

AGENDA

PLANNING COMMITTEE MEETING

Date: Thursday, 19 February 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

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- Pages
1. Apologies for Absence and Confirmation of Substitutes
 2. Minutes

To approve the Minutes of the Meeting held on 29 January 2015 (Minute Nos. 455 - 462) 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. Report of the Head of Planning

1 - 144

To consider the attached report (Parts 1, 2, 3, 4 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 18 February 2015.

Issued on Wednesday, 11 February 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

SWALE BOROUGH COUNCIL

PLANNING SERVICES

Planning Items to be submitted to the Planning Committee

19 FEBRUARY 2015

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DEFERRED ITEMS Items shown in previous Minutes as being deferred from that meeting may be considered at this meeting

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PART 2 Applications for which permission is recommended

PART 3 Applications for which refusal is recommended

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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- Deferred Items
- Minutes of any Working Party Meetings

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Part 2

2.1 Pgs 18-25	<u>UPCHURCH</u>	SW/14/0423	R/O 124 Chaffes Lane
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2.2 Pgs 26-37	<u>LEYSDOWN</u>	14/503846	349-355 Leysdown Road
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2.3 Pgs 38-48	<u>SITTINGBOURNE</u>	14/503470	Magistrates Court, 1 Park Road
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2.4 Pgs 49-64	<u>BOBBING</u>	14/505985	Howt Green, Sheppey Way
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2.5 Pgs 65-68	<u>TUNSTALL</u>	14/503907	2 Ruins Barn Road
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2.6 Pgs 69-78	<u>SITTINGBOURNE</u>	14/505359	Former Development Site Kemsley Area B, Swale Way
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2.7 Pgs 79-88	<u>FAVERSHAM</u>	14/505307	Mombasa, Whitstable Road
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2.8 Pgs 89-96	<u>OSPRINGE</u>	14/500986	Brogdale Farm, Brogdale Road
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Part 3

3.1 Pgs 97-100	<u>SITTINGBOURNE</u>	14/504392	Sittingbourne Methodist Church, High Street
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3.3 Pgs 106-113	<u>EASTLING</u>	14/503559	Land R/O Cheriton, Otterden Road
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Part 4

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SW/14/0362

Land at Blind Mary's Lane

**5.2
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DARGATE

Evaluna, Plum Pudding Lane

REFERENCE NO - SW/14/0124		
APPLICATION PROPOSAL Variation to clause 5.1.1 of Section 106 Agreements dated 1997 and 2005 which restrict the use of the lower ground floor to B1 (business) use.		
ADDRESS Former Upper Brents Shipyard, Upper Brents, Faversham, Kent, ME13 7DZ		
RECOMMENDATION – The planning obligations shall continue to have effect without modification		
SUMMARY OF REASONS FOR RECOMMENDATION/REASONS FOR REFUSAL 1) Would result in incompatible mix of residential and industrial uses causing mutual conflict 2) Adverse effect on character of Faversham creekside		
REASON FOR REFERRAL TO COMMITTEE Variation of a section 106 agreement		
WARD Davington Priory	PARISH/TOWN COUNCIL Faversham	APPLICANT Waterside Residents Association Ltd AGENT Nicholas Kingsley Smith
DECISION DUE DATE 3 rd April 2014	PUBLICITY EXPIRY DATE 20 th March 2014	
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):		
App No	Proposal	Decision
SW/96/0031&0032	Erection of 31 business units with associated residential accommodation and 2 support units	Refused on 6 grounds (full reasons given later in the report) 1) relating to incompatible mix of residential and industrial use 2) relating to residential development not being in accordance with local plan policy 3) Adequate land available for housing growth in Faversham elsewhere 4) Lack of public open space and private amenity required for residential properties 5) Highway safety 6) Highway safety
SW/96/647&648	Erection of 27 business units with associated residential accommodation and 2 support units	Refused on 6 grounds (full reasons given later in the report) 1) relating to incompatible mix of residential and industrial use

ITEM 1.1

		2) relating to residential development not being in accordance with local plan policy 3) Adequate land available for housing growth in Faversham elsewhere 4) Lack of public open space required for residential properties 5) Highway safety 6) Inadequate security or natural surveillance to detriment of crime prevention	
SW/97/202&203	25 business units with associated residential accommodation, two support units and two B1 units	Approved subject to the legal agreement the subject of this proposed variation	
SW/00/1235	Revision to approved layout of units 1, 18 and 20 to 29 to provide 11 business units with associated residential accommodation and one B1 use unit, and associated highways/parking.	Approved subject to an additional legal agreement covering changes to layout etc, also subject of this proposed variation	

1.0 DESCRIPTION OF SITE

- 1.01 Waterside Close is a small development of twenty-one “business units with associated living accommodation” located on the northern bank of Faversham Creek on the creekside frontage part of the former Upper Brents shipyard. To the north, Waterside Close immediately abuts the Upper Brents industrial estate and to the south, Faversham Creek. To the west is Faversham Reach, an earlier development of similar live work units.
- 1.02 The development was granted planning permission originally in 1997, and then an amended scheme for part of the site was approved in 2005. These two planning permissions jointly approved the scheme built today. The approved schemes include a further five un-built business units with associated living accommodation at the northern end of the site, together with a three storey solely B1 building at the (southern) entrance of the site. Whilst none of these units have been built the permissions have been commenced and they could be completed at any time.

- 1.03 The site lies adjacent to the remainder of the former shipyard which benefits from a 1980 Established Use Certificate for a shipyard, a general industrial use, without limitations in terms of noise or hours of work. Much of this area has since been redeveloped. For those areas of the former shipyard closest to its entrance and thus closest to established residential areas on Upper Brents, the Council has for many years sought to minimise harm to amenity by approving new B1 Business uses at this end of the area. However, further from the shipyard entrance noisier uses have normally been permitted and significant open areas close to the boundary with Waterside Close have not been redeveloped and still retain their unfettered General Industrial use rights.

2.0 Background

- 2.01 As can be seen from the summary information above, the proposal for partly residential re-development at what is now Waterside Close was refused planning permission twice before planning permission was granted in 1997 alongside one of the section 106 agreements to which this application for variation relates. This was at a time when the first refusals were heading for appeal inquiries and the boatyard on the site was in financial trouble. The aim of the approval was to reinvigorate the employment value of the site, and overcome the Council's concerns over the residential bias of previous schemes.

- 2.02 The reasons for refusal stated for the first 1996 scheme were as follows:

"The application site is located in close proximity to an area of existing B2 general industrial uses and the proposed business units would be accommodated in new buildings with a high proportion of residential use. The proposal would therefore result in an incompatible mix of residential and industrial uses contrary to policy E2 of the Swale Borough Local Plan (deposit draft) which, inter alia, seeks to minimise the impact of noise between new and existing uses.

1. In the Council's opinion, the residential element of the proposed development is by far the major part of the development. The development would therefore conflict with Policy 3.2E of the Faversham Local Plan 1982 which, inter alia, states that industrial or commercial (but not retailing) development will normally be permitted on the site and Policy B17 of the Swale Borough Local Plan (deposit draft) which states, inter alia, that employment development will normally be permitted at the shipyard.

2. In the Council's view adequate land is available for development at present to permit the continuation of a moderate rate of housing growth in Faversham in accordance with the objectives of the local plan. The redevelopment of this land in the manner proposed would therefore conflict with the objectives of the local plan and the Kent Structure Plan of restraining growth at Faversham in order to protect its historic character.

3. The proposed development relates primarily to a residential land use, but it would provide an unacceptable low level of residential amenity by reason of the extensive and unrelieved vehicle parking areas in front of the units, the lack of adequate private amenity areas for the family sized dwellings and the lack of adequate public open space which accords with Policy R5 of the Swale Borough Local Plan (Deposit Draft).

4. *In the opinion of the District Planning Authority the proposed junction between the site access and Faversham Reach without improvement will increase potential for vehicular conflict to the detriment to highway safety.*

5. *The geometric layout of the road which serves 34 business units and associated residential accommodation does not meet highway design standards and is therefore likely to increase the risk of accidents to the detriment of highway safety.”*

2.03 The reasons for refusal stated for the second 1996 application were as follows:

“ 1. The application site is located in close proximity to an area of existing B2 general industrial uses and the proposed business units would be accommodated in new buildings with a high proportion of residential use. The proposal would therefore result in an incompatible mix of residential and industrial uses contrary to policy E2 of the Swale Borough Local Plan (deposit draft) which, inter alia, seeks to minimise the impact of noise between new and existing uses.

2. In the Council’s opinion, the residential element of the proposed development is by far the major part of the development. The development would therefore conflict with Policy 3.2E of the Faversham Local Plan 1982 which, inter alia, states that industrial or commercial (but not retailing) development will normally be permitted on the site and Policy B17 of the Swale Borough Local Plan (deposit draft) which states, inter alia, that employment development will normally be permitted at the shipyard.

3 In the Council’s view adequate land is available for development at present to permit the continuation of a moderate rate of housing growth in Faversham in accordance with the objectives of the local plan. The redevelopment of this land in the manner proposed would therefore conflict with the objectives of the local plan and the Kent Structure Plan of restraining growth at Faversham in order to protect its historic character.

4 The proposed development relates primarily to a residential land use, but it would provide an unacceptably low level of residential amenity by reason of lack of adequate public open space which accords with Policy R5 of the Swale Borough Local Plan (Deposit Draft).

5 In the opinion of the District Planning Authority the proposed junction between the site access and Faversham Reach without improvement will increase potential for vehicular conflict to the detriment to highway safety.

6 The proposed units, by reason of their siting and orientation, would provide inadequate security for their occupants or natural surveillance of the proposed creekside public footpath, to the detriment of crime prevention.”

2.04 The amendments contained within the third (approved) proposal (1997) sought to overcome these reasons for refusal and included the following;

- Reduction in the number of units and the introduction of two additional units exclusively for B1 employment use
- Significant increase in proportion of B1 to residential floorspace to more than 40%
- Highway, security, open space and footpath improvements

NOTE: B1 Use refers to “Business” Use as defined in the Town and Country Planning (Use Classes) Order 1987 (as amended) which is for use as “Offices (other than those that fall within A2), research and development of products and processes, light industry appropriate in a residential area” It is thus specifically compatible with a residential area.

- 2.05 The applicant’s agent stated in the application papers relating to the 1997 approved scheme;

“we are aware that despite our efforts to promote this scheme as primarily one for economic development combining B1 workspace with associated residential accommodation, the Council has viewed the development as primarily a residential one”.

“The live and work units can be financed with normal residential mortgages, a fact which assists with the individual businesses viability.”

“The ground floor work areas will be business rated and my clients are prepared to enter into a Section 106 agreement to ensure that the ground floor commercial floorspace of the business/ residential units is restricted to B1 use and not used for residential purposes.”

- 2.06 The 1997 Section 106 agreement included several clauses aimed at promoting the site as a place of business, and of promoting the creekside as a business location. The part that this variation seeks to alter states at clause 5.1.1, where the words “Business Units” means the ground floor areas of the properties excluding hallways, stairwells etc. Units 18 and 19 were at that time approved solely as B1 use units;

“The use of the Business Units and of the buildings comprised in the Development numbered 18 and 19 on the Application Plan shall be restricted to purposes within Class B1 of the Town and Country Planning (Use Classes) Order 1987 as amended together with any ancillary uses relating thereto”.

- 2.07 A further section 106 agreement was entered into in 2005 following a planning application to revise the layout (SW/00/1235). Here Unit 1 was a replacement B1 only block to replace Units 18 and 19 in the earlier scheme. This legal agreement also stated at clause 5.1.1;

“The use of the Business Units and of the buildings comprised in the Development known as Application A under reference SW/00/1235 and shown as Unit 1 on the Application Plan shall be restricted to purposes within Class B1 of the Town and Country Planning (Use Classes) Order 1987 as amended together with any ancillary use relating thereto”

- 2.08 The section 106 agreements also provide that the ground floor areas cannot be used for B1 use other than by the occupiers of the residential accommodation above.

- 2.09 It is worth noting that the arrangement of the units with B1 use on the ground floor and residential use above neatly overcame concerns over flood risk at the time, and that floor levels were controlled by the planning permissions to minimise flood risk.
- 2.10 It is also worth remembering that in view of the Established Use Certificate rights on adjacent land the layout and design of the Waterside properties is very specifically designed. Features of the design intended to minimise conflict between the uncontrolled area and new properties containing living spaces include gardens shielded from noisy areas by the units themselves, most bedrooms facing away from the uncontrolled areas, and the single (smallest) bedroom facing that way being triple-glazed. There is also a high acoustic fence between the two areas to minimise impact on amenity. All these features are built in to the Waterside Close scheme as a way of recognising the potential for a new form of mixed-use unit to be built in what was effectively a potentially very noisy area where ordinary residential use would not be acceptable.

3.0 PROPOSAL

- 3.01 This application seeks to vary the two section 106 agreements which affect the business units with associated residential use in Waterside Close which were entered into in 1997 (between Larchline Limited & Swale Borough Council) and 2005 (between Swale Borough Council, Propan Properties Limited and the individual owners of the six then completed properties built on the basis of the 2005 application). Whilst the agreements contain several clauses, the specific part of the agreements that the residents wish not to comply with is the requirement for exclusively B1 use of the ground floor areas of their properties. They wish to amend the agreements to allow a flexible use of either B1 “Business” or C3 “Dwellinghouses” use so that the whole building can be used for residential purposes, or as currently approved with B1 use on the ground floor and residential use above.
- 3.02 The applicants have proposed the following amended clause;

“the use of the business units and of the buildings comprising in the development numbered 18&19 on the application plan shall be restricted to purposes within class B1 and class C3 of the Town and Country Planning (Use Classes) Order 1987 as amended together with any ancillary uses relating thereto provided that any C3 use of the ground floor shall exclude sleeping accommodation.

This suggestion is out of date in respect of Units 18 and 19 which were never built, but the intention for both business and residential use options on the ground floors is nevertheless clear.

- 3.03 The applicants’ case is that recent changes in legislation and national planning policy, including new permitted development rights for change of use from offices to residential use, and the NPPF’s aim of sustainable development, mean that flexible use of the ground floor areas is now in line with current thinking and will make better use of this brownfield site, especially as only two

of the units have the ground floors in current business use. It is also said that the mixed use restriction makes mortgages difficult and that the variation to the section 106 agreements will assist with this problem.

- 3.04 The application was accompanied by letters from local estate agents seemingly responding to a question regarding whether they get many enquiries or requests for properties involving a mix of live and work unit. All appeared to generally be saying no.

4.0 PLANNING CONSTRAINTS

Faversham conservation area

Flood Zones 2 & 3

Swale Borough Local Plan 2008 E13 - Coastal Zone & Undeveloped Coast

Swale Borough Local Plan 2008 AAP2 - Area Action Plan, - Faversham Creekside

5.0 POLICY AND OTHER CONSIDERATIONS

- 5.01 The legislative position regarding section 106 agreements and modifications of them is set out within the Town and Country Planning Act 1990.

- 5.02 The National Planning Policy Guidance (NPPG) explains;

“Planning obligations mitigate the impact of unacceptable development to make it acceptable in planning terms”. In order to be used, a planning obligation must “meet the tests that they are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind.”

- 5.03 Upon receipt of a valid application to vary or modify a section 106 agreement, the local planning authority must consider whether the obligation(s) contained in the section 106 agreement still serves a "useful purpose". In making such a determination, the local planning authority can reach one of three conclusions:

- that the planning obligation shall continue to have effect without modification;
- that the obligation no longer serves a useful purpose, in which case the local planning authority shall discharge it; or
- that the obligation continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application, in which case it shall have effect subject to those modifications.

- 5.04 Guidance from the Secretary of State (in the now-cancelled circular 05/2005) previously stated that the phrase "useful purpose" should only be considered

within the context of land-use planning. There has been no updated guidance in this respect.

5.05 The National Planning Policy Framework (NPPF)

5.06 The NPPF sets out the national policy position for determining planning applications. In this case, it is also relevant in determining whether the legal agreements still serve a useful purpose. The golden thread running through the NPPF is the encouragement of sustainable development which has three threads to it – an economic, social and environmental role. The NPPF also encourages mixed use developments recognising the multiple benefits that can be achieved and facilitate flexible working practices such as the integration of residential and commercial uses within the same unit.

5.07 Swale Borough Local Plan 2008:

E1 – General Development Criteria
E15 - Development affecting a conservation area

Policy B1;

B1 – Supporting and retaining existing business uses is particularly relevant in this case. It states;

“Land and buildings currently in employment use will be retained for that use unless it is:

- a. inappropriately located for any employment use, and having an unacceptable environmental impact in an area; or*
- b. demonstrated by expert advice that the site is no longer suitable for any employment use; or*
- c. demonstrated by market testing that there is insufficient demand to justify its retention for any employment use; or*
- d. allocated in the Plan for other purposes.*

In cases involving a change of use or redevelopment for residential purposes, the Council will additionally require proposals to: (a) demonstrate, by reference to 1a) to d) above, that a mixed use approach to the site, involving a viable level of replacement or alternative employment provision, is not appropriate; and (b) that there is no conflict with Policy SH1.”

Policy AAP2

In addition the site is located within the Area Action Plan (AAP)2 relating to Faversham Creekside. Policy AAP2 states;

“Planning permission will not be granted for proposals that would result in the loss of land or buildings suitable for employment uses or, on appropriate sites, would not involve active use or management of the creek itself. All development proposals will:

1. *maintain or enhance a mix of uses and activity that respect the maritime, industrial and residential character, as appropriate to the varied parts of the AAP area”*

Policy FAV1 deals specifically with the Faversham area, which the Local Plan recognises is quite different from the rest of the Borough which is defined as the Thames Gateway area. FAV1 explains;

“Within the Faversham and Rest of Swale Planning Area, conservation of the historic and natural environment is the prime and overriding consideration. Within this context, the Borough Council will enhance the role of the market town to support its own local needs and those of its rural hinterland. This will be achieved by promoting development proposals that can retain and harness local skills to achieve a greater diversity in employment, housing and community life, in scale and character with Faversham and its surrounding countryside and communities. Within this planning area, within the identified Area Action Plans and elsewhere, the following planning priorities will be pursued:

1. *to set scales of development that reflect local needs and environmental character to achieve a better balance between the population and employment opportunities alongside a reduction in commuting to other areas;*
2. *to retain and improve existing employment land and buildings that would otherwise exacerbate the population and employment imbalance if lost to housing development;*
3. *to safeguard and enhance the diversity of Faversham's small-scale historic character and its maritime traditions, alongside that of its surrounding countryside, landscape and communities;*
4. *to enhance Faversham creek and creekside so that it functions as a place of special interest and activity with strong associations with the water;*
5. *to raise the standard of the environment through high quality design, and the protection, enhancement, and management of environmental resources, including the creation of a network of accessible open spaces (a green grid);*
6. *to support proposals that can meet as much of Faversham's development needs as possible from land and buildings within the existing urban area so as to minimise greenfield land development;*
7. *to provide for employment development, at a scale appropriate to the environment, on sites well related to the communication network, the existing urban framework and rural settlements;*
8. *to support and diversify the services and activities, including tourism, in Faversham town centre so as to enhance its economic health;*
9. *where appropriate, to promote rural sites and initiatives for employment and protect and improve rural services and facilities, to diversify the rural economy and support the role of the market town;*
10. *to effectively manage the risk of flooding; and*
11. *avoiding any significant adverse environmental impacts, and where possible, enhancing the biodiversity interest of internationally designated sites for nature conservation.”*

Faversham Creek Neighbourhood Plan

The Faversham Creek area is the subject of advanced preparation of a Neighbourhood Plan. The emerging Swale Borough Local Plan recognises the importance of this and states;

“The Creek at the heart of Faversham. Faversham Creek is leading the regeneration of the town; a place where we can celebrate its rich history and attractive appearance; a place where we enjoy spending time, both on and off the water; a place where boats, residents and visitors want to be. A place where developments integrate the needs of people and nature and where its distinctive character and identity is rooted in its traditional industries and enriched by new businesses.”

Neighbourhood Plan policy NP1 – Faversham Creek Neighbourhood Plan states;

“Within the Faversham Creek Neighbourhood Plan area, as shown on the Proposals Map, priority will be given to the regeneration of Faversham Creek by retaining maritime activities (including the retention and improvement of wharfs and moorings, including for large craft) with complementary redevelopment opportunities for workshops/business uses, residential, small scale retail and restaurant uses. Where relevant, development of the area will:

- *Accord with the Neighbourhood Plan (once it has taken effect);*
- *Provide for the restoration of and enhancement to the settings of listed and other important historic buildings;*
- *The protection of open space and nature conservation interests and upgrading of the public realm;*
- *Navigation improvements to the Creek (subject to appropriate mitigation of the impacts on the adjacent International Designations and the Shellfish Waters);*
- *The provision of a publicly accessible creekside walkway;*
- *High quality designs which respect their context;*
- *Proposals which are acceptable in terms of flood risk; and*
- *The remediation of contaminated sites.”*

The submission draft of the Neighbourhood Plan recognises that;

“Loss of local employment, together with relatively low property prices and a high-speed rail link to London, have led to an increase in out-commuting. There are also areas with low income, low skills and high unemployment, one of which is adjacent to the Creek (Davington Priory Ward, which includes the Brents area)”

“Other sites within the area are NOT being considered for redevelopment/change of use, on the grounds that they have already been redeveloped, are in active use for employment, or are open spaces and natural areas of heritage, environmental and community value. These are:

- *Recent residential and live-work unit development at Waterside Close, Faversham Reach, Provender Walk, Belvedere Road, Belvedere Close and Goldings Wharf*

Adding vitality to the area

“The vitality of the creekside area has declined over recent years with the closure of employment sites and the increase in private housing development. There are opportunities to reverse this trend with improved access, including footpaths and additional moorings, and new activities and amenities, encouraging and enabling greater use of the area by local residents and attracting revenue-generating visitors.”

Generating economic growth

“Bringing existing buildings back into use, and new business and residential developments, could enable the creekside to make a greater contribution to Faversham’s economy. The intention is to encourage existing businesses to remain in the area, the development of additional employment capacity, particularly for light industrial activities and workshops/studios for crafts and creative activities, and facilities for training and apprenticeships.”

“Create living and working environments that respond to the Creek’s rich and outstanding maritime heritage, the demands for high-performing standards of sustainable development, whilst supporting existing businesses and their aspirations”.

6.0 LOCAL REPRESENTATIONS

6.01 None

7.0 CONSULTATIONS

7.01 Faversham Town Council say that they are unable to comment without a clearer understanding of the implications of altering the S106 agreement.

7.02 Natural England raises no objection but recommends the Council refer to their standing advice in respect of protected species.

7.03 The Environment Agency has considered the applicants’ Flood Risk assessment and raises no objection, but recommends a condition requiring the development to only be carried out in accordance with submitted flood risk assessment which details no sleeping accommodation at ground floor.

7.04 The Council’s Economy and Community Services Manager had concerns regarding the potential loss of employment space and made enquiries regarding the potential for the units to be occupied by other businesses independent from the residential accommodation. However, these enquiries resulted in the conclusion that this would not be possible, with shared access

and no separate metering for utilities. He considers that whilst in theory this could be addressed it is highly likely that the cost of doing so would render any such consideration impractical. Therefore, with the occupation of units restricted to business use by those occupying the associated residential accommodation he considers that, in reality, there will be little impact from this proposal on the use of the space and thus upon employment in the town.

7.05 However, he has raised concern about the ongoing potential for conflict between long-term existing businesses and residents of the scheme. Such conflict is impacting upon individual businesses perception of the area and may threaten the opportunity to retain businesses and/or future investment.

7.06 The Council's Environmental Health Manager has commented as follows;

"Thank you for the opportunity to comment on the above application.

The application seeks to vary the section 106 agreements which if approved would allow use of the lower ground floor of properties in Waterside Close for residential purposes.

Consideration to the original design layout and orientation of these properties was given to take account of the potential impact of noise from the adjoining industrial estate.

Properties in Waterside Close share a boundary with a long established industrial estate and one where this department has been recently involved in dealing with a complaint from residents of excessive noise from a general industrial use on the adjacent site.

When assessing the significance of the impact of noise from the industrial estate account is taken of a number of factors including local attitudes to the source of the sound and the overall character of the neighbourhood.

In my view this proposal could effectively significantly alter the characterisation of this development from business units with associated residential use and potentially the tolerance of future residents to the noise generated by the neighbouring industrial estate.

I am therefore unable to support this application."

