

AGENDA

PLANNING COMMITTEE MEETING

Date: Thursday, 14 September 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, Nicholas Hampshire, Mike Henderson, James Hunt, Ken Ingleton, Nigel Kay, 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 17 August 2017 (Minute Nos. 162 – 170) 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 5 September 2017 (Minute Nos. to follow).

To consider application 17/501755/FULL 60 – 63 Preston Street, Faversham, Kent, ME13 8PG.

6. Deferred Item

To consider the following applications:

SW/08/1124 and SW/13/0568 153 London Road, Sittingbourne, Kent.

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

Requests to speak on these items must be registered with Democratic Services (democraticservices@swale.gov.uk or call us on 01795 417328) by noon on Wednesday 13 September 2017.

7. Report of the Head of Planning Services 13 - 178

To consider the attached report (Parts 1, 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 13 September 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 179 –

To consider the attached report (Part 6).

Issued on Tuesday, 5 September 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**

SWALE BOROUGH COUNCIL

PLANNING SERVICES

Planning Items to be submitted to the Planning Committee

14 SEPTEMBER 2017

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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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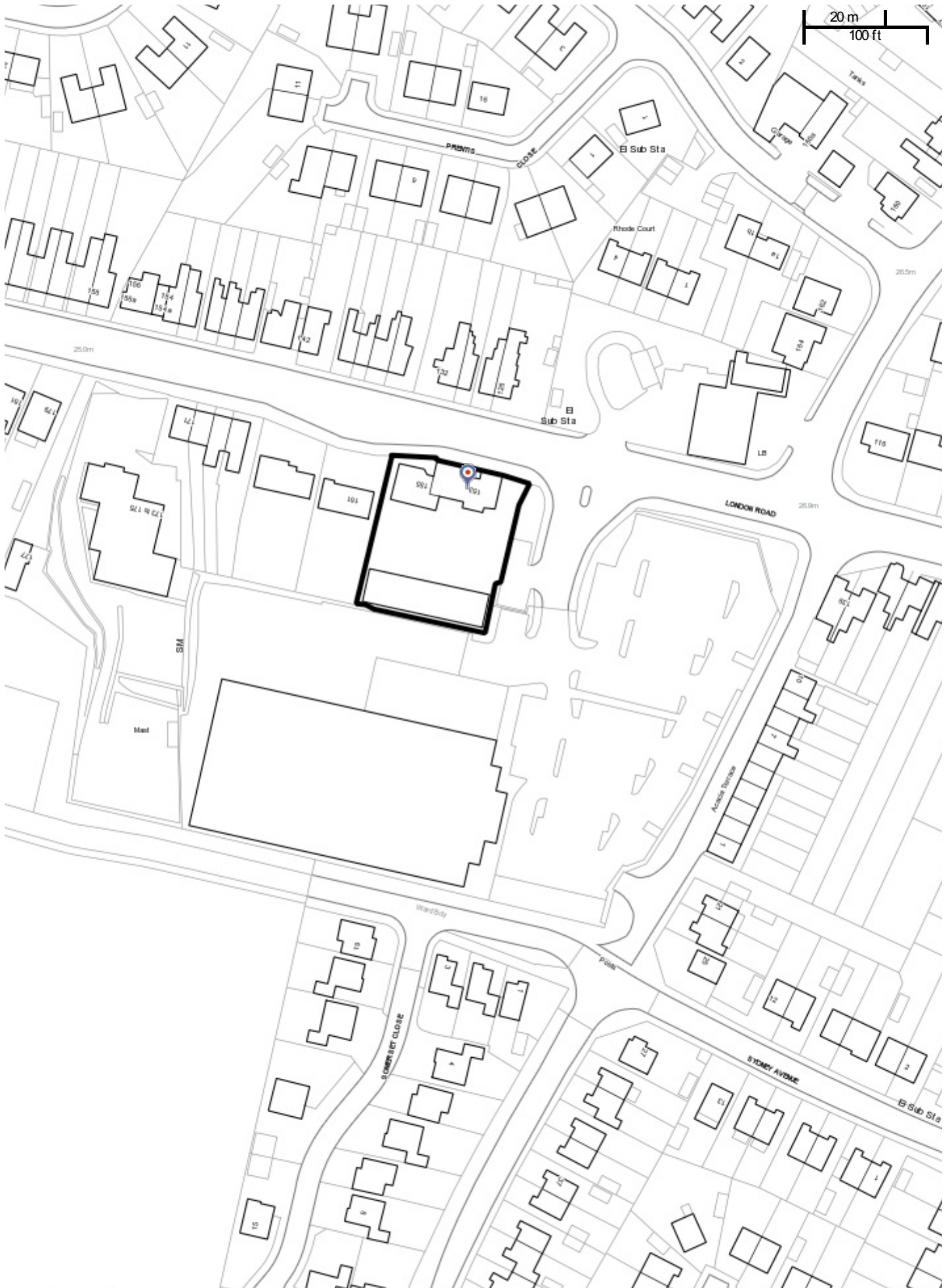
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DEF ITEM 1 153 LONDON ROAD

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PLANNING COMMITTEE – 14 SEPTEMBER 2017

DEFERRED ITEM

Report of the Head of Planning

DEFERRED ITEMS

Reports shown in previous Minutes as being deferred from that Meeting

REFERENCE NO - SW/08/1124 & SW/13/0568			
APPLICATION PROPOSAL Modification of Section 106 agreement to allow removal of on-site affordable housing with a viability re-assessment submitted upon occupation of the 21 st unit and a commuted sum payable at a <u>minimum</u> of £31,000 for off-site affordable housing. Original application - to replace an extant planning permission SW/08/1124 (Demolition of existing buildings and redevelopment of site to provide 12, two bedroom apartments, 14, one bedroom apartments, amenity space, 26 parking spaces and cycle store and new vehicular access) in order to extend the time limit for implementation.			
ADDRESS 153 London Road, Sittingbourne, Kent, ME10 1PA			
RECOMMENDATION Grant modification			
SUMMARY OF REASONS FOR RECOMMENDATION On-site affordable housing would not be viable to provide. Allowing a viability re-assessment once the development has commenced and upon occupation of the 21 st unit, would ensure that a commuted sum is secured for off-site affordable housing, subject to there being a profit above 20%. This modification of the Section 106 agreement responds to the changing financial and property markets in difficult economic times. The modification would allow the development of much needed housing to be provided within an urban and sustainable site. It would also significantly improve the appearance of the site which is an eyesore in a prominent position.			
REASON FOR REFERRAL TO COMMITTEE Modification of Section 106 agreement			
WARD Grove Ward	PARISH/TOWN COUNCIL Sittingbourne	APPLICANT Clarity Properties Ltd AGENT Mr Keith Plumb	
DECISION DUE DATE 08/08/13	PUBLICITY EXPIRY DATE	OFFICER SITE VISIT DATE 09/01/17	
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
16/507631/LDCEX	Certificate of Lawful development to establish that works commenced under the approved planning permission, SW/13/0568, in the form of demolition of the existing buildings on 23rd May 2016.	Approval	08.12.16
16/508336/NMAM D	Non material amendment to alter the description of application SW/08/1124 to reflect the approved drawings which show 13 one bedroom apartments and 13 two bedroom	Approval	08.12.16

	apartments.		
SW/13/0568	to replace an extant planning permission SW/08/1124 (Demolition of existing buildings and redevelopment of site to provide 12, two bedroom apartments, 14, one bedroom apartments, amenity space, 26, parking spaces and cycle store and new vehicular access) in order to extend the time limit for implementation.	Approval	08.08.13
SW/08/1124	Demolition of existing buildings and redevelopment of site to provide 12, two bedroom apartments, 14, one bedroom apartments, amenity space, 26 parking spaces and cycle store and new vehicular access.	Approval	18.05.10

MAIN REPORT

1.0 INTRODUCTION

1.01 The proposal to modify the Section 106 agreement as set out above was brought before Members of the Planning Committee on 2nd February 2017. The original committee report and the relevant minutes of this meeting are appended.

1.02 Members resolved that the application be deferred to allow officers to advise the developer to either provide affordable housing or more than £31,000 for offsite affordable housing, and that it cannot be dependent upon their profit margins. Members also requested that the viability assessment be made available to them when the proposed modification is reported back to them. The viability assessment is provided under Part 6 of this agenda as the information contained within it is financially sensitive.

1.03 In response to Members’ concerns, the developer instructed his financial advisor to provide an up to date viability assessment to enable the Council to review it. Officers have commissioned an independent review of this viability assessment by CBRE. The report on this review is provided under Part 6 of this agenda.

1.04 Members are asked to refer to the original report that is appended in respect of the history of the site, planning policy, consultee responses, background papers and appraisal.

1.05 Since the proposed modification was reported to the February Planning Committee, the Bearing Fruits 2031: Swale Borough Local Plan 2017 (adopted LP) has been adopted. Policy DM8 of the adopted LP in part states:

“...In exceptional circumstances, and in accordance with a supplementary planning document to be prepared by the Borough Council:

- a. on-site affordable housing provision may be commuted to a financial contribution to be used off-site, singly or in combination with other contributions. Commuted sums may also be considered in respect of sites at Faversham and the rural areas so as to support the provision of affordable housing in less viable locations; or*
- b. where no Registered Social Landlord is available, the full affordable housing provision*

requirement will be cascaded to another provider and/or site or via a commuted sum, its calculation having regard to the full amount of market housing that has been achieved on the site; or

c. where an applicant can demonstrate that providing the full affordable housing provision would result in the scheme becoming unviable, a reduced requirement may be considered and will be subject to a legal agreement to ensure that full provision of affordable housing is reconsidered should land values rise prior to the commencement of development or any subsequent phases and/or an adjustment made to the tenure split.

If evidence demonstrates that economic conditions, or the proposed characteristics of the development or its location, have positively changed the impact of viability of the provision of affordable housing, the Council will seek a proportion of affordable housing closer to the assessed level of need, or higher if development viability is not compromised.”

1.06 Under Policy DM8, for development in Sittingbourne of 11 or more dwellings, 10% affordable housing is required as opposed to the previous 30% under the old Local Plan 2008.

1.07 Since the February Planning Committee, the building that was on the application site has been demolished, the land cleared and foundations have been laid.

2.0 APPRAISAL

2.01 Members will have read in the original committee report that the principle of modifying a Section 106 agreement in respect of the level of affordable housing is accepted in National Planning Policy, providing that a viability assessment demonstrates that a reduction is justified.

2.02 Policy DM8 of the adopted LP also allows the level of affordable housing to be reviewed under a viability assessment and a reduction allowed:

“...where an applicant can demonstrate that providing the full affordable housing provision would result in the scheme becoming unviable, a reduced requirement may be considered...”

2.03 It goes on to seek to ensure that a clause is built into the revised Section 106 to allow a review of the viability at a certain trigger point with the aim of capturing an increase in sale prices, profit for the developer and/or uplift in land value.

2.04 The proposed modification to remove the requirement for affordable housing to be required on the application site would meet the requirements of Policy DM8 in my view. The viability assessment that has been submitted has been independently reviewed by CBRE (see report at part 6 of this agenda) and they conclude that the revised proposal submitted by the applicant is reasonable:

“In light of the review undertaken and assumptions applied, CBRE’s analysis shows that the scheme cannot support the delivery of on-site affordable housing in addition to the £40,000 S106 contribution allowed for. Therefore we consider the applicant’s offer of £40,000 S106 contributions and a viability review following the occupation of the 21st unit with a minimum additional payment of £31,000 to be reasonable.

However as noted in paragraph 5.12 above we would suggest that there is a formal viability review undertaken at the point of occupation of the 21st unit utilising an agreed

baseline appraisal. We believe this should be a condition of the planning consent. This should test whether a payment above the £31,000 offer be applicable at that point in time.

- 2.05 Members may have noted that the developer has agreed to change the terms under which the viability re-assessment would be based, referring to a minimum commuted sum of £31,000 as opposed to a maximum commuted sum of £31,000. It is entirely reasonable, as Members rightly considered at the February planning committee (see minutes as appendix A), that the commuted sum should be based on the amount that the developer can afford to pay at the time, as demonstrated in a viability re-assessment.
- 2.06 As noted at paragraph 2.06 of the original report, we have negotiated with the applicant that a viability re-assessment would be submitted upon the practical completion of the 21st unit. Should the viability re-assessment demonstrate that the scheme can afford a commuted sum payment, a minimum of £31,000 (plus an adjustment for inflation) for off-site affordable housing would be made to the Council. This would be paid in three installments: 1st – practical completion of 21st unit, 2nd – practical completion of the whole scheme and 3rd – sale of 26th unit or 6 months after the 2nd instalment, whichever is sooner. The wording of the Section 106 agreement will need to be modified to enable this change, the precise wording of which would be agreed under the instruction of the Head of Legal Services.
- 2.07 In response to Members concerns about the provision of affordable housing being dependant upon the developer's profit, it is entirely reasonable for the developer to make a profit from the development. Indeed, paragraph 173 of the NPPF states:
- “...To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, **provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable.**”*
- 2.07 Delivery of housing in this Borough and across the country is dependent on profit-making developers. It is widely recognised that a reasonable level of profit for a developer is within the range of 17.5-20%. As Members will see from the submitted viability assessment (see part 6), the developer seeks to demonstrate that they would actually be making a profit at 0.65%. Given the significantly reduced profit level for this development, the developer's financial advisor states:
- “In my opinion, this scheme is such a long way off being viable that any Section 106 payments at all simply adds to the costs and will reduce the viability further. However, as previously mentioned the developer is keen to build the scheme and exit the site and is willing to honour the previous commitment to provide a total package of £40,000 in payments, almost double the total projected profit of this scheme.”*
- 2.08 CBRE have conducted their viability assessment based on a 18.5% profit and consider this to be reasonable noting that in their experience elsewhere, a higher profit margin has been accepted. Despite the differences on the profit assumptions, CBRE continue to conclude that it would not be viable to provide affordable housing on this site.

- 2.09 Members should note that the developer has requested that the viability re-assessment should be based on the developer receiving a 20% profit. The developer's financial advisor justifies this as follows:

"It is widely accepted that, for a scheme to be technically viable in planning terms, an acceptable return for a developer is in the range of 17.5% to 20%. On complex brownfield sites, and particularly post-Brexit, it is widely accepted that returns will be at the upper end of this spectrum going forward, certainly much closer to 20%. As alluded to previously in this Report, the profit margin is crucial for absorbing unexpected shocks in the economy, along with hidden costs on brownfield sites, and is a suitable sum commuted on the risk taken by the developer....."

...I believe in this case, a reasonable return to the land owner would be recouping the costs of the 2007 purchase of the site, which stands at £630,000. Additionally, a willing developer would reasonably be expected to make a return in the region of 17.5% to 20%, as supported by the research paper in Appendix B [see part 6 item]. This return insulates the developer from risk and wider economic factors, which is particularly prevalent in this case considering the time of the site purchase."

- 2.10 As CBRE have based their appraisal on a profit of 18.5%, I would advise Members that this should also be the basis of the re-assessment and not the 20% as suggested by the applicant's financial advisor.

- 2.11 In summary, CBRE and the developer's financial advisor conclude that the scheme would be unviable without the removal of the requirement for affordable housing at this site. The developer is, however, willing to build in a review of the viability upon occupation of the 21st dwelling allowing a commuted sum of a minimum of £31,000 to be released if it is viable to do so. This is entirely compliant with Policy DM8 of the adopted LP and the relevant paragraphs of the NPPF. There is no reason why the Section 106 should not be modified in the way that is being requested by the developer.

3.0 CONCLUSION

- 3.01 The proposal to modify the planning obligation in respect of the affordable housing provision on site would enable the development of much needed housing to come forward. This factor weighs significantly in favour of the modification which would see the loss of all on-site affordable housing. However, the scheme would still be subject to a viability re-assessment which would see at least £31,000 secured towards off-site affordable housing, should the developer make a profit of more than 20%. The proposed modification would be entirely compliant with the adopted LP and the relevant paragraphs of the NPPF.

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

- NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.

The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.

APPENDIX A

Planning Committee Report – 2nd February 2017

REPORT SUMMARY

REFERENCE NO - SW/08/1124 & SW/13/0568		
APPLICATION PROPOSAL Modification of Section 106 agreement to allow removal of on-site affordable housing with a viability re-assessment submitted upon occupation of the 21 st unit and a commuted sum payable at a maximum of £31,000 for off-site affordable housing. Original application - to replace an extant planning permission SW/08/1124 (Demolition of existing buildings and redevelopment of site to provide 12, two bedroom apartments, 14, one bedroom apartments, amenity space, 26 parking spaces and cycle store and new vehicular access) in order to extend the time limit for implementation.		
ADDRESS 153 London Road, Sittingbourne, Kent, ME10 1PA		
RECOMMENDATION Grant modification		
SUMMARY OF REASONS FOR RECOMMENDATION On-site affordable housing would be difficult to provide. Allowing a viability re-assessment once the development has commenced and upon occupation of the 21 st unit, would ensure that a commuted sum is secured for off-site affordable housing, subject to there being a profit above 17%. This modification of the Section 106 agreement responds to the changing financial and property markets in difficult economic times. The modification would allow the development of much needed housing to be provided within an urban and sustainable site. It would also significantly improve the appearance of the site which is an eyesore in a prominent position.		
REASON FOR REFERRAL TO COMMITTEE Modification of Section 106 agreement		
WARD Grove Ward	PARISH/TOWN COUNCIL Sittingbourne	APPLICANT Clarity Properties Ltd AGENT Mr Keith Plumb
DECISION DUE DATE 08/08/13	PUBLICITY EXPIRY DATE	OFFICER SITE VISIT DATE 09/01/17
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):		

App No	Proposal	Decision	Date
16/507631/LDCEX	Certificate of Lawful development to establish that works commenced under the approved planning permission, SW/13/0568, in the form of demolition of the existing buildings on 23rd May 2016.	Approval	08.12.16
16/508336/NMAM D	Non material amendment to alter the description of application SW/08/1124 to reflect the approved drawings which show 13 one bedroom apartments and 13 two bedroom apartments.	Approval	08.12.16
SW/13/0568	to replace an extant planning permission SW/08/1124 (Demolition of existing buildings and redevelopment of site to provide 12, two bedroom apartments, 14, one bedroom apartments, amenity space, 26, parking spaces and cycle store and new vehicular access) in order to extend the time limit for implementation.	Approval	08.08.13
SW/08/1124	Demolition of existing buildings and redevelopment of site to provide 12, two bedroom apartments, 14, one bedroom apartments, amenity space, 26, parking spaces and cycle store and new vehicular access.	Approval	18.05.10

MAIN REPORT

1.0 DESCRIPTION OF SITE

1.01 The application site is 0.09ha and is rectangular in shape. It is directly adjacent to the Wickes car park and fronts onto London Road (the A2). On the site is a partially demolished two ½ storey building and a single storey flat roof building to the rear of the site.

1.02 The site lies to the west of Sittingbourne Town Centre. Residential properties lie opposite and to the west of the site. There is a Petrol Filling Station on the opposite side of London Road slightly to the east. The site is currently messy and unsightly.

2.0 PROPOSAL

2.01 Planning permission was originally granted under SW/08/1124 for the demolition of existing buildings and redevelopment of the site to provide 12, two bedroom apartments, 14, one bedroom apartments with amenity space and parking and a new vehicular access. Permission to extend the time limit for implementation of the development was granted under SW/13/0568. Application reference 16/508336/NMAMD later corrected the description to accurately reflect the approved plans which showed 13 one bedroom and 13 two bedroom apartments.

2.02 An application for a Lawful Development Certificate (16/507631/LDCEX) was later submitted to establish that the 2008/2013 permissions had been implemented by virtue of development commencing prior to the expiration of the time limit imposed. In this case, the partial demolition of the property constituted the commencement of development. The certificate was issued confirming that the permission was extant. We are currently

considering the details submitted pursuant to conditions attached to the 2008/2013 permissions. Upon approval of these details, the approved development can continue.

2.03 I understand that the applicant was required to start the demolition process due to the unsafe state of the building fronting onto London Road. This Council served a Stop Notice on the applicant once this demolition was started because the work did not have the benefit of prior approval or planning permission. There has been no work on site since then. The applicant is aware that the conditions details, including contaminated land, will need to be agreed before any further work is carried out on site. I am informed by the planning agent that the required contaminated land surveys are being carried out and will be submitted shortly.

2.04 The current proposal is to modify the Section 106 agreement attached to the original permissions (SW/08/1124 & SW/13/0568) to allow removal of the requirement for on-site affordable housing. Among other things, the requirement of the Section 106 agreement is currently for the provision of 30% affordable housing on site (8 units), though a tenure split was not specified.

2.05 In addition, the Section 106 agreement required the following developer contributions:

- i) £227 per dwelling for library improvements;
- ii) an open space contribution of £17,940;
- iii) an adult social services contribution of £2362.85;
- iv) a community learning contribution of £981.05;
- v) a primary education contribution of £590.24 per dwelling; and
- vi) a secondary education contribution of £589.95 per dwelling.

2.06 We have negotiated with the applicant that a viability re-assessment would be submitted upon the practical completion of the 21st unit and a commuted sum payable at a maximum of £31,000 (plus an adjustment for inflation) for off-site affordable housing. This would be paid in three installments: 1st – practical completion of 21st unit, 2nd - practical completion of the whole scheme and 3rd – sale of 26th unit or 6 months after the 2nd instalment, whichever is sooner. The wording of the Section 106 agreement will need to be modified to enable this change, the precise wording of which would be agreed under the instruction of the Head of Legal Services.

3.0 POLICY AND OTHER CONSIDERATIONS

3.01 The National Planning Policy Framework (NPPF) – paragraph 173 is quoted below.

3.02 National Planning Practice Guidance (NPPG): Viability & Planning Obligations

3.03 Swale Borough Local Plan 2008: SP1 (sustainable development); SP4 (housing) and; H3 (affordable housing).

3.04 Bearing Fruits 2031 The Swale Borough Local Plan Proposal Main Modifications June 2016: ST1 (sustainable development); ST2 (development targets for jobs and homes); CP3 (delivering a wide choice of high quality homes) and; DM8 (affordable housing).

3.05 Supplementary Planning Documents: Developer Contributions 2009

3.06 Section 106A of the Town and Country Planning Act 1990 allows the modification and discharge of planning obligations.

4.0 CONSULTATIONS

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

4.02 With regard specifically to the possible availability of grant funding, she comments as follows:

“The current grant programme (Shared Ownership Affordable Homes Programme 2016-21) is for the delivery of shared ownership product only with limited affordable rent tenure for specialist/supported housing. Therefore our current affordable homes delivery programme is based solely around shared ownership with zero affordable rent. This also means that our ‘new’ policy split of 90% affordable rent tenure with 10% shared ownership will be difficult to meet, as has been the case so far.”

5.0 BACKGROUND PAPERS AND PLANS

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

6.0 APPRAISAL

Principle of Development

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

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

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

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

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

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

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

6.06 NPPG - Viability, notes that viability can be important where planning obligations or other costs are being introduced. In these cases decisions must be underpinned by an understanding of viability, ensuring realistic decisions are made to support development and promote economic growth. The guidance states that where the viability of a development is in question, local planning authorities should look to be flexible in applying policy requirements wherever possible. Where an applicant is able to demonstrate to the satisfaction of the local planning authority that the planning obligation would cause the development to be unviable, the local planning authority should be flexible in seeking planning obligations. This is particularly relevant for affordable housing contributions which are often the largest single item sought on housing developments. These contributions should not be sought without regard to individual scheme viability. The financial viability of the individual scheme should be carefully considered in line with the principles in this guidance.

6.07 Paragraph 173 of the NPPF states:

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

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

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

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

7.0 CONCLUSION

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

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

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

Minutes – Planning Committee 2nd February 2017

2.9 REFERENCE NO – SW/08/1124 & SW/13/0568 APPLICATION PROPOSAL

Modification of Section 106 agreement to allow removal of on-site affordable housing with a viability re-assessment submitted upon occupation of the 21st unit and a commuted sum payable at a maximum of £31,000 for off-site affordable housing.
Original application – to replace an extant planning permission SW/08/1124 (Demolition of existing buildings and redevelopment of site to provide 12, two bedroom apartments, 14, one bedroom apartments, amenity space, 26 parking spaces and cycle store and new vehicular access) in order to extend the time limit for implementation.

ADDRESS 153 London Road, Sittingbourne, Kent, ME10 1PA

WARD Grove **PARISH/TOWN COUNCIL APPLICANT** Clarity

Properties Ltd

AGENT Mr Keith Plumb

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

A Ward Member spoke against the application. He raised points which included: fed-up with developers using affordable housing as a way to gain planning

permission only to say further down the line that this would no longer be viable; and the Council should not allow affordable housing options to be lost in this way. Members considered the application and raised the following points: nonsense to say that it would not be viable to provide affordable housing; when the application was submitted affordable housing was viable and it still was; the £31,000 for off-site affordable housing was 'derisory'; affordable housing may have been viable 9 years ago, but the viability assessments must suggest this would no longer be viable option; if the developer was not able to develop and provide affordable housing at this site then they should 'move-on' or the Council should force them to provide it. The Senior Planning Officer stated that in 2008 when the application was first submitted the housing market was at its peak. She explained that the site was an 'eyesore' and had significant contamination and groundwater issues, which may have not been factored into the original application.

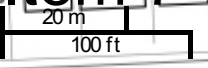
The motion to approve the application was lost.

Councillor Mike Baldock moved the following motion: That the application be refused on the grounds that the affordable housing was needed. This was not seconded.

Councillor Mike Henderson moved the following motion: That the application be deferred to allow officers to advise the developer to either provide affordable housing or more than £31,000 for off-site affordable housing, and that it could not be dependent upon their profit margins. This was seconded by Councillor Cameron Beart.

A Member requested that details of the viability assessments were provided when the application comes back to Committee for consideration.

Resolved: That the application be deferred to allow officers to advise the developer to either provide affordable housing or more than £31,000 for offsite affordable housing, and that it can not be dependent upon their profit margins.



1.1 6A THE BROADWAY

Scale: 1:1250

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PLANNING COMMITTEE – 14 SEPTEMBER 2017

PART 1

Report of the Head of Planning

PART 1

Any other reports to be considered in the public session

REFERENCE NO - 17/503041/ADV			
APPLICATION PROPOSAL Advert Application for 1 x roof mounted lettering, 2 x wall mounted signs and 1 x pole mounted sign.			
ADDRESS 6A The Broadway, Minster-on-Sea, Sheerness, Kent, ME12 2RN			
RECOMMENDATION – Split – Part Grant / Part Refuse			
SUMMARY OF REASONS FOR RECOMMENDATION/REASONS FOR REFUSAL The proposal would not give rise to significant harm to highway safety/convenience, residential amenity or visual amenity.			
REASON FOR REFERRAL TO COMMITTEE Recommendation contrary to the written view of the Parish Council.			
WARD Minster Cliffs	PARISH/TOWN COUNCIL Minster-on-Sea	APPLICANT Independent Vetcare Ltd AGENT Think Marketing Material	
DECISION DUE DATE 24/08/17	PUBLICITY EXPIRY DATE 28/07/17	OFFICER SITE VISIT DATE 13/07/17	
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
SW/89/0030	Erection of veterinary surgery	Approved	28/02/89

1.0 DESCRIPTION OF SITE

- 1.01 The site forms a semi-detached, single storey building which was granted planning permission for its erection and use as a veterinary surgery in 1989. There is hardstanding to the front, side and rear.
- 1.02 This southern end of The Broadway is mixed in residential and commercial development with a dental surgery adjacent to the site and a small row of units known as Trafalgar Parade on the opposite side of the road. To the north, the site is adjacent to the boundary of a dwelling, 8 The Broadway.
- 1.03 The existing signage includes 2 wall mounted signs (1 which is illuminated) and a pole mounted sign to the front, close to the boundary with 8 The Broadway. Although the pole sign has the ability to be illuminated, it is understood that it is not connected and used as such.

2.0 PROPOSAL

- 2.01 The proposal seeks advertisement consent for the replacement of the wall mounted signs and the pole sign, as well additional roof mounted lettering.
- 2.02 The roof mounted lettering would measure 0.529m tall x 1.171m wide x 5cm deep.
- 2.03 The pole mounted sign itself would measure 0.7m tall x 0.8m wide x 7cm deep. Taking into account the pole, the overall sign would measure approximately 2.1m in height and be located to front of the site, adjacent to the boundary with 8 The Broadway.
- 2.04 1 of the wall mounted signs would be internally illuminated to 180cd/m² (as the existing one is) and all other signs would be non-illuminated.

3.0 PLANNING CONSTRAINTS

- 3.01 None relevant

4.0 POLICY AND OTHER CONSIDERATIONS

- 4.01 The National Planning Policy Framework (NPPF) and the National Planning Practice Guidance (NPPG).
- 4.02 Development Plan: Policies CP 4, DM 14 and DM 15 of “Bearing Fruits 2031: The Swale Borough Local Plan 2017”.
- 4.03 Supplementary Planning Documents: “The Design of Shopfronts, Signs & Advertisements”.

5.0 LOCAL REPRESENTATIONS

- 5.01 Minster Parish Council objects to the proposal and considers that the pole sign would be harmful to the amenities of 8 The Broadway.
- 5.02 8 The Broadway objects to the application, specifically to the pole sign. The owner/occupiers consider it would be harmful to the visual amenity of the dwelling and more directly in their line of sight. It is also queried whether the sign would be visible on both sides.

6.0 CONSULTATIONS

- 6.01 KCC Highways & Transportation had no comments to make.

7.0 BACKGROUND PAPERS AND PLANS

- 7.01 The application reference to which this proposal refers to is 17/503041/ADV.

8.0 APPRAISAL

- 8.01 The application site is within the defined built up area boundary in which the principle of development is acceptable. The main considerations in this case are the impact of the proposal upon highway safety & convenience, visual amenity and residential amenity.
- 8.02 At this point, I inform Members that the original submission proposed the main pole sign to be illuminated and also included a separate ‘free parking’ sign further down

the pole. Following the neighbouring, and Parish Council objections, the agent agreed to remove the illumination such that this would be a non-illuminated pole sign (this would be ensured by condition) and to remove the separate 'free parking' sign (now to be included as part of the main sign).

- 8.03 Following these amendments, the Parish Council confirmed that their objection remains.

Highway Safety & Convenience

- 8.04 KCC Highways considered this a non-protocol application and therefore had no comments to make. However, in my view, the signs would be sufficiently separated from the highway so as to warrant no significant concern in this regard. The wall mounted sign to be illuminated (180cd/m^2) would be within the brightness level set out within 'The Institution of Lighting Engineers Technical Report Number 5' for a low brightness area (600cd/m^2) and I consider this would also not give rise to significant concern in this regard.

Residential Amenity

- 8.05 Although the pole sign would remain visible from the adjacent dwelling, and slightly more so due to its lower height, I do not believe it would give rise to an overbearing or overshadowing impact. It would no longer be illuminated and I consider no significant harm in this regard. The submitted objection from 8 The Broadway considers the pole sign would be more directly in their line of sight, however Members will be aware that the impact of the sign upon the views from the dwelling is not a material planning consideration. I consider the proposal acceptable in terms of residential amenity.

Visual Amenity

- 8.06 The building itself is set back from the general building line and the adjacent site, 6 The Broadway, is more prominent and somewhat shrouds the application site. As such, in my view, the wall and roof mounted signs would not amount to dominant or intrusive features in the street scene. Again, the wall mounted sign to be illuminated would be compliant with the brightness guidance set out within 'The Institution of Lighting Engineers Technical Report Number 5' and I consider this would also not be intrusive to the street scene.
- 8.07 The current pole mounted sign is, and the proposed replacement would be, undoubtedly more prominent in the street scene than the other signs given its placement at the front of the site. I can also confirm that, as with the current pole sign, the text would be on both sides. However, this part of the road is mixed in residential and commercial development, and there is, albeit lower, a pole mounted sign on the adjacent site, as well as several fascia and window/wall mounted signage throughout 'Trafalgar Parade' opposite.
- 8.08 As a result, I do not believe the existing pole sign appears out of place or intrusive to the mixed nature of this part of the street scene, and I do not consider the proposed replacement would be either, especially following the removal of the illumination and separate 'free parking' sign. I do not consider its height of 2.1m (slightly lower than the existing) would be excessive or dominant.
- 8.09 The submitted comments suggest that the pole sign would be better placed on the other side of the site, adjacent to the dental surgery, however the agent has

confirmed that this is not an option for the applicant, but as above, did agree to remove the illumination and separate parking sign. I consider the proposal to be acceptable in terms of visual amenity.

- 8.10 However I am concerned about the proposed roof mounted lettering sign .In particular that it would be sited above the eaves of the building so that it would be visible along the road. In this regard it would be poorly related to he building and in my opinion , appear incongruous in the streetscene and should therefore be refused permission.

9.0 CONCLUSION

- 9.01 Taking into account all of the above, and despite the concern raised, I do not consider that the proposed signs, as amended, would give rise to significant harm to highway safety or residential/visual amenity and recommend that advertisement consent be granted for all the proposed signs accept for the roof mounted sign as mentioned above.

10.0 RECOMMENDATION – Split - Part Allowed/Part Refused subject to the following conditions/reasons for refusal:

Consent granted for the following signs:

- 1 x internally illuminated wall mounted sign;
- 1 x non – illuminated wall mounted sign;
- 1 x pole mounted sign;

Subject to the following conditions:

- (1) No advertisement is to be displayed without the permission of the owner of the site or any other person with an interest in the site entitled to grant permission.
- (2) No advertisement shall be sited or displayed so as to:
 - (a) endanger persons using any highway, railway, waterway, dock, harbour or aerodrome (civil or military);
 - (b) obscure, or hinder the ready interpretation of, any traffic sign, railway signal or aid to navigation by water or air; or
 - (c) hinder the operation of any device used for the purpose of security or surveillance or for measuring the speed of any vehicle.
- (3) Any advertisement displayed, and any site used for the display of advertisements, shall be maintained in a condition that does not impair the visual amenity of the site.
- (4) Any structure or hoarding erected or used principally for the purpose of displaying advertisements shall be maintained in a condition that does not endanger the public.
- (5) Where an advertisement is required under these Regulations to be removed, the site shall be left in a condition that does not endanger the public or impair visual amenity.

Reason: In accordance with the provisions of Regulation 2(1) of the Town and Country Planning (Control of Advertisement) (England) Regulations 2007.

- (6) The maximum luminance of the wall mounted sign hereby permitted shall not exceed 180cd/m².

Reason: In the interests of highway safety and the amenities of the area.

- (7) The illumination of the wall mounted sign hereby permitted shall not be of a flashing type.

Reasons: In the interests of highway safety and the amenities of the area.

- (8) The source of illumination of the wall mounted sign hereby permitted shall not be visible to users of the highway.

Reasons: In the interests of highway safety and the amenities of the area.

- (9) The wall mounted sign shall not be illuminated except during the hours that the premises to which it relates are open for business.

Reasons: In the interests of visual amenity.

- (10) No other sign hereby permitted shall be illuminated.

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

Consent refused for the following sign:

- 1 x roof mounted sign;

For the following reason:

- 1) The proposed roof mounted sign, by virtue of its location sited above the eaves level of the building to which it is related, would be harmful to the character and appearance of the building and the surrounding area in a manner contrary to policies DM14 and DM15 of the adopted Swale Borough Local Plan 2017 and to the Council's Supplementary Planning Guidance entitled Design of Shopfronts , Signs and Advertisements.

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

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PLANNING COMMITTEE – 14 SEPTEMBER 2017

PART 2

Report of the Head of Planning

PART 2

Applications for which **PERMISSION** is recommended

REFERENCE NO - 17/503438/FULL		
APPLICATION PROPOSAL Erection of a detached annexe as amended by drawing DC/264 received 21 August 2017.		
ADDRESS Sunset, Southsea Avenue, Minster-on-sea, Sheerness, Kent, ME12 2JX		
RECOMMENDATION - Approval		
SUMMARY OF REASONS FOR RECOMMENDATION. Development would provide additional, annexe accommodation without giving rise to any serious amenity concerns.		
REASON FOR REFERRAL TO COMMITTEE Parish Council objection.		
WARD Minster Cliffs	PARISH/TOWN COUNCIL Minster-On-Sea	APPLICANT Mrs Jayne Wheatley AGENT Deva Design
DECISION DUE DATE 25/08/17	PUBLICITY EXPIRY DATE 10/08/17	

1.0 DESCRIPTION OF SITE

- 1.01 The property is a detached house situated within the built up area of Minster. It is set back from the road with parking to the front and side, and a detached garage to the rear. There is an area of overgrown open space to the west (owned by SBC), and other dwellings to the east and north.
- 1.02 Land levels slope downwards to the south here, so the foot of the garden is approximately 2m lower than the ground floor of the house. The rear garden is generous, and there are a number of large mature trees spread across it.
- 1.03 The neighbouring property, Cosworth House, has two large outbuildings along the common boundary with Sunset, one roughly halfway down the garden and one at the bottom.

2.0 PROPOSAL

- 2.01 This application seeks planning permission for a detached annexe at the foot of the garden. It will measure approximately 10.5m x 8.5m x 3m high with a flat roof (3.5m to top of lantern light), and will provide a bedroom, office, shower room and lounge area. Some of the existing trees would need to be removed to make room for the development.

- 2.02 An amended drawing has been received to show additional tree planting to be carried out on the site (discussed below).

3.0 SUMMARY INFORMATION

	Proposed
Approximate Ridge Height (m)	3m
Approximate Eaves Height (m)	3m
Approximate Depth (m)	10.5m
Approximate Width (m)	8.5m
No. of Storeys	1

4.0 PLANNING CONSTRAINTS

- 4.01 None.

5.0 POLICY AND OTHER CONSIDERATIONS

- 5.01 The National Planning Policy Framework (NPPF) and National Planning Practice Guidance (NPPG) encourage development subject to design and amenity considerations.
- 5.02 Policies CP4 (good design), DM7 (Parking), DM14 (general criteria), and DM16 (alterations and extensions) of the adopted SBLP2017 are relevant.

6.0 LOCAL REPRESENTATIONS

- 6.01 Letters were sent to neighbouring residents and a site notice displayed, but no comments were received.

7.0 CONSULTATIONS

- 7.01 Minster Parish Council objects, commenting:

“The description does not match the proposal. This is a self-contained dwelling not an annexe. Approval would set an unacceptable precedent for neighbouring properties to apply for similar development without the adequate parking provision or access to support it.”

8.0 BACKGROUND PAPERS AND PLANS

- 8.01 The application is supported by relevant drawings.

9.0 APPRAISAL

- 9.01 The principle of development is acceptable within the built up area, subject to considerations as set out below.
- 9.02 I consider the scale and design of the annexe to be acceptable. It is 0.5m taller than an incidental building within the garden would be permitted under Permitted Development rights afforded to the property, but the flat roof helps to reduce the bulk and scale of the building and the drop in levels from the main house (and the neighbouring house) will help to reduce the scale, prominence and visual impact of

the development in views from the rear windows. The external materials are acceptable and would not be out of place here.

- 9.03 The outbuildings at the neighbouring property would help to obscure views of the annexe from their rear windows, and significant mutual overlooking would not be likely due to the position of proposed windows, the existing 1.8m fence, the distance between the existing houses and the annexe, and the presence of existing mature trees. Any significant overshadowing or overbearing aspect is unlikely due to scale and position, and the change in land levels. I therefore don't consider that there will be any serious harm to residential amenity as a result of this annexe.
- 9.04 Whilst I note the Parish Council's comments, the level of accommodation within the annexe is not excessive in my opinion, and it is unlikely that it would ever become a separate dwelling due to its location, its proximity to and interdependence with the main dwelling, and the limited means of access (through the garden for Sunset). Furthermore the Council owns the open land to the side and there would therefore be little opportunity for a separate access to be created.
- 9.05 Nevertheless I've recommended condition 4 below, which restricts its use to ancillary / incidental only because the layout of the site is such that independent residential use (rather than ancillary annexe use) would give rise to amenity issues for the main property and neighbouring residents, due to proximity, overlooking, etc.
- 9.06 I was initially concerned about the loss of the mature trees on site, but they are not subject to any TPO and the site is not within a conservation area so there is no restriction on their removal. On discussing this with the applicant she explained that she intended to remove some of them anyway as they were now obscuring the neighbour's sea views, but intended to replant trees along the western boundary to continue encouraging wildlife into her garden. Further to this the agent has submitted an amended drawing showing new trees to be planted, which are secured by condition below.

10.0 CONCLUSION

- 10.01 The proposed annexe is of an acceptable scale and design, and would be unlikely to give rise to any serious amenity issues in my opinion. Due to its intimate relationship with the main dwelling and the limited access it's unlikely that it could or would be used as a separate dwelling, but condition 4 is suggested to prevent this in any instance.
- 10.02 Taking the above into account I recommend that planning permission should be granted.

11.0 RECOMMENDATION – GRANT Subject to the following conditions:

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

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

- 2) No development shall take place other than in accordance with drawing DC/264 received 21 August 2017.

Reason: For the avoidance of doubt.

- 3) The two new native species trees shown on drawing DC/264 shall be planted within the next available planting season following completion of the development hereby approved. Any trees removed, dying, being severely damaged or becoming seriously diseased within five years of planting shall be replaced with trees or shrubs of such size and species as may be agreed in writing with the Local Planning Authority.

Reason: In the interest of local visual amenity and biodiversity.

- 4) The annexe hereby permitted shall only be used for purposes ancillary and/or incidental to the primary residential use of the main dwelling known as Sunset, Southsea Avenue, Minster, ME12 2JX and shall not be used as a separate dwelling.

Reason: As independent residential use would be harmful to neighbouring residential amenity, and in recognition of the terms of the application.

The Council's approach to this application:

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

Offering pre-application advice.

Where possible, suggesting solutions to secure a successful outcome.

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

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

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

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REFERENCE NO - 17/503660/FULL		
APPLICATION PROPOSAL Erection of a two storey side extension.		
ADDRESS 27 Sharfleet Crescent, Iwade, Sittingbourne, Kent, ME9 8UJ.		
RECOMMENDATION Grant		
SUMMARY OF REASONS FOR RECOMMENDATION Proposed extension would sit comfortably within the street scene without giving rise to any serious loss of amenity or parking concerns.		
REASON FOR REFERRAL TO COMMITTEE Parish Council objection.		
WARD Bobbing, Iwade And Lower Halstow	PARISH/TOWN COUNCIL Iwade	APPLICANT Mr Nick Link AGENT PDL Architecture
DECISION DUE DATE 06/09/17	PUBLICITY EXPIRY DATE 15/08/17	

1.0 DESCRIPTION OF SITE

- 1.01 The application site is an end-of-terrace house situated on a modern estate in Iwade. The building forms part of a curved terrace and thus has a slightly curved frontage, with the front door raised slightly above road level. The property has a detached side garage set towards the rear of the plot, a generous parking area to the front and side, and a rear garden.
- 1.02 The layout of the estate is quite tight at this point, and the flank wall of no.20 sits hard against the rear boundary. No.20 has recently erected a large side dormer window under PD rights.
- 1.03 An area of public open space lies to the side on the site.

2.0 PROPOSAL

- 2.01 This application seeks planning permission to erect a two-storey side extension. This would measure approximately 3m wide at the front and 4.5m wide at the rear (due to the curve of the property) x 6.6m deep x 7.2m high to the ridge (300mm below the existing ridge).
- 2.02 The extension would have a parking area at ground floor level and retain vehicle access to the garage. At first floor it will provide two additional bedrooms.

