

PLANNING COMMITTEE – 27 APRIL 2017

PART 3

Report of the Head of Planning

PART 3

Applications for which **REFUSAL** is recommended

3.1 REFERENCE NO - 17/500825/FULL			
APPLICATION PROPOSAL Erection of 5 no. 4 bedroom houses, with associated parking and refuse store			
ADDRESS Land Adjacent To Crescent House, Gills Terrace, Otterham Quay Lane, Upchurch, Kent, ME8 7UY.			
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 Ward Councillor (Cllr. Lewin).			
WARD Hartlip, Newington And Upchurch	PARISH/TOWN Upchurch	COUNCIL	APPLICANT Mr Bailey Partners Ltd. AGENT Kent Design Partnership
DECISION DUE DATE 11/04/17	PUBLICITY EXPIRY DATE 24/03/17		
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
17/500594/PNOCLA	Prior notification for conversion of adjacent redundant office building to form 5 residential dwellings.	Approved	24/3/17
Council unable to refuse permission for conversion of the existing adjacent building to residential dwellings as the prior notification procedure allows for very limited consideration of the case and does not allow application of policy.			

MAIN REPORT

1.0 DESCRIPTION OF SITE

- 1.01 Application site is a parcel of vacant land on Otterham Quay Lane, situated west of Upchurch within the designated countryside close to the Borough boundary with Medway .
- 1.02 It comprises part of the grounds of a redundant office building known as Crescent House (which has recently been granted consent by way of prior approval for conversion to 5 houses under ref. 17/500594/PNOCLA), is largely flat and covered in grass, with some trees on the western edge and a small amount of scrubby vegetation.
- 1.03 To the north is a residential dwelling, , The Cottage ,northwest is the Otterham Quay Lane industrial estate, west is Crescent House, to the south are open fields, southeast a small cluster of residential dwellings, and across the road to the east is part of Upchurch golf course.
- 1.04 It is approximately 2.5km by road (1.9km via PRow) to Rainham shopping centre, 2.7km to Rainham train station (1.7km via PRow), and 1.8km to the Co-op / chip shop / school in Upchurch (1.6km via PRow)

2.0 PROPOSAL

- 2.01 The application seeks permission for the erection of 5no. 4-bed houses and associated amenities.
- 2.02 The houses would be arranged in an L-shaped terrace facing onto the corner, approximately mirroring the footprint of the existing former office building at Crescent House (which is to be converted into dwellings). The proposed houses are of a relatively simple design with a mixture of brick and dark-stained cladding, and have a maximum ridge height of approximately 8.3m.
- 2.03 Vehicle access would be via the existing site entrance on Gills Terrace and car parking would be provided as part of an extension to the existing car parking area. The proposed houses would face inwards onto this parking area, with rear gardens adjacent to Otterham Quay Lane and Gills Terrace – the submitted D&A statement shows timber close-boarded fence along the rear boundaries with Otterham Quay Lane.

3.0 SUMMARY INFORMATION

	Proposed
Site Area	0.1ha
Approximate Ridge Height	8.3m
Parking Spaces	11
No. of Residential Units	5
Density	50dph

4.0 PLANNING CONSTRAINTS

- 4.01 Potential Archaeological Importance .
- 4.02 The western part of the site, roughly where Plots 1 and 2 and the car parking court are proposed, lies within Flood Zone 2.

5.0 POLICY AND OTHER CONSIDERATIONS

The adopted Swale Borough Local Plan 2008

- 5.01 Policies E1, E6, H2 and RC3 of the 2008 Local Plan are relevant.
- 5.02 E1 is a general development policy which sets out a number of criteria to which all developments are expected to adhere.
- 5.03 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.
- 5.04 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."*
- 5.05 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."*
- 5.06 This shortage / NPPF non-compliance was recognised by the Local Plan Inspector (in her initial considerations 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 first Local Plan (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 has been met through new allocations at the LP Main Modifications stage, 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.

- 5.07 Nevertheless, the Council has made further site allocations through the LP main modification procedure and is confident that it met its 5yr housing supply target when the LP was again reviewed by the Inspector in January 2017. We currently await her final report but 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'

- 5.08 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.

- 5.09 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.

- 5.10 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.

- 5.11 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."*

- 5.12 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."*

5.13 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)

- 5.14 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."*
- 5.15 Paragraph 14 is caveated by footnote 9, which relates *"specific policies"* indicating development should be restricted to those referring to SSSI, AONB, Local Green Space, and locations at risk of flooding or coastal erosion.
- 5.16 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.
- 5.17 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."*
- 5.18 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.