8.0 APPRAISAL

8.01 In the determination of this case, Members must consider why the section 106 agreements were entered into in the first place and whether that part which the applicants seek to vary still serves a useful purpose today. In the absence of any recent Government or legal advice, I would advise Members that useful purpose means in terms of the context of land-use planning. As explained earlier in the report, development of this site was very carefully considered by the Council over a series of planning applications in the late 1990s when the Council had serious concerns about the type of accommodation being

proposed and its impact on loss of employment potential at the site. The Council was also concerned about the impact that a residentially based scheme could have on existing nearby businesses in respect of amenity due to noise and conflict with Local Plan policy at the time in respect of the area being identified for industrial or commercial development. These concerns formed reasons for refusal (amongst others) in the first two schemes considered on the site. As a direct result of these refused planning applications, a third application sought to overcome these (and the other) reasons for refusal, and the applicant offered to enter into a legal agreement which offered comfort to the Council that the ground floors of all the mixed use properties would be safeguarded for B1 use, with other units in exclusively B1 use. It is quite clear that the Council felt strongly at the time that purely residential development on this site was not appropriate, neither in terms of mutual impact on existing businesses nor on proposed occupiers. It was also the case that the Council felt that the Creekside area ought to retain its commercial and industrial identity, and that purely residential uses here would dilute that character.

8.02 That was over seventeen years ago (although the terms of the legal agreements were reaffirmed ten years ago) and there has been quite significant changes in national and regional policy, a new Local Plan adopted and one currently emerging. It is therefore important to consider whether those changes render the aims of the clauses in question no longer useful, and whether the change in policy has brought in additional considerations that the agreements may help to protect.

8.03 Members will also note that the design of the approved schemes sought to minimise flood risk as it was understood at that time, although the applicants' recently produced Flood Risk Assessment has satisfied The Environment Agency on this point. I do not consider that flood risk should be a factor in the decision on this matter.

8.04 Concerns raised by the Council historically

8.05 With regards to the impact on existing businesses, the position does not appear to have significantly changed. At the time of the original applications, the Council was concerned about a possible conflict between the existing business uses within the Upper Brents Industrial Estate, which immediately abuts the site, and new residential accommodation. It was felt at the time that the unrestricted General Industrial uses contained within the industrial estate would not be compatible with a full residential use of the buildings, and as a direct result the scheme was amended to ensure the B1 part of the units was a significant part of the floorspace of the buildings so that they were in fact business units with living accommodation, not residential buildings with ancillary business uses. The logic behind this is that the units are approved as business units where the people running them live above. The Council considered that in situations such as that, where the residential use is a component in the overall use of a building and the businesses are run and the accommodation lived in by the same occupiers, some business noise and impact from a non-residential use could be accepted and tolerated. However, this same level of tolerance would not reasonably be expected from residents of

a purely residential area, who have a right to normal standards of residential amenity, away from noisy and potentially smelly industrial uses. I consider this concern is just as valid today as it was when the agreements were entered into. This is a concern that has been raised by the Council's Economy and Community Services Manager and the Environmental Health Manager.

- 8.06 It is also relevant to note that even recently there have been complaints raised by residents within the Waterside Close area to the Council of noise problems from proposed commercial uses on the other side of the creek, and to noise from MME engineering in the former shipyard area. MME engineering is an established and successful B2 General Industrial use which abuts the boundary with the undeveloped part of the Waterside Close site. The business is a provider and key supporter of local employment, with many employees walking to work from the surrounding area. Members may also wish to note that MME has unrestricted operating hours for its B2 use and the operations could be intensified and hours extended without the need for a planning permission. More worrying indeed is the prospect of the remaining five approved mixed-use units being completed in a position immediately adjacent to the very part of the former shipyards that retains its unfettered General Industrial use (adjacent to MME Engineering), leading to poor standards of amenity and/or a real threat to the prospect for those businesses which currently exist here. There is already clear evidence that creeping residential development is resulting in conflict with employment areas.

8.07 Current additional Concerns

- 8.08 As this development is now built, it is for the Council to assess the impact of the potential loss of employment space on this site. Prior to this site being developed as it is currently, it was operating as a boat repair yard with an active Creekside frontage, that was suffering from financial difficulties. Therefore, to have replaced the former use with an entirely residential use would have resulted in a quite significant loss of employment potential. I am now satisfied based on the comments of the Economy and Community Services Manager that if the agreements were to be varied as proposed, it would not result in a significant loss of employment floorspace. The applicants point out that there are new permitted development rights for change of use from office use to residential use. However, these do not apply to mixed-use building such as these and I do not consider this reference relevant to the arguments that need to be considered here.

8.09 Current local policy position

- 8.10 The second concern raised during the original applications related to the proposal involving a large proportion or percentage of residential accommodation, which was considered to be contrary to the Local Plan at the time, which sought commercial and employment uses in the area. Policy B2 of the Swale Borough Local Plan 2008 is a general business policy for the whole of the Borough rather than being specific to this area. It does, however, clearly set out the Council's position in terms of loss of employment space. It states

that buildings currently in employment use will be retained unless it meets one of four criteria.

- 8.11 The first is if the building is inappropriately located for any employment use, and having an unacceptable environmental impact in an area. That has not been argued in this case, and I am of the opinion that it is appropriately located for continuing employment use.
- 8.12 The second is if it can be demonstrated by expert advice that the site is no longer suitable for any employment use. Again the applicants have not sought to demonstrate this.
- 8.13 The third is if it is demonstrated by market testing that there is insufficient demand to justify its retention for any employment use. It is this point that I believe the applicants have sought to demonstrate through the submission of letters from local estate agents. Whilst these letters cannot be dismissed as offering no insight at all into the local market situation, these are opinions of individuals rather than based on factual evidence resulting from a marketing exercise where figures of viewings and interest or lack of can be obtained. Also, as the properties have not been marketed, it may be that interested parties have not come forward because they are not available. Notwithstanding that, all of the units are occupied, in itself demonstrating that there has not been difficulty in selling the properties in their current approved mixed use form.
- 8.14 The fourth point is if it is allocated in the Plan for other purposes, which is not the case here.
- 8.15 The Local Plan provides post-development published advice regarding this area under policies FAV 1 and AAP2 which directly relate to the Faversham area and to Faversham Creekside. The fact that Faversham Creekside has its own specific policy is testimony to its unique and special character within the Borough. This policy quite clearly states that proposals that result in the loss of buildings suitable for employment uses will not be supported.
- 8.16 The emerging Local Plan (Bearing Fruits 2031) also contains policies relevant to this case and specific to the Creekside area. Policy NP1 requires proposals to accord with the Neighbourhood Plan once adopted and encourages opportunities for workshops and business uses.
- 8.17 The draft Neighbourhood Plan recognises the problems that Faversham has had economically as a result of out commuting. This it considers has been caused by a loss of employment in the area and that the vitality of the creekside area has declined over recent years with the closure of employment sites and the increase in private housing development. It notes that there are opportunities to reverse this trend and encourages economic development in this area.

8.18 National Policy Position – NPPF

- 8.19 The NPPF, as Members will be aware, places a strong emphasis on determining applications depending on whether they are considered to be sustainable or not. This involves considering the three strands of sustainable development – economic, social and environmental. There have been no serious economic arguments put forward or viability concerns.
- 8.20 I note the arguments put forward by the applicants, that the proposal would not result in the loss of employment floorspace, as they are proposing a flexible use, however, it appears unlikely that if the clauses were relaxed to allow full residential use that the properties would be as attractive as mixed-use units. Instead, in my view it would be inevitable that the properties would all be used exclusively as dwellinghouses very soon. This would lead to loss of all vestiges of employment use, loss of working character and an inevitable increase in the risk of complaints against noise from nearby legitimate businesses which might tip matters even further away from a working creekside.
- 8.21 As already stated, the Faversham Creek area is unique and has a special historic character which is recognisable by its mix of industrial and creekside activities interspersed with some supporting residential uses. This development was carefully designed and considered to fit in with the mixed character of this area and at the same time add to the mix of uses and encourage the regeneration and vitality of the area. The amendments to the legal agreement to potentially allow exclusively residential use of these buildings would, in my view, dilute the commercial character of the area and lead to the degradation of its creekside character.
- 8.22 Members may also wish to note that this application to amend the legal agreements is not accompanied by a planning application to change the use of the units. The planning permission granted permission for mixed use buildings and therefore to use them solely for B1 use would require the benefit of planning permission as well as the variation of the legal agreements.

9.0 CONCLUSION

- 9.01 I conclude on several different points including mutual conflict with other Creekside uses and impact on the creekside character, that the legal clauses still serve a useful purpose and therefore recommend that the section 106 agreements are not varied.

10.0 RECOMMENDATION – REFUSE request for amendment to the section 106 agreements for the following reasons:**Reason for Refusal**

1. The application site is located in close proximity to an area of existing unrestricted B2 General Industrial uses and the application properties comprise of a proportion of residential use. However, these have been designed to minimise mutual conflict and to recognise the fact that mixed-use units may not

enjoy the same standards of amenity as purely residential units. The proposal would result in an incompatible juxtaposition of residential and industrial uses, which would likely result in an unacceptably low level of amenity for the application properties and be likely to give rise to adverse pressure on existing businesses in the vicinity to change their methods of working, which could negatively affect their viability. The proposal is therefore contrary to policies E1, B1, FAV1 and AAP2 of the Swale Borough Local Plan 2008 and policy NP1 of the emerging Faversham Creek Neighbourhood Plan.

2. The potential for exclusive residential use of the properties would be likely to result in the unacceptable loss of business use in an area which is characterised by industrial and maritime uses and has historically suffered from under-provision of employment uses and an over-provision of dwellings. The application has not provided sufficient justification to override established Local Plan policy, failing to maintain or enhance a mix of uses and activity in the area. The proposal is therefore contrary to policies E1, B1, AAP2 & FAV1 of the Swale Borough Local Plan 2008.

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/14/0423			
APPLICATION PROPOSAL New dwelling within rear garden			
ADDRESS R/O 124 Chaffes Lane, Upchurch, Nr Sittingbourne, Kent, ME9 7BG			
RECOMMENDATION APPROVE			
SUMMARY OF REASONS FOR RECOMMENDATION Proposal would be acceptable as a matter of principle, would not give rise to harm to visual or residential amenity, nor to highway safety/convenience and would be acceptable in all other respects.			
REASON FOR REFERRAL TO COMMITTEE Parish Council objection			
WARD Hartlip, Newington & Upchurch	PARISH/TOWN COUNCIL Upchurch	APPLICANT Mr & Mrs K Harrell AGENT Mr Robert A Clayton	
DECISION DUE DATE 21 August 2014	PUBLICITY EXPIRY DATE	OFFICER SITE VISIT DATE	
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date

MAIN REPORT

1.0 DESCRIPTION OF SITE

- 1.01 The site lies within the built up area of Upchurch, and currently forms part of the rear garden to no.124 Chaffes Lane. It has a frontage on to Marstan Close, which the proposal seeks to utilise for vehicular and pedestrian access. Marstan Close is characterised by single storey dwellings. To the rear of the site, the closest dwellings are nos.132 & 134 Chaffes Lane, the closest of which is in excess of 35 metres from the boundary.

2.0 PROPOSAL

- 2.01 The application seeks planning permission for a small two bedroom bungalow. The dwelling would have an irregular shaped footprint, being a maximum of 11.3m wide, and a maximum of 10.5m deep. It would feature a pitched roof, with a ridge height of 5.7 metres. The plans were amended in July and have recently been amended again, such that they now show two parking spaces, a visitor parking space and a small turning area proposed to the front. Access would be taken via the driveway of 2 Marstan Close. A rear garden measuring 7 metres deep and 15 metres wide is proposed.

3.0 SUMMARY INFORMATION

	Proposed
Approximate Ridge Height (m)	5.7m
Approximate Eaves Height (m)	2.3m
Approximate Depth (m)	10.5m
Approximate Width (m)	11.3m
No. of Storeys	1
Parking Spaces	3
No. of Residential Units	1

4.0 PLANNING CONSTRAINTS

None

5.0 POLICY AND OTHER CONSIDERATIONS

- 5.01 Policies SP1, SP4, E1, E19, H2 and T3 of the Swale Borough Local Plan 2008 are relevant, and encourage the provision of new residential development within existing built up areas subject to there being no over-riding amenity concerns.
- 5.02 The National Planning Policy Framework (NPPF) and Planning Practice Guidance (NPPG) are also both relevant in terms of encouraging sustainable housing development of a high standard of design and without serious amenity impacts.
- 5.03 The Council's adopted Supplementary Planning Guidance entitled "Designing an Extension" is relevant in terms of setting minimum separation distances between properties. It advises that there should be at least 21m rear-to-rear between dwellings in order to minimise the potential for overlooking

6.0 LOCAL REPRESENTATIONS

- 6.01 Objections from 9 separate addresses have been received, summarised as follows:
- Increased vehicle movements will give rise to noise and disturbance to the occupiers of no.3 Marstan Close
 - Off road parking is at a premium in the area, and the access would result in the loss of parking for no.,2 Marstan Close.
 - A turning area should be provided [note – the plans have been amended providing a turning area to serve the dwelling]
 - Party wall agreements/structural surveys will be required. [Members will be aware that this is a private legal matter and not a material planning consideration here.]
 - The proposal will harm trees protected by a TPO [There are no TPOs on trees that might be affected by this development]
 - Will give rise to loss of light to the adjacent dwelling.
 - Will harm residential amenity;
 - This is a cynical attempt to shoehorn in a structure;
 - If built, could be extended in future, leading to more vehicles;
 - A low level modern design would reduce harm to residential amenity;
 - Will give rise to a terracing effect and detract from the current street appearance;
 - Is far too close to neighbouring boundaries;
 - Too large for a small plot and is being squeezed into an inappropriate site;

- Site is in a residential garden – could set a precedent and is not suitable for a village location;
- Inadequate access to the site for emergency vehicles;
- Lack of on street parking;
- Plans are misleading;
- Obstruction of view;
- Will have an undesirable and ill effect on the natural flow of light to properties;
- Would be overbearing;
- Will hinder access to parking at no.2 Marstan Close;
- Will not match existing properties;
- Will disturb the innate flow of the cul de sac;
- Will result in the heinous loss of plant and animal life and will be a crime against nature;
- Noise and disturbance during construction;
- The site is extremely small with the dwelling shoehorned in;
- This application cannot be considered as infill, and the site is not brownfield;
- Would be a speculative development;
- Previous applications in the garden of no.3 Marstan Close have been refused and there is no reason why this application is any different;
- Off road parking in the area is at a premium. The proposals do not allow for known historical issues to be taken into account and the proposals do not fulfil the needs of the proposed development;
- Turning areas should be incorporated to design out the need for excessive vehicle movements and or the requirements for vehicles to reverse excessive distances for access/egress onto the proposed site;
- The site is designated as residential garden;
- Issues with access for emergency vehicles;
- Previous application has been refused;
- Loss of value to properties;

6.02 No representations of support have been received. The applicant has responded to some of the objections, commenting as follows:

- The proposal will have no impact on nos.132 and 134 Chaffes Lane;
- The development of Marstan Close in the 1950s originally included the development of this plot, but it was never completed. This development would simply finish off the intended design and development in Marstan Close.

7.0 CONSULTATIONS

7.01 I have discussed the application with Kent Highway Services, who considers the scheme acceptable.

7.02 The Council's Environmental Health Manager raises no objection, subject to the condition below in respect of hours of construction.

7.03 Upchurch Parish Council raise objection, commenting as follows:

“Though it understands the applicants wish to maximise the use of the large rear garden, it has the following comments to make:

- *It believes it is an over-developed back-fill*
- *It will impact on the owners of nos. 134 and 132 Chaffes Lane;*
- *The owner of no.2 Marstan Close is a relative of the applicants and, although she may not object to the use of the right of way fronting her property, any future owner could find it intrusive;*
- *The views of the owners of no.3 Marstan Close and all the neighbours in Marstan Close should be given serious consideration;*
- *Marstan Close is a small cul-de-sac with congested parking and the proposed development would exacerbate this problem with increased on-road parking for visitors or commercial deliveries.*

Taking these views as a whole, the Planning Review Team objects to the proposals. Further views may be expressed when it is discussed at the next meeting of the full Council.”

8.0 BACKGROUND PAPERS AND PLANS

8.01 Application papers and plans (including amended plans received 30th January 2015.)

9.0 APPRAISAL

9.01 The key issues here are the principle of development, the impact on residential and visual amenity, and the impact of the development on highway safety and convenience.

Principle of Development

9.02 The site is located in the built up area of Upchurch, and therefore the development proposed is acceptable as a matter of principle. Members will note the objections raised on the basis that the site forms part of the domestic garden serving no.124 Chaffes Lane. Such development is not unacceptable in principle, and much depends on the specific details of the proposal. In this case, the proposal would not amount to isolated development, without a recognisable frontage to a highway – it would not in my view amount to “backland” development, as it would clearly be seen in the context of the existing dwellings in Marstan Close.

9.03 In my view, the proposal is acceptable as a matter of principle.

Visual Impact

9.04 The design of the proposed bungalow is acceptable. It would blend in well with the existing development in the streetscene. It would be comparatively unobtrusive and would not appear cramped within the site. The parking areas proposed would not be readily visible from public vantage points, and would not harm the visual amenities of the area.

9.05 The proposal would give rise to the loss of a number of trees and vegetation. However – these trees are not protected, and in my view do not contribute so markedly to the character of the area that they should be protected.

9.06 I consider the visual impact of the development to be acceptable.

Residential Amenity

- 9.07 The proposed dwelling would be sited and oriented such that it would not overlook nor be overlooked by the adjacent dwellings. The properties in Chaffes Lane lie some considerable distance from the site and I do not envisage any significant impact on the amenities of the occupiers of these dwellings. With regards to the impact on no.3 Marstan Close, the proposed dwelling would lie adjacent to an attached garage serving this dwelling and approximately 5 metres from its rear conservatory. In my view there is unlikely to be any significant overshadowing or overlooking issues in this respect. There are rooms above the garage serving no.3 Marstan Close, but given the proximity of the dwelling, any overlooking would be from an acute angle and would be unlikely to be significant. I do though recommend removing permitted development rights for alterations and extensions to the roof of the dwelling, in order to control any additional works which might give rise to mutual overlooking in this respect.
- 9.08 The proposed dwelling would introduce a number of additional vehicle movements into the cul de sac. However – these would not be significant, and given the location of the access to the front of no.2 Marstan Close, and adjacent to a garage serving no.3 Marstan Close, I am of the view that there would not be a harmful increase in noise and disturbance to the occupiers of these dwellings. Members will note that the Council's Environmental Health Manager has not raised objection in this respect..
- 9.09 The private garden area proposed to serve the dwelling would in my view be of a sufficient size to cater for the needs of the occupiers. Equally, it would leave a substantial area of private garden space (in excess of 20 metres in depth) for no.124 Chaffes Lane. In my view, the proposal would be acceptable in this regard.

Highways

- 9.10 Kent Highway Services, together with local residents and the Parish Council raised concern regarding the provision of off street parking and turning facilities within the site. The plans as originally submitted would have seen vehicles either reversing into or reversing out of the site for a substantial distance. This was unacceptable. However – the plans have now been amended to show a small turning area, such that Kent Highway Services do not raise objection. The provision of parking is also considered acceptable, with two spaces (together with a potential visitor space) being provided for a two bed dwelling. Access for emergency vehicles would not be impossible, and therefore that does not amount to a reason for refusing planning permission here.

Other Matters

- 9.11 Members will be aware that loss of value to property is not a material planning consideration here. With regards to the impact on wildlife, no concerns have been raised regarding the presence of protected species on the site, and any that might be discovered would need to be appropriately dealt with in accordance with the relevant legislation.
- 9.12 Reference has been made to the refusal of permission for dwellings in the garden at no.3 Marstan Close. The relevant applications are SW/98/1038 and SW/03/0614, both of which sought outline planning permission for the erection of two dwellings. Permission was refused on the basis that both schemes would have seen vehicles passing very close to no.3 Marstan Close, and this would have given rise to significant harm to residential amenity. No.3 Marstan Close now has a large garage

where the access was proposed to be taken from. The dwelling proposed here would not give rise to vehicle movements close to habitable rooms of either no.2 or no.3 Marstan Close, and the number of vehicle movements would be less. I do not consider that the approval of this scheme would be at odds with the refusal of the previous applications at the neighbouring site.

10.0 CONCLUSION

10.01 The proposal is acceptable and would not give rise, in my view, to harm to residential or visual amenity, nor would it harm highway safety or convenience.

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.

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 shall proceed in accordance with the following drawing:
14.02.03 REV B (received 30th January 2015)

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

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

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

4) Prior to the commencement of development, 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.

5) Upon completion, no further development, whether permitted by Classes B or C 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 residential amenity

- 6) 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.

Reason: In the interests of residential amenity.

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

Reason: Development without provision of adequate accommodation for the parking of vehicles is likely to lead to parking inconvenient to other road users and be detrimental to highway safety and amenity

- 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 should be native species where possible and of a type that will enhance or encourage local biodiversity and wildlife), plant sizes and numbers where appropriate, means of enclosure, hard surfacing materials, and an implementation programme.

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

- 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.

Reason: 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.

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

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.

REFERENCE NO - 14/503846/FULL			
APPLICATION PROPOSAL Provision of four 3 bedroom houses seven 2 bedroom houses, two 2 bedroom bungalows and one 2 bedroom disabled persons bungalow with associated parking court parking spaces and access driveways.			
ADDRESS 349-355 Leysdown Road Leysdown Kent ME12 4AS			
RECOMMENDATION Delegation to approve subject to an appropriate legal agreement to secure developer contributions, and any additional consultation replies (deadline for representations 16/2/15)			
SUMMARY OF REASONS FOR RECOMMENDATION The proposal is acceptable in principle and would have minimal impact on the surrounding area including residential amenity and highway safety and convenience.			
REASON FOR REFERRAL TO COMMITTEE Leysdown Parish Council objects.			
WARD Leysdown & Warden	PARISH/TOWN COUNCIL Leysdown	APPLICANT Moat Homes Limited AGENT Kent Design Partnership - Architect	
DECISION DUE DATE 27/3/15	PUBLICITY EXPIRY DATE 16/2/15	OFFICER SITE VISIT DATE 11/11/14	
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
SW/02/0145	Outline application for erection of up to 10 chalet bungalows (and removal of existing structures).	No Further action	29/10/2009
SW/02/1109	Three detached chalet bungalows.	Approved	20/11/2002
SW/03/0945	Detached bungalow and detached chalet bungalow.	Approved	23/09/2003
SW/04/0127	Four detached chalet bungalows.	Approved	30/3/2004
SW/12/1484	Residential re-development to provide 3 no. x 3 bedroom detached houses with associated garages and parking spaces.	Refused and appeal dismissed	11/03/2013
	Reason for refusal of SW/12/1484 "The proposed two storey dwellings are considered to be out of character with the area, and harmful to the streetscene and visual amenities of the area by virtue of the fact that the area is characterized by bungalows and chalet bungalows." The subsequent appeal ref:APP/V2255/A/13/2196956 was dismissed. The Inspector commented "However, whilst the proposed ridge heights would not be significantly greater than those of previously approved chalet-bungalows on the site, they would be considerably higher than the existing bungalows nearby. The buildings would clearly appear as		

	<p>two-storey houses with eaves above the first floor windows, meaning that they would seem quite out of place and overly dominant in the Danes Drive street scene. Furthermore, the site lies alongside a main road, and the house on plot 3 would be sited only a short distance from the footway meaning that the proposal would be prominent when approaching from either the east or the west. The three houses would appear as a stand alone and incongruous form of development, that would contrast starkly with the nearby bungalows and fail to integrate into or respect its surroundings.”</p>
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MAIN REPORT

1.0 DESCRIPTION OF SITE

- 1.01 The application site is located at the junction of Leysdown Road and Danes Drive. It consists of a flat empty concrete pad with an area of 0.35 hectares. The existing boundary treatments include a dwarf wall and post and rail fence to the road frontages and close boarded fences to the north and east boundaries with residential properties. The neighbouring properties are mostly detached bungalows to the west and north, with some semi-detached bungalows to the east and chalet bungalows and two storey properties beyond. To the south are agricultural fields.
- 1.02 The site is currently vacant but was formerly the Bay View Garage site associated with the sale of caravans, petrol and vehicle maintenance workshop. The wider Bay View area is characterised by organic residential growth using a variety of designs and materials.

