SWALE BOROUGH COUNCIL

PLANNING SERVICES

Planning Items to be submitted to the Planning Committee

08 November 2012

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ABBREVIATIONS:  commonly used in this Agenda

CDA  Crime and Disorder Act 1998

GPDO  The Town and Country Planning (General Permitted Development) Order 1995

HRA  Human Rights Act 1998

SBLP  Swale Borough Local Plan 2008
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Applications for which PERMISSION is recommended

2.1 SW/12/0260  (Case 04920) Tonge

Location : Former School Site, East Hall Farm, Sittingbourne, Kent, ME10 3TP

Proposal : Outline planning application to erect detached, semi-detached and terraced dwellings and associated garages, layout parking and amenity areas, estate roads, footpaths and landscaping

Applicant/Agent : Mr Thomas Woollard, C/O Mr Stewart Rowe, The Planning & Design Bureau, 45 Hart Road, Thundersley, Benfleet, Essex, SS7 3PB

Application Valid : 27 March 2012

8 Week Target : 22 May 2012

13 Week Target: 23 July 2012

SUBJECT TO: The signing of a S.106 Legal Agreement for the provision of affordable housing and wheelie bins, together with associated legal costs and monitoring charges; and for the conditional provision of costs towards primary and secondary schools, libraries and adult learning dependent upon the scheme being viable; and a mechanism to test viability through the submission of accounts at 50% and 85% completion stage,plus the receipt of further information from the developer regarding the setting out of the provision of developer contributions relating to affordable housing and education provision.

Conditions

1. Details relating to the layout, scale and appearance of the proposed building(s), the access thereto and the landscaping of the site (herein referred to as “reserved matters”) shall be submitted to and approved by the Local Planning Authority before any development is commenced.

2. Application for approval of reserved matters pursuant to Condition (1) must be made not later than the expiration of three years beginning with the date of the grant of outline planning permission.


3. The development to which this permission relates must be begun not later than the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.


4. Details pursuant to Condition (1) shall show 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.

Grounds: To ensure any contaminated land is adequately dealt with, in pursuance of Policy E1 of the Swale Borough Local Plan 2008.
5. 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.

**Grounds:** To ensure any contaminated land is adequately dealt with, in pursuance of Policy E1 of the Swale Borough Local Plan 2009.

6. 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 of the proposed remediation works 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.

**Grounds:** To ensure any contaminated land is adequately dealt with, in pursuance of Policy E1 of the Swale Borough Local Plan 2008.

7. The commencement of the development shall not take place until a programme for the suppression of dust during construction of the development has been submitted to and approved in writing by the Local Planning Authority. The measures approved shall be employed throughout the period of demolition and construction unless any variation has been approved by the Local Planning Authority.

**Grounds:** In the interests of residential amenity, and in pursuance of Policy E1 of the Swale Borough Local Plan 2008.

8. Development shall be carried out in accordance with the approved archaeological excavation assessment report.

**Grounds:** To ensure that features of archaeological interest are properly examined and recorded in pursuance of Policies E1 and E16 of the Swale Borough Local Plan 2008.
9. The details submitted pursuant to condition (1) shall include arrangements for the disposal of surface water both for the development and the construction period, which shall consist of a SUDS system unless otherwise agreed. The agreed details, which shall include an explanation of responsibilities and a long-term management plan, shall be implemented in full before the first occupation of any dwelling on the site or in accordance with such other timetable may be agreed in writing by the Local Planning Authority. And the agreed arrangements shall be complied with in perpetuity.

**Grounds:** In the interests of ensuring that proper provision is made for the disposal of surface water, and in pursuance of Policy E1 of the Swale Borough Local Plan 2008

10. No development shall take place until:

(a) A site investigation shall be carried out to determine the nature and extent of any population of protected species within that part of the site.

(b) A written report of the site investigation shall be prepared by a competent person. The report shall include the investigation results and details of a scheme to ensure the long-term health and well being of any population of protected species within that part of the site. The report shall be submitted to and approved by the Local Planning Authority.

(c) The development shall then be implemented in accordance with the approve scheme.

**Grounds:** In order to safeguard protected species that may be present at the site and in pursuance of Paragraphs 109 to 125 of the National Planning Policy Framework and Policy E11 of the Swale Borough Local Plan 2008.

11. The details submitted pursuant to condition (1) shall include measures to be incorporated in the development to support and encourage biodiversity at the site. The agreed measures shall then be implemented in full before any of the dwellings hereby approved are first occupied, unless an alternative timetable has been agreed in writing by the Local Planning Authority.

**Grounds:** In order to safeguard protected species that may be present at the site and in pursuance of Paragraphs 109 to 125 of the National Planning Policy Framework and Policy E11 of the Swale Borough Local Plan 2008.
12. Details pursuant to Condition (1) shall demonstrate how the dwellings contribute towards and incorporate sustainable measures such as energy saving methods, rainwater harvesting, water conservation, and, where appropriate, the use of local building materials; and provisions for the production of renewable energy such as wind power, or solar thermal or solar photo voltaic installations, with the dwellings hereby approved seeking to achieve at least a Level 3 rating under The Code for Sustainable Homes or equivalent. Development shall be carried out in accordance with the approved details.

**Grounds:** In the interest of promoting energy efficiency and sustainable development, and in pursuance of Policies E1 and U3 of the Swale Borough Local Plan 2008.

13. The details submitted pursuant to condition (1) shall accord with the density and storey height information set out on ‘Parameters Plan – Heights and Densities’ (PDB/08/13/02 A) and the Development Brief Review (adopted October 2009).

**Grounds:** In the interests of achieving good urban design and avoiding unacceptable levels of residential amenity, and in pursuance of Policies E1, and E19 of the Swale Borough Local Plan 2008.

14. Prior to the works commencing on site, details of parking and the loading, off-loading or turning 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 space(s) shall be provided prior to the commencement of the development.

**Grounds:** In the interests of highway safety and in pursuance of Policies E1 and T3 of the Swale Borough Local Plan 2008

15. 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 proposals to be submitted to, and agreed in writing by the Local Planning Authority before the development is commenced. 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.

**Grounds:** In the interests of highway safety and in pursuance of Policies E1 and T3 of the Swale Borough Local Plan 2008
16. The details submitted pursuant to condition (1) shall show adequate land reserved for parking or garaging. Upon approval of the details, the areas shall be provided, surfaced and drained before any building is occupied and shall be retained for the use of the occupiers of, and visitors to, the premises. Thereafter, 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 the land so shown or in such a position as to preclude vehicular access to the reserved vehicle parking area.

**Grounds:** In the interests of highway safety and in pursuance of Policies E1 and T3 of the Swale Borough Local Plan 2008

17. No piling or foundations on any part of the site shall take place unless the method for piling foundations has been submitted to and approved in writing by the Local Planning Authority. The piling shall thereafter be undertaken only in accordance with the approved details.

**Grounds:** The site is contaminated/potentially contaminated and piling could lead to the contamination of groundwater in the underlying aquifer; in pursuance of Policy E1 of the Swale Borough Local Plan 2008.

18. No construction work in connection with the development shall take place on any Sunday or Bank Holiday, nor on any other day except between the following times:

Monday to Friday 0730 - 1900 hours, Saturdays 0730 - 1300 hours unless in association with an emergency or with the prior written approval of the Local Planning Authority.

**Grounds:** To ensure any contaminated land is adequately dealt with, in pursuance of Policy E1 of the Swale Borough Local Plan 2008.

19. No impact pile driving 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.

**Grounds:** To ensure any contaminated land is adequately dealt with, in pursuance of Policy E1 of the Swale Borough Local Plan 2008.

20. All mechanical and electrical plant and equipment, including contractor’s mobile plant used during the construction of the development shall be fitted with the best practicable means of noise attenuation.

**Grounds:** In the interests of residential amenity pursuance to Policy E1 of the Swale Borough Local Plan 2008.
Reason for Approval

Having taken all material considerations into account, it is considered that subject to compliance with the attached conditions, the proposal would be in accordance with the development plan and would not cause unacceptable harm to the amenities of the area or prejudice highway safety or convenience. In resolving to grant permission, particular regard has been had to the following policies: E1, E9, E11, E16, E19, H2, H5, H7, T1, T3, T4, C1, C2 and C3 of the Swale Borough Local Plan 2008.

Description of Proposal

Outline planning permission is sought for the development of land at East Hall Farm, Sittingbourne, previously and initially set aside for a primary school, for residential development. No dwelling numbers or density provisions are set out. However the applicant has indicated that around 68 dwelling would be constructed on this land. Members will note that all matters are reserved. As such, reserved matters applications to agree the details (namely layout, scale, appearance, access and landscaping) will need to be submitted before development can commence.

The outline planning application for East Hall Farm, approved under planning reference SW/02/1180, together with its associated S.106 Agreement, made provision for the development of a primary school at the site. The S.106 Agreement required identification of land for the school and any necessary extension to it. Upon the occupation of the 200th dwelling, Kent County Council as the local education authority had a six month window in which to decide to take the land or to reject it. The applicants confirm, in Paragraph 5.4 of their planning statement, that KCC informed the applicants that the site was not required. Thus this site no longer needs to be set aside for a specific purpose and can be considered for alternative uses.

Indicative plans for the proposed residential development have been submitted. It illustrates access to the development would be formed from the west (opposite the sports field) and would contain a principal central road with three residential close roads branching off. A small local area for play is shown in the centre of the scheme; parking is not shown.

A Public Right of Way exists on the northern boundary of the site which requires some alignment adjustment to facilitate the application. Kent County Council has confirmed such an application is before them although determination will not be made until the outcome of this planning application has been established.

The applicants have submitted a draft S.106 Agreement with the application and a viability report. They have agreed to provide 20% affordable housing as required by Policy H7 of the LP; to provide two wheelie bins per dwelling and to meet the Council’s legal and monitoring costs. The applicants will only conditionally meet the requests of Kent County Council, who are seeking £342,417.46 for infrastructure, subject to the scheme achieving an 18% profit margin. I will discuss this further in the Discussion section of the report.
In support of their request not to pay the KCC contributions until the viable thresholds are met, the applicants are at pains to point out the following to Members:

- The viability of developing the site is marginal. In developing the site the applicants would normally require an 18% profit margin; they consider that developing the site may only just achieve this. If the 18% cannot be met, the site will not be developed primarily because funding from the lender would not be forthcoming;

- The applicants wish Members to be fully aware that in excess of £1 Million is to be paid to the Council as the residual sum from the Northern Relief Road contribution, required by the original outline application and its S.106 Agreement. This money, must be spent on direct benefits to the development such as a community hall for East Hall Farm and its residents.

- The above sums are due to be paid in increments linked to occupation of dwellings, however the applicants are proposing to pay the sums in one lump sum now if the sum can be slightly reduced (This is the subject of a separate application to modify the terms of the original Section 106 Agreement on this agenda under planning reference SW/12/1256)

The site area is 2 hectares or 4.94 acres. The application is accompanied by indicative drawings; a planning statement; design and access statement; ecological appraisal; archaeology statement; and a transport assessment update statement.

**Relevant Site History & Description**

The application site is currently open land within the East Hall Farm (known as Great East Hall) housing allocation site, as shown in the Swale Borough Local Plan 2008. The site is located along the northern boundary, to the east of the neighbourhood centre and to the north and west of Parcel G, which Members will recall granting outline planning consent for residential development under planning reference SW/10/0904 at the 14th October 2010 and the 21st July 2011 planning committees.

Outline planning permission was granted (under reference SW/02/1180) for a mixed use development at East Hall Farm and Eurolink IV in July 2004. This planning permission was not subject to any condition or other restriction on the total number of dwellings to be built at the site.

Significant development has taken place at the site with a number of phases of industrial, storage and distribution and residential development approved in detail and either under construction or complete.
With regard to the residential development, full planning and reserved matters approvals have been approved as follows:

- Parcels B and B1 – 181 dwellings, planning reference SW/06/1227
- Parcels B2, C1 and D – 203 dwellings, planning reference SW/06/1447
- Parcel C – 91 dwellings, planning reference SW/05/1297
- Parcel E – 56 dwellings, planning reference SW/07/1232
- Parcels F and G – 265 dwellings, planning reference SW/10/0904 (*new planning application needed as the deadline for reserved matters to be submitted pursuant to SW/02/1180 has now lapsed*)

A total of 796 dwellings has so far been granted reserved matters or full planning permission, and approximately 350 dwellings have been constructed.

The *Section 106 Legal Agreement* attached to the outline approval SW/02/1180 required a wide range of developer contributions including the following:

1. Up to £4 million towards the provision of the Northern Relief Road (NRR). The S106 agreement requires that the developer pay 15% of the price of the contract to build the section of NRR between Ridham Avenue and Castle Road up to a maximum of £4 million. If the 15% amounts to less than £4 million the difference is to be paid to Swale Borough Council. This matter is the subject of an application elsewhere on this agenda.

2. £400,000 ‘accessibility contribution’ to be paid in instalments and to be used for the promotion of non-car modes of travel. The full amount has been paid, and it has been spent – among other things - on subsidy for the Arriva bus service linking the site to Sittingbourne.

3. £8,000 for each additional dwelling occupied in excess of 550 dwellings.

4. 20% of the dwellings will be affordable housing, though Parcels F and G are not subject to this requirement.

5. The provision of public open space / allotments – so far, a football field, allotments, open space surrounding the balancing pond and a number of smaller play facilities have been provided.

6. Land for a Neighbourhood Centre to include a mix of uses such as local shops, a public house, a medical centre and community building. Although approval was granted (under reference SW/07/0431) for the development of part of the Neighbourhood Centre for a small supermarket, seven shop units, a public house, a veterinary surgery and 12 dwellings, construction has not commenced, and the permission has now lapsed.

7. Land for a primary school (which measures two hectares) which is the subject of this application following KCC’s decision not to take its option on the site.
Development at the site is informed by a Development Brief, adopted by the Council in 2003. A Development Brief Review (DBR), which the Local Development Framework Panel agreed at their meeting on 1 September 2009 was adopted in October 2009. It will inform the development of the remaining parts of the East Hall Farm development.

The wider East Hall Farm site includes approximately 25 hectares of land to be developed for residential use and ancillary purposes such as public open space, road infrastructure and the Neighbourhood Centre.

The residential development already approved consists of a mix of houses and flats, which are two-, three- and four-storeys in height.

The site lies on the north-eastern side of Sittingbourne, adjoining Murston to the west and south. To the north and east, the site adjoins open countryside. The immediately adjacent countryside does not have a landscape designation.

The site sits within the Teynham Fruit Belt as identified in the Swale Landscape Character Assessment Guidelines Supplementary Planning Document (2005), which describes the countryside as being characterised by ‘undulating, intimate, landscape composed of small hills and valleys’.

A public right of way – ZR189 – runs along part of the northern boundary of the application site, and connects the East Hall Farm to land to the east, via Lomas Road.

The application site is located in Flood Zone 1, that is to say an area where there is considered to be a low probability of flooding, as defined by the Swale Strategic Flood Risk Assessment (2009).

Although the site does not adjoin any site (s) designated on account of their ecological value, Members will note that the site is located less than one kilometre from the Swale Site of Special Scientific Interest (SSSI), Special Protection Area (SPA) and Ramsar site. As noted above, the applicant has written to Natural England in respect of possible ecological implications of the development.

**Views of Consultees**

Southern Water Services raise no objection. They do consider an informative reminding the applicant of the need for permission to connect to the sewerage system is needed from Southern Water. The applicant is already aware of this from previous permissions and no further action is deemed necessary.

Natural England has written raising no objections to the proposal. They applied their Standing Advice, which concluded that further survey work is required; this I consider can be conditioned and I have set this out in Condition (10).

The Environment Agency raise no objection. Conditions are set out above to ensure that appropriate arrangements are made to deal with surface water drainage, land contamination and piling.
The County Archaeological Officer raises no objection.

The Public Rights of Way Officer refers to the existence of a Public Right of Way across site and suggests that any diversion should be dealt with as early as possible in the development process. I have drawn this issue to the applicant’s attention and the matter is in hand.

I have been in correspondence with Mouchel, acting on behalf of Kent County Council. They have made a request for developer contributions for a total of £342,417.46 comprising the following based on the indicative housing mix and 68 dwellings:

1. Primary school contribution of £2360.93 per house and £590.24 per flat amounting to £160,545.28

2. Secondary school contribution of £2359.80 per house and £89.95 per flat amounting to £160,466.40

3. Library contribution of £13,372.76

4. Community learning of £1,983.74

5. Adult social services of £6,049.28

As I have set out previously, the developer is only prepared to meet these costs if the development achieves an 18% profit margin.

The Greenspaces Officer has verbally stated that he considers sufficient open space contributions have been sought from the previous application to cater for this proposal, and as such no contributions are required.

The Head of Service Delivery raises no objection, subject to conditions which are set out above. I have also had confirmation that a condition is not required in respect of noise mitigation.

The Head of Housing has raised no objections, accepting the developer has agreed to provide 20% affordable housing in line with planning policy.

Other Representations

The Swale Footpaths Group has written raising no objection to the proposal. They acknowledge a public footpath runs through the site and they seek assurances it will not be adversely affected by the proposal. As discussed above, the applicant is currently seeking approval from KCC to divert the footpath.

I have received no other representations.
Policies

The National Planning Policy Framework is relevant to the consideration of this application. The NPPF strongly supports sustainable development, and considers local planning authorities should be doing all it can to promote and support economic growth, achieving social cohesion whilst protecting the natural and historic environment. Only in circumstances where significant harm arises should local planning authorities not support sustainable development.

Paragraph 17 (Core Principles) states that to achieve sustainable development, the planning system should encourage the effective use of land by reusing land that has been previously developed (brownfield land), provided that it is not of high environmental value.

Perhaps of most importance is Paragraph 47, which requires local planning authorities to have a 5-year rolling supply of deliverable housing sites to meet identified need; deliverable being identified as being available now, offering a suitable location now, and be achievable with a realistic prospect within 5 years.

Paragraph 50 states local planning authorities should plan for a wide range of mix of houses to meet different groups in the community.

The Government has also recently targeted the role of S.106 Agreements and the role it plays in delivering development. On Monday 13th August, the Secretary of State for Communities and Local Government announced a scheme to help renegotiate S.106 Agreement on stalled projects, considering in many cases that the requirements of the S106 are “economically unrealistic”. He stated the following:

"Tackling problems with stalled development is essential to getting builders back on mothballed sites and building the homes we need. There is huge potential in sites to boost local economies and we simply cannot afford to have them lying idle because of earlier agreements that are no longer viable.

"The support and advice the expert brokers will offer is one of the many measures we have introduced to get development underway and I hope councils grab this chance to make use of the support we are offering."

The following is an excerpt from the Ministerial Statement dated 6th September 2012:

It is vital that the affordable housing element of Section 106 agreements negotiated during different economic conditions is not allowed to undermine the viability of sites and prevent any construction of new housing. This results in no development, no regeneration and no community benefits at all when agreements are no longer economically viable... Alongside this, the Government is also consulting on legislation that would allow developers to renegotiate non-viable Section 106 agreements entered into prior to April 2010.
The statements above are included to demonstrate that the Government is prioritising economic development and house building. They see viability of schemes as of fundamental importance and where schemes are considered unviable, they will support measures to lower contributions or affordable housing requirements in order to allow the development to proceed.

The following policies in the Swale Borough Local Plan 2008 are considered relevant to this application:

Policy E1 (General Development Criteria)
Policy E9 (Landscape)
Policy E11 (Nature Conservation)
Policy E16 (Archaeological Sites)
Policy E19 (High Quality Design)
Policy H2 (Provision of New Housing)
Policy H5 (Housing Allocations)

Policy H7 (East Hall Farm) is the specific policy for residential development of this site. It requires, among other things, that the total number of dwellings to be developed at East Hall Farm ‘could be increased to 750’ and that the acceptability or otherwise of such an increased yield should be ‘considered in detail through the preparation of a revised Development Brief for the site’.

Policy C2 (Provision of Community Facilities)
Policy C3 (Open Space Provision)

Discussion

I consider the main issues to be considered with this application are:

1. the principle of the proposal; and
2. the developer contributions requirement, and the subsequent offer made by the applicants.

I will discuss the other issues raised later in this report.

Principle

As explained above, the application site sits within the wider site at East Hall Farm for which outline planning (reference SW/02/1180) approval has previously been granted for residential development. This permission has though now lapsed.

Members will also have noted that the site is covered by Policy H7 of the Swale Borough Local Plan 2008, which explains that land at East Hall Farm, including the application site, will be developed for housing. Had KCC exercised their option and taken the application site, the current application would not have been submitted. However, as a school is not required, it is appropriate to consider an alternative use for the land, and given its allocation, it is acceptable in principle that residential replaces the school use.
The need for housing sites is enforced by Paragraph 47 of the NPPF, which requires local authorities to have a rolling 5-year supply of deliverable sites to meet identified need. The NPPF defines, as set out above, the term ‘deliverable’ as being available now, offer a suitable location now, and be achievable with a realistic prospect that housing will be delivered on the site within five years and in particular that development of the site is viable. Members will be aware that the Council is currently struggling to get a viable 5 year land supply due to market conditions. Therefore the proposed site if approved would help to improve this situation.

It is therefore my firm view that the principle of the proposed development is established.

**Developer Contributions**

As set out above in the Description of Proposals and Views of Consultees sections of the report, developer contributions have been sought by Kent County Council and Swale Borough Council. In the latter case, the developer has agreed to the provision of 20% affordable housing (14 if the development provides 68 dwellings in total); to provide wheelie bins; and to meet its legal and monitoring costs. The affordable housing requirement conforms to Policy H7. Although arguments exist that a higher affordable housing provision should be sought, particularly as the threshold of 750 units as set out in the policy has been exceeded, I am not persuaded that such arguments could be successfully defended at appeal, particularly in light of the Ministerial Statement and the fact that the application for Parcels F and G took the number of units beyond 750 yet 20% affordable housing was deemed appropriate. I consider the additional 68 units required here is not a significant increase to the overall unit provision to revisit the policy in this regard.

The key issue for Members to consider is the applicant’s refusal to enter into an unconditional payment for S.106 contributions relating to the KCC request for £342,417.46 (based on the indicative housing mix and total numbers). The applicant considers that if the development was subjected to these costs it would make the scheme unviable, and by this the applicant means that the scheme would be unable and unlikely to achieve 18% profit. The applicant will only pay the required sum subject to the development becoming viable. This would work as follows:

- The applicants would be prepared to sign a S.106 Agreement which pays the contribution if the development is viable;
- A review would take place at 50% completion where the developer would submit its accounts of build and sale cost to see if the development is viable. If viable, 50% of the money would be paid
- A second and final review to take place at 85% completion – with the remaining 50% of the monies to be paid if viable;
- An agreement of the land value would need to be resolved before the Section 106 Agreement is signed
Questions have been raised to me about whether the applicants could afford to provide both the affordable housing and the required KCC contributions, given that the school site is essentially a windfall site, and the fact that the site was to be given to the KCC thus renders its value as nil.