3.0 SUMMARY INFORMATION

	Proposed
Approximate Ridge Height (m)	7.2m
Approximate Eaves Height (m)	4.6m
Approximate Depth (m)	6.6m
Approximate Width (m)	3m-4.5m
No. of Storeys	2
Parking Spaces	2 (+1 on drive)

4.0 PLANNING CONSTRAINTS

4.01 The site lies within an area of potential archaeological importance.

5.0 POLICY AND OTHER CONSIDERATIONS

5.01 The National Planning Policy Framework (NPPF) and National Planning Practice Guidance (NPPG) encourage small-scale development subject to design and amenity considerations.

5.02 Policies CP4 (good design), DM7 (parking), DM14 (general criteria), and DM16 (extensions and alterations) of the adopted SBLP2017 are relevant.

5.03 Council’s adopted SPG “Designing an Extension” is also relevant.

6.0 LOCAL REPRESENTATIONS

6.01 None received.

7.0 CONSULTATIONS

7.01 Iwade Parish Council objects, commenting:

“There is insufficient provision for parking and concern over access to the garage.

Change to the street scene.

Development appears to be up to the boundary.”

7.02 The County Archaeological Officer confirms no archaeological works are necessary.

8.0 BACKGROUND PAPERS AND PLANS

8.01 The application is accompanied by all necessary drawings.

9.0 APPRAISAL

9.01 The site lies within the built up area of Iwade where the principle of extension is acceptable. The scale and design of the extension are acceptable in my opinion, and I consider that the development would not be an incongruous addition to the already mixed street scene within this part of the estate.

9.02 I note the Parish Council objects because the extension comes up to the common boundary, but this borders on to an area of public open space and its position would not give rise to any serious amenity impacts in this regard, or affect the use of the children’s play equipment further away to the south east, in my opinion. Simply being close to the common boundary is not a justifiable reason for refusal.

9.03 The extension would be set approximately 8m from the flank elevation of no.20, to the rear. That property does feature a flat-roofed side dormer (erected under Permitted Development (PD) rights) with three windows facing the rear of no.27. These windows are obscure-glazed (a requirement of the PD regulations) and set a storey higher than those proposed under the current application, however, and I therefore do

not consider that there will be such serious mutual overlooking as to justify a refusal of permission here.

- 9.04 I note the Parish Council's objections in regards to parking, and also note that the property will have four bedrooms as a result of the development. However condition (5) below will secure retention of the garage, the proposed undercroft parking space, and the frontage parking, meaning the property would have 3 spaces and thus be in accordance with current adopted Kent Parking Standards. Furthermore the road layout here is quite tight and discourages on-street parking to a certain extent. I therefore have no serious concerns in regards parking or highway amenity.

10.0 CONCLUSION

- 10.01 In my opinion the proposed extension is of an appropriate scale and design, and would not give rise to any serious amenity concerns. Parking is provided in accordance with current adopted Kent Vehicle Parking Standards. I therefore recommend that planning permission should be granted.

11.0 RECOMMENDATION – GRANT Subject to the following conditions:

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

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

- (2) No development shall take place other than in accordance with drawing no. 1594-GA-100.

Reason: For the avoidance of doubt.

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

Reason: In the interests of visual amenity.

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

Monday to Friday 0730 – 1900 hours, Saturdays 0730 – 1300 hours unless in association with an emergency or with the prior written approval of the Local Planning Authority.

Reason: In the interests of residential amenity.

- (5) The garage and parking spaces shown on the approved drawing shall be kept available for such use at all times and no permanent development, whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking or re-enacting that Order) or not, shall be carried out on the land so shown (other than the erection of a private garage or garages) or in such a position as to preclude vehicular access thereto; such land and access thereto shall be provided prior to the occupation of the dwelling(s) hereby permitted.

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

The Council's approach to this application:

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

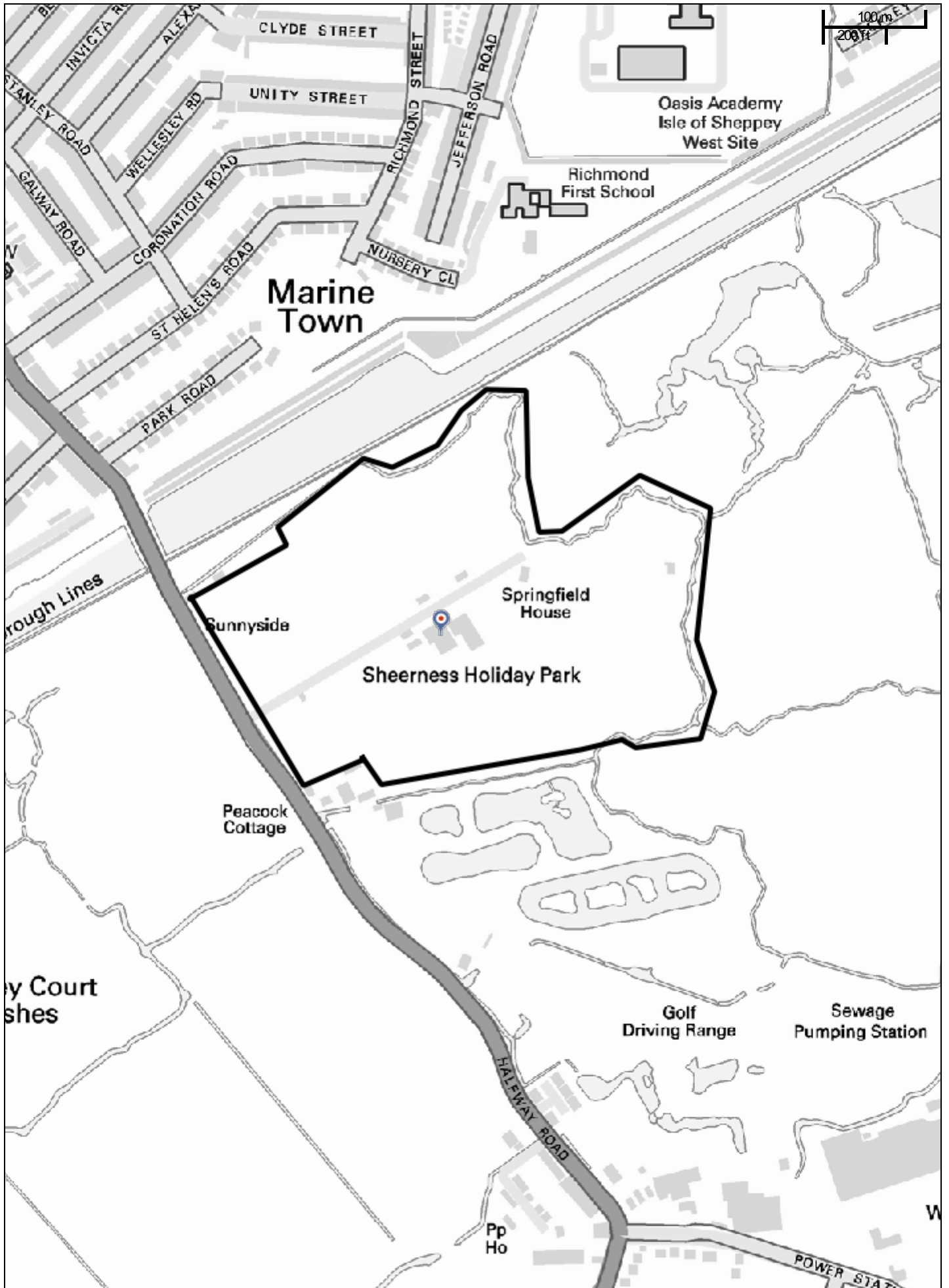
Offering pre-application advice.

Where possible, suggesting solutions to secure a successful outcome.

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

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

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



2.3 SHEERNESS HOLIDAY PARK

Scale: 1:5000

Printed on: 5/9/2017 at 10:21 AM by clairea

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REFERENCE NO - 17/502567/FULL			
APPLICATION PROPOSAL Variation of condition 2 of SW/12/0080 to allow up to three caravans on the site to be occupied on a year-round basis by staff employed on the caravan site.			
ADDRESS Sheerness Holiday Park Halfway Road Minster-on-sea Sheerness Kent ME12 3AA			
RECOMMENDATION Grant subject to conditions			
SUMMARY OF REASONS FOR RECOMMENDATION Scheme would provide necessary site security.			
REASON FOR REFERRAL TO COMMITTEE Parish Council objection.			
WARD Minster Cliffs	PARISH/TOWN COUNCIL Minster-On-Sea	APPLICANT Cosgrove Leisure AGENT Mr Mark Southerton	
DECISION DUE DATE 14/08/17	PUBLICITY EXPIRY DATE 11/07/17		
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
15/505196	Permission granted for the erection of a security hut at the front gate, and erection of an extension to the clubhouse.	Approved.	2015
Security hut considered necessary to control vehicle access to the site, and clubhouse extension generally acceptable.			
SW/12/0080	Permission granted for 10-month occupancy.	Approved	2012
In-line with Council's adopted stance on occupancy of holiday parks.			

MAIN REPORT

1.0 DESCRIPTION OF SITE

- 1.01 Sheerness Holiday Park is situated on the Halfway Road to the south of Sheerness, and comprises 341 static caravan pitches.
- 1.02 The site is bounded by a chain link fence and is generally flat.

2.0 PROPOSAL

- 2.01 Application seeks to vary condition 2 of SW/12/0080 (the permission which granted 10-month occupancy) to allow 3 caravans to be occupied year-round by staff in the interests of site security.
- 2.02 Units 26, 52, and 79 would be occupied year-round, and are spread across the site.

3.0 PLANNING CONSTRAINTS

- 3.1 The site lies within an area of Potential Archaeological Importance, and Flood Zone 3.

4.0 POLICY AND OTHER CONSIDERATIONS

- 4.01 The National Planning Policy Framework (NPPF) and National Planning Practice Guidance (NPPG) generally encourage tourism development.
- 4.02 Policies DM4 (extensions to holiday parks), DM5 (occupancy of holiday parks) and DM14 (general criteria) of the Bearing Fruits 2031 – The Swale Borough Local Plan 2017 are relevant.
- 4.03 DM4 states that *“permission will be granted for the upgrading and improvement of existing static holiday caravan and chalet sites,”* while DM5 aims to ensure that holiday chalets are not occupied for 12 months in order to prevent them from becoming full-time residential dwellings.

5.0 LOCAL REPRESENTATIONS

- 5.01 One letter received raising no objection, but asking that road signage be placed at Park Road (to the north of the site) to inform drivers aiming for the caravan park that there is no through access and turning is limited.
- 5.02 One letter received objecting to the provision of more caravans on the site, particularly with 12 month occupancy. [NB: I think the objector has misunderstood the nature of this application, as no additional caravans are proposed.]

6.0 CONSULTATIONS

- 6.01 Minster Parish Council object to the scheme:

“The site lies in an area of risk of tidal flooding. Permanent year-round occupation of the single storey accommodation would place people at unnecessary risk and increase the burden on the emergency service in times of flood, contrary to Planning Policy Statement 25: Developmental and Flood Risk, Policy E4 of the Swale Borough Local Plan 2008 and Policy NR10 of the Kent and Medway Structure Plan.”

- 6.02 I would note, however, that PPS25 was abolished in 2014, and the Kent and Medway Structure Plan was superseded by the South East Plan in 2009, which was then itself abolished in 2013 following publication of the NPPF.
- 6.03 The Environment Agency has no objection provided that the Council is satisfied that there is a business need for the 3 caravans to be occupied.
- 6.04 Kent Police welcome the proposal, commenting:

“We have 31 reported crimes to this caravan site in the last 12 months. The Policing of caravan sites on Sheppey continues to be a resource intensive activity for the Police requiring additional seasonal resources. I have not looked at the application in detail however I would suggest any additional site security would be welcome from a Police perspective.”

- 6.05 KCC Highways and Transportation have no comments.

7.0 BACKGROUND PAPERS AND PLANS

- 7.01 The application is supported by a site plan and a covering statement, which comments:

“The suggested locations of the three units are shown on the submitted plans (Northcroft 79; Springfield 52; Springfield 26). All three have easy access to the range of facilities in the centre of the park whilst providing a staff presence at different points on the holiday site to the benefit of the management/control of the park which, together with the central building group, provide a good overview of most areas. It is important to provide a sense of overview/security of the holiday caravans especially to ensure holiday makers act responsibly and do not impact unacceptably on the amenities of other holidaymakers, as well as being on hand to deal with any problems that can arise day or night...

Potential purchasers of holiday homes expect the site owner to be able to demonstrate that the caravans will be secure (especially in the off-season/winter when visits by owners are likely to be infrequent such that general security, checking for frost problems or general winter damage are an expected part of the service). Static caravans represent a substantial investment by purchasers who will reasonably expect their investment to be looked after!

In the two month closed period there is a need to work continuously on general maintenance/enhancement and undertaking works that would otherwise detract from visitors enjoyment of the site if not carried out whilst the opportunity is there with the site shut. There is also the need to have proper security in place both for the caravans and the site buildings and equipment etc. Whilst the three staff units proposed for use over the closed winter period are essential to help with the necessary site work and security during this period, in reality some of the staff using these caravans may well take their own holidays during the closed season so three units for such use may only leave one or two being used during this time, the minimum to achieve a reasonable level of staff cover/security and oversight of the closed season work programme.

The basic case in terms of functional need is centred on the fact that the site requires on-site staff to deal with a wide variety of business needs and demands. This includes the security needs of the business which are a material consideration as accepted by previous guidance such as Circular 5/94 with The Crime and Disorder Act 1998 obliging such matters to be taken into account in the determination of all planning applications. Insurance companies will often refuse to insure holiday caravan sites which do not provide an on-site 24 hour a day year round staff presence, this problem having been highlighted by the British Holiday and Home Parks Association which is the commercial association representing holiday park businesses.”

8.0 APPRAISAL

- 8.01 The application site lies outside of the built up area boundary where the Council's established policies of rural restraint seek to prevent unnecessary housing. Within the designated holiday parks policy DM5 prohibits use of caravans for 12 months of the year *“to ensure a sustainable pattern of development and to protect the character of the countryside.”*
- 8.02 The Council does recognise, however, that these holiday parks do need an element of site security, particularly through the closed season when there are few people about

and units could be vulnerable to break-ins. 12 month occupancy for staff / security purposes has been approved on individual caravans and chalets at a number of parks in the Borough, such as at Warden Springs (ref. 16/508411/FULL), Ashcroft Holiday Park (ref. 16/508226/FULL), or Shurland Dale (ref. 16/508223/FULL).

- 8.03 In this regard, I give significant weight to the comments from Kent Police, which highlight a need for security at the site (and I'd also consider this to be a business need, further to the EA's comments).
- 8.04 I don't consider the use of three caravans to be excessive for security purposes. They are spread across the park so will provide decent "coverage," and having a number of units will allow some redundancy if, as per the supporting statement, staff are away from the site on holidays, etc. Use of three caravans on a year-round basis, solely for the purposes of site security, would also not significantly change the character of the area, and the park would remain largely empty during the closed season.
- 8.05 With regard to the above, I don't agree with the Parish Council's objection, and I can unfortunately give little weight to the letters from local residents as they don't relate to the matter at hand.
- 8.06 I have considered the previous application for erection of a security lodge at the site, but don't consider that has any bearing here. The building permitted under that scheme effectively amounts to a control room at the site entrance, rather than a dwelling capable of housing 24hr security staff.

9.0 CONCLUSION

- 9.01 With regard to the above, I consider that there is a demonstrated need for units to be occupied year-round for the purposes of site security, and therefore recommend that planning permission should be granted.

10.0 RECOMMENDATION – GRANT Subject to the following conditions:

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

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

- (2) No caravans (other than caravans 26, 52, and 73, as shown on the submitted drawings, which can be occupied for 12 months of the year by site staff for the purposes of site security) shall be occupied except between 1st March and 2nd January in the following calendar year, and no caravan shall be occupied unless there is a signed agreement between the owners or operators of the Park and all caravan owners within the application site, stating that:
 - (a) The caravans are to be used for holiday and recreational use only and shall not be occupied as a sole or main residence, or in any manner which might lead any person to believe that it is being used as the sole or main residence; and
 - (b) No caravan shall be used as a postal address; and
 - (c) No caravan shall be used as an address for registering, claiming or receipt of any state benefit; and

- (d) No caravan shall be occupied in any manner, which shall or may cause the occupation thereof, to be or become a protected tenancy within the meaning of the Rent Acts 1968 and 1974; and
- (e) If any caravan owner is in breach of the above clauses their agreement will be terminated and/or not renewed upon the next expiry of their current lease or licence.

On request, copies of the signed agreement[s] shall be provided to the Local Planning Authority.

Reason: In order to prevent the caravans from being used as a permanent place of residence.

- (3) Any caravan that is not the subject of a signed agreement pursuant to condition 2 shall not be occupied at any time.

Reason: In order to prevent the caravans from being used as a permanent place of residence.

- (4) The owners or operators of the Park shall at all times operate the Park strictly in accordance with the terms of the Schedule appended to this decision notice.

Reason: In order to prevent the caravans from being used as a permanent place of residence.

- (5) Within three months from the date of this permission a site-specific evacuation plan shall be submitted to the Local Planning Authority and, upon approval, shall be made readily available for inspection and implemented upon receipt of a flood warning from the Environment Agency (or other competent authority).

Reason: To reduce the risk of flooding to the proposed development and the future occupants of the site.

- (6) The mobile homes / caravans on the site shall be firmly secured to the ground, in a manner to be submitted to and agreed with the Local Planning Authority within three months from the date of this permission, to prevent movement during extreme flood conditions.

Reason: To reduce the risk of flooding to the proposed development and the future occupants of the site.

- (7) This permission shall expire in ten years from the date of approval.

Reason: To allow re-evaluation of the acceptability of the proposals in light of the likely effect of climate change.

SCHEDULE

The Park operator must:

- 1. Ensure that all caravan users have a current signed agreement covering points (a) to (e) in condition 2 of the planning permission; and

2. Hold copies of documented evidence of the caravan users' main residence and their identity; this may comprise of utility bills, Council Tax bill, passport, driving licence or similar document; and
3. On request, provide copies of the signed agreement[s] to the Local Planning Authority; and
4. Require caravan users to provide new documentation if they change their main residence; and
5. Send all written communications to the main residence of the caravan user; and
6. Not allow postal deliveries to the caravan or accept post on behalf of the caravan users at the park office; and
7. Ensure that each caravan is to be used for holiday use only and that no caravan is occupied as a sole or main residence, or in any manner which might lead any person to believe that it is being used as the sole or main residence, of the user or occupant; and
8. Adhere to a code of practice as good as or better than that published by the British Homes and Holiday Parks Association.

The Council's approach to this application:

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

Offering pre-application advice.

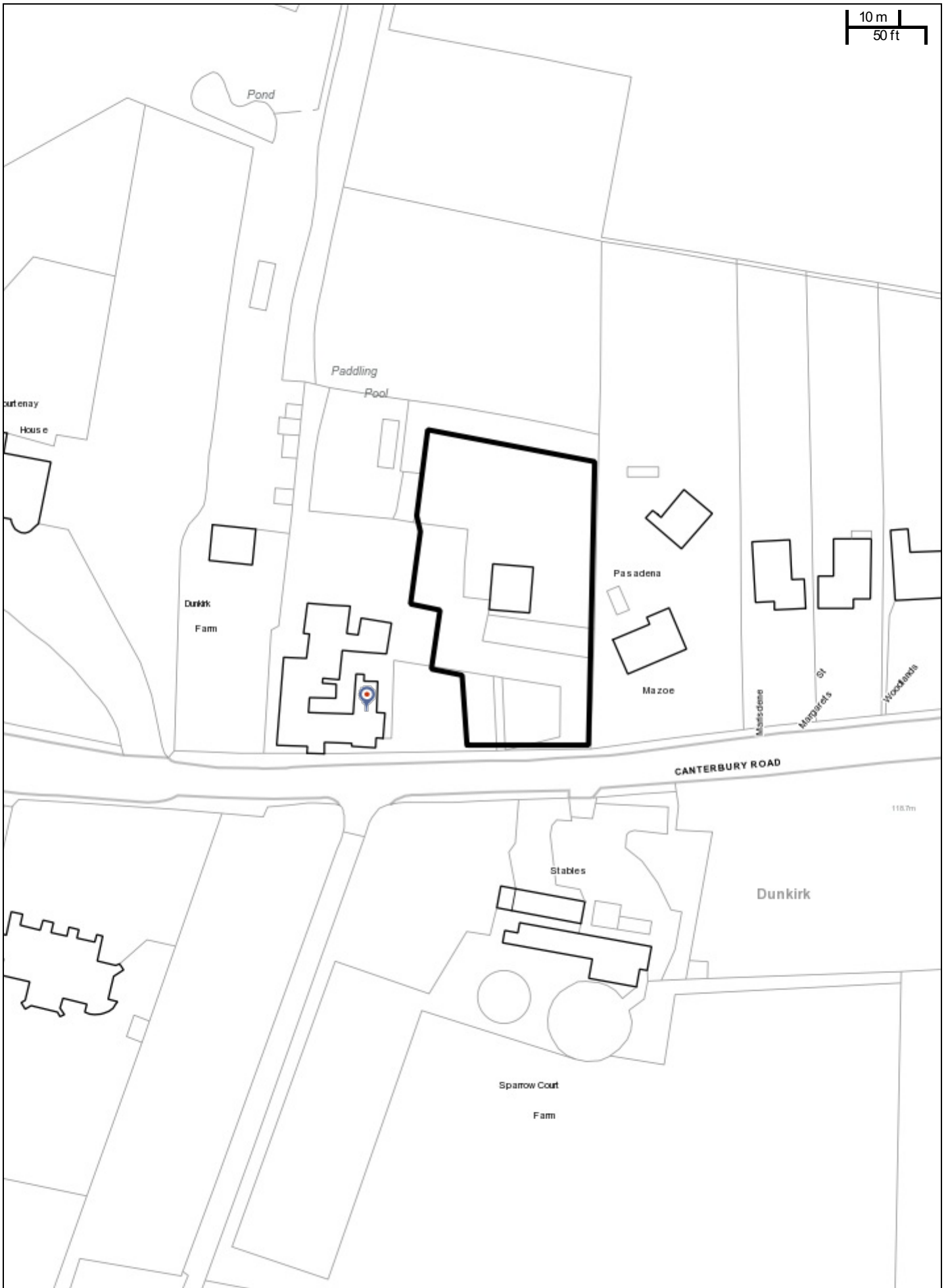
Where possible, suggesting solutions to secure a successful outcome.

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

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

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

10 m
50 ft



2.4 THE OLD SCHOOL

Scale: 1:1000

Printed on: 5/9/2017 at 10:29 AM by clairea

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REFERENCE NO - 16/506316/FULL			
APPLICATION PROPOSAL Erection of 3 two storey terraced dwellings and 2 two storey semi-detached dwellings with on plot parking and associated works, as amended by drawings DSGD/16/01F, DSGD/16/02A, DSGD/16/03A, DSGD/16/04B and DSGD/14/H01A.			
ADDRESS The Old School London Road Dunkirk Kent ME13 9LF			
RECOMMENDATION GRANT SUBJECT TO: further views of the Parish Council and adjoining residents (closing date 20 th September 2017).			
SUMMARY OF REASONS FOR RECOMMENDATION Proposal is in accordance with national and local planning policy.			
REASON FOR REFERRAL TO COMMITTEE Parish Council objection			
WARD Boughton And Courtenay	PARISH/TOWN COUNCIL Dunkirk	APPLICANT Mr A Preston AGENT Lee Evans Planning	
DECISION DUE DATE 12/10/2016	PUBLICITY EXPIRY DATE 20/09/2017		
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
16/500539/FULL and 16/500540/LBC	Change of use of school to dwelling	Approved	24/06/2016
SW/14/0416, 17, 18 & 19	Conversion of grade II listed school building and former school house to two residential dwellings	Approved	09/06/2014

1.0 DESCRIPTION OF SITE

- 1.01 The site forms part of the grounds surrounding the old village school (built 1844), which closed in 2008. The former school is a grade II listed building and has since been converted to two residential dwellings under planning permission and listed building consent approvals SW/14/0416, 17, 18 and 19 and later approvals 16/500539/FULL and 16/500540/LBC in relation to just the school itself.
- 1.02 The part of the site that is the subject of this proposal is to the north east of the former school grounds, on a part of the site which was originally given over to a grassed play area. The site is to the front of an area of woodland which the proposal will not affect, but which is protected by a Tree Preservation Order (TPO).
- 1.03 This part of Dunkirk village is formed around the school, church and vicarage which established the settlement here in the mid nineteenth century following the Battle of Bossenden Wood (1838). The location is therefore one of long established development that formed the core of what is now known as Dunkirk. The current application site is situated within the built-up area boundary of Dunkirk as now defined in Bearing Fruits 2031: The Swale Borough Local Plan 2017, and is situated between the old school building and a long row of bungalows, so forming a natural infill plot within the established original confines of the village.

2.0 PROPOSAL

- 2.01 The proposal is to construct five new properties; four semi-detached houses and one detached house. All five properties would have associated private amenity and parking spaces. All have a garden wider than the houses but plot 2 originally had a

rather short rear garden (some 6m in depth and this matter has been the subject of negotiation to achieve a more satisfactory amenity space for the property.

- 2.02 The proposed properties would be set back from the highway, and accessed by a re-aligned access point, which provides better sight lines than the present access. The properties would be set in two parallel rows of development; two semi-detached houses to the front, with the detached and the other pair of semi-detached behind. All the properties would face towards the highway. This pattern reflects the nature of the adjacent site where two bungalows sit one behind the other, and it provides more space between the new houses and the former school than a single row of dwellings would do.
- 2.03 Each property would be allocated two parking spaces, with four separate visitor parking spaces.
- 2.04 The properties have been designed in order to complement the slightly neo-Gothic styling of the school building, with the use of low eaves heights, steeply pitched roofs, high gables and prominent barge boards, etc. The use of traditional materials is also incorporated, in order to produce a minimal impact upon the adjacent listed building.
- 2.05 The application is accompanied by a Design and Access Statement (including a Heritage Assessment), and an Ecology Statement which concludes that the site is host to protected species in the form of slow worms, reptiles and grass snakes for which mitigation proposals have been suggested. I have recommended an appropriate condition.
- 2.06 The application has recently been amended to bring the front semi-detached houses slightly further forward on the site to achieve at least minimum overlooking distances between the two rows of houses, and the access arrangement has been altered to overcome an identified highway safety issue. There has also been some manoeuvring of plot 2 to ensure an adequately sized rear garden. I have recently re-consulted the Parish Council and adjoining residents on these minor changes and I will report any further views to the meeting (closing date 20th September 2017).

3.0 SUMMARY INFORMATION

	Existing	Proposed	Change (+/-)
Site Area (ha)	0.195	0.195	-
Approximate Ridge Height (m)	N/A	8 metres	+ 8 metres
Approximate Eaves Height (m)	N/A	4.7 metres	+ 4.7 metres
No. of Storeys	None	2	2
Parking Spaces	None	14	+14
No. of Residential Units	None	5	+5

4.0 PLANNING CONSTRAINTS

Adjacent to grade II listed building.

5.0 POLICY AND OTHER CONSIDERATIONS

- 5.1 The National Planning Policy Framework (NPPF): Paragraphs 14 and 49 (Presumption in favour of sustainable development); 55 (sustainable development in

rural areas); 111 (use of brownfield land); 129 and 131 (significance of heritage asset) and 133 (impact of development on heritage assets).

Bearing Fruits 2031: The Swale Borough Local Plan 2017: Policies CP3 (Delivering a choice of high quality homes); CP4 (Requiring good design); DM7 (Parking); DM14 (General Development Criteria); DM24 (Conserving and enhancing valued landscapes).

6.0 LOCAL REPRESENTATIONS

6.01 One email neither supporting nor objecting to the proposal has been received from a Dunkirk resident. The points raised therein may be summarised as follows:

- I do not object to a dwelling, but five is too many for the site
- Bungalows would be better close to the old school
- Road safety is important and this site is on a hill and a slight bend

7.0 CONSULTATIONS

7.01 Dunkirk Parish Council unanimously object to this application and has written a lengthy illustrated letter of objection to the proposal. The points contained therein may be summarised as follows and relate to the application as first submitted prior to the access alterations now negotiated:

- The Parish Council supported conversion of the old school but this scheme reduces the area of garden associated with the former school house and will lead to vehicular conflict within the site
- The scheme leaves room for access to further development
- *'Whilst the Neighbourhood Plan is yet to propose any sites as allocations, it should be noted that this site was not submitted to the Neighbourhood Plan Group for consideration. It should be further noted that SBC has decided that only the NP can allocate sites within the parishes of Boughton under Blean and Dunkirk.'*
- The highway adjacent is on an uphill bend and traffic is '*notoriously fast*', despite a flashing 30mph sign
- Proposed visibility splay is inadequate to cater for the expected increase in traffic using the access
- Traffic issues including existing congestion problems through The Street, Boughton, and at Brenley Corner
- Area comprises very low density housing at present and this development at 8m tall (with potential for loft conversions) is out of scale and form with its surroundings
- Application shows considerable amount of hardsurfacing, possibly leading to drainage problems
- Trees and hedges at rear of site must be preserved
- Within a special landscape area
- Close to a scheduled ancient monument
- Does not complement the existing built environment
- Effect on overstretched local amenities and services
- Adverse effect on the setting of the listed building
- Housing targets are now being met and a single bungalow would be a preferred form of development

7.02 Kent Highways and Transportation originally raised objection due to poor sight lines from the access, but following the receipt of an amended drawing now raise no objection, subject to conditions noted below.

8.0 APPRAISAL

8.01 The key issues to consider in this case are those of preserving the character and setting of the listed building, the principle of development, site layout, the effect of the proposal on local services, and highway issues.

8.02 In terms of the principle of development, I note that the proposal site is within the established built-up area boundary where saved policy CP3 suggests new housing ought to be acceptable in principle. The National Planning Policy Framework (NPPF) states that, in such cases, the presumption must be in favour of development, unless other material considerations suggest otherwise.

8.03 The effect of the proposal on the character and setting of the adjacent listed building must next be considered. Firstly, it must be remembered that the nearest part of the proposed development from the listed building would be a distance of twenty-eight metres away, thus significantly reducing the effect of the proposal on the character and setting of the building. The design of the proposed buildings is also sympathetic to the listed building, utilising similar materials and similar design features such as the use of high gables. I do not believe that the proposal would have an unacceptably adverse impact on the character and setting of the listed building.

8.04 The site layout is largely driven by trying to maintain the setting of the former school, with woodland behind. Hence the new development is set to one side in two rows. The impact of this is that the depth of the site (with woodland behind) is only just big enough for two rows of dwellings. Hence, whilst the front row of houses has adequate garden depths, and the 21m minimum distance between rows of houses is achieved, the rear row is very close to the rear boundary of the site. These units have wide gardens that compensate for this, also meaning that their gardens are not all to the north of the relevant house.

8.05 In terms of the potential effect of the proposal on local services and amenities, it is important to bear in mind that the proposal is for only five properties. Five extra properties within the area is unlikely to have a noticeably adverse effect on local services and amenities and, as such, I do not believe that the proposal would have an unacceptably adverse effect on local services and amenities.

8.06 In terms of highway safety and convenience, I was initially concerned by the drawings received, as these appeared to show an access point which, albeit existing, did not have the requisite sight lines required for a development of five houses. These concerns were echoed by both Kent Highways and Transportation and the Parish Council. These concerns were passed on to the agent, who has now submitted new drawings showing the access moved slightly westward. Kent Highways and Transportation consider this proposal for an amended access point to be acceptable, and I am content to accept their expert advice in this matter.

8.07 For completeness I have notified the Parish Council and immediate neighbours of the latest changes and I will update Members at the meeting if any further comments are received.

9.0 CONCLUSION

9.01 I therefore recommend that the proposal be approved, subject to the outcomes of my discussions regarding plot 2 and to strict conformity with the conditions included below.

10.0 RECOMMENDATION – GRANT Subject to the further views of the Parish Council and adjoining residents (closing date 20th September 2017), and to the following conditions:

CONDITIONS

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

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

(2) Except as provided for by condition (3) below the development to which this permission relates must be carried out in accordance with approved drawings DSGD/16/01F, DSGD/16/02A, DSGD/16/03A, DSGD/16/04B and DSGD/14/H01A.

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

(3) Notwithstanding the provisions contained within condition (2) above, no development beyond the construction of foundations shall take place until an amended drawing showing the eastern side elevations to Plots 3 and 5 showing first floor windows matching in size to those shown on the same side elevations at ground floor level on drawing no. DSGD/16/04/B have been submitted to and approved in writing by the Local Planning Authority, and works shall be implemented in accordance with the approved details.

Reason: In the interest of visual amenity

(4) No development beyond the construction of foundations shall take place until details of the external finishing materials to be used on the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority, and works shall be implemented in accordance with the approved details.

Reason: In the interest of visual amenity.

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

Reason: In the interests of residential amenity

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

Monday to Friday 0730 – 1900 hours, Saturdays 0730 – 1300 hours unless in association with an emergency or with the prior written approval of the Local Planning Authority.

Reason: In the interests of residential amenity.

- (7) No development beyond the construction of foundations shall take place until full details of the method of disposal of foul and surface waters have been 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

- (8) Unless otherwise agreed in writing with the Local Planning Authority no trees shall be removed from the site.

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

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

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

- (10) 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.

- (11) 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.

- (12) No development beyond the construction of foundations shall take place until detailed drawings at a suggested scale of 1:5 of all new external joinery work and fittings together with sections through glazing bars, frames and mouldings have been submitted to and approved by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason: In the interest of preserving or enhancing the character and appearance of the surrounding area

- (13) The areas shown on approved drawing DSGD/16/01F as parking spaces shall be kept available for such use at all times and no permanent development, whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking or re-enacting that Order) or not, shall be carried out on the land so shown or in such a position as to preclude vehicular access thereto; such land and access thereto shall be provided prior to the occupation of the dwellings 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.

- (14) The sight lines shown on drawing DSGD/14/H01A shall be provided prior to the occupation of the properties hereby permitted and thereafter maintained clear of any structure, tree, plant or other obstruction which exceed 0.6 metres above carriageway level within the approved sight lines.

Reason: In the interests of highway safety.

- (15) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
- i. the parking of vehicles of site operatives and visitors
 - ii. loading and unloading of plant and materials
 - iii. storage of plant and materials used in constructing the development
 - iv. the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
 - v. wheel washing facilities
 - vi. measures to control the emission of dust and dirt during construction
 - vii. a scheme for recycling/disposing of waste resulting from demolition and construction works

Reason: In the interests of the amenities of the area and highway safety and convenience.

- (16) No development shall take place before details of cycle storage (2 cycles per dwelling) shall have been submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out in complete accordance with these approved details.

Reason: In the interests of amenity and to ensure that the details are correct before development commences.

- (17) The first five metres of the access leading from the public highway to the development hereby permitted shall be of a bound material.

Reason: In the interests of highway safety and convenience.

- (18) No development shall take place (including any demolition, ground works, site clearance) until an Ecological Design and Management Strategy (EDMS) for the development site has been submitted to and approved in writing by the Local Planning Authority. Upon approval, the details submitted shall be implemented in full accordance with these approved details.

Reason: In the interests of biodiversity.

- (19) Upon completion, no rearward extension other at ground floor level, or any alteration to the rear roof slopes, shall be carried out to the proposed properties marked as Plots 4 and 5' on drawing no. DSGD/16/01F.whether permitted by Classes A or B of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking and re-enacting that Order) or not.

Reason: To avoid mutual loss of privacy to/from dwellings to the north,

The Council's approach to this application:

In accordance with paragraphs 186 and 187 of the National Planning Policy Framework (NPPF),

The Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and proactive manner by:
Offering pre-application advice

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

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

Habitat Regulations Assessment

This HRA has been undertaken without information provided by the applicant.
The application site is located within 6km of the Swale Special Protection Area (SPA) and Ramsar site both of which are European designated sites afforded protection under the Conservation of Habitats and Species Regulations 2010 as amended (the Habitat Regulations).
SPAs are protected sites classified in accordance with Article 4 of the EC Birds Directive. They are classified for rare and vulnerable birds and for regularly occurring migratory species. Article 4(4) of the Birds Directive (2009/147/EC) requires Member States to take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article.

The proposal therefore has potential to affect said site's features of interest.

In considering the European site interest, Natural England advises the Council that it should have regard to any potential impacts that the proposal may have. Regulations 61 and 62 of the Habitat Regulations require a Habitat Regulations Assessment. NE also advises that the proposal is not necessary for the management of the European sites and that subject to a financial contribution to strategic mitigation and site remediation satisfactory to the EA, the proposal is unlikely to have significant effects on these sites and can therefore be screened out from any requirement for further assessment. It 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:

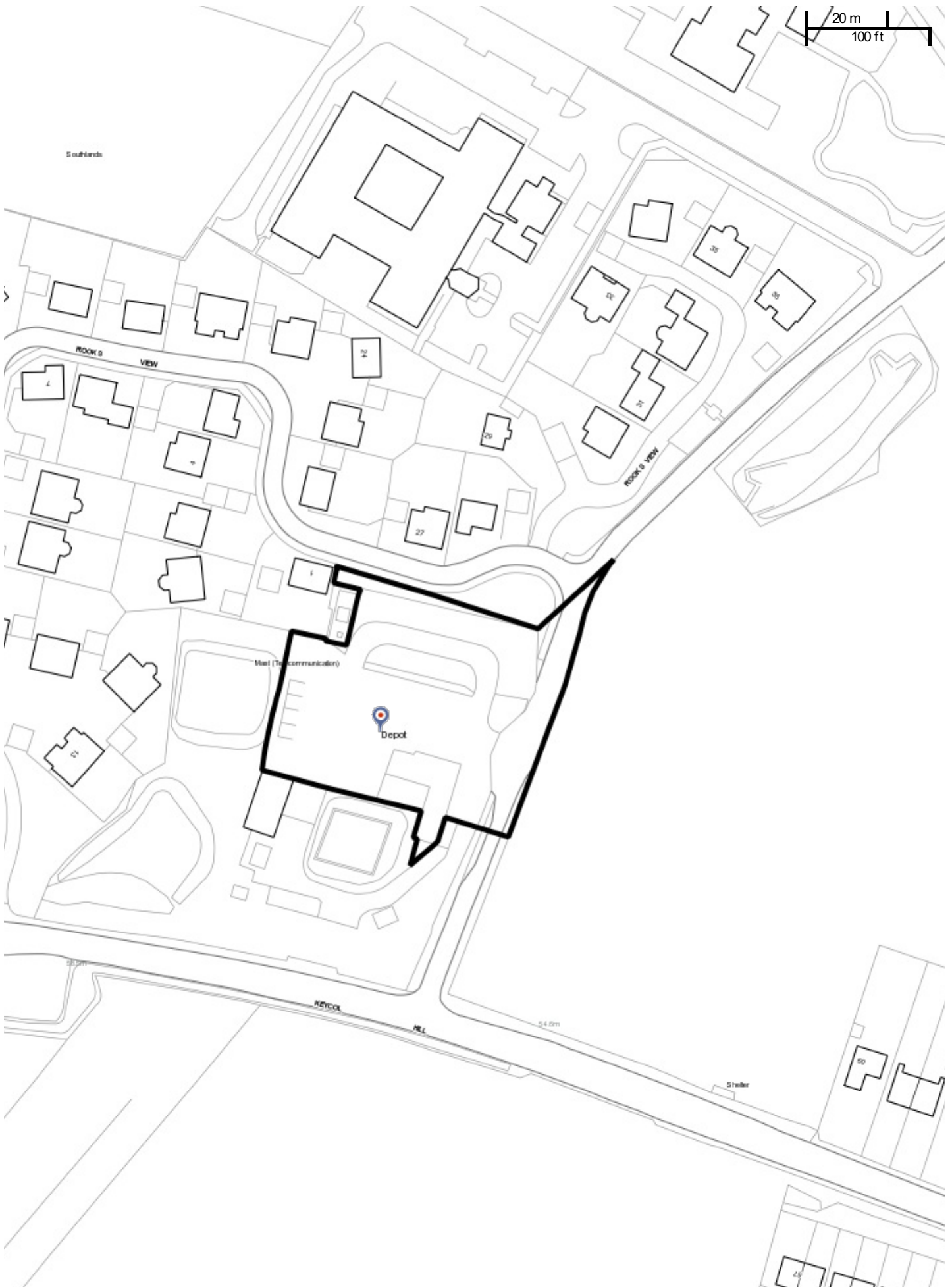
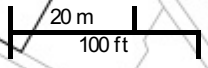
- Due to the scale of development there is no scope to provide on site mitigation such as an on site dog walking area or signage to prevent the primary causes of bird disturbance which are recreational disturbance including walking, dog walking (particularly off the lead), and predation of birds by cats.
- Based on the correspondence with Natural England, I conclude that off site mitigation is required. However, the Council has taken the stance that financial contributions will not be sought on developments of this scale because of the practicalities of securing payment. In particular, the legal agreement would cost substantially more to prepare than the contribution itself. This is an illogical approach to adopt; would overburden small scale developers; and would be a poor use of Council resources. This would normally mean that the development should not be allowed to proceed, however, NE have acknowledged that the North Kent Councils have yet to put in place the full measures necessary to achieve mitigation across the area and that questions relating to the cumulated impacts on schemes of 10 or less will need to be addressed in on-going discussions. This will lead to these matters being addressed at a later date to be agreed between NE and the Councils concerned.
- Developer contributions towards strategic mitigation of impacts on the features of interest of the SPA- I understand there are informal thresholds being set by other North Kent Councils of 10 dwellings or more above which developer contributions would be sought. Swale Council is of the opinion that Natural England's suggested approach of seeking developer contributions on single dwellings upwards will not be taken forward and that a threshold of 10 or more will be adopted in due course. In the interim, I need to consider the best way forward that complies with legislation, the views of Natural England, and is acceptable to officers as a common route forward. Swale Council intends to adopt a formal policy of seeking developer contributions for larger schemes in the fullness of time and that the tariff amount will take account of and compensate for the cumulative impacts of the smaller residential schemes such as this application, on the features of interest of the SPA in order to secure the long term strategic mitigation required. Swale Council is of the opinion that when the tariff is formulated it will encapsulate the time period when this application was determined in order that the individual and cumulative impacts of this scheme will be mitigated for.

