

3.5 REFERENCE NO - 16/507425/FULL			
APPLICATION PROPOSAL Demolition of 7 farm buildings and erection of 6 detached houses and garages, associated SUDS ponds, landscaping and wildlife planting.			
ADDRESS Land Rear Of Kaine Farm House Breach Lane Upchurch Kent ME9 7PH			
RECOMMENDATION Refuse			
SUMMARY OF REASONS FOR REFUSAL The proposed development falls outside of the built up area boundary and is not identified as one of the Council's preferred housing allocations within the emerging Local Plan. The emerging Local Plan can now be given significant weight owing to its advanced stage in the examination process. Notwithstanding the contribution that the proposals would make to the five years supply of housing land, the harm caused by this proposal would significantly and demonstrably outweigh the very limited benefits and additionally there would be unacceptable harm caused to the character and amenity value of the countryside. As a result the proposal would not constitute sustainable development.			
REASON FOR REFERRAL TO COMMITTEE Called in by Cllr Lewin			
WARD Hartlip, Newington And Upchurch	PARISH/TOWN COUNCIL Upchurch	APPLICANT Mr T Ripley AGENT Lander Planning	
DECISION DUE DATE 20/12/16	PUBLICITY EXPIRY DATE 15/12/16		
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
16/503169/PNQCL A	Prior notification for the change of use of 1 building from agriculture to form 2 residential units and for associated operational development For it's prior approval to: - Transport and Highways impacts of the development. - Contamination risks on the site. - Flooding risks on the site. - Noise impacts of the development. - Whether the location or siting of the building makes it otherwise impractical or undesirable for the use of the building to change as proposed. - Design and external appearance impacts on the building.	Prior Approval not required	10.06.2016
SW/10/0123	Lawful Development Certificate for two storey rear extension (Proposed)	Approved	16.02.2010
SW/09/1261	Proposed Lawful Development Certificate for a two storey rear extension off 'original house'.	Withdrawn	01.02.2010
SW/01/1244	Extension to house to form annexe	Approved	20.03.2002
PN/01/0053	Agricultural Notification for the erection of storage building	Prior Approval not required	20.08.2001

SW/95/0391	Transfer of agricultural occupancy condition from Kaine farm bungalow to Kaine farmhouse	Approved	26.06.1995
PN/93/0005	Extension to existing open storage barn	Prior Approval Granted	07.10.1993

1.0 DESCRIPTION OF SITE

- 1.01 The application site is comprised of Kaine Farm House which fronts onto Breach Lane and the land to the rear of the dwelling. The site measures approximately 105m x 70m. To the rear of the property lies seven farm buildings which in the most part are broadly arranged facing inwards around a central courtyard area.
- 1.02 The wider surrounding area is predominately characterised by farmland and countryside, however within close proximity of the application site there are some residential properties and agricultural, employment and equestrian related development located along Breach Lane to both the north and south of the application site. A solar farm lies approximately 400m to the north west of the site. The profile of the surrounding landscape is undulating.
- 1.03 Access to the site is gained from Breach Lane and passes adjacent to Kaine Farm House. A public footpath also crosses the site running broadly east – west.

2.0 PROPOSAL

- 2.01 This application seeks planning permission for the demolition of the seven existing agricultural buildings which occupy the site and the erection of six detached dwellings (4 x 4 bed and 2 x 5 bed).
- 2.02 Five of the six dwellings would be arranged to face inwards around a central courtyard area where vehicular access would be provided. The remaining unit would be situated in the north of the site and would front onto the existing access.
- 2.03 The proposed properties would be predominately two storey in height with some elements at single storey height. The roofs would be a mixture of pitched, hipped and catslide in design and the materials would be brick, weatherboarding and clay roof tiles. Two properties would also have detached garages which would have pitched roofs. A two storey detached structure including a garage, with a vehicle underpass for the existing property at Kaine Farm is also proposed.
- 2.04 Each property would have its own dedicated parking provision and associated private amenity space.
- 2.05 Access to the site would be gained from the existing access on Breach Lane. Two SUDS ponds would be located within the site, either side of the vehicular entrance to the courtyard.

