

**REPORT SUMMARY**

<b>REFERENCE NO - 17/502156/FULL</b>			
<b>APPLICATION PROPOSAL</b> Erection of 5no. 4 bedroom detached dwellings with associated vehicle parking and realignment of Rook lane cross over.			
<b>ADDRESS</b> Land At Rook Lane Bobbing Kent ME9 8GB			
<b>RECOMMENDATION</b> GRANT subject to conditions			
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b> The application would not be in accordance with the recent adopted local plan. However I am of the view that the unique situation of this site, that is being visually harmful concrete hardstanding, surrounded on 2 sides by modern housing, that the proposed development would not appear incongruous and that its impact on the countryside would be, though finely balanced, acceptable.			
<b>REASON FOR REFERRAL TO COMMITTEE</b>  The recommendation is contrary to the views of the Parish Council and is considered as an exception to Local Plan policy			
<b>WARD</b> Bobbing, Iwade And Lower Halstow	<b>PARISH/TOWN COUNCIL</b> Bobbing	<b>APPLICANT</b> RedFan Development Limited <b>AGENT</b> RedFan Development Limited	
<b>DECISION DUE DATE</b> 28/06/17	<b>PUBLICITY EXPIRY DATE</b> 06/06/17	<b>OFFICER SITE VISIT DATE</b>	
<b>RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):</b>			
<b>App No</b>	<b>Proposal</b>	<b>Decision</b>	<b>Date</b>
SW/12/1596	Construction of 5 x 4 bedroom detached dwellings and associated vehicle parking plus realignment of Rook Lane including new access to mast and new section of roadway to waterworks	Approved	18/02/13
<i>This was approved by the planning committee on the basis that it was not of significant greater impact compared to the approved scheme below, that it was a brownfield site surrounded in part by housing, and that the Council could not demonstrate a five year housing supply.</i>			
SW/12/0081	Construction of 4 x 4 bedroom detached dwellings and associated vehicle parking plus realignment of Rook Lane including new access to mast and new section of roadway to waterworks	Approved	20/08/12
<i>This was approved by the planning committee on the basis that it was a brownfield site surrounded in part by housing, and that the Council could not demonstrate a five year housing supply.</i>			

SW/07/0942	Outline application for affordable housing development - 4 x 1 bed flats, 5 x 2 bed houses, 2 x 3 bed houses and 1 x 4 bed house.	Refused	17/10/07
<p><i>This application was refused on the basis that an insufficient case had been made that the development would meet a local affordable housing needs, that the site was outside the built confines and failed to protect the countryside, that the site was not in a sustainable location, was of poor quality layout and design, and did not provide suitable parking and access.</i></p>			

**MAIN REPORT**

**1.0 DESCRIPTION OF SITE**

- 1.01 The application site relates to an area of land of approximately 0.3 hectares in size. The site is bordered to the south and west by land in operational use by Southern Water and which contains 2 x reservoirs. The application site was formerly part of the Southern Water site. The land rises from Rook Lane in an east-west direction. Access to the site is via a pair of metal gates and railings which are set back from Rook Lane. The site has been partially cleared and is largely laid to hardstanding.
- 1.02 The site is bounded to the south and west by the Southern Water reservoirs and operational land, to the north by a modern housing estate, which also extends to the west beyond the operational Southern Water site and to the east, on the opposite side of Rook Lane, by open countryside. The vacant NHS Southlands Centre and Demelza House Children’s Hospice lie further to the north. There is a large telecommunications mast to the north west of the application site.
- 1.03 Rook Lane itself is a two way road that narrows to single lane traffic between the existing water works site entrance and the junction with Keycol Hill (A2). Traffic heading from Rook Lane to Keycol Hill has priority over traffic in the opposite direction. The junction of Rook Lane and Keycol Hill has restricted visibility splays due to a large retaining wall to the west of the junction and a bank of earth with vegetation and a lamp post to the east of the junction
- 1.04 In policy terms, the site falls outside of any built confines and is therefore regarded as being within the countryside. Rook Lane is classified as a Rural Lane.

