



AGENDA

PLANNING COMMITTEE MEETING

Date: Thursday, 29 January 2015

Time: 7.00 pm

Venue: Council Chamber, Swale House, East Street, Sittingbourne, Kent, ME10 3HT

Membership:

Councillors Barnicott (Chairman), Sylvia Bennett, Andy Booth, Mick Constable, Derek Conway, Adrian Crowther, Mark Ellen, June Garrad, Sue Gent, Mike Henderson, Lesley Ingham, Peter Marchington, Bryan Mulhern (Vice-Chairman), Prescott, Ben Stokes, Ghlin Whelan and Tony Winckless.

Quorum = 6

	Pages
1. Apologies for Absence and Confirmation of Substitutes	
2. Minutes	
To approve the Minutes of the Meeting held on 8 January 2015 (Minute Nos. 414 - 417) as a correct record.	
3. Declarations of Interest	
Councillors should not act or take decisions in order to gain financial or other material benefits for themselves or their spouse, civil partner or person with whom they are living with as a spouse or civil partner. They must declare and resolve any interests and relationships.	
The Chairman will ask Members if they have any interests to declare in respect of items on this agenda, under the following headings:	
(a) Disclosable Pecuniary Interests (DPI) under the Localism Act 2011. The nature as well as the existence of any such interest must be declared. After declaring a DPI, the Member must leave the meeting and not take part in the discussion or vote. This applies even if there is provision for public speaking.	
(b) Disclosable Non Pecuniary (DNPI) under the Code of Conduct adopted by the Council in May 2012. The nature as well as the existence of any such interest must be declared. After declaring a DNPI interest, the Member may stay, speak and vote on the matter.	

Advice to Members: If any Councillor has any doubt about the

existence or nature of any DPI or DNPI which he/she may have in any item on this agenda, he/she should seek advice from the Director of Corporate Services as Monitoring Officer, the Head of Legal or from other Solicitors in Legal Services as early as possible, and in advance of the Meeting.

Part B reports for the Planning Committee to decide

4. Planning Working Group

To approve the Minutes of the Meeting held on 19 January 2015 (Minute Nos. to follow).

14/502521 – The Square, Chequers Hill, Doddington, ME9 0BL

5. Deferred Item

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To consider the following application:

SW/13/1571 – New Rides Farm, Leysdown Road, Eastchurch

Members of the public are advised to confirm with Planning Services prior to the meeting that this application will be considered at this meeting.

Requests to speak on this item must be registered with Democratic Services (democraticservices@swale.gov.uk or call us on 01795 417328) by noon on Wednesday 28 January 2015.

6. Report of the Head of Planning

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To consider the attached report (Parts 2, 3 and 5).

The Council operates a scheme of public speaking at meetings of the Planning Committee. All applications on which the public has registered to speak will be taken first. Requests to speak at the meeting must be registered with Democratic Services (democraticservices@swale.gov.uk or call 01795 417328) by noon on Wednesday 28 January 2015.

Part B Report for the Planning Committee to decide

7. Exclusion of the Press and Public

To decide whether to pass the resolution set out below in respect of the following item:

That under Section 100A(4) of the Local Government Act 1972, the press and public be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in Paragraphs 1, 2, 3 and 6 of Part 1 of Schedule 12A of the Act:

1. Information relating to any individual.
2. Information which is likely to reveal the identity of an individual.
3. Information relating to the financial or business affairs of any

- particular person (including the authority holding that information).
6. Information which reveals that the authority proposes:
- (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
 - (b) to make an order or direction under any enactment.

8. Report of the Head of Planning

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To consider the report attached at (Part 6).

Issued on Wednesday, 21 January 2015

The reports included in Part I of this agenda can be made available in **alternative formats**. For further information about this service, or to arrange for special facilities to be provided at the meeting, **please contact DEMOCRATIC SERVICES on 01795 417330**. To find out more about the work of the Planning Committee, please visit www.swale.gov.uk

Corporate Services Director, Swale Borough Council,
Swale House, East Street, Sittingbourne, Kent, ME10 3HT

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Report of the Head of Planning

DEFERRED ITEMS

Reports shown in previous Minutes as being deferred from that Meeting

REFERENCE NO - SW/13/1571			
APPLICATION PROPOSAL			
The erection of four wind turbines with a maximum blade tip height of up to 126.5 metres, together with a substation and control building, associated hardstandings, an improved access junction, connecting internal access tracks, and other related infrastructure.			
ADDRESS New Rides Farm, Leysdown Road, Eastchurch, Sheerness, Kent, ME12 4DD			
RECOMMENDATION APPROVAL			
SUMMARY OF REASONS FOR RECOMMENDATION			
The development would substantially contribute towards the production and provision of sustainable, renewable energy as dictated by current national and international policy, without giving rise to substantial identifiable harm to local amenity, the character of appearance of the wider marshland landscape, or to local wildlife and designated wildlife sites. As such there is no justification for the refusal of planning permission.			
REASON FOR REFERRAL TO COMMITTEE			
Parish Council objection, local objections, and significance.			
WARD Sheppey Central	PARISH/TOWN Eastchurch	COUNCIL	APPLICANT Airvolution Energy AGENT Mr Richard Frost
DECISION DUE DATE 12 December 2014 (extension agreed)	PUBLICITY EXPIRY DATE 1 August 2014	OFFICER SITE VISIT DATE Various	
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
SW/10/1567	The erection, 25 year operation and subsequent decommissioning of a wind energy development comprised of the following elements: two wind turbines, each with a maximum overall height (to vertical blade tip) of up to 121 metres, together with new access tracks, temporary works, hard standing areas, control and metering building, cabling and new vehicular access from Brabazon Road.	Approved at committee	11.11.2011
This application related to land south of the prison cluster, and west of the current application site. The proposal was approved by Members in 2011 and the turbines have now been operating for approximately 2 years.			

1.0 BACKGROUND

- 1.01 Members will recall this application was reported at the last Committee meeting (the original report is attached as appendix 1). It seeks planning permission for the erection of 4 wind turbines and associated infrastructure on land at New Rides Farm, Eastchurch, immediately to the east of the prison cluster.
- 1.02 Each turbine will measure up to a maximum of 126.5m to the tip of the blade and be of a similar design to the two existing turbines – known as the PfR turbines – and have an output of 2.3MW per turbine. This will generate electricity sufficient to provide for the needs of approximately 6,186 households and annually displace up to 11,346 tonnes of carbon dioxide.
- 1.03 The motion to approve the application, subject to an amendment to condition 4 of the report, was defeated and Members discussed the potential of refusing the proposal. Three potential reasons for refusal were put forward, :
- i. Demonstrable harm to the landscape through cumulative impact of the existing and proposed turbines;
 - ii. Demonstrable harm to native and migratory bird populations; and
 - iii. Cumulative impact – in combination with the two existing PfR turbines – of acoustic issues upon local residents.
- 1.04 However, before that motion could be put to the vote the application was called in by the Head of Planning Services under Part 3 of the Council’s Constitution to enable officers to prepare a report to Members on the prospects of such a decision if challenged at appeal and if it becomes the subject of an application for costs.
- 1.05 Since the meeting we have received an additional letter of objection from Mr Day, who spoke against the proposal at the last meeting, in which he reiterates matters already discussed within the original report and, in particular, that the technical objection from Dr Yelland should be given great weight on the basis of his credentials.
- 1.06 The applicant has also submitted a written response to the issues raised by Members at the last meeting, a copy of which is attached to this report at appendix 5.

2.0 DISCUSSION

- 2.01 National planning policy is entirely focused on the drive towards sustainable development, and the presumption in favour of sustainable development is “*a golden thread running through both plan making and decision taking*” (NPPF, para. 14). The National Planning Policy Framework (NPPF) promotes renewable energy as a key planning objective and recommends that local planning authorities should support renewable energy projects. In addition, at paragraph 97, the NPPF notes that “*local planning authorities should recognise the responsibility on all communities to contribute to energy generation from low carbon or renewable sources.*” Furthermore the adopted Local Plan Policy U3 also supports renewable technology.

- 2.02 Members should also note the aims of the Kyoto Protocol; the EU Emissions Trading Scheme; Directive 2009/28/EC; and the National Renewable Energy Action Plan for the United Kingdom, all of which provide a clear international policy framework for the development of renewable energy projects.
- 2.03 There is therefore no justification for an in-principle objection to such proposals, and the Council should be looking to approve renewable energy proposals wherever possible.

The proposed reasons for refusal

- 2.04 I will address these in a slightly different order than noted above, starting with (ii): demonstrable harm to native and migratory bird populations.
- 2.05 It is noted that some Members appeared to give great weight to the local objection submitted by Mr Haynes – a local resident and volunteer RSPB warden – and Mr Haynes credentials and intentions are not disputed by officers. However, I would draw Member's attention to the comments submitted by the RSPB; Natural England; the Environment Agency; and the KCC Biodiversity Officer (and also note that a full copy of Mr Haynes' submission was provided to each of those authorities on receipt and prior to their consideration of the application).
- 2.06 Those agencies, who are the national bodies of expertise in regards to ecology and to whom – at least as far as Natural England and the Environment Agency are concerned – the Council is legally bound to defer consideration of ecological matters in applications such as this, **do not raise an objection to this application on ecological grounds.** Whilst the wording of their responses may not explicitly express support for the scheme (as discussed by Members during the meeting), the lack of objection is a reflection of the fact that – further to the additional information submitted by the applicant in mid-2014, and subject to the conditions attached to the report – **there is no reasonable or justifiable reason to refuse planning permission on ecological grounds.**
- 2.07 Save for Mr Haynes' objection, all of the technical data submitted in regards to ecology – in particular avian ecology – demonstrates that the impact of the development, when proposed mitigation and management measures are taken into account, would not be substantial and would not justify refusal of permission. Hence the submissions from the statutory bodies, who all express no objection to this application.
- 2.08 Without the support of the RSPB; Natural England; the Environment Agency; and the KCC Biodiversity Officer (in terms of an objection to the development) the Council would have no sound basis to refuse planning permission on suggested reason ii, and would be extremely unlikely to successfully defend such a reason at appeal.
- 2.09 The implications of such a refusal in terms of the potential award of costs against the Council if an appeal were made – which the applicant has indicated is likely to be the case – are considered in my Part 6 report for this application.

2.10 With regard to suggested reason (iii): cumulative impact – in combination with the two existing PfR turbines – of acoustic issues upon local residents: further to Dr Yelland’s technical submission the agent has provided a thorough and comprehensive response to all of the points raised. Their response clearly demonstrates that the proposed development would operate within established national guidelines on noise in relation to wind turbines (the Energy Technology Support Unit (ETSU) report ETSU-R-97). Both Dr Yelland’s submission and the applicant’s response have been reviewed by the Environmental Health Manager (EHM). He confirms that the applicant’s submission is sound and **does not raise an objection on the grounds of noise or disturbance**, taking into account both proposed and existing turbines in cumulation.

2.11 Paragraph 7.19 of the original report notes the EHM’s comments:

*“The assessment concludes that there is no evidence to show that any noise that the residents might hear will cause them a problem. All the readings and predictions from the model and standard used indicate this to be the case. There is also a noise contour plan of the whole site that indicates this. **I therefore, have difficulty in disagreeing with this amount of consistent evidence**, even though there are some issues that have not been completely explained **and thus can have no objections to the scheme.**” [My emphasis.]*

2.12 In specific regard to Dr Yelland’s objection the EHM has stated (at 7.20 of the original report):

*“Despite the late and sincere intervention from Dr Yelland, it does not change my overall opinion that **there is insufficient argument to say that this proposal should not go ahead.** An interesting addition has been from the applicant’s acoustic consultant who has suggested that a lengthy condition be included which they say that they can comply with. On this basis, I am satisfied that it is appropriate to include this condition.” [My emphasis.]*

2.13 Without the support of the Council’s Environmental Health Manager on such a technical issue as noise and disturbance, I have little doubt that officers would not be able to successfully defend such a reason for refusal at appeal.

2.14 As with ecology above, the implications of such a refusal in terms of costs implications at appeal are considered in the Part 6 report for this application.

2.15 I would also draw Member’s attention to the appeal at Turncole Farm, Southminster, Essex (PINS ref. 2174982), which was determined by the Secretary of State in February 2014, and which related to the erection of seven 126m-high wind turbines within a locally designated special landscape area, close to an SPA and an SSSI, and within 2km of a number of residential dwellings. The site also lies close to a number of other wind turbines of similar scale and thus cumulative impact was a key consideration.

- 2.16 The associated Inspector's decision is lengthy (approx. 100 pages) and I do not propose to reproduce it here – although a copy of the SoS's summary is appended to this report at Appendix 4. However, in dismissing the appeal the Inspector noted that the main issues included noise and disturbance to local residents, and particularly noted the issue of Amplitude Modulation. The findings of the ES data were similar to those of the current application, and the SoS noted that the principles of ETSU-R-97 were upheld or could be achieved through conditions similar to those recommended on the current application.
- 2.17 Lastly is the suggested reason (i). that the development would cause demonstrable harm to the landscape through cumulative impact of the existing and proposed turbines. I appreciate Members' concern in regards to this issue – wind turbines are by their very nature large structures which have potential to be seen from long distances.
- 2.18 Harm to landscape can be difficult to quantify. However, in this instance the starting point has to be landscape designations. As noted within the original report the site does not fall within any area designated for landscape quality (although it is noted that a Special Landscape Area lies to the south) and therefore does not benefit from any formalized protection status with which to initially support a reason for refusal on such grounds. The applicant draws attention to this point within their recent letter (attached at appendix 5):

“11. It is clear that landscape and visual issues were not a key issue for the planning committee when the original two turbines were approved by the planning committee. This is inconsistent with the argument that the councillor (who was in attendance at the Standford Hill meeting) is now making about the local landscape being unique and of very high, even national, value.

12. If the application is sent to inquiry, the applicant will closely examine the inconsistency of the current application being refused for landscape and visual reasons whilst the original scheme was approved without this being a major factor.

36. As the planning officer correctly stated in the committee report, the turbines are located within the Central Sheppey Farmlands landscape character area which is considered to be of moderate sensitivity. Immediately to the south lies the Leysdown and Eastchurch Marshes landscape area which is also considered to be of moderate sensitivity. It should be emphasised that the Sheppey Farmland LCA is not even covered by the council's lowest tier local landscape denotation, the Area of High Landscape Value (AHGL). Whilst the Leysdown and Eastchurch Marshes LCA has been given the Special Landscape Area status, this is significantly, a county level not a regional or national level designation.

37. At no point since its first proper denotation in the borough local plan in 2000, has it ever been argued that the marshland on Sheppey is of national, and therefore, Area of Outstanding Natural Beauty status. It should be remembered that it does include some detracting features such as the major set of pylons that pass through it at its western end at

Neatscourt and the enlarged agricultural fields (particularly in the east of Sheppey) which contrast to the more natural marshland landscape.”

- 2.19 Unlike such developments within designated areas, such as the recently refused appeal for a solar farm within the AONB at Hartlip (which was reported to Members at Part 5 of last month’s agenda), officers would have a difficult time in justifying a reason for refusal based solely on landscape character in the face of a designation void. It is likely that the Council would have to engage the services of a professional landscape specialist to prepare appeal documents and appear at the public inquiry.
- 2.20 Furthermore Members should note that **the application site lies within an area specifically designated (at map 7.6.1 – “Energy Opportunities”) by the emerging Local Plan “Bearing Fruits 2031” as having high potential, and being a preferable location, for wind energy developments.** Members agreed the Publication Draft of Bearing Fruits at Full Council on 26th November, and it therefore carries weight in determining planning applications. Furthermore, in drafting that map, consideration was given to a multitude of factors including landscape designations and ability of the landscape to absorb such developments.
- 2.21 In defending a reason for refusal on landscape grounds Members would need to clearly and unequivocally set out why this development was not considered to be acceptable on landscape impact grounds after only recently agreeing the wider area as suitable for such developments within Bearing Fruits. I see this as a difficult task in light of the above, and a particular issue which leaves the Council open to a costs claim as regards unreasonable behaviour.
- 2.22 I would also draw Member’s attention to a recent appeal decision for the erection of three 115m-high wind turbines on the Pevensey Levels, East Sussex. The application site was an extensive area of flat marshland with rising land levels to the south, and situated close to the South Downs National Park – a very similar landscape to the current application.
- 2.23 That application was refused on landscape impact grounds but in dismissing the appeal the Inspector commented on the capacity of such landscapes to absorb developments of this nature:
- “27. The large scale of the landscape, its openness and wide skies, would in my view enable this particular development proposal to be accommodated without harmfully undermining its openness or sense of remoteness, and without obscuring the distinctive pattern of fields and ditches. I therefore find that the proposed development would not conflict with the aims of Local Plan Policy EN11, which seek to ensure that development proposals within the Coastal Levels conserve its generally open and exposed landscape character.”*
- 2.24 Members should also note the differentiating factor here is that the current application proposes turbines adjacent to a significant area of built development in the form of the prison cluster, whereas the Pevensey case was within a significantly less built up area.

- 2.25 A copy of that appeal decision (PINS ref. 2208526) is attached at appendix 2 to this report, and I draw Member's attention to paragraphs 24 to 31 in particular, and also to the conditions attached to the decision which are of a similar nature to those recommended by officers for the current application (particularly condition 27, which relates to noise).
- 2.26 I would also refer Members back to the Turncole appeal as noted above, where in upholding the Inspector's decision the SoS concluded that there would be only moderate visual impact arising from the development and the cumulative impacts of the development in association with existing nearby turbines was not sufficient to justify refusal. The temporary (25 year permission) nature of the development is also noted in the decision.

3.0 CONCLUSION

- 3.01 The application proposes the erection of 4 wind turbines in accordance with local, national and international policy, and is considered to be acceptable in principle.
- 3.02 The evidence presented within the Environmental Statement accords with the requirements for such information and clearly demonstrates that the proposed wind turbines would not have a serious impact or, where an impact is anticipated, this could be mitigated to within acceptable levels (as set out by national guidance) by the conditions attached to the original report.
- 3.03 Furthermore the statutory consultees on such applications, including the RSPB, Natural England, the Environmental Agency, the Kent County Council Biodiversity Officer and the Council's own Environmental Health Manager do not object to the proposals, and the Council would therefore have no support in defending Member's suggested reasons for refusal at appeal.
- 3.04 With this in mind I consider that the original recommendation to approve this application was correct and justified by the evidence presented in the submission.
- 3.05 I therefore prevail on Members to approve this application.
- NB: For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website. The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.

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REFERENCE NO - SW/13/1571			
APPLICATION PROPOSAL The erection of four wind turbines with a maximum blade tip height of up to 128.5 metres, together with a substation and control building, associated hardstandings, an improved access junction, connecting internal access tracks, and other related infrastructure.			
ADDRESS New Rides Farm, Leysdown Road, Eastchurch, Sheerness, Kent, ME12 4DD			
RECOMMENDATION GRANT subject to conditions and the adoption of the Appropriate Assessment			
SUMMARY OF REASONS FOR RECOMMENDATION The development would substantially contribute towards the production and provision of sustainable, renewable energy as dictated by current national and international policy, without giving rise to substantial identifiable harm to local amenity, the character of appearance of the wider marshland landscape, or to local wildlife and designated wildlife sites. As such there is no justification for the refusal of planning permission.			
REASON FOR REFERRAL TO COMMITTEE Parish Council objection, local objections, and significance.			
WARD Sheppey Central	PARISH/TOWN COUNCIL Eastchurch	APPLICANT Airvolution Energy AGENT Mr Richard Frost	
DECISION DUE DATE 12 December 2014 (extension agreed)	PUBLICITY EXPIRY DATE 1 August 2014	OFFICER SITE VISIT DATE Various	
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
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This application related to land south of the prison cluster, and west of the current application site. The proposal was approved by Members in 2011 and the turbines have now been operating for approximately 2 years.			

MAIN REPORT

1.0 DESCRIPTION OF SITE

- 1.01 The application site forms agricultural land associated with New Rides Farm, Eastchurch. It is located to the south of New Rides Farm, east of the Eastchurch prison cluster, and to the southeast of Eastchurch village itself. The site lies within the open countryside on marsh land – the land level falls gently to the south towards the Swale estuary, and rises – dramatically in places – to the north and west towards the main village centre. The OS map for the area shows ground heights as approximately 2m AOD in the very south of the site, rising to 10m AOD in the very north – I believe the majority of the site to be set at around 5m AOD.
- 1.02 Immediately to the west of the site (approximate minimum distance between prison walls and turbines is 360m, and approximately 430m to nearest cell block) are HMP Swaleside and HMP Elmley, with HMP Stanford Hill beyond them to the west, on the far side of Brabazon Road. To the south and east lie the Eastchurch marshes which largely comprise grazing land and wildlife habitat – landscape designations covering these areas are discussed in detail below.
- 1.03 Eastchurch village lies to the north, approximately 1.5km from the northernmost turbine, and adjacent to the northernmost tip of the application site, which is the southern edge of the public highway (Leysdown Road, B2231). The nearest residential properties sit immediately to the north of the turbine area – New Rides is roughly 456m from the nearest turbine, and New Rides Bungalow approximately 660m from nearest turbine. The residential properties on Range Road lie approximately 600m to the west (roughly 690m to nearest turbine).
- 1.04 Also further to the northwest lies Parsonage Farm, which houses the Eastchurch Airfield. This is an unlicensed airfield consisting of a grass landing strip on an east-west orientation which is predominantly used by light aircraft and microlights (amongst others). The runway is approximately 1.65km from the northernmost turbine, and 1.55km from the northwestern-most turbine.
- 1.05 In terms of Local Plan designations for the area, the site lies within the open countryside, but the land to the west is characterised by built development in the form of the prison cluster and the houses on Range Road and Orchard Way. The land immediately (a minimum of 25m from the southernmost turbine) to the south of the site is designated by the Local Plan as a Special Landscape Area, and approximately 900m to the southeast is the internationally designated Swale Site of Special Scientific Interest (SSSI), Special Protection Area (SPA), and Ramsar site – this closest part of the SSSI / SPA / Ramsar is a narrow stretch following Capel Fleet, which runs NE-SW up from the Swale.

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- 1.06 Immediately to the south is Great Bells Farm. This land is owned by the Environment Agency and has recently been brought into use as compensatory habitat for land within the SSSI that will be lost to planned sea defence works. In 2011 application SW/11/0575 granted permission for habitat improvement works – these have recently been completed and the land is now in full-time use for the specific purpose of wildlife habitat, primarily in relation to birds.
- 1.07 I am sure that Members will recall application reference SW/10/1587 which, in 2010, granted planning permission (for a period of 25 years) for the erection of two wind turbines and associated plant to the southwest of HMP Stanford Hill. Those turbines (known as the PIR turbines) have been in operation for approximately two years now, and sit roughly 1km west-southwest of the southwestern-most turbine proposed under this scheme.
- 1.08 Early last year, application reference SW/13/0097 granted two-year temporary permission for the erection of an anemometry mast – a precursor to this application – at New Rides Farm. The mast is due to be removed shortly, having fulfilled its purposes in relation to data gathering for this current application.

2.0 PROPOSAL

- 2.01 The scheme proposes the erection of 4 wind turbines on the site. Each turbine will measure up to a maximum of 126.5m to the tip of the blade, with a hub height of approximately 80m. Each turbine will be fitted with 3 blades each measuring approximately 44m, with a full rotor diameter of approximately 93m (including hub) – turbine 1 will have a reduced diameter of approximately 83m to minimise potential impact upon the functioning of Eastchurch Airfield, which is discussed in further detail below. They will be of a similar design to the two PIR turbines, although roughly 5m taller to blade tip, and have an output of 2.3MW per turbine.
- 2.02 Each turbine will sit on a concrete pad measuring approximately 6m in diameter. The pads themselves will be the visible area of a much larger concrete foundation measuring approximately 17m in diameter. Cables will run underground from each turbine to a transformer housing (measuring approximately 5m wide x 3m deep x 3m high) standing alongside the concrete pad. The applicant does note, however, that the transformers could potentially be housed within the turbine shaft depending upon the exact model of turbine that is used.
- 2.03 The existing farm access track, which runs north-south past New Rides Farm and the properties to the north, will be upgraded and two further access tracks will branch off to provide access to the turbines themselves. The southernmost track branches eastwards from the existing route past turbine 2 before turning southwards towards turbines 2 and 4. A culvert will be provided where this western track crosses an existing drainage ditch. The

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northernmost track branches westwards to turbine 1, then turns southwest towards turbine 3. The proposed layout plan illustrates this arrangement.

- 2.04 A substation / control building will be erected at the northern end of the site to provide connectivity to the grid. This will measure approximately 12m wide x 7m deep x 5.5m high (3m to eaves, with a pitched roof and three sets of double doors and two personnel doors providing access to three internal rooms.
- 2.05 The proposed layout is shown on the submitted drawing, but the applicant seeks a "micro-siting allowance" of 30m for all elements of the scheme to allow for on-site variations in levels, ground conditions, etc.
- 2.06 The total annual predicted output of the turbines is 26,390 MWh per annum based on average wind speeds for the location. This is sufficient to provide power to approximately 6,186 households, and will displace up to approximately 11,346 tonnes of CO² each year. The standard operational life of wind turbines is 25 years.

3.0 SUMMARY INFORMATION

	Existing	Proposed
Site Area (ha)	53.26 ha (131.6 acres)	
Number of turbines		4
Approximate hub height		80m
Approximate blade height		126m
Approximate rotor diameter		93m
Electricity produced		26,390 MWh/year (estimated to be sufficient to supply the requirements of 6186 homes, as per 1.7 of the ES.)

4.0 PLANNING CONSTRAINTS

- 4.01 The southern part of the site, including turbines 3 and 4, is designated as Flood Zone 3 and therefore at risk of flooding. The site layout has been designed to avoid encroachment in to the high risk flood zone wherever possible. With this in mind the majority of the proposed development, including turbines 1, 2, and the substation control building are located outside of the Flood Zone. (Chapter 14 and Appendix 14.2 of the ES specifically examine flooding and hydrology.)
- 4.02 As noted above the site lies close to the following internationally important sites:

- The Swale SSSI, SPA and Ramsar site which is located to the south of the application site on the banks of the Isle of Sheppey, and also to

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the southeast of the site where it follows the route of Capel Fleet. The SPA designation is a European Union directive designed to safeguard the habitats of breeding, migratory and overwintering birds.

- Further to the north and west lies the **Medway Estuary and Marshes Special Protection Area (SPA) and Wetland of International Importance under the Ramsar Convention** (Ramsar site) (hereto referred as Medway SPA / Ramsar), which is located to the north and west of the site.

- 4.03 The Swale SPA / Ramsar is predominantly a grazing marsh supporting significant wintering populations of waterfowl and other birds. The site has an outstanding assemblage of scarce plants. Narrow-leaved and dwarf eel grass are found on the mudflats while Ray's knotgrass and White Sea kale are found on the beach. The saltmarsh supports glassworts and golden samphire. The area is typically visited in the spring and early summer by breeding birds (particularly waders), or the winter by ducks, geese and waders.
- 4.04 The Medway SPA / Ramsar site is a wetland of international importance comprising of grazing marshes, inter-tidal flats and saltmarshes providing breeding and wintering habitats for important assemblages of wetland bird species, particularly wildfowl and waders. It is an integral part of the larger Thames estuary and contributes to its overall regional significance for bird species in an international context.
- 4.05 It is not envisaged that the development would materially affect the Medway SPA / Ramsar, but the potential impacts upon the Swale SSSI / SPA / Ramsar are discussed in greater detail below. Members may also care to note that an Appropriate Assessment (under Regulation 61 of the Conservation of Habitats and Species Regulations 2010) has been undertaken by the Council with respect to the potential impacts of the development upon these protected areas – that document was in the process of being agreed at the time of writing, and I will update Members at the meeting.
- 4.06 Aside from the above the site lies within the defined countryside of the Borough (Policy E9), although the local area is somewhat characterised by the built form of the prisons to the west which contrast with the open marsh and grazing land to the south and east. The land also falls within the defined Coastal Zone (Policy E13) and part of the site that does not include turbines lies within a Special Landscape Area (Policy E9).

5.0 POLICY AND OTHER CONSIDERATIONS

General Climate Change

- 5.01 The previous and current Coalition Governments consider that reducing Carbon Dioxide CO₂ emissions must be achieved by changing established practices in our way of life by consuming less energy and natural resources in homes, work, and travel. It also requires new development must adopt

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sustainable design and build principles set out in the supplement to the now superseded PPS1 on the effects of development on climate change, along with the Code for Sustainable Homes (February 2008) and Building A Greener Future (July 2007).

- 5.02 The global problems of climate change and tackling rising carbon dioxide levels have been placed at the heart of Government policy, particularly following the first Energy White Paper of 2003 and the Stern Review of 2006, which themselves stem from the Kyoto Protocol and the 1992 Rio Earth Summit. The Climate Change Act 2008, commits the UK to reducing its carbon dioxide emissions by 80% (from 1990 levels) by 2050.
- 5.03 The 2012 United Nations Climate Change Conference reached an agreement to extend the life of the Kyoto Protocol, which had been due to expire at the end of 2012, until 2020, and to reinforce the 2011 Durban Platform, meaning that a successor to the Protocol is set to be developed by 2015 and implemented by 2020. The European Union is playing an active role in coordinating member states' response to climate change. Relevant provisions include the following:
- **The EU Emissions Trading Scheme (ETS)**, which forms the cornerstone of UK action to reduce greenhouse gas emissions from the power sector. Since 2005, the EU ETS has set a cap on emissions from the large industrial sectors, such as electricity generation, and from Phase III (2013-2020) this cap will reduce at an annual rate of 1.74%. It is expected to deliver reductions from these sectors of 21% on 2005 levels by 2020, underpinning the transition to low carbon electricity generation.
 - **Directive 2009/28/EC on the promotion of the use of energy from renewable sources**, which amends and repeals the 2001 Renewables Directive (2001/77/EC), and is part of a package of energy and climate change legislation that provides a legislative framework for targets for greenhouse gas emission savings. The Directive encourages energy efficiency, renewable sources of power generation, and the improvement of energy supply. It thus establishes a EU-wide common framework for the production and promotion of energy from renewable sources, and sets the UK a target of 15% of total energy consumption, including transport, to be from renewable sources by 2020. In 2009 only 3% was from renewables.
- 5.04 The UK's response to the Directive is the National Renewable Energy Action Plan for the United Kingdom (NREAP), which, at pg. 4, states that "the UK needs to radically increase its use of renewable energy. The UK has been blessed with a wealth of energy resources. . . . As we look forward, we need to ensure that we also make the most of our renewable resources to provide a secure base for the UK's future energy needs."
- 5.05 Energy generation for the nation also needs to be reviewed. CO₂ producing power stations from oil and coal need to be replaced, with the Energy White Paper 2007 stating renewable (including wind power) and nuclear technologies will be the future for meeting the UK's energy demands.

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Aerodromes

- 5.06 The presence of Eastchurch Airfield to the northwest of the site, and the concerns raised by its owner, requires investigation and analysis of aviation policy in the UK.
- 5.07 The Civil Aviation Authority (CAA) is the regulator for the UK airspace. As the regulator, it produces a number of policy documents and procedures in the form of Civil Air Publications (CAPs). In this case; I consider two such documents are relevant.
- 5.08 CAP 764 is the publication referring to CAA Policy and Guidance on Wind Turbines. Specifically, Section 9 of Chapter 2 is relevant as it deals with turbulence; a key concern of the objectors. The section states the following:

"Wind turbines are generally large structures that can inevitably cause turbulence. However, given the requirements for minimum separation and avoidance of obstacles, turbulence in relation to wind turbine developments is not seen as requiring any additional consideration other than that which would normally be given to any large structure. Some research has been undertaken with regards to turbulence caused by wind turbines; however, no known recorded flight trials have taken place. The research found that there are two factors to turbulence caused by wind turbines. One is the blade tip vortices which are identical in nature to those found on fixed wing and rotary wing aircraft. The other is the effect of surrounding air rushing in to fill the void of de-energised air behind the turbine causing rolling turbulence (A similar effect to if the blades were replaced with a solid disc). Wind speed does not directly affect the distance that the turbulence travels downwind of the turbine before dissipating and returning to free flow. The greatest factor in determining the length of the wake is the ambient turbulence level. If the air in the vicinity of the turbine is already turbulent it will assist with mixing and result in the turbulent air returning to free flow more quickly. Therefore, wind turbines located in open areas (such as at sea) are likely to produce more persistent turbulence than those situated amongst hills or other obstructions. If the wakes of two turbines overlap, the effects are not doubled. In fact, due to increased mixing the wake of the second turbine returns to free flow more quickly than it might without the presence of the first turbine. This aspect should be assessed on a case-by-case basis taking into account the proximity of the development and the type of aviation activity conducted. In particular, turbulence will be of more concern to those involved in very light sport aviation such as parachuting, hang-gliding, paragliding or microlight operations."

- 5.09 CAP 793 refers to Safe Operating Practices of Unlicensed Aerodromes. Specifically, Paragraph 3.6 of Chapter 4 considers Aerodrome Physical Constraints, stating that:

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"The runway should, wherever possible, be designed such that trees, power lines, high ground or other obstacles do not obstruct its approach and take-off paths. It is recommended that there are no obstacles greater than 150 ft above the average runway elevation within 2,000 m of the runway mid-point."

National Planning Policy Framework (NPPF)

- 5.10 The NPPF has a general overall thrust in favour of sustainable development. Paragraph 7 comments that the planning system should have an economic, social and environmental role, and contribute *"to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution and mitigate and adapt to climate change including moving to a low carbon economy."*
- 5.11 Paragraph 97 continues to state that *"local planning authorities should recognise the responsibility on all communities to contribute to energy generation from renewable or low carbon sources"* and *"consider identifying suitable areas for renewable and low carbon energy sources, and supporting infrastructure, where this would help secure the development of such sources."*
- 5.12 In this regard Figure 2 of Addendum 1 to the Swale Renewable Energy & Sustainable Development Study (AECOM, Nov 2011) carried out as part of the evidence base research for the emerging Local Plan ("Bearing Fruits 2031") specifically indicates the area surrounding the current application site as having "high potential for installation of large-scale wind energy."
- 5.13 Paragraph 98 of the NPPF states:
- "When determining planning applications, local planning authorities should:*
- not require applicants for energy development to demonstrate the overall need for renewable or low carbon energy and also recognise that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions; and*
 - approve the application if its impacts are (or can be made) acceptable. Once suitable areas for renewable and low carbon energy have been identified in plans, local planning authorities should also expect subsequent applications for commercial scale projects outside these areas to demonstrate that the proposed location meets the criteria used in identifying suitable areas."*
- 5.14 Paragraph 118 of the NPPF states that developments likely to have an adverse effect on a SSSI should not normally be permitted unless such harm can be mitigated, or the development would give rise to benefits outweighing the harm caused. It also states that *"sites identified, or required, as compensatory measures for adverse effects on European sites"* should be given the same protection as European sites. Further to this paragraph 99

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notes that new development in vulnerable areas should be carried out in a way that ensures the *"risks can be managed through suitable adaptation measures."*

National Planning Practice Guidance (NPPG)

- 5.15 The NPPG provides general advice to be incorporated when determining applications for wind farm development, including advice in regards to ecology, landscape and visual impact, shadow-flicker, heritage assets, aerodromes and neighbouring buildings, amongst others. This advice largely relates to the provision of information by applicants seeking to justify proposed wind farm developments, however, and I do not consider it necessary to expand upon it here.

Planning practice guidance for renewable and low carbon energy (PPG)

- 5.16 Adopted by DCLG in July 2013 this document replaced "Planning for Renewable Energy: A Companion Guide to PPS22" and forms the bulk of current Government advice specifically related to renewable energy developments.
- 5.17 Paragraph 8 of the PPG states that *"there are no hard and fast rules about how suitable areas for renewable energy should be identified, but in considering locations, local planning authorities will need to ensure they take into account the requirements of the technology and, critically, the potential impacts on the local environment, including from cumulative impacts. The views of local communities likely to be affected should be listened to."*
- 5.18 Paragraph 15 continues to note that when considering planning applications *"it is important to be clear that:*
- *The need for renewable or low carbon energy does not automatically override environmental protections;*
 - *Cumulative impacts require particular attention, especially the increasing impact that wind turbines and large scale solar farms can have on landscape and local amenity...;*
 - *Local topography is an important factor in assessing whether wind turbines and large scale solar farms could have a damaging effect on landscape and recognise that the impact can be as great in predominantly flat landscapes as in hilly or mountainous areas"*
[amongst others].
- 5.19 Paragraphs 30 to 45 (inclusive) of the PPG provide guidance on assessing potential impacts arising from noise, safety, interference with electromagnetic transmissions, ecology, heritage (listed buildings and conservation areas), shadow flicker, landscape impact and decommissioning.

Swale Borough Local Plan 2008

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- 5.20 The Swale Landscape and Biodiversity Appraisal has been adopted as a Supplementary Planning Document. I discuss this material consideration at 9.20 to 9.22 below.
- 5.21 Policy U3 specifically refers to renewable energy generation. It states that the Borough Council will permit proposals for renewable energy schemes where they demonstrate environmental, economic and social benefits and minimise adverse impacts. In paragraph 3.177 of the supporting preamble of Policy U3, it states that that the Borough Council is supportive of the Government's aims regarding renewable energy and will encourage the development of appropriate schemes. It goes on to state that location is a key consideration, with the Kent Downs and North Kent Marshes likely to be too sensitive for such developments, whereas existing industrial sites or previously developed land may present opportunities.
- 5.22 The site lies within the open countryside (albeit close to the prison cluster) and as such Policy E6 applies, which seeks to protect the countryside for its own sake but allowing, under certain criteria, some development to take place. Policy E9 seeks to protect the quality and character of the Borough's landscape, stating that development which is harmful will not be acceptable.
- 5.23 Approximately 800m east and 1km south of the site lies the Swale Site of Special Scientific Interest (SSSI) / Special Protection Area (SPA) / Ramsar site, which enjoys international and national protection for wildlife, birds and wetlands. Policy E11 seeks to protect biodiversity in these areas whilst Policy E12 is specific to international sites, stating that the Council will give priority to its protection. It states that it will not permit development which directly, or indirectly has an adverse impact on this designated area.
- 5.24 Other policies relevant to this application are:
- | | | |
|--------|-----|--|
| Policy | SP1 | (Sustainable Development) |
| Policy | SP2 | (Environment) |
| Policy | SP3 | (Economy Development) |
| Policy | TG1 | (Thames Gateway Planning Area) |
| Policy | E1 | (General Development Criteria) |
| Policy | T1 | (Impact of Development on the Highway) |

The emerging Local Plan: "Bearing Fruits 2031" (Publication Version December 2014)

- 5.25 The emerging draft local plan, known as Bearing Fruits 2031, has not yet been formally adopted. It has, however, reached the publication version, and this can be given some weight in the determination of planning applications. As such, the policies and information set out within the document should be factored in when considering applications as they are a material consideration in the Council's decisions on planning applications.
- 5.26 Chapter 7.6 of Bearing Fruits recognises the NPPFs drive towards sustainable or green energy production, and the Government's commitment to

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reducing carbon emissions. It also notes that the Swale Renewable Energy and Sustainable Development Study (2011) and the Council's Sustainable Design and Construction Guidance (2010) both highlight the considerable opportunities within the Borough for power generation by way of biomass, wind, solar, CHP and micro-generation. The studies suggest that "Swale could achieve 30% of its electricity and 12% of its heat from renewables by 2020 to contribute to the Government's renewable energy target."

- 5.27 Policy DM20 does not specifically refer to wind farm proposals, but takes a more general approach and aims to achieve high levels of energy efficiency across all developments in the Borough. Members should also note the supporting text on pages 204 to 206, and the "Swale Energy Opportunities Map."
- 5.28 As noted above the evidence base for Bearing Fruits includes the Swale Renewable Energy & Sustainable Development Study (AECOM, Nov 2011), which specifically identifies the application site and surrounding area as having high potential for wind farm development.

6.0 LOCAL REPRESENTATIONS

- 6.01 66 letters of objection (including 5 from duplicate addresses) have been submitted, raising the following summarised concerns:
- Local residents already suffer with noise from the two existing turbines, this proposal will add to that;
 - Noise impacts on people's sleep and general quality of life, particularly in summer;
 - Should not be erected near to residential properties, and should only be erected at sea;
 - The noise levels are allegedly within guideline limits, which suggests the limits are set too high;
 - The submitted noise data is misleading;
 - The Council should carry out noise monitoring [noise monitoring in respect of the two turbines on the adjacent land has been carried out by the Council];
 - There are no studies into the long-term health impacts of wind farms, and none should be erected until such studies are carried out;
 - Harm to the appearance of the countryside;
 - Visual intrusion will discourage tourists from visiting the area;
 - Such development amounts to "environmental vandalism";
 - The red safety warning lights on top of the existing turbines are very noticeable at night;
 - The site is within a flood risk zone;
 - Increased traffic on inadequate road network;
 - Harmful to local wildlife, especially birds;
 - The "Swale Renewable Energy and Sustainability Study" states that there should be a 5km turbine exclusion zone around any airfield, and Eastchurch Airfield lies close to the site;
 - Nearby properties may be at risk of "ice and blade throwing;"

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- No benefit to the local community;
- Other modes of power generation should be considered, such as solar panels;
- Wind turbines are not as efficient as solar panel, and the cost of erecting them is not compensated by the profit generated;
- Noise and vibration from the turbines will disturb and upset horses stabled nearby;
- General errors / inconsistencies within the submitted information; and
- Other non-material planning considerations such as property value, or loss of view.

6.02 One further, very detailed and extensive, objection has been submitted by a local resident who is also a volunteer RSPB warden at Great Bells Farm, adjacent to the site. His submission notes (in summary):

- Wind turbines can have a barrier effect for birds extending up to 800m from the pylon;
- Barn Owls, Little Owls, Long Eared Owls and Short Eared Owls have been found to nest / roost / near the site either permanently or when on migration, and rely on nearby grassland for food supply;
- Barn Owl sightings have reduced to almost nil since erection of the two existing turbines;
- Sightings of other birds nearby have dropped significantly since erection of the two existing turbines;
- Sheppey is home to the UK's second largest Marsh Harrier population, which would be disturbed as a result of the development; and
- Numerous other bird species living nearby, or that stop on Sheppey while migrating, will be affected, as well as vertebrates and invertebrates.