Under the provisions of the outline application Section 106 agreement, the School Site included land known as The Extension Site, and this land would have been transferred to KCC on the basis of its residential land value. In other words, KCC would have had to buy the Extension Site from the developer at its current residential land value, and as such a land value for the Extension Site has been attributed as the applicants would have received residential value from KCC. Accordingly, the land cannot be considered to have a nil value given that the applicant’s has taken into account the receipt for the Extension Site land value when it acquired the entire Great East Hall development site and thus has already had a land cost.

Members have in my view a difficult decision before them. Members need to balance the immediate need for housing and the ‘direction of travel’ as set out by the Minster, against the potential absence of any Section 106 financial contributions for KCC run services and harm arising from that. Although I am proposing a mechanism to collect the contributions should the scheme be deemed to be viable, I am aware of a scenario where if the development achieved a 17.99% profit, then no contributions would be payable.

As discussed above, the applicant’s Viability Report states that the scheme with all requested Section 106 contributions would not be viable to build in the current economic climate. Therefore should the Members balance in favour of all requiring all contributions before permission is granted, it is my firm view that the chances of this site being developed would be very low. In such circumstances, the delivery of a deliverable housing site could be jeopardised where the Council is struggling to meet a viable 5-year rolling supply of deliverable sites due to current market conditions as required by the NPPF.

Members will note the applicant’s comments with respect to the previous £4 million contributions paid on the wider East Hall site, and will have taken note of my comments earlier with regards the current residual sum of £1.2m which exists to be spent on the site. In any event, if the scheme turns out to be viable, then the Section 106 Agreement would be structured in such a way as to allow the KCC contributions will be paid.

It is my view that, having regard to the NPPF and the Ministerial Statements as set out above, Members should prioritise the contribution towards housing delivery and economic development this proposal will bring. I am also of the view that the provision of affordable housing and the previous considerable contributions allocated to Great East Hall go some way to off-setting any potential harm arising should the circumstances arise where no further monies be available for schools and other provisions. In the light of this Members may wish to consider whether the balance between provision of affordable housing and/or the need to support contributions towards education provision of up to £342K.
Therefore taking all of the above into consideration, I consider the balance should fall in favour of a positive recommendation. I am also of the firm view that a Planning Inspector would draw the same conclusions should an appeal be pursued in the event of Members refusing the application. I therefore recommend the application is approved.

**Other Matters**

**Reserved Matters**

The details of the development, namely layout, scale, appearance, means of access and landscaping, are, as noted above reserved for future consideration. It is not therefore necessary to give them significant consideration here. However, Members will note that the applicant has specified the number of dwellings it is intended to develop on the site: the 68 dwellings proposed would give a density of just over 34 per hectare. I consider these details to be appropriate for this site, which demands a balance between making efficient use of land and achieving a smooth transition from built-up area to countryside.

I have set out planning conditions above which reflect the requirements of consultees, Development Plan policies, Government guidance and the conditions imposed on the original outline planning permission (reference SW/02/1180) for the wider site. Members will note they reflect those approved on the application for Parcels F and G (SW/10/0904) with some minor alterations.

**Drainage and Flood Risk**

As noted above, the site is located in Flood Zone 1 and there is therefore considered to be a low probability of flooding. Members will also note that the Environment Agency raise no objection.

Condition (9) is recommended above to ensure that surface water drainage is appropriately dealt with, preferably by way of a sustainable urban drainage system (or SUDS).

**Ecology**

The application site is not known to be a habitat for protected species, and Members will note that the site in general has been cleared in readiness for development. However, Natural England have suggested that protected species surveys should be undertaken before the application is determined. A condition is set out above to require that protected species surveys are undertaken, as required, before development is commenced. The condition also requires that, if protected species are identified, appropriate mitigation is put in place.
Other Matters

I am not aware of any land contamination issues on the site yet the Environment Agency consider it necessary to impose the standard investigation conditions, this I have done. I have also set out conditions requiring details (pursuant to the submission of reserved matters) of sustainable construction techniques and highway matters.

I note the realignment of the Public Right of Way is required to facilitate the development. I have not received, nor do I anticipate any objection from KCC in this matter. The process of realignment is subject to a separate consent which will be determined by KCC once the merits of this application have been considered by Members.

Recommendation

Having considered the merits of the application against national and local plan policies, I am of the opinion that the proposal is acceptable in all regards; being consistent with the allocation of the wider site for residential and being acceptable in matters such a land contamination, ecology, sustainable construction, and its impact upon the local highway network. Having considered the applicant’s assertion with respect to the scheme’s viability, their commitment to affordable housing and having regard to previous contributions made on the wider site, I consider the benefits of the scheme and its contribution towards the Council stock of deliverable sites outweighs the requirement for an unconditional contribution towards schools, libraries, community learning and adult social services as required by Kent County Council, where a significant contribution could still be made if the scheme is proven to be viable.

Therefore I recommend that outline planning permission be granted subject to conditions and to the signing of a S.106 Legal Agreement for affordable housing, wheelie bin provision, and for the conditional provision of costs towards primary and secondary schools, libraries and adult learning dependent upon the scheme being viable; and a mechanism to test viability through the submission of accounts at 50% and 85% completion stage as set out in the report.
Responsible Officer: Jim Wilson (Major Projects Officer)

List of Background papers

1. Application papers and correspondence for SW/12/0260
2. Application papers and correspondence for SW/10/0904
3. Application papers and correspondence for SW/09/0533
4. Application papers and correspondence SW/02/1180/DCA
5. Application papers and correspondence SW/07/431
6. Application papers and correspondence SW/06/1277
7. Application papers and correspondence SW/06/1447
8. Application papers and correspondence SW/05/1297
9. Application papers and correspondence SW/07/1232
10. Application papers and correspondence SW/09/0533
11. Application papers and correspondence SW/12/1256
2.2 SW/12/1103 (Case 12483) Minster

Location: Parcel 4, Thistle Hill, Minster, Sheppey, Kent

Proposal: Variation of condition (3) of planning permission SW/10/0240 to allow a further 2 years to construct retail units.

Applicant/Agent: Mr G Humphrey, Bovis Homes Ltd, The Manor House, North Ash Road, New Ash Green, Longfield, Kent, DA3 8HQ

Application Valid: 28 August 2012

8 Week Target: 23 October 2012

13 Week Target: 27 November 2012

CONDITIONS

(1) The development pursuant to this permission shall be in accordance with the approved development brief for the site, and shall include a health centre (not less than 0.07ha) and a total retail provision not exceeding 1858m$^2$ net retail floor space to be provided in at least two units of varying size.

Grounds: To ensure the development delivers appropriate community facilities and in accordance with Policies E1, H8 and C2 of the Swale Borough Local Plan 2008.

(2) The retail development identified in Condition (1) above and in Condition (6) of planning permission SW/04/1058 shall be completed by 1 January 2015.

Grounds: To ensure the development delivers the retail facility within a reasoned timescale in accordance with the outline application SW/04/1058, the approved development brief of December 2009, and in accordance with Policies E1, H8 and C2 of the Swale Borough Local Plan 2008.

(3) The development carried out pursuant to this permission and the details approved under reserved matters application SW/07/0602 shall include the submission of an Energy Performance Certificate which sets out the energy performance of the building(s) to be constructed. Development shall be carried out in accordance with the approved details and retained in such a form unless otherwise agreed in writing by the Local Planning Authority.

Grounds: In the interests of promoting energy efficiency and sustainable development and in pursuance of Policies E1 and E21 of the Swale Borough Local Plan 2008.
REASONS FOR APPROVAL

Having taken all material considerations into account, it is considered that subject to compliance with the attached conditions, the proposal would be in accordance with the development plan and would not cause unacceptable harm to the amenities of the area or prejudice highway safety or convenience. In resolving to grant permission, particular regard has been had to Policies: E1, E19, H8 and C2 of the Swale Borough Local Plan 2008.

COMMENTS

Proposal

This application is made under s.73 of the Town and Country Planning Act 1990 (as amended) to not comply (and amend) Condition (3) of planning permission SW/10/0240. This Condition requires the Thistle Hill retail centre to be completed by January 1st 2013. It reads verbatim:

(3) The retail development identified in Condition (1) above and in Condition (6) of planning permission SW/04/1058 shall be completed by 1 January 2013.

Grounds: To ensure the development delivers the retail facility within a reasoned timescale in accordance with the outline application SW/04/1058, the approved development brief of December 2009, and in accordance with Policies E1, H8 and C2 of the Swale Borough Local Plan 2008.

The planning application SW/10/0240 was itself made under S.73 of the Act to amend Conditions (10) and (11) of the outline planning application for Thistle Hill under planning reference SW/04/1059. Condition (10) required the delivery of the community hall not later than the completion of the spine road system and the occupation of the first 500 dwellings; and Condition (11) required the retail centre to be completed by the construction and occupation of 600 dwellings.

The applicants consider that there has been little demand from retailers to occupy the approved units, primarily because of the tough economic climate but also because the development has a poor retail frontage, being set in and amongst other development.

Description and relevant site history

Thistle Hill is an allocated site for residential together with some mixed use development, originally approved under SW/95/102. Two S.73 applications to vary the original time limits to submit reserved matters have been approved; firstly in 2002 and secondly in 2004. The 2004 s.73 involved two planning applications:

1. SW/04/1058 required the amending of Condition (2) of the original outline to extend the reserved matters period to 11th September 2010; and
2. SW/04/1059 which was to vary Condition (4) of the outline consent to allow an additional 150 units to be constructed prior to the construction of Sheppey Crossing (now constructed).

The latter application was the only one which re-imposed all the conditions from the previous outline schemes as well as adding some additional conditions specific to that specific scheme (SW/04/1058 imposed just the one condition extending the time period to 11 September 2010), and the informative on the permission states the following:

“This permission is being granted to consolidate the original permissions for the development of Thistle Hill (SW/95/102) with the two subsequent S.73 permissions (SW/04/1058 and SW/04/1059). In granting this new permission it has been necessary to restate all of the conditions of the original outline permission where these have not been specifically superseded by new conditions as a result of the two s.73 permissions”

In 2007, an application for reserved matters for the construction of the community hall of not less than 300m² (3230sqft); at least 2 retail units not exceeding a total of 1858m² (20,000sqft) and land for a primary school (1.6 ha), land for a health centre/surgery (not less than 0.7ha) and the provision of formal and informal open space, in particular an association football pitch and a NEAP play area. The planning reference for this application is SW/07/0602, and was approved on 15th October 2007. The applicants sought a S.73 application under planning reference SW/07/1296 to vary conditions (1) (restriction of the use of the retail unit); (2) (hours of operation) and (6) (delivery times) of this permission, this also being approved on 13th March 2008. Members will note the community hall has now been built and was completed in July 2011, and land has been levelled and prepared for the football pitch. Thus the permission remains extant and no further permission is necessary to implement the retail unit.

As discussed above, the applicant in 2010 sought planning permission under S.73 of the Act to amend the time limits to provide the community hall and the retail centre. Planning permission was granted under officers’ delegated powers and new conditions were imposed as follows:

(1) The development carried out in pursuant to this permission shall be in accordance with the approved development brief for the site, and shall include the provision for community facilities including a community hall (not less than 300 square metres gross floor space unless otherwise agreed in writing by the District Planning Authority) health centre (not less than 0.07ha) and a total retail provision not exceeding 1858m² net retail floor space to be provided in at least two units of varying size.

Grounds: To ensure the development delivers appropriate community facilities and in accordance with Policies E1, H8 and C2 of the Swale Borough Local Plan 2008.
(2) The community hall identified under condition (1) above and in Condition (6) of planning permission SW/04/1058 shall be completed by 1st July 2011.

**Grounds:** To ensure the development delivers the community facility within a reasoned timescale in accordance with the outline application SW/04/1058, the approved development brief of December 2009, and in accordance with Policies E1, H8 and C2 of the Swale Borough Local Plan 2008.

(3) The retail development identified in Condition (1) above and in Condition (6) of planning permission SW/04/1058 shall be completed by 1 January 2013.

**Grounds:** To ensure the development delivers the retail facility within a reasoned timescale in accordance with the outline application SW/04/1058, the approved development brief of December 2009, and in accordance with Policies E1, H8 and C2 of the Swale Borough Local Plan 2008.

(4) The development carried out pursuant to this permission and the details approved under reserved matters application SW/07/0602 shall include the submission of an Energy Performance Certificate which sets out the energy performance of the building to be constructed. Development shall be carried out in accordance with the approved details and retained in such a form unless otherwise agreed in writing by the District Planning Authority.

**Grounds:** In the interests of promoting energy efficiency and sustainable development and in pursuance of Policies E1 and E21 of the Swale Borough Local Plan 2008.

As of July 2012, 981 dwellings have been completed at Thistle Hill.

**Representations**

Minster Parish Council has written to object to the application. Their comments are below:

*MPC objects to the extension of time. There is a well identified need for retail units to serve Thistle Hill community and a further delay would compromise the situation. MPC has already been approached by local business people eager to take advantage of these retail opportunities at the earliest date and a further two year extension would be an unconscionable delay. To date, the existing community of new residents are forced to shop elsewhere with associated inconvenience.*

No other comments have been received.

**Development Plan Policies**

Swale Borough Local Plan 2008

Policy E1 (General Development Criteria); E19 (Quality of Development), H8 (Thistle Hill) and C2 (Provisions for Community and Facilities)
The National Planning Policy Framework is relevant to the consideration of this application. The NPPF strongly supports sustainable development, and considers local planning authorities should be doing all it can to promote and support economic growth, achieving social cohesion whilst protecting the natural and historic environment. Only in circumstances where significant harm arises should local planning authorities not support sustainable development.

The Government has also recently targeted S.106 Agreements and the role they play in delivering development. On Monday 13\textsuperscript{th} August, the Secretary of State for Communities and Local Government announced a scheme to help renegotiate S.106 Agreement on stalled projects, considering in many cases that the requirements of the S106 are “economically unrealistic”. He stated the following:

"Tackling problems with stalled development is essential to getting builders back on mothballed sites and building the homes we need. There is huge potential in sites to boost local economies and we simply cannot afford to have them lying idle because of earlier agreements that are no longer viable.

"The support and advice the expert brokers will offer is one of the many measures we have introduced to get development underway and I hope councils grab this chance to make use of the support we are offering."

The following is an excerpt from the Ministerial Statement dated 6\textsuperscript{th} September 2012:

It is vital that the affordable housing element of Section 106 agreements negotiated during different economic conditions is not allowed to undermine the viability of sites and prevent any construction of new housing. This results in no development, no regeneration and no community benefits at all when agreements are no longer economically viable... Alongside this, the Government is also consulting on legislation that would allow developers to renegotiate non-viable Section 106 agreements entered into prior to April 2010.

The statements above are included to demonstrate that the Government is prioritising economic development and house building. They see viability of schemes as of fundamental importance and where schemes are considered unviable, they will support measures to lower contributions or affordable housing requirements in order to allow the development to proceed.

Discussion

The provision of the local centre was originally required by the occupation of the 500\textsuperscript{th} and 600\textsuperscript{th} dwellings respectively. Unfortunately, this requirement was not met. The applicant subsequently sought planning permission to allow more time to deliver both under planning reference SW/10/0240. Since the grant of planning permission, Members will be aware that the community hall has now been built and the football pitch being prepared ,however the retail centre remains un-provided; indeed the January 1\textsuperscript{st} 2013 requirement by Condition (3) of the permission SW/10/0240 will not be met.
Members will note from above that reserved matters for the approval of the retail unit was granted under planning reference SW/07/0602 and remains extant by reason of the construction of the community hall. Therefore should Members be minded to grant the extension of time sought in this application, there would be no other planning barrier to prevent its construction.

It is regrettable that the retail centre has not been delivered as of yet. However the economic climate remains difficult and I can appreciate that attracting retailers to the units may have proved, and continues to be problematic. I also consider that it is not in the interests of the applicant to prolong developing the retail centre particularly as it is in their interests for the Thistle Hill development to be completed. Indeed I believe that had interest been forthcoming, the developer would have constructed the units by now.

Members will note the comments from Minster Parish Council with respect to their belief that sufficient local interest exists to occupy the units. However, the comments are unsubstantiated and no evidence has been submitted to corroborate it, and as such I can only afford them little weight. Nevertheless I am also of the firm view that should Members refuse this application, and an enforcement notice be subsequently served, the appeal timetable and the compliance period (assuming the appeal was dismissed and the Notice upheld) would likely add up to two years to the process in any event, thus the date set to comply with the Condition would not be in my view too far from completion date as set out in Condition (2) of this permission.

I consider that it cannot be in the interests of the residents of Thistle Hill, or Members, to insist the units are built without an end user. This would result in the provision of empty shells which not only gives rise to poor street scene elevations, but also risks the attraction of anti-social behaviour and poor natural surveillance.

Therefore having regard to the above, and to the Ministerial Statements, I recommend the application is approved. I have re-imposed those conditions as set out in application SW/10/0240 with some alterations; those being deletion of part of Condition (1) and all of Condition (2) of that permission that relates to the provision of the community centre, which is now unnecessary.

As an aside, Members may wish to note the I have been in separate discussions with the applicant and others with respect to retail provision at Thistle Hill, and it is my hope that matters will move forward shortly; in the hope that this will be the final request for a time limit extension.

**Recommendation**

Having considered the merits of the application against national and local plan policies, I am of the firm view that the application to allow for further time to build the retail units at Thistle Hill is acceptable. I therefore recommend that, subject to the conditions as set out above, the application is recommended for approval.
List of Background Papers

1. Application Papers and Correspondence for Application SW/12/1103
2. Application Papers and Correspondence for Application SW/10/0240
3. Application Papers and Correspondence for Application SW/07/1296
4. Application Papers and Correspondence for Application SW/07/0602
5. Application Papers and Correspondence for Applications SW/04/1058 and 1059
Location: Land North of Swale Way/adj Grovehurst Road, Sittingbourne, Kent, ME9 8RB

Proposal: Relocation of Nicholls Transport depot from Lydbrook Close, Sittingbourne to land north of Swale Way (accommodating a notional 15% increase in the size of the company) with access to Swale Way; strategic landscaping buffer to A249; ancillary offices/amenity block; vehicle workshop; ancillary warehouse; vehicle wash-down and refuelling facilities; tractor and trailer parking area; surface water attenuation ponds and biodiversity enhancement; strategic footpath/cycleway link; staff parking; safeguarding of land fronting Swale Way and all necessary infrastructure.

Applicant/Agent: Nicholls Transport, C/O Mr Paul Sharpe, Paul Sharpe Associates LLP, The Old Rectory, Burytown Lane, Broad Blunsdon, Swindon, Wilts, SN26 7DQ

Application Valid: 12 June 2012

8 Week Target: 7 August 2012

13 Week Target: 2 October 2012

SUBJECT TO: Signing of an appropriate Section 106 Agreement to include the following: the use of Lyndhurst Close site, the provision of apprenticeship, land for potential highway improvements to Swale Way and the junction with the Grovehurst Interchange, and the upgrade of the junction of the proposed vehicular access with Swale Way.

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.

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 and statements:
Grounds: In the interests of proper planning and for the avoidance of doubt.

Pre Commencement

3) No development shall take place until a strategy designed to avoid adverse impact on breeding birds that may be present within the site during the construction phase has been submitted to and approved in writing by the Local Planning Authority. The development shall then be built out in accordance with the approved details.

Grounds: In the interests of preventing adverse impact on breeding birds within the site, and in pursuance of Policies E1 and E11 of the Swale Borough Local Plan.

4) Prior to the commencement of any works that may affect great crested newts or their habitat, a detailed mitigation strategy shall be submitted to, and approved in writing by, the Local Planning Authority. All works shall then proceed in accordance with the approved strategy and any amendments agreed in writing.

Grounds: In the interests of preventing adverse impact on great crested newts within the site and in pursuance of Policies E1 and E11 of the Swale Borough Local Plan.

5) Prior to the commencement of any works that may affect reptiles or their habitat, a detailed mitigation strategy shall be submitted to, and approved in writing by, the Local Planning Authority. All works shall then proceed in accordance with the approved strategy and any amendments agreed in writing.

Grounds: In the interests of preventing adverse impact on reptiles within the site, and in pursuance of Policies E1 and E11 of the Swale Borough Local Plan.

6) No development shall take place until a programme for the suppression of dust during the construction of the development has been submitted to and approved by the Local Planning Authority. The measures shall be employed throughout the period of construction unless any variation has been approved by the Local Planning Authority.

Grounds: In the interests of the amenity of the area and in pursuance of policy E1 of the Swale Borough Local Plan 2008.

7) Construction of the development hereby approved shall not commence until details of the proposed means of foul and surface water drainage have been submitted to and approved in writing by the Local Planning Authority. With regard to surface water drainage, the agreed details shall consist of a scheme using SUDS principles and shall consist of a scheme that will limit runoff rates to those from the
existing site, unless it has been demonstrated to the satisfaction of the Local Planning Authority that such a scheme cannot be delivered for the development hereby approved. The development shall then be implemented in accordance with the approved details.

**Grounds:** In the interests of achieving an acceptable scheme of foul and surface water drainage and in the interests of minimising flood risk and, and in pursuance of Policy E1 of the Swale Borough Local Plan 2008 and the advice in the National Planning Policy Framework (NPPF) Technical Guidance.

8) Full details of the measures to be incorporated in the development to support and encourage biodiversity at the site shall be submitted to and approved in writing by the Local Planning Authority before the development is commenced. The agreed measures shall then be implemented in full before any part of the development hereby approved is first occupied, unless an alternative programme has been agreed in writing by the Local Planning Authority.

**Grounds:** In the interests of encouraging biodiversity and in pursuance of Policy E11 of the Swale Borough Local Plan 2008.

9) 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.

**Grounds:** To ensure that features of archaeological interest are properly examined and recorded in pursuance of policies E1 and E16 of the Swale Borough Local Plan 2008.

10) Adequate precautions, to be agreed in writing by the Local Planning Authority before the development is commenced, shall be taken during the period of site preparation and construction to prevent the deposit of mud and/or other debris on the public highway. 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.

**Grounds:** In the interests of highway safety and convenience in accordance with Policy E1 of the Swale Borough Local Plan 2008.

11) No development of the full planning permission area shall take place until a Construction and Environmental Method Statement has been submitted to and approved in writing by the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. This shall include details relating to:

(i) The control of noise and vibration emissions from construction activities including groundwork and the formation of infrastructure, along with arrangements to monitor noise
emissions from the development site during the construction phase;

(ii) The loading and unloading and storage of plant and materials on site;

(iii) The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;

(iv) The control and suppression of dust and noise including arrangements to monitor dust emissions from the development site during the construction phase;

(v) Measures for controlling pollution/sedimentation and responding to any spillages/ incidents during the construction phase;

(vi) Measures to control mud deposition off-site from vehicles leaving the site;

(vii) The control of surface water drainage from parking and hard-standing areas including the design and construction of oil interceptors (including during the operational phase);

(viii) The use if any of impervious bases and impervious bund walls for the storage of oils, fuels or chemicals on-site; and

(ix) The location and size of temporary parking and details of operatives and construction vehicle loading, off-loading and turning and personal, operatives and visitor parking

**Grounds:** To ensure the development does not prejudice conditions of residential amenity and highway safety and convenience through adverse levels of noise and disturbance during construction and in accordance with Policies E1 and T1 of the Swale Borough Local Plan 2008

**Post Commencement**

12) No construction work in connection with the development shall take place on any Sunday or Bank Holiday, nor on any other day except between the following times:- Monday to Friday 0730 – 1900 hours, Saturdays 0730 – 1300 hours unless in association with an emergency or with the prior written approval of the Local Planning Authority.

