

URGENT ITEM

REPORT SUMMARY

Item 3.3 REFERENCE NO - 16/505861/OUT			
APPLICATION PROPOSAL			
Outline Application with access being sought for erection of 9 dwellings with access, garaging, parking provision and other associated works.			
ADDRESS Land West To Ellens Place, Boyces Hill, Newington, Kent .			
RECOMMENDATION That Members determine that, had an appeal against non-determination not been submitted, planning permission would have been refused.			
SUMMARY OF REASONS FOR REFUSAL			
The site lies outside of the built up area, in an unsustainable location, on best and most versatile agricultural land, and in such a position that the harm caused to visual amenity and the character and appearance of the countryside would not outweigh the Council's current need for a five year housing supply.			
REASON FOR REFERRAL TO COMMITTEE			
An appeal has been submitted against non-determination and the application is presented to Members to determine what the Council's position would have been if a decision had been issued.			
WARD Hartlip, Newington And Upchurch	PARISH/TOWN COUNCIL Newington	APPLICANT Mr P Paulding AGENT Consilium Town Planning Services Limited	
DECISION DUE DATE 27/09/16	PUBLICITY EXPIRY DATE 10/10/16		
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
None.			

Members should note that this application is the subject of an appeal against non-determination. The purpose of this item is to ascertain what the Council's decision would have been had an appeal not been submitted, in order to determine the case the Council submits to the Planning Inspectorate

MAIN REPORT

1.0 DESCRIPTION OF SITE

- 1.01 Application site is a vacant plot of land to the east of Newington, fronting on to the A2. It is roughly rectangular and extends to approximately 5357sqm / 0.5ha. The land level drops down away from the road quite sharply and then rises gradually to the rear of the site. The land is largely given over to pasture, with a small cluster of trees at the southern end. It is bordered by several residential dwellings, their associated outbuildings, and a car mechanics to the east and west; the A2 along the northern edge; and open fields to the south.

- 1.02 The site forms part of a wider parcel of land, extending to approximately 23,246sqm / 2.3ha, which was put forward under the SHLAA site allocation process but discounted at the first stage (discussed further below).

2.0 PROPOSAL

- 2.01 Application seeks outline planning permission for the erection of 9 dwellings and associated parking, amenity space, etc.
- 2.02 All matters other than access have been reserved.
- 2.03 The access would be in approximately the same location as existing with a central access route leading southwards into the site, and the indicative plans show predominantly detached houses set either side of that access.

3.0 PLANNING CONSTRAINTS

- 3.01 Potential Archaeological Importance.
- 3.02 The site lies approximately 2.8km south of the Medway Estuary SSSI and SPA.

4.0 POLICY AND OTHER CONSIDERATIONS

Swale Borough Local Plan 2008

- 4.01 Policies E1, E6, H2 and RC3 of the adopted Local Plan are relevant. E1 is a general development policy which sets out a number of criteria to which all developments are expected to adhere.
- 4.02 E6 is the Council's main policy in terms of rural restraint and it aims to protect the countryside for its own sake. The policy restricts residential development within the countryside unless it is expressly for the purposes of satisfying an identified local affordable need in accordance with policy RC3; housing for agricultural workers (again in response to an identified need); or for gypsies or travellers.
- 4.03 The caveats of E6 are supported by policy RC3, which states that new housing within the rural area will be met within the existing built up area boundaries, or *“exceptionally at sites where planning permission for residential development would not normally be granted, where proposals are specifically and wholly intended to meet an identified local affordable housing need of the community provided the promoter of the scheme demonstrates that:*
- 1. the identified need cannot otherwise be met within the confines of the built-up area, or failing this, on previously developed land adjoining the built confines of the settlement;*
 - 2. the development is of a size and type suitable to meet the needs identified in a local housing needs survey;*
 - 3. the site is well related to available village services and public transport;*
 - 4. the proposal contains no element of general market housing;*
 - 5. there are no overriding environmental or highway objections; and*
 - 6. the scheme has the support of the local Parish Council.”*

- 4.04 Policy H2 states that new housing development will be allowed within the built up area or at specifically allocated sites. Outside of those areas development is expected to accord with E6 and RC3, above. A stumbling block to this policy, however, is that the Council currently has an identified 5-year housing supply shortfall. In such circumstances national guidance advises that the policy is not compliant with the aims of the NPPF, para. 49 thereof stating:

“Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.”