6.03 88 letters of support has been submitted, raising the following summarised comments:

- *"It's great to see proposals for green energy and I'd far rather see this sort of development than, for example, the waste incinerator proposed a few years ago just across the Swale. I like the view of wind turbines (I can see the existing two from my house) and I feel they add to the view rather than detract from it."*
- No noise is audible from nearby houses;
- The development will benefit the local community, particularly from the commuted sum;
- Reduction in reliance on imported energy;
- The government needs to explore new ways to produce energy;
- Will avoid approximately 11346 tonnes of CO² and generate enough energy for 6100 homes;
- Will be *"an iconic addition to the local landscape"* and *"would like to see more on the Island;"* and
- Preferable to looking at a conventional power station.

6.04 One letter neither objecting nor supporting has also been received, which reiterates points noted above.

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- 6.05 The owner of Eastchurch Airfield, located to the northwest of the application site, has written in with some detailed comments in relation to the impact of the turbines upon the operation / safety of the airfield, with particular regard to risk of collision and risk of wake turbulence. He also comments (in summary):

Further to discussions with the agent for the application, however, Eastchurch Airfield has confirmed that they do not object subject to:

- All turbines to be fitted with "normal type ICAO red aviation obstruction lights" similar to those on the existing turbines;
- Request 24hr access to wind and turbine operation information, which can be done via a website;
- Emergency shutdown conditions similar to those stated on the planning permission for the existing turbines.

- 6.06 Swale Footpaths Group note that the nearby footpath (ZS46) terminates in a dead end, and questions whether some of the community benefit fund could be used to extend the footpath to meet with the continuation of Brabazon Road to the south and enable a walk from there to the Kingsferry Bridge.

- 6.07 The Kent Invicta Chamber of Commerce supports the application, particularly noting opportunities for local businesses to be involved in construction / maintenance, and skills training for local young people (as a result of the applicant's intention to provide a commuted community benefit sum – discussed elsewhere in this report). They also note the wider benefits to be gained from sustainable energy production.

- 6.08 A substantial objection has been received from a Dr Yelland – a noise consultant who has been employed by various bodies across the country to submit technical objections to wind farm applications. The document runs to 53 pages and contains substantial amounts of technical data that I do not intend to reproduce here. The objection can, however, be summarised into 7 key points (which are noted by the objector at 2.3.1 of his submission):

- (a) Noise from the existing PFR turbines is not correctly accounted for;
- (b) The microphone used for measuring background noise levels was placed unnecessarily close to vegetation, which makes noise itself;
- (c) An unsuitable meter was used to record sound levels, and added its own electronic noise to the background readings;
- (d) Calibration drift of the sound meter was not accounted for a New Rides Bungalow;
- (e) Uncertainty in the turbine manufacturer's noise data hasn't been accounted for;
- (f) Uncertainty in the prediction of turbine noise levels at dwellings hasn't been accounted for; and
- (g) The dwelling most affected by the predicted noise levels has not been included within the assessments.

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6.09 A meeting between the Council's Environmental Health Manager, the developer and their agent and noise consultant was held further to receipt of the above. As a result of that meeting and additional information in the form of a letter of response to Dr Yelland's objection I am confident that the above issues have been adequately examined and accounted for within the application. I therefore do not agree with the objection, and the matter is explored in greater detail at 9.78 below.

7.0 CONSULTATIONS

7.01 Eastchurch Parish Council *"strongly objects to this application."* Their comments can be summarised as follows:

- DCLG guidelines on renewable energy developments indicate that the existence of other schemes should not be considered as precedent for approval of future developments;
- The site is close to a number of residential properties, and also the prison cluster with a population of over 2000;
- The proposed turbines will be 5m higher than the existing two, and thus more visible;
- The existing and proposed turbines will have a cumulative impact on the Sheppey skyline, visible from Rodmersham, Teynham and the A249 to Sheppey, and will *"dominate both the surrounding street scene and countryside and be visible from a great distance off the Island;"*
- Alter the distinctive character of the marshes to the detriment of the character of the Island;
- The existing and proposed turbines will "sandwich" the nearby houses between two sets of turbines, *"giving no respite from the noise,"* and potentially causing further problems in regard to flicker effect;
- The visual impact will discourage people from visiting and be harmful to tourism on the Island;
- *"The peace and tranquillity that it [Sheppey] provides, particularly in its close proximity to London, is an asset to be valued and supported. The installation of the proposed turbines will do lasting damage to that perception and will almost certainly have a demonstrable impact on the economic growth of the holiday industry;"*
- Impact on wildlife, with particular regard to Great Bells Farm, and displacement of birds within the area; and
- Impact views from Bright's Wood – a well-used public area close to the site, at the end of Kent View Drive.

7.02 Minster Parish Council has no objection, but comment:

"Although not a planning consideration, MPC feels that due to the proposal's close proximity to Minster, any community benefit funding should be prioritised for allocation to the Sheppey Central Ward being an area of deprivation which includes Minster."

7.03 The Defence Infrastructure Organisation, responding on behalf of the Ministry of Defence, has no objection but requests that the turbines are fitted with "25

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candela omni-directional red lighting or infrared aviation lighting with an optimised flash pattern of 60 flashes per minute of 200ms to 500ms duration at the highest practicable point." They also request that the developer notify them of the start and end date of construction; the maximum height of construction equipment; and the latitude and longitude of each turbine. These items are covered by the conditions and informative set out below.

7.04 HM Prison Service's National Offender Management Service notes that the noise of the four additional turbines may be greater than the existing two, and could thus affect the prisoners at the cluster at night. They ask whether noise monitoring will take place before permission is granted. Members will note that noise data forms a substantial part of the submitted Environmental Statement, which has been examined by the Council's Head of Service Development – as discussed below.

7.05 Atkins, on behalf of the Ministry of Justice (MoJ), state that whilst they are *"fully behind the principles of renewable energy development"* they *"need to operate the custodial estate at HMP Sheppey prison cluster in a manner which provides a safe and well-ordered establishment in which prisoners are treated humanely, decently and lawfully. Our concerns therefore relate to the potential impacts of the proposed wind turbines on the operation and the welfare of its charges."* They object to the development on the following summarised reasons:

- Cumulative noise impact of the turbines, and the need to set a lower decibel level for any new turbines than on the existing turbines;
- The impact of shadow casting / flicker on the operation of external CCTV systems;
- Interference with the operation of the prison's helipad, approximately 600m from the nearest turbine; and
- The impact of electro-magnetic fields (EMF) generated by the turbines on the operation of communications equipment at the prisons.

The applicant sent a response to the MoJ to address the above, but there have been no further comments received.

7.06 Natural England (after similar comments to the RSPB and KCC Biodiversity Officer as noted below) did not initially object, but stated that further information was required in respect to the potential impacts of the development upon the adjacent protected / designated areas and the species therein:

"The application site for the proposed turbines is in an area of high sensitivity for birds... It should also be noted that the area of land at Great Bells Farm to the south of the application site has been purchased by the Environment Agency as compensation for the loss of SPA due to coastal defence works in the future. Under the National Planning Policy Framework such areas identified as compensation are given the same protection as European sites. Given their location, the proposed turbines have the potential to result in

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impacts to birds associated with designated sites through bird strike and displacement of birds."

- 7.07 They recommend that, given the potential for impacts to protected wildlife, two years' worth of bird data should be required to *"provide a robust assessment of the potential impacts... In the absence of this information Natural England is not able to provide advice to the Council on the likely impacts that may result from this proposal,"* and can not confirm that the requirements of Regulations 61 and 62 of the Habitats Regulations (relating to Appropriate Assessment) have been complied with.

However, following significant discussions with the applicant and submission of further information **NE has withdrawn its objection**, and commented that *"after discussions with the Environment Agency and the RSPB we are now satisfied that there will not be a likely significant effect on European designated sites or Great Bells Farm compensatory habitat subject to conditions"* as also requested by the RSPB (noted at 7.11 below).

- 7.08 The Kent County Council Biodiversity Officer also advised that additional information was required prior to determination of the application. They acknowledged that the applicant has carried out a great deal of surveys, but raised concern that the Great Bells Farm reserve was not operational at the time of those surveys, and that there may be a great deal more birds in the area now that it is operational.
- 7.09 They raised concern over the impact of the proposed grazing marsh to the south of the site on foraging habitat for birds, as this had not been explored by the applicant, and also suggested that further information be provided in regards to bat surveys and water voles / reptile surveys. Lastly, they suggested that, if permission is granted, a management plan be required to ensure that the site is appropriately enhanced and managed in the long term to secure most benefit to wildlife.
- 7.10 However, as with NE and the RSPB, KCC have subsequently withdrawn their objection further to additional information and discussions with the applicant and their ecologist. **KCC now has no objection** subject to the imposition of a condition requiring a bird monitoring strategy in respect of Great Bells Farm, as listed in the conditions below.

- 7.11 *The RSPB originally objected to the application as they "do not consider that the application or its Environmental Statement have adequately considered the impacts on designated species and habitat."* They raised concerns over the impact of the turbines on the functionality of Great Bells Farm as compensatory habitat which, in due course, will be designated as part of the SPA, and also concerns over the impact of the turbines on the wider SPA / SSSI / Ramsar site and the wildlife therein. In this regard they raised four main points:

"1. *Adverse effects on Great Bells Farm based on its state once it is fully established;*

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2. *The potential for turbines to reduce the full potential of Great Bells Farm to act as compensation [habitat for land within the SPA lost to sea defence works];*
3. *Impacts on breeding and wintering raptors; and*
4. *Potential adverse effects on wintering wader populations."*

The RSPB also suggested that an Appropriate Assessment is required under section 61(1) of the Habitat Regulations. This has been carried out and, at time of writing, the document was in the process of being finalised / adopted – I will update Members at the meeting.

However, following significant discussions with the applicant and submission of further information the RSPB is *"now satisfied that there will not be a likely significant effect on existing European designated sites or Great Bells Farm compensatory land (which should be assessed as if it were a currently designated SPA), subject to conditions (with which the Environment Agency and Natural England agree) [my emphasis] which secure the following:*

- *Post-construction bird monitoring and reporting to assess the environmental effects of the turbines on Great Bells Farm. There is inherent uncertainty regarding the future bird usage of Great Bells Farm and surrounding land which means that future impacts are difficult to accurately predict. In light of this uncertainty, we strongly recommend that robust post-construction monitoring be carried out.*
- *Enhancement of 23 ha of land in accordance with the proposals in the application.*
- *Proposals to mitigate and compensate in the event that a detrimental effect is identified."*

7.12 London Southend Airport originally objected to the application, commenting that *"the airport is currently working with the applicant and their consultants to identify a technical mitigation for the impact this proposal will have on the Primary Radar at Southend Airport. The Airport Authority shall maintain an objection until a suitable technical mitigation is agreed."* Further discussions between the agent and the airport have taken place, however, and they now raise no objection subject to the use of a condition (as below) to ensure technical radar mitigation measures are implemented.

7.13 Vodafone, H3G and Everything Everywhere Ltd. (including T-Mobile and Orange) have no objection.

7.14 Arqiva (responsible for BBC and ITV transmissions) has no objection.

7.15 Kent County Council Public Rights of Way Officer objects to the application as the nearest turbine stands 126m high but only 110m from footpath ZS46. He states that this objection could be removed if the turbines were placed *"at least the fall over distance from the footpath,"* or by *"creation of a public right of way between the northern end of ZS46 and the B2231, Leysdown Road to link to Eastchurch village [which] would be of a benefit to the local community*

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and wider public.” He continues to note that “the creation of such a route ...would only require the removal of existing signs stating that the route is not a public right of way and installation of a fingerpost at the roadside to indicate a public footpath.”

I am of the opinion that this can be addressed through the ‘micro-siting’ of the turbines within the agreed areas, as noted at 2.05 above.

- 7.16 The Lower Medway Internal Drainage Board states that their formal consent will be required for the proposed watercourse crossing within the site, and for any works within 8m of the adopted Aerodrome Ditch IDB1H. They also state that surface water runoff must not increase as a result of the development.
- 7.17 CPRE Protect Kent objects to the application, and *“feels that it is only in very rare cases that on-shore wind farms can be justified.”* They suggest that the turbines would be detrimental to local residents; harmful to the character and appearance of the area – including the wider Borough due to the long-range views available – with a consequent knock-on effect on the local tourism industry; and that local employment benefits are likely to be small and only during construction. CPRE also suggest that the devaluation of nearby properties should be a material consideration in determination of the proposal, as this will affect the amenity of the owners in terms of their enjoyment of their property.
- 7.18 The Council’s Climate Change Officer has no objections, and comments that the development *“will go towards national, Kent and Swale targets for renewables and CO2 reduction.”*
- 7.19 The Environmental Health Manager has no objection to the application, subject to the use of conditions as noted below (in particular a very substantial noise monitoring condition). In regards to the submitted noise monitoring he comments:

“The assessment concludes that there is no evidence to show that any noise that the residents might hear will cause them a problem. All the readings and predictions from the model and standard used indicate this to be the case. There is also a noise contour plan of the whole site that indicates this. I therefore, have difficulty in disagreeing with this amount of consistent evidence, even though there are some issues that have not been completely explained and thus can have no objections to the scheme.”

- 7.20 As noted at 6.08, above, and discussed in greater detail at 9.83, below, the EH manager has also responded to a technical objection submitted on behalf of local residents, and again raises no objection, commenting:

“Despite the late and sincere intervention from Dr Yelland it does not change my overall opinion that there is insufficient arguments to say that this proposal should not go ahead. An interesting addition has

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been from the applicant's acoustic consultant who has suggested that a lengthy condition be included which they say that they can comply with. On this basis, I am satisfied that it is appropriate to include this condition."

8.0 BACKGROUND PAPERS AND PLANS

8.01 The application is accompanied by:

- Site location plan;
- Proposed layout plan (corrected version received 7 November 2014, showing turbines in locations discussed / explored within the ES – the original layout plan was incorrect, showing turbine 1 24m further north; turbine 2 33m to the north and turbine 3 90m to the east of their proposed positions. These changes do not impact upon the determination of the application, and will not give rise to any changes in assessment of the technical data, the correct positions having been used to inform the ES.);
- Wind turbine elevations;
- Wind turbine foundation / pad details;
- Substation elevations; and
- An Environmental Statement (ES) comprising four volumes of technical data, non-technical summaries, landscape and visual assessments, and wildlife / ornithology / ecological appraisals and studies, amongst others, as well as chapters dedicated to particular issues within the ES.

9.0 APPRAISAL

9.01 This application raises a number of important issues but I consider that there are three issues of primary importance, which are:

1. The principle of the proposal and the policy context with respect to wind energy;
2. Impact upon ecology (in particular avian ecology) and the functioning of the designated wildlife habitat areas to the south of the site; and
3. The impact upon the landscape and visual amenity.

Other issues which are raised by this proposal are:

4. The potential impacts upon Eastchurch Airfield and its users;
5. Siting and design;
6. Impact to residential amenity from noise, vibration and shadow flicker;
7. Impact on archaeology and cultural heritage;
8. Electromagnetic production and potential interference;
9. Impact upon the local highway network;
10. Ground conditions; and
11. Socio-economics;

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- 9.02 Members will be aware that national planning policy is entirely focused on sustainable development; the presumption in favour of sustainable development is *"a golden thread running through both plan making and decision taking"* (paragraph 14). The NPPF promotes renewable energy as a key planning objective; stating that local planning authorities should support renewable energy projects as noted at 5.08 and 5.09 above. In addition, at paragraph 97, the NPPF notes that *"local planning authorities should recognise the responsibility on all communities to contribute to energy generation from low carbon or renewable sources."* Local Plan Policy U3, which I refer to above also supports renewable technology.
- 9.03 The proposed wind farm is therefore supported by national and local plan policies and contributes to renewable energy generation in Kent and the UK. As such, I have no objections to the principle of the proposal.

Ecology and ornithology

- 9.04 Chapters seven and eight of the Environmental Statement (ES) refer to ecology and ornithology.
- 9.05 The issues to be considered are the impact upon the bird wildlife on the land to the south which includes the Swale SSSI / SPA / Ramsar and Great Bells Farm, which, as compensatory habitat for loss of SSSI land elsewhere, is afforded the same legal protection as formally designated SSSI.
- 9.06 Although the site for the turbines lies within the defined countryside and close to the built form of the prison cluster, the southern part of the site lies within a Special Landscape Area and approximately 990m northwest of the Swale SSSI / SPA / Ramsar. The land to the south is home to an abundance of bird life. Accordingly, and in consultation with Natural England, the proposal had the potential to raise significant environmental issues requiring it to be subjected to an Environmental Impact Assessment (accordingly, a comprehensive Environmental Statement accompanies the application), as well as an Appropriate Assessment required by Regulation 61 of the Conservation of Habitats and Species Regulations 2010.
- 9.07 Paragraph 33 of the PPG (mentioned at 5.16 to 5.19 above) states that current *"evidence suggests that there is a risk of collision between moving turbine blades and birds and/or bats. Other risks including disturbance and displacement of birds and bats and the drop in air pressure close to the blades..."* It continues to note, however, that *"these are generally a relatively low risk"* and advises that the impacts of a development be assessed.
- 9.08 The most common cause of bird and bat deaths is generally from direct strikes with the blades. The applicants have undertaken a Collision Risk Model (CRM) for the species most likely to be affected by the development – including avocet, hen harrier, marsh harrier, golden plover, Mediterranean gull, redshank, shoveler and bar-tailed godwit. Within the CRM the number of birds colliding with the rotors each year was calculated and it was assumed that all collisions would be fatal. This provides an estimate of the number of

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fatalities per year for the wind turbine development, assuming that birds take no avoiding action to prevent a collision.

9.09 The CRM showed that the predicted combined collision mortality rate for the most at-risk SPA-qualifying species would be below 1% of total population, for example:

- fatal marsh harrier collisions are estimated to occur at 0.17 birds per year during breeding season and 0.54 birds per year outside of breeding season;
- fatal peregrine and golden plover collisions are predicted to be 0.02 birds per year (per species); and
- Mediterranean Gull collisions are estimated to be negligible as, of the 6 flights recorded, none entered the collision risk area.

9.10 It must also be recognised that this model is a “worst case scenario,” and actual collision figures are likely to be much lower – the likely overall impact upon the populations of the identified bird species is therefore considered to be low risk and not significant. This issue is explored fully within the ES and also within the Appropriate Assessment carried out by the Council and reviewed by the KCC Biodiversity Officer.

9.11 Members must also carefully note the formal comments from KCC, Natural England, KWT and the EA set out in the preceding pages – they are now satisfied that the development would not give rise to ornithological impacts to such a degree that a refusal of planning permission on such grounds could be justified or reasonably defended at appeal.

9.12 Chapter seven of the ES also considers the potential impacts of the development, both during and post-construction, and in accumulation with other developments, on non-avian species. An extended Phase 1 Habitat Survey was submitted as part of the application along with a series of protected species surveys, including great crested newt, bat, water vole, otters and badgers.

9.13 No serious long-term impacts were identified in the course of these surveys when taking into account proposed mitigation measures – such as the formation of buffer zones around field margins, replanting hedgerow gaps, and other general site enhancement measures. In fact, some species, such as water vole, otter and amphibians, are expected to benefit from the development and mitigation proposals:

9.14 I am therefore confident that the development is acceptable in this regard, and have no reason to question the comments provided by the relevant ecological expert bodies.

9.15 The Council has carried out an appropriate assessment, as required by the Conservation of Habitats and Species Regulations 2010, and concluded that there will be no adverse effect upon the integrity of the Swale SPA / Ramsar site, either as a singular project or when taken as a cumulative impact or as a

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direct or indirect cause during construction and operation, subject to the imposition of conditions as set out below. The Council is in the process of adopting the Appropriate Assessment and I will update Members at the meeting.

- 9.16 In summary, and having sought the advice of Natural England, the RSPB, Kent Wildlife Trust and the Environment Agency, I am of the firm view that this proposal will have no unacceptable detrimental impact on wildlife either within the site or on surrounding land; will not have an unacceptable detrimental impact on the SSSI / SPA / Ramsar or the compensatory habitat at Great Bells Farm. Accordingly, I consider the proposal is fully acceptable in this regard.

Landscape and visual concerns

- 9.17 Chapter six of the ES deals with landscape and visual implications.
- 9.18 The wider overall study area for the assessment of landscape and visual impacts extends approximately 30km from the development site – to areas in the proximity of Birchington (to the east); Selling and Doddington (to the south); Rochester (to the west); and Canvey Island, Southend and Foulness (to the north). However, due to the likely limited extent of significant impacts a narrower 15km study area was examined in detail – extending to Whitstable (east); Badlesmere (south); Upchurch (west) and the Isle of Grain (northwest).
- 9.19 The ES notes that under normal circumstances the study area for a cumulative assessment would extend to 60km but due to the limited extent of the development, and local topography limiting views from some directions, 15km was considered to be a reasonable distance. Having travelled extensively across the Borough and into neighbouring Boroughs (to Whitstable and Rochester, for example) I do not disagree with this logic.
- 9.20 The Swale Landscape Character and Biodiversity Appraisal (2011) – which has been adopted as an SPD – identifies the site as lying predominantly within the Central Sheppey Farmlands character area. The southernmost part of the site - not including land on which any of the turbines would stand - is within the Leysdown and Eastchurch Marshes character area. The site, as described above, consists of grazing grassland and is largely open and flat with some tree planting around the site boundaries.
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- 9.21 The Central Sheppey Farmlands area is considered to be in poor condition and of moderate sensitivity. It is described as intimate in character with smaller field parcels, scattered farmsteads and settlements and undulating topography with only pockets of high ground where open views across to the mainland are possible. In terms of landscape management, there is a clear need to maintain the tranquil nature and wetland habitat of the marshes in the southern half of the Isle of Sheppey and to restore and recreate improved structure within the farmland landscapes in the north of the Isle.

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- 9.22 The Leysdown and Eastchurch Marshes area is considered to be in good condition and of moderate sensitivity. The site consists of grassland fields. Flat, open marshland dominates the overall character of the area: the Leysdown and Eastchurch Marshes giving way to the Elmley Marshes to the west and the Harty and Spitend Marshes to the east and south. These marshlands are extensive, open landscapes with little built form and they afford wide, open views across the Isle of Sheppey to the mainland of Kent beyond.
- 9.23 The landscape and visual impact assessment has concluded that, in EIA terms, there are no predicted significant effects on landscape character as a result of the proposed development. I agree with this conclusion in that I believe that the turbines would sit well within the open landscape and would not detrimentally affect its character and value, and have no serious negative impact on the adjacent land designated as a Special landscape Area in the Swale Borough Local Plan 2008. In this regard Members have the benefit of viewing the existing PFR turbines.
- 9.24 The methodology used to make the assessment is a computer-generated Zone of Theoretical Visibility (ZTV), which defines landscapes and locations that are likely to have a view of the wind farm. The ZTV can be used to produce photomontages of the proposed masts taken from a number of vantage points. In this case 14 different view points have been analysed and these are set out in Volume 2 of the ES.
- 9.25 I consider the most significant views of the site are those from the Kingsferry Bridge (viewpoint 1) and Swale Crossing (no mock-up viewpoint provided due to lack of pedestrian access to the bridge); Elmley nature reserve (viewpoint 2); the B2231 Leysdown Road (viewpoints 5 and 8); Range Road, Eastchurch (viewpoint 7); Harty (viewpoint 10); and from the Saxon Shore Way at Oare (viewpoint 11).
- 9.26 There are direct views of the turbines from other locations to the south, but these are generally at such long range as to be insignificant, in my opinion. Furthermore the structures – which are admittedly very tall – will be set against the expansive backdrop of the wider marsh landscape, with a gently rising land level to the rear (north). As such, I conclude that the ZTV and its montages demonstrate that the four turbines will not be visually dominant when set against the substantial marshes – and the rolling hills to the north – when viewed from the south.
- 9.27 Significant visual effects are predicted from points 5 and 7, which lie closest to the turbines. Point 7 is on the B2231 Leysdown Road and the top of the turbines (hub and blades) will be visible to motorists passing by, and to residents of the 3 dwellings on the access track leading to the site (one of the dwelling is New Rides Farm, the landowner). Approximate separation distances to those dwellings are as follows:
- Sunrise: 1340m;
 - New Rides Bungalow: 780m; and
 - New Rides Farm: 560m

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9.28 However, and as noted above, the turbines are set against wider views of open landscape and whilst they may present a prominent feature I do not believe that they would be so significant or dominant over that wider view as to be seriously visually harmful to the character and appearance of the landscape as to justify a reason for refusal on those grounds. Accordingly, I do not consider the proposal will have a significantly detrimental impact on the landscape character or to visual dominance and have no serious objections to the proposal in this regard.

Aviation

9.29 Members may recall that there was significant interest in this matter on the previous application for the PFR turbines to the south of the prison cluster. In the case of this current application there are two primary aviation issues to consider:

- i) The potential impact upon Eastchurch Airfield; and
- ii) The potential impact upon Southend Airport.

9.30 Contrary to the previous application there has, in fact, been relatively little concern raised by Eastchurch Airfield. The PFR turbines have been operation for nearly two years now, and the owner and users of Eastchurch Airfield have had opportunity to experience the impacts resulting from those two turbines – including previous concerns such as downwind turbulence impacting upon light aircraft.

9.31 As noted above the owner of Eastchurch Airfield has raised no objection subject to a reduction in the blade diameter of turbine 1, which lies closest to the airfield. The blades are to be reduced from 93m to 82m to achieve minimum safe separation distances as recommended by current guidance. The applicant has agreed to this and amended drawings have been provided. Other than this Eastchurch Airfield raise no objection subject to relatively standard conditions requiring aviation lighting (red flashing type) to be installed and being provided access to wind / turbine operation data – both of which are conditions imposed upon the existing two turbines. These issues are picked up in the conditions below.

9.32 London Southend Airport originally objected to the proposal due to likely impact upon the functioning of their radar. However, further to discussions directly with the applicant they have found a mutually acceptable solution and now have no objection subject to the use of a condition as below. In this regard I have no serious objection on aviation grounds.

Siting and design

9.33 The design of turbines of this scale is, in general, functional. The application notes that the final design of the turbines will be dictated by which models are available for purchase if planning permission is granted, but it likely that they will be of a standard design featuring a gently tapered upright, central

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projecting hub with nacelle behind and three blades. I have recommended a condition requiring details of the units to be used to be submitted and approved prior to erection on site, and have no serious concerns in respect of design.

- 9.34 The submitted Design & Access Statement notes that a phased site selection process began with (para. 2.11) *"a desk-based assessment testing against predefined criteria such as areas with suitable average wind speed; locations outside landscape designations; suitable buffer distances from roads, railways, public paths, service infrastructure; and with sufficient area to ensure the turbines can be located at a suitable distance from woodland, hedgerows and residential dwellings."* Para 2.18 continues to note that *"whilst the site was identified at an early stage as being an appropriate location for a wind energy scheme, the number of turbines and detailed layout has evolved over time in response to environmental factors and in consultation with the landowner."*
- 9.35 The nearest turbine (turbine 2) to any residential property lies approximately 560m from the nearest residential property (New Rides Farm – the application site landowner).
- 9.36 I am of the firm view that the turbines are designed and coloured appropriately and are unlikely to have a detrimental impact to outlook or dominance to neighbouring properties by reason of distance.
- 9.37 I have not been provided with information on construction or decommissioning. However I consider this aspect can be controlled by planning condition, which I have set out below.

Impact to residential amenity from noise, vibration and shadow flicker

- 9.38 Chapter 9 of the ES refers to noise, and chapter 11 to operational safety.
- 9.39 The National Policy Statement for Renewable Energy provides advice on this topic, and recommends that such applications are assessed in accordance with the Energy Technology Support Unit (ETSU) report ETSU-R-97. This document advises on noise limits for wind turbines and aims to *"offer a reasonable degree of protection to wind farm neighbours, without placing unreasonable restrictions on wind farm development,"* and Members will recall that it was referenced in the assessment of the two adjacent turbines and those approved on the Lappel Bank near Sheerness.
- 9.40 Current guidance notes that wind turbines are not noisy in absolute terms, and that it is possible to stand at the base of a turbine tower and hold a normal conversation. ETSU-R-97 states that *"noise limits from a wind farm should be set relative to the existing background noise at the nearest receptive noise-sensitive properties and the limits should reflect the variation in both turbine source noise and background noise with wind speed"*. It also states that noise from wind farms should be limited to 5dB(A) above background noise levels both day and night, but no greater than 43dB(A)

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externally in total at night, based on an internal sleep criteria requirement of 35 dB(A).

- 9.41 The ES states that noise surveys were carried out at two representative locations from 10th to 28th October 2013 to determine baseline noise conditions, and thus set noise limits for the development. Current accepted methodology has been referred to and used in the assessment (i.e. ETSU-R-97, the 1996 Assessment and Rating of Wind Turbine Noise and the Institute of Acoustics (IoA) 2013 Good Practice guide to the use of this standard). The principle behind this method is to establish background noise readings at/near the nearest residential properties and then to project predicted noise levels from the turbines in question at different operating speeds, in this case from 4 – 10 metres/second. (The IOA GPG gives advice on minimising the effect of existing turbine noise and specifies a calculation method ISO 9613-2 with certain stipulated input parameters. The assessment has used this standard.) The terrain in question also has to be taken into account and fed into a computer model. No actual readings from the turbines themselves are possible so similar types of turbines, both in terms of height and energy output have been used to produce sound power levels – the assessment has used manufacturer's noise data for the two proposed turbine types with additional margins for uncertainty included in the calculations. These have then been extrapolated to produce predicted sound pressure levels at both the nearest residential properties and the prisons.
- 9.42 Some of these predictions are in excess of 35dB(A). ETSU-R-97 states that, if this is the case, a further assessment at these locations should be made against the noise limits which vary with wind speed. This was carried out at a position of the nearest residential property (apart from New Rides Farm, as referred to at 9.35 above) to this scheme, i.e. adjacent to 11 Range Road. Here, the levels of predicted turbine noise with varying wind speed were less than that expressed in the ETSU-R-97 noise limits, even though they were above some of the background noise measurements. In addition, the noise levels are all well below those suggested in the WHO noise guidelines for sleep disturbance. The developer has also indicated that noise levels at the prison can meet the same standard adopted for the existing turbines.
- 9.43 The cumulative noise effect from the two existing turbines, in addition to the proposed four, has also been calculated, and the six turbines in combination will result in an increase of no more than +1.5 dB – hence still within the ETSU-R-97 limits. The effect of the predominant south-westerly wind has been taken into account within this assessment, and will have a limiting effect on any cumulative noise heard by local residents who are situated north or west of the application site. Therefore downwind conditions which represent the worst case noise levels for the proposed turbines will occur infrequently.
- 9.44 The impact from other types of noise from the turbines – i.e. tonal noise, vibration, low frequency, infrasound and amplitude modulation (i.e. noise from periodic stalling of blades to produce low frequency noise at a modulation frequency of ~1Hz) – affecting nearby properties has also been examined, and is considered to be unlikely. There have been huge improvements in

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recent technology to reduce these effects as far as practicable, as any noise or vibration generated by the turbine represents energy inefficiency in that (at the fundamental level) power is being used to generate the noise / vibration rather than to generate electricity. I am sure this will be proved to be correct, but there is very little hard evidence in the assessment to back up these statements. There is a section on Amplitude Modulation included, for which current guidance states that there is no necessity to measure it due to its rarity though it is acknowledged that it could be an issue under certain circumstances. The PfR turbines have a condition in relation to Amplitude Modulation which can also be used on this proposal.

9.45 The ES concludes that noise levels can meet the applicable limits and that there is no evidence to show that the development, in accumulation with the existing turbines, would generate levels of noise sufficient to seriously disturb local residents – I note local concerns referencing the existing turbines in this regard, but have some difficulty in assessing the validity of such claims due to letters from other nearby residents who claim to not be able to hear them. Furthermore Members should be clear that any disturbance arising from the existing turbines is not a matter for consideration here and could be dealt with separately.

9.46 The evidence before me shows that the proposed turbines can comply with Government approved noise limits and will not generate a nuisance, and all the readings, predictions and noise contour plans from the model and standard used indicate this to be the case. I therefore have difficulty in disagreeing with this amount of consistent evidence and thus have no objection on this ground, and reiterate that the Environmental Health Manager has no objections.

Shadow Flicker

9.47 Chapter 11 of the ES discusses shadow flicker and general safety surrounding installation and operation of the turbines.

9.48 Shadow flicker is a phenomenon that can occur in the proximity of wind turbines when, under certain conditions, a shadow is cast onto the windows of nearby properties. Rotation of the blades can result in this shadow appearing to 'flicker' on and off when viewed from within those properties. Paragraphs 2.7.63 and 2.7.64 of the National Policy Statement for Renewable Energy Infrastructure note that the potential significance of the effect is dependant on a number of factors, including:

- Location of the relevant building relative to the path of the sun and the turbines;
- Distance between turbines and affected buildings;
- Size of windows on the affected building, and the relation of the aperture to the turbines;
- Height and rotor diameter of the turbine;
- Local topography, buildings and vegetation;
- Frequency of bright sun and cloudless skies;

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- Time of year; and
 - Prevailing wind direction and usual rotor orientation.
- 9.49 Current guidance states that there is unlikely to be a serious affect within a building if a wind turbine is located more than 10x the rotor diameter (approximately 93m in this instance) from the turbine, and will not happen when there is intervening topography, buildings, vegetation or other obstruction.
- 9.50 The UK Shadow Flicker Evidence Base (2011) suggests that a property subjected to 30 hours or more of shadow flicker per year is regarded as affected to the extent that mitigation may be required. The ES, at Figure 11.1 and Table 11.1, shows that 8 properties – including the three prisons – are likely to experience more than 30 hours of flicker per year (up to 119 hours at HMP Elmley, the closest property). These effects are, however, a worst-case scenario modelled on perfect window alignment, clear skies, constant sunshine all year-round and no intervening vegetation or structures.
- 9.51 The ES suggests that mitigation measures be employed to prevent exposure from exceeding 30 hours per year, and states that this can be achieved by programming the operating system of the turbines to shut down the offending turbine when defined conditions coincide, including:
- Specified times of year that correspond with an identified period of likely shadow flicker;
 - If turbine-mounted photo-cells indicate that the sun is bright enough to give rise to flicker; and
 - When wind direction corresponds to an orientation of the turbine which would be likely to give rise to flicker at identified receptors.
- 9.52 I have recommended a condition in-line with the above items, and consider that this will adequately mitigate against any serious issues of shadow flicker for local residents. Members may also care to note that such a condition was also imposed upon the PFR turbines.

Impact on archaeology and cultural heritage

- 9.53 Chapter 13 of the ES refers.
- 9.54 Known heritage assets (including Scheduled Monuments, Listed Buildings, archaeological sites and other features of historic, architectural, archaeological or artistic interest) within 5 km of the proposed development site have been assessed for the potential for both direct (fabric and structural) effects and indirect (character and setting) effects. All the standard national databases and the County Historic Environment Record have been searched for relevant information on the significance of assets.
- 9.55 The ES states that there are three individual scheduled monuments within a 5km radius of the site: Shurland House (1.8km north); the medieval moat site at Sayers Court (4.2km southeast); and the nunnery at Minster Abbey (4.8km

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northwest). There are also five Grade I or II* listed buildings within that 5km radius, the closest of which are All Saints Church, Eastchurch (1.8km northwest); the ruins of Shurland Hall (1.9km north). Minster Abbey and Church lie 4.9km northwest, and the Church of St Thomas the Apostle sits 4.3km to the southeast.

- 9.56 The closest listed buildings are the former aircraft hangars at HMP Stanford Hill, 2km to the west. These lie beyond the built form of HMPs Elmley and Swaleside, however, and within the context of HMP Stanford Hill itself.
- 9.57 Both English Heritage and the Council's conservation officer, and also KCC Archaeology, have assessed the application and neither raises any objection to the proposals, and I have no serious concerns in this regard.

Electromagnetic production and potential interference

- 9.58 Chapter 10 of the ES examines impacts upon communications.
- 9.59 Paragraph 32 of the PPG for Renewable and Low Carbon Energy states:
"Wind turbines can potentially affect electromagnetic transmissions (e.g. radio, television and phone signals). Specialist organisations for the operation of electromagnetic links typically require 100m clearance either side of a line of sight link from the swept area of turbine blades. OFCOM acts as a central point of contact for identifying specific consultees relevant to a site."
- 9.60 The ES, at paragraph 10.33, states that should a risk of television interference at nearby properties be identified mitigation measures could be employed (such as repositioning aerials or installing satellite dishes). However, and as noted at 7.13 and 7.14 above, it should be reiterated that Vodafone, H3G and Everything Everywhere Ltd. (including T-Mobile and Orange) – who are responsible for mobile phone signals – and Arquiva – responsible for BBC and ITV transmissions – have no objections.
- 9.61 Nevertheless a planning condition will be employed to secure mitigation if necessary in future and I therefore have no serious objections in this regard.

Impact upon the local highway network

- 9.62 Chapter 12 of the ES examines transport and access.
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- 9.57 Since the withdrawal of PPS22 a number of years ago there is no specific guidance in relation to transport and highways in association with wind farm development. The applicant has therefore carried out their assessment using the Department for Transport's "Guidance on Transport Assessments" and current best-practice techniques.
- 9.63 The application includes proposals to upgrade the existing site access tracks and the junction with the B2231 Leysdown Road, including the provision of vision splays to allow drivers to see an appropriate distance along the road.

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The ES also provides details of a traffic management plan, including a breakdown of the routes to be used by construction and delivery traffic (ES paragraphs 12.14 to 12.16).

- 9.64 Table 12.3 of the ES provides a breakdown of traffic flows along the B2231, stating that in a normal 24hr weekday period there are an average of 6898 vehicle movements in both directions, at an average speed of between (approximately) 46 and 50mph. Construction is estimated to last between 9 and 12 months, and be completed by 2016. It is anticipated that there will be 35 construction vehicle movements per day in association with this development, which represents a 0.5% increase over the total 24hr flow on the B2231, and which I consider to be insignificant in number terms.
- 9.65 The ES does note, however, at paragraph 12.40, that the greatest number of movements will occur in construction month 3, when stone and hard-core will be imported to site for upgrading of the site access tracks. This would equate to 37 movements per day, which would decline once that phase of construction has been complete.
- 9.66 Little additional traffic (maintenance) is predicted to arise during the normal operation of the proposed turbines, due to the nature of such sites.
- 9.67 Kent Highway Services have raised no objection to the proposal, commenting *"it is appreciated that the development will only generate occasional maintenance visits once operational, and the greatest impact on the highway will be during the construction and decommissioning phases. This temporary traffic can be controlled adequately with the Construction Management Plan, and the improvements to the access are considered to provide a suitable junction during this time."*
- 9.68 I therefore have no serious objections to the scheme subject to the highway conditions noted below, as requested by KHS.

Ground conditions

- 9.69 Chapter 14 of the ES examines geology, hydrology and hydrogeology.
- 9.70 There are no geological designations that cover the site or surrounding area, but there are a number of small local drainage channels within the site and extending into surrounding land and beyond to the Swale.
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- 9.71 Construction, operation and decommissioning of wind farms can impact upon:
- Runoff rates and volumes;
 - Erosion and sediment release;
 - Flooding and impediments to flows;
 - Water resources / supplies;
 - Quality of ground and surface waters;
 - Groundwater levels;
 - Natural drainage patterns;

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- Base flows; and
- Pollution risk.

- 9.72 Information related to each of these issues has been derived from site-based assessment, consultation with relevant authorities, and collation of relevant environmental data sets related to local geology, site topography and hydrology, flood zone designation, groundwater vulnerability and source protection zone review, water abstractions / discharges and other surface water or groundwater dependent features. This assessment has demonstrated that the proposed development will have no effect on local geology and that, once operational, the development will have no effect on local groundwater resources.
- 9.73 There has however been an acknowledgement of potential for minor impacts arising from oil / fuel pollution (from vehicles, fuel, and turbine lubrication oils), and para 14.74 of the ES sets out measures to ensure that any such opportunities are minimised and controlled through good working practices. A planning condition will be employed to ensure this takes place.
- 9.74 A full Flood Risk Assessment (FRA) was conducted in accordance with National Planning Policy Framework (NPPF) technical guidance, and is included as Appendix 14.2 to the ES. The northern half of the site lies within Flood Zone 1, and the southern half of the site lies within Flood Zone 3. The southern part of the site is at risk to tidal flooding from the Swale and from fluvial flooding arising from the backing up of water in the Eastchurch Marshes drainage network. In order to mimic the existing greenfield drainage arrangements the application proposes to raise low permeability areas above the surrounding ground and construct suitable crossfalls such that surface water will shed onto the adjoining ground as at present.
- 9.75 The Environment Agency has raised no objections to the proposal in this regard, but have recommended conditions be imposed requiring a landscape management plan, details of long-term surface water run-off management, and pollution control measures.
- 9.76 With this in mind officers are satisfied that this aspect of the application can be controlled by mitigating conditions as set out below, and as such I consider the application acceptable and in accordance with current policy.

Socio-economics

- 9.77 The proposed wind farm development is likely to have minor positive effects on the local and district area as a result of an increase in local spending and a temporary increase in employment, largely during the construction phase.
- 9.78 The development is unlikely to have a significant effect on recreation, in my opinion, due to the remote nature of the site, and there are no major tourist attractions in the local vicinity that could be seriously affected. There will be views of the turbines from some of the holiday parks at the eastern end of the Island, but these are at such a distance as to not be significantly affected.

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- 9.79 I have set out a condition below to require the developer to first seek to ensure there is a local end user of the electricity generated by the development.

Other matters

- 9.80 In the interests of openness and transparency it must be reported that the applicant has offered to enter into agreements with Eastchurch Parish Council and other local organisations to provide a community benefit payment of approximately £40,000 per year for the lifetime of the development to be spent on projects within the parish and local area. The developer has also engaged in talks with the Economic Development team at Swale Borough Council to provide a commuted sum of approximately £23,000 to be used for the provision of skills training and apprenticeships for young people in the Borough. These payments are intended to provide a wider community benefit from the development, and would be subject to legal agreements outside of the planning process.