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

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

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

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2.5 LAND AT ROOK LANE

Scale: 1:1250

Printed on: 5/9/2017 at 10:26 AM



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REPORT SUMMARY

REFERENCE NO - 17/502156/FULL			
APPLICATION PROPOSAL Erection of 5no. 4 bedroom detached dwellings with associated vehicle parking and realignment of Rook lane cross over.			
ADDRESS Land At Rook Lane Bobbing Kent ME9 8GB			
RECOMMENDATION GRANT subject to conditions			
SUMMARY OF REASONS FOR RECOMMENDATION The application would not be in accordance with the recent adopted local plan. However I am of the view that the unique situation of this site, that is being visually harmful concrete hardstanding, surrounded on 2 sides by modern housing, that the proposed development would not appear incongruous and that its impact on the countryside would be, though finely balanced, acceptable.			
REASON FOR REFERRAL TO COMMITTEE The recommendation is contrary to the views of the Parish Council and is considered as an exception to Local Plan policy			
WARD Bobbing, Iwade And Lower Halstow	PARISH/TOWN COUNCIL Bobbing	APPLICANT RedFan Development Limited AGENT RedFan Development Limited	
DECISION DUE DATE 28/06/17	PUBLICITY EXPIRY DATE 06/06/17	OFFICER SITE VISIT DATE	
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
SW/12/1596	Construction of 5 x 4 bedroom detached dwellings and associated vehicle parking plus realignment of Rook Lane including new access to mast and new section of roadway to waterworks	Approved	18/02/13
<i>This was approved by the planning committee on the basis that it was not of significant greater impact compared to the approved scheme below, that it was a brownfield site surrounded in part by housing, and that the Council could not demonstrate a five year housing supply.</i>			
SW/12/0081	Construction of 4 x 4 bedroom detached dwellings and associated vehicle parking plus realignment of Rook Lane including new access to mast and new section of roadway to waterworks	Approved	20/08/12
<i>This was approved by the planning committee on the basis that it was a brownfield site surrounded in part by housing, and that the Council could not demonstrate a five year housing supply.</i>			

SW/07/0942	Outline application for affordable housing development - 4 x 1 bed flats, 5 x 2 bed houses, 2 x 3 bed houses and 1 x 4 bed house.	Refused	17/10/07
<p><i>This application was refused on the basis that an insufficient case had been made that the development would meet a local affordable housing needs, that the site was outside the built confines and failed to protect the countryside, that the site was not in a sustainable location, was of poor quality layout and design, and did not provide suitable parking and access.</i></p>			

MAIN REPORT

1.0 DESCRIPTION OF SITE

- 1.01 The application site relates to an area of land of approximately 0.3 hectares in size. The site is bordered to the south and west by land in operational use by Southern Water and which contains 2 x reservoirs. The application site was formerly part of the Southern Water site. The land rises from Rook Lane in an east-west direction. Access to the site is via a pair of metal gates and railings which are set back from Rook Lane. The site has been partially cleared and is largely laid to hardstanding.
- 1.02 The site is bounded to the south and west by the Southern Water reservoirs and operational land, to the north by a modern housing estate, which also extends to the west beyond the operational Southern Water site and to the east, on the opposite side of Rook Lane, by open countryside. The vacant NHS Southlands Centre and Demelza House Children’s Hospice lie further to the north. There is a large telecommunications mast to the north west of the application site.
- 1.03 Rook Lane itself is a two way road that narrows to single lane traffic between the existing water works site entrance and the junction with Keycol Hill (A2). Traffic heading from Rook Lane to Keycol Hill has priority over traffic in the opposite direction. The junction of Rook Lane and Keycol Hill has restricted visibility splays due to a large retaining wall to the west of the junction and a bank of earth with vegetation and a lamp post to the east of the junction
- 1.04 In policy terms, the site falls outside of any built confines and is therefore regarded as being within the countryside. Rook Lane is classified as a Rural Lane.

2.0 PROPOSAL

- 2.01 This application seeks planning permission for the construction of 5no. 4 bedroom detached dwellings and associated vehicle parking, plus the realignment of Rook Lane, The application is identical in form to the scheme permitted by the Council under SW/12/1596.
- 2.02 The proposal would take the form of a small cul-de-sac with 5 plots, each containing a 4 bed dwelling. It would also provide access to the Southern Water site to the south.
- 2.03 The dwellings on plots 1 and 2 would measure 11.7 metres in width, 8.5 metres in depth, 6m in height to eaves and between 10-10.5m to ridge height. The dwellings

incorporate gable roofs and accommodation in the roofspace, including dormer windows, and also incorporate attached double garages.

- 2.04 The dwellings on plots 3, 4 and 5 would be of the same design and would be 10 metres wide, 14 metres long, 5.5 metres to eaves and 10.5 metres to ridge height. The roof would be fully hipped. Each unit would have a single integral garage and two spaces to the front.
- 2.05 The buildings would be constructed in facing bricks with quoining details and band courses.
- 2.06 The proposal includes the provision of a small communal amenity area to the south of plot 5. Adjacent to this would be a single visitor car parking space. Rook Lane would be realigned to increase the width of the road to 5.4 metres and provide a vehicle overrun area to allow larger vehicle access to the remaining water works site via the new entrance. The alterations to the lane would include extending the pavement from the new dwellings at Rooks View into the application site.

3.0 PLANNING CONSTRAINTS

Outside of built confines
Rook Lane is a designated rural lane

4.0 POLICY AND OTHER CONSIDERATIONS

- 4.01 The National Planning Policy Framework (NPPF) – paragraphs 7(sustainable development), 11 (primacy of the development plan), 14 (presumption in favour of sustainable development), 17 (core planning principles), 50 (delivery of a wide choice of homes),
- 4.02 The Swale Borough Local Plan “Bearing Fruits” 2031 – Policies ST3 (settlement strategy), ST5 (The Sittingbourne Area Strategy), CP3 (delivering a wide choice of homes), CP4 (good design), DM6 (transport demand and impact), DM7 (vehicle parking), DM14 (general development criteria), DM19 (sustainable design), DM26 (rural lanes), DM28 (biodiversity), 111 (use of previously developed land).

5.0 LOCAL REPRESENTATIONS

- 5.01 Two letters of objection received –
- Potential overlooking
 - Lack of suitable resident and visitor parking. The situation at Rooks View shows that more is needed. Would be likely to increase parking pressure at Rooks View.
 - Road works have not yet been completed
 - Damage / potential damage to communal areas at Rooks View which are paid for by residents
 - The Rook Lane / A2 junction is dangerous – caused by high speeds on the A2 over the brow of the hill, lack of visibility and narrowness of road junction
 - Lack of pavement for pedestrians towards A2 junction

6.0 CONSULTATIONS

Bobbing Parish Council

6.01 Strongly objects on the grounds of highway issues and health and safety.

- Since permission was last granted there is more pressure on the road junction from the future Southlands development and Demelza House.
- Rook Lane is used as a rat run
- The junction of Rook Lane and the A2 is substandard with sightline and width problems
- The existing traffic calming causes a build up of traffic onto the A2, particularly during Demelza events
- There is no footpath leading from Rooks Lane to the A2
- New and granted housing developments in Newington will add to the volume of traffic on the A2 increasing the risk of an accident at the A2/Rook Lane junction.
- Insufficient parking provided
- Conflict with rural lane policy
- Are the developers able to confirm that the development is not actually above the water reservoir, as this raises pollution and safety issues?

Kent County Council Highways

6.02 I refer to the above planning application and confirm that provided the following requirements are secured by condition or planning obligation, then I would raise no objection on behalf of the local highway authority:-

- Provision of measures to prevent the discharge of surface water onto the highway.
- Provision and maintenance of 2.4 metres x 43 metres x 43 metres visibility splays at the access with no obstructions over 1.05 metres above carriageway level within the splays, prior to use of the site commencing.

Southern Water

6.03 As per the discussion held for the above proposal, access is being adequately maintained to the WSW. Southern Water will as part of the deal secure the freehold of a strip of land on the north side of the developer's ownership to enable access to a telecom mast.

Should the Local Planning Authority be minded to grant planning permission for this development we request that the following condition is attached to the consent: "Occupation of the development will not be permitted until the Local Planning Authority is satisfied that, in consultation with Southern Water, adequate wastewater treatment facilities exist to effectively drain the development".

Environmental Health

6.04 I note the contents of the supporting documentation specifically the Desk Study Report by Soiltec dated September 2014 and the construction code of practice for controlling dust on site. Provided conditions are included if permission is granted, I would have no objection to this application.

Natural England

6.05 This relates to proposals for new dwellings within the zone of influence (6km) of the Thames Estuary and Marshes, Medway Estuary and Marshes, and The Swale Special Protection Areas (SPAs) and Wetlands of International Importance under the Ramsar Convention (Ramsar Sites). It is the Council's responsibility to ensure that the

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

Environment Agency

- 6.06 No objection subject to conditions to control potential contamination, infiltration of surface water and piling.

7.0 APPRAISAL

- 7.01 This planning application is identical to the scheme permitted by the Council under SW/12/1596. Although some initial work was carried out to the site, including creation of a separate access to the phone mast, this was undertaken without discharging some pre-commencement conditions, and officers took the view that such work did not amount to lawful commencement of the planning permission. The permission expired on the 18th February 2016.

- 7.02 As such the applicant has submitted a fresh application for the same development.

- 7.03 Whilst the layout, design, effect on neighbours and highways impacts are identical to the scheme previously permitted, in my opinion the key considerations for this application relate to the principle of the development and whether there has been a change in planning policy terms or site circumstances that would now render the development unacceptable. Further to this, if the principle is considered to be unacceptable in policy terms, whether there are material considerations that could outweigh such harm.

- 7.04 A copy of the report to committee for application SW/12/1596 is attached as Appendix A, and relevant sections are referred to below.

Principle of development

- 7.05 Members will note from the report for SW/12/1596 that the development was previously considered to be acceptable in this location on the grounds that it was on previously developed land, that it abutted a modern housing estate, and that the Council could not demonstrate a five year housing land supply.
- 7.06 The first two grounds remain. However Members will be aware that the Council has recently adopted a new Local Plan and that the Local Plan Inspector recently endorsed the Council's position that it could demonstrate a five year housing supply. Policy ST3 of the recently adopted local plan sets out the settlement strategy for development in the Borough. The site does not fall within any identified settlement under this policy and falls to be considered as being within the countryside. This policy states that in such areas development will not 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, setting, tranquillity and beauty of the countryside, its buildings and the vitality of rural communities.
- 7.07 The site represents previously developed land and paragraph 111 of the NPPF encourages the effective re-use of such land, provided it is not of high environmental value. The report for the previous permission did not identify any overriding harm to

the landscape or countryside arising from the development. The site is currently open concrete hardstanding and as such it can be considered to give rise to some harm to the character and appearance of the countryside in its present form, amounting to a harsh urban development. Nonetheless, despite this, as the site has an open character and appearance, I consider that some harm to the character and value of the countryside would occur through this development, through the construction of substantial built form on an existing open site. Balanced against this harm is the fact that the site lies immediately adjacent on two sides to an existing modern housing estate. As such, the harm to the character and appearance, and the openness of the countryside would be limited in my view. On this basis, I consider that the development would be in conflict with Policy ST3 of the adopted plan, albeit that the site is previously developed land, and surrounded in part by a relatively new housing estate – and that such conflict and harm is very limited.

- 7.08 I would conclude that development of this site would normally be unacceptable given the Council's current five year housing supply position and recently adopted plan. However – there is, in my view, very limited harm and some benefit from developing what is currently a visually harmful incongruous and disused brownfield site, which directly abuts a modern housing estate. It is, in my view, a very finely balanced decision. I conclude that the benefit of developing the land, and the visual impact the development would have, being arguably less harmful than the existing site, and the fact that the development would make use of previously developed land, together with the fact that the development would not appear incongruous in its surroundings, very slightly outweighs the harm caused by the development and the fact that the site is unallocated and lies in the countryside I would therefore suggest, on balance, that the development is acceptable as a matter of principle. Members are of course entitled to take a differing view on this matter.

Impact on Countryside Gap

- 7.09 The site does not fall within an important local countryside gap as designated under Policy DM25 of the adopted Plan. However policy ST5 of the plan (The Sittingbourne Area Strategy) sets out that important gaps along the A2 corridor should be preserved.
- 7.10 The site is glimpsed from the A2 as you approach from Keycol Hill. However this would be seen in the context of the surrounding residential properties to the north and west, and I note that the development would not encroach any further south towards the A2 than existing surrounding dwellings, or any further to the east. The Southern Water reservoir and operational land would provide a buffer between the A2 and the site.
- 7.11 On this basis, I am satisfied that the scheme would not erode the separation between existing settlements to any material degree, and that it would not conflict with the above policy.

Design and visual impact

- 7.12 The design and visual impact of the development would be identical to the permitted scheme, and the officer comments are repeated in italics below.
- 7.13 *The proposal has been designed to a high standard - the dwellings reflect the character of those within Rooks View and includes the use of yellow and red bricks, timber windows and doors, front dormer windows and double garages. Plot 5 features*

side openings facing Rook Lane, that create interest to this side elevation such as bay windows. The communal amenity area is also a positive design feature which will further enhance the aesthetics of the development. It was confirmed under the previous application that this area of the site will be maintained by a residents association to be formed by the buyers of the properties.

- 7.14 *The proposed design of the dwellings is considered to be of a high standard and is acceptable in my view.*
- 7.15 *When viewed from both Keycol Hill and the open countryside to the east, the proposal would dovetail well with the existing residential development at Rooks View as a result of the high standard of design and the large plot sizes mirroring its surroundings. The proposal would result in the redevelopment of what I consider an unsightly and unattractive area of hardstanding. The proposed landscaping of the site would soften to a great degree the visual impact and impact of the proposals on the character of the streetscene and surrounding area.*
- 7.16 *When viewed within the streetscene of Rook Lane, the staggered building line created by the plots along with the high standard of design and landscaping would create a visually interesting and complementary appearance. When viewed from Rooks View the proposal would again appear entirely at home within this setting because of the visual interest created by the design of the rear elevations of the dwellings.*
- 7.17 *The loss of the existing trees on site, in particular the two Monterey Cypress, will be compensated for by the proposed landscaping scheme and the replacement trees specified in the above landscaping condition.*
- 7.18 *The impact on the visual amenities of the area and the impact on the streetscene is acceptable in my opinion.*
- 7.19 Whilst policies CP4 and DM14 of the adopted plan have replaced those in the former Local Plan, I am satisfied that there would be no conflict with these policies.

Residential Amenity

- 7.20 Again, the design and visual impact of the development would be identical to the permitted scheme, and the officer comments are repeated in italics below. Whilst policy DM14 of the adopted plan has replaced policy E1 of the former plan, there is no material change in the way in which amenity considerations are judged under the new policy.
- 7.21 *The dwelling at plot number 2 would be within 14 metres of 1 Rooks View. However, the garden of plot 2 would sit directly behind this near neighbour with the dwelling itself being set at an approximate 45 degree angle from 1 Rooks View. As a result of the position of the dwelling at plot 2 and its distance from this neighbour, the impact on the residential amenities of the occupiers of this dwelling would be minimal in my opinion.*
- 7.22 *The dwelling at plot 3 would be 25 metres away from 27 Rooks View. Similarly the dwelling at plot 4 would be approximately 25 metres away from 28 Rooks View. The dwelling at plot 5 would be 34 metres away from 28 Rooks View. These separation distances will in my view ensure that there is minimal overlooking, overbearing, overshadowing and loss of light to the neighbouring properties.*

- 7.23 *I do not consider that the finished floor levels of the proposed dwellings would give rise to significant overlooking to the existing dwellings to the north. I have considered above the impact on no.1 Rooks View. The remaining dwellings are a significant distance from those proposed here, such that overlooking would not occur to a harmful degree.*
- 7.24 *The proposed dwellings provide ample living space and private amenity areas for future occupants.*
- 7.25 *In my opinion, the impact of the development on residential amenities would be acceptable.*

Highways

- 7.26 Members will note that substantial highways concerns have been raised by the Parish Council and by local residents. These primarily relate to the narrow width of Rook Lane, which has a pinch point between the site and the A2 junction where the width narrows to a single lane, to the narrow width at this junction, and to the lack of visibility when leaving the junction.
- 7.27 Whilst I can understand that these are all far from ideal, Members will see that KCC Highways raise no objection to the proposed development. Clearly the scheme permitted under SW/12/1596 was for the same development. Given this, together with the lack of any objection from KCC Highways, I do not consider that the scheme could be held to be harmful on highways safety or traffic generation grounds. In this respect it would comply with policy DM6 of the adopted plan.
- 7.28 The development would provide garaging and vehicle parking for each unit. At least two spaces (not counting the garaging) per dwelling would be provided which would accord with highways guidance for residential parking. On this basis, I am satisfied that the development would accord with Policy DM7 of the adopted plan.

Impact upon character of rural lane

- 7.29 Policy DM26 of the adopted plan states that development will not be permitted which either physically, or as a result of traffic generation levels, would significantly harm the character of rural lanes. Given the existing relatively urban appearance of the site, together with the moderate amount of traffic that would be generated by 5 dwellings, I do not consider that significant harm to the character of this lane would occur. I also note that the lane was safeguarded in a similar way under the former local plan and that the previous permission found this relationship to be acceptable.

Other Matters

- 7.29 The parish council has raised concern on pollution grounds regarding the proximity of the development to the southern water reservoir. However no objection in this respect is made by Southern Water who operate the site, or by the Environment Agency.
- 7.30 The site falls within the zone of influence (6km) of the Thames Estuary and Marshes, Medway Estuary and Marshes, and The Swale Special Protection Areas (SPAs) and Wetlands of International Importance under the Ramsar Convention (Ramsar Sites). In accordance with the supporting text to Policy DM28 of the adopted plan, a Habitats Regulations Assessment is attached to this report.

8.0 CONCLUSION

8.01 Whilst the development was found acceptable under SW/12/1596, the planning policy and five year housing supply position has changed since, and residential development on land outside the built confines would not normally be acceptable under Policy ST3 of the adopted plan. Notwithstanding this, I am on balance of the view that the unique situation of this site, being visually harmful concrete hardstanding, surrounded on 2 sides by modern housing, the proposed development would not appear incongruous and that its impact on the countryside would be, though finely balanced, acceptable. I therefore recommend that planning permission is granted.

9.0 RECOMMENDATION – that planning permission is GRANTED, subject to the following conditions

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

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

(2) The development hereby approved shall be carried out in accordance with the following approved drawings: RF20/02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39.

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

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

i) An intrusive site investigation, based on the submitted Desk Study Report by Soiltec dated September 2014 to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.

ii) A remediation method statement (RMS) based on the site investigation results and the detailed risk assessment (2). This should give full details of the remediation measures required and how they are to be undertaken. The RMS should also include a verification plan to detail the data that will be collected in order to demonstrate that the works set out in the RMS are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

iii) A Closure Report is submitted upon completion of the works. The closure report shall include full verification details as set out in 3. This should include details of any post remediation sampling and analysis, together with documentation certifying quantities and source/destination of any material brought onto or taken from the site. Any material brought onto the site shall be certified clean;

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

Reason: To ensure any contaminated land is adequately dealt with, in the interests of mitigating pollution and human health

- (4) During construction of the development adequate space shall be provided on site, in accordance with the details submitted under 15/501034/SUB or in a position otherwise agreed by the Local Planning Authority, to enable all operatives and construction vehicles to park, load and off load and turn within the site.

Reason: In the interests of highway safety and convenience

- (5) Unless otherwise in accordance with the details submitted under 15/501034/SUB, prior to the works commencing on site details of parking for site personnel / operatives / visitors shall be submitted to and approved by the Local Planning Authority and thereafter shall be provided and retained throughout the construction of the development. The approved parking shall be provided prior to the commencement of the development.

Reason: In the interests of highway safety and convenience

- (6) As an initial operation on site, adequate precautions shall be taken during the progress of the works to guard against the deposit of mud and similar substances on the public highway in accordance with the details submitted under 15/501034/SUB or as otherwise agreed in writing by the Local Planning Authority prior to commencement of development. Such proposals shall include washing facilities by which vehicles will have their wheels, chassis and bodywork effectively cleaned and washed free of mud and similar substances.

Reason: In the interests of highway safety and convenience

- (7) No building hereby approved shall be occupied until the highway works in Rook Lane have been carried out 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: In the interests of highway safety and convenience

- (8) No development beyond the construction of foundations shall take place until full details of the method of disposal of foul and surface waters have been submitted to and approved by the Local Planning Authority. No infiltration of surface water drainage into the ground is permitted other than with the written consent of 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.

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

Reason: In the interest of visual amenity.

- (10) The document “Construction code of practice for controlling dust on site” submitted with the application shall be adhered to at all times during the construction of the development, unless agreed otherwise in writing by the Local Planning Authority.

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

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

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

- (12) No demolition/construction activities shall take place, other than between 0800 to 1800 hours Monday to Friday and 0800 to 1300 hours Saturday with no working activities on Sunday or Bank Holiday.

Reason: In the interests of residential amenity

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

Reason. To ensure that the development does not contribute to, or is not put at unacceptable risk from, or adversely affected by, unacceptable levels of water pollution caused by mobilised contaminants in line with paragraph 109 of the National Planning Policy Framework.

- (14) No impact pile driving (as may be approved under condition 13) in connection with the construction of the development shall take place on the site on any Saturday, Sunday or Bank Holiday, nor on any other day except between the following times:-

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

Reason: In the interests of residential amenity.

- (15) All hard and soft landscape works shall be carried out in accordance with the approved details shown in drawing number RF/20/38. Notwithstanding the submitted details, a replacement for the two Monterey Cypress trees to be removed, shall be provided within the grass verge to the flank of plot 5 which is to be not less than Nursery Selected Standard size (12cm- 14cm girth). Suitable species for the replacement are either two small leaved Lime (*Tilia cordata*) or Hornbeam (*Carpinus betulus*). 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.

- (16) Before the first occupation of any dwelling the following works between that dwelling and the adopted highway shall be completed as follows:

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

Reason: In the interests of highway safety.

- (17) 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.

- (18) The area shown on the submitted layout as vehicle parking space and garages shall be provided, surfaced and drained prior to the occupation of any of the dwellings hereby approved, and shall be retained for the use of the occupiers of, and visitors to, the dwellings, and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order), shall be carried out on that area of land so shown or in such a position as to preclude vehicular access to this reserved parking space.

Reason: Development without 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.

- (19) No development shall take place until details of measures to prevent the discharge of surface water onto the highway have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason: In the interests of highways safety

- (20) Prior to first occupation of the development, details to demonstrate the provision of 2.4 metres x 43 metres x 43 metres visibility splays at the site access with no obstructions over 1.05 metres above carriageway level within the splays shall be submitted to and approved in writing by the Local Planning Authority. The splays shall be provided prior to first occupation of any dwelling and shall thereafter be maintained free from obstruction over 1.05 metres above carriageway level.

Reason: In the interests of highways safety

- (21) If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until a remediation strategy detailing how this contamination will be dealt with has been submitted to and approved in

writing by the Local Planning Authority. The remediation strategy shall be implemented as approved.

Reasons: To ensure that the development does not contribute to, or is not put at unacceptable risk from, or adversely affected by, unacceptable levels of water pollution from previously unidentified contamination sources at the development site in line with paragraph 109 of the National Planning Policy Framework.

INFORMATIVES

- 1) 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.

The Council's approach to this application:

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

Offering pre-application advice.

Where possible, suggesting solutions to secure a successful outcome.

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

In this instance:

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

Habitats Regulations Assessment

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

The application site is located approximately 3 km to the south of the Thames Estuary and Marshes, Medway Estuary and Marshes, and The Swale Special Protection Areas (SPAs) and Wetlands of International Importance under the Ramsar Convention (Ramsar Sites). which are European designated sites afforded protection under the Conservation of Habitats and Species Regulations 2010 as amended (the Habitat Regulations). SPAs are protected sites classified in accordance with Article 4 of the EC Birds Directive. They are classified for rare and vulnerable birds and for regularly occurring migratory species. Article 4(4) of the Birds Directive (2009/147/EC) requires Member States to take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article. The proposal therefore has potential to affect said site's features of interest.

In considering the European site interest, Natural England advises the Council that it should have regard to any potential impacts that the proposal may have. Regulations 61 and 62 of the Habitat Regulations require a Habitat Regulations Assessment. For similar proposals NE also advise that the proposal is not necessary for the management of the European sites and that subject to a financial contribution to strategic mitigation and site remediation satisfactory to the EA, the proposal is unlikely to have significant effects on these sites and can therefore be screened out from any requirement for further assessment.

It is the advice of NE that when recording the HRA the Council should refer to the following information to justify its conclusions regarding the likelihood of significant effects: financial contributions should be made to the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring (SAMM) Strategy in accordance with the recommendations of the North Kent Environmental Planning Group (NKEPG) and; the strategic mitigation will need to be in place before the dwellings are occupied.

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

- Due to the scale of development there is no scope to provide on site mitigation such as an on site dog walking area or signage to prevent the primary causes of bird disturbance which are recreational disturbance including walking, dog walking (particularly off the lead), and predation of birds by cats.
- Based on the correspondence with Natural England, I conclude that off site mitigation is required. However, the Council has taken the stance that financial contributions will not be sought on developments of this scale because of the practicalities of securing payment. In particular, the legal agreement would cost substantially more to prepare than the contribution itself. This is an illogical approach to adopt; would overburden small scale developers; and would be a poor use of Council resources.

This would normally mean that the development should not be allowed to proceed. However, the North Kent Councils have yet to put in place the full measures necessary to achieve mitigation across the area and there are questions relating to the cumulated impacts on schemes of 10 or less that will need to be addressed in on-going discussions with NE.

Developer contributions towards strategic mitigation of impacts on the features of interest of the SPA – I understand there are informal thresholds being set by other North Kent Councils of 10 dwellings or more above which developer contributions would be sought. Swale Council is of the opinion that Natural England's suggested approach of seeking developer contributions on single dwellings upwards will not be taken forward and that a threshold of 10 or more will be adopted in due course. In the interim, I need to consider the best way forward that complies with legislation, the views of Natural England, and what is acceptable to officers as a common route forward. Swale Council intends to adopt a formal policy of seeking developer contributions for larger schemes in the fullness of time and that the tariff amount will take account of and compensate for the cumulative impacts of the smaller residential

schemes such as this application, on the features of interest of the SPA in order to secure the long term strategic mitigation required. Swale Council is of the opinion that when the tariff is formulated it will encapsulate the time period when this application was determined in order that the individual and cumulative impacts of this scheme will be mitigated for.

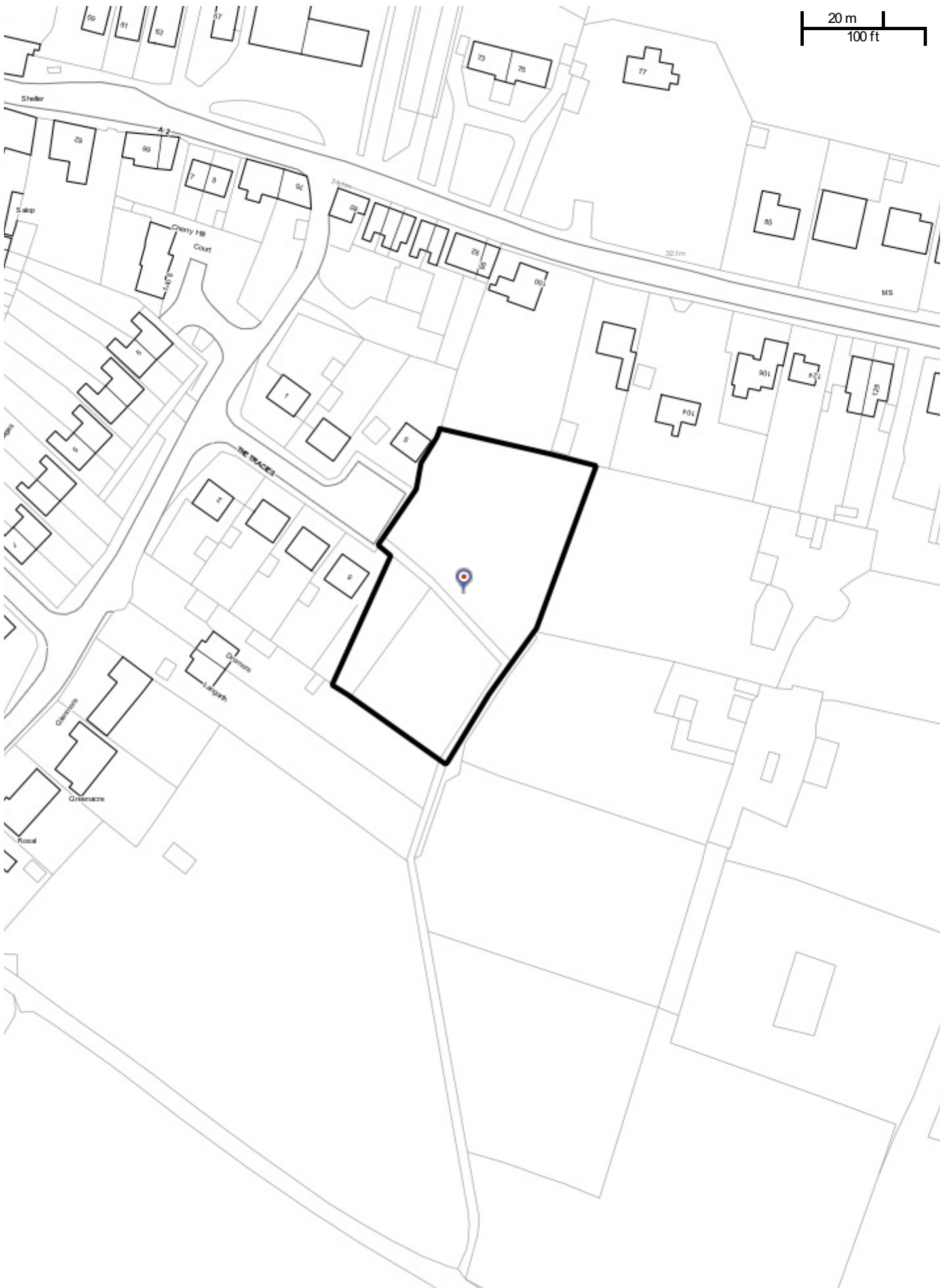
Whilst the individual implications of this proposal on the features of interest of the SPA will be extremely minimal in my opinion, cumulative impacts of multiple smaller residential approvals will be dealt with appropriately by the method outlined above.

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

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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20 m
100 ft



3.1 LAND AT THE TRACIES

Scale: 1:1250

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PLANNING COMMITTEE – 14 SEPTEMBER 2017

PART 3

Report of the Head of Planning

PART 3

Applications for which **REFUSAL** is recommended

REFERENCE NO - 15/508683/OUT			
APPLICATION PROPOSAL Outline application for the erection of 4no. four bedroom detached dwellings with associated access and parking including an attached double garage, two detached double carports and an integral garage, with landscaping the only matter reserved.			
ADDRESS Land At The Tracies Newington Kent ME9 7TQ			
RECOMMENDATION: REFUSE subject to the views of Kent County Council Ecological Unit and Environmental Health Manager			
SUMMARY OF REASONS FOR RECOMMENDATION The site is located in the countryside, outside the built up area of Newington, and amounts to grade 1 agricultural land. Whilst there are material considerations which weigh in favour of approving the application, these are outweighed by the policies of the Local Plan.			
REASON FOR REFERRAL TO COMMITTEE Wider public interest			
WARD Hartlip, Newington And Upchurch	PARISH/TOWN COUNCIL Newington	APPLICANT Mrs Gillian Murray AGENT	
DECISION DUE DATE 24/03/16	PUBLICITY EXPIRY DATE 06/06/17		
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
NK/9/62/193/7054	Use of land for residential development	Refused	1962
NK/9/67/32	Erection of 13 dwellings	Refused. Appeal Dismissed	1967
NK/9/67/32B/9198B	Use of land as a site for the extension of Tracies Estate	Refused	1971
NK/9/62/193A/7054A	Use of land as a site for residential development	Refused	1972
SW/75/225	Outline permission to erect 6 houses	Refused	1975
SW/75/226	Outline application for 36 houses	Refused	1975
SW/80/1110	Outline application for the erection of 6	Refused	1980

	four-bedroomed houses with one garage		
SW/81/471	Outline application for residential development	Refused	1981
SW/96/1055	Erection of 5 detached houses and garages	Refused	1996
SW/00/0125	Erection of 2 dwellings with integral garages	Refused Appeal Dismissed	2000.
SW/00/0126	Erection of 4 detached dwellings with integral garages.	Refused Appeal Dismissed	2000
SW/03/0850	Outline application for residential development.	Withdrawn	2003
PAA/13/0300	Redevelopment of site for housing	Unacceptable in principle, contrary to Policy E6 of the Adopted Local Plan.	2013

MAIN REPORT

1.0 DESCRIPTION OF SITE

- 1.01 The site lies within a well established residential area within the village of Newington, Kent. The application site is 'beyond' but immediately adjoining the designated settlement boundary area and may be described as an open field with previous historical agricultural use as an orchard and is approximately 0.30 hectares in size.
- 1.02 The site is accessed directly from The Tracies: a public highway that currently serves seven existing houses. There is an existing 'unmade' public footpath that crosses the site. It is intended that this footpath will be retained to cross the cross however the final route of the public footpath will require consent to divert this footpath within the overall scheme adjacent to the Newington conservation area.
- 1.03 There are no existing buildings within the application site.
- 1.04 The architectural character within The Tracies generally comprises of detached residential properties with relatively modest front gardens fronting towards the adjoining public highway. The buildings are generally low in form with two storey dwellings with pitched roofs, predominantly brickwork facing material to the principal elevations.

- 1.05 To the north of the existing houses in The Tracies, there are several terraced houses fronting along the High Street with a variety of building types in terms of style, scale and massing.
- 1.06 The site amounts to grade I agricultural land, and is located to the south of the High Street, and immediately adjoins the Newington High Street Conservation Area. In addition, Lion House, a Grade II Listed residential property lies to the north of the application site. Lion House fronts onto the High Street and has a private garden to the rear, adjoining the application site.

2.0 PROPOSAL

- 2.01 The application site comprises of 0.30 hectares and the scheme proposes four new dwellings.
- 2.02 The original submission sought outline permission for the construction of five houses. The scheme has been amended and now seeks permission for four detached houses with associated access and parking, involving an attached double garage, two detached double carports and an integral garage, with landscaping the only matter reserved.
- 2.03 The proposed houses would be arranged as a continuation of the existing development in the cul de sac, and are of 4 distinct designs.
- 2.04 Plot 1 would sit adjacent to no.5 The Tracies, would have an attached garage and would measure 15.91 metres wide, a maximum of 9.76 metres deep, 4.7 metres to eaves and 7.6 metres to the ridge of its roof. It would project slightly forward of no.5 The Tracies, and would be a minimum of 3 metres from the boundary, 5 metres from the dwelling itself.
- 2.05 Plot 2 would be “L” shaped, measuring a maximum of 9.95 metres deep, 10.7 metres wide, 4.8 metres to eaves and 7.6 metres to the ridge of its roof. It would have a detached car port sited to the front, measuring 5.77 metres wide, 5.77 metres deep and 4.53 metres to the top of its roof.
- 2.06 Plot 3 would have 2 front facing dormer windows, and a single rear facing dormer window. It would measure 10.1 metres wide, a maximum of 12.31 metres deep, 4.8 metres to eaves and 8.2 metres to the ridge of its roof. This dwelling would also be served by a detached car port of identical dimensions to that above, which would sit to the front, facing into the cul de sac.
- 2.07 Finally, plot 4 would have an integral garage, and would measure 9.58 metres wide, 11.6 metres deep, 5 metres to eaves, 8.2 metres to the ridge of its roof. It would be sited rearwards of no.8 The Tracies, and would be 16 metres from this dwelling.

3.0 SUMMARY INFORMATION

3.01	Existing	Proposed	Change (+/-)
Site Area (ha)	0.30ha.	0.30ha.	0
No. of Residential Units	0	4	+4

4.0 PLANNING CONSTRAINTS

4.01 Adjacent to - Newington High Street Conservation Area.

4.02 Adjacent to Lion House, a grade II listed building.

5.0 POLICY AND OTHER CONSIDERATIONS

National Planning Policy Framework (March 2012)

5.01 The following policies and paragraphs of the National Planning Policy Framework (NPPF) are considered to be the most relevant:

5.02 **Paragraphs 7 and 8** set out that there are three mutually dependent facets to sustainable development – economic, social and environmental including protecting and enhancing the historic environment.

5.03 **Paragraph 14** explains the Framework's presumption in favour of sustainable development, stating that Local Planning Authorities should: '*positively seek opportunities to meet the development needs of their area*' and that decision takers should approve development proposals that accord with the development plan (or where development plan policies are out of date) without delay.

5.04 **Paragraph 15** states that Local Plans should follow the approach of the presumption in favour of sustainable development.

5.05 **Paragraph 17** outlines the overarching roles/core principles of the planning system, including to: take into account the needs of the residential and business communities; to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings and to encourage the effective use of brownfield land by re-using it. Planning should conserve heritage assets in a manner appropriate to their significance.

5.06 **Section 4** promotes sustainable transport for new development.

5.07 **Section 6** of the NPPF relates to the delivery of a wide choice of high quality homes.

5.08 **Paragraph 49** states that housing applications should be considered in the context of the presumption in favour of sustainable development.

5.09 **Paragraph 55** states that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities.

5.10 **Paragraphs 56 and 58** outline the importance and principles of good design in new development.

5.11 In relation to conserving and enhancing the natural environment the NPPF, at **paragraph 109**, states:

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

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

5.12 **Paragraph 186** outlines that LPAs should approach decision taking in a positive way to foster the delivery of sustainable development.

5.13 **Paragraph 187** states that LPAs should look for solutions rather than problems, and decision-takers at every level should seek to approve applications for sustainable development where possible. LPAs should work proactively with applicants to secure developments that improve the economic, social and environmental conditions of the area.

5.14 **Paragraph 215** states that due weight should be given to development plan policies adopted since 2004, according to their degree of consistency with the Framework.

The Swale Borough Local Plan 2017: "Bearing Fruits"

5.15 The following policies are relevant here:

- ST1 - Delivering sustainable development;
- ST3 – Settlement Hierarchy;
- CP3 – High quality homes;
- CP4 – requiring good design;
- DM7 – Vehicle parking;
- DM14 – General development criteria;
- DM19 – Sustainable design and construction;
- DM31 – Agricultural land;
- DM32 – Development affecting a listed building
- DM33 – Development affecting a conservation area.

6.0 LOCAL REPRESENTATIONS

6.01 32 letters of objection have been received from the local area and may be summarised as follows:

- Lack of detail on drawings;
- Development breaching Newington built-up area boundary line – creating a precedent in conservation area;
- Increase in traffic and congestion;
- Newington should be preserved as a village and “Green Belt buffer” – safeguarding its rural aspect;
- Housing stock in recent years has virtually doubled in the Borough;
- Increase in poor air quality in Newington;
- Previous applications refused on this site including appeals dismissed;
- Inaccuracies on plans – parcel of land adjoining no. 8 is separately owned;
- There is a public footpath across the proposed development;
- Objection to lack of new or altered vehicle access proposed;
- No details of builder, style of houses shown on plans;
- Inappropriate car parking;
- Dispute over classification of application site – described as ‘vacant field – scrub land’, but, actually originally an orchard;
- Loss of natural wildlife;
- Loss of established trees;
- Increase in pollution on High Street – building houses over the Newington village boundary;
- Loss of privacy and overshadowing;
- Loss of view;
- Development contrary to Policy BE5 of Kent Structure Plan;
- Inconsistent with EC policy by ‘shrinking natural heritage’;
- Reptile surveys should not be conducted during July and August;
- Reptile report makes no mention of insects and endangered species;
- Presence of established walnut tree;
- Land used for recreation by ramblers, children and walkers;
- Confusion over description of development proposal;
- Increase in noise.

6.02 One of these objection letters comments that they consider that the design of the proposed dwellings are of good quality.

7.0 CONSULTATIONS

7.01 Newington Parish Council raise objection and comment as follows:

“Newington Parish Council objects to this application as it is beyond the ‘built-up area’ of the Village. It is on land that was offered, considered and rejected by the Local Development Framework Panel in May 2016 when preparing recommendations to expand the planned dwellings per annum as part of the modifications to the Local Plan. On this basis the Parish Council believes this proposal should be rejected.

The development is on grade 1 agricultural land. The Parish Council remains concerned that the layout of the development leaves a significant gap between the proposed houses on plots 1 and 4 and between plots 2 and 3 and makes it possible for a future application to turn the close into a road - with access through to the

adjacent field, joining to the land beyond it which is currently subject to a planning application. Any loss of farmland through the extension of the built-up area is unacceptable to the Parish Council.

The outline application gives no indication of the design or alignment of the proposed development. It does not address the important issues of the effect of increased traffic on Callaways Lane or of increased air pollution in the Village centre.

We urge rejection of the application on these grounds.”

7.02 Swale Footpaths Group state:

‘Please check Definitive Map. ZR 61 crosses the site (though the route on the ground seems to be a dog leg rather than the diagonal shown on the Map). Please remind applicant that planning consent, even if granted, does not of itself divert or extinguish a PROW (which would require an Order under the Town and Country Planning Act), nor authorize any obstruction of it.’

7.03 Kent County Council Public Rights of Way and Access Service state:

- Public footpath ZR61 passes through part of the proposed site
- There is also a well walked route that is not recorded on the definitive map which passes through the middle of the site.
- The existence of the right of way is a material consideration. Should consent be granted, the development will impact upon the public use, enjoyment and amenity of the Public Right of Way.
- Please note that no furniture may be erected on or across Public Rights of Way without the express consent of the Highway Authority.
- Furthermore, there must be no disturbance of the surface of the right of way, or obstruction of its use, either during or following any approved development.
- Please make sure that the applicant is made aware that any planning consent given confers no consent or right to disturb or divert any Public Right of Way at any time without the express permission of the Highway Authority.

7.04 I am awaiting the comments of KCC Ecology and the Environmental Health Manager and will update Members at the Meeting.

8.0 BACKGROUND PAPERS AND PLANS

8.01 Application papers and drawings, including a Design and Access Statement and a brief Heritage Statement relating to planning reference 15/508683/OUT.

9.0 APPRAISAL

Principle of Development

9.01 The key issue for consideration is whether planning permission should be granted for a residential development on a site that lies outside the defined urban confines of Newington. In addition, the application site is not allocated for development in the Adopted Local Plan. Policy ST3 of Bearing Fruits 2031 sets out the settlement

strategy that emphasises development on brownfield land within built-up areas and on sites allocated by the Local Plan. Outside of these, new residential development will only be granted for certain limited exceptions. It is considered that, the application site is outside of the built-up area boundary and as such any housing development would normally be contrary to the Policy ST3 and not in accordance with the Development Plan.

- 9.02 In addition, the site amounts to grade 1 agricultural land. Policy DM31 of the 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. Development on best and most versatile agricultural land (specifically Grades 1, 2 and 3a) will not be permitted unless:

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

- 9.03 The site is not allocated for development by the local plan, there are alternative sites for the provision of housing (namely those sites allocated in the Local Plan) and there is no overriding need to develop this site. The proposed development would be contrary to this Policy.

- 9.04 Thus, the site lies outside any area where planning permission would normally be granted for residential development, and on grade 1 agricultural land, which affords the site a further layer of protection.

- 9.05 The key question for Members is therefore whether there are sufficient material considerations which weigh in favour of approval of this scheme. In this respect, there are a number of factors which weigh in favour of approval. Firstly, the site is comparatively well contained – it lies at the end of an existing cul de sac, and whilst verdant, it can clearly be seen in the context of the surrounding suburban development. Secondly, the site lies in a highly sustainable location – it is within easy walking distance of shops, services, the local primary school, a bus route and the mainline railway station.

- 9.06 With reference to its location at the end of the cul de sac, one could take the view that, despite its location outside the built up area boundary of the village, the development of this site would provide a rounding off of the end of the cul de sac and a completion of development here. In addition, the scheme could be considered to amount to a comparatively minor infill development.

- 9.07 This must be weighed against the fact that development of the site would be contrary to the Local Plan. This is a finely balanced decision, which Members should give very careful consideration to. The key question is whether the limited benefits of this development, as set out above, outweigh the fact that the site is outside the built up area of Newington and therefore contrary to the newly adopted Local Plan. I am, on balance, of the view that despite the specific circumstances of the site, which would not result in harm to the character and appearance or the intrinsic beauty of the

countryside, this is outweighed by the policy objection. I therefore consider the development to be unacceptable as a matter of principle.