3.0 PLANNING CONSTRAINTS

- 3.01 Environment Agency Flood Zone 2

4.0 POLICY AND OTHER CONSIDERATIONS

Swale Borough Local Plan 2008

- 4.01 Saved policies E1, E6, H2 and RC3 of the adopted Local Plan are relevant. E1 is a general development policy which sets out a number of criteria to which all developments are expected to adhere.
- 4.02 E6 is the Council's main policy in terms of rural restraint and it aims to protect the countryside for its own sake. The policy restricts residential development within the countryside unless it is expressly for the purposes of satisfying an identified local affordable need in accordance with policy RC3; housing for agricultural workers (again in response to an identified need); or for gypsies or travellers.
- 4.03 The caveats of E6 are supported by policy RC3, which states that new housing within the rural area will be met within the existing built up area boundaries, or *“exceptionally at sites where planning permission for residential development would not normally be granted, where proposals are specifically and wholly intended to meet an identified local affordable housing need of the community provided the promoter of the scheme demonstrates that:*
1. *the identified need cannot otherwise be met within the confines of the built-up area, or failing this, on previously developed land adjoining the built confines of the settlement;*
 2. *the development is of a size and type suitable to meet the needs identified in a local housing needs survey;*
 3. *the site is well related to available village services and public transport;*
 4. *the proposal contains no element of general market housing;*
 5. *there are no overriding environmental or highway objections; and*
 6. *the scheme has the support of the local Parish Council.”*
- 4.04 Policy H2 states that new housing development will be allowed within the built up area or at specifically allocated sites. Outside of those areas development is expected to accord with E6 and RC3, above. However, the Council is currently unable to demonstrate a five year supply of housing land. In such circumstances national guidance advises that the policy is not compliant with the aims of the NPPF, para. 49 thereof stating:
- “Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.”*
- 4.05 This shortage / NPPF non-compliance was recognised by the Local Plan Inspector (in her consideration of the emerging local plan, 'Bearing Fruits'), who consequently increased our annual supply figure to 776 dwellings per annum. The end result of this is, in essence, that the Council has, since the LP review, had to consider sites outside of the defined built up areas and current adopted allocated sites for new housing development to assist in meeting our 5yr supply target. Some of this need will be met through new allocations currently under consideration, while some will come through consideration of windfall sites (such as the current application site). This does not mean, however, that the other policies noted in this section do not apply.

- 4.06 Nevertheless, the Council has made further site allocations through the LP main modification procedure although the presence of a five year supply has yet to be demonstrated via the Local Plan examination process. However, the fact that the Council has taken relevant steps to address and resolve the shortfall of supply is a material consideration, as set out in the recent Richborough Estates Court of Appeal decision (discussed further below).

The emerging local plan; Swale Borough Local Plan 2031 (Proposed Main Modifications June 2016)

- 4.07 Policy ST1, similar to E1 of the adopted plan, is a general policy aimed to achieve sustainable development throughout the Borough. The most relevant criteria are:
4. Accord with the Local Plan settlement strategy; and
 7. Deliver a wide choice of high quality homes by:
 - a. balancing levels of forecast housing needs with that which is deliverable;
 - b. providing housing opportunity, choice and independence with types of housing for local needs; and
 - c. keeping vitality within rural communities with identified housing needs, proportionate to their character, scale and role.
- 4.08 ST3 sets out the Swale settlement strategy, and identifies preferred locations for residential development. Para.6 of the policy states that *“locations outside the built-up area boundaries shown on the Proposals Map fall in the open countryside where development will not normally be permitted, unless supported by national planning policy and able to demonstrate that it would contribute to protecting and where appropriate enhancing the intrinsic value, tranquillity and beauty of the countryside, its buildings and the vitality of rural communities.”* In terms of the current application this means that, as with policies E6 and RC3 above, the proposed site is at the bottom of the list in terms of where officers would recommend new housing to be placed.
- 4.09 Policy CP2 states that new development will be located to minimise the need to travel for employment and services, and to facilitate sustainable transport choices.
- 4.10 CP3 aims to provide a wide choice of high-quality homes across the Borough. It aims to steer development to the built up areas and allocated sites, or to windfall sites *“except where the character of the site, its local context or environmental value determines otherwise,”* and to *“meet the housing requirements of specific groups, including families, older persons, or disabled and other vulnerable persons.”*
- 4.11 Policy DM9 relates to rural exceptions housing, and states that *“planning permission for affordable housing (including pitches for Gypsies and Travellers) to meet local needs in rural areas will be granted provided [amongst others]:*
1. *The site accords with Policy ST3 and/or is in a location where access to day to day services can be conveniently and easily achieved;*
 2. *The site and proposed development would not have a significant adverse impact upon the character of the settlement, the surrounding countryside and the amenity of the existing community;*
 3. *A need for the scheme is clearly justified by the applicant, to the satisfaction of the Council, by providing the following to accompany a planning application:*

- a. *an up-to-date parish or village housing needs assessment undertaken or carried out by a recognised and appropriate body;*
- b. *a thorough site options appraisal; and*
- c. *a prepared statement of community involvement that has sought to include the significant input of the Parish Council."*

4.12 DM14 is a general policy similar to E1 of the adopted Plan, and sets out a number of criteria all developments are expected to accord with.

