

AGENDA

PLANNING COMMITTEE MEETING

Date: Thursday, 30 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 March 2017 (Minute Nos. 1214 - 1223) 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 March 2017 (Minute Nos. to follow).

(2.4) 16/506986/FULL 116 Oak Lane, Upchurch, Kent, ME9 7AY

6. Deferred Item

To consider the following application:

16/507425/FULL – Land rear of Kaine Farm House, Breach Lane, Upchurch.

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

Requests to speak on this item must be registered with Democratic Services (democraticservices@swale.gov.uk or call us on 01795 417328) by noon on Wednesday 29 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 29 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 Wednesday, 22 March 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, Services Swale Borough Council,
Swale House, East Street, Sittingbourne, Kent, ME10 3HT**

PLANNING COMMITTEE – 30 MARCH 2017

DEFERRED ITEM

Report of the Head of Planning

DEFERRED ITEMS

Reports shown in previous Minutes as being deferred from that Meeting

DEF ITEM 1 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			
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 Development Manager for last Committee			
WARD Hartlip, Newington And Upchurch	PARISH/TOWN Upchurch	COUNCIL	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/PNQCLA	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.	Prior Approval not required	10.06.2016

	- Design and external appearance impacts on the building.		
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

MAIN REPORT

1.0 INTRODUCTION

- 1.01 Members will recall that this application was reported to Planning Committee on 2nd March 2017. This report is appended and includes full details of the application site, the proposal, planning constraints, local representations, consultations, policies, background papers and plan, appraisal and conclusion. The application was deferred following the Development Manager calling in the application as the Planning Committee were minded to make a decision that would be contrary to Officer recommendation and contrary to planning policy and guidance.
- 1.02 The purpose of this report is to provide further clarification as to why I believe that the proposals are contrary to policy and therefore unacceptable and to set out the implications that approving the application could have for the Council.
- 1.03 Subsequent to the Planning Committee of 2nd March 2017 the agent has submitted further documents in the form of an additional supporting letter; a drawing showing the distances between buildings on the site and a location plan which shows the site in relation to local services. A further document which provides the agent's view on the Governments Housing White Paper entitled 'Fixing our Broken Housing Market' has also been submitted, however, this has already been submitted prior to the completion of the Committee Report on the 2nd March 2017 Agenda. As clearly stated in the agent's supporting comments, the White Paper does not comprise Government policy, is subject to consultation and does not represent adopted policy. As a result I do not believe that any significant weight should be attached to this and for this reason I do not consider that any detailed assessment of this document should be made at this time. However, I note that the White Paper does state at paragraph 1.24, as the agent refers to in the supporting letter, that pressure on the countryside in terms of residential development should be limited.

2.0 DISCUSSION

- 2.01 As Members will be aware the Council's emerging Local Plan has recently gone through its examination in public. The Council has a claimed five-year land supply position of 5.4 years (2015/16), but this has yet to be confirmed by the Local Plan Examination process. As a result, for the purposes of this application it should be

assumed that the Council is not yet in a position to be able to demonstrate a five-year supply and that the provisions of paragraph 49 of the NPPF should be taken as applying.

2.02 However, as set out in the previous report, due to the advanced stage that the Council has reached in the in the preparation of the Local Plan, although considered out of date by the NPPF, weight can be given to relevant policies for the supply of housing.

2.03 In accordance with the requirements of paragraph 14 of the NPPF, the approach adopted has been to assess the proposal against the NPPF's requirements to grant permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework or taken as a whole. The benefits were identified as follows:

- The contribution towards housing in the Borough and to the 5 year housing land supply;
- Limited contribution towards the economic strand of sustainable development by virtue of the construction phase and increased spending in the local economy.

However, it is considered that these benefits would be offset firstly by the poor and remote location of the site in relation to the closest services and facilities and the likely dependence on the car to reach them. Secondly, the impact of introducing a group of dwellings into this countryside location was considered to be significantly harmful. The conclusion reached was that the proposal would not constitute sustainable development.

2.04 It should be reiterated that the Council has both adopted and emerging policies (that should also be given weight due to the stage that the Local Plan has reached) which intend to protect the countryside against development other than in the circumstances which are clearly set out. Furthermore, paragraph 14 of the NPPF also states that adverse impacts of developments need to be taken into account. This application satisfies none of the criteria within policy E6 of the adopted plan and falls within the least desirable location as set out in policy ST3 of the emerging plan. The Council has taken relevant steps in the emerging Local Plan in order to address the shortfall in housing supply and has identified alternative sites within the Borough which can meet the housing need in a more sustainable way. Therefore, the development of this unsustainable site for housing is unnecessary, the harm outweighs the benefits and as such the proposal fails to be supported by either national or local policies.

2.05 An as an exception to the above is Policy DM9 (Rural exceptions housing) of the emerging Local Plan which sets out the criteria which would need to be satisfied for granting planning permission for affordable housing to meet local needs in rural areas. In addition to this the NPPF encourages local planning authorities to be responsive to local circumstances and to plan housing development to reflect local needs, particularly for affordable housing, including through rural exception sites where appropriate. However, putting aside the difficulties that this application would have in complying with criterion 1 of policy DM9 (insofar as the site is not in accordance with Policy ST3 and is not in a location where access to day to day services can be easily and conveniently achieved), this application does not propose any element at all of affordable housing with or without market enabling housing. The result of this would be that the dwellings would be open market housing and therefore the application would not be able to be considered as an exception under this policy.

- 2.06 Without compliance with any of the adopted or emerging local policies or national policies, if this application was to be approved then the very real risk that this would pose would be that large sections of adopted and emerging policy would be undermined unless any material considerations taken into account are strong enough to justify a departure from the development plan and NPPF. The result of this would be twofold. The initial and short term impact would be that this unsustainable site would be developed for housing, to the detriment of the countryside in this specific location. Secondly, by approving an application for residential development on this site a precedent would potentially be created for similar applications on other unsuitable sites throughout the Borough. Therefore, if this proposal is approved then there is the potential that in doing so the principle that this would establish could be used against the Council on other sites, weakening the position that the Council has put itself into by virtue of the steps taken to address the shortfall in housing supply. The result of this could be that further residential development in unsuitable locations causing harm to the character of the Borough would be difficult to resist.
- 2.07 I am also aware of the proposal being referred to in the discussion at 2nd March 2017 Committee as brownfield land. In response to this, firstly, the Planning Statement submitted by the agent in support of the application at paragraph 5.2.21 sets out that the site is not a brownfield site. This is indeed the case and to confirm this I have included in full the definition of previously developed land which is included in Annex 2: Glossary of the National Planning Policy Framework:

“Previously developed land

*Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. **This excludes: land that is or has been occupied by agricultural or forestry buildings**; land that has been developed for minerals extraction or waste disposal by landfill purposes where provision for restoration has been made through development control procedures; land in built-up areas such as private residential gardens, parks, recreation grounds and allotments; and land that was previously-developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape in the process of time.”*

- 2.08 I have emboldened and underlined the relevant section which would relate to this application. As a result of this it is clear that any planning merits associated with the belief that the site is making use of previously developed land, is in planning terms clearly not the case and as a result I am of the view that this should not be considered to a reason as to why the application would be acceptable.
- 2.09 Furthermore, It is clear to me that the exclusion of agricultural / forestry buildings from the definition is aimed to avoid situations where such buildings, that are necessarily required in the countryside and are sometimes in isolated, unsustainable or sensitive areas, are replaced for uses (such as residential) that do not need to be sited in such locations – and the precedent that this would set given the number and size of agricultural buildings that exist throughout the Borough. I do not consider the existing buildings on this site to be unusually large or different to many other farm complexes in the countryside, and I have particular concern that a precedent would be set if permission was granted.

3.0 CONCLUSION

- 3.01 As set out above, one of the very real risks of approving this application for development which in my view is not sustainable and would cause significant and unacceptable harm to the countryside is the precedent that this would set. The application site is located in the countryside, separated from local services and facilities and as discussed above does not constitute in planning terms previously developed land. To approve this application would result in the Council undermining both its adopted and emerging local plan policies and would establish the principle of development which could equally be applied to a large number of unsuitable and isolated sites around the Borough. If Members were to approve this application then I am of the view that it would need to be clearly stated as to which policy in the local or emerging local plan, or which criteria within the NPPF that the proposal would comply with, or alternatively what material considerations are strong enough to override these policies and to promote a basis as an exception to policy. Failure to do this would establish the principle of residential development on an unknown number of similar sites throughout the Borough where the Council has taken steps through the emerging Local Plan to resist residential development. However, as set out in the original report, and as above, I believe that this proposal is not in compliance with policies at either a local or a national level and that there are no exceptional circumstances to consider approval. As a result I am of the view that the application should be refused.

4.0 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).

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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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):			
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SW/10/0123	Lawful Development Certificate for two storey rear extension (Proposed)	Approved	16.02.2010
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		required	
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

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4.0 POLICY AND OTHER CONSIDERATIONSSwale 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.

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- 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;*

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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.

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- 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.

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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

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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.

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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.”*

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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.**

APPENDIX 1**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.*

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- *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,

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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.

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- 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.

APPENDIX 1**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

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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

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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).

APPENDIX 1**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.

APPENDIX 1

- 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.

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SWALE BOROUGH COUNCIL

PLANNING SERVICES

Planning Items to be submitted to the Planning Committee

30 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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5.10 Pg 159 – 163		OSPRINGE	Land south-east side of Faversham Road
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PLANNING COMMITTEE – 30 MARCH 2017

PART 2

Report of the Head of Planning

PART 2

Applications for which **PERMISSION** is recommended

2.1 REFERENCE NO - 16/508117/OUT		
APPLICATION PROPOSAL Outline application (with access being sought) for 62 dwellings including details of vehicular access.		
ADDRESS The Slips Scocles Road Minster-on-sea Kent ME12 3SN		
RECOMMENDATION Grant subject to comments from the Greenspaces Manager and any additional conditions/obligations recommended by them, additional reptile surveys being submitted with further comments from KCC Ecology in response and any additional conditions/obligations recommended by them, further comments from Kent Highways and Transportation and any further conditions recommended by them and a Section 106 agreement.		
SUMMARY OF REASONS FOR RECOMMENDATION The proposed development would provide housing on a site that is allocated for this purpose within the emerging Local Plan. An assessment of the need for housing in the Borough highlights a requirement for housing sites that are located outside of the built-up area boundary as set out in the adopted Local Plan. The sustainability of the application site has been assessed and it is considered to be acceptable on a strategic and a local level. The economic, social and environmental considerations of the proposed development have been assessed and I have identified no harm that cannot be adequately mitigated. Subject to the imposition of the conditions listed at the end of the report and the signing of a Section 106 agreement, planning permission should be granted.		
REASON FOR REFERRAL TO COMMITTEE Parish Council objection; local resident objections; and authority to enter into a Section 106 agreement		
WARD Sheppey Central	PARISH/TOWN COUNCIL Minster-On-Sea	APPLICANT Parker AGENT BDB Design LLP
DECISION DUE DATE 02/03/17	PUBLICITY EXPIRY DATE 13/01/17	OFFICER SITE VISIT DATE 15/12/2016
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 2.778ha in area and is located to the southern boundary of the settlement of Minster-on-Sea. Elm Lane bounds the southern edge of the application site and Scocles Road bounds the western edge. A row of detached bungalows and houses front onto Scocles Road and lie opposite the application site. To the north are mainly detached bungalows/semi-detached bungalows fronting onto Drake Avenue. To the east is land used for the grazing of horses and, to the south are agricultural fields. The Thistle Hill housing estate lies to the southwest of the application site.

- 1.02 The application site is currently used for the grazing of horses. There is a large building (to be demolished) located towards the western boundary of the site that appears to be a former agricultural building converted into stables. The site slopes gently to the south and is largely flat with fences dividing the land into paddocks. There is a thick hedge that runs along the southern boundary of the site and a thinner hedge to the eastern boundary with clusters of small trees and hedges within the eastern part of the site.
- 1.03 A public footpath (ZS6) crosses the application site at the northeast corner. This footpath link passes through the site linking Scocles Road, Nelson Avenue, Drake Avenue and Elm Lane. There is an existing pond on the site located close to the existing stable building. An open water ditch runs along the eastern boundary of the application site where it meets a ditch running along Elm Lane.

2.0 PROPOSAL

- 2.01 This is an outline planning application with all matters reserved, with the exception of access, for a maximum of 62 houses to be provided within the site. The indicative plans show that the houses would be a mix of detached, semi-detached and terraced two storey, 2, 3, 4 and 5 bedroom properties. Each property is shown to have at least one allocated parking space and there are additional visitor's spaces shown. A large central green and open space is shown to be provided to the centre and north of the application site and the existing pond is to be retained. The public footpath would be incorporated within the development and would not be diverted. Another large area of open spaces is shown to occupy the northeast corner. The southern boundary is shown to be heavily planted with trees and hedges and soft landscaping provided throughout. The illustrative plan shows dwellings fronting onto Scocles Road.
- 2.02 The access to the site would be taken from two points on Scocles Road, one opposite nos. 100 and 102 Scocles Road and one opposite no. 118 Scocles Road. A new footway is shown to be provided along the entire length of the western boundary of the site as well as a new footway on the opposite side of Scocles Road stretching from no. 100 Scocles Road to the corner of Harps Avenue. The application includes details of a 30 mile/hour 'gateway' which would be located on Scocles Road, close to the corner of Elm Lane and would comprise of a red coloured 'block' with '30' painted on the road, 30m/hr signs and five-bar gates on either side of the road.
- 2.03 This outline application details the provision of 13 self-build plots that would be located close to the southern boundary of the site. The intention is for a house builder to install infrastructure, providing all 13 plots with services at the outset. The plots would then be offered to private applicants subject to them obtaining detailed planning permission for their chosen design which would be in accordance with a design brief that is to be submitted (see condition 26).

3.0 SUMMARY INFORMATION

	Proposed
Site Area (ha)	2.778ha
Approximate Ridge Height (m)	Not specified
Approximate Eaves Height (m)	Not specified
No. of Storeys	2
Parking Spaces	At least 2 per dwelling
No. of Residential Units	62
No. of Affordable Units	0
Density	23d/ha

4.0 PLANNING CONSTRAINTS

Potential Archaeological Importance

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), 30, 32, 36 (sustainable transport), 42, 47 (delivering a wide choice of high quality homes), 49, 50, 55, 56, 58 (good design), 69, 70, 73 (healthy communities); 103 (flood risk), 110, 112 (agricultural land), 118, 119 (biodiversity), 120, 121 (contaminated land), 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; Flood Risk and coastal change; Open Space, sports and recreational facilities, public rights of way and local green space.

Development Plan:

5.03 The Swale Borough Local Plan 2008 saved policies SP1 (sustainable development), SP2 (environment), SP4 (housing), SP5 (rural communities), SP6 (transport and utilities), TG1 (Thames Gateway Planning Area) SH1 (settlement hierarchy), E1 (general development criteria), E6 (countryside); E7 (separation of settlements); E9 (protecting the quality and character of the Borough’s Landscape); E10 (trees and hedges); E11 (biodiversity and geological interests), E12 (designated biodiversity and geological conservation sites), E19 (achieving high quality design and distinctiveness); H2 (new housing), H3 (affordable housing), H5 (housing allocations), RC3 (meeting rural housing needs); C2 (housing development and the provision of community services and facilities); T1 (safe access), T3 (vehicle parking for new development); 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 (Isle of Sheppey 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), CP7

(conserving and enhancing the natural environment - providing green infrastructure), DM6 (managing transport demand and impact), DM7 (vehicle parking), DM8 (affordable housing), DM14 (general development criteria), DM17 (open space, sports and recreation provision), DM19 (sustainable design and construction), DM21 (water, flooding and drainage), DM24 (conserving and enhancing valued landscapes), DM28 (biodiversity and geological conservation), DM29 (woodland trees and hedges), DM31 (agricultural land), DM34 (Archaeological sites), A14 (smaller allocations as extensions to settlements) & IMP1 (implementation and delivery plan).

Supplementary Planning Documents

5.05 Developer Contributions (2009)

5.06 Swale Landscape Character and Biodiversity Appraisal SPD (2011). The application site is identified as lying within the Central Sheppey Farmlands character area and Clay Farmlands landscape type – the landscape is generally in poor condition with a moderate sensitivity to change. The guidelines recommend that this landscape should be restored.

6.0 LOCAL REPRESENTATIONS

6.01 Twelve representations have been received from local residents. A summary of their comments is as follows:

- Views affected;
- Additional congestion on Scocles Road (a narrow road) and the accesses would increase the chance of accidents;
- Result in a reduction in property values;
- The ditch that runs along Elm Lane and the application site is prone to flooding and displacement of surface water is likely to have a negative effect;
- Development should be on brownfield land;
- Property in Drake Avenue would be overlooked and overshadowed;
- Detrimental to wildlife on the site;
- Elm Lane and Lower Road will not cope with additional traffic;
- Expansion of the urban area would be contrary to Swale Council's approach to development in the past;
- Local services such as education and health will be over-burdened;
- Dangerous to horses which use the local roads;
- Overdevelopment of the Island;
- Green spaces are being lost;
- Approval of this development could lead to further development along Elm Lane;
- The site is in a Local Countryside Gap and the development would be contrary to the aims and objectives of this designation and policy E6;
- Detrimental impact on the landscape;
- Not in-keeping with the other houses in Minster;
- Pedestrian access along Scocles Lane and Elm Lane is dangerous.

7.0 CONSULTATIONS

7.01 Minster Parish Council object to the proposal on the following grounds:

- The application is premature;
- The site is within an important local countryside gap and should be maintained to separate settlements and safeguard open and undeveloped areas;

- The development is outside of the West Sheppey Triangle (modification 45) and would contradict policies E1, E6 and RC4 of the adopted LP;
 - The development is poor in sustainability terms as it is not well related to existing services and facilities in Minster and major serves in Sheerness and Queenborough;
 - Significant adverse impact on the landscape character of the area. This is hindered by the topography of the site which rises to a crest at the centre with views from low lying marshland to the south towards Minster Abbey and from Forty-Acres Hill. Mitigation would not off-set the landscape impact;
 - Over-intensive development of the site not in-keeping with semi-rural character and appearance of this part of Minster;
 - Scocles Road will not cope with additional traffic;
 - Allowing development of this site could make further development to the east difficult to resist.
- 7.02 KCC (community contributions) request that the application contributes towards a new primary school on the Island, community learning, youth services, library bookstock and social care as well as the provision of 1 wheelchair adaptable home. Members will note that the sums of money required are detailed at paragraph 9.21 below. They also ask that an informative be added to encourage Next Generation Access Broadband.
- 7.03 KCC Highways and Transportation did not originally have sight of the submitted Transport Assessment (TA) and asked for one to be completed. Commenting on the submitted TA they have no objection to the principle of the development from a highway point of view. However, they require further detail in terms of the traffic/speed survey and they cannot therefore confirm the required visibility splay at the southern access. They also require further time to consider the applicant's TRIC's assessment to comment on the proposed trip generation. Commenting on the indicative plans, they discourage the use of tandem parking and, that they do not count garages as parking spaces and therefore plot 47 does not appear to have any parking spaces provided. They recommend conditions to provide visibility splays, provision and maintenance of the accesses, control of the gradient of the accesses, a minimum width of 1.8m for the proposed footway and the use of bound surface for the access roads.
- 7.04 The Lower Medway Internal Drainage Board note that surface water is to be discharged via SUDs to watercourses bordering the site. Although not opposed to this in principle, it will be essential that surface water runoff, and therefore downstream flood risk, will not be increased as a result. A condition to ensure that surface water be attenuated to no more than Greenfield rates for a range of events up to 100 year event +CC/ the details of the proposed SUDs and future maintenance should be agreed with KCC Drainage and flood risk team. Any works affecting their watercourses will require their consent.
- 7.05 KCC Flood Risk and Drainage are generally satisfied that the surface water generated by the proposal can be accommodated within the site's boundaries and discharge at a controlled rate without exacerbating the flood risk to the development site or surrounding area. They recommend a condition to ensure that final detailed drainage design is submitted and agreed in consultation with the Lower Medway Internal Drainage Board. At the detailed design stage it must also be ensured that the area to the north of the site that has been identified as being at risk from surface water accumulation is fully considered, and that a clearly identified and managed means of conveying water from this area to the wider drainage network is provided.

- 7.06 Natural England have no objection to the proposal subject to contributions towards the SAMM and note that a Habitat Regulations Assessment is required. They advise that the SSSI does not represent a constraint in determining the application.
- 7.07 KCC Public Rights of Way Officer have no objection to the proposal but notes that public footpath ZS6 passes through the site and is of high importance for recreational purposes. The route is well used and popular for access to the countryside from Minster. The footpath should be upgraded to a standard agreed with them and consideration should be given to the surface of the remainder of the footpath to connect to Drake Avenue and Elm Lane. A contribution of £13,640 is sought for this surfacing work to be completed. They will not adopt the connecting footpaths shown on the illustrative layout plan.
- 7.08 Southern Water do not object to the proposal but note that currently there is not capacity in their network for the disposal of wastewater sewage, without the development providing additional infrastructure. They ask for a condition to require details of the disposal of foul water. They confirm that they can provide surface water disposal to service the development. Drainage from hardstanding should be by means of oil trap gullies or petrol/oil interceptors. They confirm that they can provide a water supply to the site.
- 7.09 KCC Archaeology note that the site lies within an area of archaeological potential from the multi-period remains found on the higher areas of the Isle of Sheppey. A condition is recommended to require an archaeological field evaluation.
- 7.10 Southern Gas Networks note that there is a low/medium/intermediate pressure main near the site. There should be no mechanical excavation within 0.5m of the low/medium gas main or 2m of an intermediate pipe.
- 7.11 The NHS request contributions towards expanding existing facilities within the vicinity of the site. They ask for a total contribution of £53,280.
- 7.12 The Environmental Health Manager has no objection to the proposed development subject to conditions to secure contaminated land investigations and remediation where necessary, a condition to require a Code of Construction Practice.
- 7.13 KCC Ecology comments that additional detail in respect of reptiles is required prior to the determination of this application. The submitted ecological report outlines that there is suitable habitat for reptiles on the site. Further reports and necessary mitigation measures should be submitted therefore. Great Crested Newts are unlikely to be present at the site in their view. Ecological enhancements should be provided on site.
- 7.14 Kent Police recommend that Secure by Design principles are followed at this site. They have some concerns about the footpaths and permeability afforded adjacent to the side of plots 46 and 53 on the indicative plans which should be considered at the detailed planning stage. They recommend a condition to ensure that details of Crime Prevention through Environmental Design are submitted.
- 7.15 The Environment Agency have no comment to make on the application.
- 7.16 Housing Services were not consulted on the scheme because under the emerging Local Plan (see Policy DM8) there is not a requirement to provide a proportion of affordable housing on new development.

8.0 BACKGROUND PAPERS AND PLANS

- 8.01 Planning Statement; Design and Access Statement; Foul Water Drainage Strategy; Utilities Statement; Great Crested Newt Survey Report; Phase 1 Ecological Appraisal; Surface Water Management Strategy incorporating a Flood Risk Assessment; Transport Statement; Proposed access and highway plans and indicative site layout and housing mix plans; level survey site plan.

9.0 APPRAISAL

Principle of Development

Planning Policy and the Housing Land supply position

- 9.01 For the purposes of the development plan, the site is located outside of the built confines of Minster-on-Sea and falls to be considered as within the countryside. To clarify, contrary to the representations from local residents and the Parish Council, the site does not lie within a Local Countryside Gap. Policy E6 of the adopted local plan seeks to protect the quality, character and amenity of the countryside. Policy SP4 seeks to provide sufficient land for housing need, policy SP5 seeks to protect the quality and character of the wider countryside and policies TG1, 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. Outside of these, new residential development will only be granted for certain limited exceptions. The application site being outside of the built-up area boundary would be contrary to the above policies, with the exception of policy SP4, and not in accordance with the development plan.
- 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 or; specific policies within the Framework indicate development should be restricted.
- 9.03 Paragraph 47 of the NPPF seeks to significantly boost housing supply, and requires Local Planning Authorities to meet full objectively assessed needs for housing in their area, and to identify and update a supply of deliverable sites to provide a five year housing supply. Paragraph 49 of the NPPF clarifies that policies for the supply of housing should be considered out of date if the LPA cannot demonstrate a 5 year supply.
- 9.04 Based on current Objectively Assessed Needs (OAN) for housing within the Borough, we require 776 dwellings per annum. The council cannot currently demonstrate a 5 year housing supply on this basis as the supply figure currently sits at 3.8 years' worth. Given that the Council cannot demonstrate an existing 5 year housing supply, and policies for housing delivery pre-date the OAN, they must be considered as out of

date. For clarity, these out-of-date policies are: SP5, TG1, SH1, E6 and H2, although it should be noted that they should not be given no weight at all.

- 9.05 The emerging local plan has now completed its examination in public (closed 9th February), and following the Inspector's interim findings, the Council has sought to significantly boost its housing allocations to meet objectively assessed housing needs as modifications to the emerging Local Plan. One of the additional sites identified to meet this housing need is the application site and is a draft allocation for a minimum of 50 dwellings under Policy A14 - Main Modification 166 – smaller allocations as extensions to settlements. Under this policy, table 6.5.3 sets out matters to be considered at the planning application stage. For the application site these issues are: maintain and enhance boundary vegetation; undertake ecological assessments to determine interest and mitigation necessary; consider widening Elm Lane frontage across the site; consider a proportion of plots for self builders and; potential contribution to A2500 Lower Road improvements, health and primary school provision. The draft allocation of the application site was informed by a revised Strategic Housing Land Availability Assessment (SHLAA) undertaken in 2015. This concluded:

“This site’s primary constraints are access to services and highway issues. While there are clearly sites with better access to services and facilities, in the context of overall housing need, this constraint is not considered overriding. Facilities are available within Minster and the wider urban area within a reasonable walk, cycle or car journey. Highway issues will be need to be addressed in response to the quantum of development accessed off the Lower Road and biodiversity impacts mitigated.”

- 9.06 On the impact on landscape character and visual amenity, the SHLAA notes:
“Unlike other sites in the vicinity (SW/133 - land east of Scocles Road, south of Elm Lane) the modest scale of development proposed is unlikely to have a major impact on the landscape character of the area. Development of the scale proposed could be more easily absorbed into the landscape, being screened in the landscape by mature hedgerow planting, marking the transition between the large open fields down to the Lower Road and the perceived boundary to development in Minster.”
- 9.07 A further examination of the emerging Local Plan took place in February this year with the Council seeking to demonstrate that it can meet its full identified housing needs and a 5 year supply. A number of policies within the emerging plan, including A14 as noted above, seek to deliver housing development in order to meet the OAN for housing in the Borough. These policies are ST1 (sustainable development including delivery of homes to meet OAN), ST2 (delivery targets), ST3 (Swale settlement strategy), ST4 (site allocations to meet OAN), and ST6 (Isle of Sheppey area strategy) to provide housing at sites within the urban and village confines, or as urban extensions to settlements where indicated by proposed allocations.
- 9.08 Against the emerging Local Plan, the Council's published statement of housing land supply for 2015/16 shows the Council to have a five year supply of 5.4 years. However, at this time the Plan has not yet been found to be sound. I can therefore only attach limited weight to this changed position, other than to note the important point that the achievement of this land supply has been assisted by the allocation of the application site and that without it, this supply would be inevitably reduced.
- 9.09 Paragraph 216 of the NPPF sets out that decision makers may give weight to emerging plans, depending on the stage of preparation of the plan (the more advanced, the greater the weight), the extent to which there are unresolved objections, and the degree of consistency of relevant policies to policies in the NPPF.

In this case, the emerging plan policy A14 received eight objections from local residents and the Parish Council. Although these representations remain outstanding, I am of the opinion that the soundness of the evidence base supporting the Local Plan means that material weight should be given to the emerging plan and in terms of the Council's support for the sites that it has allocated to meet the overall OAN and demonstration of a five year housing supply.

- 9.10 Given the fact that the application site is included as a draft allocation within the emerging local plan, I do not consider that it would be premature to approve development on this draft allocation site prior to the adoption of the emerging Local Plan, particularly given the overall need for housing and the Council's 5 year supply position. Planning Practice Guidance clarifies that refusal on the grounds of prematurity would only be justified if the development would undermine the plan-making process. In this case, this draft allocation site has been chosen having followed the approach to the settlement hierarchy set out in the emerging Local Plan, which the examination inspector has endorsed. Therefore I consider that granting planning permission at this stage would not prejudice the plan-making process.

Local infrastructure

- 9.11 The site is within walking distance of a number of amenities within Minster, including a primary school (700m), convenience stores, Medical Centre (1.2km), community hall/church. The proposal includes a connection to the public right of way (Z S6) leading to Drake Avenue and also the provision of footpaths either side of the proposed vehicular accesses from Scocles Road. The applicant has agreed to pay contributions towards a new primary school on the Island as well as contributions towards community learning, youth services, library bookstock and social care in response to an identified need (refer to para 9.21 below for further detail). I therefore consider that this site is sustainably located with good access to local amenities and that adequate contributions are to be paid towards local infrastructure.

Landscape and Visual Impact

- 9.12 The application site is visible from a number of view points, in particular from opposite the site on Scocles Road and from the public footpath (ZS6) that passes through the site. Views from Elm Lane and the countryside beyond are more restricted due to the thick boundary hedge/row of trees along the southern boundary of the site. The relationship of this site with the countryside to the south is of great importance in the assessment of the impact on the landscape character in my view. The application details indicate that the southern boundary vegetation would be reinforced and this is shown on the illustrative site layout. Trees are also shown to be retained along the eastern boundary and this will also be important in helping to limit the impact on the countryside to the south and east. The retention of the existing trees/hedgerow and its reinforcement is of fundamental importance in mitigating any harm to the character and appearance of the countryside to the south and east. The landscaping condition 18 below specifically refers to the southern and eastern boundaries of the site.
- 9.13 Owing to the location of houses to the north and west of the application site, the new houses would assimilate easily into this environment in my view. The illustrative plans show that there would be houses fronting onto Scocles Road and I see this as a positive element of the design which would provide an active frontage to the development and will help to integrate the development into the existing residential area. The proposed new footway and vehicular accesses along this part of Scocles Road would not detract from the appearance of the area in my view. It is acknowledged that the character of this part of Scocles Road would be altered to

become less rural and more suburban, however, I do not consider that there would be significant harm in this respect given the proximity of the site to existing houses opposite. This is also a necessary consequence of the provision of housing on this site.

- 9.14 The Swale Landscape Character and Biodiversity Appraisal 2011 indicates that the surrounding landscape is of poor quality with moderate sensitivity to change. The application site is not within a designated landscape area and is not noted for its special quality or character. Members will note the conclusions on the landscape impact of the SHLAA above at paragraph 9.06. I therefore conclude that the development of this site for housing would cause no significant harm to the character or appearance of the countryside/landscape and that any harm can be adequately mitigated against through retention and reinforcement of vegetation along the southern and eastern boundaries of the site.

Highways

- 9.15 The proposal would provide two new vehicular access points onto Scocles Road. Kent Highways and Transportation are content with the provision of these accesses, subject to confirmation of the required visibility splays. Further comments from them on this matter will be reported at the meeting. It is likely that additional conditions will be required to ensure that the appropriate visibility splays are provided. The proposed northern access would be within an existing 30mph speed limit but the southern access would be within a 60mph speed limit. The submitted TA states that the nature of Scocles Road means that speeds are actually much lower than 60mph. As part of the development, the intention is to extend the 30mph speed limit to the junction with Elm Lane. To reinforce the reduced speed limit, a gateway is proposed which would incorporate red surfacing, 30mph signage and a 'traditional gateway feature' on the grass verge. Kent Highways and Transportation are agreeable to this scheme but it is important to note that they do not require the works in order to address highway safety concerns in respect of the proposal. This scheme is mainly in response to comments from Minster Parish Council and local residents. I have recommended that an obligation is included in the Section 106 agreement to require the applicant use their best endeavours to secure the scheme. We cannot secure the works via a condition as they would be the subject of a Traffic Regulation Order requiring a separate consultation process and a Grampian condition would not be justified as there is no highway safety concern.
- 9.16 The internal roads and parking layout will be determined under the reserved matters application. The proposed footways along Scocles Road, along the western edge of the application site and opposite, will be important in providing pedestrians with good access to the existing footpath infrastructure. It is of note that the applicant is proposing a new footway on the opposite side of Scocles Road which will not only benefit the future residents of the development but would benefit existing residents who live along this part of Scocles Road. I have recommended an obligation within the Section 106 agreement to ensure that this footway is provided via a Section 278 agreement. Pedestrians will also be able to use the public footpath ZS6 that passes through the site and the applicant has agreed to contribute towards re-surfacing of the footpath outside of the site with the expectation that the footpath within the site would also be re-surfaced as part of the development. I therefore consider that the development would be served with good pedestrian and vehicular access.
- 9.17 In terms of traffic generation and congestion on local roads, the submitted TS anticipates that there would be 38 peak hour movements and 291 daily movements from the site. This represents an increase of 8% on traffic movements along Scocles

Road. The TS concludes that the impact on local roads would therefore be negligible. The TS promotes the use of a Travel Plan to encourage a reduction in car usage. I have recommended that this is included in the section 106 agreement. Further comments from Kent Highways and Transportation on the traffic movements are awaited and will be reported at the meeting. I anticipate that these will include comments on the possible need for contributions on Lower Road, as indicated in policy A14.

Ecology

- 9.18 Natural England do not object to the application noting that there would be no significant impact on the SSSI and 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.
- 9.19 KCC Ecology have asked for additional survey data to be submitted for reptiles on the site. I have asked the applicant to address this request and Members will note that I have recommended approval subject to, among other things, the receipt of this survey work and further comments from KCC Ecology. Any required mitigation can be adequately addressed through the conditions or obligations within the Section 106 agreement.
- 9.20 With regards to other protected species, the submitted ecology report does not identify any other potential on the site. I have recommended a condition (23) to ensure that biodiversity is enhanced within the development, details of which shall be submitted.

Agricultural land

- 9.21 The application is currently used for the keeping and grazing of horses. This use seems to have taken place for over ten years and may well have a lawful use as such. However, it is possible that the land could still be considered to be of an agricultural use. The application is not accompanied by an Agricultural Land Classification Report but I am aware that much of the surrounding land is graded as 3b (post 1988 Agricultural Land Classification data). Policy DM 31 of the emerging local plan states that development on agricultural land will only be permitted when there is an overriding need that cannot be met on land within the built-up area boundaries. An overriding need in this case is considered to be the housing need of this Borough. Policy DM 31 states that development on best and most versatile agricultural land will not be permitted unless the site is allocated by the local plan. In this case, the site is included as a draft allocation in the emerging local plan. Paragraph 112 of the NPPF states that where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of higher quality. In this case I consider that the overriding argument in respect of the loss of best and most versatile agricultural land is that the need for housing outweighs the need for agricultural land and the fact that this site is included as a draft allocation is of significance.

Section 106 agreement

9.22 The following obligations and contributions are required for this application. The applicant has agreed to a Section 106 agreement to include the following:

- SAMM - £223.58 pre dwelling;
- Primary education - £4,535 per dwelling;
- Libraries - £48.02 per dwelling;
- Community learning - £60.43 per dwelling;
- Youth services - £37.58 per dwelling;
- Social care - £60.99 per dwelling;
- Bins - £92 per dwelling;
- Footpath resurfacing PROW ZS6 outside of the site - £13,640;
- NHS – £52,280 total
- Open space - awaiting comments from the Green Spaces Manager;
- 1 wheelchair adaptable home as part of the affordable housing requirement;
- Travel Plan
- Best endeavours to implement an extension to 30mph speed limit on Scocles Road and 'gateway' scheme.
- Provision of footway along Scocles Road opposite the application site from no. 100 to the junction with Harps Avenue – Section 278 agreement
- Possible reptile mitigation measures;
- 5% monitoring and administration fee

9.23 The applicant is not offering any affordable housing in accordance with emerging Local Plan Policy DM8. As this emerging policy is based on the most up to date evidence, it can be given moderate to significant weight. The adopted Local Plan policy H3 which required 30% affordable housing on all sites of is now considered to be out of date. As such, I do not consider that we have grounds to require any affordable housing on this site.