DESIGN, IMPACT ON STREETSCENE & IMPACT ON RESIDENTIAL AMENITY

- 9.08 The proposed housing layout, as amended, reflects the general character of the surrounding local area. The four proposed detached houses will achieve reasonable separation distances to the site boundary and neighbouring properties. These new dwellings will present a continuation of the general streetscene along The Tracies.
- 9.09 Each proposed property has been provided with both a garage and associated access drive and, in each case, ample parking area. The proposed houses generally utilise a traditional form of roof configuration with a variety of architectural style and fenestration that is in-keeping with the visual character of the area. Principal elevations propose red multi stock facing brickwork with white casement windows, white rainwater goods and red / brown roofing tiles. The form of roof design and architectural style reflect the architectural vernacular within an established residential area.
- 9.10 These proposals have been designed specifically to respect the scale and mass of the residential character of the area that generally comprises of two storey houses - and will ensure that the new properties will respect the general character of the surrounding area.
- 9.11 The existing public footpath that passes through the site would be retained within the overall scheme however the formal alignment and the current use as evidenced 'on the ground' would be regularised by the subsequent diversion of the public footpath.
- 9.12 Members will note that landscaping is reserved for future consideration. In my view, there is nothing inherent within the site that would prevent an effective and appropriate landscaping scheme being secured.
- 9.13 The layout of the proposed dwellings and their relationship with the existing is such that, in my view, there would be no significant harm to residential amenity. The dwellings closest to the existing in The Tracies would be 5 metres (plot 1) and 16 metres (plot 4) from the closest dwellings, and their siting relative to those dwellings is such that no significant overshadowing, loss of light nor overlooking would occur. To the north, the boundary of the site located a minimum of 20 metres from the closest dwelling, and to the south the closest dwelling would be 30 metres from the boundary of the site. The southern two plots would give rise to limited overlooking of the rearmost parts of the gardens of Dromore and Langarth in Callaways Lane. However – this would not give rise to such harm to residential amenity that planning permission should be refused.
- 9.14 Each of the proposed dwellings would have an acceptable provision of private amenity space and I consider that the occupiers of the proposed dwellings would benefit from an acceptable level of residential amenity.

Heritage Impact

- 9.15 The site lies adjacent to the Newington High Street Conservation Area and to Lion House, a grade II listed building. Members will be aware that they are required to have regard to the desirability of preserving the setting of the listed building and preserving or enhancing the special character of the conservation area. These matters should be given very significant weight in the decision making process..
- 9.16 The site abuts the rear boundary of Lion House, which also amounts to the conservation area boundary.
- 9.17 In my view, the development proposed will not have a harmful impact on the special character of the conservation area. As I set out above, the proposed houses would complement the existing in the Tracies, and would be seen in that context. Views from the site to the conservation area are currently restricted due to the overgrown nature of the site, and whilst the development will be visible from the conservation area, it would not in my view give rise to harm to this designated heritage asset.
- 9.18 Equally, the proposed dwellings would not give rise to harm to the setting of the listed building. Lion House is set at a slightly higher level than the site, and whilst the proposed development and the listed building would clearly be indivisible, the proposed dwellings would not dominate the listed building, nor would they appear obtrusive from it or in the limited views towards it.

Ecology

- 9.19 I am awaiting the comments of the KCC Ecologist and will update Members at the Meeting.

Access and Parking

- 9.20 I am mindful that the LDF Panel in May 2016 decided not to allocate the site in the Local Plan on the basis of issues relating to access. Although the minutes do not record specifically what this relates to, I presume it relates to access to Callaways Lane from the A2. I am mindful that access here is difficult, but am of the view that the addition of 4 dwellings would not give rise to so significant an increase in vehicle movements that the convenience and safety of users of the highway would be harmed.
- 9.21 The proposed development would include independent access and parking for each of the detached houses. Each of the new dwellings will be provided with either a detached/attached garage together with further parking spaces on each of the plots. The proposed dwellings will have ample 'private' gardens allowing adequate storage facility for cycles and domestic refuse collection.
- 9.22 It is acknowledged that some local residents are concerned with a potential increase in traffic and parking which may be created by the new development. However, it is considered that the introduction of four dwellings with provision of their own parking spaces will have no adverse impact upon the existing streetscene or residential amenities of the local residents.
- 9.23 There is a public footpath, ref: ZR61 that passes through the site however it appears that the alignment of the footpath follows a 'line of desire' rather than the line according to the formal footpath records. It is understood that this footpath has existed on this current route for nearly 50 years. Within the development proposals, the public

footpath has been maintained where it enters and exits the site boundary however there will be a requirement to apply to Kent County Council for consent to divert this formal alignment in order to build the southernmost two houses however it will still be possible for this footpath to be retained within the overall scheme and would not extinguish such rights.

AIR QUALITY

- 9.24 Members will of course be aware that the site lies close to the Newington AQMA. In this regard, I am awaiting the comments of the Environmental Health Manager. However – it seems unlikely to me that the addition of 4 new dwellings would result in a material increase in vehicles using the A2, given the extremely high volume of traffic which uses it, and as such, it is equally unlikely that the development would have a significant detrimental impact on air quality within the village.

10.0 CONCLUSION

- 10.01 In my view, the proposed development would not give rise to harm to the nearby designated heritage assets, nor to visual or residential amenity. The parking provision proposed is acceptable, and I do not consider that the development would materially harm air quality within the village.
- 10.02 The key issue here is whether this development is acceptable as a matter of principle. I have set out above that this is a finely balanced decision – the development of this site would be contrary to the newly adopted Local Plan and as such would ordinarily be considered unacceptable. There are material considerations which weigh in favour of approval, but I am on balance not persuaded that planning permission should be granted. I therefore recommend that outline planning permission is refused.

11.0 RECOMMENDATION – REFUSE for the following reason:

- 1) The site is located outside the built up area of Newington and amounts to best and most versatile (grade 1) agricultural land. The development of the site is not necessary in order to provide for the objectively assessed need for housing within the Borough and there is therefore no overriding need that would justify the loss of this agricultural land. The proposed development would be contrary to Policies ST3 and DM31 of the Swale Borough Local Plan 2017 “Bearing Fruits 2031”.

The Council's approach to this application:

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

Offering pre-application advice.

Where possible, suggesting solutions to secure a successful outcome.

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

In this instance:

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

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

PLANNING COMMITTEE – 14 SEPTEMBER 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 – Land on south side of Hall House, Tunstall**

APPEAL DISMISSED

ENFORCEMENT APPEAL

Observations

Full support for the Council's analysis of the legal issues involved in this situation, and for the requirements of the enforcement notice.

- **Item 5.2 – Unit 5, Oakwood Farm, Ruins Barn Road, Tunstall**

APPEAL DISMISSED

DELEGATED REFUSAL

Observations

Full support for the Council's decision.

- **Item 5.3 – 2 Woodstock Cottages, Broad Oak Road, Sittingbourne**

APPEAL DISMISSED

DELEGATED REFUSAL

Observations

Full support for the Council's decision in the light of adoption of the Local Plan.

- **Item 5.4 – 13 Wises Lane, Sittingbourne**

APPEAL ALLOWED

DELEGATED REFUSAL

Observations

A decision that seems to misinterpret the Council's Supplementary Planning Guidance, ignoring the inevitably greater impact on amenity from a two storey extension compared to a single storey extension..

- **Item 5.5 – Costs application in relation to Appeal Ref: APP/V2255/C/16/3163374 Land at Holywell Lane, Upchurch, Kent**

COSTS REFUSED

Observations

The Council withdrew this appeal for technical reasons, and are considering further steps to be taken. The appellant's claim for costs was found by the Inspector to be without merit.

- **Item 5.6 – LAND AT NEW RIDES FARM, LEYSDOWN ROAD, EASTCHURCH**

APPEAL ALLOWED

AGAINST OFFICER RECOMMENDATION

Observations

A clear decision from both the Inspector and the Secretary of State in which they consider that the location of the turbines within the existing prison cluster and adjacent to the two existing turbines would not give rise to significant further harm to the landscape, and that the turbines would not otherwise give rise to any serious amenity concerns or environmental impacts. The decisions particularly reference that the appeal site is within an area clearly identified by the Council's (then emerging) Local Plan as being specifically suitable for wind-powered renewables.

- **Item 5.7 – Excelsior House, Ufton Lane, Sittingbourne**

APPEAL ALLOWED AND COSTS REFUSED

AGAINST OFFICER RECOMMENDATION

Observations

Members refused this application wholly on the basis of parking provision, despite the scheme complying with KCC Highways requirements. The Inspector considered the parking provision on this basis and found it acceptable. Members may recall approving an alternative scheme here with improved parking facilities.

- **Item 5.8 – Courtenay House, London Road, Dunkirk**

APPEAL DISMISSED

COMMITTEE REFUSAL

Observations

Full support for the Council's decision in the light of adoption of the Local Plan.

- **Item 5.9 – New Orchard Farm, Upper Road, Rodmersham**

APPEAL DISMISSED

DELEGATED REFUSAL

Observations

A very detailed decision fully supporting the Council's original decision to refuse this application.

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Appeal Decision

Inquiry Held on 11 July 2017

Site visit made on the same day

by Mrs H M Higenbottam BA (Hons) MRTPI

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

Decision date: 01 August 2017

Appeal Ref: APP/V2255/C/16/3155962

Land on south side of Hall House, Tunstall, Sittingbourne, Kent ME9 8DX

- 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 enforcement notice was issued on 8 July 2016.
- The breach of planning control as alleged in the notice is 'Without planning permission, the material change of use of the Land from agricultural land to land used as part of the residential garden to Tunstall Hall House, in addition to the creation of an ornamental pond and the erection of sheds, the extent of which would in the opinion of the Council, require the benefit of planning permission which as has not been granted.'
- The requirements of the notice are:
 - (i) Cease the use of any part of the Land as a domestic garden associated with Tunstall Hall House;
 - (iii) Remove any structures from the Land that are not associated only with agricultural use of the Land;
 - (iv) Remove the ornamental pond and its surrounding paving and restore the land to its previous levels and condition.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and variations.

Preliminary Matters

1. All oral evidence at the Inquiry was given under oath or affirmation.
2. The appeal on ground (g) was withdrawn at the Inquiry. The appeal continues on grounds (d) and (f) only.
3. The Council acknowledge that 1-6 School View were built in 1966 and that parts of the foul drainage, effluent systems and the septic tanks to serve those dwellings are on the appeal site. The Council confirmed that there was no intention that any of the septic tanks or any drain serving those properties would be the subject of the Notice.
4. The Council confirmed that the purpose of the Notice is to remedy the breach of planning control (section 173(4) (a) of the Act).

The Notice

5. The land registry documents name the dwelling that was once Tunstall Memorial Hall as Hall House. I will therefore correct the references to the dwelling so that it refers to Hall House in paragraph 2 and 3 of the Notice. This will cause no injustice or prejudice to either party.
6. A notice directed at a material change of use may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use, even if such works on their own might not constitute development or be permitted development or be immune from enforcement so that the land is restored to its condition before the change of use took place. (*Murfitt v SSE [1980] JPL 598, Somak Travel v SSE [1987] JPL 630*). However, where those works had been undertaken for a different and lawful use and could be used for that other lawful use even if the unauthorised use ceased, those works would not have facilitated the material change of use (*Bowring v SSCLG & Waltham Forest BC [2013 EWHC 1115 (Admin)]*).
7. Both parties accepted that the sheds referred to in the allegation were erected prior to the alleged material change of use and over four years ago. The sheds therefore did not facilitate the material change of use and, having been erected for over four years, as accepted by the Council, they are immune from enforcement action.
8. In the light of this I will correct the allegation to 'Without planning permission, the material change of use of the land from agriculture to residential use as a garden to Hall House and the creation of an ornamental pond with paving to facilitate that use.' I will also vary the requirements to follow on from this corrected allegation. Neither party objected at the Inquiry to this corrected allegation or the proposed variations to the requirements.

Appeal on ground (d)

9. In appealing on ground (d), the burden of proof is firmly on the appellant to demonstrate on the balance of probabilities that the development was lawful through the passage of time at the date when the enforcement notice was issued. For that to succeed the use of the land for residential use as a garden must have continued throughout a ten year period to the extent that enforcement action could be taken against it at any time during that period. The material date in this case is 8 July 2006 i.e. ten years before the enforcement notice was issued.
10. The appellant purchased Tunstall Memorial Hall, now known as Hall House, in July 2001. He then proceeded to convert the building into a dwelling, moving into it with his family at the end of 2001/beginning of 2002. He stated that he took the fences down between the end of the land historically associated with the Tunstall Memorial Hall and the appeal site and grass seeded the area in autumn 2002. He then mowed the grass two to four times a year. In around May 2008 he started mowing the grass once a week in the growing season.
11. Mrs Panton, previously owned the land the subject of the Notice, and it was a corner of the agricultural field she still owns to the south of the appeal site. Over the years this piece of agricultural land, that is the appeal site, became less and less viable to farm. When it was decided to sell the Tunstall Memorial

- Hall to be converted to a dwelling, in order to fund the new village hall, Mrs Panton offered the land to enhance the sale of that building. While the appellant had use of the appeal site from 2001, he did not own it until 2007. The evidence of the appellant, Mrs Panton and Mr Burgess is that the land has been used as residential garden since he first had use of the appeal site land.
12. A planning application was refused in August 2002 for the change of use of the appeal site to residential curtilage. This was dismissed at appeal¹ in February 2003. The Appeal Decision records that the boundary of the village is formed by the hedges of the properties fronting the road, including the appeal site. I take that to mean that a hedge existed between the site the subject of the current appeal, and the original land that went with the Tunstall Memorial Hall at that time. There is no dispute that the site visit for the appeal was made on 31 January 2003 as recorded on the Appeal Decision.
 13. In May 2007 planning permission was granted for a garage at Hall House. As part of the application process the Planning Officer visited the site and took photographs on 12 February 2007. Those photographs roughly show half of the appeal site was muddy and the appellant states that shrubs, trees and hedging were taken out and it was reseeded after that. I therefore find that at this time, at least part of the appeal site would not have been capable of use as a garden.
 14. In oral evidence the appellant stated he built the ornamental pond on the land in October 2013. Mr Bushell, a local resident, gave evidence that he retired at Christmas 2012 and that the ornamental pond was built in the following year, i.e. 2013. However, written evidence stated it was built in 2011. An aerial photograph dated 7/9/2013 (which is 9 July 2013) shows no pond on the land. An aerial photograph dated 4/20/2015 (which is 20 April 2015) shows the ornamental pond in situ. The appellant's evidence of when this ornamental pond was constructed is inconsistent. I therefore find, on the balance of probabilities, that the ornamental pond was created sometime between the dates of these two photographs in 2013 and 2015.
 15. The Council issued a Planning Contravention Notice (PCN) dated 19 February 2016. In answer to that PCN the appellant's agent confirmed that the use of the land is ancillary to Mr Bartholomew's role as a Tenant/Manager of Grove End Farm and that the land has not been used for any other purpose except '*on rare occasions when his role as a local resident involved in the Parish's community*', which I take to mean when the land was used for community purposes although no examples of such use was provided. At that time the appellant's agent confirmed that the ornamental pond was created in 2011, contrary to the aerial photographic evidence now before me. He also confirmed that the buildings located on the land were being used to store materials ancillary to the operation of Grove End Farm comprising quad bikes, farm tools, feed and hay. The appellant accepted at the Inquiry that he authorised his agent to provide these answers in the form they were to the Council.
 16. A number of complaints had been made to the Council over the years about the use of the appeal site. The Council's Enforcement Team Manager had visited the appeal site on a number of occasions, not always speaking with the appellant. On 22 December 2010 he visited the site. It was an unannounced

¹ APP/V2255/A/02/1102864

- visit. He spoke with Mr Bartholomew while at the site and his site notes record that Mr Bartholomew had placed a chicken shed next to his shed and that Mr Bartholomew stated that the field had been in his possession for over ten years and he asked whether he could claim it as his garden. It is recorded in the note that the land was not being used as a garden.
17. The Enforcement Team Manager, along with a colleague, carried out another site visit on 1 February 2011. The note of that visit states two sheds contain straw and chicken feed and that it was not being used as a garden and that the land is agricultural. These matters are recorded as having been discussed with Mr Bartholomew. The officers advised him that it was unlikely that planning permission for a material change of use would be granted given the previous appeal decision.
 18. In oral evidence to the Inquiry the Enforcement Team Manager recalled that the appellant, Mr Bartholomew, had consistently stated that the appeal site was not part of his garden. At the February 2011 site visit he specifically alleged use for residential purposes and Mr Bartholomew advised he kept chickens and the use was agricultural. The Enforcement Team Manager had viewed the land on a number of occasions from the footpath and it was rough grass, not cut short, did not give the appearance of being used as part of the garden and there was no domestic paraphernalia on it during 2010/2011. The Enforcement Team Manager stated he had discussed whether there had been a material change of use to garden earlier with colleagues but that on balance it was felt that there had not been. However, by 2016, just before serving the PCN, there were clear indicators that there had been a material change of use of the land to residential garden.
 19. A range of aerial photographs have been provided. The Council's aerial photographs in 1999, 2002 and 2008 show a boundary between the garden of Hall House and the appeal site. In 1999 crops extend almost to the boundary with Hall House. In 2002 there is a substantial vegetative boarder between the appeal site and Hall House. The appeal site and the agricultural field appear distinct. The land on the appeal site is rough grass. In 2008 there is an altered boundary between the appeal site and Hall House, and there is a clear line shown across the photograph, although much of the boundary vegetation has been removed. In 2012 the boundary between the two areas seems to have been removed, although there is a difference in the quality of the grass, being rougher, on the appeal site land than that of the Hall House grounds.
 20. The appellant's aerial photographs are from 2003, 2008, 2013 and 2015. In 2013 (date 7/9/2013) there is a vehicle on the appeal site, the shed structure/s are apparent and the land including around the septic tanks, has been mown. There is no pond in the 2013 photograph. In 2015 (dated 4/20/15 i.e. 30 April 2015), the pond is in situ, the structure/s and a number of vehicles are on the land, no fence is apparent between the appeal site and the Hall House land.
 21. The evidence is at times contradictory from the appellant and his witnesses. However, it is clear that the people who gave evidence in support of the appellant understood it had always been the intention of the appellant to utilise the land the subject of the Notice as a residential garden. In fact, Mrs Panton specifically made the land available to the appellant to purchase for that purpose. The evidence suggests it was always the intention of the appellant to pursue a residential use of the appeal site as garden to the dwelling he had

created in the Tunstall Memorial Hall. This is despite planning permission being refused and then an appeal being dismissed in 2003 for that proposed use. However, the way in which the land was used evolved and was not a residential garden for many years after the occupation of the Tunstall Memorial Hall as a dwelling.

22. I also note that the occupiers of 1, 4, 5 and 6 School View support the use of the land as residential and consider such a use gives security for their properties' foul drainage.
23. To my mind, the creation of the ornamental pond, sometime between 2013 and 2015, was a tipping point as to how the land was used. In my view, the creation of the pond clearly facilitated a material change in use of the land to residential garden. Around the time the ornamental pond was created the land was more managed and became a manicured area, with more clearly defined residential use indications such as frequent mowing of the grass in the growing season, the creation of the pond and the demarcation between the appeal site and the other land being removed. These can be seen on the aerial photographs as the colour of the grass changes and the land appears more incorporated into the land historically associated with the original land at Hall House. I therefore find, as a matter of fact and degree, that a material change of use of the land the subject of the Notice has taken place and that this is a breach of planning control. That breach, on the balance of probabilities, has not been taking place for 10 years prior to the issue of the Notice and the appeal on ground (d) fails.

Appeal on ground (f)

24. This ground of appeal is that the requirements of the notice are excessive and that lesser steps would overcome the objections. In appealing on ground (f) the appellant must specify specific lesser steps which, in their view, would overcome the objections to the appeal development.
25. The appellant put forward two alternative lesser steps. Either only cease the use of the land as residential, thus retaining the ornamental pond as it is, or to cease the use of the land as residential and remove the paving around the ornamental pond. In both cases the pond would remain on the site to, in the appellant's view, provide improved the natural habitat for the flora and fauna of the area.
26. The pond with the paving around it is an attractive man made residential pond appropriate for a residential garden. However, it is not a natural or semi-natural feature designed specifically for indigenous wildlife. I therefore on the basis of what is before me, do not consider that the retention of the pond to provide a water based habitat is appropriate in this setting, adjacent to an arable field.
27. The power to allow an appeal under ground (f) in s174(2) of the Act is not a power to grant planning permission. I have found that the creation of the ornamental pond facilitated the material change of use. The purpose of the Notice is to remedy the breach of planning control. It thus follows that the removal of the ornamental pond from the land is necessary to remedy the breach of planning control and is not excessive.

28. I therefore find that the requirements of the Notice, as varied, would not exceed what is necessary to remedy the breach of planning control. The appeal under ground (f) fails.

Conclusion

29. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations.

Formal Decision

30. It is directed that the enforcement notice be corrected by:

- The deletion of the word 'Tunstall' after 'known as' and before 'Hall House' in paragraph 2; and
- The deletion, at paragraph 3, of the words 'agricultural land used as part of the residential garden to Tunstall Hall House, in addition to the creation of an ornamental pond and the erection of sheds, the extent of which would in the opinion of the Council, require the benefit of planning permission which as has not been granted' and the substitution thereto of the words 'agriculture to residential use as a garden to Hall House and the creation of an ornamental pond with paving to facilitate that use'.

And varied by:

- Delete the words 'of any part of the Land as a domestic garden associated with Tunstall Hall House' in paragraph 5 (i);
- Delete paragraphs 5 (iii) and (iv); and
- Insert the following after paragraph 5 (i) '(ii) Remove the ornamental pond and paving from the land and restore the land to its condition before the breach took place.'

Subject to these corrections and variations the appeal is dismissed and the enforcement notice is upheld.

Hilda Higenbottam
Inspector

APPEARANCES

FOR THE APPELLANT:

Mr Burke	Agent for the appellant
He called	
Mr P Bartholomew	Appellant
Mrs P Panton BEM	Owner of Grove End Farm, previous owner of the appeal site
Mr T Ormesher	National Farms Union
Mr L Burgess	Local resident

FOR THE LOCAL PLANNING AUTHORITY:

Ms Lawson	Of Counsel, instructed by Swale Borough Council
She called	
Mrs Murton	Senior Planning Officer, Swale Borough Council
MRTPI BA (Hons)	

INTERESTED PERSONS:

Mr Bushell	Local resident
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DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Proof of evidence and witness summary bundle submitted by the appellant.
- 2 Signed statement of common ground submitted by the appellant.
- 3 Signed note withdrawing ground (g) submitted by the appellant.

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Appeal Decision

Site visit made on 18 July 2017

by **C Jack BSc(Hons) MA MA(TP) MRTPI**

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

Decision date: 2 August 2017

Appeal Ref: APP/V2255/W/17/3171794

Unit 5, Oakwood Farm, Ruins Barn Road, Tunstall, Sittingbourne, ME9 8AA

- 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 and Mrs Alex Wilkins against the decision of Swale Borough Council.
 - The application Ref 16/507037/FULL, dated 23 September 2016, was refused by notice dated 21 November 2016.
 - The development proposed is the residential use of outbuilding, side extension and alterations to roof with associated car parking and landscaping.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Supreme Court handed down judgement on the Suffolk Coastal District Council v Hopkins Homes Ltd and SSLG, Richborough Estates Partnership LLP and SSLG v Cheshire East Borough Council case on 10 May 2017. Having regard to the judgement, I do not consider that it has any direct implications for the cases of the parties in this appeal.
3. The parties agree that the residential re-use of the appeal site (Unit 5) has been established through planning permission Ref SW/01/0763, which provided for the conversion of the building to a single storey dwelling together with the residential conversion of the adjacent oast house. This permission has been implemented, with several of the residential units created being occupied. The unit immediately adjacent to Unit 5 is currently being converted. No conversion works have yet been carried out to Unit 5.

Main Issue

4. The main issue is the effect of the proposed development on the character and appearance of the area.

Reasons

5. Unit 5 is a modest, single-storey agricultural type building, constructed principally of brick, timber and clay tiles, and forming part of a group of buildings formerly associated with Oakwood Farm. The site lies in open countryside and shares access from Ruins Barn Road with the residential units in the adjacent oast building and Oakwood Farm Cottages nearby. Unit 5 is well set back from the road, beyond the oast building.

6. It is proposed to extend Unit 5 to the side to provide a wider building of increased height, which would allow for residential accommodation at first floor level. There is some discrepancy between the appellants' and the Council's measurements, but the increase in ridge height would be around 1.65m to 1.8m and the increased width around 3m to 3.3m. The new roof would be barn-hipped with several rooflights, and a number of domestic-grade doors and windows would be added to the building, which currently has limited openings, including a window in each end and a partially closed-up large doorway.
7. Saved Policy RC6 of the Swale Borough Local Plan 2008 (SWLP) generally seeks to restrict the residential conversion of rural buildings, except in three specified circumstances, which are essentially irrelevant to this case as the principle of a residential re-use has been established. However, the policy goes on to advise that in all cases the building should be capable of conversion without the need for significant extension, alteration or reconstruction, among other things. The extent and nature of the extension proposed would be such that a three-bedroom, two-storey dwelling would result, which would be significantly larger than the existing building. The building would be clearly visible in public views across fields from the road and from the footpath that passes nearby.
8. While the enlarged building would remain generally subservient to the much more substantial oast building, the overall scale and appearance of the resulting building would be significantly altered from its current form. I note that traditional materials are proposed, and that details of the design, such as the barn hips, would reflect the agricultural origins of the building to some degree. However, the altered building would take on an overall domestic appearance, which together with its increased scale would significantly and unduly detract from its original form and character that is reflective of, and entirely consistent with, its historic grouping and wider countryside setting. I acknowledge that the extant residential permission for the building includes domestic doors and windows. While some domestication of the character of the building would be inevitable, the overall extent of alteration and enlargement of the building as permitted would be significantly less than in the scheme before me.
9. The Council's supplementary planning guidance, 'The Conservation of Traditional Farm Buildings' 2011 (SPG), sets out that the Council wishes to protect the very best of its rural buildings. While there is limited evidence before me upon which to determine whether Unit 5 meets the SPG definition of a traditional farm building in relation to the principle of residential re-use, some of the general advice in relation of the physical conversion of farm buildings is applicable and echoes some aims of Policy RC6. In particular, the SPG sets out that it will not normally be appropriate to extend the building to accommodate the new use, and that no window openings should be made in roofs. The proposal would be inconsistent with the SPG in these respects, notwithstanding that several roof lights have been inserted into the oast building.
10. In light of the above, I conclude that the proposed development would harm the character and appearance of the area. It would therefore conflict with saved Policy RC6 of the SBLP, the relevant criteria of which are set out above. It would also conflict with saved SBLP Policies E1 and E19, which set out general development and design criteria including to protect and enhance the natural and built environments and reinforce local distinctiveness; Policy E6,

which seeks to protect and enhance the countryside including through the re-use of rural buildings in accordance with Policy RC6; Policy E9, which seeks to protect the quality and character of the landscape including by minimising adverse impacts of development; and Policy E24 which seeks to ensure that extensions to buildings are in scale in height and massing in relation to its surroundings or individual details.

11. The saved policies of the SBLP pre-date the National Planning Policy Framework but their aims are generally consistent with the aims of the Framework in relation to design and recognising the intrinsic character and beauty of the countryside. I have therefore afforded them significant weight in this appeal.

Other Matters

12. I note that planning permission SW/99/78 allowed for an office building on the site of similar footprint and massing to the proposed development. However, the evidence before me indicates that permission was not implemented and so would no longer be extant. It also dates from around 18 years ago and therefore from a superseded local and national planning policy context. Furthermore, the Council's report advises that the enlarged building was accepted in connection with the commercial use of the main premises to allow greater employment potential.
13. The appellants consider that the scheme would enhance the appearance of a rundown, utilitarian building and that landscaping and topography would ensure no adverse impacts. While the building is somewhat rundown, its utilitarian nature forms part of its rural character. Landscaping could improve the appearance of the site, but would not fully screen the resulting building from public views or override the conflict with the development plan I have identified above.
14. I also note the views that the proposal would make best use of previously developed land, and would be located around 1.5 miles from Sittingbourne town centre. These factors relate mainly to the principle of residential use, which is not in dispute, and are therefore of limited weight in this case.
15. I conclude that none of the matters discussed in this section of my decision add materially to the case for or against the appeal.

Conclusions

16. For these reasons, and having regard to all matters raised, I conclude that the appeal should be dismissed.

Catherine Jack

INSPECTOR

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Appeal Decision

Site visit made on 18 July 2017

by **C Jack BSc(Hons) MA MA(TP) MRTPI**

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

Decision date: 2 August 2017

Appeal Ref: APP/V2255/W/17/3174963

2 Woodstock Cottages, Broad Oak Road, Sittingbourne, Kent ME9 8AD

- 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 Mr Michael Fuller against the decision of Swale Borough Council.
 - The application Ref 16/507437/OUT, dated 11 November 2016, was refused by notice dated 10 January 2017.
 - The development proposed is described as a 'bungalow and double garage on land belonging to 2 Woodstock Cottages'.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was made in outline with all matters reserved. I have had regard to the site location plan, Drawing No 1619/A, which shows the appeal site outlined in red, and the block plan, Drawing No 1619, which shows the footprint of the proposed bungalow and detached garage shaded in red. However, as all matters are reserved, I have regarded the footprint as indicative only, and have based my decision on the principle of a single residential dwelling on the site.
3. The Council has received the Inspector's Report on the Examination of the Swale Borough Local Plan, dated 20 June 2017 (the emerging LP). The report, which relates to the emerging LP referred to as 'Bearing Fruits 2031' in the Council's decision notice, concludes that subject to recommended main modifications, the emerging LP meets the criteria for soundness in the National Planning Policy Framework (the Framework) and is therefore capable of adoption.

Main Issues

4. The main issues are:
 - Whether the proposal would result in an acceptable pattern of development, with particular regard to settlement strategy and accessibility to services; and
 - The effect of the proposed development on the character and appearance of the area, including the setting of the adjacent listed building.

Reasons

5. 2 Woodstock Cottages (No 2) lies in the countryside, outside the defined built up area of Sittingbourne, where there is a generally rural character and appearance, notwithstanding the nearby Kent Science Park. There is a large detached garage to the side of No 2, which would remain. The appeal site would be accessed from the lane, Broad Oak Road, via a new access drive which would pass between the garage at No 2 and the boundary with 3 Woodstock Cottages (No 3). No 3 is a Grade II listed building. The bungalow would be set well back from the road, behind an existing summer house, patio and pond currently associated with No 2. The proposed detached garage would be situated forward of the pond.

Pattern of development

6. Saved Policy H2 of the adopted Swale Borough Local Plan 2008 (SBLP) sets out that new residential will be directed to allocated sites and other sites within built-up areas (BUA), as defined by the settlement hierarchy of saved Policy SH1 of the SBLP. The appeal site does not meet either of these specifications, being situated outside the BUA where new residential development is subject to the exceptional circumstances criteria set out in saved SBLP Policies E6 and RC3. Policy E6 advises that development in the countryside will be restricted to that which falls within a number of specified criteria, in the interests of protecting the countryside, while Policy RC3 relates to helping to meet identified rural housing needs. There is no significant evidence before me to demonstrate that the proposed bungalow would fall within any of the exceptions listed in these two policies, including that there is no identified relationship to a relevant local housing needs survey, or specific evidence that any such need could not be met within a BUA.
7. The emerging overarching settlement strategy essentially carries forward a hierarchy approach with defined BUAs, as set out in emerging Policy ST3, which advises that outside the BUA boundaries, development will not be permitted, unless it is supported by national planning policy and it is demonstrated that it would contribute to protecting the intrinsic value and beauty of the countryside, among other things. Furthermore, for the same reasons as above, it has not been shown that exceptions criteria have been met, as set out in emerging Policy DM 9, which relates to affordable housing to meet local needs in rural areas.
8. While the site would not be spatially isolated from other buildings, being proposed near a small cluster of dwellings, it would be generally isolated in functional terms from day to day services and facilities. I saw during my site visit that the lane outside the site has no dedicated footway or street lighting, and I saw no bus stops nearby. Furthermore, I consider that the distance to Sittingbourne town centre is such that it would be generally unattractive for future residents of the scheme to make journeys to access services there and elsewhere by any mode other than private vehicles. Moreover, I am not persuaded that the proposal meets any of the special circumstances set out in paragraph 55 of the Framework.
9. In light of the above, I conclude that the proposal would not result in an acceptable pattern of development, with particular regard to settlement strategy and accessibility to services. It would therefore conflict with saved Policies H2, E6 and RC3 of the SBLP and with emerging LP Policies ST3 and

DM9, the relevant criteria of which are set out above. It would also be inconsistent with paragraph 55 of the Framework.

Character and appearance, including the setting of the listed building

10. The development would introduce a new dwelling in a position set notably behind the existing row of dwellings, the principal buildings of which are set modestly back from the road, to around the same degree as each other, and have principle elevations facing onto the road. While all details are reserved, it is apparent from the indicative block plan that the development would have a significantly narrower frontage in the street scene, and that the proposed garage would be likely to be the most visually apparent element of the scheme when viewed from the lane. The siting of a new bungalow on the appeal site would therefore be significantly at odds with the layout of nearby dwellings and the contribution the cluster of buildings makes to the established, low-key, rural locality, to the detriment of the character and appearance of the area. I therefore conclude that the development would be contrary to saved Policy E1 of the SBLP, which sets out general development criteria, including that proposals should reflect the positive characteristics and features of the site and locality.
11. As a listed building No 3 is a designated heritage asset, which dates from the 16th Century and is set in good sized gardens. From the listing description and other evidence before me, I consider that the significance of the heritage asset derives primarily from the age, form and historic fabric of the building, and the specified features of special interest.
12. Section 66(1) of the planning (Listed Buildings and Conservation Areas) Act 1990 states that, 'in considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State, shall have special regard to the desirability of preserving the building or its setting...'. Paragraph 132 of the Framework is clear that great weight should be given to a heritage asset's conservation and that its significance can be harmed by development within its setting.
13. I have identified that an additional dwelling at the site would be detrimental to the character and appearance of the vicinity generally and I consider that it would, as a result, have an adverse impact on the wider setting of the listed building, which would include the cluster of buildings it is set among. On the basis of the outline details provided and having regard to the degree of separation between the site and No 3, the buffer that would be provided by the existing boundary hedge and summerhouse, and that matters such as design and landscaping are reserved, I acknowledge that these factors may moderate the effect of a new bungalow in relation to No 3 to some degree.
14. However, this does not override the in-principle harm to setting of the listed building that would arise in relation to the character and appearance of the locality, and the consequent negative effect that this would have on the significance of the heritage asset. The proposal would therefore also conflict with saved Policy E14 of the SBLP and emerging LP Policies CP 8 and DM 32, which respectively and among other things essentially require that where development would affect a listed building and/or its setting the building's special interest and its setting will be preserved or enhanced.

15. As a result, I further conclude that the proposed development would have a harmful effect on the heritage asset by failing to preserve the setting of the listed building, which is a matter of considerable importance and weight. However, I quantify the harm to the significance of the heritage asset as less than substantial, having regard to Paragraphs 133 and 134 of the Framework. Where a development would lead to less than substantial harm, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use. I consider the various benefits of the proposal below.

Other Matters

16. The appellant is of the view that the Council is failing to meet its housing targets. However, this view is not substantiated by the Inspector's recent report on the emerging LP, which confirms that the Council has demonstrated that there is a five year deliverable supply of sites to meet the requirements of the Framework, and that the plan identifies sufficient deliverable sites to meet the objectively assessed need for housing in full. Having regard to the judgement handed down by the Supreme Court on the *Suffolk Coastal District Council v Hopkins Homes Ltd and SSLG, Richborough Estates Partnership LLP and SSLG v Cheshire East Borough Council* case on 10 May 2017, I consider that relevant policies for the supply of housing should be considered up-to-date. Therefore, the presumption in favour of sustainable development in paragraph 14 of the Framework is not engaged in this case. Furthermore, having regard to paragraph 216 of the Framework, I have afforded very substantial weight in this appeal to relevant policies of the emerging LP, which are now at a highly advanced stage of preparation.
17. I acknowledge there would be a number of benefits of the proposed development, in particular that it would result in one additional dwelling. Other benefits include that it would provide a low maintenance, energy efficient dwelling to the local stock and have associated economic and social benefits. As a single dwelling, these benefits would be very modest but I have afforded them a little weight in favour of the proposed development. However, this is not sufficient to outweigh the significant harms that I have identified in relation to settlement strategy, accessibility to services, and the character and appearance of the area. Moreover, it does not outweigh the harm that would arise by failing to preserve the setting of the listed building, to which I afford considerable weight.
18. I understand the appellant's desire to create a new home for his own occupation. However, personal circumstances can seldom outweigh general planning considerations and do not outweigh the harms identified in this case.

Conclusion

19. For these reasons, and having regard to all matters raised, I conclude that the appeal should be dismissed.

Catherine Jack

INSPECTOR

Appeal Decision

Site visit made on 24 July 2017

by Clive Tokley MRTPI

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

Decision date: 3 August 2017

Appeal Ref: APP/V2255/D/17/3174773
13 Wises Lane, Sittingbourne, ME10 1YN.

- 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 and Mrs Mark Sears against the decision of Swale Borough Council.
 - The application Ref 17/500634/FULL dated 3 February 2017 was refused by notice dated 16 March 2017.
 - The development proposed is a first floor rear extension and change of roof to existing conservatory.
-

Decision

1. The appeal is allowed and planning permission is granted for a first floor rear extension and change of roof to existing conservatory at 13 Wises Lane, Sittingbourne, ME10 1YN. The permission is in accordance with the terms of the application, Ref 17/500634/FULL dated 3 February 2017, 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: 100117-001, 100117-002, 100117-003, 100117-004 rev A, 100117-005 and 100117-006.
 - 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.

Main Issue

2. The Council raises no concern about the proposed changes to the roof of the conservatory and I have no reason to take a different view. The officer report comments on the design of the extension but this is not reflected in the refusal reason. The main issue is the effect of the first floor rear extension on the living conditions of the occupiers of No 11 Wises Lane.

Reasons

3. No 13 Wises Lane is a semi-detached dwelling attached to No 11. Both houses have full-width flat-roofed single-storey rear extensions of the same depth. No

13 has been further enlarged by a conservatory. The proposed first floor extension would be added to the masonry extension and its rear wall would therefore align with the rear ground floor walls of Nos 13 and 11.

4. The refusal reason is not specific but the officer report indicates that the Council's concern lies with the effect of the proposal on No 11 as regards light and outlook. The first floor extension would not be seen from the ground floor windows of No 11 and would therefore have no effect on outlook. The flank wall would be almost on the boundary with No 11 and would be in view from the two bedroom windows at first floor level.
5. The Council's guidelines in *Designing an Extension A guide for Householders* (the guidelines) consider the effect of extensions on the light and outlook of neighbouring occupiers. The guidelines indicate that whilst single storey extensions of up to 3m may be acceptable first floor extensions should not exceed 1.8m. This advice is accompanied by an illustration of an extended dwelling between two un-extended houses.
6. Whilst the proposal is a first floor extension its flank wall would be the equivalent of that of a single storey when seen from the bedroom windows of No 11. The pitched roof above would be angled away from No 11 and would have a limited effect on outlook from those windows. The rearward projection of 3m would not exceed the maximum for single storey extensions set out in the guidelines and in my view the proposal would not unacceptably harm the outlook from the rear bedrooms at No 11.
7. The extension would be to the south of No 11 and would result in some overshadowing of the flat roof of No 11 and, to a limited extent, the first floor rear wall. However taking account of the relative height of the proposed extension as compared with the level of the rear windows I consider that the effect on daylight in the bedrooms would not be materially different from that which would arise from a 3m single storey extension on ground floor windows. Whilst the proposal would cast a shadow over the rear garden I consider that this would not materially diminish natural lighting in the ground floor rooms of No 11.
8. The first floor extension would be seen when looking towards the houses from the rear garden of No 11; however whilst it would change the appearance at the rear it would not project beyond the ground floor rear wall of No 11. I consider that taking account of the existing extensions the proposal would not be an over-dominant structure and would not unacceptably harm the outlook from the rear garden.
9. As I indicate above the first floor extension would result in some additional overshadowing of the garden at No 11; however taking account of the size of that garden and its relatively open aspect I consider that the living conditions of the occupiers of that dwelling as regards sun light reaching the garden would not be materially harmed.
10. The proposal would not conflict with Policies E1 and E24 of *Swale Borough Local Plan 2008* that seek to ensure that residential amenity is protected.

Conclusion

11. Taking account of all matters I have concluded that the proposal would not unacceptably harm the living conditions of the occupiers of No 11 Wises Lane as regards light and outlook and that the appeal should succeed. I have imposed the usual conditions governing the commencement of development and identifying the approved drawings. In order to ensure a satisfactory appearance I have imposed a condition requiring that the external materials should match those of the existing house.

Clive Tokley

INSPECTOR

Costs Decision

Hearing held on 18 July 2017

by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)

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

Decision date: 3 August 2017

Costs application in relation to Appeal Ref: APP/V2255/C/16/3163374 Land at Holywell Lane, Upchurch, Kent

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Paddy Delaney for a full award of costs against Swale Borough Council.
 - The hearing was in connection with an appeal against an enforcement notice alleging failure to comply with Condition No1 of planning permission Ref SW/01/0561.
-

Decision

1. The application for an award of costs is refused.

The submissions for Mr Delaney (the Appellant)

2. The Appellant alerted the Council to his concerns about the wording of the notice when he made the appeal on 17 November 2016. On that date he sent an email which included the words 'I do worry about the breach as alleged. Please note my concerns. ... I am concerned the notice may not be right and wonder whether if it would not be best to withdraw it and determine the application first'. The concerns were also mentioned in a letter dated 16 November 2016 to the Council.
3. If the notice had been withdrawn at that time there would have been no need for the Hearing today, and the Appellant would not have incurred unnecessary costs and expense.

The response by the Council

4. The Council appreciate that the notice was withdrawn during the Hearing but it maintains the stance that it is a valid enforcement notice that could be enforced. However, due to the discussions that took place during the Hearing, including the comments by the Inspector, given the nature of possible outcomes depending on the decision made, the Council considered it prudent to reconsider its position.

Reasons

5. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party

- applying for costs to incur unnecessary or wasted expense in the appeal process¹.
6. The notice was issued on 26 October 2016 and the appeal was made on 16 November 2016 on grounds (a), (b) and (f). At that time the Appellant submitted his full grounds of appeal and his supporting documents. Nothing further was submitted by the Appellant except clarification of the plans at my request about a week before the Hearing.
 7. The Council submitted all the required documents in accordance with the timetable and also provided some documents near to the date of the Hearing in response to my request and to bring me up-to-date with the emerging Local Plan which was due for adoption on 26 July 2017.
 8. Although the Appellant alerted the Council to his concerns about the terms of the notice, the concerns were not elaborated on. The concerns were merely as stated above in very general terms and I note that the Appellant also said 'There is a breach of planning control, but I do not think it is a stated'. The admission that Condition No 1 was not being complied with, albeit that the Appellant disputed that the condition applied to the appeal site, is stated in the grounds of appeal².
 9. The planning history of the appeal site as shown on the notice is complicated given planning permissions granted in the past, variations of those permissions and differences in the various 'red line' sites to which those permissions applied together with the delineation of the appeal site, the subject of the notice. Despite the discussions that took place at the Hearing the question what conditions applied to the appeal site, the subject of the notice, remained largely unresolved.
 10. However, one matter that was clarified was that the 'personal condition', that is, Condition No1 of planning permission Ref SW/01/0561, did apply to the appeal site and the Appellant conceded that he was in breach of it as alleged on the notice and as referred to above. In the circumstances the Appellant withdrew his ground (b) appeal.
 11. With regard to the ground (a) appeal, it was apparent from the grounds of appeal and the discussion at the Hearing that the Appellant was seeking planning permission for a development that was not the subject of the breach of planning control³ and that success in this appeal would not assist him in his objective. Nor, given the lack of clarity about what conditions applied to the appeal site, would success by the Council necessarily achieve its aims.
 12. Positive discussions took place during the Hearing about ways to resolve the various planning issues that had arisen and, after consideration, the Council withdrew the notice on the understanding that the Appellant would submit a planning application and, if necessary, the Council would serve a further notice in different terms.
 13. The PPG advises that costs may be awarded against a Council for unreasonable behaviour if it withdraws an enforcement notice without good reason⁴. Taking

¹ PPG Appeals Paragraph 030

² Paragraph 1.2

³ Paragraph 5.22 of the Appellant's grounds of appeal and the layout at Appendix 10

⁴ PPG Appeals Paragraph 047

into account the matters set out above I consider that the Council did have good reason to withdraw the notice and that it did not act unreasonably in so doing.

