

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	Withdrawn	26/4/2010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

**1.0 DESCRIPTION OF SITE**

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

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

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

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

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

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

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

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

1.16 I did not suggest any objection to the position, size, design or layout of the proposed dwelling, although the appellant did not argue that it was of outstanding design sufficient to be approved on its own merits. Rather, I focussed on the question of whether the intrinsic harm to the character of the countryside that might arise from the proposed single house was outweighed by the other potential advantages of the proposal. Members accepted this recommendation, but the decision was appealed and an appeal hearing took place in March 2013. The appeal was allowed in May 2013 after the appellant submitted a complicated Unilateral Undertaking which essentially required him to immediately suspend all future quarrying until he notified the Council of his intentions to either;

1. re-commence quarrying; which meant that the planning permission for the house would fall, or
2. implement the planning permission; in which case all quarrying rights would fall without compensation being claimed for loss of mineral rights, and the remainder of the quarried site would be restored.

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

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

## **2.0 THE APPEAL DECISION**

2.01 The appeal decision is a very important consideration in determining this application and a copy of the appeal decision is attached to this report. The appeal was allowed.

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

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

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

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

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

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

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

### 3.0 PROPOSAL

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

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

#### 3.03 A Planning Statement

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

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

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

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

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

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

3.08 The appellant further argues that;

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

3.09 A Design and Access Statement

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

3.10 A Transport Statement

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

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

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

3.13 A Flood Risk Assessment

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

3.14 An Ecological Scoping Survey

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

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

3.16 The Status of the Planning Permission for Quarrying

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

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



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

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

3.19 The Need for Four Houses

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

3.20 The Amendments to the Application

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

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

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

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

#### **4.0 PLANNING CONSTRAINTS**

Ancient Woodland

Enforcement Notice ENF/09/036

Enforcement Notice ENF/09/036

Section 106 Agreement SW/12/0077

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

- 5.01 The Development Plan comprises saved policies of the adopted Swale Borough Local Plan 2008. The following Local Plan policies are most directly relevant to consideration of the application:-
- SP1 (Sustainable development)
  - SP2 (Environment)
  - SP4 (Housing)
  - FAV1 (Faversham area strategy)
  - SH1 (Settlement hierarchy)
  - E1 (General Development Criteria)
  - E6 (The countryside)
  - E9 (Landscape)
  - E10 (Trees and hedges)
  - E11 (Bio diversity)
  - E12 (Designated Wildlife Sites)
  - E19 (Design)
  - H2 (Housing)
  - RC7(Rural Lanes)
  - T1 (Highway Safety)
  - T3 (Parking on new developments)
- 5.02 Draft Local Plan Bearing Fruits 2031 policies largely reflect these aims and the site does not have any site specific designation in this emerging Plan. Based on current Objectively Assessed Needs (OAN) for housing within the Borough, the Council cannot currently demonstrate a 5 year housing supply. Given this and that the above policies for housing delivery pre-date the OAN, some of the above policies must be considered as out of date.
- 5.03 The emerging local plan has been through an Examination in Public, and following the Inspector's findings, the Council has sought to significantly boost its housing allocations to meet objectively assessed housing needs. A further examination will take place early this year with the Council seeking to demonstrate that it can meet its full identified housing needs and a 5 year supply. A number of policies within the emerging plan seek to deliver housing development in order to meet the OAN for housing in the Borough. These policies are ST1 (sustainable development including delivery of homes to meet OAN), ST2 (delivery targets), ST3 (Swale settlement strategy), ST4 (site allocations to meet OAN), and ST7 (Faversham area strategy to provide housing at allocations or other appropriate locations where the role and character of Faversham and rural communities can be maintained / enhanced).
- 5.04 The background evidence base on housing allocations has been endorsed by the Local Plan Inspector in her Interim findings as a sound basis for the Council to deliver additional sites to meet OAN. On this basis, there is a high likelihood that the additional site options that will form the basis for discussion when the Examination in Public is re-opened, will be acceptable to the Inspector given the soundness of this evidence base.
- 5.05 Whilst I accept that the Council does not currently have a 5 year supply of housing, it is working to rectify this through the allocation of extra sites through the Main Modifications Document to the emerging Local Plan and therefore the other policies within the emerging LP can now hold more weight. We have now published a paper on our 5 year housing land supply which will be tested through the LP Examination in 2017. This paper shows that there is strong progress towards the achievement of a 5 year housing land supply.

