to services and amenities, or on the character and appearance of the area, and on highway safety. In taking account of all these factors the Council's considers that this proposal does not represent sustainable development, and that planning permission should be refused.
- (2) The access to the site lacks sufficient visibility to allow for its safe use, and adequate visibility splays cannot be provided on land within the applicant's control. As such, use of the access represents a danger to highway safety in a manner contrary to saved policies E1 and T1 of the 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 to be fundamentally contrary to the provisions of the Development Plan and the NPPF, and there were not considered to be any solutions to resolve this conflict.

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



Appeal Decisions

Hearing held and site visit made on 11 January 2012

by **V F Ammoun BSc DipTP MRTPI FRGS**

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

Decision date: 23 February 2012

Four appeals relating to land at Tootsie Farm, Elverland Lane, Eastling, Faversham, ME13 0SP

- Appeal A is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted; appeals B, C, and D are made under section 174 of the Act as amended by the Planning and Compensation Act 1991 against an enforcement notice.
- Appeal A and appeal B are made by Mr Wayne Willett Snr; appeal C is made by Mr Wayne Willett Jnr; and appeal D by Mr William Willett, all against decisions by the Swale Borough Council.
- The Council's reference is ENF/11/024.

Appeal A – ref APP/V2255/A/11/2157005 – the condition appeal

- The application Ref SW/10/1446, dated 06/11/2010, was refused by notice dated 4th February 2011.
- The application sought planning permission for *Use of land for one mobile home and one tourer for a Gypsy family* without complying with a condition attached to planning permission Ref SW/05/1316, dated 7 October 2005, granted on appeal on 15 November 2007 under reference APP/V2255/A/07/2035766.
- The condition in dispute is No 1 which states that: *The use hereby permitted shall be carried on only by Wayne Willett and his resident dependants, and shall be for a limited period being the period of 3 years from the date of this decision, or the period during which the land is occupied by them, whichever is the shorter.*

Summary of Decision: Temporary planning permission is granted as set out in the Formal Decision.

Appeals B, C, and D – refs APP/V2255/C/11/2159720, 2159721, and 2159722 – the enforcement notice appeals

- The notice was issued on 15 August 2011.
- The breach of planning control is the failure to comply with the requirements of conditions No 1 and 2 imposed upon the grant of planning permission on appeal for *Use of land for one mobile home and one tourer for a Gypsy family* (Council reference SW/05/1316, appeal reference APP/V2255/A/07/2035766) on 15 November 2007.
- Condition No 1 states that *The use hereby permitted shall be carried on only by Wayne Willett and his resident dependants, and shall be for a limited period being the period of 3 years from the date of this decision, or the period during which the land is occupied by them, whichever is the shorter.* Condition No 2 states that *When the land ceases to be occupied for the use hereby permitted by Wayne Willett and his dependants, or at the end of 3 years from the date of this decision, whichever shall first occur, the use hereby permitted shall cease and all caravans, structures, fences, materials and equipment brought onto, or erected on, the land, or works undertaken to it in connection with the use, shall be removed and the land shall be restored to its previous*

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condition before the development took place.

- The requirements of the notice are (a) Cease the use of the land for the stationing of any mobile homes or caravans; and (b) Remove from the land all mobile homes, caravans, structures, fences, materials and equipment as required by Condition 2 of APP/V2255/A/07/2035766.
- The period for compliance with these requirements is 12 months.
- The appeals are proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Summary of Decisions: The enforcement notice is upheld with an extended period for compliance, as set out in the Formal Decision.

Preliminary Matters

1. As pointed out at the Hearing, the breach of control, that the site is still occupied by caravans, structures, fences, etc in breach of Conditions 1) and 2) of APP/V2255/A/07/2035766 has been put under Notice heading "Reasons for issuing this notice" when it should have been under the heading "The breach of planning control alleged". The main parties accepted that this defect could be disregarded as all concerned had known what was being enforced against, and no one would be prejudiced thereby.
2. The appeal A against refusal of planning permission seeks to continue use of the land as a Gypsy caravan site beyond the three year period allowed on appeal on 15 November 2007. The appeals B, C and D were against an enforcement notice requiring that the use cease because the three year period had been exceeded. Because the prescribed fees were not paid for appeals B, C and D the deemed application cannot be considered. It follows that the enforcement notice will be upheld¹. The merits of continued use will, however, be dealt with by way of appeal A, which if successful has the effect under S180 of the Act of superseding the notice to the extent of such a permission.
3. Parish Council and interested persons' representations relied in part² upon the terms of the 2007 appeal decision to establish that consent should not be renewed. In particular it was pointed out that certain personal circumstances previously taken into account had now altered with the passage of time, and therefore no further extension of occupation should be allowed. The 2007 decision is indeed a material consideration, but as explained at the Hearing, the present appeals must be decided on the individual planning merits of the cases and evidence put forward in the light of present circumstances and policy.

Agreed and background matters

4. The Appellant occupiers are Romany Gypsies who live in two caravans on the site, which was previously part of a larger field. They have an association or connection with the Borough. There are no suitable, acceptable and affordable alternative pitches for them in the Borough that are known to the Council.
5. Planning Policy Statement 3 (PPS3) requires a five year rolling supply of sites for all residential purposes. As a 2007 study of need to 2011 has not been

¹ Subject to any modifications made due to the appeals on grounds (f) and (g).

² Other objections raised, including the substantial evidence put forward by the Kent Downs AONB Unit, have been taken into account but are not referred to separately where they support the Council's case.

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updated, the Council does not know what provision is needed for the five years to 2016 and so does not claim to have a five year rolling supply of pitches.

6. The 2007 study indicated a need for 62 additional pitches to 2011. This number was not provided. It is acknowledged that natural growth of the Gypsy and Traveller (G&T) population will generate need for pitches from 2011 to 2016. The Council has granted permanent planning permissions for pitches, is seeking to identify further pitches, has applied a scoring system to various existing or possible pitches, will carry out the necessary survey needed to establish G&T pitch needs (and other housing needs) and will allocate land to meet any remaining needs either in its Core Strategy (CR) or in a Development Plan Document (DPD).
7. The appeal site is in the countryside and within the Kent Downs Area of Outstanding Natural Beauty (AONB). In 2007 an Inspector found that the development harmed the AONB, had inadequate visibility at the site access, and lacked sustainability. He granted a temporary permission that would expire when, on the evidence then before him, there was a prospect that alternative pitches would be available to meet the acknowledged shortfall in pitches.

The main issue – the planning appeal

8. Within the AONB policy E9 of the Swale Borough Local Plan 2008 gives priority to the conservation and enhancement of natural beauty, reflecting well established national policy. As it is agreed that the site occupiers are Gypsies, it follows that policies addressing the national shortfall of residential caravan pitches for Gypsies and Travellers (G&T) will be relevant to this appeal. Local Plan policy H4 is concerned with G&T pitch provision, but its supporting text states that where there is a conflict with the terms of national policy in ODPM Circular 1/2006 the Circular should prevail³, and I shall proceed on that basis.
9. From my inspection of the site and area, and from consideration of the representations including those made at the Hearing and the agreed and background matters above, I have concluded that the main issue in the planning appeal is whether any harms to the purposes of the AONB, to sustainability objectives, and to the safety and convenience of highway users are outweighed by the need to provide additional pitches for Gypsies and Travellers (G&T) and the personal circumstances of the site occupiers.

Consideration

10. As to the **effect upon the AONB**, the area for which continued residential G&T caravan site use is sought is approximately rectangular with longer eastern and western sides. It is in part screened by a long established field hedgerow to the east, and a laurel hedge to the west. The latter hedge has grown to become a more effective screen since the temporary planning permission was granted.
11. The site is open to direct and short range views from Elverland Lane through the southern boundary site access, which opened onto a hard surfaced front yard on which have been sited a caravan and a shed, as shown in an August 2011 photograph. The hard surface has now been largely taken up and replaced with earth, and the caravan and shed removed from the front yard.

³ For reasons set out in the Local Plan, in summary that the plan policy had not taken into account earlier already extant national policy.

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Views from the Lane towards the rear or northern yard on which caravans are now situated are partly obstructed by a lawful barn/stable building. This is an improvement upon the 2007 situation, and could be required by planning conditions imposed upon any approval. The entrance to the site and views into it from Elverland Lane nevertheless remains less rural in character than would be the case were there no more than an agricultural or the lawful horse keeping use.

12. The site inspection established that, as had been found by the 2007 Inspector, the appeal use was visible in the wider landscape, and I was taken to three sections of public rights of way⁴ from which the site is visible. The caravans are out of keeping with the traditional form of rural building in this area, and the laurel hedge to the west of them is not a feature natural to this particular landscape. I therefore do not differ from the previous Inspector in concluding that the development is harmful to the landscape and undermines the objective of AONB designation, as it fails to conserve or enhance the natural beauty of the landscape. Having regard to the importance to be given to landscape considerations within an AONB, I give this matter substantial weight as an objection to the appeal proposal.
13. As to **sustainability** the evidence strongly suggests that there are more sustainable locations for G&T development than the appeal site, which in effect adds to the scatter of residential development in the open countryside. There is no reason to doubt that the eventual allocation of sites to meet G&T pitch needs, whether within the Borough or within this area of Kent as part of a joint effort by a group of local authorities complying with their duty to cooperate, will be in more sustainable locations and circumstances than the appeal site. This has considerable weight as an objection to the grant of a permanent permission for the appeal use. On the other hand, until adequate pitch provision is made elsewhere account should be taken of the advantages of providing, even on a temporary basis, for those who lack alternative accommodation and would therefore otherwise be moving between potentially more unsatisfactory temporary locations. This point is referred to in paragraph 64 of ODPM Circular 1/2006, and in this case I consider it to balance harm to sustainability objectives in the short term.
14. The principal concern as to the safety and convenience of **highway users** is the limited visibility at the site access. Though the exact relevant figures were not agreed, I consider it clear that the access remains substandard, in particular visibility to the left. I share the previous Inspector's view that residential use involves a greater number of vehicle movements than is likely for a non-residential keeping of horses. The number of potential if not actual drivers has increased since the previous decision. On the other hand the Lane is lightly travelled, evidently by local traffic, and there is a continuing absence of recorded accidents associated with use of the access. I have concluded that the unsatisfactory access has considerable weight as an objection to a permanent permission, but less weight where a temporary one is concerned.
15. Though the Council emphasised the efforts which it was making and had made to **provide additional G&T pitches** in the Borough, they have not yet provided all the pitches found to be needed up till 2011, and cannot show a five year forward provision for the years 2011-2016. Studies concerned with

⁴ Document 6, which does not take account of any views from persons using the nearby M2 motorway.

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capacity to which I was referred were acknowledged to differ from ones that, as required by PPS3, establish need. Whatever future success may attend the Council's efforts, including the possibility that sites might be found as part of extensions to urban areas and within the ambit of "affordable housing" provision, at the present time there is an unmet need for pitches in the Borough.

16. That weight is to be given to unmet need or shortfall in pitch provision is indicated in Planning Policy Statement 3 (PPS3) which requires local authorities to allocate a five year supply of sites for both the settled and the G&T communities⁵. At paragraph 71 PPS3 states in part that "*Where Local Planning Authorities cannot demonstrate an up-to-date five year supply of deliverable sites, they should consider favourably planning applications for housing...*". Though this is not a requirement to approve any application that is made in such circumstances, nor does it explicitly require a five year supply of G&T caravan pitches as distinct from bricks and mortar housing, it adds weight to the present appeal where there is a shortfall in provision and not the five year forward supply of sites that is specified for bricks and mortar housing. A consultative draft policy entitled *Planning for Traveller Sites – consultation April 2011* is consistent with this. The Consultation explains that current policy is not working and that a new approach is needed, and gives a clear indication of intended policy direction, in particular that G&T policy is to be aligned with that for conventional housing as set out in PPS3.
17. Though the term "*consider favourably*" is not formally defined in PPS3 I consider that to have effect it must imply that weight is to be given to unmet need. By way of comparison, where a temporary permission is envisaged in circumstances where need is due to be met at the end of a defined period, Circular 1/2006 at paragraphs 45 and 46 indicates that substantial weight should be given to unmet need. A temporary permission, however, is one where any consequential harms are necessarily likely to be less than a permanent permission. Also taking into account the rarity with which substantial weight is referred to in planning policy, I have concluded that where a permanent permission is concerned, and there is unmet need, then as acknowledged for the Appellant a less than substantial but still considerable weight should be given to such need.
18. Turning to a possible temporary planning permission the Circular states in paragraphs 45 and 46 that where there is unmet need but this is likely to change as a result of a DPD, "*...local planning authorities are expected to give substantial weight to the unmet need in considering whether a temporary planning permission is justified...*". The recent *Planning for Traveller Sites – consultation April 2011* also deals with this situation, and suggests that "*favourable consideration*" (after an interim period) should be given to the grant of a temporary permission. Though it is not clear at this stage whether the Council will meet pitch needs through a Core Strategy, a DPD, or through the grant of planning permissions following its extensive analysis of possible sites, I consider that on the balance of probability they will in due course have and implement an evidence based strategy for providing sites. A temporary permission could therefore be appropriate in this case, and I shall return to this possibility below.

⁵ A consultative draft *National Planning Policy Framework* referring to housing at paragraph 110 does not suggest a materially different approach.

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19. The **personal circumstances** of the site occupiers include their status as G&T as defined in paragraph 15 of ODPM Circular 01/2006, and the agreed absence of alternative accommodation. Particular matters put forward include that one of the occupiers is to have a back operation and has a young child, and that the Appellant needs a settled abode to comply with the terms of his licence following release from prison. I consider that these particular matters are not so compelling that they add more than some additional weight to the proposal, a point to which I shall return to in considering what whether a personal occupancy condition is appropriate.
20. Having regard to the foregoing and by way of summary **overall assessment**, the harm to the purposes of the AONB attracts substantial weight, and the harms to sustainability and highway matters considerable weights. Against this considerable weight should be attached to the need for additional pitches and associated absence of alternatives, and some weight to the particular personal circumstances referred to. I have concluded on the main issue in this case that the harms referred to are not outweighed by the need to provide additional pitches for Gypsies and Travellers (G&T) and the personal circumstances of the site occupiers.
21. Turning then to whether a condition limiting the use to a temporary period would alter the balance, a limited period of use would reduce the harm to AONB objectives, involve no harm to sustainability objectives while there remained a shortage of pitches, and reduce any harm due to limited visibility at the access. On the other hand the weight to be given to the unmet need for G&T pitches in the Borough and the associated lack of alternative accommodation rises to the substantial as indicated in Circular 1/2006. Such a temporary consent would not be a precedent for further approvals, a point clearly made in the Circular at paragraph 46. A temporary permission and other conditions limiting use of the site would involve some interference in the **human rights** of the Appellant, but having regard to the legitimate community objectives sought by policies for the protection of the countryside and the likelihood of suitable permanent caravan pitch provision being available at the end of the temporary period, I consider that such interference is necessary, would meet the test of proportionality and so would not amount to a violation of human rights. I have concluded that a temporary planning permission should be granted.
22. As to the **length of any temporary permission**, it is not yet determined whether G&T site allocations will be made through the CR that could be ready in 2013 or a DPD that could be adopted by June 2014. The likely date by which need will be met through the statutory planning system is thus uncertain, and it is therefore prudent to assume the later date, with an added 12- 18 months for plan allocations to translate into pitches actually available to G&T for occupation. This suggests that provision is likely to have been made in four years, and that therefore this should be the length of any temporary permission. The Council had suggested a one year period, and supported this by referring to the prospect of additional pitches coming into being through private developments obtaining planning permission. One particular site was being encouraged to come forward, and it had been hoped that the Appellant could relocate there voluntarily. Such provision is particularly uncertain, and at this stage I conclude that it is appropriate to rely upon the four year period referred to.

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23. The parties agreed on most of the **conditions** that would be appropriate if a planning permission were granted. There was no evidence to the contrary, the agreed conditions are commonly found appropriate, and the hearing proceeded on the basis that they would be imposed if permission were given. For the reasons already stated I have concluded that a four year permission should be granted rather than the single year proposed by the Council. Also having regard to the likelihood that any G&T in Swale would be likely to experience the same need for pitches and lack of alternatives, and the limited importance which I attach to the particular personal circumstances in this case, I do not consider that the personal occupancy condition envisaged by both parties can be justified in terms of Circular 11/95 *The Use of Conditions in Planning Permissions*. I shall therefore impose the standard gypsy occupancy condition in place of a personal permission. It was agreed that matters dealt with in a suggested development scheme should be extended to include the siting of caravans and parking, and I shall in consequence include that there be subsequent adherence to this scheme. Having regard to the changes made to the front or southern yard, I also consider that the Council should have the opportunity to control surface material/planting of this altered yard. I shall therefore impose a landscaping condition, though recognising that neither party sought significant further planting⁶.

The appeals on ground (f) against the enforcement notice

24. An appeal on ground (f) seeks that a lesser enforcement notice requirement should be imposed. It was argued that it was excessive to require the removal of all caravans as a caravan had been and might in future be required to serve the established lawful use of the holding for the keeping of horses. I noted, however, that the requirement to remove all caravans is qualified by reference to their having been brought onto the land *in connection with the use* that is being enforced against. The terms of the notice would thus not preclude caravans being brought onto the land for some other use⁷. I have concluded that as phrased in the notice the requirement does not exceed what is necessary to remedy the breach of planning control, and that **the appeal on ground (f) fails**.

The appeals on ground (g) against the enforcement notice

25. An appeal on ground (g) seeks to extend the period for complying with the enforcement notice. The arguments put forward in this regard are essentially those relating to need and the extent of any harms which I have considered earlier in reaching a conclusion that a temporary permission for four years should be granted. Though it is not usual⁸ to extend the compliance period of an enforcement notice beyond 12 months, in the particular circumstances of this case I have concluded that this period is less than is reasonable. The Appellant has suggested that up to two years would be a more reasonable period and I concur. **The appeal on ground (g) succeeds** to that limited extent. The apparent contradiction between a two year compliance period for the enforcement notice and a four year planning permission is in fact resolved

⁶ For completeness I record the presence of some hawthorn bushes planted along the outer edge of the laurel hedge, a matter which could be considered in relation to any new landscaping scheme.

⁷ Though such non residentially used caravans would be liable to new enforcement action if they required but did not have planning permission.

⁸ *Enforcing Planning Control: Good Practice Guide for Local Planning Authorities 1997* states in part that as a rule of thumb the compliance period for an enforcement notice should not normally exceed one year.

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by the operation of S180 of the Act, which has the effect that enforcement notice requirements are superseded to the extent that the use is permitted by the planning permission.

26. I have taken into account all the other matters raised in the representations, including the disagreement as to the merits of the Council's sustainability scoring system for sites, the various stages in the Council's consideration of G&T provision, and the differing views on the merits of Council efforts to secure the Appellant's voluntary departure from the site, but do not find that they are necessary to or alter my conclusions on the appeals.

FORMAL DECISIONS

Appeal A – ref APP/V2255/A/11/2157005 – the condition appeal

27. I allow the appeal and grant planning permission for *Use of land for one mobile home and one touring for a Gypsy family* without compliance with condition number 1 previously imposed on permission Ref SW/05/1316, dated 7 October 2005, granted on appeal on 15 November 2007 under reference APP/V2255/A/07/2035766 but subject to the following new conditions:
- 1) The use hereby permitted shall be for a limited period being the period of four years from the date of this decision. At the end of this period the use hereby permitted shall cease, all caravans, buildings, structures, materials and equipment brought on to, or erected on the land, or works undertaken to it in connection with the use shall be removed, and the land restored to its condition before the development took place.
 - 2) No more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than 1 shall be a static caravan or mobile home) shall be stationed on the site at any time.
 - 3) The site shall not be occupied by any persons other than gypsies and travellers as defined in paragraph 15 of ODPM Circular 01/2006.
 - 4) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
 - 5) No commercial activities shall take place on the land, including the storage of materials.
 - 6) No floodlighting, security lighting or other external lighting shall be installed or operated at the site, other than in accordance with details that have first been submitted to and agreed in writing by the local planning authority.
 - 7) The use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one the requirements set out in (i) to (iv) below:
 - i) within 3 months of the date of this decision a scheme for: (a) the restoration of the site to its condition before the development took place, as required by condition 1 above; (b) the modification of the access to serve the lawful horse keeping use to be implemented

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- when the residential caravan use ceases; (c) the internal layout of the site, including the siting of caravans, hardstanding, access track, parking and amenity areas; (d) the landscaping of the site including indications of what existing landscaping is to be retained and what removed; (hereafter referred to as the site development scheme) shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for its implementation.
- ii) within 11 months of the date of this decision the site development scheme shall have been approved by the local planning authority or, if the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted site development scheme shall have been approved by the Secretary of State.
 - iv) the approved scheme shall have been carried out and completed in accordance with the approved timetable.
- 8) Following the carrying out and completion of the approved scheme referred to in condition 7 above, its terms shall thereafter continue to be adhered to. Without prejudice to the generality of the foregoing, this condition shall apply to the siting of caravans and the parking of vehicles.
- 9) At the same time as the site development scheme required by condition 7 above is submitted to the local planning authority there shall be submitted a schedule of maintenance for the remaining period of this temporary permission of any proposed planting beginning at the completion of the final phase of implementation as required by that condition; the schedule to make provision for the replacement, in the same position, of any tree, hedge or shrub that is removed, uprooted or destroyed or dies or, in the opinion of the local planning authority, becomes seriously damaged or defective, with another of the same species and size as that originally planted. The maintenance shall be carried out in accordance with the approved schedule.

Appeals B, C, and D – refs APP/V2255/C/11/2159720, 2159721, and 2159722 – the enforcement notice appeals

28. The appeals are allowed on ground [g], and the enforcement notice is varied by the deletion of 12 months and the substitution of two years as the period for compliance. Subject to this variation the enforcement notice is upheld.

V F Ammoun

INSPECTOR

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& APP/V2255/A/11/2157005

APPEARANCES

FOR THE APPELLANT:

Mrs A Heine BSc MSc MRTPI	Principal, Heine Planning Consultancy.
Mr Wayne Willett (senior)	Appellant.
Mrs Shirley Willet	Wife of Appellant.

FOR THE LOCAL PLANNING AUTHORITY:

Mr Graham Thomas BSc Hons DipTP MRTPI	Area Planning Officer, Swale Borough Council.
Mr Alan Best BA Hons TP MRTPI	Senior Planning Officer, Swale Borough Council.
Mr Peter Hinckesman	Enforcement Team Leader, Swale Borough Council.


INTERESTED PERSONS:

Mrs Mary Smith	Local resident.
Mrs Sue Gunner	Chairman of Newnham Parish Council.
Mr Graham Elvy	Local resident.
Mr Colin Woods	Local resident.

DOCUMENTS provided at the Hearing

- 1 Copies of the two enforcement notices issued on 15 August 2011.
- 2 Plans accompanying the planning application, not previously supplied.
- 3 Plan accompanying application SW/05/1316.
- 4 Appeal decision APP/V2255/c/11/2151258 dated 28 November 2011.
- 5 Count of gypsy caravans, 20 July 2011; last five counts.
- 6 Highway plan annotated to show areas from which site visible.
- 7 Private Gypsy sites in Swale as at December 2011.

APPENDIX 2

	<h2>Appeal Decisions</h2>	<p>The Planning Inspectorate 4/11 Eagle Wing Temple Quay House 2 The Square Temple Quay Bristol BS1 6PN</p>
	<p>Hearing held on 16 October 2007</p>	
	<p>by Andrew D Kirby RD* MA MSc FRTPi</p>	<p>☎ 0117 372 6372 email:enquiries@pins.gsi.gov.uk</p>
	<p>an Inspector appointed by the Secretary of State for Communities and Local Government</p>	<p>Decision date: 15th November 2007</p>

Appeal A Ref: APP/V2255/C/07/2040928

Tootsie Farm, Elverland Lane, Painters Forstal, Faversham, ME13 0RY

- 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 Wayne Willett against an enforcement notice issued by Swale Borough Council.
- The Council's reference is GT/ENF/07/016/C:21662/JB.
- The notice was issued on 6 March 2007.
- The breach of planning control as alleged in the notice is:
 - i) the material change of use of the land from agricultural land to land used as a caravan site for the stationing of caravans/mobile homes used residentially, for the keeping of horses, the stationing of an external wc and
 - ii) the erection of close-boarded and post and rail fencing the approximate position of which is identified on the notice plan, laying of hardsurfacing and creation of a new access onto Elverland Lane to facilitate such use.
- The requirements of the notice are:
 - (1) Cease using the land or any part thereof for the stationing of caravans/mobile homes, or for the keeping of horses.
 - (2) Remove from the land all caravans/mobile homes, horses, the external wc, closeboarded and post and rail fencing, hardsurfacing and stop-up the new access by returning the land to its previous condition.
 - (3) Remove from the land all rubbish or debris caused by or associated with compliance with (1) and (2) above.
- The period for compliance with the requirements is 12 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed subject to the enforcement notice being corrected in the terms set out below in the Formal Decision.

Appeal B Ref: APP/V2255/A/07/2035766

Tootsie Farm, Elverland Lane, Painters Forstal, Faversham, ME13 0RY

- 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 Wayne Willett against the decision of Swale Borough Council.
- The application Ref SW/05/1316, dated 7 October 2005, was refused by notice dated 5 January 2007.
- The development proposed is use of land for one mobile home and one tourer for Gypsy family.

Summary of Decision: The appeal is allowed, and planning permission granted subject to conditions set out below in the Formal Decision.

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The terms of the enforcement notice and Appeal A on ground (c)

1. It is not immediately clear, notwithstanding the title "Enforcement Notice – Change of Use" that the allegation refers to that alone and not operational development as well. The allegation has two numbered parts, one relating to change of use and the other to operational development, just as one might anticipate in a composite notice. Moreover, there is no reference to 10 or 4 years in the notice.
2. At the hearing the council confirmed that the notice should refer to 10 years and that they intended the notice to allege only a change of use, the words "to facilitate such use" at the end of the recital of the operational development in the allegation was intended to convey that. Since those works had facilitated the use they could, on the authority of *Murfit v SSE* [1980] JPL 598, be required to be undone through the requirements of the notice. I consider this to be a perfectly legitimate approach where works have been carried out to facilitate and, in effect, form part and parcel of the change of use. But *Murfit* does not extend to works carried out in relation to a different use.
3. Under ground (c) the appellant says there was some hardstanding on the land when he bought it and that there was already an access to Elverland Lane. At the site visit I saw under the gravel some darker material – possibly road planings – that had been worked into the topsoil. It is not clear how far that extends under the gravel. The appellant bought the land some three years ago. At that time there was a barn which had been erected by the previous owner. It is the appellant's case that there was some hardened material forming an access from the roadside field gate to the barn. Certainly the 2003 aerial photograph shows worn ground or light coloured material which supports the view that there was a change in surface in that area. Whether the material I saw on site is what appears in the aerial photograph is difficult to say but there is no evidence to contradict what the appellant says about the condition of the ground before he spread the gravel. As to the access, Mr Woods, a local resident who has no connection with the appellant, remembers there being a five-barred gate in line with the field/road boundary before the appellant bought the land. However, there is no doubt that as part of implementing the change of use alleged the appellant has put down a gravel surface on part and a tarmac surface on the northern part of the land within the residential compound. He has also widened and surfaced the access with tarmac within a set back and bellmouth. In so far as he has carried out works to facilitate the change of use these are matters for ground (f) in the light of how the council intended the notice to be understood and how I intend to correct it.
4. The allegation would be better worded if it simply described the uses being alleged. It is not necessary to refer to enabling works in the allegation. The logic of referring to them only in the steps required to be taken is that it is only their undoing that is material to the notice, as derived from s173(4)(a) – restoring the land to its condition before the breach (the change of use) took place. In addition the allegation includes within the change of use "the stationing of an external wc". A simple allegation of "stationing" does not say anything about the use since items can be stationed on land for a wide range of purposes or uses. In this case it is clearly there as part of the residential caravan site use and needs no separate reference as a use. I intend to correct the allegation as follows:

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"Without planning permission, the material change of use of the Land from agricultural land to land used as a caravan site for the stationing of caravans/mobile homes used residentially and land used for the keeping of horses."

5. I conclude that in the light of a proper construction of the allegation the matters raised by the appellant do not lead to a success on ground (c). To the extent they relate to the older hardstanding and formation of an access they fall to be addressed under ground (f) as excessive requirements.

The s174 appeal on ground (a) and the s78 appeal

6. The planning application relates simply to use of the land as a Gypsy caravan site and the deemed application relates to that and to the use of the land for the keeping of horses. The council take no issue with the principle of the use of the land and the barn that predates the appellant's acquisition for the keeping of horses provided a conditional permission is given. In essence they seek to bring that use under proper planning control through the enforcement notice. Thus regardless of the residential use it would be appropriate to grant planning permission.
7. The residential use raises a number of issues. Firstly whether the appellant is a Gypsy for planning purposes; if so, whether the site is suitable as a single family Gypsy site given its relatively remote location within the countryside which is an AONB and its access; and whether there are other considerations to be weighed in the balance.