- 4.05 This shortage / NPPF non-compliance was recognised by the Local Plan Inspector (in her consideration of the emerging local plan, ‘Bearing Fruits’), who consequently increased our annual supply figure to 776 dwellings per annum. The end result of this is, in essence, that the Council has, since the LP review, had to consider sites outside of the defined built up areas and current adopted allocated sites for new housing development to assist in meeting our 5yr supply target. Some of this need will be met through new allocations currently under consideration, while some will come through consideration of windfall sites (such as the current application site). This does not mean, however, that the other policies noted in this section do not apply.
- 4.06 Nevertheless, the Council has made further site allocations through the LP main modification procedure and is now confident that it will meet its 5yr housing supply target when the LP is again reviewed by the Inspector in January 2017. The fact that the Council has taken relevant steps to address and resolve the shortfall of supply is a material consideration, as set out in the recent Richborough Estates Court of Appeal decision (discussed further below).

The emerging local plan; ‘Bearing Fruits 2031, Publication Version December 2014’

- 4.07 Policy ST1, similar to E1 of the adopted plan, is a general policy aimed to achieve sustainable development throughout the Borough. The most relevant criteria are:
4. Accord with the Local Plan settlement strategy; and
 7. Deliver a wide choice of high quality homes by:
 - a. balancing levels of forecast housing needs with that which is deliverable;
 - b. providing housing opportunity, choice and independence with types of housing for local needs; and
 - c. keeping vitality within rural communities with identified housing needs, proportionate to their character, scale and role.
- 4.08 ST3 sets out the Swale settlement strategy, and identifies preferred locations for residential development. Para.6 of the policy states that *“locations outside the built-up area boundaries shown on the Proposals Map fall in the open countryside where development will not normally be permitted, unless supported by national planning policy and able to demonstrate that it would contribute to protecting and where appropriate enhancing the intrinsic value, tranquillity and beauty of the countryside, its buildings and the vitality of rural communities.”* In terms of the current application this means that, as with policies E6 and RC3 above, the proposed site is very much near the bottom of the list in terms of where officers would recommend new housing to be placed.

- 4.09 Policy CP2 states that new development will be located to minimise the need to travel for employment and services, and to facilitate sustainable transport choices.
- 4.10 CP3 aims to provide a wide choice of high-quality homes across the Borough. It aims to steer development to the built up areas and allocated sites, or to windfall sites *“except where the character of the site, its local context or environmental value determines otherwise,”* and to *“meet the housing requirements of specific groups, including families, older persons, or disabled and other vulnerable persons.”*
- 4.11 Policy DM9 relates to rural exceptions housing, and states that *“planning permission for affordable housing (including pitches for Gypsies and Travellers) to meet local needs in rural areas will be granted provided [amongst others]:*
1. *The site accords with Policy ST3 and/or is in a location where access to day to day services can be conveniently and easily achieved;*
 2. *The site and proposed development would not have a significant adverse impact upon the character of the settlement, the surrounding countryside and the amenity of the existing community;*
 3. *A need for the scheme is clearly justified by the applicant, to the satisfaction of the Council, by providing the following to accompany a planning application:*
 - a. *an up-to-date parish or village housing needs assessment undertaken or carried out by a recognised and appropriate body;*
 - b. *a thorough site options appraisal; and*
 - c. *a prepared statement of community involvement that has sought to include the significant input of the Parish Council.”*
- 4.12 DM14 is a general policy similar to E1 of the adopted Plan, and sets out a number of criteria all developments are expected to accord with.