- 9.81 Appendix 4.4 of the ES comments:

"We would like each of our schemes to be considered a local asset and are keen to work with communities over the lifetime of our projects... If consented, the turbines would generate a minimum of £40,000 per year into a fund over the life of the project... Our funds are administered by GrantScape [who administer the funds for the existing PFR turbines], an independent charity who works with the local community to establish a panel of local representatives to decide where the funds would be distributed..."

- 9.82 Whilst these payments are noted they have not contributed to my assessment of the application, or been factored into my recommendation.

Dr Yelland's technical objection

- 9.83 As noted at 6.08 above Dr Yelland has submitted a technical objection, on behalf of a number of local residents, in which he raises seven key points. The applicant has submitted a response compiled by their noise consultant, who carried out the original monitoring and assessment queried by Dr Yelland, which begins by providing some background context to the objection:

"The general approach taken by Dr Yelland in the report is to argue on an issue by issue basis that background noise levels have been overestimated and predicted noise levels have been underestimated. At no point does Dr Yelland look objectively at an issue and accept that the approach taken in the noise assessment is, valid. This is the same approach that Dr Yelland has taken on other wind farm schemes; many of the points are effectively standard arguments that he has made on other proposals and there is nothing unique about the New Rides scheme or the noise assessment that has been undertaken.

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In short, it should be remembered that Dr Yelland's frame of reference is to object to the proposal rather than approach the noise assessment in an objective way."

- 9.84 The response goes into detail in respect of each of Dr Yelland's seven points, and is attached as an appendix to this report should Members wish to review it in detail. The summary conclusion of the response states:

"In summary, we do not believe there is anything in the Dr Yelland's report which would make any significant change to the assessment or which prevents the New Rides scheme complying with ETSU-R-97 noise limits determined in accordance with the IoA Good Practice Guide. And furthermore, we believe his implementation of additional correction factors to the predicted noise levels and comparing these to measured noise levels at an isolated farm location is actually misleading and contrary to the intention of the GPG."

- 9.85 Having discussed both the objection and the subsequent response with the Environmental Health Manager I am confident that the issues raised by Dr Yelland have been adequately and appropriately considered within the application, and that the noise assessment has been carried out in accordance with both ETSU-R-97 and the Institute of Acoustics Good Practice Guide for the Application of ETSU (2013).

- 9.86 Therefore I do not agree with Dr Yelland's objection and, as noted at 9.38 to 9.46 above I do not believe that there are reasonable or justifiable grounds to refuse permission on the basis of noise. Refusal of permission on such grounds, in the face of the submitted evidence, could leave the Council extremely vulnerable at appeal.

10.0 CONCLUSION

- 10.01 International, national, and local planning policy and guidance is supportive in principle of proposals for renewable energy production, and it is generally highlighted that such proposals have wider environmental and economic benefits that these should be given weight in determining planning applications for such development.

- 10.02 The proposed wind farm would make a significant contribution to renewable energy production (generating enough electricity to meet the needs of approximately 6186 dwellings) and there are no over-riding objections to its proposed location.

- 10.02 With regard to detailed matters, and subject to the conditions as set out below, it is considered that the proposal would have limited implications on ecology and ornithology; that its impact on landscape character and visual dominance would be acceptable; that its siting and design is acceptable and has no significant negative impact to residential amenity; that its noise outputs

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are acceptable and in accordance with the ETSU rating guidelines; that shadow flicker issues are capable of being successfully mitigated; that it would not harm the heritage assets in the locality; that it does not give rise to concerns with respect of electromagnetic interference; has no significant negative impact on the local highway network through construction and operation and is acceptable in terms of ground conditions and flood risk.

10.03 In light of the above, I recommend that planning permission be granted subject to conditions as set out below .

11.0 RECOMMENDATION – GRANT Subject to the following conditions:

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.

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

- (2) Unless permitted by one of the following conditions, development shall be carried out in strict accordance with the following plans:

AEL006	- Rev 5	Site location plan
AEL007	- Rev 5	Proposed Layout Plan
PLTUB126.5-93		Typical Wind Turbine Details
PL002		Typical new and upgraded track details
PL003-R1		Typical turbine & transformer foundation details
PL005		Typical substation and control building details
PL007RA		Typical Arched Culvert

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

Pre-Commencement

- (3) Prior to the commencement of the development, a Construction Method Statement shall be submitted to and approved in writing by the Local Planning Authority. This shall include details relating to:

- (i) The control of noise and vibration emissions from construction activities including groundwork and the formation of infrastructure,
(ii) The control of dust including arrangements to monitor dust emissions from the development site during the construction phase;
(iii) Measures for controlling pollution/sedimentation and responding to any spillages/incidents during the construction phase;
(iv) Measures to control mud deposition offsite from vehicles leaving the site;
(v) The location and size of temporary parking;

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- (vi) 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);
- (vii) The use of impervious bases and impervious bund walls for the storage of oils, fuels or chemicals on-site; and
- (viii) The means by which users of public rights of way would be protected during the construction period.

For the avoidance of doubt and other than for wind turbine component deliveries or as qualified later in this paragraph, 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 0700 – 1900 hours, Saturdays 0700 – 1300 hours unless in association with an emergency or with the prior written approval of the Local Planning Authority. Outside these hours limited construction activity on the development will be permitted provided it is not audible from the boundary of any noise sensitive property and any such construction activity will be limited to turbine delivery, erection, commissioning, maintenance, dust suppression and the testing of plant and equipment. Development shall be carried out in compliance with the approved Construction Method Statement unless any variation is first agreed in writing by the Local Planning Authority.

Reasons: In the interests of local amenity.

- (4) Prior to the commencement of the development, a scheme for post construction bird monitoring, to verify the predicted environmental effects of the construction and operation of the turbines on land at Great Bells Farm shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include provisions for management actions, similar to those agreed for the HMP Stanford Hill wind energy scheme, should there be a demonstrable detrimental effect on the bird populations at the Great Bells Farm site from the operation of development. Monitoring and any management measures required shall be carried out for a period agreed in the monitoring and management scheme. Development on site shall take place in full accordance with the approved monitoring and management scheme unless any variation is first agreed in writing by the Local Planning Authority.

Reasons: To ensure the development does not prejudice or endanger the bird population.

- (5) Prior to the commencement of the development a Habitat Management Plan (HMP) shall be submitted to and agreed in writing by the Local Planning Authority. The HMP shall include details of habitat enhancement for the 24 hectare area of land referred to as field 14 on Figure 8.3 of the Environmental Statement addendum. The HMP will also include biodiversity enhancement measures defined in Table 7.22 and illustrated on Figure 7.6 of the Environmental Statement and Table 8.51 of the Addendum. Development on site shall take place in full accordance with the approved HMP unless any variation is first agreed in writing by the Local Planning Authority.

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Reasons: To ensure the development provides ecological enhancement in accordance with the provisions of the Environmental Statement.

- (6) Vegetation clearance will be undertaken outside of the breeding bird season (1st March to 31st August). Where this cannot be avoided a competent ornithologist will be appointed to undertake a pre-vegetation clearance survey to identify the presence of any nests being built or in use, details of which shall be submitted to and approved in writing by the Local Planning Authority prior to any clearance works taking place during bird breeding season. To avoid any potential disturbance to Schedule 1 species, notably marsh harrier, in advance of any construction works to be undertaken during the breeding season, all areas within 500m of construction works will also be subject to a pre-construction survey undertaken by a competent ornithologist, to identify any nesting locations for any Schedule 1 protected species. If identified work exclusion zones will be established around nest sites, in line with best practice guidance for the species, in consultation with the appointed competent ecologist. A Breeding Bird Protection Plan (BBPP) would be implemented with the aim of protecting breeding birds from disturbance and ensuring compliance with nature conservation law during the construction phase (e.g. during vegetation removal).

Reasons: in the interest of biodiversity.

- (7) Prior to the commencement of the development, a site walk-over will be made by a competent ecologist to check for any changes to baseline conditions; this will include a specific check for badger setts, otter holts and water vole burrows in the vicinity of construction areas, using standard survey methods and recording all evidence or potential evidence of the presence of these species. A survey radius of 100m from all construction works locations is proposed. If any such features are identified, the survey results will be reviewed to determine whether any additional mitigation measures will be necessary to ensure legal compliance.

Reasons: in the interest of biodiversity and legislative compliance.

- (8) In the event of severe weather conditions (more than seven days of consecutive frozen ground) construction activities within 500m of favoured foraging/roosting areas of waterfowl, waders and target duck species will be limited in accordance with details to be included within the Construction Method Statement, and agreed in writing by the Local Planning Authority prior to construction commencing.

Reasons: in the interest of biodiversity

- (9) A series of Reasonable Avoidance Measures (RAMs) will be implemented throughout the construction phase in order to prevent individual amphibian or reptile species from being inadvertently killed or injured. Measures include the timing of operation to avoid sensitive periods when amphibians and reptiles are more likely to be present within different habitats, watching briefs and staged vegetation removal prior to ground works. Details of RAMs will be

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provided within the Construction Method Statement, and agreed in writing by the Local Planning Authority prior to construction commencing.

Reasons: in the interest of biodiversity and legislative compliance.

- (10) Prior to the erection of the turbines, full details of the make and model of the wind turbines; aviation lighting as well as, details of the wind turbine external finish and colour shall be submitted to and approved in writing by the Local Planning Authority. The structures shall not contain any symbols, signs, logos or other lettering/markings and they shall not be permanently illuminated unless any variation has been first submitted to and then agreed in writing by the Local Planning Authority.

Reasons: In the interests of visual amenity and to ensure the development does not act as a distraction.

- (11) Prior to the commencement of the development a written scheme of investigation and programme of archaeological works shall be submitted to and approved in writing by the Local Planning Authority. Development on site shall take place in full accordance with the approved archaeological investigation programme unless any variation is first agreed in writing by the Local Planning Authority.

Reasons: To ensure any archaeological remains discovered during construction are recorded and preserved.

- (12) Prior to the operation of the turbines, details of a scheme to notify Eastchurch Airfield of turbine operation, prevailing wind speeds and direction determined periodically using data gathered by the development, shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall also include details of procedures where it may be prudent to reduce or shut down the operation of the turbines in an emergency situation should aircraft encroach closer than 16 rotor diameters from turbines (or whatever subsequent CAA guidance might be issued). The approved scheme shall be implemented if requested by the operator of Eastchurch Airfield and retained throughout the duration of the permission or until the Eastchurch Airfield ceases operation or the development is decommissioned, whichever is the soonest, unless any variation is first agreed in writing by the Local Planning Authority.

Reasons: In the interests of aviation safety.

- (13) Prior to the commencement of the development, a strategy for shadow flicker mitigation in the event that a complaint is made shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with those approved details.

Reasons: To ensure the development does not prejudice conditions of amenity following a complaint.

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- (14) Prior to the commencement of the development, a Construction Traffic Management Plan as set out in the submitted Environmental Statement shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved plan unless any variation is first agreed in writing by the Local Planning Authority.

Reasons: To ensure the development does not prejudice conditions of safety or the free flow of the local highway network.

- (15) Prior to the erection of the turbines, a scheme for the investigation and alleviation of electro-magnetic interference, including television reception, caused by the development, shall be submitted to and approved in writing by the Local Planning Authority. The development shall take place in full accordance with the approved scheme unless any variation is first agreed in writing by the Local Planning Authority.

Reasons: To ensure the development does not prejudice residential amenity or other communication interference.

- (16) The planning permission is for a period from the date of this permission until the date occurring 25 years after the date of the first commercial supply to the electricity network. Written confirmation of the date of first commercial supply to the electricity network shall be provided to the Local Planning Authority no later than one calendar month after that event. Not later than six months from the date that the planning permission expires, all wind turbines, ancillary equipment and buildings shall be dismantled and removed from the site and the land reinstated in accordance with the prevailing environmental standards, unless otherwise approved in writing with the Local Planning Authority.

Reasons: In the interests of visual amenity and to ensure that all redundant equipment is removed from the site and that works do not prejudice wintering birds.

- (17) Any wind turbine that ceases to function for a continuous period of twelve months (unless such cessation is as a result of the turbine or ancillary equipment being under repair or replacement or as a result of events outside the reasonable control of the operator such as a sustained network outage or under instruction from the Distribution Network Operator or the wind farm's Licenced Supplier) shall be dismantled and removed from the site, unless otherwise agreed in writing by the Local Planning Authority, in accordance with a scheme of works (including the timing of such works) which has first been agreed in writing by the Local Planning Authority, such removal to take place within six months of the end of the initial six month period.

Reasons: In the interests of visual amenity and to ensure that all redundant equipment is removed from the site.

- (18) The wind turbine blades shall all rotate in the same direction, clockwise or anti-clockwise.

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Reasons: In the interests of visual amenity and to ensure the development does not act as a distraction.

- (19) The rating level of noise emissions from the combined effects of the wind turbines (including the application of any tonal penalty) when determined in accordance with the attached Guidance Notes (to this condition), shall not exceed the values for the relevant integer wind speed set out in, or derived from, the tables attached to these conditions at any dwelling which is lawfully existing or has planning permission at the date of this permission and:
- a) The wind farm operator shall continuously log power production, wind speed and wind direction, all in accordance with Guidance Note 1(d). These data shall be retained for a period of not less than 24 months. The wind farm operator shall provide this information in the format set out in Guidance Note 1(e) to the Local Planning Authority on its request, within 14 days of receipt in writing of such a request.
 - b) No electricity shall be exported until the wind farm operator has submitted to the Local Planning Authority for written approval a list of proposed independent consultants who may undertake compliance measurements in accordance with this condition. Amendments to the list of approved consultants shall be made only with the prior written approval of the Local Planning Authority.
 - c) Within 21 days from receipt of a written request from the Local Planning Authority following a complaint to it from an occupant of a dwelling alleging noise disturbance at that dwelling, the wind farm operator shall, at its expense, employ a consultant approved by the Local Planning Authority to assess the level of noise emissions from the wind farm at the complainant's property in accordance with the procedures described in the attached Guidance Notes. The written request from the Local Planning Authority shall set out at least the date, time and location that the complaint relates to and any identified atmospheric conditions, including wind direction, and include a statement as to whether, in the opinion of the Local Planning Authority, the noise giving rise to the complaint contains or is likely to contain a tonal component.
 - d) The assessment of the rating level of noise emissions shall be undertaken in accordance with an assessment protocol that shall previously have been submitted to and approved in writing by the Local Planning Authority. The protocol shall include the proposed measurement location identified in accordance with the Guidance Notes where measurements for compliance checking purposes shall be undertaken, whether noise giving rise to the complaint contains or is likely to contain a tonal component, and also the range of meteorological and operational conditions (which shall include the range of wind speeds, wind directions, power generation and times of day) to determine the assessment of rating level of noise emissions. The proposed range of conditions shall be those which prevailed during times when the complainant alleges there was disturbance due to noise, having regard to the written request of the Local Planning

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Authority under paragraph (c), and such others as the independent consultant considers likely to result in a breach of the noise limits.

Table 1 – Between 07:00 and 23:00 – Noise limits expressed in dB LA90,10 minute as a function of the standardised wind speed (m/s) at 10 metre height as determined within the site averaged over 10 minute periods.

Location	Standardised wind speed at 10 meter height (m/s) within the site averaged over 10-minute periods											
	1	2	3	4	5	6	7	8	9	10	11	12
Nearest prison cell at Swaleside	43	43	43	43	43	43	43	43	43	43	43	43
New Rides Bungalow	36	36	36	36	37	39	41	43	45	45	45	45
New Rides Farm	45	45	45	45	45	45	45	45	45	45	45	45
Residential properties on Range Road, Orchard Road, Brabazon Way, Church Road, Kent View Drive	35	35	35	37	38	39	42	45	45	45	45	45

Table 2 – Between 23:00 and 07:00 – Noise limits expressed in dB LA90,10-minute as a function of the standardised wind speed (m/s) at 10 metre height as determined within the site averaged over 10 minute periods.

Location	Standardised wind speed at 10 meter height (m/s) within the site averaged over 10-minute periods											
	1	2	3	4	5	6	7	8	9	10	11	12
Nearest prison cell at Swaleside	43	43	43	43	43	43	43	43	43	43	43	43
New Rides Bungalow	43	43	43	43	43	43	43	43	45	45	45	45
New Rides Farm	45	45	45	45	45	45	45	45	45	45	45	45
Residential properties on Range Road, Orchard Road, Brabazon Way, Church Road, Kent View Drive	43	43	43	43	43	43	43	44	45	45	45	45

- (20) Prior to the commencement of the development, the area between the nearside carriageway edge and lines drawn between a point 4.5m back from the carriageway edge along the centre line of the access and points on the carriageway edge 90m from and on both sides of the centre line of the access shall be cleared of obstruction to visibility at and above a height of 1.05m above the nearside carriageway level and thereafter maintained free of obstruction at all times.

Reasons: To ensure the development does not prejudice conditions of highway safety.

- (21) Finished floor levels of the permanent substation building and transformers should be raised a minimum of 150mm above ground levels.

Reasons: To ensure the development is not at risk of flooding.

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- (22) The wind turbines and their associated infrastructure shall be situated within 30m of the positions shown in drawing AEL007- Rev 5 Proposed Layout Plan. Any turbine movements between 31 – 50m will be subject to the prior written approval of the Local Planning Authority.

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

- (23) Construction of the substation and control building shall not commence until details of the external appearance, dimensions, layout and materials of that building and any associated compound or parking area, and details of surface and foul water drainage from the substation and control building and any associated compound or parking area have been submitted to and approved in writing by the Local Planning Authority. The sub-station and control building and associated infrastructure shall be constructed in accordance with the approved details.

Reasons: In the interests of visual amenity.

- (24) All cabling on the site between the wind turbines and the site substation shall be installed underground.

Reasons: In the interests of visual amenity.

- (25) Prior to the commencement of development, a scheme detailing the protection and/or mitigation of damage to populations of water vole, a protected species under The Wildlife and Countryside Act 1981 as amended and its associated habitat during construction works and decommissioning including details of the methodology and timing shall be submitted to and approved in writing by the Local Planning Authority. The development shall take place in full accordance with the approved water vole protection plan unless any variation is first agreed in writing by the Local Planning Authority.

Reasons: To protect the water vole and its habitat within and adjacent to the development site.

- (26) Prior to the commencement of the development, the area shown on the approved plans for parking for site personnel / operatives / visitors shall be provided and retained throughout the construction of the development.

Reasons: To ensure provision of adequate off-street parking for vehicles in the interests of highway safety and to protect the amenities of local residents.

- (27) During construction provision shall be made on the site, to the satisfaction of the Local Planning Authority, to accommodate operatives' and construction vehicles loading, off-loading or turning on the site.

Reasons: To ensure that vehicles can be parked or manoeuvred off the highway in the interest of highway safety.

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- (28) Prior to the erection of any wind turbines within the development, an agreement must be reached between the wind farm operator and London Southend Airport with respect to a Radar Mitigation Solution and the existence of such an agreement has been confirmed in writing to the Local Planning Authority by both the wind farm operator and London Southend Airport. The turbines will not be brought into use until the requirements of the Radar Mitigation Solution have been implemented in full as confirmed in writing by the wind farm operator together with London Southend Airport to the Local Planning Authority. For the purposes of this condition, radar mitigation solution means a technical or commercial solution put in place to mitigate the impact on the air traffic control radar at London Southend Airport.

Reasons: In the interests of aviation safety.

Guidance Notes for Noise Conditions

These notes are to be read with and form part of the noise condition. They further explain the condition and specify the methods to be employed in the assessment of complaints about noise emissions from the wind farm. The rating level at each integer wind speed is the arithmetic sum of the wind farm noise level as determined from the best-fit curve described in Guidance Note 2 of these Guidance Notes and any tonal penalty applied in accordance with Guidance Note 3. Reference to ETSU-R-97 refers to the publication entitled "The Assessment and Rating of Noise from Wind Farms" (1997) published by the Energy Technology Support Unit (ETSU) for the Department of Trade and Industry (DTI).

Guidance Note 1

- (a) Values of the $L_{A90,10 \text{ minute}}$ noise statistic should be measured at the complainant's property, using a sound level meter of EN 60651/BS EN 60804 Type 1, or BS EN 61672 Class 1 quality (or the equivalent UK adopted standard in force at the time of the measurements) set to measure using the fast time weighted response as specified in BS EN 60651/BS EN 60804 or BS EN 61672-1 (or the equivalent UK adopted standard in force at the time of the measurements). This should be calibrated in accordance with the procedure specified in BS 4142: 1997 (or the equivalent UK adopted standard in force at the time of the measurements). Measurements shall be undertaken in such a manner to enable a tonal penalty to be applied in accordance with Guidance Note 3.
- (b) The microphone should be mounted at 1.2 – 1.5 metres above ground level, fitted with a two-layer windshield or suitable equivalent approved in writing by the Local Planning Authority, and placed outside the complainant's dwelling. Measurements should be made in "free field" conditions. To achieve this, the microphone should be placed at least 3.5 metres away from the building facade or any reflecting surface except the ground at the approved measurement location. In the event that the consent of the complainant for access to his or her property to undertake compliance measurements is withheld, the wind farm operator shall submit for the written approval of the Local Planning Authority details of the proposed alternative representative measurement location prior to the commencement of measurements and the

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measurements shall be undertaken at the approved alternative representative measurement location.

- (c) The $L_{A90,10 \text{ minute}}$ measurements should be synchronised with measurements of the 10-minute arithmetic mean wind and operational data logged in accordance with Guidance Note 1(d), including the power generation data from the turbine control systems of the wind farm.
- (d) To enable compliance with the conditions to be evaluated, the wind farm operator shall continuously log arithmetic mean wind speed in metres per second and wind direction in degrees from north at hub height for each turbine and arithmetic mean power generated by each turbine, all in successive 10-minute periods. Unless an alternative procedure is previously agreed in writing with the Planning Authority, this hub height wind speed, averaged across all operating wind turbines, shall be used as the basis for the analysis. All 10 minute arithmetic average mean wind speed data measured at hub height shall be 'standardised' to a reference height of 10 metres as described in ETSU-R-97 at page 120 using a reference roughness length of 0.05 metres. It is this standardised 10 metre height wind speed data, which is correlated with the noise measurements determined as valid in accordance with Guidance Note 2, such correlation to be undertaken in the manner described in Guidance Note 2. All 10-minute periods shall commence on the hour and in 10- minute increments thereafter.
- (e) Data provided to the Local Planning Authority in accordance with the noise condition shall be provided in comma separated values in electronic format.
- (f) A data logging rain gauge shall be installed in the course of the assessment of the levels of noise immissions. The gauge shall record over successive 10-minute periods synchronised with the periods of data recorded in accordance with Note 1(d).

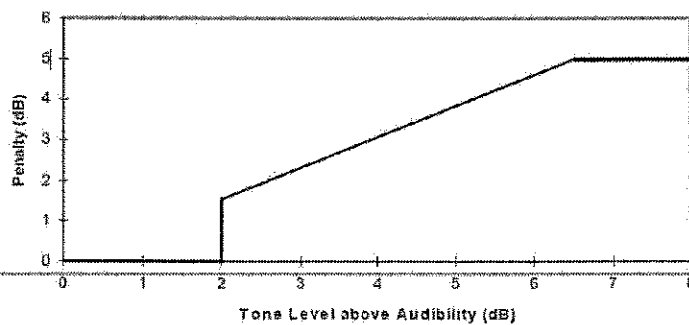
Guidance Note 2

- (a) The noise measurements shall be made so as to provide not less than 20 valid data points as defined in Guidance Note 2 (b)
- (b) Valid data points are those measured in the conditions specified in the agreed written protocol under paragraph (d) of the noise condition, but excluding any periods of rainfall measured in the vicinity of the sound level meter. Rainfall shall be assessed by use of a rain gauge that shall log the occurrence of rainfall in each 10 minute period concurrent with the measurement periods set out in Guidance Note 1. In specifying such conditions the Local Planning Authority shall have regard to those conditions which prevailed during times when the complainant alleges there was disturbance due to noise or which are considered likely to result in a breach of the limits.
- (c) For those data points considered valid in accordance with Guidance Note 2(b), values of the $L_{A90,10 \text{ minute}}$ noise measurements and corresponding values of the 10- minute wind speed, as derived from the standardised ten metre height wind speed averaged across all operating wind turbines using the procedure specified in Guidance Note 1(d), shall be plotted on an XY chart with noise level on the Y-axis and the standardised mean wind speed on the X-axis. A least squares, "best fit" curve of an order deemed appropriate by the independent consultant (but which may not be higher than a fourth order) should be fitted to the data points and define the wind farm noise level at each integer speed.

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Guidance Note 3

- (a) Where, in accordance with the approved assessment protocol under paragraph (d) of the noise condition, noise immissions at the location or locations where compliance measurements are being undertaken contain or are likely to contain a tonal component, a tonal penalty is to be calculated and applied using the following rating procedure.
- (b) For each 10 minute interval for which $L_{A90,10 \text{ minute}}$ data have been determined as valid in accordance with Guidance Note 2 a tonal assessment shall be performed on noise immissions during 2 minutes of each 10 minute period. The 2 minute periods should be spaced at 10 minute intervals provided that uninterrupted uncorrupted data are available ("the standard procedure"). Where uncorrupted data are not available, the first available uninterrupted clean 2 minute period out of the affected overall 10 minute period shall be selected. Any such deviations from the standard procedure, as described in Section 2.1 on pages 104-109 of ETSU-R-97, shall be reported.
- (c) For each of the 2 minute samples the tone level above or below audibility shall be calculated by comparison with the audibility criterion given in Section 2.1 on pages 104 -109 of ETSU-R-97.
- (d) The tone level above audibility shall be plotted against wind speed for each of the 2 minute samples. Samples for which the tones were below the audibility criterion or no tone was identified, a value of zero audibility shall be used.
- (e) A least squares "best fit" linear regression line shall then be performed to establish the average tone level above audibility for each integer wind speed derived from the value of the "best fit" line at each integer wind speed. If there is no apparent trend with wind speed then a simple arithmetic mean shall be used. This process shall be repeated for each integer wind speed for which there is an assessment of overall levels in Guidance Note 2.
- (f) The tonal penalty is derived from the margin above audibility of the tone according to the figure below.



Guidance Note 4

- (a) If a tonal penalty is to be applied in accordance with Guidance Note 3 the rating level of the turbine noise at each wind speed is the arithmetic sum of the measured noise level as determined from the best fit curve described in Guidance Note 2 and the penalty for tonal noise as derived in accordance with Guidance Note 3 at each integer wind speed within the range specified

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by the Local Planning Authority in its written protocol under paragraph (d) of the noise condition.

- (b) If no tonal penalty is to be applied then the rating level of the turbine noise at each wind speed is equal to the measured noise level as determined from the best fit curve described in Guidance Note 2.
- (c) In the event that the rating level is above the limit(s) set out in the Tables attached to the noise conditions or the noise limits for a complainant's dwelling approved in accordance with paragraph (e) of the noise condition, the independent consultant shall undertake a further assessment of the rating level to correct for background noise so that the rating level relates to wind turbine noise immission only.
- (d) The wind farm operator shall ensure that all the wind turbines in the development are turned off for such period as the independent consultant requires to undertake the further assessment. The further assessment shall be undertaken in accordance with the following steps:
- (e) Repeating the steps in Guidance Note 2, with the wind farm switched off, and determining the background noise (L3) at each integer wind speed within the range requested by the Local Planning Authority in its written request under paragraph (c) and the approved protocol under paragraph (d) of the noise condition.
- (f) The wind farm noise (L1) at this speed shall then be calculated as follows where L2 is the measured level with turbines running but without the addition of any tonal penalty:

$$L_1 = 10 \log \left[10^{\frac{L_2}{10}} - 10^{\frac{L_3}{10}} \right]$$

- (g) The rating level shall be re-calculated by adding arithmetically the tonal penalty (if any is applied in accordance with Note 3) to the derived wind farm noise L1 at that integer wind speed.
- (h) If the rating level after adjustment for background noise contribution and adjustment for tonal penalty (if required in accordance with note 3 above) at any integer wind speed lies at or below the values set out in the Tables attached to the conditions or at or below the noise limits approved by the Local Planning Authority for a complainant's dwelling in accordance with paragraph (e) of the noise condition then no further action is necessary. If the rating level at any integer wind speed exceeds the values set out in the Tables attached to the conditions or the noise limits approved by the Local Planning Authority for a complainant's dwelling in accordance with paragraph (e) of the noise condition then the development fails to comply with the conditions.

INFORMATIVES

Please note that, in the interest of aviation safety, the Ministry of Defence requires the developer to notify them of the following items prior to commencement of development:

- a) the date construction starts and ends;
- b) the maximum height of construction equipment; and

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c) the latitude and longitude of every turbine.

You must therefore contact Mr Michael Billings, Safeguarding Assistant, Ministry of Defence, Kingston Road, Sutton Coldfield, West Midlands, B75 7RL; 0121 3112025; or DIOODC-IPSSG2a1a@mod.uk.

The Council's approach to this application:

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

Offering pre-application advice.

Where possible, suggesting solutions to secure a successful outcome.

As appropriate, updating applicants/agents of any issues that may arise in the processing of their application.

In this instance the applicant/agent was advised of minor changes required to the application and these were agreed. The application was subsequently considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application.

Case Officer: Ross McCardle

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.

The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.



Appeal Decision

Inquiry opened on 22 July 2014

Site visits made on 19 May, 31 July, 1 August and 30 October 2014

by **Jessica Graham BA(Hons) PgDipl**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 7 January 2015

Appeal Ref: APP/C1435/A/13/2208526

Land off Shepham Lane, North of A27, Polegate, East Sussex BN24 5BT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Regeneco Ltd against the decision of Wealden District Council.
 - The application Ref WD/2013/0346/MEA, dated 18 February 2013, was refused by notice dated 9 May 2013.
 - The development proposed is the erection of three wind turbines; on-site access tracks; temporary site access from the A27; site access from Hailsham Road; one site sub-station and control building, and on-site underground cabling.
-

Decision

1. The appeal is allowed and planning permission is granted for the erection of three wind turbines; on-site access tracks; temporary site access from the A27; site access from Hailsham Road; one site sub-station and control building, and on-site underground cabling on land off Shepham Lane, North of A27, Polegate, East Sussex BN24 5BT in accordance with the terms of the application, Ref WD/2013/0346/MEA, dated 18 February 2013, and subject to the 27 conditions set out in the Schedule attached to this Decision Letter.

Procedural matters

2. The proposed development involves the installation of three 115m high wind turbines and associated infrastructure. A previous application for five wind turbines on this site, which was accompanied by an Environmental Statement ("the 2011 ES"), was withdrawn shortly before its determination in July 2012. The subsequent application for three wind turbines, which is now the subject of this appeal, was accompanied by the 2011 ES and also a number of additional documents addressing the effects of reducing the proposed number of turbines from five to three ("the 2013 ES Addendum").
 3. On 19 May 2014 I held a pre-inquiry meeting, the purpose of which was to consider the arrangements for the inquiry itself. Representatives of both main parties were present. There was no discussion at that meeting of the merits or otherwise of the proposed development.
 4. The inquiry opened on 22 July and also sat on 23, 24, 25, and 30 July 2014.
 5. In the course of the inquiry it became clear that neither the 2011 ES nor the 2013 ES Addendum included information on the potential cumulative impacts of the current proposal and the recently consented Rampion offshore wind
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farm, I therefore issued a direction, pursuant to Regulation 22 of the EIA Regulations¹, that Further Environmental Information (FEI) be supplied, to enable an assessment of the incremental cumulative landscape and visual impacts, and the sequential cumulative impact on the South Downs Way.

6. I adjourned the inquiry to allow time for the FEI to be compiled and subsequently advertised for a 21 day consultation period, and for the main parties then to submit further evidence relating to the FEI, in accordance with an agreed timetable. This was duly done. Closing submissions were also exchanged in writing in accordance with the agreed timetable, and I closed the inquiry on 21 October 2014.
7. I am satisfied that the information contained in the 2011 ES, the 2013 ES Addendum, the FEI, and the further evidence I heard at the inquiry on a wide range of environmental matters, together represents the necessary environmental information for the purposes of the EIA Regulations. I have taken this information into account in determining this appeal.
8. I made accompanied site visits to the appeal site, parts of the surrounding area, a number of residential properties and various agreed viewpoints (the itinerary is set out at ID 30) on 31 July. I also made extensive unaccompanied site visits on 19 May and 1 August and, in the light of the FEI, on 30 October 2014.

Main issue

9. The main issue in this appeal is the effect that the proposed development would have upon the character and appearance of the area. This encompasses its impact on views to and from the South Downs National Park and the Pevensey Levels.

Reasons

The Policy context

10. The Development Plan for the District of Wealden consists of saved Policy NRM6 of the Regional Spatial Strategy (which concerns the Thames Basin Heaths Special Protection Area, and is agreed not to be relevant to this appeal); the saved policies of the Wealden District Local Plan adopted in 1998 ("the Local Plan"); and the Wealden District (Incorporating Part of the South Downs National Park) Core Strategy Local Plan adopted in 2013 ("the Core Strategy").
11. The Council's Refusal Notice cited perceived conflict with saved policies of the Local Plan. However, the appellant contends that the Local Plan contains no policies that are relevant to this proposal or, alternatively, that if there are relevant policies, they are out of date.
12. Given that saved Policy EN1 of the Local Plan refers specifically and explicitly to "...renewable energy [and waste management] proposals..." I do not consider it can rightly be said that, as regards proposals for renewable energy development, the Development Plan is "silent" (in the terms of the NPPF) or contains "no policies relevant to the application" (in the terms of the Core Strategy).

¹ The Town and Country Planning (Environmental Impact Assessment) Regulations 2011

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13. As to whether saved Policy EN1 should be considered out of date, the Council drew my attention to the *Bloor Homes*² judgment, which held that if a Development Plan does contain "relevant policies" these may have been overtaken by things that have happened since it was adopted, either on the ground or in some change in national policy, or for some other reason, so that they are now "out-of-date".
14. The Local Plan was adopted in 1998, and so pre-dates the significant change in national policy effected by the introduction of the NPPF in 2012. Footnote 17 to paragraph 97 of the NPPF explains that in determining applications, the approach set out in the Overarching National Policy Statement for Energy should be followed: this advises, at paragraph 5.9.12, that it is necessary to "judge whether any adverse impact on the landscape would be so damaging that it is not offset by the benefits (including need) of the project".
15. Local Plan Policy EN1 does not take this "costs/benefits" approach. It does not set out any measures against which the impacts of renewable energy development proposals may be assessed, or give any other indication as to how the extent to which such impacts might be beneficial, or adverse, should be determined in the particular circumstances of the district of Wealden. It simply states that the Council will pursue sustainable development, having regard to the principles contained in government guidance.
16. The Council contends that a policy can hardly be inconsistent with government guidance when the text of the policy itself cross-refers to having regard to the principles of that guidance. That is a fair point, but while such a policy may have been a helpful inclusion in a Local Plan prior to the NPPF, the situation is very different now. The Ministerial Foreword to the NPPF explains that over a thousand pages of national policy have been replaced with around fifty, "...allowing people and communities back into planning", and the first paragraph of the NPPF itself explains that it *provides a framework within which local people and their accountable councils can produce their own distinctive local and neighbourhood plans, which reflect the needs and priorities of their communities.*
17. There is, therefore, now a clear expectation that rather than simply refer back to government guidance, Local Plan policies should set out the specific criteria that will be applied to the assessment of renewable energy proposals in their area. Local Plan Policy EN1 does not do that, and as a consequence, is out of date. To the extent that Policy GD2 of the Local Plan seeks to place a blanket restriction on development outside development boundaries, without reference to specific criteria against which renewable energy might be assessed as constituting an exception, that too is out of date. That being so, ~~Core Strategy Policy WCS14 applies: it states that where relevant policies are out of date at the time of making the decision, planning permission will be granted unless material considerations indicate otherwise, taking into account whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.~~
18. The Council argues that since Core Strategy Policy WCS14 is clearly intended to replicate the guidance set out in paragraph 14 of the NPPF,

² *Bloor Homes Ltd v SSCLG* [2014] EWHC 754 (Admin)

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judgments as to the correct interpretation of paragraph 14 (specifically, the findings of Lang J in the case of *William Davis*³) should also be applied to the interpretation of Policy WCS14. I am not persuaded by that argument. The text of Policy WCS14 was carefully formulated by the Council in the light of NPPF guidance, scrutinised at the Examination in Public of the Core Strategy, and found sound. The extent to which the correct interpretation of the NPPF's "presumption in favour of sustainable development" has been (and may well continue to be) the subject of further consideration by higher authorities does not, in my view, have any bearing on the straightforward interpretation and application of this adopted Development Plan policy.

19. It is important to note that, as the appellant accepts, the application of Policy WCS14 does not mean that other relevant Development Plan policies should simply be disregarded. The extent to which the proposal does or does not comply with their requirements will still be a key component in determining whether or not it should be permitted.
20. The government's Planning Practice Guidance (PPG), issued in March 2014, is also a material consideration. The section on "renewable and low carbon energy" refers to the advice in the NPPF that all communities have a responsibility to help increase the use and supply of green energy, and explains that this does not mean that the need for renewable energy automatically overrides environmental protections and the planning concerns of local communities. It goes on to note that local topography is an important factor in assessing whether wind turbines could have a damaging effect on landscapes, advising that their impact can be as great in predominantly flat landscapes as in hilly or mountainous ones.

The effect on the character and appearance of the area

21. The appeal site is an area of agricultural land on the northern side of the A27 Polegate by-pass. It is part of the lowland landscape between the more elevated areas of the High Weald to the north-east, and the South Downs to the south-west. This lowland area of landscape, known as the Pevensy Levels, runs from the coast at Eastbourne inland towards Hailsham and Lewes. The flat landscape underlying the appeal site forms the southernmost part of Glynleigh Level, which in turn forms the western part of the Pevensy Levels. It is crossed by a large number of drainage ditches and watercourses.
22. Clearly, the erection of three 115m high wind turbines on the appeal site would have significant and wide-ranging impacts on the surrounding landscape. This is recognised in national planning guidance: the government's Overarching National Policy Statement for Energy observes that "the scale of such projects means that they will often be visible within many miles of the proposed infrastructure." It also notes that "the fact that a proposed project will be visible from within a designated area should not itself be a reason for refusing consent". What is at issue is whether any adverse impact on the landscape would be so damaging that it would not be offset by the benefits of the proposed development.
23. The Council identified the two areas of concern as views from the South Downs National Park, and views from the Pevensy Levels.

³ *William Davis v SSCLG* [2013] EWHC 3058 (Admin)

The Pevensey Levels

24. A number of landscape character assessments, undertaken at national and local level, have identified the defining characteristics of the Pevensey Levels as being a low-lying tract of largely reclaimed wetland, actively maintained by purpose-built drainage systems and river floodplain improvements. It is a predominantly open landscape, with extensive grazed wet meadows and some arable fields with characteristic dykes, wetlands and wide skies. The open windswept feel is further enhanced by the scarcity of trees and hedges in the landscape. The fragmented pattern of settlement reflects the land reclamation undertaken, with isolated farmsteads occupying some of the higher topographical "eyes" within the Levels. While the Levels do not benefit from any formal recognition of landscape value, their openness and the patchwork of fields created by the extensive system of drains is distinctive.
25. The appeal site is situated at the edge of the Levels, to the south of Hankham Ridge and here the character of the landscape is subject to urban influences, such as the built development of Polegate, the A259 and busy A27, and pylons with overhead power lines. While the eastern part of the Pevensey Levels has more open views across to the coast, with limited direct views to the South Downs scarp, there are direct and uninterrupted views from this western part of the Levels towards the scarp, which forms a distinctive backdrop.
26. The proposed wind turbines would be a distinctly modern form of development. However, it is material to note that historically, the Pevensey Levels were characterised by a number of windmills, powering pumps to keep the land from flooding. Some windmills still remain, and the image of a windmill features on a variety of locational signs in the area. Clearly, the wind turbines would be structures of vastly greater scale than the earlier windmills. But against the background of this historic use of windpower to keep the land from flooding, in the light of the current environmental threat posed by climate change, and in the context of this wide, open landscape where the trees are few and windswept, there would be a certain functional and visual logic to their presence, harnessing energy from the wind.
27. The large scale of the landscape, its openness and wide skies, would in my view enable this particular development proposal to be accommodated without harmfully undermining its openness or sense of remoteness, and without obscuring the distinctive pattern of fields and ditches. I therefore find that the proposed development would not conflict with the aims of Local Plan Policy EN11, which seek to ensure that development proposals within the Coastal Levels conserve its generally open and exposed landscape character.
28. From locations to the north-east of the appeal site, the proposed wind turbines would be seen against the backdrop of the South Downs scarp. The hub height would be below the skyline of the ridge, but from some viewpoints the blades of the proposed turbines would project above it. The Council has expressed concern that the presence of the turbines would disrupt the sense of scale and perception of the Downs that is experienced from within the landscape of the Levels, drawing in the overall sense of openness, and that the backdrop of the scarp would emphasise the size of the proposed turbines more than would a backdrop of open sky.