Gypsy status

8. The appellant is temporarily absent from the site having been committed to prison but the site continues to be occupied by his two sons Billy and Wayne. Billy is in full time education and Wayne, assisted by his uncle who lives in a mobile home at nearby Horseshoe Farm, continues the horse breeding and trading business as well as trading in tack. The council's case is that they accept there is some measure of income being gained from going to horse fairs but the appellant does not stay away long enough to constitute "travelling". These are more in the nature of business trips and do not constitute a nomadic habit of life. The Circular definition uses the word "only" with reference to the reasons why they may have ceased travelling for educational or other reasons. That Billy is in full time education is not the only reason they no longer travel. Following a lengthy discussion with the planning officer it became clear that the appellant does not do casual work on the way to and from horse fairs or travel for other work. He explained a settled pattern of life, centred on breeding horses and dogs, which did not have as the only reason the educational needs of Billy. This is not enough to satisfy the Circular definition.
9. I am in no doubt that before moving onto the site the appellant fully satisfied the statutory and Circular definitions of a Gypsy for planning purposes. He has lived in caravans in Kent, including on the Church Marshes and Murston Gypsy sites. It is true that he has had a number of relationships with partners who lived in houses but the evidence is that he could never settle in the houses and used them more as addresses and for occasional visits; he did not live in them permanently and always kept a caravan. In the years immediately before

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coming onto the site he lived in caravans all over Kent carrying out tarmacking and block paving but mainly buying and selling horses. As well as the appeal site he has land near Fordwich where he keeps horses. The issue is whether there has been a significant change since coming onto the site for reasons other than allowed for in the Circular definition, such that he can be said to have lost his Gypsy status.

10. At the hearing I was told that in the last year or so the appellant or his children assisted by relatives had been travelling to Appleby for a week or so, Stowe twice for a couple of weeks, the New Forest for a week, Reading, Barnsley and Glasgow for the "King of the Road"; Horsmonden being near at hand and only involving day trips. On all occasions the purpose was to pursue horse trading and thus pursue the main element of their economic livelihood. I have no reason to doubt this evidence which is consistent with the traditional lifestyle of Gypsies who pursue this activity. At the hearing I provided transcripts of the unreported case of *Maidstone BC v SSE & Dunn* [1995] CO/2349/94 which applied *South Hams*, *Greenwich* and other leading cases to the circumstances of Mr Dunn. Mr Dunn satisfied the statutory definition in that while much of his work was landscape gardening locally he travelled to horse fairs to buy and sell horses. There was economic purpose to the travel which involved livelihood as opposed to it being merely a hobby. Bearing that judgment in mind and all the evidence, I am satisfied that in the case of Mr Willett there is no good evidence that, since moving onto the land, he has ceased to satisfy the Circular definition of a Gypsy.

Suitability of the site

11. Adopted Local Plan Policy H12, which deals with Gypsy sites, has not been saved and is thus not material to my decision. I was told that this was because it did not comply with ODPM Circular 01/2006 policy guidance. The Draft Local Plan is at an advanced stage and close to adoption. Policy H4 deals with Gypsies but it, like the old policy, does not approach the issue in the way advocated by C1/06. It is criteria based, having 12 criteria and, in particular, requires applicants to "clearly demonstrate" that they are Gypsies with a "genuine connection with the locality of the proposed site". As well as being unclear as to what constitutes a "genuine connection" it displays a fundamentally misconceived approach to meeting the needs of the Gypsy community, including specific guidance in paragraph 62 of C1/06. While the policy necessarily carries some weight because of its progress to adoption the degree of weight is much less than would have been the case had it reflected national policy. That it does not, is a matter of real concern given its likely adoption some two years after the date of the Circular and as a replacement in similar form for a policy found inappropriate to be saved.
12. I also share the appellant's view that there is some tension between the Structure Plan policy H9 and the Circular although it does little more than set out broad principles or guidelines for the location of sites, such as protection of the countryside, access to services and safe access. Indeed, these are the main criticisms made by the council in this case.
13. The appeal site is in the AONB. While I accept that this is not necessarily a reason for refusal since C1/06 recognises, as with any other form of development, it is necessary to demonstrate that the objectives of the

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designation will not be compromised. Given that such areas have the highest status of protection in relation to landscape and scenic beauty this imposes a particularly high test and planning policy recognises the primary objective of protecting landscape character and natural beauty. In the 2005 Swale Landscape Character Assessment and Guidelines study the site is within and on the edge of the Doddington and Newnham Dry Valleys area. This is characterised as being in "good" condition and with "high" sensitivity. Built development is generally traditional and the aim is to conserve the landscape quality.

14. The site is visible from close by at the entrance and to a lesser extent through the roadside hedgerow. There are three more distant views of significance, all of which provide sweeping views of the wider landscape setting of the appeal site. That from the eastbound carriageway of the M2 is, in part, filtered by trees and, given average motorway speeds, is only experienced for a matter of seconds even by passengers. Knowing where to look and what to look for does influence one's perception and I have been careful not to be influenced unduly by that. However, there are two other viewpoints of particular note. One from an M2 overbridge used by traffic and pedestrians over 1km away and the other from a footpath closer and on the opposite side of the valley. From both the view captures the essence of this sensitive landscape which is characteristic of the northern part of the dip slope dry valleys. It is of the rising ground of a dry valley side with arable land enclosed by hedgerows and woodland. Few buildings are visible and those that are include traditional barns, farmhouse and oast house. That is with the notable exception of two mobile homes. One, at Horseshoe Farm, is the subject of separate negotiations by the council to secure a different location and the other is that on the appeal site. The mobile home with which this appeal is concerned is prominently situated towards the top of the valley side and appears alien and incongruous in this landscape.
15. Of course Gypsies have long been a traditional part of the agricultural landscape of Kent but that traditional working presence is very different to a mobile home in a fenced off area of a field complete with domestic artefacts. While a field gate to full highway standards would involve a set back and some surfacing of the ground, the more formalised tarmac bellmouth that has been created is more intrusive. Moreover, a simple, lightly used agricultural access may not require such a well engineered access. The previous access, it appears, was little more than a gate in the hedgerow.
16. I accept that a laurel hedge has been planted which would in time provide some screening. However the two distant viewpoints are more elevated and the hedge would need to be of some height to be effective. Even though there are some evergreens in the locality on the roadside a laurel hedge of substance would not be in keeping with the natural qualities of this landscape. That there is a motorbike track on the opposite side of the valley does not offset the visual harm caused by the appeal development. In any event the track is operated on a Permitted Development basis, albeit that the scarring on the landscape is permanent.
17. I conclude that the development is harmful to the landscape and undermines the objective of AONB designation. It fails to conserve or enhance the natural beauty of the landscape and is contrary to the development plan, including policy H9.

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18. I am also not convinced that this is a particularly sustainable location for a Gypsy site. I appreciate that Billy seems to have coped with school in Faversham on his bike and proposes to use bike and train to go to college in Canterbury. While it meets the current needs of the family it is in a relatively remote and sparsely populated location some distance from services which in the main are to be found in Faversham. However, I do not consider it so unsuitable a location as to rule it out were that the only area of concern.
19. The highway objection is that assuming a 25mph road speed visibility splays of 33m x 2.4m x 33m would normally be required. To the right there is some 20m available and to the left only 10m. The land to the left is not within the appellant's control. I observed that a traffic mirror has been erected opposite the gate to facilitate visibility but this is not an approved means of overcoming poor visibility. This is a lightly trafficked country lane serving local needs and I accept that the risk to highway safety is low but 10m is an unacceptably substandard vision splay, particularly on a narrow lane of single track width where approaching vehicles will not be on the far side of the carriageway. There is no real scope for vehicles leaving the site to edge forward without encroaching onto the carriageway and I understand the highway officer's reluctance to concede 2m as an 'X' distance. A family Gypsy site is likely to generate significantly more traffic than the previous agricultural use of the access or use for keeping horses. In my view there would have to be a pressing need for this site to be used as a Gypsy site to outweigh the highway objection.

Other considerations

20. A fundamental material consideration is the need for Gypsy sites in the area. The under provision of sites for Gypsies nationally and in Kent is well established. One of the objectives of C1/06 is to increase significantly the number of Gypsy sites in appropriate locations over a period of 3-5 years from its publication. The Circular signals a change of approach to provision which is underpinned by the new development plan system and well structured and researched needs assessments (GTAA's). The council refer to a steady increase in the number of approved sites which they say shows that demand is being very substantially met. I am referred to two recent decisions – Oak Lane, Upchurch and Ashford Road, Badlesmere – where Inspectors found that the need was not so pressing as to be grounds to override other planning considerations.
21. However, I note that at Badlesmere, in February of this year, my colleague commented that while the number of permissions granted was a positive factor there was nothing to show that the permissions granted were keeping pace with, and fulfilling, the need for more sites. She considered there was every indication of a significant unmet need for more Gypsy sites in Kent generally and in Swale in particular. That highly prescient conclusion was made in advance of a proper needs assessment having taken place. At the hearing the appellant provided a note of the South East Plan Review GTAA Stakeholder Workshop on 4 October 2007 at which the results of the four Kent and Medway GTAA's was indicated. The council appeared to be unaware of the GTAA figures. Two options were discussed: Option A, distribution across Kent where accommodation need has been found and Option B, distribution influenced by planning policies (environmental constraints, extent of urbanisation, access to community facilities, Green Belt, etc). In the first five years the need for an

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overall increase in pitches of 50-60% is identified for Kent and Medway as a whole. Swale is identified as needing to provide 62 new pitches under Option A and 25 new pitches under Option B. In the former the number is second only to Sevenoaks and some 30 pitches higher than the next highest district, Maidstone. In the latter scenario Swale ranks fifth in the county, putting it in the upper half of the districts. Clearly this does not represent the final view that will be put to the Regional Assembly nor what the Plan will say but it is convincing evidence of a very real, substantial and pressing need for more sites to be brought forward with urgency in Swale.

22. While I accept that the results of the GTAA survey may not have been available to the council until recently, effective monitoring of need in the past should have provided forewarning. I therefore find it of real concern that the council are in the advanced stage of adopting a Gypsy policy that fails to address this matter and are unable to provide any meaningful timetable for a DPD to deal with Gypsy site provision. The core strategy is not due to be adopted until 2012 and, while the council's planning officer indicated that he hoped that a Gypsy sites DPD would be one of the first to be undertaken, there is no commitment to bring forward or prioritise a Gypsy site DPD, notwithstanding the advice in paragraph 43 of C1/06. I consider my criticism is not unfair since I note that in the Upchurch case in early 2006 my colleague, in reviewing the development plan arrangements commented that the thrust of C1/06 requires that action to follow up the need should be taken in a timely manner and that under provision could be addressed within a three year period. That underpinned his decision to grant a temporary three year planning permission. There is no evidence before me that, over 18 months later, notice has been taken of those comments.
23. Paragraphs 45 and 46 of C1/06 advise that where there is an unmet need and planning circumstances can be expected to change, for example through DPD site allocations, consideration should be given to a temporary planning permission without an implied commitment or precedent for the determination of future applications. This was the rationale behind the Upchurch decision which was not in the AONB. In the Badlesmere decision the Inspector concluded that a temporary planning permission could not be justified given the serious damage caused to the AONB. On the other hand the council seem in no hurry to obtain relocation of the Horseshoe Farm mobile home some three years after a planning application – as yet undetermined – was made. I do not accept that its present location is significantly less damaging than the appeal site. The council stand by their view that if temporary planning permission were to be given for the appeal site there would be no reasonable expectation that allocated sites would be available at the end of the period and paragraph 45 is not met. I fear that they might well be right but I am left with a genuine concern that acceptance of that position will do little to hasten the allocation of sufficient sites through the DPD process.
24. I now turn to the personal circumstances in this case. Wayne is not at school and in the short term at least will continue the horse breeding and trading business in his father's absence. The situation with Billy is quite different. He is waiting for an operation on his spine at the Medway Maritime Hospital. Clearly it is advantageous to have a fixed abode in these circumstances. However, I attach greater weight to his educational needs. Aged 14, until this summer he has been attending The Abbey School in Faversham. He has now been selected

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to attend a special course at Canterbury College which will take his education on to GCSE in core subjects and combine practical training in skills such as brick laying and plumbing. This is a two year course. One of the recognised ways in which the cycle of deprivation encountered by Gypsies can be broken is through education and a settled basis from which to undertake it. Whether Billy makes a success of this opportunity will be for him but, as a matter of common humanity, he should be encouraged and supported in that endeavour. The evidence is that there is no alternative accommodation and that after the existing one year compliance period there would be no alternative to the family returning to the road. Relations with their uncle at Horseshoe Farm are said to be sometimes difficult and in any event that is an unauthorised site in the AONB.

Conclusions

25. I find the educational needs of Billy to be a cogent reason to allow the family to remain where they are for the next two years. The three matters of planning concern are impact on the AONB, sustainability and highway safety. I am satisfied that this is an inappropriate site for a permanent Gypsy site given, in particular, the impact on the landscape of the AONB which has a high status meriting protection notwithstanding the clear case of general need for more Gypsy sites.
26. As a matter of general principle, it seems to me to be inappropriate to grant planning permission, temporary or permanent, where the objectives of AONB designation will be compromised. In this particular case, however, the council's approach at the nearby Horseshoe Farm has been to accept short term harm to the AONB while they seek to negotiate a permanent solution that would cause no lasting harm to the protection of the landscape. The short term perpetuation of an unsustainable location does not weight heavily in the balance. The risk to highway safety is real but relatively low given the nature of the use of the lane. It weighs strongly against permanent use but less so for short term use. Personal circumstances weigh heavily in support of a period of stability and temporary continuation of the use. On balance I consider that in the particular circumstances of this case the short term harm to the AONB and highway risk is outweighed by the need for short term stability. I emphasise that this conclusion arises from the particular circumstances of this appeal and that this site is unacceptable as a permanent Gypsy site.
27. I have considered whether this is to be done through a temporary planning permission or, exceptionally, an extended compliance period under ground (g). Given that the recent GTAA assessment indicates a higher degree of need than it appears the council anticipated from their own monitoring, an optimistic view would be that priority will now be given to site allocation as recommended by C1/06. Indeed, I am encouraged by the council's planning officer's view that he could find sites to accommodate 62 pitches without the need to trespass into the AONB. As my colleague noted in the Upchurch appeal three years is not an impractical timescale for this. Given the need for urgent action indicated by the GTAA findings it is a reasonable expectation that a responsible council would seek to achieve this. The personal circumstances I have identified justify two years but to grant a temporary planning permission for three years would not be inconsistent with encouraging the achievement of the objectives of national guidance.

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28. In summary I am satisfied that the appellant is a Gypsy for planning purposes; that the site is not suitable as a permanent single family Gypsy site given its landscape impact in the AONB; its relative remoteness and its access. However the other material considerations of the need for more sites in the short term and the personal circumstances that arise are weighty considerations which outweigh the harm in the short term. Finally, Human Rights are clearly engaged when loss of home is involved. Throughout my consideration of these appeals I have had regard to the Act. The refusal to grant a permanent planning permission and the grant of a temporary permission are consistent with its provisions.

Conditions

29. The residential caravan site use will be personal to the appellant and for a temporary period of three years for the reasons given above. It is also appropriate to control commercial activity, the erection of external lighting and the number of caravans and their location within the site because of landscape implications. While it appears that a suitable cesspool arrangement might well be in place a condition to enable suitable arrangements to be made is necessary in the event that what has been provided is unsuitable, because of aquifer considerations. The deemed application permission also incorporates horse keeping as a permanent use of the land. A number of conditions flow from that and in some cases they need to take account of the temporary situation of the residential caravan site use continuing. I consider them necessary if the use is to take place without damage to water resources and the landscape of the AONB. The landscaping scheme need not be extensive but it is an opportunity, in accordance with planning policy, to enhance the landscape of the AONB with marginal planting and to secure the removal of the laurels. Some diminution of the visual impact of the access when residential use ceases would benefit the rural character of the lane. The conditions were discussed at the hearing and the appellant raised no objection to them.

Overall Conclusions

30. As to the s174 appeal I have indicated above the reasons why I consider the allegation should be corrected. I am satisfied that no injustice will be caused by this and I will therefore correct the enforcement notice in order to clarify the terms of the deemed application under section 177(5) of the 1990 Act as amended. I will grant planning permission in accordance with the application deemed to have been made under section 177(5) of the 1990 Act as amended, which will now relate to the corrected allegation and quash the enforcement notice. In the light of this the appeals on grounds (f) and (g) do not need to be considered. The s78 appeal will be allowed.

Formal Decisions

Appeal A Ref: APP/V2255/C/07/2040928

31. I direct that the enforcement notice be corrected by the deletion of the contents of paragraph 3 of the notice and the substitution of the following:

"Without planning permission, the material change of use of the Land from agricultural land to land used as a caravan site for the stationing of

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caravans/mobile homes used residentially and land used for the keeping of horses.”

32. Subject to this correction I allow the appeal, and direct that the enforcement notice be quashed. I grant planning permission, 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 use as a caravan site for the stationing of caravans/mobile homes used residentially and use for the keeping of horses; on land at Tootsie Farm, Elverland Lane, Painters Forstal, Faversham subject to the following conditions:

- 1) The use as a residential caravan site shall be carried on only by Wayne Willett and his resident dependants, and shall be for a limited period being the period of 3 years from the date of this decision, or the period during which the land is occupied by them, whichever is the shorter.
- 2) When the land ceases to be occupied as a residential caravan site by Wayne Willett and his dependants, or at the end of 3 years from the date of this decision, whichever shall first occur, the use as a residential caravan site shall cease and all caravans, structures, fences, materials and equipment brought on to, or erected on, the land, or works undertaken to it in connection with the use, shall be removed and the land shall be restored to its previous condition before the development took place.
- 3) The residential use hereby permitted shall be restricted to the stationing of no more than 2 caravans at any time (of which no more than 1 shall be a static caravan or mobile home) and they shall not be sited other than within the area edged blue on the plan attached to the enforcement notice.
- 4) No commercial activities other than the keeping of horses and no open storage of plant, products or waste (other than provided for in condition 11 below) shall take place on the land and no vehicle over 3.5 tonnes shall be stationed, parked or stored on the land.
- 5) No floodlighting, security lighting or other external lighting shall be installed or operated at the site.
- 6) The uses hereby permitted shall cease and all caravans, structures, fences, equipment and materials brought onto the land for the purposes of such uses shall be removed within 28 days of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
 - i) within 3 months of the date of this decision a scheme for:
 - the means of foul and surface water drainage of the site;
 - the means of disposal of contaminated run-off from the stable building, hardstandings, manure heaps and hay soaking areas;
 - the landscaping for the site; and
 - the modification of the access to serve the horse keeping use to be implemented once the residential caravan site use ceases;
 (hereafter referred to as the site development scheme) shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for its implementation.
 - ii) within 11 months of the date of this decision the site development scheme shall have been approved by the local planning authority or, if the local planning authority refuse to approve the said scheme, or fail to give a

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- decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
- iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted site development scheme shall have been approved by the Secretary of State.
 - iv) the approved site development scheme shall have been carried out and completed in accordance with the approved timetable.
- 7) If within a period of five years from the date of the planting of any tree, hedge or shrub planted pursuant to condition 6 above that tree, hedge or shrub is removed, uprooted or destroyed or dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree, hedge or shrub of the same species and size as that originally planted shall be planted at the same place.
 - 8) No more than one horse or pony per hectare of grazing land shall be kept on the site.
 - 9) Other than to the extent that permission for a residential caravan site, and uses ancillary thereto, is hereby given the stables and use of the land hereby permitted shall be used solely for the keeping of horses or ponies, and no event or show shall be held within the site.
 - 10) No burning of straw or manure shall take place on the site.
 - 11) Other than to the extent that permission for a residential caravan site, and uses ancillary thereto, is hereby given and with the exception of one trailer for the storage of manure, no materials or items of any kind in connection with the horse keeping use including jumps, caravans, mobile homes, vehicles or trailers shall be kept on the site other than within the barn.
 - 12) Other than to the extent that it arises from and subsists for the duration of the permission for a residential caravan site, no part of the site shall be sub-divided from the whole by means of permanent or temporary fencing or other means of enclosure, except for electric rope of a type approved by the local planning authority.

Appeal B Ref: APP/V2255/A/07/2035766

33. I allow the appeal, and grant planning permission for use of land for one mobile home and one tourer for a Gypsy family at Tootsie Farm, Elverland Lane, Painters Forstal, Faversham in accordance with the terms of the application, Ref SW/05/1316, dated 7 October 2005, and the plans submitted with it, subject to the following conditions:
- 1) The use hereby permitted shall be carried on only by Wayne Willett and his resident dependants, and shall be for a limited period being the period of 3 years from the date of this decision, or the period during which the land is occupied by them, whichever is the shorter.
 - 2) When the land ceases to be occupied for the use hereby permitted by Wayne Willett and his dependants, or at the end of 3 years from the date of this decision, whichever shall first occur, the use hereby permitted shall cease and all caravans, structures, fences, materials and equipment brought on to, or erected on, the land, or works undertaken to it in connection with

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the use, shall be removed and the land shall be restored to its previous condition before the development took place.

- 3) The residential use hereby permitted shall be restricted to the stationing of no more than 2 caravans at any time (of which no more than 1 shall be a static caravan or mobile home) and they shall not be sited other than within the area edged red on the approved site plan.
- 4) No commercial activities or open storage of plant, products or waste shall take place on the land and no vehicle over 3.5 tonnes shall be stationed, parked or stored on the land.
- 5) No floodlighting, security lighting or other external lighting shall be installed or operated at the site.
- 6) The use hereby permitted shall cease and all caravans, structures, fences, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
 - i) within 3 months of the date of this decision a scheme for the means of foul and surface water drainage of the site (hereafter referred to as the drainage scheme) shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for its implementation.
 - ii) within 11 months of the date of this decision the drainage scheme shall have been approved by the local planning authority or, if the local planning authority refuse to approve the said scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted drainage scheme shall have been approved by the Secretary of State.
 - iv) the approved drainage scheme shall have been carried out and completed in accordance with the approved timetable.

Andrew D Kirby

Inspector

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Appearances

For the Appellant:

Mrs A Heine	Planning Consultant
Ms Mary Willett	Appellant's sister
Mr Wayne Willett	Appellant's son
Mr Billy Willett	Appellant's son

For the Local Planning Authority:

Mr G Thomas	Swale Area Planning Officer
Mr A Millard	Kent Highways Officer

Interested persons:

Mr C Woods	Martlesham, Newnham Valley
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Documents submitted at the Hearing

- 1 Report of GTAA stakeholder workshop
- 2 Statistical and Behaviour Analysis of Kent Unauthorised Encampments 2006
- 3 Revised schedule of Private Gypsy Sites in Swale
- 4 Swale Gypsy count July 2007
- 5 The Erection of Stables and Keeping of Horses policy document
- 6 List of saved policies

Hill Top Farm, Elverland Lane
15/509545/FULL

Gypsy and Traveller Site Allocations Assessment Methodology

Stage 1 - Is the site available?

Site Assessment Table: Stage 1 - Site availability

Criteria and Issues	Assessment references	Red – Does not meet criteria	Amber – May be capable of meeting criteria	Green – Fully meets criteria
Availability		Owner confirmed site not available, nor is likely to become available over plan period	Site availability uncertain	Willing landowner
Is the site available and deliverable?				

IF RED THE SITE SHOULD BE DISCOUNTED AT THIS STAGE. ALL OTHER SITES SHOULD PROCEED TO STAGE 2.

Stage 2 – Suitability/ Constraints

Site Assessment Table: Stage 2 - Suitability

Criteria and Issues	Assessment references in addition to National Planning Policy Framework (NPPF), National Planning Guidance (NPG)	Red – Does not meet criteria	Amber – May be capable of meeting criteria	Green – Fully meets criteria
Flood Zone	Swale Strategic Flood Risk Assessment (SFRA) and Environment Agency guidance	Flood zone 3/ cannot be mitigated	Flood zone 2 or 3 but with acceptable mitigation to the satisfaction of the Council and Environment Agency	Flood zone 1 ✓
Landscape	Kent Downs AONB Management Plan 2009. Landscape Character and Biodiversity Appraisal SPD. Advice from Natural England and other environmental bodies	Site is within <ol style="list-style-type: none"> a landscape designation, or will affect the setting of a designation, or is within an Area of High Landscape Value with unacceptable detrimental impact or where landscape impact cannot be mitigated including cumulative impacts ✓	Within close proximity of a designated area but, and where landscape impact may be mitigated	Outside designated area and not affecting the setting of a designation/ No impact
Biodiversity	Advice from KCC Archaeology Officers, UK/ Kent/ Swale BAP, advice from Natural England and environmental bodies	Site is within or affecting international, national or locally designated sites with unacceptable detrimental impact or where impact cannot be mitigated including cumulative impacts	Site is within, close proximity to or affecting international, national or locally designated sites where impact could be mitigated	Outside of any designation and not affecting the setting of a designation/No impact ✓
Scale of site or multiple sites	Officer assessment - considering quantity of existing sites against scale and form of existing settlement/settled community and advice from service providers	Has significant dominating effect	Scale has some impact ✓	Scale has little or no impact
Archaeology and	Heritage asset list and advice from heritage	Unacceptable detrimental impact on scheduled	Possible impact /minor impact on scheduled	Not in close proximity to Scheduled Ancient

Conservation Impact on Scheduled Ancient Monument or other heritage asset/non designated heritage asset	advisors	ancient monument/other heritage asset/non designated heritage assets	ancient monument/other heritage asset/non designated heritage assets	Monument/other heritage asset/non designated heritage assets
Contamination Unacceptable living conditions	Consult Land Contamination Planning guidance Document 2013 and Contaminated Land Strategy 2010	Site is contaminated and cannot be mitigated	Site is or is potentially contaminated - potential impact likely to be mitigated	No known contamination issues
Noise and disturbance issues Unacceptable living conditions	Consult Noise and Vibration: Planning Guidance Document 2013	Site located adjacent to noisy land use – cannot be mitigated	Site located adjacent to noisy land use - potential impact likely to be mitigated or low level	No noisy adjacent land uses
Site access and safety Access/Proximity to major roads and pedestrian routes	Any transport information submitted and Kent Highways Services assessment/advice	Remote location accessed by unmade roads/ poor roads or unresolvable highway safety issue	Some access to road network and site – potentially requiring mitigation or highway safety issue and possibly capable of mitigation	Good site and road access and no significant highway safety concerns
Accessibility to facilities GP surgery, Primary School, Shops, Public Transport	Desk top review	None or few within reasonable distance	Reasonable distance to most services	All within reasonable travelling distance

IF ANY SCORE RED THE SITE SHOULD BE DISCOUNTED AT THIS STAGE. ALL OTHER SITES SHOULD PROCEED TO STAGE 3.