Conclusions

14. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Gloria McFarlane

Inspector

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Department for
Communities and
Local Government

Mr Richard Frost
Savills
Wessex House
Priors Walk
East Borough
Winbourne, BH21 1PB

Our ref: APP/V2255/W/15/3014371

09 August 2017

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78 APPEAL MADE BY
AIRVOLUTION ENERGY LTD
LAND AT NEW RIDES FARM, LEYSDOWN ROAD, EASTCHURCH ME12 4DD
APPLICATION REF: SW/13/1571**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Paul Griffiths BSc(Hons) BArch IHBC, who held a public local Inquiry which sat on 6-8 April 2016 and 25 October 2016, with the noise evidence and closing submissions being dealt with in writing, and which closed on 24 January 2017, against the decision of Swale Borough Council (“the Council”) to refuse your client’s application for planning permission for the erection of four wind turbines with a maximum blade tip height of up to 126.5 metres together with a substation and control building, associated hardstandings, an improved junction access, connecting internal access tracks, and other related infrastructure, in accordance with application ref: SW/13/1571 dated 20 December 2013.
2. On 24 March 2016, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

Inspector’s recommendation and summary of the decision

3. The Inspector recommended that the appeal be allowed and planning permission granted subject to conditions.
4. For the reasons given below, the Secretary of State agrees with the Inspector’s recommendation to allow the appeal and grant planning permission. A copy of the Inspector’s report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Environmental Statement

5. In reaching this position, the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental

Impact Assessment) Regulations 2011 and the supplementary environmental information submitted before the inquiry opened. Having taken account of the Inspector's comments at IR4-5, the Secretary of State is satisfied that the Environmental Statement and Addendum comply with the above Regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal.

Policy and Statutory considerations

6. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case the development plan consists of the adopted Swale Borough Local Plan (2008) (LP). The Secretary of State considers that the development plan policies of most relevance to this case are those described at IR10-14.
7. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'). He has also had regard to ETSU-R-97: *The Assessment and Rating of Noise from Wind Farms* (1996).
8. As this planning application had already been submitted to the Council when the Local Planning Written Ministerial Statement (WMS) of 18 June 2015 was published, the Secretary of State agrees with the Inspector at IR22 that the transitional arrangements specified therein apply.

Emerging plan

9. The Secretary of State agrees with the Inspector at IR15 that, given the advanced stage of the emerging Local Plan (ELP), its policies should be afforded significant weight.

Main Issues

10. The Secretary of State considers that the main issues in this case are those set out by the Inspector at IR160 –161.

The policy approach

11. The Secretary of State has carefully considered the Inspector's reasoning at IR162-163 with regard to the policy approach to be taken. He agrees with the Inspector and the main parties (IR164) that LP Policy U3, the lead policy, can only make sense if LP policies E1, E9 and E19 are interpreted in a subsidiary, and more pragmatic fashion, using the approach taken by LP Policy U3 to the balance between benefits and harm. He also agrees with the Inspector at IR163 that it is evident that ELP Policies DM20 and DM24 follow that path too.

Landscape and Visual Effects

12. For the reasons given at IR164 -173, the Secretary of State agrees with the Inspector that the proposal would not have any significantly harmful impacts in terms of landscape or visual effects on the Landscape Character Areas (LCA) within which the wind turbines would lie, or on others further afield that they would be visible from. He agrees with the Inspector at IR169 that the Council clearly found the existing wind turbines that have been erected adjacent to HMP Stanford Hill acceptable in landscape terms and that it is difficult to square that with the suggestion that the vertical emphasis of the wind turbines

now proposed and their alien moving features will be in complete contrast to the flat and horizontal landscape. He also agrees with the Inspector's findings at IR173 that the wind turbines would be seen as part of the already dominant prison cluster, with its associated wind turbines, rather than as a separate intervention into the landscape of the marshes; and that they would not reduce, to any appreciable degree, the sense of tranquillity and isolation one feels when using the marshland footpaths.

13. Furthermore, the Secretary of State agrees with the Inspector that, for the reasons given at IR174, the proposal would not have any significantly harmful impact in terms of landscape or visual effect on the LCAs in which they would lie or others from which they would be visible. The Secretary of State therefore also agrees with the Inspector at IR175 that it is difficult to understand the Council's position when, cognisant of the existing installation, their own ELP endorses the area within which the appeal site lies as one suitable for large scale wind energy development. Overall, therefore, the Secretary of State agrees with the Inspector that, for the reasons given at IR176, there is clear logic to grouping the proposal with the existing installation adjacent to HMP Swaleside.

Living and Working Conditions

14. The Secretary of State has carefully considered the concerns of the Sheppey Society for Environmental Wellbeing (SSEW) and local residents with regard to the visual impact of the proposal. For the reasons given at IR178-179, the Secretary of State agrees with the Inspector that none of the dwellings would become unattractive places in which to live and that, while the outlook from some dwellings would change as a result of the proposal, it would not be in a way that would have a significant adverse impact on the living conditions of the residents concerned.
15. The Secretary of State has also carefully considered the concerns of the Ministry of Justice (MOJ) about the visual impact of the proposal on prisoners in the cell blocks of HMP Swaleside and that the impact might lead to supervisory difficulties for staff and attendant detriment to working conditions (IR180). However, for the reasons given at IR182-185, the Secretary of State agrees with the Inspector at IR185 that there would be no significant adverse impact on the living conditions of the prisoners concerned as a consequence of the visual presence of the wind turbines so that the working conditions of staff at the prison would be largely unaffected.
16. For the reasons given at IR186-192 with regard to noise impact, the Secretary of State agrees with the Inspector's conclusion at IR193 that, so long as the wind turbines proposed operate within the noise limits set by the suggested condition, with curtailment as necessary, the living conditions of local residents and prisoners, and the working conditions of prison staff, will suffer no significant detriment as a result of noise from the proposal.
17. In coming to this conclusion, the Secretary of State has taken account of the fact that the MoJ is content that, subject to conditions, the proposal would not cause difficulties to prisoners or staff (IR186) or undermine any security systems (IR197). The Secretary of State has also had regard to the concerns expressed to the Inspector by other parties with regard to health effects and shadow flicker, and the Inspector's views on them at IR194-196. Overall, the Secretary of State shares the Inspector's conclusion at IR198 that the proposal would have no significant impact on the living conditions of local residents or inmates of the prisons, or on the working conditions of prison staff through visual impact, noise, or shadow flicker.

Other Matters

18. The Secretary of State agrees with the Inspector's conclusion at IR199 that, with appropriate mitigation and controls that can be secured by condition, no significant effects are anticipated in relation to bird populations overall, so that there would be compliance with LP policies E11 and E12. The Secretary of State similarly shares the Inspector's conclusion at IR200 that there is no evidence that the presence of the existing wind turbines has put anyone off visiting the area and therefore no justification for concluding that the proposed wind turbines would have a negative impact on tourism. Furthermore, for the reasons given at IR201, the Secretary of State agrees with the Inspector that there would be no harmful impacts on the setting of any designated heritage assets as a result of the proposal.

Local Planning WMS of 18 June 2015

19. The Secretary of State has carefully considered the Inspector's comments on the WMS of 18 June 2015 (IR207-209). Whilst acknowledging that the LP does not identify suitable sites for wind energy development, the Secretary of State gives significant weight to the fact that the ELP endorses the proposal insofar as the appeal site is in an area identified on the Energy Opportunities Map as having a high potential for the installation of large scale wind energy. Furthermore, having reviewed the planning appeal documentation relating to the issues identified by the local community, including the cumulative noise impact, landscape and visual amenity, ecological impact and shadow flicker, the Secretary of State is satisfied that the appellant has adequately addressed the concerns raised by the community.

Planning conditions

20. The Secretary of State has given consideration to the Inspector's analysis at IR145-158, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework and that the conditions set out at Annex A should form part of his decision.

Planning balance and overall conclusion

21. The Secretary of State agrees with the Inspector that the proposed scheme accords with LP Policy U3, with no significant departure from LP Policies E1, E9 or E19, and that it therefore accords with the development plan taken as a whole. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

22. In favour of the scheme, the Secretary of State gives significant weight to the benefits that the proposal would bring in terms of the production of renewable energy and by assisting in mitigating the effects of climate change. It would also contribute to energy security and provide direct and indirect economic benefits. Furthermore, he considers that significant weight should be attached to the fact that the adverse impacts have been minimised by grouping the turbines with the existing turbines and in an area identified on the Energy Opportunities Map as a high potential area for the installation of large scale wind energy. He is satisfied that the proposed development would have no significant adverse impact on the landscape or visual effects, the living conditions of local residents

or inmates in the prison complex, or the working conditions of prison staff. Overall, therefore, the Secretary of State agrees with the Inspector that the benefits outweigh what little harm the proposal would cause and that planning permission should be granted subject to the conditions set out at Annex A.

Formal decision

23. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning permission for the erection of four wind turbines with a maximum blade tip height of up to 126.5 metres together with a substation and control building, associated hardstandings, an improved junction access, connecting internal access tracks and other related infrastructure, in accordance with application ref: SW/13/1571 dated 20 December 2013, subject to the conditions set out at Annex A to this decision letter.
24. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

Right to challenge the decision

25. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
26. A copy of this letter has been sent to Swale Borough Council, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Jean Nowak

Authorised by Secretary of State to sign in that behalf

Annex A**Planning 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: AEL006-Rev 5: Site Location Plan; AEL007-Rev 5: Proposed Layout Plan; PLTUB126.5-93: Typical Wind Turbine Details; PL002: Typical New and Upgraded Track Details; PL003-R1: Typical Turbine and Transformer Foundation Details; PL005: Typical Substation and Control Building Details; and PL007RA: Typical Arched Culvert.
- 3) The permission shall expire, and the development hereby permitted shall be removed in accordance with Condition 4 below, after a period of 25 years from the date when electricity is first exported from the wind turbines (excluding electricity exported during initial testing and commissioning) (the First Export Date). Written notification of the First Export Date shall be given to the local planning authority no later than 14 days after the event.
- 4) Not later than 12 months before the expiry of this permission, a decommissioning and site restoration scheme shall be submitted for the written approval of the local planning authority. The scheme shall make provision for the removal of the wind turbines and associated above ground works approved under this permission and for the removal of the wind turbine foundation to a depth of at least 1 metre below the finished ground level. The scheme shall also include the management and timing of any works and a traffic management plan to address likely traffic impact issues during the decommissioning period, location of material laydown areas, an environmental management plan to include details of measures to be taken during the decommissioning period to protect wildlife and habitats and details of site restoration measures. The approved scheme shall be fully implemented within 24 months of the expiry of this permission.
- 5) If any wind turbine generator hereby permitted ceases to export electricity for a continuous period of 12 months, except where such cessation is as a result of the wind turbine or ancillary equipment being under repair or replacement or as a result of events outside the reasonable control of the operator such as a sustained network outage, or under instruction from the Distribution Network Operator or the wind farm's Licenced Supplier, then a scheme shall be submitted to the local planning authority for its written approval within 3 months of the end of that 12 month period for the repair or removal of the wind turbine(s). The scheme shall include either a programme of remedial works where repairs to the wind turbine are required, or a programme for removal of the wind turbine and associated above ground works approved under this permission and the removal of the wind turbine foundation to a depth of at least 1 metre below finished ground level and for site restoration measures following the removal of the relevant wind turbine(s). The scheme shall thereafter be implemented in accordance with the approved details and timetable.
- 6) No development shall take place until a Construction Method Statement (CMS) has been submitted to and approved in writing by the local planning authority. Thereafter the construction of the development shall only be carried out in accordance with the approved CMS. The CMS shall include (a) the control of noise and vibration emissions from construction activities including groundwork and the formation of infrastructure; (b) the control of dust including arrangements to monitor dust emissions from the development site during the construction phase; (c) measures for controlling pollution/sedimentation and responding to any spillages/incidents during the construction phase; (d) measures to control mud deposition offsite from vehicles leaving the site; (e) the control of surface water drainage from parking and hardstanding areas including the design and construction

- of oil interceptors (including during the operational phase); (f) the use of impervious bases and bund walls for the storage of oils, fuels and/or chemicals on-site; (g) the means by which users of public rights-of-way would be protected during the construction period; (h) details of the temporary site compound including temporary structures/buildings, fencing, parking, and storage provision to be used in connection with the construction of the development; (i) details of the proposed storage of materials and the disposal of waste and surplus materials; (j) temporary site illumination during the construction period including proposed lighting levels together with a specification of any lighting; (k) details of the phasing of construction works; (l) a site environmental management plan to include details of measures to be implemented during the construction period to protect wildlife and habitats; (m) areas on site designated for the storage, loading, off-loading, parking and manoeuvring of heavy duty plant, equipment and vehicles; (n) details of mitigation measures to be implemented in the event of severe weather conditions (more than 7 days of consecutive frozen ground) to limit construction activities within 500 metres of favoured foraging/roosting areas of waterfowl, waders and target duck species; (o) details of Reasonable Avoidance Measures (RAMs) to be implemented throughout the construction period in order to prevent individual amphibians or reptiles from being inadvertently killed or injured. RAMs shall include the timing of construction works to avoid sensitive periods when amphibians and reptiles are more likely to be present within different habitats, watching briefs, and staged vegetation removal prior to ground works; and (p) details and a timetable for post construction restoration/reinstatement of the temporary working areas and the construction compound.
- 7) No development shall take place until a Construction Traffic Management Plan (CTMP) has been submitted to and approved in writing by the local planning authority. The CTMP shall include proposals for the routing of construction traffic, scheduling and timing of movements, details of escorts for abnormal loads, temporary warning signs, temporary removal and replacement of highway infrastructure/street furniture, and the reinstatement of any signs, verges, or other items, displaced by construction traffic.
 - 8) Construction work shall only take place between the hours of 0700-1900 Monday to Friday inclusive and 0700-1300 on Saturdays, with no construction work on Sundays or public holidays. Works outside these hours shall only be carried out (a) with the prior written approval of the local planning authority; (b) in an emergency in which case the local planning authority shall be notified by telephone and in writing as soon as reasonably practicable (and in any event within 48 hours) after the emergency is first identified. Such notification shall include details of the emergency and any works carried out and/or proposed to be carried out; (c) if the works are dust suppression; or (d) if the works are for the testing of plant and/or equipment.
 - 9) The delivery of any construction materials or equipment for the construction of the development, other than wind turbine blades, nacelles and towers, and concrete for the wind turbine foundations, shall be restricted to between the hours of 0700 and 1900 on Monday to Friday inclusive and 0800 to 1300 on Saturdays. Deliveries outside these hours may only take place with the prior written approval of the local planning authority.
 - 10) The blades of all wind turbine generators shall rotate in the same direction. The overall height of each wind turbine shall not exceed 126.5 metres to the tip of the blades when the wind turbine is in the vertical position as measured from ground levels immediately adjacent to the wind turbine base.
 - 11) No wind turbine shall be erected until details of the colour(s) and finish(es) of the towers, nacelles and blades and any external transformer units have been submitted to and approved in writing by the local planning authority. No name, sign or logo shall be displayed on the external surfaces of the wind turbines or any external transformer units

- other than those necessary to meet health and safety requirements. The development shall be carried out in accordance with the approved details and retained as such thereafter.
- 12) Construction of the electricity substation shall not commence until details of the design, external appearance, dimensions, materials, and foul and surface water drainage of the building and any associated compound and/or parking area, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and retained as such thereafter.
 - 13) All electrical cabling between the individual wind turbines, and between the wind turbines and the electricity substation, shall be installed underground.
 - 14) No development shall commence until a scheme for post construction bird monitoring (of bird strike bird disturbance and bird numbers during summer and winter), to verify the predicted environmental effects of the construction and operation of the turbines on land at Great Bells Farm has been submitted to and approved in writing by the local planning authority. The scheme shall include provisions for management actions should there be a demonstrable detrimental effect on the bird populations at the Great Bells Farm site from the operation of development hereby approved. The scheme shall also include a timetable for the implementation of any monitoring or management requirements. The scheme shall be implemented as approved.
 - 15) No development shall commence until a Habitat Management Plan (HMP) has been submitted to and approved in writing by the local planning authority. The HMP shall include details of habitat enhancement for the 24 hectare area of land referred to as field 14 on Figure 8.3 of the Environmental Statement addendum, biodiversity enhancement measures defined in Table 7.22 and illustrated on Figure 7.6 of the Environmental Statement and Table 8.51 of the Environmental Statement Addendum, and a timetable. The scheme shall be implemented as approved.
 - 16) No development shall commence until a management plan to maintain the habitat potential of Great Bells Farm has been submitted to and approved in writing by the local planning authority. The management plan shall include suitable habitat mitigation or compensation measures. Monitoring and any mitigation required shall be carried out for the duration of the development and operation of the wind turbines in full accordance with the approved scheme.
 - 17) Vegetation clearance shall be undertaken outside of the breeding bird season (1st March to 31st August inclusive). Where this cannot be avoided an independent ornithologist will be appointed to undertake a pre-vegetation clearance survey to identify the presence of any nests being built or in use, details of which shall be submitted to and approved in writing by the local planning authority prior to any clearance works taking place during bird breeding season. To avoid any potential disturbance to Schedule 1 species, notably marsh harrier, in advance of any construction works to be undertaken during the breeding season, all areas within 500m of construction works will also be subject to a pre-construction survey undertaken by a competent ornithologist, to identify any nesting locations for any Schedule 1 protected species. If identified work exclusion zones will be established around nest sites, in line with best practice guidance for the species, in consultation with the appointed competent ecologist. A Breeding Bird Protection Plan (BBPP) would be implemented with the aim of protecting breeding birds from disturbance and ensuring compliance with nature conservation law during the construction phase (for example during vegetation removal).
 - 18) No development shall commence until, a site walk-over has been made by an independent ecologist to check for any changes to baseline conditions; this will include a specific check for badger setts, otter holts and water vole burrows in the vicinity of construction areas,

using standard survey methods and recording all evidence or potential evidence of the presence of these species. A survey radius of 100m from all construction works locations is proposed. If any such features are identified, the survey results will be reviewed to determine whether any additional mitigation measures will be necessary to ensure legal compliance.

- 19) No development shall commence until a scheme detailing the protection and/or mitigation of damage to populations of water vole, a protected species under The Wildlife and Countryside Act 1981 as amended and its associated habitat during construction works and decommissioning including details of the methodology and timing has been submitted to and approved in writing by the local planning authority. The development shall take place in full accordance with the approved scheme.
- 20) Prior to the erection of the first wind turbine written confirmation shall be provided to the local planning authority of the proposed date of commencement of and completion of the development, and the height above ground level, and the position of each wind turbine in latitude and longitude.
- 21) No development shall commence until a scheme for either low intensity 32.5 candela red lights visible from ground level and medium intensity 200 candela right lights visible above hub height, or infra-red warning lighting, has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in full thereafter.
- 22) Prior to the operation of the wind turbines, details of a scheme to notify Eastchurch Airfield of wind turbine operation, prevailing wind speeds and direction determined periodically using data gathered by the development hereby permitted, shall be submitted to and approved in writing by the local planning authority. The scheme shall also include details of procedures where it may be prudent to reduce or shut down the operation of the wind turbines in an emergency situation should aircraft encroach closer than 16 rotor diameters from turbines. The approved scheme shall be implemented as approved.
- 23) No wind turbine shall be erected until an agreement has been reached between the wind farm operator and London Southend Airport with respect to a Radar Mitigation Solution, and the existence of such an agreement has been confirmed in writing to the local planning authority by both the wind farm operator and London Southend Airport. The wind turbines will not be brought into use until the requirements of the Radar Mitigation Solution have been implemented in full as confirmed in writing by the wind farm operator together with London Southend Airport to the local planning authority. For the purposes of this condition, Radar Mitigation Solution means a technical or commercial solution put in place to mitigate the impact on the air traffic control radar at London Southend Airport.
- 24) No development shall commence until a written scheme of investigation and programme of archaeological works has been submitted to and approved in writing by the local planning authority. The written scheme of investigation and programme of archaeological work shall be implemented as approved.
- 25) Prior to the First Export Date a scheme providing for the investigation and alleviation of any electro-magnetic interference to any television signal caused by the operation of the wind turbines shall be submitted to and agreed in writing by the local planning authority. The scheme shall provide for the investigation by a qualified television engineer, within a set timetable, of any complaint of interference with television reception at a lawfully occupied dwelling (defined for the purposes of this condition as a building within Use Class C3 and C4 of the Use Classes Order) which existed or had planning permission at the time permission was granted, where such complaint is notified to the developer by the local planning authority within 12 months of the First Export Date. Where impairment is determined to be attributable to the wind turbines hereby approved, mitigation works shall

be carried out in accordance with a scheme, which shall include a timetable, which has first been agreed in writing by the local planning authority.

- 26) No development shall commence until: (1) a written scheme has been submitted to and approved in writing by the local planning authority setting out a protocol for the assessment of shadow flicker in the event of any complaint to the local planning authority from the owner or occupier of any building which lawfully exists or had planning permission at the date of this permission. The written scheme shall include remedial measures to alleviate any shadow flicker attributable to the development. Operation of the wind turbines shall take place in accordance with the approved protocol; and (2) a shadow flicker shut down protocol to control shadow flicker/throw effects at Swaleside and Elmley prisons shall be submitted to and approved in writing by the local planning authority. The protocol shall include the following: (a) identification and detailed modelling of all potential shadow flicker/throw receptors within the shadow flicker zone of ten rotor diameters, including prison cells and CCTV equipment at Swaleside and Elmley prisons. This model is to be used to produce detailed wind turbine shut down logs to prevent shadow flicker/throw effects occurring at shadow flicker receptors within Swaleside and Elmley prisons; and (b) where unforeseen shadow flicker/throw effects occur within the prison buildings identified as requiring mitigation by the Prison Authority the following procedures will be implemented: (i) the Developer shall use all reasonable endeavours to relieve the loss of amenity caused by the shadow flicker attributable to the Development; (ii) within fourteen days of receiving a complaint from the Prison Authority, the Developer shall notify the local planning authority and Prison Authority in writing as to the course of action it shall take to investigate any problems associated with shadow flicker arising from the development; (iii) within twenty eight days of receiving a complaint from the Prison Authority, the developer shall notify the local planning authority and Prison Authority in writing as to the course of action it shall take to mitigate problems associated with shadow flicker arising from the development; (iv) industry standard mitigation options to be considered by the developer will include: increasing/providing shielding between the identified receptor and the development (by way of vegetation, other obstacles or window blinds or screens within buildings) in order to control or prevent shadow flicker occurring within occupied buildings requiring mitigation for shadow flicker; and/or upgrading or replacing CCTV or other security apparatus; and/or further operational controls where a selected wind turbine or turbines are programmed to be shut-down at times when shadow flicker effects have been demonstrated to occur and the sun is bright enough to cause a shadow flicker effect (light intensity will be monitored with external solar sensors).
- 27) The wind turbines and their associated infrastructure shall be situated within 30m of the positions shown in drawing AEL007- Rev 5 Proposed Layout Plan. Any proposed wind turbine movements between 31 – 50m will be subject to the prior written approval of the local planning authority. No turbine shall be micro-sited to a position within the North Kent Marshes Special Landscape Area.
- 28) Finished floor levels of the permanent substation building and transformers shall be raised a minimum of 150mm above ground levels.
- 29) No development shall commence until the area between the nearside carriageway edge, and lines drawn between a point 4.5m back from the carriageway edge along the centre line of the access, and points on the carriageway edge 90m from and on both sides of the centre line of the access, have been cleared of obstruction to visibility at and above a height of 1.05m above the nearside carriageway level. This area shall be thereafter maintained free of obstruction at all times.
- 30) The rating level of noise immissions from the combined effects of the wind turbines hereby permitted (including the application of any tonal penalty), when determined in accordance

with the attached Guidance Notes, shall not exceed the values for the relevant integer wind speed set out in or derived from Tables 1 and 2 attached to these conditions and:

- (A) Prior to the First Export Date, the wind farm operator shall submit to the local planning authority for written approval a list of proposed independent consultants who may undertake compliance measurements in accordance with this condition. Amendments to the list of approved consultants shall be made only with the prior written approval of the local planning authority.
- (B) Within 21 days from receipt of a written request of the local planning authority, following a complaint to it alleging noise disturbance at a dwelling, the wind farm operator shall, at its expense, employ an independent consultant approved by the local planning authority to assess the level of noise immissions from the wind farm at the complainant's property in accordance with the procedures described in the attached Guidance Notes. The written request from the local planning authority shall set out at least the date, time and location that the complaint relates to, and include a statement as to whether, in the opinion of the local planning authority, the noise giving rise to the complaint contains or is likely to contain a tonal component. Within 14 days of receipt of the written request of the local planning authority made under this paragraph (B), the wind farm operator shall provide the information relevant to the complaint logged in accordance with paragraph (H) to the local planning authority in the format set out in Guidance Note 1(e).
- (C) Where there is more than one property at a location specified in Tables 1 and 2 attached to this condition, the noise limits set for that location shall apply to all dwellings at that location. Where a dwelling to which a complaint is related is not identified by name or location in the Tables attached to these conditions, the wind farm operator shall submit to the local planning authority for written approval proposed noise limits selected from those listed in the Tables to be adopted at the complainant's dwelling for compliance checking purposes. The proposed noise limits are to be those limits selected from the Tables specified for a listed location which the independent consultant considers as being likely to experience the most similar background noise environment to that experienced at the complainant's dwelling. The submission of the proposed noise limits to the local planning authority shall include a written justification of the choice of the representative background noise environment provided by the independent consultant. The rating level of noise immissions resulting from the combined effects of the wind turbines when determined in accordance with the attached Guidance Notes shall not exceed the noise limits approved in writing by the local planning authority for the complainant's dwelling.
- (D) Prior to the commencement of any measurements by the independent consultant to be undertaken in accordance with these conditions, the wind farm operator shall submit to the local planning authority for written approval the proposed measurement location identified in accordance with the Guidance Notes where measurements for compliance checking purposes shall be undertaken. Measurements to assess compliance with the noise limits set out in the Tables attached to these conditions or approved by the local planning authority pursuant to paragraph (C) of this condition shall be undertaken at the measurement location approved in writing by the local planning authority.
- (E) Prior to the submission of the independent consultant's assessment of the rating level of noise immissions pursuant to paragraph (F) of this condition, the wind farm operator shall submit to the Local Planning Authority for written approval a proposed assessment protocol setting out the following: (i) the range of

meteorological and operational conditions (the range of wind speeds, wind directions, power generation and times of day) to determine the assessment of rating level of noise immissions; and (ii) a reasoned assessment as to whether the noise giving rise to the complaint contains or is likely to contain a tonal component. The proposed range of conditions shall be those which prevailed during times when the complainant alleges there was disturbance due to noise, having regard to the information provided in the written request of the local planning authority under paragraph (B), and such others as the independent consultant considers necessary to fully assess the noise at the complainant’s property. The assessment of the rating level of noise immissions shall be undertaken in accordance with the assessment protocol approved in writing by the local planning authority and the attached Guidance Notes.

- (F) The wind farm operator shall provide to the local planning authority the independent consultant’s assessment of the rating level of noise immissions undertaken in accordance with the Guidance Notes within 2 months of the date of the written request of the local planning authority made under paragraph (B) of this condition unless the time limit is extended in writing by the local planning authority. The assessment shall include all data collected for the purposes of undertaking the compliance measurements, such data to be provided in the format set out in Guidance Note 1(e) of the Guidance Notes. The instrumentation used to undertake the measurements shall be calibrated in accordance with Guidance Note 1(a) and certificates of calibration shall be submitted to the local planning authority with the independent consultant’s assessment of the rating level of noise immissions. Where a further assessment of the rating level of noise immissions from the wind farm is required pursuant to Guidance Note 4(c) of the attached Guidance Notes, the wind farm operator shall submit a copy of the further assessment within 21 days of submission of the independent consultant’s assessment pursuant to paragraph (F) above unless the time limit for the submission of the further assessment has been extended in writing by the Local Planning Authority.
- (G) The wind farm operator shall continuously log power production, wind speed and wind direction, all in accordance with Guidance Note 1(d). These data shall be retained for a period of not less than 24 months. The wind farm operator shall provide this information in the format set out in Guidance Note 1(e) to the local planning authority on its request, within 14 days of receipt in writing of such a request.

Note: For the purposes of this condition, a “dwelling” is a building within Use Class C3 or C4 of the Use Classes Order which lawfully exists or had planning permission at the date of this consent.

Table 1 - Between 07:00 and 23:00 – Free-field Noise Limit, dB LA90, 10-minute

Location	Standardised wind speed at 10 meter height (m/s) within the site averaged over 10-minute periods											
	1	2	3	4	5	6	7	8	9	10	11	12
Nearest prison cell at Swaleside 598713, 169779	40	40	40	40	41	42	43	43	43	43	43	43
Nearest prison cell at Elmley Prison 598566, 169288	40	40	40	40	41	42	43	43	43	43	43	43
Nearest prison cell at Standford Prison 598289, 169691	40	40	40	40	41	42	43	43	43	43	43	43
New Rides Bungalow 599382, 170450	35	35	35	35	36	38	40	43	45	45	45	45
New Rides Farm 599280, 170156	45	45	45	45	45	45	45	45	45	45	45	45
Residential properties on Range Road, Orchard Road, Brabazon Way, Church Road, Kent View Drive 598676,	35	35	35	37	38	39	42	45	45	45	45	45

Table 2 - Between 23:00 and 07:00 – Free-field Noise Limit dB LA90, 10-minute

Location	Standardised wind speed at 10 meter height (m/s) within the site averaged over 10-minute periods											
	1	2	3	4	5	6	7	8	9	10	11	12
Nearest prison cell at Swaleside	40	40	40	40	40	40	40	41	42.6	43	43	43
Nearest prison cell at Elmley Prison 598566, 169288	40	40	40	40	40	40	40	41	42.6	43	43	43
Nearest prison cell at Standford Prison, 598289,	40	40	40	40	40	40	40	41	42.6	43	43	43
New Rides Bungalow 599382, 170450	43	43	43	43	43	43	43	43	45	45	45	45
New Rides Farm 599280, 170156	45	45	45	45	45	45	45	45	45	45	45	45
Residential properties on Range Road, Orchard Road, Brabazon Way, Church Road, Kent	43	43	43	43	43	43	43	44	45	45	45	45

Note to Tables 1 & 2: The geographical co-ordinate references set out in these tables are provided for the purpose of identifying the general location of dwellings to which a given set of noise limits applies. The wind speed at 10 metres height within the site refers to wind speed measured directly at 10 metres height.

Guidance Notes for Noise Condition

These notes are to be read with and form part of the noise condition. They further explain the condition and specify the methods to be employed in the assessment of complaints about noise immissions from the wind farm. The rating level at each integer wind speed is the arithmetic sum of the wind farm noise level as determined from the best-fit curve described in Note 2 of these Guidance Notes and any tonal penalty applied in accordance with Note 3 with any necessary correction for residual background noise levels in accordance with Note 4. Reference to ETSU-R-97 refers to the publication entitled “The Assessment and Rating of Noise from Wind Farms” (1997) published by the Energy Technology Support unit (ETSU) for the Department of Trade and Industry (DTI).

Note 1

(a) Values of the LA90,10-minute noise statistic should be measured at the complainant’s property (or an approved alternative representative location as detailed in Note 1(b)), using a sound level meter of EN 60651/BS EN 60804 Type 1, or BS EN 61672 Class 1 quality (or the equivalent UK adopted standard in force at the time of the measurements) set to measure using

the fast time weighted response as specified in BS EN 60651/BS EN 60804 or BS EN 61672-1 (or the equivalent UK adopted standard in force at the time of the measurements). This should be calibrated before and after each set of measurements, using a calibrator meeting BS EN 60945:2003 “Electroacoustics – sound calibrators” Class 1 with PTB Type Approval (or the equivalent UK adopted standard in force at the time of the measurements) and the results shall be recorded. Measurements shall be undertaken in such a manner to enable a tonal penalty to be calculated and applied in accordance with Guidance Note 3.

(b) The microphone shall be mounted at 1.2 - 1.5 metres above ground level, fitted with a two-layer windshield or suitable equivalent approved in writing by the local planning authority, and placed outside the complainant’s dwelling. Measurements should be made in “free field” conditions. To achieve this, the microphone shall be placed at least 3.5 metres away from the building facade or any reflecting surface except the ground at the approved measurement location. In the event that the consent of the complainant for access to his or her property to undertake compliance measurements is withheld, the wind farm operator shall submit for the written approval of the local planning authority details of the proposed alternative representative measurement location prior to the commencement of measurements and the measurements shall be undertaken at the approved alternative representative measurement location.

(c) The LA90,10-minute measurements should be synchronised with measurements of the 10-minute arithmetic mean wind speed and wind direction data and with operational data logged in accordance with Guidance Note 1(d) and rain data logged in accordance with Note 1(f).

(d) To enable compliance with the conditions to be evaluated, the wind farm operator shall continuously log arithmetic mean wind speed in metres per second and wind direction in degrees from north at hub height for each turbine and arithmetic mean power generated by each turbine, all in successive 10-minute periods. Unless an alternative procedure is previously agreed in writing with the local planning authority, this hub height wind speed, averaged across all operating wind turbines, shall be used as the basis for the analysis. All 10 minute arithmetic average mean wind speed data measured at hub height shall be ‘standardised’ to a reference height of 10 metres as described in ETSU-R-97 at page 120 using a reference roughness length of 0.05 metres . It is this standardised 10 metre height wind speed data, which is correlated with the noise measurements determined as valid in accordance with Guidance Note 2, such correlation to be undertaken in the manner described in Guidance Note 2. All 10-minute periods shall commence on the hour and in 10- minute increments thereafter.

(e) Data provided to the local planning authority in accordance with paragraphs (E) (F) (G) and (H) of the noise condition shall be provided in comma separated values in electronic format.

(f) A data logging rain gauge shall be installed in the course of the independent consultant undertaking an assessment of the level of noise immissions. The gauge shall record over successive 10-minute periods synchronised with the periods of data recorded in accordance with Note 1(d). The wind farm operator shall submit details of the proposed location of the data logging rain gauge to the local planning authority prior to the commencement of measurements.

Note 2

(a) The noise measurements should be made so as to provide not less than 20 valid data points as defined in Note 2 paragraph (b).

(b) Valid data points are those measured during the conditions set out in the assessment protocol approved by the local planning authority under paragraph (E) of the noise condition but excluding any periods of rainfall measured in accordance with Note 1(f).

(c) Values of the LA90,10-minute noise measurements and corresponding values of the 10-minute standardised ten metre height wind speed for those data points considered valid in accordance with Note 2(b) shall be plotted on an XY chart with noise level on the Y-axis and wind speed on the X-axis. A least squares, “best fit” curve of an order deemed appropriate by the independent consultant (but which may not be higher than a fourth order) shall be fitted to the data points to define the wind farm noise level at each integer speed.

Note 3

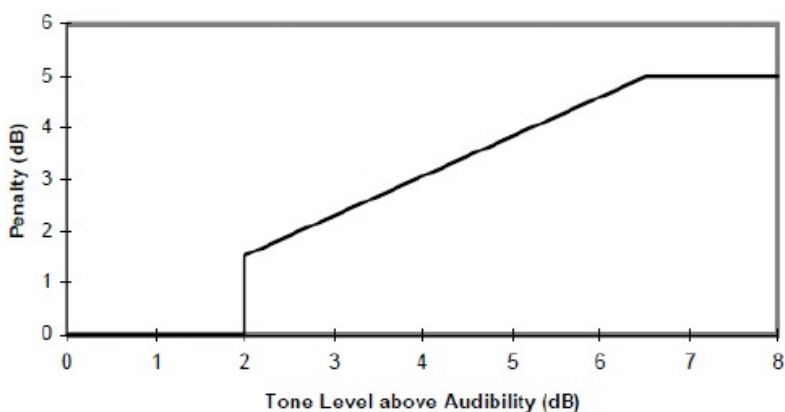
(a) Where, in accordance with the approved assessment protocol under paragraph (E) of the noise condition, noise immissions at the location or locations where compliance measurements are being undertaken contain or are likely to contain a tonal component, a tonal penalty shall be calculated and applied using the following rating procedure.

(b) For each 10-minute interval for which LA90, 10-minute data have been determined as valid in accordance with Note 2, a tonal assessment shall be performed on noise immissions during 2-minutes of each 10-minute period. The 2-minute periods should be spaced at 10-minute intervals provided that uninterrupted uncorrupted data are available (“the standard procedure”). Where uncorrupted data are not available, the first available uninterrupted clean 2-minute period out of the affected overall 10-minute period shall be selected. Any such deviations from the standard procedure shall be reported.

(c) For each of the 2-minute samples the tone level above audibility shall be calculated by comparison with the audibility criterion given in Section 2.1 on pages 104 -109 of ETSU-R-97.

(d) The average tone level above audibility shall be calculated for each integer wind speed bin. Samples for which the tones were below the audibility criterion or no tone was identified, a value of zero audibility shall be substituted.

(e) The tonal penalty is derived from the margin above audibility of the tone according to the figure below derived from the average tone level above audibility for each integer wind speed.



Note 4

(a) If a tonal penalty is to be applied in accordance with Note 3 the rating level of the turbine noise at each wind speed is the arithmetic sum of the measured noise level as determined from the best fit curve described in Note 2 and the penalty for tonal noise as derived in accordance with Note 3 at each integer wind speed within the range set out in the approved assessment protocol under paragraph (E) of the noise condition.

(b) If no tonal penalty is to be applied then the rating level of the turbine noise at each wind speed is equal to the measured noise level as determined from the best fit curve described in Note 2.

(c) If the rating level at any integer wind speed lies at or below the values set out in the Tables attached to the conditions or at or below the noise limits approved by the local planning authority for a complainant’s dwelling in accordance with paragraph (C) of the noise condition then no further action is necessary. In the event that the rating level is above the limit(s) set out in the Tables attached to the noise conditions or the noise limits for a complainant’s dwelling approved in accordance with paragraph (C) of the noise condition, the independent consultant shall undertake a further assessment of the rating level to correct for background noise so that the rating level relates to wind turbine noise immission only.

(d) The wind farm operator shall ensure that all the wind turbines in the development are turned off for such period as the independent consultant requires to undertake the further assessment. The further assessment shall be undertaken in accordance with the following steps:

- i. Repeating the steps in Note 2, with the wind farm switched off, and determining the background noise (L3) at each integer wind speed within the range set out in the approved noise assessment protocol under paragraph (E) of this condition.
- ii. The wind farm noise (L1) at this speed shall then be calculated as follows where L2 is the measured level with turbines running but without the addition of any tonal penalty:

$$L_1 = 10 \log \left[10^{L_2/10} - 10^{L_3/10} \right]$$

- iii. The rating level shall be re-calculated by adding the tonal penalty (if any is applied in accordance with Note 3) to the derived wind farm noise L1 at that integer wind speed.
- iv. If the rating level after adjustment for background noise contribution and adjustment for tonal penalty (if required in accordance with note (iii) above) at any integer wind speed lies at or below the values set out in the Tables attached to the conditions or at or below the noise limits approved by the local planning authority for a complainant’s dwelling in accordance with paragraph (C) of the noise condition then no further action is necessary. If the rating level at any integer wind speed exceeds the values set out in the Tables attached to the conditions or the noise limits approved by the local planning authority for a complainant’s dwelling in accordance with paragraph (C) of the noise condition then the development fails to comply with the conditions.

Report to the Secretary of State for Communities and Local Government

by Paul Griffiths BSc(Hons) BArch IHBC

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

Date: 5 May 2017

Town and Country Planning Act 1990

Appeal by

Airvolution Energy Ltd

Against the Decision of

Swale Borough Council

Inquiry opened on 6 April 2016

Land at New Rides Farm, Leysdown Road, Eastchurch ME12 4DD

File Ref: APP/V2255/W/15/3014371

File Ref: APP/V2255/W/15/3014371

Land at New Rides Farm, Leysdown Road, Eastchurch ME12 4DD

- 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 Airvolution Energy Ltd against the decision of Swale Borough Council.
- The application Ref. SW/13/1571, dated 20 December 2013, was refused by notice dated 3 February 2015.
- The development proposed is the erection of four wind turbines with a maximum blade tip height of up to 126.5 metres together with a substation and control building, associated hardstandings, an improved junction access, connecting internal access tracks, and other related infrastructure.

Summary of Recommendation: The appeal be allowed, and planning permission granted subject to the conditions in Annex C.

Procedural Matters

1. The Inquiry opened on 6 April 2016 and sat on that day, as well as 7 and 8 April 2016. There then followed a significant adjournment. The Inquiry was programmed to continue on 25 and 26 October 2016 but the submission of documents relating to ongoing negotiations between the appellant and the Ministry of Justice¹, and the Wind Turbine AM Review Phase 1 Report² rendered that impossible. To avoid a further adjournment, I agreed to conduct the public session of the Inquiry on the evening of 25 October 2016, as planned, but then to deal with the noise evidence and closing submissions in writing, in accordance with an agreed timetable. To that end, I adjourned the Inquiry on the evening of 25 October 2016 and it was subsequently closed in writing on 24 January 2017.
2. I carried out an unaccompanied site visit to the appeal site and its surroundings, taking in many of the footpaths referred to in evidence³ on the afternoon of 7 April 2016. I carried out an accompanied site visit to HMP Standford Hill and HMP Swaleside, hosted by the MoJ on the afternoon of 26 October 2016.
3. On 24 March 2016, in exercise of powers under section 79 and paragraph 3 of Schedule 6 of the Town and Country Planning Act 1990, the Secretary of State⁴ directed that he would determine the appeal instead of an Inspector. The reason given for the direction was that the appeal involves proposals against which another Government department⁵ has raised major objections or has a major interest.
4. As set out in the Statement of Common Ground⁶, the proposal constitutes EIA development⁷. Accordingly, the originating planning application was accompanied by an Environmental Statement⁸.

¹ Referred to hereafter as MoJ ID34

² ID35

³ ID18

⁴ Referred to hereafter as SoS

⁵ That is the MoJ

⁶ ID11 referred to hereafter as SoCG

⁷ For the purposes of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2011 (SI 2011/1824)

⁸ Referred to hereafter as ES CD 12.1

5. This was supplemented with further information in ES Addenda⁹. There is no suggestion from any party to the Inquiry that the ES, along with the ES Addenda, fail to meet the requirements of the relevant Regulations. I agree and have taken it all into account in arriving at my recommendation.

The Site and Surroundings

6. The development would be located approximately 1.2km south of the village of Eastchurch and the B2231, and between 0.45 and 0.9 km south south-east of New Rides Farm, on the Isle of Sheppey. The appeal site is currently in agricultural use and is surrounded by land associated with the farm.
7. To the west of the appeal site lies the Sheppey Prison Cluster, made up of HMP Swaleside, HMP Elmley, and HMP Standford Hill. To the north of the prison cluster are dwellings fronting and leading off the main access road. There are two existing 121m high wind turbines to the south-west of HMP Standford Hill.

The Proposals

8. In short, the proposal consists of four wind turbines each with a maximum height to blade tip of 126.5 metres; a reinforced concrete base for each wind turbine; minor improvements to the existing site access and junction with the B2231; upgrades to the existing farm track running through the site and new internal tracks to the wind turbines leading off it; underground cabling to connect the wind turbines to a new electricity substation; hard-standings both temporary and permanent near the base of each wind turbine to facilitate the use of a crane for installation; and a temporary construction compound near the site entrance¹⁰.
9. The construction period would be around 12 months and the anticipated operation life of the wind farm would be 25 years.