National Planning Policy Framework (NPPF)

4.13 Paragraph 14 states that *"at the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking."* In respect of decision-taking it notes that LPAs should approve proposals that accord with the development plan without delay. It continues to note that where the development plan is absent, silent or relevant policies are out-of-date, permission should be granted *"unless:*

- *any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or*
- *specific policies in this Framework indicate development should be restricted."*

4.14 This is particularly relevant in terms of policy H2 of the Local Plan, as noted above, as H2 is considered non-compliant and thus "silent" for the purposes of interpreting this paragraph. It does note, however, that adverse impacts need to be taken into account, and therefore does not present a carte-blanche to approving residential development within the countryside.

4.15 Paragraph 17 (11th and 12th bullet points only) of the NPPF are relevant, and state that *"within the overarching roles that the planning system ought to play, a set of core land-use planning principles should underpin both plan-making and decision-taking.*

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

4.16 Paragraph 35 encourages developments that *"protect and exploit opportunities for the use of sustainable transport modes."* It states that development should be located and designed to give priority to pedestrians, create safe and secure layouts for pedestrian and cycle movements, and consider the needs of people with disabilities by all modes of transport.

4.17 Paragraph 49, as discussed above, states that *"relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites."* This is discussed in further detail in the appraisal section below.

4.18 Paragraph 50 states that LPAs should deliver a wide choice of high quality homes and create sustainable communities by taking demographic trends into consideration, provide housing reflecting local demand, and securing affordable housing provision.

Further to this para. 54 states that LPAs should be responsive and reflexive to local affordable and rural housing needs.

- 4.19 Paragraph 55 of the NPPF is crucial in the consideration of applications such as this, and is worth reproducing in its entirety (my emphasis in bold):

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

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

5.0 LOCAL REPRESENTATIONS

- 5.01 Two letters of objection were received from neighbouring properties raising the following summarised points:

- Concern that the digging of foundations could harm the structural integrity of structures which abut the site;
- The proposed dwelling labelled as ‘property 1’ backs onto the stable block of the neighbouring property and the muck heap would be located within close proximity of the garden boundary of this proposed property;
- ‘Property 1’ would overlook the neighbouring site and will cause overshadowing due to its height;
- The majority of the boundary fence is 2/3 strand barbed wire which is covered by personal covenants in the deeds, this is not suitable for family housing;
- Approval for this scheme would set a precedent in the surrounding area;
- The lane is narrow and not suitable for an increase in traffic;
- Very restricted sight lines on exiting the site.

6.0 CONSULTATIONS

- 6.01 **Upchurch Parish Council** stated that *“Councillors considered the application and agreed unanimously that they had no comments to make save that neighbour comments should be taken into consideration.”*

- 6.02 **Newington Parish Council** stated that *“Councillors considered the application at the Planning Committee meeting on 17 November and have no comments to make.”*

- 6.03 **Lower Halstow Parish Council** stated that *“Although Kaine Farm is not within Lower Halstow itself, the Council believes that residents of Lower Halstow will be adversely affected due to the increase in traffic flow in Breach Lane, a narrow country lane. The property is situated on a particularly difficult part of the road for two cars to pass or indeed, articulated lorries going to and from Brookerpaks and buses including school buses. Sight lines in both directions are poor on leaving the property.”*
- 6.04 **KCC Highways & Transportation** initially responded stating that the existing access to the site is acceptable although drawings showing internal tracking for refuse, fire tender and pantechnicon vehicles should be provided along with an additional visitor space. Additional and amended drawings have been received and KCC Highways & Transportation *“confirm that further to the revised documentation submitted by the applicant I raise no objection on behalf of the local highway authority”*. This is subject to conditions relating to provision for construction vehicles; provision of parking facilities for site personnel and visitors; prevention of discharge of surface water onto the highway; wheel washing facilities; retention of car parking spaces; retention of vehicle loading / unloading and turning facilities.
- 6.05 **Environment Agency** *“assessed this application as having a low environmental risk. Five of the dwelling houses fall into Flood Zone 1, which has a low risk of flooding. Only one dwelling house, to the right of the access road falls on the boundary of Flood Zone 2, which would fall under our Flood Risk Standing Advice.”*
- 6.06 **KCC Ecology** raise no objection but request conditions relating to breeding birds and to enhancing the quality and quantity of biodiversity.
- 6.07 The Council’s **Rural Planning Consultant** initially raised the issue that the Planning Statement and Transport Statement indicate that the existing buildings are in active agricultural use as the impact of that use are compared to the position if housing were to be constructed instead. However, there has been nothing included which would explain how the current operation would survive without the buildings or the prospect of the requirement for replacement buildings in the event of development going ahead. Therefore a supplementary statement was requested in order to deal with the above.

As a result of this, an additional statement was forthcoming from the agent which set out that the agricultural use of the premises ceased in 2005 and the land is now used for grazing. As a result none of the buildings are now in agricultural use and are either redundant or used in connection to the private stabling of horses. If an assumption is made that the existing buildings would not be returned to a commercial agricultural use then it would also appear that replacement buildings would not be required. However, also based upon this assumption it would seem inappropriate to compare the local impacts of an active agricultural use with that of housing and the comparison should instead be made with the existing private equestrian use.