- 5.19 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.
- 5.20 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.
- 5.21 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.”*

6.0 LOCAL REPRESENTATIONS

- 6.01 Upchurch Parish Council *“have considered the application and object to the proposal as the design is out of keeping with the character of the area. There are no other properties clad with black weatherboarding. This is one of the entrances to the village so any development must be in keeping with the village. Concern was also raised as to whether the parking would be sufficient.”*
- 6.02 Swale Footpaths Group note the footpath running along Gills Terrace.
- 6.03 No others received.

7.0 CONSULTATIONS

- 7.01 The Environment Agency objects to the application on the grounds that *“the information provided with the application does not demonstrate that the risk of pollution to controlled waters is acceptable.”* They comment further that *“the information provided in the 2014 Contamination Statement report is limited. There was only one groundwater sample taken from one borehole. Four boreholes indicated landfill*

materials but the depth of landfill materials was not delineated. Further groundwater assessment is recommended to assess the potential impacts of any earthworks on controlled waters. We would point out that we are not seeking just an assessment of the current status quo, but a clear interpretation on what additional risks are posed by the development proposed. We could not agree to development in an area likely to affect groundwater or surface water in any significant way. Therefore we will require careful consideration of the potential impacts of any development activity..."

- 7.02 The Agency also objects on the grounds of flood risk, commenting that *"The application site lies within Flood Zone 2 [NB: zone corrected from 3 to 2 in EA email 30.03.17] defined by our Flood Map as having a high probability of flooding. Paragraph 103, footnote 20 of the National Planning Policy Framework (NPPF) requires applicants for planning permission to submit an FRA when development is proposed in such locations. An FRA is vital if the local planning authority is to make informed planning decisions. In the absence of an FRA, the flood risk resulting from the proposed development are unknown. The absence of an FRA is therefore sufficient reason in itself for a refusal of planning permission. This site is subject to significant tidal flooding from the river Medway in both defended and undefended scenarios for a 1 in 200 year modelled flood event with increased flow to account for climate change to 2115."*
- 7.03 Natural England confirm the site lies within the SSSI zone of influence and mitigation measures may be required. (See HRA below.)
- 7.04 Kent Highways have no objection subject to standard conditions.
- 7.05 SBC EHO has no objection subject to conditions regarding contamination investigation and remediation, hours of working, and dust suppression.
- 7.06 KCC PRoW note the footpath running along Gills Terrace but have no objection subject to it not being obstructed during development.
- 7.07 The H&SE confirm the site does not lie within the consultation zone of a hazard site.
- 7.08 UK Power Networks have no objections.
- 7.09 Southern Gas Networks confirm that there may be high pressure pipelines within the area and suitable investigation will need to be carried out before mechanical excavation is commenced.
- 7.10 Environmental Health raise on objection subject to appropriate conditions being imposed regarding contamination closure report and noise and dust relating to demolition works.

8.0 BACKGROUND PAPERS AND PLANS

- 8.01 Of relevance is application ref.15/506513/FULL for conversion of a building to a dwelling at Tranquility, immediately to the southeast of the current application site. That scheme was refused on a number of grounds, including for the reason that it lies outside of the built up area boundary and thus residential development is contrary to the Council's established policies of rural restraint.
- 8.02 Members may also recall the application for residential development at Kaine Farm, Breach Lane (ref. 16/507425/FULL), which was refused consent at the May meeting.

- 8.03 The application is also supported by a full suite of drawings, a D&A Statement, and contamination survey.

9.0 APPRAISAL

- 9.01 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.

- 9.02 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.

- 9.03 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.]*

- 9.04 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."

- 9.06 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."

- 9.07 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.

- 9.08 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.]

9.09 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.

9.10 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."*

9.11 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."

9.12 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.

9.13 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

9.14 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.

9.15 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.

- 9.16 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.** Very importantly: footnote 9 to para.14 identifies areas at risk of flooding as being clear exceptions to the presumption in favour of development, and members will note that part of this site lies within Flood Zone 2.
- 9.17 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.**”***

- 9.18 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 the Council now claims a 5.4yr supply; no significant challenges were raised in regards housing supply at the Inspector’s review of the Local Plan Main Modifications draft in January / February 2017; and it is expected that the emerging housing policies will be agreed when we receive the Inspector’s report in a month or so.
- 9.19 This 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

- 9.20 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.
- 9.21 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.