Stage 3 - More detailed site suitability

Site Assessment Table: Stage 3 - Detailed suitability

Criteria and Issues	Assessment references	Red – Does not meet criteria	Amber – May be capable of meeting criteria	Green: Fully meets criteria
Topography Uneven or unsafe ground levels and structures	Site survey by Officers and landscape evidence submitted	Steep slope which makes site unsuitable	Sloping land which may require works to make site suitable for use	Level or gently sloping site
Residential Amenity Impact on amenity of proposed and existing residents	Officers' assessment - same as housing, overlooking, disturbance from vehicle movements, loss of light, overcrowding etc	Close proximity to existing adjacent uses especially residential properties where any potential impact (light, visual, other disturbance). Has unacceptable impact which cannot be mitigated	Some impact on residential amenity – likely to be mitigated or low level	No impact on residential amenity
Utilities Electricity, Gas, Water, Drainage/ Sewers (mains or cesspit)	Site visit and utility providers advice	Not applicable as a reason for discounting a site	Yes – most (3 or 4)	Yes – all
Site capable of live/ work mix Priority for sustainable	Site visit/ submitted details	Not applicable as a reason for discounting a site	No or maybe	Yes

locations				
Parking Sufficient parking and turning space	Site visit and Kent Highways Services advice	No parking/ turning and no potential to provide parking and turning space	Inadequate parking/ turning or limited potential to provide parking and turning space	Sufficient parking and turning space
Landscaping Sufficient landscaping for amenity/impact on landscape character	Site visit and Swale Landscape Character and Biodiversity Assessment 2010, Planting on New Developments: A Guide for Developers	Not applicable as a reason for discounting a site	No soft landscaping/ landscaping could impact on landscape character area	Site has existing soft landscaping: option to provide soft landscaping

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3.3 REFERENCE NO - 16/507020/FULL			
APPLICATION PROPOSAL			
Permission is sought for change of use of land to a residential caravan site, for two Romani Gypsy families. The site to contain two static caravans, two touring caravans, hardstanding and associated residential parking, a water treatment plant and a new highway access. (Part retrospective).			
ADDRESS The Retreat Elverland Lane Ospringe Kent ME13 0SP			
RECOMMENDATION - Refuse			
SUMMARY OF REASONS FOR RECOMMENDATION/REASONS FOR REFUSAL			
The use of the site as a caravan site for residential use will adversely affect the natural beauty of the Kent Downs Area of Outstanding Natural Beauty, will result in an unsustainable pattern of development, and will adversely affect the character of a rural lane in a manner contrary to national and local planning policies, factors which outweigh the need to provide gypsy and traveller sites and the personal circumstances on the applicant and her family.			
REASON FOR REFERRAL TO COMMITTEE			
To allow Members to consider future policy for gypsy and traveller sites in this area which has seen a number of temporary planning permissions.			
WARD East Downs	PARISH/TOWN COUNCIL Ospringe	APPLICANT Mrs Annie Gibbs AGENT BFSGC	
DECISION DUE DATE 18/11/16	PUBLICITY EXPIRY DATE 04/11/16		
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
15/510499/FULL	Permission is sought for change of use of land to a residential caravan site, for two Romani Gypsy families. The site to contain two static caravans, two touring caravans, parking for four vehicles with associated hardstanding, and septic tanks/water treatment plants as required. This application is part retrospective.	Refused	12/04/2016 Appeal submitted late and turned away on 17/08/2016
Enforcement Notice and Stop Notice issued	Without planning permission, the material change of use of the Land to land used as a caravan site for the stationing of caravans/mobile homes, and the laying of hard-surfacing materials to facilitate the use. Six months period for compliance.	Appeal on Ground (g) lodged but not yet determined	24/12/2015

1.0 DESCRIPTION OF SITE

- 1.01 This application relates to an arbitrarily defined small part of a steeply sloping wider orchard situated within an attractive dry valley within the Kent Downs Area of Outstanding Natural Beauty. The site has no direct vehicular access and had no planning history prior to 2015. The wider site is adjacent to Newnham Valley Road which links Faversham to many rural communities, but it is located in a remote location

well away from any local services or amenities. Faversham station is 6km away. Access to the wider site in the applicant's ownership has always only been via an entrance within the junction of Newnham Valley Road and Elverland Lane, with the site having no other access to Elverland Lane. The actual application site fronts the narrow and steep Elverland Lane which runs off Newnham Valley Road where it forms a sunken, tree lined and attractive lane, in the manner of many lanes across the Kent Downs AONB. This lane is significantly lower than the site levels at the proposed new access point. Here, trees cling to the roadside bank with exposed roots creating a picturesque character to the lane.

- 1.02 Access to the wider field was via a simple field gate situated within the junction between Elverland Lane and Newnham Valley Road, where emerging drivers cannot be seen by traffic turning left into Elverland Lane, and who cannot see approaching traffic due to a complete lack of visibility splays at the site entrance. The original simple metal five bar gate has since been replaced by tall solid timber gates which stand out as an alien feature in this rural location.
- 1.03 The wider site was occupied unlawfully by the applicant and her family on the weekend of 12/13 December 2015 with two mobile homes and two touring caravans. The Council served an Enforcement Notice on 24 December 2015 requiring removal of the caravans. The applicant's appeal against the Notice on Ground (g) only was originally scheduled for an appeal hearing in September 2016, but shortly before that date this was changed to a written representations procedure with a new start date; and a decision from the Planning Inspectorate is still awaited. On the same day (24 December 2015) the Council also served a Stop Notice preventing further hardsurfacing works on the site.
- 1.04 A retrospective planning application (15/510499/FULL) for occupation of the wider site as gypsy and traveller site was submitted on 14 December 2015 but was refused by the Council on 12 April 2016 for the following two reasons;

(1) Notwithstanding the Council's appreciation of the need for it to respond positively to the accommodation needs of gypsies and travellers, and the guidance in DCLG's Planning Policy for Traveller Sites (2015), the Council considers that this site is unacceptable as a gypsy or traveller site. The site is isolated in open countryside away from any social, health, educational or other amenities, and lies within the Kent Downs Area of Outstanding Natural Beauty and the siting of caravans and the associated hardsurfacing creates an alien and intrusive appearance to the site which harms the natural beauty, character and appearance of the area. The proposal to use the site for the stationing of caravans compromises the objectives of designation of the Area of Outstanding Natural Beauty which are the conservation and enhancement of the area's natural beauty, and is contrary to the advice in paragraph 12 of the NPPF, paragraphs 4, 23, 25 and 27 of the PPTS and to saved policies E1, E9 and RC7 of the Swale Borough Local Plan 2008. The Council has taken account of the position in terms of the supply of gypsy and traveller sites, the health issues of the applicant and her family, and considered whether a permanent or temporary planning permission should be granted. Despite appreciating the personal circumstances of the applicant's family, the Council does not consider that a permanent or temporary planning permission represents an acceptable balance between the need for gypsy and traveller sites in the Borough and the personal circumstances of the applicant's family, and the very substantial harm that occupation of the site causes to planning policy for the appropriate location of gypsy or traveller sites in terms of access to services and

amenities, or on the character and appearance of the area. In taking account of all these factors the Council's considers that this proposal does not represent sustainable development, and that planning permission should be refused.

(2) The proposal will result in an increase in use of the existing sub-standard access, lacking in sufficient visibility sightlines and close to an existing junction, which would be to the detriment of highway safety and contrary to saved policy T1 of the Swale Borough Local Plan 2008.

- 1.05 This decision was appealed (APP/V2255/W/16/3150092), but the appeal was submitted late and turned away by PINS on 17 August 2016. This application seeks a new decision on an amended scheme for a smaller site involving the creation of a new access point onto Elverland Lane.
- 1.06 When the site was first occupied the caravans they were sited at the lowest point of the wider field, closest to Newnham Valley Road. More recently, some have been moved higher up the field closer to the current application site. In addition, long lengths of green net screening have been installed along the Newnham Valley Road and Elverland Lane boundaries of the site. These appear to be there to create privacy within the site, but appear intrusive and out of character with the area.

2.0 PROPOSAL

- 2.01 The current application is for a relatively small part of the wider field, said to represent 0.0634ha, and for this to be hard surfaced to an extent large enough to station two static caravans, two tourers, and provide room for four parking spaces; leaving the surrounding orchard undeveloped. The proposal also includes the provision of a water treatment plant (position not shown) and a new highway access to Elverland Lane. The proposal does not represent the current position of all caravans stationed within the wider site as these were generally at the foot of the slope alongside Newnham Valley Road using the original access point. The application form confirms that an area for waste and recycling will be provided within the site.
- 2.02 When originally submitted (September 2016) the application was supported by a Design and Access Statement which confirms, in summary, that;
- The new access point, and that visibility in either direction is “reasonably good”
 - The site belongs to the applicant
 - The site is in mixed used for stationing mobile homes and as an orchard
 - The site is in the AONB but that there are other gypsy sites nearby which are more prominent
 - Impact (visual or otherwise) on the AONB is minimal; the site is small and would not be prominent
 - Screening around the site can be improved; further planting can be undertaken
 - Elsewhere, personal circumstances have overridden significant environmental harm to justify a personal planning permission – this should apply to this application
 - The need for gypsy sites should outweigh any harm
 - Article 8 of the Human Rights Act requires respect for family and private life
 - Article 3 of the UNCRC requires a child’s best interests to be a primary consideration
 - The applicant’s personal circumstances include;

- They are a member of the gypsy traveller community who are entitled to respect for their traditional way of life
- A personal permission would be accepted
- It is important that the family has a stable place to live to access healthcare so a consistent health care plan can be maintained, and for access to education
- The Human Rights Act is engaged in terms of respect for private and family life, and there should be no interference by a public authority except as in accordance with the law for the protection of the rights and freedoms of others
- The site is said to be sustainable, and that utility services could be made available
- The site is close to a bus route and not far from shops and facilities at Faversham over 3 miles away
- The site has good safe access
- The site is affordable at no cost to the public
- PPTS promotes more private traveller site provision and is in favour of sustainable development
- Approval of this site will reduce need elsewhere
- A temporary permission should be a significant material consideration where the LPA is unable to demonstrate a five year supply of sites
NOTE: This is a reference to the pre-2015 version of PPTS and is out of date in relation to a site within an AONB
- Very Special Circumstances “(VSC’s)” are quoted as material considerations as follows;
 - Lack of available sites and undersupply in the district and the South-East of England
 - The need for the family to access healthcare and education
 - Lack of a five year site supply
 - The fact that the applicants are Romani Gypsies
- The site is not a risk of flooding
- Croydon Council is invited to grant permanent planning permission
NOTE: This is clearly an error.

- 2.03 Later (in October 2016) a series of additional documents were submitted relating to Health and Education (all marked confidential) and relating to Horse Fairs, Drives and Events. The last document is not marked confidential and provides details of events that the applicants have attended in recent years including Peterborough Show Horse Fair, Red Lee Show Day, Hyde Park Easter Drive, Stow Horse Fair, Appleby, Epsom Derby, Kent Horse Fair, Barnet Horse Fair, Hull Fair, Scarborough Horse Fair and of stays at different camps not listed when working away on the roads. The purpose of this information is said to be to confirm that the applicant’s family qualify for Gypsy Status.
- 2.04 The confidential documents provide details of well known and generic gypsy education, health and life expectancy issues, and of the persons expected to occupy this site. These include two children (one of primary school age; one below school age). They also include details of health care issues for one adult and the applicant’s school age grandson, including behavioural and mental health problems requiring special education, along with details of prescribed medications for two adults. Also included are details of a recent exploratory medical test for another adult.
- 2.05 The applicant’s grandson attends school in Faversham and medical establishments at Canterbury and Medway. Letters from health and education bodies outline the child’s issues and needs, and suggest that he does not react well to change.

2.06 In January 2017, further personal information was sent to the Council, which I have treated as confidential. These comprise a letter from the primary school that the applicant's grandson attends (dated 11 January 2017), a letter from an NHS Consultant Community Paediatrician (dated 08 January 2017) regarding the grandson's mental health issues, and a letter from an NHS Primary Mental Health Worker (dated 03 May 2016) which also sets out the grandson's educational situation and his contacts with children's mental health services. These letters;

- Confirm the date that the grandson started at the school
- Ask that the grandson's educational and emotional need are considered in relation to his housing situation
- Explain the grandson's progress at school
- Explain that he has complex mental health needs but is otherwise physically well
- One letter says that with the stability of his current housing situation there has been a significant improvement in the grandson's behaviour and emotional health
- Express concern that if the family has to move, the grandson may not be able to continue at the same school, which could be extremely detrimental to his progress
- One letter says that there has been no improvement in the grandson's behaviour
- Explain that the grandson greatly worries about changes or new situations, such as having to leave their current site

3.0 PLANNING CONSTRAINTS

Area of Outstanding Natural Beauty KENT DOWNS

Potential Archaeological Importance

4.0 POLICY AND OTHER CONSIDERATIONS

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

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

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

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

- an economic role – contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places

and at the right time to support growth and innovation; and by identifying and coordinating development requirements, including the provision of infrastructure;

- a social role – supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community’s needs and support its health, social and cultural well-being; and
- an environmental role – contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy.”

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

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

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

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

- protecting and enhancing valued landscapes, geological conservation interests and soils;
- recognising the wider benefits of ecosystem services;
- minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the Government’s commitment to halt the overall decline in biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;
- preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water or noise pollution or land instability; and
- remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.

4.05 The NPPF prioritises the safeguarding of AONBs at paragraph 115.

Planning Policy for Traveller Sites (PPTS)

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

“The Government’s overarching aim is to ensure fair and equal treatment for travellers, in a way that facilitates the traditional and nomadic way of life of travellers while respecting the interests of the settled community.” (para 3 PPTS)

To help achieve this, Government’s aims in respect of traveller sites are:

- a. that local planning authorities should make their own assessment of need for the purposes of planning*
- b. to ensure that local planning authorities, working collaboratively, develop fair and effective strategies to meet need through the identification of land for sites*
- c. to encourage local planning authorities to plan for sites over a reasonable timescale*
- d. that plan-making and decision-taking should protect Green Belt from inappropriate development*
- e. to promote more private traveller site provision while recognising that there will always be those travellers who cannot provide their own sites*
- f. that plan-making and decision-taking should aim to reduce the number of unauthorised developments and encampments and make enforcement more effective*
- g. for local planning authorities to ensure that their Local Plan includes fair, realistic and inclusive policies*
- h. to increase the number of traveller sites in appropriate locations with planning permission, to address under provision and maintain an appropriate level of supply*
- i. to reduce tensions between settled and traveller communities in plan-making and planning decisions*
- j. to enable provision of suitable accommodation from which travellers can access education, health, welfare and employment infrastructure*
- k. for local planning authorities to have due regard to the protection of local amenity and local environment.” (para 4 PPTS)*

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

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

- a) promote peaceful and integrated co-existence between the site and the local community*
- b) promote, in collaboration with commissioners of health services, access to appropriate health services*
- c) ensure that children can attend school on a regular basis*
- d) provide a settled base that reduces the need for long-distance travelling and possible environmental damage caused by unauthorised encampment*
- e) provide for proper consideration of the effect of local environmental quality (such as noise and air quality) on the health and well-being of any travellers that may locate there or on others as a result of new development*
- f) avoid placing undue pressure on local infrastructure and services*
- g) do not locate sites in areas at high risk of flooding, including functional floodplains, given the particular vulnerability of caravans*

h) reflect the extent to which traditional lifestyles (whereby some travellers live and work from the same location thereby omitting many travel to work journeys) can contribute to sustainability.” (para 13 PPTS)

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

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

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

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

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

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

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

“Local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. Local planning authorities should ensure that sites in rural areas respect the scale of, and do not dominate the nearest settled community, and avoid placing an undue pressure on the local infrastructure.” (para 25 PPTS). I note that the word “very” was added to this paragraph in the 2015 re-issue of PPTS.

“If a local planning authority cannot demonstrate an up-to-date 5 year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary permission. The exception to this is where the proposal is on land designated as Green Belt; sites protected under the Birds and Habitats Directives and / or sites designated as Sites of Special Scientific Interest; Local Green Space, an Area of Outstanding Natural Beauty, or within a National Park (or the Broads).” (para 27 PPTS). I note that the last sentence above was added to this paragraph in the 2015 re-issue of PPTS.

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

“Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family’s or dependants’ educational or health needs or old age have ceased to travel temporarily, but excluding members of an organised group of travelling showpeople or circus people travelling together as as such.”

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

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

Saved Policies of Swale Borough Local Plan 2008

- 4.12 Saved policy E1 (General Development Control Criteria) sets out standards applicable to all development, saying that it should be well sited appropriate in scale, design and appearance with a high standard of landscaping, and have safe pedestrian and vehicular access whilst avoiding unacceptable consequences in highway terms.
- 4.13 This site lies in an isolated position within the countryside where saved policy E6 (The Countryside) seeks to protect the quality, character and amenity of the countryside, and states that development will not be permitted outside rural settlements in the interests of countryside conservation, unless related to an exceptional need for a rural location.
- 4.14 Within Areas of Outstanding Natural Beauty saved policy E9 (Protecting the Quality and Character of the Borough’s Landscape) gives priority to the long term protection and enhancement of the quality of the landscape, whilst having regard to the economic and social well being of their communities. Saved policy E9 seeks to protect the quality, character and amenity value of the wider landscape of the Borough. Within the countryside it expects development to be informed by local landscape character and quality, consider guidelines in the Council’s landscape character and assessment, safeguard distinctive landscape elements, remove detracting features and minimise adverse impacts on landscape character. Protection of AONBs is a high priority in the NPPF and they are now afforded recognition in the PPTS, see below.

- 4.15 Saved policy E19 (Achieving High Quality Design and Distinctiveness) requires development proposals to be well designed.
- 4.16 Saved policy RC7 (Rural Lanes) seeks to protect the physical features and character of rural lanes, of which Elverland Lane is one.
- 4.17 Saved policy H4 explains the Borough Council will only grant planning permission for the use of land for the stationing of homes for persons who can clearly demonstrate that they are gypsies or travelling showpersons with a genuine connection with the locality of the proposed site, in accordance with 1 and 2 below.

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

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

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

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

4.19 Saved policy T1 (Providing Safe Access to New Development) states;

“The Borough Council will not permit development proposals that;

1. *generate volumes of traffic in excess of the capacity of the highway network, and/or result in a decrease in safety on the highway network, unless these issues can be addressed by environmentally acceptable improvements to the highway network that have been agreed by the Borough Council and the appropriate Highway Authority in accordance with Policy T2; and*
2. *lead to the formation of a new access, or the intensification of any access, onto a primary or secondary road or route, unless it can be created in a location that it acceptable to the Borough Council, or where an access can be improved to an acceptable standard and achieve a high standard of safety through design.*

Where appropriate, the Borough Council will require the submission of a comprehensive Transport Assessment and Travel Plan with a planning application.”

Swale Landscape Character and Biodiversity Appraisal SPD 2011

- 4.20 This site is within the Doddington and Newnham Dry Valleys landscape character areas as defined in the March 2011 Swale Landscape Character and Biodiversity Appraisal, areas which are seen as of high and moderate sensitivity respectively and in good condition.

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

- 4.21 The Council's Publication version of the draft Local Plan, entitled *Bearing Fruits 2031*, was published in December 2014 and underwent examination in November 2015. The Local Plan Inspector's relevant interim findings are set out below.
- 4.22 Policy CP 3 of the draft Local Plan aimed to provide pitches for gypsies and travellers as part of new residential developments. Policy DM10 set out criteria for assessing windfall gypsy site applications. These policies are now being significantly revised or abandoned as appropriate according to the Council's re-assessment of site need in the light of the changes to PPTS and local progress on site supply. This is discussed below. Draft policy DM10 will now be a criteria based policy for assessing windfall planning applications and this includes the following points. It seeks to retain existing permanent sites, and favours expansion of existing sites. Further criteria for approval are exceptional mitigating or personal circumstances where there is no overriding harm to the locality or the need for affordable housing. Beyond these points the policy suggests that new sites should;
- be for applicants who have previously led a nomadic lifestyle, or those who can show why they have stopped travelling, or show intentions for future travelling
 - provide opportunity to integrate with communities
 - be of an appropriate scale without landscape harm or overloading services
 - accommodate living and working
 - cause no significant harm to occupants or others
 - cause no harm to AONB, other national or local landscape or biodiversity designations
 - provide landscaping to enhance the environment in a way that increases openness
 - provide for health lifestyles
 - be safe from flooding
 - have safe and convenient access and parking
 - provide transit or visitor pitches where appropriate

Site Assessment

- 4.23 The Council's February 2014 Gypsy and Traveller Site Allocations: Issues and Options consultations document recommended a new methodology for how to assess site suitability for determining whether or not to allocate a site. Although this was primarily intended to rank potential site allocations, it was agreed by Members of the LDF Panel in June 2014 to be used as a material consideration in planning applications. Even though this is normally done in relation to the potential suitability of a fresh site, a site assessment exercise has been carried out in relation to this site and I have taken this into account in considering this application. The assessment is a Red/Amber/Green

staged approach to site suitability, with any site scoring Red in any stage not being progressed to the next stage.

- 4.24 The assessment starts with Stage 1: Availability. The applicant is in occupation of the site. Here the site scores green. This means that the site should proceed to Stage 2.
- 4.25 Stage 2: Suitability/Constraints. The site is not in a flood risk zone (assessment green); it is in an AONB and is part of a former traditional orchard, now in need of restoration, but the application site now is moved up the field from the main Newnham Valley Road and will be very prominent in public consciousness, especially with the proposed new entrance onto Elverland Lane. The recent occupation of the lower part of the field in which the application site lies has been extremely visually intrusive (boundaries feature predominantly deciduous hedging so for long periods of the year the caravans and vehicles etc. are plainly seen) and harmful to the aims of designation of the AONB. Whilst the caravans were originally sited only at the bottom of the site, they are prominent even here, and the proposed siting higher up the site will be even more prominent (red); it has very harmful landscape impact (red); it has no unacceptable impact on biodiversity (green); no dominating effect on settlements on its own but there are already three private gypsy sites nearby on temporary permissions (one on adjacent land and two others across the otherwise unpopulated Elverland Lane). These sites indicate sustained pressure for sites here which taken together will have a significant effect on such a sparsely populated and otherwise unspoilt area (amber); no adverse impacts on heritage/archaeology (green); is not known to be contaminated (green); will not be subject to unacceptable noise or disturbance (green); has dangerous access which the highway authority have raised formal objection to in the previous application, but now a new access to the side road is proposed – this will no doubt be less unsafe although the provision of necessary 66m overall visibility splays will have a significant impact on the character of the rural lane by removal of trees, along with extensive and intrusive engineering works to provide a level access given that the site is significantly above the level of the land at the proposed access point (green); and is remote and not within walking distance to any significant facilities at 5.5km from Bysingwood School and 6km from Faversham station (red). The red scores mean that it is not a site considered to be suitable as a permanent site, and that the site should not proceed to Stage 3 and will not be a candidate site for any future allocations policy (if such a policy were now to be produced).
- 4.26 The arrangements for production of Part 2 of the new Local Plan included consultation upon a preferred options document in summer 2014. The future of and need for Part 2 of the Local Plan was expected to be dependent upon the successful adoption of Part 1 of the Local Plan. It was intended that should the Local Plan Inspector find problems with Part 1 of the Local Plan, Officers were likely to suggest that all pitch provision matters be deferred to Part 2 to enable Part 2 of the Local Plan to progress independently of Part 1. The latest position on this issue is referred to below.

Five year supply position

- 4.27 The PPTS has since 2012 introduced a need for Council's to maintain a rolling five year supply of sites which are in suitable locations and available immediately. The Council put measures into place to deal with the PPTS requirements very quickly, but have only recently started down the route of trying to maintain a rolling five year supply.
- 4.28 The GTAA (2013) set a target of 85 pitches to be provided by the year 2031, with a suggested provision of 35 pitches in the first five years (to 2018). Three pitches were approved during the course of the GTAA's production so the final target was in fact 82 pitches. Since the publication of the GTAA and up to the end of March 2015 a total of

47 permanent pitches were approved in Swale, almost exclusively without an appeal, of which 33 pitches had been implemented. Evidence presented to the recent Local Plan examination (November 2015) shows that at the end of March 2015 the need for pitches identified from the GTAA thus stood at 82 pitches minus the 33 permanent pitches approved and implemented, including the personal permissions granted in the interim. This reduced the need to 49 pitches. These mostly comprised extensions to, or more intensive use of, existing sites and were awaiting occupation. Since then six more wholly new permanent sites (comprising eight (8) pitches) were approved in 2015/2016 including two fresh pitches on a large mixed use development site at Faversham. A further two (2) pitches as an extension to an existing well located site were approved in November 2016, with another wholly new pitch (previously approved only on a temporary basis) was approved in December 2016. This provision of 58 permanent pitches (47 in 2013 to 2015 plus eight (8) in 2015/2016 and three (3) further pitches in 2016/2017) is a very considerable achievement and indicates the Council's positive attitude to such development in the right location. As at July 2016, monitoring shows that 41 new permanent pitches have been implemented with 13 pitches yet to have their permission implemented. Based on these figures the Council has already met two thirds of the original pitch target to 2031 and the number of pitches completed exceeds any residual requirement for the five year period. The Council is able to demonstrate a five year supply and has in fact exceeded a 10 year supply of pitches. However, the situation has since changed considerably.

The latest position on site provision

- 4.29 The revised PPTS (2015) has resulted in considerable uncertainty as it changed the planning definition of a traveller and gypsy, and therefore what number of required pitches need to be identified. Evidence to the recent Local Plan examination was that the Council has re-interrogated the GTAA data to determine the appropriate level of pitch provision based on the new 2015 PPTS revised definition of gypsies and travellers. The data revealed that for all but unauthorised sites some two-thirds of households surveyed for the GTAA either never travel or travel not more than once a year. Overall, only 31% of respondents travel a few times a year, and 55% never travel, meaning that in Swale the gypsy and traveller population is quite settled, slightly more so than elsewhere in the country. Many of the borough's Gypsy/Traveller population no longer meet the new PPTS definition of having a nomadic habit of life
- 4.30 Accordingly, the need for pitches in Swale has been re-evaluated, resulting in a reduced estimate of pitch need of 61 pitches over the Plan period to 2031; this being the most generous of the possible reduced pitch numbers scenarios considered. Of these, 58 pitches have already been granted permanent planning permission meaning that the outstanding need is three (3) pitches to 2031. The Council considers that on the basis of past trends this need could easily be met from windfall proposals. Moreover it indicates that by proper engagement with the Council, appropriate sites can be found in sustainable and acceptable locations in Swale (generally outside of the AONB or other designated area) without an appeal, meaning that there is a high probability of being able to find an acceptable alternative site with minimal delay.
- 4.31 As a result of this analysis, the Council is suggesting through Main Modifications to its draft Local Plan (published in June 2016) that the future need be based on a figure of 61 pitches, leaving a need per year of less than one pitch and, that no formal pitch allocations will be needed. Policy DM10 has been revised to deal with these windfall applications and the element of policy CP3 on pitch allocations is to be removed from the Plan. Accordingly, a Part 2 Local Plan would not be required.

- 4.32 The Local Plan Inspector's third interim report (March 2016) fully supports the Council's proposed position regarding gypsy and traveller site provision, accepting that the remaining need for sites can be managed by windfall applications and without a Part 2 Local Plan. The Inspector also accepts that the Council should revise draft Plan policies to reflect progress on site provision whereupon the Plan will be effective and consistent with national policy. In June 2016 the Council published Main Modifications to the draft Local Plan to confirm these intentions and these were considered at the resumption of the Local Plan EIP in January 2017. Finally, a new appeal decision at Bredgar dated 6 February 2017 (based on data available in September 2016) has confirmed that "*...in view of the now significantly reduced level of need combined with the reasonably substantial increase in the number of permitted sites, many of which have now been implemented, overall I consider that that the Council has now demonstrated that it does have a five year supply of deliverable sites. On this basis there is no apparent need for further sites in the short term and in the longer term any outstanding need that might be established would be likely to be dealt with through the provisions of the emerging development plan*".
- 4.33 At a more local level the Council is a contributor to the Kent Downs AONB management unit which has recently published its second revision to the Kent Downs AONB Management Plan (2014 – 2019). This includes policies SD1, SD2, SD3, SD8 and LLC1 of the Plan, which refer to the need to conserve and enhance the natural beauty of the AONB being the prime purpose of the designation, with new development respecting the area's character, quality and distinctiveness, with development that runs counter to the primary purpose of the AONB, or its distinctive landform, special characteristics or qualities being opposed.
- 4.34 Finally, the Government's Chief Planner announced on 31 August 2015 (the same day PPTS was re-issued) a policy that from that date in all applications and appeals that involve intentional unauthorised development, this fact can be a material planning consideration. In this case the site was occupied over a weekend without prior notice and without the necessary planning permission. The site had previously been owned by a different gypsy family who had not carried out any unauthorised development on the site. However, after work was carried out (7 December 2015) and it was revealed that the current appellant had recently purchased the land (27 November 2015) the Council immediately wrote to the applicant at her registered address to make clear the planning situation on the site and to discourage any unauthorised development. This letter was sent on 8 December 2015. Notwithstanding that letter the site was occupied by the applicant and her family over the weekend of 12/13 December 2015.