**2.0 PROPOSAL**

- 2.01 This application seeks planning permission for the construction of 5no. 4 bedroom detached dwellings and associated vehicle parking, plus the realignment of Rook Lane, The application is identical in form to the scheme permitted by the Council under SW/12/1596.
- 2.02 The proposal would take the form of a small cul-de-sac with 5 plots, each containing a 4 bed dwelling. It would also provide access to the Southern Water site to the south.
- 2.03 The dwellings on plots 1 and 2 would measure 11.7 metres in width, 8.5 metres in depth, 6m in height to eaves and between 10-10.5m to ridge height. The dwellings

incorporate gable roofs and accommodation in the roofspace, including dormer windows, and also incorporate attached double garages.

- 2.04 The dwellings on plots 3, 4 and 5 would be of the same design and would be 10 metres wide, 14 metres long, 5.5 metres to eaves and 10.5 metres to ridge height. The roof would be fully hipped. Each unit would have a single integral garage and two spaces to the front.
- 2.05 The buildings would be constructed in facing bricks with quoining details and band courses.
- 2.06 The proposal includes the provision of a small communal amenity area to the south of plot 5. Adjacent to this would be a single visitor car parking space. Rook Lane would be realigned to increase the width of the road to 5.4 metres and provide a vehicle overrun area to allow larger vehicle access to the remaining water works site via the new entrance. The alterations to the lane would include extending the pavement from the new dwellings at Rooks View into the application site.

### **3.0 PLANNING CONSTRAINTS**

Outside of built confines  
Rook Lane is a designated rural lane

### **4.0 POLICY AND OTHER CONSIDERATIONS**

- 4.01 The National Planning Policy Framework (NPPF) – paragraphs 7(sustainable development), 11 (primacy of the development plan), 14 (presumption in favour of sustainable development), 17 (core planning principles), 50 (delivery of a wide choice of homes),
- 4.02 The Swale Borough Local Plan “Bearing Fruits” 2031 – Policies ST3 (settlement strategy), ST5 (The Sittingbourne Area Strategy), CP3 (delivering a wide choice of homes), CP4 (good design), DM6 (transport demand and impact), DM7 (vehicle parking), DM14 (general development criteria), DM19 (sustainable design), DM26 (rural lanes), DM28 (biodiversity), 111 (use of previously developed land).

### **5.0 LOCAL REPRESENTATIONS**

- 5.01 Two letters of objection received –
- Potential overlooking
  - Lack of suitable resident and visitor parking. The situation at Rooks View shows that more is needed. Would be likely to increase parking pressure at Rooks View.
  - Road works have not yet been completed
  - Damage / potential damage to communal areas at Rooks View which are paid for by residents
  - The Rook Lane / A2 junction is dangerous – caused by high speeds on the A2 over the brow of the hill, lack of visibility and narrowness of road junction
  - Lack of pavement for pedestrians towards A2 junction

### **6.0 CONSULTATIONS**

Bobbing Parish Council

6.01 Strongly objects on the grounds of highway issues and health and safety.

- Since permission was last granted there is more pressure on the road junction from the future Southlands development and Demelza House.
- Rook Lane is used as a rat run
- The junction of Rook Lane and the A2 is substandard with sightline and width problems
- The existing traffic calming causes a build up of traffic onto the A2, particularly during Demelza events
- There is no footpath leading from Rooks Lane to the A2
- New and granted housing developments in Newington will add to the volume of traffic on the A2 increasing the risk of an accident at the A2/Rook Lane junction.
- Insufficient parking provided
- Conflict with rural lane policy
- Are the developers able to confirm that the development is not actually above the water reservoir, as this raises pollution and safety issues?

Kent County Council Highways

6.02 I refer to the above planning application and confirm that provided the following requirements are secured by condition or planning obligation, then I would raise no objection on behalf of the local highway authority:-

- Provision of measures to prevent the discharge of surface water onto the highway.
- Provision and maintenance of 2.4 metres x 43 metres x 43 metres visibility splays at the access with no obstructions over 1.05 metres above carriageway level within the splays, prior to use of the site commencing.