National Planning Policy Framework (NPPF)

- 4.13 Paragraph 14 states that *“at the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking.”* In respect of decision-taking it notes that LPAs should approve proposals that accord with the development plan without delay. It continues to note that where the development plan is absent, silent or relevant policies are out-of-date, permission should be granted *“unless:*
- *any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or*
 - *specific policies in this Framework indicate development should be restricted.”*
- 4.14 This is particularly relevant in terms of policy H2 of the Local Plan, as noted above, as H2 is considered non-compliant and thus “silent” for the purposes of interpreting this paragraph. It does note, however, that adverse impacts need to be taken into account, and therefore does not present a carte-blanche to approving residential development within the countryside.
- 4.15 Paragraph 17 (11th and 12th bullet points only) of the NPPF are relevant, and state that *“within the overarching roles that the planning system ought to play, a set of core land-use planning principles should underpin both plan-making and decision-taking.*

- *actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable; and*
- *take account of and support local strategies to improve health, social and cultural wellbeing for all, and deliver sufficient community and cultural facilities and services to meet local needs.*

- 4.16 Paragraph 35 encourages developments that “*protect and exploit opportunities for the use of sustainable transport modes.*” It states that development should be located and designed to give priority to pedestrians, create safe and secure layouts for pedestrian and cycle movements, and consider the needs of people with disabilities by all modes of transport.
- 4.17 Paragraph 49, as discussed above, states that “*relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.*” This is discussed in further detail in the appraisal section below.
- 4.18 Paragraph 50 states that LPAs should deliver a wide choice of high quality homes and create sustainable communities by taking demographic trends into consideration, provide housing reflecting local demand, and securing affordable housing provision. Further to this para. 54 states that LPAs should be responsive and reflexive to local affordable and rural housing needs.
- 4.19 Paragraph 55 of the NPPF is crucial in the consideration of applications such as this, and is worth reproducing in its entirety (my emphasis in bold):

*“To promote sustainable development in rural areas, **housing should be located where it will enhance or maintain the vitality of rural communities.** For example, where there are groups of smaller settlements, development in one village may support services in a village nearby. Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as:*

- *the essential need for a rural worker to live permanently at or near their place of work in the countryside; or*
- *where such development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets; or*
- *where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting; or*
- *the exceptional quality or innovative nature of the design of the dwelling. Such a design should:*
 - *be truly outstanding or innovative, helping to raise standards of design more generally in rural areas;*
 - *reflect the highest standards in architecture;*
 - *significantly enhance its immediate setting; and*
 - *be sensitive to the defining characteristics of the local area.”*

5.0 LOCAL REPRESENTATIONS

5.01 12 letters of objection have been received from local residents, raising the following summarised concerns:

- Did not receive a consultation letter;

- Loss of views, particularly from nearby PRow;
- Erosion of countryside around the village;
- Additional noise and disturbance, particularly during construction;
- Impact on wildlife;
- Bats and owls live on the site;
- Loss of trees;
- Additional traffic affecting structural integrity of listed buildings;
- Additional traffic affect highway safety and amenity, and add to congestion;
- What will happen to the existing lay-by?;
- Lack of parking locally;
- Increased pollution and local air quality concerns;
- Impact on property values;
- Lack of local infrastructure to cope with additional residents;
- Existing field entrance does not have planning permission;
- Overlooking and loss of privacy, particularly from two-storey dwellings;
- Loss of agricultural land;
- Approval would lead to further development on adjacent land;
- Too close to listed buildings;
- Impact on local drainage, and localised flooding may increase due to inadequate drainage;
- Need to tackle overpopulation instead of building more houses; and
- Scheme driven by profit.

6.0 CONSULTATIONS

6.01 Newington Parish Council objects to the application, commenting:

- *“This land was recently rejected by Swale Borough Council when listing sites as part of the modification to the Local Plan.*
- *The proposed site is outside the built-up area of Newington Village and would be visible from footpaths crossing Boyces Hill. We believe this break in housing needs to be retained in order to preserve the rural setting of the Village.*
- *There are adjacent listed buildings the setting of which would be harmed by the proposed houses.*
- *The proposed housing would do nothing to meet local need for low-cost accommodation; nor would it provide for agricultural workers employed in the neighbouring fields.*
- *Access to the site would be via an entrance that was installed, we believe, without planning permission. There would be issues of access and egress onto the busy A2, creating a potentially dangerous junction.”*

6.02 Kent Highways & Transportation initially objected for the following summarised reasons:

- The proposals don't allow for vehicles to enter and exit the site in forward gear;
- Refuse vehicles and pantechnicons will have to mount the eastern verge / kerb to turn left out of the site, and will have to swerve into the oncoming lane to make the turn.