**Grounds:** In the interests of residential amenity and in pursuance of Policy E1 of the Swale Borough Local Plan 2008.

13) No impact pile driving in connection with the construction of the development shall take place on the site on any Saturday, Sunday or Bank Holiday, nor any other day except between the following times:- Monday to Friday 0900-1800 hours unless in association with an emergency or with the written approval of the Local Planning Authority.

**Grounds:** In the interests of residential amenity and in pursuance of Policy E1 of the Swale Borough Local Plan 2008.
14) The foot / cycle path shown on drawing number D128805-CIV-700 Revision P3 and elsewhere shall be provided – in accordance with details that have been submitted to and approved by the Local Planning Authority - before the first occupation of the development.

**Grounds:** In the interests of pedestrian and cycle permeability, and in pursuance of Policy E1 of the Swale Borough Local Plan 2008.

15) The buildings and the boundary fencing hereby approved shall be finished with the facing materials and in the colours as specified on the application form and elsewhere in the details hereby approved.

**Grounds:** In the interests of visual amenity and in pursuance of Policies E1, E9 and E19 of the Swale Borough Local Plan 2008.

16) The finished floor level within each of the buildings hereby approved shall be no lower than 5.2 metres AOD.

**Grounds:** To reduce the impact of flooding on the proposed development and future occupants, and in pursuance of Policy E1 of the Swale Borough Local plan 2008 and the advice in the National Planning Policy Framework (NPPF) Technical Guidance.

17) The office building hereby approved shall be constructed to BREEAM ‘very good’ Standard or an equivalent standard, and the workshop and warehouse buildings shall be built to the BREEAM ‘good’ standard or an equivalent standard: prior to the commencement of the construction of each of the buildings, certification shall be submitted to and approved by the Local Planning Authority demonstrating how the ‘very good’ or ‘good’ rating, as applicable, is to be achieved and prior to the first use of each of the buildings the relevant certification shall be submitted to the Local Planning Authority confirming that the relevant rating has been achieved.

**Grounds:** In the interest of promoting energy efficiency and sustainable development, and in pursuance of policies E1, and U3 of the Swale Borough Local Plan 2008, and Policies NRM11 and NRM12 of the South East Plan.

18) A management plan for the landscaped areas and the balancing ponds and retained ditch, including long term design objectives, management responsibilities and maintenance schedules, shall be submitted to and approved in writing by the Local Planning Authority prior to the occupation of the development. The management plan shall be carried out as approved.

**Grounds:** In the interests of visual and landscape amenities of the area, and the encouragement of biodiversity, and in pursuance of policies E1, E9 and E11 of the Swale Borough Local Plan 2008.

19) All hard and soft landscape works (as shown on drawing 47039810-LAN-003 P2 and elsewhere) shall be carried out in accordance with the details hereby approved. 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.
20) 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.

21) Prior to the commencement of the construction of the earth bunds shown on drawing number 47039810-LAN-003 P2 and elsewhere, details of the proposed construction method for the bunds shall be submitted to and approved in writing by the Local Planning Authority. The bunds - which shall be fully constructed before the development first operates - shall be constructed in strict accordance with such details as may be agreed.

22) Prior to the commencement of the construction of vehicle washing and vehicle refuelling facilities hereby approved, elevational details – including facing materials and British Standard details of the colour – shall be submitted to and approved by the Local Planning Authority. The development shall then be implemented in accordance with the approved details.

23) A scheme for post-construction monitoring of protected species (as a minimum, in years 1 and 3 post completion of the development) shall be submitted to and approved by the Local Planning Authority before the development is first occupied. Monitoring shall then be carried out in accordance with the agreed strategy.

24) The external lighting to the development hereby approved shall be as shown on drawing D128805-CIV-SK20 P2 ‘Proposed Lighting Layout’.

25) The areas shown on drawing number D128805-CIV-SK17 Revision P2 and elsewhere as car, van and HGV parking space – and the associated turning / manoeuvring areas - shall be kept available for such use at all times and no permanent development, whether permitted by the Town and Country Planning Authority or not, shall be carried out in such areas.
(General Permitted Development) Order 1995 (or any order revoking or re-enacting that Order) or not, shall be carried out on the land so shown or in such a position as to preclude vehicular access thereto; such land and access thereto shall be provided prior to the first use of the development hereby permitted.

**Grounds:** Development without adequate provision for the parking of cars, vans and HGVs is likely to lead to parking inconvenient to other road users and detrimental to amenity and in pursuance of policies E1 and T3 of the Swale Borough Local Plan 2008.

26) The access details shown on the approved plans shall be completed to the satisfaction of the Local Planning Authority prior to the occupation of any buildings hereby approved, the use of the site being commenced, and the access shall thereafter be maintained.

**Grounds:** In the interests of highway safety and convenience and in pursuance of Policies E1 and T1 of the Swale Borough Local Plan 2008.

(27) The development hereby approved shall not be first used until the pedestrian refuge to Swale Way has been constructed in strict accordance with the approved details.

**Grounds:** In the interests of pedestrian safety and convenience, and in pursuance of Policy E1 of the Swale Borough Local Plan 2008.

In addition, at the Committee meeting on 13th September 2012 Members granted delegation to impose a condition in respect of cycle parking, and I propose to use wording as follows:

(28) No building shall be occupied or the approved use commenced until space has been laid out within the site in accordance with details to be submitted to and approved in writing by the Local Planning Authority for 17 cycles to be securely parked and sheltered. The agreed shelters shall then be retained in perpetuity.

**Grounds:** In the interests of providing adequate and appropriate space for the parking of bicycles, and in pursuance of Policy T4 of the Swale Borough Local Plan 2008.

**Reason for Approval**

Having taken all material considerations into account, it is considered that subject to compliance with the attached conditions, the proposal would - with the exception of Policy E6 - be in accordance with the development plan and would not cause unacceptable harm to the amenities of the area or prejudice highway safety or convenience. It is considered that the conflict with Policy E6 of the Development Plan is outweighed by the benefits of the scheme. In resolving to grant permission, particular regard has been had to the following policies: SP1, SP2, SP3, SP6, TG1 E1, E6, E7, E9, E10, E11, E12, E16, E19, T1, T2, T3, T4, U3, and B14 of the Swale Borough Local Plan 2008; and CC1, RE3, KTG1, KTG3, NRM11 and NRM12 of the
South East Plan. Regard has also been had to the relevant policies of the emerging Core Strategy, ‘Bearing Fruits’, including Policy SA1, which allocates land at north-west Sittingbourne for employment and residential uses.
**Background**

Members will recall that this application was reported to the Planning Committee on 13 September 2012 with a recommendation to approve. This report is attached as Appendix A. The Planning Committee in September resolved that planning permission should be granted subject to the conditions in the report and the amendment of condition (17) and an additional condition in respect of cycle parking, the signing of a suitably-worded Section 106 Agreement and the agreement of details for a pedestrian refuge to Swale Way. The minute is attached as Appendix B.

**Update**

Since the meeting, Kent Highways Services have requested two additional conditions: first, a condition is sought to ensure that the approved vehicular access is provided in full before the development is first used. Second, a condition is sought to ensure that the pedestrian refuge is implemented before the development is first used. I consider that both conditions are necessary and indeed meet all the tests in the conditions circular (11/95). An updated list of conditions is set out below, and includes these two additional conditions (as numbers 26 and 27) and the changes agreed by Members at the meeting.

**Recommendation**

Further to the above, I recommend that Members resolve that planning permission be granted on the basis of the updated list of conditions set out below, the signing of a Section 106 Agreement, to include items as approved by Members at the September meeting and, also as previously approved, the agreement of details of the pedestrian refuge to Swale Way.

**Background Papers**

(1) Application papers and correspondence for SW/12/0816
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#### 2.8 SW/12/0816 (Case 15540)  Sittingbourne

<table>
<thead>
<tr>
<th>Location</th>
<th>Land North of Swale Way/adj Grovehurst Road, Sittingbourne, Kent, ME9 8RB</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proposal</td>
<td>Relocation of Nicholls Transport depot from Lydbrook Close, Sittingbourne to land north of Swale Way (accommodating a notional 15% increase in the size of the company) with access to Swale Way; strategic landscaping buffer to A249; ancillary offices/amenity block; vehicle workshop; ancillary warehouse; vehicle wash-down and refuelling facilities; tractor and trailer parking area; surface water attenuation ponds and biodiversity enhancement; strategic footpath/cycleway link; staff parking; safeguarding of land fronting Swale Way and all necessary infrastructure.</td>
</tr>
<tr>
<td>Applicant/Agent</td>
<td>Nicholls Transport, C/O Mr Paul Sharpe Paul Sharpe Associates LLP, The Old Rectory, Burytown Lane, Broad Blunsdon, Swindon, Wilts, SN26 7DQ</td>
</tr>
<tr>
<td>Application Valid</td>
<td>6 December 2012</td>
</tr>
<tr>
<td>8 Week Target</td>
<td>31 January 2013</td>
</tr>
</tbody>
</table>

**SUBJECT TO:**

1) The further comments of Kent Highways Services with regard to the possible signalisation of the proposed vehicular access, and any further conditions required by them;

(2) The views of Kent Police; and

(3) The signing of a Section 106 Agreement.

**13-WEEK TARGET:** 2 October 2012

**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.

2) The development hereby approved shall be carried out in accordance with the following approved drawings and statements:

Drawing numbers: D128805-CIV-SK23 P1, -CIV-471 P1, -CIV-103 P1, -CIV-400 P2, -CIV-501 P2, -CIV-104 P1, -CIV-591 P2, -CIV-592 P2, -CIV-593 P2, -CIV-700 Revision P3, -CIV-102 P2, -CIV-500 P3, -CIV-SK20 P2, -CIV-SK17 P2, -CIV-SK19 P1, -CIV-SK08 P2, -CIV-101 P2, -350 P1, -113 03, -114 03, -111 01, -112 01, -115 02, -118 03, -119 03, -116 02, -117 02, -120 02, 47039810-LAN-003 P2, -LAN-001 P3, -LAN-002 P2, -107 02, -105 02, and -109 02.

Grounds: In the interests of proper planning and for the avoidance of doubt.

Pre Commencement

3) No development shall take place until a strategy designed to avoid adverse impact on breeding birds that may be present within the site during the construction phase has been submitted to and approved in writing by the Local Planning Authority. The development shall then be built out in accordance with the approved details.

Grounds: In the interests of preventing adverse impact on breeding birds within the site, and in pursuance of Policies E1 and E11 of the Swale Borough Local Plan.

4) Prior to the commencement of any works that may affect great crested newts or their habitat, a detailed mitigation strategy shall be submitted to, and approved in writing by, the Local Planning Authority. All works shall then proceed in accordance with the approved strategy and any amendments agreed in writing.

Grounds: In the interests of preventing adverse impact on great crested newts within the site and in pursuance of Policies E1 and E11 of the Swale Borough Local Plan.

5) Prior to the commencement of any works that may affect reptiles or their habitat, a detailed mitigation strategy shall be submitted to, and approved in writing by, the Local Planning Authority. All works shall then proceed in accordance with the approved strategy and any amendments agreed in writing.

Grounds: In the interests of preventing adverse impact on reptiles within the site, and in pursuance of Policies E1 and E11 of the Swale Borough Local Plan.

6) No development shall take place until a programme for the suppression of dust during the construction of the development has been submitted to and approved by the Local Planning Authority. The measures shall be employed throughout the period of construction unless any variation has been approved by the Local Planning Authority.
Grounds: In the interests of the amenity of the area and in pursuance of policy E1 of the Swale Borough Local Plan 2008

7) Construction of the development hereby approved shall not commence until details of the proposed means of foul and surface water drainage have been submitted to and approved in writing by the Local Planning Authority. With regard to surface water drainage, the agreed details shall consist of a scheme using SUDS principles and shall consist of a scheme that will limit runoff rates to those from the existing site, unless it has been demonstrated to the satisfaction of the Local Planning Authority that such a scheme cannot be delivered for the development hereby approved. The development shall then be implemented in accordance with the approved details.

Grounds: In the interests of achieving an acceptable scheme of foul and surface water drainage and in the interests of minimising flood risk and, and in pursuance of Policy E1 of the Swale Borough Local Plan 2008 and the advice in the National Planning Policy Framework (NPPF) Technical Guidance.

8) Full details of the measures to be incorporated in the development to support and encourage biodiversity at the site shall be submitted to and approved in writing by the Local Planning Authority before the development is commenced. The agreed measures shall then be implemented in full before any part of the development hereby approved is first occupied, unless an alternative programme has been agreed in writing by the Local Planning Authority.


9) 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.

Grounds: To ensure that features of archaeological interest are properly examined and recorded in pursuance of policies E1 and E16 of the Swale Borough Local Plan 2008.

10) Adequate precautions, to be agreed in writing by the Local Planning Authority before the development is commenced, shall be taken during the period of site preparation and construction to prevent the deposit of mud and/or other debris on the public highway. 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.

Grounds: In the interests of highway safety and convenience in accordance with Policy E1 of the Swale Borough Local Plan 2008.
11) No development of the full planning permission area shall take place until a Construction and Environmental Method Statement has been submitted to and approved in writing by the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. This shall include details relating to:

(x) The control of noise and vibration emissions from construction activities including groundwork and the formation of infrastructure, along with arrangements to monitor noise emissions from the development site during the construction phase;

(xi) The loading and unloading and storage of plant and materials on site;

(xii) The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;

(xiii) The control and suppression of dust and noise including arrangements to monitor dust emissions from the development site during the construction phase;

(xiv) Measures for controlling pollution/sedimentation and responding to any spillages/incidents during the construction phase;

(xv) Measures to control mud deposition off-site from vehicles leaving the site;

(xvi) The control of surface water drainage from parking and hard-standing areas including the design and construction of oil interceptors (including during the operational phase);

(xvii) The use if any of impervious bases and impervious bund walls for the storage of oils, fuels or chemicals on-site; and

(xviii) The location and size of temporary parking and details of operatives and construction vehicle loading, off-loading and turning and personal, operatives and visitor parking.

Grounds: To ensure the development does not prejudice conditions of residential amenity and highway safety and convenience through adverse levels of noise and disturbance during construction and in accordance with Policies E1 and T1 of the Swale Borough Local Plan 2008

Post Commencement

12) No construction work in connection with the development shall take place on any Sunday or Bank Holiday, nor on any other day except between the following times:- Monday to Friday 0730 – 1900 hours, Saturdays 0730 – 1300 hours unless in association with an emergency or with the prior written approval of the Local Planning Authority.
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Grounds: In the interests of residential amenity and in pursuance of Policy E1 of the Swale Borough Local Plan 2008.

13) No impact pile driving in connection with the construction of the development shall take place on the site on any Saturday, Sunday or Bank Holiday, nor any other day except between the following times:- Monday to Friday 0900-1800 hours unless in association with an emergency or with the written approval of the Local Planning Authority.

Grounds: In the interests of residential amenity and in pursuance of Policy E1 of the Swale Borough Local Plan 2008.

14) The foot / cycle path shown on drawing number D128805-CIV-700 Revision P3 and elsewhere shall be provided – in accordance with details that have been submitted to and approved by the Local Planning Authority - before the first occupation of the development.

Grounds: In the interests of pedestrian and cycle permeability, and in pursuance of Policy E1 of the Swale Borough Local Plan 2008.

15) The buildings and the boundary fencing hereby approved shall be finished with the facing materials and in the colours as specified on the application form and elsewhere in the details hereby approved.

Grounds: In the interests of visual amenity and in pursuance of Policies E1, E9 and E19 of the Swale Borough Local Plan 2008.

16) The finished floor level within each of the buildings hereby approved shall be no lower than 5.2 metres AOD.

Grounds: To reduce the impact of flooding on the proposed development and future occupants, and in pursuance of Policy E1 of the Swale Borough Local Plan 2008 and the advice in the National Planning Policy Framework (NPPF) Technical Guidance.

17) Each of the buildings hereby approved shall be constructed to BREEAM ‘very good’ Standard or an equivalent standard: prior to the commencement of the construction of each of the buildings, certification shall be submitted to and approved by the Local Planning Authority demonstrating how the ‘very good’ rating is to be achieved and prior to the first use of each of the buildings the relevant certification shall be submitted to the Local Planning Authority confirming that ‘very good’ rating has been achieved.

Grounds: In the interest of promoting energy efficiency and sustainable development, and in pursuance of policies E1, and U3 of the Swale Borough Local Plan 2008, and Policies NRM11 and NRM12 of the South East Plan.
18) A management plan for the landscaped areas and the balancing ponds and retained ditch, including long term design objectives, management responsibilities and maintenance schedules, shall be submitted to and approved in writing by the Local Planning Authority prior to the occupation of the development. The management plan shall be carried out as approved.

*Grounds:* In the interests of visual and landscape amenities of the area, and the encouragement of biodiversity, and in pursuance of policies E1, E9 and E11 of the Swale Borough Local Plan 2008.

19) All hard and soft landscape works (as shown on drawing 47039810-LAN-003 P2 and elsewhere) shall be carried out in accordance with the details hereby approved. 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.

*Grounds:* In the interests of the visual amenities of the area and in pursuance of policies E1 and E9 of the Swale Borough Local Plan 2008.

20) 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.

*Grounds:* In the interests of the visual amenities of the area and in pursuance of policies E1 and E9 of the Swale Borough Local Plan 2008.

21) Prior to the commencement of the construction of the earth bunds shown on drawing number 47039810-LAN-003 P2 and elsewhere, details of the proposed construction method for the bunds shall be submitted to and approved in writing by the Local Planning Authority. The bunds - which shall be fully constructed before the development first operates - shall be constructed in strict accordance with such details as may be agreed.

*Grounds:* In the interests of ensuring the safety of the trunk road in accordance with the Highways Act 1980 and Policy E1 of the Swale Borough Local Plan 2008.

22) Prior to the commencement of the construction of vehicle washing and vehicle refuelling facilities hereby approved, elevational details – including facing materials and British Standard details of the colour – shall be submitted to and approved by the Local Planning Authority. The development shall then be implemented in accordance with the approved details.

*Grounds:* In the interests of the visual amenities of the area and in pursuance of policies E1 and E9 of the Swale Borough Local Plan 2008.
23) A scheme for post-construction monitoring of protected species (as a minimum, in years 1 and 3 post completion of the development) shall be submitted to and approved by the Local Planning Authority before the development is first occupied. Monitoring shall then be carried out in accordance with the agreed strategy.

**Grounds:** In the interests of preventing adverse impact on breeding birds within the site, and in pursuance of Policies E1 and E11 of the Swale Borough Local Plan.

24) The external lighting to the development hereby approved shall be as shown on drawing D128805-CIV-SK20 P2 ‘Proposed Lighting Layout’.

**Grounds:** In the interests of visual and landscape amenity, and in pursuance of Policies E1, E9 and E19 of the Swale Borough Local Plan 2008.

25) The areas shown on drawing number D128805-CIV-SK17 Revision P2 and elsewhere as car, van and HGV parking space – and the associated turning / manoeuvring areas - 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) Order 1995 (or any order revoking or re-enacting that Order) or not, shall be carried out on the land so shown or in such a position as to preclude vehicular access thereto; such land and access thereto shall be provided prior to the first use of the development hereby permitted.

**Grounds:** Development without adequate provision for the parking of cars, vans and HGVs is likely to lead to parking inconvenient to other road users and detrimental to amenity and in pursuance of policies E1 and T3 of the Swale Borough Local Plan 2008.

26) And any further conditions requested by Kent Highways Services.

**Informative:**

1. The management of this facility should be registered with the Environment Agency’s Flood Warning Service – call 0845 988 11 88 or go to ‘www.environment-agency.gov.uk/floodline’
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REASON FOR APPROVAL:

Having taken all material considerations into account, it is considered that subject to compliance with the attached conditions, the proposal would - with the exception of Policy E6 - be in accordance with the development plan and would not cause unacceptable harm to the amenities of the area or prejudice highway safety or convenience. It is considered that the conflict with Policy E6 of the Development Plan is outweighed by the benefits of the scheme. In resolving to grant permission, particular regard has been had to the following policies: SP1, SP2, SP3, SP6, TG1 E1, E6, E7, E9, E10, E11, E12, E16, E19, T1, T2, T3, T4, U3, and B14 of the Swale Borough Local Plan 2008; and CC1, RE3, KTG1, KTG3, NRM11 and NRM12 of the South East Plan. Regard has also been had to the relevant policies of the emerging Core Strategy, ‘Bearing Fruits’, including Policy SA1, which allocates land at north-west Sittingbourne for employment and residential uses.

Description of Proposal

This report deals with a planning application for the development of a haulage yard and ancillary development on land to the north of Swale Way, immediately to the north-east of the junction of the A249 trunk road and Grovehurst Road, Sittingbourne.

The proposal is put forward by Nicholls Transport, who wish to re-locate from their existing, 2.25-hectare site at Lydbrook Close, which sits to the south of the A2 (London Road), just to the west of Sittingbourne town centre.

The scheme, which is designed to accommodate a notional 15% increase in the size of the company and which is described in detail in the supporting Planning Statement (Pages 5 and 6) and on the application form, consists of the following elements:

1) vehicular access to Swale Way
2) strategic landscape buffer to A249 (the extent of which is shown on the ‘Masterplan’ layout, ‘Masterplan Sections’ and the other section drawings)
3) ancillary offices / amenity block
4) vehicle workshop
5) ancillary warehouse
6) vehicle wash-down and refuelling facilities
7) tractor and trailer parking area
8) surface water attenuation ponds and biodiversity enhancement
9) footpath / cycleway link (between underpass beneath the railway line to the west of the Morrisons warehouses and Swale Way)
10) staff car parking / cycle / motorcycle parking
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Taking each in turn, Members will note the following:

(1) The proposed vehicular access will be located approximately 140 metres east of the Swale Way / Grovehurst Road / A249 junction, and will consist of the re-configuring of the existing farm / Swale Way maintenance access. A two-lane road will run north – for 120 metres - and connect to the central part of the site, where the main elements of the development are proposed.

(2) The operational areas of the site would be set back from the eastern site boundary, with the A249, by a minimum of 50 metres, allowing for the provision of a landscape buffer that would accommodate the proposed cycle / pedestrian link (described at (9) below) and two bunds – with a typical height of three to four metres - the retention of the existing drainage ditch (with no excavation proposed within five metres on either side) and the provision of new balancing pond / wetland areas. The southern bund would measure 175 metres in length and have a typical width of approximately nine metres, and the northern bund would measure 200 metres in length and range in width from approximately eight metres to approximately 12 metres. The detailed ‘landscape planting proposals’ show the bunds to be planted up predominantly with a ‘tree and shrub mix’. Areas of species rich grass, aquatic planting and ornamental shrubs and ground cover are also proposed in the landscape buffer and at the northern and southern ends of the site, where substantial planted areas are proposed.