2.0 PROPOSAL

- 2.01 The general form of the development would be 2 no two bedroom bungalows fronting on to Danes Drive, two Alms Houses at right angles to Leysdown Road containing 4 no three bedroom dwellings and 7 no two bedroom dwellings, and 1 no two bedroom bungalow fronting Leysdown Road. The development would be entirely social rented housing.
- 2.02 Each bungalow would be L shaped with plots 1 and 2 measuring 10 metres wide, 9.5 metres deep and 5 metres to ridge. The disabled persons bungalow at plot 14 would measure 8.5 metres wide, 11.5 metres deep and 5.5 metres to ridge. The western Alms Houses would measure 26.5 metres wide, 10 metres deep and 7.5 metres to ridge. The eastern Alms Houses would measure 32 metres wide, 10 metres deep and 7.5 metres to ridge.
- 2.03 The design includes a variation in the form of the bungalows with gable ends in different positions whilst the Alms Houses use front and rear gable ends to the three bedroom units as well as front and rear dormer windows and canopies to add interest to the design. The Alms Houses have been designed to reflect the character of a large chalet bungalow in that they have accommodation in the roof space.
- 2.04 The Alms Houses gardens are typically 8-10 metres in depth whilst those of the bungalows are significantly larger. Each bungalow would have two car parking

spaces whilst the Alms Houses would have a single parking court providing 21 car parking spaces. Each dwelling would have bicycle parking in a rear garden shed. Three vehicle accesses would be created in place of the two that currently exist.

- 2.05 The application form states the walls would be made of clay stock facing bricks with natural mortar with Marley eternity cedar boarding. Roof tiles would be Redland or Marley duo interlocking tiles, windows and doors white PVCU and boundary treatment dark stained close boarded fences 1.8 metres high.
- 2.06 The land is potentially contaminated given its previous use as a petrol station/vehicle repairs therefore a desk study contaminated land assessment has been submitted by the applicant.

3.0 SUMMARY INFORMATION

	Existing	Proposed	Change (+/-)
Site Area (ha)	0.35	0.35	NA
Approximate Ridge Height (m)	NA	5 to 7.5	+5 to 7.5
Approximate Eaves Height (m)	NA	2.2, 2.5 & 3.6	+2.2, 2.5 & 3.6
Approximate Depth (m)	NA	9.5, 11.5 & 10	+9.5, 11.5 & 10
Approximate Width (m)	NA	10, 8.5, 26.5 & 32	+10, 8.5, 26.5 & 32
No. of Storeys	NA	1 & 2	+1 & 2
Net Floor Area	NA	NA	NA
Parking Spaces	NA	27	+27
No. of Residential Units	NA	14	+14
No. of Affordable Units	NA	14	+14

4.0 PLANNING CONSTRAINTS

- 4.01 The site is within the built up area.

5.0 POLICY AND OTHER CONSIDERATIONS

- 5.01 The National Planning Policy Framework (NPPF) and National Planning Practice Guidance (NPPG) in relation to achieving sustainable development, promoting sustainable transport, delivering a wide choice of high quality homes, requiring good design and conserving and enhancing the natural environment.
- 5.02 Development Plan: Policies SP1, SP4, SP6, SP7, TG1, SH1, E1, E19, B1, H2, H3, T3, T4, C2 and C3 of the Swale Borough Local Plan 2008.
- 5.03 The Council's Developer Contributions Supplementary Planning Document.
- 5.04 The contents of Bearing Fruits 2031- The Swale Borough Local Plan Part 1- Publication version December 2014 which generally reflects the NPPF and many of the policies of the current local plan. This is to be afforded limited weight due to the stage of development the Plan has reached.

6.0 LOCAL REPRESENTATIONS

- 6.01 A petition signed by 24 people has been received which states “We the undersigned petition the Council to: oppose the building of houses” at the site.
- 6.02 Five further objections have been received which are summarised as follows;
- A similar application was refused on the site and this one should be for the following reasons; houses would be out of character with area; too dense- it should be 6-8 dwellings in keeping with area; contrary to emerging local plan which requires fewer than 14 dwellings for Leysdown and none at all for Bay View; proposal smacks of developer greed with little thought for local area; in fill development should be appropriate to the area.
 - Strain on existing services and facilities including schools and doctors.
 - Highway safety will worsen on Leysdown Road.
 - The driveways near the junction will hinder traffic/safety.
 - Perhaps a site meeting could be arranged to allow residents to voice their concerns.
 - Privacy would be maintained if bungalows were proposed.
 - The plot positions are at odds with the existing properties and will affect the character of Bay View on the main approach road.
 - Flood risk.
 - The number of houses would result in undue noise and disturbance in a retirement area.

Further consultations have been carried out with neighbours and the Parish Council on an amended plan showing additional parking to address parking concerns (closing date for comments 16/2/15). As a result an additional letter of objection has been received raising issues regarding inadequate street lightning and parking provision, plus speed limit on road should be reduced between Eastchurch to Leysdown to between 40 and 30mph or provide speed calming measures and suggest a speeds study be carried out asap. I shall update members at the meeting of any further comments received.

7.0 CONSULTATIONS

- 7.01 Leysdown Parish Council objects on the grounds that the development is over-intensive and there is a lack of parking. Further comments are awaited on the amended plan as mentioned above (closing date for comments 16/2/15).
- 7.02 The Council’s Head of Service Delivery notes the submitted contaminated land assessment and requests standard conditions in relation to contaminated land, pile driving, construction hours and dust suppression.
- 7.03 The Council’s Housing Strategy and Enabling Officer supports the 14 dwellings as a 100% affordable housing site and in particular the three bungalows including the 2 bed fully adapted property for disabled tenants as this will meet an identified need in the Borough. It is requested that instead of each dwelling being affordable rent, the split should be 70% affordable rent and 30% intermediate housing as per the Council’s Developer Contributions SPD.
- 7.04 The Council’s Green Spaces Manager requests developer contributions totalling £9,482 towards the nearest play facility. This request relates to the 11 dwellings, not the bungalows.

- 7.05 Kent Highway Services considers the amended layout plans submitted to have addressed its initial concerns. It is noted that the amended parking provision is more aligned to the requirements of adopted standards and is acceptable in number which minimises the possibility of overspill parking on the highway. The provision of four independently accessible parking spaces to the two dwellings fronting Danes Drive should prevent parking on street. The sightlines are appropriate. Subject to the standard conditions noted below no objection is raised.
- 7.06 Southern Water clarified that they require a formal application for connection to the public sewer and request an informative in this regard. There are no public surface water sewers in the area to serve the development. Alternative means should be found not including disposal to a public foul sewer. Sustainable urban drainage systems guidance is given. A condition regarding details of foul and surface water sewerage is requested. Sewer ownership guidance is also provided as well as what the developer should do if a sewer is found during construction. The applicant is advised to contact Southern Water.
- 7.07 The Environment Agency considers the application to have a low environmental risk and makes no comment.
- 7.08 Kent County Council request developer contributions totalling £3216.
- 7.09 Kent County Council Archaeology considers there to be archaeological potential at the site and recommends an associated condition.

8.0 APPRAISAL

- 8.1 Contrary to the Parish Councils views, I do not agree that the development is over-intensive for the reasons given below. The petition does not give any reason for opposing the proposal other than opposing the building of houses. I consider the principle acceptable for the reasons given below. Whilst there was a refused application on part of this site the current scheme is markedly different. Whilst the site is not an allocated housing site, the proposal is considered as a windfall site which is factored into the emerging local plan and is therefore not contrary to it. The developer contributions should help address strain on services. The impact on highway safety and convenience is considered acceptable as below. As Members know the request for a committee site meeting is at Members discretion. The impact on privacy is acceptable in my opinion as set out below. The plot positions are not considered a reason for refusal here as there is no set character in the area. The site is not in a flood risk zone so this is not an issue. The number of dwellings would not give rise to noise concerns or harmful disturbance.

Principle of Development

- 8.02 The site is located within the built up area boundary where the principle of development is considered acceptable. The loss of the former business use of the site has been accepted under the aforementioned approved residential schemes on the site therefore it is acceptable in this instance in my view.
- 8.03 The proposal would reuse brownfield land which complies with current policies. The proposal would be entirely social rented affordable housing provided by Moat Housing. The number of dwellings proposed does not actually exceed the threshold of 15 or more set out in the Local Plan whereby affordable housing would be

required. I note the views of the Council's Housing Strategy and Enabling Officer but as there is no policy requirement for affordable housing I do not believe the Council is in a position to demand an SPD compliant tenancy type split.

- 8.04 The amount of development proposed in relation to the size of the site, whilst more dense than the surroundings, is reasonable in my view and would not be harmful to the character and appearance of the area. The provision of housing on the site would also help to address the Council's housing shortfall. Members should note that the Council currently has a 3.17 year housing land supply as opposed to the 5 years required by the NPPF.

Visual Impact and Design

- 8.05 The visual impact of the proposal is a key consideration especially given the previous refusal and dismissed appeal for SW/12/1484. This previous application entailed the redevelopment of one corner of the site as opposed to the whole site. In my opinion, when viewed from Leysdown Road the provision of bungalows to the eastern and western extremities of the site eases the scheme into the streetscene in visual terms and enables the provision of more substantial buildings in the centre of the site. There is space to the south of the development for some landscaping to lessen the visual impact. The amended plans move the eastern Alms Houses further north in the site to enable more landscaping to take place between it and the road.
- 8.06 The design of the bungalows would be consistent with the character of the area. The Alms Houses, whilst taller than the majority of the surrounding housing stock, seek to reflect the character of their surroundings in that they feature lowered eaves and rooms within the roof space served by dormer windows which leads me to the view that the general form of the Alms Houses attempts to reflect that of chalet bungalows as opposed to traditional two storey dwellings. It is noteworthy that the previous use of the land for the sale of caravans created a jarring visual appearance that was out of character with the residential nature of the area in my opinion.
- 8.07 The proposal addresses to an acceptable level the visual harm identified by the Inspector under the appeal for SW/12/1484. The visual impact from Leysdown Road and Danes Drive as well as the design of the proposal are acceptable in my opinion.

Residential Amenity

- 8.08 The three proposed bungalows are an acceptable distance from the existing surrounding dwellings in my view. Mutual overlooking would be extremely limited because both the proposed and existing surrounding dwellings are bungalows so the provision of a fence along the common boundary would secure privacy.
- 8.09 The Alms Houses would be 21 metres from the nearest dwellings to the north and would feature no openings to the northern elevations. This distance and design would result in minimal overbearing, overshadowing, loss of light and overlooking between properties in my view. The impact on residential amenity is acceptable in my opinion.

Highways

- 8.10 The number and layout of vehicle parking spaces is considered acceptable by Kent Highway Services. The vision splays are similarly considered acceptable. The position of the three vehicle accesses onto Leysdown Road and Danes Drive raises no objection from Kent Highways in relation to highway safety and convenience. The

provision of a bicycle store in each rear garden is also acceptable. The impact on highway safety and convenience is acceptable in my opinion contrary to the views of the Parish Council.

Landscaping

- 8.11 There is fairly limited space for landscaping within the proposal generally. The most important location for planting is along Leysdown Road to soften the appearance of the development and the space provided is acceptable in my view.

Other Matters

- 8.12 The submitted contaminated land desk study report and its recommendations are considered acceptable by the Head of Service Delivery. A series of conditions are recommended and attached to deal with contaminated land, pile driving, hours of construction and dust suppression.
- 8.13 Developer contributions for this proposal total £14438.63 (Kent County Council £3216, Swale Greenspaces £9482, Swale Wheelie Bins £1053.08 and Swale's 5% monitoring charge £687.55). A suitably worded S106 agreement is currently being prepared therefore delegation from Committee is sought to approve the scheme subject to this being resolved, along with any additional consultation replies.

9.0 CONCLUSION

- 9.01 The proposal is acceptable in principle as the site is within the built up area. The impact on residential amenity, visual amenity and highway safety and convenience are acceptable. The developer contributions have provisionally been agreed and are as required. Any concerns relating to contamination can be dealt with by condition.

10.0 RECOMMENDATION – GRANT, Subject to the further views of adjoining occupiers, the Parish Council and to the signing of a suitably worded Section 106 agreement to secure appropriate developer contributions and 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) Prior to the commencement of development, 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

- 3) The dwellings hereby approved shall achieve at least a Level 3 rating under The Code for Sustainable Homes or equivalent, and no development shall take place until details have been submitted to, and approved in writing by the Local Planning Authority, which set out what measures will be taken to ensure that the development incorporates sustainable construction techniques such as rainwater harvesting, water conservation, energy efficiency and, where appropriate, the use of local building materials; and provisions for the production of renewable energy such as wind

power, or solar thermal or solar photo voltaic installations. Upon approval, the details shall be incorporated into the development as approved.

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

- 4) Prior to the works commencing on site details of parking for site personnel / operatives / visitors shall be submitted to and approved by the Local Planning Authority and thereafter shall be provided and retained throughout the construction of the development. The approved parking shall be provided prior to the commencement of the development.

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

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

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

- 6) Prior to the works commencing on site details of parking for site personnel / operatives / visitors shall be submitted to and approved by the Local Planning Authority and thereafter shall be provided and retained throughout the construction of the development. The approved parking shall be provided prior to the commencement of the development.

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

- 7) As an initial operation on site, adequate precautions shall be taken during the progress of the works to guard against the deposit of mud and similar substances on the public highway.

Reason: In the interests of amenity and road safety.

- 8) The area shown on the submitted layout as vehicle parking and turning space shall be provided, surfaced and drained to the satisfaction of the Local Planning Authority before the use is commenced or the premises occupied, and shall be retained for the use of the occupiers of, and visitors to, the premises, and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order), shall be carried out on that area of land so shown or in such a position as to preclude vehicular access to this reserved parking space.

Reason: Development without provision of adequate accommodation for the parking and turning of vehicles is likely to lead to parking inconvenient to other road users and be detrimental to highway safety and amenity.

- 9) No dwellings hereby permitted shall be occupied until space has been laid out within the site in accordance with the submitted details for cycles to be securely stored and sheltered and such facilities shall be retained as such thereafter.

Reason: To ensure the provision and retention of adequate off-street parking facilities for cycles in the interests of sustainable development and promoting cycle visits.

- 10) The access details shown on the approved plans shall be completed to the satisfaction of the Local Planning Authority prior to the commencement of any other works authorised by this permission, the occupation of any buildings hereby approved, the use of the site being commenced, and the access shall thereafter be maintained.

Reason: In the interests of highway safety.

- 11) The development hereby permitted shall not be occupied until the visibility splays shown on the submitted plan have been provided with no obstruction to visibility at or above a height of 900mm above the nearside carriageway level. The visibility splays shall thereafter be maintained free of obstruction at all times.

Reason: In the interests of highway safety.

- 12) Pedestrian visibility splays 2 m x 2 m with no obstruction over 0.6 m above the access footway level shall be provided prior to the commencement of any other development in this application and shall be subsequently maintained.

Reason: In the interests of highway safety.

- 13) No development approved by this permission shall be commenced prior to a contaminated land assessment (and associated remediation strategy if relevant), being submitted to and approved in writing by the Local Planning Authority, comprising:

- a) An investigation, including relevant soil, soil gas, surface and groundwater sampling, carried out by a suitably qualified and accredited consultant/contractor in accordance with a Quality Assured sampling and analysis methodology.
- b) A site investigation report detailing all investigative works and sampling on site, together with the results of analyses, risk assessment to any receptors and a proposed remediation strategy which shall be of such a nature as to render harmless the identified contamination given the proposed end-use of the site and surrounding environment, including any controlled waters.

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

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

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

- 15) Upon completion of the works identified in the contaminated land assessment, and before any part or agreed phase of the development is occupied, a closure report shall be submitted which shall include details of the proposed remediation works with quality assurance certificates to show that the works have been carried out in accordance with the approved methodology. Details of any post-remediation sampling and analysis to show the site has reached the required clean-up criteria

shall be included in the closure report together with the necessary documentation detailing what waste materials have been removed from the site.

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

- 16) No impact pile driving in connection with the construction of the development shall take place on the site on any Saturday, Sunday or Bank Holiday, nor on any other day except between the following times :-

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

Reason: In the interests of residential amenity.

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

Monday to Friday 0730 - 1800 hours, Saturdays 0830 - 1300 hours unless in association with an emergency or with the prior written approval of the Local Planning Authority.

Reason: In the interests of residential amenity.

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

Reason: In the interests of residential amenity.

- 19) Construction of the development shall not commence until details of the proposed means of foul and surface water sewerage disposal have been submitted to, and approved in writing by, the Local Planning Authority in consultation with Southern Water. The approved details shall be implemented in full.

Reason: To ensure foul and surface water drainage are dealt with appropriately at the site.

- 20) 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 should be native species where possible and of a type that will enhance or encourage local biodiversity and wildlife), plant sizes and numbers where appropriate, means of enclosure, hard surfacing materials, and an implementation programme.

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

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

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

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

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

- 23) Prior to the commencement of development details of ecological enhancement measures to be incorporated into the development shall be submitted to and approved in writing by the Local Planning Authority. The approved measures shall be incorporated in full prior to the occupation of the development and shall be retained in perpetuity unless otherwise agreed in writing by the Local Planning Authority.

Reason: To secure ecological enhancements within the development site.

- 24) 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 by the Local Planning Authority.

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

- 25) The development shall proceed in accordance with the following approved plan numbers; 12.58.201B, 202B, 203B, 204B, 205B, 210B, 211B, 215, 2011B, 2021A, 2031A, 2041B, 2051B, Design and Access Statement and Soiltec Desk Study Report dated 27/8/14.

Reason: In the interests of proper planning.

INFORMATIVES

Kent Highway Services wishes to make the applicant aware of the following; Planning permission does not convey any approval for works within the highway for which a statutory licence must be obtained. It is the responsibility of the applicant to ensure, before the development hereby approved is commenced, that all necessary highway approvals and consents where required are obtained and that the limits of highway boundary are clearly established in order to avoid any enforcement action being taken by the Highway Authority. The applicant must also ensure that the details shown on the approved plans agree in every aspect with those approved under such legislation and common law. It is therefore important for the applicant to contact KCC Highways and Transportation to progress this aspect of the works prior to commencement on site.

Kent County Council wishes to make the applicant aware of the following; it is requested that the development provides 'fibre to the premises' (Superfast fibre optic broadband) to all buildings (residential, commercial, community etc) of adequate capacity (internal min speed of 100mb to each building) for current and future use of the buildings.

Southern Water wishes to make the applicant aware of the following; A formal application for connection to the public sewerage system is required in order to service this development. To initiate a sewer capacity check to identify the appropriate connection point for the development. Please contact Southern Water, Sparrowgate House, Sparrowgrove, Otterbourne, Hampshire, SO21 2SW (Tel: 0330 303 0119) or www.southernwater.co.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 changes required to the application.
The applicant/agent was provided formal pre-application advice.
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.

REFERENCE NO - 14/503470/FULL			
APPLICATION PROPOSAL Proposed change of use application from a former Police Station and Court House into a Public House including internal and external alterations and new M and E equipment.			
ADDRESS Magistrates Court 1 Park Road Sittingbourne Kent ME10 1DR			
RECOMMENDATION Grant subject to the further comments of Kent Highway Services			
SUMMARY OF REASONS FOR RECOMMENDATION/REASONS FOR REFUSAL The proposal would result in the long-term security and preservation of this non-designated heritage asset and would bring into economic use a vacant building within the town centre. This is a positive impact. The new use as a public house would be acceptable in principle. The external and internal alterations would be sensitive to the historic character and appearance of this non-designated heritage asset. The pub use would cause some noise and possibly disturbance to local residents. However, this would not be significant and the new use would be unlikely to lead to a notable increase in anti-social behaviour over and above the existing surrounding pubs. There would be no significant undue impact on highway safety or amenity in my view.			
REASON FOR REFERRAL TO COMMITTEE More than three objections			
WARD St Michaels	PARISH/TOWN COUNCIL	APPLICANT Mr James Marsden AGENT Harrison Ince Architects LLP	
DECISION DUE DATE 24/11/14	PUBLICITY EXPIRY DATE 24/11/14	OFFICER SITE VISIT DATE 26/01/15	
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
SW/14/0179	Demolition of the existing Court House and erection of 3-storey building containing 8x 4 bed houses, 2x 2 bed flats and 1x 1 bed flat with storage for 24 bicycles.	Withdrawn	30/07/14
SW/83/0664	FIRST FLOOR EXTENSION TO OFFICES AND DISPLAY OF ROYAL COAT OF ARMS	Approved	

MAIN REPORT DESCRIPTION OF SITE

1.01 The application site lies within Sittingbourne Town Centre with frontage onto Park Road and the High Street. The site is situated towards the western end of the

High Street opposite Ypres Tavern. The surrounding buildings have a mix of uses including estate agent, office, residential, retail and takeaways.

1.02 The building on the application site is historic but unlisted built in the late 1800s. It has mainly two storeys with a basement, yellow stock bricks and slate pitched roof. It was until recently (29th July 2011) used as a magistrates court. There is vehicular access from Park Road to a rear yard and garages. The total site area is 0.11ha. The site lies within an Area of High Townscape Value.

2.0 PROPOSAL

2.01 The application seeks planning permission for a change of use from a magistrates court to public house. Internally, there would be some walls removed to open up the space but much of the character would remain with the retention of a number of partitioned spaces, including the old cells where seating areas would be provided. The bar area would be located in the centre of the ground floor beneath the existing large roof lantern. Customer toilets would be provided at first floor together with staff living accommodation. The garages would be converted into kitchen and bin store space and a small area of the external space would be enclosed to provide additional seating. Two external seating areas are proposed, one to the rear of the building within the former parking area and one to the front of the building between the front elevation facing the High Street and the front boundary wall. The new main entrance to the pub would be from the High Street. An extraction flue would be provided upon the roof of the former garages to the rear of the site.

2.02 Externally, the elevation facing High Street would be altered to provide full height doors at ground floor, including the entrance door. The new windows and doors would be designed to match the existing windows and are therefore traditional in appearance. Where possible, existing windows have been retained and the agent confirms that they will be refurbished. The wall adjacent to the High Street would be altered to provide piers at a height of 2 m and traditionally designed railings in-between. Steps would be provided to the front entrance doors with a wall and railings either side.

2.03 The elevation fronting Park Road would be unaltered with the wall and railings retained. The elevation to the rear yard would be unaltered with the exception of an in-fill extension between existing projections.

2.04 Servicing for the pub was proposed to take place from Park Road. However, due to highway concerns, this is now proposed to take place from High Street involving the construction of a reinforced layby built subtly into the pavement.

3.0 PLANNING CONSTRAINTS

Potential Archaeological Importance

Area of High Townscape Value

4.0 POLICY AND OTHER CONSIDERATIONS

4.1 The National Planning Policy Framework (NPPF) 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 18 states that the Government is committed to securing economic growth in order to create jobs and prosperity, building on the country's inherent strengths, and to meeting the twin challenges of global competition and of a low carbon future.

4.3 National Planning Practice Guidance (NPPG) – Natural Environment; Noise; Travel plans, transport assessments and statements in decision-making and; Use of planning conditions.

Swale Borough Council 2008:

4.4 Relevant policies include: - Policies E1 - general guidance regarding design and amenity, E18 – Area of High Townscape Value; E19 – high quality design, B1 – supporting and retaining existing employment land and businesses, B2 – providing new employment, T1 – vehicular access and T3 – vehicular parking.

5.0 LOCAL REPRESENTATIONS

5.1 Two letters of support have been received for this proposal. They comment that the court house will be saved and welcome a new Weatherspoons pub. The proposal would support the town's wider regeneration ambitions.

5.2 Two letters of objection have been received from a local business (the pub opposite) and a local resident. We have also received a petition with 50 signatures against the proposal. A summary of the comments is as follows:

- The use of the building as a pub is not the best use of the building and should be used as a community building;
- Wetherspoons pubs attract large groups of young people. The entrance and exit to the building is directly opposite the flat above the Ypres Tavern and there are concerns about noisy customers in the early hours of the morning;
- Concerns about the increase in anti-social behaviour at that end of the town and the introduction of Wetherspoons will add to this;
- The proposal would lead to increases in litter;
- Any increase in anti-social behaviour could have an impact on customers using the function space within Ypres Tavern;
- The pub will directly overlook the living accommodation within the Ypres Tavern;
- There would be no parking provided for the pub and this would lead to on-street parking and traffic flow problems;
- Deliveries would have to stop in Park Road which would impact on traffic flow;
- The proposal would have a serious detrimental effect on the Ypres Tavern;
- Noise from music;

- Risk of intimidation by patrons of the pub;
- The brick wall to the High Street should be retained;
- The concentration of public houses in the town has a damaging impact and;
- There should be no entrance onto High Street, only from Park Road to reduce intimidation to passers by.

6.0 CONSULTATIONS

6.1 The Council's Environmental Services Manager raises no objection to the proposal noting that the external seating area will be closed at 21:00 hours, the opening hours are in line with neighbouring pubs and they do not play amplified music. They note that the proposal includes external condensing units and kitchen equipment. These have the potential to generate noise and they recommend a condition to limit the noise level to at least 5db below the existing ambient noise. They also recommend a condition to limit the hours of construction.