Further to receipt of additional information, however, they have no objections subject to standard conditions.

- 6.03 KCC Ecologist advised that further information was required. The agent submitted further information (received 26.10.16) and the ecologist is now happy subject to relatively standard conditions.
- 6.04 UK Power Networks have no objections.
- 6.05 KCC sustainable drainage officer has no comments as the scheme falls outside their remit.
- 6.06 Southern Water has no objection subject to standard conditions and informatives.
- 6.07 The Council's Environmental Health Manager recommends that the application be refused on lack of a (traffic) noise and land contamination assessments, and comments that whilst he does not entirely agree with the submitted air quality assessment he suggests that *"is debateable whether a development of this size would make much difference to current air pollution levels, but it certainly will not help them."*

7.0 BACKGROUND PAPERS AND PLANS

- 7.01 Of relevance is the Council's recent second call for allocation sites as part of the emerging Local Plan process, following the Inspector's interim report that advised further allocations would be required. The application site forms part of a wider allocation (ref.SW/732) that extends to the south and south-west. The assessment notes (my emphasis in bold):

"The site is located on the fringes of the village 680m from the Co-op, 1.2km from the primary school and 3.5km from the nearest GP surgery.

Development in this location is not considered to be the most sustainable option and should not progress on these grounds.

The centre of Newington is an Air Quality Management Area so there are concerns about the impact of development in this regard. An action plan is in place to ensure that the air quality situation does not worsen and seeks to improve it, to bring it within acceptable levels as stipulated by Government.

Development in this location could give rise to moderate to significant adverse visual impacts arising from the rural aspect of this site at the fringes of the village. This, in addition to its poor connectivity to the village means that it relates less well to Newington as a whole than other sites. Building here would read as consolidation of the A2 ribbon development and the infilling of a pleasant gap, rather than a logical extension of the village.

This site comprises an improved grassland field which is bordered on the western side by dense hedgerow. There is some potential for protected/notable species to be present –particularly on the boundary. Bearing in the connectivity with the surrounding area there is increased potential for protected/notable species. However, it is considered that there are only minor ecological impacts."

8.0 APPRAISAL

Principle

- 8.01 The application site lies outside of the built up area boundary and is thus within the countryside, where the Council's established policies of rural restraint seek to restrict residential development unless for the purposes of (amongst others) agricultural worker's housing, or affordable housing to meet an identified local need.
- 8.02 The principle of development in this instance is complicated by virtue of the Council's *current* lack of an identified five-year housing supply, but this is clarified through a recent (17 March 2016) court judgement: The Royal Court of Justice ruling in relation to i) Suffolk Coastal District Council and Hopkins Homes Limited and Secretary of State for Communities and Local Government, and ii) Richborough Estates Partnership LLP and Cheshire East Borough Council and Secretary of State for Communities and Local Government
- 8.03 At para. 32 the Court states that "relevant policies for the supply of housing" means all policies that would affect the outcome of an application for new housing development:

*"A "relevant" policy here is simply a policy relevant to the application for planning permission before the decision-maker – **relevant either because it is a policy relating specifically to the provision of new housing in the local planning authority's area or because it bears upon the principle of the site in question being developed for housing.**" [My emphasis in bold.]*

- 8.04 This is expanded in para. 33:

"Our interpretation...recognizes that the concept extends to plan policies whose effect is to influence the supply of housing land by restricting the locations where new housing may be developed – including, for example, policies for the Green Belt, policies for the general protection of the countryside, policies for conserving the landscape of Areas of Outstanding Natural Beauty ... policies for the conservation of wildlife or cultural heritage, and various policies whose purpose is to protect the local environment in one way or another by preventing or limiting development."