Other issues

9.24 The submitted illustrative plan show a development of 62 dwellings and does not appear overly dense and does not lead to any significant overlooking or overshadowing within and outside of the site. The final layout and design of the houses will be considered at the reserved matters stage and such detail can be assessed at that point. However, the illustrative plan does provide me with the confidence that a scheme of 62 dwellings on the site would be acceptable.

9.25 The proposal includes the suggestion that some of the dwellings/plots could be developed as self-build homes. The details of this are outlined at paragraph 2.03 above. I acknowledge that emerging policy A14 encourages the consideration of self-build plots and the proposal before Members responds accordingly. The inclusion of self-build plots has been promoted in the past by Central Government as a way of encouraging different ways of increasing housing stock and type. The applicant notes that the Island has a tradition of self-build housing and that this scheme would follow this pattern. Such a proposal is therefore to be encouraged in my view.

9.26 In terms of contamination, surface and foul drainage, I note the comments of relevant consultees and have included conditions to ensure that any issues raised are adequately addressed.

10.0 CONCLUSION

- 10.01 Paragraph 7 of the NPPF identifies three strands to sustainable development - economic (supporting the economy and growth), social (providing strong, healthy, accessible communities), and environmental (contributing to protecting our natural, built and historic environment). In terms of the social and economic aspects of the scheme, the development would provide much needed housing. This Borough does not currently have a 5 year supply of housing as required by National Planning Policy. This site is of great importance in helping to meet the growing demand for housing in the Borough.
- 10.02 In terms of whether the proposals constitute sustainable development, I find that the proposals perform strongly in terms of the social and economic strands and that any harm identified in respect of the environmental strand can be adequately mitigated. I also conclude that the development would be contrary to the adopted Local Plan in respect of development outside of the built-up area boundary but that the development would be in accordance with the emerging Local Plan in that the site is a draft allocation.
- 10.03 Paragraph 14 of the NPPF sets out that, for the purposes of decision taking, 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 or; specific policies within the Framework indicate development should be restricted. I have already identified the key issues above and have considered the impacts against each of the three strands of sustainable development – social, economic and environmental and have concluded that the development would be sustainable. In terms of the paragraph 14 tests, firstly, I do not consider that there are any specific policies within the NPPF that would restrict the proposed development. It is therefore necessary to consider whether there are any adverse impact that would significantly and demonstrably outweigh the benefits.
- 10.04 In terms of the environmental impact of the proposal, I set out above that I do not consider that there would be significant harm to the landscape here and that mitigation in the form of soft landscaping will ensure that landscape harm is limited further. I have discussed the impact of the development on highway safety and amenity and consider that there would be no harm in this respect. In addition, it is anticipated that there would be limited harm to ecology and biodiversity but this is subject to the submission of additional reptile surveys and appropriate mitigation measures if necessary. I have also set out mitigation measures such as ecological enhancements within the site and a contribution towards the SAMM Strategy. The loss of best and most versatile agricultural land is accepted in this case owing to the sites' allocation in the emerging Local Plan for housing.
- 10.05 I therefore consider that the development would be acceptable and, as such, that planning permission should be granted.

- 11.0 RECOMMENDATION – GRANT** Subject to the following conditions and comments from the Greenspaces Manager and any additional conditions or obligations recommended by them, additional reptile surveys being submitted with further comments from KCC Ecology in response and any additional conditions recommended by them, further comments from Kent Highways and Transportation and any further conditions recommended by them and a Section 106 agreement to include items as set out at paragraph 9.21. In addition, authority is sought to amend the planning conditions and to negotiate amendments to the Section 106 agreement as may be reasonably necessary.

Condition:

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 drawings: 619/204, 619/203619/201.

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

5. The details submitted pursuant to condition (1) above shall include an area equal to 10% of the net site area shall be reserved for public open space. Play spaces shall be surfaced and equipped with play equipment, in accordance with a schedule agreed by the Local Planning Authority before development is commenced and shall be provided before the last dwelling is occupied; no permanent development whether permitted by the Town and Country Planning (General Permitted Development) Order 1995 or not shall be carried out in the areas so shown without the prior written approval of the Local Planning Authority.

Reason: To ensure that these areas are made available in the interests of the residential amenities of the area in pursuance of policies E1 and C3 of the Swale Borough Local Plan 2008.

6. No development approved by this permission shall be commenced prior to a contaminated land assessment (and associated remediation strategy if relevant), being submitted to and approved in writing by the Local Planning Authority, comprising:

- a) A desk study and conceptual model, based on the historical uses of the site and proposed end-uses, and professional opinion as to whether further investigative works are required. A site investigation strategy, based on the results of the desk study, shall be approved by the Local Planning Authority prior to any intrusive investigations commencing on site.

- b) An investigation, including relevant soil, soil gas, surface and groundwater sampling, carried out by a suitably qualified and accredited consultant/contractor in accordance with a Quality Assured sampling and analysis methodology.
- c) A site investigation report detailing all investigative works and sampling on site, together with the results of analyses, risk assessment to any receptors and a proposed remediation strategy which shall be of such a nature as to render harmless the identified contamination given the proposed end-use of the site and surrounding environment, including any controlled waters.

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

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

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

- 8. Upon completion of the works identified in the contaminated land assessment, 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.

- 9. Development shall not begin until a detailed sustainable surface water drainage scheme for the site has been submitted to (and approved in writing by) the Local Planning Authority. The detailed drainage scheme shall be based on the recommendations within the report prepared by RMB consulting (August 2016), and 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 on site before being discharged at an agreed rate to the receiving watercourse network; this rate shall not exceed 7l/s/ha and shall be agreed in writing prior to the submission of any related discharge of conditions application.

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

- 10. Development shall not begin 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.

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

11. Prior to the commencement of the development, a Code of Construction Practice shall be submitted to and approval in writing by the Local Planning Authority. The construction of the development shall then be carried out in accordance with the approved Code of Construction Practice and 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.

The code shall include:

- An indicative programme for carrying out the works
- Measures to minimise the production of dust on the site(s)
- Measures to minimise the noise (including vibration) generated by the construction process to include the careful selection of plant and machinery and use of noise mitigation barrier(s)
- Maximum noise levels expected 1 metre from the affected façade of any residential unit adjacent to the site(s)
- Design and provision of site hoardings
- Management of traffic visiting the site(s) including temporary parking or holding areas
- Provision of off road parking for all site operatives
- Measures to prevent the transfer of mud and extraneous material onto the public highway
- Measures to manage the production of waste and to maximise the re-use of materials
- Measures to minimise the potential for pollution of groundwater and surface water
- The location and design of site office(s) and storage compounds
- The location of temporary vehicle access points to the site(s) during the construction works
- The arrangements for public consultation and liaison during the construction works.

Reason: In the interests of residential amenity, highway safety and amenity.

12. 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.

13. Development shall not commence until a drainage strategy detailing the proposed means of foul disposal (including such infrastructure – on and off site – as may be required) and an implementation timetable, has been submitted to and approved in writing by, the local planning authority. The development shall be carried out in accordance with the approved scheme and timetable.

Reason: In the interests of ensuring that the site is adequately drained.

14. No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of:

- i) archaeological field evaluation works in accordance with a specification and written timetable which has been submitted to and approved by the Local Planning Authority; and
- ii) following on from the evaluation, any safeguarding measures to ensure preservation in situ of important archaeological remains and/or further archaeological investigation and recording in accordance with a specification and timetable which has been submitted to and approved by the Local Planning Authority

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

15. 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.

16. The vehicular accesses to the site as shown on the approved drawings shall be constructed and completed prior to the commencement of the first use of the development hereby permitted. The gradient of the accesses 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.

17. The details submitted pursuant to condition (1) above shall include details of a covered secure cycle parking facility shall be submitted to the Local Planning Authority for approval in writing and thereafter provided prior to the occupation of dwellings hereby approved, and retained in perpetuity.

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

18. The details submitted pursuant to condition (1) above shall include 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, the retention and reinforcement of vegetation along the southern and eastern boundaries of the site and an implementation programme.

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

19. All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part

of the development or in accordance with the programme agreed in writing with the Local Planning Authority.

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

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

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

21. The details submitted pursuant to condition (1) above shall include 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.

22. The details submitted pursuant to condition (1) above shall include details 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.

23. The details submitted pursuant to condition (1) above shall include a report demonstrating how the proposal will incorporate measures to encourage and promote biodiversity and wildlife shall be submitted to and approved in writing. Development shall be carried out in accordance with those approved details and shall thereafter be retained.

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

24. The landscaping details to be submitted in accordance with condition (1) above shall include:

- (a) a plan showing the location of, and allocating a reference number to each existing tree on the site to be retained and indicating the crown spread of each tree.
- (b) details of the size, species, diameter, approximate height and an assessment of the general state of health and stability of each retained tree.
- (c) details of any proposed arboricultural works to any retained tree, which shall be carried out in accordance with British Standard 3998 (tree work).
- (d) details of any alterations in ground levels and of the position of any excavation or other engineering works within the crown spread of any retained tree.

- (e) details of the specification and position of fencing and of any other measures to be taken for the protection of any retained tree from damage before or during the course of development

In this condition “retained tree” means any existing tree which is to be retained in accordance with the drawing referred to in (a) above.

Reason: In the interests of protecting existing trees which are worthy of retention in the interests of the amenities of the area.

25. The details submitted pursuant to condition (1) above shall include measures to minimise the risk of crime via measures, according to the principles and physical security requirements of Crime Prevention through Environmental Design (CPTED). The approved measures shall be implemented before the development is occupied and thereafter retained.

Reason: In the interest of Security, Crime Prevention and Community Safety.

26. The details submitted pursuant to condition (1) shall include the submission of a development brief to include a design strategy for the overall site and any self-build plots to be provided on site. This strategy shall include details of the finishing materials, palette of colours, elevational treatment and architectural approach as well as maximum and minimum building heights.

Reason: In the interests of visual amenities.

27. Visibility splays of 43 metres at the proposed northern access into the site, set back 2.4 metres from the edge of the carriageway, at the access with no obstructions over 0.9 metres above carriageway level within the splays shall be provided and maintained prior to use of the site commencing. *Additional text to be added upon receipt of accepted visibility splays for the southern access.*

Reason: In the interests of highway safety and amenity.

28. The footways to be provided along the eastern side of Scocles Road and within the development, should be a minimum of 1.8 metres wide to meet standards outlined in the Kent Design Guide.

Reason: In the interests of highway safety and amenity.

Informative:

1. The applicant should be reminded that planning consent does not confer a right to disturb or divert any public right of way at any time without the express permission of the Highway Authority, in this case Kent County Council’s PROW and Access Service.
2. The applicant/developer should enter into a formal agreement with Southern Water to provide the necessary sewerage infrastructure required to service this development. The applicant/developer should contact Southern Water, Sparrowgrove House, Sparrowgrove, Otterbourne, Hampshire SO21 2SW (Tel: 0330 303 0119) or www.southernwater.co.uk in order to progress the required infrastructure.
3. Kent County Council recommends that all developers work with a telecommunication partner or subcontractor in the early stages of planning for any new development to make sure that Next Generation Access Broadband is a fundamental part of the project. Access to superfast broadband should be thought of as an essential utility for

all new homes and businesses and given the same importance as water or power in any development design. Please liaise with a telecom provider to decide the appropriate solution for this development and the availability of the nearest connection point to high speed broadband. We understand that major telecommunication providers are now offering Next Generation Access Broadband connections free of charge to the developer. For advice on how to proceed with providing access to superfast broadband please contact broadband@kent.gov.uk

The Council's approach to this application:

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

Offering pre-application advice.

Where possible, suggesting solutions to secure a successful outcome.

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

In this instance:

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

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

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’s ecological assessment dated January 2017 and the submitted report entitled ‘Information for Habitats Regulations Assessment’ January 2017 contains information to assist this 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 25th July 2016 has also been considered; in particular that they have raised no objections subject to contributions towards strategic mitigation.

The Assessment of Land at The Slips, Scocles Road, Minster-on-Sea

The application site is located 1.2km to the south The Swale SPA. Therefore, there is a medium possibility that future residents of the site will access footpaths and land within these European designated areas.

Measures are to be taken to reduce the impact on the SPA and these would be built into the development in respect of the provision of public open space.

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

Conclusions

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

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2.2 REFERENCE NO - 16/501266/FULL		
APPLICATION PROPOSAL		
Erection on land to the north of 99 High Street of 124 No. dwellings in total including two storey 2, 3, and 4 bedroom dwellings and 1 and 2 bedroom apartments (2 no. 3 storey blocks) with a new access road from the High Street, pedestrian and cycle link to Church Lane, formal and informal areas of open space and landscaping, car parking and amenity space.		
ADDRESS 99 High Street And Land To The North Of High Street Newington Kent ME9 7JJ		
RECOMMENDATION GRANT subject to the receipt of revised drainage details and further comments from KCC Sustainable Drainage and any additional conditions suggested by them, any further comments from Newington Parish Council and CPRE (closing date 17 th March 2017), further comments from Kent Highways and Transportation in response to the amended plans and further comments from Medway Council in response to the revised Air Quality Assessment, a section 106 agreement requiring contributions as set out in paragraph 9.53 and 9.54 below.		
SUMMARY OF REASONS FOR RECOMMENDATION		
The proposed development would provide housing on a site that is allocated for this purpose within the emerging Local Plan. An assessment of the need for housing in the Borough highlights a requirement for housing sites that are located outside of the built-up area boundary as set out in the adopted Local Plan. The sustainability of the application site has been assessed and it is considered to be acceptable on a strategic and a local level. The economic, social and environmental considerations of the proposed development have been assessed and I have concluded that there would be some harm to human health as a result of an increase in air pollution as a consequence of this development, but that this would be confined to the area of the Rainham AQMA. Mitigation measures will reduce this harm to some degree. I conclude that the need for housing would outweigh any harm arising from air pollution. Subject to the imposition of the conditions listed at the end of the report and the signing of a Section 106 agreement, planning permission should be granted.		
REASON FOR REFERRAL TO COMMITTEE		
Parish Council objection		
WARD Hartlip, Newington And Upchurch	PARISH/TOWN Newington	COUNCIL APPLICANT Persimmon Homes South East Ltd AGENT
DECISION DUE DATE 07/06/16	PUBLICITY EXPIRY DATE 11/10/16	OFFICER SITE VISIT DATE 10/11/16
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites): There is no relevant planning history for this site other than the submission of a request for an Environmental Impact Assessment (EIA) in July 2015. This was determined on 6 th October 2015 concluding that an EIA was not required.		

MAIN REPORT

1.0 DESCRIPTION OF SITE

1.01 The application site immediately lies to the northeast of the settlement of Newington, a village of some 1058 houses approximately 2 miles to the west of Sittingbourne. Newington has a railway station, primary school, village hall, post office, shops, restaurant, and public house. The village is well served by bus routes.

- 1.02 The application site is a total of 7.2ha (17.9 acres) in area and is made up of mostly agricultural land. It includes an access track from the High Street (A2) that is situated between no. 99 and 105. No. 99 High Street is included within the application site and will be retained with some of its grounds used to widen the access into the site. The northern boundary of the site follows the railway line that passes through Newington Railway Station. The eastern boundary of the site seems to follow a hedge dividing this field from the next. The southern and western boundaries of the site meet the rear gardens and other unspecified land to the rear of residential properties within the village of Newington.
- 1.03 A large proportion of the application site is broadly flat and Members will note the submitted topographical survey. The submitted Design and Access Statement describes the site topography as:
- “...the site falls in a north-easterly direction from the south-western corner, rising again in the north-eastern corner towards the railway embankments and the eastern boundary of the site.*
- The railway embankment forms a notable change in levels along the northern boundary of the site and is approximately 5m higher than the application site at its north-eastern corner, rising eastwards to approximately 10-15m higher than the site levels.*
- The southern boundary contains localised changes of level of approximately 1 – 1.5m above the existing agricultural field and adjoining rear gardens fronting High Street.”*
- 1.04 A submerged drain runs north-south across the site and is located approximately 60m to the east of the vehicular access from High Street.
- 1.05 A public right of way ZR59 crosses the eastern part of the land on a north-south axis. This links to a pedestrian crossing point over the railway line. There is also an access from the application site that leads from the western boundary to Church Lane. This is currently used for agricultural access to the application site and part of it is used for access to parking for nos. 40, 42 and 44 Church Lane.
- 1.06 Newington High Street Conservation area lies immediately to the west of the application site at the western boundary. There are a number of listed buildings fronting onto High Street and Church Lane. The closest of these to the application site is The Holly Bank, a grade II listed early 18th Century dwelling which is located 75m to the west of the site. A grade II listed milestone marker lies 58 metres to the west of the proposed access onto High Street.
- 1.07 Newington Village Hall lies adjacent to the western boundary of the site. This has a small public car park that is free to use. There is also a scout hall and hand car wash to the southwest of the site.
- 1.08 The site lies close to the Newington Village Air Quality Management Area (AQMA) and the access to the site would be within the AQMA, 150m from its eastern extent. The site also lies within the Strategic Gap between Sittingbourne the Medway towns and as identified by the adopted Local Plan.

2.0 PROPOSAL

- 2.01 This is a full planning application for 124 dwellings comprising 114 houses and 10 flats (in two separate blocks). The scheme was originally submitted as part detailed and part outline with the details of a D1 (non-residential institution) building to be considered at a later date. The application has been amended by removing this D1 building from the proposal in order to enhance the 'green' spaces within the site and because the end user of the building was uncertain. The amended scheme also sees the inclusion of the two blocks of flats, mainly as a response to the requirement for 40% affordable housing provision on the site, and a slight rearrangement of the layout to address urban design concerns. The resulting layout increases the number of dwellings by 11 (or 9.7%).
- 2.02 Vehicular access into the site would be taken from High Street (A2) directly adjacent to 99 High Street and no. 105 High Street. The proposal would see changes to the A2 at the point of access involving the creation of a ghost island to allow traffic to turn right into the site and the consequent narrowing of the pavements. The original application would have included the demolition of no. 99 High Street and replacement with a new dwelling, but after careful consideration of the costs and necessity of this part of the proposal, the applicant is now seeking to retain no. 99. The access into the site does though need to be wider than it is now and so some of the curtilage land to the eastern side of no. 99 will be used for the access. Pedestrian access to the site would also be provided via public footpath ZR59 and also the track leading to the site from Church Lane. Currently this track serves to provide an access for agricultural vehicles to the fields within this application site and the first part of it is used to gain vehicular access to three properties fronting Church Lane (nos. 40, 42 and 44). This track would provide pedestrian and cycle access to the site and can also be used as an emergency access to the site.
- 2.03 The site layout proposes for the eastern third (3.26ha/9.4 acres) of the site to be provided as formal and informal green space with a children's play area close to the houses and rough grassland, orchard, a pond, and woodland buffer along the northern and eastern boundaries. The open spaces and amenity areas within the site would be open for public use and managed by a management company. It would not be transferred to the Council. The submerged drain would be opened up to form an open water ditch acting to manage surface water in a sustainable way as well as providing a landscape feature. This ditch would be crossed by four pedestrian paths which would link the built area of the site to the open space at the eastern end. A foul pumping station is proposed to be located within the north-eastern corner of the built-up area of the development. Details of this are to be submitted as required by condition. A small electricity substation is also shown to be provided close to the main access into the site and against the rear boundary of 103 High Street.
- 2.04 The layout of the housing development provides a central 'green corridor' running from the eastern open space to a smaller 'green' at the western end of the site. The green corridor has a pedestrian path running along it as well as a row of trees (to be of an appropriate height and species worthy of such an important element of the layout). Another small 'green' would be located halfway along the 'green corridor'. A thick landscape buffer would also be provided along the northern boundary adjacent to the railway line. The main access road through the site would run from High Street and then east-west through the site. Secondary roads and shared surface roads would lead off of this principle road with different surface materials used to differentiate between them. Most properties would have carports and at least one off-road parking space (2 spaces for each 2 and 3 bed dwelling and 3 spaces for each 4

bed dwelling). The flats and some of the houses would have spaces located in parking courts.

- 2.05 The apartment blocks would be 3 storeys high and would be located in two separate central locations within the site. All of the houses would be two storeys or 2.5 storeys high and would have 2, 3 and 4 bedrooms. The architecture would be traditional in respect of their gable and hipped pitched roofs and use of brick and tiles. They would have a rural character with some properties featuring weatherboarding, small dormer windows and chimneys.
- 2.06 The proposal would provide 40% of the units as affordable (49) and these would be spread about the site in four separate clusters of no more than 20 units. The flat blocks are included within the affordable housing provision.

3.0 SUMMARY INFORMATION

	Proposed
Site Area (ha)	7.2ha
Approximate Ridge Height (m)	Max 10.8m
Approximate Eaves Height (m)	Max 8
No. of Storeys	Max 3 min 2
Parking Spaces	24 visitor spaces & 228 on-plot/allocated spaces
No. of Residential Units	124
No. of Affordable Units	49 (40%)
Density of built-up area	31.4 d/ha

4.0 PLANNING CONSTRAINTS

Potential Archaeological Importance

Conservation Area Newington High Street (to west of the site)

Strategic Gap

AQMA

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), 30, 32, 36 (sustainable transport), 42 (supporting high quality communications infrastructure), 47 (delivering a wide choice of high quality homes), 49, 50, 55, 56, 58 (good design), 69, 70, 73 (healthy communities); 103 (flood risk), 109 (air quality), 110, 112 (agricultural land), 118, 119 (biodiversity), 120, 121 (air quality/contaminated land), 122, 124 (air quality), 128, 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): Air Quality; Conserving and Enhancing the historic Environment; 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; Flood Risk and coastal change; Open Space, sports and recreational facilities, public rights of way and local green space.

Development Plan:

- 5.03 The Swale Borough Local Plan 2008 saved policies SP1 (sustainable development), SP2 (environment), SP4 (housing), SP5 (rural communities), SP6 (transport and utilities), TG1 (Thames Gateway Planning Area) SH1 (settlement hierarchy), E1 (general development criteria), E6 (countryside); E7 (separation of settlements); E9 (protecting the quality and character of the Borough's Landscape); E10 (trees and hedges); E11 (biodiversity and geological interests), E12 (designated biodiversity and geological conservation sites), E15 (Developing affecting a Conservation Area); E19 (achieving high quality design and distinctiveness); H2 (new housing), H3 (affordable housing), H5 (housing allocations), RC3 (meeting rural housing needs); C2 (housing development and the provision of community services and facilities); T1 (safe access), T3 (vehicle parking for new development); 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), CP7 (conserving and enhancing the natural environment - providing green infrastructure), CP8 (conserving and enhancing the historic environment), AX6 (land north of High Street Newington), DM6 (managing transport demand and impact), DM7 (vehicle parking), DM8 (affordable housing), DM14 (general development criteria), DM17 (open space, sports and recreation provision), DM19 (sustainable design and construction), DM21 (water, flooding and drainage), DM24 (conserving and enhancing valued landscapes), DM28 (biodiversity and geological conservation), DM29 (woodland trees and hedges), DM23 (listed buildings), DM31 (agricultural land), DM32 (development involving listed buildings), DM33 (development affecting a conservation area), 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

- 5.06 Developer Contributions (2009)
- 5.07 Swale Landscape Character and Biodiversity Appraisal SPD (2011). The application site is identified as lying within the Iwade Arable Farmlands character area – gentling undulating rural landscapes in poor condition with a moderate sensitivity to change. The guidelines recommend that this landscape should be restored.

Other

- 5.08 Land-use Planning & Development Control: Planning for Air Quality. Guidance from Environmental Protection UK and the Institute of Air Quality Management for the

consideration of air quality within the land-use planning and development control process (January 2017).

5.09 Swale Borough Council Air Quality Planning Technical Guidance (December 2016).

6.0 LOCAL REPRESENTATIONS

6.01 We have received 55 representations from local residents. A summary of their comments, which I have categorised for ease of reading, is as follows:

Highways

- Increased traffic through Newington which cannot cope with an increased volume;
- The access is at a narrow point in the A2 where lorries often cause congestion. The new access arrangements would narrow the road and pavements even more and cause a bottle-neck;
- Likely to be queues of traffic leaving the new housing estate onto the A2;
- Children will be unlikely to walk to school from the new housing estate, causing congestion along Church Lane and outside the school. More children would live within the housing development than the Transport Assessment suggests. The TA hasn't addressed the nursery that is based at the school, to which 100% of parents drive;
- The access to the site is in a part of the highway which is dangerous and there have been serious accidents there in the past. Crossing the road at this point would be dangerous as there would be three lanes. Traffic lights are needed at this new access due to the volume of traffic;
- The right of way to no. 103 High Street has been ignored on the plans;
- The realignment of the A2 to accommodate the "ghost lane" will require sacrificing the width of the adjoining pavement. This is a major concern for pedestrian safety next to a busy main road with a high number of HGVs;
- The emergency access onto Church Lane is questionable as this road is already congested;
- The footpath link onto Church Lane is dangerous as it leads straight onto a busy road. It would also become an attraction for anti-social behaviour;
- Commuters park in local roads making them more congested;
- Church Lane is often congested at the railway bridge;
- The development would contribute to junction improvements at M2 Stockbury;
- There should be a road underneath the railway to provide access to the school, church and the north side of the village;
- Headlights from cars leaving the new development will shine into the windows of the house opposite and these residents are concerned about how they might turn right into their drive. They are also concerned about an increase in noise and pollution as a consequence of cars waiting to turn from the A2 into the site;
- Calls for a by-pass of Newington village;
- The conclusions of the Transport Assessment are questioned;
- Have KCC already agreed to the road layout as the signs at the site suggest;
- Emergency vehicles often use the A2 through Newington and any further congestion associated with the development would block their route;
- The erection of bollards at the entrance to the pedestrian and cycle route from the development onto Church Lane will not be possible as there are rights of access for adjacent properties (40, 42 and 44 Church Lane) to access rear parking spaces. If collapsible bollards are provided as shown on the amended plans, how will this be maintained?;

- Two parking spaces per property is not enough;
- Disruption during construction of the access will be significant for pedestrians and motorists.

Environment

- Pollution increased in an area already designated as an AQMA, as a consequence of increased congestion;
- Loss of best and most versatile agricultural land;
- Loss of land for wildlife;
- The development will cause light and noise pollution. The site is within a natural “amphitheatre” and so noise travels well;
- The density and proportion of open spaces is unacceptable in this landscape;
- The design and materials of the construction is unimaginative and typical of the developers pseudo village style, especially for the tightly-packed affordable housing;
- Impact on listed buildings and the Conservation Area;
- Extra housing will increase localised flooding;
- There are no plans for a doctors surgery at the site;
- The site will be subject to surface water flooding from Boyces Hill;
- The development would damage the character of Hollybank, a grade II listed building.

Village infrastructure

- There would be a significant increase in the population of the village of Newington (approx. 15%). This would change the character and fabric of the village. There are also other planning applications for residential development within the village with not sufficient infrastructure to cope;
- Query about the affordable housing proposed and whether it will actually be available to local people;
- Lack of infrastructure in terms of doctors and the local hospital cannot cope;
- Lack of school places;
- Lack of local employment. It makes more sense to build houses in towns, close to places of employment;
- There are very few trains stopping at Newington and no fast trains to London. Residents will have to drive to Rainham.

Residential amenities

- Building works will cause disturbance to local residents;
- Privacy and outlook from the properties along the A2 and Church Lane would be compromised;
- The residents of 103 High Street (adjacent to the proposed access) object on the grounds that there would be noise and disturbance due to vehicles using the new access;
- The development would affect light entering into no. 87 High St;
- Overlooking from 2 storey units, especially where dormers are proposed.

Other

- Newington is becoming a town;
- It is better to development on brownfield sites, of which there are plenty in Swale;
- The development does not benefit the existing local residents, only the developers and land owner;
- There is no provision for soft landscaping to alleviate the intrusive impact of the proposed development;

- The site is likely to be extended to the east towards Keycol Hill in the future;
 - The development is not part of the adopted Local Plan housing allocations;
 - This would be a good place to provide housing. It would be sustainable development;
 - If the village is to expand, it is better to do this to the north of the A2 than to the south;
 - The majority of houses close to the site are bungalows and chalet bungalows. The proposed development would consist of 2 and 3 storey buildings;
 - Greenbelt land should be protected (Members should note that this land is not within the Greenbelt);
 - The demand for housing in London is being met by Kent.
- 6.02 In response to the amended plans, 21 representations have been received. Many of the comments reiterate the comments summarised above. Additionally, they comment: that there would be even more of an impact with the increase in number from 113 to 124; that the layout looks like a rabbit warren; no. 105 High St would be overlooked as it backs on to the development; the development would provide 3 storey flats and would be high density and would set a precedent, contrary to the emerging draft allocation policy and out of character with the village; detrimental impact on no. 105 High St as a result of noise and; fumes and disturbance from the use of the access into the site. They also express concern about the length of time allowed for the re-consultation.
- 6.03 Cllr J Wright – Ward Members for Hartlip, Upchurch and Newington objects to the application on the grounds that the land is not allocated within the Local Plan or the emerging Local Plan (This is not the case. The site is within the emerging Local Plan). He considers that there are better and more sustainable sites available. He has safety and congestion concerns about the proposed access to the site and extra traffic will increase pollution in his view. Additional pollution would impede the brickearth extraction at Paradise Farm as the cumulative impact would exceed permitted pollution levels. Why is section 106 money going out of the village when there is a need within the village? Issues about the safety of Church Lane have been ignored. Visitor parking does not seem to take account of commuter parking or visitors to the proposed parkland. The cumulative impact of this development with other approved developments does not seem to have been properly considered by Highways England.
- 6.04 Gordon Henderson MP for Sittingbourne and Sheppey strongly supports the residents of Newington and others in opposing the application because the site is not included within the Swale Borough Local Plan 2008 nor the emerging Local Plan (Members should note that this site is included as a housing allocation in the emerging Local Plan).
- 6.05 CPRE object to the application on the following grounds:
- Whilst the Government's policy to significantly boost the supply of housing is a material consideration, the duty to consider this application against the adopted Local Plan still applies, even if the NPPF judges the policies out of date;
 - It is clear that the proposal is not in accordance with the development plan;
 - The proposal would also seem to conflict with the settlement strategy within the emerging Local Plan which describes Newington as having poor pedestrian connections between north and south of the village, restricted internal road network, poor air quality and surrounding high quality agricultural land as well as valued landscapes and heritage;

- There are grounds for refusing the application on prematurity as the development would undermine the emerging Local Plan which should identify sites and allow time for proper scrutiny and proper consultation. Also, the application needs to be considered in the context of the cumulative effect of other planning applications in Swale. The Council should strongly resist speculative development such as this in order to ensure sustainable patterns of development;
- Detrimental impact on the landscape and the character of the village setting;
- Should the application be approved, habitat enhancements should be incorporated into the development as well as: ensuring that the open space to the east is included within the management; wildlife corridors should be enhanced; the landscaping masterplan should include the pond that the SUDs report recommends and uncertainties about the drainage should be resolved;
- Loss of best and most versatile agricultural land;
- The Heritage Assessment needs to be improved to assess the detailed proposals. The proposal would go against the historic pattern of development in Newington Conservation Area. The application fails to provide sufficient evidence to demonstrate that there would be no harm to the setting of listed buildings close to the site;
- Detrimental impact on the AQMA. The mitigation measures are wholly inadequate. The cumulative impact on the traffic from this proposal with other development should be considered. The development will be car dependent;
- The submitted HRA fails to take account of the cumulative effects of the development on the North Downs Woodlands which already exceeds maximum critical levels of nitrogen pollutants;
- The proposal would fail to constitute sustainable development.

6.06 Swale Footpaths Group comment that public footpath ZR59 would not be affected by the proposal but as always, the upkeep of any new footpaths, cycleways etc. needs to be established.

7.0 CONSULTATIONS

7.01 Newington Parish Council object to the application on the following grounds:

- Loss of high quality agricultural land. Poorer quality agricultural land should be used instead;
- The land forms a natural boarder to the village and the proposal would result in 'urban sprawl'. Reference is made to an appeal decision which considers this issue;
- The land was not included in the site allocations for housing in the emerging Local Plan (Members should note that these comments post-date the modified emerging Local Plan in which this site is included);
- The site is adjacent to High Street and Church Lane Conservation Areas;
- this is not sustainable development with poor public transport and a lack of amenities such as a dentist and doctors;
- the development would increase the risk of flooding within the site and/or the properties on the north of the High Street;
- the A2 is a busy road used by HGVs, buses and school traffic. The new access arrangements with 3 lanes would be dangerous to pedestrians and motorists. Narrowing the pavement here to 1.5m will be dangerous for pedestrians, particularly those who use mobility scooters and those who have buggies. Two buggies could not safely pass one another and HGV wing-mirrors would overhang the pavement;

- an increase in population would result in more pressure on the local hospital which is already in special measures;
- the development would result in an increase in air pollution. An increase in traffic would lead an increase in noxious fumes;
- the footpath link to Church Lane would become a focal point for anti-social behaviour;
- commenting on amended plans, they acknowledge that the applicant has sought to address the concerns of local residents, they consider that the overall concept is ‘fundamentally flawed’;
- there would be added congestion to the roads at peak times and the £94,000 offered for improvements to the Key Street roundabout will do nothing to alleviate the problem here and further onwards to Sittingbourne and the Stockbury roundabout. Traffic from this site will add to other developments planned with access to the A2 and;
- concerns about education contributions going towards a school outside of the village.

In response to the amended plans, Newington Parish Council make the following additional comments:

- The planned expansion of Newington is flawed on a strategic level as local services cannot sustain further development and the spilt between development in the Thames Gateway and Faversham is out-of-date. Additional villages should become Rural Local Service Centres instead of compounding problems in its towns and villages;
- The allocation of development here does not comply with policy ST3 which directs development to previously development land. The development would harm that settlement pattern and the character of the countryside.
- The proposed site is designated as best and most versatile agricultural land and development would be contrary to paragraph 112 of the NPPF and the council’s own policies of protecting this land;
- The proposal would be likely to have at least a moderately adverse impact on air quality in Newington and Rainham AQMAs and therefore a significant effect on human health. There is no evidence to demonstrate the effectiveness of mitigation measures proposed. They note the recent EC decision to issue a final warning to the UK over failure to reduce NO2 levels with the threat of referral to the European Court of Justice;
- Newington is a village and the residents wish it to remain one. The already approved and planned development in the village would increase the population considerably. Newington Primary School is already close to capacity and cannot expand due to traffic expansion;
- Public transport to and from Newington is limited – one slow train per hour to London or Dover, a poor bus service and no buses at all on Sundays;
- There is no doctors or dentist in Newington;
- The proposed flats do not have a lift and are unsuitable for the elderly, disabled and families with young children;
- The access onto the A2 would be too narrow and dangerous and pavements would also be too narrow;
- Congestion on the A2 and junctions to the A249 would be made worse;
- Nearby residents have suffered frequent rainwater and foul sewage flooding due to the incline of Boyces Hill and the sewage infrastructure;
- The Ellens Place application, opposite the application site, was refused planning permission and they believe that the same reasons apply for the application site.