Planning Policy

10. The development plan for the area includes the Swale Borough Local Plan¹¹, adopted in February 2008. LP Policy E1 sets out general development criteria and expects all development to, of relevance here, respond positively by reflecting the positive characteristics and features of the site and locality; protect and enhance the natural and built environments; be well sited and of a scale, design and appearance that is appropriate to the location with a high standard of landscaping; and cause no demonstrable harm to residential amenity and other sensitive uses or areas.
11. LP Policy E9 says that the quality, character and amenity value of the wider landscape of the Borough will be protected and where possible enhanced. In the countryside where the appeal site lies, development proposals are expected to be informed by and sympathetic to local landscape character and quality; consider the guidelines contained in the Council's Landscape Character Assessment and Guidelines Supplementary Planning Document so as to contribute to the restoration, creation, reinforcement and conservation, as appropriate, of the landscape likely to be affected; safeguard or enhance landscape elements that

⁹ CD12.2 and CD12.10

¹⁰ A detailed description of the development can be found in Chapter 3 of the ES CD12.1

¹¹ Referred to hereafter as LP; a complete copy is attached as ID47

- contribute to the distinctiveness of the locality or the Borough; remove features which detract from the character of the landscape; and minimise the adverse impacts of development upon landscape character.
12. LP Policy E19 expects development to be of high-quality design. Development proposals should, of application here, create safe, accessible, comfortable, varied and attractive places; enrich the qualities of the existing environment by promoting and reinforcing local distinctiveness and strengthening the sense of place; make efficient and prudent use of natural resources; and provide development that is appropriate to its context in respect of scale, height and massing, both in relation to its surroundings, and its individual details.
 13. LP Policy U3 deals specifically with renewable energy and is permissive where schemes demonstrate environmental, economic and social benefits and minimise adverse impacts. Amongst a range of matters to be considered are the likely decommissioning requirements and the ability to ensure restoration of the site; the availability of alternative, potentially more beneficial sites, especially those involving previously developed land; power transmission requirements; potential electromagnetic interference; noise generation, air emissions and odour; and the contribution made to enhancing landscape and built character and nature conservation interests.
 14. LP Policy E11 seeks to protect the Borough's biodiversity and geological interests in general terms while LP Policy E12 deals with sites designated for their importance to biodiversity or geological conservation, including European Sites, proposed European Sites, Ramsar sites, Sites of Special Scientific Interest, Local Nature Reserves, and Sites of Nature Conservation Interest, amongst others.
 15. The emerging Local Plan: Bearing Fruits 2031¹² is at an advanced stage in the process towards adoption and, bearing in mind the Inspector's interim findings¹³, it can attract significant weight. Chapter 7.6 of the ELP recognises the general drive towards renewable energy production and the Government's commitment to reducing carbon emissions. It notes that the Swale Renewable Energy and Sustainable Development Study¹⁴ and the Council's Sustainable Design and Construction Guidance¹⁵ both highlight the considerable opportunities within the Borough for renewable energy generation suggesting that it could source 30% of its electricity and 12% of its heat from renewables by 2020.
 16. The supporting text to ELP Policy DM20¹⁶ and the Swale Energy Opportunities Map contained within the Swale Renewable Energy and Sustainable Development Study¹⁷ explain the considerable emphasis which the Council places upon the need to increase energy production from renewable and low carbon sources. The policy itself supports proposals for the development of renewable and low carbon energy where analysis of all impacts and methods to avoid and mitigate harm is demonstrated; and it is shown how opportunities highlighted in the Borough's Energy Opportunities Map have been exploited, with priority given to previously-

¹² Referred to hereafter as ELP CD3.8

¹³ ID12

¹⁴ CD3.7

¹⁵ CD3.4

¹⁶ CD3.8 paragraphs 7.6.13 to 7.6.24

¹⁷ CD3.7 Figure E7

developed land, though development on agricultural land is not ruled out altogether. Landscape, visual and heritage impacts, including cumulative impacts, are expected to be minimised and mitigated to acceptable levels as are any potential impacts on residential amenity, including noise. Applications are meant to demonstrate evidence of community involvement.

17. ELP Policy DM24 aims to conserve and enhance what it terms, valued landscapes. For non-designated landscapes, like that in which the appeal site is situated, planning permission will be granted for development proposals subject to the minimisation and mitigation of adverse landscape impacts; and when significant adverse impacts remain, that the social and/or economic benefits of the proposal significantly and demonstrably outweigh the landscape character and value of the area. For all landscapes, the design of the development should be informed by landscape and visual impact assessment, taking opportunities to enhance the landscape, where possible.
18. The approach of the ELP in particular, chimes with that of the National Planning Policy Framework¹⁸. Following on from a raft of Government policy¹⁹, one of the core principles of the Framework is that planning should support the transition to a low carbon future in a changing climate, and encourage the use of renewable resources (for example, by the development of renewable energy).
19. Paragraph 93 tells us that planning plays a key role in helping shape places to secure radical reductions in greenhouse gas emissions, minimising vulnerability, and providing resilience to the impacts of climate change, and supporting the delivery of renewable energy and associated infrastructure. This, we are told, is central to the economic, social and environmental dimensions of sustainable development.
20. As an aid to decision-making, paragraph 98 says that we should not require applicants for energy development to demonstrate the overall need for renewable energy and recognise that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions. In very simple terms, applications should be approved if impacts are (or can be made) acceptable.
21. Other core principles of the Framework include the recognition of the intrinsic character and beauty of the countryside and the need to secure high-quality design and a good standard of amenity for all existing and future occupiers of land and buildings. Paragraph 109 says that the planning system should contribute to and enhance the natural and local environment by, amongst other things, protecting and enhancing valued landscapes and minimising impacts on biodiversity and providing net gains where possible.
22. There is also the Written Ministerial Statement of 18 June 2015²⁰ to consider. For proposals like that at issue in this appeal, where the transitional provisions apply, we are told that local planning authorities²¹ can find the proposal acceptable if, following consultation, they are satisfied it has addressed the planning impacts identified by affected local communities and therefore has their backing.

¹⁸ CD1 Referred to hereafter as the Framework

¹⁹ CD2.2, CD2.3, CD2.4, CD5.4, CD5.6, and CD5.29 in particular

²⁰ Referred to hereafter as WMS of June 2015 CD2.6 and ID13

²¹ I take this to include all decision-makers

The Case for Swale Borough Council

23. The Council outlined its case in opening and closing statements to the Inquiry²² and provided evidence on landscape and planning matters²³. What follows here is a brief summary of their position.

Introduction

24. Following the reconsideration of the matter at the Council's planning committee on 13 August 2015, it was clarified that planning permission was refused on the basis that: *The proposed development by virtue of the location and nature of the development would give rise to a cumulative impact, in combination with the two existing PfR turbines (approved under reference SW/10/1567), leading to demonstrable harm to the landscape. The development is therefore contrary to.....*²⁴.
25. It is important to understand what is meant by 'cumulative impact'. The Council's position²⁵ is that the reason for refusal is concerned with the impact of the four wind turbines at issue, alongside the two existing wind turbines. However, that is not to say that the four wind turbines proposed would be acceptable if the existing wind turbines were not in place.
26. There is broad agreement between the main parties on the wider cumulative impact beyond the two existing wind turbines referred to²⁶. The Council accepts the appellant's assessment of the cumulative landscape and visual impacts of the proposals at issue with these other operational and approved wind turbines.

Landscape and Visual Impact Assessment

27. In cases like this, the most persuasive evidence on landscape and visual impact is that gleaned by the Inspector on the site visit. The Council is confident that the having visited the site and its surroundings, the Inspector will agree with the Council that landscape effects will be substantial as there will be uninterrupted views of the wind turbines from most of the marshes to the south. The vertical emphasis of the wind turbines and their alien moving features will be in complete contrast to the flat and horizontal landscape. For similar reasons there would be substantial and moderate/substantial visual impacts.
28. What is often of more use to the decision-maker is an understanding of how it is that two experienced professionals can reach such different conclusions about the impact of the same proposal. The Council²⁷ is critical of some aspects of the appellant's approach and rationale²⁸. These criticisms need to be considered in the context of the fact that the appellant's witness does not purport to have carried out a full Landscape and Visual Impact Assessment²⁹ as the Council has.

²² ID9 and ID41

²³ C1-C4

²⁴ The previous reference to human health to sufferers of tinnitus and hearing aid users having been withdrawn

²⁵ As articulated by Mr La Dell (C1 and C2)

²⁶ Appendix 4 of the SoCG (ID11) refers

²⁷ Through Mr LaDell

²⁸ In the evidence of Mr Truscott (A1)

²⁹ Referred to hereafter as LVIA (C1 and C2) and accepted by Mr Truscott in x-e

29. The main criticism the Council makes of the appellant's landscape evidence is that there has been a failure to assess the baseline. GLVIA3³⁰ advises in paragraph 3.15: *'For the landscape baseline the aim is to provide an understanding of the landscape in that area that may be affected – its constituent elements, its character, and the way that it varies spatially, its geographic extent, its history (which may require its own specialist study), its condition, the way in which the landscape is experienced, and the value attached to it'*.
30. Paragraph 5.3 adds: *'Baseline studies for assessing landscape effects require a mix of desk study and fieldwork to identify and record the character of the landscape and the elements, features, and aesthetic and perceptual factors which contribute to it. They should also deal with the value attached to the landscape. The methods used should be appropriate to the context into which the development proposal will be introduced and in line with current guidance and terminology'*.
31. The appellant accepted³¹ that the 'Baseline', 'Principal Positive Components', 'Principal Negative Components', and 'Landscape Value and Sensitivity'³² for the 4 Landscape Character Areas³³ which the Council takes such a different view on with regard to landscape effects, namely, Elmley Marshes, Leysdown and Eastchurch Marshes, South Sheppey Saltmarshes and Mudflats, and Spitend Marshes (collectively the Swale Marshes), are taken in each case more or less verbatim from the Swale Landscape Character and Biodiversity Appraisal of September 2011³⁴. The appellant has not followed the GLVIA guidance about how to establish the landscape baseline; it has been taken from another source.
32. Having taken the Jacobs Report for the purposes of establishing the baseline, the appellant then takes a very different stance in assessing the sensitivity of the landscape in the 4 LCAs specifically in respect of the four wind turbines proposed; the difference between a generic and a specific sensitivity assessment accounting for the difference in each case between a 'high' sensitivity in each case in the Jacobs Report, and finding of medium or medium/low in the specific. This largely accounts for the different judgements reached by the appellant and the Council.
33. However, nowhere does the appellant's witness explain how the specific sensitivity assessment has been arrived at, beyond professional judgement. The methodology is transparent, but the judgement is not.
34. On top of that GLVIA3 requires the landscape assessment to be specific to the development proposed in the same way that the specific sensitivity assessment must be³⁵. Clearly, the appellant's witness has not made his own assessment of the landscape baseline, relying instead on the Jacobs Report. This takes no account of the four wind turbines proposed.

³⁰ CD10.15

³¹ Mr Truscott in x-e

³² Table at Appendix 6.4 C2

³³ Referred to hereafter as LCAs

³⁴ Also known as the Jacobs Report CD3.1

³⁵ CD10.15 paragraph 5.3 refers

35. Moreover, it is worth considering the Jacobs Report in detail and how it reaches the finding of 'high' sensitivity and then whether the addition of the two existing wind turbines can really make such a difference that the addition of a further four wind turbines leads to a sharp decrease in sensitivity.
36. In the Jacobs Report, for Elmley Marshes, the high sensitivity finding is based on the fact that: '*Features within the landscape, although rare, are highly visible where they exist due to the flat and open nature of the land*'; for Leysdown and Eastchurch Marshes: '*this is a highly sensitive landscape, largely because of the extensive visibility enabled by the flat and treeless landscape.....along with the high visibility, the lack of built development provokes a remote and tranquil character*'; for South Sheppey Saltmarshes and Mudflats: '*It is a highly sensitive landscape that is unsheltered and highly visible from long distances*'; and for Spitend marshes: '*this is a unique, very distinct and tranquil landscape visible from long distances*'³⁶.
37. Given the emphasis on the high degrees of visibility within the landscape, because it is so flat and featureless, it is the Council's case that the appellant has underestimated the sensitivity of the landscape of the Swale Marshes and as a consequence, underestimated the adverse impact the proposal would have on that landscape.
38. If the true nature of the landscape, as set out in the Jacobs Report, is properly appreciated, and the high degrees of visibility across it in particular, the suggestion that effects would be localised, that is within 2-3 km south, east and west³⁷, confirms, in the Council's view, that the impact of the proposal on the landscape of the Swale Marshes has not been adequately addressed.
39. This is supported by the extraordinary failure of the appellant to include viewpoints from the Elmley Farm to New Rides Farm Public Right of Way³⁸ on the basis that it appeared to be not well used, possibly because it fails to link up with the road to the north of New Rides Farm.
40. It can be seen that the appellant has not properly appreciated the landscape and as a consequence, failed to adequately assess the impacts of the proposal upon it. This lends weight to the Council's conclusion that the introduction of further such dominant, vertical structures would cause demonstrable harm to this very flat landscape.

Planning

41. There is general agreement between the Council and the appellant that the relevant policies of the LP, and in particular, LP Policies E1, E9, E19 and U3, are broadly consistent with the Framework, but for a few exceptions. Broadly speaking, these policies seek to encourage renewable energy projects but to balance any resultant harm to the landscape against the benefits. The exceptions concern the inclusion of words or phrases such as 'minimise' in LP Policy U3, and 'protect and enhance' in LP Policy E1.

³⁶ CD3.1

³⁷ Confirmed by Truscott in x-e

³⁸ Referred to hereafter as PRoW

42. So long as these words and phrases are interpreted in line with the way in which 'minimise' is intended in ELP Policy DM20, so that adverse impacts are 'minimised and mitigated to acceptable levels'; or that 'enhancement' in the context of necessarily very tall wind turbines is applied pragmatically, tempered by the essential nature of a wind turbine, then the development can be assessed against these policies without necessarily being found to conflict with the policy.
43. There will nevertheless be a measure of inconsistency between the LP and the Framework and the Council accepts that this might limit the weight to be attached to the LP. Any diminution should be modest given that the broad thrust of the LP is to support the move towards a low carbon future by supporting renewable energy proposals, while ensuring that landscape and visual impacts are satisfactorily addressed.
44. ELP Policy DM20 is consistent with the Framework but ELP Policy DM24 needs to be interpreted pragmatically in order to ensure consistency by reading into it: the minimisation and mitigation of adverse landscape impacts *to acceptable levels* or words to that effect. Both these ELP policies are well advanced in the process towards adoption and so attract significant weight.
45. In that light, it is common ground that the first bullet point of paragraph 14 of the Framework is engaged that is *approving development proposals that accord with the development plan without delay unless material considerations indicate otherwise* or, as per the Council's case to the Inquiry, that the proposals do not accord with the development plan so it is necessary to consider whether other material considerations indicate that planning permission should be granted.
46. The Council's position is that the proposal would have a significant intrusive and harmful impact on the visual and landscape quality of the surrounding landscape and as such, it falls contrary to the LP and ELP policies referred to.
47. For similar reasons, the proposal would be at odds with paragraphs 97 and 98 of the Framework. Of course, considerable weight must be given to the important benefits that would flow from the proposals but that is not sufficient to outweigh the harmful landscape and visual impacts that would result.
48. That leaves the WMS. The Council does not suggest that the WMS or the PPG guidance that flows from it should, or indeed can, supplant Section 38(6) of the Planning and Compulsory Purchase Act 2004.
49. The appeal must be determined in accordance with the development plan unless material considerations, which would of course include the WMS, and local opinion, indicate otherwise.
50. It is open to the decision-maker to take the view that if the proposal has addressed the planning impacts identified by local communities (which include impacts on the landscape which form the central plank of the Council's case, as well as matters around noise and health and others raised by SSEW) then it could be said that the affected local community backs the proposal.
51. The interpretation turns on the word 'therefore' in the final line of the WMS: *'...local planning authorities can find the proposal acceptable if, following consultation, they are satisfied it has addressed the planning impacts identified by affected local communities and therefore has their backing'*. What is very clear in this case is that the affected local community does not back the proposals.

Conclusions

52. This case revolves around the impact the proposed wind turbine array considered together with the two already in place nearby, would have on the landscape and visual amenity of the Swale Marshes.
53. The Council's evidence demonstrates how the appellant's approach has not adequately described the landscape and as a consequence, has not adequately assessed the impact the proposed wind turbines would have on it. In that light, and notwithstanding the acknowledged benefits the scheme would bring forward, the proposal falls contrary to the development plan, emerging policy, and the Framework.
54. On that basis, the appeal should be dismissed.

The Case for SSEW

55. The case for SSEW was made in opening³⁹ and closing⁴⁰ statements to the Inquiry and through evidence on various matters of concern⁴¹. Some of this was put forward at the Inquiry, and other matters dealt with through written submissions⁴². The summary that follows is based on the closing statement. SSEW argues that the proposal should be rejected on a number of grounds.

The Concerns of the Local Community

56. The great majority of the homes that would be adversely affected by the proposal lie within the Parish of Eastchurch. The Parish Council voted unanimously against the development and the Inquiry has served to reinforce that decision.
57. Local residents are only too aware of the noise emanating from the two existing wind turbines at HMP Stanford Hill, yet these are three times as far away from dwellings as the four now proposed. Residents had been reassured by the developer and Council Officers that the two wind turbines previously approved would cause no issue in terms of noise so they made no objection to them.
58. Residents' trust in wind turbine developers and their claims about noise evaporated soon after these wind turbines started generating. Residents have experienced for themselves the impacts that just two wind turbines can have on their quality of life and can well imagine how much worse the impact of six wind turbines would be, with the additional four much closer to them than the original two. These concerns have been documented throughout the various stages the scheme has gone through.
59. The appellant has not resolved any of these concerns. Many other residents came along to the Inquiry and made plain their objections. It is plain that the proposal does not have their backing.
60. Most local residents either work or have worked in prisons or have friends and relatives that do. They are only too aware that disturbances can and do arise in the prisons and can seriously affect local residents.

³⁹ ID8

⁴⁰ ID42

⁴¹ R1-R5

⁴² ID36, ID37 and ID38

ETSU-R-97 and the IoA Good Practice Guide

61. There is serious doubt in the mind of SSEW⁴³ as to whether the appellant demonstrated that ETSU-R-97⁴⁴ and IoA Good Practice Guide⁴⁵, together with ISO 9613-2, guidance has been properly followed.
62. SSEW considers that if it has, and in the absence of excess amplitude modulation, wind farm neighbours will be provided with a reasonable degree of protection from wind farm noise, albeit with little margin. However, the appellant has 'cherry picked' from the guidance to achieve a reduced (by 4dB) predicted immission level from that SSEW believe to be correct.
63. This 4dB figure is made up of 3dB from the appellant's ignorance of the plus or minus 3dB in ISO 9613-2 and the remainder from disregarding the guidance of the IoA GPG on dealing with wind turbine noise data uncertainty; the appellant having allowed 1dB where the IoA GPG requires 2dB.
64. The appellant suggests that the existing wind turbines near HMP Standford Hill do not breach the noise limits set for them. However, there is no evidence that they comply either; there have been no measurements to demonstrate compliance. Local residents have given evidence that limits, that were themselves inadequate, have been exceeded, with consequent impacts on their well-being, and that of prison inmates and staff.
65. The concern of SSEW is not in any event the performance of the existing wind turbines, but that of those proposed. It is noteworthy that the predicted immission level from the existing wind turbines was only 0.5dB below the 43dB night-time limit. SSEW state⁴⁶ that adding the noise from the four proposed wind turbines will increase the noise level at HMP Elmley by 1.5dB, 1dB above the ETSU-R-97 derived noise limit. Moreover, the true level will be higher as the noise impact assessment for the existing wind turbines was undertaken before the publication of the IoA GPG.
66. It is clear that the appellant's noise limits, themselves calculated on a false premise, will be breached. The resulting noise levels will have a detrimental impact on the living conditions of local residents, and on the inmates and staff of the prisons.

Wind Turbine Noise, Health and Amplitude Modulation

67. This is a serious problem for the wind energy industry. The problem is misleadingly termed excess amplitude modulation but in reality the resulting harm to health derives from the very low frequency and infrasonic emissions that accompany it. SSEW is of the view that the appeal should fail on the basis that the scheme would not comply with ETSU-R-97 and IoA GPG derived noise limits but on top of that SSEW is concerned that the effect of excess amplitude modulation on prisoners could impinge very severely on prison management, particularly in the case of higher category inmates.

⁴³ Articulated through the evidence of Dr Yelland R1 and ID36

⁴⁴ CD11.1

⁴⁵ CD11.2 Referred to hereafter as IoA GPG

⁴⁶ Through Dr Yelland R1 and ID36

68. The Wind Turbine AM Review Phase 1 Report submitted by the appellant⁴⁷ on the subject is in many ways, a review of the literature on excess amplitude modulation. It concludes, wrongly in the view of SSEW that the reason wind farm neighbours can be very annoyed by it is because they have a negative attitude to wind turbines⁴⁸. SSEW claims no relevant expertise but is surprised to note that DECC entrusted two acousticians with a report requiring expertise in medicine and psychology.
69. SSEW takes the position, partly based on mounting anecdotal evidence⁴⁹ that adverse health impacts as a result of excess amplitude modulation are tangible and are likely to affect local residents and prisoners and staff in the prison cluster.

The WMS and the Emerging Local Plan

70. The appellant has sought to downplay the importance of the WMS. The scheme does not have the backing of the local community and as a consequence, fails to accord with the WMS. The intention of the WMS is clear that in such circumstances, planning permission should not be granted.
71. Much has been made of the supportive approach of the ELP towards renewable energy but it has yet to be adopted and is unlikely to be in its current form. It is but a draft and should be afforded little weight.

Visual Amenity

72. The appellant⁵⁰ accepts that a small number of properties in Range Road and Kent View Drive would experience significant visual effects as a result of the presence of the wind turbines. Much of the prison cluster would experience similar impacts.
73. The conclusion reached is that the visual impact would not be overbearing but there is no explanation of how that conclusion was reached. Logically, it is difficult to see how four wind turbines, 126m high, 600m away from homes, would not appear overbearing with a consequent unacceptable effect on residents' living conditions.
74. Aside from that, SSEW take issue with the notion portrayed by the appellant that the wind turbines proposed would fit in well with the local wind turbine landscape. There is no local wind turbine landscape – the only ones presently visible are those adjacent to HMP Stanford Hill.

Ecology

75. Birds are of central importance to the ecology of the Elmley Marsh. Locals, and particularly those who work or spend a lot of time on the marsh, have already noticed that many species avoid the existing wind turbines at HMP Stanford Hill. This 'displacement' effect has not been properly addressed.

⁴⁷ ID35

⁴⁸ ID35 paragraph 3.3.87

⁴⁹ ID37 for example

⁵⁰ Through the evidence of Mr Truscott

76. SSEW⁵¹ has given a comprehensive insight into migratory and resident bird movements over the marsh. Unlike the appellant's work, it is the work of an ornithologist who has spent many years in the study of birds on the marsh. The appellant's conclusions are not based on such an accurate picture and should be discounted. There would be a harmful impact on birds as a result of the proposal.

Conclusion

77. It is obvious to people living in the vicinity of the proposed development that it has not been well designed. The wind turbines would be too close to dwellings and dangerously close to prisons. Noise would be produced over permitted limits at some residents' homes, and grossly over those limits within the prison cluster. There would be a significantly harmful landscape and visual impact on the local area, and beyond. There is no support for the scheme from the local community. For all those reasons, the appeal should be dismissed.

The Case for the MoJ

78. The MoJ did not participate in the Inquiry as a Rule 6 party and their presence was limited to a non-technical submission by the Governing Governor of HMP Swaleside⁵² that I summarise below.
79. **Paul Newton**, Governing Governor of HMP Swaleside outlined concern about the environment that would result for staff and their charges in the Sheppey Prison Cluster. Effectively, they would be working, and living, within the confines of a wind farm; a unique situation.
80. First, there is a concern that coupled with the two existing, operational wind turbines near to HMP Standford Hill, the wind turbines proposed will exceed noise limits. Higher category prisoners at HMP Swaleside and Elmley are in their cells for long periods, and have limited opportunities to spend time outside. They may regard the noise from the wind turbines as a nuisance. If the prison management cannot offer a remedy, this may lead to agitation and disruptive behaviour by individuals, or groups of prisoners. Prison staff may also find the noise intrusive which may result in difficulties in them discharging their duties.
81. There is no reason why prisoners should not be afforded the protection afforded to other residential occupiers. Moreover, staff should be protected in the workplace. Similar issues around noise impacts led to a proposed Energy from Waste installation being dismissed at appeal in Scotland⁵³.
82. There are concerns too that prisoners and staff might be affected by shadow flicker, with similar results. Shadow flicker might also create difficulties for the prison security systems.
83. The final point relates to the visual impact of the wind turbines. Some prisoners would have views of wind turbines just 400m away. The consequent visual impact would be overbearing and because the prisoner only has one view available from their cell, this would have a significant detrimental impact on their living conditions.

⁵¹ Through the evidence of Mr Haynes R5

⁵² ID17

⁵³ ID15

84. As a result of all that, the appeal should be dismissed.
85. In view of the central importance of the MoJ position to determination of the appeal, and the ongoing discussions that took place between them and the appellant during the adjournment, on technical matters, I sought a closing statement from the MoJ so that their position at the end of the Inquiry could be properly ascertained⁵⁴. This was produced on their behalf by Atkins Ltd.
86. The resulting submission makes a number of points about noise, including amplitude modulation, and shadow flicker/casting, largely in the form of a commentary. On my reading, there appears to be an acceptance that noise, and shadow flicker can be dealt with by suitably worded conditions. A number of amendments are suggested to the conditions put forward by the appellant⁵⁵. I deal with these in considering conditions below.
87. The main objection to the proposal, put forward by Atkins Ltd, relates to visual impact, largely reiterating the points made by Mr Newton. The point is made that much is made by the appellant of the MoJ's acceptance of the wind turbines near HMP Stanford Hill in similar proximity but it must be stressed that this is an open prison. The sensitive prisoners that would be affected at HMP Swaleside and HMP Elmley are in a different category and spend much more time in their single-aspect cells. The visual impact of the wind turbines, in such close proximity, would have a significantly detrimental effect on the living conditions of those prisoners, which may well lead to supervisory difficulties.
88. In brief, the MoJ objection derives from the basic premise that the prison cluster needs to be operated in a manner which provides for safe and well-ordered establishments in which prisoners are treated humanely, decently and lawfully, and is a safe place for inmates, staff, and others. The proposed wind turbine cluster would undermine that.

The Case for Airvolution Energy Ltd

89. The appellant's case to the Inquiry was delivered through evidence on landscape, panning and noise⁵⁶ and set out in opening⁵⁷ and closing statements⁵⁸ to the Inquiry. What follows is a summary of the closing statement.

Introduction

90. The scheme represents a near perfect example of the type of commercial wind farm that should be granted permission in late 2016.

Benefits

91. Notwithstanding any curtailment necessary for shadow flicker and noise mitigation, the proposal would deliver a nationally significant amount of renewable energy and contribute to the achievement of the national target for 15% of all energy to come from renewables by 2020. The scheme would make a recognisable contribution towards mitigating the impact of climate change.

⁵⁴ ID40 and ID45

⁵⁵ ID40 Appendix 2 and ID33

⁵⁶ A1-A5 inclusive and ID39

⁵⁷ ID7

⁵⁸ ID44 and ID45

92. On top of that, it would assist with energy security through its contribution to the mix of decentralised renewable resources in Kent and the South-East. Direct economic benefits would flow in terms of some new local employment, and there would be indirect economic benefits too.

The WMS and Local Opinion

93. SSEW and local residents set great store by the WMS of 18 June 2015. Clearly this is an important material consideration. However, alongside the attendant changes to PPG, it is clearly subservient to the development plan, and the unchanged approach of the Framework.
94. It is well established that local opinion is a material consideration. However, to place greater weight on it following the WMS of 18 June 2015 would risk undermining the objectivity of the planning system. Objectors' views are relevant to the extent that they bear on land-use planning issues. The amount of weight to be attached is a matter for the decision-maker, bearing in mind the approach of Section 38(6) of the 2004 Act. The approach taken by the Courts to the WMS is instructive⁵⁹.

The MoJ Position

95. It is regrettable that the MoJ now seeks to object to this proposal when they were very actively involved in the project that delivered the now-installed Stanford Hill wind turbines. It is somewhat rich that the MoJ raise unwarranted technical issues against the scheme at issue, when three years ago, they adopted a stance that was the direct opposite. The sole point of objection raised by the MoJ seems to be the visual impact of the wind turbines on the outlook from certain prison cells. It is the appellant's case that any visual impact would be within acceptable bounds.
96. Great play is made of the differences between HMP Swaleside and HMP Stanford Hill but this approach is flawed. First, there is a suggestion that varying degrees of sensitivity should be applied to inmates depending on what type of accommodation they are housed in. There is no planning basis for that. The appellant's Residential Amenity Study⁶⁰ treats all inmates as highly sensitive. It is interesting to contrast the approach of the MoJ now with their approach to the Stanford Hill wind turbines where inmates were judged to be of negligible sensitivity⁶¹. Secondly, the MoJ appears to have ignored HMP Elmley which is closer to the existing wind turbines than HMP Stanford Hill.
97. In relation to other technical issues, notwithstanding their closing submissions, the MoJ appears to be satisfied that noise, shadow flicker and drones detection can all be addressed by condition. The appellant does not accept any of the eleventh hour changes suggested to the conditions by the MoJ.
98. In short, any problems with prisoner discipline at the Sheppey cluster are pre-existing. There is no evidence that prison conditions were made worse by the installation of the Stanford Hill wind turbines, and no evidence that conditions will be made worse still by the wind turbines at issue.

⁵⁹ *Holder v Gedling BC* [2016] EWHC 3095 ID44 Appendix 1

⁶⁰ Contained within CD12.10

⁶¹ ID3, ID5, ID19, ID20 and ID21

Planning Policy and Other Material Considerations

99. The most relevant policies of the LP⁶² are LP Policies E1, E9, E19 and U3. In terms of the ELP⁶³, Policies DM20 and DM24 apply.
100. There is no dispute between the appellant and the Council about the correct approach to the LP and the ELP in the light of advice in the Framework. In simple terms, 'minimised' in LP Policy U3 means no more than a need to demonstrate that impacts have been reduced to a point where they are acceptable in the context of paragraph 98 of the Framework. That approach should be taken to LP Policies E1, E3 and E19 and ELP Policies DM20 and DM24 too.
101. In terms of other material considerations, there is a raft of Government policy and guidance that stresses the importance of renewable energy⁶⁴. The national pipeline to 2020 may be reasonably healthy but that depends to a large extent on proposals like that at issue, that are already in the planning system, coming to fruition, in time. It is important to reflect too on the fact that Government ambitions go well beyond 2020.

Landscape and Visual Impact

102. The Council's evidence to the Inquiry on this matter was weak and focused almost entirely on effects upon the landscape character of the marshes. Producing five additional viewpoints from the footpath across the marshes⁶⁵ was of little assistance because they are not representative of how the development would sit in the wider landscape context. The evidence of the appellant on this matter should obviously be preferred.
103. The appeal site is largely within the Central Sheppey Farmlands LCA⁶⁶ with a very small part in the Leysdown and Eastchurch Marshes LCA⁶⁷. The former is described as an area of 'poor' landscape condition, of 'moderate' sensitivity. The guidance concludes that wind farms in exposed locations are often prominent features but visual impacts are likely to be reduced when located in landscapes where there is a diverse mix of land uses, like the prison cluster, against which wind turbines can be viewed.
104. It is fair to say that all modern commercial wind farms will result in significant landscape effects and this is acknowledged in national policy. If wind turbines are to be accepted as part of the overall energy mix, then such effects are inevitable. The question is whether those effects can be considered acceptable.
105. Significant landscape character effects would be most widespread to the west, south and east of the site by reason of the landscape being open and flat. The effects would decrease with distance. There would be less of an effect on the character of the landscape to the north owing to the ridge which would curtail visibility of the development, combined with a greater degree of settlement, tree groups, and hedgerows.

⁶² ID47

⁶³ CD3.8

⁶⁴ CD2.2, CD2.3, CD2.4 CD5.4, CD5.6, CD5.29 and CD5.36 amongst others

⁶⁵ C2 Appendix TL2

⁶⁶ ID16 refers

⁶⁷ As identified in the Swale BC Landscape Character and Biodiversity Appraisal CD3.1

106. The Central Sheppey Farmlands LCA would receive locally significant adverse effects on landscape character while the Leysdown and Eastchurch Marshes LCA would receive localised direct and indirect moderate to substantial adverse effects. All would these effects decrease with distance. Others LCAs and SLAs would receive significant indirect effects on landscape character but again, these would reduce with separation.
107. Cumulatively, the two affected LCAs would sustain significant landscape character effects as a result of a combination of the wind turbines at issue, and those already installed adjacent to HMP Stanford Hill. The effect would be confined to a relatively small part of the overall study area.
108. Over the 30km study area, a number of viewpoints, and routes would receive significant visual effects. Similarly, some built receptors and outdoor sites would sustain similar effect. These are residential receptors occupying elevated positions on the southern edge of Eastchurch; residential receptors near to the prison cluster; and receptors in the prison buildings.
109. In terms of visual amenity, because of the separation distance, relative orientation, and the expanse of the view, at no dwelling, or part of the prison accommodation, would the wind turbines proposed appear visually overbearing, overwhelming, dominant or oppressive such that the dwelling (or cell) would become an unattractive place to live. The Council accepts that.
110. Put simply, in terms of landscape and visual effects, the impact of the proposed development considered in isolation, or cumulatively, is, in the parlance of paragraph 98 of the Framework, acceptable.
111. What is more, in accordance with paragraph 97 of the Framework, the Council instructed AECOM to identify areas suitable for renewable energy development. The resulting Swale Council Renewable Energy and Sustainability Study⁶⁸ is incorporated into and informs the approach of the ELP. The appeal site lies within one of the few areas on the Energy Opportunities Map that forms part of the study, where there is said to be high potential for the installation of large scale wind energy schemes. Within an area of high potential for the installation of large scale wind energy schemes, the manifestly sensible thing to do is to locate additional wind turbines in a clustered arrangement, close to the existing wind turbines adjacent to HMP Stanford Hill.
112. In essence, the Council is getting exactly what it asked for. Having identified the area as suitable, and having already granted permission for the existing wind turbines at HMP Stanford Hill, it cannot sensibly now argue that wind turbines are unacceptable in landscape terms because of their impact on views across the marshes.
113. While the presence of the existing wind turbines adjacent to HMP Stanford Hill does not automatically justify a grant of planning permission for the scheme at issue, the Council cannot sensibly argue that the proposal at issue would introduce incongruous, tall, vertical structures into a landscape that is unsuitable for such features. Commercial scale wind turbines have already been approved by the Council in that landscape, and satisfactorily accommodated within it.

⁶⁸ CD3.7

Noise

114. The Council raises no substantive issue in this regard and neither does the MoJ. The issues raised by SSEW⁶⁹ are nothing new and have been addressed⁷⁰.
115. Government guidance⁷¹ has consistently incorporated ETSU-R-97⁷² as the approved methodology for assessing wind turbine noise. In this case, predicted wind turbine immissions levels, using a candidate turbine, will meet the ETSU-R-97 derived noise limits under all conditions, and at all locations, for both quiet daytime and night-time periods. Vague assertions have been made about health impacts⁷³ but there is no substantive evidence to demonstrate that such harm would be caused.
116. SSEW highlight examples of wind turbine applications where a flaw has been found in the noise monitoring data. Aside from some micro-criticism of the monitoring location on Range Road, raised at a late stage, that is not the situation here.
117. In terms of the prediction methodology, considerable work has been done over the years to validate operational wind farm noise levels with those predicted. The results have led to a consensus amongst leading acousticians in the sector about the correct parameters. The March 2009 IoA Bulletin was followed by the IoA GPG⁷⁴. The use of warranted sound power levels in combination with a ground effect factor of 0.5 provides a realistic worst case basis for assessment.
118. None of the arguments put forward by SSEW are new. The IoA GPG approach does not require the decision-maker to add in a 3db(A) margin, a margin for hard ground, or indeed any other margin. Protection for the residential occupier is provided by the noise limit in the relevant planning condition; any wind turbine, whatever the predictive methodology, will have to meet that limit.
119. The fact that the MoJ objection on noise grounds has been withdrawn should be the end of the matter. The argument about whether ETSU-R-97 applies to prisons is academic. The limits in the relevant condition agreed with the MoJ would involve some limited curtailment, depending on the eventual wind turbine model chosen. The MoJ is content that the agreed limits can be met.
120. In terms of cumulative noise, a contour plot was provided in the ES Addendum⁷⁵. The assumed downwind propagation for all wind turbines and cumulative noise levels can meet the 43 dB LA90 limit without relying on propagation losses of different wind directions referred to by SSEW⁷⁶. This point has been accepted by the MoJ. The agreed noise limits for the prisons will involve some limited curtailment but the development is not reliant on propagation losses to achieve the limits.

⁶⁹ R1, ID36, ID37 and ID38

⁷⁰ A5 and ID39

⁷¹ EN-1 and EN-3 CD2.2 and CD2.3 respectively

⁷² CD11.1

⁷³ ID37 and ID38 for example

⁷⁴ CD11.2

⁷⁵ CD12.10 Figure 9.1

⁷⁶ R1 and ID36

121. The prison blocks will provide some acoustic shielding. The prison cells are single aspect and no cell window can be exposed to the noise of all the existing and proposed wind turbines.
122. Other or excess amplitude modulation has been raised by SSEWs but there is no consensus amongst the acoustic community about the definition, causes, mechanics, frequency, duration, or seriousness of it. Government policy has not changed. As recorded in the IoA GPG⁷⁷, current best practice is not to attempt to impose a condition to deal with amplitude modulation.
123. The Wind Turbine AM Review Phase 1 Report⁷⁸ sought to address this matter and makes a recommendation as to how a planning condition might be framed. If, the decision-maker decides that such a condition would be appropriate in this case, a suggestion has been put forward⁷⁹.

Tourism

124. The Council does not suggest that the proposal would have any harmful impact on tourism. While some concerns were raised⁸⁰, there is no objective evidence that the addition of the four wind turbines proposed, over and above the two already present, will result in any adverse impact.

Conclusion

125. This is a refined scheme - the wind turbines proposed would result in localised changes to landscape character and to some views but, in the parlance of paragraph 98 of the Framework, these impacts would be acceptable.
126. The proposal complies with the development plan. A development plan led exercise, giving due weight to other material considerations, including the WMS, leads to the inexorable conclusion that planning permission should be granted for this sustainable, temporary, and wholly reversible development in the form in which it is sought.

Interested Parties

127. I conducted an evening session on 25 October 2016 to allow proper opportunity for local residents to make their views known. Others made submissions at other points in proceedings. Many kindly provided written transcripts of their statements which I have appended as Inquiry documents. I have briefly summarised what was said below.
128. **Trish Codrington**, the Parish Clerk of Minster on Sea PC set out that there is general support for renewable energy but shares the concern of many residents and PCs about the harmful impact of prominent wind turbines on such a flat landscape. The photomontages in the ES Addendum⁸¹ make plain the scale of that impact. Given the scale of local opposition, the WMS is of particular relevance.

⁷⁷ CD11.2

⁷⁸ ID35

⁷⁹ ID33 Suggested Condition 32

⁸⁰ ID24 in particular

⁸¹ CD12.10

129. **Mr Tatton** claimed to represent Leysdown PC⁸² and explained that the scheme should not have been rejected.
130. **Mike Brown**, representing Eastchurch PC offered strong support for SSEW and the Council's stance. The proposed wind turbines would be too close to dwellings. The WMS should be taken at face value and Eastchurch residents, who would be those most directly affected, should have the final say⁸³.
131. **John Stanford**, a local resident, and someone who grew up in the area, offered support for the scheme and explained that in the context of the threat of climate change, the benefits of the proposal would outweigh any harm. The landscape and visual impact of the wind farm would be within reasonable bounds.
132. **Gareth Fulton**, a local resident and manager of Elmley National Nature Reserve felt that the additional four wind turbines proposed would create an incongruous cluster that would have a significantly detrimental impact on a unique marshland landscape and its open skies. It would bring the viability of the nature reserve into question by depressing visitor numbers and making the overnight accommodation and events offered less attractive⁸⁴.
133. **Tina Booth**, a resident of Eastchurch, and a Parish and Borough Councillor, objected to the proposal, largely on the basis of noise and shadow flicker. The local community does not support the scheme and bearing in mind the approach of the WMS, it should therefore be rejected⁸⁵.
134. **Duncan Aldred**, a local resident, felt that the wind turbines proposed would dominate views and create an industrial landscape. There would be harm caused to wildlife too⁸⁶.
135. **Sara O'Bray**, a resident of Eastchurch, explained her belief that the wind turbines proposed would pose a threat to the health of local residents. The local community should not be ignored⁸⁷.
136. **Richard Halls**, a resident of Eastchurch, and former Prison Officer, outlined his view that the noise from the wind turbines, in particular, would have a significant detrimental impact on the health of those working at, visiting, and incarcerated in, the three prisons⁸⁸.
137. **Mark Gibson**, a resident of Minster, and the treasurer of the Standford Hill Angling Group, who fish at a lake adjacent to HMP Standford Hill, suggested that noise from the wind turbines proposed would affect users and those with hearing aids in particular. It has the potential to cost the group membership⁸⁹.

⁸² SSEW confirmed, correctly in my view, that he had no authority to make that claim

⁸³ ID23

⁸⁴ ID24

⁸⁵ ID25

⁸⁶ ID26

⁸⁷ ID27

⁸⁸ ID28

⁸⁹ ID29

138. **Sandra Peck**, a resident of Eastchurch, set out her concerns that the wind turbines proposed would exacerbate the detrimental impact on sufferers of tinnitus that the wind turbines approved at Standford Hill have already had⁹⁰.
139. **Andy Booth**, a Local Councillor and Vice Chairman of the Planning Committee, vehemently opposed the scheme and explained that it would heighten the unfortunate impact on the landscape that the previously approved wind turbines have already caused. Moreover, they would compound problems for local residents through noise. The area is home to an internationally recognised population of predatory hawks, and marsh harriers. The wind turbines would harm those birds.
140. **Michelle Gudgeon**, a local resident and tinnitus sufferer, outlined the discomfort caused by noise from the existing wind turbines. The wind turbines proposed would heighten the problems already experienced⁹¹.
141. **Susan Higgs**, a resident of Eastchurch has made a series of complaints about noise from the existing wind turbines and the disruption they cause. The four additional wind turbines proposed will only make the already intolerable situation worse⁹².
142. **Lorraine St John**, a local resident, expressed concern about impacts on the wildlife the Isle of Sheppey is renowned for.
143. **Denise Russell**, a resident of Eastchurch, complained about noise and the need for lighting at night, which would disturb local wildlife and bats in particular.
144. **Tony Read**, a resident of Eastchurch, raised issues around the impact of the wind turbines proposed on wildlife, the prison population, and tourism.