- 8.05 Para. 35 clarifies concisely:

"If a local planning authority is unable to demonstrate the requisite five-year supply of housing land, both the policies of its local plan that identify sites for housing development and policies restrictive of such development are liable to be regarded as not "up-to-date" under paragraph 49 of the NPPF – and "out-of-date" under paragraph 14."

- 8.06 Where policies that restrict housing development are out of date, the NPPF's overall presumption in favour of sustainable development, and providing new housing to meet the designated five-year supply target (currently 776 dwellings per annum), is considered to prevail. This opens up otherwise unacceptable sites to consideration for new housing development, e.g. sites outside of built up areas, in order to meet that target.
- 8.07 However, para 24 states that "Lord Reed ... emphasized, however (in paragraph 19), that statements of policy "should not be construed as if they were statutory or contractual provisions". He also said (in the same paragraph) that "**many of the provisions of development plans are framed in language whose application to a given set of facts requires the exercise of judgment**", and that "[such]

matters fall within the jurisdiction of planning authorities, and their exercise of their judgment can only be challenged on the ground that it is irrational or perverse...” ... It has been accepted in this court, and is not in dispute in these appeals, that the same principles apply also to the interpretation of national policy and guidance, including policies in the NPPF.” [My emphasis.]

8.08 This affords the Council opportunity to consider the weight to be afforded to national policy in terms of its affect upon local policy on a case-by-case basis, and with reference to the particular circumstances of each application.

8.09 Furthermore the judgement notes at para. 42 that *“it is for the decision-maker to decide what weight should be given to NPPF policies in so far as they are relevant to the proposal. Because this is government policy, it is likely always to merit significant weight. But the court will not intervene unless the weight given to it by the decision-maker can be said to be unreasonable in the Wednesbury sense.”*

8.09 Crucial to the consideration of applications such as this is para. 43 of that judgement:

“When determining an application for planning permission for housing development the decision-maker will have to consider, in the usual way, whether or not the proposal accords with the relevant provisions of the development plan. If it does, the question will be whether other material considerations, including relevant policies in the NPPF, indicate that planning permission should not be granted. If the proposal does not accord with the relevant provisions of the plan, it will be necessary to consider whether other material considerations, including relevant policies in the NPPF, nevertheless indicate that planning permission should be granted.”

8.10 Consequently, my understanding of the ruling is that whilst a failure to demonstrate an up-to-date five-year housing supply opens up consideration of sites that would be otherwise unacceptable under **any** policies that restrict the supply of housing (rural restraint policies, for example), there is still a duty imposed upon officers to consider **all other relevant policies** within both local guidance and the NPPF when assessing the suitability of any sites that come forward as part of an application. The weight that is afforded to those individual policies needs to be balanced against the lack of a demonstrable five-year supply, but does not negate the validity or the intention of those policies in themselves.

8.11 Therefore the acceptability of the principle of development can't be established from the outset, and a conclusion needs to be arrived at following consideration of the individual matters as set out below, and the associated policies.

Housing supply and the impact on policy

8.12 As noted above I have to consider the otherwise unacceptable nature of this development against the need for the Council to demonstrate a five-year housing supply. And, as above it is for officers to determine whether or not the policies in the development plan (adopted and emerging Local Plans, the NPPF and the NPPG) outweigh the need for more housing.

8.13 Paragraphs 14 and 49 of the NPPF state that, in a nutshell, where we can't demonstrate a five-year supply the Council should “approve development proposals that accord with the development plan without delay,” and where the development plan is absent (as ours is because of a lack of five-year supply), the Council should be granting permission.