(3) The office / amenity block would be arranged over two levels (but partly set into ground) with a total external floor area of 647 square metres, and located 125 metres north of Swale Way. On the southern side (facing Swale Way) the building would measure 4.05 metres in height, while on the northern side it would extend to 7.05 metres. The elevations would be predominantly stone filled gabion wall cladding.

(4) The vehicle workshop would have an external floor area of 1473 square metres and would accommodate six lorry bays, a tyre storage area and ancillary areas. The building – to be faced in a combination of textured masonry and insulated panels would have a curved roof extending to a maximum height of 8.85 metres. The rectangular building would be arranged perpendicular to Swale Way and 170 metres north of it.

(5) The ancillary warehouse would be located at south-east corner of the part of the site to be developed (110 metres north of Swale Way) and would have an external floor area of 1228 square metres. The elevational treatment would use the same materials as the vehicle workshop and the maximum height would, like the vehicle workshop, be 8.85 metres.
(6) The **vehicle wash-down and refuelling facilities** would be located to the north of the proposed buildings and would consist of four under-ground fuel tanks, each with a capacity of 75,000 litres and to be located a minimum of 26 metres north of the proposed office. The vehicle wash-down facilities would be located 26 metres to the north of the proposed workshops and although full details have not been provided, Members will note that the Design and Access Statement explains, on Pages 21 to 23, that a “fully automatic moving gantry wash, capable of cleaning a mixed fleet of vehicles from 4.5 metres articulated vehicles down to sprinter vans…” is proposed. Spray containment screens, to measure 23 metres long and six metres in height, would enclose the HGV wash.

(7) 9265 square metres (or just under one hectare) are proposed for **heavy good vehicles (HGV) parking**, including space for 125 trailer bays and 50 tractor (cab) bays.

(8) As mentioned at (2) above, **surface water attenuation ponds** are proposed. The four proposed ponds – in addition to the existing ditch which is to be retained – would form part of a SUDS drainage system, which would not only provide for sustainable drainage of surface water run-off but would also create a significant opportunity for enhanced biodiversity.

(9) As mentioned above a **cycle / pedestrian path** – to measure approximately 520 metres in length - is proposed to connect the existing underpass to the adjacent railway line and the existing path at the southern end of the site, which in turn links to the pavement to Swale Way.

(10) 49 car parking spaces (including disabled parking spaces) are proposed in a single car park to be located immediately to the south of the proposed office building. 17 cycle parking spaces and 3 motorcycle parking spaces are also to be provided.

In addition, the application envisages that a strip of land at the southern end of the site will be made available to Kent County Council for possible future improvements to Swale Way and its junction with the A249 for a period of ten years from occupation of the completed development. This land – which has an area of approximately 3.2 hectares (or 7.9 acres) – will be free from development other than the access road. This issue is discussed in the ‘Developer Contributions’ section of the ‘Discussion’ below.

The application also proposes in respect of the use of the existing Nicholls Transport site at Lydbrook Close, Sittingbourne that a Section 106 agreement would accompany any planning permission granted for the current application to prevent the use of the site for either Use Class B2 (general industrial) or B8 (storage and distribution) purposes for a period of five years from the date that Nicholls Transport vacate the site.

This issue is discussed in the ‘Developer Contributions’ section of the ‘Discussion’ below.
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Members will note that planning permission is sought for the use to operate 24 hours a day and 365 days a year.

The site area is 11.96 hectares.

The applicant has also provided the Highways Agency with additional information in respect of the bunds proposed on the western side of the site, which run parallel with the boundary with the A249 trunk road and would be planted with trees and shrubs in order to minimise the visual impact of the development from the eastern side of the village of Iwade. The letter explains that “...the bunds will be between two and five metres above existing ground levels within the site boundary using 1 in 3 side slopes to construct the bunds. The level of the top of the bunds has been set as closely as possible to match as closely as possible the level of the adjacent A249...” The letter also explains that construction techniques and detailed planting have not been finalised, and that these will be addressed at the detailed design stage. If permission is granted, these matters could be controlled by planning condition.

Finally, the size, nature and location of the proposed development (particularly, the close proximity to land designated on account of its high ecological value) are such that an Environmental Statement (ES) was required in support of the application. This document - together with the accompanying Non-Technical Summary - consider the various potential environmental impacts, namely for ‘cultural heritage’, ‘waste’, ‘ecology and nature conservation’, ‘water resources’, ‘noise and vibration’, ‘landscape and visual’ and potential ‘inter-relationships and cumulative effects’.

Relevant Site History & Description

The application site has no recent planning history. However, in the mid 1990s two identical applications (outline with all matters reserved) for a mix of industrial, other commercial, leisure and recreation uses on a piece of land, measuring 17 hectares, which included the current application site and land immediately to the south (including the buildings at Great Grovehurst Farm and the land where the section of Swale Way to the south of the current application site has now been built) were submitted. The applications envisaged the creation of circa 500 jobs.

The second, made under reference SW/95/778, was refused by the Council (in January 1996) on a total of 14 grounds relating to, among other things, the development being unacceptable in principle as it was located outside the built-up area boundaries as set out in the Development Plan at the time, which included the Sittingbourne and Milton and Vicinity Town Map (1969).

The first application, made under reference SW/95/520, was the subject of an appeal against non-determination by the Council and, in a decision dated 4 September 1996, the Inspector dismissed the appeal and concluded as follows:
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“My overall conclusion is that it would not be in the interests of the proper planning of the area to release this site, where development would be detrimental to the character of the area, at the potential expense of other land to the east which ought to have greater priority for action. I find that the benefits arising from the scheme, while they might have carried more weight in other circumstances, are insufficient to overcome the harm that would be done by the proposed development itself. No other matters raised at the inquiry were so cogent as to deflect me from this conclusion, which derives from the main issues considered above.”

The site is enclosed to the west and south by important roads as mentioned above, and by the Sheerness branch railway line running along the eastern site boundary. The residential areas of Iwade and Kemsley are located beyond these transport links. The closest part of Iwade is Wigeon Road, which is located a minimum of 300 metres from the application site. The residential development at Kemsley is closer to the site and Members will note that the dwellings at Archer Court are located approximately 80 metres from the south-east corner of the application site, but no development is proposed there and the distance from these dwellings to the proposed office car parking (which is at the southern end of the main part of the site to be built on) is approximately 300 metres.

Members will note that there are other dwellings in the vicinity of the site, notably Pond Farm just to the south of Iwade on the western side of Grovehurst Road and 320 metres from the nearest part of the application site, Featherbed House just to the south of the junction of Grovehurst Road and the A249 and 190 metres from the application site, and New House, adjacent to Grovehurst Farm, which is 160 metres from the site entrance.

To the east of the railway line where it adjoins the site, a substantial electricity sub-station and the Morrisons distribution depot buildings (combined floor area 85,594 square metres, with planning reference SW/08/0177) are located.

The site lies partly within Flood Zones 1, 2 and 3, and the Environment Agency consider that overall there is a medium-to-high risk of tidal flooding. But in accordance with advice in the National Planning Policy Framework (NPPF) Technical Guidance, they state that less vulnerable industrial development may be acceptable. Members will note the summary of their consultation response below and, in particular, that no objection is raised by them.

Members will note that at its closest point the Special Protection Area (SPA) / Site of Special Scientific Interest (SSSI) / Ramsar site lies 42 metres to the north-east of the application site. These designated areas – which in the vicinity of the application site are known as Coldharbour Marshes and Ridham Marshes – are also designated as a Special Landscape Area.
Members will also note that the application site – which is located in the countryside, outside the built-up area as defined in the Swale Borough Local Plan 2008 - falls within the Iwade Arable Farmlands character area as identified in the Swale Landscape Character and Biodiversity Appraisal (2011), which has been adopted as a Supplementary Planning Document (SPD). The SPD concludes that the area is in a “...poor condition overall, largely as a result of the effects of agricultural intensification. The condition has deteriorated since 2005 assessment because of the further encroachment of Iwade on the landscape and large scale commercial development [which includes the Morrisons depot] along the A249.”

The A249 itself and the two overhead cable routes that cross this landscape area – one of which bisects the application site – are particularly harmful features.

The SPD guidelines for the area state, among other things, that “…targeted enclosure of open landscapes, screen plant and soften major transport routes and development using woodland blocks, shelter belts and hedgerows” should be undertaken.

**Views of Consultees**

**Kent Highways Services (KHS)** have, as described in the ‘Discussion’ section below, provided initial comments. They accept the principle of the proposed development, and consider that the proposed vehicular access on to Swale Way is acceptable. They do though have outstanding queries about the longer term proposal for the possible signalisation of the junction with Swale Way and the arrangements for pedestrians and cyclist to cross Swale Way (see details in the ‘Discussion’ section below). The applicant is aware of these issues, and I expect to be able to report their response and the further views of KHS at the meeting.

The **Head of Service Delivery** raises no objection subject to a condition to restrict the hours of construction. Having considered the findings of the acoustic report (see Chapter 11 of the Environmental Statement), they consider that the proposed unrestricted operational hours are acceptable. They have also verbally advised that conditions to control dust generation and to limit the hours when construction generally and piling, in particular, can take place are justified, and appropriate conditions are set out above. Finally, they have considered the proposed scheme of external lighting and consider it to be acceptable. A condition is included above to ensure that the development is built out in accordance with the submitted details.

The **Environment Agency** raises no objection. Conditions are though recommended in respect of the minimum finished floor levels in the proposed buildings being no lower than 5.2 metres above Ordnance datum (AOD) and the agreement of a scheme of surface water drainage based on SUDS principles and which would ensure that the rate at which run-off leaves the site does not exceed seven litres per second per hectare, which is the typical rate from a green-field site.

The **EA** also give general advice with regard to the disposal of waste excavated from the site and of material brought to it, and with regard to pollution control.
The **Highways Agency (HA)** have engaged with the applicant at the pre-application stage and given advice which has been incorporated in their submitted Transport Assessment (TA).

An issue that the HA were not aware of at the pre application stage is the proposal to build a bund adjacent to the A249. For reasons of safety, they require details of the proposed construction to ensure it does not pose a risk to the highway.

I have discussed the issue of the bund with the applicant and, as mentioned above, the applicant has provided additional information in an attempt to address the point.

The HA have subsequently written raising no objection subject to the imposition of a planning condition requiring that details of the bund be submitted and approved by this Authority before construction of the bund is commenced.

**Iwade Parish Council** have raised objections to the application. In particular:

“This development will have a major impact on the already overstretched A249 Grovehurst interchange; this is backed up by the following extracts in the recent version of ‘Bearing Fruits’ Swale Borough Draft Core Strategy:

5.6.19 This Core Strategy continues to focus on Sittingbourne as the main urban area, with strategic allocations for housing and employment proposed at north west and north east Sittingbourne. This utilises existing capacity on the A249 and the built and planned sections of the SNRR. The Key Street and Grovehurst interchanges with the A249 are nearing capacity and will require improvement to accommodate traffic arising from development proposed in the Core.

6.2.4 A key issue affecting all of the sites involved in this strategic allocation is the need for a new junction with Grovehurst Road which has been identified as necessary by the Core Strategy transport model. Detailed site modelling would be needed at the planning application stage to take this further, together with an assessment of the impact on existing junctions along the B2005. The quality of public transport also needs to be improved - both in terms of public transport into the sites in question, but also the enhancement to rail facilities at Kemsley Halt.

If this application is approved, Iwade Parish Council insists that the improvement to the A249 is agreed and takes place prior to the start of any development, as clearly indicated above.
Lorries exiting the site will have difficulty and will have to do so slowly due to the steep gradient onto the existing road. Furthermore any lorries leaving the site will need to turn left, go down to the next roundabout and then come back up to the A249 Grovehurst interchange, due to the volume of traffic that is normally queuing to exit the Relief Road onto the roundabout during most of the day. If this is not enforced it will add to the already congested area and be an ‘accident waiting to happen’ because of the speed of some motorists using this route.

Of further concern is that if permission is granted for this site, to the size shown on the plans, there will not be any scope to change the A249 junction or to increase the use of the railway as stated in the Core Strategy. One scenario for Swale Members to consider is what happens in the future if there is a need to add another railway line as there will be Nicholls one side of the existing line and Morrisons the other. With more housing, both in this area and the Isle of Sheppey, and with industry in Ridham Dock now looking at using the railway an extra line could well be needed in the future which will effectively take vehicles off the already stretch highways. However, if this development goes ahead it will effectively stop any prospect of improving the railway infrastructure in the future and could have a detrimental impact on any hopes of attracting businesses to the Isle of Sheppey.”

Network Rail has no observations to make on this development as Gascoynes user worked level crossing was closed in 2005 therefore eliminating access to the railway. With regard to comments made by Iwade Parish Council and the issues raised

1. The Sheerness branchline which neighbours the adjacent site of the proposal is double tracked and caters for a number of freight services to and from Sheerness and Ridham docks, there are no plans to introduce a third line at this location to cater for Ridham dock.
2. The prospective development will not create a material impact upon any upgrade to the Sheerness branchline as the line will remain double tracked should an upgrade occur.

Natural England (NE) raises no objection to the application, advising that if the development is implemented in accordance with the submitted details it is “not likely to have a significant effect on the Swale Site of Special Scientific Interest (SSSI), the Swale Special Protection Area (SPA) or the Ramsar designated wetland.” Furthermore, NE advise that an Appropriate Assessment under the 2010 Conservation of Habitats and Species Regulations is not required. With regard to protected species, NE note the survey work that has been undertaken – Members will note Chapter 9 of the Environmental Statement and Appendices 9B and 9C, which set out respectively a ‘wintering bird survey’ and a ‘breeding bird survey’ – and conclude that the proposed measures to maintain the local breeding bird population appear appropriate. Members will note that condition (3) above is designed to ensure that these measures are undertaken.

With regard to the surveys for great crested newts and widespread reptiles, I have received the further comments of NE and conditions (4) and (5) above are as requested by them.
Finally, with regard to landscape and visual impact, NE advise that this scheme does not meet their criteria for commenting. Members will note, however, that I have addressed these issues in the ‘Discussion’ section below.

The Ecologist at Kent County Council has considered the application, and has identified the potential for ecological impacts to the following species:

- Breeding birds
- Water voles
- Great crested newts
- Reptiles

They conclude, however, that the mitigation proposed in the Environmental Statement is “sufficient to satisfy...[the] requirement to address all relevant (ecological) material considerations in the determination of this application.”

They recommend conditions in respect of post-development ecological monitoring and the on-going management of the proposed habitat areas. I have included conditions above to cover these issues.

The County Archaeological Officer (CAO) has reviewed the application and notes that the site has been “…formally evaluated in 1996…and remains were located…and there is still high potential for prehistoric and Roman remains to survive.” The CAO concludes that a condition is required to ensure that a programme of archaeological work is agreed. I have included such a condition above.

The Lower Medway Internal Drainage Board raises no objection. They do though stipulate that the rate of surface water runoff from the site should be restricted to the green-field rate, which is seven litres per second per hectare. Condition (7) above will ensure that this requirement is satisfied.

The Kent County Council Public Rights of Way Officer notes that there are no public rights of way that would be affected by the proposed development. He also advises that the proposed cycle / pedestrian route through the site “…would be a matter for KHS”.

The Economic Development Officer has no objection to the application, and states:

“Given their current location at Lydbrook Close and that the new site will allow Nicholls to increase the size of the company it seems a sound and sensible proposal…”

With regard to the use of apprenticeships at the development, he advises that the following wording should be included in the Section 106 agreement:

“Use reasonable endeavours to facilitate and encourage contractors and sub-contractors to use reasonable endeavours to support the delivery of accredited apprenticeships or accredited construction qualifications within the workforce from the local labour market, through work placements or similar.”
Item 2.3 APPENDIX A

The Climate Change Officer has commented on the application and an extract from her response reads as follows:

“I am slightly disappointed that it only comes in at BREEAM good. However, given the lack of a Core Strategy and the considerable benefits of re-locating to this site (environmental, traffic etc) I am happy with this so long as you are.”

No comments have been received from National Grid.

I await the views of Kent Police and will update Members at the meeting.

Other Representations

The application has been advertised in the local press, by the posting of site notices at, and near to, the application site and by letters sent to 119 addresses at Kemsley and Iwade.

TWO letters of objection has been received. One of which includes the following:

“I strongly object to this planning application. The site is totally inappropriate. This is a busy road already and lorries turning out of this new development will cause major problems. Surely this land must be green belt, or are we not allowed green belt on the north side. Please see sense Swale Council and through this out.”

The second letter also expresses concerns about the highway and traffic flow implications and questions whether the land is ‘green belt’ and as such unsuitable for this development. It also raises concerns about the following:

- Noise implications (noting that the Morrisons distribution depot already causes noise disturbance)
- Availability of alternative sites (for example, at Neats Court, “which already has planning [permission] and is not far away”

As Members are probably aware, there is no green belt land in Swale. The application site is though – and as noted elsewhere - outside the defined built-up area boundary and therefore constitutes countryside.

Policies

The National Planning Policy Framework (NPPF) came into force in March 2012 and in so doing replaced a number of planning documents, including the various PPSs and PPGs. I consider that the following paragraphs should be noted:
Paragraph 7 suggests the following roles for the planning system:

- "An economic role – contributing to building a strong, responsive and competitive economy…"
- A social role – supporting strong, vibrant and healthy communities…; and
- An environmental role – contributing to protecting and enhancing our natural, built and historic environment."

Paragraph 12 states that the NPPF “…does not change the statutory status of the development plan as the starting point for decision making…development that accords with an up-to-date Local Plan should be approved, and…development that conflicts should be refused unless material considerations indicate otherwise.”

Paragraph 14 sets a presumption in favour of sustainable development.

Paragraph 17 sets ‘core planning principles’, including sustainable economic development, good quality design, countryside protection and low carbon development.

Paragraph 19 states that the “…planning system should do everything it can to support sustainable economic growth.”

Various paragraphs support sustainable transport and Members will note that Paragraph 30 gives encouragement to “…solutions which support reductions in greenhouse gas emissions and reduce congestion.”

Paragraph 35 states that opportunities for sustainable transport should be protected and exploited and, among other things, “…development should be located and designed where practical to…accommodate the efficient delivery of goods and supplies.”

Paragraph 36 states that Travel Plans will be required for all developments that “generate significant amounts of [vehicle] movements”.

Paragraphs 56 to 68 address ‘requiring good design’, and Paragraph 56 asserts that “Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people.”

Paragraph 75, under the heading of ‘Promoting healthy communities’, states that “local authorities should seek opportunities to…[enhance public rights of way] …for example by adding links to existing PROW networks.”

Paragraph 96, 2nd bullet states that in determining planning applications, local planning authorities should “take account of landform, layout, building orientation, massing and landscaping to minimise energy consumption”.

Paragraph 100 stipulates that “Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk, but where development is necessary making it safe without increasing flood risk elsewhere.”
Paragraph 103 states that in areas at risk of flooding, development should be informed by a Flood Risk Assessment following the Sequential Test and, if required, the Exceptions Test.

At Paragraph 109 it states, among other things, that “...the planning system should contribute to and enhance the natural and local environment by...minimising impacts on biodiversity and delivering net gains in biodiversity where possible.”

Paragraph 112 deals with best and most versatile agricultural land and advises that authorities should seek first to use areas of poorer quality land.

Paragraph 118 sets out principles that are to be applied with the aim of conserving and enhancing biodiversity. If significant harm arising from a development cannot be avoided, mitigated or compensated for, then planning permission should be refused.

Paragraphs 120, 123 and 125 deal respectively with risks from pollution and land instability, noise pollution and light pollution respectively.

Paragraphs 196 to 198 inclusive deal with the determination of planning applications, and Members will note that Paragraph 197 reminds local planning authorities of the presumption in favour of sustainable development (see also Paragraph 14 above).

Paragraphs 203 to 206 inclusive deal with the use of planning conditions and planning obligations [S106 Agreements].

Paragraph 216 states that decision takers “...may also give weight to relevant policies in emerging plans according to:

- The stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);
- The extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
- The degree of consistency of the relevant policies in the emerging plan to the policies in the Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).

The South East Plan (SEP) includes the following relevant policies: CC1 (sustainable development), RE3 (employment and land provision), KTG1 (separation of Sittingbourne from settlements to the west), KTG3 (employment land at Sittingbourne / Isle-of-Sheppey), NRM11(energy efficiency and renewable energy), and NRM12 (combined heat and power). However, as Members may be aware, the Coalition Government has indicated its intention to revoke the SEP, and this intention is a material consideration. As such, limited weight should be attached to these policies.
The following policies of the adopted Swale Borough Local Plan (SBLP) 2008 are relevant to this application: SP1 (sustainable development), SP2 (environment), SP3 (economy), SP6 (transport and utilities), TG1 (Thames Gateway), E1 (general development criteria), E6 (development in rural areas), E7 (separation of settlements), E9 (landscape), E10 (trees and hedges), E11 (biodiversity and geological conservation), E12 (sites designated for their biodiversity or geological conservation), E16 (archaeology), E19 (design), B1 (existing employment land and businesses), T1 (safe access to development), T2 (highway improvements), T3 (vehicle parking), T4 (cyclists), U3 (renewable energy), and B14 (new employment sites).

With regard to Policy E6, Members will note that the site is located – as explained above - entirely outside the built-up area boundary as defined in the SBLP 2008. As such, the site is subject to the policy of rural restraint set out under Policy E6. However, land immediately to the east of the site is within the built-up area.

Members will also note that Policy E7 is applicable because the site sits within the Important Local Countryside Gap between, in particular, Sittingbourne / Kemsley and Iwade and in the Strategic Gap between the former settlement and the Medway Towns. The policy seeks to retain the individual character and setting of settlements.

The emerging Core Strategy (CS), the draft of which – known as ‘Bearing Fruits’ – was published earlier this year, indicates a strategic allocation for north-west Sittingbourne that includes the application site allocated for employment purposes. The part of the allocation the subject of this planning application has not attracted strong objection. Although the CS is still at an early stage of its preparation to attach any considerable weight to, the allocation represents a clear ‘direction of travel’ for employment growth at the town.

The following policies are of particular relevance to this application: ST1 (land for jobs and homes, 2011 to 2031), ST2 (location of development), ST3 (Sittingbourne area), SA1 (north-west Sittingbourne), and DM15 (managing transport demand and impacts).

Discussion

Principle

It remains the case, and this is set out in the NPPF, that the Development Plan is the starting point for the determination of planning applications, and – as quoted above – proposals that accord with an up-to-date Local Plan should be approved while those that conflict with it should be refused unless material considerations indicate otherwise.