- 7.02 UK Power Networks have no objection to the proposal.
- 7.03 Kent Police note that the applicant has considered crime prevention that the developer has met with them to discuss the proposal. Secure by Design principles should be included in the development and a condition is recommended to secure this.
- 7.04 Natural England have no objection to the proposal. They note that the site is in close proximity to the Swale SPA and Ramsar site. This is also designated as a SSSI. A Habitats Regulations Assessment should be undertaken by SBC Planning. However, based on the information provided, Natural England consider that the proposals are unlikely to have a significant effect on these sites and can therefore be screened out from any requirement for further assessment. This is providing the development makes the necessary contribution towards the Thames, Medway and Swale Estuaries SAMM Strategy to provide appropriate mitigation towards recreational disturbance of birds within the SPA. Natural England also advise that the SSSI does not represent a constraint in determining this application and refers to their standing advice on protected species. They also recommend biodiversity enhancements. Commenting on the amended plans they consider that the development is unlikely to have significantly different impacts on the natural environment than the original proposal.
- 7.05 Network Rail comment on the application noting that the developer must ensure that their proposal, both during construction and after completion of works, does not encroach on their land, affect safety, operation or integrity of the railway line and its infrastructure, undermine its support zone or affect it in any other way. Future maintenance must be conducted solely on the applicant's land. All buildings should be at least 2m from Network Rail's boundary. No surface water or effluent should discharge from the site into Network rail's property. Foul drainage must be provided separate from Network Rail's existing drainage. Soakaways must not be constructed near/within 10-20metres of their boundary. During construction, no plant should be capable of falling within 3 metres of their boundary. Any scaffolding within 10metres of their land should not over-sail the railway and protective netting should be installed. Details of any piling will need to be agreed with them. The developer must provide a suitable trespass proof fence along the development side of the existing boundary fence to a minimum height of 1.8m. Its future maintenance should be secured by the developer. Any lighting for the proposed development should not interfere with the sighting of the signalling apparatus and/or train driver's vision. Their approval of the detailed lighting scheme is required. They asked to be involved in the approval of landscaping scheme where landscaping is proposed close to the track. The applicant is advised to contact the Asset Protection Manager.
- 7.06 The KCC Public Rights of Way Officer notes that public right of way ZR59 would be directly affected by the proposed development. They have no objection to the proposed development but have requirements for future maintenance if the proposal is approved. The proposed pond should be located so that it does not obstruct the public footpath or create potential drainage issues. Any vegetation close to the public right of way should be cut on a regular basis.
- 7.07 Southern Gas Network note that a low/medium/intermediate pressure gas main lies close to the site. There would be no mechanical excavations taking place above or within 0.5m of the gas main, or above or within 3m of an intermediate pressure system.

- 7.08 Southern Water note that they cannot accommodate the needs of the development without the provision of additional local infrastructure to reduce the risk of flooding and to supply water to the site. An appropriate condition is recommended. There are no public water sewers in the area to serve the development and there must be an alternative means of surface water disposal. The proposal refers to the use of SUDs. The developer should ensure that there are provisions for the maintenance of this system. The adequacy of the soakaway and drainage via the watercourse should be assessed.
- 7.09 KCC Sustainable Drainage note that the drainage strategy for the site in general is acceptable. They note that infiltration is likely to be suitable and should avoid exacerbating downstream flooding but require further detail on this. Soakaways should discharge into Chalk. Commenting on the revised layout and updated Flood Risk Assessment, they object to the scheme noting that there would be a significant increase in the use of permeable pavement and geocellular soakaways/attenuation storage shared across back gardens. The placement of drainage within the private properties could be a problem for future maintenance. The use of roofwater soakaways in central and western parts of the site is encouraged to tackle this problem. The greater depth of superficial deposit in the eastern side of the site may require the use of offsite discharge. The statutory undertaker will also be likely to object to adoptable pipework being sited under permeable paving. This may impact on the layout. Commenting on a written response from the applicant they strongly recommend that attenuation and discharge features are located within open spaces and common areas. This simplifies access and any future repair or maintenance requirement. The present layout does not lend itself to achieving this with a gravity discharge. They do however note that it may be possible to promote the use of individual property roof water soakaways to help solve this problem in the areas of the site where infiltration is more viable. Some areas will still need to consider the issues above. Further comments are anticipated upon receipt of the amended drainage details to address their previous comments.
- 7.10 The Lower Medway Internal Drainage Board state that provided that surface water runoff is restricted to that of the Greenfield site with on-site storage to accommodate the 1 in 100 year rainfall event, ideally by the use of open SUDs, the Board's interests would not be affected. Details of surface water drainage should be required by condition. They suggest that open SUDs are better than the closed systems proposed.
- 7.11 Kent Highways and Transportation comment that the Transport Assessment has been prepared in consultation with them and Highways England and that the methodology used is appropriate. The figure generated for the predicted vehicle trip rates are considered to be accurate and would equate to less than 2% of the total number of vehicles passing through the village at the AM peak, well within the limits set out in the NPPF. Along with other local developments, this proposal should contribute towards an improvement scheme to increase capacity and manage traffic more efficiently through the Key Street roundabout. Highways England has calculated a contribution of £94,864 (now amended to £102,487) for this development. The proposed "ghost island" with a right turn filter lane would be appropriate for the new access and the resulting narrowing of the footway to 1.5m would be acceptable. The narrower lane widths would actually be wider than some of the many other right turn lanes along the A2 between Rainham and Sittingbourne and this is a 30mph stretch of the road. Infrequent use of this right filter lane by HGVs is considered to be acceptable. The design of this junction has been the subject of a Stage 1 Road Safety Audit which did not identify the narrow lanes as being an issue. In response to the latest set of amended plans, they comment that

the new parking arrangement would meet the quantum suggested in current standards but would be lower than had previously been proposed. However, they note that the internal roads would not be adopted by them and so any parking issues would not be their responsibility. However, they do offer advice on how the parking arrangement could be improved. This includes increasing the number of visitor spaces where tandem spaces are relied upon and along two particular lengths of road, changing the footway along the main access to the opposite side of the road. They note the update Transport Assessment and consider that the findings are accepted and that there would be no material impact on the highway network. They have no objections subject to condition to ensure that the access and changes to the junction are provided prior to occupation, that adequate provision is made for contractor parking during construction, management of surface water so as to prevent spillage onto the highway, to prevent mud on the highway during construction, the provision and retention of parking space, completion of footways and carriageways prior to occupation, provision of cycle spaces and pedestrian visibility splays. Further comments on the revised parking layout with increased visitor spaces are awaited and will be reported at the meeting.

- 7.12 KCC Archaeology comment that the site has potential for prehistoric and Roman remains with high potential for Roman remains close to the public footpath that crossed the site to the east. There may also be a cemetery here and if so, this should be preserved and referenced in the landscape masterplan. There should be a programme of archaeological evaluation and appropriate mitigation which would involve preservation in situ or archaeological excavation. A suitable condition is recommended.
- 7.13 The NHS (Strategic Estates) confirm that there is no intention to develop a GP facility in this area as they would normally seek to put funding into existing infrastructure rather than build new facilities unless the size of the development is such that a new facility is warranted. The Meads Practice operates out of a purpose built facility which is now operating at capacity and does have the potential to develop facilities to register additional patients. As the proposed development has details of the number of dwellings/bedrooms, they are able to calculate an exact figure for a contribution towards the expansion of The Meads Practice. This totals £124,200.
- 7.14 KCC Planning (Minerals and Waste) refer to the submitted LEAP Environmental Report and note that there is little or no definable brickearth present on the site. The report concludes that any brickearth present is unlikely to be of any economic value. They note that Wienerberger Ltd should have ideally been consulted in coming to this conclusion but KCC believe that the application for development on this site satisfies exemption 1 of Policy DM7 in the Kent Minerals and Waste Local Plan 2013-2030 in that 'the mineral is not of economic value or does not exist.'
- 7.15 The Environmental Services Manager comments on air quality, land contamination and noise. The findings of the noise report are accepted. Conditions to address the presence of contaminated land on the site and remediation thereof are suggested. A condition is also recommended to require the submission of a Construction Code of Conduct. With regards to air quality, he accepts the damage cost calculation of £151,133 as an improvement on the previous figure offered. In his latest comments he states:

"When comparing this figure against predicted NO₂ concentrations in 2021, both with- and without the development, the impact is considered negligible in Newington for all 12 receptors, with none of these points experiencing more than a 1.0% change, and none higher than 92% of the AQ objective. In Rainham it is

predicted to be between slight and moderate, depending on the location in question. Here the figures were up to 148% of the AQ objective value.

*Because of this prediction, in Newington this impact is **not considered significant** referring to the guidance in section 7.6 of the EPUK Planning Guidance 2017.*

This is a change from previous assessments, where a slight to moderate impact was predicted for Newington. The data has been rigorously discussed, checked and modelled again and the most recent 2015 data now used. The impact on Rainham has also been applied and shown to be more significant than in Newington.

Despite the lower significance of the latest assessment, the applicant is keen to retain the level of mitigation described previously, as they consider that it will not only assist the Newington, but also the Rainham AQMA.

To accompany the lower significance of the development in Newington, the damage costs have been correspondingly reduced from that previously offered. The figure now stands at £132K. Some of this figure will be put aside for further air quality monitoring-related activities with discussions to follow.

I have considered this application very carefully over a period of time and have seen an improvement in the clarity and quality of the data presented in each succeeding version of their air quality assessments.

I am now satisfied that the applicant has done everything reasonably possible to demonstrate that the impact on local air quality is negligible in Newington, despite the presence of a nearby AQMA. In addition, the suggested mitigation measures are being retained and can only assist the situation further.

The latest data appears to show a greater impact on the Rainham AQMA than Newington. I therefore do not object to this proposal.”

- 7.16 The Environment Agency have no comment on the application as it is not in a flood zone or near a river or source protection zone.
- 7.17 The Greenspaces Manager notes that the amenity space is a little limited in terms of usability for ball games, however, the natural greenspace is significant. There is a lack of play facilities provided and he seeks some formal, perhaps natural play elements within the natural greenspace (the amended plans provide this). In addition, a contribution of £511 per dwelling is sought towards Newington Recreation Ground. Clarification on the transfer of open space to the Council is required and a contribution towards maintenance of this land if necessary (the open space is to be transferred to a management company).
- 7.18 Highways England comment that the proposals have the potential to impact on the safe and efficient operation of the Strategic Road Network (SRN) in this case the A249. The development would generate 56 trips in the AM peak and 56 trips in the PM peak at the A2/A249 Key Street junction. The conclusions of the submitted Transport Assessment that there would be no impact is not accepted and they consider that the junction would operate over capacity in the peak hours by 2021. As a result the Key Street junction will be adversely affected and mitigation will be necessary. On the basis that this development contributes to improvements to this junction, Highways England have no objection. This approach is in line with other developments that would have an impact on the Key Street junction. In response to the amended plans and updated Transport Assessment they are satisfied that the

amended proposals will not materially change the scale of impact compared to the amended proposal. Their previous comments still apply therefore with an increase in the amount requested for junction improvements to £102,487.

- 7.19 KCC Ecology comment on the application and advise that there is sufficient ecological information to determine the application. They note that because the majority of the site boundaries would be retained, there would be no loss of foraging/commuting habitat for bats. However, the lighting within the scheme should be designed to minimise the impact on bats/site boundaries. The Suitable Alternative Natural Greenspace (SANG) will increase the foraging habitat for bats if managed properly. There is evidence of foraging badger within the site and there needs to be measures in place to ensure that this can continue. Access between the grassland/scrub buffer and scrub area within the SANG for badgers will need to be provided and the proposed dog-proof fence amended accordingly. Any works to the site boundaries should be carried out outside of the bird-breeding season or that an ecologist is appointed to examine the site and that work ceases if birds are found. If managed correctly, the SANG will create habitat which will benefit biodiversity. However, the submitted management plan is not sufficiently detailed. A condition is recommended to ensure that a detailed SANG management plan is submitted. The submitted Habitats Regulation Assessment is noted and its conclusions that the development will avoid a likely significant impact are accepted providing that the SANG is provided and contribution is made towards the Strategic Access Management and Monitoring plan (SAMM). In response to the amended layout, they note that there is potential for bats to roost in trees 18 and 20 and that there is a need for climbing surveys to assess their suitability for roosts. Following the submission of the climbing surveys, KCC Ecology are happy for the removal of overhanging branches to tree 18 with the need for additional information. However, for tree 20 there is potential for bat roosts in the overhanging branches. As such, they recommend a condition to require a further assessment prior to the tree works being carried out and suggest a suitably worded condition.
- 7.20 KCC Economic Development (Education contributions) seek contributions towards primary and secondary schools (both new schools at Quinton Road), community learning, youth services, libraries and social care. They also ask for superfast fibre optic broadband to be provided for all properties within the site.
- 7.21 The Strategic Housing and Health Manager seeks 40% affordable housing with a 70:30 split of social rented : shared ownership and accept that this equates to 49 affordable dwellings. The distribution of affordable housing across the site is accepted. A proportionate mix should be provided across each phase of development if it is to be phased. They seek a small number of wheelchair adaptable homes, the number of which would be agreed with the preferred Registered Provider.
- 7.22 Medway Council object to the proposal on the grounds that the Air Quality Assessment does not consider the impact of the development on the Rainham Air Quality Management Area. They also consider that the development might lead to extra pressure on schools within their administration and that contributions towards education should be made to them. Medway Council have been consulted on the amended Air Quality Assessment and I will update Members at the meeting.

8.0 BACKGROUND PAPERS AND PLANS

Agricultural Land Classification and Soil Resources; Air Quality Assessment; Arboricultural Impact Assessment; Arboricultural Method Statement; Ecological

Assessment; Energy & Sustainability Statement; Flood Risk Assessment; Habitats Regulations Assessment; Heritage Statement; Historic Environmental Assessment; Landscape and Visual Appraisal; Noise Assessment; Planning Statement; Statement of Community Involvement; Transport Assessment; Travel Plan Framework; Desk Study Investigation Report (contaminated land); Design and Access Statement; topographical survey plans; proposed site layout; landscaping masterplan; strategy plans; elevations; Development and Air Quality Update.

9.0 APPRAISAL

Principle of Development

Planning Policy and the Housing Land supply position

- 9.01 For the purposes of the development plan, the site is located outside of the built confines of Newington and falls to be considered as within the countryside and a Strategic Gap. Policy E6 of the adopted local plan seeks to protect the quality, character and amenity of the countryside. Policy E7 of the adopted local plan seeks to prevent development that would result in the merging of settlements or the piecemeal erosion of land or its rural open and undeveloped character or prejudice the Council's strategy for the redevelopment of urban sites. Policy SP4 seeks to provide sufficient land for housing need, policy SP5 seeks to protect the quality and character of the wider countryside and policies TG1, 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. Outside of these, new residential development will only be granted for certain limited exceptions. The application site being outside of the built-up area boundary would be contrary to the above policies, with the exception of policy SP4, and not in accordance with the development plan.
- 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 or; specific policies within the Framework indicate development should be restricted.
- 9.03 Paragraph 47 of the NPPF seeks to significantly boost housing supply, and requires Local Planning Authorities to meet full objectively assessed needs for housing in their area, and to identify and update a supply of deliverable sites to provide a five year housing supply. Paragraph 49 of the NPPF clarifies that policies for the supply of housing should be considered out of date if the LPA cannot demonstrate a 5 year supply.
- 9.04 Based on current Objectively Assessed Needs (OAN) for housing within the Borough, we require 776 dwellings per annum. The council cannot currently demonstrate a 5 year housing supply on this basis as the supply figure currently sits at 3.8 years' worth. Given that the Council cannot demonstrate an existing 5 year housing supply, and policies for housing delivery pre-date the OAN, they must be considered as out

of date. For clarity, these out-of-date policies are: SP5, TG1, SH1, E6, E7 and H2, although it should be noted that they should not be given no weight at all.

- 9.05 The emerging local plan is has now completed its examination in public (closed 9th February), and following the Inspector's interim findings, the Council has sought to significantly boost its housing allocations to meet objectively assessed housing needs as modifications to the emerging Local Plan. One of the additional sites identified to meet this housing need is the application site and is a draft allocation under Policy AX6. This policy states that planning permission will be granted for a *minimum* of 115 dwellings along with a large area of green space in the eastern third and green corridors through the site. The decision to allocate this site within the emerging local plan followed a number of steps. Firstly, the site was assessed in the 2014-15 Strategic Housing Land Availability (SHLAA) in the context of a lower housing target. At that time, whilst landscape and traffic issues were considered capable of being addressed, the presence of the AQMA and the distance to a GP surgery meant that the site was not considered suitable. Following the Inspector's interim findings and the increase in the overall housing target, the SHLAA was subject to a 2016 addendum which required the site (and others) to be re-assessed. This was published in June 2016 and re-considered the two main constraints of the AQMA and access to medical facilities. In respect of the access to medical facilities, the SHLAA concluded that a 'flexible' interpretation could be used here because existing residents of Newington already need to travel to access medical facilities. With regards to the AQMA, the site's location on the eastern side of the village meant that the majority of traffic from the site intending to access the strategic road network would not pass through the village, therefore avoiding travelling through the majority of the AQMA. It should be noted that this assumption is supported by the Transport Assessment submitted in support of this application. The critical need for housing sites was therefore considered to outweigh the impact of the two identified constraints and the site was identified as potentially being acceptable for allocation. The 2016 SHLAA concluded:

"...this is an excellent opportunity for high quality housing in a semi-rural location which is likely to prove popular with developers and purchasers."

- 9.06 The site was secondly assessed under the Sustainability Appraisal of the Swale Borough Local Plan June 2016. This assessment concluded much the same as the 2016 SHLAA with regards to the impact on the AQMA but noted that there is potential for 'in combination effects'. It also highlighted the proximity of the site to the Conservation Area and the need to address the impact on this heritage asset. However, it was also noted that the site has a good relationship with the village centre and train station (via the footpath link to Church Lane). The site was also ranked well, at 21 out of 115 within the ranked assessment of non-allocated options to inform modifications to the Swale Borough Local Plan June 2016 (AECOM). Thirdly, the report to the LDF Panel on 19th May 2016 compared this site to other sites to the west of the village and noted that it was better in terms of landscape, heritage and air quality impacts.
- 9.07 Consultation on the modifications to the emerging local plan, including policy AX6 which allocates the application site for housing, took place over the summer of 2016. A further examination of the emerging Local Plan took place in February this year with the Council seeking to demonstrate that it can meet its full identified housing needs and a 5 year supply. A number of policies within the emerging plan seek to deliver housing development in order to meet the OAN for housing in the Borough. These policies are ST1 (sustainable development including delivery of homes to meet OAN), ST2 (delivery targets), ST3 (Swale settlement strategy), ST4 (site

allocations to meet OAN), and ST5 (Sittingbourne area strategy) to provide housing at sites within the urban and village confines, or as urban extensions to settlements where indicated by proposed allocations.

- 9.08 Against the emerging Local Plan, the Council's published statement of housing land supply for 2015/16 shows the Council to have a five year supply of 5.4 years. However, at this time the Plan has not yet been found to be sound. I can therefore only attach limited weight to this changed position, other than to note the important point that the achievement of this land supply has been assisted by the allocation of the application site and that without it, this supply would be inevitably reduced.
- 9.09 Paragraph 216 of the NPPF sets out that decision makers may give weight to emerging plans, depending on the stage of preparation of the plan (the more advanced, the greater the weight), the extent to which there are unresolved objections, and the degree of consistency of relevant policies to policies in the NPPF. In this case, the emerging plan policy AX 6 received a relatively large number of objections from local residents, the Parish Council and CPRE. Although these representations remain outstanding, I am of the opinion that the soundness of the evidence base supporting the Local Plan means that material weight should be given to the emerging plan and in terms of the Council's support for the sites that it has allocated to meet the overall OAN and demonstration of a five year housing supply.
- 9.10 Given the fact that the application site is included as a draft allocation within the emerging local plan, I do not consider that it would be premature to approve development on this draft allocation site prior to the adoption of the emerging Local Plan, particularly given the overall need for housing and the Council's 5 year supply position. Planning Practice Guidance clarifies that refusal on the grounds of prematurity would only be justified if the development would undermine the plan-making process. In this case, this draft allocation site has been chosen having followed the approach to the settlement hierarchy set out in the emerging Local Plan, which the examination inspector has endorsed. Therefore I consider that granting planning permission at this stage would not prejudice the plan-making process.

Local infrastructure

- 9.11 The site is within walking distance of a number of amenities within Newington, including a primary school, post office, convenience store, train station and community hall. The proposal includes a pedestrian/cycle link between the site and Church Lane which would provide direct access to the centre of the village which would cut-down walking times to the primary school and train station. Even without this link to Church Lane, the walking distance if using the main access onto the A2, would still only be approximately 1km. I acknowledge that the local primary school as oversubscribed. Unfortunately, this situation is not uncommon within Kent. KCC have asked for contributions towards a new primary school at the allocation known as North-west Sittingbourne (Quinton Road) to cater for an increase in population as a result of new housing developments and so it considered that, at a strategic level, the numbers of primary places available to residents of this part of the borough would be sufficient. I understand that, currently, some of the children who are allocated places at Newington Primary School live outside of the village. If this development is approved, it is likely that children who live in the village will be given preference, including those living on this new estate, with children living outside the village being given places elsewhere when applying for a primary school place.
- 9.12 The lack of a doctors' surgery within the village is disappointing but is not fundamental to the acceptance of this development in my view. The NHS have

confirmed that they do not consider the provision of a new surgery within the application site to be necessary and there are doctors surgeries in Rainham and on The Meads, both a 5-10 minute drive from the application site.

Loss of agricultural land

- 9.13 The application is accompanied by an Agricultural Land Classification Report which confirms that 76% of the site is Grade 2 and 24% is grade 3A and so falls within the 'best and most versatile' category. Policy DM 31 of the emerging local plan states that development on agricultural land will only be permitted when there is an overriding need that cannot be met on land within the built-up area boundaries. An overriding need in this case is considered to be the housing needs of this Borough. Policy DM 31 states that development on best and most versatile agricultural land will not be permitted unless the site is allocated by the local plan. In this case, the site is included as a draft allocation in the emerging local plan. Paragraph 112 of the NPPF states that where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of higher quality. The applicant argues that the majority of agricultural land around Newington is best and most versatile and therefore to accommodate the development needs of the Borough, it is inevitable that development will have to take place on said land in the absence of poorer quality land. In this case however, I consider that the overriding argument in respect of the loss of best and most versatile agricultural land is that the need for housing outweighs the need for agricultural land and the fact that this site is included as a draft allocation is of significance.

Visual/landscape Impact

- 9.14 The application is accompanied by a Landscape and Visual Impact Assessment (LVIA). This assesses the landscape impact from different scales – national (North Kent Plain), Kent (Fruit Belt) and local (Iwade Arable Farmlands). This notes that the southern boundary of the Area of High Landscape Value is located approximately 310m to the north of the application site and is separated from the site by the railway line and an expanse of vegetation. The LVIA considers that the site does not contain any particularly unique landscape characteristics which cannot be found elsewhere within the study area or wider landscape and the character of the site is influenced heavily by the adjoining developed land a Newington to the south and west. It is largely protected in views by the railway line and its embankments to the north and by Keycol Hill to the east. Glimpsed views of the site would be mainly from motorists, cyclists and pedestrians travelling along the A2 and High Oak Hill and users of the public rights of way – ZR59 (which passes through the site), ZR58 (to the east of the site) and ZR38 (to the west of the site Mill Hill) as well as passengers of the trains travelling along the railway track and properties backing onto the site. Overall, the LVIA concludes that the site would have a small and contained visual envelope and that as a result it would affect only a limited number of individuals on a local scale. I agree with these findings.

- 9.15 The report concludes that:

“Although the development would result in a change to the character and appearance of the site and would cause a reduction in the amount of agricultural land and a corresponding increase in the settlement area to the north-east of the village, the general relationship between the existing settlement of Newington and the surrounding rural landscape would not be fundamentally altered.”

- 9.16 The north, south and west boundaries of the site enclose the site with residential properties and the railway line which is on a raised embankment. The site also sits lower than the land to the east meaning that the built-up element of this development would sit in a pocket of land that would be protected from view from a significant number of viewpoints. It would be seen within the context and against the backdrop of Newington village. The submitted report concludes that adverse impacts would be minor and on a local scale which could be mitigated through a landscape buffer to the eastern boundary.
- 9.17 There is no doubt that the loss of open countryside would lead to some harm to the landscape on a local level. However, the inclusion of a robust landscaping scheme through the site and around the edges of the built up part of it would go some way towards softening its impact. Also, a significant part of this scheme is the inclusion of the open space to the eastern third of the site. This open space would cater for both recreational use and ecological enhancements. The public right of way that cuts through this open space would also be incorporated into it and there would be a circular walk around the space which is intended to cater for dog walkers.
- 9.18 The layout of the development has also sought to introduce tree-lined 'green corridors' as encouraged by the draft policy allocation AX6. There are pedestrian links running through the development between the open space to the east and the 'green' to the west. The scheme as amended has a rural feel with roads that are less dominant than the original plans had shown. The architecture of the dwellings offers a good mix of housing types and forms, all of which are of a vernacular that reflects a more traditional rural village character. Finishing material such as weather-boarding and, tile hanging and slate roof. I consider that this design, layout and architecture is appropriate for this area and that it responds well to emerging policy AX6. Amended plans have been submitted to address some concerns in respect of design i.e. introducing windows in some flank elevations, adding interest in terms of the pallet of materials to some of the terraces and, introducing trees/hedges to some of the parking areas. I consider that the proposed scheme would be of a good design overall.

Residential Amenity

- 9.19 The proposed development would undoubtedly increase noise, activity and levels of light within the site when compared to its current use as an agricultural field. However, this would be entirely associated with residential use and informal recreational use of the open space which is not considered to be a 'bad-neighbour' in planning terms. In terms of the proximity of the proposed houses to existing residential properties fronting High Street and Church Lane, I consider that there would be a sufficient distance allowed to avoid any harmful overlooking, overshadowing or an overbearing effect. I have given careful consideration to the impact in terms of noise and disturbance caused to the residents of nos. 99 and 103 High Street as a consequence of vehicles using the new access into the site. There will no doubt be an increase in noise experienced by these properties. However, I do not consider that this would be significant in comparison to the road noise already experienced from the High Street. The new access would be adjacent to the flank elevation of no. 99. There is one high level ground floor flank window and a non-habitable first floor window within the flank elevation of this property. It is likely that cars would be travelling at a slow speed at this point thereby reducing noise impact. The submitted noise survey predicts that for the rear garden of no. 103 High Street, the road traffic noise levels from the A2 would increase by 4 db. However, it notes that the worse-case scenario would not see noise levels exceed 55 db, which is considered to be acceptable (according to British Standard 8233:2014). The plans

show that there would be a landscaped buffer provided between the new access and no. 103 High Street and I consider that this would limit any noise impact further.

- 9.20 Concern has been raised in respect of car headlights shining into properties facing the new access. Such an impact, if it were to occur, would not be a constant source of irritation to the extent that it would become a nuisance in my view, noting that such circumstances are unavoidable in housing layout designs.
- 9.21 A noise survey has been submitted with this application to consider the impact of noise from the railway line to the proposed dwellings as well as noise from the A2. It states that levels of railway noise at the development are expected to be lower than shown on the noise contours set out in the report and that in practice, railway noise levels are expected to be satisfactory. Properties close to the railway have been mostly positioned to face towards it so that the dwellings themselves can act as a noise buffer for the rear gardens. No vibration was perceived at the railway noise monitoring position. Noise levels from the A2 are also predicated to be acceptable in most cases. The Environmental Services Manager accepts the findings of the report, which recommends specifications for glazing, trickle vents, mechanical ventilation and wall construction to ensure that noise levels within the dwellings most affected by the noise are acceptable. I have recommended a suitably worded planning condition which refers to mitigation measures required and a plan identifying the properties that are most likely to be affected by noise from the railway and the A2.
- 9.22 The development is laid out in such a way that there is no significant overlooking between the new properties and any overshadowing or overbearing effect would be limited. The rear gardens of house and the communal amenity space for the flats would all be of an appropriate size and depth, giving future residents a good quality living environment in my view.

Highways

- 9.23 The submitted Transport Assessment (TA) considers the impact of the proposed development on relevant junctions and highlights the need to pay a contribution towards improvements to the Key Street/A249 junction. This has been accepted by Highways England with a requested contributions of £102,487 (see paragraph 7.18). The updated TA states that the proposed use of the site would only lead to a small increase in trips on the local highway network. Local junctions in the area were considered to have adequate capacity to accommodate the additional traffic from the development. This has been accepted by Kent Highways and Transportation. The proposed access to the site has been designed in conjunction with Kent Highways and Transportation and provides a right turn lane in the form of a ghost island on the A2/High Street at the point where the access to the site is proposed.
- 9.24 A number of local residents have serious concerns about the design of this junction in respect of increasing congestion and also the consequent narrowing of the footpath to 1.5m wide. The concern here is mainly in respect of the safety of pedestrians using this footpath being knocked/clipped by wing-mirrors to HGVs. Kent Highways and Transportation continue to accept the findings of the Road Safety Audit submitted with the application which finds the proposed new junction to be safe. Kent Highways and Transportation are confident that the new junction will not cause an increase in congestion along the A2.
- 9.25 In respect of congestion associated with increased vehicles using local roads, the findings of the updated TA are that there would be no material increase in traffic on the A2 through the village and no increase on Church Lane. The TA assumes that

almost 60% of the traffic from the site would turn left towards the strategic highway network and Sittingbourne and 40% of traffic from the site would turn right towards the Medway towns and through Newington village. This assumption is based on the 2011 census data for journeys to work. Kent Highways and Transportation accept these assumptions. Kent Highways and Transportation have highlighted the fact that the scheme makes use of tandem parking and recommends that additional visitor spaces are provided within the site. They also ask for other minor changes to the parking and road layout. The applicant has submitted amended plans to address some of these concerns and it is anticipated that further comment from Kent Highways and Transportation will be available at the meeting.

- 9.26 The use of the existing farm access from the western boundary of the site to Church Lane as a pedestrian/cycle access has been criticised by local residents as interfering with rights of access to 40, 42 and 44 Church Lane and also potentially attracting anti-social behaviour. However I see this pedestrian/cycle link as an important way of integrating the development into the existing village. I note that Kent Police have not raised any concerns in respect of this pedestrian/cycle link and consider that with adequate lighting (details of which I have requested in the lighting condition below), instances of anti-social behaviour would be limited. With regards to vehicular access being retained for 40, 42 and 44 Church Lane, the applicant has altered the position of the bollards so that this access is still allowed whilst preventing vehicular access to the majority of the pedestrian link.
- 9.27 I understand the concerns of local residents in respect of the pedestrian/cycle link coming out onto a busy road with a narrow footpath at this point. However, I have observed that cars tend to park along the opposite side of Church Lane and there is also a chicane at this point in the road. This will slow vehicles down as they approach these obstacles. I consider that the pedestrian/cycle link will be an attractive and safe route for the residents of the proposed development.
- 9.28 I am informed that no. 103 High Street has a right of way over the current farm access into the site from the A2. The concern is that the proposed plans do not allow for this right of access to continue. I have not been given evidence of this right of access but note that the plans do not extinguish the opportunity for the right of access to be maintained. This could very easily be addressed directly between the developer and the resident should they wish to pursue it.

Heritage

- 9.29 A Heritage Statement has been submitted with the application and this identifies key heritage assets, including Newington High Street Conservation Area which immediately abuts the western boundary of the site and a small number of listed buildings close by.
- 9.30 Paragraph 132 of the NPPF states that *“When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting.”* The setting of a listed building and/or conservation must either be conserved or enhanced.
- 9.31 In terms of the impact on the listed buildings, the majority face onto the High Street and have no notable relationship with the application site. Hollybank, a grade II listed building faces onto Church Lane and it the closest listed building to the application site. It does have some connection with the application site in that its garden backs

onto the western boundary. In respect of Newington High Street Conservation Area and Hollybank, the submitted Heritage Statement notes that:

“The part of the conservation area lying along Church Lane, including the gardens of Holly Bank (31) are the most likely to be effected given their proximity to the proposed development. The key components of the historic setting of the Church Lane have been summarised as follows:

- *Focussed on the road / inward looking;*
- *Residential;*
- *Attractive groups of traditional buildings.*

Whilst the proposed development may, depending on size and massing, impact on the views of some properties in Church Lane and the Conservation Area this visual amenity has not been identified as contributing to the significance of the designated assets. The key components of the historic setting outlined above are not anticipated to be impacted by the development particularly given its inward looking focus and enclosed character. The proposed development area is similarly enclosed and thus is unlikely to provide competition with or distraction from the Conservation Area. Accordingly the likely impact of the proposed development of the setting (as it pertains to significance) is considered negligible.”

- 9.32 In respect of the Newington Church Conservation Area which is to the north of the site on the other side of the railway line, the Heritage Statement notes:

“This wider setting has not been identified as making a major contribution to the setting of the assets as pertains to their significance and impacts are therefore likely to be negligible.”

- 9.33 I therefore consider that the setting of the designated heritage assets as identified would be preserved.
- 9.34 I have recommended a suitably worded condition to address the comments of the archaeological officer in respect of potential archaeological find at the site.

Air Quality

- 9.35 The applicant has submitted an Air Quality Assessment (recently revised) and a ‘Development and Air Quality Update’ to accompany this application. Members will have noted that an Air Quality Management Area (AQMA) has been declared along Newington High Street, the eastern end of which extends 150m past the proposed access to the site. As such, vehicles travelling to and from the application site will travel through the AQMA. The submitted assessment considered the potential impacts on local traffic emissions once the development has been completed (2021) and concludes that the impact of any change in the predicted particle concentrations (PM₁₀) at existing receptors is negligible and that subject to appropriate mitigation measures, the impact on air quality during construction is negligible. I have recommended that the mitigation measures during construction are set out within the submitted Air Quality Assessment are implemented through the Construction Code of Conduct (condition 12).
- 9.36 Paragraph 109 of the NPPF states: *The planning system should contribute to and enhance the natural and local environment by...preventing both new and existing development from contributing to or being put at unacceptable risk from, or being*

adversely affected by unacceptable levels of soil, air, water or noise pollution or land instability.

- 9.37 Paragraph 124 of the NPPF states: *“Planning policies should sustain compliance with and contribute towards EU limit values or national objectives for pollutants, taking into account the presence of Air Quality Management Areas and the cumulative impacts on air quality from individual sites in local areas. Planning decisions should ensure that any new development in Air Quality Management Areas is consistent with the local air quality action plan.”*
- 9.38 For NO₂ concentrations, the submitted Air Quality Assessment sets out the impact of the development on receptors located along the A2 within the Newington and Rainham AQMAs. The impact on receptors is considered to be negligible for the Newington AQMA and slight, moderate or negligible, depending on the location of the receptor, within the Rainham AQMA. The assessment identifies that in no cases would the government objective of 40µg/m³ be exceeded within the Newington AQMA but that within the Rainham AQMA the objective would be exceeded in 6 out of the 8 receptor locations. In this case, the baseline NO₂ concentrations already exceed the objective - 40µg/m³. However, the development is predicted to add less than 1% to the NO₂ concentrations here. The data shows that for the Newington AQMA, there would not be a significant effect on human health as a consequence of increases in air pollution from this development. However, owing to the fact that the NO₂ concentrations in the Rainham AQMA are already exceeding the 40µg/m³ objective, it is concluded that any increase, no matter how small, would, as a consequence of development, lead to a significant effect on human health. The assessment recommends that mitigation measures should be considered.
- 9.39 Members will note the recent appeal decisions for two proposed residential developments at Pond Farm (APP/V2255/W/15/3067553 & APP/V2255/W/16/3148140 which were reported to the previous planning committee). This was for two schemes, one for 140 houses, plus 60 extra care units, and one for 330 houses with 60 extra care units). The Inspector considered the impact of the development on air quality, specifically the AQMA, among other issues. The appeal was dismissed on the grounds of detriment to the landscape and also significant adverse effect on human health in terms of air quality in respect of NO₂ levels. In the final planning balance, the Inspector considered that the combination of the landscape and air quality harm would outweigh the need for housing. As such, given the conclusions of the Inspector and the submitted air quality assessment for this application, very careful consideration must be given to this matter.
- 9.40 For the Pond Farm appeals, the Inspector found the predicted fall in general levels of NO₂ as set out in the submitted air quality assessment was over optimistic and that therefore, NO₂ levels at receptor sites would be likely to be worse than predicted. As a consequence, the Inspector found that “moderate adverse” and “substantial adverse” impacts were likely. The Inspector also found that the proposed mitigation measures were unsupported by evidence to demonstrate their likely effectiveness. In addition, the Inspector found that the contributions that were put forward to fund measures to mitigate the adverse impacts of the development *“may well not reflect the true impacts of the development.”*
- 9.41 Members should be advised that the applicant for the Pond Farm appeal has submitted an application for a judicial review on the grounds that the Inspector erred in law in their assessment of the air quality impact.

