

2.6 REFERENCE NO - 16/508446/FULL			
APPLICATION PROPOSAL Erection of a detached dwelling			
ADDRESS Land North Of 40 The Street, Iwade Kent ME9 8SJ			
RECOMMENDATION – Grant Subject to conditions			
SUMMARY OF REASONS FOR RECOMMENDATION			
<p>The principle of a dwelling on this site is established under a previous permission for a dwelling of very similar scale and design. The conservatory addition is not considered to cause any adverse impacts.</p> <p>Whilst the use of the dwelling to provide a level of care for residents has raised objections, there are circumstances when this can still fall under the definition of a dwelling, and the application has been made on the basis that the use will be as a dwelling.</p> <p>The development would not conflict with the development plan and should be approved.</p>			
REASON FOR REFERRAL TO COMMITTEE			
The application has been referred to committee as it is contrary to the views of the parish council, and has also been referred to committee by Cllrs Stokes and Baldock			
WARD Bobbing, Iwade And Lower Halstow	PARISH/TOWN COUNCIL Iwade	APPLICANT Richard Beale Holdings Ltd AGENT Surveying & Sustainability Services	
DECISION DUE DATE 10/03/17	PUBLICITY EXPIRY DATE 02/03/17		
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
SW/06/1355	Development of 27 dwellings & ancillary buildings, a new car park adjacent to All Saints Church, refurbishment of listed barn for community use, provision of open space, creation of wetlands habitat & transfer/provision of burial ground.	Granted	24/03/09
<i>The above residential development has now been built out and occupied – with the exception of the plot now subject to the current application.</i>			

MAIN REPORT

1.0 DESCRIPTION OF SITE

1.01 The application site relates to a plot of land to the north of No 40 The Street. It falls within the built confines of Iwade and formed part of the residential development that has been built immediately next to the site – this plot being the only one that was not built. The plot is generally flat, with close boarded fencing to the side boundary with No 40 and the rear boundary, and lower ranch style fencing to the front and north boundary.

1.02 The site lies immediately next to open countryside to the north of the plot.

- 1.03 A dropped kerb and hardstanding to the site entrance has already been provided, presumably as part of the original housing development.

2.0 PROPOSAL

- 2.01 This application seeks planning permission to erect a dwelling on the plot. The dwelling would be an L shaped two storey building, with a conservatory filling in the recess at the rear. 5 bedrooms are proposed in total, with one located on the ground floor.
- 2.02 The dwelling would measure just under 8 metres in height to the ridge line. The front elevation would be 9.6 metres wide, and the depth of the building would extend up to 12.2 metres. The building would be sited around 2 metres to the north of the dwelling at No 40, and would be set slightly further back from the front building line of this property.
- 2.03 A double garage is proposed to the north side of the dwelling.
- 2.04 Other than the conservatory to the rear of the building, the proposed dwelling is virtually identical in scale, design and form to the dwelling permitted on the site under application SW/06/1355.

3.0 PLANNING CONSTRAINTS

Within built confines of Iwade
 Within SSSI Consult / Impact Risk zone
 Potential Archaeological Importance

4.0 POLICY AND OTHER CONSIDERATIONS

- 4.01 The National Planning Policy Framework (NPPF): Paragraphs 7 (three dimensions to sustainable development), 14 (presumption in favour of sustainable development), 17 (core planning principles), 50 (delivery of wide choice of high quality homes to meet needs of various groups), 56 (good design)
- 4.02 The adopted Swale Borough Local Plan: Policies SP1 (sustainable development), E1 (general development criteria), E11 (protecting biodiversity), E19 (achieving high quality design), H2 (providing for new housing), H5 (Housing allocations – Iwade), T1 (safe access to new development), T3 (vehicle parking), AAP1 (Iwade)
- 4.03 The emerging Swale Borough Local Plan – Bearing Fruits 2031 – Policies ST1 (sustainable development), ST3 (Swale settlement strategy), ST5 (the Sittingbourne area strategy), CP3 (delivering a wide choice of homes), CP4 (good design), DM6 (managing transport demand and impact), DM7 (vehicle parking), DM14 (general development criteria), DM28 (biodiversity)

5.0 LOCAL REPRESENTATIONS

- 5.01 11 letters have been received raising the following comments / concerns –
- It is unclear whether the application is for a detached house or another use
 - The layout appears to be for a care home facility
 - The block plan shows the house too small
 - Concerns regarding parking
 - The existing planning permission is for a dwelling, not a care home business
 - Impact upon sewage
 - The proposal would impact upon highways sight lines

- Noise / disturbance arising from care home use
- Potential staff would cause parking difficulties
- Loss of privacy to neighbours
- Impact on house prices
- This is a commercial development
- The occupants could be of an unsavoury disposition

6.0 CONSULTATIONS

Iwade Parish Council

6.01 Iwade Parish Council objects to this application on the following grounds:

- Parking provision is not shown.
- Parking on the street is not possible. At present existing parked vehicles restrict the highway down to one lane and often there are head on conflicts when vehicles try to pass each other; traffic calming build outs add to this issue.
- Safety of vehicles entering and exiting this site due to the road layout.
- Would query the site boundary and dimensions as shown on the application.
- The Parish Council requests a site meeting so that members of Swale's Planning Committee can look at highway and parking issues. A representative from the Parish Council would like to be present at this meeting.