- 6.08 **KCC Public Rights of Way** state that public footpath ZR26 passes through the site and that should consent be granted, the development will impact upon the public use, enjoyment and amenity of the Public Right of Way. As a result a condition is recommended which requires a minimum width of 2m to be retained for the proposed pedestrian access along the public right of way on the grounds of safety and public enjoyment.

- 6.09 The Council's **Environmental Health Manager** raises no objection subject to conditions related to construction hours; asbestos; suppression of dust; and contamination and remediation. A further response relating to the requirement for a 2m close boarded fence would be required along the boundary of proposed 'property 1' shared with 'Oakview' due to the location of the stables at the neighbouring property.
- 6.10 **Swale Footpaths Group** state that "a *PRoW* crosses the site, but the applicant has shown it on their plans as being unaffected and has answered "No" to the question about whether a diversion would be needed."
- 6.11 **Cllr Lewin** stated "Whilst I have not pre-determined my position on this application I think there is some merit in it being approved."

Firstly one has to accept that the land cannot be returned to agricultural use. It therefore follows that the impact of any alternative use has to be considered against its last use as stables – I am thinking primarily of traffic generation.

In the situation where the land is not used it would have the equivalent status of brown field land with road infrastructure already in place making it ideal, in NPPF terms, to be used for windfall housing development counted in the 5-year housing supply target.

Whilst the site is within a rural area and outside the built environment of the village I note that Upchurch PC, the parish within which the application is sited, do not object [for information whilst I am a member of UPC I did not participate or vote when this application was discussed].

Whilst there may be a case for arguing poor access to services from this location, I would refer you to the APP/V2255/A/14/2220447 [Spade Lane, Hartlip a location not too distant from Breach Lane].

The Inspector rejected arguments that reasons for dismissal should include "poor access to services" on the grounds that people in rural areas rely heavily on private transport – in this case they were Gypsies and Travellers.

The appeal was however dismissed for other reasons.

I would also note that public transport serves Breach Lane with one of the stops being at this location also school transport is provided along the A2 as well as other public transport services.

I note that KCC Highways do not object.

I am inclined to the view that there is not any demonstrable harm arising from this application and that it is a useful windfall site amongst the thirteen other residences at this location.

If your report recommends refusal, as a Ward Member, I request that it be called in for determination by the Planning Committee."

- 6.12 **Cllr Wright** commented "I would agree with my fellow ward councillor that there is merit in this case and would draw your attention to a similar site approved by

members at high oak hill newington which is as far away from services and has no bus routes and poorer access.

I believe also this site Kaine farm could revert to a farm shop and wholesale fruit and veg warehousing as used by Ken Stevens the then farmer under the name of Bishenden. So would agree to its committee report."

7.0 BACKGROUND PAPERS AND PLANS

7.01 The application is supported by a Planning Statement, Design & Access Statement, Transport Statement, Sustainability Statement, Phase 1 Desk Study, Low Impact Ecological Impact Assessment Report along with associated drawings.

7.02 The Planning Statement is divided into the following sections:

- Introduction
- Site Location and Surroundings
- Planning History and Pre Application Consultation
- Planning Policy
- Planning Appraisal
- Conclusion

7.03 The Planning Statement sets out in detail the current policy background which this application is to be assessed against. It sets out that the Council can not currently demonstrate a five year supply of housing land and as such the policies which relate to the location of housing development are out of date. As a result of this the presumption in favour sustainable development should take precedence, in accordance with paragraph 49 of the NPPF. The Statement concludes:

7.04 *"The proposal would constitute sustainable development in accordance with the NPPF. There are numerous social, environmental and economic benefits of the proposal, all of which comprise the individual facets of sustainable development. The sustainability merits of the proposal have been outlined within this Statement (and the accompanying statement by SI Partnership) which should override the usual policy presumption against housing in the countryside. The site is not unsustainably located, but is within one mile of Newington's numerous shops and services and is located within walking distance of a local bus service and cycling distance from a train station, making these modes an option for a proportion of journeys undertaken by new residents. there are numerous social, environmental and economic benefits of the proposal, all of which that due to the location of the site it constitutes sustainable development."*

8.0 APPRAISAL

Principle of Development

8.01 The application site lies outside of the built up area boundary and as a result in planning terms is in the countryside. Here the Council's established policies of rural restraint seek to restrict residential development unless it is for the purposes of (amongst others) agricultural worker's housing, or affordable housing to meet an identified local need.

8.02 These policies of restraint would normally point to development contrary to both the adopted and emerging Local Plans. However, para 49 of the NPPF renders policies

affecting the supply of housing out of date where a five year supply of housing land cannot be demonstrated. Furthermore, considerable weight should be attached to the applications potential contributions towards the five year supply.