- 9.42 The applicant has taken the opportunity to review the submitted air quality assessment in the light of the Pond Farm decisions, new monitoring data from 2015 and has reassessed the damage cost calculations in order to reflect the latest version of the DEFRA Emission Factor Toolkit. This update in the calculation increases the five year damage cost to £132,951 from the original £5,716. The air quality consultants also highlight the differences between the Pond Farm development and the current application in respect of: the lesser number of properties proposed under the current application with a lesser number of traffic movements; the inherent sustainability of this site being so close to the centre of Newington, train station and bus stops and; the fact that the air quality assessment for the current application does not make assumptions about a reduction in background concentrations of NO² levels, as the Pond Farm assessment did.
- 9.43 The applicant has also taken the opportunity to submit a document entitled 'Development and Air Quality Update'. This is a helpful document that sets out how the application has changed since its first submission and how it has responded to changes in air quality considerations and the Pond Farm appeal decision. It also demonstrates very well how sustainable the site is in respect of being within a short walking distance of a number of the amenities within Newington, including the primary school (10 minutes), train station (4.5 minutes) and bus stops (5-7 minutes). Importantly, the document sets out a number of mitigation measures that are to be included within the development which are costed based on the 'damage cost' referred to above with additional mitigation measures proposed since the original submission. These mitigation measures include:
- Electric car charging points at every property, plus 10 free-standing dual EV car charging points for some of the visitors spaces;
 - Travel Plan & Welcome Pack to encourage a 'modal shift' to sustainable means of transport such as public transport, cycling and walking. Also to include details of grants for purchasing electric vehicles and details of car sharing schemes;
 - Low NOx or zero emission boilers fitted to all properties and use of green infrastructure – trees and soft landscaping within the development;
 - Cycle sheds for each property and cycle voucher for each new resident;
 - Potential for funding of an improved cycle shelter at Newington Railway Station (£5,000);
 - Financial incentive for eco driver training for each household (£50 each);
 - Financial contribution towards air quality monitoring (£15,000);
 - Independent Validation Report prepared detailing how the mitigation measures have been implemented and submitted to SBC.
- 9.44 As part of the process of deciding how best to utilise the 'damage cost' (£132,951), the applicant also considered other mitigation measures such as an additional bus stop, repairs and improvements to existing bus stops, private car club scheme. These were discounted for a number of reasons and I am content that the mitigation measures put before us will be the most effective in seeking to reduce the air quality impact of the development. The mitigation measures put forward are in line with the Swale Borough Council Air Quality Planning Technical Guidance (December 2016).
- 9.45 Members will have noted that Medway Council have objected to the scheme on the grounds that the submitted Air Quality Assessment does not consider the impact of the development on the Rainham AQMA. The recently revised Air Quality Assessment does now consider the Rainham AQMA and Medway Council have been re-consulted. Their comments will be reported at the meeting. I am seeking further

clarification from the applicant about how the damage cost calculation will be directed to the Rainham AQMA and will update Members at the meeting.

- 9.46 Despite what the applicant's air quality assessment concludes, which is that the development would have a significant adverse impact on air quality within the Rainham AQMA, it is a matter for the Environmental Services Manager to consider and to ultimately advise Officer's and Members on the significance of the *effect* on human health. Guidance from Environmental Protection UK and the Institute of Air Quality Management for the consideration of air quality within the land-use planning and development control process (January 2017) notes that a significant impact on air quality does not necessary equate to a significant effect on human health. This depends on factors such as the number of people that might be affected and whether the development lies within an AQMA. It is important to note that the Environmental Services Manager does not object to the scheme on air quality grounds and has taken his time to fully consider the issues in light of changing air quality guidance and the recent Pond Farm appeal decision. He does conclude that the air quality effect would be significant for the Rainham AQMA but notes that national air quality NO₂ objective levels have not been exceeded within the Newington AQMA and even with the development in place, are not predicted to rise above this national limit. He also notes that the mitigation measures put forward would go some way towards reducing the harm within the Rainham AQMA.
- 9.47 Ultimately, a weighing-up exercise must be conducted, of the potential harm in terms of air quality impact on human health against the benefits of the scheme in terms of the significant need for houses in the Borough. This is made clear in the Land-use Planning & Development Control: Planning for Air Quality. Guidance from Environmental Protection UK and the Institute of Air Quality Management for the consideration of air quality within the land-use planning and development control process (January 2017). This states:

"A significant air quality effect is not, of itself, a reason for refusal of a planning application; that decision will be the outcome of a careful consideration of a number of factors by a planning committee (or a planning inspector/Secretary of State), air quality being just one of the factors."

(para. 7.3)

- 9.48 As such, although I still consider the effect on human health to be significant within the Rainham AQMA as a consequence of the increases in NO₂ levels, I consider that a direct comparison with the Pond Farm scheme is unwise given the differences as set out above. I acknowledge the mitigation measures, including the contributions towards monitoring, that have been offered and consider that they are practical and reasonable for this size of development. The effectiveness of these measures is unknown but it must be acknowledged that our own technical guidance referred to above promotes these measures.

Ecology and biodiversity

- 9.49 A Phase 1 Habitat Survey has been undertaken on the site to provide an inventory of basic habitat types at the site and comments on the need for further survey work. This recommended that a series of bat emergence surveys are carried out. No bats were detected during these surveys and so buildings on site can be demolished. The report concludes that the majority of the site consists of an agricultural crop of little ecological value and that the development is unlikely to have an adverse effect on the conservation status of habitats or species. The boundary hedgerows are of value to bats and should be retained and enhanced and the report suggests a number of

mitigation measures to ensure no significant impact upon protected species. I have recommended conditions to ensure that there are enhancements to biodiversity at the site and a condition to protect bats that may be affected by proposed works to one of the trees with the site, as requested by KCC Ecology. I have also required the submission of a detailed management plan for the open space to the east. An amended Landscape Masterplan has been submitted and this includes amendments to the open space referred to as a Suitable Alternative Natural Green space (SANG) to better respond to policy AX6 and also the comments of KCC Ecology.

- 9.50 An arboricultural survey was undertaken at the site and notes that a total of 24 trees, 5 tree groups and 1 hedgerow would be lost as a consequence of the development. However, 29 trees, 14 tree groups and 7 hedgerows would be retained with replacement planting proposed to more than compensate for the losses.
- 9.51 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.

Section 106 agreement

- 9.52 The applicant has been asked to consider the following planning obligations/developer contributions in line with the various requests from consultees.
- Community learning: £7432.89
 - Youth services: £4622.34
 - Social care: £7789.59
 - Libraries: £27,921
 - Primary education: £456,000
 - Secondary education: £580,422.40
 - SAMM: £223.58/dwelling
 - Strategic highways improvements to the Key Street roundabout: £102,487 to be secured via a Section 278 agreement;
 - Air quality mitigation (off-setting impacts, continual annual monitoring costs): £15,000
 - Affordable housing at 40% (mix of 70% social rented to 30% shared ownership);
 - 1 wheelchair adaptable home.
 - Off-site (Newington Recreation Ground) sports provision £511/dwelling
 - Off-site (The Meads Practice) health centre contribution: £124,200
 - Bins - £92/dwelling and £471 per six flats (rounded up to the nearest 6);
 - Monitoring and administration fee.
- 9.53 In addition to the above, the mitigation measures set out in table 8 of the submitted 'Development and Air Quality Update' and as detailed at paragraph 9.44 above would be included as an obligation as well as the requirement to set up a management company for the open space. The applicant has accepted the above contributions and obligations.

- 9.54 KCC have responded to the comments of Medway Council in respect of asking for education contributions for the Medway Authority area. They note:

“It is quite clear that KCC is the Local Education Authority responsibility for the provision of school places in the county and in Swale District. KCC’s request letter details the required mitigation. Medway Council is responsible for the provision of pupils places within its jurisdiction and due to development within its boundaries. KCC is not beholden to nor prepared to share or proportion any developer contributions secured from the developer and will resist any appeal from the neighbouring authority to do so.

KCC upholds its statutory duty to provide education for pupils in Kent. Government legislation, however, does not prevent families living outside the county from applying for school places within Kent.”

- 9.55 As such, I do not intend to require additional funds for education in Medway or that the education contributions are split between authorities in this instance.
- 9.56 The above contributions and obligations are all considered to meet the tests set out in the Community Infrastructure Levy regulations (CIL). Delegation is sought for Officers to agree to the final wording of the planning obligations within the Section 106 agreement in conjunction with the Head of Legal Services.

Other Matters

- 9.57 The development would adopt sustainable design and construction methods and techniques as well as following the principles of secure by design. The applicant also notes that current Building Regulations in respect of maximum carbon emissions and maximum space heating will be followed and that it is likely that Building Regulations standards will tighten even further in this regard before construction starts. Nonetheless, I have recommended a condition (no. 25) to require details of how the development will incorporate sustainable design and construction methods.
- 9.58 KCC Planning (Minerals and Waste) refer to the submitted LEAP Environmental Report and note that there is little or no definable brickearth present on the site. The report concludes that any brickearth present is unlikely to be of any economic value. They note that Winerberger Ltd should have ideally been consulted in coming to this conclusion but KCC believe that the application for development on this site satisfies exemption 1 of Policy DM7 in the Kent Minerals and Waste Local Plan 2013-2030 in that ‘the mineral is not of economic value or does not exist.’ In addition, 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. I acknowledge that this site is not technically an allocated development site but it is a draft allocation in the emerging Local Plan and this should be given material weight.
- 9.59 The site is at low risk of flooding, being within flood zone 1. There is a small risk from surface water flooding but the development has been designed so that no houses would be located within the area at risk. The surface water drainage within the site will be designed to accommodate the 1:100 year return period storm even plus 30% for climate change. Storm water will drain to the existing culvert that runs through the site. A Sustainable Urban Drainage scheme is being considered and an updated flood risk assessment has been submitted. KCC Sustainable Drainage team have

commented on the amended scheme and have concerns about the inclusion of drainage features, control devices and pipework within the curtilage of properties. They also highlight potential problems with the adoption of sewage pipework beneath permeable paving and that this may have implications for the layout of the scheme. I have asked the applicant to consider these comments and I anticipate that these issues will be able to be adequately addressed. I will update Members at the meeting. Southern Water have asked for further details on surface and foul water drainage and I have recommended a suitably wording condition to address this.

- 9.60 A Phase 1 Desk Study and Phase 2 site investigation report has been submitted with the application to assess the potential for contaminants at the site. This concludes that the main risk of contamination is from herbicides and pesticides associated with the current land use. Further sampling and testing is recommended. The Environmental Services Manager is satisfied that the reports submitted are sound and I have recommended a suitably worded condition to address the need for further work and remediation as necessary.
- 9.61 The development would be located close to a railway line and Network Rail have set out a number of stipulations in respect of development during and after construction. The application's attention has been drawn to these requirements and I note that the plans provide a buffer of 5 m for drainage with dwellings set away from the railway embankment by 7-20 m.

10.0 CONCLUSION

- 10.01 This proposal would be contrary to the adopted Local Plan in respect of the provision of residential development outside of the built-up area boundary. However, the development would be in accordance with the emerging Local Plan in that the site is a draft housing allocation and this must be given material weight.
- 10.02 Paragraph 7 of the NPPF identifies three strands to sustainable development - economic (supporting the economy and growth), social (providing strong, healthy, accessible communities), and environmental (contributing to protecting our natural, built and historic environment). In terms of whether the proposals constitute sustainable development, I find that the proposals perform strongly in terms of the social and economic strands. The development would provide much needed housing, including 40% (49 units) as affordable housing. This Borough does not currently have a 5 year supply of housing as required by National Planning Policy. This site is of great importance in helping to meet the growing demand for housing in the Borough. The provision of 49 unit of affordable accommodation will make a significant contribution to the housing needs of Newington and a contribution to the needs of the borough as a whole. It is acknowledged that the village does not have a doctor's surgery but in terms of other infrastructure, the village is well served. Importantly, the site is within walking distance of the village shops, primary school and train station.
- 10.03 In respect of the environmental strand of sustainable development however, whilst most environmental impacts can be mitigated to acceptable levels, there are uncertainties concerning residual air quality impacts within the Rainham AQMA which means that the proposal cannot be regarded as sustainable against the environmental strand.
- 10.04 Paragraph 14 of the NPPF sets out that, for the purposes of decision taking, 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 or; specific policies within the Framework indicate development should be restricted. I have already identified the key issues above and have considered the impacts against each of the three strands of sustainable development – social, economic and environmental and have concluded that the development would be sustainable in terms of the first two strands, but that there are uncertainties in respect of the third.

- 10.05 In terms of the paragraph 14 tests, firstly, I do not consider that there are any specific policies within the NPPF that would restrict the proposed development. It is therefore necessary to consider whether there are any adverse impact that would significantly and demonstrably outweigh the benefits.
- 10.06 In terms of the environmental impact of the proposal, I do not consider that there would be significant harm to the landscape here and that mitigation in the form of soft landscaping as well as the design of the layout and the houses will ensure that landscape harm is limited further. I have discussed the impact of the development on highway safety and amenity and consider that there would be some harm. However, mitigation measures are proposed that would limit this harm to an acceptable degree in my view. In addition, there would be limited harm to ecology and biodiversity but I have set out mitigation measures such as ecological enhancements within the site and a contribution towards the SAMM Strategy. I consider that there would be no harm to the setting of the Conservation Area or to Hollybank, a Grade II listed building, concluding that the setting of both of these designated heritage assets would be preserved. The loss of best and most versatile agricultural land is accepted in this case owing to the sites' allocation in the emerging Local Plan for housing. The potential for brickearth at the site has been examined and as well as being uneconomical to extract, the site is a draft housing allocation in the emerging local plan. As such, mineral extraction does not need to take place prior to its development.
- 10.07 In terms of air quality, I have found that the effect on human health would be significant but that this would be confined to the Rainham AQMA and I find that mitigation measures proposed will go some way towards lessening this effect. The applicant has considered a raft of air quality mitigation measures for this development, discounting those that would be impractical or of very little benefit but including those that would cumulatively make some difference in resident's choice of transport and would limit the scheme's contribution to air pollution. It is hoped that the mitigation measures combined will persuade residents to use sustainable forms of transport on a regular basis. However, it is fair to say that there are uncertainties as to the extent that the mitigation would reduce the significance of the impact and as such for purposes of the planning balance, I have therefore assumed the harm to be significant and that this should be weighed against the other elements of harm and overall benefits. This Council's Environmental Health Manger does not object to the scheme on air quality, or any other grounds, and I give this significant weight in my consideration of air quality concerns. In terms of the overall planning balance, I consider that the need for housing in the Borough to be significant. This development would provide housing on a draft allocated site, contributing significantly to the 5 year housing land supply and this should carry significant weight in terms of social and economic benefits. Whilst the harm to air quality is potentially significant within the Rainham AQMA, in the absence of other significant harm, I do not consider that the significant harm to air quality is sufficient to significantly and demonstrably outweigh the overall benefits of the proposals.
- 10.08 I therefore consider that the development would be acceptable and, as such, that planning permission should be granted subject to the following conditions (with any

minor amendments required) and a Section 106 agreement listed in paragraph 9.53 and 9.54 above.

11.0 RECOMMENDATION – GRANT Subject to the following conditions and subject to the receipt of revised drainage details and further comments from KCC Sustainable Drainage and any additional conditions suggested by them, any further comments from Newington Parish Council and CPRE (closing date 17th March 2017), further comments from Kent Highways and Transportation in response to the amended plans and further comments from Medway Council in response to the revised Air Quality Assessment and, a section 106 agreement requiring contributions as set out in paragraph 9.53 and 9.54 below:

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 the following approved drawings: *to be added once all amended plans received.*

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 2015 (as amended), no gates, fences, walls or other means of enclosure shall be erected or provided in advance of any wall or any dwelling fronting on a highway without the consent in writing of the Local Planning Authority.

Reason: In the interests of residential amenity.

4. Details in the form of a levels strategy overlaying the proposed layout with the Topographical survey 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.

5. The amenity areas adjacent to the flats as shown on the approved plans shall be retained for use by the residents of all the flats throughout the duration of the development.

Reason: In the interests of residential amenity.

6. The areas shown on the approved drawings 2588-20 I and PERSE1978309 B as 'Green' and 'Suitable Alternative Natural Green Space' shall be reserved for the general amenity of the area and shall be provided in accordance with a schedule to be submitted to the Local Planning Authority to be agreed in writing prior to first occupation. Play space shown on drawing no. 2588-20 I as 'LEAP' shall be surfaced and equipped with play equipment, in accordance with a schedule agreed by the Local Planning Authority before the first occupation; no permanent development whether permitted by the Town and Country Planning (General Permitted Development) Order 1995 or not shall be carried out in the areas so shown without the prior written approval of the Local Planning Authority.

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

7. Adequate underground ducts shall be installed before any of the buildings hereby permitted are occupied to enable telephone services, broadband and electrical services to be connected to any premises within the application site without resource to the erection of distribution poles and overhead lines, and notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) Order 1995 no distribution pole or overhead line shall be erected other than with the express consent of the Local Planning Authority.

Reason: In the interests of residential amenity.

8. No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of
 - (A) archaeological field evaluation works in accordance with a specification and written timetable which has been submitted to and approved by the Local Planning Authority; and
 - (B) following on from the evaluation, any safeguarding measures to ensure preservation in situ of important archaeological remains and/or further archaeological investigation and recording in accordance with a specification and timetable which has been submitted to and approved by the Local Planning Authority

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

9. No development approved by this permission shall be commenced prior to a contaminated land assessment (and associated remediation strategy if relevant), being submitted to and approved in writing by the Local Planning Authority, comprising:
 - a) A desk study and conceptual model, based on the historical uses of the site and proposed end-uses, and professional opinion as to whether further investigative works are required. A site investigation strategy, based on the results of the desk study, shall be approved by the Local Planning Authority prior to any intrusive investigations commencing on site.
 - b) An investigation, including relevant soil, soil gas, surface and groundwater sampling, carried out by a suitably qualified and accredited consultant/contractor in accordance with a Quality Assured sampling and analysis methodology.
 - c) A site investigation report detailing all investigative works and sampling on site, together with the results of analyses, risk assessment to any receptors and a proposed remediation strategy which shall be of such a nature as to render harmless the identified contamination given the proposed end-use of the site and surrounding environment, including any controlled waters.

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

10. Before any part or agreed phase of the development is occupied, all remediation works identified in the contaminated land assessment and approved by the Local Planning Authority shall be carried out in full (or in phases as agreed in writing by the Local Planning Authority) on site under a quality assured scheme to demonstrate

compliance with the proposed methodology and best practice guidance. If, during the works, contamination is encountered which has not previously been identified, then the additional contamination shall be fully assessed and an appropriate remediation scheme agreed with the Local Planning Authority.

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

11. Upon completion of the works identified in the contaminated land assessment, 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.

12. Prior to the commencement of the development, a Code of Construction Practice shall be submitted to and approval in writing by the Local Planning Authority. The construction of the development shall then be carried out in accordance with the approved Code of Construction Practice and 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.

The code shall include:

- An indicative programme for carrying out the works
- Measures to minimise the production of dust on the site(s)
- Measures to minimise the noise (including vibration) generated by the construction process to include the careful selection of plant and machinery and use of noise mitigation barrier(s)
- Maximum noise levels expected 1 metre from the affected façade of any residential unit adjacent to the site(s)
- Design and provision of site hoardings
- Management of traffic visiting the site(s) including temporary parking or holding areas
- Provision of off road parking for all site operatives
- Measures to prevent the transfer of mud and extraneous material onto the public highway
- Measures to manage the production of waste and to maximise the re-use of materials
- Measures to minimise the potential for pollution of groundwater and surface water
- The location and design of site office(s) and storage compounds
- The location of temporary vehicle access points to the site(s) during the construction works
- The arrangements for public consultation and liaison during the construction works
- Details of any mitigation measures necessary to mitigate the impact of construction on biodiversity and wildlife
- The mitigation measures set out in table 17 of the submitted Air Quality Assessment (March 2017).

Reason: In the interests of residential amenity, biodiversity and the control of air pollution.

13. Prior to the commencement of development hereby approved, full details of the method of disposal of foul and surface waters, including a drainage strategy and implementation timetable shall be submitted to and approved by the Local Planning Authority. The approved details shall be implemented before the first use of the development hereby permitted.

Reason: In order to prevent pollution of water supplies and localised flooding and in the interests of highway safety and convenience.

14. The area shown on the submitted plan as car parking (including the car barns) 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; such land and access thereto shall be provided, surfaced and drained 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.

15. No dwelling/building shall be occupied or the approved use commenced until space has been laid out within the site in accordance with details to be submitted to and approved in writing by the Local Planning Authority for cycles to be parked securely stored (providing for 1 cycle per dwelling).

Reason: To ensure the provision and retention of adequate off-street parking facilities for cycles in the interests of sustainable development and promoting cycle visits.

16. The car barns/car ports as shown on the approved plans shall not be enclosed by the use of doors, walls, fences or any other means of enclosure to any open elevation, unless otherwise required by Part B (fire safety) of the Building Regulations (2010 as amended).

Reason: To ensure that the car barns/ carports are retained for parking in the interests of highway safety and amenity.

17. 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.

18. Before the first occupation of a dwelling / premises the following works between that dwelling / premises and the adopted highway shall be completed as follows:
 (A) Footways and/or footpaths shall be completed, with the exception of the wearing course;
 (B) Carriageways completed, with the exception of the wearing course, including the provision of a turning facility beyond the dwelling together with related:

- (1) highway drainage, including off-site works,
- (2) junction visibility splays,
- (3) street lighting, street nameplates and highway structures if any.

Reasons: In the interests of highway safety.

19. No dwelling hereby approved shall be occupied until the junction indicated on drawing 5784/101B, and the footway/emergency access shown on drawing 5288-23C have been provided in accordance with a design and specification to be approved in writing with the Local Planning Authority and to be fully implemented to the satisfaction of the Local Planning Authority.

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

20. No vehicular access shall be brought into use until pedestrian visibility splays 2 m x 2 m with no obstruction over 0.6 m above the access level have been provided on each side of the access, and these shall be subsequently maintained.

Reasons: In the interests of highway safety.

21. Prior to the commencement of development hereby approved, full details of both hard and soft landscape works shall be submitted to and approved in writing by the Local Planning Authority. These details shall include existing trees, shrubs and other features, planting schedules of plants, noting species (which should be native species where possible and of a type that will enhance or encourage local biodiversity and wildlife), plant sizes and numbers where appropriate, means of enclosure, hard surfacing materials, and an implementation programme.

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

22. 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.

23. 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.

24. Prior to the commencement of development (above ground floor slab level) 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.

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.

26. 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, including to the pedestrian/cycle link, 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.
- Confirmation that there would be no lighting to the SANG.
- Identification of 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.
- Demonstration as to 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 bats using their territory.

Reason: In the interests of visual amenity/landscape character and the residential amenities of occupiers of nearby dwellings and the interests of ecology.

27. All work to the site boundaries (where vegetation exists) must be carried out outside of the breeding bird season (March to August inclusive) unless otherwise agreed in writing by the Local Planning Authority that an ecologist examines the site prior to works commencing and if any nesting birds are recorded, all works must cease until all young have fledged.

Reason: In the interests of the protection of breeding birds.

28. Prior to the commencement of development hereby approved, a detailed SANGs management plan must be submitted to the Local Planning Authority for approval in

writing. The approved management plan must be implemented and carried out as specified.

Reason: In the interests of ecology and biodiversity.

29. Notwithstanding the provisions of Classes A, B and C of Part 13 of the Town and Country Planning (General Permitted Development) Order 2015, prior to the commencement of development of the foul pumping station, details of its siting, design, scale and means of enclosure, shall be submitted to the Local Planning Authority for approval in writing and the approved details shall be implemented.

Reason: In the interests of visual amenities.

30. In this condition “retained tree” means an existing tree, which is to be retained in accordance with the approved plans and particulars. Paragraphs i) and ii) below shall have effect until the expiration of 5 years from the date of completion of the development for its permitted use.
- i) No retained tree shall be deliberately damaged, cut down, uprooted or destroyed, nor shall any retained tree be pruned other than in accordance with the Arboricultural Impact Report (PJC ref: 3781/15-02) dated 15th January 2016, without the written approval of the Local Planning Authority. Any pruning approved shall be carried out in accordance with British Standard 3998:2010 Tree Work – Recommendations or any revisions thereof.
 - ii) If any retained tree dies, or is removed, uprooted or destroyed, another tree shall be planted at the same place and that tree shall be of such size and species and shall be planted at such time as may be specified in writing by the Local Planning Authority.
 - iii) The installation of tree protection barriers, the methods of working shall be undertaken in accordance with the Arboricultural Method Statement Report (PJC 3781/15-03 Rev 2) dated 15th January 2016.

Reason: To protect and enhance the appearance and character of the site and locality.

31. No development shall commence until the developer has (at his own expense):
- i) Instructed an Arboricultural consultant, approved in writing by the LPA, to liaise with the developer and/or his architect or engineer to approve relevant details of construction methods, oversee the works and report to the Council throughout the period of the works in so far as the works may affect retained trees (as set out in the approved plans) and;
 - ii) Submitted to an obtained the written approval of the LPA for an auditable system of Arboricultural site monitoring, including a schedule of specific site events requiring Arboricultural input or supervision where construction and development activity is to take place within or adjacent to any root protection area of any tree identified for retention.

Reason: To protect and enhance the appearance and character of the site and locality.

32. The noise mitigation methods as set out on pages 17, 18 and 19 of the submitted Noise Assessment: February 2016 (1391\MD\08-2015\370) and appendices D, E, F, G, H, and I, including the provision of mechanical ventilation, details of which shall have first been approved in writing by the Local Planning Authority, shall be implemented in respect of the ‘worst-case’ properties outlined in red on drawing 1391-001.

Reason: In the interests of the residential amenities of future residents of the development.

33. Prior to the occupation of the dwellings outlined in red on drawing no.1391-001, a verification report shall be submitted to and approved by the LPA to demonstrate that the recommendations contained in the MRL Acoustic Report submitted with the application have been incorporated, and therefore internal noise levels within the residential units and the external noise levels in the back gardens and other relevant amenity areas will confirm to the standard identified by BS 8233 2014, Sound Insulation and Noise Reduction for Buildings - Code of Practice.

Reason: In the interests of the residential amenities of future residents of the development.

34. Notwithstanding the plans submitted, the Suitable Alternative Natural Green Space shall make provision to enable badgers to access the grassland and scrub area by reducing the fenced area to create a vegetated buffer between the northern and southern boundaries and the dog proof fence. Details of how this will be achieved shall be submitted to the Local Planning Authority prior to the first occupation for approval in writing.

Reason: In the interests of preserving and enhancing the habitat for badgers within the site.

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

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

36. If the development hereby approved has not commenced by February 2018 and, prior to any works to trees being carried out, an updated Preliminary Tree Roost Assessment shall be undertaken, the results of which must be submitted to the Local Planning Authority with any suggested mitigation measures approved in writing.

Reasons: In the interests of protecting bats that may be roosting within the trees at the site.

37. Prior to any tree works commencing to tree 20 (as per the Preliminary Tree Roost Assessment; Feb 2017), a dawn re-entry bat survey shall be carried out on that tree which shall include appropriate methodology required for the removal of any branches on this tree. The survey and methodology report shall be submitted to the Local Planning Authority for approval in writing prior to any works being carried out on tree 20.

Reasons: In the interests of protecting bats that may be roosting within the trees at the site.

Informative:

1. The applicant is advised to consider and act upon the contents of Network Rail's email in response to the consultation on this application dated 22nd March 2016.
2. The applicant is advised to consider the contents of the letter from Kent Public Right of Way Officer dated 24th March 2016, the contents of Southern Gas Networks' email dated 29th March 2016 and the contents of the letter from Southern Water dated 23rd March 2016.
3. It is the responsibility of the applicant to ensure , before the development hereby approved is commenced, that all necessary highway approvals and consents where required are obtained and that the limits of highway boundary are clearly established in order to avoid any enforcement action being taken by the Highway Authority. Across the county there are pieces of land next to private homes and gardens that do not look like roads or pavements but are actually part of the road. This is called 'highway land'. Some of this land is owned by The Kent County Council (KCC) whilst some are owned by third party owners. Irrespective of the ownership, this land may have 'highway rights' over the topsoil. Information about how to clarify the highway boundary can be found at <http://www.kent.gov.uk/roads-and-travel/what-we-look-after/highway-land> The applicant must also ensure that the details shown on the approved plans agree in every aspect with those approved under such legislation and common law. It is therefore important for the applicant to contact KCC Highways and Transportation to progress this aspect of the works prior to commencement on site.

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 consider the submission of amended plans to address Officer's concerns. These plans were forthcoming and the scheme was considered to be acceptable.

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’s ecological assessment dated January 2017 and the submitted report entitled ‘Information for Habitats Regulations Assessment’ January 2017 contains information to assist this 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 25th July 2016 has also been considered; in particular that they have raised no objections subject to contributions towards strategic mitigation.

The Assessment of Land at 99 High Street and land to north of High Street, Newington

The application site is located 2.5km to the south Medway Estuary and Marshes Special Protection Area (SPA) and 5km to the southwest of The Swale SPA. Therefore, there is a medium possibility that future residents of the site will access footpaths and land within these European designated areas.

Measures are to be taken to reduce the impact on the SPA and these would be built into the development in respect of the provision of public open space which would have a circular route around it.

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

Conclusions

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

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PLANNING COMMITTEE – 30 MARCH 2017

PART 3

Report of the Head of Planning

PART 3

Applications for which **REFUSAL** is recommended

3.1 REFERENCE NO - 16/508250/FULL			
APPLICATION PROPOSAL Erection of a front and rear dormer to form two rooms, including a store room and bathroom, and alterations to the fenestration.			
ADDRESS Penult Imperial Avenue Minster-on-sea Kent ME12 2HG			
RECOMMENDATION - REFUSE			
SUMMARY OF REASONS FOR RECOMMENDATION/REASONS FOR REFUSAL The proposed front and rear dormer windows would represent a poor quality design by virtue of the flat roof design; the depth and prominence of the dormers arising from the shallow pitch of the existing roof line; and the excessive size of the rear dormer. It is considered that this would be seriously detrimental to the appearance of the dwelling and the visual amenities of the surrounding area.			
REASON FOR REFERRAL TO COMMITTEE Parish Council support the application			
WARD Minster Cliffs	PARISH/TOWN Minster-On-Sea	COUNCIL	APPLICANT Mr & Mrs A Erving AGENT CK Designs
DECISION DUE DATE 26/01/17	PUBLICITY EXPIRY DATE 09/01/17		
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites): NONE			

MAIN REPORT

1.0 DESCRIPTION OF SITE

- 1.01 Penult is a semi-detached bungalow located on the east side of Imperial Avenue, which is an unmade road within the built up area of Minster. The property is constructed of brick, with a shallow pitched roof, and an attached garage to the side which projects forward of the front elevation.
- 1.02 The road is characterised by varied styles of properties, although the dwellings immediately to the south of the application site are bungalows of a similar height and roof form. The last property on the road immediately to the north of the site is a two storey detached dwelling.

2.0 PROPOSAL

- 2.01 This application seeks planning permission for the erection of front and rear dormer windows to facilitate a loft conversion. The front dormer would measure approximately 2.3m wide x 1.4m tall x 4.5m deep. The proposed rear dormer would measure roughly 4.8m wide x 2.3m tall (the full height of the roof) x 4.5m deep. Both would have flat roofs. The dormer to the rear would be cut into the roof space to provide a balcony area within the roof area, and a glazed privacy screen is proposed to the side of the balcony to prevent overlooking of neighbouring properties.
- 2.02 The resultant roof space would contain a fourth bedroom bathroom (with balcony leading off it), study, and a small storage room.

3.0 PLANNING CONSTRAINTS

- 3.01 No designations or specific restrictions affect the area.

4.0 POLICY AND OTHER CONSIDERATIONS

- 4.01 The National Planning Policy Framework (NPPF) and The National Planning Practice Guidance (NPPG): The NPPF and NPPG are relevant in that they encourage good design and seek to minimise serious amenity concerns.
- 4.02 Development Plan: Saved policies E1, E19 and E24 of the adopted Swale Borough Council Local Plan 2008, and Policies CP4, DM14 and DM16 of the emerging Swale Borough Council Local Plan Bearings Fruits 2031 are relevant in that they relate to general development criteria, require good design and state that developments should not cause unacceptable harm to amenities.
- 4.03 Supplementary Planning Documents: The Council's adopted Supplementary Planning Guidance entitled "Designing an Extension" is also relevant, and remains a material consideration having been through a formal review and adoption process. It is specifically referred to in the supporting text to saved policy E24 of the adopted Swale Borough Local Plan 2008 and to policy DM16 of the emerging plan. As such it should be afforded significant weight in the decision making process.

5.0 LOCAL REPRESENTATIONS

- 5.01 No representations received

6.0 CONSULTATIONS

- 6.01 Minster Parish Council support the application "*subject to adequate parking being in place for a five-bedroom property.*"

7.0 APPRAISAL

Principle of Development

- 7.01 The site is situated within the defined built up area boundary of Minster in which the principle of extending a property is acceptable subject to other relevant policy considerations and local amenity impacts.

Visual Impact

- 7.02 The road contains a mix of dwellings of varying sizes and designs (as is common in Minster), including dwellings with front dormers which are predominantly situated at the southern end of the road. Paragraph 5.4 of the Council's SPG entitled 'Designing an Extension – A Guide for Householders' states that dormers can have a serious impact on the street and should therefore be in proportion to the roof, preferably with pitched roofs to match the dwelling.
- 7.03 In this instance the roof of the existing property is very shallow and as a result the proposed dormer windows would be substantial in depth and very prominent on the roof slope. Whilst the front dormer is relatively narrow when viewed on the front elevation, it is substantial in depth on the side elevations as a result of trying to gain the necessary internal head height. This depth emphasises the form of the dormer, which is in itself contrary to the advice of the SPG and in my opinion harmful to the character of the dwelling and the wider street scene. The rear dormer would cover a very substantial amount of the roof slope (almost the entire of it, in fact), and its scale and form are exacerbated by the design, which cuts into the roof and provides a balcony. This alters the character of the property entirely from a relatively modest bungalow with a shallow roof to a large, blocky structure with a substantial area of flat roof. Unfortunately, due to the shallow pitch of the existing roof, the dormer need to be this scale to get any accommodation in the loft space.
- 7.04 In my opinion, for the reasons above, the dormers would represent a visually prominent and wholly unsympathetic addition to the existing property with a consequently unacceptable impact upon the form and appearance of the existing dwelling, and the wider street scene.

Residential Amenity

- 7.05 The proposed front dormer would not impact significantly on neighbouring properties in Imperial Drive. Whilst it is elevated and visible from these properties I am of the opinion that given the distance involved it would not cause overlooking issues.
- 7.06 The proposed rear dormer includes glazed doors and a balcony which could give rise to overlooking of neighbouring properties. The scheme has been amended to move the balcony away from the common boundary with the attached bungalow at High Winds (to the south), and in terms of overlooking I consider this to be acceptable. However the glazed screen necessary to afford privacy to High Winds does add to the overall bulk of the dormer, which has been considered unacceptable in the section above. Any overlooking from upper floor glazed doors would be similar to conventional two storey semi detached dwellings, and I do not consider this in itself to be unacceptable.
- 7.07 The dwelling to the north extends beyond the rear building line of Penult and I do not consider that any harmful impacts would occur to this property.
- 7.08 Overall I consider the impact on residential amenity to be acceptable.

8.0 CONCLUSION

- 8.01 The scale, flat-roofed design, and overall bulk of the proposed dormer windows would result in a poor form of design that would be harmful to the character and appearance of the property and the wider street scene. I therefore recommend that planning permission should be refused.