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29. I am not convinced that this would be the case. I saw at my site visit that in views from this part of the Levels, the South Downs scarp is clearly distinguishable as a distinctive but distant element of the landscape, unconnected with the foreground and middle ground of the Levels themselves, and of a very different character in landscape terms. It would be evident in such views that the proposed turbines were set within the Pevensy Levels, and would be a component of this lowland landscape, rather than being associated with the elevated ground of the Downs.
30. It is fair to note that the considerable height of the turbines, and their moving blades, would draw the eye in a way that existing static infrastructure, such as the electricity pylons that would be seen in the same views, does not. However, the turbines would be slender structures and spaced well apart, such that they would be visually permeable in terms of continuing views through and beyond them to the distant escarpment of the Downs. The dramatic visual contrast between the height of that scarp, some 190m AOD, and the much lower-lying landscape of the Levels, which is only just above sea level, would remain easily appreciable.
31. As the appellant accepts, the proposed turbines would be visually prominent in local views up to 4 kilometres away. From public viewpoints beyond this range, the relatively compact cluster of three wind turbines would be a small element of the panoramic views available over the low-lying landscape of the Levels, in contrast with the extensive views of the scarp beyond. I agree with the appellant that seen against the backdrop of the scarp, the lower elements of the turbines would be perceived as smaller and more recessive in the landscape than would be the case if their verticality were made starkly apparent against a backdrop of open sky.
32. There are a number of recreational routes which pass through the Levels and which would afford views of the proposed development. The 1066 Country Walk, a regional trail from Pevensy to Winchelsea, crosses the Pevensy Levels and has a loop at its southern end, via Hankham, which would pass 500m from the proposed turbines at its nearest point. The Cuckoo Walk and Sustrans 21 cycle route follow the former railway line from Polegate to Heathfield, passing some 1.5km from the appeal site. There are many other public rights of way and minor roads in the vicinity, used by walkers, cyclists and equestrians. There is evidence that these routes are popular with local residents and visitors alike, providing welcome opportunities to get out into the countryside.
33. The extent to which the proposed turbines would be seen in views from public rights of way is assessed in the 2011 ES and 2013 ES Addenda, and supplemented by material produced by the appellant's and Council's professional landscape witnesses. Whether the presence of the proposed development would detract from people's enjoyment of these routes is likely to be dependent on each individual's perception of this type of development. There is a wide range of public attitudes towards wind turbines, as was evident from representations made to the inquiry. Some admire them as elegant sculptural beacons of hope and progress: others detest them as ugly industrial machines that blight the landscape. In order to make as objective an assessment as possible of the changes to views which would occur, it is appropriate to proceed on the precautionary basis that the changes would be perceived as adverse.
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34. The proposed development would have a significant visual impact on a number of viewpoints on public rights of way. Where these lie in close proximity to the appeal site, the proposed turbines would be dominant elements of the available views. There is also the sequential aspect to consider; for example, walkers heading south along the 1066 Country Walk would have the turbines in view over a considerable distance, and therefore for a considerable length of time. The visual impacts of the proposed development would not be experienced to the same degree throughout. Views from many of the identified public rights of way would be intermittent, due to varying degrees of screening provided by the local landform and hedges. Motorists would experience significant visual effects for relatively brief periods in the context of their overall journeys. Walkers covering a long distance along the promoted recreational footpaths would not have their overall experience characterised by the proposed wind farm, although of course the same would not hold true for residents using sections of those longer routes for walks around their local area.
35. Taking all of this into account, I conclude that while the proposed development would not undermine the overall landscape character of the area, it would have an adverse visual impact from a number of public viewpoints, and that is a consideration which needs to be weighed in the overall planning balance.

South Downs National Park

36. The NPPF advises that National Parks have the highest status of protection in relation to landscape and scenic beauty, and that great weight should be given to conserving these qualities. The South Downs National Park (SDNP), designated as such in 2010, stretches some 140km from Eastbourne to Winchester. It is recognised for its unique chalkland geology, and the variety of vegetation, birds and animals this supports. The appeal site lies some 2.5km from the boundary of the SDNP which, in this part, is characterised by the open chalk escarpment which faces north and east towards the appeal site.
37. From the top of this escarpment there are extensive, panoramic views out over the lower lying landscape below. There are a number of formal viewpoint locations situated along the ridge at the break of this scarp slope, many of them destinations in their own right, as well as forming part of the experience of long distance routes or within areas of open access. Views toward a variety of landscape areas are available, including the extended settlement of Eastbourne and other smaller settlements; the coastal zone towards Bexhill and Seaford; the expansive downland of the National Park itself, between the scarp and the coast to the south; and the lower lying landscape containing the A27 and other communication routes. The High Weald is also visible as the distant north-east horizon.
38. The combination of elevation, breadth and depth of views enables visitors to the SDNP to experience a strong sense of "getting away from it all". The value of this is recognised in the South Down National Park Authority's paper *South Downs National Park: Special Qualities* (2011), which assists interpretation of the two statutory purposes of the National Park: to conserve and enhance the natural beauty, wildlife and cultural heritage of the area, and to promote opportunities for the understanding and enjoyment of the special

qualities of the National Park by the public. The identified special qualities of the SDNP include "diverse inspirational landscapes and breathtaking views", "tranquil and unspoilt places", and "great opportunities for recreational activities and learning experiences".

39. It is material to note that, as detailed in the FEI, there are viewpoints from within the SDNP from which the 70m wind turbine at Glyndebourne (now operational), and the recently consented Rampion offshore wind farm (likely to consist of some 100 wind turbines up to 210m high) would be seen in addition to the three currently proposed wind turbines. The downland scarp topography provides physical and visual separation between the three locations. While views south to the offshore Rampion site are extensive throughout the SDNP, views of the currently proposed development are largely limited to the ridge of the scarp slope that forms the northern boundary of the National Park. The most significant visual cumulative effects would be experienced from viewpoints at Folkington Down, Combe Hill and Willingdon Hill.
40. From these viewpoints, the elevated location allows for 360 degree panoramic views across the surrounding landscape and seascape. The Rampion wind farm, which would be visible on the horizon over 25km away, would be clearly identified as part of the expansive seascape. The Glyndebourne wind turbine would be between 12 and 17km from each of these viewpoints, across the Low Weald, where it would appear as a remote element in the distance. The currently proposed wind turbines would be seen in the opposite direction to the Rampion offshore wind farm, and the low-lying, large-scale landscape of the Pevensy Levels would separate them, physically and visually, from the wind turbine at Glyndebourne.
41. The proposed turbines would constitute a new element in the landscape, altering the composition of views from the National Park over the Pevensy Levels. I saw at my site visits that from viewpoints in the eastern part of the SDNP closest to the appeal site, such as Combe Hill and Folkington Down, the new development would be seen in the context of extensive residential development at Eastbourne and Polegate, existing infrastructure such as roads, pylons and railways, and some large-scale industrial facilities and warehouses. From SDNP viewpoints further to the west, such as Firle Beacon, I saw that the turbines would be viewed in the context of a more rural landscape, with smaller pockets of residential development and a larger proportion of open fields, but still a landscape in which the signs of human intervention (such as roads, bridges, telegraph poles and reservoirs) are clearly apparent.
42. While the proposed turbines would be easily recognisable within these views, I do not see that this would in any way diminish the viewers' sense of being "away from it all". That sense derives from an appreciation of being up on the tranquil, timeless landscape of the unspoilt downlands, surrounded by nature, and therefore set apart from built development, and other evidence of the hustle and bustle of daily life that is carrying on below. This appreciation would not be affected by the addition of the proposed turbines to the view. The movement of the turbine blades would draw the eye, but having done so, they would not necessarily retain it at the expense of other features. The regular sweep of the blades would not be the only moving element of views;

cars on roads are visible, as are trains moving through the landscape and, from some viewpoints, ships at sea.

43. As noted above in the context of the Pevensy Levels, the extent to which the enjoyment of visitors to the National Park and walkers on the South Downs Way would be affected by the proposed development is likely to be dependent on individuals' attitudes toward wind turbines. Given the separation distances involved, and the wide expanse of the views available, I see no reason to suppose that even those strongly opposed to wind farm development would consider their enjoyment of the SDNP as a whole to be significantly reduced by the proposed development, or choose to stay away from this particular area of it as a consequence. A number of studies have been carried out around the country into the effects of wind farms upon tourism, and there is no conclusive evidence of any adverse impacts; in some areas, visitor numbers are said to have increased as a consequence of their construction.
44. The Council expressed concern that views of the SDNP from within the Pevensy Levels would be adversely affected by the presence of the proposed turbines, and that this would be harmful to the special qualities of the SDNP. I have noted above that the proposed development would have an adverse impact upon such views, but have not been provided with any convincing argument as to why this would also lead in turn to an adverse impact on the special qualities of the SDNP. It seems to me that none of those identified in the SDNPA's 2011 *Special Qualities* paper would be affected by the change to views from the Pevensy Levels, and nor would the special qualities of the escarpment itself, identified in the South Downs Joint Committee's *The South Downs Integrated Landscape Character Assessment*.
45. Taking all of this into account, I find that the proposed development would not alter the landscape and scenic beauty of the SDNP itself, and would not compromise the special qualities of the National Park or conflict with its statutory purposes. I conclude that the proposal would accord with the overall aim of Core Strategy Policy SP01 to protect the nationally designated landscapes of the district.

Living conditions at nearby properties

46. I turn next to the visual impact that the proposed wind turbines would have on nearby residential properties. It is important to note at the outset that the planning system exists to regulate the development and use of land in the public interest. In most cases, the outlook from a private property is a private interest, not a public one: in other words, there is no "right to a view" that would protect private views from development that would adversely affect them. However, the question of public interest may be at issue where a development proposal would have such a severe adverse impact on the outlook from a private residence that it would render it an unsatisfactory place to live, for future as well as current occupiers.
47. This point was specifically addressed by my colleague, Inspector Lavender, in an appeal decision in 2009⁴. He wrote: *...when turbines are present in such number, size and proximity that they represent an unpleasantly overwhelming and unavoidable presence in main views from a house or garden, there is*

⁴ Appeal Ref: APP/X220/A/08/2071880

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every likelihood that the property concerned would come to be regarded as an unattractive and thus unsatisfactory (but not necessarily uninhabitable) place in which to live. It is not in the public interest to create such living conditions where they did not exist before. The Secretary of State subsequently endorsed this approach in an appeal decision in 2011⁵. He held that when assessing the effect on visual outlook, it is helpful to pose the question: would the proposal affect the outlook of these residents to such an extent, i.e. be so unpleasant, overwhelming and oppressive that this would become an unattractive place to live?

48. In this current case, the Council conducted a thorough assessment of the visual impact that the development would have on nearby residential properties, and concluded that while significant effects at 1 & 2 Old Court Cottages would be an adverse impact of moderate weight, no dwellings would experience such an overwhelming and oppressive alteration to their outlooks as to be rendered unattractive places in which to live. The appellant has also undertaken a detailed Residential Visual Amenity study, and I have had careful regard to the representations made by the owners and occupiers of potentially affected properties. I assessed the situation for myself in the course of my site visits.
49. Old Court Cottages are a pair of semi-detached dwellings to the north of the appeal site. The two houses front the B2104, such that they each have an elevation facing south west. Views from windows in the side elevation of No.2 are towards the north west, away from the appeal site, and in these the proposed turbines would not be visible. However, the side elevation of No. 1 faces south east, such that oblique views towards the turbines would be available from a number of windows in this elevation, as well as from all of the south-west facing windows. Some views of the turbines would be available from some parts of the garden, but from others would be screened by the house. The timber fence and boundary hedge along Cottage Lane would provide some screening for the ground-floor side windows of the single-storey living space toward the rear of the dwelling, which is also served by rear-facing patio doors, but the low boundaries to the front of the property, and to the opposite side of B2104, would provide no effective screening.
50. The proposed turbines would clearly have a significant impact on the outlook from No.1 Old Court Cottages; three large, man-made structures with moving blades would be inserted into the existing views across the open fields of the appeal site. However, the orientation of the windows is such that the turbines would be seen obliquely, as peripheral elements of the view, rather than filling the field of vision. Taking into account a 30m allowance for micro-siting, the closest of the turbines would still be some 620m away. Thus, while the turbines would loom large, I reach the same conclusion as the Council: their visual impact would not be so oppressive or overwhelming as to render No. 1 Old Court Cottage an unattractive and thus unsatisfactory place to live. No. 2 Old Court Cottage would experience a much lesser degree of visual impact, since the turbines would not be visible at all from the windows of its side elevation, and it too would not become an unattractive place to live as a consequence of the proposed development.

⁵ Appeal Ref: APP/D0515/A/10/2123739 & 2131194

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51. While the various dwellings at Priesthaves and Drockmill would be closer to the proposed turbines, with the nearest at a distance of just over 0.5km, there is a greater degree of intervening screening than is the case for Old Court Cottages, and each of the properties would retain a variety of views and aspects unaffected by the proposed development. While some would experience significant visual impacts, none would be rendered an unattractive place to live.
52. Willoughby Cottage is a two-storey detached property in Hankham, some 1.3km from the nearest of the proposed turbines. From windows in the west and south elevations there would be oblique views toward the turbines, while more direct views would be available from parts of the garden. The dense boundary vegetation would provide some effective screening while in leaf; less so during winter months. However, the fact that the turbines would be visible, to varying degrees, from parts of the property does not, of itself, render the ensuing change of outlook unacceptable. The impact on views from within the house would not be oppressive or overbearing, and views of the turbines from parts of the garden would not cause such harm as to render that outdoor amenity space unattractive.
53. At the inquiry there was some dispute as to the separation distances between the proposed wind turbines and the recent, and ongoing, residential development on the north-east side of Polegate. On the basis of the evidence before me and the grid coordinates provided, none of the existing dwellings, or any of those permitted but yet to be built, would be closer than 500m. Some of these have large windows and first-floor balconies facing out toward the appeal site, from which the proposed turbines would be directly in view, across a wide field of vision. However, the intervening A27, a busy dual carriageway with some tree screening to either side, functions as a significant visual and audible barrier, separating the residential development to its south from the appeal site and surrounding countryside to its north. This sense of physical separation would reduce the extent to which the proposed turbines might otherwise be perceived as an oppressive presence, such that while the development would have a significant impact on the outlook from these dwellings, it would not be so unpleasant or overwhelming as to render their living conditions unsatisfactory.
54. To conclude on the question of the visual impact on residential properties, many others besides those discussed above would experience a visual impact, and alterations of varying degree to their outlook, as a result of the proposed development. I appreciate that the occupiers of some of these dwellings would consider that their living conditions had been made less attractive as a consequence. However, applying the test set out above, I conclude that the proposed wind turbines would not have such an unpleasant, overwhelming and oppressive effect on the outlook of any dwelling as to make it an unattractive place in which to live.

Cultural heritage

55. S.66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 sets out the duty, placed on decision-makers who are considering whether to grant planning permission for development which affects a listed building or its setting, to "have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic

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interest which it possesses". This is reflected in the NPPF, which explains that one of the core principles for the planning system is to "conserve heritage assets in a manner appropriate to their significance".

56. Paragraph 128 of the NPPF explains that applicants for planning permission should describe the significance of any heritage assets affected, including any contribution made by their setting, so that the potential impact of the development proposal on their significance can be understood. Paragraphs 133 and 134 advise that development resulting in substantial harm to the significance of designated heritage assets should not be permitted unless it would be necessary to achieve substantial public benefits that would outweigh the harm. Where less than substantial harm would result, this should be weighed against the public benefits of the proposal. The NPPF does not define what is meant by "substantial harm" for these purposes, but the PPG provides some guidance. It states that "In general terms, substantial harm is a high test, so it may not arise in many cases. It is the degree of harm to the asset's significance rather than the scale of the development that is to be assessed."
57. In this case, no designated heritage assets would be physically altered by the proposed development. Rather, it is the indirect effect of the development, in terms of its impact on the setting of heritage assets, that needs to be considered. The 2011 ES incorporated an assessment of the heritage assets that may have been affected by the original five-turbine proposal, and I note that English Heritage raised a number of concerns about the extent to which the significance of these assets had been adequately described and understood. A revised assessment was undertaken and included in the 2013 ES Addendum, together with a further assessment of four specific heritage assets identified by English Heritage as likely to suffer the greatest harm: the chapel at Otham Court, Priesthawes, the Church of St Mary Magdalene at Wartling, and Glyndley Manor.
58. English Heritage subsequently confirmed that this additional material addressed its previous concerns about providing an adequate description of the affected assets' significance, and agreed that the proposed development would be likely to cause less than substantial harm to heritage assets, including the four identified as likely to suffer the greatest harm. I visited each of these in the course of my site visits.
59. Glyndley Manor is not a listed building, or a "designated heritage asset" for the purposes of the NPPF. The manor house dates from the 16th Century but has been much altered. The ornamental gardens to the north, east and south-east contribute to the heritage significance of the house, as does its wider parkland setting. On the south front, the carriage sweep has been re-shaped to form a large (20m x 40m) car park and tennis court, and it is in views from this south front that one of the turbines would be visible at a distance of just over 1km. The introduction of an incongruous modern structure in one of the principal outward views from the house would clearly be a noticeable change, but this is not the only view outward or the only component of the setting; further, the turbine would be seen in the context of the existing car park. I consider that the harm caused to the significance of this heritage asset would be slight, and considerably less than substantial.
60. The Church of St Mary Magdalene at Wartling is Listed Grade I. It derives much of its heritage significance from the special architectural, historic and

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artistic value of its fabric and construction but the surrounding churchyard, which includes a number of mature trees, also contributes to its significance. The spire of the church is visible against the skyline in a number of views from lower ground to the south and south west, which reinforces its significance as a landmark in the wider historic landscape. In views toward the south-west from within the churchyard, through gaps in the vegetation on the southern boundary, all three turbines would be visible some 6km away. At this distance, they would form only a very small component of the overall view. While there is a historic relationship between the church and views toward the south-west, the impact on this part of the setting of the church would be very slight, and in my judgment would have only a very slight adverse impact on the significance of this designated heritage asset.

61. Priesthawes is Listed Grade II, and dates from the 16th Century. Its heritage significance lies largely in the architectural and archaeological interest of its historic fabric, but includes its historical connection with its surroundings. Its setting contributes to the latter aspect of its significance through its strong connection with the private landscaped gardens to the north-east, and to a lesser degree its visibility, from Hailsham Road, as a familiar feature in the local landscape. The proposed turbines would not intrude into any important views toward the house, would not be visible in principal views from the windows of the listed building to the north-east, and would only be seen from the upper (bedroom) windows of the south-west elevation, over the roofs of the intervening service buildings. I agree with the 2013 ES assessment's finding that the effect on the setting would be relatively contained and localised, and the impact on significance would be minor.
62. The Chapel at Otham⁶ Court is Listed Grade II*, and is also a Scheduled Ancient Monument. Otham Court itself is Listed Grade II. The heritage significance of the chapel, and the house, derives mainly from their archaeological and historic interest as structures dating from the 14th and 15th Centuries, and also their architectural and artistic interest. The chapel is an unassuming building sited toward the side and rear of the house, and its setting is largely restricted to the residential curtilage of the house; this contextual historic relationship contributes to the heritage significance of both buildings. While the surrounding agricultural land is of contextual and historical relevance, the relationship is difficult to discern from points close to the listed buildings themselves due to intervening grounds, outbuildings and boundary trees. There is no indication that the chapel and the house were intended to be buildings from which to look out in any direction, and no evidence of a historic garden layout in association with either the house or the chapel.

63. There are no positions from which the proposed turbines would be visible above the buildings, and no views toward them into which the turbines would intrude. The turbines would not be visible from within the chapel. From outside the chapel and from the garden to the east of the house, and to a lesser extent from windows in the east elevation of the house, the blades of the turbines would be visible in views to the east, but would be filtered by intervening trees in the foreground and middle distance. Taking all of this into

⁶ Also appears as "Othham" and "Otteham" in various documents. I have adopted the spelling used by the owner in his written submissions.

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account, I consider that the harm caused by the proposed development to the significance of these two designated heritage assets would be slight.

64. I have given careful consideration to the other heritage assets identified as potentially affected by the development proposal, and visited a number of them in the course of my site visits, including Pevensey Castle. While the proposed development would result in a visual change to the setting of some of these heritage assets, I am satisfied that these changes would not in any instance be harmful to the setting, or the significance, of the heritage assets in question.
65. Nevertheless, harm to the significance of the five heritage assets identified above is a factor that must be weighed in the overall planning balance.

Aviation

66. The private helipad at Otham Court would be some 1.25km from the closest of the proposed turbines, in an area where there are currently no significant airspace constraints. The proposed development would result in the introduction of obstacles that would curtail, to an extent that would largely depend on wind direction, the freedom of movement currently available to users of the helipad. However, the evidence before me indicates that continued flying operations would not pose any additional danger, so long as standard aviation practices were observed. Similarly, the presence of the proposed turbines may, in certain wind conditions, mean that alterations to the circuit pattern, take-off and landing approaches at Downash airfield would be needed. While this would clearly be inconvenient, there is no evidence that it would present any additional danger.
67. Concerns about the aviation safety implications of erecting three 11.5m high wind turbines on the appeal site are wholly understandable; they would constitute a new obstacle, with the potential therefore to increase the risk of collision. But it is important that such concerns be kept in proportion. The proposed turbines would not obstruct any commercial flight paths, or any existing radar sight lines, and neither the MoD nor NATS has raised any objection to the proposed development. Thus, while the implications for aviation weigh against the proposed development, the extent of that weight is limited to the adverse effect upon the amenity currently enjoyed by the operators of these two private aviation facilities, rather than any wider concern about public safety.

The benefits of the proposed development

68. The government's Overarching National Policy Statement for Energy, published in 2011, explains that as part of the UK's need to diversify and decarbonise electricity generation, the UK government is committed to increasing dramatically the amount of renewable generation capacity; in the short to medium term, much of this new capacity is likely to be onshore and offshore wind. In respect of the UK's commitments to sourcing 15% of energy from renewable sources by 2020, it states that to hit this target, and to largely decarbonise the power sector by 2030, "it is necessary to bring forward new renewable electricity generating projects as soon as possible. The need for new renewable electricity generation projects is therefore urgent".

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69. More recently, in 2013, the Government published its Third Update to the UK Renewable Energy Roadmap. This reiterated the UK Government's commitment to achieving the UK's 15% renewable energy target by 2020 (committed by the Energy Directive 2009). It states that renewable energy offers the UK a wide range of benefits from an economic growth, energy security and climate change perspective, and that a key benefit of deploying renewable energy technologies is the potential reduction in carbon emissions (paragraph 91). It also states that onshore wind is one of the most cost effective and proven renewable energy technologies, and has an important part to play in a responsible and balanced UK energy policy.

70. The proposed development would supply renewable electricity generation of up to 7.5 MW of installed capacity, sufficient to power up to 4,000 homes, and would achieve an annual saving of up to 8,475 tonnes of carbon. This would make a material contribution to the attainment of the national renewable energy policy objectives set out above; it would help to improve the security of the energy supply through diversifying the range of resources, would have direct and indirect economic benefits, and would reduce carbon dioxide and greenhouse gas emissions, thereby helping to mitigate climate change.

71. These are substantial benefits which carry a great deal of weight.

Other matters

72. The PPG makes it very clear that the need for renewable energy does not automatically override environmental protections and the planning concerns of local communities. Rather, it notes: "As with other types of development, it is important that the planning concerns of local communities are properly heard in matters that directly affect them". This was emphasised by the Secretary of State in his Written Ministerial Statement of April 2014. My consideration of this appeal has therefore proceeded on the basis of a clear understanding that the need for renewable energy should not override the views of the local community: the extent of the need for the proposed development is only one of the many considerations that must be placed in the planning balance and, like each of them, has the potential to be outweighed by others.

73. I am aware that some have taken the Government's most recent guidance to mean that renewable energy proposals should be refused if the local community is against them. In my opinion the PPG does not bear such an interpretation. Rather, it seems to me that the PPG emphasises the need for decision makers to pay very careful attention to the concerns of local communities, since they, after all, are the people who will have to live with the consequences of the development that is under consideration. In so far as the concerns raised are material and relevant, they must be given due weight in the overall balance of considerations. But the extent of the weight that is due to such considerations remains a matter for the appointed decision maker.

74. A number of local residents expressed concern that noise generated by the proposed development could lead to sleep deprivation, and other harm to health. However, the evidence before me is that the proposed development would accord with noise limits set out in the government's ETSU-R-97 *The Assessment and Rating of Noise from Wind Turbines* at all properties, day and

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night, for all wind speeds and in all conditions. The imposition of an appropriately detailed condition would ensure that compliance was achieved.

75. Concerns were also expressed about the impact the turbines might have upon TV reception. There is no convincing evidence that any disruption would occur, but neither is there any certainty that it would not. This uncertainty could however be adequately addressed by the imposition of a condition requiring that any such disruption be investigated by an independent engineer, and appropriate remedial action taken, funded by the wind farm operator. Similarly, a condition could be imposed requiring an agreed protocol for the prevention, assessment and mitigation of any shadow flicker that may be caused at nearby dwellings.

76. The 2011 ES and 2013 ES Addendum record the detailed ecological assessment of the appeal site and surrounding area, undertaken with input from Natural England and the RSPB. Having carefully reviewed this material the Council accepted its conclusion that, subject to the identified mitigation measures, there would be no residual significant adverse effects. Having assessed all of the evidence before me, and noting that the necessary mitigation could be secured by an appropriately worded condition, I see no reason to depart from these findings. I do not, however, share the Council's view that the proposed habitat improvements carry weight in favour of the proposed development, since these are provided to mitigate the adverse impact that the development would otherwise have.

77. Concerns were expressed about the impact that the proposed development would have upon food security. I note that the appeal site is currently in agricultural use, but the built footprints of the three proposed turbines and associated infrastructure would not be large, and in any event would not preclude the ongoing agricultural use of the remainder of the appeal site. Concerns were also expressed about the potential for drivers on nearby roads to become distracted by the moving blades, but a large number of turbines have now been erected in the UK, including some alongside motorways, and I have seen no evidence that any of these have distracted drivers to such an extent as to cause an accident. Concerns about the impact of the development upon the water table, and surface water drainage, can be adequately addressed by condition.

78. I note concerns raised by the British Horse Society that horses may be startled by the visibility and noise of the turbines, or shadow flicker caused by their blades. It is fair to note that horses may be startled by any number of things, including bicycles and unexpected noises, but also that they have, historically, been trained to work alongside vehicles and machinery, in traffic, and even in battlefields. The turbine towers would be static features of the landscape, while their blades would move in a smooth and regular pattern, rather than suddenly or unexpectedly. In the absence of any convincing evidence that significant safety concerns would arise, the possibility that horses might be spooked by the proposed turbines is not, in my view, a consideration that carries any weight.

79. Concerns were also expressed that the proposed development might deter visitors to local businesses and visitor attractions, such as the fishing lake and caravan site at Sharnfolds Farm, and the Chapel at Otham Court, which is used as a venue for weddings. However, as discussed above, there is no

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convincing evidence that existing wind turbines have adversely affected visitor numbers, and in the absence of any such evidence, this is not a concern to which I attach weight.

Conclusions

80. I have found that Local Plan Policy EN1 is out of date, and have not found any conflict with other policies of the adopted Development Plan. Core Strategy Policy WCS14 provides that where relevant policies are out of date, planning permission should be granted unless material considerations indicate otherwise, taking into account whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.
81. For the reasons set out above, I have concluded that the proposed development would have an adverse visual impact on views within the Pevensy Levels, and that is a material consideration to which I attach a moderate amount of weight. I also attach some weight to the adverse visual impacts that would be experienced at No. 1 Old Court Cottages and, to a lesser extent, other nearby residential properties, albeit these would not be so unpleasant as to render any dwelling an unsatisfactory place in which to live. I attach a small amount of weight to the limited harm that the proposed development would cause to the amenity of two private airfields.
82. I attach considerable weight and importance to the fact that the proposed development would fail to preserve the settings of four Listed Buildings, and the less than substantial harm that would thereby be caused to their heritage significance. I include in the balance the slight harm that would also be caused to the heritage significance of Glyndley Manor.
83. However, I find that the combined weight of these adverse impacts is clearly and convincingly outweighed by the substantial public benefits that would arise from the proposed development.
84. I therefore conclude that planning permission should be granted.

Conditions

85. The Council and the appellant helpfully collaborated to produce an annotated list of suggested conditions (INQ 29), which then formed the basis for a discussion session at the inquiry. I consider that the majority of these conditions are necessary and reasonable, but have amalgamated and amended some of them, in accordance with discussions at the inquiry, to improve clarity and concision and to ensure they accord with the tests and guidance set out in the NPPF and Circular 11/95: *The Use of Conditions in Planning Permissions* (to the extent that the latter remains extant).
86. The appellant queried the need to impose a condition requiring the development to accord with the approved plans. I appreciate that a number of the submitted plans, such as those detailing the candidate turbine model, and a potential layout for the site compound, were submitted for indicative purposes only and it would not be appropriate to require compliance with them. Instead, such matters should be the subject of the Council's written approval: control over the height, design, colour and finish of the turbines, as well as details of the compound, is provided by conditions (7), (8) and (9). Nevertheless, in the interests of certainty and precision I consider it is

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reasonable and necessary to attach a condition (2) requiring the development to be carried out in accordance with the Site Boundary Plan and Detailed Layout Plan (2), since these provide necessary detail to inform further conditions dealing with the micro-siting of the turbines and the creation of accesses (see below).

87. The Council expressed concern about the suggested micro-siting condition (3), which allows a tolerance of 30m for the siting of the turbines. This is a relatively standard condition for wind turbine development, which provides flexibility in addressing site-specific ground conditions. Given the nearby presence of hedges and trees, which may be frequented by foraging or commuting bats, I consider it necessary to include provision that the micro-siting should not result in any turbine being located closer than the recommended 50m separation distance from these features.
88. Since this permission is limited to a period of 25 years, it is necessary to include a condition to that effect (4), and conditions requiring the removal of the development at the end of that period (5), or sooner if the turbines cease to produce electricity (6).
89. In order to minimise visual disturbance at night, and adverse ecological impacts, a condition is needed to prevent illumination of the turbines other than by the infrared lighting required for aviation safety (10). Condition (11) is also necessary to the interests of aviation safety, to ensure the potential hazards are duly notified to, and recorded by, the relevant authorities. It is not appropriate for this condition to require that the operators of individual aerodromes are notified, but it would remain open to those operators to make arrangements with the Council for notification if required.
90. A condition requiring the cabling to be underground (12) will help to reduce the visual impact of the development, and conditions requiring the Council's prior approval of a Construction Traffic Management Plan (13) and Construction Method Statement (17) will help to protect the living conditions of local residents during the construction period, as will conditions limiting the hours of construction (18) and deliveries (14 and 15).
91. The Highway Authority proposed a number of conditions concerning the proposed access from the A27 for abnormal loads, but the requirements to complete construction of this access in accordance with approved details prior to the first such delivery, and to prevent any other traffic from using it, can usefully be secured by a single condition (16).
92. Conditions are needed to secure appropriate archaeological investigations and works (19), and the Council's prior approval of a Construction Environmental Management Plan (20), a Habitat Management Plan (21), drainage arrangements (22) and flood risk mitigation works (23), before the development commences. Further, to protect the amenities of local residents, it is necessary to attach conditions requiring the provision of telemetry mitigation (24), and the Council's prior approval, before the turbines are erected, of protocols to address any problems that may subsequently arise in respect of television reception (25) and shadow flicker (26).
93. The noise condition (27) is complex and very lengthy, but this is necessary to protect nearby residents from any unacceptably adverse impact on their living conditions. It specifies clear limits for a wide range of representative

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locations, and makes detailed provision for a thorough and fair investigation of any complaint made about noise levels at affected dwellings. The wording is clear about the circumstances in which the development would be found not to comply with the condition: it would then be for the local planning authority to decide what action would be expedient.

Determination

94. For the reasons set out above, the appeal is allowed.

Jessica Graham

INSPECTOR

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DOCUMENTS SUBMITTED IN THE COURSE OF THE INQUIRY

- 1 Copy of Council's letters notifying interested persons of the appeal and inquiry details, with circulation list
- 2 List of appearances on behalf of the Appellant
- 3 Copy of opening submissions made on behalf of the Appellant
- 4 Copy of opening submissions made on behalf of the Council
- 5 Topographical map of the appeal site and surroundings, submitted by the appellant
- 6 Extract (pp 60-67) from the North Northamptonshire Core Spatial Strategy (2008), submitted by the Appellant
- 7 e-on newsletter of April 2013 concerning Rampion Offshore Wind Farm, submitted by the Appellant
- 8 Copy of appeal decision ref: APP/D2510/A/12/2176754 (Thacker Bank), submitted by the Appellant
- 9 Copy of Mr I Casselden's statement to the inquiry
- 10 Copies of (a) statement made by Mr M Clewett to the inquiry on behalf of Polegate Town Council, and (b) Mr Clewett's own statement to the inquiry
- 11 Copy of Mr S Popek's statement to the inquiry
- 12 Copy of Mr R Van-der Kieft's statement to the inquiry
- 13 Further information, including photomontages, submitted by SSWAG
- 14 Copy of Supplementary Environmental Information dated April 2012, provided at Inspector's request (missing from documents originally submitted to PINS)
- 15 Letter from Mr M Clewett to the Inspector dated 23 July 2014
- 16 Copies of Approved Boundary Treatments Plan for Land North of Dittons Road (drg. No. MPL_01_A Rev A); Approved Site Plan for "Polegate Phase 2" (drg. No. 00177A_RS02 Rev D); Illustrative Masterplan for "The Winfields" (drg. No. GDG.P_001)
- 17 Draft list of suggested conditions, compiled by the Council and the Appellant
- 18 Set of 10 aerial photographs, taken above the appeal site, provided by Mr Van-der Kieft
- 19 Copies of documents, previously referenced via hyperlink, referred to in Mr R Van-der Kieft's representations
- 20 Copy of Ms B Echlin's statement to the inquiry
- 21 Copy of Mr J Fowler's statement to the inquiry
- 22 Set of 4 images, produced by the appellant, showing the Bluebells Development Plan and Polegate Phase 2 Development Plan superimposed, respectively, on a base plan and an aerial photograph
- 23 Letter from Mr N Howcroft to the Inspector, dated 24 July 2014
- 24 A3 binder of material concerning cumulative landscape and visual impacts, prepared by the appellant, and intended to form the basis of an agreed statement between the Appellant and the Council
- 25 E-mail from the Council to the Appellant, dated 29 July 2014, responding to Document 24 (above)
- 26 Copy of RuSource Briefing 1589 "Wind power"
- 27 Extract of Maldon District Council Local Plan, submitted by the Appellant
- 28 Transcript of the High Court's judgment in *Lark Energy Ltd v SoS CLG & Waveney DC* [2014] EWHC 2006 (Admin)
- 29 Updated version of Document 17 (above)
- 30 Draft Itinerary, agreed between the Council and the Appellant, for the Inspector's accompanied site visits

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- 31 Regulation 22 request for Further Environmental Information, dated 4 August 2014, issued by the Planning Inspectorate
- 32 Update Note concerning recently published DUKES Statistics 2014, submitted by the appellant
- 33 The Council's response to Document 31 above
- 34 Update Note on Consultation Draft Guidance Notes issued by English Heritage, submitted by the Council
- 35 Copies of the responses to the consultation on the Further Environmental Information
- 36 The Appellant's supplementary evidence on cumulative landscape and visual effects
- 37 The Council's supplementary evidence on cumulative landscape and visual effects
- 38 The Appellant's Rebuttal of Document 37 above
- 39 Closing submissions on behalf of the Council
- 40 Closing submissions on behalf of the Appellant

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision. Written confirmation of the commencement of development shall be provided to the local planning authority within 14 days of its occurrence.
- 2) Subject to conditions nos. 3, 8 and 9 below, the development hereby permitted shall be carried out in accordance with the approved plans numbered Figure 1.2A: Turbine Layout and Site Boundary and Figure 3.6A: Detailed Site Layout.
- 3) The wind turbines hereby permitted shall be erected at the following grid co-ordinates:

Turbine	Easting	Northing
1	560051	105565
2	560238	105396
3	560513	105291

EXCEPT THAT notwithstanding the terms of this condition and condition no. 2 above, the wind turbines hereby permitted may be micro-sited within 30 metres of the specified locations, and the consequential realignment of the crane pads, and access tracks between the wind turbines, is permitted SUBJECT TO THE PROVISIO that the blade-swept area of each turbine shall be no closer than 50m from any hedge or tree.

- 4) This grant of planning permission shall expire no later than 25 years from the date when electricity is first exported from any of the wind turbines to the electricity grid ("First Export Date"). Written notification of the First Export Date shall be given to the local planning authority within 14 days of its occurrence.
- 5) No later than 12 months before the expiry of this permission, a decommissioning method statement shall be submitted for the written approval of the local planning authority. The statement shall include a traffic management plan, and details of the timing and management of the decommissioning works, the removal of the development, and the reinstatement of the land to its former condition. The works shall be carried out in accordance with the approved details, within 12 months from the date of expiry of this permission.
- 6) If any of the wind turbines hereby permitted ceases to produce electricity for supply to the local electricity grid network for a continuous period of 12 months, then details of a scheme, to repair or remove the turbine, shall be submitted to the local planning authority for its written approval within 3 months of the end of that 12 month period. If repairs to the turbine are proposed, the details shall include a programme of remedial works. If removal of the turbine is proposed, the turbine shall be removed within 12 months of the details being approved and the details shall include a method statement and timetable for the dismantling and removal of the turbine and the associated above-ground works; the removal of the turbine foundation to a depth of at least 1 metre below ground; a traffic management plan; and a method statement and

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timetable for any necessary site restoration works following the removal of the turbine. The scheme shall be implemented in accordance with the approved details.

- 7) The development hereby permitted shall comprise up to 3 wind turbine generators which are three-bladed machines with a maximum blade-tip height of 115 metres. All of the blades of the wind turbines hereby permitted shall rotate in the same direction.
- 8) None of the wind turbines hereby permitted shall be erected until details of their design, colour and finish, and those of any external transformer units, have been submitted to and approved in writing by the local planning authority. No name, sign, symbol or logo shall be displayed on any external surfaces of any turbine or external transformer unit, other than that which is required to meet statutory health and safety requirements. The development shall be carried out in accordance with the approved details and thereafter retained as such.
- 9) The substation building hereby permitted shall not be erected until details of the design and external materials for the building, and for any associated compound or parking area, have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and thereafter retained as such.
- 10) Other than the infrared aviation lighting required for the safety of aircraft the turbines shall not carry any form of external illumination, and there shall be no permanent illumination on the site other than lighting required during the construction period as agreed in connection with condition no. 17(viii) below, and lighting required for maintenance or emergencies, and a PIR-operated external door light for the sub-station building door to allow safe access.
- 11) At least one month before the commencement of development, the developer shall provide the Local Planning Authority, the Ministry of Defence (MOD) and the Civil Aviation Authority (CAA) with written confirmation of the following details:
 - i) the date when development is expected to commence;
 - ii) the maximum height of any turbine; and
 - iii) the maximum extension height of any construction equipment to be used on the site.

Within fourteen days of the First Export Date, the developer shall provide the local planning authority, the MOD and the CAA with written confirmation of the following details:

- iv) the date of completion of construction;
 - v) the height above ground level of the highest structure that has been erected as part of the development hereby permitted;
 - vi) the position of the turbines in latitude and longitude; and
 - vii) details of the aviation lighting to be fitted to the turbines.
- 12) All electrical cabling between the individual turbines and the on-site electricity sub-station shall be located underground. Following the

Installation of that cabling, the excavated ground shall be reinstated to its former condition within 3 months of the First Export Date.

- 13) No development shall take place until a construction traffic management plan has been submitted to and approved in writing by the local planning authority. The plan shall include details of:
- (i) The timetable for works on site;
 - (ii) The routing of vehicles to and from the site;
 - (iii) Arrangements for escorting abnormal loads;
 - (iv) Temporary warning signage;
 - (v) Temporary removal and replacement of highway infrastructure and street furniture;
 - (vi) Any road closures;
 - (vii) Expected levels and timings of development traffic;
 - (viii) Measures to control traffic, in and around the site;
 - (ix) All loading and unloading areas which will be used for the delivery or despatch of materials related to the development; and
 - (ix) Measures to ensure that delivery vehicles and construction traffic will not park on the public highway for loading, unloading or waiting for site entry.

The development shall be carried out in accordance with the approved plan.

- 14) Delivery to the site of construction materials, and of equipment for the construction of the development, shall only take place between the hours of 07:00 - 18:00 on Monday to Friday inclusive and 08:00 - 16:00 hours on Saturday. No such deliveries shall take place on any Sunday, Bank or Public holiday unless the local planning authority has been given at least two full working days' notice of the proposed delivery and has subsequently given its written approval to the delivery.
- 15) Notwithstanding the provisions of condition no. 14 above, the delivery of turbine, nacelle and crane components to the site may take place outside the hours specified by condition no. 14 if the local planning authority has given its prior written approval to the delivery.
- 16) The access to the A27 for abnormal loads shall be fully constructed, in accordance with details first approved in writing by the local planning authority, before the delivery of any turbine components to the site. This access shall be limited to use by abnormal loads bringing turbine components, nacelles or crane components to the site. No other traffic shall be permitted to use this access to the A27, at any time, for any purpose.
-
- 17) Prior to the commencement of development a construction method statement (CMS) shall be submitted to and approved in writing by the Local Planning Authority. The CMS shall include details of:
- (i) the routes, and site entrances, to be used by traffic accessing the site;
 - (ii) details of the temporary construction access to the B2104, including hardening and surfacing of the site access, visibility splays, and provisions for the removal of the access and restoration of the land once the development is complete;

- (iii) the deposition, grading and finishing (in relation to local landform and habitat) of soil and other natural materials not removed from the site during the construction works;
- (iv) pollution prevention measures to be adopted during the construction phase to ensure that suitable bunding is used around fuel tanks and that excavation/construction works do not harm local sewerage, groundwater supplies, surface water quality or the quality of subsoil;
- (v) construction mitigation and post construction reinstatement measures;
- (vi) measures to control dust and mud arising from the development;
- (vii) measures to clean and maintain site entrances, and the adjacent public highway;
- (viii) temporary site illumination;
- (ix) methods to reduce the effects of construction noise in accordance with BS5228;
- (x) arrangements for the disposal of waste and surplus materials;
- (xi) the siting and design of the temporary site compound including any structures/buildings, fencing, parking and storage provision to be used in connection with the construction of the development;
- (xii) emergency procedures and pollution response plans; and
- (xiii) the timing and phasing of the above elements.

The CMS shall be implemented in accordance with the approved details.