Conditions

145. A list of draft conditions⁹³ was discussed at the Inquiry in the light of advice in paragraph 206 of the Framework. The standard commencement condition is an obvious necessity as is a condition setting out the approved plans.
146. Given the temporary and reversible nature of the development proposed, conditions are required to specify the 25 year period for which the permission endures, and to secure decommissioning and site restoration, which are requirements of LP Policy U3. Another condition is required to cater for any situation in which one or more of the wind turbines cease to export electricity, save for certain exceptions.
147. Given the scale of the undertaking involved in the construction of the development, and the attendant potential for disruption, it is reasonable to apply conditions to secure a Construction Method Statement and a Construction Traffic Management Plan, and to control working hours, and delivery times.
148. To exert proper control over appearance and design, conditions are necessary to ensure the wind turbine blades rotate in a common direction and that the height

⁹⁰ ID30

⁹¹ ID31

⁹² ID32

⁹³ ID33

- to tip is limited to 126.5 metres. Furthermore, there is a need for colours and finishes of the wind turbines to be approved by the Council and for signage to be limited. Similarly, details of the substation need to be subject to approval before construction and on-site electrical cabling needs to be installed underground.
149. A number of conditions have been suggested to deal with ecology. Given the proximity of the nature reserve at Great Bells Farm, it seems to me that a condition to require the monitoring of bird numbers post-construction is a reasonable imposition so that any unforeseen impact can be addressed.
150. A condition is required to secure the compensatory 24 hectare area of land and biodiversity enhancement measures referred to in the ES and ES Addenda⁹⁴, as is another similar condition designed to maintain the habitat potential of Great Bells Farm. Further conditions are required to address the clearance of vegetation, to ensure that a pre-commencement walkover to check the baseline takes place and to allow for a scheme designed to address potential impact on water voles.
151. In terms of aviation, it would be necessary to apply conditions to ensure the location and height of the wind turbines, and a start/finish date for their erection, is notified to the Council, to secure aviation warning lighting, to address the requirements of the nearby Eastchurch Airfield, and to secure a Radar Mitigation Solution with London Southend Airport.
152. Given the potential of the site, it would be reasonable to apply a condition requiring an archaeological investigation. Conditions are also necessary to deal with micro-siting, the finished floor levels of the substation, and to ensure reasonable visibility is maintained at the site access.
153. In order to safeguard against interference with televisions, a condition should be applied to secure a means of dealing with any that might arise. More complex is the condition required to address shadow flicker. This needs to deal with the phenomenon in the usual manner at dwellings and but also to address the operational requirements, and CCTV in particular, at the nearby HMP Swaleside and HMP Elmley. Finally, a condition, along with attendant guidance notes, is necessary to cover operational noise and the steps to be taken in the event of any difficulties that might arise.
154. As set out above, the MoJ provided detailed comments on the conditions designed to deal with noise, and shadow flicker and made a number of suggested additions to the conditions⁹⁵. In my view, these are all unnecessary and add nothing useful to conditions that are already complex. The suggested conditions, as drafted, are perfectly clear in their intentions.
155. There are a two suggested conditions that are disputed by the appellant. The first relates to drones and the difficulties they cause for prison management. The suggested condition requires the appellant to submit a scheme for the detection of drones approaching within 100m of the eastern perimeter walls of HMP Swaleside and HMP Elmley for approval and to subsequently implement it.
156. The difficulty with that, in my view, is that, as the Inquiry heard from the Governing Governor of HMP Swaleside, the prisons already experience difficulties

⁹⁴ CD12.1, CD12.2 and CD12.10

⁹⁵ ID40 Appendix 2 refers

with the use of drones to make nefarious deliveries to inmates. It is a pre-existing problem therefore. I have significant doubts as to whether any noise from the wind turbines proposed will make detection more difficult; detection seems to me to depend largely on visual contact. In that context, if planning permission was granted for the scheme, the suggested condition would be an unreasonable imposition on the appellant because it is not the development proposed that gives rise to the MoJ's difficulties in this regard.

157. The second disputed condition relates to amplitude modulation and, in simple terms, requires the submission for approval, and implementation, of a scheme for the assessment and regulation of the phenomenon. The difficulty is that as the appellant points out, there is no consensus amongst the acoustic community about the definition, causes, mechanics, frequency, duration, or seriousness of it. There is no evidence to suggest that amplitude modulation will occur here.
158. In that light, it is very difficult to see how the suggested condition can meet the tests of precision and necessity. Best practice as set out in the IoA GPG reflects that. Notwithstanding the more permissive approach set out in the Wind Turbine AM Review Phase 1 Report⁹⁶, I consider that the suggested condition would be an unreasonable, and in my view, unworkable imposition.

Conclusions

159. In this part of the report, I have used references thus [---] to cross-refer to previous paragraphs in the report.

Main Issue

160. Notwithstanding the reason for the call-in, the main issue to be considered is whether any harmful impacts the development might have in terms of landscape character and visual effects, the living conditions of residents and prisoners and working conditions of staff at the prisons, and other matters like ecology and tourism, are outweighed by any benefits it would bring forward. **[3]**
161. That analysis must take place in the context of the development plan, and other material considerations, notably the Framework, and the WMS.

The Policy Approach

162. Before addressing those specific matters, it is important to set out the approach to be taken to the relevant LP policies. In that it specifically addresses renewable energy, LP Policy U3 is the lead development plan policy. The approach it takes to the balance between benefits and adverse impacts and the need to minimise, but not eliminate, the latter, presages in many ways that of paragraph 98 of the Framework which tells us that applications should be approved if impacts are (or can be made) acceptable.
163. LP Policies E1, E9 and E19 take a much more prescriptive approach to adverse impacts, seeking to avoid them completely. I agree with the main parties that LP Policy U3, the lead policy, can only make sense if LP Policies E1, E9 and E19 are interpreted in a subsidiary, and more pragmatic, fashion, using the approach LP

⁹⁶ ID35

Policy U3 takes to the balance between benefits and harm. It is evident that ELP Policies DM20 and DM24 follow that path too. [10-20, 41-44, 71, 99-100]

Landscape and Visual Effects

164. First of all, it is important to note that commercial wind turbines of the scale proposed here will almost always be prominent and have significant landscape effects. If, as the Framework tells us, we are to recognise the intrinsic character and beauty of the countryside then these effects must be seen as adverse. That said, different landscapes have different capacities to absorb those effects.
165. The proposal is largely located in the Central Sheppey Farmlands LCA as set out in the Swale Landscape Character and Biodiversity Appraisal (or Jacobs Report)⁹⁷, with a small part in the Leysdown and Eastchurch Marshes LCA. The Central Sheppey Marshlands LCA is described as poor in condition with moderate sensitivity. It is described as a large-scale, open, predominantly arable landscape. The prison complex is highlighted as a dominant feature.
166. The guidelines for the LCA suggest that proposals that are unduly prominent in highly visible locations such as undeveloped south, east, and west facing slopes should be avoided as should proposals that would have a similar impact on the undeveloped coast or obstruct or erode views of the Swale or Thames Estuary. The Leysdown and Eastchurch Marshes LCA is described as highly sensitive largely because of the extensive visibility enabled by the flat and treeless landscape.
167. I note the concerns expressed by the Council about the appellants' methodology and how that might have affected the conclusions reached but in very simple terms, the Council and others are concerned that the introduction of four further large-scale vertical structures would cause unacceptable harm to the very flat marshland landscape because the vertical emphasis of the wind turbines and their alien moving features will be in complete contrast to the flat and horizontal landscape.
168. By marshland landscape, the Council means the Elmley Marshes, Leysdown and Eastchurch Marshes, South Sheppey Saltmarshes and Mudflats, and Spitend Marshes LCAs (collectively the Swale Marshes). All are defined in the Swale Landscape Character and Biodiversity Appraisal as highly sensitive largely because of their flat and open nature, the extensive visibility across them, and their tranquil nature.
169. Nevertheless, I have a number of difficulties with the Council and others' analysis. First of all, the Council clearly found the existing wind turbines that have been erected adjacent to HMP Standford Hill acceptable in landscape terms. That is difficult to square with the suggestion that the vertical emphasis of the wind turbines now proposed and their alien moving features will be in complete contrast to the flat and horizontal landscape.
170. Leaving that point aside, the visual representations in the ES Addendum⁹⁸ and in the Council's evidence⁹⁹, which were borne out by my unaccompanied site visit

⁹⁷ CD3.1 and ID16

⁹⁸ CD12.10

⁹⁹ C2 Views 1-20

which took in the important PRoWs highlighted in the Council's evidence, show that these existing wind turbines sit comfortably in their context. Far from appearing incongruous, the wind turbines are read alongside the dominant bulk of the prison complex and do not appear unduly prominent or as part of the marshland landscape in long distance views across the different LCAs. Moreover, the flat, open, and windswept landscape lends the existing wind turbines a functional logic that further aids assimilation.

171. On top of that, because the existing wind turbines do not appear as part of the marshes, but as an adjunct to the prison complex, they have little impact on the sense of tranquillity and isolation one garners when using the footpaths across the marshes. They do not devalue the experience of these footpaths to any significant degree. All that significantly limits the adverse impact the existing wind turbines have on the LCA they sit within and the marshland LCAs.
172. Given that they would be on the other side of the prison complex, the wind turbines at issue would be seen as a separate cluster in some views, but as an extension of the existing cluster in others. They would be widely visible, as you would expect of such tall structures.
173. In both scenarios, however, they would also be seen as part of the already dominant prison cluster, with its associated wind turbines, rather than as a separate intervention into the landscape of the marshes. They would not appear unduly prominent but would share a similar functional logic, being located in a flat, open and windswept landscape. They would not reduce to any appreciable degree, the sense of tranquillity and isolation one feels when using the marshland footpaths.
174. That is not to say that the wind turbine cluster proposed would cause no harm because, as set out, if we are to recognise the intrinsic character and beauty of the countryside then such a large-scale, man-made intervention would have something of an adverse impact. However, for the reasons set out, notwithstanding the sensitivity of the various LCAs affected, seen in concert with the prison cluster and the existing wind turbines, I do not consider that the proposal would have any significantly harmful impact in terms of landscape or visual effects on the LCAs the wind turbines would lie within, or others further afield, that they would be visible from.
175. It is relevant to note too that the appeal site lies within an area identified on the Energy Opportunities Map which forms part of the Swale Renewable Energy and Sustainable Development Study as a high potential area for the installation of large scale wind energy. It is clear then that AECOM, the authors of the study, which forms part of the evidence base for the ELP, underpinning ELP Policy DM20, took a similar view. It is also clear that large scale wind turbines in areas like that proposed here are an expectation of the ELP. The Council's position is difficult to understand when, cognisant of the existing installation, their own ELP endorses the area the appeal site lies within as one suitable for large scale wind energy development.
176. On top of that, there is a clear logic to grouping a proposal like that at issue with the existing installation adjacent to HMP Swaleside. That way, landscape impact and indeed other impacts are minimised. It seems to me better to have a larger group of wind turbines within the area identified on the Energy Opportunities Map

than a series of single wind turbines, or small groups of wind turbines spread throughout that area. [27-40, 74, 102-113, 128, 131, 132, 134, 139]

Living and Working Conditions

177. There are several facets to this issue but it is important to note at the outset that the Council makes no suggestion that living or working conditions would be adversely affected by any aspect of the proposal, to any significant degree. SSEW and the MoJ take a different view.
178. The first aspect is visual impact. SSEW and a number of local residents raised concerns in this regard. From what I saw at my site visits, the wind turbines would be most visible from dwellings to the north of the prison cluster and their gardens; those on Range Road and Kent View Drive in particular, and dwellings on the south side of Eastchurch. However, from what I saw having visited the area, because of the degree of separation between the dwellings and the wind turbine cluster, and the relative orientations involved, the wind turbines would not appear dominant, overwhelming, or oppressive. None of the dwellings would become unattractive places to live as a result of the proposal.
179. I recognise that some residents might find the visual presence of wind turbines in the outlook from their properties unwelcome, and comments I heard about the existing wind turbines adjacent to HMP Standford Hill bear that out, but it is important to note that there is no inviolable right to a view. Of course the outlook from some dwellings would change as a result of the proposal but not, to my mind, in a way that would have a significant adverse impact on the living conditions of the residents concerned.
180. The MoJ and others have raised concern about the visual impact of the proposal on prisoners in the cell blocks of HMP Swaleside that would face the wind turbine array. It is suggested that this impact might lead to supervisory difficulties for staff and attendant detriment to working conditions.
181. First, it is not in my view helpful to speculate whether the 'unattractive place to live' (or Lavender) test is relevant to prisoners (given that prison is not intended to be attractive) and it seems to me best to treat prison inmates in much the same way as one would approach residents¹⁰⁰.
182. Second, and more importantly, I observe that there is no evidence that the existing wind turbines adjacent to HMP Standford Hill have caused any difficulties in this regard for prisoners or staff at HMP Standford Hill or, importantly, HMP Elmley. It is fair to note that HMP Standford Hill, as an open prison is very different in character to HMP Swaleside and I noted as much at my site visit. That might account for some difference there but HMP Elmley is a similar category of prison to HMP Swaleside and has a similar relationship to the existing wind turbines as HMP Swaleside would to the proposed wind turbines. Broadly, the separation distance would be similar too. If the suggestion that the proposed wind turbines would have a detrimental impact on prisoners and staff, and supervisory difficulties, at HMP Swaleside, is to be accepted, then one would expect similar difficulties to have been experienced at HMP Elmley.

¹⁰⁰ And this is the way the appellant has approached the matter in the RAS (CD12.10)

183. That aside, the site visit demonstrated that there would be a clear view of the upper parts of the wind turbines above the perimeter wall of the prison from several cells, on the upper levels of the closest wing, in particular. However, the view from those cells is already dominated by the visual presence of the very high perimeter wall, and the security fence that sits between the cell block and the wall. Along with the bars in the windows, the wall and the fence must be a constant reminder to prisoners of their incarceration and that probably explains why, as I observed at the site visit, most prisoners in the outward facing cells, use curtains or similar devices to screen the view.
184. That is not to suggest that the outlook from these cells is unimportant to the prisoners concerned. However, it seems to me that the visual impact of the wind turbines, even at the separation distances involved (around 400m), would make little difference to the outlook from the cells concerned, given that the outlook is already dominated by bars, the perimeter wall, and the security fence.
185. On that overall basis, it is my conclusion that there would be no significant adverse impact on the living conditions of the prisoners concerned as a consequence of the visual presence of the wind turbines. It must follow that the wind turbines would not lead to any supervisory difficulties for staff at the prison, so working conditions would be largely unaffected.
186. In terms of noise, the MoJ is content that subject to suitable conditions, to which I have addressed myself above, the proposal will cause no difficulties for prisoners or staff. SSEW take a different view in relation to the prisons, but also raise issues about noise and its impact on local residents.
187. Put simply, SSEW suggest that, alongside the existing wind turbines adjacent to HMP Standford Hill, the wind turbines proposed will operate in excess of the noise limits set by the suggested noise condition. I agree that if they did then there would clearly be a detrimental impact on the living conditions of local residents and prisoners, and the working conditions of staff at the prisons.
188. However, whatever local residents might say, there is no evidence that the existing wind turbines adjacent to HMP Standford Hill operate in excess of their set limits. Indeed, there appears to have been no cause for their noise outputs to have been investigated through the condition imposed on the planning permission for them.
189. Cognisant of that, the appellant has agreed through a condition noise limits for the proposed wind turbines that comply with guidance in ETSU-R-97. If the wind turbines operate in accordance with the requirements of that condition, and with occasional curtailment, depending on the eventual model of wind turbine selected, then it seems to me that there would be no significant detrimental impact on the living conditions of local residents, prisoners, or the working conditions of staff at the prisons, as a result of noise. That is the way ETSU-R-97, which the preferred Government guidance on wind turbine noise is intended to work.
190. The appellant is sure that the wind turbines proposed will operate within the set limits. I attach significant weight to that because I fail to see why a developer would go to the trouble and expense of proposing the erection of a wind farm where there would be doubt. Secondly, if the wind turbines are erected, and fail to operate within the noise limits, then the condition provides a vehicle for them

to be investigated, and if necessary, shut down. I agree with the appellant that this offers sufficient protection for local residents, prisoners, and prison staff. Again, that is the way ETSU-R-97 is expected to function.

191. Concerns have been raised about other or excess amplitude modulation with reference in particular to the wind turbines at Cotton Farm¹⁰¹. However, as I have said out in the discussion about conditions above, the nature of the phenomenon is not fully understood but it is clear that not all wind turbines, whether erected singly or in groups, generate other or excess amplitude modulation.
192. The presence of a problem attributed to it at Cotton Farm is no indication that the proposal at issue will lead to similar difficulties. There is no evidence that it will.
193. Bringing those points together, I am content that so long as the wind turbines proposed operate within the noise limits set by the suggested condition, which I consider a reasonable assumption for the reasons set out, with curtailment as necessary, then the living conditions of local residents and prisoners, and the working conditions of prison staff, will suffer no significant detriment as a result of noise from the proposal.
194. Several people raised issues around tinnitus and suggested that the operation of the existing wind turbines at Standford Hill has worsened such problems and that the wind turbines proposed will make them even more severe. I sympathise but there are all sorts of reasons why a medical condition like tinnitus could worsen.
195. No-one has demonstrated a causal link between any worsening and the operation of the existing wind turbines. In that context, it is not possible to conclude that the wind turbines proposed would make the situation even worse.
196. There have been some concerns raised about the health effects of wind turbine noise¹⁰². The appellant has responded to these in some detail¹⁰³. It may be that there is a link between forms of wind turbine noise and annoyance and sleep deprivation but there is no evidence to justify a conclusion that there is for certain. What these concerns are driving at is the inadequacy of ETSU-R-97 in protecting people from the effects of wind turbine noise. However, Government guidance is clear that ETSU-R-97 should continue to be used for those purposes.
197. Shadow flicker has the potential to undermine living and working conditions for local residents, prisoners, and prison staff but the phenomenon is predictable and a protocol to deal with it, which might include curtailment, if necessary, can be enforced through a condition. The MoJ accepts that and is content that subject to the suggested condition, shadow flicker will not undermine any security systems serving the prisons affected.
198. Drawing those threads together, I am content that the proposal would have no significant impact on the living conditions of local residents or inmates of the prisons, or working conditions of prison staff through visual impact, noise, or shadow flicker. **[61-69, 72-73, 79-88, 95-98, 109, 114-123, 130, 133, 135-141, 143-144, 157-158]**

¹⁰¹ ID37

¹⁰² ID38

¹⁰³ ID39

Other Matters

199. A number of participants raised issues around ecology and the potential impact on birds in particular. Given the proximity of the site to the Swale Ramsar/SSSI, and the RSPB nature reserve at Great Bells Farm, those concerns are understandable. However, based on various ornithological surveys the ES¹⁰⁴ concludes that, with appropriate mitigation, and controls, that can be secured by condition, no significant effects are anticipated in relation to bird populations overall. I have no good reason to doubt the veracity of that conclusion and am satisfied that there would be compliance with LP Policies E11 and E12. **[14, 75-76, 134, 139, 142-144]**
200. Concerns were also raised about tourism and suggestions made that the proposal might depress visitor numbers. I can well understand why the area is attractive to visitors but it seems to me that if there was going to be such an effect as a result of wind turbines, then it would already have been felt as a result of the erection of those adjacent to HMP Standford Hill. There is no evidence that the presence of these wind turbines has put anyone off visiting the area and in that context, there can be no justification for a conclusion that the proposed wind turbines would have a negative impact on tourism. **[124, 132, 144]**
201. The ES¹⁰⁵ identifies a number of designated heritage assets in the vicinity (that is within 5km) of the proposal, including listed buildings and Scheduled Ancient Monuments. No party to the Inquiry raised any issue in this regard and having observed the relationships involved in the course of my site visits, I am content that there would be no harmful impact on the setting of any designated heritage asset as a result of the proposal.

Final Conclusion

202. It is my conclusion that the proposal would have no significant impact on the character and appearance of the receiving landscape, the living conditions of local residents or inmates in the prison complex, or the working conditions of prison staff. On the other hand, even with some minor curtailment, it would bring forward significant benefits in terms of the production of renewable energy and thereby assist in mitigating the effects of climate change. It would also increase energy security and lead to direct and indirect economic benefits. On my analysis, these benefits far outweigh what little harm the proposal would cause.
203. Moreover, grouped with the existing installation adjacent to HMP Standford Hill, and within an area identified on the Energy Opportunities Map which forms part of the Swale Renewable Energy and Sustainable Development Study as a high potential area for the installation of large scale wind energy, it is clear to me that adverse impacts have been minimised.
204. On that overall basis, I am content that the proposal complies with LP Policy U3 and, bearing in mind the pragmatic approach that must be taken, that there would be no significant departure from LP Policies E1, E9 or E19. On that basis, the proposal complies with the development plan, read as a whole.

¹⁰⁴ CD12.1 Chapter 8, CD12.2 and CD12.10

¹⁰⁵ CD12.1 Chapter 13, CD12.2 and CD12.10

205. In terms of other material considerations, the first to consider is the ELP. For the reasons set out above, I find that the proposal would provide clear compliance with ELP Policies DM20 and DM24. Given the weight that can be attached to the ELP, that is an important matter.
206. Secondly, it follows from what I set out above that the impacts of the proposal are (or can be made) acceptable. The proposal is in compliance with the Framework which we are told sets out the Government's planning policies for England and how these are expected to be applied¹⁰⁶. Paragraph 14 of the Framework tells us that proposals that accord with the development plan should be approved without delay in order to give effect to the presumption in favour of sustainable development. **[52-54, 77, 88, 125-126]**
207. That brings me to the WMS of June 2015. Contrary to what some people who addressed the Inquiry believe, it does not serve to give the local community a veto over wind farm development. Nevertheless, it is an important material consideration. Despite some who spoke in favour, the submissions of SSEW, and others, to the Inquiry, left me in no doubt that the proposal is not one that is welcomed by the local community.
208. Nevertheless, notwithstanding what the WMS says in the transitional provisions, national policy as expressed in the Framework has not changed and it seems to me reasonable to assume that the WMS of June 2015 is to be read alongside, rather than as a replacement for, it. In that context, a conclusion that the impacts of the scheme are, or can be made, acceptable (as required by the Framework), must logically equate with a finding that the planning impacts identified by local communities have been addressed.
209. On that basis, despite the presence of unresolved objections to the proposal, the use of the word 'therefore' in the WMS can in my view reasonably be said to mean that in the circumstances I have set out, the proposal can, as a consequence, be deemed to have the backing of the affected local community. On that basis, the WMS of June 2015 does not serve to justify a decision that would run contrary to the development plan, and the Framework. **[48-51, 56-60, 70, 77, 93-94, 126, 128-130, 135]**

Recommendation

210. I recommend that the appeal be allowed and planning permission be granted subject to the conditions set out in Annex C.

Paul Griffiths

INSPECTOR

¹⁰⁶ CD2.1 Paragraph 1

Annex A: APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Giles Atkinson of Counsel
He called

Tom La Dell
CMLI MCIEEM

LaDellWood

Michael Goddard
BA DipTP DMS MRTPI

Goddard Planning Consultancy

FOR THE APPELLANT:

David Hardy
LL.B(Hons) 1st Class,
B.C.L.(Hons) (Oxon)
He called

Partner, Squire Patton Boggs (UK) LLP

James Truscott
DipLA (Glos) CMLI

Director, ASH

George Machin
MTCP MRTPI

Partner, Grace Machin Planning

FOR SHEPPEY SOCIETY FOR ENVIRONMENTAL WELLBEING (SSEW):

Robin Peck
Gave evidence and
called

Mr Barry Day

Retired Engineer and Local Resident

Mr Andy Fisher

Local Resident

Phil Haynes¹⁰⁷

Volunteer Warden for RSPB at Great Bells Farm
Nature Reserve

INTERESTED PERSONS:

Paul Newton
Trish Codrington
Mr Tatton

Governing Governor, HMP Swaleside (MoJ)
Parish Clerk, Minster on Sea PC
Local Resident (claimed to represent Leysdown
on Sea PC)

¹⁰⁷ Mr Haynes was not available to give evidence in person, or to be cross-examined, and his proof of evidence was read out at the Inquiry by Sara O'Bray

Mike Brown	Eastchurch PC
John Stanford	Local Resident
Gareth Fulton	Local Resident and Manager of Elmley National Nature Reserve
Tina Booth	Local Resident
Duncan Aldred	Local Resident
Sara O'Bray	Local Resident
Richard Halls	Local Resident (and ex. Prison Officer)
Mark Gibson	Local Resident
Sandra Peck	Local Resident
Andy Booth	Local Councillor (Vice-Chair of Planning Committee)
Michelle Gudgeon	Local Resident
Susan Higgs	Local Resident
Lorraine St John	Local Resident
Denise Russell	Local Resident
Tony Read	Local Resident

Annex B: DOCUMENTS

Core Documents (CD)

CD2.1	The National Planning Policy Framework
CD2.2	Overarching National Policy Statement for Energy (EN-1)
CD2.3	National Policy Statement for Renewable Energy Infrastructure (EN-3)
CD2.4	Written Ministerial Statement on Onshore Wind delivered by Ed Davey on 6 June 2013
CD2.5	Extract from Planning Practice Guidance (Renewable and Low Carbon Energy)
CD2.6	Written Ministerial Statement on Local Planning delivered by Greg Clark on 18 June 2015
CD3.1	Swale Landscape Character and Biodiversity Appraisal SPD September 2011 (The Jacobs Report)
CD3.2	Renewable Energy for Kent: An Action Plan for Delivering Opportunities (August 2013)
CD3.3	Review of Renewable and Decentralised Energy Potential in South East England (prepared for South East Planning Partnership Board by Land Use Consultants and TV Energy) (June 2010)
CD3.4	Swale BC Climate Change Strategy: Sustainable Design and Construction Guidance Document (March 2010)
CD3.6	Renewable Energy for Kent Part 1: Overview and Action Plan (AECOM) (April 2012)
CD3.7	Swale Renewable Energy & Sustainable Development Study (AECOM) (November 2011)
CD3.8	Bearing Fruits 2031: The Swale Borough Local Plan Part 1 – Publication Version
CD5.4	The UK Renewable Energy Strategy
CD5.6	The UK Low Carbon Transition Plan
CD5.29	UK Renewable Energy Roadmap Update 2013
CD5.31	Amber Rudd's speech on a new direction for UK energy policy (18 November 2015)
CD5.33	The Fifth Carbon Budget November 2015
CD5.34	Statement to Parliament on ending subsidies for onshore wind by Amber Rudd (22 June 2015)
CD5.36	Renewable Energy Progress Report by the EC (15 June 2015)
CD9.2	SoS Decision on APP/D0515/A/10/2123739 (Burnthouse Farm)

- CD9.13 SoS Decision on APP/J0540/V/14/2220136 (French Farm) CD9.14
SoS Decision on APP/H0900/A/14/2224323 (Lillyhall Landfill Site)
- CD9.15 SoS Decision on APP/E3715/A/144/2227479 (Cestersover Farm)
- CD9.16 Inspector's Decision on APP/D0515/A/14/2228134 (Long Nighslayer's Drove)
- CD9.17 Inspector's Decision on APP/W4705/W/14/3000729 (Jaytail Farm)
- CD9.18 Inspector's Decision on APP/E2530/A/14/2215578 (Honey Pot Lane) CD9.19
Inspector's Decision on APP/Y0435/A/14/2227711 (Astwood Grange)
- CD10.3 Landscape Character Assessment: Guidance for England and Scotland
- CD10.4 Landscape Character Assessment: Guidance for England and Scotland Topic Paper 9: Climate change and natural forces – the consequences for landscape character
- CD10.5 Visual Representation of Wind Farms (SNH) (Version 2.1 December 2014)
- CD10.15 GLVIA Third Edition
- CD11.1 ETSU-R-97: The Assessment and Rating of Noise from Wind Farms
- CD11.2 A Good Practice Guide to the Application of ETSU-R-97 for the Assessment and Rating of Wind Turbine Noise (IoA May 2013)
- CD11.3 New Rides Farm: Appraisal of Noise Impact Assessment (John Yelland) (24 November 2014)
- CD11.4 Response to CD11.3 from Ion Acoustics (16 December 2014)
- CD11.5 Further Response from Ion Acoustics (27 January 2015)
- CD12.1 Planning Application and Supporting Documents including Environmental Statement
- CD12.2 Addendum Environmental Statement (July 2014)
- CD12.3 Appropriate Assessment for Proposed Wind Farm at HMP Standford Hill, Eastchurch, IoS
- CD12.4 Officers' Report to Committee on New Rides Farm Application
- CD12.5 Further Report to Committee on New Rides Farm Application
- CD12.6 Council's Decision Notice on New Rides Farm Application
- CD12.7 Statement of Case on behalf of the appellant
- CD12.8 Statement of Case by the Council
- CD12.9 Statement of Case by SSEW

Main Parties' Documents

Appellant

- A1 Proof of Evidence of Mr Truscott
- A2 Summary Proof of Evidence of Mr Machin
- A3 Proof of Evidence and Appendix of Mr Machin
- A4 Proof of Evidence of Mr Irvine

Council

- C1 Summary Proof of Evidence of Mr La Dell
- C2 Proof of Evidence and Appendices of Mr La Dell
- C3 Summary Proof of Evidence of Mr Goddard
- C4 Proof of Evidence and Appendices of Mr Goddard

SSEW (Rule 6 Party)

- R1 Proof of Evidence of John Yelland
- R2 Proof of Evidence of Robin Peck
- R3 Proof of Evidence of Barry Day
- R4 Proof of Evidence of Andy Fisher
- R5 Proof of Evidence of Phil Haynes

Inquiry Documents (ID)

ID1	Council's Letter of Notification
ID2	Swale BC Officers' Report on HMP Stanford Hill Wind Energy Development
ID3	Comments of MoJ on HMP Stanford Hill Wind Energy Development application
ID4	Summary of Residents' comments on planning application
ID5	Various plans relating to HMP Stanford Hill Wind Energy Development (Turbine Placement Constraints, Potential Residential Visual Receptors within 3.6km, and Shadow Flicker Assessment Locations)
ID6	Copy of Appeal Decision APP/W1145/W/15/3002153 (Culsworthy Farm)
ID7	Appellant's Opening Statement
ID8	SSEW Opening Statement
ID9	Council's Opening Statement
ID10	Copy of planning permission for HMP Stanford Hill Wind Energy Development (Ref. SW/10/1567)
ID11	Statement of Common Ground agreed between the appellant and Swale BC
ID12	Inspector's Interim Findings on Bearing Fruits 2031
ID13	Copy of WMS of 18 June 2015 on Local Planning
ID14	Copy of Energy Opportunities Map (from Swale Renewable Energy and Sustainable Development Study CD3.7)
ID15	Decision of the Scottish Ministers on PPA-340-2068 (the relocation of an existing waste recycling centre and the formation of a waste to energy facility)
ID16	Extract from Swale Landscape Character and Biodiversity Appraisal (CD3.1): Central Sheppey Farmlands
ID17	Statement of Paul Newton Governing Governor of HMP Swaleside
ID18	Extract from Definitive Map showing PRoWs in vicinity of appeal site
ID19	HMP Stanford Hill Wind Energy Development Planning Statement (December 2010)
ID20	HMP Stanford Hill Wind Energy Development Design & Access Statement (December 2010)
ID21	HMP Stanford Hill Wind Energy Development ES (Volume 1 – Written Statement) (December 2010)
ID22	HMP Stanford Hill Wind Energy Development Shadow Flicker Mitigation (to address condition 15 of planning permission ref.SW/10/1567 (ID10))
ID23	Submission of Mike Brown

ID24	Submission of Gareth Fulton
ID25	Submission of Tina Booth
ID26	Submission of Duncan Aldred
ID27	Submission of Sara O'Bray
ID28	Submission of Richard Halls
ID29	Submission of Mark Gibson
ID30	Submission of Sandra Peck
ID31	Submission of Michelle Gudgeon
ID32	Submission of Susan Higgs
ID33	List of Suggested Conditions
ID34	Correspondence between appellant and MoJ following appearance of Mr Paul Newton, Governing Governor of HMP Swaleside
ID35	Wind Turbine AM Review Phase 1 Report (WSP and Parsons Brinckerhoff) (October 2015 [sic])
ID36	Written Submission on Noise from Dr Yelland (SSEW) (10 November 2016)
ID37	Written Submission on Cotton Farm Wind Farm by Bev Gray (SSEW) (October 2016)
ID38	Written Submission on health risks by Barry Day (SSEW) (dated May 2016 but received October 2016)
ID39	Response to ID36, ID37 and ID38 from Gavin Irvine of Ion Acoustics
ID40	Final Comments from MoJ (30 November 2016)
ID41	Closing Submissions of Swale BC
ID42	Closing Submissions of SSEW
ID43	Comments on ID42 from MoJ
ID44	Closing Submissions on behalf of the Appellant
ID45	Comments on ID44 from MoJ
ID46	Final Comments on ID45 from Appellant
ID47	Copy of Swale Borough Local Plan adopted February 2008

Annex C: 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: AEL006-Rev 5: Site Location Plan; AEL007-Rev 5: Proposed Layout Plan; PLTUB126.5-93: Typical Wind Turbine Details; PL002: Typical New and Upgraded Track Details; PL003-R1: Typical Turbine and Transformer Foundation Details; PL005: Typical Substation and Control Building Details; and PL007RA: Typical Arched Culvert.
- 3) The permission shall expire, and the development hereby permitted shall be removed in accordance with Condition 4 below, after a period of 25 years from the date when electricity is first exported from the wind turbines (excluding electricity exported during initial testing and commissioning) (the First Export Date). Written notification of the First Export Date shall be given to the local planning authority no later than 14 days after the event.
- 4) Not later than 12 months before the expiry of this permission, a decommissioning and site restoration scheme shall be submitted for the written approval of the local planning authority. The scheme shall make provision for the removal of the wind turbines and associated above ground works approved under this permission and for the removal of the wind turbine foundation to a depth of at least 1 metre below the finished ground level. The scheme shall also include the management and timing of any works and a traffic management plan to address likely traffic impact issues during the decommissioning period, location of material laydown areas, an environmental management plan to include details of measures to be taken during the decommissioning period to protect wildlife and habitats and details of site restoration measures. The approved scheme shall be fully implemented within 24 months of the expiry of this permission.
- 5) If any wind turbine generator hereby permitted ceases to export electricity for a continuous period of 12 months, except where such cessation is as a result of the wind turbine or ancillary equipment being under repair or replacement or as a result of events outside the reasonable control of the operator such as a sustained network outage, or under instruction from the Distribution Network Operator or the wind farm's Licenced Supplier, then a scheme shall be submitted to the local planning authority for its written approval within 3 months of the end of that 12 month period for the repair or removal of the wind turbine(s). The scheme shall include either a programme of remedial works where repairs to the wind turbine are required, or a programme for removal of the wind turbine and associated above ground works approved under this permission and the removal of the wind turbine foundation to a depth of at least 1 metre below finished ground level and for site restoration measures following the removal of the relevant wind turbine(s). The scheme shall thereafter be implemented in accordance with the approved details and timetable.
- 6) No development shall take place until a Construction Method Statement (CMS) has been submitted to and approved in writing by the local planning authority. Thereafter the construction of the development shall only be carried out in accordance with the approved CMS. The CMS shall include (a) the control of noise and vibration emissions from construction activities

including groundwork and the formation of infrastructure; (b) the control of dust including arrangements to monitor dust emissions from the development site during the construction phase; (c) measures for controlling pollution/sedimentation and responding to any spillages/incidents during the construction phase; (d) measures to control mud deposition offsite from vehicles leaving the site; (e) the control of surface water drainage from parking and hardstanding areas including the design and construction of oil interceptors (including during the operational phase); (f) the use of impervious bases and bund walls for the storage of oils, fuels and/or chemicals on-site; (g) the means by which users of public rights-of-way would be protected during the construction period; (h) details of the temporary site compound including temporary structures/buildings, fencing, parking, and storage provision to be used in connection with the construction of the development; (i) details of the proposed storage of materials and the disposal of waste and surplus materials; (j) temporary site illumination during the construction period including proposed lighting levels together with a specification of any lighting; (k) details of the phasing of construction works; (l) a site environmental management plan to include details of measures to be implemented during the construction period to protect wildlife and habitats; (m) areas on site designated for the storage, loading, off-loading, parking and manoeuvring of heavy duty plant, equipment and vehicles; (n) details of mitigation measures to be implemented in the event of severe weather conditions (more than 7 days of consecutive frozen ground) to limit construction activities within 500 metres of favoured foraging/roosting areas of waterfowl, waders and target duck species; (o) details of Reasonable Avoidance Measures (RAMs) to be implemented throughout the construction period in order to prevent individual amphibians or reptiles from being inadvertently killed or injured. RAMs shall include the timing of construction works to avoid sensitive periods when amphibians and reptiles are more likely to be present within different habitats, watching briefs, and staged vegetation removal prior to ground works; and (p) details and a timetable for post construction restoration/reinstatement of the temporary working areas and the construction compound.

- 7) No development shall take place until a Construction Traffic Management Plan (CTMP) has been submitted to and approved in writing by the local planning authority. The CTMP shall include proposals for the routing of construction traffic, scheduling and timing of movements, details of escorts for abnormal loads, temporary warning signs, temporary removal and replacement of highway infrastructure/street furniture, and the reinstatement of any signs, verges, or other items, displaced by construction traffic.
- 8) Construction work shall only take place between the hours of 0700-1900 Monday to Friday inclusive and 0700-1300 on Saturdays, with no construction work on Sundays or public holidays. Works outside these hours shall only be carried out (a) with the prior written approval of the local planning authority; (b) in an emergency in which case the local planning authority shall be notified by telephone and in writing as soon as reasonably practicable (and in any event within 48 hours) after the emergency is first identified. Such notification shall include details of the emergency and any works carried out and/or proposed to be carried out;

- (c) if the works are dust suppression; or (d) if the works are for the testing of plant and/or equipment.
- 9) The delivery of any construction materials or equipment for the construction of the development, other than wind turbine blades, nacelles and towers, and concrete for the wind turbine foundations, shall be restricted to between the hours of 0700 and 1900 on Monday to Friday inclusive and 0800 to 1300 on Saturdays. Deliveries outside these hours may only take place with the prior written approval of the local planning authority.
 - 10) The blades of all wind turbine generators shall rotate in the same direction. The overall height of each wind turbine shall not exceed 126.5 metres to the tip of the blades when the wind turbine is in the vertical position as measured from ground levels immediately adjacent to the wind turbine base.
 - 11) No wind turbine shall be erected until details of the colour(s) and finish(es) of the towers, nacelles and blades and any external transformer units have been submitted to and approved in writing by the local planning authority. No name, sign or logo shall be displayed on the external surfaces of the wind turbines or any external transformer units other than those necessary to meet health and safety requirements. The development shall be carried out in accordance with the approved details and retained as such thereafter.
 - 12) Construction of the electricity substation shall not commence until details of the design, external appearance, dimensions, materials, and foul and surface water drainage of the building and any associated compound and/or parking area, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and retained as such thereafter.
 - 13) All electrical cabling between the individual wind turbines, and between the wind turbines and the electricity substation, shall be installed underground.
 - 14) No development shall commence until a scheme for post construction bird monitoring (of bird strike bird disturbance and bird numbers during summer and winter), to verify the predicted environmental effects of the construction and operation of the turbines on land at Great Bells Farm has been submitted to and approved in writing by the local planning authority. The scheme shall include provisions for management actions should there be a demonstrable detrimental effect on the bird populations at the Great Bells Farm site from the operation of development hereby approved. The scheme shall also include a timetable for the implementation of any monitoring or management requirements. The scheme shall be implemented as approved.
 - 15) No development shall commence until a Habitat Management Plan (HMP) has been submitted to and approved in writing by the local planning authority. The HMP shall include details of habitat enhancement for the 24 hectare area of land referred to as field 14 on Figure 8.3 of the Environmental Statement addendum, biodiversity enhancement measures defined in Table 7.22 and illustrated on Figure 7.6 of the Environmental Statement and Table 8.51 of the Environmental Statement Addendum, and a timetable. The scheme shall be implemented as approved.

- 16) No development shall commence until a management plan to maintain the habitat potential of Great Bells Farm has been submitted to and approved in writing by the local planning authority. The management plan shall include suitable habitat mitigation or compensation measures. Monitoring and any mitigation required shall be carried out for the duration of the development and operation of the wind turbines in full accordance with the approved scheme.
- 17) Vegetation clearance shall be undertaken outside of the breeding bird season (1st March to 31st August inclusive). Where this cannot be avoided an independent ornithologist will be appointed to undertake a pre-vegetation clearance survey to identify the presence of any nests being built or in use, details of which shall be submitted to and approved in writing by the local planning authority prior to any clearance works taking place during bird breeding season. To avoid any potential disturbance to Schedule 1 species, notably marsh harrier, in advance of any construction works to be undertaken during the breeding season, all areas within 500m of construction works will also be subject to a pre-construction survey undertaken by a competent ornithologist, to identify any nesting locations for any Schedule 1 protected species. If identified work exclusion zones will be established around nest sites, in line with best practice guidance for the species, in consultation with the appointed competent ecologist. A Breeding Bird Protection Plan (BBPP) would be implemented with the aim of protecting breeding birds from disturbance and ensuring compliance with nature conservation law during the construction phase (for example during vegetation removal).
- 18) No development shall commence until, a site walk-over has been made by an independent ecologist to check for any changes to baseline conditions; this will include a specific check for badger setts, otter holts and water vole burrows in the vicinity of construction areas, using standard survey methods and recording all evidence or potential evidence of the presence of these species. A survey radius of 100m from all construction works locations is proposed. If any such features are identified, the survey results will be reviewed to determine whether any additional mitigation measures will be necessary to ensure legal compliance.
- 19) No development shall commence until a scheme detailing the protection and/or mitigation of damage to populations of water vole, a protected species under The Wildlife and Countryside Act 1981 as amended and its associated habitat during construction works and decommissioning including details of the methodology and timing has been submitted to and approved in writing by the local planning authority. The development shall take place in full accordance with the approved scheme.
- 20) Prior to the erection of the first wind turbine written confirmation shall be provided to the local planning authority of the proposed date of commencement of and completion of the development, and the height above ground level, and the position of each wind turbine in latitude and longitude.
- 21) No development shall commence until a scheme for either low intensity 32.5 candela red lights visible from ground level and medium intensity 200 candela right lights visible above hub height, or infra-red warning lighting,

- has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in full thereafter.
- 22) Prior to the operation of the wind turbines, details of a scheme to notify Eastchurch Airfield of wind turbine operation, prevailing wind speeds and direction determined periodically using data gathered by the development hereby permitted, shall be submitted to and approved in writing by the local planning authority. The scheme shall also include details of procedures where it may be prudent to reduce or shut down the operation of the wind turbines in an emergency situation should aircraft encroach closer than 16 rotor diameters from turbines. The approved scheme shall be implemented as approved.
- 23) No wind turbine shall be erected until an agreement has been reached between the wind farm operator and London Southend Airport with respect to a Radar Mitigation Solution, and the existence of such an agreement has been confirmed in writing to the local planning authority by both the wind farm operator and London Southend Airport. The wind turbines will not be brought into use until the requirements of the Radar Mitigation Solution have been implemented in full as confirmed in writing by the wind farm operator together with London Southend Airport to the local planning authority. For the purposes of this condition, Radar Mitigation Solution means a technical or commercial solution put in place to mitigate the impact on the air traffic control radar at London Southend Airport.
- 24) No development shall commence until a written scheme of investigation and programme of archaeological works has been submitted to and approved in writing by the local planning authority. The written scheme of investigation and programme of archaeological work shall be implemented as approved.
- 25) Prior to the First Export Date a scheme providing for the investigation and alleviation of any electro-magnetic interference to any television signal caused by the operation of the wind turbines shall be submitted to and agreed in writing by the local planning authority. The scheme shall provide for the investigation by a qualified television engineer, within a set timetable, of any complaint of interference with television reception at a lawfully occupied dwelling (defined for the purposes of this condition as a building within Use Class C3 and C4 of the Use Classes Order) which existed or had planning permission at the time permission was granted, where such complaint is notified to the developer by the local planning authority within 12 months of the First Export Date. Where impairment is determined to be attributable to the wind turbines hereby approved, mitigation works shall be carried out in accordance with a scheme, which shall include a timetable, which has first been agreed in writing by the local planning authority.
- 26) No development shall commence until: (1) a written scheme has been submitted to and approved in writing by the local planning authority setting out a protocol for the assessment of shadow flicker in the event of any complaint to the local planning authority from the owner or occupier of any building which lawfully exists or had planning permission at the date of this permission. The written scheme shall include remedial measures to alleviate any shadow flicker attributable to the development. Operation of the wind turbines shall take place in accordance with the approved

protocol; and (2) a shadow flicker shut down protocol to control shadow flicker/throw effects at Swaleside and Elmley prisons shall be submitted to and approved in writing by the local planning authority. The protocol shall include the following: (a) identification and detailed modelling of all potential shadow flicker/throw receptors within the shadow flicker zone of ten rotor diameters, including prison cells and CCTV equipment at Swaleside and Elmley prisons. This model is to be used to produce detailed wind turbine shut down logs to prevent shadow flicker/throw effects occurring at shadow flicker receptors within Swaleside and Elmley prisons; and (b) where unforeseen shadow flicker/throw effects occur within the prison buildings identified as requiring mitigation by the Prison Authority the following procedures will be implemented: (i) the Developer shall use all reasonable endeavours to relieve the loss of amenity caused by the shadow flicker attributable to the Development; (ii) within fourteen days of receiving a complaint from the Prison Authority, the Developer shall notify the local planning authority and Prison Authority in writing as to the course of action it shall take to investigate any problems associated with shadow flicker arising from the development; (iii) within twenty eight days of receiving a complaint from the Prison Authority, the developer shall notify the local planning authority and Prison Authority in writing as to the course of action it shall take to mitigate problems associated with shadow flicker arising from the development; (iv) industry standard mitigation options to be considered by the developer will include: increasing/providing shielding between the identified receptor and the development (by way of vegetation, other obstacles or window blinds or screens within buildings) in order to control or prevent shadow flicker occurring within occupied buildings requiring mitigation for shadow flicker; and/or upgrading or replacing CCTV or other security apparatus; and/or further operational controls where a selected wind turbine or turbines are programmed to be shut-down at times when shadow flicker effects have been demonstrated to occur and the sun is bright enough to cause a shadow flicker effect (light intensity will be monitored with external solar sensors).