I note above that the application site falls outside the defined built-up area boundary and, as such, is subject to Policy E6 of the Local Plan, which as Members know seeks to restrain development in the countryside.
The applicant has presented a detailed case in an attempt to justify the grant of planning permission despite the conflict with Local Plan policy. The key strands of their argument are as follows:

1. Benefits of re-location from Nicholls’ existing site at Lydbrook Close, Sittingbourne
2. The lack of suitable and available alternative sites for re-location within the built-up area boundaries of Sittingbourne / Kemsley or any other local settlements
3. The status of the application site as part of a strategic allocation in the Council’s draft Core Strategy ‘Bearing Fruits’ (2012)

Taking each turn, my comments are as follows:

**Lydbrook Close**

It is important to acknowledge that Nicholls Transport is an important local business and its contribution to the local economy includes the employment of 74 people, but the location of their existing site - in a residential area (the site is enclosed by housing – about 45 dwellings - on all sides) and served by a very poor quality vehicular access on to the A2 (Lydbrook Close cul-de-sac), which itself is of a relatively poor standard at this location and arguably ill-suited to significant flows of heavy goods vehicles – is a constraint both on the operational efficiency of the business and the prospects for growth but also has adverse implications for the amenity of local residents and for highway safety in the vicinity.

The Planning Statement deals with these issues on Pages 12 to 15. Re-location to a purpose built site as proposed would – as explained at Paragraph 5.23 – allow the company to fulfil its “commercial objectives for modernisation and competiveness” and create an opportunity to prevent the future use of the Lydbrook Close site for unsuitable commercial uses (notably the current haulage use and, as put forward in the draft legal agreement that accompanies the application, general industrial (B2) and storage / distribution (B8) uses).

**Alternative Sites**

In conjunction with my colleagues and I, the applicant and his agents have undertaken a thorough search for suitable alternative re-location sites within the defined built-up area boundaries with the aim of avoiding the need to develop a countryside site. This work is discussed on Page 15 of the Planning Statement and is presented in full in a separate report, ‘Assessment of Potential Relocation Sites’ (2011 and updated April 2012).
To summarise, the exercise used a number of criteria such as access to local highway network, access to strategic motorway network, proximity to key customers and proximity to incompatible uses to assess the different sites at Eurolink, Ridham / Kemsley and at Neats Court. The matrix on Page 27 of ‘Assessment of Potential Relocation Sites’ sets out the results, and the application site (‘land north of Swale Way’) scored significantly higher than the other three areas, each of which would impose significant constraints on the operation of the business.

Together with my own consideration, Economic Development colleagues have considered this exercise and, as noted above, welcome this application and conclude that it seems a “sound and sensible proposal”.

Core Strategy status

As noted above, the application is allocated for employment development in the emerging Core Strategy and a draft for consultation, known as ‘Bearing Fruits’, was published earlier this year. The proposed allocation of this site did not generate significant objection.

Whilst the grant of planning permission in the near future would remove the ability of objections to be considered at an Examination in Public and / or the ability of Members to change their approach to this site, without prejudice, there seems a strong likelihood that the Council would continue to see development of this site as strongly in conformity with its ‘employment led’ strategy.

As such, and taking a holistic view of the three strands of the argument being presented by the applicant, I conclude that there is a strong argument for accepting the principle of the proposed development despite the conflict with the rural restraint policy of the adopted Swale Borough Local Plan 2008. In reaching this view, I have kept in mind the relevant policies of the NPPF (which I have set out in the ‘Policies’ section above) and note, in particular, the ‘economic role’ proposed for the planning system: “contributing to building a strong, responsive and competitive economy.” The proposed development would accord with this.

Highway Safety / Convenience

Given the nature of the proposed use and mindful of the concerns of Iwade Parish Council and the local residents who’s comments I summarise above, this is clearly an important material consideration. As such, the Transport Assessment (TA) submitted with the application and the draft Travel Plan (TP) – which sets out measures to maximise the use of non-car modes of travel - have been carefully scrutinised by both the Highways Agency (HA), who are responsible for the strategic road network which includes the A249 and the M2, and Kent Highways Services (KHS), who are responsible for the local road network, which as described above includes Swale Way – from which the vehicular access would be taken – and Grovehurst Road, which via Swale Way, links the site to Sittingbourne town centre and Iwade.
An important consideration here is the potential traffic flow and highway convenience benefits that would arise from the termination of the use of the Lydbrook Close site by HGVs and other commercial vehicles. The TA suggests, based on modelling in June 2010, that these amount to a maximum of 248 trips per day, including 86 HGV trips.

The HA have considered the TA and, as noted above, raise no objection to the proposal.

Kent Highways Services acknowledge that the existing Nicholls Transport at Lydbrook Close is not an appropriate one in highway terms. They also note that the proposed site would not have a detrimental impact on the local highway network and would provide some relief in the vicinity of the current site and at the Key Street roundabout. However, they raise the following four points in respect of the proposed access arrangements:

- Traffic speed data for traffic passing the proposed vehicular access on Swale Way is required;
- Further assessment of the extent of westbound vehicles queuing back from the Grovehurst Road interchange;
- Further consideration of the need, or otherwise, for the proposed traffic signal control of the site access junction (see discussion of developer contributions below); and
- Consideration should be given to the provision of a pedestrian / cycle crossing to Swale Way.

The applicant’s agents have provided further information in response to these points, and KHS are now satisfied that the first two bullet points have been satisfactorily addressed – particularly with regard to the ability of HGVs to turn right when leaving the site - and therefore that the proposed vehicular access is acceptable.

With regard to the possible subsequent introduction of traffic signals and the pedestrian / cycle crossing issue (including the provision of a ‘refuge island’ in the middle of Swale Way to assist pedestrians and cyclists), consideration is on-going, and I will report Kent Highways Services’ further views and any additional comments on behalf of the applicant at the meeting.

Landscape / Visual Amenity

As set out above, this application proposes the provision of significant areas of landscape planting some of which would be on raised bunds designed to assist the process of screening the development from public vantage points, notably the road and rail routes that enclose the site. I am mindful that a use of the type proposed has the potential for very harmful visual and landscape impacts. However, having carefully considered the proposed landscaping scheme and earthworks, the existing quality of the landscape - both on the site itself and in the vicinity – and the guidance in the Swale Landscape Character and Biodiversity Appraisal (2011), I conclude that the development would not have unacceptable impacts in this regard, and furthermore that in the longer term the landscape scheme has the potentially to actually enhance landscape quality.
Countryside Gap

As noted above, the application site sits within the Important Countryside Gap between Sittingbourne and Iwade and within the Strategic Gap between the former and the Medway Towns. Policy E7 Swale Borough Local Plan (SBLP) 2008 seeks to prevent the merging of settlements and the piecemeal erosion of land within the gaps “or its rural, open and undeveloped character.”

It seems clear to me that this proposal will have an impact, particularly on the Important Countryside Gap between Sittingbourne and Iwade. However, I am mindful that the draft allocation of this site for employment development in the emerging Core Strategy implies that the retention of this site free from development is not of over-riding importance, especially given the site’s confinement by roads and other urban influences, and, arguably, given an acceptable degree of separation between Iwade and Sittingbourne would be retained on the NW side of the A249 towards Iwade.

With the above in mind, I am content that although there is a degree of conflict between the proposed development and Policy E7 of the SBLP 2008, this is insufficient to justify refusal of the application.

Ecology

The ES that accompanies this planning application includes a chapter devoted to consideration of the potential implications of the proposed development for biodiversity both within the application site and on the designated sites in the vicinity, notably the SPA, SSSI, Ramsar Site to which I refer above.

I have consulted both Natural England and the Ecologists at KCC and, as set out above, it will be noted that neither raises objection to the application. They consider, subject to suitable planning conditions (which are set out above), that the mitigation proposed is acceptable.

Members will note that this application offers the opportunity for significant biodiversity enhancement; not only will the existing ditch (and ditch margins) be retained, four new balancing ponds will be provided and, as shown, on the submitted detailed landscape plan significant new tree, shrub and other planting will be undertaken.

Finally, I have had regard to the possible need for an Appropriate Assessment (AA), under Regulation 48 of the Conservation (Natural Habitats etc) Regulations (1994). As Members may be aware, an AA needs to be carried out where a significant impact on internationally designated nature conservation sites (SPA and Ramsar sites) is anticipated. In this instance, however, I agree with the conclusion of the ‘Screening of Effects on European Sites (2012)’ report that accompanies the planning application, namely that the development “… may be screened out as being unlikely to lead to… significant adverse effects on the Swale SPA and Ramsar sites or on the Medway Estuary and Marshes SPA and Ramsar sites.”
Residential Amenity

Dealing first with the proposed development, as set above there are two areas of residential development in the vicinity of the proposed development – the village of Iwade and north-western part of the settlement of Kemsley. There are also a small number of individual dwellings on Grovehurst Road, which are relatively close to the application site. The relationships between all of this residential development and the application site are described more fully in the ‘Relevant Site History & Description’ section above. Although development of the type proposed, especially where as is the case here the use would operate round-the-clock, has the potential to detract from residential amenity, I note that heavily used roads separate the site from the residential development. I also note that between the Kemsley housing and the site the intervening road – Swale Way – is elevated and that raised bunds – albeit with a gap between them - are proposed on the west side of the site, where it faces the housing at Iwade. I am also mindful that there is some separation (described above) between the housing and the site. In addition, I have had regard to the relevant chapter of the ES (11 – noise and vibration), which concludes that neither the construction phase or the on-going operation of the development will result in significant noise effects on residents of the wider area. I note that Paragraph 11.8.3 states that for the operational phase: “The predicted noise levels at all receptor locations are shown to be considerably below the Council’s criteria of a rated noise level no more than 5dB (decibels) above background.”

Finally, Members will note that the Head of Service Delivery raises no objection, having considered both the potential noise implications and the likely impacts of the proposed scheme of external lighting.

As explained above, the application also has the potential to remove the current haulage use from the Lydbrook Close. In addition, a draft S106 agreement has been put forward (discussed below) with the aim of precluding the future use of the site for general industrial (Class B2) or storage and distribution (Class B8) uses. The prevention of the future use of the Lydbrook Close for these potentially noisy and otherwise disturbing uses would amount, in my view, to a significant material consideration weighing in favour of approval.

Sustainable Design and Construction

BREEAM (Building Research Establishment Environmental Assessment Method) pre-assessment reports have been provided for the office building and the workshop and warehouse. These state that a rating of ‘good’ will be achieved for the three buildings. The Planning Statement states though: “...experience suggests that the rating likely to be achieved on development may well be ‘very good’. “ Accordingly, a condition is included above requiring that the ‘very good’ level be achieved.

Members will note, as set out in the Environmental Statement, that the application includes the provision of 115 square metres of solar photovoltaic panels, eight square metres of solar hot water panels and an air source heat pump would – according to the Energy Statement – meet the heating demand in the offices.
In addition, Members will have noted the reference above to a draft Workplace Travel Plan. This sets targets for an improvement in the modal split between car and non-car trips in favour of the latter when compared to Nicholls Transport's existing site. In particular, on Page 25, it aspires to the following:

- 10% increase in the number of single occupancy car driver trips
- 8% increase in car sharing
- 2% increase in cycling

Members will also have noted above that site layout envisages the provision of a cycle/pedestrian path connecting the existing underpass which links the site to the Gazeley development (which includes the Morrisons buildings) and Swale Way at the southern end of the site. A condition is included above to ensure that this is provided before the development is first used.

**Flood Risk / surface water drainage**

As explained above, part of the northern end of the application site lies in an area considered to be a risk of tidal flooding (flood zone 3a). However, the application is informed by a Flood Risk Assessment and the risk of tidal flooding is considered to be low.

To deal with the increased surface water runoff as a result of the introduction of hard surfaced areas to approximately 4.7 hectares, or 39 percent, of the site for attenuation ponds are proposed.

I note that the EA raise no objection, and subject to the conditions they recommend in respect of details of the foul and surface water drainage scheme and the finished floor levels of the building (set out above) I consider that the proposal is acceptable in terms of the implications for flood risk and drainage.

**Loss of Agricultural Land**

It is understood that much of the application site may constitute best and most versatile agricultural land. However, I note the applicant’s agent’s comments on this issue – see Paragraphs 5.87 to 5.90 of the Planning Statement – and, in particular that more than 50% of the application site is not suitable for modern agricultural on account of the configuration of the site or the topography and drainage. As such, the amount of potential agricultural land that would be lost under this proposal would be less than five hectares. He also notes that the emerging Core Strategy acknowledges that on various sites around Sittingbourne where the release of green-field land is proposed best and most versatile agricultural land is likely to be lost. With these points in mind, I conclude that while the loss of this potential agricultural land would be regrettable, it does not amount to a material consideration weighing significantly against the grant of planning permission in this instance.
Developer Contributions

This application is accompanied by a draft Section 106 that proposes obligations in respect of the following:

- the use of the Lydbrook Close site;
- the provision of apprenticeship;
- land for potential highway improvements to Swale Way and the junction with the Grovehurst Interchange; and
- the upgrade of the junction of the proposed vehicular access with Swale Way

I consider that broadly these are the topic areas that the Section 106 agreement will need to cover, and taking each in turn have comments as follows:

**Lydbrook Close**

As mentioned above, this is an important potential benefit and I am keen to ensure that, in the event that this application approved and subsequently that Nicholls Transport vacate the Lydbrook Close site, the legal agreement goes as far as possible to protect the surrounding community from the possibility of unsuitable commercial land uses taking place at the site in the future.

As drafted, the S106 agreement relates only to the five year period after Nicholls Transport vacate the site and only seeks to preclude the use of the site for general industrial (Class B2) and storage / distribution (Class B8) purposes.

It is my view that the time period needs to be extended to at least ten years and that the range of uses precluded needs to be broaden to include haulage use (which is *sui generis*, ie a particular use not falling within a Use Class) and other commercial uses (ie those not within use class B2 or B8) with the potential to detract from residential amenity in the vicinity of the site.

I would welcome Members’ views on this.

**Provision of Apprenticeship**

As drafted, the S106 agreement provides for a single apprentice to be taken on (or retained if the company already has one) for a minimum of three years. The individual would work either in the workshop or as a transport assistant in the office, and would be supported by the developer for college attendance.

As noted above, however, the Economic Development Officer has suggested alternative wording, which is consistent with the approach taken on other recently-approved developments. I consider that the amended wording should be used in this instance.

**Land for highway improvements to Swale Way and the junction with the Grovehurst Interchange**
It is acknowledged that in due course this junction will need to be comprehensively upgraded. The position of the application site immediately to the east of the eastern side of the existing junction is such that the design of an upgraded junction would be likely to need to use land at the southern end of the application site. The applicant is willing to provide land for this purpose at nil cost, and has provided a plan identifying 3.2 hectares for this purpose. However, the land transferred would only be that required for the highway improvements and may well amount to considerably less than the whole of the 3.2 hectares.

The land would be kept available for possible transfer to the County Council for this purpose for ten years from the date of first occupation of the development.

**Highway improvements to Swale Way**

The draft S106 agreement includes clauses to secure the bi-annual monitoring of traffic flow for ten years from the first occupation of the development on the site access road and on Swale Way with the objective that if this monitoring should show that either the two way daily flow on the site access junction exceeds 300 movements or the two way daily flow on Swale Way exceeds 13,000 movements then a traffic light controlled junction (to an agreed specification) would be installed within 12 months of a scheme being agreed.

As noted above, I await the final views of KHS with regard to the question of whether or not the proposed signal controlled junction is required, and will update Members at the meeting.

I consider that the S106 agreement will also need to include wording to secure the delivery of the Travel Plan.

Delegation is sought to conclude the negotiation of the Section 106 Agreement.

**Summary and Recommendation**

The above discussion considers the principle of the proposed development of a haulage facility (to accommodate the re-location of the existing Nicholls Transport depot from Lydbrook Close and a 15% expansion of the business) and the potential detailed implications of the development under the following sub-headings:

- highway safety and convenience
- landscape and visual amenity
- countryside gap
- residential amenity
- ecology
- sustainable design and construction
- flood risk and surface water drainage
- loss of agricultural land
- developer contributions
With regard to the principle, it is acknowledged that the site falls outside the built-up area boundary in the adopted Local Plan and as such that it is subject to the policy of rural restraint. However, having had full regard to the arguments put forward on the applicant’s behalf, I conclude that in the particular circumstances of this proposal (including the benefits of re-location from Lydbrook Close and the allocation of the application site in the emerging Core Strategy) Members should agree to the principle of the proposed development.

With regard to the details, having evaluated the scheme under the above sub-headings, I conclude that unacceptable adverse impacts will not arise from this proposal and that where there are conflicts with the Local Plan these are not sufficiently substantial as to justify refusal.

I therefore conclude that the development is in accordance with the NPPF and the South East Plan and that although the development I contrary to Policy E6 of the Local Plan this does not amount, in this instance, to a reason for refusal.

I therefore recommend - subject to the further comments of Kent Highways Services (KHS) with regard to the possible signalisation of the proposed vehicular access, and any further conditions required by KHS, the comments of Kent Police, and the signing of a Section 106 Agreement - that planning permission be granted.

**Background papers**

(1) Application papers and correspondence for SW/12/0816
(2) Application papers and correspondence for SW/95/778
(3) Appeal papers and correspondence for SW/95/778
(4) Application papers and correspondence for SW/95/520
(5) Appeal papers and correspondence for SW/95/520
(6) Application papers and correspondence for SW/08/0177.
The Major Projects Officer reported that, further to KHS comments on page 98 and the discussion on page 107 of the report, they had added that they were happy for wording to be included in the Section 106 Agreement to ensure that if the relevant traffic flow thresholds were met (300 movements on the access road or 13,000 on Swale Way per day), the junction would be converted to traffic signal control. The Major Projects Officer further reported that with regard to the provision of a pedestrian/cycle crossing to Swale Way (to connect with the foot-cycle way on the southern side of the road), discussions with the applicant were on-going and KHS were confident that the required amendments to accommodate a refuge area at the centre of the carriageway could be provided within the land available on the highway land adjacent to the site. KHS had also requested a further condition to secure the provision of covered cycle parking within the development. The Major Projects Officer advised that Kent Police raised no objection. They noted various beneficial crime prevention measures included within the application, and also identified that traffic flow/road safety at the site access was an important issue. They also raised the issue of security with regard to site access arrangements. They suggested that, in addition to the proposed gates, consideration be given to the provision of a gate house and/or re-positioning the office building to improve surveillance of the operational yard. The Major Projects Officer advised that the layout did not require amendment. The Major Projects Officer reported that with regard to apprenticeships, in addition to what was proposed in the report by SBC’s Economic Development Officer, which related to a work-placement during the construction phase, the Section 106 would also need to ensure the provision of an apprentice during the operational phase for a minimum of three years after the development first operates.
Item 2.3 APPENDIX B

The Major Projects Officer advised that with regard to condition (17) (BREEAM, rating) the report, as worded, required a ‘very good’ rating for all the buildings. The applicant had asserted that, although the submitted documents identified the possibility of achieving ‘very good’, they were not committed to this and therefore wished to see the condition amended to require ‘very good’ only for the office building, and not for the ‘workshop’ or ‘warehouse’ buildings which should be built to the ‘good’ standard. The Major Projects Officer stated that whilst this was regrettable, he respected their view that achieving ‘very good’ for all the buildings would be “very difficult and very expensive” and Members would also note the lack of a Local Plan policy dealing with BREEAM ratings. He therefore recommended that Members agreed to the amendment of condition (17).

The Major Projects Officer further advised that, with regard to the Section 106 agreement and the future use of the Lydbrook Close site, the applicant was offering to: “.amend the draft Section 106 Agreement to preclude Class B2 [general industrial] and Class B8 [storage and distribution] uses but to include “haulage use” and to extend the obligation from five to seven years rather than “at least ten years”, as suggested in the report. The Major Projects Officer added that the Section 106 Agreement should be worded to ensure that the haulage use and indeed Class B2 and B8 uses could never take place on the site, rather than this part of the agreement being time-limited. He concluded that once Nicholls Transport had vacated the site, the residents living near it should be permanently protected against the possibility of such un-neighbourly uses taking place there.

The Major Projects Officer reported that the applicant’s agent had made various further points: noting that the site was identified by Nathaniel Lichfield & Partners in the Employment Land Review as the best performing potential employment site in the Sittingbourne area and that review had informed preparation of the Draft Core Strategy; worth noting that the applicants had gone to considerable lengths to design a scheme to minimise its visual impact from residential properties in Iwade, undertaking its own public consultation exercise. The proposed bunding and landscaping to the A249 boundary would effectively screen the development in views from Iwade; and the applicant considered that the Strategic Gap policy no longer applies as Strategic Gap policy in the Kent County Structure Plan was not carried forward into the South East Plan; the proposed development would also positively enhance biodiversity; and he noted that Natural England concurred that an Appropriate Assessment was not required.

The Major Projects Officer disagreed with the suggestion that the Strategic Gap policy no longer applies on the basis that the adopted Local Plan had a saved Policy, E7, which referred to Strategic Gaps and the adopted proposals map showed such a gap between Sittingbourne and the boundary with the Medway Towns. Although, as noted on page 108, this did not amount to a reason for refusal.

The Major Projects Officer therefore sought delegation to approve the application subject to the signing of a suitably worded Section 106 Agreement (to include addressing the matters described in respect of apprentices and the future use of the site), the resolution of the outstanding highway issue (namely the design of the improvement to Swale Way to accommodate the central refuge), the amendment of condition (17) and the extra condition to secure the provision of covered cycle parking.
Mr Sharpe, the Agent, spoke in support of the proposal.

In response to queries, the Major Projects Officer clarified that the proposed refuge area was to enable pedestrians/cyclists to negotiate Swale Way, not to prevent HGVs from turning right.

Members raised the following points: increased lorries turning right onto the northern relief road could make the junction dangerous, especially given proximity to pedestrian refuge; residents of the Badgers Croft estate were being let down by previous planning decisions and potentially by the design of the proposal; need to be clear on the level of apprenticeship proposed; the proposal would offer enormous economic benefits for the area; principle of development should be accepted, subject to resolving any technical issues and potential flooding issues should be resolved.

Resolved: That application SW/12/0816 be delegated to Officers to approve subject to conditions (1) to (26) in the report, the signing of a suitably worded Section 106 Agreement (addressing matters in respect of apprentices - with regard to the operational phase the requirement is for either one three-year apprenticeship or three one-year placements - and the future use of Lydbrook Close site as well as the other points set out on pages 111 and 112 of the report), the resolution of the outstanding highway issue (namely the design of the improvement to Swale Way to accommodate the central refuge), the amendment of condition (17) and the extra condition to secure the provision of covered cycle parking.
Location: Ambleside, Ennerdale, Faversham, Kent ME13 8JH

Proposal: Demolition of existing flats. Erection of 14 no dwellings with associated parking

Applicant/Agent: Ink Developments, C/O Mr Colin Sharpe, Architects Plus, Tubbs Hill House, London Road, Sevenoaks, Kent, TN13 1BL

Application Valid: 2 July 2012

8 Week Target: 27 August 2012

13 Week Target: 1 October 2012

And as amended by drawings received 21st September 2012

Delegate to officers to enter into Section 106 Agreement for the provision of appropriate contributions towards youth facilities, play equipment, waste and household bins and monitoring fee.

Conditions/Grounds

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.