Southern Water

6.03 As per the discussion held for the above proposal, access is being adequately maintained to the WSW. Southern Water will as part of the deal secure the freehold of a strip of land on the north side of the developer's ownership to enable access to a telecom mast.

Should the Local Planning Authority be minded to grant planning permission for this development we request that the following condition is attached to the consent: "Occupation of the development will not be permitted until the Local Planning Authority is satisfied that, in consultation with Southern Water, adequate wastewater treatment facilities exist to effectively drain the development".

Environmental Health

6.04 I note the contents of the supporting documentation specifically the Desk Study Report by Soiltec dated September 2014 and the construction code of practice for controlling dust on site. Provided conditions are included if permission is granted, I would have no objection to this application.

Natural England

6.05 This relates to proposals for new dwellings 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). It is the Council's responsibility to ensure that the

proposals fully adhere to the agreed approach within the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring Strategy (SAMM) to mitigate for additional recreational impacts on the designated sites and to ensure that adequate means are in place to secure the mitigation before first occupation. Subject to the above, Natural England is happy to advise that the proposals may be screened out as not having a likelihood of significant effects on the designated sites.

Environment Agency

- 6.06 No objection subject to conditions to control potential contamination, infiltration of surface water and piling.

## **7.0 APPRAISAL**

- 7.01 This planning application is identical to the scheme permitted by the Council under SW/12/1596. Although some initial work was carried out to the site, including creation of a separate access to the phone mast, this was undertaken without discharging some pre-commencement conditions, and officers took the view that such work did not amount to lawful commencement of the planning permission. The permission expired on the 18<sup>th</sup> February 2016.
- 7.02 As such the applicant has submitted a fresh application for the same development.
- 7.03 Whilst the layout, design, effect on neighbours and highways impacts are identical to the scheme previously permitted, in my opinion the key considerations for this application relate to the principle of the development and whether there has been a change in planning policy terms or site circumstances that would now render the development unacceptable. Further to this, if the principle is considered to be unacceptable in policy terms, whether there are material considerations that could outweigh such harm.
- 7.04 A copy of the report to committee for application SW/12/1596 is attached as Appendix A, and relevant sections are referred to below.

### Principle of development

- 7.05 Members will note from the report for SW/12/1596 that the development was previously considered to be acceptable in this location on the grounds that it was on previously developed land, that it abutted a modern housing estate, and that the Council could not demonstrate a five year housing land supply.
- 7.06 The first two grounds remain. However Members will be aware that the Council has recently adopted a new Local Plan and that the Local Plan Inspector recently endorsed the Council's position that it could demonstrate a five year housing supply. Policy ST3 of the recently adopted local plan sets out the settlement strategy for development in the Borough. The site does not fall within any identified settlement under this policy and falls to be considered as being within the countryside. This policy states that in such areas development will not 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, setting, tranquillity and beauty of the countryside, its buildings and the vitality of rural communities.
- 7.07 The site represents previously developed land and paragraph 111 of the NPPF encourages the effective re-use of such land, provided it is not of high environmental value. The report for the previous permission did not identify any overriding harm to

the landscape or countryside arising from the development. The site is currently open concrete hardstanding and as such it can be considered to give rise to some harm to the character and appearance of the countryside in its present form, amounting to a harsh urban development. Nonetheless, despite this, as the site has an open character and appearance, I consider that some harm to the character and value of the countryside would occur through this development, through the construction of substantial built form on an existing open site. Balanced against this harm is the fact that the site lies immediately adjacent on two sides to an existing modern housing estate. As such, the harm to the character and appearance, and the openness of the countryside would be limited in my view. On this basis, I consider that the development would be in conflict with Policy ST3 of the adopted plan, albeit that the site is previously developed land, and surrounded in part by a relatively new housing estate – and that such conflict and harm is very limited.