Kent County Council Highways

6.02 Comments are awaited.

Natural England

6.03 Advise that the application relates to proposals for a new dwelling within the zone of influence (6km) of the Thames Estuary and Marshes, Medway Estuary and Marshes, and The Swale Special Protection Areas (SPAs) and Wetlands of International Importance under the Ramsar Convention (Ramsar Sites). These proposals may be screened out as not having a likelihood of significant effects on the designated sites.

KCC Archaeology

6.04 No comments received

7.0 BACKGROUND PAPERS AND PLANS

7.01 This application has been submitted with floor plans and elevations of the dwelling as approved, and as now proposed. There were discrepancies with the scale of the plans (as pointed out by objectors) that have now been resolved. Following discussions with the agent, further information relating to the proposed use has been received, and can be summarised as follows –

- The property is to be occupied by up to four young adults living as a family unit, sharing meals and activities throughout the day
- It is anticipated that two staff will be present on site at any given time
- The occupants will typically be young adults with learning difficulties and autism
- Parking provision is not expected to exceed two vehicles, unless additional support staff are required.

8.0 APPRAISAL

Principle of Development

- 8.01 The site lies within the built confines of Iwade where new residential development is generally held to be acceptable. The land also benefits from permission for a dwelling to be erected on the site under planning permission SW/06/1355, and this can be implemented at any time.
- 8.02 Iwade is recognised under Policy ST3 as a rural local service centre, where development within the built confines or at allocated sites is appropriate.

Whether the Application is for a Dwelling or Care Home

- 8.03 Some confusion has arisen during the course of this application regarding the proposed use of the building. This originally stemmed from information originally submitted with the application, which sought a Class C2 use for the development. However, this reference was removed from the description of the development on the request of the applicant, and from this point the application has been considered on the basis that it would be used as a dwelling.
- 8.04 For the benefit of Members, the definition of uses of a building or land stem from the Town and Country Planning (Use Classes) Order 1987 (as amended). A dwelling falls under Class C3 of the Order and is defined as follows –
- “Use as a dwellinghouse (whether or not as a sole or main residence) by—*
(a) a single person or by people to be regarded as forming a single household;
(b) not more than six residents living together as a single household where care is provided for residents; or
(c) not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4).”
- 8.05 Members will note that Class C3 (b) does allow for situations where not more than six residents live together as a single household, where care is provided for residents. There is considerable case law on this subject, and the judgement of when occupation of a dwelling by persons in care may or may not stray into a C2 (care home) use appears finely balanced. The key issues to consider are largely centred around two points. Firstly, whether a building is set out with the facilities that would be expected with a single household. Secondly, whether the nature of occupation is similar to how a single household would operate – such as shared preparation and eating of meals, and division of household tasks, and the living relationships that occupants would have with each other.
- 8.06 In this instance, the layout of the building is now shown to be essentially as you would expect for a dwelling. The only missing facility is a family bathroom, and it is noted that each bedroom would have an en-suite, and a further communal toilet facility would be provided on the ground floor. In my opinion, the layout of the building, together with the considerable amount of floorspace on the ground floor that would be shared rooms, is closely associated to that expected within a “conventional” dwelling.
- 8.07 The way in which residents (and staff) would interact and use the property is difficult to establish, not least because the “household” does not yet exist. Nonetheless, from the case law upon this subject, it is possible for a group of people in need of care to live as a household. The applicant asserts that the property would be occupied as a dwelling and not as a C2 care facility, and this application is being considered as a C3 dwelling. If any potential occupation of the dwelling was materially different to the C3 use class definition, then planning permission would be required for this.

- 8.08 I would conclude on this matter that the application has been made for use as a C3 dwelling and should be determined on this basis, and that this can include occupation by up to six residents where care is provided, as long as they live as a single household. It will be for the applicant (or owner) to ensure that this is the case.

Visual Impact

- 8.09 Policies E1 and E19 of the adopted plan, and CP4 and DM14 of the emerging plan seek to ensure that new developments are well sited and appropriate in scale, design and appearance.
- 8.10 The erection of a dwelling on this existing plot would “round off” development on the east side of the road. The building would face onto The Street with an active frontage and the scale and form of the building would relate well to its surroundings. The siting of the garage on the north side of the building would allow for the development to step down as it meets the boundary with open countryside to the north. In my opinion, the building would fit well onto a natural development plot and would not be at odds with the character / appearance of the area. I consider this would accord with the above policies
- 8.11 Notwithstanding the above, the dwelling (minus the conservatory) could be erected in the same form and design under the terms of the planning permission granted under SW/06/1355. This represents a significant fall-back position even if Members disagreed with my assessment in the above paragraph.