- 8.03 Whilst housing land supply policies are considered out of date the courts (ref: The Royal Court of Justice ruling in relation to i) Suffolk Coastal District Council and Hopkins Homes Limited and Secretary of State for Communities and Local Government, and ii) Richborough Estates Partnership LLP and Cheshire East Borough Council and Secretary of State for Communities and Local Government) have established that whilst a failure to demonstrate an up-to-date five-year housing supply opens up consideration of sites that would be otherwise unacceptable under **any** policies that restrict the supply of housing (rural restraint policies, for example), there is still a duty imposed upon officers to consider **all other relevant policies** within both local guidance and the NPPF when assessing the suitability of any sites that come forward as part of an application. The weight that is afforded to those individual policies needs to be balanced against the lack of a demonstrable five-year supply, but does not negate the validity or the intention of those policies in themselves.
- 8.04 Therefore the acceptability of the principle of development can't be established from the outset, and a conclusion needs to be arrived at following consideration of the individual matters as set out below, and the associated policies.

Housing supply and the impact on policy

- 8.05 As noted above I have to consider the otherwise unacceptable nature of this development against the need for the Council to demonstrate a five-year housing supply. As above it is for Members to determine whether or not the policies in the development plan (adopted and emerging Local Plans, the NPPF and the NPPG) outweigh the need for more housing.
- 8.06 Paragraphs 14 and 49 of the NPPF state that, in summary, where we can't demonstrate a five-year supply the Council should "approve development proposals that accord with the development plan without delay". However, paragraph 14 caveats this position by stating that permission should be granted **unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against policies in the NPPF, or specific policies in the NPPF indicate development should be restricted.**

Impacts of Development

Location of Development

- 8.07 Within the Emerging Local Plan, settlements outside of the built up area boundary, as is the case here, are ranked at the bottom in terms of where this Council wishes to direct new homes. As such, when tackling the housing need in the borough on a strategic level this Council has identified sites that would be far more sustainable. The Council is able to demonstrate through the housing allocations identified in the emerging local plan that there are many more sites within the Borough that can meet the housing need in a sustainable way. The application site is therefore not necessary to meet the housing needs of this Borough. Developing the site for housing would be contrary to the strategic and sustainable approach to delivering housing that the Council has shown can be achieved through the emerging local plan

(which I consider should now be given significant weight). I therefore believe that the development would be unsustainable in this respect.

- 8.08 As the supporting documents set out, there is a bus stop located approximately 50m from the site providing on Monday – Friday an hourly service during the day and one evening service, an hourly service on Saturday and no service on Sundays. Aside from this, the closest services are located in Newington which would most likely be accessed by travelling either south along Breach Lane and then east along the A2 or east along Breach Lane into School Lane to access the Primary School or continuing south into Church Lane to access the centre of Newington. Breach Lane does not have a footpath and is unlit. When this is combined with the distance to the centre of Newington of 1.9km I am of the very strong view that the likelihood of residents of the dwellings proposed using either of the above routes to access these facilities and services on foot is highly unlikely. Furthermore, I consider that only a keen cyclist would be prepared to use this route due to the condition of the highway as set out above. Likewise, I also consider that there would be some limited potential for future residents of the dwellings to find employment at one of the services provided within Newington.
- 8.09 In addition to the above, I am of the opinion that the private car would be extremely heavily relied upon and only reinforces my view that the location of the site is unsustainable. Furthermore, although the supporting documents include a number of sustainability features which are set out in the Sustainability Statement these are related to the individual dwellings and the surrounding amenity areas. Although the intention of all the features would be welcomed this does not in my view compensate for the inherently unsustainable location of the application site.
- 8.10 I have also taken into account the Transport Statement which has been submitted in support of the application. This document concludes the following:
- *“This assessment is based upon relatively recent use of the site and it is relevant that the site has been used more intensively in the past and could revert to a more intensive traffic generation without the need for planning permission.*
 - *It is predicted that the replacement of the farm buildings with the development of six residential units will reduce the number of trips accessing and egressing the site during the week.*
 - *The vehicles associated with the site will change from large agricultural vehicles to mainly cars. This will lead to a betterment in terms of the operation of the access junction.*
 - *The site is located within walking distance of a local bus service and cycling distance from a train station, making these modes an option for a proportion of journeys undertaken by new residents.”*
- 8.11 Regardless of the traffic generation of the agricultural use that could operate from the site without planning permission, it must be taken into account that an agricultural use is generally required to operate from a countryside location such as this. This is not the case in terms of housing which, as set out in the assessment above, the Council has identified a number of other sites within the Borough which are in a more sustainable location. Notwithstanding this, the traffic movements, compared to if the previous use was reinstated would, according to the Transport Statement, drop by a predicted 4 trips per week if the site was developed for 6 dwellings. I consider this to be such a small difference that I do not believe that this assessment should override the unsustainable location of the site. In any case, it also has to be taken into account that as clearly set out in the supporting documents, the agricultural use of

the site has ceased, is unlikely to be re-instated and the site is currently used in connection with a private equestrian use. Therefore I would contend that the actual trips to and from the site currently undertaken would be extremely low. The result of this would be that the erection of 6 dwellings in this unsustainable location would increase traffic generation.