- 9.22 With regards to the environmental dimension I do not consider the site to be sustainably located in respect of access to services. Whilst it is just under 2km to the centre of Upchurch the majority of this route is via narrow, unlit, country lanes with 60mph speed limit and no pedestrian footpath. This is likely to encourage trips by private vehicle rather than on foot or by bicycle, in my opinion, which is contrary to the environmental aims of the NPPF.
- 9.23 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.”* Whilst there are a number of bus stop signs within the area the Chalkwell timetable shows these to be redundant, and the nearest stops actually in use are at Upchurch church (1.6km) and the A2/OQ Lane junction (1.4km). Chalkwell operates the 326 and 327 services between Medway and Sittingbourne, and there are several buses at peak commuter times but only 3 between 09.45 and 15.29 (<http://www.chalkwell.co.uk/files/5914/7879/7892/326-8-chalkwell-timetable-wefNov2016-web.pdf>). I consider that the distance to reach these stops is unacceptable under the Council's methodology, and that the number of services is unlikely to be sufficient to encourage people to travel by means other than private vehicle, again contrary to the environmental aims of the NPPF.
- 9.24 I therefore do not consider that the development meets the NPPF's tests of sustainable development.

Rural protection

- 9.25 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.
- 9.26 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.
- 9.27 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

- 9.28 The proposed dwellings themselves are, in my opinion, of an acceptable design and I have no significant objections on this aspect in itself and do not share the concerns of the Parish Council. However, it must be made clear that I do not consider them to be

of such exceptional architectural merit as to justify grant of permission as an exception to rural protection policies.

- 9.29 I am, however, concerned that the proposed dwellings turn their back on the highway and that the primary view of the site would be of rear garden fences immediately adjacent to the road. I consider that this would be harmful to the otherwise open character of the location and thus harmful to the character and appearance of the countryside. Landscaping could soften this to a certain extent, but would not resolve the matter sufficiently to overcome the harm caused, in my opinion.
- 9.30 In this regard I also consider that erection of dwellings on this site would remove the general sense of openness on this corner plot, which is currently open save for mature trees, in a manner harmful to the character of the area. I have not requested amendments to the scheme due to my objection in principle as set out above.

Amenity

- 9.31 There are a handful of existing dwellings within the immediate vicinity, and the existing adjacent office block is to be converted to houses under the PN process. Due to the layout of the proposed development and the position of those other properties, however, I do not consider that there would be any serious harm to residential amenity.

Contamination

- 9.32 I note the EA's concerns and therefore consider the proposal as submitted to be unacceptable in terms of potential contamination of groundwater. I appreciate that this matter could be resolved by submission of further information but due to the objection in principle I do not consider it justified to request additional details at this stage.

Flooding

- 9.33 As set out above the Environment Agency object to the proposals because the site lies within Flood Zone 2, and no Flood Risk Assessment (FRA) has been provided. As with the layout concerns I have not requested an FRA due to the objection in principle.
- 9.34 Development of this site is subject to the Sequential test. As set out by the government website *"the sequential test compares the site you're proposing to develop with other available sites to find out which has the lowest flood risk"* and *"ensures that a sequential approach is followed to steer new development to areas with the lowest probability of flooding."* The Council, through the site allocations process, has identified areas for residential development that would be at little or no flood risk, and there are likely many windfall sites within the Borough outside of any flood risk areas that, together, will enable us to meet our 5yr housing supply. I therefore consider that there is no need for the Council to approve residential development in otherwise unacceptable or marginal sites such as this.

Highways and Parking

- 9.35 I note that Kent highways have no objections and I do not consider that there are any reasonable grounds for refusal in regards highway safety and amenity. The site has good access via an existing road (Gills Terrace) and sufficient parking would be provided within the confines of the site.

Ecology

9.36 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.

10.0 CONCLUSION

10.01 This application proposes new dwellings outside of the defined built up area and in a location considered, by the Council's own adopted methodology, to be unsustainable. The social benefits to be gained from an additional 5 dwellings being added to the council's housing supply are, in my opinion, entirely and heavily outweighed by the harm to the countryside that would arise.

10.02 Taking the above into consideration I strongly recommend that planning permission should be refused.

11.0 RECOMMENDATION –REFUSE for the following reasons:

- 1) The proposals would not represent sustainable development. The dwellings would be located 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, and away from established settlements in the Borough. The proposals would therefore be located so as to be poorly served by facilities, services, and public 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 site lies within Flood Zone 2 and no Flood Risk Assessment has been provided to demonstrate that the risk associated with residential development in this location are acceptable. The development may therefore give rise to unacceptable risk to life and increased flood risk elsewhere, in a manner contrary to policy E1 of the Swale Borough Local Plan 2008; DM14 and DM21 of the emerging Swale Borough Local Plan 2031 (Proposed Main Modifications June 2016), and paragraph 14 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.

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.