6.2 Kent Police comment that it is clear that the applicant has considered crime prevention measures within the Management Plan and Design and Access Statement. The plans indicate that staff may live above the pub and this will add an additional layer of security to the site. Internally, public and private areas should be well secured.

6.3 The Council's Head of Service Delivery (parking) comments that there is an existing double yellow line outside and opposite the premises which would prevent on-street parking. However, these restrictions end at the southern boundary of the site and then become residents parking bays on the west side of Park Road, with single yellow lines on the east side. His only concern is on-street parking generated outside of the restriction times which are 8am-6:30pm Monday to Saturday. If a large number of vehicles park along Park Road, there could be complaints from residents of Park Road in relation to the use of the parking bays. Also, there could be some traffic congestion caused with parking on the single yellow line. They would look to monitor on-street parking once the premises commences trading.

6.4 The Environment Agency assesses the application as having low environmental risk and therefore have no comments to make.

6.5 KCC Archaeology welcome the proposal as it secures the future of an important heritage building at a key gateway to the town's high street. Archaeological remains are frequently found in locations adjacent to the former Roman Road. There is potential for medieval and post medieval finds in this general area. Due to the limited groundwork involved in this development, a watching brief is recommended to be secure through a condition. He also recommends a condition to secure a programme of historic building recording prior to the conversion works commencing.

6.6 The Council's Climate Change Officer recommends that the development complies with BREEAM 'excellent' or if not possible 'very good'. If this cannot be achieved, then there should be a robust reason for a lower rating.

6.7 Kent Highway Services make the following comments:

“The proposals now include the provision of a service bay, located on West Street, to accommodate the standing of a delivery vehicle while supplies are being unloaded for transfer into the development. The bay will take the form of an area of existing footway, strengthened to withstand the weight of the vehicular traffic, and sympathetically surfaced in a different colour to indicate the occasional shared use. This will allow the vehicle to park clear of the running lane, so as not to obstruct the free flow of traffic, and still provide a clear 3m width of footway at the same time. The wider footway will be available at other times, as pedestrians will be able to walk between the bollards used to contain the vehicle to within the bay. The existing traffic regulation order does not need to be amended to facilitate unloading at this location, unless more stringent restrictions are considered necessary at a later date, if it is felt that only loading associated with this development should be able to use the bay. The provision of this bay should be secured in the appropriate manner.

Consequently, I would have no objections to the proposals in respect of highway matters.”

Conditions suggested relate to ensuring the provision of the layby and ensuring that satisfactory arrangements are in place for vehicles during the construction period.

7.0 BACKGROUND PAPERS AND PLANS

Design and Access Statement; proposed elevations; proposed floor plans; existing floor plans; existing elevations; proposed and existing roof plan; existing basement plan; plant and flue specification; Code of Conduct Statement and; operating hours statement.

8.0 APPRAISAL

Principle of Development

8.01 The loss of the magistrates court use of this site is perhaps regrettable in terms of its contribution to the community. However, seeking to retain such a use for the building would be unrealistic given its specialist nature and that fact that the Ministry of Justice has now sold the building. Putting the building to another use that will preserve the character and appearance of the building is therefore the best option for the site. Members may recall that there was a recent planning application that sought to redevelop this site for housing which would have involved the demolition of the building. This application was withdrawn following the sale of the site to the current applicant – Wetherspoons. The demolition of the building was at the time considered to be unacceptable by many local residents as although it is unlisted, the building holds historic and local value. The current proposal would retain the building in its entirety and in this regard is received very positively. If this application is approved, the future of the building would potentially be secured for many years to come. In addition, the current proposal very sensitively, in my view, makes internal and external alterations as described above. This retains the character of the building and in my opinion, improves its appearance from High Street. The use as a public house would provide a form of community use, would provide employment and would ensure that a business use is established within the town centre. The public house use would complement the town centre uses in my

view and would merely add to the existing number of public houses promoting healthy competition. I therefore consider that this proposal is acceptable in principle and given significant weight to the positive outcome in terms of securing the future of the building.

Visual Impact

8.02 The external alterations to the building would be sensitive to the historic character and appearance of this non-designated heritage asset. Officers have discussed the proposal with the architect and amended plans have been provided to address concerns in respect of the treatment of the boundary wall adjacent to the High Street. The current proposal would have no undue impact on visual amenity and would positively enhance the appearance of the building from the High Street. The building would address the High Street more readily and create an active frontage. In being sensitive to the historic character and appearance of the building, I am of the view that the proposal will have no undue impact on the Area of High Townscape Value.

Residential Amenity

8.03 The occupants of the Ypres Tavern opposite the application site have concerns about the impact on their residential amenities in terms of noise and activity in the early hours of the morning. They have a flat above their pub.

8.04 The proposed opening hours area as follows:

Sunday to Wednesday 0700 to 0030
 Thursday to Saturday 0700 to 0130
 Christmas eve/Bowing day/Maundy Thursday/Sundays preceding a Bank Holiday an additional hour
 New Year's Eve 0700 to 0700 New Years Day

Beer Garden Hours: Monday – Sunday 0700 to 2100 with only smoking permitted after that.

8.05 The impact on surrounding residents is of course a consideration but one must recognise that this is a town centre location. There are other pubs within the vicinity of the site and I am aware that the Vineyard is permitted to open until 1am on Fridays and Saturdays and 11pm on the remaining days of the week. I acknowledge that the Wetherspoons proposal is to have more generous opening hours than the Vineyard and Ypres Tavern. However, other than on the exceptional days listed above, in comparison to the Vineyard, this would only be by 30 minutes at the weekend and 1 hour 30 minutes on week nights. The residential properties close to the application site will already experience a certain amount of noise and activity from existing pubs and takeaway uses. One must expect this within a town centre location. The use of the beer garden would be limited to smokers after 2100 hrs and I note the fact that the adjacent building to the rear of the site, fronting Park Road, is a solicitors. This will limit the impact on residential amenity.

8.06 Potential impact from noise from the external plant will be limited by its location which is the rear of the site and adjacent to a non-residential property. I have recommended a condition to control the use of music within the external areas and am mindful that this particular pub chain do not tend to play music in any event. I therefore consider that the proposal would have no significant detriment to the residential amenities of the surrounding residential properties.

8.07 I note the concerns of the residents of the flat above the Ypres Tavern in respect of overlooking and noise. I have addressed the noise issues above. With regards to overlooking, the two buildings are 16m apart. This distance between the upper floor windows is typical of a residential street with windows to the front. I see no reason why the proposal, which includes staff living accommodation, would result in any harmful overlooking of the Ypres Tavern.

Highways

8.08 Kent Highways have no objection to the proposal subject to a condition to ensure that the delivery layby is provided on High Street. The use of the existing access from Park Road is too narrow to allow service vehicles to enter and exit and it is likely that there would be obstruction to the flow of traffic along Park Road close to a busy junction with High Street/West Street. Kent Highways suggested an alternative solution which would see the pub serviced from High Street in a new loading bay subtly built into the existing pavement area directly outside the building. Pedestrians would still be able to walk over this area when not in use as a layby for delivery vehicles. The pavement would still be the same width but there would be bollards placed at strategic points around the layby and the colour of the block-paving would be slightly different to indicate a shared surface. I am satisfied that the appearance of the street will not be harmed.

8.09 The comments of the Head of Service Delivery are noted and I see that they will be closely monitoring the on-street parking situation should planning permission be granted. However, the concerns in this respect do not outweigh what I consider to be a positive use for this building that secures its future. Kent Highway Services do not consider that there are any highway safety concerns and so the issue to consider is one of highway amenity – i.e. convenience to road users. Displacement of some residential parking outside of the parking restriction times as a consequence of pub-users occupying on-street spaces would be an unfortunate outcome. However, significant weight must be given to the town centre location and its close proximity to public car parks and public transport. It is my strong view that the possible inconvenience caused to some residents as a result of on-street parking being more readily occupied, would be outweighed by the retention of this undesignated heritage asset. Moreover, any use of this building would potentially cause some displacement of on-street parking. I consider that the proposed pub use would cause no significant harm to highway amenity and safety (subject to the servicing issue being resolved).

Other Matters

8.10 Issues of anti-social behaviour and litter have been raised by local residents. I note the comments from Kent Police who have no objection. It may well be the

case that there will be some incidents of anti-social behaviour, including littering, that can be directly linked to the proposed public house. However, I suggest that it would be difficult to conclude that the proposed public house would make the actual and perceived safety of the area and the environment in general significantly worse. I have given weight to the information submitted by the applicant that sets out their policies and procedures that deal with potential anti-social behaviour and consider that these will go some way towards reducing the risk of anti-social behaviour generated from the public house. I am of the view that any potential increase in anti-social behaviour as a consequence of this public house could be appropriately managed by the manager of the pub and the relevant authorities and that any harm in this respect would be outweighed by the potential benefits of this pub use as set out above.

9.0 CONCLUSION

9.01 The proposal would result in the long-term security and preservation of this non-designated heritage asset and would bring into economic use a vacant building within the town centre. This is a positive impact in my view and I consider that the new use as a public house would be acceptable in principle. The external and internal alterations would be sensitive to the historic character and appearance of this non-designated heritage asset in my view. The pub use would cause some noise and possibly disturbance to local residents. However, I do not consider that this would be significant and the new use would be unlikely to lead to a notable increase in anti-social behaviour over and above the existing surrounding pubs. There would be no significant undue impact on highway safety or amenity in my view, subject to the resolution of the servicing arrangements.

I therefore consider that subject to further comments from Kent Highway Services, planning permission should be granted.

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 development hereby approved shall be carried out in accordance with the following approved drawings: 2140/01 A; AL03 A; AV01 C; AL01 & AL02 A.

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

3. No development shall commence until the alterations to the highway to provide a delivery layby within the footway as shown on drawing no. 2140/01 revision A have been completed in accordance with a design and specification to be approved in writing by the Local Planning Authority.

Reason: In the interests of highway safety and amenity.

4. 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.

Reason: In the interests of residential amenity.

5. No amplified music or other amplified sound shall be played into the external seating areas of the premises.

Reason: In the interests of residential amenities.

6. The premises shall be used for the purpose of a Public House with associated ancillary uses and for no other purpose.

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

7. The use of the premises hereby permitted shall be restricted to the following hours:

Sunday to Wednesday 0700 to 0030

Thursday to Saturday 0700 to 0130

Christmas eve/Bowing day/Maundy Thursday/Sundays preceding a Bank Holiday an additional hour

New Year's Eve 0700 to 0700 New Years Day

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

8. With the exception of smokers, the external seating areas shall be closed to patrons of the public house after 21:00 hours.

Reason: In the interests of residential amenities.

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

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

10. The building hereby approved shall be converted and refurbished to BREEAM 'Excellent' or 'Very Good' (where excellent is not possible with robust reasoning provided for this) Standard or an equivalent standard and prior to the use of the building the relevant certification shall be submitted to the Local Planning Authority

confirming that the required standard has been achieved unless otherwise agreed in writing by the Local Planning Authority.

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

11. 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.

Reason: In the interests of visual amenity.

12. All new external windows and doors shall be timber and prior to the commencement of development hereby approved, detailed drawings of all new external joinery work and fittings shall be submitted to and approved by the Local Planning Authority, together with sections through glazing bars, frames and mouldings. The details shall include: elevations at 1:20; vertical and horizontal sections showing the location of frames within the walls, and 1:1 or 1:2 scale sections through all individual components. The development shall be carried out in accordance with the approved details.

Reason: In the interests of preserving the character and appearance of this undesignated heritage asset.

13. Prior to the commencement of development, details of the railings, piers and steps to the main entrance to a scale of 1:20 shall be provided. For the railings, these details shall include a plan, elevation and sections of all new railings and detailed drawings showing the existing railings fronting Park Road. The approved details shall be implemented.

Reason: In the interests of preserving the character and appearance of this undesignated heritage asset.

14. The rating level of noise emitted from the proposed plant and equipment to be installed on site (determined using the guidance of BS4142:19979 Rating for industrial noise affecting mixed residential and industrial areas) shall be at least 5dB below the existing ambient noise level LA90 T.

Reason: In the interests of residential amenity.

15. During construction provision shall be made, to the satisfaction of the Local Planning Authority, to accommodate operatives' and construction vehicles loading and off-loading.

Reason: In the interests of amenity and road safety.

Informative:

1. Planning permission does not convey any approval for works within the highway for which a statutory licence must be obtained. It is the responsibility of the applicant to ensure, before the development hereby approved is commenced, that all necessary highway approvals and consents where required are obtained and that the limits of highway boundary are clearly established in order to avoid any enforcement action being taken by the Highway Authority. The applicant must also ensure that the details shown on the approved plans agree in every aspect with those approved under such legislation and common law. It is therefore important for the applicant to contact KCC Highways and Transportation to progress this aspect of the works prior to commencement on site.

Council's approach to this application

The Council recognises the advice in paragraphs 186 and 187 of the National Planning Policy Framework (NPPF) and seeks to work with applicants in a positive and proactive manner by offering a pre-application advice service; having a duty planner service; and seeking to find solutions to any obstacles to approval of applications having due regard to the responses to consultation, where it can reasonably be expected that amendments to an application will result in an approval without resulting in a significant change to the nature of the application and the application can then be amended and determined in accordance with statutory timescales.

In this case amendments were sought in relation to design matters and servicing, the application was then considered by the Planning Committee.

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 - 14/505985/FULL			
APPLICATION PROPOSAL Proposed change of use of land for the creation of hardstanding to site 16 mobile homes for 52 weeks of the year for occupation by seasonal agricultural workers along with associated engineering works.			
ADDRESS Howt Green Sheppey Way Bobbing Kent ME9 8QT			
RECOMMENDATION Approval subject to the comments of Kent Highways.			
SUMMARY OF REASONS FOR RECOMMENDATION The development would be acceptable in principle given the agricultural need. Subject to appropriate landscaping and the provision of fences along the boundaries, the impact on visual and residential amenities would be limited. The impact on highway safety/amenity would be insignificant in my view.			
REASON FOR REFERRAL TO COMMITTEE Parish Council objection			
WARD Grove Ward	PARISH/TOWN COUNCIL Bobbing	APPLICANT AC Goatham And Son AGENT Lambert And Foster	
DECISION DUE DATE 19/01/15	PUBLICITY EXPIRY DATE 19/01/15	OFFICER SITE VISIT DATE 11/12/14	
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	
SW/03/0201 & SW/04/0579	Fruit box and machinery store and chill store extension to this building respectively.	Approved	
SW/07/1388	Erection of a steel frame building to the rear of the site containing long-term storage for English Apples and Pears under.	Approved	
SW/08/1321	Variation of condition to allow the storage of fruit grown in Swale, not just on A C Goatham's farms.	Refused	
SW/09/0386	Variation of condition to allow the storage of fruit grown in Swale, not just on A C Goatham's farms.	Approved	
SW/10/1570	Increase in hardstanding area, soil bund with additional landscaping and provision of 16 no. seasonal workers caravans including hardstanding and vehicular parking.	Approved	
SW/11/0764	Erection of 65m in length close boarded fence 2-3 m height.	Approved	
SW/13/0501	Controlled temperature fruit store with associated hardstanding and extension to general purpose building to provide office, WCs and laundry.	Approved	

SW/13/0728	Temporary portacabin for laundry use.	Approved	
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MAIN REPORT

1.0 DESCRIPTION OF SITE

1.01 The application site lies within the countryside and within the Strategic Gap between Sittingbourne and the Medway Towns. There are no special landscape designations that cover the application site. It is to the northwest of Sittingbourne and to the south of Iwade. It lies opposite the Dancing Dog public house and residential properties, including Nethertoës, a Grade II listed building. Stickfast Farm lies to the south west.

1.02 The site for the proposed caravans would be adjacent to Sheppey Way and within the eastern corner of a complex of buildings associated with the farming activities at Howt Green Farm (see planning history above). The area within which the caravans would occupy is currently occupied by fruit trees.

2.0 PROPOSAL

2.01 This application seeks planning permission for the provision of 16 seasonal workers caravans/mobile homes to be stationed for 52 weeks of the year on agricultural land owned by AC Goatham & Son. The caravans would be used as a base for seasonal workers employed to carry out work on various farms used in AC Goatham & Sons harvest operations. The work would consist of harvesting, tree pruning and topping, mowing, spraying, replanting and orchard maintenance. This work would take place across the 14 farms owned by AC Goatham & Sons (six in the Swale Borough) and partner farms.

2.02 Since the 2010 planning application for 16 seasonal workers caravans (SW/10/1570), AC Goatham & Sons have increased their labour requirement. This is as a result of on-going expansion of their business through buying land and renting on long terms agreements. The applicant wishes to increase their production of top fruit from 75,000 bins to 120,000 bins in 2019. A similar application for seasonal workers caravans has been submitted to Medway Council for one of the applicant's farms in that area. AC Goatham & Son currently employ 230 full-time equivalent staff.

2.03 For the current application, the applicant is willing to accept a similar condition to condition 9 of SW/10/1570:

9. The mobile homes/caravan hereby permitted shall not be used for human habitation other than for a period of five months in any year during the apple/pear harvest (1st July – 30th November) and thereafter, only four of the caravans/mobile homes hereby permitted shall be used for human habitation, except that between the 31st December in any year and the 1st March in the following year when none of the caravans/mobile homes shall be used for human habitation.

Reason: As the site lies outside any area in which permanent residential use of the caravans/mobile homes would be permitted and in the interests of preserving the character of the rural area in pursuance of policies E1 and E6 of the Swale Borough Local Plan 2008

2.04 For the 2014 harvest, AC Goatham & Son required 8 teams of staff which were made up of 200 staff from Concordia (an internationally recognised non profit organisation providing employees with workers from over 50 nations) and 120 who were self-sourced.

Concordia set out guidelines and recommendation for growers with regards to accommodation to ensure high welfare standards on farm.

2.05 The proposed new caravans at Howt Green Farm would provide accommodation for up to approximately 48 workers – three occupants per caravan on average. The applicant explains that it is not possible to isolate the labour requirement for individual farms i.e. disperse the accommodation around AC Goatham's farms, due to inefficiencies in managing dispersed accommodation.

2.06 The caravans would be arranged in two rows of 6 and one row of 4. The ground conditions require the provision of a hardsurface. The original proposal was to have a drop-off and pick-up point adjacent to the caravan. However, this has been relocated following concerns raised by the Environmental Health Manager. The proposal also includes the provision of a landscaping screen consisting of a mixed native species hedgerow to the northeast of the proposed caravans. The applicant has also confirmed that they will be providing a 3m high acoustic fence along the boundary with Sheppey Way.

2.07 The applicant has submitted a Traffic Statement which sets out that in general, the seasonal workers do not have their own vehicles and are discouraged from having them as they are transported to and from work using 7-seater people carriers (MPVs). Supervisors may have their own cars and they will use the existing parking spaces.

3.0 PLANNING CONSTRAINTS

The site lies 44 metres from a High Pressure Gas Pipeline (see comments from HSE below).

4.0 POLICY AND OTHER CONSIDERATIONS

4.1 The National Planning Policy Framework (NPPF) 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 18 states that the Government is committed to securing economic growth in order to create jobs and prosperity, building on the country's inherent strengths, and to meeting the twin challenges of global competition and of a low carbon future.

4.3 Paragraph 22 states that planning policies should support economic growth in rural areas in order to create jobs and prosperity by taking a positive approach to sustainable new development. To promote a strong rural economy, local and neighbourhood plans should:

- support the sustainable growth and expansion of all types of business and enterprise in rural areas, both through conversion of existing buildings and well designed new buildings;
- promote the development and diversification of agricultural and other land-based rural businesses.

4.4 National Planning Practice Guidance (NPPG) – Natural Environment; Noise; Travel plans, transport assessments and statements in decision-making and; Use of planning conditions.

Swale Borough Local Plan 2008:

4.5 Policies E1 - general guidance regarding design and amenity, E6 – countryside, E7 – strategic gap, E9 – protection of landscape, E10 – trees and landscaping, E11 - biodiversity, E14 – development involving listed buildings, E19 – high quality design, B1 – supporting and retaining existing employment land and businesses, B2 – providing new employment, RC1 – helping to revitalise the rural economy, RC5 – agricultural dwellings, T1 – vehicular access and T3 – vehicular parking.

4.6 Supplementary Planning Document – Swale Landscape and Biodiversity Appraisal (adopted 2011).

Emerging Local Plan December 2014:

4.7 ST1; CP1; CP7; DM3; DM7; DM12; DM14 & DM32.

5.0 LOCAL REPRESENTATIONS

5.1 Five representations have been received from local residents. A summary of their comments is as follows:

- Increased volumes of traffic from the site;
- Large vehicles associated with the site cause obstructions in the road;
- Concern that this development will set a precedent for future housing development at the site;
- Additional noise from additional residents;
- The caravans would be sited in a 'noise buffer area' to protect residents from the noise from the cold store;
- Why cant some workers be housed on another of the farm owned by the applicant?;
- Vehicles may crash onto the application site;
- Drainage and water mains will be put under more strain;
- Local services i.e. GPs, police, and hospitals will be under more pressure;
- The current 16 caravans on the site are not fully occupied therefore the need on a purely agricultural basis is questioned;
- 40% of apples are discarded by supermarkets demonstrating uncertainty in the apple market;
- These jobs should be undertaken by local residents to reduce the carbon footprint;
- The cost of accommodating workers elsewhere is not a material planning consideration;
- Occupancy conditions cannot be monitored by the council;
- Is council tax paid for the occupancy of the caravans?;
- The caravans on this site would overwhelm the existing population in this area;
- This development will create ribbon development along Sheppey Way;
- A surface water run-off report should be submitted. There has been localised flooding since the cold store was built;
- The conditions of the cold store buildings are being contravened as fruit from farms not owned or managed by the applicant is being stored;
- Howt Green Farm is one of the smallest farms owned by the applicant so why is it the 'hub' for the applicant's operations?
- Planting along Sheppey Way has not been provided and should have been;
- The caravans are only required to be occupied for 44 weeks of the year, not the 52 applied for;
- The existing caravans were occupied by families with young children last year;
- The site and operations on it are not environmentally friendly;
- This will clearly be a 'transit' camp;

- The development will be seen from the public footpath;
- Part of the site is used to park HGVs;
- Drivers sleep in their vehicles overnight;
- Mud is dragged onto the carriageway;
- The workers do leave the site contrary to the applicant's planning statement;
- Cars are parking between the caravans and there was one occasion of the site being used as a 'race track' one evening;
- External lighting required for the caravans would shine into the neighbours properties and;
- The vehicular access to the site is not sufficient.

6.0 CONSULTATIONS

6.1 The Rural Planning Consultant makes the following comments:

'As previously explained regarding SW/10/1570, the applicants rely heavily on a large workforce of Eastern European temporary student labour, and it is common for larger, intensive fruit farms to have organised "camps" for such seasonal harvest workers. The permitted camps are a convenient way for UK growers and packers to temporarily accommodate necessarily large numbers of short-term workers from abroad.

The context is that agricultural workers may occupy caravans on farms as "permitted" development during a particular season (e.g. for fruit picking), but planning consent is required for any out-of-season storage of vacant caravans (as opposed to moving them off site), or for any longer periods of occupation that would be regarded as work "out-of season".

As indicated in the submissions, the need for A.C. Goatham & Son to have additional seasonal workers' accommodation, based at Howt Green Farm, appears to genuinely arise from its increasing labour requirement as referred to above. It is understood that the applicants would accept equivalent conditions regarding the nature and periods of occupancy, to those applied to SW/10/1570.'

6.2 The Health and Safety Executive do not advise against the granting of planning permission in this case.

6.3 The Council's Environmental Services Manager states that the proposal has the potential for behavioural noise to affect the amenity of neighbouring residential properties, especially considering the location of the caravans close to the front boundary of the site. The increase in the number of seasonal workers has the potential to increase noise levels. Further consideration should be given to the management of the site and the workers and the continuation of the 3m high acoustic fence along the boundary of the site including the new hardstanding proposed for the seasonal workers. It may also be beneficial to move the area designated for staff collection and drop off to a point further away from residents to protect them from early morning disturbances. In addition they recommend a condition to control the hours of construction. They have confirmed that there have been no complaints from local residents to their department in respect of noise from the existing seasonal workers caravan at this site.

6.4 Bobbing Parish Council object to the application on the following grounds:

"This proposal will create a ribbon development along Sheppey way; this is supposed to be agricultural farm land not a caravan site.

We understand that the caravans were occupied by workers and their families including young children last season; this contravenes the planning permission that was granted for seasonal workers.