5.0 LOCAL REPRESENTATIONS

- 5.01 I have received sixteen letters of objection to the application from the wider local area despite it being thinly populated. These object to the application on the following summarised grounds;
- Is this application in addition to the site already there or in place of it?
 - If it is to replace it how does it differ from the previous application?
 - The current use of the site exceeds even what is being proposed
 - Simply moving the site a few yards up the hill will not make any difference, in fact it will make it worse; the large caravans will still be visible all the time, all year through the thinly spread trees, from a route that people use for recreation and leisure including cyclists and tourists – the caravans cannot be successfully screened on this site

- If this application is refused can we expect other applications for other small parts of the wider site as the site is clearly large enough for far more caravans
- The new application is akin to the previous refusal which has not yet been enforced; this should now be done with the Council's costs reimbursed
- The occupation of the site and submission of this application is making a laughing stock of the Council's Planning Committee and is an insult to local residents
- The site is isolated from any social, health, educational or other amenities, and within the Kent Downs AONB. The occupants have not even tried to involve themselves in the local community and have ignored rules others have to live by
- Are there adequate amenities to facilitate the development?
- Nothing of substance has changed since the previous refusal
- The development remains contrary to the policies of the Local Plan
- There has been no additional investment in infrastructure
- Extra traffic on an already busy road near a sharp bend with no pavements or street lighting creating even more risk for pedestrians and drivers
- A new access onto a designated rural lane, Elverland Lane, will be detrimental to the bank and hedgerows there, and to highway safety
- A new access will lead to subdivision of the site
- The Council should genuinely consider the rights of established residents
- There are already an imposing number of temporary sites here on former agricultural land
- Brownfield land would be more suitable and the applicants should be encouraged to find a site with suitable amenities
- The proposed buildings and their materials are not in keeping with the AONB
- If this is approved they will eventually build a bungalow
- If the occupants have stopped travelling they cannot still be travellers. The applicants have been on this site since December 2015 and have not demonstrated any travelling habit – their gypsy status must be in question
- If approved this development will open the floodgates to further sites nearby
- Rubbish piled up in the orchard and in lanes nearby since the applicants occupied the site
- One writer contends that the Council's negative EIA Screening Opinion is wrong
- The Government has said that LPAs should very strictly limit new traveller development in open countryside and that there should be question of an exception within the AONB
- The Council has already met its obligations to provide sufficient gypsy and traveller sites. There is now no requirement for temporary or permanent permissions on unsuitable sites such as this one
- The applicants have occupied the site illegally and should be evicted before the application is considered
- The reference to Croydon Council in the Design and Access Statement is noted

5.02 I have also received one letter of support for the application on the following summarised grounds;

- Many objections are from people jumping on the band wagon because of what they have heard about gypsies through the media
- Many are uneducated about gypsy culture
- There are far worse looking sites with shabby caravans unconcealed by greenery or fencing nearby
- People should find out about what aspects constitute traveller status and remember that gypsies are Kent's largest minority group

6.0 CONSULTATIONS

- 6.01 The Kent Downs AONB management unit has written objecting to the application noting that under PPTS guidance LPAs should very strictly limit traveller development in open countryside away from existing settlements or outside areas allocated in the development plan; and that there should be no exception to granting a temporary consent given the AONB designation. They add that paragraph 115 of the NPPF specifies that great weight should be given to conserving the landscape and scenic beauty in AONBs which have the highest status of protection in relation to landscape and scenic beauty. They suggest that whilst there is a presumption in favour of sustainable development in the NPPF planning permission should not be granted where adverse impacts of development significantly and demonstrably outweigh the benefits, and they suggest that the AONB designation overrides the benefits here. Reference is then made to saved policy E9 of the adopted Local plan and to policies of the AONB Management Plan, which is a further significant material consideration.
- 6.02 In terms of landscape impact the site is said to be located within the Mid Kent Downs Landscape Character Area within which the Kent Downs AONB Landscape Design handbook advises that one of the overall landscape character objectives is to maintain the remote quality of the countryside and to control urban fringe pressures. It is noted that this area is a remote one comprising a mix of woodland, arable fields and orchards and that, despite a number of scattered dwellings and the M2, the area retains its rural character. The AONB unit considers that stationing caravans here will detract from the landscape character of the locality and fail to conserve the natural beauty of the Kent Downs AONB, weakening and disregarding the primary purpose of AONB designation which is the conservation and enhancement of natural beauty contrary to policies SD1, SD2, SD3, SD8 and LLC1 of the AONB management plan, saved policy E9 and the aims of paragraph 115 of the NPPF.
- 6.03 Kent Highways and Transportation have not raised objection to the application but in response to my question have confirmed that 33m x 2.0m x 1.05m height visibility splays would be adequate to maintain highway safety at the proposed new access point in view of the low traffic speeds expected here.
- 6.04 Neither Ospringe, Newnham or Doddington Parish Councils, nor the County Archaeological Officer have responded to our consultation.

7.0 BACKGROUND PAPERS AND PLANS

- 7.01 Application papers for application 16/507020/FULL

8.0 APPRAISAL

- 8.01 I believe that the main considerations in this matter are the degree of congruence with policy towards development in the countryside; visual impact of the site; the impact of the development on the objectives of designation of the Area of Outstanding Natural Beauty; the Council's current position regarding the supply of gypsy and traveller sites; whether a permanent permission should be granted and if not, whether a temporary permission is appropriate. If I do not conclude that the other merits of the application warrant the grant of a permanent or temporary permission I believe that it would be proper to go on to consider whether the applicant's personal circumstances are sufficient to warrant the granting of a permanent or temporary planning permission and then, whether a refusal of permission would constitute an infringement of the applicant's human rights.

- 8.02 My starting point for consideration of this application is the provisions of the saved policies of the Swale Borough Local Plan 2008 and the Council's published site assessment criteria for gypsy and traveller sites. Saved policies E6, E9 and RC7 seek to resist development in the countryside and to protect valued landscapes and rural lanes. There is no doubt that the site is not generally suitable for residential development or use as a caravan site as it is located in open countryside, well outside any defined settlement designated as suitable for residential development, and that saved policy E6 seeks to protect the wider countryside from development except in specific exceptional circumstances. It follows that the granting of planning permission for the proposal would seriously undermine the effectiveness of local rural settlement policy and thus have adverse implications for the character of the countryside, unless it satisfies at least one of the exceptions that justify a departure from the development plan.
- 8.03 The site lies in open countryside and on an attractive rural lane, where established policy at local and national level is to restrict non-essential development. At NPPF para 115 it is made clear that in AONBs great weight should be given to conserving the landscape and scenic beauty. The objectives of AONB designation are to conserve and enhance the natural beauty of the area. This is therefore the key policy test here, which is closely linked with visual impact. PPTS (2015) at para 25 states that local planning authorities "should very strictly limit new traveller site development in open countryside this is away from existing settlements", meaning that such a site is no longer acceptable in principle.
- 8.04 The weight to be given to AONB landscape protection remains a strong national policy. Occupation of the appeal site would have a significant landscape impact that would be a clear reason for refusal of planning permission as supported by saved policy E9. The site could be further landscaped but this would not reduce its impact significantly, unless it is to be hidden completely in a manner contrary to good planning practice and to paragraph 26 of PPTS. Recent erection of green netting along the roadsides at the site has not served to lessen its impact, and if this is necessary to provide adequate privacy for the applicant, it points to an unsuitability of the site for her family.
- 8.05 The idea that conserving the landscape and natural beauty of the AONB by introducing incompatible development and then attempting to screen it is the wrong approach. Furthermore, this approach would be directly contrary to PPTS guidance which seeks greater openness and can only serve to raise the sense of social exclusion of the site occupants; hiding them away from the world.
- 8.06 The NPPF seeks to protect Areas of Outstanding Natural Beauty, and PPTS states that sites in open countryside away from settlements should be very* strictly controlled (* very was introduced into this sentence in August 2015). In my view this policy has three purposes which are to minimise visual harm to the countryside, ensure sites are not isolated from the settled community and, to ensure sites are sustainably located.
- 8.07 Overall, I consider that the landscape impact of this site is overriding and that further landscaping is not the solution to any objection on landscape grounds, sufficient to warrant a refusal of planning permission.
- 8.08 Elverland Lane is designated as a rural lane to which saved policy RC7 applies. This specifies that development proposals should have particular regard to, amongst other things, the landscape importance of such lanes. The lane is distinctly rural in character and evocative of the essence of the AONB, making an important contribution to the character of the area. It is particularly attractive in its own right by reason of its narrow

carriageway and long stretches of unbroken roadside vegetation including at the proposed new access point, where the lane is characterised by high banks.

- 8.09 The new site access will require a minimum of 33m of roadside bank on either side to be kept clear of any obstructions over 1.05m in height, creating a new and artificial element to this most traditional and evocative of sunken lanes. The proposal to use this site for stationing caravans with a new access, which would necessarily involve cutting through the steep and wooded roadside banks with old roots protruding therefrom, would be a substantial engineering operation significantly harming the ancient and secluded character of the lane to the extent that a refusal of planning permission on grounds of being contrary to saved policy RC7 is sustainable. The need to maintain the sightlines clear of obstructions in the long term will also mean long lasting damage to the valued intimate character of the lane.
- 8.10 The site is also very remote from services (6km from Faversham station and 5.5km by road from Bysingwood School), and does not provide a convenient location for access to educational, health or social facilities. Nor is the site well located for integration with any local community, or for a sustainable form of development. There are few facilities close to the site and any access to amenities will involve the use of private transport. Saved policy SH1 of the adopted Local Plan identifies a settlement hierarchy for the Borough where various levels of development might be appropriate. This isolated location is not one where there is ready access to amenities. It thus fails to meet the second stage of the Council's published site assessment criteria.
- 8.11 In this regard the nature of the site is far more remotely located than one at Spade Lane close to the Medway conurbation that was subject of an appeal decision regarding a proposed gypsy or traveller site in October 2014. In that case (APP/V/2255/C/14/2220447) the Inspector considered whether the use of that site close to a major population centre with a wide range of facilities as a gypsy or traveller site constituted sustainable development. He noted that locational sustainability depends on a range of factors which are neither constant nor easy to measure with confidence. Nevertheless, he concluded that the site was "in a location where the overwhelming majority of journeys to shops, to school, to the doctor or to most other facilities and services would be undertaken by car." He added that "The distances involved, the absence of any public transport in easy reach, the character of the lanes along which people would travel, and the unattractiveness at night, in winter or in bad weather of any short cuts provided by local PROWs, would obviate journeys on foot other than for the fittest and/or most enthusiastic of walkers." His conclusion was that the sustainability benefits of the proposed development were minimal and more than outweighed by significant and demonstrable disadvantages. I consider that similar conclusion apply with even greater force here where the site is far further from amenities and where the roads and lanes in question are also without footpaths or street lighting.
- 8.12 If further evidence were needed, there have been three recent appeal decisions relating to private gypsy and traveller sites in Elverland Lane close to the current application site in 2007, 2011 and 2012. In the 2007 appeal decision at the site then known as Tootsie Farm, now Hill Top Farm (immediately uphill adjacent to this site) the Inspector commented that;

"I am also not convinced that this is a particularly sustainable location for a Gypsy site. I appreciate that Billy seems to have coped with school in Faversham on his bike and proposes to use bike and train to go to college in Canterbury. While it meets the current needs of the family it is in a relatively remote and sparsely populated location some

distance from services which in the main are to be found in Faversham. However, I do not consider it so unsuitable a location as to rule it out were that the only area of concern.”

Nevertheless in January 2012 (pre PPTS), a different Inspector commenting on the same site said that;

*“As to **sustainability** the evidence strongly suggests that there are more sustainable locations for G&T development than the appeal site, which in effect adds to the scatter of residential development in the open countryside. There is no reason to doubt that the eventual allocation of sites to meet G&T pitch needs, whether within the Borough or within this area of Kent as part of a joint effort by a group of local authorities complying with their duty to cooperate, will be in more sustainable locations and circumstances than the appeal site. This has considerable weight as an objection to the grant of a permanent permission for the appeal use. On the other hand, until adequate pitch provision is made elsewhere account should be taken of the advantages of providing, even on a temporary basis, for those who lack alternative accommodation and would therefore otherwise be moving between potentially more unsatisfactory temporary locations. This point is referred to in paragraph 64 of ODPM Circular 1/2006, and in this case I consider it to balance harm to sustainability objectives in the short term.”*

Finally, at Horseshoe Farm, also higher up Elverland Lane (opposite Tootsie Farm) an Inspector in May 2012 (post PPTS 2012) stated that;

“19. Paragraph 11 of the PPTS requires traveller sites to be sustainable economically, socially and environmentally. The appeal site is remote from all services and facilities and is not well located in relation to any settlement so as to foster social inclusion. It is isolated, in a sparsely populated area and there is environmental harm as identified above. Although there are two other gypsy sites nearby, they are not lawful.

20. A positive factor is that the Applicant has his horse keeping and breeding business based on the land on which he lives which reduces daily travel. There are also the recognised benefits arising from having a permanent base, such as being able to access health services more readily and reducing any need to move around on unauthorised sites. But those are benefits which arise in the provision of any permanent site and do not outweigh the disbenefits arising from the isolated location in this case.”

- 8.13 On the basis of this consistent view from recent Planning Inspectors, and bearing in mind the results of the Council’s own site assessment criteria (see above) I consider that this location is too remote from services and amenities to be acceptable as a permanent gypsy or traveller site. I consider that the limited remaining need for sites in the Borough can more properly be met in far more suitable locations and that use of this site fails to meet the environmental role necessary to be considered sustainable development in terms of the NPPF definition.
- 8.14 In this context, I consider that a strong case would again need to be made for a decision to favour a permanent use of this site. Whilst the Council has not produced a site allocations DPD for gypsy and traveller sites it has made very significant progress on site provision. A new GTAA has been completed and all but a few sites from the entire site supply need identified up until 2031 have been provided. The Local Plan Inspector has very recently agreed that the remaining site need can be managed by windfall applications. I accept that this site is capable of being a windfall application but this would be judged against the new criteria based policy DM10. I have already discussed how this site falls well short of the Council’s current site assessment criteria

which would have been used to allocate sites under DM10 as originally drafted. It is therefore no surprise to find that the site fails to meet the criteria of DM10 as proposed to be modified. In particular the site fails on the following points;

- The remote location of the site fails the sustainability criteria of DM10 as it falls within category 6 of policy ST3 being in open countryside and not protecting the intrinsic value or beauty of the countryside
- Its isolation does not achieve integration between communities
- It causes harm to the objective of designation of the AONB, and so would the creation of the proposed new access
- Additional site landscaping would not and could not reasonably increase openness

Accordingly, I see no justification for a permanent planning permission here.

Whether a temporary permission might be appropriate if a permanent permission is not.

- 8.15 Government advice was that local planning authorities should consider favourably planning applications for housing where a five year supply was lacking. PPTS 2012 continued that theme saying that the lack of a five year site supply should be a significant material consideration in relation to a potential temporary permission. However, PPTS 2015 has re-written this advice, now saying that the exception to this advice is where a site lies in a designated area such as an AONB. My conclusion now is that the Government's intention is to safeguard AONBs from temporary site development (presumably when a site is not acceptable on a permanent basis) even where site supply might be lacking. In this conclusion I am supported by the findings of a very recent appeal Inspector regarding site at Bredgar (February 2017) where he found that "*the PPTS has been amended such that where a five year supply of deliverable sites cannot be demonstrated, this cannot be a significant material consideration when considering applications...where the land is within an AONB*". As a result, I consider that the tide has now firmly turned against the possibility of a temporary planning permission here. There is in my view no case for granting temporary permissions pending policy production and the possibility of sites being allocated. Nor is there a shortage of site supply here. I have already concluded that the site is not suitable for a permanent permission. I have now also concluded that there is no case for a temporary permission based on waiting for emerging Local Plan policy, or on the basis of a lack of site supply. I have also had regard to the Inspector's comments in the Spade Lane appeal decision in relation to the granting of a temporary planning permission, which he dismissed. He found that the granting of a temporary permission creates some expectation of future permanence, but he saw no realistic prospect of circumstances there changing in the near future. He noted that the site would still be in open countryside and with poor relationship to services. He also noted that harm is often greatest in early years when landscaping has not had time to establish, and that the applicant's position was not urgent. I consider that many of these factors apply to this case, reinforcing my conclusions above. I do not consider that a temporary planning permission should be granted.

The applicant's own circumstances.

- 8.16 The Council made relevant enquiries regarding personal circumstances when the applicant first occupied the site. The applicant has also submitted a number of documents and details regarding gypsy equality issues, her own family circumstances and her gypsy status with the application. I have had regard to this information in its following comments.

Gypsy status.

- 8.17 The applicant has sent details of her family's attendance at Horse Fairs, Fairs and Events throughout the year, as well as at other unspecified cultural and family events. The applicant explains that the family also continue to travel for work for a significant part of the year, and explains that her family have also stayed at different camps when working way on the roads. This she suggests satisfies the test of gypsy status.

Health issues.

- 8.18 The applicant has also submitted various Education and Health Statements on a confidential basis. These largely rehearse widely known issues about the health and educational issues affecting gypsies and travellers, but also set out some details of the family members' health issues. These relate principally to the applicant's husband who has on-going health issues, and to her grandson of primary school age who has learning and behavioural problems for which he is receiving specialist medical help. Letters from the grandson's school (which he started at in January 2016) and from the NHS to the school along with details of his referral to the CAMHS (Child and Adolescent Mental Health Services) have been provided on a confidential basis. Further information about the applicant's grandson's mental health issues has also been submitted more recently. The applicant's daughter is also being prescribed medication. I appreciate that the applicant's grandson is now in education and does not react well to change, but I see nothing which suggest that his needs can only be met on this site, or that bearing in mind his experience of a nomadic lifestyle before moving to this site, a carefully managed change of permanent location will be to his long-term detriment.
- 8.19 The revised PPTS now makes it very clear that personal circumstances are unlikely to clearly outweigh harm to the AONB sufficient to grant a temporary permission, even where the supply of sites is inadequate. The exception here is where the best interests of a child might indicate otherwise (see Article 3 of the United Nations Convention on the Rights of the Child (UNCRC)). It is quite clear to me that in taking a decision which affects children the decision maker should understand and take proper account of the best interests of the child involved. This issue also relates to Article 8 of the European Convention on Human Rights (Right to a Private and Family Life). I have made enquiries of the applicant and medical and educational (or both) needs relating to her husband, daughter and grandson have been revealed. I have considered these issues fully. They seem to be to be significant and chronic, and I see no reasonable likelihood that they will be overcome in the short term; meaning that a temporary planning permission will not cover the period necessary to see them resolved. I can understand the benefits of a settled site for all these issues, but it is not clear to me how by settling on this remote site, on what must only at best be a temporary basis, the best interests of the family or children will be best served. Moreover, whilst the best interests of the child will always be a primary consideration, this does not mean that identifying their best interests will inevitably lead to a decision in conformity with those interests.
- 8.20 Even taking the best interests of the children involved here to have a settled base (as their parent and grandparents desire) I ask whether this can be outweighed by any combination of other factors, which individually do not outweigh that consideration. I find that the combination of significant factors including the impact of the development on policies to protect the countryside; significant harm to the AONB and on the character of Elverland Lane; the remote location and lack of accessibility to vital social, health and educational, facilities; and the intentional unauthorised development issue; create powerful counter arguments for the need for a settled base to be met on this site. That is not to say that the need cannot or should not be met elsewhere in the Borough (or beyond) where all these factors might not be present.

- 8.21 National policy is not to grant temporary planning permission in an AONB and, given that the Council will not be allocating the application site or any other sites for the foreseeable future, the applicant will be best served by finding an alternative permanent site elsewhere sooner rather than later. There seems to me no benefit in extending the applicant's current occupation of the appeal site as this will simply drag out the inevitability of relocation, and result in further harm to the AONB by consolidation of development, the creation of a new permanent access into Elverland Lane, and the possibility of inappropriate tree planting as has happened on the adjacent Tootsie Farm/HillTop Farm site and elsewhere (and which is extremely hard to resolve under planning powers). I note that inappropriate laurel planting and the erection of green netting has recently taken place at the site (possibly to provide privacy and lessen disturbance of the applicant's grandson from passers-by), which confirms my view that its continued occupation will inevitably and perhaps irreversibly adversely affect the natural beauty of the AONB.
- 8.22 The applicant's evidence of a need to live on the site for personal, health, or educational reasons is understood. Having considered whether a personal permission might be appropriate I can find insufficient reason to grant one, and I consider that a decision not to grant a personal permission is proportionate to the interference with the applicant's human rights and the Council's need to consider the best interests of the child as a primary consideration.

Equality and Human Rights issues

- 8.23 The submitted Design and Access Statement notes that elsewhere, strongly compelling personal circumstances have carried significant weight along with an identified need for sites and a lack of reasonable alternative sites. The statement refers to the United Nations Convention on the Rights of the Child which requires that a child's best interests be a primary consideration, and to the European Convention on Human Rights that requires respect for family and private life.
- 8.24 The Statement confirms that the applicant has gypsy status for planning purpose and would accept a personal planning permission as it is important that the family has a stable place to live and access education and healthcare. The Human Rights Act is referred to as is the entitlement of gypsies and travellers to their traditional way of life, which involves living in caravans. These issues are said to amount to "Very Special Circumstances" which are material to the planning application.
- 8.25 Finally, the applicant has submitted a number of documents relating more generally to the issue of racial discrimination especially in relation to gypsies both from the UK and the Council of Europe and UNHCR.

The balance between the above issues

- 8.26 The appeal site is very remote from social, health and educational facilities, has a significantly harmful impact on the natural beauty of the Kent Downs AONB, not least arising from the proposals to create a new access point onto Elverland Lane, and is not a site where a permanent planning permission ought to be granted on the basis of current policies. Nor is the need for sites now so overwhelming that such an unsuitable site should be approved. When first interviewed on occupying the site the applicant explained that her grandson of primary school age was to enrol in school and that this was the very first piece of land she had ever owned. The Council took time to enquire about any personal or medical issues that the family had and it was revealed that the applicant's husband has some on-going health issues that do not prevent him continuing to work, and that her grandson had learning and behavioural problems that were causing him to see medical professionals.

- 8.27 Having considered these competing factors, along with the harm to the AONB, remoteness of the site from any social, medical or educational facilities, and the Ministerial Statement regarding intentional unauthorised development, I find that the harm identified is not outweighed by the applicant's family's personal circumstances. Rather, I conclude that the severity of the impact of the use of the site on a nationally designated area (AONB) including that arising from the proposed new access to Elverland Lane, the manner of its occupation over a weekend, and the inappropriate location of the site far away from any amenities, allied to the applicant's opportunity to discuss with the Council more appropriate sites for long-term occupation in a more sustainable and suitable location, all weigh against a personal planning permission.
- 8.28 Any refusal of planning permission for someone's place of residence is potentially a breach of their human right to a home. However, this right is to a home, not to any particular home. There is nothing to suggest that the applicant's family's need for a permanent site can be met only on the appeal site or only within the AONB, and in fact there may be equally suitable sites closer to schools in Faversham which itself is not within the AONB. A site nearer to these schools would also be far closer to the wider amenities of Faversham itself and in a location which the Council would be more likely to approve. The obligation on public authorities to act compatibly with the European Convention on Human Rights does not give gypsies and travellers a right to establish sites in contravention of planning control. To that extent I do not consider that there would be a disproportionate interference with the applicant's rights under the Convention if permission were refused.

9.0 CONCLUSION

- 9.01 This site is prominent within the Kent Downs AONB and has unacceptable proposed access arrangements. Whilst PPTS makes clear that gypsy and traveller sites in rural areas without special planning constraints are acceptable in principle, it does state that sites in open countryside should be very strictly controlled and that sites that compromise the objectives of designation should not be permitted in AONBs.
- 9.02 The Council has been working to provide new sites across the Borough, and this has resulted in a substantial number of permanent pitches being approved. There are also substantial suitably located rural areas where a gypsy and traveller caravan site would be acceptable in principle, and significantly less harmful to the landscape than the appeal site.
- 9.03 The position regarding site supply is currently one where it is not necessary to consider setting aside serious environmental constraints to meet any deficiency in supply. I have considered the applicant's personal circumstances, but have concluded that there is nothing to suggest that his need can be met only on the appeal site or only within the AONB.
- 9.04 In balancing the competing issues of the need for and potential availability of alternative sites against the serious objections to the use of this site as a private gypsy site in terms of harm to the landscape character and to the objectives of designation of the AONB, and to sustainability, I believe that the balance remains strongly against permission being granted on this site.
- 9.05 I have considered the applicant's gypsy status and the need for sites, but have concluded that site supply is well advanced and as the area is very poorly served by amenities; that significant harm to the AONB and to planning policy would result, and that the site does not score well enough in relation to the Council's gypsy and traveller site assessment criteria to be suitable for a permanent planning permission. I also note that the issue of intentional unauthorised development is engaged here and I give this

some weight. I have considered whether a personal or temporary planning permission would be appropriate and have concluded that it would not. I therefore conclude that the proposed development should not be granted planning permission.

10.0 RECOMMENDATION – REFUSE for the following reason.

REASONS

- (1) Notwithstanding the Council's appreciation of the need for it to respond positively to the accommodation needs of gypsies and travellers, and the guidance in DCLG's Planning Policy for Traveller Sites (2015), the Council considers that this site is unacceptable as a gypsy or traveller site. The site is isolated in open countryside away from any social, health, educational or other amenities, and lies within the Kent Downs Area of Outstanding Natural Beauty and the siting of caravans and the associated hardsurfacing would create an alien and intrusive appearance to the site which harms the natural beauty, character and appearance of the area. The proposal to use the site for the stationing of caravans compromises the objectives of designation of the Area of Outstanding Natural Beauty which are the conservation and enhancement of the area's natural beauty, and is contrary to the advice in paragraph 12 of the NPPF, paragraphs 4, 23, 25 and 27 of the PPTS, to saved policies E1, E9 and RC7 of the Swale Borough Local Plan 2008 and to policies SD1, SD2, SD3, SD8 and LLC1 of the AONB Management Plan 2014 to 2019, which refer to the need to conserve and enhance the natural beauty of the AONB being the prime purpose of the designation. The Council has taken account of the position in terms of the supply of gypsy and traveller sites, the health issues of the applicant and her family, and considered whether a permanent or temporary planning permission should be granted. Despite appreciating the personal circumstances of the applicant's family, the Council does not consider that a permanent or temporary planning permission represents an acceptable balance between the need for gypsy and traveller sites in the Borough and the personal circumstances of the applicant's family, and the very substantial harm that occupation of the site causes to planning policy for the appropriate location of gypsy or traveller sites in terms of access to services and amenities, or on the character and appearance of the area. In taking account of all these factors the Council's considers that this proposal does not represent sustainable development, and that planning permission should be refused.
- (2) The site lies within the Kent Downs Area of Outstanding Natural Beauty and the siting of caravans and associated works including the proposal for a new site entrance onto Elverland Lane, and the ongoing need to achieve and then retain adequate sightlines in either direction therefrom, will create an alien and intrusive appearance to the site which detracts from the character and appearance of the lane contrary to area contrary to saved policy RC7 of the Swale Borough Local Plan, and to saved policies E1, E9, and to policies SD1, SD2, SD3, SD8 and LLC1 of the Kent Downs AONB Management Plan 2014 to 2019 which refer to the need to conserve and enhance the natural beauty of the AONB being the prime purpose of the designation.

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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The Retreat, Newnham Valley

16/507020/FULL

Gypsy and Traveller Site Allocations Assessment Methodology

Stage 1 - Is the site available?

Site Assessment Table: Stage 1 - Site availability

Criteria and Issues	Assessment references	Red – Does not meet criteria	Amber – May be capable of meeting criteria	Green – Fully meets criteria
Availability				
Is the site available and deliverable?		Owner confirmed site not available, nor is likely to become available over plan period	Site availability uncertain	Willing landowner ✓

IF RED THE SITE SHOULD BE DISCOUNTED AT THIS STAGE. ALL OTHER SITES SHOULD PROCEED TO STAGE 2.

Stage 2 – Suitability/ Constraints

Site Assessment Table: Stage 2 - Suitability

Criteria and Issues	Assessment references in addition to National Planning Policy Framework (NPPF), National Planning Guidance (NPG)	Red – Does not meet criteria	Amber – May be capable of meeting criteria	Green – Fully meets criteria
Flood Zone	Swale Strategic Flood Risk Assessment (SFRA) and Environment Agency guidance	Flood zone 3/ cannot be mitigated	Flood zone 2 or 3 but with acceptable mitigation to the satisfaction of the Council and Environment Agency	Flood zone 1 ✓
Landscape	Kent Downs AONB Management Plan 2009. Landscape Character and Biodiversity Appraisal SPD. Advice from Natural England and other environmental bodies	Site is within 1. a landscape designation, or 2. will affect the setting of a designation, or 3. is within an Area of High Landscape Value with unacceptable detrimental impact or where landscape impact cannot be mitigated including cumulative impacts ✓	Within close proximity of a designated area but, and where landscape impact may be mitigated	Outside designated area and not affecting the setting of a designation/ No impact
Biodiversity	Advice from KCC Archaeology Officers, UK/ Kent/ Swale BAP, advice from Natural England and environmental bodies	Site is within or affecting international, national or locally designated sites with unacceptable detrimental impact or where impact cannot be mitigated including cumulative impacts	Site is within, close proximity to or affecting international, national or locally designated sites where impact could be mitigated	Outside of any designation and not affecting the setting of a designation/No impact ✓
Scale of site or multiple sites	Officer assessment - considering quantity of existing sites against scale and form of existing settlement/settled community and advice from service providers	Has significant dominating effect	Scale has some impact ✓	Scale has little or no impact
Archaeology and	Heritage asset list and advice from heritage	Unacceptable detrimental impact on scheduled	Possible impact /minor impact on scheduled	Not in close proximity to Scheduled Ancient

Conservation Impact on Scheduled Ancient Monument or other heritage asset/non designated heritage asset	advisors	ancient monument/other heritage asset/non designated heritage assets	ancient monument/other heritage asset/non designated heritage assets	Monument/other heritage asset/non designated heritage assets
Contamination Unacceptable living conditions	Consult Land Contamination Planning guidance Document 2013 and Contaminated Land Strategy 2010	Site is contaminated and cannot be mitigated	Site is or is potentially contaminated - potential impact likely to be mitigated	No known contamination issues
Noise and disturbance issues Unacceptable living conditions	Consult Noise and Vibration: Planning Guidance Document 2013	Site located adjacent to noisy land use - cannot be mitigated	Site located adjacent to noisy land use - potential impact likely to be mitigated or low level	No noisy adjacent land uses
Site access and safety Access/Proximity to major roads and pedestrian routes	Any transport information submitted and Kent Highways Services assessment/advice	Remote location accessed by unmade roads/ poor roads or unresolvable highway safety issue	Some access to road network and site - potentially requiring mitigation or highway safety issue and possibly capable of mitigation	Good site and road access and no significant highway safety concerns
Accessibility to facilities GP surgery, Primary School, Shops, Public Transport	Desk top review	None or few within reasonable distance 	Reasonable distance to most services	All within reasonable travelling distance

IF ANY SCORE RED THE SITE SHOULD BE DISCOUNTED AT THIS STAGE. ALL OTHER SITES SHOULD PROCEED TO STAGE 3.