9.0 RECOMMENDATION – REFUSE for the following reasons:

- (1) The proposed dormer windows, by virtue of the bulk, scale, and flat-roofed design, would be significant and prominent features on the property in a manner harmful to its character and appearance, and to the character and appearance of the wider street scene. The proposal is therefore contrary to saved policies E1, E19 and E24 of the Swale Borough Local Plan 2008, policies DM14 and DM16 of the emerging Swale Borough Local Plan “Bearing Fruits 2031 (Proposed Main Modifications June 2016)”, and to the advice of the Council’s adopted Supplementary Planning Guidance entitled “Designing an Extension - A Guide for Householders.”

The Council’s approach to this application

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

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

In this instance:

The applicant was advised of minor changes required to make the proposal acceptable so that permission could be granted. Such changes were not forthcoming, however, and the application was presented to planning committee where the applicant / agent were afforded opportunity to speak.

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 – 30 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 – Funton Brickworks, Raspberry Hill Lane / Sheerness Rd, Lower Halstow**

APPEAL DISMISSED

Observations

COMMITTEE REFUSAL

A good decision. The Inspector agreed with the Council's view that the development did not amount to sustainable development and therefore that planning permission should be refused. In reaching this view, he agreed that the development would have harmful impacts on landscape quality and visual amenity. However, he did not agree that the development would have unacceptable implications for highway safety.

- **Item 5.2 – 155 Westerham Road, Sittingbourne**

APPEAL ALLOWED

Observations

DELEGATED REFUSAL

A disappointing decision, where the Inspector concluded that the development would cause some harm the character and appearance of the area, but that this was not sufficient to warrant refusal of planning permission.

- **Item 5.3 – 11 St Ann's Road, Faversham**

APPEAL DISMISSED

Observations

DELEGATED REFUSAL

Full support for the Council's normal approach to consideration of neighbours' amenity.

- **Item 5.4 – 11 Leet Close, Eastchurch**

APPEAL ALLOWED

Observations

AGAINST OFFICER RECOMMENDATION

The Inspector concluded that the proposal would not harm the amenities of the

neighbours.

- **Item 5.5 – The Hawthorns, Greyhound Road, Minster**

APPEAL ALLOWED

AGAINST OFFICER RECOMMENDATION

- **Item 5.6 – Blackthorn Lodge, Greyhound Road, Minster**

APPEAL ALLOWED

AGAINST OFFICER RECOMMENDATION

- **Item 5.7 – The Peartree, Greyhound Road, Minster**

APPEAL ALLOWED

AGAINST OFFICER RECOMMENDATION

Observations

Three extremely disappointing decisions.

The Inspector has concluded, bizarrely, that the sites in Greyhound Road are not visually harmful. They are, in my experience, visible from a distance and cause substantial harm to visual amenity. He has concluded, contrary to the normal view taken on such matters, that landscaping can mitigate any visual harm arising from the development.

Furthermore despite a previous Inspector finding to the contrary, he concluded, wrongly in my view, that the location of the sites is sustainable.

Finally, and perhaps of more concern, he gave credence firstly to the appellants' interpretation that the provision of extra caravans to address household expansion on existing sites did not amount to the provision of extra pitches, nor address unmet need for pitches within the Borough. Secondly, based on an assertion by the appellants, and without evidence to support it, he has formed the view that significant objection to the Council's position regarding the need for and supply of pitches would be forthcoming at the Local Plan Inquiry. In the event, there was only one objection, and the objector failed to attend the Inquiry. The Council's position on gypsy and traveller pitches was dealt with by the Local Plan Inspector in less than 15 minutes.

Officers have sought legal advice on the merits of challenging these decisions by way of Judicial Review. I will update Members at the Meeting.

- **Item 5.8 – Land and buildings at Parsonage Farm, Painters Forstal**

APPEAL ALLOWED IN PART

Observations

ENFORCEMENT APPEAL

A disappointing decision which not only ignores the Council's careful and consistent application of our Supplementary Planning Guidance, but encourages the appellants

to seek permission for further works at odds with that guidance.

- **Item 5.9 – Land east of St Marys View, Newington**

APPEAL DISMISSED

Observations

AGAINST OFFICER RECOMMENDATION

A good decision. Although the Inspector did not consider that three of the four reasons for refusal put forward by Members (namely highway safety, harm to amenity of residents living along Church Lane, and loss of Best and Most Versatile farmland) amounted to robust reasons for the refusal of the application, he did find that there would be significant harm to 'the character and quality of the landscape and locality' and, as such, that the development would conflict with Local Plan policies E6 and E9. Weighing this against the benefits of the development, he concluded that the harm would significantly outweigh the benefits. Consequently, he concluded that the proposals did not amount to sustainable development and that planning permission should be refused.

- **Item 5.10 – Land south-east side of Faversham Road, Ospringe**

APPEAL ALLOWED

Observations

ENFORCEMENT APPEAL

Despite this being a clear case of intentional unauthorised development in the Kent Downs AONB and the Inspector agreeing that occupation of this site is harmful, the Inspector has still decided to extend the period for compliance to 12 months, which will be a serious disappointment to the local community who have seen the significant adverse impact that this unauthorised development has already had. This, added to the 14 months it has taken to see this decision reached since the original enforcement notice was served (December 2015), means that despite swift action by the Council the notice will not require compliance until over 2 years since the site was first occupied.

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Appeal Decision

Inquiry opened on 20 December 2016

Site visit made on 23 December 2016

by **Clive Hughes BA(Hons) MA DMS MRTPI**

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

Decision date: 17 February 2017

Appeal Ref: APP/V2255/W/16/3146393

Funton Brickworks, Raspberry Hill Lane/ Sheerness Road, Lower Halstow, Kent ME9 7EG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Nightingale Homes (Upchurch) Ltd against the decision of Swale Borough Council.
 - The application Ref 15/502681/OUT, dated 7 April 2015, was refused by notice dated 14 September 2015.
 - The development proposed is residential development (about 55 dwellings) with associated access and parking, creation of footpath link to the Saxon Shore Way and formation of a reptile and invertebrate reserve.
 - The inquiry sat for 4 days on 20-23 December 2016.
-

Decision

1. The appeal is dismissed.

Procedural matters

2. The application is made in outline form with all matters of detail reserved for subsequent approval.
 3. The address of the site is described in various documents as being in either Raspberry Hill Lane or Sheerness Road. The former Funton Brickworks was consistently referred to as being in Sheerness Road although it appears that this road only runs west from the junction with Basser Hill whereas the site is to the east of the junction. For the avoidance of doubt I have used both road names in the heading for this Decision and Raspberry Hill Lane in the text.
 4. There are differences in the submitted plans concerning the former European Brickwork Building. This building is excluded from the site. This is as shown on Drawing No 3265_DR_004 Rev A: Landscape parameter plan 02, which was submitted during the Inquiry (Document 13). This building, together with an access road from Raspberry Hill Lane, is the subject of a separate planning application for use as a community hub. References to that building being a future Outward Bound centre on some plans and in some documents need to be deleted as the Outward Bound Trust are not pursuing any interest.
 5. A draft Unilateral Undertaking (UU) under s106 of the Act was submitted to, and discussed at, the Inquiry. A completed UU, taking account of the minor alterations that arose from that discussion, was submitted following the close of the Inquiry in accordance with an agreed timetable.
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Main issues

6. The main issues are:
- Whether the Council is able to demonstrate a 5-year supply of housing against a full objective assessment of housing need and the implications of this in terms of national and local policy;
 - The effect of the proposals on the character of the countryside and on the appearance of the area;
 - The effect of the proposals on highway safety in the vicinity of the site;
 - Whether the proposals make adequate provision for community and other services and facilities including affordable housing; and
 - Whether the proposals comprise sustainable development as defined in the Framework and whether the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits.

Reasons

Background

7. The site is roughly rectangular with one of its long sides, over 500m in length, fronting Raspberry Hill Lane and with a regular depth of between 120 and 140m. There is an indent on the road frontage where the site boundary goes around a pair of semi-detached houses (Nos 1 & 2 Funton Cottages) that lie outside the site, albeit surrounded by it on three sides. Also outside the site, and in this case completely surrounded by it, is the former European Brickwork Building which is the subject of a separate planning application. The ground level within the site rises from the road towards the south.
8. The appeal site has an area of about 6.5ha and was used as a brickworks until that business closed in 2008, since when it has been disused. The buildings are now falling into disrepair. Visually and functionally the site is in three parts with the central area containing a number of dilapidated buildings including a substantial kiln and three brick chimneys, as well as concrete hardstandings. The eastern part of the site was used as a brick earth field from where the raw materials were taken. It has no buildings but there are mounds of stockpiled materials and some vegetation. The western end was used for the open storage of bricks. Its surface is partly gravel and partly concrete with some self-sown vegetation and no buildings.
9. Around the site the land is in agricultural use. A little distance to the east is a byway that runs south from Raspberry Hill Lane. South of the site the byway is crossed by the Saxon Shore Way, part of a long distance footpath around the coast. This footpath (ZR42) runs east/ west at a higher level to the south of the site. There are clear views down onto the site from the path although these are, in part, filtered by a small copse. To the immediate south west the footpath runs very close to the site, separated only by a narrow strip of land that is, according to the appellant, also in the appellant's control.
10. The site is located in open countryside some 2.5km from Iwade (3.75km by road) and 1.8km from the centre of Lower Halstow. It is to the south of the estuary of the River Medway, close to Barksore Marshes and the tidal mudflats of Funton Creek. There is agricultural land around the site but generally the

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surrounding area to the north is characterised by low lying marshes and the estuary. The site lies within an Area of High Landscape Value (AHLV) and adjacent to the North Kent Marshes Special Landscape Area. The eastern part lies within an identified Coastal Zone in the Local Plan.

11. The parties agree that the site comprises previously developed land. It has the benefit of a Certificate of Lawful Use (CLU) for Class B2 (general industrial purposes) granted on 13 October 2010. There is no planning condition requiring the remediation of the site following the cessation of the brickworks. The planning application for the use of the former European Brickwork Building as a community hub was undetermined at the time of this Inquiry.
12. While the application is in outline form, indicative plans submitted with it show that all the buildings within the appeal site, save for the three brick chimneys, would be demolished. The central and western parts of the site would be developed by the erection of about 55 dwellings with indicative storey heights of 8.5 to 13.5m. The indicative design takes its cue from the brickworks; the houses would be finished with Funton brick. The eastern part of the site would be used to provide a reptile and invertebrate reserve with ponds, bunds, mounds and access for residents and visitors with information points, pathways and a viewpoint. Two vehicular accesses from Raspberry Hill Lane are proposed utilising the existing access points. One would serve the housing; the other would serve the community hub.

Planning policy

13. The development plan includes the saved policies in the Swale Borough Local Plan, adopted 2008 (LP). The emerging plans include the Emerging Draft Local Plan: Bearing Fruits 2013 (Publication draft December 2014) (ELP) that was submitted for examination in April 2015. It has been the subject of an Examination in Public and the Inspector's Interim Findings were issued in early 2016. Main Modifications have been issued for consultation and further hearings are anticipated in early 2017 to consider these.

Whether the Council is able to demonstrate a 5-year supply of housing against a full objective assessment of housing need and the implications of this in terms of national and local policy

14. It is common ground between the parties that the Council is unable to demonstrate a five-year housing land supply. The agreed position, as set out in the Statement of Common Ground (SoCG), is that the Council can demonstrate no more than 3.8 years supply. The Objectively Assessed Need (OAN) is now 776 dwellings per year; this is also agreed in the SoCG. This figure significantly exceeds any annual delivery figure that has been achieved since 2007/08.
15. Government policy, as set out in the National Planning Policy Framework (the Framework) says that relevant policies for the supply of housing should not be considered up-to-date if the Council cannot demonstrate a five-year supply of deliverable housing. There is no dispute between the parties that the term "relevant policies" means any policy relating specifically to the provision of new housing and/ or policies bearing upon the principle of a particular site being developed for housing. This includes policies for the general protection of the countryside.

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16. In addition, the LP is now time-expired in that it was for a plan period for the period up to 31 March 2016. However, being time-expired does not mean that it cannot carry weight if the policies under consideration are consistent with the Framework. It is still the adopted development plan although it has to be borne in mind that its evidence base is quite old.
17. I have given weight to the fact that the Council is making significant progress towards improving the housing land supply in the Borough. This is as set out in the ELP. The identified supply, however, still has to undergo an Examination in Public, the outcome of which cannot be guaranteed. It is possible that some identified sites will not be progressed so there is no certainty that the Council will be able to demonstrate a five-year housing land supply in the near future.
18. The implications for local policy, therefore, are that the policies in the LP that are relevant for the supply of housing are not up-to-date and so cannot carry full weight. The ELP, which is making progress towards addressing the shortfall in housing land supply, carries only very moderate weight at this stage in the process. The second bullet point of the decision-taking limb of paragraph 14 of the Framework is therefore engaged.

The fall back position

19. While this was not raised as a main issue at the Inquiry, the appellants placed considerable reliance on the fact that the Class B2 use could resume at any time. That is undeniably true, given that there is a CLU in respect of such use that covers the whole site. The weight that can be given to this acknowledged fall back position must depend, to some degree, on the likelihood of that use resuming.
20. The site has been marketed since the brickworks closed in 2008. The Planning Statement that accompanied the planning application says that the marketing agents had received few enquiries for the site and that these included army training and paintball games. A separate enquiry to the owners was for the storage of salt for winter road use. All these uses would require further planning permission. The lack of enquiries concerning future Class B2 use rather implies that the site is not particularly attractive for that use.
21. This lack of attraction would appear to stem from its location some distance from the main road network and the poor quality of the road network in the immediate area. Due to their width and rural character, nearby roads are generally unsuitable for HGVs. Many of the roads between the site and the A2 are subject to weight restrictions and/ or, due to bridges under the railway that runs parallel to the A2, height restrictions.
22. A recent enquiry, an "initial intention" from KKB Remediation Ltd, who recently occupied a site in the area that has since received planning permission for housing development, was put forward. However, the use they undertook at that site does not appear to fall within Class B2 use as they were served an Enforcement Notice which was unsuccessfully appealed. The appellant was unable to provide any further information concerning this interest.
23. That letter suggests that there may potentially be some interest in the site. If planning permission for housing is not forthcoming it seems probable that the owners will increase their efforts to achieve some financial return from their investment. The Class B2 fall back position undoubtedly carries some weight in

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the appellant's favour. However, that weight has to be limited due to the length of time since the site was first marketed and the lack of substantive interest during that time; the need for substantial investment and the possible need for further planning permission for replacement or specialist buildings; and the poor quality of the road network in the immediate area.

The effect of the proposals on the character of the countryside and the appearance of the area

24. The buildings on the appeal site are in poor condition and the land is becoming overgrown. The site, and in particular the buildings on it, are visible from public viewpoints in Raspberry Hill Lane, the Saxon Shore Way and in longer views across the water. The buildings are disused and the overall appearance of the site is one of neglect that detracts from the appearance of the immediate surroundings and the wider area. Nonetheless, the brickworks buildings and the brick chimneys are distinctive features that reflect the recent industry in the area and as such form part of its history. Unless the site is redeveloped or reused, the appearance of the land and buildings is likely to decline further.
25. The surrounding area is characterised by agricultural land, mostly in arable use, with orchards and small pockets of woodland. There are scattered farms with outbuildings and a few dwellings. To the north the open Barksore Marshes and Medway estuary dominate the landscape. Some nearby fields are used for horse grazing, with the substantial Callum Park Riding Centre accessed from Basser Hill. The villages of Lower Halstow and Iwade lie some distance to the west and east respectively. The roads are generally narrow country lanes with no footways or street lighting. They are sometimes bordered by hedgerows and trees, giving them a narrow, enclosed feel, although there are also occasional extensive views across the marshes.
26. The site is designated as an AHLV in the LP and this designation is carried forward in the ELP. There is no question, therefore, that it is a valued landscape for the purposes of paragraph 109 of the Framework. The first bullet point of this paragraph says that the planning system should protect and enhance valued landscapes. The 5th bullet point seeks the remediation and mitigation of despoiled, degraded and derelict land. This site comprises such land within a valued landscape. The 5th bullet point of paragraph 17 of the Framework, which identifies the core planning principles, says that planning should recognise the intrinsic character and beauty of the countryside.
27. LP Policy E6 seeks to protect the countryside. It does not prevent development; it sets out the various instances when development will be permitted. This is a closed list and the current proposal does not comply with any of the cited forms of development. Policy E7 relates to the Strategic Gap between the Medway Towns and Sittingbourne north of the M2 in which this site lies and it sets out the instances when planning permission for development will not be granted. Due to the authorised use of this site and the buildings already on it, I am not convinced that there is any conflict with this policy.
28. LP Policy E9 seeks to protect and, where possible, enhance the quality, character and amenity value of the landscape. In certain specified designated areas priority will be given to their protection. These areas include AHLVs where, while at the lowest level of land protected by this policy, the priority is the protection and enhancement of the integrity, character and local

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distinctiveness of these assets. It does not prevent housing so this is not a policy for the supply of housing and it is in line with the Framework so it carries full weight. Emerging policies DM 22 and DM 24 seek to protect the coast and valued landscapes respectively, including AHLVs.

29. The appellant accepts that there will be some harm to the landscape character of the area. The Landscape and Visual Impact Assessment (LVIA) identifies 9 viewpoints and finds moderate adverse impacts for 2 viewpoints, both on the Saxon Shore Way, and minor adverse for 2 further viewpoints. It identifies that the impact would be minor and moderate beneficial in 2 viewpoints while the impact would be neutral in the remaining 3 viewpoints.
30. I visited all the viewpoints and would broadly agree with the findings in the LVIA, although I think that the harm has been underestimated in some instances. Concerning the benefits, there would undoubtedly be improvements to the view into the site when seen from Raspberry Hill Lane immediately outside the central part of the site. That view is already dominated by buildings and due to their poor condition and the overgrown appearance of the site the proposals would be beneficial. The appellant has chosen not to analyse the view into the site from immediately outside the western end where the open storage took place and where houses are now proposed on the indicative plans. There would be some moderate harm arising here.
31. I am particularly concerned about the impact of the proposed development on views from the Saxon Shore Way. Recreational walkers are likely to be particularly sensitive receptors and the site lies between the footpath and the main view, which is towards the estuary. The LVIA describes the recreated kiln building as being "slightly taller" than the existing kiln building. However, the increase in height is around 33% (and over 50% if the central gable feature is taken into account). The gable would be as tall as the adjoining brick chimney and this would mean that this new building would not only be very visually dominating but that it would also reduce the visual importance of the chimney. I consider that the effect of this would be major adverse, even in the long term.
32. According to the LVIA the other dwellings would be 8.5m high (Type B) or 9.2m high (Types C & D). At the western end of the site, where the land is currently hard surfaced but open, the impact of the proposals on views from viewpoint 7 and from the footpath further to the west, would be particularly severe. The path runs down the slope such that it is almost level with the site where it is closest. The proposed houses, together with associated fencing and potential noise from vehicles and the use of gardens, would significantly alter the character of this part of the footpath.
33. The increased height and spread of built form within the site would be seriously harmful to the landscape character of the wider area. It is a valued landscape and the proposed residential enclave would detract from both the appearance of the site and its surroundings. Such a large, and visually prominent, residential development would also appear wholly out of keeping with the established rural character of the area. The impact would not be limited to the built form, however, as there would of necessity be lights (to the roads and within dwellings), signage and traffic associated with the scheme.
34. I conclude on this issue that the proposals would provide some landscape benefits insofar as the despoiled and derelict land would be brought back into beneficial use. The indicative plans show a sensitive design to the

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development that in many ways would respect the most recent use of the central part of the site. However, due to its scale, and in particular the indicative height and spread of the buildings, the proposals would be unacceptably harmful to the character and the appearance of the area. This would be contrary to LP Policies E6 and E9 and to Policies ST 1(11), ST3 (6), ST 5(10) and DM 24 of the emerging LP. There would be harm to a valued landscape, identified as an AHLV in the adopted and emerging LPs, contrary to advice in paragraphs 17 and 109 of the Framework.

The effect of the proposals on highway safety in the vicinity of the site

35. Policy T1 of the Local Plan, which attracts substantial weight, says that development that generates volumes of traffic in excess of the capacity of the highway network or result in a decrease in safety on the highway network will not be permitted. It is now accepted that the capacity of the road network in the vicinity of the site is capable of accommodating the additional traffic generated by the proposed housing. The only outstanding issue, therefore, relates to whether the proposals would result in a decrease in highway safety.
36. Paragraph 32 of the Framework advises that development should only be prevented or refused on highway safety grounds where the residual cumulative impacts of the development are severe. The relevant part of the reason for refusal refers to severe harm to highway safety and amenity by way of increased vehicle and pedestrian traffic. It is not contested that the site is accessed via narrow country lanes that are subject only to the national speed limit. Nor is it contested that average speeds, including the 85%-ile speed, is well below the national speed limit.
37. The parties agreed that Woodruff Close, to the west of Upchurch, represented a reasonable comparator site as it comprises a small residential cul-de-sac in a countryside location accessed from a narrow lane without footways. It is, however, on a bus route with bus stops serving it and there is a public house within walking distance. The manned survey shows little in the way of pedestrian traffic and I am satisfied that it is a reasonable comparator.
38. Using data from that development, and applying the directional split for traffic generated by the appeal site favoured by the Council, the increase in traffic would mean that the surrounding roads remained well below capacity. The main issue concerns Basser Hill, which runs south from Raspberry Hill Lane/ Sheerness Road a short distance to the west of the site. This road can accommodate two-way traffic for much of its length, but there is one section, some 63m long, where cars are unable to pass one another. This section, however, has passing places at either end and is relatively straight with clear visibility from one end to the other. This allows drivers to ascertain whether the road is clear before proceeding.
39. I saw that vehicle speeds in this area are slow, with drivers generally taking a precautionary approach. It is, as described at the Inquiry, a naturally traffic calmed road, quite unlike the pro-active approach to traffic calming that I saw in nearby Iwade. Driving around the local roads I saw cyclists, hikers, a dog-walker and a single horse rider, although given the number of horses in surrounding fields I would anticipate that they are a common feature on this part of the road network.

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40. There has been only one recorded accident along Basser Hill. The proposals would inevitably increase the amount of traffic on this road; a 30% increase seems a reasonable estimate based upon Woodruff Close data, the estimated directional split and existing traffic levels. There is no exact way of measuring the impact of the proposals on a road like Basser Hill and the impact must be a matter of professional judgement. In this case the judgements of the professionals were very different. My conclusion, based upon the limited extent of the single carriageway part of Basser Hill; the known low traffic speeds; the low accident rate; and the low volume of traffic is that it is unlikely that there would be a significant decrease in the level of safety on the highway network or that the impact would be severe. There would be no unacceptable conflict with LP Policy T1 or with the Framework.
41. The reason for refusal also refers to increased pedestrian traffic on the narrow country lanes. To the west of the Basser Hill junction, the Saxon Shore Way shares Sheerness Road with vehicles for some distance towards Lower Halstow. There are some facilities there including a shop, church, primary school, public house, bus stop and village hall that might attract walkers from the appeal site and some villagers might walk to the community hub within the appeal site.
42. However, the distance to Lower Halstow is about 1.8km and the first part of the route, using the Saxon Shore Way is very muddy in wet weather. The route along Sheerness Road has no footways, is not lit and the road would not allow two vehicles and a pedestrian to pass at one time. The road is slightly sunken at one point, the banks leaving no off-carriageway refuge for walkers. Due to these circumstances, and the known pedestrian generation at Woodruff Close, it seems unlikely that the development would generate significant levels of pedestrian traffic.
43. The appellant does not rely on the fall back position for support as it was argued that there is existing spare capacity. In any case, HGVs are unlikely to use Basser Hill due to weight and height restrictions between Basser Hill and the main road network. A resumption of the Class B2 use would be likely to generate some additional traffic on this road as it would be used by employees and visitors using cars and small vans to access the premises.
44. I conclude on this issue that the proposed development would not be likely to result in severe harm to highway safety and amenity by way of increased vehicle and pedestrian traffic. There would be no unacceptable conflict with the development plan or with the Framework.

Whether the proposals make adequate provision for community and other services and facilities including affordable housing

45. The UU, signed and dated 23 December 2016, makes provision for 30% of the dwellings to comprise affordable housing; for further landscaping outside the appeal site on land controlled by the appellant; for the provision of a Community Hub Funding and Management Plan to include the provision of that building; for a footpath link from the site to the Saxon Shore Way; for the submission of a Sustainability Enhancements Plan; for the submission of an Invertebrate Reserve Establishment and Management Plan; and a financial contribution towards the Strategic Access Management and Monitoring Strategy in respect of the Swale Special Protection Area.

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46. The UU also makes provision of financial contributions to the Kent County Council in respect of primary education (Iwade Primary School); secondary education (Westlands Secondary School); libraries (mobile library at School Lane, Lower Halstow); and wheeled bins for the proposed houses and flats.
47. The Council raised no objections to the UU in principle as it meets various requirements and would ensure that some elements of the proposed development would be provided. The affordable housing is in accordance with LP paragraph 3.114 and LP Policy H3 which seek to ensure that at least 30% of proposed dwellings are affordable. While ELP Policy DM 8 would require the provision of 40% of the homes in this rural location to be affordable, that emerging policy has not been adopted and could be subject to revision. The quantum of provision would therefore be in accordance with adopted policy.
48. The UU cannot ensure that the community hub building is actually provided as this is dependent upon the Council granting planning permission for it. If permission is forthcoming, however, its provision and future management would be secured. This cannot carry much weight as there is no certainty that it can be provided and in any case its intended use is unclear. There is no obvious need for a meeting hall for the local community as there is a hall in Lower Halstow and it seems unlikely that 55 dwellings would generate the need for an additional facility. It certainly is not necessary to make the development acceptable in planning terms and so fails the tests in the Community Infrastructure Levy Regulations 2010 (as amended) and paragraph 204 of the Framework.
49. The reptile and invertebrate reserve would be a public benefit but cannot reasonably be described as being necessary to make the development acceptable in planning terms. This carries only limited weight. The footpath access to the Saxon Shore Way would be of benefit to future occupiers of the site but would have no public benefit beyond that. The financial contributions to the County Council are in accord with its requirements in respect of education, libraries and refuse collection.
50. Overall, the scheme would make adequate provision for community and other services and facilities including affordable housing. The overall package contained within the UU weighs in favour of the development.

Whether the proposals comprise sustainable development as defined in the Framework and whether the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits

51. The starting point has to be that the proposals are contrary to the provisions of the development plan insofar as it seeks to protect the countryside. The issue in this case is firstly whether the proposals comprise sustainable development as defined in the Framework; and, second, whether the adverse impacts would significantly and demonstrably outweigh the planning benefits. The Framework says that the policies within it as a whole constitute the Government's view of what sustainable development means in practice. Paragraph 7 identifies that there are three dimensions to sustainable development: economic, social and environmental. Paragraph 8 says that these roles must not be undertaken in isolation and that economic, social and environmental gains should be sought jointly and simultaneously through the planning system.

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52. Concerning the economic role, the economic benefits of providing new housing are agreed, especially given the lack of a five-year housing land supply and the absence of constraints to delivery on this site. The proposals would fully meet the policy requirement to provide 30% affordable housing; up to 16 units would be a significant benefit due to the current levels of supply and need. While the size of the proposed units do not exactly tally with the sizes of units required in the area as identified in the Lower Halstow Housing Needs Survey (2013), this is an outline application with all matters reserved and suitably-sized units can be provided under the terms of the UU.
53. Other economic benefits would be likely to include short term employment opportunities during construction and future residents may use some of the shops, businesses and facilities in nearby villages. There is, however, a need to balance this with the relatively isolated location of the site and lack of public transport. There is no convenient walking route to Lower Halstow or Iwade as the road is narrow with no footways or street lighting. The likelihood is that most journeys will be by car and not necessarily to local facilities.
54. In terms of a social role, the separation of the site from local villages would mean that it would not help to create a strong and healthy community. The lack of accessible local facilities would not reflect or support the community's needs. There is no certainty that the community hub will be granted planning permission and its potential future use remains vague. While the built form might well be of a high quality, and the SoCG shows that this would reflect its industrial past, its contribution to any social role beyond the provision of housing is severely limited by its location.
55. Concerning its environmental role, the proposals would result in the reuse of previously used land in the countryside. There would be an ecological benefit in providing an invertebrate and reptile reserve on land that is currently overgrown and despoiled. The on-site sustainability enhancements and other factors such as the provision of charging points for electric cars are beneficial.
56. There would, however, be very great harm to a valued landscape that is identified as an AHLV in the development plan and the ELP. While it is acknowledged that the buildings on the site are, for the most part, in poor condition, the visual harm would be considerable. The indicative plans show a very significant increase in the height and spread of buildings on the site. This would be harmful to local views including close views from the Saxon Shore Way. The provision of a large residential enclave in the countryside, unrelated to any existing settlement, would also be harmful to the character of the area. Its presence, together with signage, lighting, fencing, noise and traffic would add to the environmental harm. In terms of the environmental role, the harm would significantly outweigh the benefits.
57. Paragraph 47 of the Framework seeks to boost significantly the supply of housing. This is, in part, qualified by paragraph 55 which says that housing in rural areas should be located where it will enhance or maintain the vitality of rural communities in order to promote sustainable development. This proposal would not enhance the vitality of any rural communities. I am not convinced that the latter part of paragraph 55, concerning isolated homes, is relevant as there would be about 55 new houses and so none of them could reasonably be individually described as being isolated.

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58. The proposals are also contrary to the provisions of the development plan. While overall this carries reduced weight in accordance with advice in the Framework, the parts of the relevant policies that protect the countryside, and in particular LP Policy E9, carry full weight. While it is permissive towards development, and the AHLV is the lowest of the three tiers of protected landscapes, this proposal would be in direct conflict with Policy E9 as it would fail to safeguard or enhance the landscape. The local landscape contributes positively to the distinctiveness of the locality and the Borough.
59. I have had regard to the concession by the Council in cross examination that a reduced form of residential development on the built up part of the site might be acceptable. The Council, the highway authority and local residents have not had the opportunity to consider such a proposal and no scheme has been put forward. I acknowledge that this is a concession that some housing may be acceptable here despite its locational disadvantages and the environmental harm that would arise. This carries limited weight in the appellant's favour.
60. Overall I have found that the Council cannot demonstrate a five-year housing land supply; that there would be economic and social benefits arising from the reuse of previously developed land by the provision of market and affordable housing; that there would be environmental benefits arising from the remediation of degraded and derelict land; that there would be some benefits arising from the formation of an invertebrate and reptile reserve; and that there may be some benefits arising from the provision of a community hub building. These benefits, together with the other identified benefits, have to be seen alongside the fact that there would be no unacceptable harm to highway safety and that a Class B2 use could recommence at any time. The likelihood of a Class B2 use recommencing carries limited weight, however, for the reasons set out in paragraph 23 (above).
61. Against this the proposals would be contrary to the development plan and the ELP. There would be harm arising from the construction of a housing estate in the countryside that would be poorly related to existing settlements and facilities and which would have no direct access to public transport. There would be very great harm to both the character and the appearance of the area which is a valued and protected landscape. On balance, the proposals would not comprise a sustainable form of development. Taken together, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits.
62. I conclude, therefore, that the other material considerations do not outweigh the provisions of the development plan and so the appeal is dismissed.

Clive Hughes

Inspector

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APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Emmaline Lambert of Counsel	Instructed by Head of Legal for Mid Kent Legal Services
She called	
David Huskisson DipLA CMLI	Principal, Huskisson Brown Associates
Alun Millard MCIHT	Kent County Council, Highways & Transportation
Jonathan Buckwell BA(Hons)	Director, DHA Planning
MA MRTPI PIEMA	

FOR THE APPELLANT:

Richard Turney of Counsel & Admas Habteslasie of Counsel	Instructed by the appellant
He called	
Richard Harrison BSc CMILT MCIHT	Assistant Director, Odyssey Markides
Paul Whatley BS(Hons) DipLA CMLI	Assistant Director, Lloyd Bore Ltd
Iain Warner BSc(Hons) MRTPI	Assistant Director, Tetlow King Planning Ltd

INTERESTED PERSONS:

Allyson Beerstecher	Local resident
Elizabeth Mouland	Local resident

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Statement of Common Ground
- 2 Agreed list of suggested conditions
- 3 Appeal decision APP/W2275/C/08/2077889 – Land at Four Gun Field, Otterham Quay Lane, Upchurch (24 March 2009)
- 4 Enforcement Notice: Land at Four Gun Field, Otterham Quay Lane, Upchurch 19 May 2008
- 5 Appeal decision APP/V2255/W/15/3135521 – Norton Ash Garden Centre, London Road, Norton (4 May 2016)
- 6 Appeal decision APP/V2255/W/16/3153537 – Land at Church Farm, Sheppy Way, Bobbing (6 December 2016)
- 7 Appeal decision APP/D0840/W/16/3142537 – Horizon Poultry Farm, Tremar, Cornwall (15 November 2016)
- 8 Extract from Guidelines for Landscape and Visual Impact Assessment pp85/5
- 9 Lower Halstow Housing Needs Survey (October 2013)
- 10 Appellant's opening submissions
- 11 Opening statement on behalf of the Council
- 12 Draft Unilateral Undertaking
- 13 Drawing No 3265_DR_004 Rev A: Landscape parameter plan 02
- 14 Gladman Developments Ltd v Daventry DC v SoSCLG [2016] EWCA Civ 1146 23 November 2016

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- 15 Email from Swale BC to Anna Bloomfield 21 August 2013
- 16 Existing site plan: The Old Brickworks, Nacolts, Ashford
- 17 Appeal decisions APP/V2255/A/10/2127237 & 2131566 – Conyer Brickworks, Conyer, Teynham 1 June 2011
- 18 Summary of evidence of Paul Whatley
- 19 Extract from Council's Strategic Housing Land Availability Assessment 2014/2015 – Appendix 2

DOCUMENTS SUBMITTED AFTER THE INQUIRY FINISHED SITTING

- 20 Agreed conditions
- 21 Unilateral Undertaking dated 23 December 2016
- 22 Closing submissions on behalf of the Council
- 23 Appellant's closing submissions

PLANS

- A Drawing No 61_001_01: Site Location Plan
- B Drawing No 61_004_09: Masterplan Design Proposal
- C Drawing No 3265_DR_004 Rev A: Landscape Parameter Plan 02

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Appeal Decision

Site visit made on 7 February 2017

by **Simon Warder MA BSc(Hons) DipUD(Dist) MRTPI**

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

Decision date: 21 February 2017

Appeal Ref: APP/V2255/D/16/3165644

155 Westerham Road, Sittingbourne ME10 1XH

- 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 Miss Chaplin against the decision of Swale Borough Council.
 - The application Ref 16/506983/FULL, dated 21 September 2016, was refused by notice dated 23 November 2016.
 - The development proposed is a two storey side extension.
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Decision

1. The appeal is allowed and planning permission is granted for a two storey side extension at 155 Westerham Road, Sittingbourne ME10 1XH in accordance with the terms of the application, Ref 16/506983/FULL, dated 21 September 2016, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: WR01 Rev 2 and WR02 Rev 2.
 - 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.
 - 4) The ground floor rear window serving the room labelled as 'Bathroom' on drawing number WR02 Rev 2 shall be obscure glazed and shall be kept as such in perpetuity.

Main Issue

2. The main issue is the effect of the proposal on the character and appearance of the area.

Reasons

3. The appeal property is a two storey semi-detached dwelling which occupies a corner location. Properties in the area typically comprise semi-detached or short terraces and are laid out behind reasonably generous front gardens. Where they are sited on a corner, the flank walls of the buildings are generally set back from the side boundaries. This helps to give the area a fairly relaxed, spacious layout which contributes positively to local distinctiveness. The appeal property is typical of this arrangement. However, a 2m high wall is
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positioned close to the edge of the footpath on side boundary with Westerham Road.