There is already a large caravan population on site and we would query why these extra 16 are required in the same area when the applicant has clearly stated that the existing caravans are not fully occupied. Why does the applicant feel the need to place more caravans there, as this will be clearly a transit camp as made clear by one of the elected members of the Planning Committee on the application for the original 16 caravans?

The caravans are for occupation for 52 weeks of the year but we understand only 44 weeks are required; as the application clearly states that it is difficult to determine the seasons how will this occupancy be monitored by the Borough Council? How will the Council monitor the proposed reduced number of occupants in each caravan? Will monitoring be carried out as there was a similar case in Borden and these caravans were not monitored; the situation being highlighted by residents?

We understand the applicant has caravans at the Griffin Farm site at Maidstone which is on the main A299/A229 Hastings road and is more suited because it is away from any residential properties; are these to be replaced by this application?

Concern that the external lighting required for these caravans will shine directly onto abutting properties and cause light pollution to the rural area.

The current sixteen caravans have not been fully occupied. Therefore, the need on a purely agricultural basis is suspect; especially as there appears to be an over-production of apples.

This is backed up by recent news stating that 40% of apples are discarded by supermarkets.

An extract in the Daily Mail (Monday, December 15, 2014 - Page 10) illustrates the uncertainty in the future of the apple market.

In a previous application for the new cold store the applicant was asked to produce a report on the rain water run-off created by a large area of concrete that he was planning to create, but we understand that in order to negate that report the size of the hard standing was reduced. We assume that this is now required due to the increased area but a report does not accompany this application.

We understand that the cold stores were to provide storage facilities for fruit grown on the applicants farms or farms managed by him, and that the company's website clearly states that the applicant is in partnership with multiple farms in the area and stores fruit grown by them, does this contravene the cold store conditions? An extract taken from the company's website states:

In addition to our own production of around 50,000 bins of fruit each year we also work in partnership with an additional 20 growers; either share farming with them, purchasing fruit early in the season or providing storage and packing services. Every year additional growers join us; we must be doing something right! We currently farm 1,650 acres including 990 acres under leasehold arrangements; our partnership with 20 other growers means that there is an additional 1000 acres worth of fruit flowing through our business each year.

These partnerships have been a consistent part of our business growth; for many years the family bought fruit at the Horsmonden hard fruit sale to supplement their own production, we now have direct relationships and support growers with agronomic and technical support services when required.

The above information shows that the total acreage is in excess of 1650 acres; Howt Green farm appears to be one of the smallest farms owned/managed by the applicant and by making it a hub for AC Goatham & son has created a large industrial scale development in a semi-rural location.

The applicant comments on a reduced carbon footprint, but if vehicles are being used to transport workers to other site this is not the case.

The development will be seen from the public footpath, contrary to the statement made by the applicant, as it is nearer to the road/public footpath than any other part of the development and will be clearly visible.

The residents at Howt Green number approximately 50 in 22 dwellings and this development, which could potentially house 192, when added to the existing caravans will out weighing the residents by almost 70% which is unacceptable and will overwhelm the existing population in Howt Green. Google Earth clearly shows the existing size of the development and the scale compared to the rest of the community.

We believe that the site is now able to park several HGV tractor units and trailers due to the company letting part of the site to another operator, who has now got a vehicle operators licence for use of the agricultural land to park these vehicles; despite the applicant having a yard designed for the parking of tractor units and trailers near the Flanders Farm site. This development will have a further impact on the Sheppey Way, coupled with the new housing at Iwade. Vehicles will have to pull out of a shared drive onto an unrestricted single lane carriage way some 20 mtrs from Axminster tools car park entrance. The new A249 was built to alleviate traffic problems on the old road not make way for industry to create traffic on a scale similar to that prior to the new road being built.

We understand residents have complained of having drivers sleeping in their vehicles and parked opposite their homes for the night; have suffered nuisance due to noise coming from the existing site and are concerned because the new area will be much closer to homes. We understand residents have also complained to the Council regarding cars and taxis arriving at all sorts of time day and night and indeed the Police have been contacted as the farm yard was being used as a race track at 10.30 p.m. on one occasion.

We can find no evidence of Council Tax bandings or a Business Rate figure for the sixteen caravans currently sited at Howt Green Farm; as these are connected with a functioning business do rates apply?

The proposed site was designated a noise buffer area and was provided to help with the noise level produced by the previous cold store planning application. This noise buffer area is now being disregarded and residents feel this should be left to protect those living opposite.

The Parish Council would query why the application does current vehicle movement numbers as figures given appear to be the same as the last three applications for this site?

These jobs could and should be undertaken by a home grown workforce; this would reduce the carbon footprint and create employment for the unemployed able-bodied. Current government policy is to offer work to the local population and not to exclusively import labour from outside the United Kingdom.

The statement that higher wages would be required if staff had to rent accommodation elsewhere is not a planning consideration. If other businesses wanted caravan accommodation for their workers in order to reduce their wage bill, it would not be considered relevant either.

It would appear from comments that several residents abutting the proposal have not received any notification of this, which is of concern to the Parish Council. It looks as though one resident is awaiting a statutory site notice before commenting and another commented that he believed the application date was the 18th November but only discovered it on the 5th December; he too never received a letter from the Borough Council.

Finally, Members are concerned that this application will create a precedent as a residential brownfield site which will then become the subject of further planning requests in the future; similar to the same circumstances at Hoo, St. Werburgh. This concern ties in with a recently withdrawn outline application for 42 dwellings on this site, under reference Ref. No: 14/506167/OUT.”

The comments of the Parish Council will be addressed in the Appraisal section below.

7.0 BACKGROUND PAPERS AND PLANS

Site layout plan; Traffic Statement; Design and Access Statement & Landscape and Visual Appraisal.

8.0 APPRAISAL

8.1 I consider the key issues to be the principle of the development, the visual impact, the impact on residential amenities and any highway implications. The biodiversity/ecology implications are also a consideration as well as whether the development would have any impact on the setting of the nearby listed buildings.

Principle

8.2 The overriding consideration when examining the principle of the seasonal workers accommodation is whether this type of development is compliant with local and national policies which seek to balance the needs of the rural economy against the impact on visual and residential amenities. The NPPF at paragraph 22 states that planning policies should support economic growth in rural areas in order to create jobs and prosperity by taking a positive approach to sustainable new development. To promote a strong rural economy, local and neighbourhood plans should:

- support the sustainable growth and expansion of all types of business and enterprise in rural areas, both through conversion of existing buildings and well designed new buildings;
- promote the development and diversification of agricultural and other land-based rural businesses.

8.3 Members should note that there are permitted development rights for farmers to station caravans on their land for the period required to house seasonal workers. The reason that

this proposal requires planning permission is that the caravans would remain on site after the season has finished i.e. after October and also because the workers would not just be required to work on Howt Green Farm, but other farms under the applicant's control. It is worth bearing in mind therefore that a number of caravans could be placed anywhere on the farm without the need for planning permission, albeit a smaller number and for a lesser period of time. The need for the larger number of caravans has been explained above. The need for the caravans to stay on site is because the harvest season has been extended due to the type of fruit grown and that there is a need for some workers to be accommodated to carry out other farm duties in addition to maintaining the orchards out of season. The period within which the caravans would not be occupied would be so short as to make their removal from the site impractical and would lead to considerable cost for perhaps little gain i.e. the visual impact would be gone, but only fleetingly. The visual impact is discussed in more detail below. By approving this application, we are able to apply conditions controlling the use and associated development. Members should be mindful that if this permission is refused, the applicant could still provide a number of caravans on this site, albeit for a shorter period of time, but with none of the requirements set out in the conditions below.

8.4 Policy E6 of the Local Plan allows development within the countryside that is demonstrated to be necessary for agriculture. The comments of the Rural Consultant clearly show that the establishment of dedicated and centralised seasonal workers accommodation is necessary for agriculture. His comments also make it clear that this type of development is a common practice for intensive farms such as those in A C Goatham's control. He accepts the argument that there is an increase in the need for additional accommodation linked to the increase in the labour requirement for the business. The Parish Council and local residents question why additional caravans are needed when the existing caravans are not fully occupied. It is my understanding that the caravans are only under-occupied outside of peak season – July-November. The additional caravans and existing caravans are all expected to be occupied during peak season.

8.5 With regards to the claims by residents and the Parish Council that the apple market is in decline, I have asked our Rural Planning Consultant to comment. He notes:

"I am not aware of any evidence of over-production of English apples. The whole trend in recent years has been one of investment for increased UK production, substituting for foreign imports....."

...There was a 2013 report by the Global Food Security Programme that found retailer standards (e.g. size, shape and blemish criteria of fruit and vegetables – not just apples) can reject up to 40% of edible produce (avoidable waste), which may never reach market – perhaps that was what was referred to, or a similar study.

Farmers are as keen as anyone to avoid waste – and if anything that is an argument for maximising efficient management, and having a well-trained and adequate workforce engaged throughout the growing, harvesting, storage, packhouse and marketing processes."

I have no reason to question the robustness of the applicant's business and therefore his desire to expand and increase production. Members will also note condition 10 below which would require the caravans to be removed from the site, should they become redundant.

8.6 Policy RC1 of the Local Plan supports proposals to revitalise the rural economy. In my opinion, the seasonal workers accommodation would respond entirely to local and national policy objectives.

8.7 For the avoidance of doubt, I do not consider that the proposed seasonal workers accommodation would amount to farm diversification as such as it would be wholly

connected to a well established agricultural activity. This type of development does however, demonstrate how farmers are having to adapt to the changes demanded of them.

8.8 Also of consideration is the fact that Members of the planning committee have previously accepted the principle of seasonal workers caravans at Howt Green. Members accepted the need for a centralised base for the seasonal workers as opposed to dispersing them across other farms in the applicant's ownership. The current proposal would simply add to this accommodation. Members also accepted the applicant's argument with regards to dismissing the option of accommodating the workers on the various holiday parks. Not only would it be more costly to the applicant but it would be more difficult to manage transportation and moreover, that the workers would not be on site to deal with early morning or late night tasks that may arise at short notice.

8.9 Policy E7 of the local plan states that planning permission will not be granted for development within strategic gaps which would result in the merging of settlements, would result in encroachment or piecemeal erosion of its rural, open and undeveloped character or, prejudice the Council's strategy for the redevelopment of urban sites. However, this policy has been reviewed in a report to the LDF Panel and is not compliant with the NPPF insofar as the NPPF is seeking to support a prosperous rural economy is positively framed in terms of development opportunities in the rural area. It is worth noting that this site does not fall within the Important Local Countryside Gap in the adopted Local Plan, or the Local Countryside Gap in the emerging Local Plan.

8.10 The suggested conditions to control the use of the caravans will ensure that the development does not lead to the establishment of permanent residential accommodation on land that is outside of the built-up area boundary which would be entirely contrary to policy. The conditions will also ensure that the use remains wholly connected to the accommodation of seasonal workers associated with the agricultural operations of A C Goatham & Son. It is my view that these conditions are enforceable and can therefore be relied upon to limit activity at the site and ensure that the caravans remain temporary in nature.

8.11 Having considered the proposal on its own merits and against planning policies set out in the NPPF and the Local Plan, I am of the view that this proposal is classified as development necessary to assist in the adaptation, viability and vitality of agricultural and rural business. Accordingly I have no objection to the proposal in this regard.

Visual impact

8.12 The visual impact of the caravans and the hardstanding on the landscape is a significant consideration in this case. I have referred to the Supplementary Planning Document – Swale Landscape and Biodiversity Appraisal (adopted 2011). This identifies the application site as being within the fruit belt and within a landscape characterised by arable farmland. This document provides guidance on the provision of caravan sites within the rural area and recommends that they should be enclosed by landscape features and well screened by natural vegetation. The submitted Landscape and Visual Appraisal provides a detailed assessment of the visual impact of the development from different view points including Sheppey Way and the public right of way between Host Green and Stickfast Farm. The view of the caravans from this public footpath would be limited by vehicles and items being stored within the site and would be seen within the context of a working farm. The degree of effect would be 'negligible'. The view from Sheppey Way looking from the east would be impacted upon the most in my view. The caravans would be partially screened from the road by an existing hedgerow. The planning application proposes the introduction of an additional hedgerow to the northeast of the caravans and this will lessen the visual impact somewhat. The proposal would also see the caravans coloured dark green. I consider that this would only go some way towards obscuring the caravans from view from

Sheppey Way. I am of the view that there should be a fence provided along the boundary with Sheppey Way at a height of 3 metres and that this should be sited behind the existing hedgerow. I also consider that there should be a 2m fence provided to the northeast boundary behind the new hedgerow that is proposed to be planted. I have recommended conditions to ensure that the fences are provided. Subject to the provision of this fence, I consider that the proposal would have no significant detrimental impact on the character and appearance of the landscape in this case.

8.13 The visual impact must be balanced against the strong indication that the principle of the development is acceptable and that supporting development that aids the vitality of agriculture is encouraged by national policy guidance. In this case, the landscaping proposed would be comprehensive and I am of the view that it will adequately mitigate any significant adverse effect.

Impact on residential amenities

8.14 When considering this aspect of the proposal, Members must bear in mind that this is a working farm. Early morning and late evening activity is not controlled as is the case with many farms within the borough and nationally. However, the proposal for the seasonal caravans does not affect the current operations at Howt Green Farm i.e. the fruit storage buildings.

8.15 In respect of the caravans, as they would be used for residential purposes, in planning terms, this is not considered to be a 'bad neighbour' use. The minimum separation between existing dwellings and the caravans would be 30m and separated by a road – Sheppey Way. Anti-social behaviour would be a matter for the employer to deal with and failing that, the Council's anti-social behaviour officers or the Police. I have also set out above the case for the provision of a 3m high acoustic fence along boundary with Sheppey Way and 2 m high close boarded fence along the northeast boundary for visual reasons. This fence would also act as a noise and privacy barrier benefitting both the existing residents opposite the site and the occupants of the caravans.

8.16 It is possible that there will be some noise generated from workers leaving the site in vehicles during the early hours of the morning to start their shift. Indeed this matter is raised by the Environmental Services Manager. The applicant has relocated the drop-off/pick-up point for these caravans to the area adjacent to the existing caravans. This will ensure that noise is limited. I acknowledge that there would be more vehicles entering and leaving the site as a consequence of this current proposal. In terms of noise from the access to the site, the closest neighbour property is Nethertoës which is 20 m away. In my opinion, there is nothing to demonstrate that the noise from a number of vehicles entering and leaving the site would have a significant impact on the residential amenities of this property.

8.17 It is acknowledged that there would be a large number of people living on this site during peak months – July to November. Local residents and the Parish Council are concerned that this will overwhelm the local population. However, I consider that the nature of the proposed use is such that the impact on the workers would be largely contained within the Howt Green site. Given the fact that the majority of the workers would be on the site for temporary periods, it is unlikely that there would be a notable strain on local services and amenities in my view.

8.18 There are concerns about the potential impact from lighting at the site on local residents. Members will note that I have recommended a condition to control any future lighting.

Highway implications

8.19 The submitted Traffic Statement clearly sets out the transport arrangements for this site concluding that the number of cars brought onto the site by workers would be negligible and that most of the workers would rely on MPVs to travel to and from work. The Traffic Statement notes that between January and February the caravans would be unused. Between March and June and in December, only four of the caravans would be occupied. This means that the peak use of the access by vehicles would be between July and November – five months of the year. During this five month period the majority of the workers would be students employed through Concordia and would be unlikely to have their own vehicles. At peak times (between July and November) the proposal would result in approximately 14 additional trips per day (7 in and 7 out). This is not significant in my view. Kent Highways have been informed of this proposal and I hope to have their comments prior to the meeting.

Biodiversity/ecological implications

8.20 The site of the proposed caravans is currently an intensively farmed orchard and the ground conditions are unlikely to provide habitat for many types of protected species. The possibility of reptiles and Great Crested Newts being found at the site is very slim given the intensively managed nature of the land. Members will note my recommended condition which will be used to ensure that the development is carried out in a manner that enhances local biodiversity.

Setting of listed buildings

8.21 With regards the impact on the nearby listed building, Members will be aware that the Council must have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. The closest listed building to the site is Nethertoës. This is a grade II listed building and is separated from the application site by Sheppey Way and thick vegetation of approximately 3m in height along the front boundary of this property. The caravans would be a minimum of 90m from this listed building, and the fence would be removed from it also. I therefore consider that the proposed development would not give rise to a harmful impact on this building or its setting.

Other issues

8.22 The fact that families with young children may potentially have occupied the existing caravans on the site is not material to the determination of this planning application. It is feasible that a couple may come to the site together to carry out the seasonal work and would therefore potentially need to bring their children. This is not in breach of the planning conditions and I see no planning harm here.

8.23 I have recommended a condition to require further details of foul and surface water drainage to address concerns about potential localised flooding.

8.24 Any concerns in respect of the conditions applied to the cold stores at the site are not material to this planning application and should not influence how this application is determined. Similarly, concerns about HGVs parking on the site and drivers sleeping in vehicles overnight are relevant to the wider operations at the farm and should not influence the outcome of this planning application. Council tax concerns are also not relevant to this application.

8.25 I can confirm that all correct neighbour notifications were carried out and a site notice was displayed giving residents who are close to the site an opportunity to comment.

8.26 There is no substance to the claims that this development would lead to permanent housing on this site. The application to which the Parish Council refers to in respect of 42 houses is actually on a different site – Floplast.

9.0 CONCLUSION

9.1 Having considered the relevant planning policies, comments from the Parish Council, other consultees and the local residents, I am of the strong view that the development would be acceptable in principle as it is clear that the caravans/hardstanding are necessary for agriculture. The visual impact would be successfully managed by the implementation of an additional hedgerow and fences in my view and the fence would ensure reduced noise and increased privacy for neighbours and occupants of the caravans. The additional vehicle movement at the site would be insignificant in my view. I therefore consider that there would be no detriment to visual amenities, the rural character of the landscape and the residential amenities of dwelling close by.

9.2 Subject to any additional comments from Kent Highway Services, I consider that planning permission should be granted.

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 development hereby approved shall be carried out in accordance the following approved drawings: 2254/P/10 C and 3307/DR 001 rev. A.

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

- (3) Prior to the commencement of development hereby approved, full details of the method of disposal of foul and surface waters shall be submitted to and approved by the Local Planning Authority. The approved details shall be implemented before the first use of the development hereby permitted.

Reason: In order to prevent pollution to ground waters and localised flooding.

- (4) Prior to the commencement of development hereby approved, a report demonstrating how the proposal will incorporate measures to encourage and promote biodiversity and wildlife shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with those approved details and shall thereafter be retained.

Reason: In the interests of promoting wildlife and biodiversity and wildlife in rural areas.

- (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.

Reason: In the interests of residential amenity.

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

Reason: In the interests of highway safety and convenience.

- (7) Prior to the commencement of development hereby approved, full details of soft landscape works shall be submitted to and approved in writing by the Local Planning Authority. These details shall include planting schedules of plants, noting species (which should be native species where possible and of a type that will enhance or encourage local biodiversity and wildlife), plant sizes and numbers where appropriate, and an implementation programme.

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

- (8) The approved scheme of tree planting and landscaping (including a 2 m high close boarded fence along the northeast boundary) shall be carried out within 6 months of the completion of the development. Any trees or shrubs removed, dying, being severely damaged or becoming seriously diseased within ten 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. The close boarded fence shall be retained in perpetuity or until such time as the caravans are removed from the site.

Reason: In the interests of the visual amenities and rural character of the area.

- (9) Prior to the commencement of development hereby approved, details of a 3m high acoustic fence to be located along the boundary with Sheppey Way, shall be submitted to and approved by the Local Planning Authority. The approved fence shall be erected prior to the first use of the caravans hereby approved.

Reason: In the interests of residential and visual amenities.

- (10) The caravans/mobile homes hereby permitted shall be used for the purpose of seasonal workers accommodation in association with agriculture as defined in Section 336(i) of the Town and Country Planning Act 1990 and for no other purpose, including any other purposes in Class C3 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended). The number of season workers accommodated within the caravans/mobile homes shall not exceed 50 in number and these seasonal workers should undertake work for A C Goatham & Son only.

Reason: In the interests of the amenities of the area and in the interests of preserving the character of the rural area.

- (11) The mobile homes/caravan hereby permitted shall not be used for human habitation other than for a period of five months in any year during the apple/pear harvest (1st July – 30th November) and thereafter, only four of the caravans/mobile homes hereby permitted shall be used for human habitation, except that between the 31st

December in any year and the 1st March in the following year when none of the caravans/mobile homes shall be used for human habitation.

Reason: As the site lies outside any area in which permanent residential use of the caravans/mobile homes would be permitted and in the interests of preserving the character of the rural area.

- (12) Should any or all of the caravans/mobile homes become redundant and unused for the purposes of seasonal workers accommodation in association with agriculture as defined in Section 336(i) of the Town and Country Planning Act 1990 for a period of 2 consecutive calendar years or if at any time they are no longer required for accommodating seasonal workers, they shall be removed from the site and the land shall be restored to its previous condition - the hardstanding removed and the ground restored to its natural state and the 2 and 3 metre high fences surrounding the caravans/mobile homes removed from the site within 3 months of the cessation of the use or within 3 months of the date on which the 2 consecutive calendar years referred to above expires.

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

- (13) At no time shall there be any more than 16 caravans/mobile homes stationed or stored on the land within the application site and these caravans shall be positioned in the area for the siting of the caravans/mobile homes as indicated on the submitted plans 2554/P/10 A.

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

- (14) The caravans shall be dark green in colour as set out in the submitted Landscape and Visual Assessment.

Reason: In the interests of visual amenities.

- (15) Notwithstanding the plans submitted, the drop-off/pick-up point for the seasonal workers shall be located adjacent to the existing caravans located to the rear of the Howt Green site as shown on drawing number 2554/P/10A.

Reason: In the interests of residential amenities.

- (16) 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.

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

- (17) Details in the form of cross-sectional drawings through the site, of the existing and proposed site levels shall be submitted to and approved in writing by the Local Planning Authority before work commences and the development shall be completed strictly in accordance with the approved levels.

Reason: In order to secure a satisfactory form of development having regard to the need to screen the caravans from Sheppey Way.

Council's approach to this application

The Council recognises the advice in paragraphs 186 and 187 of the National Planning Policy Framework (NPPF) and seeks to work with applicants in a positive and proactive manner by offering a pre-application advice service; having a duty planner service; and seeking to find solutions to any obstacles to approval of applications having due regard to the responses to consultation, where it can reasonably be expected that amendments to an application will result in an approval without resulting in a significant change to the nature of the application and the application can then be amended and determined in accordance with statutory timescales.

In this case 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

REFERENCE NO - 14/503907/FULL		
APPLICATION PROPOSAL To construct a timber framed and timber clad garage/storage area to the rear boundary of the property. Access via track to rear of ruins barn road.		
ADDRESS 2 Ruins Barn Road Tunstall Kent ME10 4HS		
RECOMMENDATION - Approve		
SUMMARY OF REASONS FOR RECOMMENDATION: The proposal is in accordance with national and local policy.		
REASON FOR REFERRAL TO COMMITTEE Parish Council recommends refusal		
WARD Woodstock	PARISH/TOWN COUNCIL Tunstall	APPLICANT Mrs Jennifer Zaluska AGENT
DECISION DUE DATE 15/01/15	PUBLICITY EXPIRY DATE 15/01/15	

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1.0 DESCRIPTION OF SITE

- 1.01 The property is situated on the edge of Sittingbourne, within the built up area boundary. The site of the garage is at the rear end of the garden serving the property, and is itself served by an unmade track leading alongside no.30 Ruins Barn Road and then extending behind all of the properties. It appears that a smaller garage originally stood on the site. The property is not the subject of any specific planning constraints.

2.0 PROPOSAL

- 2.01 This is a retrospective application for the retention of a detached garage to the rear of 2 Ruins Barn Road, Tunstall. The garage has a ridge height of four metres, a length of 8.1 metres and a width of 5.3 metres. The structure is finished in pale grey painted weatherboarding with a black corrugated onduline roof.

3.0 SUMMARY INFORMATION

None

4.0 PLANNING CONSTRAINTS

None.

5.0 POLICY AND OTHER CONSIDERATIONS

- 5.01 Policies E1 and E19 of the Swale Borough Local Plan 2008.