- 18) Construction of the development hereby permitted shall only take place on the site between the hours of 07:00 - 18:00 on Monday to Friday inclusive and 08:00 - 16:00 hours on Saturday. No such construction work shall take place on any Sunday, Bank or Public holiday. Works outside these hours shall only be carried out (a) with the prior written approval of the local planning authority or (b) in the case of an emergency or (c) for dust suppression works. Emergency works shall include, but not be limited to, works to make safe a turbine that is under construction. The local planning authority shall be informed in writing of any emergency works within one working day of their occurrence.
- 19) No development shall take place until the implementation of a programme of archaeological works has been secured in accordance with a written scheme of investigation, including a timetable for the investigation, which has been submitted to and approved in writing by the local planning authority. The works shall be undertaken in accordance with the approved details. A written record of any archaeological works undertaken shall be submitted to the local planning authority within 3 months of the completion of any archaeological investigation unless an alternative timescale for submission of the report is first agreed in writing with the local planning authority.
- 20) No development shall take place until a detailed Construction Environmental Management Plan (CEMP), with particular regard to mitigation to alleviate any effects upon the hydrological baseline, which shall reflect the details in the ES Addendum (Non-Technical Summary) and parts 10.7 - 10.9 and 11.4 of the Environmental Statement Parts 1 and 2, has been submitted to and approved in writing by the local planning authority. Details shall include measures for the protection of,

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- and mitigation of damage to, the rivers, streams and ponds BAP habitats. Development shall be carried out in accordance with the approved CEMP.
- 21) No development shall take place until details of an on-site Habitat Management Plan, including a timetable for its implementation and provisions for future management and maintenance, have been submitted to and approved in writing by the local planning authority. The details shall be consistent with part 6.6 of the Environmental Statement Parts 1 and 2 and the details on figure 6.8a of the ES Addendum Volume 2 part 8 and shall include improvements to habitat within the ditch networks and planting of native hedgerows together with mitigation for reducing bird strike. They shall also include details of any new habitat created on site, and a scheme for the provision of a minimum 3m wide buffer zone alongside watercourses, ditches and ponds, and details of any proposed planting. The Habitat Management Plan shall be implemented in accordance with the approved details.
 - 22) No development shall take place until details of surface water drainage, which shall follow the principles of sustainable drainage as far as practicable, have been submitted to and approved by the local planning authority. The drainage shall be provided in accordance with the approved details before the First Export Date.
 - 23) No development shall take place until details of proposed flood risk mitigation works (which shall demonstrate that adequate flood routing will be incorporated within the development to accommodate overland flows arising from both within the site and externally as a result of extreme rainfall conditions) have been submitted and approved by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
 - 24) Prior to the erection of any turbine components on the site the mitigation scheme for the terrestrial telemetry link between Fairlight and Alfriston for Southern Gas Networks shall be provided.
 - 25) None of the wind turbines hereby permitted shall be erected until details of a scheme to investigate and remedy any electro-magnetic interference to terrestrial television, caused by the operation of the turbines, has been submitted to and approved in writing by the local planning authority. The scheme shall provide for a baseline survey of electro-magnetic interference and for the investigation, by an independent qualified television engineer ("the Independent Engineer"), of any complaint of interference with television reception at a building which lawfully existed or had planning permission at the date of this permission, where such complaint is notified to the local planning authority within 12 months of the First Export Date. If the Independent Engineer determines that interference is attributable to the wind farm development hereby permitted, the remedial works shall be carried out in accordance with the approved details at the expense of the wind farm operator.
 - 26) None of the wind turbines hereby permitted shall be erected until a written scheme has been submitted to and approved in writing by the local planning authority, setting out a protocol for the assessment of shadow flicker in the event of any complaint to the local planning authority from the owner or occupier of any dwelling (defined for the purposes of this condition as a building within Use Class C3 or C4 of the

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Use Classes Order) which lawfully exists or had planning permission at the date of this permission. The written scheme shall include remedial measures to alleviate any shadow flicker attributable to the development and shall be implemented in accordance with the approved details and thereafter retained. Operation of the wind turbines shall take place in accordance with the approved scheme unless the local planning authority gives its prior written consent to any variation.

27) The rating level of noise immissions from the wind turbines (including the application of any tonal penalty), when determined in accordance with the attached Guidance Notes, shall not exceed the values for the relevant integer wind speed set out in Tables 1 and 2 attached to these conditions and:

(A) Prior to the First Export Date, the wind farm operator shall submit to the local planning authority for written approval a list of proposed independent consultants who may undertake compliance measurements in accordance with this condition. Amendments to the list of approved consultants shall be made only with the prior written approval of the local planning authority.

(B) Within 21 days from receipt of a written request of the local planning authority, following a complaint to it alleging noise disturbance at a dwelling, the wind farm operator shall, at its own expense, employ an independent consultant approved by the local planning authority to assess the level of noise immissions from the wind turbines at the dwelling in accordance with the procedures described in the attached Guidance Notes. The written request from the local planning authority shall set out at least the date, time and location that the complaint relates to. Within 14 days of receipt of the written request of the local planning authority made under this paragraph (B), the wind farm operator shall provide the information relevant to the complaint logged in accordance with paragraph (H) to the Local Planning Authority in the format set out in Guidance Note 1(e).

(C) Where there is more than one property at a location specified in Tables 1 and 2 attached to this condition, the noise limits set for that location shall apply to all dwellings at that location. Where a dwelling to which a complaint is related is not identified by name or location in the Tables attached to these conditions, the wind farm operator shall submit to the local planning authority for written approval proposed noise limits selected from those listed in the Tables to be adopted at the complainant's dwelling for compliance checking purposes. The proposed noise limits are to be those limits selected from the Tables specified for a listed location which the independent consultant considers as being likely to experience the most similar background noise environment to that experienced at the complainant's dwelling. The submission of the proposed noise limits to the local planning authority shall include a written justification of the choice of the representative background noise environment provided by the independent consultant. The rating level of noise immissions resulting from the combined effects of the wind turbine when determined in accordance with the attached Guidance Notes shall not exceed the

noise limits approved in writing by the local planning authority for the complainant's dwelling.

- (D) Prior to the commencement of any measurements by the independent consultant to be undertaken in accordance with these conditions, the wind farm operator shall submit to the local planning authority for written approval the proposed measurement location identified in accordance with the Guidance Notes where measurements for compliance checking purposes shall be undertaken. Measurements to assess compliance with the noise limits set out in the Tables attached to these conditions or approved by the local planning authority pursuant to paragraph (C) of this condition shall be undertaken at the measurement location approved in writing by the local planning authority.
- (E) Prior to the submission of the independent consultant's assessment of the rating level of noise immissions, the wind farm operator shall submit to the local planning authority for written approval a proposed assessment protocol setting out the following:
- (i) the range of meteorological and operational conditions (the range of wind speeds, wind directions, power generation and times of day) to determine the assessment of rating level of noise immissions.
 - (ii) a reasoned assessment as to whether the noise giving rise to the complaint contains or is likely to contain a tonal component.

The proposed range of conditions shall be those which prevailed during times when the complainant alleges there was disturbance due to noise, having regard to the information provided in the written request of the local planning authority under paragraph (B), and such others as the independent consultant considers likely to result in a breach of the noise limits. The assessment of the rating level of noise immissions shall be undertaken in accordance with the assessment protocol approved in writing by the local planning authority.

- (F) The wind farm operator shall provide to the local planning authority the independent consultant's assessment of the rating level of noise immissions undertaken in accordance with the Guidance Notes within 2 months of the date of the written request of the local planning authority made under paragraph (B) of this condition unless the time limit is extended in writing by the local planning authority. ~~The assessment shall include all data collected for the purposes of undertaking the compliance measurements, such data to be provided in the format set out in Guidance Note 1(e) of the Guidance Notes. The instrumentation used to undertake the measurements shall be calibrated in accordance with Guidance Note 1(a) and certificates of calibration shall be submitted to the local planning authority with the independent consultant's assessment of the rating level of noise immissions.~~

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(G) Where a further assessment of the rating level of noise immissions from the wind turbines is required pursuant to Guidance Note 4(c) of the attached Guidance Notes, the wind farm operator shall submit a copy of the further assessment within 21 days of submission of the independent consultant's assessment pursuant to paragraph (F) above unless the time limit for the submission of the further assessment has been extended in writing by the local planning authority.

(H) The wind farm operator shall continuously log nacelle wind speed, nacelle orientation, power generation and nacelle wind direction for the turbines in accordance with this consent, all in accordance with Guidance Note 1(d) of the attached Guidance Notes. The data from the wind turbines shall be retained for the duration of this planning permission. The wind farm operator shall provide this information in the format set out in Guidance Note 1(e) of the attached Guidance Notes to the local planning authority on its request within 14 days of receipt in writing of such a request.

Note: For the purposes of this condition, a "dwelling" is a building within Use Class C3 or C4 of the Use Classes Order which lawfully exists or had planning permission at the date of this permission.

Table 1 - Between 07:00 and 23:00 - Noise level dB L_{A90}, 10-minute

Location (easting, northing coordinates)	Standardised wind speed at 10 metres height (m/s) within the site averaged over 10-minute periods										
	3	4	5	6	7	8	9	10	11	12	
	L _{A90} Decibel Levels										
Glyndley Cottage 560508, 106304	45.8	45.8	47.3	49	51.2	53.7	56.9	56.9	56.9	56.9	
Little Shepham 559250, 105297	50.0	50.0	51.2	52.6	53.9	55.2	56.2	56.2	56.2	56.2	
Little Friars Farm 559182, 106123	44.8	44.8	45.9	47.3	48.9	50.8	53.1	55.7	55.7	55.7	
Sharnfold Cottages 561044, 105139	46.1	46.1	47.4	48.7	50.0	51.3	52.9	52.9	52.9	52.9	
Willowby Cottage 561527, 105694	41.4	41.4	42.1	43.0	44.7	44.7	44.7	44.7	44.7	44.7	
Otteham Court 558769, 105699	44.8	44.8	45.9	47.3	48.9	50.8	53.1	55.7	55.7	55.7	
New Barn Cottage 560273, 106236	45.8	45.8	47.3	49.0	51.2	53.7	56.9	56.9	56.9	56.9	
New Barn Farmhouse 560308, 106349	45.8	45.8	47.3	49.0	51.2	53.7	56.9	56.9	56.9	56.9	
Old Court Cottages 560376, 106142	45.8	45.8	47.3	49.0	51.2	53.7	56.9	56.9	56.9	56.9	
Nursery 560157, 106419	45.8	45.8	47.3	49.0	51.2	53.7	56.9	56.9	56.9	56.9	
Priesthawes 560664, 105875	45.8	45.8	47.3	49.0	51.2	53.7	56.9	56.9	56.9	56.9	

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Priesthawes Farm 560739, 106009	45.8	45.8	47.3	49.0	51.2	53.7	56.9	56.9	56.9	56.9
East Lodge 561068, 106408	45.8	45.8	47.3	49.0	51.2	53.7	56.9	56.9	56.9	56.9
Cherry Croft 561496, 105081	46.1	46.1	47.4	48.7	50.0	51.3	52.9	52.9	52.9	52.9
Milton Nurseries 561290, 104889	46.1	46.1	47.4	48.7	50.0	51.3	52.9	52.9	52.9	52.9
Sharnfold Farm 560867, 104923	46.1	46.1	47.4	48.7	50.0	51.3	52.9	52.9	52.9	52.9
Dittons Road 560858, 104547	46.1	46.1	47.4	48.7	50.0	51.3	52.9	52.9	52.9	52.9
Roundabout East 560420, 104603	50.0	50.0	51.2	52.6	53.9	55.2	56.2	56.2	56.2	56.2
Roundabout West 560190, 104795	50.0	50.0	51.2	52.6	53.9	55.2	56.2	56.2	56.2	56.2
Dittons Road Nursery 559569, 104928	50.0	50.0	51.2	52.6	53.9	55.2	56.2	56.2	56.2	56.2
Winfield Farm 559836, 104880	50.0	50.0	51.2	52.6	53.9	55.2	56.2	56.2	56.2	56.2
Lusteds 561420, 106394	45.8	45.8	47.3	49.0	51.2	53.7	56.9	56.9	56.9	56.9
Holme Farm 558950, 106883	44.8	44.8	45.9	47.3	48.9	50.8	53.1	55.7	55.7	55.7
Hankham Primary School 561871, 105519	41.4	41.4	42.1	43.0	44.7	44.7	44.7	44.7	44.7	44.7
East of Shepham Lane Development 559725, 105071	50.0	50.0	51.2	52.6	53.9	55.2	56.2	56.2	56.2	56.2
North east of Shepham Lane development 559595, 105249	50.0	50.0	51.2	52.6	53.9	55.2	56.2	56.2	56.2	56.2
Bluebells 559863, 105052	50.0	50.0	51.2	52.6	53.9	55.2	56.2	56.2	56.2	56.2
Shepham Lane 559590, 105228	50.0	50.0	51.2	52.6	53.9	55.2	56.2	56.2	56.2	56.2

Table 2 - Between 23:00 and 07:00 - Noise level dB L_{A90, 10-minute}

Location (easting, northing coordinates)	(easting, grid coordinates)	Standardised wind speed at 10 metres height (m/s) within the site averaged over 10-minute periods									
		3	4	5	6	7	8	9	10	11	12
L _{A90} Decibel Levels											
Glyndley Cottage 560508, 106304		43.0	43.0	43.0	43.0	47.0	47.0	47.0	47.0	47.0	47.0
Little Shepham 559250, 105297		43.0	43.0	43.0	43.0	45.8	50.4	50.4	50.4	50.4	50.4
Little Friars Farm 559182, 106123		43.0	43.0	43.0	43.0	43.8	43.8	43.8	43.8	43.8	43.8
Sharnfold Cottages 561044, 105139		43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0

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Willowby Cottage 561527, 105694	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0
Otteham Court 558769, 105699	43.0	43.0	43.0	43.0	43.8	43.8	43.8	43.8	43.8	43.8
New Barn Cottage 560273, 106236	43.0	43.0	43.0	43.0	47.0	47.0	47.0	47.0	47.0	47.0
New Barn Farmhouse 560308, 106349	43.0	43.0	43.0	43.0	47.0	47.0	47.0	47.0	47.0	47.0
Old Court Cottages 560376, 106142	43.0	43.0	43.0	43.0	47.0	47.0	47.0	47.0	47.0	47.0
Nursery 560157, 106419	43.0	43.0	43.0	43.0	47.0	47.0	47.0	47.0	47.0	47.0
Priesthawes 560664, 105875	43.0	43.0	43.0	43.0	47.0	47.0	47.0	47.0	47.0	47.0
Priesthawes Farm 560739, 106009	43.0	43.0	43.0	43.0	47.0	47.0	47.0	47.0	47.0	47.0
East Lodge 561068, 106408	43.0	43.0	43.0	43.0	47.0	47.0	47.0	47.0	47.0	47.0
Cherry Croft 561496, 105081	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0
Milton Nurseries 561290, 104889	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0
Sharnfold Farm 560867, 104923	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0
Dittons Road 560858, 104547	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0
Roundabout East 560420, 104603	43.0	43.0	43.0	43.0	45.8	50.4	50.4	50.4	50.4	50.4
Roundabout West 560190, 104795	43.0	43.0	43.0	43.0	45.8	50.4	50.4	50.4	50.4	50.4
Dittons Road Nursery 559569, 104928	43.0	43.0	43.0	43.0	45.8	50.4	50.4	50.4	50.4	50.4
Winfield Farm 559836, 104880	43.0	43.0	43.0	43.0	45.8	50.4	50.4	50.4	50.4	50.4
Lusteds 561420, 106394	43.0	43.0	43.0	43.0	47.0	47.0	47.0	47.0	47.0	47.0
Holme Farm 558950, 106883	43.0	43.0	43.0	43.0	43.8	43.8	43.8	43.8	43.8	43.8
Hankham Primary School 561871, 105519	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0
East of Shepham Lane Development 559725, 105071	43.0	43.0	43.0	43.0	45.8	50.4	50.4	50.4	50.4	50.4
North east of Shepham Lane development 559595, 105249	43.0	43.0	43.0	43.0	45.8	50.4	50.4	50.4	50.4	50.4
Bluebells 559863, 105052	43.0	43.0	43.0	43.0	45.8	50.4	50.4	50.4	50.4	50.4
Shepham Lane 559590, 105228	43.0	43.0	43.0	43.0	45.8	50.4	50.4	50.4	50.4	50.4

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Note to Tables 1 & 2: The geographical coordinates references set out in these tables are provided for the purpose of identifying the general location of dwellings to which a given set of noise limits applies. The standardised wind speed at 10 metres height within the site refers to wind speed at 10 metres height derived from those measured at hub height, calculated in accordance with the method given in the Guidance Notes.

Guidance Notes for Noise Condition (No. 27 above)

These notes are to be read with and form part of the noise condition. They further explain the condition and specify the methods to be employed in the assessment of complaints about noise immissions from the wind turbines. The rating level at each integer wind speed is the arithmetic sum of the wind turbines noise level as determined from the best-fit curve described in Note 2 of these Guidance Notes and any tonal penalty applied in accordance with Note 3 with any necessary correction for residual background noise levels in accordance with Note 4. Reference to ETSU-R-97 refers to the publication entitled "The Assessment and Rating of Noise from Wind turbines" (1997) published by the Energy Technology Support unit (ETSU) for the Department of Trade and Industry (DTI).

Note 1

- (a) Values of the $L_{A90,10\text{-minute}}$ noise statistic shall be measured at the complainant's property (or an approved alternative representative location as detailed in Note 1(b)), using a sound level meter of EN 60651/BS EN 60804 Type 1, or BS EN 61672 Class 1 quality (or the equivalent UK adopted standard in force at the time of the measurements) set to measure using the fast time weighted response as specified in BS EN 60651/BS EN 60804 or BS EN 61672-1 (or the equivalent UK adopted standard in force at the time of the measurements). This should be calibrated before and after each set of measurements, using a calibrator meeting IEC 60945:2003 "Electroacoustics - sound calibrators" Class 1 with PTB Type Approval (or the equivalent UK adopted standard in force at the time of the measurements) and the results shall be recorded. Measurements shall be undertaken in such a manner to enable a tonal penalty to be applied in accordance with Guidance Note 3.
- (b) The microphone shall be mounted at 1.2 - 1.5 metres above ground level, fitted with a two-layer windshield or suitable equivalent approved in writing by the Local Planning Authority, and placed ~~outside the complainant's dwelling and be not more than 35 metres~~ from it. Measurements should be made in "free field" conditions. To achieve this, the microphone shall be placed at least 3.5 metres away from the building facade or any reflecting surface except the ground at the approved measurement location. In the event that the consent of the complainant for access to his or her property to undertake compliance measurements is withheld, the wind farm operator shall submit for the written approval of the local planning authority details of the proposed alternative representative measurement location prior to the commencement of measurements and the measurements shall

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be undertaken at the approved alternative representative measurement location.

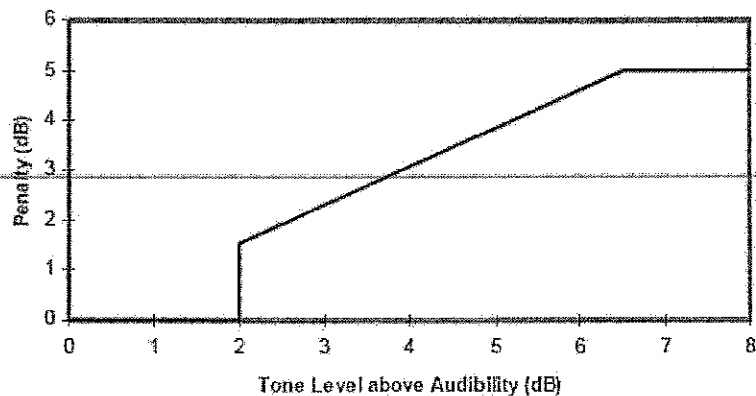
- (c) The $L_{A90,10\text{-minute}}$ measurements shall be synchronised with measurements of the 10-minute arithmetic mean wind speed and wind direction data and with operational data logged in accordance with Guidance Note 1(d) and rain data logged in accordance with Note 1(f).
- (d) To enable compliance with the conditions to be evaluated, the wind farm operator shall continuously log arithmetic mean nacelle wind speed (duly corrected for the presence of the rotating blades) arithmetic mean nacelle orientation, nacelle wind direction and arithmetic mean power generated during each successive 10-minute periods for the wind turbines on the site. The hub height wind speeds recorded from the nacelle anemometers or as calculated from the power output of the turbines shall be supplemented by standardised ten metre height wind speed data calculated for each 10-minute period from those measured at hub height assuming a reference roughness length of 0.05 metres and using the equation given on page 120 of ETSU-R-97. All 10-minute periods shall commence on the hour and in 10-minute increments thereafter synchronised with Greenwich Mean Time and adjusted to British Summer Time where necessary. Standardised 10 metre height wind speed data shall be correlated with the noise measurements determined as valid in accordance with Note 2(b), such correlation to be undertaken in the manner described in Note 2(c).
- (e) Data provided to the Local Planning Authority in accordance with paragraphs (E) (F) (G) and (H) of the noise condition shall be provided in comma separated values in electronic format.
- (f) A data logging rain gauge shall be installed within 3m of any sound level meter installed in the course of the independent consultant undertaking an assessment of the level of noise immissions. The gauge shall record over successive 10-minute periods synchronised with the periods of data recorded in accordance with Note 1(d).

Note 2

- (a) The noise measurements should be made so as to provide not less than 20 valid data points as defined in Note 2 paragraph (b).
- (b) Valid data points are those measured during the conditions set out in the assessment protocol approved by the Local Planning Authority under paragraph (E) of the noise condition but excluding any periods of rainfall measured in accordance with Note 1(f).
- (c) Values of the $L_{A90,10\text{-minute}}$ noise measurements and corresponding values of the 10-minute standardised ten metre height wind speed for those data points considered valid in accordance with Note 2(b) shall be plotted on an XY chart with noise level on the Y-axis and wind speed on the X-axis. A least squares, "best fit" curve of an order deemed appropriate by the independent consultant (but which may not be higher than a fourth order) shall be fitted to the data points to define the wind turbines noise level at each integer speed.

Note 3

- (a) Where, in accordance with the approved assessment protocol under paragraph (E) of the noise condition, noise immissions at the location or locations where compliance measurements are being undertaken contain or are likely to contain a tonal component, a tonal penalty shall be calculated and applied using the following rating procedure.
- (b) For each 10-minute interval for which $L_{A90,10\text{-minute}}$ data have been determined as valid in accordance with Note 2, a tonal assessment shall be performed on noise immissions during 2-minutes of each 10-minute period. The 2-minute periods should be spaced at 10-minute intervals provided that uninterrupted uncorrupted data are available ("the standard procedure"). Where uncorrupted data are not available, the first available uninterrupted clean 2-minute period out of the affected overall 10-minute period shall be selected. Any such deviations from the standard procedure shall be reported.
- (c) For each of the 2-minute samples the tone level above audibility shall be calculated by comparison with the audibility criterion given in Section 2.1 on pages 104 -109 of ETSU-R-97.
- (d) The tone level above audibility shall be plotted against wind speed for each of the 2-minute samples. Samples for which the tones were below the audibility criterion or no tone was identified, a value of zero audibility shall be substituted.
- (e) A least squares "best fit" linear regression shall then be performed to establish the average tone level above audibility for each integer wind speed derived from the value of the "best fit" line fitted to values. If there is no apparent trend with wind speed then a simple arithmetic mean shall be used. This process shall be repeated for each integer wind speed for which there is an assessment of overall levels in Note 2.
- (f) The tonal penalty is derived from the margin above audibility of the tone according to the figure below derived from the average tone level above audibility for each integer wind speed.



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Costs Decision

Site visit made on 3 March 2014

by J Flack BA Solicitor

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 31 March 2014

**Costs application in relation to Appeal Ref: APP/V2255/A/13/2206002
Land adjoining Community Hall, Shellness Road/Wing Road, Leysdown,
Sheerness, Kent ME12 4RH**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by P and G Taylor Ltd for a full award of costs against Swale Borough Council.
 - The appeal was against the refusal of planning permission for residential development of 4 No. x 2 Bedroom and 1 No. x 3 bedroom single storey dwellings together with all associated driveway parking.
-

Decision

1. The application for an award of costs is allowed in the terms set out below.

Procedural matter

2. The application for costs was made and responded to in the context of Circular 03/2009. This has been superseded by the Planning Practice Guidance, which was issued on 6 March 2014, and in the light of this I afforded the parties an opportunity to make comments. None have been received.

Reasons

3. The Planning Practice Guidance advises that whilst parties in planning appeals normally meet their own expenses, costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
4. The Council's decision on the application was taken against the recommendation of its officers. The Planning Practice Guidance advises that local planning authorities are at risk of an award of costs if they fail to produce evidence to substantiate each reason for refusal on appeal.
5. The Council's first refusal reason stated that noise and disturbance arising from the village hall would unacceptably harm the amenities of future residents of the proposal. In so determining, the Council rejected the unequivocal technical advice of its officers that the proposed acoustic fence would be effective to prevent harmful noise pollution and that a condition requiring its provision would suffice. At appeal, the Council has done little to support its refusal, providing no specific evidence as to anticipated noise pollution, nor refuting the noise survey provided by the appellant. The Council's evidence is, in essence,

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- limited to assertion that it has not been sufficiently demonstrated that the living conditions of future occupiers would not be harmed, the Council pointing out that the information supplied concerning the proposed acoustic fence did not demonstrate how effective it would be in relation to the circumstances of the appeal site, and stating the concerns of Councillors that the fence might not be adequate in the absence of a detailed design or accurate noise assessment.
6. Nevertheless, in my appeal decision I have concurred with the findings of the noise survey that it will be necessary to combine the acoustic fence with other mitigation measures to the proposed dwellings. To that extent the Councillors' concerns have proved justified.
 7. However, I have also found that a condition requiring the fence, together with measures recommended by the survey, to be provided is sufficient to prevent unacceptable effects on the living conditions of future occupiers of the proposal. The Planning Practice Guidance advises that a planning authority refusing permission on a ground capable of being dealt with by condition risks an award of costs where it is concluded on appeal that suitable conditions would enable the development to go ahead.
 8. Given this advice, and that the Council's concerns as to lack of comprehensive information arose in the context of contrary advice of its officers, I consider that the Council has behaved unreasonably through refusing the application on a ground it has failed to evidence adequately at appeal, rather than allowing the appellant an opportunity to answer the Council's concerns by submitting a noise survey. However, I also consider that the Council would not have behaved unreasonably in requiring a survey rather than simply accepting the advice of its officers. It follows that although the Council's unreasonable behaviour has led to appellant incurring unnecessary expense in pursuing the appeal on this refusal ground, that expense does not include the costs of the noise survey given that the appellant could reasonably have been expected to provide this in any event to secure permission.
 9. The second reason for refusal was that the proposal, and in particular the boundary fence, would lead to unacceptable loss of daylight and sunlight to the village hall. I have found that it would not do so. Although I have given limited weight to the appellant's drawing which seeks to demonstrate that there would be no unacceptable effects, the Council has not sought to refute the drawing nor has it provided substantive evidence of its own. Its evidence is largely limited to general assertions of harmful effect, ignoring the set back of some of the windows in the flank wall of the hall, and its statement as to the hall being a single large space suggests that the effects of the fence would be mitigated by other windows in the hall. I consider therefore that the Council has behaved unreasonably by failing to produce relevant evidence on appeal to support this refusal reason, and this has led to the appellant to incurring unnecessary expense in pursuing the appeal in relation to this reason.
 10. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

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Costs Order

11. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Swale Borough Council shall pay to P and G Taylor Ltd the costs of the appeal proceedings described in the heading of this decision, but excepting the costs incurred in relation to the report of Grant Acoustics, Ref GA-2013-0052-R1, dated 1 November 2013.
12. The applicant is now invited to submit to Swale Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

J Flack

INSPECTOR

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Department for
Communities and
Local Government

Ms Kee Evans
Eversheds LLP
1 Callaghan Square
Cardiff
CF10 5BT

Our Refs:
Appeal A: APP/X1545/A/12/2174982
Appeal B: APP/X1545/A/12/2179484
Appeal C: APP/X1545/A/12/2179225

13 February 2014

Dear Madam

**TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 78)
APPEALS BY RES UK & IRELAND LTD:**

**APPEAL A - TURNCOLE FARM, THE MARSHES, DENGIE, SOUTHMINSTER -
APPLICATION REF: FUL/MAL/10/01070**

**APPEAL B - LOWER BURNHAM ROAD AND FAMBRIDGE ROAD, NEAR COLD
NORTON, ESSEX - APPLICATION REF: FUL/MAL/12/00119**

**APPEAL C - TURNCOLE FARM, THE MARSHES, DENGIE, SOUTHMINSTER -
APPLICATION REF: FUL/MAL/11/00879**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, John Woolcock BNatRes(Hons) MURP DipLaw MPIA MRTPI, who held a public local inquiry between 23 April and 8 May 2013 into your appeals against a decision of Maldon District Council to refuse planning permission for:

Appeal A: Wind Farm Development consisting of seven three-bladed, horizontal-axis wind turbines, each up to 126.5 m maximum height to blade tip, with associated electricity transformers, underground cabling, access tracks, road widening works, crane hard-standings, control building, substation compound, communications mast and anemometry mast for a period of twenty-five years. Also temporary works including a construction compound, laydown area, rotor assembly pads, turning heads, welfare facilities and four guyed anemometry masts, in accordance with application reference FUL/MAL/10/01070, dated 14 February 2011.

Appeal B: Permanent road widening works for the purpose of facilitating access for abnormal load deliveries to the proposed wind farm at Turncole Farm. The new highway created will be fenced or similar to allow access to the abnormal

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loads only and not all traffic. The works will take place at the two road junctions between Lower Burnham Road and Fambridge Road near Cold Norton. The works will result in a change of use from residential and agricultural land to form new highway. Works in accordance with application reference FUL/MAL/12/00119, dated 8 February 2012.

Appeal C: Permanent road widening works and replacement of Twizzlefoot bridge for the purpose of facilitating access for abnormal load deliveries to the proposed wind farm at Turncole Farm. The works will result in a change of use from agricultural land to form new highway. Works in accordance with FUL/MAL/11/00879, dated 5 October 2011.

2. On 5 June 2013, the appeals were recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 to Schedule 6 to, the Town and Country Planning Act 1990, because they relate to proposals of major significance for the delivery of the Government's climate change programme and energy policies.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that all the appeals be allowed and planning permission be granted subject to conditions. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and agrees with his recommendation. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural matters

4. In reaching this position, the Secretary of State has taken into account the Environmental Statement (ES) and Supplemental Environmental Information (SEI) which was submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 and the Inspector's comments on the ES and SEI at IR2 and 119. The Secretary of State considers that the ES and SEI comply with the above regulations and that sufficient information has been provided for him to assess the environmental impact of the proposals. Given that the appeals are linked, he agrees with the Inspector that they should be either all allowed or all dismissed (IR119).
5. Following the close of the inquiry, on 9 January 2014 the Secretary of State wrote to the main parties to invite them to consider whether any amendments would be appropriate to the noise condition that was considered at the inquiry. On 3 February the Secretary of State received a noise condition agreed upon by the appellant and the Council, and a representation from the Rule 6 party. These representations were circulated to the parties for final comment.
6. A list of all the responses received from parties is set out at Annex A to this letter. The Secretary of State has taken account of all these responses in his consideration of the appeals before him. As the responses were circulated to the main inquiry parties, he does not consider it necessary to summarise the responses here or attach them to this letter. Copies of the correspondence can be obtained upon request to the address at the bottom of the first page of this letter.

Matters arising after the close of the inquiry

7. Following the close of the inquiry, The Department of Communities and Local Government (DCLG) published the 'Planning Practice Guidance for Renewable and Low Carbon Energy' (PPGRLCE) in July 2013, and cancelled 'Planning for Renewable Energy: A Companion Guide to Planning Policy Statement 22'. The Planning Inspectorate invited comments on the PPCRLCE (IR6). In reaching his decision on these appeals, the Secretary of State has taken into account the PPGRLCE and the parties' responses to this.
8. In December 2013, Renewable UK published new research and a proposed planning condition covering the regulation of Other Amplitude Modulation, with accompanying guidance notes. However this has not yet been reflected in an update to the current good practice guidance that accompanies ETSU-R-97 and has not been endorsed by Government.

Policy considerations

9. In deciding the appeals, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
10. In this case, following the revocation of the Regional Spatial Strategy for the East of England, the adopted development plan for the area comprises only the saved policies of the Maldon Local Plan 2005 (IR7). The Secretary of State considers that the local plan policies listed in Annex 1 of the IR are the most relevant policies to these appeals.
11. The Secretary of State notes that the Council is reviewing its Local Plan, but as this is still at consultation draft stage and is liable to change, he attributes it little weight.
12. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (the Framework); the National Policy Statements (NPS) for Energy (EN-1) and Renewable Energy (EN-3); the Community Infrastructure Levy (CIL) Regulations 2010 as amended; and Circular 11/95: The Use of Conditions in Planning Permissions. The Secretary of State has also taken into account Ministerial Written Statements on renewable energy published in June 2013 by the Secretary of State for Energy and Climate Change and by the Secretary of State for Communities and Local Government. He has not taken into account Planning for Renewable Energy: A Companion Guide to PPS22, as this was cancelled by the PPGRLCE.
13. The Secretary of State has had regard to the fact that on 28 August 2013 Government opened a new national planning practice guidance web-based resource. However, given that the guidance has not yet been finalised, he has attributed it limited weight.

Main issues

Renewable energy benefits

14. The Secretary of State agrees with the Inspector's assessment of the renewable energy benefits of the scheme at IR196-198. He agrees that it would make a

significant contribution to meeting national targets and reducing greenhouse gas emissions, and that this consideration weighs heavily in favour of the proposal.

Landscape character and appearance

15. The Secretary of State agrees with the Inspector's overall assessment and reasoning in regard to landscape and visual impacts at IR121-145. He agrees that the scheme duration of 25 years would be a substantial period for those who would have to endure any adverse effects and that the reversibility of the scheme should not be an influential factor in determining these appeals (IR127). He notes that the Inspector considers that the impact of the proposal on landscape character, when taken cumulatively with the previously permitted Middlewick wind farm, would be of moderate to minor significance (IR128-134). Additionally, the proposal would have an adverse effect on visual amenity, both by itself and cumulatively, of major/moderate significance from some vantage points, but more generally of moderate significance, reducing to minor or negligible with distance (IR135-145). Like the Inspector, the Secretary of State considers that the overall adverse effect on the landscape character and visual amenity of the area would be of moderate significance, and that this consideration weighs against the proposal and brings it into conflict with the aims of several Maldon Local Plan Policies (IR145).

Living conditions

16. The Secretary of State has given careful consideration to the Inspector's assessment of the impacts on the living conditions of local residents at IR146-176. Regarding outlook, he agrees with the Inspector that the proposed Turncole turbines, either by themselves or cumulatively with other existing or proposed turbines, would not result in an overwhelming and oppressive impact on the outlook from nearby dwellings or their associated amenity space that would result in unsatisfactory living conditions. Likewise, he agrees that the limited removal of roadside vegetation along the route proposed for abnormal indivisible loads would not harm the residential amenity of nearby occupiers (IR161). Consequently he agrees with the Inspector's judgement that the proposal would not unacceptably affect amenities and the use of land and buildings which ought to be protected in the public interest (IR162).

17. Regarding noise and disturbance, the Secretary of State agrees with the Inspector that a lower fixed day-time cumulative limit of 40 dB would properly accord with the provisions set out in ETSU-R-97 (IR169). He agrees that wind turbine noise and some disturbance during construction and decommissioning would, to some extent, detract from the tranquillity of the area, but that subject to the suggested condition the scheme could operate within acceptable ETSU-R-97 limits (IR170-173).

18. Regarding the issue of Amplitude Modulation (AM), the Secretary of State has considered the representations made in response to his request for further information and the suggested additional conditions put forward by the appellant and SIEGE. He is persuaded that there is a need for an additional condition to protect the living conditions of nearby residents from unacceptable AM. He agrees with the view expressed in the appellant's representation of 10 February that, given the wider debate that is presently taking place concerning the most appropriate form that a fit for purpose AM noise condition should take, it would not be appropriate at this stage to choose between the condition put forward in the appellant's earlier response of 3 February and the alternative form of an AM noise

condition advanced in a technical report provided by SIEGE with its response of 3 February and endorsed in the Council's representation of 10 February (an 'updated' Den Brook condition). The Secretary of State agrees with the noise condition proposed in the applicant's representation of 10 February and considers that it is the most appropriate in current circumstances, because this condition will allow a properly endorsed AM noise assessment and rating methodology to be appropriately incorporated into an AM scheme to be agreed by the Council, taking account of any further advice forthcoming from the UK Institute of Acoustics and/or Government prior to commencement of operation of the development. For these reasons the Secretary of State has added Condition 25 in Annex B to this letter.

19. Overall, with the addition of Condition 25, the Secretary of State agrees with the Inspector that the evidence indicates that the combined effects of the proposed turbines on the outlook of nearby occupiers, along with operational noise in compliance with ETSU-R-97 limits, likely shadow flicker, health fears, and any disturbance or disruption during construction, operation or decommissioning, would not have a significant adverse effect on the living conditions of local residents. As a result, there would be no conflict with those parts of relevant Local Plan policies that aim to protect the amenity of neighbouring properties and their occupiers (IR176).

Heritage assets

20. In determining these appeals, the Secretary of State has had regard to its potential impacts on listed buildings, with particular regard to the desirability of preserving those buildings or their settings, as required by section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. He has given careful consideration to the Inspector's assessment of impacts on listed buildings and archaeological features at IR177-182. The Secretary of State agrees that the evidence indicates that the proposed turbines would not significantly affect views that are important to the setting of heritage assets and that there would be no conflict with relevant Local Plan policies on landscape features and buildings of historic importance. The less than substantial harm to heritage assets that would result from the solus and cumulative effects of the proposed development would be a matter to be weighed against the benefits of the scheme in accordance with the provisions of the Framework (IR183).

Other Matters

21. The Secretary of State agrees with the Inspector's reasoning and conclusions on air safety at IR184-186, nature conservation and biodiversity at IR187-189, highway safety at IR190 and other considerations at IR191-195, including an alternative delivery route for abnormal loads.

Conditions

22. The Secretary of State has considered the Schedule of Conditions at the end of the Inspector's report and national policy as set out in Circular 11/95 and the Framework. He is satisfied that the proposed conditions, and also Condition 25 that he has added for the reasons above, are reasonable and necessary and would meet the tests of Circular 11/95 and paragraph 206 of the Framework.

Planning balance and overall conclusions

23. The Secretary of State has given careful consideration to the Inspector's balancing exercise and consideration of policy matters at IR199-204, and his overall conclusions at IR212-214. He agrees with the Inspector that the benefits of renewable energy should be given significant weight. The Secretary of State also agrees that the proposed wind farm would have an adverse effect on landscape character and visual amenity of overall moderate significance, but that the adverse effects on the living conditions of those residing in the area would not be significant. He also agrees that there would be some harm to local amenity, but that this would largely be attributable to the effects on the local landscape and visual amenity of the area, which should not be double-counted. The proposal would have only a minor adverse effect on cultural heritage. Subject to the imposition of appropriate conditions the wind farm would not unduly affect air safety, biodiversity or highway safety (IR199-200).
24. The proposal would conflict with saved Local Plan policies on landscape and visual impact. However the Framework provides that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework (IR201). In this case, the Local Plan does not include criteria-based policies to enable the assessment of renewable energy schemes. Furthermore, whilst the Special Landscape Area designation in which the proposal is situated is indicative of a valued landscape, the Plan does not set criteria-based policies against which proposals for any development on or affecting such landscape areas would be judged. This is not consistent with the Framework (IR203). Having had particular regard to paragraph 98 of the Framework, the Secretary of State considers that the landscape and visual amenity impacts of the proposal would be acceptable in this case, as would other impacts subject to the relevant conditions. He agrees with the Inspector that the planning balance falls in favour of the proposal and that it would be sustainable development to which the presumption in favour set out in Framework would apply (IR204).

Formal decision

25. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's overall conclusions at IR212-213 and his recommendation at IR215. He hereby grants planning permission for the construction and operation of a wind farm and associated highway works, as described in paragraph 1 above, for an operation period of 25 years in accordance with application references FUL/MAL/10/01070, FUL/MAL/12/00119 and FUL/MAL/11/00879, dated 14 February 2011, 8 February 2012 and 5 October 2011, respectively, subject to the conditions at Annex B of this letter.
-
26. An applicant for any consent, agreement or approval required by a condition of this permission has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the local planning authority fails to give notice of their decision within the prescribed period.
27. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than that required under section 57 of the Town and Country Planning Act 1990.

28. This letter serves as the Secretary of State's statement under Regulation 21(2) of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999.

Right to challenge the decision

29. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

30. A copy of this letter has been sent to Maldon District Council. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Julian Pitt

Authorised by Secretary of State to sign in that behalf

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SW/13/1571 - New Rides Farm wind turbines, note on suggested reasons for refusal

Introduction

1. At the Swale Borough Council planning committee meeting on 8th January 2015 a motion was proposed by a councillor that the application should be refused and the councillor suggested some potential reasons for refusal. Before this motion was voted on, the head of planning 'called in' the application to consider the strength of the suggested reasons for refusal and the potential chances of success, risks and costs associated with taking the application to appeal.

2. The application is due to be reconsidered as a deferred item at the 29th January 2015 planning committee, where a report from planning officers on the strength of the suggested reasons for refusal and the appeal implications will be taken into account. The application could be approved or refused at this further committee meeting or any variations thereof.

3. The suggested reasons for refusal ("SRFR") put forward by the councillor are understood to be as follows:

- (i) demonstrable harm to landscape through cumulative impact;
- (ii) demonstrable harm to birdlife; and
- (iii) cumulative impact of acoustic issues on local residents.

4. This note provides the applicant's view on the suggested reasons for refusal and consequences of sending the application to the inevitable appeal should it be refused.

Demonstrable harm to landscape through cumulative impact ("SRFR1")

Potentially inconsistent approach on this application

5. The planning officer carefully considered the landscape and visual implications of the proposal in the officer's report in paragraphs 9.17 - 9.28. In paragraph 9.28 the planning officer concludes:

'However, and as noted above, the turbines are set against wider views of open landscape and whilst they may present a prominent feature I do not believe that they would be so significant or dominant over that wider view as to be seriously visually harmful to the character and appearance of the landscape as to justify a reason for refusal on those grounds. Accordingly, I do not consider the proposal will have a significantly detrimental impact on the landscape character or to visual dominance and have no serious objections to the proposal in this regard.'