4. The proposed two storey side extension would extend the flank wall of the property to within 0.4m of this side boundary. As such, it would, to a degree, reduce the locally distinctive space to the side of the property. Nevertheless, that space has already been closed down somewhat by the side boundary wall. Moreover, the houses on the opposite side of Westerham Road are set well back from the road. Consequently, I consider that the particular circumstances of this case would ensure that the proposal would allow adequate space to be retained around the building to maintain the characteristic layout of the area.
5. The Council has also expressed concern that the proposed extension would have an oppressive and overbearing effect on users of the adjoining footpath. However, the footpath is reasonably wide and, considered in the overall context and scale of the street scene, the extension would take up a short length of the footpath. I have already found that the proposal would allow adequate space to be maintained around the building and this would contribute to the feeling of openness experienced by footpath users.
6. Therefore, I conclude that the proposal would not have a harmful effect on the character and appearance of the area. As such, it would accord with Policies E1, E19 and E24 of the *Swale Borough Local Plan 2008* to the extent that they require proposals to respond positively to the characteristics of the locality, be well sited and of a scale and design appropriate to the location. The proposal would also accord with Policies CP4, DM14 and DM16 of the emerging *Swale Borough Local Plan Bearing Fruits 20131* and the advice in the Council's *Designing an Extension Planning and Development Guidelines* insofar as they have similar aims.

Conditions

7. The Council has suggested four conditions. With amendments for clarity, I find that they meet the tests set out in the Planning Practice Guidance. I have imposed a condition specifying the approved drawings as this provides certainty. A condition requiring the external materials to be used in the extension to match those of the existing building is necessary to safeguard the character and appearance of the area. A condition requiring the proposed ground floor bathroom window to have obscured glazing is necessary to ensure the privacy of occupiers of the building.

Conclusion

8. For the reasons set out above, the appeal should be allowed.

Simon Warder

INSPECTOR



Appeal Decision

Site visit made on 9 February 2017

by **R J Maile BSc FRICS**

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

Decision date: 21st February 2017

Appeal Ref: APP/V2255/D/16/3163772

11 St Anns Road, Faversham, Kent, ME13 8RH.

- 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 W and Mrs L Roalfe against the decision of Swale Borough Council.
 - The application, ref: 16/506386/FULL, dated 10 August 2016, was refused by notice dated 19 October 2016.
 - The development proposed is: "Rear extension including demolition of rear garden w.c. and partial removal of ground floor external walls to existing kitchen, fitting out of basement to provide a bedroom, study, shower/w.c. and alterations to lightwells."
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue here is the effect of the proposed rear extension upon the living conditions of existing and future residents of 12 St Anns Road.

Reasons

3. No. 11 St Anns Road comprises a two storey, late Victorian terraced house. It contains a basement area that has very limited natural lighting, together with a two storey back addition housing a kitchen at ground floor level. The adjoining property to the south (no. 10) has a flat roofed single storey extension abutting the common boundary with the appeal site and which contains a bathroom/w.c.
 4. The proposed single storey extension would wrap around the back addition and extend towards the matching structure of no. 12. This has a similar layout with a kitchen window facing towards the appeal site. Due to the topography of the site the houses are stepped down, with no. 12 being below the level of no. 11.
 5. I see no objection, in principle, to a ground floor extension at no. 11 to a point coinciding with the rearward projection of that constructed to no. 10. However, whilst I fully appreciate the benefits of creating a more spacious and better proportioned kitchen/dining area, this would involve extending the back addition at ground floor level towards the neighbouring property at no. 12.
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6. I was able to view the proposal from the adjoining houses to either side of no. 11 as part of my site visit. From this, I am satisfied that the rear extension would not adversely impact upon the living conditions of the occupiers of no. 10.
7. The appellants have indicated their willingness to forego the raised decking to the rear, which would remove any concerns regarding loss of privacy to neighbouring residents.
8. The projection of the back addition towards the common boundary with no. 12 would, however, be clearly seen from the kitchen window of that neighbouring property. Given the elevated siting of no. 11 the top of the proposed extension, with its glazed roof, would also be plainly visible above the intervening dwarf brick wall and close boarded fence that forms the common boundary between the two houses.
9. Although the new structure would be seen against the backdrop of the existing brick wall to the back addition, its proximity to the common boundary (some 1m) would result in an over-dominant feature that would have an overbearing and enclosing effect as viewed from no. 12. The glazed roof structure would also be highly visible from the rear-facing bedroom window of that property.
10. I have therefore found upon the main issue that development as proposed, by reason of its projection towards the common boundary, would adversely impact upon the living conditions of existing and future residents of 12 St Anns Road contrary to "saved" Policies E1 and E24 of the adopted Local Plan¹ and Policies DM14 and DM16 of the emerging Local Plan².

Other Matters

11. The appeal site is situated within the Faversham Conservation Area.
12. The new extension would be located to the rear of the house, such that it would be largely screened in views from the public domain.
13. I note the comments of the Council's Design and Conservation Consultant, Mr John Woodward, who has confirmed that the current design in all its aspects, including the provision of alterations to the front and rear lightwells, would represent an enhancement to the building and its setting.
14. I agree that the lightwells are acceptable in relation to their impact upon the character and appearance of the Conservation Area and that the scheme would provide an enhancement to the accommodation on offer at no. 11. However, Mr Woodward's remit did not include an assessment of the proposal in terms of its impact upon the amenity of nearby residents.
15. I also question whether a more appropriate use of traditional materials such as those noted to the extension at no. 2 Queens Road to the rear of no. 11 would be more in keeping with this small Victorian dwelling.

¹ The Swale Borough Local Plan (adopted February 2008).

² The Swale Borough Local Plan: Proposed Main Modifications (June 2016).

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Conclusion

16. For the reasons given above, I conclude that the appeal should fail.

R. J. Maile

INSPECTOR

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Appeal Decision

Site visit made on 9 February 2017

by **R J Maile BSc FRICS**

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

Decision date: 21st February 2017

Appeal Ref: APP/V2255/D/16/3161524

11 Leet Close, Eastchurch, Sheerness, Kent, ME12 4EE.

- 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 Paul Faiers against the decision of Swale Borough Council.
 - The application, ref: 16/503388/FULL, dated 18 April 2016, was refused by notice dated 22 August 2016.
 - The development proposed is: "First floor front extension over garage to form bedroom together with internal alterations to form new en-suite bathroom and new bathroom window to side elevation."
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Decision

1. The appeal is allowed and planning permission is granted for first floor front extension over garage to form bedroom together with internal alterations to form new en-suite bathroom and new bathroom window to side elevation at 11 Leet Close, Eastchurch, Sheerness, Kent, ME12 4EE, in accordance with the terms of the application, ref: 16/503388/FULL, dated 18 April 2016, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.
 - 3) The development hereby permitted shall be carried out in accordance with the following approved plans:

Drawing no. 3489/2.04A:	Site Plan – scale 1:500.
Drawing no. 3489/2.05:	Location Plan – scale 1:1250.
Drawing no. 3489/2.01/3A:	Existing Floor Plans – scale 1:100.
Drawing no. 3489/2.01/4A:	Existing Elevations – scale 1:100.
Drawing no. 3489/2.06A:	Proposed Floor Plans – scale 1:100.
Drawing no. 3489/2.07A:	Proposed Elevations – scale 1:100.
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Main Issues

2. The main issues in this case are:
 - a) The effect of the proposed first floor front extension upon the character and appearance of the street scene.
 - b) The impact of the proposed first floor front extension upon the living conditions of existing and future residents of no. 12 Leet Close, Eastchurch.

Reasons

- a) *Effect upon character and appearance.*
 3. No. 11 Leet Close comprises a modern detached house located on an estate of similar large dwellings (Kingsborough Manor). The houses vary in design with a number having 'L' shaped formats incorporating two storey gable ends facing the street, as in the case of no. 12 next door.
 4. The current scheme would reflect a number of these designs that were noted during my site visit and which are included in a photographic record attached to the appellant's grounds of appeal.
 5. Given the varied nature of dwellings on the estate, including some similar to that now proposed I can see no objection to the scheme before me, which will accord with the established character and appearance of the street scene.
 6. I therefore find upon the first main issue that development as proposed would not have a harmful effect upon the character and appearance of the street scene and would accord with the requirements of "saved" Policies E1, E19 and E24 of the Local Plan¹ and with the Council's adopted SPG².
- b) *Impact upon living conditions.*
 7. The double garage to no.11, which projects forward of the building line of the two storey element of the property, would be raised by approximately 0.8m at eaves level with an increased ridge height of 2.1m. The existing low pitched roof would be steeper and incorporate a roof light facing towards no. 10. That dwelling, however, is sited behind the building line of the subject property and would not be overlooked from the new roof light.
 8. As part of my site visit I viewed the proposal from within the adjoining property at no. 12 Leet Close. That property has ground floor windows facing the appeal site and serving a small utility room and a kitchen. At first floor level there are obscure glazed bathroom windows, which would be largely unaffected by the proposal.
 9. The increased height of the garage would have only a very minor impact upon the outlook from the kitchen window of no. 12 given the siting of nos. 11 and 12 approximately 5m apart, together with intervening boundary treatment. Having regard to the relative relationship and orientation of the two properties I am also satisfied that there would be no noticeable loss of sunlight to the kitchen window of no. 12.

¹ The Swale Borough Local Plan: adopted February 2008.

² Supplementary Planning Guidance: "Designing an Extension – A Guide for Householders."

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10. Accordingly, I have found upon the second main issue that the erection of the first floor extension above the garage of no. 11 would not bring about any unacceptable impact upon the living conditions of existing and future residents of no. 12 Leet Close, Eastchurch, as required by "saved" Policies E1, E19 and E24 of the Local Plan and the Council's adopted SPG.

Conditions

11. The Council has put forward a total of three conditions in the event that I am minded to allow this appeal, which I have considered against the tests of the Framework³ and advice provided by the Planning Practice Guidance issued on 6 March 2014. I find all to be reasonable and necessary in the circumstances of this case.

12. My reasons for the conditions are:

13. Condition 1 is the standard commencement condition imposed in accordance with section 91(1) (a) of the Town and Country Planning Act 1990. Condition 2 will ensure a satisfactory appearance to the completed development in the interests of the visual amenities of the area.

14. Condition 3, requiring the development to be carried out in accordance with the approved plans, provides certainty.

Conclusion

15. For the reasons given above, I conclude that the appeal should be allowed.

R. J. Maile

INSPECTOR

³ The National Planning Policy Framework.

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Appeal Decision

Hearing held on 13 December 2016

Site visit made on 14 December 2016

by **S J Papworth DipArch(Glos) RIBA**

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

Decision date: 21 February 2017

Appeal Ref: APP/V2255/W/16/3153751

The Hawthorns, Greyhound Road, Minster-on-Sea, Kent ME12 3SP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Ms Liza Smith against the decision of Swale Borough Council.
 - The application Ref 15/502191/FULL, dated 10 March 2015, was approved on 5 January 2016 and planning permission was granted subject to conditions.
 - The development permitted is change of use of land to use as residential caravan site for one gypsy family with one caravan, erection of amenity building and laying of hardstanding.
 - The condition in dispute is No 1 which states that: The use hereby permitted shall be for a limited period being the period of one year 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.
 - The reason given for the condition is: As permission has only been granted in recognition of the particular circumstances of the case, having regard to the lack of alternative, available sites elsewhere within the Borough, in accordance with DCLG Planning Policy for Traveller Sites.
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Decision

1. I allow the appeal and vary planning permission Ref 15/502191/FULL for change of use of land to use as residential caravan site for one gypsy family with erection of amenity building and laying of hardstanding at The Hawthorns, Greyhound Road, Minster-on-Sea, Kent ME12 3SP granted on 5 January 2016 by Swale Borough Council, by deleting conditions 1) and 6) and varying conditions 3) and 8).

Main Issues

2. These are;
 - The effect of the proposal on the character and appearance of the Lower Road area of Sheppey.
 - The effect of the proposal on the aims of sustainable development, with particular regard to access to services and facilities for day-to-day living.
 - The weight to be attached to other considerations, including the supply of sites generally, the personal circumstances of the appellant and the availability of alternative sites for her.
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Reasons

Preliminary Matters

3. The site is among a group of traveller sites on Greyhound Road, and a single Hearing addressed similar applications from the occupiers of three of the sites; this one at The Hawthorns, one at The Peartree and one at Blackthorn Lodge. Another site at Woodlands Lodge was referred to as being the subject of an appeal in 2013, and that Decision will be considered as part of the main issues in the present appeal.
4. Whilst a joint Hearing was appropriate in view of the common issues, the appellants being represented by the same agent and by both the Council and the appellants having submitted joint Appeal Statements, it is appropriate to issue three separate Appeal Decisions in order that each should stand-alone as a document. There are however passages common to all three Decisions.
5. The hearing in the Council offices took place over much of Tuesday 13 December and in view of the failing light it was agreed that the site inspection should take place the following day. At that inspection each site was visited along with the respective occupiers, and the appellant's agent then drove myself and the Council Officer on a tour of possible viewpoints, shops, schools and other facilities mentioned in evidence, as well as recent housing development to the west. At the request of District Councillors and a representative of the Parish Council, notice was taken of the traffic conditions at the entry onto the main road, although this was not a matter of objection from the Council. The Hearing remained open for discussion throughout.
6. The original application was for the variation or removal of condition 7) of planning permission SW/11/1430 granted on 27 June 2012 which was for the change of use of land to a residential caravan site for one gypsy family with one caravan, erection of amenity building and laying of hardstanding, and sought the temporary permission of 4 years be extended or removed. The four year period would have expired on 27 June 2016. The Council granted permission on 5 January 2016 for a further 1 year period from that date, effectively another 6 months or so, secured by condition 1) as set out in the bullet points to the heading above, and it is this grant of permission that is appealed. Being an appeal against the grant of permission, the various options open to the decision taker were discussed and agreed at the Hearing. The permission granted in 2016 included 7 of the 9 other conditions attached to the 2012 permission.
7. It was confirmed at the Hearing that the original 2012 permission was for only a single touring caravan, by reason of the wording of condition 2), and this was not rectified in the 2016 permission in the new condition 3), although the Council were of the view that the permission was for residential use, with the condition limiting only the number of touring caravans. It is the fact however that both of the other two permissions appealed against, at The Peartree and at Blackthorn Lodge had conditions that covered the number of mobile homes as well as touring caravans.
8. It was also confirmed that the occupiers of the site continue to satisfy the definition of a gypsy or traveller as set out in the August 2015 version of Planning Policy for Traveller Sites, a situation that existed at the time of the Council's grant of the one year permission in January 2016.

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Policy Background

9. The Development Plan for the area consists of the saved policies of the Swale Borough Local Plan 2008 and Policy E1 on general development control criteria requires development to be well sited, appropriate in scale, design and appearance with a high standard of landscaping, and have safe pedestrian and vehicular access. The site is in the countryside where Policy E6 seeks to protect the quality, character and amenity of the area. Development will not be permitted outside rural settlements unless related to an exceptional need for a rural location. Policies E9 and E19 seek the protection of landscape and high quality design. Safe access to development is the subject of Policy T1.
10. Specific to the provision of gypsy and traveller sites, Policy H4 sets criteria for sites, but seeks a genuine connection with the locality for anyone wanting to set-up a site, in addition to be able to prove traveller status. The Council accept that the policy was criticised by the Local Plan Inspector at the time, and that greater weight should be given to the more recent publication of Planning Policy for Traveller Sites. Whilst Policy H4 is still part of the Development Plan, and benefits from the provisions of section 38(6) of the Planning and Compulsory Purchase Act 2004, the Council's acceptance of its limitations is acknowledged.
11. There is emerging policy in '*Bearing Fruits 2031: The Swale Borough Local Plan, Proposed Modifications, June 2016*'. The Local Plan Inspector's interim findings contains at paragraphs 11 to 14 in Part 3 a commentary on the process being undertaken by the Council, having mind to the revised definition of a gypsy or traveller introduced in the August 2015 revision to Planning Policy for Traveller Sites. The original need for 85 pitches was found to have reduced to 61, of which 51 had been completed or had permission granted. The Inspector considered the proposal that the remaining 10 be provided through windfall planning applications to be a well-reasoned and pragmatic solution to ensure that the Plan aligns with up-to-date national policy.
12. On that basis it is not proposed to allocate sites, but to test windfall applications against criteria in Policy DM10 of the draft Local Plan which includes consideration of integration between communities; the effect on local communities, character and appearance, landscape and local services; the health of occupiers; the need for landscaping; access and parking. The appellant made representation as to the weight to be attached to the Inspector's interim findings, which will be considered in the planning balance.
13. The Council has published the Supplementary Planning Document '*Swale Landscape Character and Biodiversity Appraisal*' which identifies the area where the site is as being within the central Sheppey Farmlands character area, described as being of moderate sensitivity and in poor condition.
14. Planning Policy for Traveller Sites of August 2015 is the most recent statement of Government policy with regard to such site provision and the introduction states the Government's overarching aim 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.
15. Decisions on traveller sites should also have regard to the policies in the National Planning Policy Framework so far as relevant, and this document states the presumption in favour of sustainable development and sets out the

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three dimensions of such development. The core planning principles include conserving and enhancing the natural environment; actively managing patterns of growth to make the fullest possible use of public transport, walking and cycling; and focusing significant development in locations which are or can be made sustainable.

Character and Appearance

16. The site is part of a distinct and closely linked group of similar sites along Greyhound Road leading south from Lower Road, the A2500. It is outside the settlement boundary to the west and is, in policy terms, in the open countryside. There is open agricultural land to the north of the main road and the flat land reaching to the Swale to the south, but that land south of the road is not devoid of other development, there being linear built form leading away from the road to the west of the site, a disused public house and car park to the east, and further east more concentrated development around the bend and hill at Brambledown and at the entry to Elmley Road.
17. It is clear from a series of aerial views supplied by the Council that the site was once wooded and the various temporary permissions granted have resulted in the present more open aspect. It is less clear what would be expected pursuant to the condition requiring the land to be restored to its condition before the development took place, or what control might have prevented some removal of trees under the original use, presumably agricultural.
18. As mentioned previously, another site at Woodlands Lodge was the subject of an appeal in 2013. That site is adjacent to and between The Peartree and Blackthorn Lodge, the other two sites covered by the joint Hearing, whereas The Hawthorns which is the subject of this Decision is further to the north and nearer the main road, with intervening sites not considered here. The Inspector's Decision (Ref: APP/V2255/C/13/2208507, 28 October 2014) concerned enforcement action, but he considered a deemed planning application under Ground (a) and the effect on the character and appearance of the area. He found views of that site to be limited in extent to the immediate locality given the presence of trees around the edge of the site, although the structures and hardstanding would be visible from Greyhound Road given the wide access.
19. The analysis holds true to an extent for the current appeal site, although being on the straight part of Greyhound Road the nearby view is less open, Greyhound Road is a *cul-de-sac* and there is no public right of way. The vegetation at the site boundary with open land to the west is well established. The previous Inspector accepted that the use of landscaping could soften the appearance of that site and over time mitigate, to an extent, the visual harm, but he considered that it would not remove it entirely. It is agreed now that compared with what appears to be the previous condition of the land, there has been some harm caused to the appeal site, but this is limited and to a substantial degree, capable of being further mitigated by landscaping.
20. More distant view-points are limited as found in 2013, and from the slightly raised locations along Lower Road to the east and west the sites, including The Hawthorns, are largely subsumed into other development or filtered by vegetation. Higher level views are available from Elm Lane to the north, but from there the sites do not stand out and are again largely subsumed into the flat land leading down to the Swale, the eye being drawn to the attractive

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estuarial landscape and distant features. Having mind to the findings of the 'Swale Landscape Character and Biodiversity Appraisal' that the site lies within an area of moderate sensitivity that is in poor condition, the effect on the wider area is limited.

21. Another consideration in this and the next main issue is the change being brought about by the continued development of Thistle Hill on the far side of Scocles Road to the west. This is bringing the appearance of the built-up area closer to the appeal site, rendering it less clearly in open countryside and more as an edge-of-town site. The consequence of this is to reduce further the limited visual harm that would occur.
22. It is appropriate to consider the cumulative effect, having mind to the Decisions being issued at the same time for the other two sites at The Peartree and Blackthorn Lodge, and the possibility that these would affect consideration of other sites in the group. There is visual benefit in a grouping, avoiding sporadic development and visually isolated individual sites. The single entry onto Lower Road is visually appropriate and not unlike other entries in the vicinity, and Greyhound Road has the character and appearance of a rural lane
23. To conclude on this issue, whilst the passage of over 4 years of temporary permissions has resulted in the site becoming a part of the character and appearance of the area over that time, the use of the land, the stationing of the mobile home and the other structures has resulted in some limited harm in nearby views. That is mitigated in long views to a considerable extent by the vegetation and there is scope for further works. With those provisions the proposal accords with national policy and Development Plan Policies E1, E6, E9 and E10.

Accessibility to Local Services

24. This matter again was considered by the Inspector in the 2013 appeal, and he made reference to the policies of the Planning Policy for Traveller Sites extant at that time. One of the changes introduced in 2015 was to paragraph 25 in Policy H on determining planning application for traveller sites. This now reads '*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*', the alteration being the addition of the word 'very' in the first sentence. The Inspector concluded that the site was remote and located away from a settlement with adequate and sufficient amenities.
25. The site inspection of the current case included an extensive tour of the nearest settlement and its facilities, and they do not appear to have changed significantly from those referred to in the Woodlands Lodge case. The main road is not inviting to walk along, but there is a public right of way across fields towards the school and shops.
26. It is pertinent to consider the changes being brought about by the continued development at Thistle Hill. Whilst much is built-out and the Council state a high degree of pre-sales, and whilst the community centre and school are in place, the provision of the planned shops appears to have stalled. That would provide a ready access for the site, and a level of integration with the new

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settled community. It is clear that there is development to the north of the proposed central site for the shops still to commence and that may provide the critical mass of demand necessary to bring about the provision.

27. It was asserted at the Hearing that the traveller lifestyle is likely to involve the use of private transport in any event, and that journeys would often combine shopping and the school run with other needs to make use of such transport for work, where the use of public transport, even if available, would not be appropriate. Certainly the traveller lifestyle is based on the need to travel in search of work, but there would be times when work is found closer to home and requiring only day-trips. Such a pattern of work would allow those other journeys to be undertaken at the same time, but would require of necessity, private transport. That aspect of the lifestyle is accepted in paragraph 13 h) of Planning Policy for Traveller Sites which states that some travellers live and work from the same location thereby omitting many travel to work journeys, which can contribute to sustainability.
28. As accepted by the Inspector on the Woodlands Lodge appeal, a settled base has given the occupiers of the appeal site access to healthcare and the same would be true of education for a family living here. The personal circumstances of the appellant will be considered next, but the site is not so remote as to make it unduly difficult to gain ready access to facilities, and Planning Policy for Traveller Sites does provide at Policy C for sites in rural areas.
29. That allowance for rural sites is provided that they do not dominate the nearest settled community. As with consideration on the visual effect, it is necessary to consider a possible cumulative effect, as the Greyhound Road area consists of a number of traveller sites. However, the layout is not sprawling, but is well contained and does not appear to have any adverse effect on the settled community of Brambledown or Minster, either in visual or numerical terms. It is sufficiently removed to avoid dominating the community, whilst being close enough so as not to appear truly isolated.
30. In conclusion on this issue, the site is outside the settlement boundary, but less remote than at the time of an appeal Decision at Woodlands Lodge, due to the progress being made with the Thistle Hill expansion. In the balance between a desirable social inclusion and the operational needs of a traveller site for a countryside location, the situation of Greyhound Road is appropriate and acceptable, in accordance with emerging Policy DM10 and national policies.

Other Considerations and the Planning Balance

31. The first consideration is the supply of sites in the Swale Borough area. The decision to not allocate sites is based on there being a reduced need, following the revision in 2015 to the definition of a gypsy and traveller, and to there being as a result, more than a five year supply of sites as required by paragraph 10 of Planning Policy for Traveller Sites.
32. The Council did accept however that where a gypsy or traveller who was occupying a site, falls out of the definition on a permanent basis through old age, they were unlikely in practice to seek their removal from the site. This, coupled with the already low turnover of privately provided sites, would limit site availability.

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33. The inclusion of 8 new pitches in the 2015/2016 monitoring update at Orchard Park, Oak Lane, should be treated with some caution on the evidence presented to the Hearing, as the new pitches are the result of sub-division of existing pitches and would share the already existing utility buildings. The appellant's assertion that this sharing would not provide for wholly new occupiers, unconnected with the existing families, to be accommodated carries significant weight. As a result, the appellant's view that this is more akin to a house extension to accommodate a growing family than a wholly new house should also be afforded considerable weight.
34. The appellant says that there will be objections to the resumed Local Plan examination, notwithstanding the Council's view that this matter is settled, and that removing the 8 sites at Orchard Park reduces the supply below the 5 year point. That appears a realistic appraisal.
35. Looking at the particular alternatives open to the appellant, the site at Brotherhood Woodyard at Dunkirk, with its 19 pitches, would appear to offer the possibility of vacancies arising, but the appellant's evidence is that this is occupied by Irish Travellers and that the Romany descended appellant would be most unlikely to settle there. Having mind to the views expressed at the Hearing, this appears a consideration of significant weight.
36. With regard to personal circumstances, Ms Smith does suffer some ill-health and has a carer on whom she relies. She also has access to health care locally at Thistle Hill, the continuity of which could be lost were she to have to leave the site. The presence of other traveller families on Greyhound Road is also a significant consideration when it comes to support.
37. It is appropriate here to consider the objection to the entry onto Lower Road, and the safety of that road. Whilst evidence was brought by Councillors and the Parish Clerk, regarding accidents on the road and at the entry, there is no official data indicating that users of the entry were at fault or even involved, and the Highway Authority raises no objection to the proposal either alone or cumulatively. The entry is on a part of the road subject to the national speed limit, between areas of 40mph, and has good visibility in both directions due to the curve of the road away from the entry. This does not appear a reason to find against the proposal, and the Council's approach is concurred with now. In this respect the proposal accords with Policies E1 and T1.
38. Turning then to the planning balance, there is real doubt over whether the Council can demonstrate a five year supply of sites, which as stated in paragraph 27 of Planning Policy for Traveller Sites is a significant material consideration in the grant of a further temporary permission.
39. However, the grant of a further temporary permission now would be the third on this site and the web-based Planning Practice Guidance states at Paragraph: 014 Reference ID: 21a-014-20140306 that it will rarely be justifiable to grant a second temporary permission – further permissions should normally be granted permanently or refused if there is clear justification for doing so.
40. Considering the findings of the two previous main issues, the visual harm can be mitigated to a considerable degree by the imposition of a landscaping condition, which should include control of hardstanding and site layout. The residual effect would be only in as much as activity and the sites being visible in views filtered, but not blocked, by vegetation secured by condition. Such

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filtering of views is fully in line with advice in paragraph 26 d) of Planning Policy for Traveller Sites that a site should not be enclosed with so much hard landscaping, high walls or fences, that the impression may be given that the site and its occupants are deliberately isolated from the rest of the community. The location of the site is not so distant from facilities, with the built form of Minster moving closer, as to be considered remote in the terms of paragraph 25 of the national policy document.

41. Further weight in favour of the proposal derives from the Development Plan position with Policy H4, whilst accepted as being out-of-date, is complied with in terms of the effect and the occupiers do now have a connection with the locality and the other criteria would have been considered in 2012.
42. To sum up, the location of the site, singly or cumulatively with others, appears a reasonable balance between isolation and not dominating the nearest settled community. The site scores well when considered against the criteria in paragraph 26 of Planning Policy for Traveller Sites and given the limitations of the Area of Outstanding Natural Beauty in other parts of the Borough, the location appears entirely suitable for a permanent permission.
43. In view of that finding, there is no need to attach particular weight to the personal circumstances of the appellant, other than that they indicate the experience of many gypsies or travellers. On that basis, whilst it would be essential to attach a condition limiting the occupation of the site to a gypsy or traveller as defined, there would be no necessity to limit it to any particular person.

Conditions

44. The starting point for this consideration is the conditions attached to the 2016 permission. The Council suggested conditions at the Hearing and these were substantially as conditions 2) to 5) of that permission. As stated in the Formal Decision above, in addition to deleting condition 1) that limited the occupation to only a temporary period, it is necessary to replace condition 3) to rectify the ambiguity over the number of caravans that appears to have been in place since the original grant of permission in 2012. It is also appropriate to delete conditions 6) and 8) on access, parking and turning in favour of a new condition seeking a Site Development Scheme that would cover those matters.
45. The provision of such a Site Development Scheme including site layout and hard-standings as well as filtering vegetation, is essential for the reasons set out previously and is reasonable in a permanent permission. Due to the fact that the development and stationing of caravans has already taken place, the condition should provide for sanctions in default, ultimately leading to the removal of the items placed on the land and its reinstatement.

Conclusions

46. The development of the Thistle Hill area of Minster has rendered the site less remote than was considered to be the case in an appeal in 2013, and the visual effects are consequently less apparent. The appeal proposal when taken together with the other two sites and accepting the possibility of the other sites in the group also seeking to establish permanent use, would provide much needed accommodation without causing significant and demonstrable harm once conditions have been accorded with. The site is suitable for permanent

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traveller occupation and Development Plan policies together with those of the Framework and Planning Policy for Traveller Sites do not indicate that development should be restricted.

47. For the reasons given above it is concluded that the appeal should succeed. The planning permission will be varied by deleting some of the conditions and substituting others.

S J Papworth

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

R McCardle	Senior Planning Officer Swale Borough Council
S Rouse	Senior Policy Officer Swale Borough Council

FOR THE APPELLANT:

P Brown	Managing Director Philip Brown Associates
L Smith	The Hawthorns
D Brazil	Blackthorn Lodge
D Kerbey	The Peartree

INTERESTED PERSONS:

Cllr T Booth	Sheppey Central Ward Swale Borough Council
Cllr C Beart	Queenborough and Halfway Ward Swale Borough Council
T Codrington	Parish Clerk Minster-on-Sea Parish Council

DOCUMENTS

Document	1	Notification letter 14 November 2016 submitted by Council
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Document	5	Planning Committee Report 13 March 2014 on Orchard Park site
Document	6	Locations for site inspection submitted by Council

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SCHEDULE OF CONDITIONS

- 1) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1 to the Department for Communities and Local Government 'Planning Policy for Traveller Sites August 2015'.
- 2) No more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended (of which no more than 1 shall be a static caravan) shall be stationed on the site at any time.
- 3) The site shall only be used for residential purposes and it shall not be used for any business, industrial or commercial use. In this regard no open storage of plant, products or waste may take place on the land, no vehicle over 3.5 tonnes and no more than one 3.5 tonne vehicle shall be stationed, parked or stored on the land.
- 4) 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.
- 5) No building or structure shall be erected or stationed within 8 metres of the adopted drainage ditch.
- 6) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 30 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 internal layout of the site, including the siting of caravans, utility building, hardstanding, access roads, parking and amenity areas; tree, hedge and shrub planting and where appropriate earth mounding including details of species, plant sizes and proposed numbers and densities; and vehicle parking or turning space (hereafter referred to as the Site Development Scheme) shall have been submitted for the written approval of the Local Planning Authority and the scheme shall include a timetable for its implementation.
 - ii) If within 11 months of the date of this decision 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 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.

Upon implementation of the approved Site Development Scheme specified in this condition, that items the subject of the Scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.



Appeal Decision

Hearing held on 13 December 2016

Site visit made on 14 December 2016

by **S J Papworth DipArch(Glos) RIBA**

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

Decision date: **21 February 2017**

Appeal Ref: APP/V2255/W/16/3153747

Blackthorn Lodge, Greyhound Road, Minster-on-Sea, Kent ME12 3SP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr D Brazil against the decision of Swale Borough Council.
 - The application Ref 15/503278/FULL, dated 14 April 2015, was approved on 5 January 2016 and planning permission was granted subject to conditions.
 - The development permitted is change of use of land to use as residential caravan site for 2 gypsy families with a total of 4 caravans, including no more than 2 static mobile homes, erection of amenity building and laying of hardstanding.
 - The condition in dispute is No 1 which states that: The use hereby permitted shall be for a limited period being the period of one year 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..
 - The reason given for the condition is: As permission has only been granted in recognition of the particular circumstances of the case, having regard to the lack of alternative, available sites elsewhere within the Borough, in accordance with DCLG Planning Policy for Traveller Sites.
-

Decision

1. I allow the appeal and vary planning permission Ref 15/503278/FULL for change of use of land to use as residential caravan site for 2 gypsy families with a total of 4 caravans, including no more than 2 static mobile homes, erection of amenity building and laying of hardstanding at Blackthorn Lodge, Greyhound Road, Minster-on-Sea, Kent ME12 3SP granted on 5 January 2016 by Swale Borough Council, by deleting conditions 1) and 6) and varying condition 8).

Main Issues

2. These are;
 - The effect of the proposal on the character and appearance of the Lower Road area of Sheppey.
 - The effect of the proposal on the aims of sustainable development, with particular regard to access to services and facilities for day-to-day living.
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- The weight to be attached to other considerations, including the supply of sites generally, the personal circumstances of the appellant and the availability of alternative sites for him.

Reasons

Preliminary Matters

3. The site is among a group of traveller sites on Greyhound Road, and a single Hearing addressed similar applications from the occupiers of three of the sites; this one at Blackthorn Lodge, one at The Peartree and one at The Hawthorns. Another site at Woodlands Lodge was referred to as being the subject of an appeal in 2013, and that Decision will be considered as part of the main issues in the present appeal.
4. Whilst a joint Hearing was appropriate in view of the common issues, the appellants being represented by the same agent and by both the Council and the appellants having submitted joint Appeal Statements, it is appropriate to issue three separate Appeal Decisions in order that each should stand-alone as a document. There are however passages common to all three Decisions.
5. The hearing in the Council offices took place over much of Tuesday 13 December and in view of the failing light it was agreed that the site inspection should take place the following day. At that inspection each site was visited along with the respective occupiers, and the appellant's agent then drove myself and the Council Officer on a tour of possible viewpoints, shops, schools and other facilities mentioned in evidence, as well as recent housing development to the west. At the request of District Councillors and a representative of the Parish Council, notice was taken of the traffic conditions at the entry onto the main road, although this was not a matter of objection from the Council. The Hearing remained open for discussion throughout.
6. The original application was for the variation or removal of condition 7) of planning permission SW/11/1415 granted on 25 June 2012 which was for the change of use of land to use as residential caravan site for 2 gypsy families with a total of 4 caravans, including no more than 2 static mobile homes, erection of amenity building and laying of hardstanding, and sought the temporary permission of 4 years be extended or removed. The four year period would have expired on 25 June 2016. The Council granted permission on 5 January 2016 for a further 1 year period from that date, effectively another 6 months or so, secured by condition 1) as set out in the bullet points to the heading above, and it is this grant of permission that is appealed. Being an appeal against the grant of permission, the various options open to the decision taker were discussed and agreed at the Hearing. The permission granted in 2016 included 7 of the 9 other conditions attached to the 2012 permission.
7. It was confirmed at the Hearing that the occupiers of the site continue to satisfy the definition of a gypsy or traveller as set out in the August 2015 version of Planning Policy for Traveller Sites, a situation that existed at the time of the Council's grant of the one year permission in January 2016.