6.0 LOCAL REPRESENTATIONS

6.01 Objections, with photographs, have been received from a local resident. The points contained therein may be summarised as follows:

- *Built without planning permission*
- *Size is too large*
- *All we can see is 'this hideous black mass...it is visible from every aspect of our homes'*
- *Too large and too high*
- *Overlooking and poor visual appearance*
- *We no longer can see the trees beyond*
- *Why are there windows in the eaves?*
- *Roofing material is black corrugated- out of keeping*
- *Owner needs to take the roof off and either have a flat roof or one the same size as his neighbour*
- *'Please ensure that the application is REJECTED'*

7.0 CONSULTATIONS

7.01 Tunstall Parish Council recommends refusal on the following grounds:

- *The building dominates neighbours' back gardens*
- *This is a retrospective application*
- *Size not in keeping with other garages*
- *If approved, please add condition(s) to restrict use to ancillary use only and no residential use*

8.0 BACKGROUND PAPERS AND PLANS

8.01 Application papers and drawings relating to planning reference 14/503907.
Application papers and drawings relating to planning reference SW/10/1481.

9.0 APPRAISAL

9.01 The main issue to consider appears to be the effect of the building on visual and residential amenity.

9.02 As noted, the application is retrospective, so the effects of the building can be seen now, and are not the subject of conjecture.

9.03 The building is fairly well designed and finished. The weatherboarding has been painted pale grey, which minimises its visual impact. A great number of rural outbuildings within the borough are roofed in the corrugated fabric known as Onduline, and I consider it to be a suitable material to use in such circumstances.

9.04 The main objection appears to be aimed at the height and scale of the building, which is four metres high at the ridge. Whilst this is higher than the

adjacent garages, I do not consider it to be an excessive height. Indeed, a garage building with a ridge height of 5.3 metres was approved at the rear of no.28 Ruins Barn Road in 2010 under planning reference SW/10/1481. It is difficult to recommend refusal of the present application, when a taller garage in the same road has been previously approved.

9.05 I acknowledge the neighbour's comments and photographs which show the garage roof from his rear windows. However, I note that the garage is situated nearly fifteen metres from the rear windows of the neighbour's property and much as it may seem unfair, there is no right to a view enshrined within planning law.

9.06 I also acknowledge the points raised by the Parish Council, and note the requests for a condition/conditions restricting the building's use. I therefore recommend the inclusion of the condition below, should Members be inclined to approve the proposal.

10.0 CONCLUSION

10.01 Whilst I acknowledge the points raised by the neighbour and the Parish Council, I am not of the opinion that the building represents an unacceptable erosion of visual or residential amenity, and am further of the opinion that the proposal is in accord with the relevant policies. I therefore recommend that the application be approved, subject to strict accordance with the condition included below.

11.0 RECOMMENDATION – GRANT Subject to the following conditions:

CONDITIONS

1 The garage hereby permitted shall be used only for purposes incidental to the use of the main dwellinghouse, and for no commercial purpose.

Reason: In the interest of residential amenity.

Council's approach to the application

The Council recognises the advice in paragraphs 186 and 187 of the National Planning Policy Framework (NPPF) and seeks to work with applicants in a positive and proactive manner by offering a pre-application advice service; having a duty planner service; and seeking to find solutions to any obstacles to approval of applications having due regard to the responses to consultation, where it can reasonably be expected that amendments to an application will result in an approval without resulting in a significant change to the nature of the application and the application can then be amended and determined in accordance with statutory timescales.

In this case the proposal was considered by the Planning Committee.

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.

REFERENCE NO - 14/505359/FULL			
APPLICATION PROPOSAL Retrospective application for the retention of a bund and fencing and associated proposed landscaping.			
ADDRESS Former Development Site Kemsley Area B Swale Way Sittingbourne Kent			
RECOMMENDATION APPROVE			
SUMMARY OF REASONS FOR RECOMMENDATION The proposed development and landscaping would not give rise to harm to residential or visual amenity.			
REASON FOR REFERRAL TO COMMITTEE Significance			
WARD Kemsley	PARISH/TOWN COUNCIL	APPLICANT Taylor Wimpey South East AGENT Mr Richard Jones	
DECISION DUE DATE 16/01/15	PUBLICITY EXPIRY DATE 16/01/15	OFFICER SITE VISIT DATE	
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
SW/91/0117, SW/91/0125, SW/91/0130	Planning permission for residential and business B1 development, including provision for a district distributor road and associated estate roads, car parking and landscaping	Allowed on appeal	22 January 1993, subsequently renewed under SW/99/847 and SW/01/0831
SW/04/0948	Approval of reserved matters of SW/91/0125 for the erection of 1, 2, 3 & 4 bedroom homes, associated roads, parking and drainage	Approved	25 th March 2005
SW/05/0574	Approval of reserved matters of SW/91/0125 for the hard and soft landscaping works to new housing site	Approved	11 th July 2005

MAIN REPORT

1.0 DESCRIPTION OF SITE

- 1.01 Outline planning permission was granted for the development of this site, together with the area to the west (known as Kemsley Fields) for residential development, and land to the north for industrial development in the early 1990s. This permission was renewed a number of times, and reserved matters applications for the housing here were submitted in 2004 and 2005. The landscaping of the estate was approved under reference SW/05/0574.

The housing sits to the south and west of Swale Way, the Northern Relief Road, which runs round part of the perimeter of the site. As part of the approved landscaping scheme, the perimeter of the eastern portion of the site should have had a flat landscaped belt between the NRR and the dwellings, and a 1.8 metre high brick wall built on the back edge of the footway. What has, in fact, been constructed at the site is a large bund in the area supposed to be planted with trees, and a post and rail fence on the back edge of the footway.

2.0 PROPOSAL

- 2.01 This retrospective application seeks permission for the bund and then fence, and proposes substantial landscaping along the top of the bund for its full length, (8 rows of thorny and non-thorny species together with feathered trees/whips) with groups of trees (hornbeam) at regular intervals on the road facing side of the bund.
- 2.02 The application is accompanied by a design and access statement and a landscape management scheme, which amongst other things sets out the scale of planting, a regime for ensuring that trees, shrubs etc are planted in conditions in which they should thrive (provision of topsoil etc) and a maintenance scheme.

3.0 PLANNING CONSTRAINTS

- 3.01 None identified

4.0 POLICY AND OTHER CONSIDERATIONS

- 4.01 The National Planning Policy Framework (NPPF):

Paragraph 58 states that, amongst other things, planning decisions should aim that all developments are visually attractive as a result of good architecture and appropriate landscaping.

- 4.02 Swale Borough Local Plan 2008:

E1 – General Development Criteria: Development should respond positively by reflecting the positive characteristics and features of the site and locality, cause no demonstrable harm to residential amenity, be both well sited and of a scale, design and appearance, that is appropriate to the location with a high standard of landscaping.

E19 – creating safe, accessible, comfortable, varied and attractive places, providing native (regional or local) plant species for soft landscaping and hard landscaping, surface and boundary treatments that respond positively to the character of the locality.

- 4.03 Publication Draft – Bearing Fruits 2031 – The Swale Borough Local Plan Part 1

CP4 – Requiring Good Design – Development should provide a high standard of locally native plant species and trees (of local provenance and supportive of biodiversity) for soft (including green walls) landscaping, providing hard landscaping, surface and boundary treatments that are locally distinct and that respond positively to the character of the locality;

DM14 – General Development Criteria – Development should cause no significant harm to amenity and other sensitive uses or areas; Be both well sited and of a scale, design, appearance and detail that is sympathetic and appropriate to the location; Reflect the positive characteristics and features of the site and locality; Provide for an integrated landscape strategy that will achieve a high standard landscaping scheme that informs the earliest stages of a development proposal

5.0 LOCAL REPRESENTATIONS

5.01 54 representations (including a number of duplicate representations) have been received, all raising objection to the proposals.

- The existing post and rail fence does not provide adequate protection from the noise levels generated from the passing traffic;
- The existing post and rail fence MUST be replaced with an acoustic barrier akin to the existing fence which is in place on the adjoining Kemsley Fields development. A similar acoustic fence also runs along the length of the euro link and the fence boarding Chandlers croft should be replaced to match.
- Residents have requested on numerous times that we have some kind of sound proofing in the form of a wall or a fence. It is impossible to have a conversation in the garden with the lorries and cars going past. In the summer, you can't sleep with the window open because of the noise. The bund is a waste of space. It needs to be managed and made into something to improve the lives of the residents because currently we cannot enjoy our open space in the garden, not enjoy a decent night sleep with the window open.
- We also have to put up with people walking along the bund, setting off fireworks, peering into our garden to see what they can steal. When I purchased this house, I was led to believe I would have sufficient sound proofing, and that the view from my lounge window would not be of industrial units as per the plans that George Wimpey had. It would be nice to have some privacy rather than lorry drivers sitting in the traffic watching you. I'm very disappointed that leaving this bund is even being suggested.
- Swale way is one of the busiest single carriageways used by lorries in Kent, with traffic at all hours of the day and night. The opening of the Nicholls yard near the A249 roundabout is guaranteed to ensure that the traffic continues to grow. Once the end of the Sittingbourne relief road is decided and built this will add to further traffic. This means that residents on Chandlers croft will receive no let up in the noise of traffic suffered.
- The current bund is a rubble filled mound on which nothing useful will grow. it is nothing short of an eye sore which does nothing to assist in the reduction of noise.
- When people buy houses, they buy them with reasonable expectations that they and the development will be of a certain standard, this standard being defined by the planning application amongst other things.
- It is therefore very clear that the proposed plan of just a fence and a few clumps of trees is not at all acceptable, as these will just be destroyed and will end up making the buffer zone the same unsightly mess it is at present. This is not acceptable to expect residents to pay for the up keep of a mound. The traffic along Swale Way is very busy as it's a route to Eurolink, which is used a lot by lorries and commuters. The noise of the traffic is a constant drone and Chandlers Croft residents should have the same as Kemsley Field and Recreation way, surrounding our estate to reduce the noise.
- Not only is it aesthetically unappealing but it also doesn't do the job of reducing traffic noise on an increasingly popular industrial road.
- It should be levelled or the rubble removed at the expense of the developer.

- A noise reflective noise barrier should be erected from Lloyd drive to Reams Way as a start.
- The Council in my opinion along with Kent Highways have already set a precedent because they erected the fence from Lloyd drive upwards to toward the roundabout and again from Reams Way to the printers, we are closer to the road yet we have no noise protection.
- Why is Chandlers Croft without a barrier when all the other developments around about have their noise barrier but nowhere near the volume of traffic they now use that road now.
- The bund itself should have a hedge on it that should be maintained by Swale same with the noise barrier, interspersed with low maintenance trees and shrubs.
- A consultant engineer should be commissioned to conduct a noise survey and a proper noise attenuation barrier be installed that is both future and maintenance proof.
- I moved onto the development in 2006, the traffic noise has increased greatly with Morrisons, Firmins and now Nicholls lorries going up and down the road 24hrs a day. Added to this is the daily traffic that now uses Swale Way, which at certain times of the day queues from Grovehurst roundabout to the Mill. We were all sold properties with the promise of a flat landscaped buffer zone with a brick wall surrounding it that would protect the development from the noise of this traffic, which to date we are still waiting for.
- In the original planning application for this development it was raised as a concern and highlighted that the residents were to be protected from the noise of the mill and traffic.
- Kemsley Fields has acoustic fencing along Swale Way and so does Recreation Way so why should it be deemed ok for Chandlers Croft, whose houses are closer to the road than the other developments, not to need such protection.
- The bund is an unsightly area of building rubble covered in weeds which will not support the growth of trees. Those that were planted a few years ago quickly died and disappeared. The picket rail fence that is currently in situ is often broken and does nothing to stop people walking across the top of the bund peering into the houses invading people's privacy.
- To protect the development and the residents TW should NOT be allowed to leave this area as is and should be made to comply with the original plans. A flat area, landscaped with a range of trees and shrubs and the development to have acoustic fencing or wall as protection as originally agreed.
- As residents we should have the development and protection that we were all sold by TW and we signed contracts for not the unsightly mess we have been left with.
- If the trees are not planted into fertile ground that will sustain their growth and have to constantly be replaced the residents will look to seek financial compensation for the extra costs incurred by the management company.
- The bund is full of builders rubble so that any planting of trees or bushes don't survive. The bund should be levelled, all rubble removed and in place should be a flat landscaped area with adequate noise protection for all the properties on the Chandlers Croft estate.
- In the application form, it states there is currently scrub (low shrubs) on the bund, this is not the case. At one time trees were planted, but due to the extremely poor quality of builders rubble and damage and general lack of maintenance to the trees, these quickly died.
- With the approval of the new Nicholls site increasing the lorry usage of the Swale Way, and the 24/7 constant drone of vehicles, we are unable to enjoy our gardens, or keep windows open at the rear of any property that backs towards the main road.
- Essentially I now live on the edge of a distribution hub with Morrison's, Knauf, Ridham docks, Firmin and now Nichols all moving HGV's along Swale Way within

earshot of my property. I omitted to mention the paper mill as I already knew they were here when I bought my house. The addition of the link road has increased traffic immensely since it opened and will only increase once the other section is completed.

- Whilst it is used by many commuters, HGV's account for a great deal of traffic movements and will further increase as new business comes into Swale via the Eurolink estate and those that will take up development sites close to Morrison's and Knauf. Taking into account the location and the size of these sites they are likely to attract warehousing and distribution operators which will increase the numbers of HGV's using Swale Way and the link road substantially.
- The traffic noise from the road is 24/7 and peaks at rush hour along with the various times that shifts change across the businesses that operate within close proximity.
- My property does not actually sit next to the road but the traffic noise is very audible throughout the day; I dread to imagine what it is like for those living closer to the buffer zone.
- In my case I've noticed a significant rise in noise levels since 2006 and I'm not prepared to suffer even more. Action is needed NOW to improve the quality of life for the residents and I urge the council not to approve the proposal of the developer.
- Acoustic fencing and considerate landscaping is what is needed to absorb the noise from the busy roads that surround the development. It will enhance the appearance of the site, provide some privacy and ultimately improve the quality of life for the residents.
- The application to not put up acoustic fencing is simply ridiculous given the ever increasing road noise along Swale Way. When I moved in in 2007 there was a tolerable amount of road noise, a few lorries for the paper mill. However now I'm unable to have the windows at the back of my house open at night (the back faces onto Swale Way) as the road noise is unbearable.
- I bought my house on this estate in 2007. The road outside my house was a quiet road as is led nowhere. Over the past few years it's got ridiculous. Every truck, lorry, van and boy racer going in and out of Sittingbourne goes past my house. I hear every long, drawn out gear change from 40 tonne trucks as they slow down and accelerate at the roundabout. It's painful, I cannot keep windows open in summer at night due to the noise, its unbearable.
- There are so many haulage firms in the area, Morrisons, Nicholls, Kemsley Mill, Lafarge, Hansons, Ridham Dock traffic, and Bretts, they all use this roundabout as well as all Eurolink traffic and commuter traffic in the town. At a guess, it's probably at least 1 truck every 15 seconds pulling away and braking during the day. The queues start from one end of Swale way to the other, from 4.30 most evenings too, all sitting with idling engines outside my house. I am fed up with this and the constant estate problems I've endured and so something needs to be done as fed up with noise, dirt dust and tin cans coming in from this very busy at times fast road.
- We bought our house after knowing that the northern relief road would be open one day to be used after being told that there would be a sound proof solution which was to be a wall or fence to dampen the noise especially from the huge increase of traffic from the surrounding companies and beyond.
- At the weekends the road is used by boy racers who use it to do speed trials which the police are aware of. Taylor Wimpey had planted trees at the beginning but these had not grown and eventually died this is due to the mound being full of the builder waste.
- It is vital that TW provide the adequate sound proof fencing or buffer zone and the landscape that was promised to the people who have bought these properties. Windows are kept shut and I can just imagine it all getting busier, noisier over a short space of time.

- I strongly object to this buffer zone staying as it is, it looks horrendous and the noise needs to be blocked from the main busy rd. the development company should complete this development as per original plans.
- The fencing which is at present in situ was only meant to be a temporary boundary fence whilst building was taking place. I therefore object to the retrospective application.
- The bund is an eyesore and I feel it should be levelled and then turfed and landscaped as per the original plan. Why should we have to look at a weed infested heap of builders waste that makes up the bund. The fence does nothing to prevent rubbish and litter being blown onto the development, and is not even the same as the other fence which lines the main road on the other side of Lloyd Drive.
- If one half of Swale Way has acoustic fencing in place, why not the other half - our development? I trust that the council will take the appropriate action and not approve the application put forward by Taylor Wimpey and listen to the objections from those that live here.
- We have no privacy in our garden with teenagers walking across it. There is no insurance paid for it.
- The lorries from the mill carrying waste paper constantly have no netting on their roofs and this mound constantly works as a collection point for lists of waste paper. The drone of lorries using the swale way now that the ndr is open is not helping with us living here.
- We cannot have our windows open or sit in our garden.
- We were promised a wall but as the Kemsley fields and new build amicus site both have acoustic fencing that would be much better and in keeping so that it looks like it's one place not plots that are treated differently. None of the other acoustic fencing has ever been treated or damaged and it's got to be the best solution for everyone.
- To leave the buffer zone like this would be disgraceful. This is not what we were promised when we bought our homes from Taylor Wimpey. It is one big mess and to even consider leaving it as it is a joke.
- With the increase in traffic it also means an increase in noise pollution and the residents deserve nothing less than the best possible protection; leaving the bund as it is, is not the answer. Taylor Wimpey must revert back to their original plan to install acoustic fencing or a wall along with a flat landscaped area. Acoustic fencing has been installed in Swale Way and the new development that joins our development, why should Chandlers Croft not have this benefit?
- The current level of noise pollution on swale way is shocking and posed significant mental health risk.
- The works should be carried out as was originally set out to make good this bund for noise reduction and to tidy it up, not leave it as is.
- I believe that there are two problems with the current bund at present. Firstly, it does nothing to reduce the noise from traffic travelling along Swale Way. Since the relief road has opened, noise levels on the estate have been unacceptable - this is only set to increase once the building of the logistics hub is finished as even more lorries will be using the road. Secondly, the bund offers no protection from the waste paper that is falling off of the top of the lorries that travel to-and-fro from the paper mill. This litter is therefore collecting along the bund and is very unsightly. I believe that at the very least, the original planning application should be adhered to and the wall should be built. However, both the Kemsley Fields development and the new Amicus site have acoustic fencing. I would suggest that provision of an acoustic fence would be a better solution to the noise problem than the wall and this would also be in better keeping with the surroundings.
- The bund and fencing is completely inadequate. I believe in the original planning discussions about this site there were concerns raised about noise levels. Since then, the bridge over the creek has been built, the morrison's depot build as well as

other developments in the Ridham docks area. All of this has led to a huge surge in traffic using swale way, including a large number of HGV's. The noise generated by these is unacceptable. I therefore cannot see any logical or sensible reason to approve this application.

- The bund is unsightly. It is not planted or landscaped and covered with weeds. It is not suitable at all. And the fencing is not fit for any purpose.
- In fact, the current set up leaves houses vulnerable to burglary.
- The fencing allows an easy get away for would be thieves and the bund gives them the perfect shelter from the road. This needs to be flattened and a proper fence or wall erected to protect people living on the boundary. I just cannot see any reason why the proposals are in the best interest of the residents.
- Kemsley Fields has acoustic fencing, the new build also has acoustic fencing. We will present as a break in that fencing - again adding weight to the fact this is not a sensible or logical decision - if either side of us has acoustic fencing how can it be argued we do not need it.

6.0 CONSULTATIONS

- 6.01 The Council's Environmental Services Manager does not raise objection, and comments as follows:

"I refer to the retrospective application for the retention of a 2 metre high earth bund and a rail fence on the back edge of the footway together with landscaping of the bund at Chandlers Croft.

In my view and provided the earth bund is constructed of suitable materials and landscaped sensibly, it can provide a functional noise mitigation solution comparable with and probably better than the original proposal of a 1.8 metre high wall and 16 metre wide flat landscaped buffer.

As far as I am aware, at the time of the development's original planning consent, there was no specific requirement imposed to protect garden/amenity areas from road traffic noise. That said, an acceptable level of noise attenuation required for habitable rooms (with windows closed) was to be achieved by the provision of reasonable standard double glazed window units incorporating acoustic vents as recommended by the developers acoustic design consultant at the time.

Commenting on the breach of landscaping condition at Chandlers Croft; I think that removal of a large bund and replacing it with a flat planted area and 1.8 metre high brick wall built on the back edge of the highway would not in my view benefit the residents of this development in terms of noise attenuation from the highway. Of the two options, provision of a 2 metre high earth bund properly constructed and landscaped would be the more favourable in terms of noise mitigation."

- 6.02 No other representations have been received.

7.0 BACKGROUND PAPERS AND PLANS

- 7.01 Application plans, papers and supporting information for SW/91/0125, SW/04/0948, SW/05/0574 and 14/505359/FULL

8.0 APPRAISAL

- 8.01 Members will note the significant feelings/views of residents to the proposal and generally regarding the development, as set out in section 5 above. However, at the outset, it is important that Members are clear on what the issues are. A number of representations refer to the provision of acoustic fencing, that noise pollution was a concern at the time of the reserved matters approval, and many refer to an increase in traffic and the use of the land to the north of the housing estate for industrial/warehouse/distribution uses.

For the avoidance of doubt, Members should be clear that:

- Despite the repeated suggestion by residents, there has never been any requirement for the provision of an acoustic fence around this part of the residential development. Members cannot therefore afford this any weight in their consideration of the issues.
- The approved wall around the boundary of this site with Swale Way was never intended to act as a noise barrier. At the time of the approval of the reserved matters for the development relating to appearance, access, siting and design (SW/04/0948) the Environmental Health Manager commented as follows:

“The provision of a 1.8 metre high close-boarded fence (non-acoustic) and 16 metre buffer zone around this part of the development together with good quality double glazing (Rw 35dB) as detailed in the Acoustic Design Consultants letter dated 2nd December 004 will fulfil the requirements of the current planning consent. This level of attenuation will ensure internal noise levels generated by traffic using the MKDR will be acceptable.

There is no specific requirement of the planning consent that outside amenity areas i.e. gardens meet the current WHO guidelines for such areas. If this more onerous standard is required then it will be necessary to incorporate an acoustic barrier adjacent to the road, which would form a continuous barrier with that required for the northern housing area (junction J2 westwards.)”

Members should be clear that the issue of noise from the road was considered at the time of the original applications. At that point, it was envisaged that the NRR would be a well used route both to Eurolink and the Paper Mill, and to the industrial development to the north, including Ridham Dock and that approved concurrently with the residential estate. There was no requirement for noise attenuation then, and as such it would be incorrect to refuse planning permission on that basis here.

- There was never any requirement for an acoustic fence to be provided on the Kemsley Fields development to the west. This appears to have been constructed by Kent Highway Services, on land they own, separate from the planning approvals at the site.
- The approvals for the site to the south of Chandlers Croft (Land off Ridham Avenue, Kemsley – application references SW/12/1425 and SW/13/1199) did not include any requirement for the provision of an acoustic fence. The environmental noise assessment submitted as part of the application, and accepted by the Environmental Health Manager (and ultimately by Members – application SW/12/1425 was approved by the Planning Committee) simply required dwellings to be built a minimum of 20 metres from Swale Way. No acoustic attenuation in the form of a

fence or other barrier was required. The plans were subsequently amended (not on our request).

- Issues regarding maintenance costs for the upkeep of the bund as shown on the drawings are a private matter between the residents and the management company responsible for maintaining it, and are not material considerations here.

8.02 Members will note that, notwithstanding my comments above regarding noise, the Environmental Services Manager has assessed the bund and planting proposed, and is clear that the bund and planting thereon would actually provide a better level of attenuation than the approved wall.

8.03 The key issues here centre around whether the bund and fence are an acceptable alternative to the approved scheme, namely their impact on visual and residential amenity, and whether the bund is capable of sustaining the planting proposed.

Visual Impact

8.04 The post and rail fencing is in my view visually acceptable. It is not as noticeable as a solid boundary treatment, and complements the wider setting of the site, together with the open verdant character of the residential estate beyond.

8.05 The bund, if properly planted as per the submitted details, would provide an acceptable soft edge to the site, and would provide an appropriate visual buffer between the dwellings and the road (and the industrial development beyond.)

8.06 I am firmly of the view that the provision of a brick wall around the entire perimeter of this site would be a more harmful alternative to the details before Members here.

Residential Amenity

8.07 The fence is unobjectionable in this regard, not being sited close to the dwellings.

8.08 The bund as it stands today, affords views down into the rear gardens of dwellings which back on to it. This is unacceptable. However – the submitted planting scheme shows a substantial band of planting along the top of the bund, such that walking along it would be impractical and unlikely to occur. In my view, the planting proposed would result in a structure that would not harm residential amenity.