- 27) The wind turbines and their associated infrastructure shall be situated within 30m of the positions shown in drawing AEL007- Rev 5 Proposed Layout Plan. Any proposed wind turbine movements between 31 – 50m will be subject to the prior written approval of the local planning authority. No turbine shall be micro-sited to a position within the North Kent Marshes Special Landscape Area.
- 28) Finished floor levels of the permanent substation building and transformers shall be raised a minimum of 150mm above ground levels.
- 29) No development shall commence until the area between the nearside carriageway edge, and lines drawn between a point 4.5m back from the carriageway edge along the centre line of the access, and points on the carriageway edge 90m from and on both sides of the centre line of the access, have been cleared of obstruction to visibility at and above a height of 1.05m above the nearside carriageway level. This area shall be thereafter maintained free of obstruction at all times.
- 30) The rating level of noise immissions from the combined effects of the wind turbines hereby permitted (including the application of any tonal penalty), when determined in accordance with the attached Guidance Notes, shall not

exceed the values for the relevant integer wind speed set out in or derived from Tables 1 and 2 attached to these conditions and:

- (A) Prior to the First Export Date, the wind farm operator shall submit to the local planning authority for written approval a list of proposed independent consultants who may undertake compliance measurements in accordance with this condition. Amendments to the list of approved consultants shall be made only with the prior written approval of the local planning authority.
- (B) Within 21 days from receipt of a written request of the local planning authority, following a complaint to it alleging noise disturbance at a dwelling, the wind farm operator shall, at its expense, employ an independent consultant approved by the local planning authority to assess the level of noise immissions from the wind farm at the complainant's property in accordance with the procedures described in the attached Guidance Notes. The written request from the local planning authority shall set out at least the date, time and location that the complaint relates to, and include a statement as to whether, in the opinion of the local planning authority, the noise giving rise to the complaint contains or is likely to contain a tonal component. Within 14 days of receipt of the written request of the local planning authority made under this paragraph (B), the wind farm operator shall provide the information relevant to the complaint logged in accordance with paragraph (H) to the local planning authority in the format set out in Guidance Note 1(e).
- (C) Where there is more than one property at a location specified in Tables 1 and 2 attached to this condition, the noise limits set for that location shall apply to all dwellings at that location. Where a dwelling to which a complaint is related is not identified by name or location in the Tables attached to these conditions, the wind farm operator shall submit to the local planning authority for written approval proposed noise limits selected from those listed in the Tables to be adopted at the complainant's dwelling for compliance checking purposes. The proposed noise limits are to be those limits selected from the Tables specified for a listed location which the independent consultant considers as being likely to experience the most similar background noise environment to that experienced at the complainant's dwelling. The submission of the proposed noise limits to the local planning authority shall include a written justification of the choice of the representative background noise environment provided by the independent consultant. The rating level of noise immissions resulting from the combined effects of the wind turbines when determined in accordance with the attached Guidance Notes shall not exceed the noise limits approved in writing by the local planning authority for the complainant's dwelling.
- (D) Prior to the commencement of any measurements by the independent consultant to be undertaken in accordance with these conditions, the wind farm operator shall submit to the local planning authority for written approval the proposed measurement location identified in accordance with the Guidance Notes where measurements for compliance checking purposes shall be

undertaken. Measurements to assess compliance with the noise limits set out in the Tables attached to these conditions or approved by the local planning authority pursuant to paragraph (C) of this condition shall be undertaken at the measurement location approved in writing by the local planning authority.

- (E) Prior to the submission of the independent consultant's assessment of the rating level of noise immissions pursuant to paragraph (F) of this condition, the wind farm operator shall submit to the Local Planning Authority for written approval a proposed assessment protocol setting out the following: (i) the range of meteorological and operational conditions (the range of wind speeds, wind directions, power generation and times of day) to determine the assessment of rating level of noise immissions; and (ii) a reasoned assessment as to whether the noise giving rise to the complaint contains or is likely to contain a tonal component. The proposed range of conditions shall be those which prevailed during times when the complainant alleges there was disturbance due to noise, having regard to the information provided in the written request of the local planning authority under paragraph (B), and such others as the independent consultant considers necessary to fully assess the noise at the complainant's property. The assessment of the rating level of noise immissions shall be undertaken in accordance with the assessment protocol approved in writing by the local planning authority and the attached Guidance Notes.
- (F) The wind farm operator shall provide to the local planning authority the independent consultant's assessment of the rating level of noise immissions undertaken in accordance with the Guidance Notes within 2 months of the date of the written request of the local planning authority made under paragraph (B) of this condition unless the time limit is extended in writing by the local planning authority. The assessment shall include all data collected for the purposes of undertaking the compliance measurements, such data to be provided in the format set out in Guidance Note 1(e) of the Guidance Notes. The instrumentation used to undertake the measurements shall be calibrated in accordance with Guidance Note 1(a) and certificates of calibration shall be submitted to the local planning authority with the independent consultant's assessment of the rating level of noise immissions. Where a further assessment of the rating level of noise immissions from the wind farm is required pursuant to Guidance Note 4(c) of the attached Guidance Notes, the wind farm operator shall submit a copy of the further assessment within 21 days of submission of the independent consultant's assessment pursuant to paragraph (F) above unless the time limit for the submission of the further assessment has been extended in writing by the Local Planning Authority.
- (G) The wind farm operator shall continuously log power production, wind speed and wind direction, all in accordance with Guidance Note 1(d). These data shall be retained for a period of not less than 24 months. The wind farm operator shall provide this information in the

format set out in Guidance Note 1(e) to the local planning authority on its request, within 14 days of receipt in writing of such a request.

Note: For the purposes of this condition, a “dwelling” is a building within Use Class C3 or C4 of the Use Classes Order which lawfully exists or had planning permission at the date of this consent.

Table 1 - Between 07:00 and 23:00 – Free-field Noise Limit, dB LA90, 10-minute

Location	Standardised wind speed at 10 meter height (m/s) within the site averaged over 10-minute periods											
	1	2	3	4	5	6	7	8	9	10	11	12
Nearest prison cell at Swaleside 598713, 169779	40	40	40	40.4	41.7	42.7	43	43	43	43	43	43
Nearest prison cell at Elmley Prison 598566, 169288	40	40	40	40.4	41.7	42.7	43	43	43	43	43	43
Nearest prison cell at Standford Prison 598289, 169691	40	40	40	40.4	41.7	42.7	43	43	43	43	43	43
New Rides Bungalow 599382, 170450	35	35	35	35	36	38	40	43	45	45	45	45
New Rides Farm 599280, 170156	45	45	45	45	45	45	45	45	45	45	45	45
Residential properties on Range Road, Orchard Road, Brabazon Way, Church Road, Kent View Drive 598676, 170159	35	35	35	37	38	39	42	45	45	45	45	45

Table 2 - Between 23:00 and 07:00 – Free-field Noise Limit dB LA90, 10-minute

Location	Standardised wind speed at 10 meter height (m/s) within the site averaged over 10-minute periods											
	1	2	3	4	5	6	7	8	9	10	11	12
Nearest prison cell at Swaleside 598713, 169779	40	40	40	40	40	40	40	41	42.6	43	43	43
Nearest prison cell at Elmley Prison 598566, 169288	40	40	40	40	40	40	40	41	42.6	43	43	43
Nearest prison cell at Standford Prison, 598289, 169691	40	40	40	40	40	40	40	41	42.6	43	43	43
New Rides Bungalow 599382, 170450	43	43	43	43	43	43	43	43	45	45	45	45
New Rides Farm 599280, 170156	45	45	45	45	45	45	45	45	45	45	45	45
Residential properties on Range Road, Orchard Road, Brabazon Way, Church Road, Kent View Drive 598676, 170159	43	43	43	43	43	43	43	44	45	45	45	45

Note to Tables 1 & 2: The geographical co-ordinate references set out in these tables are provided for the purpose of identifying the general location of dwellings to which a given set of noise limits applies. The wind speed at 10 metres height within the site refers to wind speed measured directly at 10 metres height.

Guidance Notes for Noise Condition

These notes are to be read with and form part of the noise condition. They further explain the condition and specify the methods to be employed in the assessment of complaints about noise immissions from the wind farm. The rating level at each integer wind speed is the arithmetic sum of the wind farm noise level as determined from the best-fit curve described in Note 2 of these Guidance Notes and any tonal penalty applied in accordance with Note 3 with any necessary correction for residual background noise levels in accordance with Note 4. Reference to ETSU-R-97 refers to the publication entitled "The Assessment and Rating of Noise from Wind Farms" (1997) published by the Energy Technology Support unit (ETSU) for the Department of Trade and Industry (DTI).

Note 1

(a) Values of the LA90,10-minute noise statistic should be measured at the complainant's property (or an approved alternative representative location as detailed in Note 1(b)), using a sound level meter of EN 60651/BS EN 60804 Type 1, or BS EN 61672 Class 1 quality (or the equivalent UK adopted standard in force at the time of the measurements) set to measure using the fast time weighted response as specified in BS EN 60651/BS EN 60804 or BS EN 61672-1 (or the equivalent UK adopted standard in force at the time of the measurements). This should be calibrated before and after each set of measurements, using a calibrator meeting BS EN 60945:2003 "Electroacoustics – sound calibrators" Class 1 with PTB Type Approval (or the equivalent UK adopted standard in force at the time of the measurements) and the results shall be recorded. Measurements shall be undertaken in such a manner to enable a tonal penalty to be calculated and applied in accordance with Guidance Note 3.

(b) The microphone shall be mounted at 1.2 - 1.5 metres above ground level, fitted with a two-layer windshield or suitable equivalent approved in writing by the local planning authority, and placed outside the complainant's dwelling. Measurements should be made in "free field" conditions. To achieve this, the microphone shall be placed at least 3.5 metres away from the building facade or any reflecting surface except the ground at the approved measurement location. In the event that the consent of the complainant for access to his or her property to undertake compliance measurements is withheld, the wind farm operator shall submit for the written approval of the local planning authority details of the proposed alternative representative measurement location prior to the commencement of measurements and the measurements shall be undertaken at the approved alternative representative measurement location.

(c) The LA90,10-minute measurements should be synchronised with measurements of the 10-minute arithmetic mean wind speed and wind direction data and with operational data logged in accordance with Guidance Note 1(d) and rain data logged in accordance with Note 1(f).

(d) To enable compliance with the conditions to be evaluated, the wind farm operator shall continuously log arithmetic mean wind speed in metres per

second and wind direction in degrees from north at hub height for each turbine and arithmetic mean power generated by each turbine, all in successive 10-minute periods. Unless an alternative procedure is previously agreed in writing with the local planning authority, this hub height wind speed, averaged across all operating wind turbines, shall be used as the basis for the analysis. All 10 minute arithmetic average mean wind speed data measured at hub height shall be 'standardised' to a reference height of 10 metres as described in ETSU-R-97 at page 120 using a reference roughness length of 0.05 metres . It is this standardised 10 metre height wind speed data, which is correlated with the noise measurements determined as valid in accordance with Guidance Note 2, such correlation to be undertaken in the manner described in Guidance Note 2. All 10-minute periods shall commence on the hour and in 10- minute increments thereafter.

(e) Data provided to the local planning authority in accordance with paragraphs (E) (F) (G) and (H) of the noise condition shall be provided in comma separated values in electronic format.

(f) A data logging rain gauge shall be installed in the course of the independent consultant undertaking an assessment of the level of noise immissions. The gauge shall record over successive 10-minute periods synchronised with the periods of data recorded in accordance with Note 1(d). The wind farm operator shall submit details of the proposed location of the data logging rain gauge to the local planning authority prior to the commencement of measurements.

Note 2

(a) The noise measurements should be made so as to provide not less than 20 valid data points as defined in Note 2 paragraph (b).

(b) Valid data points are those measured during the conditions set out in the assessment protocol approved by the local planning authority under paragraph (E) of the noise condition but excluding any periods of rainfall measured in accordance with Note 1(f).

(c) Values of the LA90,10-minute noise measurements and corresponding values of the 10-minute standardised ten metre height wind speed for those data points considered valid in accordance with Note 2(b) shall be plotted on an XY chart with noise level on the Y-axis and wind speed on the X-axis. A least squares, "best fit" curve of an order deemed appropriate by the independent consultant (but which may not be higher than a fourth order) shall be fitted to the data points to define the wind farm noise level at each integer speed.

Note 3

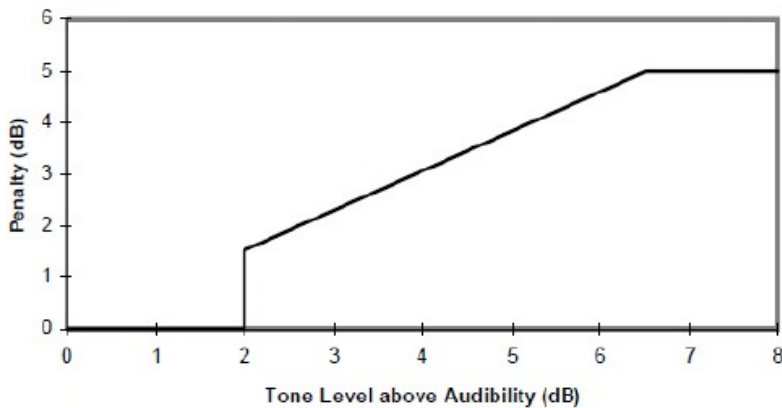
(a) Where, in accordance with the approved assessment protocol under paragraph (E) of the noise condition, noise immissions at the location or locations where compliance measurements are being undertaken contain or are likely to contain a tonal component, a tonal penalty shall be calculated and applied using the following rating procedure.

(b) For each 10-minute interval for which LA90, 10-minute data have been determined as valid in accordance with Note 2, a tonal assessment shall be performed on noise immissions during 2-minutes of each 10-minute period. The 2-minute periods should be spaced at 10-minute intervals provided that uninterrupted uncorrupted data are available (“the standard procedure”). Where uncorrupted data are not available, the first available uninterrupted clean 2-minute period out of the affected overall 10-minute period shall be selected. Any such deviations from the standard procedure shall be reported.

(c) For each of the 2-minute samples the tone level above audibility shall be calculated by comparison with the audibility criterion given in Section 2.1 on pages 104 -109 of ETSU-R-97.

(d) The average tone level above audibility shall be calculated for each integer wind speed bin. Samples for which the tones were below the audibility criterion or no tone was identified, a value of zero audibility shall be substituted.

(e) The tonal penalty is derived from the margin above audibility of the tone according to the figure below derived from the average tone level above audibility for each integer wind speed.



Note 4

(a) If a tonal penalty is to be applied in accordance with Note 3 the rating level of the turbine noise at each wind speed is the arithmetic sum of the measured noise level as determined from the best fit curve described in Note 2 and the penalty for tonal noise as derived in accordance with Note 3 at each integer wind speed within the range set out in the approved assessment protocol under paragraph (E) of the noise condition.

(b) If no tonal penalty is to be applied then the rating level of the turbine noise at each wind speed is equal to the measured noise level as determined from the best fit curve described in Note 2.

(c) If the rating level at any integer wind speed lies at or below the values set out in the Tables attached to the conditions or at or below the noise limits approved by the local planning authority for a complainant’s dwelling in accordance with paragraph (C) of the noise condition then no further action is necessary. In the event that the rating level is above the limit(s) set out in the

Tables attached to the noise conditions or the noise limits for a complainant's dwelling approved in accordance with paragraph (C) of the noise condition, the independent consultant shall undertake a further assessment of the rating level to correct for background noise so that the rating level relates to wind turbine noise immission only.

(d) The wind farm operator shall ensure that all the wind turbines in the development are turned off for such period as the independent consultant requires to undertake the further assessment. The further assessment shall be undertaken in accordance with the following steps:

- i. Repeating the steps in Note 2, with the wind farm switched off, and determining the background noise (L3) at each integer wind speed within the range set out in the approved noise assessment protocol under paragraph (E) of this condition.
- ii. The wind farm noise (L1) at this speed shall then be calculated as follows where L2 is the measured level with turbines running but without the addition of any tonal penalty:

$$L_1 = 10 \log \left[10^{L_2/10} - 10^{L_3/10} \right]$$

- iii. The rating level shall be re-calculated by adding the tonal penalty (if any is applied in accordance with Note 3) to the derived wind farm noise L1 at that integer wind speed.
- iv. If the rating level after adjustment for background noise contribution and adjustment for tonal penalty (if required in accordance with note (iii) above) at any integer wind speed lies at or below the values set out in the Tables attached to the conditions or at or below the noise limits approved by the local planning authority for a complainant's dwelling in accordance with paragraph (C) of the noise condition then no further action is necessary. If the rating level at any integer wind speed exceeds the values set out in the Tables attached to the conditions or the noise limits approved by the local planning authority for a complainant's dwelling in accordance with paragraph (C) of the noise condition then the development fails to comply with the conditions.



RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.



Appeal Decision

Site visit made on 24 July 2017

by Richard Aston BSc (Hons) DipTP MRTPI

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

Decision date: 15th August 2017

Appeal Ref: APP/V2255/W/17/3173734

Excelsior House, Ufton Lane, Sittingbourne ME10 1JA

- 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 Wildwood Ltd against the decision of Swale Borough Council.
- The application Ref 16/505541/FULL, dated 29 June 2016, was refused by notice dated 19 October 2016.
- The development proposed is conversion from B1 offices to a mixed use of A2 offices and 9 one bedroom residential apartments.

Decision

1. The appeal is allowed and planning permission is granted for conversion from B1 offices to a mixed use of A2 offices and 9 one bedroom residential apartments at Excelsior House, Ufton Lane, Sittingbourne ME10 1JA in accordance with the terms of the application, Ref 16/505541/FULL, dated 29 June 2016, and subject to the conditions set out in the attached schedule.

Procedural Matter

2. The Council have referred me to Policies DM14 and DM7 of the Bearing Fruits 2031: The Swale Borough Local Plan (Proposed Main Modifications June 2016) ('the LP'). Following the site visit the Council confirmed that the plan was adopted on 26 July 2017 and have provided me with copies of the relevant policies. I am required to determine this appeal on the basis of the development plan and national policy which are in place at the time of my decision and accordingly I have determined the appeal on that basis.

Application for costs

3. An application for costs was made by Wildwood Ltd against Swale Borough Council. This application is the subject of a separate Decision.

Main Issue

4. The main issue is whether the parking provision is acceptable, with particular regard to the effect on the living conditions of neighbouring occupiers.

Reasons

5. The appeal site is formed by a 2 storey brick building formerly in use as offices. It is located on the corner of Ufton Lane and Addington Road and within close proximity of Sittingbourne Town Centre. It has an existing car park to the side and rear accessed via gates from Ufton Lane, opposite the junction with Epps

Road. On-street parking controls are in force in surrounding streets.

6. The surrounding area is predominantly residential in character with groups of 2 and 3 storey terraced and semi-detached houses sited close to the highway. On the evidence before me there is an extant planning permission¹ for a very similar development, albeit that the parking provision for that scheme was 15 spaces, 9 for the residential units and 6 for the office use.
7. The proposal before me would result in a total of 10 parking spaces, 4 spaces for the A2 ground floor use and 6 for the residential units. Consequently, there would be a shortfall of three parking spaces compared with the maximum adopted parking standards² for the residential use and for the A2 use, there would be a shortfall of 2, giving an overall shortfall of 5 spaces.
8. Nevertheless, on-street parking spaces were available for non-permit holders for up to 2 hours, with no return within 2 hours. This would be sufficient time for users of the A2 use, even if waiting times were to be reduced to 30 minutes for non-permit holders³. Furthermore, the restrictions are from 0800 hours to 1800 hours and therefore it is unlikely there would be a material number of vehicle movements and manoeuvres at times when residents can expect a reasonable level of peace and quiet.
9. Moreover, the site is very close to the town centre and the location amounts to an area where a higher level of accessibility is likely to lead to a demonstrably lower level of average car ownership among occupants of the proposal and not all visitors to the ground floor use and residential properties would arrive by car. I also note that the relevant highway authority considered the location meant maximum parking standards were not seen as vital given the proximity of the site to the town centre⁴.
10. The Council's case appears to be based on the general amenity of residents and specific local circumstances and I have had regard to the parking evidence submitted by the Council in relation to parking demand taken in the morning and evening over a 2 day period. I also acknowledge that a petition submitted earlier this year in which residents reported parking problems caused by non-permit holders does demonstrate there are some concerns with the local parking situation although problems with the enforcement of the restrictions are not matters for me to address as part of this appeal.
11. Nevertheless, in this particular case I am not persuaded that any modest increase that may result in further demand for on-street parking spaces would result in a greater level of noise and general disturbance from people using the footpaths and from engine noise, vibrations and the opening and closing of vehicle doors to warrant dismissal of the appeal. Nor would it, on the evidence before me, lead to local residents being unable to access their properties or cause harm to highway safety.
12. For these reasons, the proposed parking provision would be acceptable and would not cause harm to the living conditions of neighbouring occupiers. The proposal would comply with Policies DM14 and DM7 of the LP which, amongst other things and when read as a whole, require that development proposals do not exacerbate on-street parking to an unacceptable degree and cause no significant harm to amenity.

¹ 16/507575/FULL

² Kent Design Guide Review: Interim Guidance Note 3, November 2008.

³ As proposed to the Swale Joint Transportation Board on 26 June 2017.

⁴ Kent County Council consultation response to SW/16/505541/FULL dated 13 July 2016.

Other Matters

13. The Council's committee report makes reference to the appeal site being within 3.5km of the Swale Special Protection Area and Ramsar site and within 5.5km of the Medway Estuary and Marshes Special Protection Area and Ramsar. The Council duly considered the Habitat Regulations but for the reasons set out in that report screened the proposal out of the need to progress to an Appropriate Assessment. On the evidence before me, I see no reason to take a different view.

Conditions

14. I have considered the conditions put forward by the Council and have amended the wording where necessary in the interests of clarity and simplicity. A condition is required to ensure compliance with the approved plans as this provides certainty. In the interests of sustainability and national policy it is also reasonable to include a condition relating to energy efficiency measures.
15. A condition requiring details of the external materials to be agreed is necessary, in order to protect the character and appearance of the area. To protect the living conditions of neighbouring occupiers it is necessary for details of the obscure glazing proposed in the northern elevation to be submitted and agreed. A condition requiring details of the soft and hard landscaping of the site is necessary to protect and enhance the character and appearance of the area and that such works are retained and replaced, where necessary.
16. To ensure the proposed parking and turning facilities are satisfactorily provided and thereafter permanently retained, a condition is required for these to be provided and laid out prior to occupation of the dwellings and first use in accordance with the approved plan. A condition is necessary restricting the hours of construction in the interests of highway safety and the living conditions of neighbouring occupiers. A condition is also required restricting the use of the ground floor to A2 Financial and Professional Services and its hours of operation in the interests of the living conditions of neighbouring occupiers. The provision of refuse and cycle storage prior to occupation is necessary in the interests of character and appearance and in order to promote sustainable forms of transport.
17. Conditions 3, 4 and 6 are conditions precedent and I am satisfied that such conditions are fundamental to the development to ensure that development does not occur until such matters are resolved, in the interests of sustainability and the character and appearance of the area.

Conclusion

18. For the reasons set out above, the proposal would comply with the development plan, when read as a whole. Material considerations do not indicate that a decision should be made other than in accordance with the development plan. Having considered all other matters raised, I therefore conclude that the appeal should be allowed.

Richard Aston

INSPECTOR

SCHEDULE

CONDITIONS

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the approved plans: 1363/P2, 1363/P1, 1363/P3 and 1363/P4 Rev B.
- 3) No development shall take place until full details have been submitted to and approved in writing by the local planning authority which set out measures 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. Development shall be carried out in accordance with the approved details.
- 4) No development shall take place until details of the materials (including colour) to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 5) The residential units hereby permitted shall not be occupied until the windows at first floor in the northern elevation have been fitted with obscured glazing. Details of the type of obscured glazing shall be submitted to and approved in writing by the local planning authority before the windows are installed and once installed the obscured glazing shall be retained thereafter.
- 6) No development shall take place until details of the soft and hard landscaping of the site and the provision of boundary treatments have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 7) All planting, seeding, turfing and other details comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 8) The development hereby permitted shall not be occupied or first used until the areas shown on approved plan 1363/P3 for the parking and turning of vehicles have been provided, surfaced and drained in accordance with details that have been previously submitted and approved in writing by the local planning authority. Subsequently, the parking and turning areas shall not be used for any purpose other than the parking and turning of vehicles.

- 9) Demolition or construction works shall take place only between the hours of 0730 to 1900 Monday to Friday, 0730 to 1300 on Saturdays, and shall not take place at any time on Sundays or on Bank or Public Holidays, unless in association with an emergency or with the prior written agreement of the local planning authority.
- 10) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), the part of the building shown as 'Office 1' and 'Office 2' shown on approved plan 1363/P4B shall be used for A2 'Financial and Professional Services' and for no other use or purpose.
- 11) The A2 uses shall only be open for customers between the following hours: 0700 to 1900 Monday to Friday and 0700 to 1700 on Saturdays, Sundays, Bank or Public Holidays.
- 12) The development hereby permitted shall not be occupied or the A2 use first used until the secure cycle parking and refuse storage areas as shown on approved plan 1363/P3 have been provided. The secure cycle parking and refuse storage areas shall thereafter be kept available for such purposes.



Costs Decision

Site visit made on 24 July 2017

by Richard Aston BSc (Hons) DipTP MRTPI

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

Decision date: 15th August 2017

Costs application in relation to Appeal Ref: APP/V2255/W/17/3173734 Excelsior House, Ufton Lane, Sittingbourne ME10 1JA

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Wildwood Ltd for a full award of costs against Swale Borough Council.
- The appeal was against the refusal of planning permission for conversion from B1 offices to a mixed use of A2 offices and 9 one bedroom residential apartments.

Decision

1. The application for a full award of costs is refused.

Reasons

2. The Planning Practice Guidance ('PPG') advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The Council's reason for refusal set out in the decision notice is complete, specific and relevant to the application. It also clearly states the policies of the development plan that the proposal would conflict with, albeit that they have been superseded during the course of the appeal¹.
4. Whilst I appreciate that the appellant does not agree with the Council's consideration of the development or opinions relating to the effect of the proposal, the issues at the heart of the appeal inevitably involve matters of planning judgement. The Council is not bound by the view of Kent County Council as highway authority and notwithstanding the original positive officer recommendation, the Planning Committee was not bound to accept the advice of officers and their concerns are based on specific local circumstances. Although I have reached a different view, given their conclusions, which I am satisfied were properly reached, an appeal was inevitable.
5. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. For this reason an award for costs is not justified.

Richard Aston

INSPECTOR

¹ Adoption of Bearing Fruits 2031: The Swale Borough Local Plan on 26 July 2017.

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Appeal Decision

Site visit made on 24 July 2017

by Richard Aston BSc (Hons) DipTP MRTPI

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

Decision date: 15th August 2017

Appeal Ref: APP/V2255/W/17/3172403

Courtenay House, London Road, Dunkirk ME13 9LF

- 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 Mr and Mrs Datlen against the decision of Swale Borough Council.
 - The application Ref 16/507038/OUT, dated 23 September 2016, was refused by notice dated 6 January 2017.
 - The development proposed is described as 'outline application for the erection of a single dwelling to include access and associated parking'.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was submitted in outline form and makes it clear that all matters are reserved apart from access. The appellant has provided a series of plans that are marked as 'for illustrative purposes only' and show how the site could be developed. It was evident from my site visit that the access had been constructed and I have determined the appeal on that basis and that the plans are indicative.
3. The Council have referred me to Policies ST1, ST3, ST7 and DM24 of the emerging Bearing Fruits 2031: The Swale Borough Local Plan (Proposed Main Modifications June 2016) ('the LP'). Following the site visit the Council confirmed that the plan was adopted on 26 July 2017. I am required to determine this appeal on the basis of the development plan and national policy which are in place at the time of my decision and accordingly I have determined the appeal on that basis.

Main Issues

4. The main issues are:
 - Whether the site is suitable location for housing having regard to settlement strategy and the effect of the proposal on the character and appearance of the area including the effect on any non-designated heritage assets.

Reasons

5. The appeal site is formed by a rectangular piece of land with a tapered front section that sits to the side of Courtenay House, a substantial 2 storey former coaching inn that has been converted into flats. The land subject of this appeal lies to the side of Flat A, a ground floor flat and is used by the occupiers for amenity purposes, albeit that the Council consider planning permission is required for such a use.
6. The land is relatively level with mature hedgerows along its rear boundary. Access is from London Road via a large in and out driveway that would be shared with Courtenay House. The land to the rear of the buildings was free from significant development other than incidental outbuildings and the appeal site positively contributes to the sense of openness and spaciousness between properties on what is a transitional area between the countryside and the built up settlement. It would also appear that a significant amount of soft landscaping and trees have been removed to construct the access¹.
7. The site is outside the Built up Area Boundaries ('BUA') and is therefore in the countryside for planning purposes. Policies ST1 and ST3 of the recently adopted LP set out the settlement strategy for the district in order to meet the objectively housing assessed and places emphasis on the use of previously developed land within the defined built up areas and on sites allocated within the development plan. Policy ST7 relates to the Faversham area and provides housing at allocations or other appropriate locations where the role and character of Faversham and rural communities can be maintained/enhanced. Dunkirk is a fifth tier settlement and is therefore ranked at the bottom in terms of where the Council seeks to direct new homes and employment.
8. The settlement strategy essentially carries forward a hierarchy approach with defined as set out in emerging Policy ST3, which advises that outside the BUA boundaries, development will not be permitted, unless it is supported by national planning policy and it is demonstrated that it would contribute to protecting the intrinsic value and beauty of the countryside, amongst other things.
9. Facilities in Dunkirk were limited to a public house, farm shop and hall although Boughton under Blean is located approximately 1km away and contains a slightly wider array of services. Whilst there may be some limited services and employment in the settlement, I am not persuaded that the existing bus service, in combination with the lack of services such as schools or shops and employment in Dunkirk would not result in future occupants being dependent on the private car for the majority of their journeys to access day to day services and facilities further afield. I am mindful that the National Planning Policy Framework ('the Framework') advises that opportunities to maximise sustainable transport solutions will vary from urban to rural areas. However, although not physically isolated it would, to my mind, be somewhat functionally isolated.
10. Turning to the effect on character and appearance, the appeal site lies within an Area of Great Landscape Value (Kent and Swale Level) and within the 'Woodland Landscape Types' and 'Blean Woods West Special Landscape Area'. Supporting illustrative material shows the opportunities for tree planting and

¹ Drawing No. 8350/JTS/02.

landscaping although I am mindful that the construction of the access appears to have resulted in the loss of a number of trees that would have contributed to the landscape character of the area. Moreover, it would take a substantial period of time to mature and therefore have any real effect.

11. 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 plans. In visual terms the proposal would introduce a new dwelling in a position set notably behind existing built form. Given the narrow size of the plot it is also highly likely that any building would have a significantly narrower frontage and greater depth.
12. Consequently, any such dwelling is likely to extend behind the existing building line and be of a much greater scale than Dunkirk Farm. This would result in it being conspicuous on the approach past the appeal site from the village and somewhat at odds with the appearance of this part of the Canterbury Road streetscene. The encroachment of what is likely to be a significant amount of built form, in combination with the protrusion of the access and its associated boundary fencing would be harmful to the established pattern and character and appearance of this part of Canterbury Road, in particular the sense of openness and spaciousness. It would substantially diminish the visual contribution that the appeal site makes to the approach into the village.
13. The definition of heritage assets, as set out in the Framework, includes buildings, sites and places as having a degree of significance meriting consideration in planning decisions, because of their heritage interest. Heritage assets include designated heritage assets and non-designated heritage assets ('NDHA') identified by the local planning authority.
14. The Council have not placed the building on a local list of buildings of special or architectural and historic interest in the borough but the Planning Practice Guidance ('PPG') advises that local lists incorporated into Local Plans can be a positive way of identifying non-designated heritage assets on a consistent basis, but neither this nor the Framework requires that a building must be on a local list before it can be treated as a non-designated asset: the definition refers only to 'assets identified by the local planning authority (including local listing)'.
15. Such assets have a degree of significance due to their heritage interest that merits consideration in the planning process. I am mindful that Courtenay House has been significantly extended and is within proximity of other residential development. Nonetheless, the appeal site provides a sense of openness and spaciousness that positively contributes to the setting of the property, notwithstanding that it would appear its once wooded appearance has been substantially altered by the construction of the access.
16. Paragraph 135 of the Framework states that, in weighing applications that directly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset. In my view, the site as a whole does have some interest as a heritage asset that is culturally significant to the history of the area, a point which is accepted by the appellant. What would effectively amount to the infilling of the appeal site with a very different form, scale and design of development would encroach onto this undeveloped part of the site to such an

extent that it would undermine the setting and significance of Courtenay House.

17. For these reasons, the proposal would not be a suitable location for housing in terms of the adopted settlement strategy, would cause harm to the character and appearance of the area and harm to the significance of a non-designated heritage asset in terms of its setting. Accordingly, it would conflict with Policies ST1, ST3, ST7 and DM24 of the LP which when read as a whole require development in accordance with a settlement strategy and seek to protect local character including that of the countryside.
18. The proposal would also conflict with paragraph 17 of the 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.

Other Matters

19. The site is within 6km of the Swale Special Protection Area and therefore a financial contribution toward mitigation is required and none is provided. If the circumstances leading to a grant of permission had been present, I would have given further consideration to the impact upon these in accordance with the Habitats Regulations. However, as I am dismissing the appeal on the main issues above I have not found it necessary to consider such matters any further.
20. I have had regard to the appeal decisions² put before me by the appellant. However, the decisions were made prior to the adoption of the current local plan and in the context of a lack of a 5 year supply of housing land. Having viewed the proposal at The Firs, Dunkirk Road South at the site visit, it also lies in an area with a different character. Overall, I do not find that they are directly comparable to the proposal before me and therefore do not alter my findings in relation to the main issue. In any event each case must be determined on its own merits.
21. I understand the appellant's desire to create a new home for their own occupation following retirement. However, the personal circumstances do not outweigh the harm that I have identified in this case.

Planning balance and overall conclusions

22. From the evidence submitted, it appears that there was a lack of a 5 year housing land supply when the Council determined the application. This position has changed with the adoption of the LP and the appellant acknowledges that such a supply has been demonstrated but also contends that given a persistent under delivery of housing, the proposal would make a limited but important contribution. I have therefore determined the appeal on the basis that the Council is able to demonstrate a five year supply of deliverable housing land in accordance with paragraph 47 of the Framework. In the context of a genuinely plan-led planning system the policies can be regarded as being up-to-date and I afford them full weight. This in turn means that the presumption in favour of sustainable development within paragraph 14 of the Framework is not engaged.

² APP/V2255/W/16/3157268, APP/V255/W/16/3146393 and APP/V2255/W/15/3004335.

23. In the unweighted balancing exercise the proposal would provide some limited economic benefits during construction. Regardless of the supply situation a new dwelling would be provided although on the evidence before me, I am not convinced that the proposal would provide for any meaningful enhancement or maintenance of the vitality of rural communities.
24. Taking everything together, the benefits would not outweigh the harm that I have identified in terms of the conflict with the settlement strategy, harm to the character and appearance of the area and the harm to the significance of a non-designated heritage asset. The proposal would not accord with an up to date development plan and as such would not represent sustainable development.
25. For the reasons set out above, the proposal would conflict with the development plan, when read as a whole and the Framework. Material considerations do not indicate that a decision should be made other than in accordance with it and having considered all other matters raised, I therefore conclude that the appeal should be dismissed.

Richard Aston

INSPECTOR

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Appeal Decision

Site visit made on 3 August 2017

by **B M Campbell BA(Hons) MRTPI**

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

Decision date: 16 August 2017

Appeal Ref: APP/V2255/X/17/3168048

New Orchard Farm, Upper Road, Rodmersham, Sittingbourne ME9 0QL

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr and Mrs J McGrath against the decision of Swale Borough Council.
 - The application Ref: 16/506852/LAWPRO, dated 13 September 2016, was refused by notice dated 14 November 2016.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is the erection of a garage.
-

Decision

1. The appeal is dismissed.

Preliminary matters

2. For the avoidance of doubt, it was confirmed at my visit that the correct name of the property is New Orchard Farm and that the drawings formally considered by the Council were 497-01F, 497-03C and 497-04B.

Reasons

The matter in dispute

3. There is no dispute that the erection of the proposed garage would comprise operational development within the meaning of s55 of the Act for which planning permission is required. The Appellants, however, consider that planning permission is granted by way of Article 3 of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO). That grants permission for classes of development described as permitted development in Schedule 2 to that Order. The Appellants rely on Class E of Part 1 of Schedule 2 which (amongst other things) permits the provision of any building within the curtilage of a dwellinghouse required for a purpose incidental to the enjoyment of the dwellinghouse as such (subject to certain limitations).
4. There is no suggestion that any of the limitations imposed by Class E would not be met by the development. Rather there is disagreement as to whether the land on which the building would be erected falls within the curtilage of the dwellinghouse, New Orchard Farm. If it does then Class E would apply and the

proposal would be permitted by way of the GPDO. If it does not, then Part 1

(including Class E) to Schedule 2 to the GPDO which is entitled "Development within the curtilage of a dwellinghouse" would not apply; the development would require express planning permission; and until that was obtained the development would be unlawful.

Does the land fall within the curtilage of New Orchard Farm?

5. Curtilage defines an area of land in relation to a building and not a use of land. In a conventional housing estate layout, the residential curtilage will generally equate with the residential planning unit. However, in other situations it is not uncommon for land to be in the same unit of occupation and in use for residential purposes incidental to the use of the dwellinghouse and yet fall outside the residential curtilage. A curtilage relates to a building and a planning unit to a use. Thus, use of land in connection with the dwellinghouse does not, in itself, bring that land within the curtilage.
6. The DCLG publication – *Permitted Development for Householders, Technical Guidance* provides guidance for the application of Part 1 of Schedule 2 to the GPDO. It says curtilage is understood to be *land which forms part and parcel with the house. Usually it is the area of land within which the house sits, or to which it is attached, such as the garden, but for some houses, especially in the case of properties with large grounds, it may be a smaller area.*
7. The appeal property is not part of a conventional housing layout. The house was erected within a small complex of farm buildings following a grant of permission in 1992. It is approached from a drive shared with The Stables (which I understand to comprise holiday accommodation) and an agricultural access to farmland beyond. The history of the property does not assist since the farm has been subdivided to provide a number of separate dwellings, all potentially with their own curtilages.
8. The formal, cultivated garden for New Orchard Farm lies to the rear (northern) and western sides of the house and is fully enclosed, primarily by a tall brick wall. The appeal site lies to the eastern side of the house and garden, outside the enclosed area, and separated from it by the wall and a track serving farmland immediately to the north and a barn to the east. This rectangular area of rough grass does not have the character of a garden but is more closely associated in appearance to the adjoining farmland from which there is no physical separation. At the time of my visit there was no indication of any residential use, although the site for the proposed garage appears to have been excavated. There was, however, a football net and posts on the adjoining farmland to the north.
9. There is disagreement between the Council and the Appellant as to the lawful use of this rectangle of land to the east of the dwelling. The Council consider it has agricultural use whilst clearly the Appellants, in claiming it as part of the curtilage of the house, say it has lawful residential use. They say the walled garden was formed to enable dogs to roam and children to play without straying and that the unenclosed area to the east was laid to grass and used for outdoor ball games and the like and latterly was used for growing vegetables. There are two pedestrian gates in the walls of the enclosed garden giving access to the north and east.
10. Even if the land to the east, and outside the walled garden, does have lawful use for residential purposes in connection with the dwelling, New Orchard

Farm, (and I make no such formal finding) that does not, in itself bring that land within the residential curtilage of that dwelling. The Appellants have drawn attention to the case of *O'Flynn v SSCLG and Warwick DC* [2016] EWHC 2894 (Admin) which was concerned with whether land had lawful use for residential purposes incidental to the use of the dwellinghouse. In that case it was found that the Inspector should have considered whether the land fell within the curtilage of the dwelling since if it did it would have had lawful incidental residential use (s55(2)(d) of the Act). That is not authority for saying that land which has been used for incidental purposes and can be lawfully used as such necessarily falls within the curtilage of a dwellinghouse.

11. The function of the land is relevant to the question of curtilage but it is not determinative. Thus even adopting the Appellants' stance that the land has lawful incidental residential use and forms part of the residential planning unit would not be an end to the matter. Whether the land forms part of the curtilage is a matter of fact and degree. In this case the land is physically separated from the house and associated domestic cultivated garden by a tall wall and the farm access. There is no intimate association with the building and nor would there have been when the land was previously enclosed on three sides by tree hedges but open to the farmland to the north¹. The land is neither attached to the dwellinghouse and garden, nor does it form one enclosure with it. It gives no indication of being part and parcel with the house. Visually, there is nothing to associate it with the dwelling. It is a physically and visually separate area with a quite different character more readily associated with the adjoining farmland.
12. Even if I accept the Appellants' claim (disputed by the Council) that the land forms part of the residential planning unit and might lawfully be used for such purposes, I nonetheless find, as a matter of fact and degree, that the land upon which the proposed garage would be sited does not form part of the curtilage of the dwellinghouse, New Orchard Farm. It does not form one enclosure with the house.
13. As such, Class E of Part 1 to Schedule 2 to the GPDO does not apply; the proposed garage requires express planning permission.

Conclusion

14. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the erection of a garage was well-founded and that the appeal should fail. I exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

B M Campbell

Inspector

¹ As described by the Appellants with reference to a 2008 aerial photograph

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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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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