Stage 3 - More detailed site suitability

Site Assessment Table: Stage 3 - Detailed suitability

Criteria and Issues	Assessment references	Red - Does not meet criteria	Amber - May be capable of meeting criteria	Green- Fully meets criteria
Topography Uneven or unsafe ground levels and structures	Site survey by Officers and landscape evidence submitted	Steep slope which makes site unsuitable	Sloping land which may require works to make site suitable for use	Level or gently sloping site
Residential Amenity Impact on amenity of proposed and existing residents	Officers' assessment - same as housing, overlooking, disturbance from vehicle movements, loss of light, overcrowding etc	Close proximity to existing adjacent uses especially residential properties where any potential impact (light, visual, other disturbance). Has unacceptable impact which cannot be mitigated	Some impact on residential amenity - likely to be mitigated or low level	No impact on residential amenity
Utilities Electricity, Gas, Water, Drainage/ Sewers (mains or cesspit)	Site visit and utility providers advice	Not applicable as a reason for discounting a site	Yes - most (3 or 4)	Yes - all
Site capable of live/ work mix Priority for sustainable	Site visit/ submitted details	Not applicable as a reason for discounting a site	No or maybe	Yes

locations				
Parking Sufficient parking and turning space	Site visit and Kent Highways Services advice	No parking/ turning and no potential to provide parking and turning space	Inadequate parking/ turning or limited potential to provide parking and turning space	Sufficient parking and turning space
Landscaping Sufficient landscaping for amenity/impact on landscape character	Site visit and Swale Landscape Character and Biodiversity Assessment 2010, Planting on New Developments: A Guide for Developers	Not applicable as a reason for discounting a site	No soft landscaping/ landscaping could impact on landscape character area	Site has existing soft landscaping/ option to provide soft landscaping

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3.4 REFERENCE NO - 16/503982/FULL			
APPLICATION PROPOSAL Retrospective application for change of use to residential - for one gypsy family, comprising one mobile home, one touring caravan and one utility shed.			
ADDRESS Graces Place Homestall Road Doddington Kent ME9 0HF			
RECOMMENDATION - Refuse			
SUMMARY OF REASONS FOR RECOMMENDATION/REASONS FOR REFUSAL The use of the site as a caravan site for residential use will result in an unsustainable pattern of development in a manner contrary to national and local planning policies, which outweighs the need to provide gypsy and traveller sites and the personal circumstances on the applicant and her family.			
REASON FOR REFERRAL TO COMMITTEE To allow Members to consider future policy for gypsy and traveller sites in this area which has seen a number of temporary planning permissions.			
WARD East Downs Ward	PARISH/TOWN COUNCIL Doddington	APPLICANT Mrs Sybil Smith AGENT Veritas Architectural Services	
DECISION DUE DATE 09/03/17	PUBLICITY EXPIRY DATE 05/07/16		
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
SW/06/0126	Change of use to residential for one gypsy family for one mobile, one tourer, one shed	Approved for 3 years on personal grounds	28/07/2011
Approved to allow children's education/personal needs to be accommodated			

1.0 DESCRIPTION OF SITE

- 1.01 The site is mid-way along Homestall Road, which runs parallel to, and just north of the M2, between Lynsted Lane and Newnham Valley. The site is broadly rectangular with its narrow end to the highway, and is generally bounded by tree lines. It is not near any built up area, but lies directly opposite a pair of cottages, which are otherwise quite isolated. The nearest settlement of any size is Newnham which is 1.6km away as the crow flies (with the M2 in between) but 2.8km by the shortest road route. Shops in Teynham are 5.3km by most convenient road route albeit a shorter route can be taken via narrow lanes. Faversham station and town centre is 7.5km away.
- 1.02 The site is said to be 0.1ha, and has a cesspool. However, it has no mains gas or electricity; these are provided by gas cylinders, and a generator. Originally the site had no water supply and relied on large above ground water tanks. Water supply in this area is by private mains and after trying unsuccessfully to obtain a connection the site owner secured a water supply by means on an on-site borehole.

- 1.03 The access to the site is on a tight double bend, and visibility to the west on exiting the site is poor. However, in the previous application it was determined that it would be possible to secure adequate visibility splays within the site ownership and highway boundaries.
- 1.04 Previous formal planning history of the site is limited to the service of an enforcement notice regarding the stationing a large soil grading machine in July 2004. This resulted in the grading machine being removed from the site.
- 1.05 However, of most significance is planning application SW/06/0126 from the current site owner (a relative of the current applicant) who was at that time living on the site, latterly with a partner and three children who, in 2011, were aged 13, 10 and 3 years old. Although the parents were considered to have a nomadic habit of life, the application was only approved in July 2011 on a personal basis for a three year period on the basis of the Council's recognition of the personal circumstances of the three children then living on the site; two of whom were in full time education. The youngest child was then at nursery and was suspected of being autistic, finding change difficult to cope with. In combination, the needs of the children persuaded the Council to grant a temporary and personal permission for one mobile home and one touring caravan even though it was clear then that the site was not seen as suitable for a permanent or temporary permission due to its extreme isolation and remoteness from services and facilities. This temporary permission was intended to allow time for the family to find an alternative site without undue disruption to education or nursery care for the children.
- 1.06 A condition requiring early removal of prominent fencing at the site entrance was complied with, but I have not been contacted by the applicant or site owner regarding assistance in finding any alternative site to move to.
- 1.07 This permission expired in July 2014 and no attempt to renew the permission was made until I approached the current site occupants; the result of which is the current retrospective planning application. The current site occupants are now almost all different from those that the temporary planning permission related to; a matter which I will clarify below.

2.0 PROPOSAL

- 2.01 The current application is for the stationing of one mobile home, one touring caravan, and a small flat roofed timber clad utility shed (approx 4m x 4m). The original mobile home has been clad in timber and a shed added to it to extend the accommodation. It remains a mobile home but with the appearance of a wooden building. The application is entirely retrospective and the mobile home and utility shed were present on the site at the time of my visit in August 2016. The site also includes a number of other structures principally children's play equipment and an open fronted store (car port type structure).
- 2.02 The application as submitted consisted simply of the application form and three drawings; a site location plan (drawing 001), a site plan showing the laying out of the site (and showing a far larger shed as "existing" in the rear corner of the site) (drawing 002), and a drawing of the utility shed (drawing 003). There was no evidence or gypsy status or personal circumstances. I have sought such information before coming to any conclusion on the merits of the application.
- 2.03 I contacted the agent on 1 June 2016 with a series of questions as follows;

"I am dealing with your application on the basis that it is for a private gypsy or traveller site and seek your clarification of certain matters in order to come to a fair and balanced recommendation. I am familiar with the recent changes to the PPTS national guidance on gypsy and traveller sites.

To assist me, I would be grateful if you could answer the following questions as fully as possible;

- 1. Can you please confirm the intended occupants of the site with their name, sex, age and details of any special circumstances in terms of education, health or disability that they may have?*
- 2. Can you provide any evidence that any of the above people satisfy the newly amended definition of a gypsy or traveller as set out in Annex 1 to the PPTS of August 2015? As part of this, can you please explain the employment status of the occupants and, if employed, what their employment consists of. Can you specifically confirm to what extent they may have a nomadic habit of life?*
- 3. Can you please confirm how long the site occupants have lived on the application site, and where they stayed before moving onto the site?*
- 4. Please confirm what, if any, land or property other than the application site is owned by any of the people named above? Please confirm whether any of this property is of a residential property such as a house, or mobile home stationed elsewhere?*
- 5. Please confirm that if a temporary or permanent planning permission were to be issued whether you would consider a personal planning permission to be justified, and if so why?*

I look forward to hearing from you within the next fourteen days."

2.04 At the end of June I received an initial response to my queries (letter dated 27 June 2016) confirming the site occupants as;

- Sybil Smith (aged 69 years) suffering from Spondylitis (and living on the site since September 2010)
- Dennis Doughty (81 years) (living on the site since September 2010), and
- Jacob Smith (18 years) – the original child aged 13 years in 2011 (living on the site since January 2005, when he moved there with his parents).
- None of the above are said to have any fixed address before moving to the site, nor do they own any other property or site.
MY NOTE: Previous (application) information was that Jacob had lived with his mother in a house in Newnham before moving to the site. Neither parent, nor the other original children, now appear to live at the site following a break-up of the parent's relationship.
- The site is owned by John Smith (original occupant and father of Jacob) - whom formal Notice of the application has been served on.
- A temporary permission was argued on the basis on temporary cessation of travelling due to Sybil's health issues.

2.05 In relation to gypsy status I was informed that Sybil Smith has previously led a nomadic habit of life as a fruit picker and field labourer but that this has been temporarily suspended due to her illness. Dennis Doughty is said to have been a manager of a traveller site at Snowdon and is well known as a traveller. However, he has suspended his travelling to take care of Sybil. Spondylitis was said to be a condition that can improve and that both Sybil and Dennis intend to return to travelling, although the timescale for this is uncertain.

2.06 I then asked;

“Thank you for your response to my earlier questions. Can I ask now;

1. *For any information about Jacob Smith’s gypsy status or personal circumstances (if any).*
2. *Can you clarify Jacob’s family relationship to Sybil Smith and/or Dennis Doughty (if any) or to the land owner John Smith. Do the three current site occupants form one family unit now?*
3. *Can you clarify who Jacob’s parents are or who he lived on the site with (aged from 7 years) from 2005 to 2010, and where those people live now?*
4. *If there is any reason why any of the information provided so far (and to be provided under 1 to 3 above) cannot be made public?*
5. *What arrangements should I make to visit the site and understand its current configuration/pattern of use?*
6. *Are you are able to provide any independent corroboration of any medical/health issues which we can if necessary treat confidentially?”*

2.07 In response I was provided with information on a confidential basis regarding Jacob’s continued vocational training; that he is living with his grandmother and step-grandfather as a family unit whilst studying; and about his parent’s circumstances, which are as I had understood them (see above).

2.08 I met the agent on site on 26 August 2016 to discuss outstanding matters (Sybil was there at the time) and asked him to prepare a statement to explain the site occupants’ gypsy status and health issues which could be made public. I also discussed original planning conditions and which, if any, be appropriate to imposed on any new planning permission.

2.09 On 5 September I received further information, which I have also been asked to treat confidentially. It confirms maintenance of a visibility splay to the west of the entrance (as per condition (9) of the original 2011 planning permission); confirms on site drainage arrangements (by cess pit); suggests that the site’s remoteness should be weighed against the occupants’ personal circumstances and newer innovations in internet services such as online shopping which reduce the need for site occupants to travel from the site. Finally, the dimensions of the mobile home are confirmed as meaning that (even as extended) it remains within the legal definition of a caravan i.e.it does not exceed 20m in length or 6.8m in width as per the definition in Section 2 of The Caravan Sites Act 1968 and Social Landlords (Permissible Additional Purposes) (England) Order 2006 (Definition of Caravan) (Amendment) (England) Order 2006.

2.10 Attached to that message was a further letter (again confidentiality was requested) re-affirming and expanding upon many of the points in the letter of 27 June but (in summary) confirming that Sybil Smith’s Spondylitis causes her severe back pain; and confirming that Jacob’s parents no longer live on the site, with Sybil and Dennis moving there from a house they lived in when not travelling to look after Jacob whilst he was still a minor. Thus they have given up their permanent home to allow Jacob to continue his education; and if planning permission is not granted the site occupants would have no immediate place to live.

2.11 Lastly, I have also more recently (10 October 2016) been sent a letter from Sybil’s doctor confirming her medical condition, along with evidence of her receiving Disability Living Allowance for the last few years (again, in confidence). This information makes it clear that Sybil has limited mobility.

3.0 PLANNING CONSTRAINTS

Enforcement Notice

4.0 POLICY AND OTHER CONSIDERATIONS

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

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

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

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

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

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

- To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. For example, where there are groups of smaller settlements, development in one village may support services in a village nearby. Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as:
 - the essential need for a rural worker to live permanently at or near their place of work in the countryside; or
 - where such development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets; or

- where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting; or
- the exceptional quality or innovative nature of the design of the dwelling. Such a design should:
 - be truly outstanding or innovative, helping to raise standards of design more generally in rural areas;
 - reflect the highest standards in architecture;
 - significantly enhance its immediate setting; and
 - be sensitive to the defining characteristics of the local area.

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

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

- protecting and enhancing valued landscapes, geological conservation interests and soils;
- recognising the wider benefits of ecosystem services;
- minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the Government's commitment to halt the overall decline in biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;
- preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water or noise pollution or land instability; and
- remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.

4.05 The NPPF prioritises the safeguarding of AONBs at paragraph 115, but as stated above this site does not lie within the Kent Downs AONB as this runs to the south of the M2 motorway, whilst this site is just north of the motorway.

Planning Policy for Traveller Sites (PPTS)

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

“The Government’s overarching aim is to ensure fair and equal treatment for travellers, in a way that facilitates the traditional and nomadic way of life of travellers while respecting the interests of the settled community.” (para 3 PPTS)

To help achieve this, Government’s aims in respect of traveller sites are:

- a. that local planning authorities should make their own assessment of need for the purposes of planning*
- b. to ensure that local planning authorities, working collaboratively, develop fair and effective strategies to meet need through the identification of land for sites*
- c. to encourage local planning authorities to plan for sites over a reasonable timescale*
- d. that plan-making and decision-taking should protect Green Belt from inappropriate development*
- e. to promote more private traveller site provision while recognising that there will always be those travellers who cannot provide their own sites*

- f. *that plan-making and decision-taking should aim to reduce the number of unauthorised developments and encampments and make enforcement more effective*
- g. *for local planning authorities to ensure that their Local Plan includes fair, realistic and inclusive policies*
- h. *to increase the number of traveller sites in appropriate locations with planning permission, to address under provision and maintain an appropriate level of supply*
- i. *to reduce tensions between settled and traveller communities in plan-making and planning decisions*
- j. *to enable provision of suitable accommodation from which travellers can access education, health, welfare and employment infrastructure*
- k. *for local planning authorities to have due regard to the protection of local amenity and local environment.” (para 4 PPTS)*

4.07 In terms of plan making the PPTS advice is that;

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

- a) *promote peaceful and integrated co-existence between the site and the local community*
- b) *promote, in collaboration with commissioners of health services, access to appropriate health services*
- c) *ensure that children can attend school on a regular basis*
- d) *provide a settled base that reduces the need for long-distance travelling and possible environmental damage caused by unauthorised encampment*
- e) *provide for proper consideration of the effect of local environmental quality (such as noise and air quality) on the health and well-being of any travellers that may locate there or on others as a result of new development*
- f) *avoid placing undue pressure on local infrastructure and services*
- g) *do not locate sites in areas at high risk of flooding, including functional floodplains, given the particular vulnerability of caravans*
- h) *reflect the extent to which traditional lifestyles (whereby some travellers live and work from the same location thereby omitting many travel to work journeys) can contribute to sustainability.” (para 13 PPTS)*

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

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

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

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

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

- a) *the existing level of local provision and need for sites*
- b) *the availability (or lack) of alternative accommodation for the applicants*

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

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

“Local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. Local planning authorities should ensure that sites in rural areas respect the scale of, and do not dominate the nearest settled community, and avoid placing an undue pressure on the local infrastructure.” (para 25 PPTS). I note that the word “very” was added to this paragraph in the 2015 re-issue of PPTS.

“If a local planning authority cannot demonstrate an up-to-date 5 year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary permission. The exception to this is where the proposal is on land designated as Green Belt; sites protected under the Birds and Habitats Directives and / or sites designated as Sites of Special Scientific Interest; Local Green Space, an Area of Outstanding Natural Beauty, or within a National Park (or the Broads).” (para 27 PPTS). I note that the last sentence above was added to this paragraph in the 2015 re-issue of PPTS.

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

“Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family’s or dependants’ educational or health needs or old age have ceased to travel temporarily, but excluding members of an organised group of travelling showpeople or circus people travelling together as as such.”

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

- 4.10 The Council has responded positively and quickly to the changes in the national policy position in respect of Gypsy and Traveller accommodation. The Local Development Framework Panel quickly supported the commissioning of a new Gypsy and Traveller Accommodation Assessment (GTAA), which was completed in June 2013 and identified a need for 82 pitches to be provided during the plan period (adjusted down from 85 pitches in reflection of those sites granted permanent permission whilst the document was under preparation). This need figure was incorporated within the draft Bearing Fruits Swale Borough Local Plan: Part 1 alongside a policy introducing provision for pitches on certain major development sites. An additional net 47 permanent pitches (some with personal use conditions) had also been approved up to March 2015, reducing the outstanding need to 35 pitches over the Plan period. Further

permanent permissions have since been granted. A further number of pitches enjoy temporary permissions.

- 4.11 Shortly after publication of the GTAA in 2013 the Council began work on Part 2 of the Swale Borough Local Plan which was intended to deal with site allocations for Gypsy and Traveller pitch provision only. This process began with a call for sites between September and December 2013, and the publication of an issues and options paper which was subject to public consultation (this finished on 25 April 2014). The Local Plan was subject to examination in November 2015 and the latest position on this is referred to below.

Saved Policies of Swale Borough Local Plan 2008

- 4.12 Saved policy E1 (General Development Control Criteria) sets out standards applicable to all development, saying that it should be well sited appropriate in scale, design and appearance with a high standard of landscaping, and have safe pedestrian and vehicular access whilst avoiding unacceptable consequences in highway terms.
- 4.13 This site lies in an isolated position within the countryside where saved policy E6 (The Countryside) seeks to protect the quality, character and amenity of the countryside, and states that development will not be permitted outside rural settlements in the interests of countryside conservation, unless related to an exceptional need for a rural location.
- 4.14 Within the Borough's countryside saved policy E9 (Protecting the Quality and Character of the Borough's Landscape) seeks to protect the quality, character and amenity value of the wider landscape of the Borough. Within the countryside it expects development to be informed by local landscape character and quality, consider guidelines in the Council's landscape character and assessment, safeguard distinctive landscape elements, remove detracting features and minimise adverse impacts on landscape character.
- 4.15 Saved policy E19 (Achieving High Quality Design and Distinctiveness) requires development proposals to be well designed.
- 4.16 Saved policy RC7 (Rural Lanes) seeks to protect the physical features and character of rural lanes, of which Homestall Road is one.
- 4.17 Saved policy H4 explains that the Borough Council will only grant planning permission for the use of land for the stationing of homes for persons who can clearly demonstrate that they are gypsies or travelling showpersons with a genuine connection with the locality of the proposed site, in accordance with 1 and 2 below.
1. For proposals involving the establishment of public or privately owned residential gypsy or travelling showpersons sites:
 - a) there will be a proven need in the Borough for the site and for the size proposed;
 - b) the site will be located close to local services and facilities;
 - c) there will be no more than four caravans;
 - d) the site will be located close to the primary or secondary road networks
 - e) in the case of a greenfield site there is no suitable site available on previously developed land in the locality;
 - f) the site is not designated for its wildlife, historic or landscape importance;
 - g) the site should be served, or capable of being served, by mains water supply and a satisfactory means of sewage disposal and refuse collection;

- h) there is no conflict with pedestrian or highway safety;
- i) screening and landscaping will be provided to minimise adverse impacts;
- j) no industrial, retail, commercial, or storage activities will take place on the site.
- k) use of the site will not give rise to significant adverse impacts upon residential amenity, or agricultural or commercial use, of surrounding areas; and
- l) the land will not be in a designated flood risk area.

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

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

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

4.19 Saved policy T1 (Providing Safe Access to New Development) states (most relevant bit in **bold**);

“The Borough Council will not permit development proposals that;

- 1. *generate volumes of traffic in excess of the capacity of the highway network, **and/or result in a decrease in safety on the highway network, unless these issues can be addressed by environmentally acceptable improvements to the highway network that have been agreed by the Borough Council and the appropriate Highway Authority in accordance with Policy T2;** and*
- 2. *lead to the formation of a new access, or the intensification of any access, onto a primary or secondary road or route, unless it can be created in a location that it acceptable to the Borough Council, or where an access can be improved to an acceptable standard and achieve a high standard of safety through design.*

Where appropriate, the Borough Council will require the submission of a comprehensive Transport Assessment and Travel Plan with a planning application.”

Swale Landscape Character and Biodiversity Appraisal SPD 2011

4.20 This site is within the Lynsted Enclosed Farmlands landscape character areas as defined in the March 2011 Swale Landscape Character and Biodiversity Appraisal, areas which are seen as in poor condition and with low sensitivity. I do not consider that landscape impact is a significant potential objection to development here.

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

4.21 The Council’s Publication version of the draft Local Plan, entitled *Bearing Fruits 2031*, was published in December 2014 and underwent examination in November 2015. The Local Plan Inspector’s relevant interim findings are set out below.

4.22 Policy CP 3 of the draft Local Plan aimed to provide pitches for gypsies and travellers as part of new residential developments. Policy DM10 set out criteria for assessing windfall gypsy site applications. These policies are now being significantly revised or abandoned as appropriate according to the Council’s re-assessment of site need in the light of the changes to PPTS and local progress on site supply. This is discussed

below. Draft policy DM10 will now be a criteria based policy for assessing windfall planning applications and this includes the following points. It seeks to retain existing permanent sites, and favours expansion of existing sites. Further criteria for approval are exceptional mitigating or personal circumstances where there is no overriding harm to the locality or the need for affordable housing. Beyond these points the policy suggests that new sites should;

- be for applicants who have previously led a nomadic lifestyle, or those who can show why they have stopped travelling, or show intentions for future travelling
- provide opportunity to integrate with communities
- be of an appropriate scale without landscape harm or overloading services
- accommodate living and working
- cause no significant harm to occupants or others
- cause no harm to AONB, other national or local landscape or biodiversity designations
- provide landscaping to enhance the environment in a way that increases openness
- provide for health lifestyles
- be safe from flooding
- have safe and convenient access and parking
- provide transit or visitor pitches where appropriate

Site Assessment

- 4.23 The Council's February 2014 Gypsy and Traveller Site Allocations: Issues and Options consultations document recommended a new methodology for how to assess site suitability for determining whether or not to allocate a site. Although this was primarily intended to rank potential site allocations, it was agreed by Members of the LDF Panel in June 2014 to be used as a material consideration in planning applications. Even though this is normally done in relation to the potential suitability of a fresh site a site assessment exercise has been carried out in relation to this site and I have taken this into account in considering this application. The assessment is a Red/Amber/Green staged approach to site suitability, with any site scoring Red in any stage not being progressed to the next stage.
- 4.24 The assessment starts with Stage 1: Availability. The appellant is in occupation of the site. Here the site scores green. This means that the site should proceed to Stage 2.
- 4.25 Stage 2: Suitability/Constraints. The site is not in a flood risk zone (assessment green); it is not in an AONB or with significant landscape impact (green); it has no unacceptable impact on biodiversity (green); no dominating effect on settlements on its own but there are already three private gypsy sites nearby within the AONB on temporary permissions (and a further nearby new site with a current enforcement notice against it) and there is local concern over the number of such sites locally. A current planning application for this new private site nearby indicates sustained pressure for sites here which, taken together will have a significant effect on such a sparsely populated and otherwise unspoilt area (amber); no adverse impacts on heritage/archaeology (green); is not known to be contaminated (green); will not be subject to unacceptable noise or disturbance (green); has access which the highway authority considers can be safely arranged (green); but is very remote and not within walking distance to any significant facilities (red). The red score means that it is not a site considered to be suitable as a permanent site, and that the site should not proceed to Stage 3 and will not be a candidate site for any future allocations policy (if such a policy were now to be produced).

- 4.26 The arrangements for production of Part 2 of the new Local Plan included consultation upon a preferred options document in summer 2014. The future of and need for Part 2 of the Local Plan was expected to be dependent upon the successful adoption of Part 1 of the Local Plan. It was intended that should the Local Plan Inspector find problems with Part 1 of the Local Plan, Officers were likely to suggest that all pitch provision matters be deferred to Part 2 to enable Part 2 of the Local Plan to progress independently of Part 1. The latest position on this issue is referred to below.

Five year supply position

- 4.27 The PPTS has since 2012 introduced a need for Council's to maintain a rolling five year supply of sites which are in suitable locations and available immediately. The Council put measures into place to deal with the PPTS requirements very quickly, but have only recently started down the route of trying to maintain a rolling five year supply.
- 4.28 The GTAA (2013) set a target of 85 pitches to be provided by the year 2031, with a suggested provision of 35 pitches in the first five years (to 2018). Three pitches were approved during the course of the GTAA's production so the final target was in fact 82 pitches. Since the publication of the GTAA and up to the end of March 2015 a total of 47 permanent pitches were approved in Swale, almost exclusively without an appeal, of which 33 pitches had been implemented. Evidence presented to the recent Local Plan examination (November 2015) shows that at the end of March 2015 the need for pitches identified from the GTAA thus stood at 82 pitches minus the 33 permanent pitches approved and implemented, including the personal permissions granted in the interim. This reduced the need to 49 pitches. These mostly comprised extensions to, or more intensive use of, existing sites and were awaiting occupation. Since then six more wholly new permanent sites (comprising eight (8) pitches) were approved in 2015/2016 including two fresh pitches on a large mixed use development site at Faversham. A further two (2) pitches as an extension to an existing well located site were approved in November 2016, with another wholly new pitch (previously approved only on a temporary basis) was approved in December 2016. This provision of 58 permanent pitches (47 in 2013 to 2015 plus eight (8) in 2015/2016 and three (3) further pitches in 2016/2017) is a very considerable achievement and indicates the Council's positive attitude to such development in the right location. As at July 2016, monitoring shows that 41 new permanent pitches have been implemented with 13 pitches yet to have their permission implemented. Based on these figures the Council has already met two thirds of the original pitch target to 2031 and the number of pitches completed exceeds any residual requirement for the five year period. The Council is able to demonstrate a five year supply and has in fact exceeded a 10 year supply of pitches. However, the situation has since changed considerably.

The latest position on site provision

- 4.29 The revised PPTS (2015) has resulted in considerable uncertainty as it changed the planning definition of a traveller and gypsy, and therefore what number of required pitches needs to be identified. Evidence to the recent Local Plan examination was that the Council has re-interrogated the GTAA data to determine the appropriate level of pitch provision based on the new 2015 PPTS revised definition of gypsies and travellers. The data revealed that for all but unauthorised sites some two-thirds of households surveyed for the GTAA either never travel or travel not more than once a year. Overall, only 31% of respondents travel a few times a year, and 55% never travel, meaning that in Swale the gypsy and traveller population is quite settled, slightly more so than elsewhere in the country. Many of the Borough's Gypsy/Traveller population no longer meet the new PPTS definition of having a nomadic habit of life.

- 4.30 Accordingly, the need for pitches in Swale has been re-evaluated, resulting in a reduced estimate of pitch need of 61 pitches over the Plan period to 2031; this being the most generous of the possible reduced pitch numbers scenarios considered. Of these, 58 pitches have already been granted permanent planning permission meaning that the outstanding need is three (3) pitches to 2031. The Council considers that on the basis of past trends this need could easily be met from windfall proposals. Moreover it indicates that by proper engagement with the Council, appropriate sites can be found in sustainable and acceptable locations in Swale (outside of the AONB or other designated area) without an appeal, meaning that there is a high probability of being able to find an acceptable alternative site with minimal delay.
- 4.31 As a result of this analysis, the Council is suggesting through Main Modifications to its draft Local Plan (published in June 2016) that the future need be based on a figure of 61 pitches, leaving a need per year of less than one pitch and, that no formal pitch allocations will be needed. Policy DM10 has been revised to deal with these windfall applications and the element of policy CP3 on pitch allocations is to be removed from the Plan. Accordingly, a Part 2 Local Plan would not be required.
- 4.32 The Local Plan Inspector's third interim report (March 2016) fully supports the Council's proposed position regarding gypsy and traveller site provision, accepting that the remaining need for sites can be managed by windfall applications and without a Part 2 Local Plan. The Inspector also accepts that the Council should revise draft Plan policies to reflect progress on site provision whereupon the Plan will be effective and consistent with national policy. In June 2016 the Council published Main Modifications to the draft Local Plan to confirm these intentions and these were considered at the resumption of the Local Plan EIP in January 2017. Finally, a new appeal decision at Bredgar dated 6 February 2017 (based on data available in September 2016) has confirmed that "*...in view of the now significantly reduced level of need combined with the reasonably substantial increase in the number of permitted sites, many of which have now been implemented, overall I consider that that the Council has now demonstrated that it does have a five year supply of deliverable sites. On this basis there is no apparent need for further sites in the short term and in the longer term any outstanding need that might be established would be likely to be dealt with through the provisions of the emerging development plan*".