- 8.14 However, paragraph 14 caveats this position by stating that permission should be granted **unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against policies in the NPPF, or specific policies in the NPPF indicate development should be restricted.**
- 8.15 Furthermore, and of significant value at this stage in the Council's work towards meeting the housing supply shortfall, is para.47 of the Richborough Estates decision, which states (my emphasis in bold):

*“One may, of course, infer from paragraph 49 of the NPPF that in the Government's view the weight to be given to out-of-date policies for the supply of housing will normally be less than the weight due to policies that provide fully for the requisite supply. **The weight to be given to such policies is not dictated by government policy in the NPPF. Nor is it, nor could it be, fixed by the court. It will vary according to the circumstances, including, for example, the extent to which relevant policies fall short of providing for the five-year supply of housing land, the action being taken by the local planning authority to address it, or the particular purpose of a restrictive policy** – such as the protection of a “green wedge” or of a gap between settlements. There will be many cases, no doubt, in which restrictive policies, whether general or specific in nature, are given sufficient weight to justify the refusal of planning permission despite their not being up-to-date under the policy in paragraph 49 in the absence of a five-year supply of housing land. Such an outcome is clearly contemplated by government policy in the NPPF. It will always be for the decision-maker to judge, in the particular circumstances of the case in hand, how much weight should be given to conflict with policies for the supply of housing that are out-of-date. **This is not a matter of law; it is a matter of planning judgment.**”*

- 8.16 The Council has, since the Local Plan review earlier this year, made a concerted effort to address the lack of a 5yr supply. Additional sites have been brought forward to make up the shortfall, and officers expect the Inspector to agree the Council's supply at the Inspector's review of the Local Plan Main Modifications draft in January / February 2017.
- 8.17 This accords with the thrust of the above decision and, in my opinion, puts the Council in a position to be able to refuse the application in principle (subject to the matters below) due to the progress made on the 5yr supply issue.

Sustainable development

- 8.18 Paragraph 14 of the NPPF makes it clear that there is a presumption in favour of sustainable development, which has three dimensions: economic, social and environmental. The NPPF expects development to seek improvements across all three dimensions.
- 8.19 It should be acknowledged that the proposals will achieve social gains in terms of the provision of new housing for the community whilst the Borough has an acknowledged shortfall. In turn these make a positive contribution towards the economic role of sustainable development by contributing to building a strong, responsive and competitive economy, by helping to ensure that sufficient development land is available to support growth.

- 8.20 With regards to the environmental dimension, the site is reasonably well located in terms of accessibility from services, facilities and amenities. The Co-op, post office and Bull pub are approximately 520m to the west of the site, Newington train station is roughly 680m away, and Newington Primary School lies approximately 1.1km to the northwest along Church Road and School Lane. The site fronts directly on to the A2, and there are bus stops close to the site along the A2 with regular services between Sittingbourne, Sheerness and Medway (Chalkwell 326 and 327).
- 8.21 The Methodology for the Swale Borough Strategic Housing Land Availability Assessment June 2009 sets out at section 7a that *“access to public transport local services and district wide facilities will be taken into account. The Council agrees with the conclusions of the Protocol that 800 m should be regarded as a maximum walking distance.”*
- 8.22 Given this it is considered that the site is located in a reasonably sustainable location with social, economic and environmental gains, and as such the NPPF's presumption in favour of sustainable development applies. These gains have to be balanced against the impact of locating a housing development outside of the built up area boundary.

Rural protection

- 823 The site lies outside of any built up area boundary and is thus considered to lie within the countryside of the Borough. Policy E6 of the adopted SBLP 2008 and ST3 of the emerging local plan aim to restrict the provision of housing unless for very specific circumstances – one of which is the provision of affordable housing to meet an identified rural need, with the support of the Parish Council.
- 8.24 There is no suggestion or evidence put forward to suggest that the development would provide affordable housing, accommodation for gypsies, travellers, or rural workers, or fall within any of the recognised other rural housing exceptions. The proposal therefore amounts to unjustified and unnecessary housing within the countryside, with consequent harm to the character and amenity of the rural landscape in a manner contrary to established policies.
- 8.25 Unjustified development upon the countryside would, in my opinion, be harmful to its rural character and appearance in a manner contrary to local and national policies of rural restraint.