- 7.08 I would conclude that development of this site would normally be unacceptable given the Council's current five year housing supply position and recently adopted plan. However – there is, in my view, very limited harm and some benefit from developing what is currently a visually harmful incongruous and disused brownfield site, which directly abuts a modern housing estate. It is, in my view, a very finely balanced decision. I conclude that the benefit of developing the land, and the visual impact the development would have, being arguably less harmful than the existing site, and the fact that the development would make use of previously developed land, together with the fact that the development would not appear incongruous in its surroundings, very slightly outweighs the harm caused by the development and the fact that the site is unallocated and lies in the countryside I would therefore suggest, on balance, that the development is acceptable as a matter of principle. Members are of course entitled to take a differing view on this matter.

#### Impact on Countryside Gap

- 7.09 The site does not fall within an important local countryside gap as designated under Policy DM25 of the adopted Plan. However policy ST5 of the plan (The Sittingbourne Area Strategy) sets out that important gaps along the A2 corridor should be preserved.
- 7.10 The site is glimpsed from the A2 as you approach from Keycol Hill. However this would be seen in the context of the surrounding residential properties to the north and west, and I note that the development would not encroach any further south towards the A2 than existing surrounding dwellings, or any further to the east. The Southern Water reservoir and operational land would provide a buffer between the A2 and the site.
- 7.11 On this basis, I am satisfied that the scheme would not erode the separation between existing settlements to any material degree, and that it would not conflict with the above policy.

#### Design and visual impact

- 7.12 The design and visual impact of the development would be identical to the permitted scheme, and the officer comments are repeated in italics below.
- 7.13 *The proposal has been designed to a high standard - the dwellings reflect the character of those within Rooks View and includes the use of yellow and red bricks, timber windows and doors, front dormer windows and double garages. Plot 5 features*

*side openings facing Rook Lane, that create interest to this side elevation such as bay windows. The communal amenity area is also a positive design feature which will further enhance the aesthetics of the development. It was confirmed under the previous application that this area of the site will be maintained by a residents association to be formed by the buyers of the properties.*

- 7.14 *The proposed design of the dwellings is considered to be of a high standard and is acceptable in my view.*
- 7.15 *When viewed from both Keycol Hill and the open countryside to the east, the proposal would dovetail well with the existing residential development at Rooks View as a result of the high standard of design and the large plot sizes mirroring its surroundings. The proposal would result in the redevelopment of what I consider an unsightly and unattractive area of hardstanding. The proposed landscaping of the site would soften to a great degree the visual impact and impact of the proposals on the character of the streetscene and surrounding area.*
- 7.16 *When viewed within the streetscene of Rook Lane, the staggered building line created by the plots along with the high standard of design and landscaping would create a visually interesting and complementary appearance. When viewed from Rooks View the proposal would again appear entirely at home within this setting because of the visual interest created by the design of the rear elevations of the dwellings.*
- 7.17 *The loss of the existing trees on site, in particular the two Monterey Cypress, will be compensated for by the proposed landscaping scheme and the replacement trees specified in the above landscaping condition.*
- 7.18 *The impact on the visual amenities of the area and the impact on the streetscene is acceptable in my opinion.*
- 7.19 Whilst policies CP4 and DM14 of the adopted plan have replaced those in the former Local Plan, I am satisfied that there would be no conflict with these policies.

### **Residential Amenity**

- 7.20 Again, the design and visual impact of the development would be identical to the permitted scheme, and the officer comments are repeated in italics below. Whilst policy DM14 of the adopted plan has replaced policy E1 of the former plan, there is no material change in the way in which amenity considerations are judged under the new policy.
- 7.21 *The dwelling at plot number 2 would be within 14 metres of 1 Rooks View. However, the garden of plot 2 would sit directly behind this near neighbour with the dwelling itself being set at an approximate 45 degree angle from 1 Rooks View. As a result of the position of the dwelling at plot 2 and its distance from this neighbour, the impact on the residential amenities of the occupiers of this dwelling would be minimal in my opinion.*
- 7.22 *The dwelling at plot 3 would be 25 metres away from 27 Rooks View. Similarly the dwelling at plot 4 would be approximately 25 metres away from 28 Rooks View. The dwelling at plot 5 would be 34 metres away from 28 Rooks View. These separation distances will in my view ensure that there is minimal overlooking, overbearing, overshadowing and loss of light to the neighbouring properties.*