2. The development hereby approved shall be carried out in accordance with the following approved plans:

   12646 PL02 Rev A; 12646 PL03; 12646 PL04 Rev A; 12646 PL05 Rev A; 12646 PL06; and 12646 PL07.

   Grounds: For the avoidance of doubt.
Pre-commencement conditions

3. 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.

Grounds: To ensure any land contamination is adequately dealt with, pursuant to policy E1 of the Swale Borough Local Plan 2008.

4. 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.

Grounds: To ensure any land contaminated is adequately dealt with, pursuant to Policy E1 of the Swale Borough Local Plan 2008.

5. 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 of the proposed remediation works 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.
6. Prior to the commencement of the development details of proposed means of foul and surface water sewerage disposal shall be submitted to and approved in writing by Local Planning Authority. The approved details shall be implemented before the first use of the development hereby permitted.

Grounds: In order to prevent pollution of water supplies and in pursuance of Policy E1 of the Swale Borough Local Plan 2008.

7. Prior to the commencement of the development hereby permitted, details of facing materials to be used on the development shall be submitted to and approved in writing by the Local Planning Authority and the development shall be implemented in accordance with the approved details.

Grounds: In the interests of visual amenity and in pursuance of Policies E1 and E19 of the Swale Borough Local Plan 2008.

8. Prior to the commencement of the development hereby permitted full details of both hard and soft landscape works shall be submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved. These details shall include existing features, planting schedules of plants, noting species, plant sizes and numbers where appropriate, means of enclosure, hard surfacing materials, and an implementation programme.

Grounds: In the interests of the visual amenities of the area and in pursuance of Policy E1 of the Swale Borough Local Plan 2008.

9. Prior to the commencement of the development hereby permitted details shall be 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 and retained in perpetuity.

Grounds: In order to ensure sustainable development pursuant to Policy E1 of the Swale Borough Local Plan 2008.

10. Prior to the commencement of the development hereby permitted a programme for the suppression of dust during construction of the development shall be submitted to and approved by the Local Planning Authority. The measures shall be employed throughout the period of demolition and construction unless any variation has been approved by the Local Planning Authority

Grounds: In the interests of residential amenity and in pursuance of Policy E1 of the Swale Borough Local Plan 2008.
11. Details in the form of cross-sectional drawings through the site, of the existing and proposed site levels shall be submitted to and approved in writing by the Local Planning Authority before work commences and the development shall be completed strictly in accordance with the approved levels.

**Grounds:** In order to secure a satisfactory form of development having regard to the nature of the site in accordance with Policy E1 of the Swale Borough Local Plan 2008.

*Post-commencement conditions*

12. 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.

**Grounds:** In the interests of the visual amenities of the area and in pursuance of Policy E1 of the Swale Borough Local Plan 2008.

13. Upon completion of the approved landscaping scheme, any trees or shrubs 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.

**Grounds:** In the interests of the visual amenities of the area and in pursuance of Policy E1 of the Swale Borough Local Plan 2008.

14. The areas shown on the drawing number 12646 PL02 Rev A as car parking 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) Order 1995 or not, shall be carried out on the land so shown 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 dwellings hereby permitted.

**Grounds:** Development without adequate provision for the parking or garaging of cars and cycles is likely to lead to car parking inconvenient to other road users and detrimental to amenity, and loss of cycle storage and in pursuance of Policies E1, T3 and T4 of the Swale Borough Local Plan 2008.
15. The dwellings hereby permitted shall not be occupied until the visibility splays shown on the submitted drawings have been provided with no obstruction to visibility at or above a height of 1.05 metres above the nearside carriageway level. The visibility splays shall thereafter be maintained free of obstruction at all times.

**Grounds:** In the interests of highway safety and in pursuance of Policies E1 and T1 of the Swale Borough Local Plan 2008.

16. Before the first occupation of a dwelling the following works between that dwelling and the adopted highway shall be completed as follows:

   i. Footways and/or footpaths shall be completed, with the exception of the wearing course;
   
   ii. 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.

   **Grounds:** In the interests of highway safety and in pursuance of Policies E1 and T1 of the Swale Borough Local Plan 2008.

17. No construction work in connection with the development shall take place on any Sunday or Bank Holiday, nor on any other day except between the following times:-

   Monday to Friday 0730 – 1900 hours, Saturdays 0730 – 1300 hours unless in association with an emergency or with the prior written approval of the Local Planning Authority.

   **Grounds:** In the interests of residential amenity and in pursuance of policy E1 of the Swale Borough Local Plan 2008.

18. During construction of the development adequate space shall be provided on site, in a position previously agreed by the Local Planning Authority to enable all employees and contractors vehicles to park, load and off load and turn within the site.

   **Grounds:** In the interests of highway safety and convenience in accordance with Policy E1 of the Swale Borough Local Plan 2008.
19. The proposed road, including footpaths and turning spaces where applicable, shall be constructed in such a manner so as to ensure that each dwelling before it is occupied is served by a properly consolidated and surfaced footpath and carriageway to at least base course level between the buildings and the public highway.

**Grounds:** To ensure adequate access, in pursuance of Policy E1 of the Swale Borough Local Plan 2008.

20. Notwithstanding the provisions of Class A, Part 2, Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (as amended), no gates, fences, walls or other means of enclosure shall be erected or provided in advance of any wall or any dwelling fronting on the central car parking and amenity area highway without the consent in writing of the Local Planning Authority.

**Grounds:** In the interests of residential amenity and in pursuance of Policies E1 and E19 of the Swale Borough Local Plan 2008.

21. The cycle parking areas shown on plan 12646 PL02 Rev A shall be provided before any of the dwellings hereby approved are first occupied and shall subsequently be retained in perpetuity.

**Grounds:** In the interests of encouraging non-car modes of travel, and in pursuance of Policy T4 of the Swale Borough Local Plan 2008.

**Reasons for Approval**

Having taken all material considerations into account, it is considered that subject to compliance with the attached conditions, the proposal would be in accordance with the development plan and would not cause unacceptable harm to the amenities of the area or prejudice highway safety. In resolving to grant permission, particular regard has been had to the following policies E1, E10, E19, H2, T1, T3 and T4 of the Swale Borough Local Plan 2008.
**Description of Proposal**

Planning permission is sought for the demolition of the existing flats and the erection of thirteen 3 bedroom terrace house and one 2 bedroom bungalow for a disabled person at Ambleside, Ennerdale, Faversham.

Firstly, and very importantly, it should be noted that this report only seeks approval of the Section 106 agreement attached to any permission granted for this proposal: as there is only a single objection raising concerns about the scheme (summarised below), and as the proposal is in accordance with all relevant planning policy, the planning application can be approved under delegated powers. It is the approval of the details of the Section 106 Agreement and for the Council to enter into the Agreement that is sought. However, as I anticipate that Members would be interested in learning a little of this scheme, I therefore include details of the application proposal within this report.

The present building is placed on a North/South axis; the proposed development would sit on an East/West axis, and would consist of two terraces of properties facing each other. With the exception of the abovementioned 2 bedroom bungalow (which would be situated within the northwest corner of the plot), all the properties would be three bedroom houses. Each property would have a single parking space to the front, and a parking court for a further thirteen cars would be accommodated on the area occupied by the existing parking court.

All of the proposed properties would fall into the category of ‘affordable housing’; the thirteen houses being part of a shared ownership scheme, with the bungalow being a social rented property.

The application is accompanied by a Planning Statement, a Noise Impact Assessment (due to the proximity of the railway line) and details of a neighbourhood consultation exercise carried out by the applicant.

**Relevant Site History and Description**

The present building is a rather plain two storey complex of flats and studios providing sheltered accommodation for elderly people, which is now nearly empty, due to its inability to comply with the contemporary requirements for such use. Most of the residents have already been re-housed in more suitable accommodation.

The site is surrounded on the eastern, northern and western sides by housing, all of which is contemporary in time with the present building, having been constructed in the late 1960s. To the south and down an embankment, there is the main London/Canterbury railway line. The site is situated toward the eastern boundary of Faversham, within the built-up area and outside of the Conservation Area.

The application is accompanied by a Planning Statement, a Noise Impact Assessment (due to the proximity of the railway line) and details of a neighbourhood consultation exercise carried out by the applicant.
The present building was approved in 1968 under reference NK/7/67/231. There is no other planning history for the site.

**Views of Consultees**

Kent Police recommend certain safety elements, including more parking provision to the front of the properties rather than the parking court. However, as this would defeat the design object of creating a pleasant open space, I do not recommend approval of this suggestion.

The Head of Service Delivery raises no objection subject to conditions relating to contaminated land assessment, details of remediation works, programme of suppression of dust, survey of location and nature of asbestos and an action plan, and restriction of hours of construction. The condition suggested in respect of asbestos is not included above, because this matter falls to be dealt with under other legislation.

Faversham Town Council raises no objection, subject to conditions regarding elevations, materials and landscaping.

Kent Highways Services raise no objection to the proposal subject to certain amendments. Those amendments are shown on drawing ref 12646 PL02 Rev A, submitted on 21st Aug 2012.

**Other Representations**

One letter of concern has been received making the following comments:

- No provision for bicycle storage has been included in the design; the proposal does not meet the Kent Vehicle Parking Standards, 41 spaces should be provided for this development.

New drawings show an increase in cycle parking provision which I consider to be acceptable.

**Development Plan policies**

The following policies of the Swale Borough Local Plan 2008 are relevant:

E1- General Development Criteria
E10- Trees and Hedges
E19- Design
H2- Providing for new housing
T1- Providing safe access for new development
T3- Vehicle parking for new developments
T4- Cyclist and pedestrians
**Discussion**

As noted above, the proposal itself does not require approval from Members as under the Council’s Standing Orders, the application can be decided under powers delegated to Officers to decide the application. As such, I have not provided a full assessment of the planning implications of the development here. I can advise though that the implications of the development – in particular, for residential amenity, the character and appearance of the area and highway safety – have been carefully considered, and the development would not have significant adverse planning implications.

Only the details of the S106 Agreement, and authority to enter into the Agreement, require the approval of Members. This is an unusual case, where a planning decision can be delegated for this (albeit small) Major Project, as adverse comments sufficient to trigger reporting to the Planning Committee have not been received.

With regard to the Section 106 Agreement, contributions are required as follows:

Kent County Council require £159.18 to be spent on youth facilities.

The Greenspaces Officer requires a contribution of £11,394.74. As thirteen of the fourteen proposed properties would be three bedroomed houses, it is envisaged that they will be occupied by families with children, hence a need for new play equipment. Although specific details have not been provided, it is envisaged that it would be placed on a site to benefit the residents of the Love Lane site as a whole.

There is also a requirement for 14 waste bins and 14 recycling bins, and a total contribution of £1,049.44 is needed to pay for them.

The Monitoring Fee (5% of total for the above) amounts to £630.17.

Therefore a total contribution of £13,233.55 is required. The applicant agrees to pay all of the above, and to pay the Council’s legal fees. This mainly refers to costs for Officer time spent working on the documentation by the Legal team.

The S106 Agreement will also require that the dwellings are retained in perpetuity as affordable homes.

The terms of the S106 requirements are relatively simple, with relatively small amounts of monies being requested and agreed to, and with sensible trigger points agreed for payment.

**Recommendation**

I therefore recommend that the details of the proposal be noted, and that Members delegate authority to officers to enter into a Section 106 agreement to include contributions and requirements as set out above, or with such minor refinements as may be required.
List of Background papers

1. Application Papers and Correspondence for Application SW/12/0758.
Location: Great East Hall, Great East Hall Way, Murston, Sittingbourne, Kent, ME10 3TQ

Proposal: Application to modify the Section 106 Agreement attached to planning permission SW/02/1180 (outline approval for mixed use development) to allow the amount and timing of the residual monies (remaining after payment of Northern Relief Road contributions) to be paid for community facilities at East Hall Farm to be altered.

Applicant/Agent: Thomas Woollard, Countryside Properties, Countryside House, The Drive, Brentwood, Essex, CM13 3AT

Application Valid: 1 October 2012

8 Week Target: 26 November 2012

Grant to modify planning obligations pursuant to Section 106 Agreement attached to planning permission SW/02/1180

Subject to: any further representations (closing date 6 November 2012) and clarification of the final Northern Relief Road payment to Kent County Council.

Reasons for approval

Having taken all material considerations into account, it is considered that the proposal would be in accordance with the development plan and would not cause unacceptable harm to the amenities of the area or prejudice highway safety or convenience. In resolving to grant this modification of the Section 106 particular regard has been had to the following policies: E1, E16, E19, H2, H5, H7, T1, T3, T4, C1, C2 and C3 of the Swale Borough Local Plan.

Description of proposal

This application seeks approval for the variation of the Section 106 Agreement that accompanies the outline planning permission (reference SW/02/1180) for the development of East Hall Farm (also known as Great East Hall) and the adjacent industrial area (Eurolink IV): in particular, the application seeks to alter the timing and the amount of the payments to be made to the Council in respect of the residual money that is to paid following the payment of the Northern Relief Road financial contributions to Kent County Council (KCC).
As Members may be aware, the S106 Agreement required the payment of a contribution of up to £4 million towards the cost of the construction of the Milton Creek Crossing section of the Northern Relief Road (NRR). The payment was capped so that the developer was to contribute no more than 15% of the cost of the project, and the 15% amounts to £3, 222, 216.20 (consisting of £2, 748, 912.82 and indexation of £473, 303. 47)

The residue of the £4 million - when the payment to KCC is deducted from it - therefore amounts to £1, 251, 087.18. Indexation is to be added to this sum, to take account of the effect of inflation, and the total amount that would ultimately be paid would be more than £1.25 million though the extent to which this is the case depends upon the prevailing rate of inflation and the length of time it takes for the dwellings to be built out.

The Section 106 Agreement requires (at Paragraph 19.3) that this residual amount be paid to Swale Borough Council to be spent on:
"…procuring the construction and fitting out of the Community Hall or any other community infrastructure purposes directly related to the Residential Development as Swale acting reasonably and in consultation with Kent County Council considers to be appropriate in scale and kind to the Residential Development."

The Section 106 Agreement also stipulates (at Paragraph 4.6) that this money should be paid in instalments and the first instalment – of £363, 636 (adjusted for indexation) “…shall be made before the occupation of an additional 50 dwellings following the last payment…“ to KCC for the NRR.

The last payment to KCC for the NRR is to be paid imminently, and I hope to be able to confirm at the meeting that KCC have received the money.

Following discussions with officers, the applicant is proposing that the Section 106 Agreement be varied such that rather than residual payments to the Council to which I refer being paid in instalments tied to the rate of occupation of dwellings at East Hall Farm, that a single, immediate payment of £1, 045, 970.00 [a reduction of £205, 117.10 plus indexation compared to the amount due under the existing arrangement] be made.

I have also discussed with the developer the possibility of re-wording Paragraph 19.3 to give the Council increased flexibility as to how the money is spent to deliver community facilities at East Hall Farm. This issue is considered in the ‘Discussion’ section below.

Finally, I am mindful that Paragraph 19.4.1 requires that any payments to the Council as described above would need to be spent within three years of receipt, and although I would like to hope that whatever community facilities may be agreed for East Hall Farm would be delivered within this length of time, there is a risk that such a programme cannot be achieved .I therefore seek delegation to agree the amendment of the S106 Agreement to refer to a five-year time limit for the money to be spent.
Planning History and Site Description

The outline planning permission for the development of East Hall Farm and which is subject to the Section 106 Agreement the subject of this application was, as noted above, granted under reference SW/02/1180 in July 2004. Since then, a string of reserved matters approvals have been granted for various parcels of housing within the site and for ancillary elements such as the loop road, the bus-only link and landscape planting.

As set out below, and as of July 2012, just under 350 dwellings had been completed on the site; these are spread across Parcels B, B1, B2, C, C1 and D (and have been developed by Bovis, Taylor Wimpey and Countryside Properties). Construction is on-going on all of these except Parcel C, which has been complete for some years. Development is yet to commence on Parcels E, F and G, where approval has been granted for a further 321 dwellings.

In total, approval has been granted for 796 dwellings at East Hall Farm. Members will note that, elsewhere on this agenda, there is an application seeking outline planning permission to erect dwellings on the ‘Primary School and Extension’ site (reference SW/12/0260; site area – 2.0 hectares or 4.94 acres). Although all matters (of detail) are ‘reserved’ for future consideration, the indicative details suggest that 68 could be accommodated on this part of the site. In the event that Members approved this application and the land was built out along the lines suggested indicatively, this would take the total number of dwellings to be built at East Hall Farm to 864.

The Masterplan for East Hall Farm includes the allocation of two plots, on either side of the vehicular access to the site, for the development of a Neighbourhood Centre; the larger parcel – on the north-western side – extends to 1.34 hectares (or 3.32 acres), while the smaller parcel – on the south-eastern side - measures 0.68 hectares (or 1.67 acres) and it is envisaged that facilities such as a community hall and / or a medical centre could be built on it. To date, no development has taken place on either parcel of Neighbourhood Centre land.

The development also includes allotments (1.1 hectares), structural planting (1.2 hectares), water attenuation pond (0.96 hectares), sports fields (2.5 hectares) and other public open space (POS)(0.70 hectares) and these amenities have been provided, though the sports pitches and play areas have not yet been adopted by the Council.
Views of Consultees

Mouchel, acting on behalf of Kent County Council, have written stating that they have no comments to make on the proposed variation of the Section 106 Agreement.

Other Representations

No other representations have been received. The closing date for comments is 6 November 2012, and I will update Members at the meeting.

Policies


Paragraphs 69 to 78 fall under the heading of ‘promoting healthy communities’, and paragraph 70 states that planning policies and decisions should assist with the delivery of ‘…the social, recreational and cultural facilities and services the community needs…’ and, in particular:

- “plan positively for the provision and use of …community facilities (such as local shops, meeting places, sports venues, cultural buildings, public houses and places of worship) and other local services to enhance the sustainability of communities and residential environments…” and
- Ensure an integrated approach to considering the location of housing, economic uses and community facilities and services.”

Swale Borough Local Plan 2008

Policy H7 deals with East Hall Farm and addresses the level of housing to be provided at the site, but does not discuss the issue of community facilities or developer contributions.

Policies C1 and C2, which deal respectively with ‘existing and new community services and facilities’ and ‘housing developments and provision of community services and facilities’ respectively, should also be noted, but do not give a particular guide as to how this application should be dealt with.

Discussions

As noted above, this report deals with three related issue in respect of the provisions of the Section 106 Agreement that accompanies planning permission SW/02/1180. These are:

1. The timing and amount of the payment to be made to the Council as the residue after the 15% contribution has been paid to Kent County Council (KCC) towards the cost of constructing the Milton Creek Crossing section of the Northern Relief Road (NRR):
(2) The time limit for spending the money received under (1); and
(3) The wording of the clause in the Section 106 Agreement that controls how the money received under (1) is spent.

(1) Timing and amount of residual payment to the Council following payment of the NRR contribution to KCC

As explained in the ‘Description’ above, the Section 106 Agreement requires that once a sum equal to 15% of the cost of building the Milton Creek Crossing section of the NRR has been paid, any money remaining when this amount is deducted from £4 million is to be paid to the Council. This amounts to £1,251,087.18, and indexation is to be added to it.

As also explained above, this money is to be paid in instalments (of £363,636) triggered by the occupation of dwellings at the site. In particular, the first instalment – (adjusted for indexation) “…shall be made before the occupation of an additional 50 dwellings following the last payment…” to KCC for the NRR. Members will have noted above that the final payment to KCC has not yet been made, but is imminent. I hope to be able to update Members at the meeting.

Members will appreciate that in the prevailing poor economic conditions the rate at which new houses are being built and occupied at East Hall Farm is very low when compared to pre-2007 rates. Although the monitoring carried out by the Council records dwelling completions, rather than occupations, it demonstrates the rate at which the development has been built-out in recent years:
In July 2009, the number of completions stood at 172;  
July 2010 – 238 completions (66 completed since July 2009)  
July 2011 – 311 completions (73 completed since July 2010)  
July 2012 – 347 completions (36 completed since July 2011)  
These figures represent an average annual rate of completions of just over 58 dwellings. If this rate of completions were to be sustained in the coming years, 50 dwellings would be completed every 10 to 11 months.

Working on the basis that this analysis of past performance is a reasonable basis upon which to predict future rates of construction at the site, and noting that KCC have not yet received the final payment from the developer, the earliest that the Council can expect to receive the first tranche of the residual NRR money, £363,636 plus indexation, is August 2013, and the subsequent three instalments (the first two of £363,636 plus indexation, and a third smaller payment for the remainder) could be expected at intervals of 10 to 11 months until the full sum, of £1,251,087.18 plus indexation, has been paid.

As explained in the ‘Description’ above, and following discussions with my colleagues and I (instigated by officers, and not the developer) the applicant is proposing that the Section 106 Agreement be varied such that rather than the residual payments to the Council being made in instalments tied to the rate of occupation of dwellings at East Hall Farm, that a single, immediate payment of £1,045,970.00 [a reduction of £205,117.10 plus indexation compared to the amount due under the existing arrangement] be made.
The applicant explains that the amount being offered - £1, 045, 970.00 – was:
“…based on the opportunity cost of making a payment now to the Council against being able to invest this money in a new development opportunity and obtaining a return. Our required rate to return is 18%.”

It seems to me that this offer is a reasonable one and will, once the Section 106 Agreement has been amended to give effect to this change and those dealt with elsewhere in the report, enable the Council to push forward – in 2013 - with engagement with the local community and subsequently, once the type of facility to be provided has been agreed and planning permission granted, the construction of the Community Hall or similar building. The alternative - without the amendment of the agreement - is a further delay at least until the first instalment of the money is paid, probably no earlier than the latter part of 2013, because it is my understanding that engagement with the community and the start of planning for the facility will not be able to begin until the first instalment is received.

I therefore recommend that Members agree to this proposed amendment and seek delegation to agree the variation of the Section 106 Agreement to give effect to it, with the money to be paid within 28 days following the signing of the variation of the S106 Agreement.

(2) The time limit for spending the residual payment to the Council following payment of the NRR contribution to KCC

As explained in the description, Paragraph 19.4.1 requires that any payments to the Council as described above would need to be spent within three years of receipt otherwise the money is to be paid to KCC (for expenditure on ‘educational purposes’), and although I would like to hope that whatever community facilities may be agreed for East Hall Farm would be delivered within this length of time, I seek delegation to agree the amendment of the S106 Agreement to refer to a five-year time limit for the money to be spent.

(3) The wording of Paragraph 19.3 of the Section 106 Agreement that controls how the residual payment to the Council is spent.

Paragraph 19.3 of the Section 106 Agreement requires that this money be spent on:
“…procuring the construction and fitting out of the Community Hall or for any other community or infrastructure purposes directly related to the Residential Development as Swale acting in reasonably and in consultation with KCC considers to be appropriate in scale and kind to the development.”