Landscape / visual

- 8.26 The application is in outline form at this stage, and I can't comment on the acceptability or otherwise of the proposed dwellings themselves.
- 8.27 However, the site lies within a clear gap in the street scene as you enter / leave Newington village. The village fringe extends slightly beyond the built up area boundary and tails off to the east. The gap left by the application site forms a definite stop to the village and prevents it from extending as a ribbon development along the A2 towards Bobbing. There are few significant breaks along the A2 and it is thus even more important that those remaining be preserved – otherwise there is a real danger that Sittingbourne could, ultimately, merge with Medway.

- 8.28 Approval of this parcel could also conceivably leave the Council open to pressure to develop the remainder of the (dismissed) allocation site, to further considerable harm to the character and appearance of the countryside.
- 8.29 I consider that infilling this gap would harm the character of the countryside in a manner contrary to adopted policy.

Amenity

- 8.30 I do not consider that the amenity of neighbouring residents would be significantly harmed by a well thought out development here. Dwellings could be designed so as to minimise overlooking or overshadowing, and residential use would not normally give rise to any significant levels of noise or disturbance in its own right.

Highways

- 8.31 I note that Kent Highways are happy subject to conditions, and do not have any serious concerns myself. I am confident that matters such as access, parking provision, sight lines, etc. could be dealt with by way of condition attached to a grant of outline permission.

Ecology

- 8.32 I note local concern regarding bats and owls on the site, but the submitted preliminary Ecological Appraisal shows little potential for bats (*"None of the trees present on site offered potential for roosting bats. The site is likely to be used by a small number of foraging and commuting bats."*) and disturbance of owls would only be a significant concern if during the nesting season (which could be avoided by way of an appropriate condition).
- 8.33 Further to receipt of the additional information as requested by the County Ecologist I have no serious concerns. Had I been recommending permission I would have suggested conditions to secure ecological and biodiversity protection / enhancements.

Environmental health

- 8.34 As noted above the Council's EHO raises concern about the lack of traffic noise and contamination studies accompanying this application:

"In support of this outline application the applicant has submitted an air quality assessment, but no noise or contamination reports. These are required for a development of this type so close to a major route and a significant generator of traffic noise."

- 8.35 The site lies east of the Newington AQMA, but the EHO manager does not raise significant concern in regards this proposal noting, as above, that it *"is debateable whether a development of this size would make much difference to current air pollution levels..."*
- 8.36 He also notes that contamination surveys are required here.
- 8.37 I consider the lack of noise and contamination surveys to be sufficient to justify a reason for refusal.

Other matters

- 8.38 The site lies within an area identified by Natural England as being Grade I (excellent) quality agricultural land. The NPPF states, at para. 112, that “*local planning authorities should take into account the economic and other benefits of the best and most versatile agricultural land.*” Development here would sterilise the agricultural potential of the land.
- 8.39 A number of local objections are not planning considerations, and other local concerns have largely been addressed by the comments from statutory consultees or my assessment above.

9.0 CONCLUSION

- 9.01 As discussed above I consider the proposal to have drawbacks in terms of harm to the character, appearance, and wider amenity value of the countryside. I also consider that paras. 17, 35, 50, 54, and 55 of the NPPF advise against granting permission here, supported by policies E1, E6, E7, H2 and RC3 of the adopted Local Plan, and policies ST1, ST3, ST5, CP2, CP3, DM8, DM9, and DM14 of the emerging Local Plan.
- 9.02 With regard to the harm caused by this proposal I consider that the above policies outweigh the need to meet the five-year supply target, and consider that refusing planning permission in this instance would be justifiable and correct in light of current policy and legal circumstances.
- 9.03 Taking the above into account I recommend that Members determine that, had an appeal against non-determination of this application not been submitted, planning permission would have been refused.