- 7.23 *I do not consider that the finished floor levels of the proposed dwellings would give rise to significant overlooking to the existing dwellings to the north. I have considered above the impact on no.1 Rooks View. The remaining dwellings are a significant distance from those proposed here, such that overlooking would not occur to a harmful degree.*
- 7.24 *The proposed dwellings provide ample living space and private amenity areas for future occupants.*
- 7.25 *In my opinion, the impact of the development on residential amenities would be acceptable.*

### **Highways**

- 7.26 Members will note that substantial highways concerns have been raised by the Parish Council and by local residents. These primarily relate to the narrow width of Rook Lane, which has a pinch point between the site and the A2 junction where the width narrows to a single lane, to the narrow width at this junction, and to the lack of visibility when leaving the junction.
- 7.27 Whilst I can understand that these are all far from ideal, Members will see that KCC Highways raise no objection to the proposed development. Clearly the scheme permitted under SW/12/1596 was for the same development. Given this, together with the lack of any objection from KCC Highways, I do not consider that the scheme could be held to be harmful on highways safety or traffic generation grounds. In this respect it would comply with policy DM6 of the adopted plan.
- 7.28 The development would provide garaging and vehicle parking for each unit. At least two spaces (not counting the garaging) per dwelling would be provided which would accord with highways guidance for residential parking. On this basis, I am satisfied that the development would accord with Policy DM7 of the adopted plan.

### **Impact upon character of rural lane**

- 7.29 Policy DM26 of the adopted plan states that development will not be permitted which either physically, or as a result of traffic generation levels, would significantly harm the character of rural lanes. Given the existing relatively urban appearance of the site, together with the moderate amount of traffic that would be generated by 5 dwellings, I do not consider that significant harm to the character of this lane would occur. I also note that the lane was safeguarded in a similar way under the former local plan and that the previous permission found this relationship to be acceptable.

### **Other Matters**

- 7.29 The parish council has raised concern on pollution grounds regarding the proximity of the development to the southern water reservoir. However no objection in this respect is made by Southern Water who operate the site, or by the Environment Agency.
- 7.30 The site falls 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). In accordance with the supporting text to Policy DM28 of the adopted plan, a Habitats Regulations Assessment is attached to this report.



## 8.0 CONCLUSION

8.01 Whilst the development was found acceptable under SW/12/1596, the planning policy and five year housing supply position has changed since, and residential development on land outside the built confines would not normally be acceptable under Policy ST3 of the adopted plan. Notwithstanding this, I am on balance of the view that the unique situation of this site, being visually harmful concrete hardstanding, surrounded on 2 sides by modern housing, the proposed development would not appear incongruous and that its impact on the countryside would be, though finely balanced, acceptable. I therefore recommend that planning permission is granted.

**9.0 RECOMMENDATION** – that planning permission is GRANTED, 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) The development hereby approved shall be carried out in accordance with the following approved drawings: RF20/02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39.

Reason: For the avoidance of doubt and in the interests of proper planning.

(3) The development hereby permitted shall not be commenced until the following components of a scheme to deal with the risks associated with contamination of the site shall have been submitted to and approved, in writing, by the local planning authority:

i) An intrusive site investigation, based on the submitted Desk Study Report by Soiltec dated September 2014 to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.

ii) A remediation method statement (RMS) based on the site investigation results and the detailed risk assessment (2). This should give full details of the remediation measures required and how they are to be undertaken. The RMS should also include a verification plan to detail the data that will be collected in order to demonstrate that the works set out in the RMS are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

iii) A Closure Report is submitted upon completion of the works. The closure report shall include full verification details as set out in 3. This should include details of any post remediation sampling and analysis, together with documentation certifying quantities and source/destination of any material brought onto or taken from the site. Any material brought onto the site shall be certified clean;

Any changes to these components require the express consent of the local planning authority. The scheme shall thereafter be implemented as approved.