5.0 LOCAL REPRESENTATIONS

- 5.01 I have received three letters of objection from residents of a wide local area, including from as far away as The Street in Newnham, on the following summarised grounds;
- The site distracts from an area of natural beauty
NOTE: The site does not lie in an AONB; this is south of the M2
 - The original temporary permission was granted because of the needs of the children, but they moved out shortly after it was granted
 - There has been unauthorised construction on the site, making the caravan look like a log cabin
 - Permission has been refused elsewhere for more homes in the countryside and this application should also be refused
 - The site is particularly remote and not within walking distance of any significant facilities.
 - It will not support integration with the local community
 - The site adversely impacts on the designated rural lane

6.0 CONSULTATIONS

6.01 Doddington Parish Council has objected to the application on the following grounds;

- Not a suitable site as within the Area of Outstanding Natural Beauty
NOTE: The site does not lie in an AONB; this is south of the M2
- "It is a random site"
- There are sufficient gypsy and traveller sites in the emerging Local Plan
- The site is remote from local services and amenities
- The site would compromise highway safety
- The site would adversely affect the residential amenities of adjacent properties.

6.02 Kent County Council's Gypsy and Traveller Unit do not have any comments to make on the application.

6.03 Kent Highways and Transportation do not comment on the application. I have asked them to consider the Parish Council's highway concerns, but they have responded with their 2011 advice saying that as vehicles will be moving slowly (25 to 30 mph) past the site due to the nearby sharp bend, a sightline of 30m in distance would be adequate, which is within site limits, and that the set-back could be reduced from 2.4m to 2.0m in this instance. They suggested a 2.0m x 30m sightline would achieve adequate road safety.

NOTE: A sight line of 2.0m x 30 was required by condition (9) of the 2011 planning permission. As such I see no reason to see a highway safety danger arising from this application.

6.04 The Council's Environmental Health Manager has no comments to make on the application.

7.0 BACKGROUND PAPERS AND PLANS

7.01 Application papers for application 16/503982/FULL

8.0 APPRAISAL

8.01 I believe that the main considerations in this matter are the degree of congruence with policy towards development in the countryside; visual impact of the site; the suitability of the site's location and its access to services; whether the applicant or site occupants is/are a gypsy and such policies are engaged; if so, the Council's progress on the supply of gypsy and traveller sites; whether a permanent permission should be granted and if not, whether a temporary permission is appropriate. If I do not conclude that the other merits of the application warrant the grant of a permanent or temporary permission I believe that it would be proper to go on to consider whether the applicant's personal circumstances are sufficient to warrant the granting of a permanent or temporary planning permission and then, whether a refusal of permission would constitute an infringement of the applicant's human rights.

8.02 The site lies in open countryside and on an attractive rural lane, where established policy at local and national level is to restrict non-essential development. However, PPTS, at paragraph 54, states that sites in rural areas where not subject to special planning constraints are acceptable in principle. The site is on level ground in an extensively cultivated area. It does not have significant impact on long distance views, but its entrance is to some extent harmful to the character of otherwise largely

undeveloped Homestall Lane, which is recognised as a rural lane protected by saved policy RC7 of the adopted Local Plan.

- 8.03 The site is also very remote from services, and does not provide a convenient location for access to educational, health or social facilities. The site is not served by mains water. Nor is the site well located both for integration with any local community, or for a sustainable form of development. There are few facilities close to the site and any access to amenities will involve the use of private transport. Saved policy SH1 of the Local Plan identifies a settlement hierarchy for the Borough where various levels of development might be appropriate. This isolated location is not one where there is ready access to amenities. It thus fails to meet the second stage of the Council's published site assessment criteria.
- 8.04 In this regard the nature of the site is far more remotely located than one at Spade Lane close to the Medway conurbation that was subject of an appeal decision regarding a proposed gypsy or traveller with a wide range of facilities as a gypsy or traveller site constituted sustainable development. He noted (October 2014) that locational sustainability depends on a range of factors. In that case (APP/V/2255/C/14/2220447) the Inspector considered whether the use of that site close to a major population centre with a wide range of facilities as a gypsy or traveller site constituted sustainable development. He noted that locational sustainability depends on a range of factors which are neither constant nor easy to measure with confidence. Nevertheless, he concluded that the site was "in a location where the overwhelming majority of journeys to shops, to school, to the doctor or to most other facilities and services would be undertaken by car." He added that "The distances involved, the absence of any public transport in easy reach, the character of the lanes along which people would travel, and the unattractiveness at night, in winter or in bad weather of any short cuts provided by local PROWs, would obviate journeys on foot other than for the fittest and/or most enthusiastic of walkers." His conclusion was that the sustainability benefits of the proposed development were minimal and more than outweighed by significant and demonstrable disadvantages. I consider that a similar conclusion applies with even greater force here where the site is far further from amenities and where the roads and lanes in question are also without footpaths or street lighting.
- 8.05 If further evidence were needed, there have been three recent appeal decisions relating to private gypsy and traveller sites in Elverland Lane close to the current appeal site in 2007, 2011 and 2012. In the 2007 appeal decision at the site then known as Tootsie Farm (now called Hill Top Farm) the Inspector commented that;

"I am also not convinced that this is a particularly sustainable location for a Gypsy site. I appreciate that Billy seems to have coped with school in Faversham on his bike and proposes to use bike and train to go to college in Canterbury. While it meets the current needs of the family it is in a relatively remote and sparsely populated location some distance from services which in the main are to be found in Faversham. However, I do not consider it so unsuitable a location as to rule it out were that the only area of concern."

Nevertheless in January 2012 (pre PPTS), a different Inspector commenting on the same site said that;

*"As to **sustainability** the evidence strongly suggests that there are more sustainable locations for G&T development than the appeal site, which in effect adds to the scatter of residential development in the open countryside. There is no reason to doubt that the eventual allocation of sites to meet G&T pitch needs, whether within the Borough or within this area of Kent as part of a joint effort by a group of local authorities complying*

with their duty to cooperate, will be in more sustainable locations and circumstances than the appeal site. This has considerable weight as an objection to the grant of a permanent permission for the appeal use. On the other hand, until adequate pitch provision is made elsewhere account should be taken of the advantages of providing, even on a temporary basis, for those who lack alternative accommodation and would therefore otherwise be moving between potentially more unsatisfactory temporary locations. This point is referred to in paragraph 64 of ODPM Circular 1/2006, and in this case I consider it to balance harm to sustainability objectives in the short term.”

Finally, at a site known as Horseshoe Farm, Elverland Lane (opposite Tootsie Farm) an Inspector in May 2012 (post original PPTS) stated that;

“19. Paragraph 11 of the PPTS requires traveller sites to be sustainable economically, socially and environmentally. The appeal site is remote from all services and facilities and is not well located in relation to any settlement so as to foster social inclusion. It is isolated, in a sparsely populated area and there is environmental harm as identified above. Although there are two other gypsy sites nearby, they are not lawful.

20. A positive factor is that the Appellant has his horse keeping and breeding business based on the land on which he lives which reduces daily travel. There are also the recognised benefits arising from having a permanent base, such as being able to access health services more readily and reducing any need to move around on unauthorised sites. But those are benefits which arise in the provision of any permanent site and do not outweigh the disbenefits arising from the isolated location in this case.”

- 8.06 On the basis of this consistent view from Planning Inspectors, and bearing in mind the results of the Council’s own site assessment criteria (see above), I consider that this location is too remote from services and amenities to be acceptable as a permanent gypsy or traveller site. I consider that the limited remaining need for sites in the Borough can and is being more properly met in far more suitable locations and, that use of this site fails to meet the environmental role necessary to be considered sustainable development in terms of the NPPF definition. I also note that the question of sustainability is central to NPPF which has been published since the original temporary permission was granted on this site and which, to my mind, means that this issue assumes far greater significance. I am satisfied that this unsustainable location is now a major obstacle to seeing this site as acceptable on a permanent basis.
- 8.07 In this context, I consider that a strong case would again need to be made for a decision to favour a permanent use of this site. The Council’s policy position is now far different from that at the time of the three appeal decisions referred to above. The approach taken by the emerging Local Plan would not require a separate gypsy and traveller site allocations document and the Council has made very significant progress on site provision since publication of PPTS (2012). A new GTAA has been completed and all but a few sites from the entire site supply need identified up until 2031 have been provided. The site policy and supply situation could hardly be more different from that at the time of the above appeal decisions, and the Local Plan Inspector has very recently agreed that the remaining site need can be managed by windfall applications. I accept that this site is capable of being a windfall application but this would be judged against the new criteria based policy DM10. I have already discussed how this site falls short of the Council’s current site assessment criteria which would have been used to allocate sites under DM10 as originally drafted. It is therefore no surprise to find that the site fails to meet the criteria of DM10 as proposed to be modified. In particular the site fails on the following points;

- The remote location of the site fails the sustainability criteria of DM10 as it falls within category 6 of policy ST3 being in open countryside
- Its isolation does not achieve integration between communities

Accordingly, I see no justification for a permanent planning permission here.

- 8.08 Having said that, in a case where gypsy and traveller site supply might be important it is relevant to consider the applicant's gypsy status. Here, the evidence is limited but not so much that a reasonable conclusion of gypsy status cannot be drawn. I see no reason to dispute the appellant's gypsy status and will consider the remaining matters in this context.
- 8.09 At the time of the previous temporary permission on this site, Government advice was that local planning authorities should consider favourably planning applications for housing where a five year supply was lacking. PPTS 2012 continued that theme saying that the lack of a five year site supply should be a significant material consideration in relation to a potential temporary permission. Given the Council's very significant progress on site provision, as now independently confirmed as meeting the required five years supply by an appeal Inspector in February 2017, my view now is that there is no longer a case for granting temporary permissions pending policy production and the possibility of sites being allocated. I have already concluded that the site is not suitable for a permanent permission. I now also conclude that there is no case for a temporary permission based on waiting for emerging Local Plan policy.
- 8.10 The previous temporary planning permission granted at this site was primarily in recognition of the educational need evident at that time. The proposed occupants of the site now are the applicant and her partner, and an 18 year old. These facts in themselves do not in my view constitute special circumstances to outweigh what is now a very small need for sites, and not one that should be met in a location such as this one.
- 8.11 I have also had regard to the Inspector's comments in the Spade Lane appeal decision (see above) in relation to the granting of a temporary planning permission. He found that the granting of a temporary permission creates some expectation of future permanence, but he saw no realistic prospect of circumstances there changing in the near future. He noted that the site would still be in open countryside and with poor relationship to services. He also noted that harm is often greatest in early years when landscaping has not had time to establish, and that the appellant's position was not urgent. I consider that many of these factors apply to this case, reinforcing my conclusion that a further temporary planning permission should not be granted here.

The applicant's own circumstances

- 8.12 I have made relevant enquiries regarding personal circumstances of the applicant and others living on the site. The applicant has since submitted a number of documents and details in this regard. The proposed occupants of the site now are the applicant, her partner/carer and her grandson, aged 18. The applicant clearly suffers limited mobility and the grandson is still in part time vocational education. These facts in themselves do not in my view constitute special or very unusual circumstances. Previously, the older children on the site were at school, and an abrupt cessation of use of the site with no obvious alternative site to go to might have created an avoidable hiatus in the children's education. To avoid these consequences at a time when there was a high need for new sites, a temporary planning permission was granted. Now, circumstances have changed. The younger children no longer occupy the site, and the eldest is now aged 18 and only in part time education, and the position on site supply has radically changed. These circumstances are markedly different from before.

- 8.13 The occupant's evidence of a need to live on the site for personal, health, or educational reasons is understood. Having considered whether these factors support a personal planning permission I have to say that I do not think that they do. Accordingly, I conclude that any suggestion of extending the unlawful occupation of this site in recognition of the applicant's circumstances is significantly outweighed by all other factors.
- 8.14 Any refusal of planning permission for someone's place of residence is potentially a breach of their human right to a home. However, this right is to a home, not to any particular home. Paragraph 70 of Circular 1/2006 states that the obligation on public authorities to act compatibly with the European Convention on Human Rights does not give gypsies and travellers a right to establish sites in contravention of planning control. To that extent I do not consider that there would be a disproportionate interference with the applicant's rights under the Convention if permission were refused.
- 8.15 Finally, I have had regard to the advice in paragraphs 71 and 72 of Circular 01/2006 concerning the Council's duties to actively seek to eliminate unlawful discrimination and to promote equality of opportunity and good race relations in all they do. I do not consider that those duties support the grant of permission in the present case.

9.0 CONCLUSION

- 9.01 This site is remotely located along Homestall Lane unusually far away from amenities and accessible only by private transport, and whilst the current Circular makes clear that gypsy and traveller sites in rural areas without special planning constraints are acceptable in principle, it is so far removed from services that it is unacceptable as a permanent gypsy site.
- 9.02 The Council has been working to examine ways of providing new sites across the Borough, and has now produced solid results in terms of the approval of a very significant majority of the sites required until 2031. There are substantial suitably located rural areas where a gypsy and traveller caravan site would be acceptable in principle, and in significantly less remote and poorly serviced locations than the current application site. The site supply and policy position could not be more different than that which applied when temporary permissions were granted on this site and at appeal for similar sites nearby.
- 9.03 In balancing the competing issues of the need for, and potential availability of, alternative sites against the poor location of this site, I believe that the balance remains strongly against a permanent permission being granted on this site. The need to plan for sustainably sites with adequate access to amenities are to my mind powerful arguments against even a temporary permission on this site.
- 9.04 I have considered the personal circumstances of the applicant and her family. I have not found them to warrant a personal planning permission.

10.0 RECOMMENDATION –REFUSE for the following reasons:

REASONS

- (1) Notwithstanding the Council's appreciation of the need for it to respond positively to the accommodation needs of gypsies and travellers, and the guidance in DCLG's Planning Policy for Traveller Sites (2015), the Council considers that this site is unacceptable as a gypsy or traveller site. The site is isolated in open countryside far away from any social, health, educational or other amenities, and is contrary to the advice in paragraph 12 of the NPPF, paragraphs 4, 23, 25 and 27 of the PPTS, to saved policies E1, and RC7 of the Swale Borough Local Plan 2008. The Council has

taken account of the position in terms of the supply of gypsy and traveller sites, the personal circumstances of the applicant and her family, and considered whether a permanent or temporary planning permission should be granted. Despite appreciating the personal circumstances of the applicant's family, the Council does not consider that a permanent or temporary planning permission represents an acceptable balance between the need for gypsy and traveller sites in the Borough and the personal circumstances of the applicant's family, and the very substantial harm that occupation of the site causes to planning policy for the appropriate location of gypsy or traveller sites in terms of access to services and amenities. In taking account of all these factors the Council's considers that this proposal does not represent sustainable development, and that planning permission should be refused.

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 to be fundamentally contrary to the provisions of the Development Plan and the NPPF, and these were not considered to be any solutions to resolve this conflict.

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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Gypsy and Traveller Site Allocations Assessment Methodology

Stage 1 - Is the site available?

Site Assessment Table: Stage 1 - Site availability

Criteria and Issues	Assessment references	Red – Does not meet criteria	Amber – May be capable of meeting criteria	Green – Fully meets criteria
Availability		Owner confirmed site not available, nor is likely to become available over plan period	Site availability uncertain	Willing landowner
Is the site available and deliverable?				✓

IF RED THE SITE SHOULD BE DISCOUNTED AT THIS STAGE. ALL OTHER SITES SHOULD PROCEED TO STAGE 2.

Stage 2 – Suitability/ Constraints

Site Assessment Table: Stage 2 - Suitability

Criteria and Issues	Assessment references in addition to National Planning Policy Framework (NPPF), National Planning Guidance (NPG)	Red – Does not meet criteria	Amber – May be capable of meeting criteria	Green – Fully meets criteria
Flood Zone	Swale Strategic Flood Risk Assessment (SFRA) and Environment Agency guidance	Flood zone 3/ cannot be mitigated	Flood zone 2 or 3 but with acceptable mitigation to the satisfaction of the Council and Environment Agency	Flood zone 1
Is there flooding and risk to residents?				✓
Landscape	Kent Downs AONB Management Plan 2009. Landscape Character and Biodiversity Appraisal SPD. Advice from Natural England and other environmental bodies	Site is within 1. a landscape designation, or 2. will affect the setting of a designation, or 3. is within an Area of High Landscape Value with unacceptable detrimental impact or where landscape impact cannot be mitigated including cumulative impacts	Within close proximity of a designated area but, and where landscape impact may be mitigated	Outside designated area and not affecting the setting of a designation/ No impact
Impact on designations or on landscape character/quality				✓
Biodiversity	Advice from KCC Archaeology Officers, UK/ Kent/ Swale BAP, advice from Natural England and environmental bodies	Site is within or affecting international, national or locally designated sites with unacceptable detrimental impact or where impact cannot be mitigated including cumulative impacts	Site is within, close proximity to or affecting international, national or locally designated sites where impact could be mitigated	Outside of any designation and not affecting the setting of a designation/No impact
Impact on biodiversity of known protected species				✓
Scale of site or multiple sites	Officer assessment - considering quantity of existing sites against scale and form of existing settlement/settled community and advice from service providers	Has significant dominating effect	Scale has some impact	Scale has little or no impact
Scale dominating nearest settled community			✓	✓
Archaeology and	Heritage asset list and advice from heritage	Unacceptable detrimental impact on scheduled	Possible impact /minor impact on scheduled	Not in close proximity to Scheduled Ancient
				✓

Conservation Impact on Scheduled Ancient Monument or other heritage asset/non designated heritage asset	advisors	ancient monument/other heritage asset/non designated heritage assets	ancient monument/other heritage asset/non designated heritage assets	Monument/other heritage asset/non designated heritage assets ✓
Contamination Unacceptable living conditions	Consult Land Contamination Planning guidance Document 2013 and Contaminated Land Strategy 2010	Site is contaminated and cannot be mitigated	Site is or is potentially contaminated - potential impact likely to be mitigated	No known contamination issues ✓
Noise and disturbance issues Unacceptable living conditions	Consult Noise and Vibration: Planning Guidance Document 2013	Site located adjacent to noisy land use - cannot be mitigated	Site located adjacent to noisy land use - potential impact likely to be mitigated or low level	No noisy adjacent land uses ✓
Site access and safety Access/Proximity to major roads and pedestrian routes	Any transport information submitted and Kent Highways Services assessment/advice	Remote location accessed by unmade roads/ poor roads or unresolvable highway safety issue	Some access to road network and site - potentially requiring mitigation or highway safety issue and possibly capable of mitigation	Good site and road access and no significant highway safety concerns ✓
Accessibility to facilities GP surgery, Primary School, Shops, Public Transport	Desk top review	None or few within reasonable distance ✓	Reasonable distance to most services	All within reasonable travelling distance

IF ANY SCORE RED THE SITE SHOULD BE DISCOUNTED AT THIS STAGE. ALL OTHER SITES SHOULD PROCEED TO STAGE 3.

Stage 3 - More detailed site suitability

		Site Assessment Table: Stage 3 - Detailed suitability		
Criteria and Issues	Assessment references	Red – Does not meet criteria	Amber – May be capable of meeting criteria	Green- Fully meets criteria
Topography Uneven or unsafe ground levels and structures	Site survey by Officers and landscape evidence submitted	Steep slope which makes site unsuitable	Sloping land which may require works to make site suitable for use	Level or gently sloping site
Residential Amenity Impact on amenity of proposed and existing residents	Officers' assessment - same as housing, overlooking, disturbance from vehicle movements, loss of light, overcrowding etc	Close proximity to existing adjacent uses especially residential properties where any potential impact (light, visual, other disturbance). Has unacceptable impact which cannot be mitigated	Some impact on residential amenity – likely to be mitigated or low level	No impact on residential amenity
Utilities Electricity, Gas, Water, Drainage/ Sewers (mains or cesspit)	Site visit and utility providers advice	Not applicable as a reason for discounting a site	Yes – most (3 or 4)	Yes – all
Site capable of live/ work mix	Site visit/ submitted details	Not applicable as a reason for discounting a site	No or maybe	Yes
Priority for sustainable				

locations				
Parking Sufficient parking and turning space	Site visit and Kent Highways Services advice	No parking/ turning and no potential to provide parking and turning space	Inadequate parking/ turning or limited potential to provide parking and turning space	Sufficient parking and turning space
Landscaping Sufficient landscaping for amenity/impact on landscape character	Site visit and Swale Landscape Character and Biodiversity Assessment 2010, Planting on New Developments: A Guide for Developers	Not applicable as a reason for discounting a site	No soft landscaping/ landscaping could impact on landscape character area	Site has existing soft landscaping/ option to provide soft landscaping

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3.5 REFERENCE NO - 16/507425/FULL			
APPLICATION PROPOSAL Demolition of 7 farm buildings and erection of 6 detached houses and garages, associated SUDS ponds, landscaping and wildlife planting.			
ADDRESS Land Rear Of Kaine Farm House Breach Lane Upchurch Kent ME9 7PH			
RECOMMENDATION Refuse			
SUMMARY OF REASONS FOR REFUSAL The proposed development falls outside of the built up area boundary and is not identified as one of the Council's preferred housing allocations within the emerging Local Plan. The emerging Local Plan can now be given significant weight owing to its advanced stage in the examination process. Notwithstanding the contribution that the proposals would make to the five years supply of housing land, the harm caused by this proposal would significantly and demonstrably outweigh the very limited benefits and additionally there would be unacceptable harm caused to the character and amenity value of the countryside. As a result the proposal would not constitute sustainable development.			
REASON FOR REFERRAL TO COMMITTEE Called in by Cllr Lewin			
WARD Hartlip, Newington And Upchurch	PARISH/TOWN COUNCIL Upchurch	APPLICANT Mr T Ripley AGENT Lander Planning	
DECISION DUE DATE 20/12/16	PUBLICITY EXPIRY DATE 15/12/16		
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
16/503169/PNQCL A	Prior notification for the change of use of 1 building from agriculture to form 2 residential units and for associated operational development 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 not required	10.06.2016
SW/10/0123	Lawful Development Certificate for two storey rear extension (Proposed)	Approved	16.02.2010
SW/09/1261	Proposed Lawful Development Certificate for a two storey rear extension off 'original house'.	Withdrawn	01.02.2010
SW/01/1244	Extension to house to form annexe	Approved	20.03.2002
PN/01/0053	Agricultural Notification for the erection of storage building	Prior Approval not required	20.08.2001

SW/95/0391	Transfer of agricultural occupancy condition from Kaine farm bungalow to Kaine farmhouse	Approved	26.06.1995
PN/93/0005	Extension to existing open storage barn	Prior Approval Granted	07.10.1993

1.0 DESCRIPTION OF SITE

- 1.01 The application site is comprised of Kaine Farm House which fronts onto Breach Lane and the land to the rear of the dwelling. The site measures approximately 105m x 70m. To the rear of the property lies seven farm buildings which in the most part are broadly arranged facing inwards around a central courtyard area.
- 1.02 The wider surrounding area is predominately characterised by farmland and countryside, however within close proximity of the application site there are some residential properties and agricultural, employment and equestrian related development located along Breach Lane to both the north and south of the application site. A solar farm lies approximately 400m to the north west of the site. The profile of the surrounding landscape is undulating.
- 1.03 Access to the site is gained from Breach Lane and passes adjacent to Kaine Farm House. A public footpath also crosses the site running broadly east – west.

2.0 PROPOSAL

- 2.01 This application seeks planning permission for the demolition of the seven existing agricultural buildings which occupy the site and the erection of six detached dwellings (4 x 4 bed and 2 x 5 bed).
- 2.02 Five of the six dwellings would be arranged to face inwards around a central courtyard area where vehicular access would be provided. The remaining unit would be situated in the north of the site and would front onto the existing access.
- 2.03 The proposed properties would be predominately two storey in height with some elements at single storey height. The roofs would be a mixture of pitched, hipped and catslide in design and the materials would be brick, weatherboarding and clay roof tiles. Two properties would also have detached garages which would have pitched roofs. A two storey detached structure including a garage, with a vehicle underpass for the existing property at Kaine Farm is also proposed.
- 2.04 Each property would have its own dedicated parking provision and associated private amenity space.
- 2.05 Access to the site would be gained from the existing access on Breach Lane. Two SUDS ponds would be located within the site, either side of the vehicular entrance to the courtyard.

3.0 PLANNING CONSTRAINTS

- 3.01 Environment Agency Flood Zone 2

4.0 POLICY AND OTHER CONSIDERATIONS

Swale Borough Local Plan 2008

- 4.01 Saved policies E1, E6, H2 and RC3 of the adopted Local Plan are relevant. E1 is a general development policy which sets out a number of criteria to which all developments are expected to adhere.
- 4.02 E6 is the Council's main policy in terms of rural restraint and it aims to protect the countryside for its own sake. The policy restricts residential development within the countryside unless it is expressly for the purposes of satisfying an identified local affordable need in accordance with policy RC3; housing for agricultural workers (again in response to an identified need); or for gypsies or travellers.
- 4.03 The caveats of E6 are supported by policy RC3, which states that new housing within the rural area will be met within the existing built up area boundaries, or *“exceptionally at sites where planning permission for residential development would not normally be granted, where proposals are specifically and wholly intended to meet an identified local affordable housing need of the community provided the promoter of the scheme demonstrates that:*
1. *the identified need cannot otherwise be met within the confines of the built-up area, or failing this, on previously developed land adjoining the built confines of the settlement;*
 2. *the development is of a size and type suitable to meet the needs identified in a local housing needs survey;*
 3. *the site is well related to available village services and public transport;*
 4. *the proposal contains no element of general market housing;*
 5. *there are no overriding environmental or highway objections; and*
 6. *the scheme has the support of the local Parish Council.”*
- 4.04 Policy H2 states that new housing development will be allowed within the built up area or at specifically allocated sites. Outside of those areas development is expected to accord with E6 and RC3, above. However, the Council is currently unable to demonstrate a five year supply of housing land. In such circumstances national guidance advises that the policy is not compliant with the aims of the NPPF, para. 49 thereof stating:
- “Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.”*
- 4.05 This shortage / NPPF non-compliance was recognised by the Local Plan Inspector (in her consideration of the emerging local plan, 'Bearing Fruits'), who consequently increased our annual supply figure to 776 dwellings per annum. The end result of this is, in essence, that the Council has, since the LP review, had to consider sites outside of the defined built up areas and current adopted allocated sites for new housing development to assist in meeting our 5yr supply target. Some of this need will be met through new allocations currently under consideration, while some will come through consideration of windfall sites (such as the current application site). This does not mean, however, that the other policies noted in this section do not apply.

- 4.06 Nevertheless, the Council has made further site allocations through the LP main modification procedure although the presence of a five year supply has yet to be demonstrated via the Local Plan examination process. However, the fact that the Council has taken relevant steps to address and resolve the shortfall of supply is a material consideration, as set out in the recent Richborough Estates Court of Appeal decision (discussed further below).

The emerging local plan; Swale Borough Local Plan 2031 (Proposed Main Modifications June 2016)

- 4.07 Policy ST1, similar to E1 of the adopted plan, is a general policy aimed to achieve sustainable development throughout the Borough. The most relevant criteria are:
4. Accord with the Local Plan settlement strategy; and
 7. Deliver a wide choice of high quality homes by:
 - a. balancing levels of forecast housing needs with that which is deliverable;
 - b. providing housing opportunity, choice and independence with types of housing for local needs; and
 - c. keeping vitality within rural communities with identified housing needs, proportionate to their character, scale and role.
- 4.08 ST3 sets out the Swale settlement strategy, and identifies preferred locations for residential development. Para.6 of the policy states that *“locations outside the built-up area boundaries shown on the Proposals Map fall in the open countryside where development will not normally be permitted, unless supported by national planning policy and able to demonstrate that it would contribute to protecting and where appropriate enhancing the intrinsic value, tranquillity and beauty of the countryside, its buildings and the vitality of rural communities.”* In terms of the current application this means that, as with policies E6 and RC3 above, the proposed site is at the bottom of the list in terms of where officers would recommend new housing to be placed.
- 4.09 Policy CP2 states that new development will be located to minimise the need to travel for employment and services, and to facilitate sustainable transport choices.
- 4.10 CP3 aims to provide a wide choice of high-quality homes across the Borough. It aims to steer development to the built up areas and allocated sites, or to windfall sites *“except where the character of the site, its local context or environmental value determines otherwise,”* and to *“meet the housing requirements of specific groups, including families, older persons, or disabled and other vulnerable persons.”*
- 4.11 Policy DM9 relates to rural exceptions housing, and states that *“planning permission for affordable housing (including pitches for Gypsies and Travellers) to meet local needs in rural areas will be granted provided [amongst others]:*
1. *The site accords with Policy ST3 and/or is in a location where access to day to day services can be conveniently and easily achieved;*
 2. *The site and proposed development would not have a significant adverse impact upon the character of the settlement, the surrounding countryside and the amenity of the existing community;*
 3. *A need for the scheme is clearly justified by the applicant, to the satisfaction of the Council, by providing the following to accompany a planning application:*

- a. *an up-to-date parish or village housing needs assessment undertaken or carried out by a recognised and appropriate body;*
- b. *a thorough site options appraisal; and*
- c. *a prepared statement of community involvement that has sought to include the significant input of the Parish Council."*

4.12 DM14 is a general policy similar to E1 of the adopted Plan, and sets out a number of criteria all developments are expected to accord with.