6. This is a clear and unequivocal statement. The planning officer has not wrestled with this issue; after carefully considering the matter, and visiting the site and its environs several times, the council's planning officer has firmly concluded that the broad open landscape could accommodate the proposal. It is understood that the case officer's committee report was discussed internally with senior members of the planning team and that it was signed off. The officer's view on landscape and visual issues has therefore been sanctioned by other officers within the planning department.

7. In addition, it should be acknowledged that there are relatively few consultees that have raised landscape and visual issues in their responses to the application, and even

fewer have raised the specific issue of cumulative effects. For example, Natural England, who are the government's appointed advisors on landscape and visual issues did not raise any concerns on this issue in their response. Even the Kent branch of the CPRE, who are a campaign organisation rather than a formal statutory consultee, did not raise specific concerns about the cumulative landscape effects of the scheme.

8. If the application goes to inquiry, the applicant will scrutinise the inconsistency between the clear conclusions reached on landscape and visual at the application stage and the council's altered position on this at appeal.

Potentially inconsistent approach compared to the Stanford Hill scheme

9. This is of course not the first time that the consultees, planning officers and the planning committee has considered the landscape and visual effects of wind turbines in this part of Sheppey. In May 2011 a different case officer carefully considered these issues. The officer concluded the following on page 73 of the report to committee:

'I concur with the conclusion in that I consider the turbines would sit well within the open landscape and would not detrimentally affect its character and value, and would have no negative impact on the adjacent land designated as a Special Landscape Area in the Swale Borough Local Plan 2008.'

10. The minutes of the committee meeting state that:

'Members raised the following points: threats to bird breeds and it was a site of international importance for birds; turbulence and aircraft problems; and welcome the sustainability of the development.'

11. It is clear that landscape and visual issues were not a key issue for the planning committee when the original two turbines were approved by the planning committee. This is inconsistent with the argument that the councillor (who was in attendance at the Stanford Hill meeting) is now making about the local landscape being unique and of very high, even national, value

12. If the application is sent to inquiry, the applicant will closely examine the inconsistency of the current application being refused for landscape and visual reasons whilst the original scheme was approved without this being a major factor.

Inspector's approvals in similar circumstances

13. There are numerous cases where planning inspectors at appeal have concluded that similar open, relatively flat marsh landscapes have the capacity to accommodate wind turbines.

14. ~~The most relevant parallel case is the Turncole application near Burnham-on-Crouch on the Dengie peninsula on the opposite side of the Thames Estuary, about 30 km to the north of the New Rides Farm site. This went to inquiry in May 2013 and was recovered by the Secretary of State.~~

15. This consisted of seven, 126.5m to tip turbines, approximately 1.3km south of the approved Middlewick wind farm which comprised nine, similarly sized turbines. The area is known as the Dengie Marshes which can be described as an area of extensive open space dominated by the sky, with a predominantly flat low-lying landscape consisting of salt marshes and reclaimed farmland. The Turncole proposal lies within an area designated as a

Special Landscape Area (SLA), whilst the New Rides Farm proposal lies, outside of, but on the edge of an SLA.

16. Due to the close proximity of the Middlewick scheme, and other wind schemes further away, the cumulative landscape effects of the Turncole scheme were a key issue at appeal. Interestingly, during the application process Natural England raised no objection on landscape grounds and went as far as to say that 'very open landscapes have a greater capacity for wind turbine developments'.

17. Despite the Turncole and Middlewick schemes being notably larger in extent than the New Rides and Stanford Hill schemes, the Inspector concluded that the combined effects of the existing and proposed turbines would be of no more than moderate significance. The Inspector found that no cumulative threshold of acceptability for wind turbine development on the Dengie peninsula would be breached as a result.

18. In February 2014, the Secretary of State issued his decision and approved the scheme, agreeing with the inspector that the cumulative landscape effects of this proposal within a Special Landscape Area were not sufficient to result in a refusal.

Potential contradictions between the council's landscape ground and its policy context

19. The Council's new local plan was issued for formal consultation on 19th December 2014 and it is anticipated that it will be adopted within the timescale of any appeal on the New Rides scheme. The plan includes the Energy Opportunities Map (attached) from the Swale Renewable Energy and Sustainable Development Study undertaken by AECOM on behalf of the council in 2011, and which forms part of the plan's evidence base.

20. The Energy Opportunities Map (EOM) shows that the New Rides site lies within one of the few red areas which are categorised as 'High Potential Areas for installation of large scale wind energy'.

21. It would be illogical for the council to show an area of high potential for large scale wind energy and then refuse an application which comes forward in this area due to cumulative effects. This is a stance which will be very difficult to substantiate at appeal.

22. It is not the case that the consultants who drew up the EOM had no regard to landscape and visual issues. Regard was had to the North Kent Marshes Special Landscape Area as this is shown as being excluded from the area of high potential.

23. The new local plan includes policy DM20 on renewable energy, a supportive rather than a restrictive policy which states that planning permission will be granted where various criteria are satisfied. One of these criterion (no 2) requires it to be demonstrated that opportunities highlighted in the EOM have been exploited. Also of relevance is criterion 7 which requires that: '*Landscape, visual and heritage impacts as well as impacts on geology, soils, and flood risk, including cumulative impacts are minimised and mitigated to acceptable levels.*' Both of these criteria are comfortably met by the New Rides scheme.

24. The supporting text of the new local plan states at paragraph 7.6.18: 'There are particular opportunities for wind energy generation on the Isle of Sheppey (a number of turbines are already operating there)'. This has been drawn from the Swale Renewable Energy study, however this study is not the only independent consultant's report which has highlighted the potential for wind turbines on the Isle of Sheppey. The Swale Borough Council Climate Change Strategy undertaken for the council in 2010 by consultants CEN also states that:

'The large scale, relatively simple nature of this landscape but with a degree of remoteness indicates that it has a medium sensitivity to commercial scale turbine development.'

25. In addition, the Sustainable Design and Construction Guidance Document published by Swale Borough Council in 2010 states that

'...the large scale, relatively simple nature of this landscape but with a degree of remoteness indicates that it has a medium sensitivity to commercial scale turbine development.....many sites would be suitable for the installation of wind turbines, and would provide sufficient generation to make them cost effective. This would particularly be true in areas of higher ground and where building density is low with obstruction free orientation towards the prevailing south west wind.' (page 40)

26. A similar commentary was made in the report entitled East of England Regional Assembly, Placing Renewables in the East of England undertaken by Arup.

27. The incompatibility of the council's suggested reason for refusal on cumulative landscape grounds with the suitability of the site for wind turbines demonstrated in the council's own policy documents, and evidence base, will be strongly emphasised if the application is sent to appeal. It is very unlikely that the council will be able to adequately defend this reason for refusal.

The capacity of the area to accommodate wind turbines

28. The use of cumulative landscape effects as a potential reason for refusal is surprising given that there are relatively few other wind energy schemes within the area. Whilst it is the case that the PFR turbines lie 1 km to the west, and that it is possible that the four turbines at Sheerness Docks approximately 9.5 km away, could eventually be constructed, this part of Kent has, no where near, reached its cumulative wind energy capacity limit compared to other parts of the UK.

29. If it was nearing its cumulative limit, instead of commissioning studies to identify areas of search for wind turbines (ie the AECOM report) the council would have brought in consultants to examine the landscape capacity of the area to accommodate further turbines as other councils have done for example, Cumbria County Council and Fenland District Council.

30. Given the above, it will be very difficult for the council to successfully argue at appeal that the scheme should be refused for cumulative landscape reasons.

The additional effects of the New Rides scheme would be acceptable

31. ~~In this open landscape, the New Rides scheme would mainly effect an area of landscape which is already affected by the Stanford Hill wind turbines. Unlike an area of undulating or upland topography, there would be very few, if any, medium range viewpoints or stretches of road where the new wind turbines would be introduced into the view on their own.~~

32. The proximity of the turbines to the existing PFR turbines is something that is in the scheme's favour. The local landscape is one which can accommodate a group of large turbines as highlighted in the Energy Opportunities Map and the proposed turbines would be associated and seen with the PFR turbines. In effect this would become a group of six wind turbines.

The design congruity of the New Rides and Stanford Hill turbines

33. The New Rides and Stanford Hill turbines are sufficiently close and the relative number of turbines and height are such that from most viewpoints the turbines effectively appear as a balanced composition consisting of a six turbine wind farm.

34. The council would find it very difficult to argue that the cumulative effect is unacceptable because the schemes are separated to the point that they use up different parts of the landscape's capacity, or alternatively that the stacking of turbines creates an unacceptable in combination effect. They would appear well ordered in the landscape.

The value and significance of the local landscape

35. During the debate at the committee meeting on 8th January, the councillor who is proposing that the scheme should be refused for landscape reasons described the open landscape of the area as exceptional, and akin to being of national rather than just local value. This is an overstatement which the applicant would strongly contest at appeal.

36. As the planning officer correctly stated in the committee report the turbines are located within the Central Sheppey Farmlands landscape character area which is considered to be of moderate sensitivity. Immediately to the south lies the Leysdown and Eastchurch Marshes landscape area which is also considered to be of moderate sensitivity. It should be emphasised that the Sheppey Farmland LCA is not even covered by the council's lowest tier local landscape denotation, the Area of High Landscape Value (AHGL). Whilst the Leysdown and Eastchurch Marshes LCA has been given the Special Landscape Area status, this is significantly, a county level not a regional or national level designation.

37. At no point since its first proper denotation in the borough local plan in 2000, has it ever been argued that the marshland on Sheppey is of national, and therefore, Area of Outstanding Natural Beauty status. It should be remembered that it does include some detracting features such as the major set of pylons that pass through it at its western end at Neatscourt and the enlarged agricultural fields (particularly in the east of Sheppey) which contrast to the more natural marshland landscape.

38. The section within the National Planning Policy Framework on renewable energy clearly states that when determining applications regard should be had to the Overarching National Policy Statement on Energy EN-1. The following is stated about local landscape designations at paragraph 5.9.14 of the National Policy Statement on Energy:

'Local landscape designations should not be used in themselves to refuse consent, as this may unduly restrict acceptable development.'

39. This is a very clear and important piece of current guidance in a document that was ratified by the UK Parliament.

Demonstrable harm to birdlife (“SRFR2”)

Position of the statutory consultees and non governmental organisations

40. There are no objections or remaining reservations from Natural England, the Environment Agency (Landowner of Great Bells Farm), Kent County Council’s (KCC) ecologist or very significantly from the RSPB (who manage Great Bells Farm). Any objection on the grounds of ornithology would be contrary to the view of these expert organisations. As reported in the committee report these organisations are *‘now satisfied that the development would not give rise to ornithological impacts to such a degree that a refusal of planning permission on such grounds could be justified or reasonably defended at appeal’* (paragraph 9.11) Again this is a very firm statement from which it will be very difficult and potentially costly for the council to do a ‘U’ turn on.

Habitats regulations assessment

41. On behalf of the borough council, the Kent County Council ecologist has completed an Appropriate Assessment (AA), as required under the Habitats Regulations. The AA process effectively ‘raises the bar’ in terms of acceptability of effects on statutory designated sites and linked land. The relevant designation is The Swale Special Protection Area (SPA), but the same level of protection is afforded to Great Bells Farm (as compensatory habitat).

42. Any AA must ascertain there will be no adverse effects on the integrity of Natura sites (i.e. not low or negligible levels), as was concluded for the application. Any refusal of the application on the grounds of ornithology would be in complete contradiction to the conclusions of the AA undertaken by the Kent County Council ecologist.

Witness for the council

43. The following question arises: who would represent the council on the issue of ornithology in the event of an appeal given the lack of objections from the official regulators and NGOs? It is likely that only local resident Mr Haynes would be in a position to defend the council’s position, should he choose to do so.

44. Mr Haynes is a volunteer warden for the RSPB and is not a scientist or professional ecologist. In many areas his views contrast to those of the RSPB who manage Great Bells Farm, and they often contradict the scientific consensus and peer-reviewed research papers.

45. A copy of Mr Haynes report was reviewed by the applicant and discussed at a meeting with NE, EA, RSPB and the KCC ecologist in April 2014 and, without exception, all of the points raised in the report or via his written submissions have been fully and robustly addressed in the ES Addendum to the satisfaction of regulators and the RSPB.

46. It is therefore incorrect to state that data in his report was not considered by the applicant or the relevant consultees. It is also pertinent to note that Mr Haynes comments primarily relate to the operational HMP Standford Hill turbines and displacement of birds from within Great Bells Farm. The New Rides application turbines have been deliberately located further away and it has been demonstrated that they will not lead to any detectable displacement of birds using Great Bells Farm, so the two projects are not directly comparable in this respect.

Amount of bird survey effort and data

47. The application was supported by two years' worth of field survey data. This was collected independently by a specialist consultancy, with the total survey effort exceeding that recommended in Natural England guidance. The assessment also considered data on future bird populations of Great Bells (provided by the RSPB), along with marsh harrier monitoring information from the HMP Standford Hill turbines. Additional monitoring information from other comparable UK wind farms, including Little Cheyne Court in south Kent, was also reviewed and referenced.

48. For the avoidance of doubt, the applicant would make a claim for costs on the basis of inconsistency and unfounded claims should the council send the application to appeal due to ornithology.

Cumulative impact of acoustic issues on local residents ("SRFR3")

Compliance with accepted guidance

49. The National Policy Statement for Renewable Energy Infrastructure (NPS EN-3) clearly requires that wind turbine noise should be assessed using a guidance document known as ETSU-R-97.

50. ETSU-R-97 describes a process where appropriate noise limits are derived from a background noise survey. In the Government's current online Planning Practice Guidance noise limits determined in accordance with ETSU-R-97 are described as offering a reasonable degree of protection to wind farm neighbours, without placing unreasonable restrictions on wind farm development.

51. The Institute of Acoustics' Good Practice Guide (IoA GPG) provides supplementary guidance on the noise survey procedure including advice on correcting for wind shear and on using directional filtering to remove data which could be affected by the operation of existing turbines. This guidance has been followed.

52. The IoA guidance recommends that noise monitoring positions should be agreed with the local authority, and this has been done in this case. ETSU-R-97 does not describe turbine noise predictions but the IoA GPG states an agreed calculation method to determine "realistic predictions" of turbine noise levels, based on ISO 9613-2.

53. Once the monitoring positions have been agreed, the setting of limits and determining compliance with the noise limits is largely a numerical procedure. Planning conditions can be specified with the appropriate noise limits. A noise survey can be carried out to determine compliance once the turbines are operational.

54. Significantly, the planning officer states in the committee report:

'the evidence before me shows that the proposed turbines can comply with Government approved noise limits and will not generate a nuisance...' (para 9.46).

Potential inconsistency if the council refuses the application on noise grounds

55. Government policy clearly states that the ETSU-R-97 guidance should be used to assess noise from wind farms and that if a scheme meets the ETSU-R-97 noise limits no

other test of acceptability should be used. Whether a proposal complies with ETSU-R-97 noise limits is effectively a pass or fail test.

56. Based on very much a worst case assessment, the cumulative noise levels from both schemes meets the required ETSU noise limits. The reports submitted have demonstrated compliance can be achieved and these have not been disputed by the Council's Environmental Health Officer (EHO), who has responded twice in writing saying that he has no objection to the application and has verbally defended this stance at the committee meeting on 8th January.

57. If the council now gives noise as a reason for refusal this would be wholly inconsistent with its earlier position.

58. At a late stage in this project, some of the local residents commissioned a report by Dr Yelland which sought to cast doubt over various issues. The applicant responded fully to this report and the council EHO accepted the applicant's clarification. There are a number of overstatements within Dr Yelland's critique that the applicant would strongly contest at appeal such as the claim that the existing turbines have given rise to several noise complaints to the council, the local MP and the local press.

59. As the EHO explained at the committee meeting, there has only been one official noise complaint since the installation of these turbines and this related to the effects on a residents pet birds, and following monitoring this complaint was not maintained

60. It is worth emphasising that Dr Yelland has appeared, on behalf of third parties, at planning inquiries relating to wind turbines and to our knowledge his arguments have not persuaded inspectors to refuse applications.

61. For the avoidance of doubt, the applicant would make a claim for costs on the basis of inconsistency and unfounded claims should the council send the application to appeal due to noise.

Conclusion

62. If the application were sent to appeal on landscape and visual grounds the applicant would scrutinise: the inconsistency of the council's position given the lack of support from technical consultees, the earlier strong and clear conclusions on this matter from planning officers, the inconsistency with the committee's approval of the PFR turbines, the contradiction between this stance and the council's policy context, the lack of a cumulative landscape capacity issue and the absence of concerns over the design congruity of the two neighbouring schemes.

63. In short, the landscape effects of the New Rides scheme, both on its own and in cumulative terms would be acceptable and the council will find it very difficult to argue that ~~the scheme would give rise to unacceptable landscape impacts above and beyond those of~~ the many wind farms that have secured permission.

64. If ornithology were used as a reason for refusal, the applicant would again major on the inconsistency of the council's position given the absence of support for it from all of the key technical statutory consultees on this issue and the earlier strong and clear conclusions on this matter from the planning officers.

65. If noise were used as a reason for refusal, again at appeal the applicant would scrutinise the inconsistency of this stance given the lack of an objection from Environmental Health and the earlier strong and clear conclusions on this issue from the planning officers.

66. To summarise, neither the statutory consultees, the planning officers or several of the councillors consider that there are sufficient grounds for the refusal of the New Rides application.

67. To refuse the application would result in the council having to defend a case at inquiry which it will find very difficult to win.

68. The council would incur significant costs in employing consultants and legal advisors to help it defend its case and it is probable that some of the applicant's costs would also have to be met.

69. For the avoidance of doubt, if the application is refused, the applicant would definitely pursue an appeal by way of a public inquiry with full legal representation, and would make a claim for costs.

SWALE BOROUGH COUNCIL

PLANNING SERVICES

Planning Items to be submitted to the Planning Committee

29 JANUARY 2015

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PART 4 Swale Borough Council's own development; observation on County Council's development; observations on development in other districts or by Statutory Undertakers and by Government Departments; and recommendations to the County Council on 'County Matter' applications.

PART 5 Decisions by County Council and the Secretary of State on appeal, reported for information

PART 6 Reports containing "Exempt Information" during the consideration of which it is anticipated that the press and public will be excluded

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

K&MSP Kent and Medway Structure Plan 2006

SBLP Swale Borough Local Plan 2008

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PLANNING COMMITTEE – 29 JANUARY 2015

PART 2

Report of the Head of Planning

PART 2

Applications for which **PERMISSION** is recommended

2.1 REFERENCE NO - 14/505771/FULL			
APPLICATION PROPOSAL Meads Community Centre			
ADDRESS Land Adjacent To Emerald Crescent Quartz Way Sittingbourne Kent ME10 5JL			
RECOMMENDATION GRANT subject to no fresh issues being raised in further representations, closing date 31 January 2015.			
SUMMARY OF REASONS FOR RECOMMENDATION The development would provide a community centre within the wider housing estate as required by the grant of outline planning permission SW/96/0717, and in a manner and position that would not give rise to serious harm to local amenity or the character or appearance of the area.			
REASON FOR REFERRAL TO COMMITTEE Swale Borough Council application and local objections.			
WARD Grove Ward	PARISH/TOWN COUNCIL N/A	APPLICANT Swale Borough Council AGENT HOCA Practice	
DECISION DUE DATE 03/02/15	PUBLICITY EXPIRY DATE 03/02/15	OFFICER SITE VISIT DATE Various	
RELEVANT PLANNING HISTORY			
App No	Proposal	Decision	Date
SW/96/0717	Outline permission for mixed use development including residential, office and commercial uses, shopping and community facilities, school, community woodland, associated infrastructure and services.	Approved	20.01.1998
<p>This application granted outline planning permission for development of the Meads. Condition (iv)(f) of that permission stipulates that the site shall include <i>“land for a neighbourhood centre which shall include neighbourhood shopping facilities...”</i></p> <p>Members will be aware that, since the grant of that outline permission, there have been numerous approvals of reserved matters for housing and development of the wider site has been underway for many years. Of note are applications SW/09/0306 which granted planning permission for the public house to the west, and SW/020988 which approved the reserved matters for the residential development directly abutting this site to the east.</p>			

MAIN REPORT

1.0 DESCRIPTION OF SITE

- 1.01 The application site currently comprises an area of informal green space along the southern boundary of the Meads development site. It measures roughly 62m deep and 22m wide, and is oriented roughly SW – NE, with Staplehurst Road along the southern (rear) boundary and Emerald Crescent to the north (front).
- 1.02 The plot is largely open grass with small trees and shrubs along the side and rear boundaries. The front boundary features a knee rail along the rear footpath edge and a series of concrete pipe sections used as planters.
- 1.03 To the southeast are a number of residential dwellings off Emerald Crescent, extending the full depth of the plot, and properties on Moonstone Square sit to the front across the road. The northwestern boundary lies adjacent to another area of informal open space with a public footpath beyond.
- 1.04 The local centre – comprising a pub and a number of commercial properties – lies further to the northwest.
- 1.05 This site has, for some time, been considered as the location for a community centre serving the wider estate. Specific mention is made of it in the application details and particulars for SW/02/0988.

2.0 PROPOSAL

- 2.01 This application seeks planning permission for the erection of a community centre building and associated vehicle access, parking and landscaping.
- 2.02 The proposed community centre comprises a single-storey building sited approximately in the centre of the site. The building will comprise three distinct sections in a staggered elevation:
- The front section comprises the entrance, toilet and kitchen facilities and a small seating / meeting area.
 - The middle section comprises a large open hall with a storage area, and an area to the rear (close to the western boundary) for external seating.
 - The rear section, closest to the main road, also comprises a large open hall with access to the rear area. There is no internal link between the two halls shown, and the rearmost hall is accessed independently of the front and middle sections.
- 2.03 The building will measure a maximum of approximately 10.2m wide (accounting for the staggered elevation), by 38.7m deep, and with a maximum height of 5.2m (on the central section only, the majority of the building will measure approximately 4.3m high).
- 2.04 A variety of external materials are proposed to differentiate the different sections of the building, including brick, render and timber cladding. The roof will comprise a dark grey composite membrane, and windows and doors will be powder-coated aluminium.
- 2.05 A bin store is proposed in the northernmost corner, close to the front of the site, and a cycle store to the rear.

- 2.06 Vehicle access is provided by way of a new entrance situated in the northeastern corner of the site, close to the junction with Moonstone Square. Ten parking spaces are shown to the rear of the site, adjacent to the main road, including two disabled bays.

3.0 SUMMARY INFORMATION

	Existing	Proposed
Site Area (ha)	0.15 ha	
Approximate max. ridge height (m)		5.2m
Approximate max. depth (m)		38.7m
Approximate max. width (m)		10.2m
No. of Storeys		1
Parking Spaces		10 (inc. 2 disabled)

4.0 PLANNING CONSTRAINTS

- 4.01 The site lies within the built up area boundary, as identified by the adopted Swale Borough Local Plan 2008. There are no other specific restrictions or allocations for the site, but Members should note that land for the erection of a community centre has been programmed into the development of the wider site since the grant of outline permission in 1996.

5.0 POLICY AND OTHER CONSIDERATIONS

- 5.01 The National Planning Policy Framework seeks to support and encourage prosperous and healthy communities. Paragraph 70, in particular, states that planning authorities should act positively in regards to *“provision and use of shared space, community facilities (such as local shops, meeting places, sports venue, cultural buildings, public houses and places of worship) and other local services to enhance the sustainability of communities and residential environments.”*
- 5.02 The National Planning Practice Guidance also supports community development and the provision of new community services and facilities in general.
- 5.03 Policy C2 of the adopted Swale Borough Local Plan 2008 specifically requires provision new community services on major development sites, and states:

“For all new housing developments resulting in 10 or more dwellings, the Borough Council will seek, through negotiation at planning application stage, the provision of, or a contribution towards, new or improved community services and facilities where the need for the facilities arises as a result of the development proposed. The provision or contribution sought will relate to the:

- 1. existing pattern of provision in the immediate locality;*
- 2. scale and nature of the development proposed; and*
- 3. other priorities for contributions arising from the site.*

The agreed provision, or contribution, will be subject to the completion of a suitable legal agreement and, unless agreed otherwise with the Borough Council, the provision of the facilities should be completed before the development they serve is first occupied.”

5.04 In this regard I would again refer Members to the 1996 permission, above, which specifically requires provision of land for a community centre to service the new housing estate as part of the wider development on the Meads, and to the fact that this land is specifically referred to as being held for these purposes in the planning history for the wider estate.

5.05 Furthermore, paragraph 2 of policy C1 of the adopted Local Plan states:

“The Borough Council will grant planning permission for new or improved community services and facilities. Additionally, where proposals would meet an identified local need in an accessible location, it will permit development proposals that will help maximise the use of existing public and private community services and facilities, including those that would make them available for wider public use, in locations where shortfalls in local public provision could be met.”

6.0 LOCAL REPRESENTATIONS

6.01 The application has been advertised by way of letters to immediate neighbours and display of a site notice close to the application site. The closing date for comments is 31 January 2015 and I will update Members of any additional comments at the meeting.

6.02 Three letters of objection have been received, raising the following summarised concerns:

- The proposed building will be situated close to residential properties and may give rise to noise and disturbance during construction and final end-use;
- The building should be provided on land on the other side of Staplehurst Road;
- Inadequate car parking provision will encourage parking on local roads, which are already congested;
- The proposed access will remove an area of car parking for local residents;
- Additional vehicle movements may give rise to highway safety concerns;
- The position of the proposed vehicle access may give rise to conflicts with vehicles entering / leaving Moonstone Square or the nearby roundabout;
- Loss of green space, which is used by locals as an area of open space / playing field;
- Anti-social behaviour;
- The land is designated as green belt [NB: there are no designated green belts in Swale];
- Loss of privacy to neighbouring properties;
- Inadequate local drainage systems;
- Noise and dust during construction;
- This development wasn't highlighted in property searches when purchasing a nearby dwelling;
- Loss of property value; and
- Loss of view across the green space.

6.03 Three letters with general comments have also been received. They raise similar concerns as noted above, but do not expressly object to the proposal.

6.04 One letter of support has been received, commenting that *“having been involved in community halls I know what a positive impact they have on communities and am pleased that Swale Borough Council are finally delivering what residents have been promised for many years.”*

- 6.05 The Swale Footpaths Group notes that a nearby footpath (between Emerald Crescent and the main B2006 Staplehurst Road) is unlikely to be affected.

7.0 CONSULTATIONS

- 7.01 The Kent Police Crime Prevention Design Advisor has put forward a number of recommendations aimed to enhance site security and discourage anti-social behaviour. These include:

- The installation of vehicle barriers to prevent misuse / fly tipping;
- Redesign of planters to discourage use for sitting / congregation;
- Adaption of the existing street-lighting columns to enable CCTV hook-up in future;
- Repositioning of the proposed cycle parking area;
- Use of materials other than white render to discourage graffiti;
- Installation of security lighting;
- Building alarms;
- Structural enhancements to deter burglars;
- Installation of locks on external storage areas; and
- Secure storage for chairs / furniture used in outdoor seating areas.

Whilst their comments are noted the majority of the listed items are not planning considerations, or matters in which officers can insist upon amended drawings. I have, however, passed the comments on to the applicant for them to take into consideration.

- 7.02 I have not yet received responses from other bodies such as Kent Highway Services or the Head of Service Delivery. The closing date for comments is 31 January 2015 and I will update Members accordingly at the meeting.

8.0 BACKGROUND PAPERS AND PLANS

- 8.01 The application is accompanied by site location plan; proposed layout plan; proposed floor plans and elevations; topographical survey; and drainage strategy.

9.0 APPRAISAL

Principle of Development

- 9.01 The application site lies within the built up area of Sittingbourne, where development is generally acceptable in principle. Furthermore both local and national policies support the provision of community developments such as this. I therefore consider the proposal to be acceptable in principle, subject to matters of detail as discussed below.

Visual Impact

- 9.02 I consider the proposed building to be of an acceptable scale and design. The staggered elevation and use of a varied palette of materials across the façade will add variety and interest to the structure, and I believe that it would represent a positive feature within the local street scene.
- 9.02 Boundary planting and on-site landscaping will help to minimise distant views of the building from public areas, and help to soften its visual impact. The clearest view of the development will be from the front, where the position of the vehicle and pedestrian access means that there is little opportunity for screening or planting (other than the proposed planters). However, taking into account the good design of the building I do

not consider this to be a serious or over-riding issue, and do not believe that the visual impact here would be substantive as to justify a reason for refusal on such grounds.

Residential Amenity

- 9.03 I recognise concerns expressed by local residents in regards to the potential for noise and disturbance from the proposed development. It should be noted, however, that community halls are not usually a significant source of noise in themselves and the majority of activities taking place within such buildings are likely to be low-key with little noise generated.
- 9.04 However I note that community halls can host a variety of uses and that some – parties or private functions, for example – could give rise to noise from as music or general disturbance. In this regard I have suggested the conditions below that limit the hours of use of the building, thus limiting the potential for serious disturbance to neighbouring residents (NB: I await a response from the Council Environmental Health team, and may suggest to Members at the meeting that the stated hours are changed, dependent upon their observations). Members should also note that the Council’s Environmental Health team has powers to intervene should specific noise complaints be received, and that the Council’s Licencing Team also have powers (in regards to premises-specific alcohol licencing and times / conditions of sale, etc.) to intervene should specific problems arise.
- 9.05 Subject to monitoring of the times of use (by all the relevant departments involved) I do not believe that the proposed community centre would give rise to serious disturbance to local residents in a manner that would justify refusal of planning permission in this instance.
- 9.06 I have also recommended a condition requiring any external lighting to be approved by the Council prior to being installed on the building. This will ensure that the light levels, as well as the position and angle of any external lamps, can be carefully considered so as to minimise disturbance to neighbouring residents.

Highways

- 9.07 The majority of letters submitted by local residents raise concern in regards to parking provision for the new development, and the potential impact upon local parking pressures and highway safety in general. I recognise that this is a key concern to neighbouring residents.
- 9.08 Kent Highway Services had not had opportunity to respond at the time of writing, and I am therefore unable to provide detailed comment on this matter. I will update Members at the meeting.
- 9.09 I would note at this stage, however, that the application proposes 10 parking spaces (including 2 disabled bays). For public / community halls the current adopted Kent Parking Standards requires provision of 1 space per 60 square metres. The total floor space here, including toilets and storage areas, amounts to approximately 255 square metres thus requiring a maximum provision of 5 spaces.
- 9.10 The proposed parking provision would therefore be double that required by the adopted guidance, and Members should also note that the location of the community centre would be within walking distance of the majority of the wider estate. In response to initial, informal comments from Kent Highways I have also asked the

applicant to provide an amended drawing showing additional parking bays along the access road, which is wide enough to allow this.

Landscaping

- 9.11 The site currently comprises an area of green, open space bordered by small trees and bushes. In this regard it provides a soft landscaped area adjacent to the solid built form of the housing estate and, in my opinion, would positively contribute to the character of the area.
- 9.12 However, it should be noted that in granting the outline planning permission in 1996 there was not a clear intention to leave this land as an area of open space, and the land does not form part of a formalised area of public open space provided as part of the wider development. Indeed, the land was specifically set aside for a community centre.
- 9.13 The land immediately to the northwest was the original intended location for a community centre but land ownership issues have prevented that from coming forward for development. The case is similar to that elsewhere at the Meads, such as on the other side of Staplehurst Road, in that the Council has not been able to secure parcels for such a development.
- 9.14 Therefore, whilst I note local concern in regards to the loss of the open space members should note that this is not a formal area of open space, (the community woodland on the opposite side of Grovehurst Road is provided for this purpose, and as I set out below, there are various play areas scattered throughout the estate, together with the Milton Recreation Ground, slightly further afield) and comprises in my view an acceptable location in which a community centre can be provided. Whilst the loss of green spaces is rarely encouraged I consider that the wider benefits of the development outweigh the slight harm to the landscape in building on this area of greenery.
- 9.15 However, the landscaping condition suggested below, will ensure that a robust and appropriate landscaping scheme is implemented to soften the development and provide some screening from surrounding areas.

Other Matters

- 9.16 The wider area has been shown to have significant archaeological potential, and I have therefore recommended the condition below to secure a programme of archaeological works prior to development of the site. I also await comments from the County Archaeologist (closing date 31 January) and will update Members at the meeting.
- 9.17 I note that some residents have raised concern in regards to loss of the land as a play area for children. Other open spaces are available throughout the estate, such as the linear park running SW-NE throughout the estate (linking Staplehurst Road with Quinton Road); green areas at Balas Drive and Moonstone Square; and Milton Recreation ground on the eastern side of the railway, which is accessed by a pedestrian footbridge from Bismuth Drive, and which is approximately 560m from the application site.
- 9.18 Unfortunately matters such as property values and loss of view are not material planning considerations, and I am unable to take them into account for the purposes of this application.

10.0 CONCLUSION

10.01 Taking the above into account and subject to outstanding comments (including those of Kent Highway Services) – closing date 31 January 2015 – I consider that the proposal would provide a dedicated local community centre within the wider housing estate of the Meads as required by the grant of outline planning permission SW/96/0717, and in a manner and position that would not give rise to serious harm to local amenity or the character or appearance of the area.

10.02 Whilst I note and appreciate concerns raised by local residents I do not believe that they amount to a justifiable reason for refusal of planning permission in this instance.

10.0 I therefore recommend that planning permission should be granted.

11.0 RECOMMENDATION – GRANT subject to the following conditions:

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

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

(2) No development shall take place other than in accordance with the following drawing numbers (all received 20 November 2014):

- 241/13/P/001;
- 241/13/P/002;
- 241/13/P/100;
- 241/13/P/101;
- 241/13/P/200 rev. A;
- 241/13/P/300;
- SDS 203794.01; and
- A114025-TG-00-XX-DR-C-0005 rev/ P1.

Reasons: In the interest of clarity and for the avoidance of doubt.

(3) 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.

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

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

Reasons: In the interest of visual amenity.

(5) 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.

Reasons: In the interests of residential amenity.

- (6) 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.

Reasons: In the interests of highway safety and convenience.

- (7) Adequate precautions shall be taken during the period of demolition and construction to prevent the deposit of mud and/or other debris on the public highway.

Reasons: In the interests of highway safety and convenience.

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

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

- (9) 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.

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

- (10) 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.

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

- (11) No external storage of parts, equipment, raw materials or products shall take place within the site.

Reasons: In the interests of visual amenity.

- (12) 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.

Reasons: In the interests of visual amenity and the residential amenities of occupiers of nearby dwellings.

- (13) The area shown on the submitted plan 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 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 building hereby permitted.

Reasons: Development without adequate provision for the parking of cars is likely to lead to car parking inconvenient to other road users and in a manner detrimental to highway safety and amenity.

- (14) The premises shall be used for the purpose of a public hall and for no other purpose, including any other purposes in Class D1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended).

Reasons: In the interests of the amenities of the area.

- (15) The use of the premises hereby permitted shall be restricted to the hours of 7 am to 10 pm Sundays to Thursdays (inclusive); and 7 am to midnight on Fridays and Saturdays.

Reasons: In the interests of the residential amenities of the area.

- (16) Any other conditions recommended by consultees – closing date for response 31 January 2015.

The Council's approach to this application:

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

Offering pre-application advice.

Where possible, suggesting solutions to secure a successful outcome.

As appropriate, updating applicants/agents of any issues that may arise in the processing of their application.

In this instance the application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application.

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.

The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.

2.2 REFERENCE NO - 14/503850/FULL			
APPLICATION PROPOSAL			
Erection of 2.5m high acoustic barrier and variation of conditions 4 and 5 of SW/12/1023 to allow sales and commercial activity in connection with the retail use of the site between 0700-2300 hrs Monday to Saturday and 0900-1800 hrs on Sundays and loading, offloading and delivery of goods in connection with the retail use of the site between 0600hrs and 2300hrs Monday to Saturday and 0700hrs and 2300hrs on Sundays and Bank Holidays			
ADDRESS Aldi East Street Sittingbourne Kent ME10 4RX			
RECOMMENDATION- Permission subject to outstanding representations (deadline for comments.....)			
SUMMARY OF REASONS FOR RECOMMENDATION			
The noise implications of the proposal are acceptable.			
REASON FOR REFERRAL TO COMMITTEE			
Ward Councillor Bennett has called the application in.			
WARD St Michaels	PARISH/TOWN COUNCIL	APPLICANT The Manager AGENT Planning Potential Ltd	
DECISION DUE DATE 4/2/15	PUBLICITY EXPIRY DATE	OFFICER SITE VISIT DATE 22/10/14	
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
-SW/96/0544	Outline application for class a1 retail store, car park, service area, landscape and access works (including demolition of existing depot) and residential development on west lane frontage- approved.		
-SW/98/0797	Variation of Condition (xxi) of SW/96/544 to amend delivery hours to allow backing, off-loading or deliveries of goods to commence at 6:00am rather than 8:00am- refused.		
SW/00/0014	Variation of condition (xxi) of SW/96/544 to allow deliveries on Sundays between the hours of 8.00am and 9.00pm- approved.		
SW/12/1023	(Revised hours) Amendment of condition (xxi) appended to planning permission SW/95/544 and condition (xxi) appended to planning permission SW/00/0014 to enable loading, offloading and delivery of goods to take place between 0700hrs and 2200hrs Mon-Sat and 0900hrs and 1800hrs on Sundays and Bank Holidays in connection with use of the site as a retail store- approved.		
SW/14/0433	Lawful Development Certificate to apply white render to the existing brickwork panels between the brick piers on each elevation of the building from 150mm above finished floor level to eaves level (proposed)- approved.		

1.0 DESCRIPTION OF SITE

- 1.01 This Aldi store is located on East Street near the town centre. It has a car park to the rear that is adjacent to the A2 St Michael's Road, which provides a bypass to East Street. The Hall to the east of the site has been converted into a number of residential flats which are immediately adjacent to the loading bay area. There are also residential properties to the west of the site along East Street and West Lane. The site is within the built up area, area action plan 7, the East Street frontage is a secondary shopping area and there are housing allocations to the east of the site and on Aldi's own car park on the northern edge of the site. The site is also in flood zones 2 and 3.

2.0 PROPOSAL

- 2.01 To vary conditions 4 and 5 of planning permission SW/12/1023 which state;

4. Sales or commercial activity in connection with the retail use of the site shall only take place between 0800-2100 hrs Monday to Saturday and 0900-1800 hrs on Sundays.

5. Loading, offloading and delivery of goods in connection with the retail use of the site shall only take place between 0700hrs and 2200hrs Monday to Saturday and 0900hrs and 1800hrs on Sundays and Bank Holidays.

- 2.02 The application – which is supported by an explanatory covering letter and a dedicated Environmental Noise Report - seeks to allow the store to trade between 0700 and 2300 Monday to Saturday. There is no change proposed to Sunday opening hours. In addition, the application seeks to extend the permitted times, enabling the store to be serviced from 0600 to 2300 Monday to Saturday and 0700 to 2300 on Sundays and Bank Holidays.
- 2.03 A 2.5m high acoustic barrier would be erected along the boundary of the site with 127 East Street, details of which have been provided.

3.0 PLANNING CONSTRAINTS

- 3.01 The site has archaeological potential and is in the Environment Agency Flood Zones 2 and 3.

4.0 POLICY AND OTHER CONSIDERATIONS

- 4.01 The National Planning Policy Framework (NPPF) and National Planning Practice Guidance (NPPG) in terms of sustainable development, building a strong competitive economy and para 123 on noise. Development Plan: E1 (general development criteria), AAP7 (Area Action Plan for Sittingbourne Town Centre), B3 (maintaining the vitality and viability of town centres) and H2 (housing) of the Swale Borough Local Plan 2008.

5.0 LOCAL REPRESENTATIONS

5.01 A petition signed by 7 residents of Valmar apartments adjacent to the site and 2 further letters of objection from the landlord of said properties have been received which are summarised as follows;

- Opening hours not a problem.
- Longer delivery times will cause noise problem above recommended level. If an acoustic barrier was erected and a new noise survey carried out then the longer hours would not be a problem.
- The objector lists the methods of goods delivery to the store and believe none of the goods are delivered by cages.
- Refuse bins have been emptied at 2am-3am numerous times.
- It is wrong of Aldi to assume they will get permission as they have already changed their signage.
- The store renovations have been impressive and the recommended noise barrier would be welcome and make the lives of residents of Valmar apartments easier.
- 7am too early and 11pm too late for lorries to unload and harms quality of life for nearby residents.
- Noise complaints have been made to Environmental Health, contrary to the noise assessment. Lorries unload outside of permitted hours and the noise from bin collections in the early morning is unbearable.
- There is a problem with rats in the area climbing into open rubbish bins which Aldi was told to keep closed.
- I've been told Aldi needs more coolers on the outside which have been a problem in the past.
- My property was there before Aldi, my tenants use the store but we believe there should be neighbour co-operation.

6.0 CONSULTATIONS

6.01 Ward Councillor Bennett commented:

"Having considered this application I would like it to be reported to planning committee. It is the increase in servicing hours which I think will cause problems." Ward Councillor Conway is yet to reply to consultation.

6.02 Extensive correspondence between the agent and Environmental Health team is summarised below;

- EHO initially raised no objection to extended opening hours and objected to extended servicing hours because of the adverse noise pollution that would be experienced by the residents of adjacent dwellings. The noise assessment mitigation measures were considered unenforceable by the EHO and a reason given for the unacceptability of each measure proposed.
- Agent replied disputing noise pollution harm identified by EHO and stating that the conditions are enforceable. Agent recommended condition controlling reversing alarms and refrigeration units. Objectors' comments also addressed and it was confirmed that the applicant is happy to erect acoustic barrier (which

will be required by condition (8) below, and will – I understand – need to be 2.5 metres in height). Agent confirmed external bins are collected by external contractor on a weekly basis and suggested a condition ‘no goods pallets or roll cages to be moved on the open areas within the service yard.’

- EHO concluded that the conditions regarding noise from vehicles reversing alarms and refrigeration units during the early morning are acceptable. There will also be a requirement for a further condition requiring no waste collection by third parties before 7am. The acoustic barrier offered will also help prevent unreasonable disturbance to residents of the flats at 127 East Street.