Residential Amenity

- 8.12 Policies E1 of the adopted plan and DM14 of the emerging plan state that new developments should cause no significant harm to amenity.
- 8.13 The closest neighbouring property is No 40 to the south of the site. The proposed dwelling would be built in close proximity to this dwelling (around 2 metres). There are no habitable windows in the flank wall to No 40 that would be affected by the development. In addition, the front building line would be set marginally behind the line of No 40. The proposed conservatory addition to the rear would project beyond the rear of No 40, but this would be limited and would also be offset by the design of the conservatory, which cuts away from the boundary. The layout and design of windows within the building follow those previously permitted, albeit that some overlooking from side windows may occur.
- 8.14 Parts of the building would also face towards properties to the rear of the site, but this would be at distances of between 15 and 20 metres and would not result in any direct overlooking relationships.
- 8.15 I do not consider that the proposal would lead to any undue impacts on surrounding properties when compared to the existing permitted development for the site, and on this basis I do not consider that the development would be unacceptable.

Highways

- 8.16 Policies T1 and T3 of the adopted plan and DM6 / DM7 of the emerging plan seek to ensure that developments are sustainably located, and that safe access and acceptable levels of car parking are provided for development

- 8.17 Comments from Kent County Council Highways are awaited, and I hope to report these to Members at the meeting. However I note that the access and parking arrangements are shown to be identical to those in the approved scheme, and I do not consider that any undue highways safety or convenience impacts would arise.
- 8.18 The site is in a sustainable rural service centre, with services and facilities nearby.
- 8.19 I note that a number of residents have raised concern regarding the implications of parking if the dwelling provides residential care. The site plan shows parking for at least 4 vehicles at the front of the property, together with garaging as well. This exceeds the requirement for 2 spaces under the Kent County Council Interim Guidance Note for parking, and I do not consider that the Council could justify a requirement for a greater quantum of parking than is currently shown.
- 8.20 In my opinion, the development would comply with the above policies.

Landscaping

- 8.21 There is no landscaping of significance on the existing site. No landscaping is shown on the proposed plans, but this can be secured via planning condition.

Other Matters

- 8.22 The site is currently overgrown and may have some ecological value. Although permission exists for development of a house on the site, this was subject to conditions to protect / mitigate against any impacts on wildlife. Usually, an ecological scoping survey would be required prior to determination of the application. However given the terms of the existing permission on the land, I consider that in this particular instance it would not be reasonable to require a survey at this stage. I would recommend that a condition is applied to undertake a scoping survey, together with any further surveys that may be required and subsequent mitigation.
- 8.23 Although the site falls within a zone of influence relating to the Swale SPA, SSSI and Ramsar site, it falls below the threshold where contributions would be required to mitigate any impacts. For completeness, a Habitats Regulations Assessment is attached to this report.

9.0 CONCLUSION

- 9.01 The site already benefits from permission to erect a dwelling on the site of very similar scale and form to the proposal. The key objection to this scheme appears to arise from the proposed use of the building – and Members will note my comments above that this application has been made as a proposal for a C3 dwelling. Whilst this definition can extend to include households where care is provided, the planning use is still considered as a residential dwelling, and this use is appropriate in this location.
- 9.02 My recommendation is therefore to grant planning permission.

10.0 RECOMMENDATION – GRANT Subject to the following conditions

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

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

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

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

3. Prior to the commencement of development, details in the form of samples of external finishing materials to be used in the construction of the development hereby approved shall be submitted to and approved in writing by the Local Planning Authority and shall be implemented in accordance with the approved details.

Reason: In the interest of visual amenity.

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

Reason: In the interests of the visual amenities of the area and encouraging wildlife and biodiversity and to ensure that such matters are agreed prior to the commencement of development.

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

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

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

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

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

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

8. No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written specification and timetable which has been submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that features of archaeological interest are properly examined and recorded.

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

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

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

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

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

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

12. Before development commences, an ecological scoping survey (ESS) together with any further surveys recommended by the ESS shall be submitted to and approved in writing by the Local Planning Authority to establish the presence of any protected species on the site, and the mitigation measures required to offset any ecological impacts identified within the survey(s). The development shall be carried out in full accordance with the approved details.

Reason: In the interests of wildlife and biodiversity.

INFORMATIVES

1) For the avoidance of doubt, this permission has been granted for a dwelling under Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended) and for no other use.

Habitats Regulations Assessment

This HRA has been undertaken without information provided by the applicant. The application site is located approximately 400m from The Swale Special Protection Area and Ramsar site which is a European designated site, 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 where the proposal is not necessary for the management of the European sites and that subject to a financial contribution to strategic mitigation, proposals are 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 past 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 Borough 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 a single dwelling, 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.

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.