Policy Background

8. The Development Plan for the area consists of the saved policies of the Swale Borough Local Plan 2008 and Policy E1 on general development control criteria
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- requires development to be well sited, appropriate in scale, design and appearance with a high standard of landscaping, and have safe pedestrian and vehicular access. The site is in the countryside where Policy E6 seeks to protect the quality, character and amenity of the area. Development will not be permitted outside rural settlements unless related to an exceptional need for a rural location. Policies E9 and E19 seek the protection of landscape and high quality design. Safe access to development is the subject of Policy T1.
9. Specific to the provision of gypsy and traveller sites, Policy H4 sets criteria for sites, but seeks a genuine connection with the locality for anyone wanting to set-up a site, in addition to be able to prove traveller status. The Council accept that the policy was criticised by the Local Plan Inspector at the time, and that greater weight should be given to the more recent publication of Planning Policy for Traveller Sites. Whilst Policy H4 is still part of the Development Plan, and benefits from the provisions of section 38(6) of the Planning and Compulsory Purchase Act 2004, the Council's acceptance of its limitations is acknowledged.
 10. There is emerging policy in *'Bearing Fruits 2031: The Swale Borough Local Plan, Proposed Modifications, June 2016'*. The Local Plan Inspector's interim findings contain at paragraphs 11 to 14 in Part 3 a commentary on the process being undertaken by the Council, having mind to the revised definition of a gypsy or traveller introduced in the August 2015 revision to Planning Policy for Traveller Sites. The original need for 85 pitches was found to have reduced to 61, of which 51 had been completed or had permission granted. The Inspector considered the proposal that the remaining 10 be provided through windfall planning applications to be a well-reasoned and pragmatic solution to ensure that the Plan aligns with up-to-date national policy.
 11. On that basis it is not proposed to allocate sites, but to test windfall applications against criteria in Policy DM10 of the draft Local Plan which includes consideration of integration between communities; the effect on local communities, character and appearance, landscape and local services; the health of occupiers; the need for landscaping; access and parking. The appellant made representation as to the weight to be attached to the Inspector's interim findings, which will be considered in the planning balance.
 12. The Council has published the Supplementary Planning Document *'Swale Landscape Character and Biodiversity Appraisal'* which identifies the area where the site is as being within the central Sheppey Farmlands character area, described as being of moderate sensitivity and in poor condition.
 13. Planning Policy for Traveller Sites of August 2015 is the most recent statement of Government policy with regard to such site provision and the introduction states the Government's overarching aim 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.
 14. Decisions on traveller sites should also have regard to the policies in the National Planning Policy Framework so far as relevant, and this document states the presumption in favour of sustainable development and sets out the three dimensions of such development. The core planning principles include conserving and enhancing the natural environment; actively managing patterns of growth to make the fullest possible use of public transport, walking and

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cycling; and focusing significant development in locations which are or can be made sustainable.

Character and Appearance

15. The site is part of a distinct and closely linked group of similar sites along Greyhound Road leading south from Lower Road, the A2500. It is outside the settlement boundary to the west and is, in policy terms, in the open countryside. There is open agricultural land to the north of the main road and the flat land reaching to the Swale to the south, but that land south of the road is not devoid of other development, there being linear built form leading away from the road to the west of the site, a disused public house and car park to the east, and further east more concentrated development around the bend and hill at Brambledown and at the entry to Elmley Road.
16. It is clear from a series of aerial views supplied by the Council that the site was once wooded and the various temporary permissions granted have resulted in the present more open aspect. It is less clear what would be expected pursuant to the condition requiring the land to be restored to its condition before the development took place, or what control might have prevented some removal of trees under the original use, presumably agricultural.
17. As mentioned previously, another site at Woodlands Lodge was the subject of an appeal in 2013. That site is adjacent to and between The Peartree and Blackthorn Lodge, another site covered by the joint Hearing, whereas The Hawthorns is further to the north and nearer the main road, with intervening sites not considered here. The Inspector's Decision was issued on 28 October 2014 (Ref: APP/V2255/C/13/2208507) and concerned enforcement action, but he considered a deemed planning application under Ground (a) and the effect on the character and appearance of the area. He found views of that site to be limited in extent to the immediate locality given the presence of trees around the edge of the site, although the structures and hardstanding would be visible from Greyhound Road given the wide access.
18. The analysis holds true to an extent for the current appeal site, although being at the end of Greyhound Road the nearby view is more open. Greyhound Road is a *cul-de-sac* and there is no public right of way, whilst the vegetation at the site boundary with open land to the west is limited. The previous Inspector accepted that the use of landscaping could soften the appearance of that site and over time mitigate, to an extent, the visual harm, but he considered that it would not remove it entirely. It is agreed now that compared with what appears to be the previous condition of the land, there has been some harm caused to the appeal site, but this is limited and to a substantial degree, capable of being further mitigated by landscaping.
19. More distant view-points are limited as found in 2013, and from the slightly raised locations along Lower Road to the east and west the sites, including Blackthorn Lodge, are largely subsumed into other development or filtered by vegetation. Higher level views are available from Elm Lane to the north, but from there the sites do not stand out and are again largely subsumed into the flat land leading down to the Swale, the eye being drawn to the attractive estuarial landscape and distant features. Having mind to the findings of the '*Swale Landscape Character and Biodiversity Appraisal*' that the site lies within an area of moderate sensitivity that is in poor condition, the effect on the wider area is limited.

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20. Another consideration in this and the next main issue is the change being brought about by the continued development of Thistle Hill on the far side of Scocles Road to the west. This is bringing the appearance of the built-up area closer to the appeal site, rendering it less clearly in open countryside and more as an edge-of-town site. The consequence of this is to reduce further the limited visual harm that would occur.
21. It is appropriate to consider the cumulative effect, having mind to the Decisions being issued at the same time for the other two sites at The Peartree and The Hawthorns, and the possibility that these would affect consideration of other sites in the group. There is visual benefit in a grouping, avoiding sporadic development and visually isolated individual sites. The single entry onto Lower Road is visually appropriate and not unlike other entries in the vicinity, and Greyhound Road has the character and appearance of a rural lane
22. To conclude on this issue, whilst the passage of over 4 years of temporary permissions has resulted in the site becoming a part of the character and appearance of the area over that time, the use of the land, the stationing of the mobile home and the other structures has resulted in some limited harm in nearby views. That is mitigated in long views by the vegetation on other sites and there is scope for further works on this site. With those provisions the proposal accords with national policy and Development Plan Policies E1, E6, E9 and E10.

Accessibility to Local Services

23. This matter again was considered by the Inspector in the 2013 appeal, and he made reference to the policies of the Planning Policy for Traveller Sites extant at that time. One of the changes introduced in 2015 was to paragraph 25 in Policy H on determining planning application for traveller sites. This now reads *'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'*, the alteration being the addition of the word *'very'* in the first sentence. The Inspector concluded that the site was remote and located away from a settlement with adequate and sufficient amenities.
24. The site inspection of the current case included an extensive tour of the nearest settlement and its facilities, and they do not appear to have changed significantly from those referred to in the Woodlands Lodge case. The main road is not inviting to walk along, but there is a public right of way across fields towards the school and shops.
25. It is pertinent to consider the changes being brought about by the continued development at Thistle Hill. Whilst much is built-out and the Council state a high degree of pre-sales, and whilst the community centre and school are in place, the provision of the planned shops appears to have stalled. That would provide a ready access for the site, and a level of integration with the new settled community. It is clear that there is development to the north of the proposed central site for the shops still to commence and that may provide the critical mass of demand necessary to bring about the provision.

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26. It was asserted at the Hearing that the traveller lifestyle is likely to involve the use of private transport in any event, and that journeys would often combine shopping and the school run with other needs to make use of such transport for work, where the use of public transport, even if available, would not be appropriate. Certainly the traveller lifestyle is based on the need to travel in search of work, but there would be times when work is found closer to home and requiring only day-trips. Such a pattern of work would allow those other journeys to be undertaken at the same time, but would require of necessity, private transport. That aspect of the lifestyle is accepted in paragraph 13 h) of Planning Policy for Traveller Sites which states that some travellers live and work from the same location thereby omitting many travel to work journeys, which can contribute to sustainability.
27. As accepted by the Inspector on the Woodlands Lodge appeal, a settled base has given the occupiers of the appeal site access to healthcare and the same would be true of education for a family living here. The personal circumstances of the appellant will be considered next, but the site is not so remote as to make it unduly difficult to gain ready access to facilities, and Planning Policy for Traveller Sites does provide at Policy C for sites in rural areas.
28. That allowance for rural sites is provided that they do not dominate the nearest settled community. As with consideration on the visual effect, it is necessary to consider a possible cumulative effect, as the Greyhound Road area consists of a number of traveller sites. However, the layout is not sprawling, but is well contained and does not appear to have any adverse effect on the settled community of Brambledown or Minster, either in visual or numerical terms. It is sufficiently removed to avoid dominating the community, whilst being close enough so as not to appear truly isolated.
29. In conclusion on this issue, the site is outside the settlement boundary, but less remote than at the time of an appeal Decision at Woodlands Lodge, due to the progress being made with the Thistle Hill expansion. In the balance between a desirable social inclusion and the operational needs of a traveller site for a countryside location, the situation of Greyhound Road is appropriate and acceptable, in accordance with emerging Policy DM10 and national policies.

Other Considerations and the Planning Balance

30. The first consideration is the supply of sites in the Swale Borough area. The decision to not allocate sites is based on there being a reduced need, following the revision in 2015 to the definition of a gypsy and traveller, and to there being as a result, more than a five year supply of sites as required by paragraph 10 of Planning Policy for Traveller Sites.
31. The Council did accept however that where a gypsy or traveller who was occupying a site, falls out of the definition on a permanent basis through old age, they were unlikely in practice to seek their removal from the site. This, coupled with the already low turnover of privately provided sites, would limit site availability.
32. The inclusion of 8 new pitches in the 2015/2016 monitoring update at Orchard Park, Oak Lane, should be treated with some caution on the evidence presented to the Hearing, as the new pitches are the result of sub-division of existing pitches and would share the already existing utility buildings. The appellant's assertion that this sharing would not provide for wholly new

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occupiers, unconnected with the existing families, to be accommodated carries significant weight. As a result, the appellant's view that this is more akin to a house extension to accommodate a growing family than a wholly new house should also be afforded considerable weight.

33. The appellant says that there will be objections to the resumed Local Plan examination, notwithstanding the Council's view that this matter is settled, and that removing the 8 sites at Orchard Park reduces the supply below the 5 year point. That appears a realistic appraisal.
34. Looking at the particular alternatives open to the appellant, the site at Brotherhood Woodyard at Dunkirk, with its 19 pitches, would appear to offer the possibility of vacancies arising, but the appellant's evidence is that this is occupied by Irish Travellers and that the Romany descended appellant would be most unlikely to settle there. Having mind to the views expressed at the Hearing, this appears a consideration of significant weight.
35. With regard to personal circumstances, the occupiers have access to health care locally at Thistle Hill, the continuity of which could be lost were they to have to leave the site. The presence of other traveller families on Greyhound Road is also a significant consideration when it comes to support.
36. It is appropriate here to consider the objection to the entry onto Lower Road, and the safety of that road. Whilst evidence was brought by Councillors and the Parish Clerk, regarding accidents on the road and at the entry, there is no official data indicating that users of the entry were at fault or even involved, and the Highway Authority raises no objection to the proposal either alone or cumulatively. The entry is on a part of the road subject to the national speed limit, between areas of 40mph, and has good visibility in both directions due to the curve of the road away from the entry. This does not appear a reason to find against the proposal, and the Council's approach is concurred with now. In this respect the proposal accords with Policies E1 and T1.
37. Turning then to the planning balance, there is real doubt over whether the Council can demonstrate a five year supply of sites, which as stated in paragraph 27 of Planning Policy for Traveller Sites is a significant material consideration in the grant of a further temporary permission.
38. However, the grant of a further temporary permission now would be the third on this site and the web-based Planning Practice Guidance states at Paragraph: 014 Reference ID: 21a-014-20140306 that it will rarely be justifiable to grant a second temporary permission – further permissions should normally be granted permanently or refused if there is clear justification for doing so.
39. Considering the findings of the two previous main issues, the visual harm can be mitigated to a considerable degree by the imposition of a landscaping condition, which should include control of hardstanding and site layout. The residual effect would be only in as much as activity and the sites being visible in views filtered, but not blocked, by vegetation secured by condition. Such filtering of views is fully in line with advice in paragraph 26 d) of Planning Policy for Traveller Sites that a site should not be enclosed with so much hard landscaping, high walls or fences, that the impression may be given that the site and its occupants are deliberately isolated from the rest of the community. The location of the site is not so distant from facilities, with the built form of

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Minster moving closer, as to be considered remote in the terms of paragraph 25 of the national policy document.

40. Further weight in favour of the proposal derives from the Development Plan position with Policy H4, whilst accepted as being out-of-date, is complied with in terms of the effect and the occupiers do now have a connection with the locality and the other criteria would have been considered in 2012.
41. To sum up, the location of the site, singly or cumulatively with others, appears a reasonable balance between isolation and not dominating the nearest settled community. The site scores well when considered against the criteria in paragraph 26 of Planning Policy for Traveller Sites and given the limitations of the Area of Outstanding Natural Beauty in other parts of the Borough, the location appears entirely suitable for a permanent permission.
42. In view of that finding, there is no need to attach particular weight to the personal circumstances of the appellant, other than that they indicate the experience of many gypsies or travellers. On that basis, whilst it would be essential to attach a condition limiting the occupation of the site to a gypsy or traveller as defined, there would be no necessity to limit it to any particular person.

Conditions

43. The starting point for this consideration is the conditions attached to the 2016 permission. The Council suggested conditions at the Hearing and these were substantially as conditions 2) to 5) of that permission. As stated in the Formal Decision above, condition 1) that limited the occupation to only a temporary period, is removed. It is also appropriate to delete conditions 6) and 8) on access, parking and turning in favour of a new condition seeking a Site Development Scheme that would cover those matters.
44. The provision of such a Site Development Scheme including site layout and hard-standings as well as filtering vegetation is essential for the reasons set out previously and is reasonable in a permanent permission. Due to the fact that the development and stationing of caravans has already taken place, the condition should provide for sanctions in default, ultimately leading to the removal of the items placed on the land.

Conclusions

45. The development of the Thistle Hill area of Minster has rendered the site less remote than was considered to be the case in an appeal in 2013, and the visual effects are consequently less apparent. The appeal proposal when taken together with the other two sites and accepting the possibility of the other sites in the group also seeking to establish permanent use, would provide much needed accommodation without causing significant and demonstrable harm once conditions have been accorded with. The site is suitable for permanent traveller occupation and Development Plan policies together with those of the Framework and Planning Policy for Traveller Sites do not indicate that development should be restricted. For the reasons given above it is concluded that the appeal should succeed. The planning permission will be varied by deleting some of the conditions and substituting others.

S J Papworth

INSPECTOR

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SCHEDULE OF CONDITIONS

- 1) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1 to the Department for Communities and Local Government 'Planning Policy for Traveller Sites August 2015'.
- 2) No more than 4 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended (of which no more than 2 shall be a static caravan) shall be stationed on the site at any time.
- 3) The site shall only be used for residential purposes and it shall not be used for any business, industrial or commercial use. In this regard no open storage of plant, products or waste may take place on the land, no

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vehicle over 3.5 tonnes and no more than one 3.5 tonne vehicle shall be stationed, parked or stored on the land.

- 4) 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.
- 5) No building or structure shall be erected or stationed within 8 metres of the adopted drainage ditch.
- 6) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 30 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 internal layout of the site, including the siting of caravans, utility building, hardstanding, access roads, parking and amenity areas; tree, hedge and shrub planting and where appropriate earth mounding including details of species, plant sizes and proposed numbers and densities; and vehicle parking or turning space (hereafter referred to as the Site Development Scheme) shall have been submitted for the written approval of the Local Planning Authority and the scheme shall include a timetable for its implementation.
 - ii) If within 11 months of the date of this decision 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 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.

Upon implementation of the approved Site Development Scheme specified in this condition, that items the subject of the Scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.



Appeal Decision

Hearing held on 13 December 2016

Site visit made on 14 December 2016

by **S J Papworth DipArch(Glos) RIBA**

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

Decision date: 21 February 2017

Appeal Ref: APP/V2255/W/16/3153750

The Peartree, Greyhound Road, Minster-on-Sea, Kent ME12 3SP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr David Kerbey against the decision of Swale Borough Council.
 - The application Ref 15/502237/FULL, dated 11 March 2015, was approved on 5 January 2016 and planning permission was granted subject to conditions.
 - The development permitted is change of use of land to use as residential caravan site for one gypsy family with two caravans, including no more than one static mobile home, erection of utility room and laying of hardstanding.
 - The condition in dispute is No 1 which states that: The use hereby permitted shall be for a limited period being the period of one year 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..
 - The reason given for the condition is: As permission has only been granted in recognition of the particular circumstances of the case, having regard to the lack of alternative, available sites elsewhere within the Borough, in accordance with DCLG Planning Policy for Traveller Sites.
-

Decision

1. I allow the appeal and vary planning permission Ref 15/502237/FULL for change of use of land to use as residential caravan site for one gypsy family with two caravans, including no more than one static mobile home, erection of utility room and laying of hardstanding at The Peartree, Greyhound Road, Minster-on-Sea, Kent ME12 3SP granted on 5 January 2016 by Swale Borough Council, by deleting conditions 1) and 6) and varying condition 8).

Main Issues

2. These are;
 - The effect of the proposal on the character and appearance of the Lower Road area of Sheppey.
 - The effect of the proposal on the aims of sustainable development, with particular regard to access to services and facilities for day-to-day living.
 - The weight to be attached to other considerations, including the supply of sites generally, the personal circumstances of the appellant and the availability of alternative sites for him.
-

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Reasons

Preliminary Matters

3. The site is among a group of traveller sites on Greyhound Road, and a single Hearing addressed similar applications from the occupiers of three of the sites; this one at The Peartree, one at The Hawthorns and one at Blackthorn Lodge. Another site at Woodlands Lodge was referred to as being the subject of an appeal in 2013, and that Decision will be considered as part of the main issues in the present appeal.
4. Whilst a joint Hearing was appropriate in view of the common issues, the appellants being represented by the same agent and by both the Council and the appellants having submitted joint Appeal Statements, it is appropriate to issue three separate Appeal Decisions in order that each should stand-alone as a document. There are however passages common to all three Decisions.
5. The hearing in the Council offices took place over much of Tuesday 13 December and in view of the failing light it was agreed that the site inspection should take place the following day. At that inspection each site was visited along with the respective occupiers, and the appellant's agent then drove myself and the Council Officer on a tour of possible viewpoints, shops, schools and other facilities mentioned in evidence, as well as recent housing development to the west. At the request of District Councillors and a representative of the Parish Council, notice was taken of the traffic conditions at the entry onto the main road, although this was not a matter of objection from the Council. The Hearing remained open for discussion throughout.
6. The original application was for the variation or removal of condition 7) of planning permission SW/11/1414 granted on 26 June 2012 which was for the change of use of land to use as residential caravan site for one gypsy family with two caravans, including no more than one static mobile home, erection of utility room and laying of hardstanding, and sought the temporary permission of 4 years be extended or removed. The four year period expired on 26 June 2016. The Council granted permission on 5 January 2016 for a further 1 year period, effectively another 6 months or so, secured by condition 1) as set out in the bullet points to the heading above, and it is this grant of permission that is appealed. The permission granted in 2016 included 7 of the 9 other conditions attached to the 2012 permission.
7. It was confirmed at the Hearing that the occupiers of the site continue to satisfy the definition of a gypsy or traveller as set out in the August 2015 version of Planning Policy for Traveller Sites, a situation that existed at the time of the Council's grant of the one year permission in January 2016.

Policy Background

8. The Development Plan for the area consists of the saved policies of the Swale Borough Local Plan 2008 and Policy E1 on general development control criteria requires development to be well sited, appropriate in scale, design and appearance with a high standard of landscaping, and have safe pedestrian and vehicular access. The site is in the countryside where Policy E6 seeks to protect the quality, character and amenity of the area. Development will not be permitted outside rural settlements unless related to an exceptional need

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- for a rural location. Policies E9 and E19 seek the protection of landscape and high quality design. Safe access to development is the subject of Policy T1.
9. Specific to the provision of gypsy and traveller sites, Policy H4 sets criteria for sites, but seeks a genuine connection with the locality for anyone wanting to set-up a site, in addition to be able to prove traveller status. The Council accept that the policy was criticised by the Local Plan Inspector at the time, and that greater weight should be given to the more recent publication of Planning Policy for Traveller Sites. Whilst Policy H4 is still part of the Development Plan, and benefits from the provisions of section 38(6) of the Planning and Compulsory Purchase Act 2004, the Council's acceptance of its limitations is acknowledged.
 10. There is emerging policy in '*Bearing Fruits 2031: The Swale Borough Local Plan, Proposed Modifications, June 2016*'. The Local Plan Inspector's interim findings contain at paragraphs 11 to 14 in Part 3 a commentary on the process being undertaken by the Council, having mind to the revised definition of a gypsy or traveller introduced in the August 2015 revision to Planning Policy for Traveller Sites. The original need for 85 pitches was found to have reduced to 61, of which 51 had been completed or had permission granted. The Inspector considered the proposal that the remaining 10 be provided through windfall planning applications to be a well-reasoned and pragmatic solution to ensure that the Plan aligns with up-to-date national policy.
 11. On that basis it is not proposed to allocate sites, but to test windfall applications against criteria in Policy DM10 of the draft Local Plan which includes consideration of integration between communities; the effect on local communities, character and appearance, landscape and local services; the health of occupiers; the need for landscaping; access and parking. The appellant made representation as to the weight to be attached to the Inspector's interim findings, which will be considered in the planning balance.
 12. The Council has published the Supplementary Planning Document '*Swale Landscape Character and Biodiversity Appraisal*' which identifies the area where the site is as being within the central Sheppey Farmlands character area, described as being of moderate sensitivity and in poor condition.
 13. Planning Policy for Traveller Sites of August 2015 is the most recent statement of Government policy with regard to such site provision and the introduction states the Government's overarching aim 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.
 14. Decisions on traveller sites should also have regard to the policies in the National Planning Policy Framework so far as relevant, and this document states the presumption in favour of sustainable development and sets out the three dimensions of such development. The core planning principles include conserving and enhancing the natural environment; actively managing patterns of growth to make the fullest possible use of public transport, walking and cycling; and focusing significant development in locations which are or can be made sustainable.

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Character and Appearance

15. The site is part of a distinct and closely linked group of similar sites along Greyhound Road leading south from Lower Road, the A2500. It is outside the settlement boundary to the west and is, in policy terms, in the open countryside. There is open agricultural land to the north of the main road and the flat land reaching to the Swale to the south, but that land south of the road is not devoid of other development, there being linear built form leading away from the road to the west of the site, a disused public house and car park to the east, and further east more concentrated development around the bend and hill at Brambledown and at the entry to Elmley Road.
16. It is clear from a series of aerial views supplied by the Council that the site was once wooded and the various temporary permissions granted have resulted in the present more open aspect. It is less clear what would be expected pursuant to the condition requiring the land to be restored to its condition before the development took place, or what control might have prevented some removal of trees under the original use, presumably agricultural.
17. As mentioned previously, another site at Woodlands Lodge was the subject of an appeal in 2013. That site is adjacent to and between The Peartree and Blackthorn Lodge, and The Hawthorns is further to the north and nearer the main road, with intervening sites not considered here. The Inspector's Decision (Ref: APP/V2255/C/13/2208507, 28 October 2014) concerned enforcement action, but he considered a deemed planning application under Ground (a) and the effect on the character and appearance of the area. He found views of that site to be limited in extent to the immediate locality given the presence of trees around the edge of the site, although the structures and hardstanding would be visible from Greyhound Road given the wide access.
18. The analysis holds true to an extent for the current appeal site, although being on the straight part of Greyhound Road the nearby view is less open, Greyhound Road is a *cul-de-sac* and there is no public right of way. The previous Inspector accepted that the use of landscaping could soften the appearance of that site and over time mitigate, to an extent, the visual harm, but he considered that it would not remove it entirely. It is agreed now that compared with what appears to be the previous condition of the land, there has been some harm caused to the appeal site, but this is limited and to a substantial degree, capable of being further mitigated by landscaping.
19. More distant view-points are limited as found in 2013, and from the slightly raised locations along Lower Road to the east and west the sites, including The Peartree, are largely subsumed into other development or filtered by vegetation. Higher level views are available from Elm Lane to the north, but from there the sites do not stand out and are again largely subsumed into the flat land leading down to the Swale, the eye being drawn to the attractive estuarial landscape and distant features. Having mind to the findings of the '*Swale Landscape Character and Biodiversity Appraisal*' that the site lies within an area of moderate sensitivity that is in poor condition, the effect on the wider area is limited.
20. Another consideration in this and the next main issue is the change being brought about by the continued development of Thistle Hill on the far side of Scocles Road to the west. This is bringing the appearance of the built-up area closer to the appeal site, rendering it less clearly in open countryside and more

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as an edge-of-town site. The consequence of this is to reduce further the limited visual harm that would occur.

21. It is appropriate to consider the cumulative effect, having mind to the Decisions being issued at the same time for the other two sites at The Hawthorns and Blackthorn Lodge, and the possibility that these would affect consideration of other sites in the group. There is visual benefit in a grouping, avoiding sporadic development and visually isolated individual sites. The single entry onto Lower Road is visually appropriate and not unlike other entries in the vicinity, and Greyhound Road has the character and appearance of a rural lane
22. To conclude on this issue, whilst the passage of over 4 years of temporary permissions has resulted in the site becoming a part of the character and appearance of the area over that time, the use of the land, the stationing of the mobile home and the other structures has resulted in some limited harm in nearby views. That is mitigated in long views to a considerable extent by the vegetation and there is scope for further works. With those provisions the proposal accords with national policy and Development Plan Policies E1, E6, E9 and E10.

Accessibility to Local Services

23. This matter again was considered by the Inspector in the 2013 appeal, and he made reference to the policies of the Planning Policy for Traveller Sites extant at that time. One of the changes introduced in 2015 was to paragraph 25 in Policy H on determining planning application for traveller sites. This now reads *'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'*, the alteration being the addition of the word 'very' in the first sentence. The Inspector concluded that the site was remote and located away from a settlement with adequate and sufficient amenities.
24. The site inspection of the current case included an extensive tour of the nearest settlement and its facilities, and they do not appear to have changed significantly from those referred to in the Woodlands Lodge case. The main road is not inviting to walk along, but there is a public right of way across fields towards the school and shops.
25. It is pertinent to consider the changes being brought about by the continued development at Thistle Hill. Whilst much is built-out and the Council state a high degree of pre-sales, and whilst the community centre and school are in place, the provision of the planned shops appears to have stalled. That would provide a ready access for the site, and a level of integration with the new settled community. It is clear that there is development to the north of the proposed central site for the shops still to commence and that may provide the critical mass of demand necessary to bring about the provision.
26. It was asserted at the Hearing that the traveller lifestyle is likely to involve the use of private transport in any event, and that journeys would often combine shopping and the school run with other needs to make use of such transport for work, where the use of public transport, even if available, would not be appropriate. Certainly the traveller lifestyle is based on the need to travel in

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search of work, but there would be times when work is found closer to home and requiring only day-trips. Such a pattern of work would allow those other journeys to be undertaken at the same time, but would require of necessity, private transport. That aspect of the lifestyle is accepted in paragraph 13 h) of Planning Policy for Traveller Sites which states that some travellers live and work from the same location thereby omitting many travel to work journeys, which can contribute to sustainability.

27. As accepted by the Inspector on the Woodlands Lodge appeal, a settled base has given the occupiers of the appeal site access to healthcare and the same would be true of education for a family living here. The personal circumstances of the appellant will be considered next, but the site is not so remote as to make it unduly difficult to gain ready access to facilities, and Planning Policy for Traveller Sites does provide at Policy C for sites in rural areas.
28. That allowance for rural sites is provided that they do not dominate the nearest settled community. As with consideration on the visual effect, it is necessary to consider a possible cumulative effect, as the Greyhound Road area consists of a number of traveller sites. However, the layout is not sprawling, but is well contained and does not appear to have any adverse effect on the settled community of Brambledown or Minster, either in visual or numerical terms. It is sufficiently removed to avoid dominating the community, whilst being close enough so as not to appear truly isolated.
29. In conclusion on this issue, the site is outside the settlement boundary, but less remote than at the time of an appeal Decision at Woodlands Lodge, due to the progress being made with the Thistle Hill expansion. In the balance between a desirable social inclusion and the operational needs of a traveller site for a countryside location, the situation of Greyhound Road is appropriate and acceptable, in accordance with emerging Policy DM10 and national policies.

Other Considerations and the Planning Balance

30. The first consideration is the supply of sites in the Swale Borough area. The decision to not allocate sites is based on there being a reduced need, following the revision in 2015 to the definition of a gypsy and traveller, and to there being as a result, more than a five year supply of sites as required by paragraph 10 of Planning Policy for Traveller Sites.
31. The Council did accept however that where a gypsy or traveller who was occupying a site, falls out of the definition on a permanent basis through old age, they were unlikely in practice to seek their removal from the site. This, coupled with the already low turnover of privately provided sites, would limit site availability.
32. The inclusion of 8 new pitches in the 2015/2016 monitoring update at Orchard Park, Oak Lane, should be treated with some caution on the evidence presented to the Hearing, as the new pitches are the result of sub-division of existing pitches and would share the already existing utility buildings. The appellant's assertion that this sharing would not provide for wholly new occupiers, unconnected with the existing families, to be accommodated carries significant weight. As a result, the appellant's view that this is more akin to a house extension to accommodate a growing family than a wholly new house should also be afforded considerable weight.

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33. The appellant says that there will be objections to the resumed Local Plan examination, notwithstanding the Council's view that this matter is settled, and that removing the 8 sites at Orchard Park reduces the supply below the 5 year point. That appears a realistic appraisal.
34. Looking at the particular alternatives open to the appellant, the site at Brotherhood Woodyard at Dunkirk, with its 19 pitches, would appear to offer the possibility of vacancies arising, but the appellant's evidence is that this is occupied by Irish Travellers and that the Romany descended appellant would be most unlikely to settle there. Having mind to the views expressed at the Hearing, this appears a consideration of significant weight.
35. With regard to personal circumstances, the occupiers have access to health care locally at Thistle Hill, the continuity of which could be lost were they to have to leave the site. The presence of other traveller families on Greyhound Road is also a significant consideration when it comes to support.
36. It is appropriate here to consider the objection to the entry onto Lower Road, and the safety of that road. Whilst evidence was brought by Councillors and the Parish Clerk, regarding accidents on the road and at the entry, there is no official data indicating that users of the entry were at fault or even involved, and the Highway Authority raises no objection to the proposal either alone or cumulatively. The entry is on a part of the road subject to the national speed limit, between areas of 40mph, and has good visibility in both directions due to the curve of the road away from the entry. This does not appear a reason to find against the proposal, and the Council's approach is concurred with now. In this respect the proposal accords with Policies E1 and T1.
37. Turning then to the planning balance, there is real doubt over whether the Council can demonstrate a five year supply of sites, which as stated in paragraph 27 of Planning Policy for Traveller Sites is a significant material consideration in the grant of a further temporary permission.
38. However, the grant of a further temporary permission now would be the third on this site and the web-based Planning Practice Guidance states at Paragraph: 014 Reference ID: 21a-014-20140306 that it will rarely be justifiable to grant a second temporary permission – further permissions should normally be granted permanently or refused if there is clear justification for doing so.
39. Considering the findings of the two previous main issues, the visual harm can be mitigated to a considerable degree by the imposition of a landscaping condition, which should include control of hardstanding and site layout. The residual effect would be only in as much as activity and the sites being visible in views filtered, but not blocked, by vegetation secured by condition. Such filtering of views is fully in line with advice in paragraph 26 d) of Planning Policy for Traveller Sites that a site should not be enclosed with so much hard landscaping, high walls or fences, that the impression may be given that the site and its occupants are deliberately isolated from the rest of the community. The location of the site is not so distant from facilities, with the built form of Minster moving closer, as to be considered remote in the terms of paragraph 25 of the national policy document.
40. Further weight in favour of the proposal derives from the Development Plan position with Policy H4, whilst accepted as being out-of-date, is complied with

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in terms of the effect and the occupiers do now have a connection with the locality and the other criteria would have been considered in 2012.

41. To sum up, the location of the site, singly or cumulatively with others, appears a reasonable balance between isolation and not dominating the nearest settled community. The site scores well when considered against the criteria in paragraph 26 of Planning Policy for Traveller Sites and given the limitations of the Area of Outstanding Natural Beauty in other parts of the Borough, the location appears entirely suitable for a permanent permission.
42. In view of that finding, there is no need to attach particular weight to the personal circumstances of the appellant, other than that they indicate the experience of many gypsies or travellers. On that basis, whilst it would be essential to attach a condition limiting the occupation of the site to a gypsy or traveller as defined, there would be no necessity to limit it to any particular person.

Conditions

43. The starting point for this consideration is the conditions attached to the 2016 permission. The Council suggested conditions at the Hearing and these were substantially as conditions 2) to 5) of that permission. As stated in the Formal Decision above, condition 1) that limited the occupation to only a temporary period is removed. It is also appropriate to delete conditions 6) and 8) on access, parking and turning in favour of a new condition seeking a Site Development Scheme that would cover those matters.
44. The provision of such a Site Development Scheme including site layout and hard-standings as well as filtering vegetation, is essential for the reasons set out previously and is reasonable in a permanent permission. Due to the fact that the development and stationing of caravans has already taken place, the condition should provide for sanctions in default, ultimately leading to the removal of the items placed on the land.

Conclusions

45. The development of the Thistle Hill area of Minster has rendered the site less remote than was considered to be the case in an appeal in 2013, and the visual effects are consequently less apparent. The appeal proposal when taken together with the other two sites and accepting the possibility of the other sites in the group also seeking to establish permanent use, would provide much needed accommodation without causing significant and demonstrable harm once conditions have been accorded with. The site is suitable for permanent traveller occupation and Development Plan policies together with those of the Framework and Planning Policy for Traveller Sites do not indicate that development should be restricted.
46. For the reasons given above it is concluded that the appeal should succeed. The planning permission will be varied by deleting some of the conditions and substituting others.

S J Papworth

INSPECTOR

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APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

R McCardle	Senior Planning Officer Swale Borough Council
S Rouse	Senior Policy Officer Swale Borough Council

FOR THE APPELLANT:

P Brown	Managing Director Philip Brown Associates
D Kerbey	The Peartree
D Brazil	Blackthorn Lodge
L Smith	The Hawthorns

INTERESTED PERSONS:

Cllr T Booth	Sheppey Central Ward Swale Borough Council
Cllr C Beart	Queenborough and Halfway Ward Swale Borough Council
T Codrington	Parish Clerk Minster-on-Sea Parish Council

DOCUMENTS

Document	1	Notification letter 14 November 2016 submitted by Council
Document	2	Statement of Common Ground signed and submitted jointly, includes track-change deletions for information
Document	3	'Monitoring Update of Gypsy and Traveller Land Supply 2015/16' submitted by Council
Document	4	Planning Committee Report 16 January 2014 on Orchard Park site
Document	5	Planning Committee Report 13 March 2014 on Orchard Park site
Document	6	Locations for site inspection submitted by Council

SCHEDULE OF CONDITIONS

- 1) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1 to the Department for Communities and Local Government 'Planning Policy for Traveller Sites August 2015'.
- 2) No more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended (of which no more than 1 shall be a static caravan) shall be stationed on the site at any time.
- 3) The site shall only be used for residential purposes and it shall not be used for any business, industrial or commercial use. In this regard no open storage of plant, products or waste may take place on the land, no vehicle over 3.5 tonnes and no more than one 3.5 tonne vehicle shall be stationed, parked or stored on the land.

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- 4) 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.
- 5) No building or structure shall be erected or stationed within 8 metres of the adopted drainage ditch.
- 6) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 30 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 internal layout of the site, including the siting of caravans, utility building, hardstanding, access roads, parking and amenity areas; tree, hedge and shrub planting and where appropriate earth mounding including details of species, plant sizes and proposed numbers and densities; and vehicle parking or turning space (hereafter referred to as the Site Development Scheme) shall have been submitted for the written approval of the Local Planning Authority and the scheme shall include a timetable for its implementation.
 - ii) If within 11 months of the date of this decision 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 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.

Upon implementation of the approved Site Development Scheme specified in this condition, that items the subject of the Scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.