6.03 Kent Highway Services- consider there will be no highway implications with the proposal.

6.04 Environment Agency- no comment to make.

6.05 KCC Archaeology- no comment.

7.0 APPRAISAL

7.01 The key issue is the impact on the aural amenity of residents abutting the site to the east.

7.02 Impact on aural amenity:

7.03 The applicant’s case is that the proposal is required to enable the store to compete on an equal footing with less restricted larger stores.

7.04 The Council’s environmental health officer raises no objection to the extended trading hours and in my opinion consider this element of the proposal to have an acceptable impact on the surrounding area. I note objectors raise no objection to this element also.

7.05 The extended servicing hours are more contentious. The noise implications have been addressed satisfactorily in the opinion of the environmental health officer. A series of further conditions are recommended below including securing the provision of an acoustic barrier between the loading bay and dwellings to the east and restrictions on reversing beepers, refrigeration units, the number of deliveries at any one time etc.

7.06 The report for SW/12/1023 makes an important point which I repeat verbatim:

“An important point is that the Aldi supermarket and the siting of its delivery/loading area substantially predated the residential conversion of the adjoining hall which is also used for martial arts. The reasonable expectation must therefore be that consideration of these applications took into account the existence of the supermarket and its loading bay and the noise and disturbance arising from these. It certainly would have been unwise to grant planning permission for these uses without taking into account how this could potentially constrain the lawful activities taking place on an adjoining site.”

7.07 In the absence of objection form the environmental health officer it is considered that it would be difficult to justify refusal based on harm to the aural amenity.

7.08 Other matters:

7.09 The concerns of the objectors regarding non-compliance with the original delivery hours are noted. However advice makes clear that where it is possible to address concerns by condition this should be done rather than going down the route of refusal or via enforcement at that stage.

8.0 CONCLUSION

8.01 Notwithstanding the objections received from adjoining residential occupiers, given the need to support business set out in the NPPF and that the EHO no longer raises any objection based on harm to aural amenity, it is considered that there is good case for allowing amendments to the opening and delivery hours as proposed.

8.02 In addition, as what is being sought effectively seeks fresh planning permission for the use of the site all outstanding relevant conditions and those reflecting more recent best practice are imposed.

9.0 RECOMMENDATION – GRANT Subject to the receipt of further representations raising fresh issues (closing date....) and the following conditions:

CONDITIONS to include

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

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

(2) The premises shall be only be used for the purpose of a retail store falling within Class A1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended).

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

(3) The areas currently used for the parking of vehicles and for the loading and off-loading of commercial vehicles shall be retained for this purpose 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 to this reserved space and shall be used for or be available for use for the parking, loading and off-loading of vehicles at all times when the premises are in use.

Reason: The development, without the provision of parking, loading and off-loading space, would be detrimental to amenity and likely to lead to inconvenience and danger to road users by virtue of vehicles parked on the public highway amenity.

- (4) Sales or commercial activity in connection with the retail use of the site shall not take place before 0700 and after 2300 hrs Monday to Saturday and before 0900 and after 1800 hrs on Sundays.

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

- (5) Loading, offloading and delivery of goods in connection with the retail use of the site shall not take place before 0600hrs and after 2300hrs Monday to Saturday and before 0700hrs and after 2300hrs on Sundays and Bank Holidays.

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

- (6) Any deliveries received between 0600 and 0700 Monday-Saturday and between 0700 -0900 Sundays and Bank Holidays and between 1800 and 2300 Sundays and Bank Holidays shall comply with the following restrictions;

- No goods pallets or roll cages shall be moved on the open areas within the service yard.
- No audible reversing beepers to be used.
- Refrigeration units shall be switched off when the vehicle enters the loading bay.
- No more than one delivery vehicle will be permitted in the service yard at any one time.

Reason: In the interests of preventing noise pollution to nearby residential properties.

- (7) The occupiers of the site shall not permit any waste collection from the site between the hours of 2300 and 0700.

Reason: In the interests of preventing noise pollution to nearby residential properties.

- (8) The acoustic barrier shown on drawing number 1448-100 Rev A and 'Typical fence construction' shall be erected prior to the extended servicing hours hereby permitted being implemented. The fence shall be retained in perpetuity.

Reason: In the interests of preventing noise pollution to nearby residential properties.

INFORMATIVES

The Council's approach to this application:

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

Offering pre-application advice.

Where possible, suggesting solutions to secure a successful outcome.

As appropriate, updating applicants/agents of any issues that may arise in the processing of their application.

In this instance:

The applicant/agent was advised of concerns regarding noise which were subsequently dealt with.

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.

The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.

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2.3 REFERENCE NO - 14/500234/FULL			
APPLICATION PROPOSAL Part single / Part two storey side extension and roof extension including provision of dormer to rear roof slope.			
ADDRESS 6 Paradise Cottages Lower Hartlip Road Hartlip Kent ME9 7SU			
RECOMMENDATION Approve			
SUMMARY OF REASONS FOR RECOMMENDATION On balance, the increase in size of the dwelling is not unacceptable, and the development proposed is not so harmful that planning permission ought to be refused.			
REASON FOR REFERRAL TO COMMITTEE Parish Council Objection			
WARD Hartlip, Newington & Upchurch	PARISH/TOWN Hartlip	COUNCIL	APPLICANT Mr W Hilden AGENT Mr Gary Edwards
DECISION DUE DATE 25/08/14	PUBLICITY EXPIRY DATE 25/08/14	OFFICER SITE VISIT DATE August & October 2014	
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
SW/13/0561	Two storey side and rear extension	REFUSED	30 th July 2013
<i>The proposed extension would not represent a modest extension of a dwelling in the countryside, and it would result in substandard parking provision at the site.</i>			
A subsequent appeal was dismissed (copy of decision attached as Appendix A to this report.)			
SW/14/0115	Lawful Development Certificate for single storey rear extension, single storey side extension, hip to gable roof extension, rear dormer window and tile cladding to the first floor elevations of the existing property (Proposed)	APPROVED	7 th April 2014
The development proposed amounts to permitted development			

MAIN REPORT

1.0 DESCRIPTION OF SITE

- 1.01 The site lies in the countryside, as defined in the proposals map for the Swale Borough Local Plan 2008. It amounts to a modest, but recently extended two storey semi-detached dwelling, with parking to the side and garden to the rear. To the side and rear of the site is agricultural land. To the front lies a grade II listed building.

2.0 PROPOSAL

- 2.01 This application seeks planning permission for a part single, part two storey side extension, and a roof extension together with the provision of a dormer window in the rear roof slope.
- 2.02 The proposed single/two storey side extension would be set back 3.3m from the front of the dwelling, projecting 3.3m from the side of the dwelling, and 4.7m to the rear. It would thus have a total depth, when viewed from the side, of 9.9m. The two storey element would sit above the first 5.25m of the side projecting element of the scheme. The scheme also includes the raising of the hipped roof to a gable, and the construction of a rear facing dormer window. This does though amount to permitted development (in isolation from the development proposed under this application) and has already been carried out.
- 2.03 The cumulative increase in floor space of the development proposed under this application, over that of the original dwelling, would be approximately 115%.
- 2.04 Members will note the previous planning application and associated appeal. A copy of the relevant appeal decision is attached at Appendix 1 to this report. The development proposed under that application proposed a two storey extension projecting 4.5m from the side of the dwelling, and with a total depth of 9.23m, together with a small ground floor rear extension. This gave rise to an increase of approximately 114% over that of the original dwelling. Planning permission was refused for two reasons, relating to the scale of the extension and to the parking provision at the site (although this reason was not pursued by the Council at appeal.)
- 2.05 The agent has set out in his supporting statement that, in his view, the majority of the scheme amounts to permitted development, and the main considerations here relate to the first floor side extension and the increase in scale of the ground floor extension. An excerpt from the supporting is as follows:

“The proposed extension has been sensitively designed in order to overcome the concerns raised by the previous Planning Inspector. In his decision letter the Inspector raised concern primarily with the bulk and rearward projection of the two storey side extension.

In order to address there concerns, the two storey side extension has been significantly reduced in size. It is now substantially smaller than the appeal proposal...

It is considered that the design of the proposed development would be entirely appropriate in terms of its impact upon the character and appearance of the existing property and immediate locality...

The proposed extension would not be visually prominent in this location. When viewed from the north-east it would be screened by the existing dwelling. From the south-west it would be substantially screened by the existing tree planting on the western side of Lower Hartlip Road.”

3.0 PLANNING CONSTRAINTS

- 3.01 The site lies opposite a grade II listed building – the Old Farmhouse. Members will be aware of the statutory duty to preserve or enhance the significance of heritage assets under the Planning (Listed Buildings & Conservation Areas) Act 1990
- 3.02 The site also lies in Environment Agency Flood Zone 2, in a groundwater source protection zone, and in the countryside, as defined in the proposals maps of the Swale Borough Local Plan 2008.

4.0 POLICY AND OTHER CONSIDERATIONS

Development Plan: E1, E6,, E14 E19, E24 and RC4 of the Swale Borough Local Plan 2008

Supplementary Planning Documents: Designing an Extension - A Guide for Householders

Adopted SPG entitled “Designing an Extension - A Guide for Householders”, was adopted by the Council in 1993 after a period of consultation with the public, local and national consultees, and is specifically referred to in the supporting text for saved Policy E24 of the Local Plan. It therefore remains a material consideration to be afforded substantial weight in the decision making process.

National Planning Policy Framework (NPPF)

The NPPF was released on 27th March 2012 with immediate effect, however, para 214 states “that for 12 months from this publication date, decision-makers may continue to give full weight to relevant policies adopted since 2004 even if there is a limited degree of conflict with this Framework.”

The 12 month period noted above has now expired, as such, it is necessary for a review of the consistency between the policies contained within the Swale Borough Local Plan 2008 and the NPPF.

This has been carried out in the form of a report agreed by the Local Development Framework Panel on 12 December 2012. Policies E1, E6, E14 E19, E24 and RC4 are considered to accord with the NPPF for the purposes of determining this application and as such, these policies can still be afforded significant weight in the decision-making process.

5.0 LOCAL REPRESENTATIONS

- 5.01 12 representations of support have been received, which are summarised as follows:
- The proposal would improve the property and the area and provide a home for the family;
 - The neighbouring house has a very large extension;

- Other similar proposals in this road have been approved;
- The extension would not overlook anyone;
- Hartlip is a very unique village with an eclectic mix of dwellings and the granting of this application can only enhance the surrounding area;
- The design, appearance and materials proposed will enhance the property;
- The size of the proposal is much smaller than the adjoining property;
- We understand that the new application is smaller than that proposed last year. We have had a number of very large extensions in Hartlip creating 5 and 6 bedroom houses from 3 and 4 bedroomed homes. As a result the village has very little in the way of affordable accommodation for young families which has resulted in an increased average age of the community. It has also effected a reduction of local children to our village school.
- In order to ensure that young families can live in villages, a sympathetic consideration needs to be given to applications such as this;
- The proposal would not harm the character of the area;
- The proposal would accord with the NPPF, and is modest in scale;
- An extension of the scale proposed is required, due to the size of the applicant's family;
- The proposal is consistent with extensions to other houses elsewhere in the village.

5.02 One representation with general observations has been submitted.

6.0 CONSULTATIONS

6.01 The Environment Agency does not raise objection.

6.02 Hartlip Parish Council objects to the application, and comments as follows:

“The reduction in scale and bulk of the 2 storey proposed side extension is a big improvement on the previous scheme but it is still too big for the plot. It is a much larger development than has been allowed in the Lawful Development Certificate. It is a much larger footprint and there has been a linkage between the roof extension and the side extension sweeping round the back. It would still conflict with reason of the Appeal Decision Appendix 1.

The applicant appears to have used his Lawful Development rights to the maximum and then come back for a modest extension which has produced unsympathetic designs that look quite out of place and the loft conversion looks awful. The second storey extension to the rear still dominates the building, as in the inspector's comments at appeal, making the bulk and mass of the building look out of place when viewed from the footpath or road to the South.

For the above reasons, HPC objects to this application.”

7.0 BACKGROUND PAPERS AND PLANS

7.01 Application drawings, supporting statement and appendices.

8.0 APPRAISAL

8.01 The extension of dwellings in the countryside is acceptable as a matter of principle, subject to matters relating to design and scale. The proposed development would not in my opinion give rise to harm to residential amenity by virtue of overlooking, overshadowing or loss of outlook. The proposed parking provision would be acceptable (it remains unchanged from the previous scheme). Members will note that the Environment Agency do not raise objection, subject to the informatives recommended below.

The key issue here is, therefore, whether the proposed development would amount to a modest, acceptable extension, taking into account its bulk and scale, and the cumulative increase in floorspace

8.02 In this case, Members will note that the cumulative increase in floorspace over the original dwelling is approximately 115%. As Members will be aware, this is significantly above what would normally be considered acceptable.

8.03 I am though mindful of the recent appeal decision at this site, and in particular, paragraph 5 of that decision, which refers to the bulk and scale of the two storey extension proposed not being subservient to the main dwelling, and being visually dominant and incongruous with the original dwelling.

8.04 The applicant has attempted to address the concern of the Inspector by significantly reducing the bulk of the two storey side extension. Taken in isolation, the two storey extension now proposed is in my view acceptable. It would be modest in scale and would not dominate the original dwelling in the manner of the previously refused scheme.

8.05 Equally, I am mindful that the dormer window and roof alteration amount to permitted development, and that single storey side and rear extensions could also be constructed as permitted development here, albeit on a much smaller scale than those proposed under this application.

8.06 However – the proposal, taken as a whole would still be substantial in scale in comparison to the original dwelling, and it would in my view cause some harm to the character of the dwelling. I am though mindful that whilst the development proposed here would be much larger than normally considered acceptable, it is designed such that the dwelling would still retain some of its character.

8.07 In addition, the site is comparatively well screened. The extension would only be visible from public vantage points close to the site, would not be visible at all on approach from the north and only from almost in front of the site from the south. As such, there would be a very limited impact on the character and appearance of the countryside or the wider area.

8.08 I have given consideration as to the effect of the proposed development on the setting of the listed building. I do not consider that the proposal would have a harmful impact. The front elevation of the proposed extension would be set

back from the highway, and would not appear incongruous when viewed in conjunction with, or from the listed building.

9.0 CONCLUSION

- 9.01 This is a very finely balanced decision. The proposed development is, on the face of it, contrary to the adopted SPG, which sets out that domestic extensions in the countryside should generally increase the floorspace of the original dwelling by no more than 60%. In addition, when viewed from the side, the extensions and alterations to the dwelling would be such that it would be increased in bulk in a moderately harmful manner.
- 9.02 However – the extension would be of an acceptable design (notwithstanding its bulk and scale), and the main objection of the Planning Inspector (namely the size of the two storey element of the scheme) has been addressed. I am also mindful that single storey side and rear extensions to the dwelling could be carried out as permitted development, and that the site is not readily visible from public vantage points.
- 9.03 Given the above I am, on balance, of the view that the increase in size of the dwelling is not unacceptable, and that the development proposed is not so harmful that planning permission ought to be refused.

10.0 RECOMMENDATION – GRANT Subject to the following conditions

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

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

- (2) The materials to be used in the construction of the external surfaces of the extension hereby permitted shall match those on the existing building in terms of type, colour and texture.

Reasons: In the interests of visual amenity

The Council's approach to this application:

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

Offering pre-application advice.

Where possible, suggesting solutions to secure a successful outcome.

As appropriate, updating applicants/agents of any issues that may arise in the processing of their application.

In this instance:

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

Informatives:

Drainage

The development site lies in a Source Protection Zone 2 for our potable water supply, and on Seaford Chalk Geology in a Major Aquifer therefore we recommend the following:

Foul drainage

Foul drainage should be connected to the main sewer. Where this is not possible the Environment Agency recommend the installation of a Package Treatment Plant. If these are installed and it is proposed to discharge treated effluent to ground or to a surface watercourse, the applicant may require an Environmental Permit from the Environment Agency. Applicants should apply online at <https://www.gov.uk/waste-exemptions-disposing-of-waste> or contact the EA for an Environmental Permit application form and further details on 08708 506506.

The granting of planning permission does not guarantee the granting of a permit under the Environmental Permitting Regulations 2010. A permit will only be granted where the risk to the environment is acceptable.

To help the applicant choose the correct option for sewage disposal, additional information can also be found in the Environment Agency's Pollution Prevention Guidelines (PPG) 4: Treatment and Disposal of Sewage where no Foul Sewer is available which can be found at:

<http://webarchive.nationalarchives.gov.uk/20070109100153/http://publications.environment-agency.gov.uk/pdf/PMHO0706BJGL-E-E.pdf>

Surface water drainage

Please note that only clean uncontaminated roof water should drain to the surface water system, entering after any pollution prevention methods installed.

All precautions must be taken to avoid discharges and spills to the ground both during and after construction. For advice on pollution prevention, the applicant should refer to the Environment Agency guidance "PPG1 – General guide to prevention of pollution", which can be found at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/290124/LIT_1404_8bdf51.pdf

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.

The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.

Appeal Decision

Site visit made on 18 October 2013

by **S Poole BA(Hons) DipArch MPhil MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 4 November 2013

Appeal Ref: APP/V2255/D/13/2205048

6 Paradise Cottages, Lower Hartlip Road, Hartlip, Sittingbourne, Kent ME9 7SU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr W. Hilden against the decision of Swale Borough Council.
- The application Ref SW/13/0561 was refused by notice dated 30 July 2013.
- The development proposed is the erection of a two storey side extension.

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this case are the effects of the proposal on:
 - (i) the character and appearance of the countryside; and
 - (ii) highway safety, with particular regard to car parking provision.

Reasons

Character and appearance

3. The appeal property is a 2-storey semi-detached house. It is situated in a rural area and forms part of a small group of dwellings of similar age and appearance, some of which have been extended in the recent past.
4. The proposal would comprise the removal of a group of dilapidated outbuildings to the side of the house and the erection of a 2-storey extension which would be set behind the line of the front elevation of the property and extend a significant distance beyond the original rear building line. It would have a pitched roof and partly rendered, partly tile hung walls plus windows that would match the proportions of the existing.
5. Whilst the addition would reflect the appearance of the host, due to its overall bulk – which would be similar to that of the existing house - and its rearward projection it would not be subservient in size to the house. In my judgement, as a consequence, it would be a visually dominant and incongruous element that would not sit comfortably on the site, despite being partly screened by tall road-side hedges.

APPENDIX A – ITEM 2.3

Appeal Decisions APP/V2255/D/13/2205048

6. For these reasons I conclude that the proposal would have an unacceptable effect on the character and appearance of the countryside. It is therefore contrary to the aims of Policy E1 of the Swale Borough Local Plan 2008 (LP) which seeks development that is of a scale that is appropriate to the location. It also conflicts with the objectives of the Council's guidance document *Designing an Extension – A Guide for Householders* which, whilst somewhat dated, includes broad aims that are consistent with the LP.
7. I note that some nearby properties include side extensions and that the addition to 4 Paradise Cottages was built following a planning application allowed at appeal in 2010 (ref: APP/V2255/D/10/2134525). These recent additions are smaller than the appeal proposal and located in less exposed positions. They are not directly comparable to the appeal proposal and, as each application and appeal should be considered on its individual merits, I therefore attach limited weight to them.
8. The Council has referred to LP Policy RC4. As the existing ground floor area of the appeal property is less than 50sqm and a need for smaller accommodation in the area has not been identified, I am satisfied that the proposal complies with this policy. However, this does not outweigh my conclusions above.

Highway safety

9. The application drawings indicate that 2 off-street car parking spaces would be provided at the front of the property. This level of parking is in line with the standards set out in the *Kent Design Review: Interim Guidance Note 2 – Residential Parking* (2008) which was produced to form the basis for residential parking policies in Local Development Frameworks across Kent. The proposal therefore complies with LP Policies E1 and T3 which require car parking provision to accord with County Council standards. For this reason I am satisfied that the proposal would not result in unacceptable effects on highway safety in the area.

Conclusion

10. Although I have concluded that the proposal would not have an unacceptable effect on highway safety, for the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should fail.

S Poole

INSPECTOR

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2.4 REFERENCE NO - 14/504785/FULL		
APPLICATION PROPOSAL Proposed replacement dwelling and garage.		
ADDRESS 2 Swaysdown Game Farm School Lane Iwade Kent ME9 8QH		
RECOMMENDATION Approval subject to the comments of Natural England		
SUMMARY OF REASONS FOR RECOMMENDATION The current proposal adequately addresses the previous reasons for refusal and the grounds for the dismissed appeal. The proposal would therefore comply with policy RC4 and would be acceptable in principle in my view. I consider that the design of the dwelling and garage would be appropriate for this rural area.		
REASON FOR REFERRAL TO COMMITTEE Parish Council objection		
WARD Iwade & Lower Halstow	PARISH/TOWN Iwade	COUNCIL
APPLICANT Mrs P MacKenzie		AGENT Mr Keith Plumb
DECISION DUE DATE 12/12/14	PUBLICITY EXPIRY DATE 12/12/14	OFFICER SITE VISIT DATE 11.12.14
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):		

SW/00/0547: Application for Lawful Development Certificate for the stationing of one residential caravan. APPROVED 20th July 2000

SW/10/1122: Replacement of existing mobile home with a two storey detached dwelling and detached double garage with storage space at ground and first floor REFUSED 29th October 2010 on the 3 grounds summarised as follows:

1. The dwelling by reason of size, design and siting would harm rural character of area and result in loss of small affordable rural home and harm area of high landscape value.
2. Proposed dwelling and attached garden would be sited outside acknowledged domestic curtilage harmful to character of area.
3. Failure to enter into legal agreement to secure removal of mobile home would result in additional unit of accommodation harmful to character of the area.

SW/11/471: Application for a Lawful Development Certificate to establish the lawful use of land as residential garden – APPROVED 27th January 2012

SW/12/0963: Replacement dwelling (2 storey) and garage for no. 2 Swaysdown within the same application site. This application was refused on the following grounds:

1. *The proposed house by reason of its size, design and siting represents an unacceptable encroachment of built mass into an otherwise wholly open area to the detriment of the character and appearance of this rural area. It will also result in a substantial increase in built mass compared to that of the mobile home it is intended to replace while resulting in the loss of a small dwelling. The proposal is therefore considered contrary to the provisions of policies E6 and RC4 of the adopted Swale Borough Local Plan 2008.*

2. *In the absence of an ecological assessment, it has not been demonstrated that the proposed development would not cause harm to any protected species at or nearby the site. The proposal is therefore contrary to the provisions of policies E1 and E11 of the Swale Borough Local Plan 2008.*

SW/13/0403: Replacement dwelling (bungalow) and garage. This application was refused on the following grounds:

1. *The proposed house by reason of its size, design and siting represents an unacceptable encroachment of built mass into an otherwise wholly open area to the detriment of the character and appearance of this rural area. It will also result in a substantial increase in built mass compared to that of the mobile home it is intended to replace while resulting in the loss of a small dwelling. The proposal is therefore considered contrary to the provisions of policies E6 and RC4 of the adopted Swale Borough Local Plan 2008.*

This application was later dismissed at appeal (see **Appendix A**) on the grounds that the development would have an adverse impact, by virtue of its size, height, location and overall design, on the character and appearance of the area and harm the current open character of this countryside site.

MAIN REPORT

1.0 DESCRIPTION OF SITE

- 1.01 The application site is located within the countryside and the northern part of the site (location of the new dwelling) lies within an Area of High Landscape Value (policy E9). The Medway Estuary & Marshes SSSI (policy E11) and a Special Landscape Area (policy E9) lies 490 metres to the north of the site. The site also lies within a Strategic Gap (Policy E7).
- 1.02 The application site totals approximately 0.24 ha. It incorporates part of a vehicular trackway that leads from the main access through to a wider area of land used as part of the applicant's turf business. The access to the site is via narrow unmade track leading from School Lane. There are currently two static mobile homes on the land (no. 1 Swaysdown Game Farm is owned by the applicant's brother) and a number of buildings used in connection with the turf business. The land to the north and east and west is characterised by low lying agricultural and marshland. To the south, with access from the same track described above, there are at least two separate small private gypsy sites, one residential property and a long-established commercial site. Iwade village lies 880 metres to the east as the crow flies. Via public footpaths, Iwade village is 1.046km to the east and via the track and School Lane –it is 1.6km.

2.0 PROPOSAL

- 2.01 This application seeks planning permission for the erection of a three bedroom bungalow and separate double garage. The proposal would result in the removal of an existing mobile home and garage within the same application site. The proposed dwelling would be located in the same location as the mobile home to be removed, except that it would be orientated differently. The proposed double garage would be located 25 metres away from the main dwelling to the north and within the established garden area of the property. This garage would be very close to the existing garage to be removed.

- 2.02 The proposed bungalow would have a pitched roof and would be of a simple rectangular form and architecture. There are no rooms provided within the roofspace. The double garage would also have a pitched roof with barn hips to mirror the roof of the main dwelling. There would be a storage room to the side of the garage. The roof would have plain clay tiles and stock brickwork to the elevations of the dwelling. The garage would be finished with featheredge weatherboarding.
- 2.03 The proposed garage would have a very similar size floorspace to the existing garage. The proposed dwelling would provide an additional 56.6 sq m of floorspace which equates to a 113% increase.
- 2.04 This application has been amended to change the design of the roof to the proposed garage, removing dormer windows and introducing barn hips. The roof to the proposed dwelling would also be reduced in height by 300mm. This has been achieved by reducing the angle of the roof from 40° to 37°. The amendments were in response to Officer's concerns in respect of the height and dominance of the roof and 'domestic' appearance of the garage.

3.0 PLANNING CONSTRAINTS

- 3.1 The site lies within the SSSI consultation zone.

4.0 POLICY AND OTHER CONSIDERATIONS

- 4.1 The National Planning Policy Framework sets out at paragraph 14 that at the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking.
- 4.2 Paragraph 55 seeks to promote sustainable development in rural areas. It states that: *'housing should be located where it will enhance or maintain the vitality of rural communities. For example, where there are groups of smaller settlements, development in one village may support services in a village nearby. Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as:*
- *the essential need for a rural worker to live permanently at or near their place of work in the countryside; or*
 - *where such development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets; or*
 - *where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting; or*
 - *the exceptional quality or innovative nature of the design of the dwelling. Such a design should:*
 - *be truly outstanding or innovative, helping to raise standards of design more generally in rural areas;*
 - *reflect the highest standards in architecture;*
 - *significantly enhance its immediate setting; and*
 - *be sensitive to the defining characteristics of the local area.'*

Swale Borough Local Plan 2008:

- 4.3 All policies cited have been 'saved' by the Secretary of State. However, because the 12 month period provided by the NPPF, within which all saved policies could be given full weight, has expired and because this Council does not have an up to date development plan, a review of the consistency between the policies contained within the Swale Borough Local Plan 2008 and the NPPF was necessary. This has been carried out in the form of a report agreed by the Local Development Framework Panel on 12 December 2012. All policies cited below, with the exception of policy H2, are considered to accord with the NPPF for the purposes of determining this application and as such, these policies can still be afforded significant weight in the decision-making process.
- 4.4 Policy E1 gives general guidance regarding design and amenity, amongst others. Specifically, it states that all development proposals should include information sufficient to enable the Council to determine the application, should protect and enhance the natural and built environments and, should be of an appearance that is appropriate to the location.
- 4.5 Policy E6 allows appropriate development within the countryside. This includes: necessary agricultural development, re-use or adaption of an existing rural building, the acceptable rebuilding or modest extensions of a dwelling currently in residential use, affordable housing and, sites for gypsies. The policy seeks to direct growth to areas allocated in the plan, brownfield sites and existing settlements. In Areas of High Landscape Value, the priority is the protection and enhancement of the integrity, character and local distinctiveness of these Borough Assets, whilst considering the needs of local communities. It seeks to protect the quality, character and amenity value of the countryside. Development not covered under policy E6 will not be permitted.
- 4.6 Policy E7 seeks to ensure that development does not result in the merging of settlements and the piecemeal erosion of the countryside.
- 4.7 Policy E9 seeks to protect the quality and character of the Borough's landscape. Development proposals within the rural area are expected to be sympathetic to local landscape character and quality and minimise the adverse impacts of development upon the landscape. This policy refers to the Landscape Character Assessment and Guidelines SPG. This has now been superseded by the Swale Landscape Character and Biodiversity Appraisal (2011) (SPG) (detailed below).
- 4.8 Policy E19 aims to achieve high quality design on all developments in the Borough.
- 4.9 Policy H2 seeks to encourage the provision of new houses within the built-up area. With regards to compatibility with the NPPF, this policy is highlighted as being non-compliant in the case of a weak five-year land supply situation. Essentially, where there is a weak housing land supply, the provision of new houses outside of the built-up area boundary will potentially be acceptable. Careful additional justification for refusal may be required to demonstrate that any adverse impacts would significantly and demonstrably outweigh the benefits. However, this should be read in conjunction with paragraph 55 of the NPPF.
- 4.10 Policy RC4 allows the rebuilding of an existing dwelling in rural areas only if the proposed new dwelling is of a similar size and proportion to the original dwelling, and is erected on, or close to, the position of the original dwelling. For dwellings in the rural area with an existing external ground floor area of 50 sq metres or more, the Council will permit only modest extensions (taking into account any previous additions), of an appropriate scale, mass and appearance to the location.

- 4.11 Policy T3 seeks to ensure that there is sufficient vehicle parking.
- 4.12 The Swale Landscape Character and Biodiversity Appraisal (2011) identifies the site as being within the Lower Halstow Clay Farmland. These farmlands extend from the edge of the Chetney Marshes to Lower Halstow. Here there is a complex mixture of truly rural landscapes. It contains isolated farms and cottages and small-scale industrial works at Bedlams Bottom. At its north-eastern periphery, there is small-scale urban and industrial development and motorsport activity. The Sheppey Crossing is visible from the eastern part of the area. Overall the area is in moderate condition. There are localised areas in poorer condition, notably the activities at Marshside, whilst, in places, unsympathetic materials are used to fence in livestock or surround residential dwellings. Sheets of corrugated iron, used to supplement post and wire fencing, locally interrupt the stunning long views of the natural landscape of the neighbouring marshes. Fly tipping on the coast road is also a distraction. The quality of the landscape immediately surrounding many of the buildings frequently been eroded. Most buildings are of a mixed quality and style, having been built in the latter half of the 20th century. Occasionally a more traditional isolated farmstead is built in local vernacular style out of locally extracted brick. Sensitivity to change is high.

Emerging local plan – Bearing Fruits 2031 (publication version December 2014)

- 4.13. Some limited weight can be given to the policies within this plan. The following policies are relevant: ST3; DM7; DM11; DM14; DM24 & DM28.

5.0 LOCAL REPRESENTATIONS

None received.

6.0 CONSULTATIONS

- 6.01 Iwade Parish Council object to the proposal on the grounds that this is the fourth application for the replacement dwelling and garage and all have been refused. They note that the proposed dwelling would result in a greater footprint than the existing mobile home and consider that the proposed garage is large enough to convert to another dwelling.
- 6.02 Natural England have been consulted and their comments are awaited. These will be reported at the meeting.

7.0 BACKGROUND PAPERS AND PLANS

- 7.1 Planning statement; Proposed plans and elevations (drawing no. MA/10/135.01 rev. D) and; Preliminary Ecological Appraisal.

8.0 APPRAISAL

Principle of Development

- 8.01 Under Policy RC4 of the adopted Local Plan 2008 the rebuilding of an existing dwelling in rural areas is allowed if the proposed new dwelling is of a similar size and proportion to the original dwelling, and is erected on, or close to, the position of the original dwelling. For dwellings in the rural area with an existing external ground floor area of 50 sq metres or more, the Council will permit only modest extensions (taking into account any previous additions), of an appropriate scale, mass and appearance to the

location. The site is currently occupied by a mobile home that has had some adaptations externally but no significant additions to the floorspace. As Members will note, the use of this mobile home is established as lawful and as such, it is appropriate to apply policy RC4 to this proposal. The principle of a replacement dwelling is therefore accepted. Given the visual harm associated with mobile homes, replacement with a modest dwelling meeting the requirements of policy RC4 can be acceptable. The key issue to consider now is whether the current proposal overcomes the previous grounds for refusal and grounds for the dismissed appeal and whether the proposal accords with policy RC4.

Impact on the Character and Appearance of the Countryside

- 8.02 The previously refused schemes showed the proposed new dwelling approximately 35 metres from the location of the existing mobile home. This would have resulted in the spread of buildings into the countryside to the detriment of its open and rural character. The current proposal has sought to address this concern by relocating the proposed dwelling to sit over a large part of the footprint of the existing mobile home. This location is closer to existing buildings on the land and would be far less conspicuous in my view. There are tall trees surrounding the application site which will help to ensure that the house and garage are concealed to a certain extent. The location of the proposed garage is in a similar location to the existing garage to be demolished. The current proposal would therefore limit the impact on the character and appearance of the countryside in this respect.
- 8.03 The applicant's agent has reduced the scale, height and has simplified the design of the proposed dwelling and garage. In so doing, he has achieved what I consider to be a modest increase in the floorspace over and above the existing mobile home. I acknowledge that the increase in floorspace would be 113% (previous scheme showed increases of 170% and 135%) but consider that the resulting accommodation would provide a modest dwelling within the countryside. I give weight to the fact that the existing mobile home is very small in size and acknowledge that a 'modest' dwelling will be likely to be somewhat larger than the existing. The previous schemes proposed dwellings that would have been significantly larger than the existing mobile home and I consider that the current proposal achieves a modest dwelling. I give weight to the fact that the existing mobile home is somewhat dilapidated and in need of replacement. I am also mindful of the example appeal decisions that the agent has provided to demonstrate that there have been similarly sized and designed replacement dwellings allowed in similar situation i.e. where a mobile home is allowed to be replaced with a bricks and mortar dwelling.
- 8.04 Members will note that the Inspector assessing the previous proposal (see **Appendix A**) was concerned about the scale and height of the roof which he concluded represented 'a rather overpowering feature, which would dominate the elevations of the proposed house.' The scheme has been amended to reduce the ridge height by 300mm at least. This has been achieved by lowering the angle of the roof as described above. I consider that this amendment provides enough of a reduction to address the Inspector's concerns. The elevations to roof ratio will now achieve a balance in my view. In addition, the Inspector was considering a scheme that would have seen the dwelling placed in a far more conspicuous location.
- 8.05 The design of the dwelling and garage would be appropriate for this rural area in my view and I am content with the finishing material proposed, subject to further detail of the bricks.

- 8.05 I have recommended the removal of permitted development rights for extensions and outbuildings in order to limit the amount of development at this site. I have also recommended a condition to prevent the roofspace of the dwelling and garage from being used for habitable accommodation. This will ensure that the dwelling remains of a modest size internally in accordance with policy RC4.
- 8.06 Taking the above into account, I consider that the proposed dwelling and garage would have no detriment to the character and appearance of the countryside.

9.0 Other Matters

- 9.01 There would be adequate parking provided for the proposed dwelling within the proposed garage. The proposed development is some distance from the closest dwelling – 1 Swaysdown Game Farm. I therefore consider that there would be no concerns in respect of residential amenities. The proposed dwelling would provide adequate internal and external space for its future residents in my view.
- 9.02 With regards to ecology, information about the potential for protected species, has been submitted in the form of a preliminary Ecological Appraisal. The submitted report shows that there is only low to negligible potential for amphibians (great crested newts) and suggests mitigation during construction. Recommendations are made about lighting in respect of bats and it is recommended that vegetation removal considers breeding birds. I therefore consider that there would be no harm to ecology and biodiversity that cannot be addressed by conditions.

10.0 CONCLUSION

- 10.01 I consider that the current proposal adequately addresses the previous reasons for refusal and the grounds for the dismissed appeal. The proposal would therefore comply with policy RC4 and would be acceptable in principle in my view. I consider that the design of the dwelling and garage would be appropriate for this rural area.

11.0 RECOMMENDATION – GRANT Subject to the following conditions:

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

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

2. The development hereby approved shall be carried out in accordance with the following approved drawings: MA/10/135.01 rev D.

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

3. No development shall commence until the existing garage as shown on plan no. MA/10/135.01 rev D has been demolished in its entirety.

Reason: In the interests of the character and appearance of the countryside.

4. Upon completion, no further development, whether permitted by Classes A, B, C, D or E of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (as amended) (or any order revoking and

re-enacting that Order) or not, shall be carried out without the prior permission in writing of the Local Planning Authority.

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

5. The roofspace of the dwelling and garage hereby approved shall at no time be used as, or converted into, an extension to the living accommodation of this property.

Reason: In the interests of retaining a modestly sized dwelling within the countryside.

6. The garage hereby approved shall be kept available for the parking of vehicles 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 or in such a position as to preclude vehicular access thereto.

Reason: In the interests of the character and appearance of the countryside.

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

Reason: In the interest of visual amenity.

8. Prior to the commencement of development hereby approved, 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.

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

9. The details set out in section 4 of the submitted Preliminary Ecological Appraisal dated 21st March 2013 shall be implemented in complete accordance with the recommendations.

Reason: In the interests of protecting and promoting ecology and biodiversity.

The Council's approach to this application:

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

Offering pre-application advice.

Where possible, suggesting solutions to secure a successful outcome.

As appropriate, updating applicants/agents of any issues that may arise in the processing of their application.

In this instance:

Amendments were provided by the applicant to improve the scheme and the application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application.

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.

The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.



Appeal Decision

Site visit made on 10 April 2014

by Ray Wright BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 6 May 2014

Appeal Ref: APP/V2255/A/13/2208837

2 Swaysdown Game Farm, School Lane, Iwade, Sittingbourne ME9 8QH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs P MacKenzie against the decision of Swale Borough Council.
 - The application Ref SW/13/0403, dated 22 February 2013, was refused by notice dated 22 May 2013.
 - The development proposed is 'replacement dwelling and garage.'
-

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this case is the effect of the appeal proposal on the character and appearance of the surrounding countryside having regard to both national and local policy guidance on the location and form of new development.

Reasons

3. The appeal site lies outside any defined built up area boundary and is, therefore, within a countryside location. The proposal is for erection of a new dwelling, with an existing mobile home being replaced by a garage/ storage building.
 4. The National Planning Policy Framework (Framework) indicates that there should be a presumption in favour of sustainable development, but confirms good design is a key aspect of sustainable development. It further identifies that isolated new homes in the countryside should be avoided unless there are special circumstances. However, there appears to be no dispute between the parties that the existing dwelling on the site and its garden curtilage are 'lawful.' Therefore the appeal scheme, rather than a new home, represents a replacement dwelling. Consequently, it does not have to meet the specific requirements set out in paragraph 55 of the Framework or to have a supporting business case, as indicated as required, by the Council.
 5. Policy E6 of the Swale Borough Local Plan 2008 (LP) confirms that, in countryside areas, permission will only granted where the proposal is for an acceptable rebuilding of a dwelling currently in residential use, with more detailed guidance given in Policy RC4.
-

APPENDIX A

Appeal Decision APP/V2255/A/13/2208837

6. The existing mobile home is positioned near to a complex of other buildings but has an open aspect to the east. Due to its size and form, however, it remains a relatively inconspicuous development within the landscape.
7. The proposed siting of the appeal development would remain within the garden curtilage but would be around 20 metres to the north of the existing unit and would be in a more open area of the site. Although the accommodation within the proposed new dwelling would be provided solely at ground floor level, there would be a considerable increase in its floor area compared to that existing. The Council indicate, and it does not appear to be disputed, that this increase would be around 174%. This considerably exceeds the allowance of 60% generally allowed for extensions in rural areas set out in the Council's guidance 'Designing an Extension' (SPG). The appeal scheme does not, therefore, readily comply with Policy RC4 of the LP which confirms that a replacement dwelling should be of similar size and proportion to that which it replaces and located close to the original dwelling.
8. The appellant has put forward that a landscaping scheme could be incorporated into the development. Such a scheme could reduce the visual impact of the development, particularly at ground floor level. However, the proposed dwelling would have a high roof line rising to around six metres at its ridge. It would also have a first floor gable feature facing open fields to the west of the dwelling. These elements are unlikely to be screened by any such landscaping.
9. In particular the roof form proposed would represent a rather overpowering feature which would dominate the elevations of the proposed house and, to my mind, the consequent scale and form would not satisfactorily be integrated within this countryside setting.
10. Due to its height and overall design, I consider the house would create a prominent form of development unsuitable in this sensitive location, and in this respect it would be contrary to Policy E6 of the LP which expects the quality and character of such countryside areas to be protected and where possible enhanced.
11. The Council do not object to the replacement of the original mobile home by the proposed garage/storage building and I have no reason to disagree with this assessment.
12. I conclude the proposed dwelling would have an adverse effect on the character and appearance of the area and harm the current open character of this countryside site. As such the proposal is contrary to the Framework and Policies E6 and RC4 of the LP.

Conclusion

13. For the reasons given above, I conclude that the appeal should be dismissed.

Ray Wright

INSPECTOR



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PLANNING COMMITTEE – 29 JANUARY 2015

PART 3

Report of the Head of Planning

PART 3

Applications for which **REFUSAL** is recommended

3.1		
APPLICATION PROPOSAL		Ref No 14/503559/FULL
Change of use from equestrian grazing to domestic curtilage; removal of existing timber building and replacement with one and a half storey timber-framed barn-style residential property that will form a fully fitted, self contained annex ancillary to the adjacent property 'Cheriton'		
ADDRESS Land To The Rear Of Cheriton Otterden Road Eastling Kent ME13 0BN		
RECOMMENDATION - REFUSE		
WARD East Downs Ward	PARISH/TOWN COUNCIL Eastling	APPLICANT Mr Barrie Neaves AGENT
DECISION DUE DATE 10/12/14	PUBLICITY EXPIRY DATE 12/11/14	OFFICER SITE VISIT DATE 19.11.14
RELEVANT PLANNING HISTORY (including relevant history on adjoining site):		
App No	Summary	

1.0 DESCRIPTION OF SITE

- 1.1 The site is located to the south of the village of Eastling on the east side of Otterden Road. The main property on the site is Cheriton which is a relatively modest two bedroom bungalow located to the front of the plot adjacent to the road. The site was previously a commercial orchard but now is non-productive, the cherry trees have died and were replaced with plum trees of which many have also now died and is currently being used to graze horses by the occupants.
- 1.2 A number of other buildings exist on the site one of which being referred to as "The Workshed" and is subject to this application. The existing building is in a dilapidated state "shored up with temporary supports" and lies approx. 40m south of Cheriton and measures 12m wide and 6m deep, finished with a 3.6m high timber corrugated shallow pitched roof.
- 1.3 A post and rail fence forms the boundary to Otterden Road and the whole site can be seen from the road, to the northern boundary are a number of evergreen trees, to the east rear boundary is a low hedge and to the southern boundary a further post and rail fence with open land beyond.