National Planning Policy Framework (NPPF)

4.13 Paragraph 14 states 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."* In respect of decision-taking it notes that LPAs should approve proposals that accord with the development plan without delay. It continues to note that where the development plan is absent, silent or relevant policies are out-of-date, permission should be granted *"unless:*

- *any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or*
- *specific policies in this Framework indicate development should be restricted."*

4.14 This is particularly relevant in terms of policy H2 of the Local Plan, as noted above, as H2 is considered non-compliant and thus "silent" for the purposes of interpreting this paragraph. It does note, however, that adverse impacts need to be taken into account, and therefore does not present a carte-blanche to approving residential development within the countryside.

4.15 Paragraph 17 (11th and 12th bullet points only) of the NPPF are relevant, and state that *"within the overarching roles that the planning system ought to play, a set of core land-use planning principles should underpin both plan-making and decision-taking.*

- *actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable; and*
- *take account of and support local strategies to improve health, social and cultural wellbeing for all, and deliver sufficient community and cultural facilities and services to meet local needs."*

4.16 Paragraph 35 encourages developments that *"protect and exploit opportunities for the use of sustainable transport modes."* It states that development should be located and designed to give priority to pedestrians, create safe and secure layouts for pedestrian and cycle movements, and consider the needs of people with disabilities by all modes of transport.

4.17 Paragraph 49, as discussed above, states that *"relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites."* This is discussed in further detail in the appraisal section below.

4.18 Paragraph 50 states that LPAs should deliver a wide choice of high quality homes and create sustainable communities by taking demographic trends into consideration, provide housing reflecting local demand, and securing affordable housing provision.

Further to this para. 54 states that LPAs should be responsive and reflexive to local affordable and rural housing needs.

- 4.19 Paragraph 55 of the NPPF is crucial in the consideration of applications such as this, and is worth reproducing in its entirety (my emphasis in bold):

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

- *the essential need for a rural worker to live permanently at or near their place of work in the countryside; or*
- *where such development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets; or*
- *where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting; or*
- *the exceptional quality or innovative nature of the design of the dwelling. Such a design should:*
 - *be truly outstanding or innovative, helping to raise standards of design more generally in rural areas;*
 - *reflect the highest standards in architecture;*
 - *significantly enhance its immediate setting; and*
 - *be sensitive to the defining characteristics of the local area.”*

5.0 LOCAL REPRESENTATIONS

- 5.01 Two letters of objection were received from neighbouring properties raising the following summarised points:

- Concern that the digging of foundations could harm the structural integrity of structures which abut the site;
- The proposed dwelling labelled as ‘property 1’ backs onto the stable block of the neighbouring property and the muck heap would be located within close proximity of the garden boundary of this proposed property;
- ‘Property 1’ would overlook the neighbouring site and will cause overshadowing due to its height;
- The majority of the boundary fence is 2/3 strand barbed wire which is covered by personal covenants in the deeds, this is not suitable for family housing;
- Approval for this scheme would set a precedent in the surrounding area;
- The lane is narrow and not suitable for an increase in traffic;
- Very restricted sight lines on exiting the site.

6.0 CONSULTATIONS

- 6.01 **Upchurch Parish Council** stated that *“Councillors considered the application and agreed unanimously that they had no comments to make save that neighbour comments should be taken into consideration.”*

- 6.02 **Newington Parish Council** stated that *“Councillors considered the application at the Planning Committee meeting on 17 November and have no comments to make.”*

- 6.03 **Lower Halstow Parish Council** stated that *“Although Kaine Farm is not within Lower Halstow itself, the Council believes that residents of Lower Halstow will be adversely affected due to the increase in traffic flow in Breach Lane, a narrow country lane. The property is situated on a particularly difficult part of the road for two cars to pass or indeed, articulated lorries going to and from Brookerpaks and buses including school buses. Sight lines in both directions are poor on leaving the property.”*
- 6.04 **KCC Highways & Transportation** initially responded stating that the existing access to the site is acceptable although drawings showing internal tracking for refuse, fire tender and pantechnicon vehicles should be provided along with an additional visitor space. Additional and amended drawings have been received and KCC Highways & Transportation *“confirm that further to the revised documentation submitted by the applicant I raise no objection on behalf of the local highway authority”*. This is subject to conditions relating to provision for construction vehicles; provision of parking facilities for site personnel and visitors; prevention of discharge of surface water onto the highway; wheel washing facilities; retention of car parking spaces; retention of vehicle loading / unloading and turning facilities.
- 6.05 **Environment Agency** *“assessed this application as having a low environmental risk. Five of the dwelling houses fall into Flood Zone 1, which has a low risk of flooding. Only one dwelling house, to the right of the access road falls on the boundary of Flood Zone 2, which would fall under our Flood Risk Standing Advice.”*
- 6.06 **KCC Ecology** raise no objection but request conditions relating to breeding birds and to enhancing the quality and quantity of biodiversity.
- 6.07 The Council’s **Rural Planning Consultant** initially raised the issue that the Planning Statement and Transport Statement indicate that the existing buildings are in active agricultural use as the impact of that use are compared to the position if housing were to be constructed instead. However, there has been nothing included which would explain how the current operation would survive without the buildings or the prospect of the requirement for replacement buildings in the event of development going ahead. Therefore a supplementary statement was requested in order to deal with the above.

As a result of this, an additional statement was forthcoming from the agent which set out that the agricultural use of the premises ceased in 2005 and the land is now used for grazing. As a result none of the buildings are now in agricultural use and are either redundant or used in connection to the private stabling of horses. If an assumption is made that the existing buildings would not be returned to a commercial agricultural use then it would also appear that replacement buildings would not be required. However, also based upon this assumption it would seem inappropriate to compare the local impacts of an active agricultural use with that of housing and the comparison should instead be made with the existing private equestrian use.

- 6.08 **KCC Public Rights of Way** state that public footpath ZR26 passes through the site and that should consent be granted, the development will impact upon the public use, enjoyment and amenity of the Public Right of Way. As a result a condition is recommended which requires a minimum width of 2m to be retained for the proposed pedestrian access along the public right of way on the grounds of safety and public enjoyment.

- 6.09 The Council's **Environmental Health Manager** raises no objection subject to conditions related to construction hours; asbestos; suppression of dust; and contamination and remediation. A further response relating to the requirement for a 2m close boarded fence would be required along the boundary of proposed 'property 1' shared with 'Oakview' due to the location of the stables at the neighbouring property.
- 6.10 **Swale Footpaths Group** state that "a *PRoW* crosses the site, but the applicant has shown it on their plans as being unaffected and has answered "No" to the question about whether a diversion would be needed."
- 6.11 **Cllr Lewin** stated "Whilst I have not pre-determined my position on this application I think there is some merit in it being approved."

Firstly one has to accept that the land cannot be returned to agricultural use. It therefore follows that the impact of any alternative use has to be considered against its last use as stables – I am thinking primarily of traffic generation.

In the situation where the land is not used it would have the equivalent status of brown field land with road infrastructure already in place making it ideal, in NPPF terms, to be used for windfall housing development counted in the 5-year housing supply target.

Whilst the site is within a rural area and outside the built environment of the village I note that Upchurch PC, the parish within which the application is sited, do not object [for information whilst I am a member of UPC I did not participate or vote when this application was discussed].

Whilst there may be a case for arguing poor access to services from this location, I would refer you to the APP/V2255/A/14/2220447 [Spade Lane, Hartlip a location not too distant from Breach Lane].

The Inspector rejected arguments that reasons for dismissal should include "poor access to services" on the grounds that people in rural areas rely heavily on private transport – in this case they were Gypsies and Travellers.

The appeal was however dismissed for other reasons.

I would also note that public transport serves Breach Lane with one of the stops being at this location also school transport is provided along the A2 as well as other public transport services.

I note that KCC Highways do not object.

I am inclined to the view that there is not any demonstrable harm arising from this application and that it is a useful windfall site amongst the thirteen other residences at this location.

If your report recommends refusal, as a Ward Member, I request that it be called in for determination by the Planning Committee."

- 6.12 **Cllr Wright** commented "I would agree with my fellow ward councillor that there is merit in this case and would draw your attention to a similar site approved by

members at high oak hill newington which is as far away from services and has no bus routes and poorer access.

I believe also this site Kaine farm could revert to a farm shop and wholesale fruit and veg warehousing as used by Ken Stevens the then farmer under the name of Bishenden. So would agree to its committee report."

7.0 BACKGROUND PAPERS AND PLANS

7.01 The application is supported by a Planning Statement, Design & Access Statement, Transport Statement, Sustainability Statement, Phase 1 Desk Study, Low Impact Ecological Impact Assessment Report along with associated drawings.

7.02 The Planning Statement is divided into the following sections:

- Introduction
- Site Location and Surroundings
- Planning History and Pre Application Consultation
- Planning Policy
- Planning Appraisal
- Conclusion

7.03 The Planning Statement sets out in detail the current policy background which this application is to be assessed against. It sets out that the Council can not currently demonstrate a five year supply of housing land and as such the policies which relate to the location of housing development are out of date. As a result of this the presumption in favour sustainable development should take precedence, in accordance with paragraph 49 of the NPPF. The Statement concludes:

7.04 *"The proposal would constitute sustainable development in accordance with the NPPF. There are numerous social, environmental and economic benefits of the proposal, all of which comprise the individual facets of sustainable development. The sustainability merits of the proposal have been outlined within this Statement (and the accompanying statement by SI Partnership) which should override the usual policy presumption against housing in the countryside. The site is not unsustainably located, but is within one mile of Newington's numerous shops and services and is located within walking distance of a local bus service and cycling distance from a train station, making these modes an option for a proportion of journeys undertaken by new residents. there are numerous social, environmental and economic benefits of the proposal, all of which that due to the location of the site it constitutes sustainable development."*

8.0 APPRAISAL

Principle of Development

8.01 The application site lies outside of the built up area boundary and as a result in planning terms is in the countryside. Here the Council's established policies of rural restraint seek to restrict residential development unless it is for the purposes of (amongst others) agricultural worker's housing, or affordable housing to meet an identified local need.

8.02 These policies of restraint would normally point to development contrary to both the adopted and emerging Local Plans. However, para 49 of the NPPF renders policies

affecting the supply of housing out of date where a five year supply of housing land cannot be demonstrated. Furthermore, considerable weight should be attached to the applications potential contributions towards the five year supply.

- 8.03 Whilst housing land supply policies are considered out of date the courts (ref: The Royal Court of Justice ruling in relation to i) Suffolk Coastal District Council and Hopkins Homes Limited and Secretary of State for Communities and Local Government, and ii) Richborough Estates Partnership LLP and Cheshire East Borough Council and Secretary of State for Communities and Local Government) have established that whilst a failure to demonstrate an up-to-date five-year housing supply opens up consideration of sites that would be otherwise unacceptable under **any** policies that restrict the supply of housing (rural restraint policies, for example), there is still a duty imposed upon officers to consider **all other relevant policies** within both local guidance and the NPPF when assessing the suitability of any sites that come forward as part of an application. The weight that is afforded to those individual policies needs to be balanced against the lack of a demonstrable five-year supply, but does not negate the validity or the intention of those policies in themselves.
- 8.04 Therefore the acceptability of the principle of development can't be established from the outset, and a conclusion needs to be arrived at following consideration of the individual matters as set out below, and the associated policies.

Housing supply and the impact on policy

- 8.05 As noted above I have to consider the otherwise unacceptable nature of this development against the need for the Council to demonstrate a five-year housing supply. As above it is for Members to determine whether or not the policies in the development plan (adopted and emerging Local Plans, the NPPF and the NPPG) outweigh the need for more housing.
- 8.06 Paragraphs 14 and 49 of the NPPF state that, in summary, where we can't demonstrate a five-year supply the Council should "approve development proposals that accord with the development plan without delay". However, paragraph 14 caveats this position by stating that permission should be granted **unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against policies in the NPPF, or specific policies in the NPPF indicate development should be restricted.**

Impacts of Development

Location of Development

- 8.07 Within the Emerging Local Plan, settlements outside of the built up area boundary, as is the case here, are ranked at the bottom in terms of where this Council wishes to direct new homes. As such, when tackling the housing need in the borough on a strategic level this Council has identified sites that would be far more sustainable. The Council is able to demonstrate through the housing allocations identified in the emerging local plan that there are many more sites within the Borough that can meet the housing need in a sustainable way. The application site is therefore not necessary to meet the housing needs of this Borough. Developing the site for housing would be contrary to the strategic and sustainable approach to delivering housing that the Council has shown can be achieved through the emerging local plan

(which I consider should now be given significant weight). I therefore believe that the development would be unsustainable in this respect.

- 8.08 As the supporting documents set out, there is a bus stop located approximately 50m from the site providing on Monday – Friday an hourly service during the day and one evening service, an hourly service on Saturday and no service on Sundays. Aside from this, the closest services are located in Newington which would most likely be accessed by travelling either south along Breach Lane and then east along the A2 or east along Breach Lane into School Lane to access the Primary School or continuing south into Church Lane to access the centre of Newington. Breach Lane does not have a footpath and is unlit. When this is combined with the distance to the centre of Newington of 1.9km I am of the very strong view that the likelihood of residents of the dwellings proposed using either of the above routes to access these facilities and services on foot is highly unlikely. Furthermore, I consider that only a keen cyclist would be prepared to use this route due to the condition of the highway as set out above. Likewise, I also consider that there would be some limited potential for future residents of the dwellings to find employment at one of the services provided within Newington.
- 8.09 In addition to the above, I am of the opinion that the private car would be extremely heavily relied upon and only reinforces my view that the location of the site is unsustainable. Furthermore, although the supporting documents include a number of sustainability features which are set out in the Sustainability Statement these are related to the individual dwellings and the surrounding amenity areas. Although the intention of all the features would be welcomed this does not in my view compensate for the inherently unsustainable location of the application site.
- 8.10 I have also taken into account the Transport Statement which has been submitted in support of the application. This document concludes the following:
- *“This assessment is based upon relatively recent use of the site and it is relevant that the site has been used more intensively in the past and could revert to a more intensive traffic generation without the need for planning permission.*
 - *It is predicted that the replacement of the farm buildings with the development of six residential units will reduce the number of trips accessing and egressing the site during the week.*
 - *The vehicles associated with the site will change from large agricultural vehicles to mainly cars. This will lead to a betterment in terms of the operation of the access junction.*
 - *The site is located within walking distance of a local bus service and cycling distance from a train station, making these modes an option for a proportion of journeys undertaken by new residents.”*
- 8.11 Regardless of the traffic generation of the agricultural use that could operate from the site without planning permission, it must be taken into account that an agricultural use is generally required to operate from a countryside location such as this. This is not the case in terms of housing which, as set out in the assessment above, the Council has identified a number of other sites within the Borough which are in a more sustainable location. Notwithstanding this, the traffic movements, compared to if the previous use was reinstated would, according to the Transport Statement, drop by a predicted 4 trips per week if the site was developed for 6 dwellings. I consider this to be such a small difference that I do not believe that this assessment should override the unsustainable location of the site. In any case, it also has to be taken into account that as clearly set out in the supporting documents, the agricultural use of

the site has ceased, is unlikely to be re-instated and the site is currently used in connection with a private equestrian use. Therefore I would contend that the actual trips to and from the site currently undertaken would be extremely low. The result of this would be that the erection of 6 dwellings in this unsustainable location would increase traffic generation.

Visual Impact

- 8.12 Although there is some built form to both the north and south of the application site, the surrounding area is more distinctly characterised by open fields and countryside. I also take into consideration that although there are some grouping of buildings relatively close to the application site, none of these are in the form of a group of dwellings. As set out in the supporting documents the site is occupied by existing built form comprised of agricultural buildings. I would agree that the existing buildings are of little architectural merit and would in my view be described as functional in terms of their design. However, I am also of the opinion that this type of agricultural development is not uncommon in a countryside location such as this. Therefore, although the agricultural use of the site, as set out in the supporting documents has ceased, this does not in itself in my view constitute a reason for finding this site acceptable for residential use. I also consider that the removal of the agricultural buildings and the replacement with a housing development would introduce an alien and incongruous group of buildings into this location. As a result I am of the view that the development, due to this assessment would cause unacceptable harm to the character and appearance of the countryside.
- 8.13 As a result of the above assessment, and as required by the NPPF I take the view that the location of the site is unsustainable and that the harm caused by six additional dwellings in this countryside location would significantly and demonstrably outweigh the benefits. Regardless of whether the existing agricultural buildings are redundant or not I do not believe that this results in the site being an acceptable one for housing. The advanced stage that the emerging Local Plan has reached only reinforces my opinion in relation to this.
- 8.14 At the current time, as set out above, the site is comprised of an existing dwelling fronting onto Breach Lane and agricultural buildings of varying scales and designs. I take the view that the agricultural buildings are of a functional design and consist of a variety of styles with varying heights. The majority of the structures face inwards on a central courtyard area. I am of the opinion that the design of the existing buildings, being agricultural in nature, sit comfortably within this rural location as the surrounding countryside lends itself to this type of development and it is entirely the type of built form that one would expect to see in a countryside setting such as this.
- 8.15 It is of significance that public footpath ZR26 passes directly through the site in a broadly east – west direction. As a result of this, clear and prominent views from within the application site of the existing and proposed buildings would be available from extremely close proximity. In addition, the levels of the site itself are lower than much of the surrounding land and therefore as the public footpath continues to the west, increasingly elevated views of the application site, existing development within the vicinity and the surrounding countryside are available. This includes farmland, agricultural buildings, employment related development, open countryside, stables and dwellings. I consider that the limited number of dwellings in the surrounding area are predominately separated from one another and situated on large plots.

- 8.16 The dwellings that have been proposed are grouped together which is in my view seriously at odds with the surrounding pattern of residential development. Although it is appreciated that the existing agricultural buildings are grouped together, as set out above I believe that their presence within this rural setting is typical of a countryside location. I also take into consideration that when approaching the site from the east along footpath ZR26, as set out in the supporting Planning Statement the proposed dwellings which would first come into view would be greater in height than the existing agricultural buildings. Therefore I am of the opinion that this would only serve to make the development more prominent and to emphasise this incongruous type of development within the countryside. As a result I take the view that to situate a housing development, grouped together in this way and of the scale proposed into this setting would introduce an alien form of development which would be significantly out of keeping with the surrounding pattern of development. As such I take the view that the proposed development would cause significant harm to the countryside and visual amenities and should be refused for this reason.
- 8.17 In relation to the design of the properties themselves, I am of the view that although with the right type of materials they could be acceptable in their own right they are not of such exceptional quality or innovative in nature that they should be considered as an exception to rural policies.

Residential Amenities

- 8.18 The supporting documents state that the return to an agricultural use would represent a bad neighbour use and as such housing should be considered as a less harmful alternative. However, this must firstly be considered in the context that the application makes it clear that the return to agricultural use is extremely unlikely. Therefore, if this is taken into consideration then the existing private stabling use of the site should be what the proposed use is judged against. As a result, I am of the view that private stables are common in a rural location such as this and I do not consider that the proposed use would be a significant improvement in relation to the impact upon residential amenities. Notwithstanding this, if the agricultural use of the site was to be reinstated in this rural area there is no evidence to suggest that this would represent such a bad neighbour use that any significant weight should be given to the alternative of housing as being significantly less harmful.
- 8.19 Aside from the identified issues within this report, dealing solely with the layout of the proposed houses I consider that they would limit any opportunities for overlooking and would provide an acceptable level of private amenity space.
- 8.20 To the north of the application site lies the property known as 'Oakview'. The occupier of this property has raised concern regarding the close proximity of the proposed 'property 1' to the stables upon this neighbouring site. I have paid close attention to the relationship between the location of this proposed property and the stables situated on the neighbouring site and further consulted the Council's Environmental Protection Team regarding this. A response has been received stating that to protect residential amenity a 2m close boarded fence be provided along this boundary. Although the neighbouring occupier states that the boundary treatment is in compliance with the requirements of the property deeds this is not controlled by the planning process. I therefore consider that this solution would overcome the proximity of the neighbouring stables.
- 8.21 In relation to the additional points raised by the neighbouring occupiers I respond as follows. I note that there are two windows on the rear elevation of the proposed

property 1 which would face towards the rear amenity space of the 'Oakview'. However, I note that these windows would serve a bathroom and staircase. The bathroom window would be expected to be obscure glazed and the window to the stairs does not serve a habitable room. Notwithstanding this, if the recommendation had been for approval than I would have imposed a condition requiring these windows to be obscure glazed to ensure that the privacy of neighbouring occupiers was protected. In relation to overshadowing of the yard, although this proposed property is located closest to the boundary with 'Oakview' I take into consideration the considerable size of the amenity space and stable area associated with the neighbouring dwelling. As a result I do not consider that the location of this proposed property would be unacceptably overbearing or cause unacceptable levels of overshadowing. Finally, the point raised in relation to the structural integrity of buildings is not a material planning consideration.

- 8.22 I have also assessed the relationship between the proposed properties and the existing property known as Kaine Farm House. The rear to rear distance between proposed property 2 and the existing dwelling is approximately 25m. The Council expects a minimum rear to rear distance of 21m and as a result I consider this separation distance to be acceptable.

Housing provision

- 8.23 The development would make a contribution towards meeting new homes within the Borough generally and the rural area specifically. There would also be some limited employment generated from the construction phase and increased spending in the local economy.

Highways

- 8.24 Due to the layout of the site the existing access will be used from Breach Lane. KCC Highways & Transportation have raised no objection to this and on the receipt of amended drawings showing the tracking for various vehicles consider that subject to a number of conditions that the impact of the proposal upon highway safety or amenities would not be unacceptable.

Impact upon SPA and Ramsar Sites

- 8.25 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.

Flood Risk

- 8.26 Although the vast majority of the site lies in Flood Zone 1, Flood Zone 2 does cut across the site and includes proposed 'property 1'. I have consulted with the Environment Agency on this basis who have responded stating that their Flood Risk Standing Advice applies in these circumstances. I have referred to the Standing Advice and consider that occupants of the one property which it refers to would have the opportunity to access the upper floor of the dwelling or would be able to reach higher ground in the event of a flood warning. As a result of this I am of the view that the flood risk for future occupants of the development would not be unacceptable.

Other Matters

- 8.27 I note the letter received from the Doctors and the statement from the applicant relating to the applicant's brother and the medical assistance that he requires. Although I have great sympathy with the medical situation that has been described I do not believe that the personal circumstances would outweigh the harm that the development as whole would cause. I also note that the applicants have consent via the Prior Notification procedure to convert one of the agricultural buildings to two dwellings. When this is taken into account two additional dwellings could be located on the site without the need for any further permission from the Council. As a result I take the view that the difficult personal circumstances do not justify the requirement for 6 additional dwellings in light of the possibility that additional dwellings could be provided.
- 8.28 Reference has also been made to two other sites within relatively close proximity to the application site to which I respond to as follows. Firstly, the circumstances surrounding the application approved under 14/504984/OUT for 5 dwellings at High Oak Hill were markedly different from this site now being considered. The Committee Report written in relation to the High Oak Hill application states that the application site lies *"in a comparatively unsustainable location, and in an area where residential development would normally be considered unacceptable as a matter of principle."* However, in this case it was considered that as the site was in use for metal grinding and cutting that this represented a material planning consideration. Therefore, the Committee Report went on to state that *"I am of the opinion that the significant benefits of the proposed development, which are wholly due to the specific and unusual circumstances of this site, outweigh the material planning harm associated with new dwellings in the countryside, such that the development is acceptable as a matter of principle."*
- 8.29 Therefore, in comparison to the application as set out above, the use of site being considered in this application does not in my view represent a bad neighbour use. As a result, I believe that a comparison can not be made on this basis and take the view that the decision reached under 14/504984/OUT should have no bearing on the proposal now being considered.
- 8.30 Secondly, an application at Spade Lane, Hartlip is referred to for the siting of two mobile homes with an associated utility block, parking for cars, and parking for two touring units/caravans. This application was refused by the Council and a subsequent appeal was dismissed. As part of the Inspector's decision an assessment was made as to whether the site was sustainable. In relation to this the Inspector noted that *"the great majority of journeys to these [services and facilities] from the site would be by private motor vehicle. On the basis of the advice in Section 4 of the Framework, the proposed development would not therefore '...promote sustainable transport...'"*. The Inspector concluded that *"the sustainability benefits of the proposed development are minimal and more than outweighed by its significant and demonstrable disadvantages."* As a result I take the view that the Inspector found the location of the Spade Lane site to be unsustainable.

9.0 CONCLUSION

- 9.01 In considering whether these proposals constitute sustainable development as set out in paras 7 to 10 of the NPPF which sets out the social, economic and

environmental strands of sustainable development and that the planning system should seek gains across all 3.

- 9.02 In terms of the social strand, I attach weight to the contributions towards housing in the borough and to the 5 year housing land supply and the limited positive contribution toward the economic strand. Offsetting this is the poor and remote location of the site relative to the range of services and the likely dependence upon the car to reach them. These also feed into my conclusions against the environmental strand where I consider that these would have a significant adverse impacts on the countryside. I therefore conclude that the proposals do not constitute sustainable development.
- 9.03 Whilst many of the Local Plan policies that relate to the above conclusions are out of date, I consider that in this instance, that they should carry moderate to significant weight. This is because of the advanced stage reached by the emerging Local Plan, the considerable progress towards securing a 5 year housing land supply and that there are alternative sites, both allocated and windfall able to be provided in other locations with greater benefits and lesser overall harm.
- 9.04 I therefore conclude that the proposals fail to achieve the presumption in favour of sustainable development as set out in paragraph 14 of the NPPF as not withstanding the benefits of the proposals, they are significantly and demonstrably outweighed by the adverse impacts and conclude that the application should be refused.

10.0 RECOMMENDATION – REFUSE for the following reasons:

- 1) The proposals would not represent sustainable development. They would be located away from established settlements in the Borough within the countryside outside the defined built up area boundaries as identified by Local Plan saved policies SH1 and E6 and emerging Local Plan Policy ST3. The proposals would therefore be located as to be poorly served by easily assessable facilities and services and a range of transport options. They would also be harmful to the landscape character and visual amenity of the surrounding countryside. Notwithstanding the contribution that the proposals would make toward the Borough's five-year supply of housing land, the adverse harm arising from the proposals would significantly and demonstrably outweigh the benefits. The proposals would be contrary to policies SP1, SP2, SH1, E1, E6, E9, E19 and H2 of the Swale Borough Local Plan 2008, policies ST1, ST3, CP2, DM14 and DM24 of the emerging Swale Borough Local Plan 2031 (Proposed Main Modifications June 2016), together with paragraphs 14, 17 and 55 of the National Planning Policy Framework
- 2) The introduction of 6 properties, grouped together in this rural setting would be seriously at odds with the surrounding pattern of development and as a result would introduce an alien form of development into this location causing unacceptable harm to the countryside and visual amenities. The proposal is therefore contrary to policies E1, E6, E9 and E19 of the Swale Borough Local Plan 2008 and policies DM14 and DM24 of the emerging Swale Borough Local Plan 2031 (Proposed Main Modifications June 2016).

Habitats Regulations Assessment

This HRA has been undertaken without information provided by the applicant. The application site is located approximately 2.2km south west of the Medway Estuary and Marshes Special Protection Area and Ramsar site which is a European designated sites afforded protection under the Conservation of Habitats and Species Regulations 2010 as amended (the Habitat Regulations).

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

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

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

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

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

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

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

The Council's approach to this application:

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

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

In this instance:

The application was considered to be fundamentally contrary to the provisions of the Development Plan and the NPPF, and these were not considered to be any solutions to resolve this conflict.

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

PLANNING COMMITTEE – 2 MARCH 2017

PART 5

Report of the Head of Planning

PART 5

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

- **Item 5.1 – 36 The Glen, Minster**

APPEAL DISMISSED

Observations

DELEGATED REFUSAL

The Inspector agreed that the proposed development would harm the character and appearance of the streetscene, but concluded there would be no significant harm to residential amenity.