Visual Impact

- 8.12 Although there is some built form to both the north and south of the application site, the surrounding area is more distinctly characterised by open fields and countryside. I also take into consideration that although there are some grouping of buildings relatively close to the application site, none of these are in the form of a group of dwellings. As set out in the supporting documents the site is occupied by existing built form comprised of agricultural buildings. I would agree that the existing buildings are of little architectural merit and would in my view be described as functional in terms of their design. However, I am also of the opinion that this type of agricultural development is not uncommon in a countryside location such as this. Therefore, although the agricultural use of the site, as set out in the supporting documents has ceased, this does not in itself in my view constitute a reason for finding this site acceptable for residential use. I also consider that the removal of the agricultural buildings and the replacement with a housing development would introduce an alien and incongruous group of buildings into this location. As a result I am of the view that the development, due to this assessment would cause unacceptable harm to the character and appearance of the countryside.
- 8.13 As a result of the above assessment, and as required by the NPPF I take the view that the location of the site is unsustainable and that the harm caused by six additional dwellings in this countryside location would significantly and demonstrably outweigh the benefits. Regardless of whether the existing agricultural buildings are redundant or not I do not believe that this results in the site being an acceptable one for housing. The advanced stage that the emerging Local Plan has reached only reinforces my opinion in relation to this.
- 8.14 At the current time, as set out above, the site is comprised of an existing dwelling fronting onto Breach Lane and agricultural buildings of varying scales and designs. I take the view that the agricultural buildings are of a functional design and consist of a variety of styles with varying heights. The majority of the structures face inwards on a central courtyard area. I am of the opinion that the design of the existing buildings, being agricultural in nature, sit comfortably within this rural location as the surrounding countryside lends itself to this type of development and it is entirely the type of built form that one would expect to see in a countryside setting such as this.
- 8.15 It is of significance that public footpath ZR26 passes directly through the site in a broadly east – west direction. As a result of this, clear and prominent views from within the application site of the existing and proposed buildings would be available from extremely close proximity. In addition, the levels of the site itself are lower than much of the surrounding land and therefore as the public footpath continues to the west, increasingly elevated views of the application site, existing development within the vicinity and the surrounding countryside are available. This includes farmland, agricultural buildings, employment related development, open countryside, stables and dwellings. I consider that the limited number of dwellings in the surrounding area are predominately separated from one another and situated on large plots.

- 8.16 The dwellings that have been proposed are grouped together which is in my view seriously at odds with the surrounding pattern of residential development. Although it is appreciated that the existing agricultural buildings are grouped together, as set out above I believe that their presence within this rural setting is typical of a countryside location. I also take into consideration that when approaching the site from the east along footpath ZR26, as set out in the supporting Planning Statement the proposed dwellings which would first come into view would be greater in height than the existing agricultural buildings. Therefore I am of the opinion that this would only serve to make the development more prominent and to emphasise this incongruous type of development within the countryside. As a result I take the view that to situate a housing development, grouped together in this way and of the scale proposed into this setting would introduce an alien form of development which would be significantly out of keeping with the surrounding pattern of development. As such I take the view that the proposed development would cause significant harm to the countryside and visual amenities and should be refused for this reason.
- 8.17 In relation to the design of the properties themselves, I am of the view that although with the right type of materials they could be acceptable in their own right they are not of such exceptional quality or innovative in nature that they should be considered as an exception to rural policies.

Residential Amenities

- 8.18 The supporting documents state that the return to an agricultural use would represent a bad neighbour use and as such housing should be considered as a less harmful alternative. However, this must firstly be considered in the context that the application makes it clear that the return to agricultural use is extremely unlikely. Therefore, if this is taken into consideration then the existing private stabling use of the site should be what the proposed use is judged against. As a result, I am of the view that private stables are common in a rural location such as this and I do not consider that the proposed use would be a significant improvement in relation to the impact upon residential amenities. Notwithstanding this, if the agricultural use of the site was to be reinstated in this rural area there is no evidence to suggest that this would represent such a bad neighbour use that any significant weight should be given to the alternative of housing as being significantly less harmful.
- 8.19 Aside from the identified issues within this report, dealing solely with the layout of the proposed houses I consider that they would limit any opportunities for overlooking and would provide an acceptable level of private amenity space.
- 8.20 To the north of the application site lies the property known as 'Oakview'. The occupier of this property has raised concern regarding the close proximity of the proposed 'property 1' to the stables upon this neighbouring site. I have paid close attention to the relationship between the location of this proposed property and the stables situated on the neighbouring site and further consulted the Council's Environmental Protection Team regarding this. A response has been received stating that to protect residential amenity a 2m close boarded fence be provided along this boundary. Although the neighbouring occupier states that the boundary treatment is in compliance with the requirements of the property deeds this is not controlled by the planning process. I therefore consider that this solution would overcome the proximity of the neighbouring stables.
- 8.21 In relation to the additional points raised by the neighbouring occupiers I respond as follows. I note that there are two windows on the rear elevation of the proposed