- 1.4 The site lies within the defined countryside and is also within The Kent Downs Area of Outstanding Natural Beauty (AONB)

2.0 PROPOSAL

- 2.1 This proposal is for “The change of use from equestrian grazing to domestic curtilage; removal of an existing timber outbuilding and its replacement with a self contained timber framed residential annex ancillary to Cheriton”.
- 2.2 The proposed property would measure 12.2m wide and 6m deep finished with a 5.75m high pitched roof and which includes 3 pitched roof dormer windows. The property would comprise of 2 bedrooms and a bathroom on the first floor, and an office, w.c. utility room, kitchen/dining room and a breakfast area and sitting room below. A covered log and bin store and covered porch would also be provided.
- 2.3 The existing access would be extended by approximately 60 m to the proposed across the site to the north east of Cheriton.

3.0 PLANNING CONSTRAINTS

Area of Outstanding Natural Beauty KENT DOWNS

4.0 POLICY AND OTHER CONSIDERATIONS

The National Planning Policy Framework (NPPF)

National Planning Practice Guidance (NPPG)

Development Plan: Swale Borough Local plan saved policies E1, E6, E9, H2 and RC6

5.0 LOCAL REPRESENTATIONS

- 5.1 Six comments of support have been received from local residents, they are summarised below:
- This proposal would allow him to look after his elderly parents. Giving all concerned the care needed while also certain independence
 - The proposed building is appropriate for the property in question. It is of suitable scale and design and uses sympathetic materials. I also think that it is a positive move to marginally increase the density of population of Eastling without using new land for development.
 - The needs that the applicant has to reside in the village in order to care for parents, makes the proposed building a necessity and may reduce the burden on public services such as providing carers and undertaking additional journeys, that would otherwise result from living remotely
 - The build is sympathetic and in keeping with the village
 - I have no objection to the proposal at the above address

- It will also be a positive addition to have this building in place of the existing shed
- We have no hesitation in offering our full support for this application

6.0 CONSULTATION RESPONSES

- 6.1 No comments have been received from both the Council's Environmental Services Manager and Eastling Parish Council.
- 6.2 Kent Highway Services note that the application does not detail the layout of the proposed car parking and turning facilities within the site, and have asked for a plan to show the proposed layout of parking demonstrating that there will be sufficient additional space for Kent Fire and Rescue Service to manoeuvre vehicles within the site so as to leave in a forward gear.

7.0 APPLICANT'S SUPPORTING COMMENTS

- 7.1 The current owners/occupiers of the site reside in Cheriton. They used to earn a living from the small holding but are now both in their 80's and retired. Mrs Neaves suffers from Alzheimers Syndrome and requires constant care. The couple's only son who was raised in the village stays over regularly to assist with care provision with additional day care provided by social services. The bungalow has been adapted to meet their needs.
- 7.2 In the short term the annex would provide part time carer accommodation for their son enabling them to remain in their own home. When not used as carer accommodation it is anticipated the annex building could be used as a short duration holiday accommodation.
- 7.3 An alternative to provide carer accommodation by extending the existing bungalow was deemed structurally difficult and disruptive to the existing vulnerable residents. Similarly an annex positioned closer to the bungalow could be achieved but would result in intensification of development near the road and loss of grazing space.

8.0 BACKGROUND PAPERS

- 8.1 Pre application advice was sought by the applicant for a new dwelling and a response sent on 28/05/14 advising that "the proposal for a new dwelling in the countryside would be contrary to the principles of new development in the countryside and would have a harmful impact on the character of the countryside. In principle new dwellings in the countryside are not considered acceptable and as such the proposal was considered unlikely to receive planning permission.
- 8.2 It was suggested that a more acceptable solution would be to either extend the existing bungalow on the site or to demolish it and build a replacement dwelling suitable for the current occupiers as well as the proposed carer. You may also want to look at the possibility of building an annex close to the existing property.

9.0 APPRAISAL

- 9.1 The key issue in determining this application is whether or not the type and amount of accommodation proposed essentially amounts to a new dwelling in the countryside and would therefore be unacceptable as a matter of principle, and if so whether the personal circumstances involved outweigh the harm to the countryside. On the other hand, if the proposal can be considered as an extension to the accommodation provided by the main house, the key test then would be whether its design and size is considered modest for the location in the countryside and for this sensitive location within the AONB.
- 9.2 I note the applicant's reasoning for the accommodation and have some sympathy with the situation, however, I do not feel that the situation requires additional accommodation to be built in the form of a new dwelling of a scale equivalent to the existing dwelling on the site. I am concerned that the desire of the applicant to provide "carers accommodation...in a self contained annex" results in a proposal which includes all the facilities of a separate dwelling including a kitchen, separate utility room, w.c/shower room and bathroom with no dependency on the main house. Its location over 40m from the house also creates a physical distance/detachment from the original property on site.
- 9.3 I am concerned that the amount of accommodation being proposed is at such a level that its dependency on the main dwelling would be very much limited, and that it could very easily, and perhaps not even intentionally, be used as an independent dwelling in its own right.
- 9.4 Residential development in the countryside is very rarely ever acceptable and this case is not very different from a proposal for a wholly new dwelling house. As a matter of fact, I consider the accommodation of a living area, kitchen/dining room, hallway, downstairs WC/shower room and 2 bedrooms and bathroom is actually in law a dwelling house. There is a fine line between what is acceptable as an annex and what is not and what is an annex and what is a dwelling house. I am not however convinced that it is linked accommodation that is being required here but separate "independent" accommodation just with relatively close proximity to provide support.
- 9.5 Therefore as the argument being made is not that the proposal is the reuse of a redundant building it must be treated as a new dwelling rather than an annex this needs to be addressed.
- 9.6 In respect of housing in the Countryside, para 55 the NPPF states that "*To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. For example, where there are groups of smaller settlements, development in one village may support services in a village nearby. Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as (amongst other things):*
- Where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting".

- 9.7 In the context of local planning policy, policy E6 deals with the issue of rural restraint and explains that *“the quality, character and amenity value of the wider countryside of the Borough, will be protected and where possible enhanced.”* There is a presumption against development and proposals will only be permitted in specific circumstances, of which only one could be investigated further and that being *“The re-use or adaptation of an existing rural building, in accordance with Policy RC1 & Policy RC6.”*
- 9.8 However policy RC1 refers to the circumstances in which planning permission would be granted for the re use of such buildings for proposals that would help to diversify the rural economy, provide new rural jobs and services or provide environmentally positive countryside management business and thus is not relevant.
- 9.9 Policy RC6 however states that planning permission will not be permitted for the conversion of buildings in the rural area to residential use, or a mixed-use including residential, unless:
1. the Borough Council is satisfied that the applicant has made a reasonable and sustained effort to secure an alternative acceptable re-use of the building for employment or community purposes (at a price that reflects that use), and has provided a statement of such action; or
 2. the Borough Council is satisfied that the building would be undesirable or unsuitable for a non-residential use in its own right or by way of its location or the scale of use that would otherwise result; or
 3. a residential use, or a mixed-use including residential is the preferred way in which a historic building could be retained and/or restored.
- In all cases, the building should be suitable for the proposed use, structurally sound and capable of conversion without: (a) the need for significant extension, alteration, or reconstruction; (b) significantly adversely affecting the countryside; and (c) without creating scales of residential use that would lead to unsustainable travel patterns.
- 9.10 Given the above and the design, location (on a prominent site) and condition of the existing building (not capable of being renovated but needs to be rebuilt) I do not consider the proposal would meet any of the above criteria. The applicant has stated the building is not suitable for renovation, and as the photographs submitted with the application show it is in a serious state of dilapidation with the building being supported by temporary supports.
- 9.11 The applicant’s argument of wanting the new dwelling to meet the applicant’s personal needs and the architectural quality of the proposal must be weighed against the harm to policy, visual amenity and to the landscape of the AONB. The site is in a prominent position and can be viewed from some distance within this part of the Kent Downs AONB. The proposed building would also be of a size that would compete with the existing property on the site and furthermore the design, whilst generally traditional in nature fails in the modern top hung fenestration proposed. In addition the 3 dormers represent a cluttered appearance too high on the roof slope and are oversized and appear intrusive.

- 9.12 The proposed access track/road is also shown to extend a considerable distance across the site and although no detail of the material to be used has been provided the size and impact of this element of the proposal is likely to cause harm to the character of the countryside and the AONB.
- 9.13 I therefore return to the terms of the NPPF which is clear in the “great weight” it places on the protection of the AONB and *the highest status of protection in relation to landscape and scenic beauty...*. I note the comments from the applicant and the support they have received from the local community, however, I do not consider this proposal is the solution to the situation. I note in the application details that reference is made to two examples locally where it is claimed that similar size annexes have been approved in recent years, however this application must be considered on its own merits. I also note the notion of a caravan or mobile home being placed on the site were this application to be refused and consider that this would require planning approval in its own right.
- 9.14 The application also refers to the carers’ accommodation when not in use being used as a short duration holiday accommodation, however no further details are provided as to how this could/would be managed and I am unsure how this would be able to adequately serve both uses. However, this reinforces my view that what is being proposed is essentially an independent new dwelling which is completely contrary to Local Plan policy.
- 9.15 The submission suggests that were the existing building to be outside of the AONB it would be able to be converted to a residential property following the changes to the GPDO in 2014. However, considering the current state and condition of the building I would argue that whilst the government’s guidance states “the installation or replacement of windows, doors, roofs, or exterior walls, or water, drainage, electricity, gas or other services will be allowed to the extent reasonably necessary for the building to function as a house” the building clearly requires more and this would seem to preclude the knocking down of buildings and rebuilding on their footprints as has been proposed here. Furthermore, the isolated nature of the building would not comply with NPPF guidance for a new dwelling, and in any case the building is within the AONB so this argument is baseless.
- 9.16 I have considered all the arguments regarding the justification for the new dwelling along with local submissions. However, it remains the case that the proposal is based purely on the applicant’s personal circumstances and such needs should not override strong policy against such development. Members are very familiar with such considerations in some very emotional circumstances. Despite the circumstances in this case, unusual personal and sometimes delicate matters, are presented with many applications and the Borough Council is always very sympathetic to these circumstances. However, it is accepted that personal circumstances are inevitably impermanent and that it is not appropriate to grant planning permission for permanent development on the basis of personal needs if that permission would not normally be granted.

9.17 Whilst I have sympathy for the situation of the applicant and the family the Council's duty is to be fair and consistent and the granting of planning permission for a new dwelling here on the basis of personal need cannot be justified. Therefore, after careful consideration I consider this proposal for a new dwelling in the countryside is unacceptable as a matter of principle and therefore I recommend that planning permission should be refused.

RECOMMENDATION – REFUSAL subject to the following reasons for refusal:

REASONS

The scale and self contained nature of the proposed accommodation amounts to the creation of a separate dwelling capable of independent occupation from the main dwelling. The site is located outside of any built up area boundary, within a remote protected rural location and an Area of Outstanding Natural Beauty and the proposal would represent undesirable residential development in the countryside, not outweighed by the personal circumstances of the applicant. In the opinion of the Local Planning Authority, having taken into account the applicant's personal circumstances, these circumstances do not justify an exception to development plan policy. The development would be harmful to the amenities of the area and contrary to policies H2, E1, E6, E9 of the Swale Borough Local Plan 2008 which seek to protect the countryside for its own sake and which provide that development will not be permitted in rural Kent except in specified circumstances.

The Council's approach to this application:

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

Offering pre-application advice.

Where possible, suggesting solutions to secure a successful outcome.

As appropriate, updating applicants/agents of any issues that may arise in the processing of their application.

In this instance:

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

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

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Report of the Head of Planning

PART 5

Decisions by County Council and Secretary of State, reported for information

- **Item 5.1 – Orchard Place, Badllesmere**

APPEAL ALLOWED

A truly disappointing decision to effectively grant permanent planning permission on grounds of personal circumstances, circumstances which were not even raised at application stage, and for a proposal which differed from that in front of the Council at application stage. The way this decision has been made is rather worrying as it removes any certainty or confidence in the approach that the Planning Inspectorate will take for future similar appeals despite their apparently clear guidance. The decision also puts personal circumstances over planning considerations in relation to a permanent development, which is highly unusual given that the personal circumstances involved here will clearly not persist on a permanent basis, yet the appellant's continued occupation of the site in breach of the 2006 enforcement notice has now essentially been rewarded.

- **Item 5.2 – 18 Bayford Road, Sittingbourne**

APPEAL DISMISSED, COSTS APPLICATION AGAINST THE COUNCIL REFUSED

An interesting decision. Members may recall that I had recommended this application for approval, and that I advised Members against refusing planning permission based on the highway impact of the scheme, as Kent Highway Services had not raised objection. Members will note that the appeal was dismissed on the basis of the impact of the development on residential amenity, and that the reason for refusal in relation to highway impact was not upheld by the Inspector.

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Appeal Decision

Hearing held on 8 October 2014

Site visit made on 8 October 2014

by Sarah Colebourne MA, MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 14 January 2015

Appeal Ref: APP/V2255/A/14/2219020

Orchard Place, Ashford Road, Badlesmere, Faversham, ME13 0NU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mrs Pam Hilden against the decision of Swale Borough Council.
- The application Ref SW/13/1549, dated 13 December 2013, was refused by notice dated 7 February 2014.
- The development proposed is described as a change of use to include the stationing of caravans for 3 no. residential gypsy pitches.

Decision

1. The appeal is allowed and planning permission is granted for a change of use to a residential gypsy site for the stationing of one static caravan, three touring caravans and to include an access, a hardstanding and associated structures at Orchard Place, Ashford Road, Badlesmere, Faversham, ME13 0NU in accordance with the terms of the application, Ref SW/13/1549, dated 13 December 2013, subject to the conditions attached to the schedule at the end of this decision.

Procedural Matters

2. The plans determined by the Council proposed a new development for three pitches which included the siting of three static caravans and three touring caravans together with three movable structures. That scheme also included landscaping around the caravans and along the site boundaries. The appeal statement seeks to amend the proposal to retain the existing use and development on the site which includes one static caravan and three touring caravans. The amended site layout plan shows that the site also comprises an access and a number of other structures including a 'Portaloo' type toilet, a 'Portacabin' used as a shared utility room, a cess tank, two timber sheds used as utility rooms, a storage container, a dog kennel and three field shelters. It does not include any additional landscaping. Although the plans show that the amendment comprises a greater number of structures in total than originally sought, the site area remains the same, there are two static caravans less (hence a lower overall height impact) and a slightly smaller overall footprint. Therefore, whilst this is not normally an appropriate means of seeking permission for an alternative scheme, in this instance I am not persuaded that the interests of the Council or other parties have been prejudiced and I have considered the appeal as a change of use to a residential gypsy caravan site to include the development shown on the amended site layout plan.

Main Issues

3. The main issues in this case are:-

- the effect of the development on the character and appearance of the area, including the Kent Downs Area of Outstanding Natural Beauty (AONB);
- if any harm arises, whether it is outweighed by any other material considerations, including any identified need for sites for gypsies and travellers in the area, the alternatives for the appellant and any personal circumstances.

Reasons

Background

4. The appeal site is located in the countryside, to the north of Badlesmere. It is currently in use as a private gypsy site for the appellant and her family, having been occupied since 2006. The appellant and her husband live in the static caravan and their two sons and their families live in the two touring caravans. The site has a long planning history which includes an enforcement notice, two dismissed appeals (APP/V2255/C/06/2022786 and APP/V2255/A/09/2111231) and four prosecutions for a breach of the enforcement notice. The Council is currently pursuing an injunction in the High Court but I was told that this is being held in abeyance pending the outcome of this appeal. The Council has not disputed the family's gypsy status and I have no reason from the evidence provided to disagree with that.

Character and appearance

5. The development plan includes the Swale Borough Local Plan (LP), dated 2008. Policies E1, E9 and E19 accord broadly with national policy in seeking to ensure a sustainable pattern of development, protect the character and quality of the AONB and ensure a high quality of design respectively. Decision makers have a statutory duty to conserve and enhance the natural beauty of AONBs which have the highest status of protection and these policies accord broadly with the National Planning Policy Framework ("the Framework") which affords them great weight. They also accord broadly with national planning policy for traveller sites which is set out in Planning Policy for Traveller Sites (PPTS) and seeks to ensure that sites are environmentally sustainable and strictly limit sites in open countryside. This does not exclude all sites outside settlements or within AONBs. I have given little weight to the proposed amendments to PPTS in the government's consultation document 'Planning and Travellers' (September 2014) due to its current status as it may change in response to the consultations.
6. The appeal site is located on a dip slope of the downs in the AONB, a nationally important landscape which in this area is characterised by a gently undulating arable landscape with mature hedgerows, small scale woodland, orchards and buildings mainly clustered in villages and hamlets with some isolated farmsteads. The existing development occupies a former orchard. The developed part of the site is set back from the road and separated from it by a more recently planted orchard. There are mature hedgerows along the northern, eastern and western boundaries of the site of varying heights with more recent planting (carried out between 3 and 6 years ago according to the

appellant's Landscape and Visual Assessment (LVIA)) on the northern and eastern boundaries and within the site.

7. The Council acknowledged at the hearing that the LVIA provides a fair assessment of the character of the area. Although the appellant and her family have planted a substantial area between the development and the road with additional orchard trees which enhances the character of the area, the LVIA acknowledges that some of the existing conifer planting within the site is out of character with the area and I would agree with that. Whilst there is a dwelling opposite the site access and a number of dwellings on the Leaveland lane on the far side of the large, adjoining arable field to the rear of the site and a recreational caravan site further along the Leaveland lane, the use of the site as a gypsy site and the presence of the existing caravans and structures is clearly out of character with the local settlement pattern and most of the surrounding land uses and buildings, notwithstanding the lower impact of the amended proposal in comparison to the original scheme. The existing development therefore causes moderate harm overall to the character of the AONB.
8. The principal views towards the site are the short range views from the access and the A251 to the east, from the footpath which crosses the appellant's adjoining field to the south and from the continuation of that path over the adjoining arable field to the west of the site and a longer range view from the Leaveland lane to the north west of the site.
9. From the footpath through the appellant's adjoining field to the south of the site, the LVIA notes that the tops of the caravans are visible and at my visit this appeared to still be the case. The appellant is prepared to omit from the appeal the smaller third touring caravan but in my view it makes little difference to the impact of the existing development. I agree with the LVIA and the Council that the existing conifer planting and fencing along the access road do not contribute positively to the character and appearance of the area but I saw that, due to their distance from the footpath, neither they nor the tops of the caravans are unduly dominant in the view. Furthermore, I noted that since the LVIA was carried out, the appellant's husband has planted an additional hedge along the southern boundary of the site with the adjoining field which in time would reduce the impact of the development further when seen from the footpath. Having seen the point at which the footpath emerges onto a bend in the A251 and from what I was told at the hearing it seems unlikely to me that the footpath is well used. The development has a limited visual impact from this footpath which will in time, reduce further.
10. From the continuation of the footpath through the large arable field to the rear of the site, the LVIA, carried out in April 2013 when there was little or no leaf cover, notes that the existing mobile home is clearly visible through the existing hedgerow. At the time of my visit there was good leaf cover and only a glimpse of it was possible through a gap in that boundary. Beyond the field, from the Leaveland lane where there a number of dwellings and a church, the site is further away and even less visible. Although the LVIA refers to the conifers behind the existing static caravan as out of character with the area, I do not consider that their removal is necessary as they form only a short section of this long boundary. There appears to be, however, some scope for a limited amount of additional planting and I agree with the LVIA that in time and

with further planting within the site along that boundary the visual impact when seen from here could be reduced to a slight/moderate effect.

11. The LVIA noted that from the access, the existing caravans are clearly visible through the hedgerow along the eastern boundary. It acknowledged that the significance is a substantial/moderate adverse effect but that in time and with further mitigation this could reduce to a moderate adverse effect. At the time of my visit, the hedge was in full leaf cover and whilst the tops of some of the caravans and structures were visible, they were certainly not dominant in the view from that point as a result of their distance from the road and the intervening orchard, the conifer planting along the access road and the planting around the access and alongside the road. The last appeal decision was made over four years ago when much of the existing landscaping within the site was still young. Since that appeal there has been more than four years of growth and indeed since the LVIA was undertaken there has been an additional 18 months of growth which has reduced the impact of the existing development at least during the summer months. However, in winter the views would be much clearer and the development would have at least a moderate visual impact.
12. Moreover, from what I saw at my visit and the plan submitted at the hearing showing the required visibility splays, a substantial length of the existing roadside boundary particularly on the south side of the access would have to be either felled, reduced in height or cut back. Whilst it is clear that a safe access can be achieved, the necessary works would considerably open up views towards the site. Although there is sufficient space within the site for additional landscaping around the developed area that would, in time, provide some mitigation, PPTS encourages the openness of sites and any additional planting that provided full screening would not conserve the character and appearance of the AONB or overcome the significant harm which would be caused in the short term. In this case, as in the previous appeals, landscaping conditions would not mitigate the harm to an acceptable degree and should not be used to screen an incompatible development.
13. I conclude then that despite the limited visual harm from some viewpoints, in the shorter term, the significant visual harm that would result from the visibility splay necessary for a safe access together with the moderate harm to the character of the area arising from the use of the land and the presence of structures on the site would significantly harm the character and appearance of the area and the AONB. This would be contrary to local policies E1, E9 and E19 and to national policy. The development would not accord with the environmentally sustainable aspect of national policy and would fail to conserve or enhance the natural beauty of the AONB. I have, therefore, attached great weight to this harm in accordance with paragraph 115 of the Framework.

Any identified need for sites for gypsies and travellers in the area

14. PPTS identifies a national need for traveller sites and seeks to ensure that local planning authorities develop strategies to meet the need for sites in appropriate locations, to address under provision and maintain an appropriate level of supply (including a five year supply) of sites. The Council has published an assessment of need and is in the process of producing a strategy to address this need with the provision of a supply of sites.

15. At the hearing the appellant's agent accepted the need for 85 pitches until 2031 as identified in the Council's 2013 Gypsy and Traveller Accommodation Assessment (GTAA) but disagreed with its assessment of the supply of sites. The Council said at the hearing that the remaining need since its base date of April 2013 has been reduced to 72, as a result of further pitches granted permission prior to 31 March 2014 (including 9 completed and occupied pitches at Brotherhood Wood and 1 at Hursell Farm, Upchurch). It also said that it has 22 pitches in its supply (10 completed but unoccupied at Brotherhood Wood, 4 at Cricket Meadow and 8 at Orchard Park) that would meet the five year need for 21.2 pitches based on an annualised approach. That approach has not yet been considered as part of the local plan process or agreed by the Council but I have insufficient information to conclude that a different approach should be taken at this stage.
16. The appellant maintains that the additional pitches at the Brotherhood Wood site do not count towards the supply for a number of reasons. I have noted that the permission restricts the site to gypsies and travellers and although I was told that the layout is not in accordance with the approved plans, I agree with the Council that this is an enforcement issue rather than a supply issue.
17. Although the appellant says that the site is owned by an Irish Traveller and may be occupied by overseas workers (which might include Roma Gypsies and if so may increase the level of need further) and an enquiry has been made to the Council for occupation of part of the site for overseas workers, I have only limited evidence that there may be little demand for the site from the local gypsy and traveller population at some point in the future. Whilst the new government consultation document for gypsy and traveller sites which encourages provision for different groups of gypsies and travellers carries little weight at present due to its status, the Framework requires that local authorities ensure choice in the market for land. Whilst this limited evidence does not necessarily indicate a decreasing need for sites as suggested by the Council, neither does it persuade me that the site is unsuitable for any gypsies or travellers in this area.
18. The site originally had a permanent permission for 10 pitches (each with a static and touring caravan) and two transit pitches. In 2013 permission was granted for the redevelopment of the site to 7 pitches, 2 transit pitches and 22 single pitches. The permitted single pitches do not accord with the Council's definition of a pitch in its Gypsy and Traveller Site Allocations: Issues and Options document (February 2014) which forms part of the Swale Borough Local Plan: Part 2 (although that has not yet been tested as part of the local plan process) or with government guidance in 'Designing Gypsy and Traveller Sites' because the pitches do not have space for a touring caravan or individual utility area. However, that advice is for guidance only and relates to social and not private sites. Although I have been referred by the parties to an appeal decision in Doncaster (APP/F4410/A/12/268993) in which additional caravans on an existing site were counted as contributing towards additional pitches, the Council said at the hearing that those circumstances differed from this case and in the absence of further details I have assessed this case on its merits. Although the single pitches do not comply with government guidance, they nevertheless contribute towards the Council's overall supply.

19. However, it is clear to me from the information provided at the hearing that, although the Cricket Meadow and Orchard Park sites have permissions that are not personal and could be available to any gypsy or traveller, they provide additional caravans on existing pitches for existing families rather than new, separate pitches for new families. Therefore they cannot count fully towards supply.
20. As the Council is reliant on the full contribution of these three sites, I conclude that it is unable to demonstrate a robust five year supply and this carries significant weight. Despite the Council's clear progress in granting planning permissions for sites and some progress on its strategy there remains, even on the basis of its lower overall need figure, a high level of need over the plan period at 72 pitches (albeit lower than the level of need when the previous decisions were made) and this is a matter to which I also attach significant weight.

Alternative accommodation options for the appellant

21. The previous appeal decisions considered that there was scope for the appellant to secure an alternative site and the Council says that this is still the case. Following the 2010 decision, the family was unable to pursue other sites due to caring for their terminally ill son for over 2 years and subsequent bereavement in 2013. Since then their personal circumstances have changed significantly and a site elsewhere is not considered acceptable by the family.
22. Although at the hearing the Council accepted that it has no Council sites to offer the family as an alternative, it referred to its table of private gypsy sites and said that there are numerous windfall sites in the borough, some with permanent and some with temporary permissions. I accept that the Council is genuinely willing to help the family find an alternative site but from the details provided by the appellant of the Brotherhood Wood, Cricket Meadow and Orchard Park sites it seems that these would be unsuitable for and unavailable to the appellant and her family. I have not been provided with sufficient information that would lead me to conclude that other sites are available.
23. The appellant has, however, provided some recent evidence of having approached the owners of the touring caravan site at Leaveland and a couple of farms in the borough but none of these are able to offer a site.
24. The Council could offer temporary housing to the family that would meet its requirement for access to the school attended by the eldest child and hospitals attended by two of the children. Nonetheless, I heard that Joe and Bill Hilden (junior), the appellant's two sons, have never lived in a house before and that this would be culturally unacceptable to the family.
25. If the appeal is dismissed and the appellant and her family are required to leave the site, it seems likely that they would have to stop at the roadside. This would not enable adequate provision for the significant personal needs of the family, including its health and educational needs and the best interests of the children. There does not appear to be any reasonable alternative accommodation for the appellants and I have given this significant weight.

Personal needs

26. PPTS seeks to ensure the 'provision of suitable accommodation from which travellers can access education, health, welfare and employment infrastructure'. The personal circumstances of the appellant and her family are of great weight in the determination of this appeal.
27. Full details of the family's changed personal circumstances were not provided as part of the application to the Council. Since the previous appeal, the appellant's other two sons have each had families and there are now five young children living on the site, two of whom have medical conditions requiring on-going appointments in London and Canterbury. Given that these appointments are some distance away, living elsewhere in the locality would not prevent their attendance and this matter is not determinative.
28. I heard that the appellant's sons are very aware of the difficulties that result from not having a settled base and keen that their children have a good education. The eldest child attends the local school in Sheldwich and another child will follow next year. Leaving the site and living at the roadside would entail disruption to the children's education as it would be difficult to seek help from the Travellers' Education Service from there. This is an important consideration which did not form part of the previous appeal decisions or the Council's decision and which add further weight but is not determinative.
29. Most significantly, I have strongly compelling evidence from Mrs Hilden and her doctor in documents provided at the hearing and supported further by the evidence given by Mr Hilden on her behalf at the hearing, about the considerable impact that the dismissal of this appeal and leaving the site would have on her health which has deteriorated significantly following the bereavement of their son in 2013. I have no reason to doubt this professional evidence which was not challenged by the Council at the hearing. I have no evidence of any suitable alternative close to this site that would provide for this significant need which did not form part of the previous appeal decisions or the Council's decision. Mrs Hilden's health is an important and uncommon consideration which is specific to this family and adds very significant weight to this case.
30. At the hearing the Council considered that only the appellant herself has a need (which it in any case considered not great enough to outweigh the landscape harm) to remain on this particular site. In my view, the proposed development would enable the extended family to live together as a group where they are able to provide the necessary care and support for Mrs Hilden, which is an important consideration, given the difficult circumstances. This is part of the traveller way of life which PPTS seeks to facilitate and this provides some additional weight in favour of the appeal.
31. The health and education needs of the appellant and her family have increased significantly since the previous appeal decisions. They carry substantial weight in favour of the development. For the above reasons, these particular personal circumstances are compelling and the benefits of having a settled base in this location are clearly apparent. This adds substantial weight to the proposed development.

Other matters

32. The appeal site is located on the A251 along which there are bus routes to nearby towns and facilities. Whilst the appellant and her family are dependent on the car for some of their journeys, the availability of public transport in the area provides an alternative and the site constitutes a broadly sustainable location.
33. PPTS also seeks to ensure that traveller sites are economically and socially sustainable. I have noted that the appellant and her family have a small number of livestock on their land which are used to produce food for the family. Her husband sells fruit from the orchard and their two sons work locally as well as travelling for some work away. The development therefore provides a small economic contribution to the area. Despite an objection from the Parish Council and two local residents, there are ten letters from local residents in support of the development which suggests to me that the family is well integrated into the local community. It seems to me, therefore, that the proposal would also fulfil the socially sustainable aspect of national policy.
34. The previous Inspectors concluded that those proposals would not result in significant harm to the setting of Orchard Cottage, a grade II listed building opposite the site. I have had special regard to the desirability of preserving the setting of the listed building in accordance with s66 of the Planning (Listed Buildings and Conservation Areas) Act 1990. The developed area of the site is separated from Orchard Cottage by the road and orchard and so the development results in no material harm to the heritage asset or its setting.

Conditions

35. Whilst the application was for a permanent permission, the appellants have requested that a temporary permission is considered should a permanent permission be unacceptable. The previous appeal decisions both concluded that a temporary permission would not be appropriate. PPTS states that the failure to demonstrate an up to date five year supply of deliverable sites should be a significant material consideration when considering applications for the grant of a temporary planning permission. Paragraph 26 of PPTS advises that conditions can enable a development proposal to proceed where it would have otherwise been necessary to refuse permission and that planning authorities should take this into consideration.
36. For a short term permission, the balance of considerations changes. Whilst the harm to the character and appearance of the AONB would continue to have great weight, that harm would come to an end when any temporary permission expired. A temporary permission would enable the Council to continue its progress on a strategy for the identification of sites under the Swale Borough Local Plan: Part 2 which it anticipates will be adopted in early 2016 and the subsequent delivery and availability of those sites.
37. However, it would not meet the very significant personal needs of the appellant and her family or provide the future certainty that they require (this was acknowledged by the Council at the hearing) and this case differs significantly from the previous appeals in that respect. From the evidence presented to me, there is no certainty that Mrs Hilden can be treated successfully or permanently. It seems to me that the closer the appellant got in time to the

end of the planning permission the worse her health would be likely to become. For these reasons, a temporary permission would not be appropriate.

38. The Council has suggested a number of further conditions should the appeal be allowed. I have amended or combined some of these in the interests of brevity and to meet the requirements of the Planning Practice Guidance.
39. For the avoidance of doubt and in the interests of proper planning a condition specifying the amended plan is necessary. A personal condition is necessary as the appellant's and her family's personal circumstances weigh heavily in the balance of a grant of permission. Although the family's status is not disputed, a condition to tie the occupation of the land to gypsies and travellers is necessary as this could change in the future.
40. To protect the character and appearance of the area and the AONB, the following conditions are necessary: the limiting of the number of caravans on the site to four; a site development scheme, including the site layout, the access, details of foul drainage, landscaping and lighting; the restriction of commercial activities and larger commercial vehicles on the site. I have also added a condition for restoration of the site following the cessation of the personal use.

Conclusion

41. I have found that significant environmental harm would be caused by the development in terms of the character and appearance of the area and the AONB and have accorded this great weight. The proposal does not, therefore, constitute sustainable development. However, the strongly compelling personal circumstances of the appellant and her family carry substantial weight which together with the significant weight attached to each of the following matters: the identified need for gypsy and traveller sites in the area and the lack of reasonable alternative accommodation in the area, outweigh that harm.
42. Article 3 of the United Nations Convention on the Rights of the Child requires a child's best interests to be a primary consideration. Article 8 of the European Convention on Human Rights requires that decisions ensure respect for family and private life. Dismissing the appeal would be likely to result in the direct loss of the homes of the appellant and her immediate family. Dismissing the appeal will force the appellant and her family, none of whom have their own permanent, individual base elsewhere, to adopt an itinerant lifestyle. This would represent an interference with the best interests of the five children referred to earlier and with the family's home, their family life and their livelihoods, and this adds further weight in favour of the appeal. Having regard to the balance of considerations outlined above and the effect of the proposal upon the public interest, I conclude that dismissal of the appeal would have a disproportionate effect upon the rights of the children under Article 3 of the United Nations Convention on the Rights of the Child and the rights of the families under Article 8 of the European Convention on Human Rights. For the reasons given in my consideration of the grant of a permanent planning permission I find that the appropriate balance would be struck between the rights of the individuals and the protection of matters of acknowledged public interest by the grant of a permanent permission such that the action would not be disproportionate and would not result in a violation of the occupiers rights.

43. I have taken into account all other matters raised and the content of the government's new Planning Practice Guidance but in light of the facts in this case they do not alter my conclusion.

44. For the reasons stated above, the appeal should be allowed.

Sarah Colbourne

Inspector

APPEARANCES

FOR THE APPELLANT:

Mrs A Heine	Agent
Mr Bill Hilden	Appellant's husband
Mr Bill Hilden (junior)	Appellant's son
Mr Joe Hilden	Appellant's son

FOR THE LOCAL PLANNING AUTHORITY:

Mr G Thomas	Area Planning Officer
Claire Dethier	Planning Officer

DOCUMENTS

1. Heine Planning Consultancy: Lenny Howard, Newington Assessment of Need, Council's Response and Appeal Decision (APP/F4410/A/12/2168993). (Submitted by the Council).
2. Heine Planning Consultancy: Swale Assessment of Need. (Submitted by the appellant).
3. Table of private gypsy sites in Swale as at October 2014.
4. Planning permission details: SW/13/0137 02092 (Brotherhood Wood); SW/14/0184 10480 (Cricket Meadow); SW/13/1373 21085 (Orchard Park)
5. Gypsy and Traveller Site Allocations: Issues and Options, The Swale Borough Local Plan: Part 2.
6. Letters dated 2/6/14 John Clinch, Syndale Farm; 3/6/14 R Butler; 9/5/14 T A Darby, Monks Cottage Caravan Park.
7. Letters dated 13/6/14 and 24/9/14 Newton Place Surgery.
8. Letter dated 7/10/14 Pam Hilden.

PLANS

1. Proposed site layout plan, scale 1:200
2. Visibility splay, drwg no 08_242_LV\A09

Schedule of conditions:

- 1) The occupation of the site hereby permitted shall be carried on only by the following and their resident dependants: Pam Hilden, William (Bill) Hilden (senior), Bill Hilden (junior), Sam Hilden (nee Johnstone), Joe Hilden and Kelly Hilden (nee Vine).
- 2) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1 of DCLG '*Planning policy for traveller sites*'.
- 3) When the land ceases to be occupied by those named in condition 1 above, the use hereby permitted shall cease and all caravans, structures, materials and equipment brought on to the land, or works undertaken to it in connection with the use shall be removed and the land restored to its condition before the development took place.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plan: Proposed Site Layout plan, scale 1:200.
- 5) No more than four caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than one shall be a static caravan) shall be stationed on the site at any time. The static caravan shall only be positioned as approved on the Proposed Site Layout plan.
- 6) No commercial activities other than agriculture shall take place on the land, including the storage of materials, plant, products or waste and no vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.
- 7) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
 - i) within 3 months of the date of this decision a scheme for: the internal layout of the site, including the siting and surfacing details of the hardstanding, parking and amenity areas; the means of access to the site including road width, kerb radii, visibility splays and details of surfacing materials; the means of foul water drainage of the site; the means of landscaping of the site; a schedule of maintenance for a period of five years of the proposed planting beginning at the final phase of implementation as required by that part of this condition, the schedule to make provision for the replacement, in the same position of any tree, hedge or shrub that is removed, uprooted or destroyed or dies or, in the opinion of the local planning authority, becomes seriously damaged or defective, with another of the same species and size as that originally planted. The maintenance shall be carried out in accordance with the approved schedule; proposed external lighting on the boundary of and within the site; (hereafter referred to as the site development scheme) shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for its implementation.
 - ii) within 11 months of the date of this decision the site development scheme shall have been approved by the local planning authority or,

- if the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
- iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted site development scheme shall have been approved by the Secretary of State.
 - iv) the approved scheme shall have been carried out and completed in accordance with the approved timetable.

End of conditions.

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Appeal Decision

Site visit made on 23 December 2014

by **A Banks BA(Hons) DipUD PGCM MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 6 January 2015

Appeal Ref: APP/V2255/A/14/2226837

18 Bayford Road, Sittingbourne, Kent ME10 3AD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs Jean Straight against the decision of Swale Borough Council.
 - The application Ref SW/14/0146, dated 6 February 2014, was refused by notice dated 5 September 2014.
 - The development proposed is demolition of rear barn, garage block & covered ways, together with the side conservatory structures, with the construction in lieu of 2 No. proposed houses, both attached to the current site dwelling to create a terrace, the construction of a rear single-storey extension to the current site dwelling & the undertaking of all external works associated with the development, including bin storage space and some off-road car parking.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mrs Jean Straight against Swale Borough Council. This application is the subject of a separate Decision.

Preliminary Matter

3. No representative for the Council attended the site visit. With the agreement of the appellant I therefore conducted the site visit unaccompanied.

Main Issues

4. The main issues are the effect of the proposed development:
 - on the living conditions of the occupiers of No 22 Bayford Road, with particular regard to sunlight and outlook; and
 - on highway amenity and safety.

Reasons

Living conditions

5. No 22 Bayford Road is the northern neighbour of the appeal property. In part its southern elevation runs immediately along the boundary with the appeal site and in part it steps slightly inwards away from the boundary. A number of windows are located within this southern elevation facing towards the appeal site. Most are located in the part of the dwelling that is slightly further away
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from the boundary. One, which I saw is the only window serving a bedroom, is located within the elevation that is on the boundary.

6. The proposal would result in a new dwelling between No 22 and No 18, the existing dwelling on the appeal site. Similar to No 22, the proposed new dwelling would feature a dog leg shape. But it would not mirror that of No 22, as at its closest point the proposal's northern elevation runs further back along this boundary. The appellant has not contested the Council's estimation that in respect of this part of the proposal the new dwelling would only be 1.6m away from the boundary. This part is two-storey and I consider its proximity and position to the south of No 22 would prevent sunlight to the only window which serves a bedroom in this location. In addition, I consider it would also reduce light to the next door bedroom in No 22 which has an east facing window. It would thus turn two habitable rooms into dark and gloomy spaces. In my opinion, the photos showing the shadow created by the existing development at the appeal site supports this consideration.
7. Whilst I acknowledge that there are examples of other dwellings in the street where the gaps between buildings are narrow, I did not notice any that also had windows within them. To this end I consider that the proximity of the proposal would also have an overbearing and oppressive impact in terms of outlook for the occupiers of No 22.
8. Consequently I conclude that the proposed development would adversely harm the living conditions of the occupiers of No 22 Bayford Road, with particular regard to sunlight and outlook. Therefore it would be contrary to Saved Policy E1 of the Swale Borough Local Plan 2008 (LP) and the National Planning Policy Framework insofar as these seek to pursue good design and a good standard of amenity for all existing occupants.

Highway safety

9. Bayford Road is a narrow no-through road. There are few parking restrictions in the street and most properties have no off-road parking provision. Therefore the proposed development would not be very different to many of the properties in the road. When I visited the site, late morning on a week day, I saw that most of the road was taken up with parked vehicles on both sides. I acknowledge that this may cause an inconvenience for residents and other road users, including larger service and emergency vehicles. However, I consider that the proposal would not make a significant difference to the current situation. Added to this the site is in an accessible location, not far from the town centre and other facilities and I note that the Highway Authority has confirmed it has no objections.
10. I conclude that the proposed development would not result in unacceptable highway amenity or safety concerns, contrary to LP Saved Policy T3 which seeks appropriate parking provision. However this does not outweigh the harm I have found regarding the impact on the living conditions of the occupiers of No 22 Bayford Road.

Other matters

11. I have considered the other concerns raised by residents, including the loss of a historic barn, bats, noise, security, privacy, maintenance, dust and debris and foundation disturbance during demolition and construction. But, based on

the information before me, these matters would not constitute reasons to dismiss the appeal.

12. The appellant claims that the removal of the commercial use and existing large buildings on the site would have significant benefits. A matter that was given weight by the officer in the committee report when considering the impact of the proposal on the living conditions of the occupiers of No 22 Bayford Road. The removal of the buildings, which are in a dilapidated condition, would improve views of the site from surrounding properties. However, as the photographs sent in by the neighbour indicate, the current buildings have little impact on their property's levels of sunlight. Furthermore I have insufficient information to determine that a commercial use would be particularly, or more, harmful. Therefore I give little weight to this argument.

Conclusion

13. For the above reasons and taking account of all matters raised, I therefore conclude that the appeal should be dismissed.

A Banks

INSPECTOR

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