Appeal Decision

Site visit made on 17 February 2017

by **Katie Peerless** Dip Arch RIBA

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

Decision date: 28th February 2017

Appeal Ref: APP/V2255/C/16/3159910

Land and Buildings at Parsonage Farm, Painters Forstal, Faversham, Kent ME13 0EW

- 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 Mrs Rachel Brown against an enforcement notice issued by Swale Borough Council.
 - The enforcement notice, numbered 16/500318/CHANGE, was issued on 2 September 2016.
 - The breach of planning control as alleged in the notice is: front dormers have been constructed that do not match in terms of overall size and design the details as submitted and approved on Drawing No. BRW-0413-011, Revision B Dated April 2013 Sheet 2 of 2 of planning reference SW/13/1272, copies of which are attached to the enforcement notice.
 - The requirements of the notice are remove the unauthorised dormer windows or construct the dormer windows fully in accordance with the details, sizes and designs as shown on Drawing BRW-0413-01 Revision B Dated April 2013 Sheet 2 of 2 of planning permission SW/13/1272.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
-

Decision

1. The appeal is allowed insofar as it relates to the 2 outermost dormers in the front roof slope, and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for this part of the development as already carried out, namely the erection of 2 dormers on a building at Parsonage Farm, Painters Forstal, Faversham, Kent ME13 0EW referred to in the notice.
 2. It is therefore directed that the enforcement notice be varied by the deletion of the allegation and its replacement with the following words: *'the construction of a central front dormer that does not match in terms of overall size and design the details as submitted and approved on Drawing No. BRW-0413-011, Revision B Dated April 2013 Sheet 2 of 2 of planning reference SW/13/1272, copies of which are attached to the enforcement notice'*. It is also directed that the requirements of the notice be varied by the deletion of the words *'dormer windows'* and their replacement by the words *'central dormer window'* and that the time for compliance is varied from 6 to 9 months.
 3. The appeal is dismissed and the enforcement notice is upheld as varied, insofar as it relates to the central dormer and planning permission is refused for this part of the development.
-

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Main Issue

4. I consider the main issue on ground (a) is the effect of the dormers on the character and appearance of the host building and its context within the surrounding area.

Site and surroundings

5. The appeal property is a detached dwelling in countryside which is within the Kent Downs Area of Outstanding Natural Beauty (AONB). It was formerly a single storey bungalow that has now been converted into a larger chalet style house by the addition of rooms in the roof space and a rear extension. Planning permission was granted for additions to the property under reference SW/13/1272 but the works have not been carried out as approved. There are 3 new roof dormers on the front elevation that serve 2 bedrooms and the stairwell and these are larger and of a different design to those approved. Other differences include the design of the front entrance porch that has a gabled roof rather than the hipped version shown on the approved plan and different fenestration on the front elevation.

Reasons

Ground (a)

6. The Council has enforced only against the dormer windows, considering that they are overly large and out of scale with the property, thereby damaging its original simple rustic character and creating an intrusive appearance. For these reasons, it is claimed that harm is being caused to the character of the Kent Downs Area of Outstanding Natural Beauty, contrary to saved policies E1, E9, E19 and E24 of the Swale Borough Local Plan 2008, and to the Council's adopted Supplementary Planning Guidance (SPG) on domestic alterations that is referred to in paragraph 3.71 of the Local Plan.
7. The dormers have been constructed with gabled roofs whose ridges run back to meet the main ridge of the house roof rather than the hips shown on the plans. They are larger than approved in both height and width and set higher up in the roof slope. The approved plans also show the dormers as all being the same size but the central addition as built is larger than the 2 side dormers and has different fenestration. It also cuts into the side of the porch roof.
8. It seems to me that the combination of the unauthorised alterations within the roof slope has resulted in poorly designed scheme that is out of scale and fails to respect the character of the original low-key bungalow. The planning permission has allowed additional bulk within the roof slope, but the enlargement of the permitted 3 dormers has now given the building a top-heavy appearance. The detail between the middle dormer and the porch roof is poorly thought out and awkward and detracts from the overall appearance of the house. These details represent a poor standard of design that also causes harm to the wider setting of the property, where it now appears more intrusive than was originally envisaged in this countryside location within the AONB.
9. The scheme as built therefore conflicts with policy E24 (1) and (2) which require alterations and extensions to be of a high quality design and to be in scale with the building's surroundings and its individual details. It also fails to meet the requirement of policy E19 (8) as the changes are not appropriate to their context, with respect to their scale and massing.

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10. I recognise that none of the dormers meet the dimensional guidance set out in the SPG. However, when seen in context with the gable end to the porch, the design of their roofs appears appropriate. I also consider that the 2 outermost additions remain in proportion to the roof and the difference between these and the approved versions are not sufficiently harmful in themselves to warrant the requirement that they should be altered to match those granted planning permission. To my mind, it is the central dormer that is causing the worst of the impacts noted above and it is this that requires to be addressed.
11. Through this appeal, I am only able to grant planning permission, in whole or in part, for the scheme enforced against as there are no other proposals before me. I will therefore grant planning permission under the appeal on ground (a) for the 2 outermost dormers but refuse it for the central dormer. Although the appellants say that the dormer needs to be the size that it is in order to meet the height requirements of the Building Regulations above the staircase, I saw at the site visit that it would be possible to reduce the size of the dormer whilst still being able to provide a staircase with sufficient headroom.
12. I realise that this could possibly leave the building with dormers of unequal sizes and designs if the appellant decides to install the central dormer as approved. However, in my opinion, a smaller central dormer would still be preferable to that existing at present. Nevertheless, now that the outer dormers are authorised, the appellants could consider seeking planning permission from the Council for a central dormer that is the same size and design as the 2 outer ones.

Ground (f)

13. The reasons given by the appellants to support the appeal on ground (f) (that the requirements of the notice are excessive and would not serve to remedy the injury to amenity) are more relevant to the appeal on ground (a) which I have dealt with in preceding paragraphs. Neither do they explain why the requirement to comply with the planning permission or return the roof to its condition before the works took place go beyond what would be required to remedy the breach of planning control. The only 'lesser steps' suggested are allowing the appeal on ground (a).
14. I have noted that the appellant may have financial difficulties in rebuilding the dormers, and that complying with the requirements of the notice will entail some disruption to the living conditions of the occupants of the building, but these are not matters to which I can give great weight in this appeal. I realise that the alterations to the permitted proposals may have been carried out inadvertently but this does not outweigh the identified harm. The appeal on ground (f) consequently fails.

Ground (g)

15. The appellant asks for up to 12 months to comply with the notice, rather than the 6 months suggested by the Council. I have reduced the scope of the requirements and I do not find that 6 months would be an unreasonable amount of time to remove or alter the central dormer. However, I recognise that more time might be needed to apply for planning permission if the appellant wanted to replace the central dormer with one that matches the others. To this end, I will allow a period of 9 months for the process and will vary the enforcement notice accordingly. The appeal on ground (g) succeeds to this extent.

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Katie Peerless

Inspector



Appeal Decision

Site visit made on 24 January 2017

by **Lesley Coffey BA Hons BTP MRTPI**

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

Decision date: 6th March 2017

Appeal Ref: APP/V2255/W/16/3157268

Land to East of St Marys View, Newington, Kent ME9 7JW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Swann Construction (UK) LLP against the decision of Swale Borough Council.
 - The application Ref 15/509664/OUT, dated 20 November 2015, was refused by notice dated 8 July 2016.
 - The development proposed is the erection of up to 26 residential dwellings with all matters reserved for future determination with the exception of access.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The proposal is an outline application with all matters with the exception of access reserved for future determination. The appellant submitted plans showing how the development might be accommodated, but these are for illustrative purposes only. Nevertheless they provide a useful guide when considering the proposal before me.
3. The appellant submitted a Unilateral Obligation under s106 of the Act. This covenants to make a financial contribution towards education, libraries, open space improvements, wheelie bins and mitigation in respect of the Swale Special Protection Area. In addition it covenants to provide 40% of the dwellings as affordable housing, provide a reptile mitigation strategy and to apply for a Traffic Regulation Order in respect of passing places and parking restrictions. I have taken these obligations into account in reaching my decision.

Main Issues

4. I consider the main issues to be:
 - Whether the road network is adequate for the proposed development;
 - The effect of the proposal on the living conditions of the occupants of the dwellings in Church Lane, with particular regard to traffic noise and disturbance;
 - The effect of the proposal on the character and quality of the landscape and locality; and
-

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- The effect of the proposal on the supply of the best and most versatile (BMV) land.

Reasons

Adequacy of Road Network

5. St Marys View connects to Church Lane which links the site to the centre of Newington and the A2. It provides the quickest and most convenient access to surrounding towns and centres, including the Medway towns, Sittingbourne, and the motorway network. Church Lane is subject to a 30mph speed limit, and only subject to parking restrictions for the first 30 metres from the junction with the A2. The road varies in width from 4.5 metres at its narrowest point to 7.5 metres in the vicinity of its junction with School Lane.
6. The Transport Statement identifies a critical area in terms of width to the south of the railway bridge where there is a build-out of some 50 metres. It also noted that roadside parking takes place along Church Lane, primarily due to the lack of off-street parking available to many existing properties. The Council states that due to congestion it is often not possible for vehicles to pass each other within Church Lane. Newington C of E Primary School is located to the east of Church Lane and the Council advise that this adds to congestion during drop off and pick up times.
7. The Council does not dispute any of the technical data within the appellant's Transport Statement. Nevertheless, the Parish Council is critical of the timing of the survey which was conducted about two weeks before the start of the school summer holidays. It considers that it is therefore likely to show fewer vehicle trips compared with other times. There is no evidence to suggest that the date of the survey had a material impact on the number of trips associated with the primary school. I therefore consider that the Transport Statement provides a reliable evidence base against which to assess the proposal. It indicates that existing peak hour traffic movements on Church Lane would increase by 14 movements in the morning peak period and 16 movements during the evening peak period.
8. The Highway Authority consider that the proposal is unlikely to have a material impact on the traffic movements during school traffic peak periods, since residents of the development would be likely to avoid making car based journeys using Church Lane at those times. It also considers that any primary school children residing within the development would probably not generate vehicle movements at these times due to the proximity of the site to the school. I share this view.
9. Notwithstanding this, Church Lane becomes very heavily parked during evenings and weekends when more people are at home. At these times there can be little opportunity for vehicles to pass one another over a considerable length. The Highway Authority advises that this problem has increased over time with increased car ownership associated with the terraced housing along Church Lane and that as a consequence parking has spread into the informal passing place under the railway bridge. There is a further passing place adjacent to the garages nos. 21 and 23, however, the length of the break in parking is fairly short.

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10. The proposed development would add to the traffic passing through this section of Church Lane, and increase the likelihood of congestion or conflict between vehicles. The Highway Authority suggested that some mitigation is necessary in the form of waiting restrictions in order to formalise a usable passing place by the garages, and secure the historic passing place under the bridge. Since the submission of the appeal the Highway Authority advise that waiting restrictions under the bridge have now been approved by the Swale Joint Transportation Board, and these are due to be implemented in the near future.
11. The submitted planning obligation covenants to submit and implement a TRO in relation to the provision of parking spaces by the garages for 21 and 23 Church Lane and extending the existing parking restrictions from the A2 to the entrance of Newington Methodist Church. Subject to these measures, and control over construction traffic movements, the Highway Authority does not object to the proposal.
12. The Traffic Regulation Order would require statutory periods of advertisement and consultation. The Council consider that residents may be minded to object to such restrictions, on the grounds that existing parking would be further diminished. The latter would remove one on-street parking space between the access to the Methodist Church and the garage immediately south of it. Any objections would be a matter for the Highway Authority to consider.
13. The Council is also concerned that even when the passing space under the bridge is implemented, the bend in the road and presence of parked vehicles mean that visibility towards the north would still be restricted. There is no evidence to suggest that the bend in the road restricts visibility to the extent it has implications for highway safety.
14. I appreciate that the proposed measures may not resolve all of the existing issues with parking and the free flow of traffic within Church Lane. However there is no substantive evidence to indicate that, once these measures have been implemented, the appeal proposal would materially worsen the existing situation.
15. The Parish Council also refer to other committed development at Vicarage Gardens, High Oak Hill, School Lane and Vicarage Close. It considers that these schemes would add to additional traffic on Church Lane. I understand that the development at Vicarage Close is complete and therefore any traffic associated was reflected within the Traffic Statement. The appellants state that the traffic generated by the development at School Lane is offset by the previous agricultural use, and that the scheme at High Oak Hill would generate fewer trips than the previous industrial use. No evidence to the contrary has been submitted. The development at Vicarage Gardens relates to 4 dwellings and would be unlikely to have a significant effect on traffic.
16. The Council also refer to the Department for Transport Traffic Advisory leaflet 2/04 which provides advice on considerations when planning a single track with passing places scheme. This advises that passing places for single track roads should have a minimum length of three cars. However, the lack of passing places is an existing situation, and the measures due to be implemented by the Highway Authority, together with the planning obligation submitted by the appellants should ensure that the proposal would not exacerbate the existing situation and may improve it.

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17. I therefore conclude that the road network is adequate for the proposed development and that the proposal would not conflict with policy T1 of the Swale Borough Local Plan (adopted 2008) which resists proposals that would generate a volume of traffic in excess of the capacity of the highway network and policy DM6 of the emerging Local Plan, Bearing Fruits 2031: The Swale Borough Local Plan Part 1 which has a similar intent.

Living Conditions

18. Policy SP2 of the Local Plan requires adverse impacts arising from development proposals to be minimised and mitigated, whilst policy E1 requires development to cause no demonstrable harm to residential amenity and other sensitive uses or areas. Policy DM14 of the emerging Local Plan has a similar intent.
19. Traffic from the proposed development would be likely to use Church Lane. The Council considers that the increase in traffic movements would be noticeable within some of the dwellings which are situated close to the carriageway. It also considers that conflict between vehicles travelling in opposite directions on Church Lane is likely to lead to an increase, and would add to the disturbance which local residents currently experience.
20. The Transport Assessment identifies that the proposal would lead to a modest additional increase in trips which would equate to one extra vehicle every four to five minutes during peak hours. These figures are not disputed by the Council. Church Lane is currently used by vehicles, including traffic visiting the school. Having regard to the proposed mitigation I consider that there would be no worsening of the existing traffic congestion and there may well be a slight improvement. Therefore, the proposal would be unlikely to have a significant adverse impact on the living conditions of the occupants of the dwellings in Church Lane.
21. I therefore conclude that the proposal would not harm the living conditions of the occupants of the dwellings in Church Lane and would comply with policies SP2 and E1 of the Local Plan and policy DM14 of the emerging plan.

Character and Appearance

22. St Marys View is a cul-de-sac which lies on a north-south alignment and connects via a shorter east-west branch to Church Lane. The appeal site is a broadly rectangular piece of land that runs parallel to St Marys View and forms part of a much wider land holding that extends to the north and the east. The land towards the southern part of the site rises towards the railway embankment. The Newington Church Conservation Area, lies to the north. The tower to the Grade I listed Parish Church of St Mary dominates views looking north from St Marys View. The site adjoins the built up boundary of Newington and comes within the designated countryside as defined by both the adopted and emerging Local Plan. The site is not covered by any national or local designations for landscape quality, although there is a locally designated Area of High Landscape Value on the north side of Church Lane, which includes most of the conservation area and also Wardwell Wood and the area to the north.
23. The site is located on the side of a valley that drops down to the east away from the existing built development of Newington, before rising again to the

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north east and south east. The landscape to the east of Newington is an attractive mix of rising land and valleys, woodlands and open arable fields.

24. The opposite side of St Marys View is residential in character with a mixture of frontage and cul-de-sac development. The appeal site marks the transition from the urban environment of Newington to the countryside. The hedgerows and trees on the site give it a distinctly rural character which contrasts with the tight-knit urban development of Newington.
25. The site is currently overgrown with a dense mix of vegetation including some fruit trees and dense scrub. An arboricultural survey submitted by the appellant found no mature trees on the site. The only individual trees recorded were 4 oaks and 4 ash, together with some smaller hawthorn and hazel. Whilst these trees are of limited merit individually, they combine with the hedgerows and other vegetation to give the site a wooded rural character which forms the backdrop to this part of Newington.
26. Local Plan policies E6 and E9 seek to protect the quality, character and amenity value of the wider countryside. Proposals are expected to be informed by, and sympathetic to, local landscape character and quality and safeguard or enhance landscape elements that contribute to the distinctiveness of the locality. Policy DM24 of the emerging Local Plan has a similar intent.
27. The indicative layout shows a block of flats close to the railway line, adjoined by terraced, semi-detached and detached dwellings fronting St Marys View with associated garages and parking courts accessed directly off St Marys View. There would be a separate parking area for the apartments. It is intended that the dwellings would be 2 storeys in height. Whilst I appreciate the proposal is in outline form, having regard to the size and shape of the site I consider that the general form of development is likely to be similar to that shown on the illustrative plan. It is probable that the majority of the vegetation on the site will be removed. The submitted unilateral undertaking includes provision for a 10 metre deep buffer on the adjoining land to assist with the assimilation of the proposal into the surrounding landscape and mitigation in respect of biodiversity.
28. It is common ground between the parties that the proposal would not harm the setting of the Newington Conservation Area or the listed St Marys Church. Based on the submitted evidence and my observations at the time of my site visit I have no reason to disagree.
29. The site comes within the *Iwade Arable Farmlands as identified by the Swale Landscape Character and Biodiversity Appraisal SPD*. This area is characterised by very gently undulating rural landscapes that may traditionally have supported fruit growing. The SPD refers to the large arable/horticultural fields with regular field patterns and rectangular shapes predominating, and a sparse hedgerow pattern. It concludes that overall the farmlands are generally in poor condition largely as a result of agricultural intensification with many field boundaries lost, with remnant orchards and other fragmented features providing reference to the historic landscape pattern. Guidelines for the Iwade Arable Farmlands focus on restoring the rural environment where possible through planting and restoration initiatives. A priority is seen as the conservation and careful management of the older, traditional orchards particularly where biodiversity can be enhanced. It is assessed as a moderately sensitive area.

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30. The appeal site and the adjoining land display many of the characteristics of this landscape area. It has not been subject to agricultural intensification, and the remnants of the orchard are still apparent.
31. There would be some distant and limited views of the proposed dwellings from the north east. Due to the distance and the topography, I consider that in these views the proposal would blend with the remainder of the settlement and would not give rise to significant harm.
32. From the east there are partial and filtered views towards the site from the public footpath which runs along the bottom of the shallow local valley past Moat Cottage. There are also more elevated and clearer views from the public footpath further to the east, which runs from the railway crossing to the north, and also from the footpath which runs up Keycol Hill, to the south of the railway line. I consider the change in the character of the landscape would be noticeable in these views.
33. The main views would be from St Marys View and the dwellings to the west. The existing countryside would be replaced with a view of a suburban development. Since the site occupies the higher ground and lies adjacent to the settlement boundary, the removal of the vegetation and introduction of the proposed dwellings would change the character and setting of this part of Newington.
34. The site boundary appears to be arbitrary and unrelated to features on the ground or the topography of the site. I appreciate that the scheme includes a landscape buffer, but I consider that this would serve to emphasise the awkward relationship between the appeal scheme and the surrounding countryside. The loss of vegetation would be considerable and in my view the proposal would significantly harm the rural character and setting of Newington. This harm would not be mitigated by the landscape proposals. The proposal would therefore conflict with paragraph 17 of the National Planning Policy Framework, which amongst other matters states that regard should be had to the different roles and character of different areas, and that the intrinsic character and beauty of the countryside should be recognised.
35. In addition, due to the shape of the site the proposal would be likely to be dominated by the proposed parking areas, and on the basis of the submitted evidence I am not persuaded that it would deliver the high quality public realm sought by the Framework.
36. I therefore conclude that the proposal would significantly harm the character and appearance of the surrounding area and would fail to comply with Local Plan policies E6 and E9.

Loss of Agricultural Land

37. The appellant acknowledges that the proposal would result in the loss of an area of BMV land. Policy DM31 of the emerging local plan sets out that development on BMV land will only be permitted when there is an overriding need that cannot be met on land within the built up area boundaries, unless the site is allocated for development by the Local Plan or, there is no alternative site of lower quality. Notwithstanding this, the Council concedes that it in order to meet its housing requirements within the emerging Local Plan it has been necessary to allocate housing sites on BMV land. It states that the

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allocated sites would result in a significant loss of BMV land, and the appeal site would add to this loss, albeit on a small scale. The Council suggest that policy DM31 should be afforded significant weight given that the interim findings of the examination inspector did not recommend any modification to this policy.

38. Paragraph 112 of the Framework states that local planning authorities should take into account the economic and other benefits of the best and most versatile agricultural land. Where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality. The Framework does not define the meaning of the term 'significant development'. The appellant contends that the 20 hectare threshold for consulting Natural England on proposals for the loss of BMV land supports his view that the proposal cannot be considered to be significant development. However, the Framework does not set such a threshold for the consideration of 'significant development' in the context of paragraph 112.
39. The loss of BMV land is undesirable and unsustainable in that it is a finite resource. I understand that the site forms part of a belt of predominantly high-quality agricultural land stretching all the way from Gillingham to Faversham. The emerging Local Plan indicates that some 70% of the 23,000 ha of agricultural land in the Borough is BMV land. The appeal site is about 0.75 Ha in area. The wider site (4.85 ha) does not form part of the appeal site and would remain as BMV land. The appellant states that the site was previously used as a fruit orchard but has not been cultivated since 1973, however, this does not diminish the agricultural quality of the land. The loss of BMV land would be relatively small and in my view would not be significant in the context of the supply of BMV land within the Borough. Whether the loss of such land is necessary is a matter for the overall planning balance.

Other Matters

40. The appellant suggests that should the wider site return to active agricultural use, some of the ecological benefits provided by the wider site at the present time would be lost and the proposed ecological enhancements would not be realised. To some extent this would be dependant on the nature of any future agricultural use. Some agricultural uses, including orchards, can deliver significant benefits in terms of biodiversity and ecology. Balanced against this, the development of the appeal site would require mitigation in order to compensate for the loss of habitat. I therefore afford this consideration limited weight.
41. The Council published *Bearing Fruits 2031 - The Swale Borough Local Plan Proposed Main Modifications* in June 2016. The modifications were made in response to the Examination Inspector's Interim Findings. They included additional housing site allocations to meet the identified Objectively Assessed Need for housing. Public consultation on the modifications ran between 24 June – 8 August 2016 and the Council anticipate that the examination will resume in the very near future.
42. No evidence has been submitted to indicate the extent of the existing shortfall in housing land. The Council has recently taken steps to address the shortfall through modification to the emerging plan. The recently published Statement of Housing Land Supply 2015/16 identifies a 5.4 year supply. These additional allocations have not been subject to examination, but they are informed by the

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Examining Inspector's Interim Findings. Nevertheless, the Council acknowledges that at the present time it does not currently have a five year supply of housing land, therefore in accordance with paragraph 49 of the Framework the policies for the protection of the countryside should not be considered to be up to date.

43. At the heart of the Framework is a presumption in favour of sustainable development. There are three dimensions to sustainable development, social, economic and environmental. These roles should not be undertaken in isolation, because they are mutually dependent. In social terms the proposal would provide market and affordable housing, within walking distance of a primary school, shops, services and public transport.
44. Economically the proposal would provide employment during the construction period and would make a modest contribution towards household expenditure in the area. The developer contributions would provide mitigation against the adverse impacts of the proposal on local infrastructure and therefore are not an economic benefit of the proposal. In environmental terms, the proposal would result in the loss of BMV land, and would result in harm to the landscape and character of the area. Whilst the proposal includes mitigation measures these would not outweigh the environmental harm arising from the proposal.

Overall Planning Balance

45. Paragraph 14 of the Framework states that where the development plan is absent, silent or relevant policies are out-of-date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
46. In the absence of a five year supply of housing land policies E6, and E9 are out of date for the purposes of the Framework. However, this does not mean that these policies carry no weight. As set out above, the Framework recognises the intrinsic beauty and character of the countryside as a core planning principle, and it should be given significant weight. However, these policies clearly carry less weight than they would if there were a five year supply of deliverable housing sites.
47. Whilst there is an existing shortfall in the five year housing land supply, it is likely that this will be resolved in the context of the emerging Local Plan and therefore the existing shortfall is likely to be of limited duration. In this context there is insufficient evidence to persuade me that the loss of the BMV land which comprises the appeal site is necessary to meet the housing needs of the Borough.
48. I have concluded above that the proposal would cause significant harm to the rural character and appearance of the site and the surrounding area and would also result in the loss of BMV land.
49. Whilst I have found that the road network could accommodate the proposal, and that it would not harm the living conditions of residents, these matters do not weigh in favour of the proposal, they merely do not add to the harm. The contribution of the proposal to market and affordable housing weighs in favour of the proposal and I afford it moderate weight. None of the other factors considered carry any more than limited weight in favour of the proposal.

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50. Taking everything into account, I consider that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits. As a result, the application of paragraph 14 of the Framework does not indicate that permission should be granted and the proposal would not represent sustainable development. In the circumstances of this appeal, the material considerations considered above do not justify making a decision other than in accordance with the development plan.

51. For these reasons, the appeal should be dismissed.

Lesley Coffey

INSPECTOR

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Appeal Decision

Site visit made on 24 January 2017

by **Mr K L Williams BA, MA, MRTPI**

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

Decision date: 3 March 2017

Appeal: APP/V2255/C/16/3142907

Land on the South-East Side of Faversham Road, Ospringe, Faversham, Kent, ME13 0SP

- 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 Mrs A Gibbs against an enforcement notice issued by Swale Borough Council.
 - The Council's reference is ENF/GEN.
 - The notice was issued on 24 December 2015.
 - The breach of planning control as alleged is 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.
 - The requirements of the notice are to:
 - i. Cease the use of the land as a caravan site for the stationing of any mobile homes or caravans.
 - ii. Remove any caravans/mobile homes from the site.
 - iii. Remove the hard-surfacing materials referred to in sub-paragraph (ii) above from the land.
 - The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal succeeds only to a limited extent. The enforcement notice is corrected, varied to extend the period for compliance to 12 months and upheld.

Background

1. The appeal site is in the countryside, adjacent to Faversham Road and Elverland Lane. It is within the Kent Downs Area of Outstanding Natural Beauty (AONB). The site is a steeply sloping orchard within a dry valley. There is a gated access close to the junction of Faversham Road and Elverland Lane. There are two pitches, both sited near the bottom of the slope.

The Enforcement Notice

2. The allegation should convey the use for which caravans are stationed. In this case it is apparent from the evidence submitted that the caravans are stationed for residential purposes. The main parties have approached the appeal on that basis. The notice can be corrected to address this matter without injustice to the main parties as set out in the Formal Decision.
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The Appeal on Ground (g)

3. The main issue is whether the 6 month period for compliance with the requirements is unreasonably short. The appellant seeks an extension of that period to 3 years.

The Main Points of the Appellant's Case

4. The site is occupied by an extended gypsy family. One pitch is occupied by Mr A Gibbs and Mrs A Gibbs. The other is occupied by their daughter Ms Lifton, her son John Lifton, aged 8 and her daughter Bridgeann, aged 1. Their gypsy status is not disputed. There are sustainability benefits from the family staying on the site, including access to medical facilities and education. Personal medical and educational circumstances need to be taken into account. One site resident has several medical conditions. Another has particularly complex health problems. Correspondence and assessments are submitted which explain the seriousness of that condition. Letters from the head teacher of a local primary school explain that it is John Lifton's third primary school and confirm the good progress he is making. They refer to the benefits to him of a settled home and to the disruption and harm to his education which would result from having to leave his home.
5. There is no alternative site available to the family and the Council has not offered alternative accommodation. There is a shortage of sites in the district and more widely and there is no 5-year supply of sites. The deliverability of some of the sites the Council relies on is questionable. The Council's approach in its emerging local plan is unlikely to succeed in delivering new sites. Finding sites is particularly difficult for gypsies and travellers. If this family is compelled to leave they would face considerable difficulty in getting a suitable site unless given further time. They could not find another site before buying the appeal site. They expended all their resources in doing so and need further time to recover financially. An extended period would allow them respite while also allowing continued access to education and health facilities. It would also allow the Council time to properly assess unmet need and make additional provision, while others could also be positively involved. There are no pressing safety or other issues to justify a compliance period of only 6 months.
6. The human rights of the family members are engaged and must be considered. The best interests of the children must be a primary consideration. The children benefit from a settle site and their best interests would be harmed if the family had to resort to a roadside existence
7. The site complies with many aspects of local and national policies other than in respect of its location in an AONB. There is a mature landscape edge to the site and there are trees within it, so that visual impact is reduced. The actual harm to the AONB is limited. The site is not remote from local services and facilities. There are other caravan sites in the area and some unauthorised sites have been tolerated. A similar range of issues has resulted in successful appeals elsewhere in the district, for example at Bredgar, Sittingbourne (APP/V2255/A/14/2222135), where a 3 year temporary permission was granted. A high court injunction concerning land near Sittingbourne was also suspended having regard to the best interests of the children on that site.

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Assessment

8. In an appeal limited to ground (g) it is not for me to decide whether or not planning permission should be granted. Nevertheless, some matters of planning merit may be relevant. A range of matters weigh in favour of extending the compliance period. There are personal medical circumstances. They apply in particular to one site resident who has a serious and complex medical condition. The submitted medical and other assessment documents strongly suggest that this condition will be exacerbated by the disruption caused when the family is required to leave the site.
9. The requirement to leave the site is an infringement of the human rights of each member of the extended family under Article 8 of the European Convention on Human Rights. It deals with the right to respect for family life and the home. The extent of that infringement would be reduced to some degree by an extension of the compliance period. In addition, the best interests of children must be a primary consideration in my decision. There are 2 children living on this site. One of them attends a local school. His education has been disrupted previously and he is said to be doing well now. A settled site affords the children the best opportunity of a stable family life, safe play and access to education, health and other services. A roadside existence would not preclude all access to education. Nevertheless, it is likely that if prolonged it would lead to serious disruption to education. A longer period for compliance would serve the children's best interests by extending the period when a settled site would remain available to them.
10. In addition to access to health and education facilities, an extended period would facilitate some of the sustainability benefits to which paragraph 13 of Planning Policy for Traveller Sites, 2015 (PPTS) refers. It would, for example, facilitate a traditional traveller lifestyle, reduce the need for long distance travel and reduce the risk of environmental damage caused by unauthorised encampments.
11. The need for sites for travellers and the provision of sites forms a backdrop to my decision. Contrary to the appellant's position the Council contends that there is a small surplus of pitches. The 2013 Gypsy and Traveller Accommodation Assessment (GTAA) requirement was for 85 pitches to 2031. Having regard to implemented permissions at March 2015 the outstanding need at that date was for 49 pitches. The Council contends that it now has a 5-year supply of sites. At March 2015 there remained some unimplemented permissions and 6 further permanent sites have been approved since then. A re-evaluation of need, having regard to the revised definition of travellers in Planning Policy for Traveller Sites, 2015 (PPTS), has resulted in a reduced pitch requirement to 2031. The Council is carrying this forward in the emerging Swale Local Plan. The Council contends that its approach was endorsed by an Inspector's interim findings on the local plan, dated March 2016. The Inspector considered that the provision of the remaining pitch requirement through windfall permissions provided a well-reasoned and pragmatic solution.
12. The balance of evidence in this appeal is that the Council is making considerable progress towards making provision for its assessed need for additional pitches. On the other hand, the Council has not suggested any specific alternative site which is likely to be available to the members of this extended family if they are required to leave the appeal site on the expiry of a

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6 month compliance period. It is consistent with caselaw that any alternative site should be suitable, affordable, acceptable and available. The lack of substantive evidence of an alternative site meeting these requirements weighs in favour of an extended period for compliance.

13. If the period for compliance is extended, any harm caused by the development would be prolonged. The site is in an AONB, a highly valued landscape which local and national policies protect. Paragraph 115 of the National Planning Policy Framework (the Framework) provides that great weight should be given to conserving the landscape and scenic beauty of an AONB. Notwithstanding the mature boundary hedgerow and other caravan sites nearby, the development is harmful to the landscape character of this part of the AONB, which is predominantly undeveloped. The site is prominently located and the development is visually intrusive, particularly at times when trees and hedgerows lack foliage. The development fails to conserve the AONB landscape and its scenic beauty. The site is in an isolated position. It is in open countryside and is away from existing settlements. A very prolonged compliance period would not be consistent with the very strict control of new traveller sites to which PPTS paragraph 25 refers. The site's isolated position is unlikely to facilitate integration with the local community.
14. There is also harm to highway safety and the highway authority objects to the development on that basis. Visibility for drivers emerging from the gated entrance is very limited. The access emerges almost directly onto the junction of Faversham Road and Elverland Lane. Drivers turning left into Elverland Lane would not see vehicles emerging from the site. There is also poor visibility for drivers emerging from Elverland Lane onto Faversham Road. The Council's evidence is that this road carries fast moving traffic to and from many rural communities and from the A2 and A20/M20 at Maidstone. The small scale of the development must also be taken into account. It would not generate large numbers of vehicle movements.
15. The suspension of an injunction concerning land near Sittingbourne turned on matters pertinent to the best interests of the children. As I have set out, they are also a primary consideration in my decision. The Bredgar appeal decision was against a refusal of planning permission so that the Inspector was not concerned with whether a period for compliance with an enforcement notice was unreasonable short, as in this appeal. That decision was issued in December 2014 so that it pre-dated the issue of PPTS in August 2015. It introduced a number of changes to national policies for traveller sites. In addition, the circumstances in the Bredgar appeal do not exactly reflect those in this appeal, for example with regard to personal circumstances.
16. Government policy is that if there was intentional unauthorised development that should be a material consideration in appeal decisions. That policy applies in this case. The site was occupied in December 2015, soon after the appellant acquired it. The development was unauthorised and it is not disputed that it was intentional. I appreciate that the intentional nature of the unauthorised occupation of the site is a matter of concern to a number of local residents. On the other hand, this policy was introduced because of concern about the harm caused by such development. I have addressed that harm above. In that context, while it is a material consideration, I give little additional weight to the intentionality of the development.

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The Overall Balance

17. Having regard in particular to personal medical circumstances and the best interests of the children for a settled home, the matters weighing in favour of extending the compliance period as the appellant suggests are worthy of considerable weight. However, they must be weighed against prolonging the harm which I set out above, including the harm to the AONB. The inadequacy of the site access and the effect of its use on highway safety are also significant concerns. Use of this access over a very prolonged period would not be in the best interests of the children, those of the other site residents or those of the wider community. When balancing all relevant matters I find that the 3 year period sought by the appellant would be excessive. It would be akin to a planning permission for a lengthy period which was unconditioned other than in respect of its temporary nature. On the other hand, a more limited extension of the compliance period would give more time for discussion with the Council and others about alternatives. It would go some way to increasing the chances of this extended family finding a suitable alternative site. It would also help towards minimising the likely disruptive effects of leaving the site, including the effects on existing medical conditions, on access to education and health facilities and on the family's traveller way of life.
18. In all the circumstances I conclude that the 6 month period for compliance is unreasonably short and should be extended to 12 months. I shall vary the enforcement notice accordingly. I am satisfied that the legitimate aim of protecting the environment and safety cannot be achieved by means which are less interfering with human rights than this decision. It is proportionate and necessary in the circumstances and will not result in a violation of rights under Article 8. In reaching this decision I have also taken into account the requirements of Equality Act, 2010, including those concerning equality of opportunity and eliminating discrimination.

Overall Conclusion

19. Having regard to the above and to all other matters the enforcement notice should be corrected, varied and upheld.

Formal Decision

20. I direct that the notice be corrected as follows:
- i) At paragraph 3 by the insertion of the words "for residential purposes" after the words "caravans/mobile homes".
 - ii) By the replacement of the words at paragraph 5(i) with the words "Cease the use of land as a caravan site for the stationing of caravans/mobile homes for residential purposes.
21. I further direct that the notice be varied at paragraph 6 by the replacement of the words "6 months" with the words "12 months". I allow the appeal to that limited extent. I uphold the enforcement notice as corrected and varied.

K Williams

INSPECTOR

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By virtue of paragraph(s) 1, 2, 3, 4, 5, 6, 7 of Part 1 of Schedule 12A of the Local Government Act 1972.

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