property 1 which would face towards the rear amenity space of the 'Oakview'. However, I note that these windows would serve a bathroom and staircase. The bathroom window would be expected to be obscure glazed and the window to the stairs does not serve a habitable room. Notwithstanding this, if the recommendation had been for approval than I would have imposed a condition requiring these windows to be obscure glazed to ensure that the privacy of neighbouring occupiers was protected. In relation to overshadowing of the yard, although this proposed property is located closest to the boundary with 'Oakview' I take into consideration the considerable size of the amenity space and stable area associated with the neighbouring dwelling. As a result I do not consider that the location of this proposed property would be unacceptably overbearing or cause unacceptable levels of overshadowing. Finally, the point raised in relation to the structural integrity of buildings is not a material planning consideration.

- 8.22 I have also assessed the relationship between the proposed properties and the existing property known as Kaine Farm House. The rear to rear distance between proposed property 2 and the existing dwelling is approximately 25m. The Council expects a minimum rear to rear distance of 21m and as a result I consider this separation distance to be acceptable.

Housing provision

- 8.23 The development would make a contribution towards meeting new homes within the Borough generally and the rural area specifically. There would also be some limited employment generated from the construction phase and increased spending in the local economy.

Highways

- 8.24 Due to the layout of the site the existing access will be used from Breach Lane. KCC Highways & Transportation have raised no objection to this and on the receipt of amended drawings showing the tracking for various vehicles consider that subject to a number of conditions that the impact of the proposal upon highway safety or amenities would not be unacceptable.

Impact upon SPA and Ramsar Sites

- 8.25 I have for completeness set out a Habitat Regulations Assessment below. This confirms that whilst mitigation could be provided by way of developer contributions, this is not considered appropriate for developments under 10 dwellings. The cost of mitigation will be met by developer contributions on developments over 10 dwellings. In view of this it is not considered that the development will have a harmful impact on the special interests of the SPA and Ramsar sites.

Flood Risk

- 8.26 Although the vast majority of the site lies in Flood Zone 1, Flood Zone 2 does cut across the site and includes proposed 'property 1'. I have consulted with the Environment Agency on this basis who have responded stating that their Flood Risk Standing Advice applies in these circumstances. I have referred to the Standing Advice and consider that occupants of the one property which it refers to would have the opportunity to access the upper floor of the dwelling or would be able to reach higher ground in the event of a flood warning. As a result of this I am of the view that the flood risk for future occupants of the development would not be unacceptable.

Other Matters

- 8.27 I note the letter received from the Doctors and the statement from the applicant relating to the applicant's brother and the medical assistance that he requires. Although I have great sympathy with the medical situation that has been described I do not believe that the personal circumstances would outweigh the harm that the development as whole would cause. I also note that the applicants have consent via the Prior Notification procedure to convert one of the agricultural buildings to two dwellings. When this is taken into account two additional dwellings could be located on the site without the need for any further permission from the Council. As a result I take the view that the difficult personal circumstances do not justify the requirement for 6 additional dwellings in light of the possibility that additional dwellings could be provided.
- 8.28 Reference has also been made to two other sites within relatively close proximity to the application site to which I respond to as follows. Firstly, the circumstances surrounding the application approved under 14/504984/OUT for 5 dwellings at High Oak Hill were markedly different from this site now being considered. The Committee Report written in relation to the High Oak Hill application states that the application site lies *"in a comparatively unsustainable location, and in an area where residential development would normally be considered unacceptable as a matter of principle."* However, in this case it was considered that as the site was in use for metal grinding and cutting that this represented a material planning consideration. Therefore, the Committee Report went on to state that *"I am of the opinion that the significant benefits of the proposed development, which are wholly due to the specific and unusual circumstances of this site, outweigh the material planning harm associated with new dwellings in the countryside, such that the development is acceptable as a matter of principle."*
- 8.29 Therefore, in comparison to the application as set out above, the use of site being considered in this application does not in my view represent a bad neighbour use. As a result, I believe that a comparison can not be made on this basis and take the view that the decision reached under 14/504984/OUT should have no bearing on the proposal now being considered.
- 8.30 Secondly, an application at Spade Lane, Hartlip is referred to for the siting of two mobile homes with an associated utility block, parking for cars, and parking for two touring units/caravans. This application was refused by the Council and a subsequent appeal was dismissed. As part of the Inspector's decision an assessment was made as to whether the site was sustainable. In relation to this the Inspector noted that *"the great majority of journeys to these [services and facilities] from the site would be by private motor vehicle. On the basis of the advice in Section 4 of the Framework, the proposed development would not therefore '...promote sustainable transport...'"*. The Inspector concluded that *"the sustainability benefits of the proposed development are minimal and more than outweighed by its significant and demonstrable disadvantages."* As a result I take the view that the Inspector found the location of the Spade Lane site to be unsustainable.