I seek Members’ agreement for delegation to re-word this paragraph to add reference to “the use of a project manager as appropriate”, “payment of any costs associated with community consultation and ancillary costs including planning permission”, “a maintenance sum to be paid to a third party for management / maintenance of the community facility” and to omit reference to “in consultation with KCC”.
Recommendation

I recommend - subject to any further representations (closing date 6 November 2012) and clarification of the timing of the final Northern Relief Road payment to Kent County Council - that Members agree delegation for the variation of the existing Section 106 Agreement in respect of:

1) The timing and amount of the residual payments to the Council such that the existing arrangement which stipulates that the money - £1, 251, 087.18 plus indexation - be paid in instalments triggered by the occupation of tranches of 50 dwellings at East Hall Farm be replaced with a single payment of £1, 045, 970.00 to be made within 28 days of the signing of the deed of variation;

2) The time limit for spending this contribution to be extended from three years to five years.

3) The re-wording of the clause controlling what the money is spent to add reference to “the use of a project manager as appropriate” and “payment of any costs associated with community consultation and ancillary costs including planning permission”, “a maintenance sum to be paid to a third party for management / maintenance of the community facility” and to omit reference to “in consultation with KCC”.

Responsible Officer : Jim Wilson (Major Projects Officer )

List of Background Papers:

1) Application papers and correspondence for SW/12/1256
2) Application papers and correspondence for SW/02/1180
3) Application papers and correspondence for SW/12/0260
Location : Club Room, Breach Lane, Lower Halstow, Sittingbourne, ME9 7DE

Proposal : Change of use from former social club to Class D1 health centre (front ground floor) and residential use in an association with existing neighbouring dwelling (rear ground floor and first floor)

Applicant/Agent : Mr Timothy Box, 1 Club Cottages, Lower Halstow, Kent, ME9 7DE

Application Valid : 29 August 2012

8 Week Target : 24 October 2012

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.


2. The development hereby permitted shall not be carried out otherwise than in complete accordance with drawing 07.10.05, received 17 August 2012.

Grounds: For the avoidance of doubt, in the interests of residential amenity and in pursuance of policies E1 of the Swale Borough Local Plan 2008.

3. Details of any mechanical ventilation system that is to be installed shall be submitted to and approved by the Local Planning Authority and upon approval shall be installed, maintained and operated in a manner that prevents the transmission of odours, fumes, noise and vibration to neighbouring premises.

Grounds: In the interests of residential amenity and in pursuance of policies E1 and E2 of the Swale Borough Local Plan 2008.

3. No construction work in connection with the development shall take place on any Sunday or Bank Holiday, nor on any other day except between the following times:-
Monday to Friday 0730 – 1900 hours, Saturdays 0730 – 1300 hours unless in association with an emergency or with the prior written approval of the Local Planning Authority.

Grounds: In the interests of residential amenity and in pursuance of policies E1 of the Swale Borough Local Plan 2008.

4.
Any Class D1 use of the ground floor of the premises shall be restricted to the hours of 9 am to 6 pm on weekdays, and shall not take place at any time on weekends or Bank Holidays.
Grounds: In the interests of residential amenity and in pursuance of policy E1 of the Swale Borough Local Plan 2008.

Reasons for Approval

Having taken all material considerations into account, it is considered that subject to compliance with the attached conditions, the proposal would be in accordance with the development plan and would not cause unacceptable harm to the amenities of the area or prejudice highway safety or convenience. In resolving to grant permission, particular regard has been had to the following policies: E1, E6, E19, E24, H2, B2 and T3 of the Swale Borough Local Plan 2008.

Description of Proposals

This application seeks planning permission for change of use of the former Lower Halstow Social Club to a mixed use providing a health centre and residential use in association with the existing neighbouring dwelling.

The proposed health centre use will occupy the majority of the ground floor, apart from the rearmost room. The ground floor has been divided up to provide three consulting rooms, a waiting room / reception area and a WC. (The internal works carried out so far do not require planning permission.)

These rooms will provide workspace for a maximum of three complementary / alternative therapists to receive patients. The therapists will include the applicant, who is a clinical hypnotherapist; and I understand that one of the other rooms is to be occupied by a masseur; the remaining third room is yet to be leased at the time of writing.

The first floor of the building, along with the rearmost room at ground floor, will be converted to residential use in association with the existing adjoining property at 1 Club Cottages. The applicant currently lives at no.1, and it is proposed to knock through at first floor to extend the existing residential property across the bar / lounge area of the former club. The rear room at ground floor will provide a utility room in association with the residential use, and will also provide a space for the applicant to keep his dogs whilst seeing clients.

No external changes are proposed to the buildings.
The application is accompanied by various supporting documents, including letters from the Medway NHS Trust, the village hall management trust, and a recognised local property surveyor confirming that the building is not required for the purposes of social, community or commercial uses.

**Relevant Site History and Description**

The application site is the former Lower Halstow Social Club, situated on Breach Lane, just to the south of the main village centre. Lower Halstow Social Club forms the northwestern quarter of a detached building that has been divided into four separate properties, with the remaining three units occupied by residential properties (1 to 3 Club Cottages).

To the south of the site is a row of terraced houses, known as Westfield Cottages. Across Breach Lane to the west of the site is the former social club car park – this was never within the ownership of the Social Club, however, having been used as a car park following a gentleman’s agreement between the Club and the landowner, and is not included within the application site.

The property lies outside of any built up area as defined by the Swale Borough Local Plan 2008.

In 2008 application reference SW/08/0132 sought planning permission for conversion of the former social club into two self-contained residential flats. The planning statement accompanying that proposal commented:

> “The Social Club building is now surplus to requirements of the community due to the lack of support and members, and has poor access arrangements and facilities to continue its present function. The village has other facilities for functions and meetings so there is no other reasonable use the site could be used for except residential accommodation, particularly where the site has no parking provisions.”

That application was, however, refused under delegated powers on three grounds relating to its location within the countryside and outside of the defined built up area boundary; lack of off-road parking facilities; and the unjustified loss of a local service / facility.

The applicant challenged this refusal at appeal, which was ultimately dismissed by the Inspector.

Within his decision the Inspector supported the Council’s reasons for refusal, commenting that the appellant had not demonstrated that the property was no longer required for social or community purposes, “nor is there any evidence that organisations charged with delivering public or private health services, education and skills training or arts, leisure, farm-based retail and other facilities to rural communities have been notified of the availability of the building.”

The Inspector then suggested that residential use in association with the adjoining properties may be an acceptable solution:
“Alternatively, it might be that neighbouring householders might see some merit in purchasing all or parts of the building as a way of extending their own housing accommodation or simply to avoid the risk of dereliction on their property boundaries. Though perhaps not contributing to the rural economy, that would at least secure the future of the building without the harmful implications associated with separate residential use.”

There is no other relevant planning history for the site.

**Views of Consultees**

The Parish Council had not responded at the time of writing. I will update Members of any further representations at the meeting.

Kent Highway Services have no objection, commenting:

> “Whilst it is appreciated that the proposed development makes no provision for off-street parking spaces, it is clear that refusal on those grounds would be difficult to defend at Appeal. The Appeal Decision for the previous application, SW/08/0132, accepted that any reuse of this building will generate on-street parking, as the parking area formerly used by the social club was never an official arrangement, and evidence showed that this only ever existed on a "good will" basis.

> Acknowledgement was also made of the waiting restrictions in existence on Breach Lane, and how enforcement of these could be used to appropriately control parking.”

The Head of Environment and Amenities has no objection.

**Other Representations**

Six letters of objection, from five separate addresses, have been submitted by local residents. Their concerns can be summarised as:

- Lack of parking;
- Potential for customers to park in the existing disabled bay used by one of the residents;
- Highway safety if customers / visitors park on the double yellow lines or the bend in the road;
- Noise and disturbance from use of the ground floor as a gym;
- The upper floor could be converted into a self-contained flat.

One letter of support has been submitted by an adjoining resident, commenting that they have no objection to either element of the proposal subject to no loss of light to their existing windows.
Development Plan Policies

Policies E1 and E6 of the Local Plan seek to protect the countryside for its own sake, and restrict development unless it is shown to be justifiably necessary for the purposes of agriculture, or the acceptable reuse of a building.

Policy RC4 of the Local Plan supports proposals for modest extensions to houses within the countryside, and policy RC1 supports proposals “that would help to diversify the rural economy, provide new rural jobs and services” subject to various amenity considerations. Furthermore policy E6 encourages the reuse of redundant rural buildings. The Council also generally accepts that it is not favourable for properties to remain vacant and that a beneficial use should be found for this site.

However, the loss of a community facility and its replacement with a non-community use must be justified during the course of a planning application. Policy C1 states that “before agreeing to its loss or change of use, the Borough Council will require evidence that the current use is no longer needed and is neither viable, nor likely to become viable.”

Discussion

I believe that this proposal can be examined as two discrete items: the first is use of part of the building as (effectively) an extension to the residential accommodation of 1 Club Cottages; and the second is the use of part of the building to provide a health centre.

Residential use

Local Plan policy C1 states that the loss or change of use of a community or social facility must be justified before the Council will support such proposals. In this instance it is only the community use of the upper floor that is being lost, but the policy tests must still be satisfied.

In this regard the applicant has undertaken a significant amount of work to establish the viability / demand for an alternative community use for the building. The application is supported by letters from the local NHS Trust and the village hall committee, which state that there is no need / demand for additional community use buildings within the area.

The application is also supported by a letter from a respected local lettings agent who states that there is “little interest / demand for commercial use of premises such as this former social club during the last 2-3 years. In my opinion this property does not lend itself to commercial use such as offices or light industrial due to the lack of parking, the size and layout of the property, its very close proximity to residential properties, its relatively isolated rural location and limited access by public transport.”

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I therefore believe that the applicant has satisfied the policy tests for exploring the potential for an acceptable employment or community use of the building, and that there are none in the short to medium term. I therefore consider that the proposed residential use of part of the property is acceptable in principle.

The application site lies outside of the built up area boundary, and thus proposals for conversion of the building to provide new self-contained free-market residential units would be contrary to policy. This is reflected in the refusal of permission for the 2008 application, and its subsequent dismissal at appeal.

However, policy RC4 of the Local Plan (as above) supports extensions to existing residential dwellings within the countryside, and policy E6 supports reuse of existing buildings. I consider that the use of part of the building as an extension to the residential accommodation of the adjoining house is acceptable.

The proposal involves no external changes to the building, and would therefore have minimal impact upon the character and appearance of the countryside. A residential use would also be unlikely to give rise to any serious amenity concerns for the neighbouring residents, particularly in comparison to potentially noisy employment or community uses. In my opinion a residential use is perhaps preferable to any other option – as noted in the inspector’s comments, above.

The residential element of this application would not increase parking requirements at the property.

I would also note that self-contained residential use of the upper floor would require planning permission in its own right. Officers would examine this should the need arise, but I suggest that it is unlikely to be acceptable, given the previous appeal decision as noted above.

**Health centre use**

As above, the proposal seeks to use the ground floor as a health centre for the provision of alternative or complementary therapies with a maximum of three therapists operating from the premises.

I believe that the proposed use accords with the advice of Local Plan policies RC1 and C1, in that the applicant has secured a use that would provide small-scale rural employment and a local service or facility that is not already provided within the village. Furthermore this has been done by making use of an existing building, without the need for significant extensions or alterations.

I note the concerns of some residents that the use as a health centre would be noisy, but I would reiterate that the proposal is not for a gym, but for a complementary therapy clinic. Use as a gymnasium falls within Use Class D2, and separate planning permission would be required should the applicant wish to explore this possibility in future. Use Class D1 encompasses facilities such as doctors, museums, education and training centres, and other similar non-intensive activities.
The proposed complementary health centre use would not, by its very nature, be likely to give rise to significant levels of noise and disturbance for the adjoining residents – hypnotherapy, massage, and other “complementary therapies” are low-key activities on the whole. Furthermore the provision of only three consulting rooms would keep the volume and frequency of customers relatively low, in my opinion, which would in turn keep overall activity levels at the site (and associated noise and disturbance) fairly low.

It should also be noted that the applicant proposes opening hours of 09.00 to 18.00, Monday to Friday, with no weekend or evening working. This will help to ensure that the amenity of the adjoining residents is protected as far as possible, particularly during the sensitive morning and evening times, and at weekends. The above conditions regarding use of the property and hours of work will help to minimise any amenity impacts upon the surrounding residential dwellings, of which, I would note, the applicant is one.

I note the concerns regarding parking provision, particularly with regard to the lack of dedicated off-street parking spaces for the building. However, I would remind Members that Kent Highway Services raises no objection to the proposal, and that the use of the site as a health centre will be during working hours when resident’s parking is in least demand. During my site visits to the village I have noticed that parking spaces are often available to the front of Westfield Cottages during the day, and unrestricted on-street parking is available further north along Breach Lane, just beyond the double yellow lines.

The applicant has submitted a letter in response to the various objections in which they comment:

“The hours of business are detailed in the application as daytime hours and not evenings, therefore parking will not be a problem. We have...taken care to limit the number of therapy rooms at the premises to ensure that any extra vehicles during business hours are more than catered for.

It is not envisaged that the disabled bay will be used by any able-bodied clients, as at present. Any disabled clients would only be invited to use the bay if their disability prevented them from walking from parking spaces.”

**Recommendation**

In my view this proposal complies with Local Plan policies regarding the provision of social and community facilities, and also residential extensions, within the rural area. It should also be noted that the proposed use would be in line with the appeal decision of the Planning Inspector on a previous application in regard to acceptable re-use of the building.

I do not believe that the proposal would give rise to any serious amenity concerns for the surrounding residents and, whilst I note the letters of objection, I do not consider that their contents amount to a reason for refusal.

Taking the above into account I recommend that planning permission be granted.
Responsible Officer: Rob Bailey (Area Planning Officer)

List of Background papers

1. Application papers and correspondence for SW/12/1066.
2. Application papers and correspondence for SW/08/0132.
Location: Wyllie Court, Attlee Way, Milton Regis, Sittingbourne, Kent, ME10 2HB

Proposal: Redevelopment of site for Extra Care scheme comprising a three storey block of flats made up of 38 no: two bed flats and 13 no: one bedrooms flats (51 in total) including front and rear entrance lobbies, receptions area, lounge, activity room, cafe and hair/therapy (all allowing public access), kitchen, laundry and offices. Provision of 21 no: parking bays (including 2 no:disabled) and communal rear landscaped garden.

Applicant/Agent: Mr Warren Myles, C/O Mr Gerald Curtis, The Tooley and Foster Partnership, Warwick House, 116 Palmerston Road, Buckhurst Hill, Essex, IG9 5LQ

Application Valid: 18 September 2012

8 Week Target: 13 November 2012

13 Week Target: 18 December 2012

Subject to: The receipt of revised details to address the outstanding concerns of Kent Highway Services and the applicants entering into a Section 106 Legal Agreement to secure 30% affordable housing for the site, wheelie bin provision and a 5% monitoring charge.

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.


2. The ground floor slab level of the development hereby approved shall be 300mm above that of the existing ground level.

   Grounds: In order to prevent flooding of the development in pursuance of Policy E1 of the Swale Borough Local Plan 2008.
Before development commences:

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


4. Prior to the commencement of development hereby approved, full details of the method of disposal of foul and surface waters which shall include a SUDS scheme shall be submitted to and approved by the Local Planning Authority. The approved details shall be implemented before the first use of the development hereby permitted.

   Grounds: In order to prevent pollution of water supplies and localised flooding and in pursuance of Policy E1 of the Swale Borough Local Plan 2008.

5. The dwellings hereby approved shall achieve at least a Level 3 rating under The Code for Sustainable Homes or any other specification approved by the Local Planning Authority. In the case of the parts of the building not being used residentially, BREEAM ‘very good’ standard or its equivalent shall be achieved. No development shall take place until details have been submitted to, and approved in writing by the Local Planning Authority, which set out what measures will be taken to ensure that the development incorporates sustainable construction techniques such as rainwater harvesting, water conservation, energy efficiency and, where appropriate, the use of local building materials; and provisions for the production of renewable energy such as wind power, or solar thermal or solar photo voltaic installations. Upon approval, the details shall be incorporated into the development as approved.

   Grounds: In the interest of promoting energy efficiency and sustainable development, and in pursuance of policies E1 and SP1 of the Swale Borough Local Plan 2008.

6. Prior to the commencement of development hereby approved, the applicant, or their agents or successors in title, shall secure the implementation of a watching brief to be undertaken by an archaeologist approved by the Local Planning Authority so that the excavation is observed and items of interest and finds are recorded. The watching brief shall be in accordance with a written specification and timetable which has been submitted to and approved in writing by the Local Planning Authority.

   Grounds: To ensure that features of archaeological interest are properly examined and recorded in pursuance of policies E1 and E16 of the Swale Borough Local Plan 2008.

7. Prior to the commencement of development hereby approved, details of a covered secure cycle parking facility to provide for staff, residents and visitors shall be
submitted to the Local Planning Authority for approval in writing. The approved facility shall be provided prior to first occupation of the premises hereby approved and shall be retained in perpetuity.

**Grounds:** To ensure that there is sufficient cycle parking at the site in the interests of sustainable development in accordance with polices E1 and T4 of the Swale Borough Local Plan 2008.

8. No construction work in connection with the development shall take place on any Sunday or Bank Holiday, nor on any other day except between the following times:- Monday to Friday 0730 – 1900 hours, Saturdays 0730 – 1300 hours unless in association with an emergency or with the prior written approval of the Local Planning Authority.

**Grounds:** In the interests of residential amenity and in pursuance of policy E1 of the Swale Borough Local Plan 2008.

9. Before development commences details of (a) vehicle washing facilities and (b) dust suppression measures shall be provided in accordance with details to be submitted and approved in writing with the Local Planning Authority beforehand and shall be available for use for the duration of the construction of the development.

**Grounds:** In the interests of highway safety and amenity in pursuance of policies E1 and T1 of the Swale Borough Local Plan 2008.

10. During the construction phase provision shall be made on the site, to accommodate operatives/visitors and construction vehicles parking, loading, off-loading or turning on the site and shall be submitted to and approved by the Local Planning Authority and thereafter shall be provided and retained throughout the construction of the development.

**Grounds:** In the interests of highway safety and amenity in pursuance of policies E1 and T1 of the Swale Borough Local Plan 2008.

11. 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 the developer has submitted and obtained written approval from the Local Planning Authority, details of how this unsuspected contamination shall be dealt with.

**Grounds:** To ensure that the development complies with the approved details in the interests of protection of Controlled Waters in accordance with policy E1 of the Swale Local Plan 2008.

**Before occupation:**

12. Before first occupation of development hereby approved the flood protection measures set out in paragraph 9.1.4 of the Flood Risk Assessment carried out by WSP in September 2012 shall be fully implemented.
Grounds: In order to prevent flooding of the development in pursuance of policy E1 of the Swale Borough Local Plan 2008.

13. Prior to first occupation of the development hereby approved, full details of both hard and soft landscape works shall be 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, plant sizes and numbers where appropriate, means of enclosure, hard surfacing materials, and an implementation programme. The approved scheme shall be carried out in the first available planting season following occupation of the units. 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.

Grounds: In the interests of the visual amenities of the area and in pursuance of policy E1 of the Swale Borough Local Plan 2008.

14. The area shown on the submitted plans as car parking and turning shall be provided before occupation of the dwellings hereby approved and kept available for such use at all times and no permanent development, whether permitted by the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking or re-enacting that Order) or not, shall be carried out on the land so shown 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.

Grounds: Development without adequate provision for the parking of cars is likely to lead to car parking inconvenient to other road users and detrimental to amenity and in pursuance of policies E1 and T3 of the Swale Borough Local Plan 2008.

15. The habitat enhancements set out in paragraphs 7.0 - 8.3 (inc) of the Preliminary Ecological Appraisal carried out by the Mayhew Consultancy dated June 2012 shall be carried out within 12 months of completion of the development hereby approved.


16. The premises shall be used for the purpose of an extra care residential accommodation and for no other purpose and other facilities open to members of the public shall remain at all times ancillary to the main use of the building hereby permitted.

Grounds: In the interests of the amenities of the area and in pursuance of Policy E1 of the Swale Borough Local Plan 2008.

17. The dwellings hereby approved shall only be occupied as extra sheltered accommodation by persons of 60 years of age or over unless prior approval is obtained in writing for a relaxation which shall be assessed on a case by case basis.
Grounds: To ensure that the accommodation hereby approved remains at all times available to serve the intended housing need and in the interests of highway safety and the free flow of traffic to secure compliance with Policies H2 and T3 of the Swale Borough Local Plan 2008.

18. Before first occupation of the dwellings to which they relate, the first and second floor windows shown on the north west corner of the north west elevation shall be obscured glazed and that any opening part of the window(s) is restricted by limiters to opening no more than 150mm in any direction and such measures shall be retained in place at all times thereafter.

Grounds: To safeguard the privacy of adjoining development to accord with the provisions of Policy E1 of the Swale Borough Local Plan 2008.

19. No floodlighting, security lighting or other external lighting shall be installed or operated at the site, other than in accordance with details that have first been submitted to and agreed in writing by the Local Planning Authority. These details shall include:

- A statement of why lighting is required, the proposed frequency of the use and the hours of illumination.
- A site plan showing the area to be lit relative to the surrounding area, indicating parking or access arrangements where appropriate, and highlighting any significant existing or proposed landscape or boundary features.
- Details of the number, location and height of the lighting columns or other fixtures.
- The type, number, mounting height and alignment of the luminaries.
- The beam angles and upwards waste light ratio for each light.
- An isolux diagram showing the predicted illuminance levels at critical locations on the boundary of the site and where the site abuts residential properties.

Grounds: In the interests of visual amenity and the residential amenities of occupiers of nearby dwellings, in pursuance of Policy E1 of the Swale Borough Local Plan 2008.

20. The development hereby approved shall only be carried out in accordance with the details received on the 18th September 2012.

Grounds: In the interests of clarity pursuant to policy E1 of the Swale Borough Local Plan 2008.
INFORMATIVE:

In carrying out the above development, in dealing with surface water runoff you are reminded to take into account the concerns of the Environment Agency set out in its letter dated the 22nd October 2012.

Reason for approval

Having taken all material considerations into account, it is considered that subject to compliance with the attached conditions, the proposal would be in accordance with the development plan and would not cause unacceptable harm to the amenities of the area or prejudice highway safety or convenience. In resolving to grant permission, particular regard has been had to the following Policies: E1, E19, E11, E16, C2, H2, H3, T1, T3, T4 and U3 of the Swale Borough Local Plan 2008.

Description of proposal

The proposal is to redevelop this former care home site by a three storey (maximum height 11.8 meters) U-shaped block to provide for extra care accommodation. This is defined by the applicants as suitable for the needs of frailer older people requiring varying levels of care and support which will be available on site. The accommodation provided will be self-contained homes each with its own front door which the applicants, Amicus Horizon, advise are a popular alternative to care homes allowing residents a higher level of independence.

The length of the south elevation facing North Street measures 73.5 metres, the south west elevation abutting the public open space measures 42 metres with the north east elevation measuring 37.5 metres.

A total of 51 units are proposed, 15 for shared ownership and 36 for affordable rent and will be a mix of 13 no: one and 38 no: two bedroom units. The one bedroom units will have an area of 56.3 square metres while the two bedroom units vary in size between 66.9 and 67.5 square metres with all units designed to meet ‘lifetime’ home standards. Living accommodation with be provided on all three levels with 22 units having their own balconies.