- **Item 5.2 – FCS Trade Sales, Horsham Lane, Upchurch**

APPEAL DISMISSED

Observations

COMMITTEE REFUSAL

Full support for the Council's decision to refuse advertisement consent for this unnecessary and visually harmful sign.

- **Item 5.3 – 1 Old Half Acre, Blind Mary's Lane, Bredgar**

APPEAL DISMISSED

Observations

DELEGATED REFUSAL

This decision in this long standing case appears to pave the way for seeking enforcement of the January 2015 High Court injunction. I will be seeking legal advice on the way forward on this case.

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Appeal Decision

Site visit made on 18 January 2017

by Mr Kim Bennett BSc DipTP MRTPI

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

Decision date: 1st February 2017

Appeal Ref: APP/V2255/D/16/3163835

36 The Glen, Minster, Sheerness, Kent ME12 2SD

- 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 Simpson against the decision of Swale Borough Council.
 - The application Ref 16/506437/FULL, dated 9 August 2016, was refused by notice dated 27 October 2016.
 - The development proposed is a two storey side extension.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are: the effect of the proposal on the character and appearance of the area; and the effect of the proposal on the amenities of the occupiers of the neighbouring property, No 38 The Glen.

Reasons

Character and appearance

3. The appeal property, No 36 The Glen, comprises a semi-detached chalet style bungalow located on the north eastern side of road. It is one of two pairs of similarly designed bungalows which adjoin each other on this side of the road, but elsewhere, the character is diverse, with a mixture of mainly detached bungalows and two storey houses of varying designs. The adjoining property to the south east, No 38 The Glen, is a large detached house which stands slightly forward of No 36 in the street scene.
4. The appellant refers to the diversity in character of the area in support of the proposal and comments that a number of properties are close together. Reference is also made to No 38 being different in design and therefore there would be no terracing effect.
5. With regard to the latter point, I agree that because of the significant difference in design between the appeal property and No 38, together with the latter being set slightly forward and also higher, the proposal would not result in an apparent terracing effect. However, in my view, the key issue is whether the proximity of the proposed development to No 38, together with its scale and bulk as a result of two storeys of accommodation being proposed, would harm the character of the area.

Appeal Decision APP/V2255/D/16/3163835

6. In that respect, the area is generally spacious and open through a combination of open front gardens, spaces between properties, and a number of bungalows and therefore low building heights. Although there are some examples of properties with narrow gaps between them, they tend to be mainly bungalows so that built form does not dominate the street scene. In my view, the proposed extension right up to the boundary with No 38, with the latter also close to its own side boundary, and with two very differently designed properties, would result in a cramped and awkward arrangement within the street which would harm its generally open character, particularly as accommodation is proposed on two levels. I noted that there is an apparently similar example directly opposite the appeal site where a detached house has been extended right up to the common boundary with the adjoining bungalow. To my mind however that has resulted in a poor visual relationship between the two and only serves to demonstrate the similar harm that would be caused with the current proposal. It is not a good reason therefore, to add to that harm within the street scene.
7. The Council has adopted planning guidance in its document 'Designing an Extension – A guide for householders – Planning and Development Guidelines No5' (PG) which seeks to avoid terracing effects by recommending separation distances of 2 metres from side boundaries and stressing that 'houses should not be physically or visually linked, especially at first floor level' (para 5). It is not directly comparable in this situation because I have found that there would be no terracing effect created. I also acknowledge the appellant's point that such guidance is just that, and cannot be followed in all situations. However, the principles of the guidance, in terms of maintaining some degree of openness and particularly at first floor level, seem applicable here.
8. I note that the Council is also concerned about loss of part of the driveway for parking from a visual amenity point of view. However, there would still be on-site parking available on the frontage, which is similar to the majority of properties along the road, and there is no evidence before me regarding any on-street parking pressure. Accordingly I attach little weight to that particular concern.
9. Notwithstanding the above, the proposal would harm the character and appearance of the area. It would therefore be contrary to Policies E1, E19 and E24 of the Council's Local Plan 2008 (LP) in that its scale design and appearance would not be appropriate to the locality and it would not maintain the character of the street scene.

Living conditions

10. There are no first floor windows in the north western flank wall of No 38, and only one ground floor window which is already largely obscured by the proximity of the high fence on the common boundary between the two properties. I do not consider therefore that there would be any harm to amenity in terms of loss of light to No 38. The Council advises the extension would extend 2.4 metres beyond the existing main rear elevation of the appeal property, which would be in excess of the 1.8 metres that the PG recommends. Given that No 38 is set slightly forward, the extension would only extend slightly beyond the rear elevation of that property, but not to any significant degree and I am satisfied that the relationship would be acceptable as a result.

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There would therefore be no adverse effect upon the living conditions of the occupiers of No 38 and no conflict with Policy E24 of the LP as a result, in that there would be no harm to residential amenity.

Conclusion

11. Although I have found the proposal to be acceptable in some respects, the overall design and siting of the proposed extension in such close proximity to No 38 would harm the character and appearance of the area for the reasons and conflict with policy as set out. I acknowledge the appellant's point that it would improve living space and living conditions and thus in those respects would be consistent with objectives within the National Planning Policy Framework. However, in this instance I attach greater weight to the visual harm that would result.
12. Accordingly, the appeal should be dismissed.

Kim Bennett

INSPECTOR

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Appeal Decision

Site visit made on 18 January 2017

by **Mr Kim Bennett BSc DipTP MRTPI**

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

Decision date: 1st February 2017

Appeal Ref: APP/V2255/Z/16/3158208

FCS Trade Sales, Horsham Lane, Upchurch, Kent ME9 7AL

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 against a refusal to grant express consent.
 - The appeal is made by Mrs Tracy Ferguson against the decision of Swale Borough Council.
 - The application Ref 16/500488/ADV, dated 21 March 2016, was refused by notice dated 15 July 2016.
 - The advertisement proposed is 2 non- illuminated fascia signs attached to each side of the site boundary and 1 non-illuminated triangular freestanding sign.
-

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of sign 2 (left hand side of main entrance) on the visual amenities of the area.

Procedural Issue

3. The application was for the continued display of 3 non- illuminated signs but the description on the application form cross referenced to attached photographs. I have therefore adopted the description as set out on the Council's decision notice for clarification purposes.
4. In reaching a decision on the application, the Council issued a split decision. Advertisement consent was granted for the triangular freestanding sign and one non-illuminated fascia sign annotated as sign 1 on the plans. However consent was refused for the second non-illuminated fascia sign annotated as sign 2 on the plans. The appeal therefore is only in respect of sign 2.

Reasons

5. The appeal site is at the entrance to a car sales and showroom complex which is located on the northern side of Horsham Lane and to the west of the main village of Upchurch. There are mature hedgerows on either side of the road but beyond that open countryside to the north and south giving a rural character to the area.
 6. Given its location and the need for some form of advertisements to identify its presence, the Council has granted consent for a freestanding sign at the site
-

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frontage and a fascia sign (sign 1) attached to a metal fence on the right hand side of the site entrance. Given that, the appellant considers there is no good reason to resist the sign on the left hand side of the fence (sign 2), which is the subject of this appeal, particularly as it is set well back from the road. All three signs were displayed at the time of my site visit.

7. The sign in question is some 13 metres long and because of its position attached to the top of the fence, stands at a maximum height of 3 metres above the ground, although the sign itself is only 610mm deep. It is particularly prominent because of the bright pink lettering adopted.
8. I acknowledge that both fascia signs are not prominent in wider views when approaching from either direction because of the tall hedgerows, but they are particularly apparent when passing the site, to both occupiers of vehicles and pedestrians walking past, as well as to users of the fishing lakes to the north, the access to which adjoins the site. In my view the extensive horizontal size of sign 2, together with its bright colour, and in addition to the signage granted for sign 1, has resulted in a proliferation and unnecessary extent of signage at the premises. Because of that, it detracts from the visual amenity of this rural location and causes visual harm as a result. I also note that the information on sign 2 largely replicates that of sign 1 and therefore there seems no good reason why the additional signage is necessary, given that the basic advertisement requirements to identify the location of the site appear to have been met by the Council in granting consent for the 2 other signs.
9. I note the appellant's comments about the relationship with the Parish Council and the extent of investment in the site, but those issues are beyond the scope of the Advert Regulations where the power to control advertisements are exercisable only in the interests of amenity and public safety. They have therefore had no bearing on my findings above.
10. For similar reasons, in terms of scope of the Regulations, although the Council has referred to a number of policies and guidance, I have taken them into account only as material considerations and they have not in themselves been decisive. However, I note in passing that because of my findings, sign 2 would not protect the countryside and would not respond positively to the character of the locality and would thereby be contrary to Policies E6 and E23 of the Council's Local Plan 2008.
11. No objections have been raised by the Council in respect of public safety and I see no reason to come to a different view.
12. For the above reasons sign 2 causes harm to visual amenity and accordingly the appeal should be dismissed.

Kim Bennett

INSPECTOR



Appeal Decision

Hearing held on 29 September 2016

Site visit made on 29 September 2016

by **G D Jones BSc(Hons) DipTP DMS MRTPI**

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

Decision date: 6 February 2017

Appeal Ref: APP/V2255/D/15/3141240

1 Old Half Acre, Blind Marys Lane, Bredgar, Kent ME9 8AR

- 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 Samuel Baker against the decision of Swale Borough Council.
 - The application Ref 15/505426/FULL, dated 5 July 2015, was refused by notice dated 25 November 2015.
 - The development proposed is change of use of land from agricultural to a residential caravan site to contain two static caravans and one touring caravan, for two Romani Gypsy families and vehicular access, parking for four vehicles, associated hardstanding and cesspit.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The evidence indicates that there has been a change of use of the appeal property from agricultural land to a caravan site. When I visited the site as part of the hearing I observed caravans positioned within it along with operational development including an area of hardstanding. There appears to be at least some differences between what was on-site at the time of the hearing and the details that were before the Council when it determined the appeal planning application. I have considered and determined the appeal based on the details which formed the basis of the planning application. I have done so because that is what the appellant formally sought planning permission for and as it is the detail on which interested parties were consulted. I advised the parties of my intention in this regard during the hearing.
3. At the hearing, with reference to the proposed details, particularly those shown on the proposed site layout drawing ref. BP-01, I suggested that the description of the proposed development set out in the heading to this decision better represents the details proposed. This was agreed by the main parties. They also agreed that the address should be changed to be consistent with the appeal property's name '1 Old Half Acre'.
4. The appeal development is proposed to provide a permanent home for the appellant, his wife, their four children (who are all minors) and his parents.

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Main Issues

5. The main issues are:
- The effect of the appeal development on the character and appearance of the area including the Kent Downs Area of Outstanding Natural Beauty; and
 - Whether any harm arising is outweighed by any other considerations, including any identified need for sites for gypsies and travellers in the area, the alternatives for the appellant and any other personal circumstances.

Background

6. The appeal site is the subject of an enforcement notice (the EN)¹ concerning *the material change of use of the Land from agricultural land to land used as a caravan site for the stationing of caravans/mobile homes used residentially*. The current appellant appealed against the EN, including on the ground that planning permission should be granted for the development alleged in the notice. The appeal was dismissed, the EN upheld and planning permission refused on the deemed application². For ease of reference I shall refer to that appeal as the 'EN Appeal'.
7. An appeal against an enforcement notice in respect to similar alleged development on adjoining land was also dismissed (the 'Neighbouring Appeal')³. A separate proposal on part of that adjoining land was allowed on appeal. Planning permission was granted subject to a condition which limits the use to a period of three years, having regard to the lack of a five year supply of sites at that time and the social benefits provided⁴.
8. At the hearing it was put to me by the Council that the EN Appeal decision should be the starting point for my decision, while the appellant advised that my starting point should be the Neighbouring Appeal decision. As it relates to largely the same land, concerns the same appellant and is for comparable development, I have taken the EN Appeal decision as my starting point. I do, nonetheless, recognise that the Neighbouring Appeal decision is highly material bearing in mind that site's close proximity to the current appeal site and that it concerns similar development to that now proposed.

Reasons

Character and Appearance

9. The appeal site is within the Kent Downs Area of Outstanding Natural Beauty (the AONB), where Policy E9 of the Swale Borough Local Plan 2008 gives priority to the conservation and enhancement of natural beauty which reflects current national policy. For instance, para 115 of the National Planning Policy Framework (the Framework) states that great weight should be given to conserving landscape and scenic beauty in AONBs⁵, which have the highest status of protection in relation to those matters.

¹ Council Ref: ENF/BRE/11/004 issued on 7 June 2011. Also Hearing document 6a

² Appeal Ref: APP/V2255/C/11/2156335, dated 21 February 2012

³ Appeal Ref: APP/V2255/C/11/2156341

⁴ Appeal Ref: APP/V2255/A/14/2222135, dated 28 January 2015

⁵ Section 85 of the Countryside and Rights of Way Act 2000 establishes that the statutory purpose of AONBs is to conserve and enhance the natural beauty of the area

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10. The Deans Hill escarpment covers a large area of the parish and is of high landscape value. In this part of the AONB the landscape is generally open and there are long views over open countryside including towards the Thames, Medway and marshes.
11. The appeal site is situated in open countryside and abutted on two sides by a single track road, Blind Marys Lane, which makes a dog-leg along its eastern and northern boundaries. Apart from Cedar Cottage, a detached dwelling on the north side of the lane, and the neighbouring caravan site to the southwest, the surrounding fields are largely in agricultural use. The evidence indicates that prior to its current use the appeal site was a field or paddock, with no building on it.
12. The EN Appeal Inspector described the residential caravan use of the site as being immediately apparent from the adjacent lane, in part due to views of the caravans and associated development, and in part due to the incongruous evergreen planting associated with the new use. The planting has no doubt matured over the intervening years. The evidence also indicates that some of the evergreen species have been removed.
13. Nonetheless, the use was still readily apparent when I visited the area for broadly the same reasons given by the EN Appeal Inspector. I observed that the vehicular access affords a reasonably open view into much of the site. There are also open views in to the site from the public footpath that runs for several metres in very close proximity to the site's southern boundary. Moreover, evergreen species remain a strong feature of the planting within the site and this is clearly visible from the public domain. Like that previous Inspector, I find that the overall effect is of a loss of rural character and natural beauty, directly contrary to national and local policies for the conservation of the AONB.
14. When considering the extent and significance of this adverse effect upon the AONB, I too have given particular weight to the proximity of the site to Blind Marys Lane and the public footpath. At the time of the EN Appeal that Inspector found the Lane to be lightly used by vehicles and this still appears to be the case. Nonetheless, it and linking footpaths are used by walkers.
15. The Neighbouring Appeal Inspector stated that local residents had indicated that the footpath is well-used and this is consistent with my observations as well as with what I have read and heard during the appeal process. I also note that the footpath continues beyond the site via nearby arable fields immediately to the west and to the east on the opposite side of Blind Marys Lane, linking in both directions to the network of rights of way beyond. What was once a walk through fields has now been transformed in the near vicinity of the appeal site due to the change of use and the associated planting and operational development.
16. More distant views to and across the site, including those from the reasonably well-trafficked Swanton Street and from footpaths in the wider area, are also now significantly altered and would remain so as a result of the appeal development. For the reasons outlined above, the proposed use of the site and associated planting would continue to interrupt views across the site and disrupt the otherwise generally open landscape.

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17. The site's appearance could be enhanced via the removal of existing evergreen planting and/or planting of more sympathetic native species. Nonetheless, irrespective of such measures, the appeal site would continue to appear at odds with the otherwise largely open landscape when perceived from both nearby and wider points of view as described above. Consequently, the appeal scheme would cause substantial harm to the character and appearance of the AONB.
18. In making this assessment I have had regard, among other things, to the presence of the neighbouring caravan site and the electricity pylons/cables that pass close to the site and their effect on the character and appearance of the area. I note that the Inspector for the Neighbouring Appeal also considered that despite some nearby houses and the electricity infrastructure, the area had retained an open and rural character and appearance.
19. In that case the Inspector found that the development then in question would have a limited effect in the context of such a large scale and expansive landscape. The Inspector concluded, nonetheless, that it would cause moderate harm to the main characteristics of the AONB in this area.
20. To my mind, the proposal before me would cause greater harm due mainly to the site's position to the other side of the nearby right of way and adjacent to Blind Mary's Lane. As a consequence, it is considerably more prominent. Its location adjacent to the dog-leg also means that development within it has far greater potential to interrupt what would otherwise be long-views across it to and from nearby open fields.
21. For the reasons outlined above, therefore, the appeal development would have a detrimental effect on the character and appearance of the area, which would include substantial harm to the AONB. Accordingly, in this regard, it conflicts with Policy E9 of the Local Plan as well as with its Policies E1 and E19, which seek, among other things, to safeguard environmental features and high quality/distinctiveness respectively, and with the Framework.

Other Considerations and the Planning Balance

Need for gypsy sites

22. Planning Policy for Traveller Sites (PPTS), aims to address under provision and maintain an appropriate level of supply. Councils should identify and update annually, a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against their locally set targets.
23. In 2015, the Neighbouring Appeal Inspector concluded that it had not been satisfactorily demonstrated that there was an up-to-date five year supply of deliverable sites. This conclusion was based on the needs evidence contained in the Council's Gypsy and Traveller Accommodation Assessment (GTAA), which was completed in June 2013 and identified a need for 82 pitches to be provided from 2013 to 2031⁶.
24. The Council has reviewed its GTAA to reflect the revised definition of gypsy and traveller. This work has led it to reduce its estimated need for new pitches from 82 to 61. The Council's evidence is that over 50 pitches have already

⁶ The evidence indicates that, while the need figure identified in the GTAA is 85 pitches, as three pitches were approved during the course of its production, the final target was 82 pitches. This is consistent with the approach followed by the Neighbouring Appeal Inspector

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been granted permanent planning permission. On this basis the outstanding need would be no more than 10 pitches to 2031. This approach has informed the Council's draft Bearing Fruits Swale Borough Local Plan: Part 1 (the emerging Local Plan), which is currently undergoing examination.

25. The Council's position is that the remaining need, based on the figure of 61 pitches, could be addressed via windfall provision. This is set out in a proposed main modification. The Local Plan Inspector's Interim Findings, published in March 2016⁷, state that the Council's *evidence update provides a well-reasoned and pragmatic solution to ensure that the Plan aligns with up to date policy on Gypsy and Traveller Sites. Unless any government guidance advocating a different approach is issued before the Plan is adopted I consider that this approach will serve to make the Plan effective and consistent with national policy.*
26. At the time of the hearing the proposed main modifications had recently undergone consultation. I was supplied with a copy of an objection which is critical of how the Council has recalculated need and questions the assumptions made regarding supply (the Heine Objection)⁸. In these circumstances I can give the emerging Local Plan only limited weight as it could be subject to further change.
27. Notwithstanding the Heine Objection and the appellant's wider evidence, from the information before me I have found nothing that leads me to believe that the Council's reassessed need figure of 61 pitches to 2031 is incorrect. I would note, however, that the need figure should be seen as the minimum level of provision and that additional delivery of sites that meet national and local policy would increase choice.
28. The appellant has challenged the Council's evidence regarding the supply of pitches, including the number of and appropriateness of pitches that have permanent planning permission. The Council produced a schedule which shows the sites granted permanent planning permission since the GTAA 2013 base date, as well as those that have been implemented⁹. The total number of pitches is indicated as 54, of which 41 are shown as having been implemented. Several of the sites identified show the number of caravans and the number of pitches as being the same value, one caravan per pitch. However, given that the GTAA uses a 1.7 caravan to pitch ratio to determine need, it appears likely that the number of permitted pitches may be overstated.
29. I also note the matters raised by the Neighbouring Appeal Inspector regarding the assessment of supply bearing in mind the size of and facilities available on some of the permitted pitches, the suitability of some of the permitted sites for some gypsies and travellers for ethnic reasons and that some of the pitches and associated facilities had not been implemented. These include the sites at Brotherhood Woodyard (Dunkirk), Orchard Park (Upchurch) and Cricket Meadow (Iwade), which are also cited in the Heine Objection.
30. While there does appear to have been an increase in implementation since the Neighbouring Appeal decision was made, I broadly share that Inspector's reservations in this regard such that, in the absence of contradictory evidence,

⁷ Interim Findings on Swale Local Plan, Part 3: Overall Interim Findings

⁸ Hearing Document 2

⁹ Hearing Document 3

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the Council appears likely to have partly over-estimated the supply of usable pitches for gypsies and travellers. Nonetheless, in view of the now significantly reduced level of need combined with the reasonably substantial increase in the number of permitted sites, many of which have now been implemented, overall I consider that the Council has now demonstrated that it does have a five year supply of deliverable sites. On this basis there is no apparent need for further sites in the short term and in the longer term any outstanding need that might be established would be likely to be dealt with through the provisions of the emerging development plan.

Personal circumstances and alternatives available for the appellant

31. At the hearing the appellant advised that he had looked elsewhere for accommodation but that the main obstacles are cost and availability. While there is no documentary evidence to demonstrate the lengths to which he has gone to find alternative accommodation, there is no obligation on the appellant to carry out a search of sites.
32. The appellant advised during the hearing that his family's occupation of the appeal site has been sporadic. Local residents and representatives of the Parish Council also advised that the site was rarely occupied. The appellant explained that this was principally due to his concern that regular occupation could bring about further enforcement action by the Council. From what I read and heard during the appeal process it appears that use of the site is only occasional.
33. The appellant also advised that when not living at the appeal site, he and his family would mainly live with friends and family or by the roadside. He also confirmed that his parents, who he intends to live with him at the appeal site, still live at a permanent pitch at a site in Sidcup. On this basis his parents appear to have existing alternative accommodation, yet I recognise that the appeal development would allow the extended family group to live together and provide mutual support, consistent with the gypsy way of life.
34. The appellant also advised that he had never lived in a house or other 'bricks and mortar' accommodation and that to do so would be contrary to his ethnic preferences. The Council's evidence indicates that there are at least some traveller sites available. As recorded by the Neighbouring Appeal Inspector those at Brotherhood Woodyard are unlikely to be a realistic alternative due to potential social tensions as well as the size, of at least some, of the pitches in question. There is no evidence regarding which of the other sites are actually available now or whether they would meet the needs of the appellant's extended family such that I have no good reason to believe that there are suitable alternative available to the appellant.
35. The Council's evidence indicates that if the appeal were to be dismissed it would take steps to seek compliance with the EN. On this basis and for the reasons outlined above, there is a reasonably high likelihood that the opportunity potentially offered by the site for the appellant's family to establish a permanent base along with the associated stability would be lost, and that they would find it difficult to find alternative accommodation in the event that planning permission were not granted for the site. In these circumstances his family would be likely to have no alternative but to live 'on the road' or find other temporary arrangements.

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36. The evidence indicates that the appellant, his wife, their four children and his parents would normally live at the site. The children are all minors. The eldest two are in higher education/training, while the two younger children attend primary school and pre-school respectively. I was advised at the hearing that they attend educational/training establishments in Sittingbourne, which is in reasonably close proximity to the appeal site. It would be in the children's best interests to have a settled base on the land and these interests are a primary consideration.
37. I note the appellant's parents' state of health. Bringing the extended family together on a single site and having a settled base would also support their health needs. Other than in that respect and as outlined above, there is no evidence to indicate that the intended occupants of the site have any particular health or educational needs. Nonetheless, while these general needs are shared with the wider, more settled community, the absence of a settled base is associated with undisputed evidence that nationally the traveller community experience comparatively poor health and educational outcomes.
38. Dismissing the appeal would result in the direct loss of the proposed occupiers' opportunity to establish a permanent home given that the site is only occupied on a sporadic basis. This would represent an interference with the best interests of the appellant's children and with the occupants' home, their family life and their livelihoods in the terms of Article 8 of the Human Rights Act 1998. These circumstances combined with the limited availability of alternative accommodation, as outlined above, have considerable weight in support of the appeal.

Other considerations and overall balance

39. Notwithstanding the appellant's evidence to the contrary, the appeal site is in the open countryside away from Bredgar. It is in this kind of location where the PPTS states that new traveller site development should be 'very strictly limited'. The current version of the PPTS sets a higher bar in this regard than the previous version, which referred only to 'strictly limited'. Access to Bredgar from the site is via either largely unlit, often narrow roads without footways or along un-surfaced/unlit rights of way across the intervening fields. Given these circumstances and the reasonably long distances concerned, residents of the site are likely to largely rely on use of private vehicles to access services in the village and elsewhere. These considerations weigh against the appeal development.
40. I have also found that the appeal development would have a detrimental effect on the character and appearance of the area, which would include substantial harm to the AONB. Given that great weight should be given to conserving landscape and scenic beauty in AONBs, this harm carries very considerable weight against the appeal.
41. As outlined above the identified need for pitches is a minimum figure. The appeal development would deliver more accommodation thereby increasing choice for gypsies and traveller families. This weighs in favour of the development, albeit to a limited extent given the limited quantity of accommodation concerned. I have also found that the personal circumstances and associated human rights at play combined with the availability of alternative accommodation weigh considerably in favour of the appeal.

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42. On the evidence before me, I have found that the Council does not have a pressing need for new pitches and that it has a five year supply of gypsy and traveller sites. The accommodation need in the local area is being assessed through the development plan process and, if necessary, a supply of suitable and deliverable sites will be identified to meet that need. Through that process, sites which best meet the need with least harm to the environment would come forward, if necessary. In these circumstances, those sites might be less harmful than, and therefore preferable to, the appeal site.
43. It is also important to bear in mind that the rights under the Human Rights Act 1998 are qualified and interference with them may be justified where in the public interest. The concept of proportionality is crucial. In this case such interference would be in accordance with the law and in pursuit of a well-established and legitimate aim, the protection of the AONB. In the context of this case the harm to the AONB outweighs the human rights of the appellant's family and the best interests of the children. The appellant and his family are gypsies who are a protected group for the purposes of the Equality Act 2010. The requirements of the Public Sector Equality Duty are to eliminate discrimination and to promote equality and good relations between those with protected characteristics and those without. However, in dismissing the appeal, none of these duties would be breached.
44. I have also considered the possibility of a temporary permission. I recognise that while no substitute for a permanent site, temporary permission would offer a period of stability and allow further time to find alternative accommodation, including the pursuit of a site through the plan-making process. However, whilst temporary development would reduce the duration of the harm I have identified, it would not be sufficient to cause the matters in favour of the development to outweigh those that are against it. Even though not applicable in this case I note that since the Neighbouring Appeal was determined the PPTS has been amended such that where a five year supply of deliverable sites cannot be demonstrated, this cannot be a significant material consideration when considering applications for the grant of temporary planning permission where the land is within an AONB. Overall, given the degree of harm that would result from the proposed development especially in respect to the AONB, a temporary permission would not be appropriate.
45. Weighing all these matters in the balance, I conclude that the totality of the considerations that are in favour of the proposal do not outweigh the environmental harm particularly the identified harm to the character and appearance of the area, including the AONB, and the conflict with the development plan. Consequently, the appeal scheme, on either a permanent or a temporary basis, should be resisted.

Other Matters

46. Another appeal decision and an Injunction Order concerning gypsy development elsewhere in the borough were brought to my attention at the hearing¹⁰. I have taken these into account when making my decision. I note that that appeal decision is several years old such that it was made against a different national planning policy context and at a different site. Consequently it is of limited relevance to this appeal. In any event I have, reached my decision on the basis of the particular planning circumstances of the appeal,

¹⁰ Hearing Documents 1 & 5

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including the human rights and the personal circumstances of the appellant and his family, as set out above.

47. I have also taken into account wider matters raised in opposition to the appeal scheme by interested parties, including by those who spoke during the hearing. However, they have not led me to any different overall conclusion.

Conclusion

48. For the reasons given above, the proposed development is unacceptable and the appeal is dismissed.

G D Jones

INSPECTOR

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APPEARANCES

FOR THE APPELLANTS:

Joseph G Jones	BFSGC
Joseph P Jones	BFSGC
Samuel Baker	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Graham Thomas	Area Planning Officer, Swale Borough Council
BSc(Hons) DipTP MRTPI	
Shelley Rouse	Principal Planning Policy Officer, Swale Borough Council
MRTPI	

INTERESTED PERSONS:

Cllr Monique Bonney	District Councillor
Cllr Penny Twaites	Chair, Bredgar Parish Council
Cllr Jane Collins	Bredgar Parish Council and local resident
Cllr Andy Dwyer	Bredgar Parish Council and local resident

DOCUMENTS SUBMITTED AT THE HEARING

- 1 High Court Injunction Order Claim No HQ16X01733, dated 7 September 2016 and related note on behalf of the appellant
- 2 Response of Heine Planning in respect to gypsy traveller aspects of the Main Modifications to the emerging Local Plan, July 2016
- 3 Updated 'Monitoring of Gypsy Supply' schedule prepared by the Council
- 4 Plans of the neighbouring gypsy site considered under appeal reference APP/V2255/A/14/2222135
- 5 Decision letter for appeal reference APP/V2255/C/06/2022786
- 6 Copy of Enforcement Notices in respect to (a) the appeal site and to (b) the neighbouring gypsy site

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