Landscaping

8.09 I am mindful that the bund may be constructed of building spoil – at a few points broken bricks etc are visible through the topsoil. However – I note the submitted planting schedule and maintenance scheme which sets out amongst other things that the planting sites will be excavated and backfilled with appropriate soil and ameliorants. I have discussed the details, together with the species proposed with the Council's Tree Consultant, who has confirmed that this will be sufficient for the planting to survive and thrive. Members will note the conditions below, which require the planting to be carried out in strict accordance with these details. Subject to this, I conclude that the planting should survive at the site.

9.0 CONCLUSION

9.01 I am firmly of the view that the fence, together with the bund and the planting proposed are an appropriate and attractive solution here. I do not envisage harm to visual or residential amenity, and I therefore recommend that planning permission is granted.

10.0 RECOMMENDATION – GRANT Subject to the following conditions

- 1) The scheme of tree planting and landscaping shown on submitted plan no.3165_DR_001-C shall be carried out, wholly in accordance with the details in “3165_SP_001-A Landscape Bund Specification”. The planting shall be completed within 12 months of the date of this decision, and shall be maintained thereafter, in accordance with the details in “Landscape Maintenance Schedule”, document reference 3165/SP 002-B. Any trees or shrubs removed, dying, being severely damaged or becoming seriously diseased within five years of planting shall be replaced with trees or shrubs of such size and species as may be agreed in writing with the Local Planning Authority.

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

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.

REFERENCE NO - 14/505307/FULL			
APPLICATION PROPOSAL Construction of 3 dwellings with gardens, landscaping, parking and associated works			
ADDRESS Mombasa Whitstable Road Faversham Kent ME13 8BD			
RECOMMENDATION - Approve			
REASON FOR REFERRAL TO COMMITTEE: Town Council objection; Neighbour objections			
WARD Abbey	PARISH/TOWN COUNCIL Faversham	APPLICANT Mr L Panormo AGENT Mr Michael Calder	
DECISION DUE DATE 16/01/15	PUBLICITY EXPIRY DATE 16/01/15		
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
SW/06/1088	Erection of three terraced houses	Approved	09/05/2007
<i>Summarise Reasons</i>			
SW/05/0220	Demolition of existing bungalow	Approved	30/03/2005
<i>Summarise Reasons</i>			

1.0 DESCRIPTION OF SITE

- 1.01 The site is located within the built up area boundary of Faversham, just outside the town centre. The site is located within the Faversham conservation area, and is at present a vacant plot. However, the site previously hosted a bungalow named 'Mombasa', which was granted conservation area consent for demolition under reference SW/05/0220 in 2005.
- 1.02 The site is at present covered in sparse vegetation. It fronts directly onto Whitstable Road, and is roughly rectangular in shape. It is surrounded on three sides by existing structures; to the west is part of the adjacent retirement homes scheme, part of a complex of sheltered housing, and to the east is St Saviour's Church, a grade II Listed 'tin church'.

2.0 PROPOSAL

- 2.01 The proposal is for the construction of a trio of three bedroom houses. They would front onto Whitstable Road, facing the park opposite. The houses would be on three floors, with high gables, thus making them two and a half storeys in height. Each property would be served by a private garden, and off-road parking for five cars in total. Vehicle access would be from the rear of the site,

via Cyprus Road. The parking area would be screened from Whitstable Road by landscaping.

- 2.02 The properties would be of a Victorian villa design, with high gable fronts. They would be finished in traditional materials suitable for use within the conservation area.
- 2.03 The application is accompanied by a Design and Access Statement, a Planning Statement and a Heritage Impact Assessment. These together explain the complex and meticulous design process which has been followed in order to arrive at a scheme which is sympathetic to the character and appearance of the conservation Area and the setting of the adjacent listed building. The documents further explain how the proposal is in accordance with national and local planning policy.

3.0 SUMMARY INFORMATION

	Existing	Proposed	Change (+/-)
Approximate Ridge Height (m)		10.5	
Approximate Eaves Height (m)		5.5 to 9.5 (gable)	
Approximate Depth (m)		10	
Approximate Width (m)		15.2	
No. of Storeys		2.5	
Net Floor Area (sq m)		425.33	
Parking Spaces		5	
No. of Residential Units		3	
No. of Affordable Units		None	

4.0 PLANNING CONSTRAINTS

Archaeological Importance

Conservation Area Faversham

Environment Agency Flood Zone 2

5.0 POLICY AND OTHER CONSIDERATIONS

The National Planning Policy Framework (NPPF)

National Planning Practice Guidance (NPPG)

Swale Borough Local Plan 2008: Policies E1, E14, E15, E19, T3 and H2.

6.0 LOCAL REPRESENTATIONS

Four letters and emails of objection have been received from local residents. The comments contained therein may be summarised as follows:

- If the proposal is approved, I will no longer have a view of the park; only rooftops
- Plot is too small for three houses
- 'Please consider fewer properties and of reduced height'
- No objections to proposal, only the access
- Access is adjacent to my property. Vehicle movements, particularly during construction, will damage my foundations. My property is a grade II listed building.
- 'Who will I be able to sue for compensation when this happens, and it will? You in planning, perhaps, for allowing this stupidity to go ahead?'
- Disturbance from music in passing cars.
- Church House cares for vulnerable people. Problems of access for emergency vehicles.
- Why cannot the access be from the road?
- Loss of privacy
- Loss of sun to my flat and my garden
- Light is important to my health and wellbeing

7.0 CONSULTATIONS

- 7.01 Faversham Town Council raises objection to the proposal, noting that '*The proposed new building would be out of scale with the neighbouring building and would have an adverse impact on the character of the conservation area.*'
- 7.02 The County Archaeological Officer raises no objection, subject to conditions.
- 7.03 The Environmental Health Manager raises no objection, subject to conditions.

8.0 BACKGROUND PAPERS AND PLANS

- 8.01 Application papers and drawings referring to applications 14/505307 and SW/06/1088

9.0 APPRAISAL

- 9.01 In this case, the main issues for consideration appear to be the effect on the conservation area and the adjacent listed building, and the effect on residential amenity.
- 9.02 In terms of design, and the proposed building's effect on the character and appearance of the conservation area, I am of the opinion that the proposed building is well-designed and thought out, following discussions with Officers. The Victorian style high gables are reminiscent of those found on the almshouses in South Road, and the use of traditional finishes and materials will further create a building of good and sympathetic design.
- 9.03 A prime consideration in determining this application is the Council's statutory duty "*to have special regard to the desirability of preserving the setting of the*

listed building” (s.16(2) and 66(1) of the P(LB&CA) Act 1990) and “*that special attention shall be paid in the exercise of planning functions to the desirability of preserving or enhancing the character or appearance of the conservation area*” (s.72 of the Act).

- 9.04 This is a sensitive site because of its location within Faversham conservation area and its close proximity to the grade II listed St Saviours Chapel. The site remained undeveloped until the mid C20th when the bungalow “Mombasa” was built. The bungalow was a negative feature which detracted from the setting of the listed building and the character of the conservation area so the opportunity to see the site developed is positive.
- 9.05 The site’s context within the conservation area is all important in terms of scale, form and materials. Buildings on Whitstable Road are typically traditional 2-storey or 2 and a half-storey terraced houses. Some taller buildings and some gabled elevations add interest and articulation to the street scene. Materials are predominantly yellow stock brick with red brick dressings and slate or tile roofs.
- 9.06 The proposed design responds well to its architectural context. The massing and siting of the building (set back from the pavement and set away from the listed building) are appropriate. The use of yellow and red stock brick is an obvious choice which helps to reinforce local distinctiveness. The gabled elevation adds a distinctness and quality to the traditional design concept. I am aware that there is some concern about the architectural impact and scale of the gabled frontages but gables are not uncommon in Faversham’s Victorian suburbs or on Whitstable Road and they do provide interest and character to the proposals. The height of the building does not worry me in this context. The elevations are well composed and the proportion and disposition of the various architectural elements is well executed.
- 9.07 I am not of the opinion that the height of the building would be detrimental to its immediate surroundings. Whitstable Road hosts an eclectic mix of building styles, with a number of nearby properties having rooms in the roof via dormers. The present design, with its Victorian styled gables, allows for living space in the roof without the need for dormers. The height would be only 1.1 metres taller than the adjacent buildings, and I am of the opinion that such a small increase in height will have no detrimental impact on either the appearance of the conservation area or the setting of the listed building.
- 9.08 With regard to the impact on the setting of the listed tin church, I note that the proposed building would be situated nearly nine metres away from the western flank wall of the church, which should therefore have a fairly minimal effect on its setting.
- 9.09 Furthermore, the clearance of this rather unsightly land will further improve both the appearance of the conservation area and the setting of the listed building.

- 9.10 With reference to residential amenity, the issues raised by local residents are those of access, loss of privacy and loss of views. It has been suggested that the proposed access should be to the front, not the back. I am of the opinion that to have the access to the front would impose an urban and modern appearance on a design which is sympathetic to the area. I would also suggest that to have a separate access from Whitstable Road so near to the junction of Cypress Road would create safety issues, with little scope for effective sight lines. I also note that Kent Highways Services raise no objection to the present proposals.
- 9.11 Regarding the issue of loss of privacy, the rear elevations of the proposed properties would be at least 13 metres from the flank elevation of Church House, and due to the angles of sight, there are unlikely to be any new issues of overlooking to Park View Lodge.
- 9.12 I note the concerns raised by a neighbour regarding potential damage to the foundations of his property, but this eventuality, if it occurs, would be a private legal matter, not a planning matter.

10.0 CONCLUSION

- 10.01 To conclude, whilst I acknowledge the concerns of the Town Council and local residents, I consider the proposal to be in accordance with local and national policy, and I therefore recommend that the application be approved.

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 Subject to Condition 3 below, the development hereby approved shall be carried out in complete accordance with drawings PB328/111 Rev C and PB328/110 Rev D.

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

Pre-Commencement Conditions

- 3 Notwithstanding the drawings submitted, the step in the gable shown on the east and west elevations shall be omitted from the final scheme.

Reasons: In the interests of visual amenity.

- 4 Before the development hereby permitted is commenced, samples of all facing materials to be used in the development shall be submitted to and approved in

writing by the Local Planning Authority. The development shall then be carried out in complete accordance with these approved details.

Reasons: In the interests of visual amenity.

5 Before the development hereby permitted is commenced, a 1 metre square panel of brickwork and mortar, to be laid in Flemish bond, shall be constructed on site; inspected on site and approved in writing by the Local Planning Authority. The development shall then be carried out in complete accordance with these approved details.

Reasons: In the interests of visual amenity.

6 Notwithstanding the drawings and details submitted, before the development hereby permitted is commenced detailed drawings of all external joinery and finishes thereto at two scales 1:20 and 1:2 or 1:1, also showing the relationship of the windows to the brickwork at head, cill and jamb, shall be submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out in complete accordance with these approved details.

Reasons: In the interests of visual amenity.

7 Before the development hereby permitted is commenced detailed constructional drawings of the eaves and verges; gauged brick arches; bargeboards; and front railings, at a scale of 1:5, shall be submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out in complete accordance with these approved details.

Reasons: In the interests of visual amenity.

8 Before the development hereby permitted is commenced detailed drawings of the front wall and railings, at a scale of 1:10, shall be submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out in complete accordance with these approved details.

Reasons: In the interests of visual amenity.

9 No development shall take place until details have been submitted to and approved in writing by the Local Planning Authority, which set out what measures 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.

Reasons: In order to ensure sustainable development.

10 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 planting schedules of plants, noting species, plant sizes and numbers where appropriate, means of enclosure, hard surfacing materials, and an implementation programme.

Reasons: In the interest of visual amenity.

11 No development approved by this permission shall be commenced prior to a contaminated land assessment (and associated remediation strategy if relevant), being submitted to and approved in writing by the Local Planning Authority, comprising:

- a) A desk study and conceptual model, based on the historical uses of the site and proposed end-uses, and professional opinion as to whether further investigative works are required. A site investigation strategy, based on the results of the desk study, shall be submitted to and approved in writing by the Local Planning Authority prior to any intrusive investigations commencing on site.
- b) An investigation, including relevant soil, soil gas, surface and groundwater sampling, carried out by a suitably qualified and accredited consultant/contractor in accordance with a Quality Assured sampling and analysis methodology.
- c) A site investigation report detailing all investigative works and sampling on site, together with the results of analyses, risk assessment to any receptors and a proposed remediation strategy which shall be of such a nature as to render harmless the identified contamination given the proposed end-use of the site and surrounding environment, including any controlled waters.

Reasons: To ensure any contaminated land is adequately dealt with.

12 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

During Construction Conditions

13 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.

14 No impact pile driving in connection with the construction of the development shall take place on the site on any Saturday, Sunday or Bank Holiday, nor on any other day except between the following times :-

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

Reasons : In the interests of residential amenity.

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

Reasons : In the interests of residential amenity.

16 As an initial operation on site, adequate precautions shall be taken during the progress of the works to guard against the deposit of mud and similar substances on the public highway.

Reasons: In the interests of amenity and road safety.

Post Commencement Conditions

17 All rainwater goods shall be of cast iron.

Reasons: In the interests of visual amenity.

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

Grounds: In the interest of visual amenity.

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

Reasons: In the interest of visual amenity.

20 The areas marked on the approved drawing as parking spaces shall be reserved for vehicle parking at all times, and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 1995 (as amended) (or any Order revoking and re-enacting that Order), shall

be carried out on that area of land or in such a position as to preclude vehicular access to these areas.

Reasons: In the interest of highway safety and amenity.

21 Upon completion, no further enlargement of the new dwellings whether permitted by Class A of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 or not, shall be carried out.

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

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

Reasons: To ensure any contaminated land is adequately dealt with

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

Reasons: To ensure any contaminated land is adequately dealt with.

24 No dwelling shall be occupied until space has been laid out within the site in accordance with details to be submitted to and approved in writing by the Local Planning Authority for 3 cycles per dwelling to be securely parked under cover.

Reasons: To ensure the provision and retention of adequate off-street parking facilities for cycles in the interests of highway safety.

Council's approach to this application

The Council recognises the advice in paragraphs 186 and 187 of the National Planning Policy Framework (NPPF) and seeks to work with applicants in a positive and proactive manner by offering a pre-application advice service; having a duty planner service; and seeking to find solutions to any obstacles to approval of applications having due regard to the responses to consultation, where it can reasonably be expected that amendments to an application will result in an approval

without resulting in a significant change to the nature of the application and the application can then be amended and determined in accordance with statutory timescales.

In this case amendments were sought in relation to design matters and the application was approved.

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.

REFERENCE NO - 14/500986/AMRCON			
APPLICATION PROPOSAL Removal of condition 1 of approved SW/13/0409 to allow for the permanent use of the meat preparation premises in accordance with condition 7 of approved SW/13/0409.			
ADDRESS Brogdale Farm Brogdale Road Ospringe Kent ME13 8XU			
RECOMMENDATION- Approval subject to outstanding comments from the Council's Economic Development Officer.			
SUMMARY OF REASONS FOR RECOMMENDATION The permanent use of the meat preparation premises in accordance with condition 7 of planning permission SW/13/0409 would not have a detrimental impact on the surrounding residential amenity.			
REASON FOR REFERRAL TO COMMITTEE Parish Council objection/concern.			
WARD East Downs Ward	PARISH/TOWN COUNCIL Ospringe	APPLICANT Mr Leroy Moore AGENT Eric Przyjemski	
DECISION DUE DATE 19/08/14	PUBLICITY EXPIRY DATE 19/08/14	OFFICER SITE VISIT DATE January 2015	
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
SW/11/1560	Change of use, extension and alterations to part of former cold store building to ground floor Class B2 use for meat preparation and a separate first floor Class B1 business use approved.	Approved	3 rd February 2012.
<i>Summarise Reasons; In line with Local plan policy guidance and no significant impact on the surrounding area.</i>			
SW/13/0409	Variation to condition 5 of approved SW/11/1560 to the following: 'The use hereby permitted shall be restricted to the hours of 5am to 6pm Mondays to Fridays including deliveries and dispatches and 7am to 2pm on any other day'.	Approved-temporary permission.	22 nd July 2013
<i>Summarise Reasons: Temporary 1 year permission granted to enable assessment of the extended hours of use and the resulting impact on the surrounding residential amenity.</i>			

1.0 DESCRIPTION OF SITE

- 1.01 The site is located south of Faversham and the M2 motorway, within a Special Landscape Area and the countryside. The frontage of Brogdale Farm is surrounded by residential properties to the north west and south west boundaries of the site. To the north east lies Brogdale Farm House, and to the north east open countryside.
- 1.02 The unit which is the subject of this application forms part of a former cold store building and is located to the rear of the site. The unit is located within the designated employment area under Policy B26 of the Swale Borough Local Plan 2008 .

- 1.03 The site has a long and varied planning history. The most recent and relevant history, including the 2 cases above also include the following:
- SW/12/1409- Change of use to use as demonstration gardens with incidental buildings and associated parking- (Withdrawn)
- SW/10/0036 – change of use, conversion and extension of existing cold store to provide business use (Approved)
- SW/08/0271 – change of use of existing cold store to catering use (food preparations) and/or B1 use and minor alterations to the external appearance of the building – (Approved)
- SW/08/0194 – change of use and alterations to chemical store to plant display and sale use with ancillary office and store, outdoor plant display area, new canopy, erection of glazed link between existing glasshouses and creation of additional craft/retail unit (Approved)
- SW/07/0189 – change of use and alterations to part of existing cold store to form offices and labs (B1) (Approved)

2.0 PROPOSAL

- 2.01 The proposal is for the removal of condition 1 of approved SW/13/0409. For clarification the application was approved in July 2013 for one year, under condition 1, whilst condition 7 permitted the same original hours of use except in relation to food preparation which allowed a 5am start on weekdays/Saturdays. Various new conditions regarding vehicle parking and deliveries were imposed for the one year trial period.
- 2.02 The proposal is now to remove the one year restriction as set out by condition 1 of SW/13/0409 making the new arrangements permanent, including the additional conditions
- 2.03 However, condition 7 (now condition 6) is also proposed to be amended to remove an ambiguity in the trial period conditions, and would it therefore now state the following;
6. The uses hereby permitted shall be restricted to the hours of 8am to 6pm on any day except only for that part of the ground floor of the premises used for the preparation of food in which case that use shall be restricted to the hours of 5am to 6pm on any weekdays and Saturdays, and to 8am to 6pm on any Sunday or Bank Holiday.
- 2.04 All other conditions as set out under approved SW/13/0409 would remain the same, but with revised numbering, conditions i.e. 2-6 and 8-10 of SW/13/0409 would now be conditions 1-5 and 7-9 of the new permanent permission. The only exception here is an amendment to new condition 9 to refer to new condition 5, see below.

3.0 PLANNING CONSTRAINTS

- 3.01 Brogdale Farm house lies to the north east and is Grade II listed. The site lies within the open countryside and falls under Policy B26 of the Swale Borough Local Plan 2008.

4.0 POLICY AND OTHER CONSIDERATIONS

- 4.01 The policies most relevant to this application are saved policies E1 (General Development Criteria), E6 (The Countryside), E9 (relating to Special Landscape Areas), B1 (Supporting and Retaining Existing Employment Land and Businesses), RC1 (Helping to Revitalise the Rural Economy) and B26 (Brogdale National Fruit Centre) of the Swale Borough Local Plan 2008.

Policy B26 states (in relation only to the built up part of the farm) that:

“In order to help safeguard the continuation of the National Fruit Collection at Brogdale National Fruit Centre, the Borough Council will grant planning permission for a range of research, commercial, tourism and educational use. Development proposals will:

1. *be of a scale and character appropriate to the rural setting of the site;*
2. *clearly demonstrate that the proposed uses will both relate to the existing functions of the Brogdale National Fruit Centre, and make a significant contribution to the long term viability of the National Fruit Collection;*
3. *be the subject of a satisfactory transport impact assessment; and*
4. *be limited in extent to the area identified on the proposals map.”*

- 4.02 The National Planning Policy Framework is also a material consideration in determining this application. In terms of “Supporting a prosperous rural economy”, it states at paragraph 28 that:

“Planning policies should support economic growth in rural areas in order to create jobs and prosperity by taking a positive approach to sustainable new development. To promote a strong rural economy, local and neighbourhood plans should:

- *Support the sustainable growth and expansion of all types of business and enterprise in rural areas, both through conversion of existing buildings and well designed new buildings”*

5.0 LOCAL REPRESENTATIONS

- 5.01 Seven letters of objections have been received making the following summarised comments:

- Applicant is already ignoring the originally agreed hours with impunity
- The existing hours should not be changed- no deliveries should be allowed before 7am and no dispatches before 7.30am
- Neighbours will continue to be disturbed by noise created by allowing extended hours
- Loss of the quiet rural setting
- Disturbed by vehicles entering and leaving the site at all hours
- Brogdale is not an industrial site, it is a fruit farm
- Most of the residents bought their properties when Brogdale was a proper fruit farm and acknowledged that there would a certain amount of farm machinery in use during normal working hours and occasional (during harvest time) outside of normal working hours for a limited time

- The current owners and businesses do not seem to have regard to the disturbance caused to the local residents
- Excessive noise from Brogdale, in excess of what which would be expected from a working fruit farm
- Alternative premises should be found if the business needs to expand
- The amenity of the village needs to be protected
- Owner has been on site when he should be- specific dates have been provided (Members should note that the agent has responded to these allegations and explained the circumstances surrounding these apparent breaches)

5.02 Countryside Under Threat (CUT) make the following summarised comments in relation to this application:

- No more development should be allowed at Brogdale until a full appraisal has been carried out
- The butcher is using the Market Place to receive meat and also to load delivery vehicles from 6.45am
- The butcher has shown blatant disregard for neighbours, their amenity
- The butcher is about to open another shop in Whitstable- his activities at Brogdale Farm can only increase
- The butcher and staff park in the main car park next to Brogdale Farmhouse- they do not use the land east of the buildings
- Aware of these movement for the period of the temporary permission- it is not a one off scenario
- Processing of meat appears to still be taking place in the shop
- Light concerns
- Site is creeping towards 'industrialisation in the middle of a residential area'

5.03 In response to an objector letter stating use outside of the agreed hours the agent has responded and confirms the following:

'Since the grant of the temporary consent on 22/7/2013 there have been six reported incidents to the Landlord of breach of conditions. These have been investigated with the CCTV on site. One of these involved early access by a supplier vehicle to the butcher who responded immediately to reinforce the delivery protocol to all their suppliers. No further incidents have been reported. Four of the reports have been regarding isolated lorry movements three of which have been refuse lorries collecting from the different tenants on site. The landlords acknowledge this as an on-going problem and are now taking direct action to intervene and restrict the number of contractors who this service can be arranged with. These events were unconnected with the butcher. The final incident on 15th September 2014 was in response to an emergency on site where there was a breakdown in one of the butchers large storage fridges.'

6.0 CONSULTATIONS

6.01 Ospringe Parish Council is concerned that the current temporary condition for operating hours has not been met by the tenant. Ospringe Parish Council would like to see a new replacement condition for SW/13/0409 condition 1 stipulating that no inward deliveries are allowed before 7am. If this is not possible then they would seek to extend the current temporary condition 1 for a further year. Although they recognise that this may be considered unusual practice they say that the applicant has failed to demonstrate that he is able to keep to the current temporary planning

condition and so accordingly they would like Swale Planning to recommend this further temporary extension of one year. We would also wish to see all other 9 conditions of SW/13/0409 kept in place and unchanged.

6.02 The Council's Environmental Health Manager has confirmed that he has not received any noise complaints concerning the use of the premises since the granting of the temporary permission. Therefore there has been no investigation into the likelihood of the proposed activities being a Statutory Nuisance. In the absence of any evidence that the temporary use has impacted on residential amenity and in view of the proposed conditions relating to vehicle movements/parking and deliveries he has no objection to this proposal.

6.03 I am awaiting comments from the Council's Economic Development Officer and will update Members at the meeting.

6.04 Kent Highway Services raise no objection.

7.0 BACKGROUND PAPERS AND PLANS

7.01 Planning application form and Planning Statement June 2014.

8.0 APPRAISAL

8.01 Members will note that there have been several objections to this application which raise concerns in relation to the running of and the uses located at Brogdale Farm as a whole and it is clearly a contentious issue locally. However, Members should note that planning permission has already been granted for the use and that this application is simply for the deletion of condition 1 of SW/13/0409 which gave a one year temporary permission for the extension of the hours of operation in relation to the meat preparation premises. All that can be considered in determining this application is the impacts above and beyond the approved use and hours of operation; the Council cannot seek to control the existing permission through this application.