Accommodation on the ground floor, in addition to 9 flats will, amongst other things, comprise communal facilities including a main entrance lobby, office and reception area, café/kitchen, lounge and bar, hair /therapy area. Communal facilities’ at 1st and 2nd floor include ensuite guest rooms, disabled WC’s and assisted bathrooms.

A detailed specification of materials have been provided with the use of brickwork and coloured render while roofing materials will be a mix of concrete tiles and fibre glass slates.

The scheme has been designed to secure Code for Sustainable Homes – Level 3 (with an option for Level 4) and has been designed to meet the needs of the over
60’s with, amongst other things, the use of flush entrance doors and size of doors and spaces to accommodate wheelchair use.

The main entrance to the building will front North Street with the car parking provided in a single communal 21 space parking area including disabled parking for two cars and three 3 cycle spaces served off Attlee Way.

The building is to be set back from the North Street typically by 7 metres with the intervening area landscaped. The area at the rear of the building will provide a partly enclosed communal landscaped area.

In addition to the Design and Access statement, the application has been accompanied by a Statement of Community Involvement, Statement of Community Involvement, Flood Risk Assessment, Ecology, Transport and Security statements.

**Description of site**

The site is located at the junction of North Street and Attlee Way and has an area of 0.61 hectares (1.5 acres) and was formerly occupied by a two storey building, now demolished, providing elderly accommodation for 33 persons. The site is now enclosed by hoardings. Immediately opposite the site, development, comprises mainly two storey houses while to the east, on the opposite side of Atlee Way there is further two storey residential development and the St Bartholomew’s School site.

The western site boundary abuts open space while the northern site boundary abuts open areas and the St Thomas’s School site and housing backing onto and flanking the site in Wyvern Close.

**Relevant site history:**

On the 9th July 2012 under reference DN/12/0067 approval was granted for the demolition of Wyllie Court.

On the 2nd February 2011 the Planning Committee resolved to grant outline planning permission with all matters reserved apart from access under reference SW/10/1456 for the construction of 20 dwellings on the former St Thomas School site immediately abutting the application site to the north.

On the 2nd February 2011 the Planning Committee under reference SW/10/145 resolved to grant outline planning permission with all matters reserved apart from access for 12 houses on part (northern section) of the former St Bartholomews School site, Attlee Way, Sittingbourne.
On the 19th August 2011 under reference SW/11/0994, the Council confirmed to KCC that it raised no objection to a revised proposal originally permitted under application reference SW/10/0334 for provision for a multi-agency Specialist Hub at St Bartholomews School.

On the 9th April 2010 under application reference SW/10/0334, the Council confirmed to KCC it raised no objection to the construction of a multi-agency specialist hub for disabled children and specialist early years centre/nursery, together with associated access roads and car parking at St Bartholomews School.

**Views of Consultees**

**Kent Highway Services**: The amount of parking indicated for this development is 1 space per 2.4 units and within the maximum levels suggested by the relevant parking guidance. As noted above the scheme provides 21 parking spaces to cater for 51 units.

The existing 33 person unit facility only provided 10 parking spaces, a provision of 1 space per 3.3 units. The current proposal, therefore, proposes an improved parking allowance compared to the previous similar use of the site. The proposed parking provision is also in line with similar extra care schemes elsewhere, where provision appears adequate.

The only additional parking demand over and above the residential element of the scheme would be from the on-site café and hair/therapy uses that are going to be accessible to the public. However it is expected that these facilities would mainly cater for the residents, their visitors, and the closer local community. As such it is not expected that these uses will generate much additional parking demand that cannot be accommodated within the proposed parking areas or adequately among the existing on-street parking nearby.

Cycle parking facilities could be improved, as the scheme currently only caters for staff. No provision has been suggested for any of the more abled bodied residents or visitors to the site. It would be appropriate to provide secure cycle parking for those users too and Members will note condition (7) above.

With regard to the layout of the site turning space is restricted for vehicles parked in the 2 spaces adjacent to Attlee Way, within the parking courtyard. It is normally expected that the access central aisle should extend for 1m beyond the last spaces, to allow sufficient manoeuvring room for vehicles to use them.

Provided the above amendments are made KHS will raise, no objections to the proposal subject to conditions to secure construction vehicles loading, off-loading turning and parking on the site, provision of parking, and provision for secure cycle parking for staff, residents and visitors.
**Environment Agency:** No objection subject to imposition of conditions to secure details of surface water drainage (Condition 4) and measures to deal with any contamination identified in the course of the development proceeding. (Condition 11)

Regarding flood risk, no records of surface water flooding affecting the area though there is a still a risk of this occurring. Therefore satisfied with the proposed mitigation measures set out in the submitted flood risk assessment subject to a condition requiring floor levels to be 300mm above the existing ground levels (Condition 2).

Regarding reference to surface water runoff and proposed mitigation measures it is generally satisfied with the submitted details which has been addressed by condition by condition (4) above.

**Council’s Housing Strategy Team:** Confirm that there is a requirement for older persons housing in Sittingbourne for all types and sizes of accommodation and it would support proposal. From an affordable housing perspective it would support an Extra Care scheme with 100% affordable housing.

**Council’s Head of Service Delivery:** No objection subject to conditions requiring dust suppression, hours of working and measures to dispose of asbestos. Members will note conditions (8) and (9). Asbestos treatment and disposal is dealt with under other legislation and not a planning issue.

**Council’s Climate Change Officer:** The Design and Access Statement only makes passing reference to Code Level 3 of the Code for Sustainable Homes. No mention of the use of renewables notwithstanding that the roof orientation and its size lend both to solar pv and solar thermal. Also could be an opportunity for a biomass boiler and would like to see other renewable options explored particularly given the likely high energy demands of the proposed residents.

For the communal parts of the building BREEAM standards would apply and a minimum of “very good” should be sought.

Large areas of communal garden, but no reference to rainwater harvesting /water butts to reduce run off and be utilised for watering. Members will note condition (5) above.

**KCC Ecology:** Broadly satisfied that appropriate survey methods were used during the assessment of the site and that if the measures detailed in section 7 of the report are implemented, there is limited potential for ecological impacts as a result of the proposals. Implementation of these measures should be secured by condition, if planning permission is granted.

The NPPF seeks to incorporate biodiversity in and around developments. The Preliminary Ecological Appraisal report provides recommendations for biodiversity enhancements within section 8 and condition (13) for landscaping details for the site should include specific reference to the provision of biodiversity enhancements to ensure that these measures can be secured.
Other Representations

One of the two Ward Members for Milton Regis Ward objects on the grounds that the proposal is totally inappropriate for the people of the local area. The development is too big and does not address the kind of residential accommodation required by our Local Elderly population.

A Petition with 47 signatories raising objections on the grounds that the proposal is totally inappropriate for the people of the local area. The development is too big and does not provide the kind of residential accommodation required by the local elderly population.

In addition many signatories amplified their comments on the above petition and these are summarised below:

- Too high and not in keeping with the area.
- Will result in loss of privacy while creating an unacceptable sense of enclosure while also resulting in loss of sunlight.
- The mass of the building will result in noise ‘bouncing’ off it.
- Will create parking difficulties
- Need more social housing for the elderly – replacing low cost with high cost elderly accommodation.
- Has a commercial rather than residential appearance.
- Will appear as an eyesore
- Not against the development so long as it benefits local old people.
- Not being built to satisfy local need.

Five objections received which are summarised as follows:

- Development is too high and will overlook bedrooms and sitting rooms of nearby houses. Perspective plans do not provide a proper view of development but show that nearby development will be dwarfed by proposal.
- Result in loss of mature trees, loss of sunlight, noise and vibration cause by traffic on over high buildings and line of sight loss of local residents.
- Result in reduction in property values, in an open plan environment which local residents want to see retained.
- Will result in loss of privacy while all adjacent properties in North Street will need to be soundproofed if development goes ahead.
- Loss of privacy due to siting of balconies.
- No trees should be removed as because of their age and height they act as buffers to road traffic noise and cannot be replaced.
- The height and bulk of the building will reflect back sound and exacerbate noise from the increased number of vehicles using North Street.
- All other properties in area are only two storeys therefore proposal is wholly out of scale and character with the locality.
- Only compatible with large town centre schemes and is not appropriate in a residential area.
- Given wealth profile of this part of Sittingbourne few elderly people in the locality could afford proposed accommodation and such will not bring benefit to local people.
- What is needed is similar to what was previously on site and affordable for local use.
- Insufficient parking which will cause overspill into surrounding areas which are already congested which will be made worse as a consequence of public access to the café and other site facilities.
- Concerns regarding hours of opening and delivery times to café
- The height of the building will interfere with TV signals.
- Applicants are totally insensitive to wishes of local residents.
- Where a development damages or blights local environments a full environmental impact study should be carried out.
- Concerned about choice of materials, particularly the colour washed features.
- Concerns regarding course of construction and demolition of garages forming rear boundary of property and seeks compensation to mitigate possible harm and disturbance to property.
- Do not feel that applicants have given local residents proper opportunity to make comments on the application.
- Concerned regarding siting of new front entrance and implications for road safety especially if parking takes place close to this on what is a heavily trafficked route close to a bus stop on a road which has a history of accidents.

Development Plan Policies

The National Planning Policy Framework (NPPF), in addition to setting out a presumption in favour of sustainable development, sets out 12 core planning principles that should underpin both plan making and decision taking. The following are considered to be of particular relevance in relation to this proposal being

- promote mixed use developments, and encourage multiple benefits from the use of land in urban and rural areas, recognising that some open land can perform many functions (such as for wildlife, recreation, flood risk mitigation, carbon storage, or food production);

Paragraph 50 relating to delivering a wide choice of homes states amongst other things that where an affordable housing need has been identified this should be met on site unless off-site provision or a financial contribution of broadly equivalent value can be justified and that the agreed approach contributes to the objective of creating mixed and balanced communities. Furthermore that such policies should be sufficiently flexible to take account of changing market conditions over time.
Swale Borough Local Plan 2008 contains the following relevant policies:

E1 (general development criteria),  
E11: (Protecting and enhancing biodiversity)  
E16: (Archaeology)  
E19 (Design),  
C2: (Community services and facilities)  
H2 (new housing),  
H3 (affordable housing)  
T1 (vehicular access),  
T3 (car parking)  
T4 (cycle parking and pedestrian)  
U3 Renewable Energy

Guidance in the Council’s supplementary planning document ‘Developer Contributions’ (2009) is also relevant.

**Discussion**

Taking into account the past use of the site for elderly person’s accommodation it is considered that there is no objection to the principle of its continued use for this purpose. The proposal also has central reception leading to publicly accessible areas such as the café, lounge/activity room and hair/therapy. It is considered that these facilities, though they will be available to the general public, can be considered as ancillary to the wider use of the building. Their use can be controlled (see condition16 above ) but given their relatively small size, that they are clearly ancillary to the main use of the proposed building and will contribute to local facilities, it is considered that there is no objection to their forming part of the application.

The key issues are therefore considered to be (a) need for additional elderly persons accommodation (b) design and layout considerations (c) highways and parking issues (d) flooding (e) archaeology and (f) wildlife and habitat concerns

**Need for additional elderly persons accommodation:**

The Council’s Housing Strategy Team fully supports the use of this site for elderly persons accommodation particularly as it is not aware of any other extra care scheme in Swale. In addition it acknowledges that changing demographics (notably an aging population) have resulted in an unsatisfied need for this type of accommodation. As such where appropriate sites do come forward their development potential should be optimised.

However, in order to ensure that the site continues to contribute towards meeting elderly persons housing needs occupation should be limited to this purpose. See condition 17 above.
Design and Layout Considerations:

The site has an area of 0.61 hectares and the proposed scheme for 51 units results in a density of just over 83 dwellings per hectare. However density is only one factor in considering a proposal. For example, whether a site is physically capable of accommodating the development without it appearing out of scale or character in the street scene or harming the amenity of nearby residents are also important considerations.

Dealing first with the scale of the proposed block, it is acknowledged that the site lies in a mainly residential area comprising two storey development. As such the proposal clearly departs from this. Nevertheless simply because a development differs in scale from its surroundings does not make it automatically unacceptable. The site occupies a prominent corner position and as such advantage could be taken of this to provide an important ‘landmark’ building.

It is normally the case that a building of the size and scale proposed should sit in a spacious setting. In this context it is considered that the following are key considerations in whether the site is capable of accommodating the scale of the building proposed.

Dealing first with the impact on North Street, the western site boundary abuts an area of public open space with the proposed block set just under 10 metres from this. This compares favourably with the former position where two storey housing came to within just under 5 metres of the boundary. Regarding the set back from North Street, this is just under 7 metres reducing to 5 metres where the block fronts the corner. On the return frontage along Attlee Way, the block maintains a setback of approximately 7 metres from the back edge of the footpath and a separation distance of just under 30 metres to the flank wall of 58 North Street on the opposite side of the road. To the north of 58 North Street along the Attlee way frontage, the road frontage opens out to the broad expanse of the former Saint Bartholomew’s School site, which features a group of mature trees covered by a TPO.

It is therefore considered that the setting of the site is suitably spacious and separate from its immediate surroundings such to give the site a self-contained distinctive character capable of accommodating development of the size proposed without appearing overly dominant or out of scale with nearby development.

Notwithstanding the above, the design of the block is crucial in determining whether the proposal is acceptable.

The block is clearly of a contemporary design notwithstanding the use of a traditional pitched roof. The key challenge to be addressed, given the width of the frontage and return facades is how to address the scale and height of the block, acknowledging the use of the building which was a key element in informing design, while reflecting the more domestic scale of the wider site context. In order to achieve this the roof has been broken into a number of smaller interlocking sections. In addition, full depth projecting bays both of square and triangular section breaking through the eaves line and irregular footprint of the building have given the building a strong vertical
emphasis notwithstanding the overall width of the block particularly on the North Street frontage where it extends for 73.5 metres. This is further emphasised by the use of the materials. All these elements ensure that the block rather than presenting a single uniform frontage, has a highly articulated design. Furthermore by breaking the block up into much narrower individual sections, this gives the building a more domestic appearance thereby helping to make its overall scale appear less and more in keeping with its surroundings.

It is acknowledged that parts of the block such as the entrance feature give it greater emphasis which is clearly not of a domestic scale. However in the context of the proposed community use of the building it is important to ensure that the function of the building is also made clear in its design.

It should be stressed that this is an important high profile site and as such any development permitted on it must be capable of performing the role of a ‘landmark’ building. This, by definition, requires a building of good design in order to ensure that the proposal brings about an appropriate improvement to the area.

Concern has been raised that the proposal appears out of character and scale with the area with the inference that only development similar to what previously occupied the site is acceptable. However the design of the building previously occupying the site, it is considered, failed to fully deliver the potential of this prominent site in bringing forward visual benefits capable of improving the character of the area.

By contrast the proposed development represents an example of contemporary design that will bring about significant visual improvements to the character of the area. In the circumstances there is considered to be no objection to the proposal on design, size and siting grounds and that the proposal meets the design standards expected on an important high profile site such as this.

Concerns have been raised regarding loss of sunlight to nearby dwellings due to the height of the block. In response Sun path diagrams have been provided showing the situation on the 22 December when the Sun is at its lowest.

These show that at 0830 hrs, houses to the north west of the site in Wyvern Close are subject to overshadowing (a minimum separation of 26.5 metres is proposed between the development and 21Wyvern Close, the closest dwelling in this road). However this is first thing in the morning. At 1200 hrs the situation is such that only part of the rear gardens of these properties is affected while at 1530 hrs there will be even less impact on these properties. However the rear garden of the house flanking Attlee Way will be overshadowed though no overshadowing will occur to any properties opposite the site in North Street.

It should be taken into account that this represents the mid-Winter situation when use of gardens is likely to be low. Later on in the year and throughout the Summer months when the Sun is much higher the overshadowing effect of the block will be significantly lower.
Detailed layout considerations

Regarding the layout within the development, an area of reasonably private communal space is to be provided to the rear of the block which will be used for sitting out and quiet contemplation in a landscaped setting. This, it is considered, meets the requirements for a quality space that should be usable, private and of regular shape, be readily and directly accessible from the dwellings that it serves.

The submitted details also show 22 flats with private balconies all of a usable size and shape. As such the combination of private communal open space provision and private balconies will provide an acceptable amenity for residents.

Regarding the visual impact of the parking area on the Attlee Way Street scene, this area of the site was partly occupied by two storey buildings and as such the parking area will potentially now be exposed to view. However taking into account the set back from the road and presence of landscaping, its visual impact will be mitigated to an acceptable degree. However in order to maintain nighttime amenity lighting details to serve the car park and the main block should be controlled (see condition 20).

Concerns have been raised regarding loss of privacy to nearby dwellings and it is acknowledged that the proposed building will increase the sources of overlooking from windows and balconies. Nevertheless dwellings opposite the site in North Street and Attlee Way were previously exposed to overlooking from first floor windows in the former buildings occupying the site. In the circumstances it is not considered that the proposed development will result in a material erosion in the former situation with overlooking taking place across the public domain in any event.

There is also the impact on the occupants of properties in Wyvern Close with the separation distance from the rear of these properties the nearest past of the proposed development, as noted above, of a minimum of 26.5 metres. Taking into account that there are first and second floor habitable room windows in this elevation these windows will give rise to high level overlooking. As such a condition should be imposed requiring these windows to be obscure glazed. (See condition 18 above).

As a further concern there is the impact on the development resolved to be approved on the St Bartholomew’s School site to the north. However given that the layout of this development has not been approved and the distance of the proposed development from the boundary with this site, it is considered that the amenity of the future residents of this development will not be materially affected.

Highway and parking considerations

Subject to the outstanding concerns of Kent Highway Services being addressed (which are described above) and which appear to require only minor amendment to the submitted parking layout and imposition of conditions to secure its requirement, it is considered that the proposal is acceptable in its impact on the free flow of traffic and highway safety in the locality.
Flooding:

The site falls within Flood Zone 3 and as such the application has been accompanied by a Flood Risk Assessment (FRA). This concluded that notwithstanding the location of the site within a flood zone that no significant groundwater or surface water flooding issues were identified.

However in order to mitigate any residual flooding risks the finished floor levels will be raised while no basements are proposed. The proposal also involves a reduction in impermeable areas reducing surface water runoff and along with the use of above ground storage and use of oversize pipes potential sewer overloading will be reduced thereby lowering the risks of flooding.

It is considered that the above represents an acceptable response to flooding and which have been made the subject of condition (12) above.

Archaeology:

A small part of the north west corner of the site falls within an Area of Archaeological Potential. In response the applicants consulted Kent Archaeology who confirmed that it was satisfied with the approach adopted and that a watching brief should be undertaken. See condition (6) above.

Wildlife:

The wildlife survey identified no protected species but did identify a number of measures that could maintain and protect wildlife diversity and which should be made the subject of a condition. See condition (15) above. The proposed measures include provision to avoid harm to wildlife during the construction phase. Post development measures are the provision of bird and bat boxes, maintenance of a variety of vegetation habitats including, where possible, unkempt ‘wild’ areas and introduction of some standing water features.

Legal Agreement

The applicants have confirmed their intention to make the whole of the development affordable. The policy requirement however is that only 30% of a development can be required to be affordable (in this case 16 units) which will need to be the subject of the legal agreement to this effect.

In addition there will be a requirement for wheelie bins and it is understood that 10 no: 1100 litre wheeled bins for general waste and 3 no: 1100 litre wheeled bins for commercial waste will be required. At £75 for each wheelie bin this gives a total contribution of £975.

There is also requirement for a 5% S106 monitoring charge resulting in a payment of £48-75.
Other matters:

The majority of concerns raised by objectors have already been addressed but the following outstanding matters require comment.

Concerns regarding loss of mature trees are noted. Though regrettable, taking into account the number of trees to be retained and those likely to be planted as part of any landscaping scheme, will, it is considered, compensate for tree loss arising from this proposal. Members should note the development would not affect any protected trees.

Loss of property value is not a material planning consideration. However the need to maintain amenity and to ensure that a material erosion in amenity is avoided is a matter that has been addressed in the consideration of this proposal.

The compensation claim following demolition of garages forming part of the site boundary are also noted. Any claim for compensation would have to be made to the applicants and is not a matter for the Council. However it is intended that site security will be maintained by the erection of a 1.8 metre high close boarded fence along the northern site boundary with the western boundary chain link fencing retained and repaired.

Regarding concerns that the height and bulk of the building will reflect noise from traffic using North Street and thereby be detrimental to the aural amenity of residents opposite the site, in the absence of evidence to this effect, it is not considered this represents a sustainable objection to the proposed development and Members will also note that the Head of Service Delivery raises no objection on these grounds.

Impact on TV reception can be a material planning consideration. However in the absence of compelling evidence this can normally only be determined after the development has been implemented.

It is suggested that the proposal should have been accompanied by an environmental statement. However the requirement for an Environmental Statement to be submitted as part of the application have not been triggered. It is nevertheless acknowledged that an Environmental Statement can be sought even if the normal triggers for submission are not met. A key determinant in whether an Environmental Statement is required is the need to take into account the existing use of the site and whether what is proposed will be materially different in its environmental impacts. Given the past use of the site for elderly person’s accommodation and the similarities of this with the current proposal it is considered that there is no requirement for an Environmental Statement.

Finally concerns have been raised that the applicants failed to carry out proper pre application consultations with the public and take into account the views of local residents. The applicants submitted as part of the application a Statement of Community Involvement. This set out the steps taken to advertise the proposal including a public meeting prior to the application being submitted and is in addition to the consultation carried out by the Council once the application is submitted.
Taking the above into account it is not considered that the applicants have therefore failed to discharge their duty to involve local residents in the pre application stage of the proposal.

**Recommendation**

Taking into account the past use of the site, there is considered to be no objection to the use of the site for much needed extra care accommodation. That though the area is characterised by two mainly two storey houses of domestic scale and design, taking into account the prominent location of the site standing in a spacious setting, this provides the opportunity for larger scale development acting as landmark building on this prominent corner site.

That the proposed development represents an example of contemporary design which will bring significant visual improvements to the character of the area. In the circumstances there is considered to be no objection to the proposal on design, size and siting grounds with the proposal meeting the design standards expected on an important high profile site such as this.

It is also considered that the proposal will result in a high quality environment for the proposed residents while safeguarding the outlook and amenity of residents overlooking and abutting the site. Subject to the receipt of revised details to address the outstanding concerns of Kent Highway Services and any further conditions that may be required by them as a consequence and the applicants entering into a S106 Legal Agreement to secure 30% affordable housing for the site, wheelie bin provision and a 5% monitoring charge, the proposal is considered worthy of support. On this basis I therefore recommend that permission be granted.

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**Responsible Officer:** Jim Wilson (Major Projects Officer)

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**List of Background Documents**

1. Application papers and correspondences for SW/12/1188
2. Application papers and correspondences for SW/12/0067
3. Application papers and correspondences for SW/12/1455
4. Application papers and correspondences for SW/12/1456
5. Application papers and correspondences for SW/12/0994
6. Application papers and correspondences for SW/10/0334