- 5.06 Paragraph 216 of the NPPF sets out that decision makers may give weight to emerging plans, depending on the stage of preparation of the plan (the more advanced, the greater the weight), the extent to which there are unresolved objections, and the degree of consistency of relevant policies to policies in the NPPF. Given the endorsements made by the Local Plan Inspector and despite outstanding objections to the new allocations proposed in the plan, I am of the opinion that the soundness of the evidence base means that material weight can be given to the emerging plan and demonstration of a five year housing supply.
- 5.07 When considering the NPPF, the test as to whether this application constitutes sustainable development and whether any harm arising from the proposal would significantly outweigh the benefits, the position of the emerging plan as set out above, should be taken into account.
- 5.08 As the County Council has previously stated that the mineral reserves within the site are no longer of strategic importance the provisions of minerals planning policies are not of significance.
- 5.09 The Council's Landscape and Biodiversity Appraisal (2011) sees the site within the Hernhill and Boughton Fruit Belt landscape character area, which is in good condition and has high sensitivity, making it one of the very few landscapes within the Borough that combine both qualities. This means that if one were to rank local landscapes according to their condition/sensitivity index this one would come in the highest possible bracket, meaning that this is an area to be avoided where there is a choice of location,
- 5.10 The NPPF is relevant to consideration of the application. In particular its emphasis on approving sustainable development (paragraph 14); paragraph 49 where it states that where a five housing supply is not available relevant policies for the supply of housing should not be considered up-to-date; paragraph 55 where the exception to restraint on isolated dwellings is set out – including circumstances other than where the design approach is of exceptional quality; and paragraphs 109 and 118 which seek to protect valued landscapes and biodiversity.

## **6.0 LOCAL REPRESENTATIONS**

### **Scheme as first submitted**

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

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

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

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

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

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

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

#### **Scheme as amended**

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

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

NOTE: The survey has been updated

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

NOTE: This site is not within a designated AONB

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

## 7.0 CONSULTATIONS

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

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

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

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

#### **General.**

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

#### **Design.**

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

#### **Sustainability.**

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

#### **Highway Safety.**

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

#### **Traffic Generation.**

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

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

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

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

**Road access.**

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

**Policy Constraints.**

*Local Designated Site of Biodiversity DM28*

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

*Rural Lanes DM26*

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

**Drainage and Flood risk.**

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

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

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

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

**Grounds of the objection.**

**General.**

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

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

**Policy Constraints.**

*Local Designated Site of Biodiversity DM28*

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

*Rural Lanes DM26*

*NPPF.*

**Design.**

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

**Sustainability.**

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



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

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

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

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

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

*NPPF states:*

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

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

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

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

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

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

*NPPF para55 states:*

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

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

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

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

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

### **Highway Safety.**

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

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

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

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

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

### **Traffic Generation.**

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

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

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

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

### **Road access.**

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

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

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

### **Drainage and Floodrisk.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I have included the first two recommended conditions below.

## **8.0 BACKGROUND PAPERS AND PLANS**

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

## **9.0 APPRAISAL**

### **Principle of Development**

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

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

### **Visual Impact**

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

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

### **Highways**

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

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

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

### **Ecology**

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

### **Other Matters**

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

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

## 10.0 CONCLUSION

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

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

### CONDITIONS

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

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

- (2) The development hereby permitted shall be carried out in accordance with the following approved drawings;

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

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

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

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

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



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

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

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

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

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

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

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

Reason: In the interests of highway safety and convenience.

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

Reason: In the interests of highway safety and convenience

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

Reason: In the interests of highway safety and convenience

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

Reason: In the interests of highway safety and convenience

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

Reason: In the interest of visual amenity.