Reason: To ensure any contaminated land is adequately dealt with, in the interests of mitigating pollution and human health

- (4) During construction of the development adequate space shall be provided on site, in accordance with the details submitted under 15/501034/SUB or in a position otherwise agreed by the Local Planning Authority, to enable all operatives and construction vehicles to park, load and off load and turn within the site.

Reason: In the interests of highway safety and convenience

- (5) Unless otherwise in accordance with the details submitted under 15/501034/SUB, prior to the works commencing on site details of parking for site personnel / operatives / visitors shall be submitted to and approved by the Local Planning Authority and thereafter shall be provided and retained throughout the construction of the development. The approved parking shall be provided prior to the commencement of the development.

Reason: In the interests of highway safety and convenience

- (6) As an initial operation on site, adequate precautions shall be taken during the progress of the works to guard against the deposit of mud and similar substances on the public highway in accordance with the details submitted under 15/501034/SUB or as otherwise agreed in writing by the Local Planning Authority prior to commencement of development. Such proposals shall include washing facilities by which vehicles will have their wheels, chassis and bodywork effectively cleaned and washed free of mud and similar substances.

Reason: In the interests of highway safety and convenience

- (7) No building hereby approved shall be occupied until the highway works in Rook Lane have been carried out in accordance with a design and specification to be approved in writing with the Local Planning Authority and to be fully implemented to the satisfaction of the Local Planning Authority.

Reason: In the interests of highway safety and convenience

- (8) No development beyond the construction of foundations shall take place until full details of the method of disposal of foul and surface waters have been submitted to and approved by the Local Planning Authority. No infiltration of surface water drainage into the ground is permitted other than with the written consent of the Local Planning Authority. The approved details shall be implemented before the first use of the development hereby permitted.

Reason: In order to prevent pollution of water supplies.

- (9) No development beyond the construction of foundations shall take place until details of the external finishing materials to be used on the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority, and works shall be implemented in accordance with the approved details.

Reason: In the interest of visual amenity.

- (10) The document “Construction code of practice for controlling dust on site” submitted with the application shall be adhered to at all times during the construction of the development, unless agreed otherwise in writing by the Local Planning Authority.

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

- (11) No development beyond the construction of foundations 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 in accordance with the approved details prior to the first use of any dwelling.

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

- (12) No demolition/construction activities shall take place, other than between 0800 to 1800 hours Monday to Friday and 0800 to 1300 hours Saturday with no working activities on Sunday or Bank Holiday.

Reason: In the interests of residential amenity

- (13) Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater. The development shall be carried out in accordance with the approved details.

Reason. To ensure that the development does not contribute to, or is not put at unacceptable risk from, or adversely affected by, unacceptable levels of water pollution caused by mobilised contaminants in line with paragraph 109 of the National Planning Policy Framework.

- (14) No impact pile driving (as may be approved under condition 13) in connection with the construction of the development shall take place on the site on any Saturday, Sunday or Bank Holiday, nor on any other day except between the following times:-

Monday to Friday 0900 - 1700 hours unless in association with an emergency or with the prior written approval of the Local Planning Authority.

Reason: In the interests of residential amenity.

- (15) All hard and soft landscape works shall be carried out in accordance with the approved details shown in drawing number RF/20/38. Notwithstanding the submitted details, a replacement for the two Monterey Cypress trees to be removed, shall be provided within the grass verge to the flank of plot 5 which is to be not less than Nursery Selected Standard size (12cm- 14cm girth). Suitable species for the replacement are either two small leaved Lime (*Tilia cordata*) or Hornbeam (*Carpinus betulus*). 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.

- (16) Before the first occupation of any dwelling the following works between that dwelling and the adopted highway shall be completed as follows:

- (A) Footways and/or footpaths shall be completed, with the exception of the wearing course;
- (B) Carriageways completed, with the exception of the wearing course, including the provision of a turning facility beyond the dwelling together with related:
  - (1) highway drainage, including off-site works,
  - (2) junction visibility splays,
  - (3) street lighting, street nameplates and highway structures if any.