10.0 RECOMMENDATION – That, had an appeal against non-determination not been submitted, planning permission would have been REFUSED for the following reasons:

- (1) The proposed development would be located outside of the defined urban boundaries of Newington (as established by Local Plan Policy SH1 and Emerging Local Plan Policy ST3 which place emphasis on the use of previously development land within the defined built up areas and on sites allocated by the Local Plan) and on land that has been discounted as an allocated housing site within the emerging local plan. Given the currently advanced stage of the Emerging Local Plan, Bearing Fruits 2031, development would in this instance be unnecessary - despite the fact that the Council does not have a five-year housing land supply - and would fail to promote more efficient use of previously developed urban land within the defined built-up area boundaries, to the detriment of rural character and the settlement's form, and would result in the unnecessary release of agricultural land and erosion of a Strategic Gap. The grant of permission would increase pressure for the release of other sites in the A2 corridor for residential development. The development fails to seek positive improvements across the three dimensions of sustainable development as required by paragraphs 7-9 of the National Planning Policy Framework 2012. Furthermore, in accordance with paragraph 14 of the National Planning Policy Framework 2012, the proposals do not achieve the presumption in favour of

sustainable development as the adverse impacts of development would significantly and demonstrably outweigh any benefits because:

- (i) Newington is considered to be a less sustainable settlement, in terms of services, transport and access to employment, than the other higher order locations identified within Policy SH1 of the Swale Borough Local Plan 2008 and Policy ST3 of Bearing Fruits 2031: The Swale Borough Local Plan Proposed Main Modifications June 2016 draft.
- (ii) There would be significant adverse impact on the landscape character, quality and value of the rural setting.
- (iii) There would be significant, permanent and unnecessary loss of a large area of best and most versatile agricultural land (BMV) (including its economic and other benefits).

As such it is considered that the proposed development does not accord with the National Planning Policy Framework, being contrary to policies set out in paragraphs 14, 17, 64, 109, 112, 113, 117-119 and 142 - 144, nor with the Development Plan, being contrary to policies SP1, SP2, SH1, TG1, E1, E6, E7, E9, E12, E19 and H2 of the Swale Borough Local Plan 2008, together with guidelines of the Swale Landscape Character and Biodiversity Appraisal 2011 SPD. The proposals are also contrary to emerging Development Plan policies ST1, ST3, ST5, CP2, CP4, CP7, DM24, DM25, DM28 and DM31 of Bearing Fruits 2031: The Swale Borough Local Plan April 2015.

- (2) The application fails to demonstrate, by way of appropriate assessments carried out by suitably qualified experts, that future residents of the proposed development would not be adversely affected by road noise, and that the site is not contaminated. The proposal is therefore contrary to the provisions of policy E1 of the adopted Swale Borough Local Plan 2008; policy DM14 of the emerging Swale Borough Local Plan "Bearing Fruits 2031;" and paragraphs 109, 120, 121 and 123 of the National Planning Policy Framework.

The Council's Approach to this Application

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

Offering pre-application advice.

Where possible, suggesting solutions to secure a successful outcome.

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

In this instance the application was considered to be fundamentally contrary to the provisions of the Development Plan and the NPPF, and these were not considered to be any solutions to resolve this conflict. The applicant's agent was notified of the Council's position prior to determination and offered the chance to withdraw 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.

Habitat Regulations Assessment.

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

The application site is located approximately 2.8km to the south of The Medway Estuary and Marshes Special Protection Area (SPA) which is a European designated sites afforded protection under the Conservation of Habitats and Species Regulations 2010 as amended (the Habitat Regulations).

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

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

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

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

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

- Due to the scale of development there is no scope to provide on site mitigation such as an on site dog walking area or signage to prevent the primary causes of bird disturbance which are recreational disturbance including walking, dog walking (particularly off the lead), and predation of birds by cats.
- Based on the correspondence with Natural England, I conclude that off site mitigation is required. However, the Council has taken the stance that financial contributions will not be sought on developments of this scale because of the practicalities of securing payment. In particular, the legal

agreement would cost substantially more to prepare than the contribution itself. This is an illogical approach to adopt; would overburden small scale developers; and would be a poor use of Council resources. This would normally mean that the development should not be allowed to proceed.

However, the North Kent Councils have yet to put in place the full measures necessary to achieve mitigation across the area and there are questions relating to the cumulated impacts on schemes of 10 or less that will need to be addressed in on-going discussions with NE.

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

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

For these reasons, I conclude that the proposal can be screened out of the need to progress to an Appropriate Assessment.