9.0 CONCLUSION

- 9.01 In considering whether these proposals constitute sustainable development as set out in paras 7 to 10 of the NPPF which sets out the social, economic and

environmental strands of sustainable development and that the planning system should seek gains across all 3.

- 9.02 In terms of the social strand, I attach weight to the contributions towards housing in the borough and to the 5 year housing land supply and the limited positive contribution toward the economic strand. Offsetting this is the poor and remote location of the site relative to the range of services and the likely dependence upon the car to reach them. These also feed into my conclusions against the environmental strand where I consider that these would have a significant adverse impacts on the countryside. I therefore conclude that the proposals do not constitute sustainable development.
- 9.03 Whilst many of the Local Plan policies that relate to the above conclusions are out of date, I consider that in this instance, that they should carry moderate to significant weight. This is because of the advanced stage reached by the emerging Local Plan, the considerable progress towards securing a 5 year housing land supply and that there are alternative sites, both allocated and windfall able to be provided in other locations with greater benefits and lesser overall harm.
- 9.04 I therefore conclude that the proposals fail to achieve the presumption in favour of sustainable development as set out in paragraph 14 of the NPPF as not withstanding the benefits of the proposals, they are significantly and demonstrably outweighed by the adverse impacts and conclude that the application should be refused.

10.0 RECOMMENDATION – REFUSE for the following reasons:

- 1) The proposals would not represent sustainable development. They would be located away from established settlements in the Borough within the countryside outside the defined built up area boundaries as identified by Local Plan saved policies SH1 and E6 and emerging Local Plan Policy ST3. The proposals would therefore be located as to be poorly served by easily assessable facilities and services and a range of transport options. They would also be harmful to the landscape character and visual amenity of the surrounding countryside. Notwithstanding the contribution that the proposals would make toward the Borough's five-year supply of housing land, the adverse harm arising from the proposals would significantly and demonstrably outweigh the benefits. The proposals would be contrary to policies SP1, SP2, SH1, E1, E6, E9, E19 and H2 of the Swale Borough Local Plan 2008, policies ST1, ST3, CP2, DM14 and DM24 of the emerging Swale Borough Local Plan 2031 (Proposed Main Modifications June 2016), together with paragraphs 14, 17 and 55 of the National Planning Policy Framework
- 2) The introduction of 6 properties, grouped together in this rural setting would be seriously at odds with the surrounding pattern of development and as a result would introduce an alien form of development into this location causing unacceptable harm to the countryside and visual amenities. The proposal is therefore contrary to policies E1, E6, E9 and E19 of the Swale Borough Local Plan 2008 and policies DM14 and DM24 of the emerging Swale Borough Local Plan 2031 (Proposed Main Modifications June 2016).

Habitats Regulations Assessment

This HRA has been undertaken without information provided by the applicant. The application site is located approximately 2.2km south west of the Medway Estuary and Marshes Special Protection Area and Ramsar site which is a European designated sites afforded protection under the Conservation of Habitats and Species Regulations 2010 as amended (the Habitat Regulations).

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

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

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

- Due to the scale of development there is no scope to provide on site mitigation such as an on site dog walking area or signage to prevent the primary causes of bird disturbance which are recreational disturbance including walking, dog walking (particularly off the lead), and predation birds by cats.
- Based on the correspondence with Natural England, I conclude that off site mitigation is required. However, the Council has taken the stance that financial contributions will not be sought on developments of this scale because of the practicalities of securing payment. In particular, the legal agreement may cost more to prepare than the contribution itself. This is an illogical approach to adopt; would overburden small scale developers; and would be a poor use of Council resources. This would normally mean that the development should not be allowed to proceed, however, NE have acknowledged that the North Kent Councils have yet to put in place the full measures necessary to achieve mitigation across the area and that questions relating to the cumulated impacts on schemes of 10 or less will need to be addressed in on-going discussions. This will lead to these matters being addressed at a later date to be agreed between NE and the Councils concerned.
- Developer contributions towards strategic mitigation of impacts on the features of interest of the SPA- I understand there are informal thresholds

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

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

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

The Council's approach to this application:

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

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

In this instance:

The application was considered to be fundamentally contrary to the provisions of the Development Plan and the NPPF, and these were not considered to be any solutions to resolve this conflict.

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