Reason: In the interests of highway safety.

- (17) 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.

- (18) The area shown on the submitted layout as vehicle parking space and garages shall be provided, surfaced and drained prior to the occupation of any of the dwellings hereby approved, and shall be retained for the use of the occupiers of, and visitors to, the dwellings, and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order), shall be carried out on that area of land so shown or in such a position as to preclude vehicular access to this reserved parking space.

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

- (19) No development shall take place until details of measures to prevent the discharge of surface water onto the highway have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason: In the interests of highways safety

- (20) Prior to first occupation of the development, details to demonstrate the provision of 2.4 metres x 43 metres x 43 metres visibility splays at the site access with no obstructions over 1.05 metres above carriageway level within the splays shall be submitted to and approved in writing by the Local Planning Authority. The splays shall be provided prior to first occupation of any dwelling and shall thereafter be maintained free from obstruction over 1.05 metres above carriageway level.

Reason: In the interests of highways safety

- (21) If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until a remediation strategy detailing how this contamination will be dealt with has been submitted to and approved in

writing by the Local Planning Authority. The remediation strategy shall be implemented as approved.

Reasons: To ensure that the development does not contribute to, or is not put at unacceptable risk from, or adversely affected by, unacceptable levels of water pollution from previously unidentified contamination sources at the development site in line with paragraph 109 of the National Planning Policy Framework.

#### INFORMATIVES

- 1) It is the responsibility of the applicant to ensure , before the development hereby approved is commenced, that all necessary highway approvals and consents where required are obtained and that the limits of highway boundary are clearly established in order to avoid any enforcement action being taken by the Highway Authority.

Across the county there are pieces of land next to private homes and gardens that do not look like roads or pavements but are actually part of the road. This is called 'highway land'. Some of this land is owned by The Kent County Council (KCC) whilst some are owned by third party owners. Irrespective of the ownership, this land may have 'highway rights' over the topsoil.

Information about how to clarify the highway boundary can be found at <http://www.kent.gov.uk/roads-and-travel/what-we-look-after/highway-land>

The applicant must also ensure that the details shown on the approved plans agree in every aspect with those approved under such legislation and common law. It is therefore important for the applicant to contact KCC Highways and Transportation to progress this aspect of the works prior to commencement on site.

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

#### Habitats Regulations Assessment

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

The application site is located approximately 3 km to the south 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). which are European designated sites afforded protection under the Conservation of Habitats and Species Regulations 2010 as amended (the Habitat Regulations). SPAs are protected sites classified in accordance with Article 4 of the EC Birds Directive. They are classified for rare and vulnerable birds and for regularly occurring migratory species. Article 4(4) of the Birds Directive (2009/147/EC) requires Member States to take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article. The proposal therefore has potential to affect said site's features of interest.

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

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

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

- Due to the scale of development there is no scope to provide on site mitigation such as an on site dog walking area or signage to prevent the primary causes of bird disturbance which are recreational disturbance including walking, dog walking (particularly off the lead), and predation of birds by cats.
- Based on the correspondence with Natural England, I conclude that off site mitigation is required. However, the Council has taken the stance that financial contributions will not be sought on developments of this scale because of the practicalities of securing payment. In particular, the legal agreement would cost substantially more to prepare than the contribution itself. This is an illogical approach to adopt; would overburden small scale developers; and would be a poor use of Council resources.

This would normally mean that the development should not be allowed to proceed. However, the North Kent Councils have yet to put in place the full measures necessary to achieve mitigation across the area and there are questions relating to the cumulated impacts on schemes of 10 or less that will need to be addressed in on-going discussions with NE.

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

schemes such as this application, on the features of interest of the SPA in order to secure the long term strategic mitigation required. Swale Council is of the opinion that when the tariff is formulated it will encapsulate the time period when this application was determined in order that the individual and cumulative impacts of this scheme will be mitigated for.

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

For these reasons, I conclude that the proposal can be screened out of the need to progress to an Appropriate Assessment. I acknowledge that the mitigation will not be in place prior to occupation of the dwellings 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.