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

Reason: In the interest of visual amenity.

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

Reason: In the interest of visual amenity.

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

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

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

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

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

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

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

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

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

Reason: In the interests of encouraging wildlife and biodiversity.

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

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

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

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

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

Reason: In the interest of visual amenity.

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

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

### **Council's Approach to the Application**

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

Offering pre-application advice.

Where possible, suggesting solutions to secure a successful outcome.

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

In this instance

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

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

## APPENDIX 1




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## Appeal Decision

Hearing held on 6 & 27 March 2013

Site visit made on 6 & 27 March 2013

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

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

**Decision date: 16 May 2013**

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

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

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr I Fern against the decision of Swale Borough Council.
  - The application Ref SW/12/0077, dated 19 January 2012, was refused by notice dated 30 April 2012.
  - The development proposed is the revocation of the quarrying use and erection of a single dwelling house with detached garage block and associated landscaping, enlarged lake and use of existing access.
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### Decision

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

### Procedural Matter

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

### Main Issues

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

### Reasons

4. The appeal site forms part of a larger area of land owned by the appellant. Two separate mineral consents permit the extraction of sand and gravel across
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[www.planningportal.gov.uk/planninginspectorate](http://www.planningportal.gov.uk/planninginspectorate)

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

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

*Character And Appearance Of Surrounding Countryside*

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



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

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

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

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

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

#### *Revocation*

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



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

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

#### *Restoration Scheme*

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

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

#### *Unilateral Undertaking*

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

#### *Other Considerations*

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

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

*Conclusions on Benefits of Proposal*

35. Although I have found that the proposed dwelling would not harm the character and appearance of the surrounding countryside, I nonetheless attach significant weight to the intrinsic harm that would arise from the provision of an isolated new home within the countryside.

36. The revocation of the extant minerals consents would enable the preservation of the ancient woodland and other woodland on the quarry site in perpetuity. This would preserve the appearance of the Blean Woods Special Landscape Area and the rich habitat provided by the ancient woodland. The proposal would therefore accord with Local Plan policies E9 and E12 and paragraph 118 of the Framework which resist the loss or deterioration of irreplaceable habitats, including ancient woodland. I therefore attach substantial weight to these benefits, particularly given the decline in the extent of ancient woodland in recent decades.

37. For the reasons given above, I am doubtful that following the cessation of mineral extraction, that the site could be restored without further significant and permanent damage to the existing landscape including the loss of additional areas of ancient woodland. I therefore attach considerable weight to the benefits that would result from the restoration of the previously quarried land.

38. The proposal would also result in a reduction in the number of large lorries using the narrow country lanes surrounding the appeal site. This harm would cease once the site is restored following the cessation of mineral extraction. Therefore unlike the other harm identified above, it would not be permanent in nature. Nonetheless, it could well continue until 2042, and during this period could continue to cause a significant nuisance to local residents and congestion on the narrow lanes within the local area. I therefore accord this matter moderate weight.

39. The Council considers that the short term harm from the continued extraction of minerals would be outweighed by the permanent harm arising from the proposed dwelling. However, for the reasons given above, the loss of ancient woodland and the damage to the landscape and biodiversity would represent permanent and substantial harm to the countryside. Therefore whilst the proposal would represent a new dwelling within the countryside, it would nevertheless comply with the aims of Local Plan policy E6, namely to protect the character and amenity value of the wider countryside. I therefore conclude that the benefits of the proposal, including the revocation of the extant minerals consent and the restoration of the previously quarried land, would



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

*Conditions*

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

**Conclusion**

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

*Lesley Coffey*

INSPECTOR

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**APPEARANCES**

FOR THE APPELLANT:

John Collins	DHA Planning
Ian Fern	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Graham Thomas	Area Planning Officer Swale Borough Council
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INTERESTED PERSONS:

Jeffery Tutt

**DOCUMENTS SUBMITTED AT THE HEARING**

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

**PHOTOGRAPHS**

- 1 Aerial photographs of appeal site submitted by the Council

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**Schedule of Conditions**

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

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

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

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