8.02 Therefore, the main considerations in the determination of this application remain the same which are the potential increase in vehicular movements, particularly early in the mornings, and whether the proposed increased in operational hours would have a significantly detrimental impact on the amenity of neighbouring residents. These factors should be considered against the potential benefits of the proposal to the local economy in continuing to support this local business and ensuring the future viability of this small scale business. The previous application under SW/13/0409 assessed the impact of the increased hours and at that time Members voted to approve, on a temporary one year basis.

8.03 The temporary nature of the previous approval has given officers the chance to fully assess the impact on the residential amenity of the surrounding neighbouring properties. It is worth noting that officers have received a survey from a neighbour outlining some potential breaches to the planning conditions, specifically providing dates and times of the alleged breaches. Subsequently the landowner of the site has checked the on-site CCTV footage and has confirmed that of the six alleged breaches, one was the arrival of a supplier and that the owner of the business has reinforced the delivery protocol to all their suppliers. Four of the alleged breaches have been confirmed to be three refuse lorry movements. The final incident reported which took place on 15th September 2014 was clearly in response to a fire alarm indicating system failure, which has been confirmed by the landowner and

applicant. This did indeed result in a number of early movements to and from the site and the shop located in Market Place. However, this was clearly necessary to move the meat from the broken fridge and I consider this to be an isolated incident.

- 8.04 Whilst the site lies within the land zoned by policy B26 of the Local Plan, that policy really seeks to offer flexibility for novel development at Brogdale to support the National Fruit Collection (see policy wording above) over and above normal rural development policies such as E1, E6 and RC1. These were the policies relied on in approving the use in the first place, and I consider that these are the ones that should be focussed on now. I also consider that the proposed change of hours is in principle capable of meeting the objectives of policy RC1 of the Local Plan which looks to provide rural jobs provided the proposal is in scale with its locality with no detriment to landscape character, biodiversity or countryside conservation; and providing it does not lead to a significant increase in traffic or unsustainable travel patterns. However, it is the issue of the impact on the amenities of the nearest dwellings (policy E1) that remains at the heart of the issue now and was the case under the previous application
- 8.05 Neighbouring residents are particularly concerned about amenity issues in respect of vehicular movements at the entrance of the site before usual business hours. Whilst I fully consider and sympathise with the argument put forward by local residents that this is a residential area I am of the view that the premises is reasonably small, detached from neighbours, and does not have a large workforce, which reduces the impact on the wider residential amenity.
- 8.06 Having taken into consideration the impact on residential amenity I am on the view that these isolated incidences, four of which are not related to the applicant's business, is not significant enough to warrant a further time restricted temporary permission. In my opinion the conditions recommended adequately restrict the movements to and from the site to reduce any impact on the residential amenity of the surrounding area. The stringent nature of the conditions ensures a great reduction in the potential impact on the most immediate residential property, especially Brogdale Farm House and its owners. The Council's Environmental Health Manager does not raise an objection to the proposal subject to the attached conditions. In addition, he has confirmed that there have been no noise complaints made during the temporary period of the planning permission.
- 8.07 The stringent conditions recommended in this report restrict the parking of staff vehicles to the rear of the site; deliveries of fresh meat shall not place before 6.30am Monday to Saturday with no deliveries on Sundays or Bank Holidays; no vehicles associated with the food preparation business within the premises shall be parked, loaded or unloaded in the main or overflow car park at any time. Furthermore, the hours of use have been strictly controlled by a condition.
- 8.08 With regards to the potential highway implications, I am of the view that the vehicular movements will not be significantly greater than under the approved hours of operation. In addition, the site has good access and a good surrounding road network. I have consulted Kent Highway Services who do not consider there to be any highway implications as a result of the removal of condition 1. Furthermore, highway impact was not considered a significant consideration under the previous application.

9.0 CONCLUSION

- 9.01 I am of the view that the suggested conditions relating to parking and access arrangements and the hours of use overcome the potential impact on the residential amenity and that any limited impact is not sufficient to warrant a refusal of this application.
- 9.02 The one year temporary permission has enabled officers to fully assess the impact on the residential amenity and except for a few isolated cases (in one instance to access the site to deal with a freezer emergency) the applicant has complied with the conditions thus limiting the impact on the residential amenity. As such I see no reason to refuse this application or to suggest a further temporary permission.
- 9.03 Therefore after careful consideration I consider this proposal acceptable, subject to conditions and outstanding comments from the Council's Economic Development Officer.

10.0 RECOMMENDATION – GRANT Subject to the following conditions:**CONDITIONS**

1. The use hereby be permitted shall be restricted to the preparation of food or for any uses within Class B1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) only.

Reasons: In order to prevent the development having an adverse impact on the amenities of the area.

2. No cooking of food shall take place within the area hereby approved for food preparation until details of a ventilation system have been submitted to and approved by the Local Planning Authority and upon approval the system shall be installed prior to any cooking of food, and thereafter maintained and operated in a manner which prevents the transmission of odours, fumes, noise and vibration to neighbouring premises.

Reasons: In the interests of residential amenity.

3. No external refrigeration or air conditioning unit shall be installed other than in accordance with details which shall be submitted to and approved by the Local Planning Authority and upon approval the unit shall be installed, maintained and operated in a manner which prevents the transmission of odours, fumes, noise and vibration to neighbouring premises.

Reasons: In the interests of residential amenity.

4. The parking of vehicles used by staff associated with the use of this premises shall be restricted to land to the east of the Market Place at Brogdale between the hours of 6pm on any day and 7.30am on the following day.

Reasons: In the interests of residential amenity.

5. Deliveries of fresh meat to the premises shall not take place before 6.30am on Monday to Saturdays with no deliveries on Sundays and Bank Holidays and no delivery vehicles shall park or unload in the main car park or overflow car park at Brogdale at any time

Reasons: In the interests of residential amenity.

6. The uses hereby permitted shall be restricted to the hours of 8am to 6pm on any day except only for that part of the ground floor of the premises used for the preparation of food in which case that use shall be restricted to the hours of 5am to 6pm on any weekdays and Saturdays, and to 8am to 6pm on any Sunday or Bank Holiday

Reasons: In the interests of residential amenity.

7. No vehicles associated with the food preparation business carried on within the premises shall be parked, loaded or unloaded in the main or overflow car park at any time.

Reasons: In the interests of residential amenity.

8. The use of the site hereby approved for food preparation will cease if refrigerated lorries and/or vans, used in connection with the business, park or wait in the established main or overspill vehicle parking areas at Brogdale Farm. All such waiting vehicles shall park beside the unit.

Reasons: In the interests of residential amenity.

9. No deliveries (other than as provided for by condition 5 above) and despatches to or from the premises, including deliveries or dispatches to or from any unit with the Market Place at Brogdale, shall take place before 7.30am or after 6pm on any day.

Reasons: In the interests of residential 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.

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.

REFERENCE NO - 14/504392/FULL			
APPLICATION PROPOSAL Removal of arched brick opening and arched hardwood doors. Construction of new opening to take rectangular aluminium glazed doors.			
ADDRESS Sittingbourne Methodist Church High Street Sittingbourne Kent ME10 4PB			
RECOMMENDATION Refuse			
SUMMARY OF REASON FOR REFUSAL The proposal would harm the conservation area.			
REASON FOR REFERRAL TO COMMITTEE At the request of Councillor Truelove			
WARD St Michaels	PARISH/TOWN COUNCIL	APPLICANT Mr A Brown AGENT Mr D Batson	
DECISION DUE DATE 26/2/15	PUBLICITY EXPIRY DATE 09/12/14	OFFICER SITE VISIT DATE 18/11/14	
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
SW/12/1207	Extension to front of Church to provide larger entrance foyer with central porch. Construction of extension to enlarge existing front kitchen.	Approved.	22/11/12.

MAIN REPORT

1.0 DESCRIPTION OF SITE

1.01 The site is located to the rear of Sittingbourne High Street and is accessed via a long landscaped path leading from the High Street which affords pleasant views of the building beyond. The site is within the built up area boundary.

2.0 PROPOSAL

2.01 The proposal entails the removal of the arched brick opening and arched hardwood doors and the construction of a new opening to take rectangular aluminium glazed doors.

3.0 PLANNING CONSTRAINTS

3.01 The application site is located within the Sittingbourne High Street Conservation Area. (-statutory duty to preserve or enhance the significance of heritage assets under the Planning (Listed Buildings & Conservation Areas) Act 1990).

4.0 POLICY AND OTHER CONSIDERATIONS

- 4.01 The National Planning Policy Framework (NPPF) and National Planning Practice Guidance (NPPG) in relation to sustainable development and conserving and enhancing the historic environment. Paragraph 132 of the NPPF states;

“When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification.”

- 4.02 Policies E1, E15, E19 and E24 of the Swale Borough Local Plan 2008 and the relevant policies in the emerging Local Plan should also be considered material in the determination of the application.

5.0 LOCAL REPRESENTATIONS

- 5.01 None.

6.0 CONSULTATIONS

- 6.01 Councillor Truelove called the application up to planning committee stating;

“The reasons given for refusal are the impact on a conservation area. Conservation is not an absolute standard and a lay person might take a different view. I would like the decision to go to the Planning Committee so that the applicant can put his case and so that members can give their view.”

7.0 APPRAISAL

- 7.01 The Council’s statutory duty in determining this application is to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area. Local and National policy attaches great weight to the conservation of heritage assets and there is a strong presumption against granting permission for development which does not preserve or enhance the conservation area.
- 7.02 The existing arched doors were designed to reflect the arched doors in the south of the 1951 rebuild (shown in the history of the church) in fact they may well be the doors from the original south doorway. They are a very pleasant termination to the view of the church from the High Street through the arched entrance feature. In this respect they contribute to the special character of the Sittingbourne High Street Conservation Area.
- 7.03 The loss of the existing doors and brick arch is not in itself an issue. As the architect points out the Council has granted permission for new doors and a well designed porch which would make its own contribution to the character of the conservation area.
- 7.04 However, the replacement of the existing doors and arch with pedestrian looking anodised aluminium doors and a flat head with no brick arch detail represents a

significant downgrading of the character and appearance of the building and of the conservation area. The materials and the design do not do justice to either the host building or the character of the conservation area where the quality of materials and architectural detailing is generally of a higher order.

- 7.05 I recommended to the applicant/agent that an acceptable alternative would be to install glazed doors (in timber frames) in the existing arched opening. This solution, or the one which has already been granted permission (with the porch) would appear to achieve the church's vision for transparency and "welcoming all" without downgrading the quality of the architecture or the contribution it makes to the conservation area. However, the applicant/agent confirmed they want the proposal determined in its current form. In these circumstances, I recommend refusal of the application.

8.0 CONCLUSION

- 8.01 The proposal would cause harm to the conservation area and should therefore be refused permission.

9.0 RECOMMENDATION –REFUSE for the following reason:

- (1) The proposal, by virtue of its design and materials, would harm the character and appearance of the building and would fail to preserve or enhance the special character of the conservation area, contrary to policies E1, E15 and E19 of the Swale Borough Local Plan 2008 and paragraph 132 of the National Planning Policy Framework.

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 informed of design changes required to make the proposal acceptable but unfortunately they were not forthcoming. The application was therefore 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.

REFERENCE NO - 14/504246/OUT		
APPLICATION PROPOSAL Outline application for the erection of a detached single storey dwelling, creation of a new access, construction of driveway and associated works.		
ADDRESS Land Adjoining The Firs Dunkirk Road South Dunkirk Kent ME13 9PD		
RECOMMENDATION - Refusal		
REASON FOR REFERRAL TO COMMITTEE: Parish Council support		
WARD Boughton & Courtenay	PARISH/TOWN COUNCIL Dunkirk	APPLICANT Mr And Mrs P Stevens AGENT Mr David Stewart
DECISION DUE DATE 25/12/14	PUBLICITY EXPIRY DATE 25/12/14	

1.0 DESCRIPTION OF SITE

- 1.01 The site is situated in a rural location, south of the Boughton bypass, along a quiet lane. The area is noted for sporadic development, with properties being fairly isolated and generally situated within large plots. The site in question forms a large plot within the joint ownership with an existing dwelling, and is situated outside any built-up area boundary.

2.0 PROPOSAL

- 2.01 This is an outline application for the erection of a new detached, single-storey dwelling, the creation of a new access, driveway and associated works. Although the accompanying application form states that the proposal is outline with all matters reserved, drawings showing layout, scale and access accompany the proposal.
- 2.02 The proposal is for a three bedroom single storey dwelling. Indicative drawings accompanying the application suggest that the dwelling would be of contemporary design and appearance.
- 2.03 The application is accompanied by a Design and Access Statement, which concludes that, in the agent's opinion, the proposal constitutes sustainable development; is not isolated development; as in accordance with the adopted Local Plan; that the Local Plan is a 'dated document' and therefore carries 'little weight'; and that the Council fails to provide a five year housing supply.

3.0 SUMMARY INFORMATION

- 3.01 None

4.0 PLANNING CONSTRAINTS

4.01 Outside built-up area boundary.

5.0 POLICY AND OTHER CONSIDERATIONS

5.01 Swale Borough Local Plan 2008: Policies E1, E6, E19 and H2.

6.0 LOCAL REPRESENTATIONS

6.01 One email of objection has been received from a local resident who, whilst not raising specific objection to the proposed property, is concerned that it would set a precedent for further development within the area.

7.0 CONSULTATIONS

7.01 Dunkirk Parish Council supports the application, but has given no reasons for its support.

7.02 Kent Highways Services raises no objection, subject to conditions.

8.0 BACKGROUND PAPERS AND PLANS

8.01 Application Papers and drawings referring to 14/504246/OUT.

9.0 APPRAISAL

9.01 The main issue is whether the proposed new dwelling would accord with development plan policy regarding development in the countryside.

9.02 The National Planning Policy Framework (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.”*

9.03 When the 12 month period noted above had expired. It was necessary for a review of the consistency between the policies contained within the Swale Borough Local Plan 2008 and the NPPF. This was carried out in the form of a report agreed by the Local Development Framework Panel on 12 December 2012. All policies cited within this report are considered to accord with the NPPF and as such, these policies can still be afforded significant weight in the decision-making process. Therefore, the agent’s assertion that the present Local Plan policies carry little weight is clearly in error.

9.04 The National Planning Policy Framework (NPPF) at its heart is to achieve sustainable development.

9.05 The NPPF states that one of the core planning principles shall be to *“take account of the different roles and character of different areas, promoting the vitality of our main urban areas, protecting the Green Belts around them,*

recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it".

9.06 In respect of housing in the Countryside, 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):

- *The essential need for a rural worker to live permanently at or near their place of work in the countryside*
- *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*
- *The exceptional quality or innovative nature of the design of the building.*

9.07 In the context of this case the adopted Swale Local Plan Policies E1 (General Development Criteria), E6 (The Protection of the Countryside) apply, and guide us as to what is considered acceptable development. Due to the location of the site within the countryside and the nature of the proposal there is clear and long established policy by which we can determine the application.

9.08 Policy E6 of the Local Plan is most relevant and 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 housing proposals will only be permitted in specific circumstances, including when it is demonstrated to be necessary for agriculture etc, it is the re-use or adaptation of an existing rural building, it relates to the acceptable rebuilding, or modest extension, of a dwelling currently in residential use in accordance with Policy RC4, is a site for affordable housing in accordance with Policy RC3; or is a site for gypsies or travelling showpersons in accordance with Policy H4 or it is a site allocated in the Local Plan.

9.09 The proposal is to build a new residential property and as none of the above criteria applies to the proposal there is a fundamental policy objection to this proposal. I note the support of the Parish Council, but as there is a fundamental policy objection to the principle of a residential dwelling on the site the detail of the scheme does not need to be considered further.

9.10 I take exception to the suggestion within the Design and Access Statement that the 2008 Local Plan carries 'little weight', which is particularly ironic when considering that the same statement quotes from that plan. The same statement also refers to appeal decisions in Norwich and Maidstone, which I

would counter with a recent decision which actually refers to Swale. Members will recall a recent refusal for a new property at 'Acorns', Butlers Hill, Dargate, which was subsequently refused at appeal under reference APP/V2255/A/14/223979. This appeal was refused due to the unsustainability of the site, outside the built-up area boundary; an argument which is central when determining the present application.

9.11 I also note the assertion that the Council does not have a five year housing supply. Whilst this is not incorrect, the erection of a single dwelling outside the built up area boundary would not make a serious contribution to any such shortfall.

9.12 In conclusion, this proposal to build a residential dwelling on this site would conflict with the development plan aim of restricting undesirable development in rural areas and to protect the countryside for its own sake. No evidence has been submitted to demonstrate that any of the above policy criteria apply or why the usual rural restraint policies should be relaxed and residential use accepted in this case.

10.0 CONCLUSION

10.01 As the proposal is clearly contrary to local and national policies of rural restraint, I have no option but to recommend that the proposal be refused.

11.0 RECOMMENDATION – REFUSE for the following reasons:

1. The proposal to build a residential dwelling would conflict with the development plan aim of restricting undesirable development in rural areas and to protect the countryside for its own sake and will be harmful to the natural beauty of the Kent Downs Area of Outstanding Natural Beauty. No evidence has been submitted to demonstrate that any of the policy criteria apply or why the usual rural restraint policies should be relaxed and residential use accepted in this case. The proposal is therefore contrary to policies SH1, TG1, E1, E6, E19, H2 and RC7 of The Swale Borough Local Plan 2008.

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.

It is noted that the applicant/agent did not engage in any formal pre-application discussions.

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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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 is referred to as "The Workshed" is the subject of 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, with an office, w.c. utility room, kitchen/dining room, 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 (KHS) 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.

6.3 The applicant has responded to KHS' comments with a written statement regarding the access stating that:

- The existing gates and driveway are to remain
- The new building is just over the 45m distance from the highway, so an existing grassed track to the site can be extended and upgraded to a gravelled twin track drive capable of supporting a 12 tonne vehicle and allowing it to turn around, including provision of a 16.8m diameter turning area, and
- Suggesting a planning condition to require the driveway extension and turning area.

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. Another alternative suggestion was that the applicant may also want to consider 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 their 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 Kent Downs 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 would also include the use of modern top hung fenestration . In addition the 3 dormers would represent a

cluttered appearance too high on the roof slope, oversized and would appear intrusive.

- 9.12 The proposed access track/road is also shown to extend a considerable distance across the site, although no detail of the material to be used was originally provided. The applicant's recent clarification of the proposal to extend and consolidate the track to accommodate emergency vehicles appears likely to be harmful to the AONB and, whilst I do not consider that this alone represents a reason to refuse the application, it does add to my general concern over the impact of the proposals.
- 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 permission 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 application details 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. Nor do the permitted rights referred to allow the increase in overall dimensions of any such building, so the result proposed here would not be permitted. 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 therefore be harmful to the amenities of the area and be 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.

REFERENCE NO - 15/500171/COUNTY			
APPLICATION PROPOSAL KCC Regulation 3 - Renewal of planning permission for retention of three mobile buildings for a further period of 5 years.			
ADDRESS St Georges Church Of England Primary School, Chequers Road, Minster-on-sea Kent ME12 3QU			
RECOMMENDATION – No Objection			
SUMMARY OF REASONS FOR NO OBJECTION The proposed retention of the mobile buildings for a further 5 years would provide an important community facility and would not impact unacceptably upon visual amenities			
REASON FOR REFERRAL TO COMMITTEE Recommendation contrary to Parish Council views			
WARD Sheppey Central	PARISH/TOWN COUNCIL Minster	APPLICANT Mr H Fisher AGENT Kent County Council	
DECISION DUE DATE 10/02/15	PUBLICITY EXPIRY DATE 10/02/15	OFFICER SITE VISIT DATE 29/01/2015	
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
SW/09/0851	The creation of a new Pre-School and Nursery facility together with a school extended hours club using three existing mobile classroom buildings on site.	No Objection	5/10/2009

MAIN REPORT

1.0 DESCRIPTION OF SITE

- 1.01 St Georges Church of England Primary School occupies a large broadly rectangular plot, measuring 145m x 210m.
- 1.02 The site is located on a shared access road off Chequers Road and abuts Minster Cricket Club to the west and residential properties to the north. The site is bounded by agricultural land to the south and east.
- 1.03 The main school buildings and car park are located to the west of the site, close to the site entrance. Three mobile buildings are located towards the central part of the site, with footpaths providing access from the hardstanding located around the main buildings.
- 1.04 The ground level of the site gently rises towards the mobile buildings from the main school buildings and the car park.

2.0 PROPOSAL

- 2.01 This is a KCC Regulation 3 application that Swale Borough Council has been consulted upon.
- 2.02 The proposal is for the retention of three mobile buildings on the site for a further 5 years.
- 2.03 The three mobile buildings each measure 7m x 20m and 3m in height. There is a 1.2m timber palisade fence around the three mobile buildings. The external walls are stoneflex panels.

3.0 PLANNING CONSTRAINTS

- 3.01 None

4.0 POLICY AND OTHER CONSIDERATIONS

The National Planning Policy Framework (NPPF)
National Planning Practice Guidance (NPPG)
Development Plan: E1, E19 and C1 of the Swale Borough Local Plan 2008

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, E19 and C1 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.

6.0 LOCAL REPRESENTATIONS

None

7.0 CONSULTATIONS

- 7.01 *“Minster-on-Sea Parish Council objects in principle to the plan for temporary accommodation being used for a further five years when permanent accommodation is required. This together with the lack of a promised travel plan and unsafe routes due to the lack of footpaths connecting the site to Chequers Road, the Kingsborough development and the Thistle Hill Estate means that the proposal has to be deemed unsustainable.”*

8.0 BACKGROUND PAPERS AND PLANS

8.01 Application papers and drawings referring the application reference 15/500171/COUNTY.

9.0 APPRAISAL

9.01 In my opinion there are two key issues to consider as follows:

- The impact upon visual amenities;
- The need for the mobile buildings as part of the wider educational offering of the school.

Impact upon Visual Amenities

9.02 The buildings are located towards the middle of the large site which the school occupies. However, on the approach to the main school entrance the mobile buildings are largely screened by the existing school buildings. Further to this, to the north is a row of residential properties, also impeding the view towards the buildings from public vantage points on Chequers Road.

9.03 Although the site gently rises from west to the east the mobile buildings are located in an otherwise open vista when looking from the west, when the school playing fields are considered along with the adjacent agricultural land. However, the limited height and the neutral colours of the buildings mean that they do not have a dominant impact. As such I do not consider that this proposal would give rise to an unacceptable impact upon visual amenities.

9.04 It is also worth noting that the site does not fall within a protected or designated area and in light of this I consider that no objections to this application should be raised on the grounds of visual amenities.

The need for the mobile buildings

9.05 The Design and Access Statement submitted with the application states the following:

“The Breakfast Club and Nursery have become an important part of the overall school site and the facilities that they provide to the users of the school and local community.

It was considered beneficial by the KCC Early Years team and the school to have the nursery at the school as it provides the opportunity for a combined learning experience, in that children attending the nursery facility can move straight over to the main school (subject to the admissions policy of the school) i.e. schooling from 3 months – 11 years old can be achieved from one site. The change in buildings is easier as the children are familiar with the surroundings. It is also considered beneficial for families with your children as they only need to attend a single site.”

9.06 The above details clearly outline the need for the retention of the mobile buildings and I am of the opinion that they provide a well used and important facility when considered as part of offer of the site as a whole. In my opinion there is no question that the existing buildings provide an important community facility and their loss, without alternative accommodation being available would have a detrimental impact upon the existing users of the nursery and breakfast / after school club.

Other Matters

9.07 Minster Parish Council have objected to the principle of the development and that due to a lack of a travel plan the proposal is unsustainable.

9.08 In response to this policy C1 states that *“The Borough Council will not permit proposals that involve the loss, or change of use, of a local community facility, where this would be detrimental to the social well being of the community.”* In this case I believe that the loss of the Nursery and Breakfast / After School Club would have a detrimental impact upon the social well being of the community. As such I believe that the principle of the application is compliant with this policy and is accepted.

9.09 In terms of the travel plan the application does not propose an increase in places at either the Breakfast / After School Club or the Nursery. It is also worth noting that the session times are staggered to try and alleviate issues with congestion. As such I do not consider that the retention of the mobile buildings would have any additional impact.

10.0 CONCLUSION

10.01 Although it would be beneficial if the facilities could be provided within permanent structures, this has not been presented as an option at the current time. As such, the facilities provided by the mobile buildings are an important part of the school and their loss, by virtue of not extending the permission for a further 5 years would have a detrimental impact upon the educational offering at this site. When this is considered along with opinion the mobile buildings not having an unacceptable impact visual amenities in this undesignated located then I recommend that no objection be raised to the application.

11.0 RECOMMENDATION – Raise No Objection to renewing temporary planning permission for a further 5 years

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.

Report of the Head of Planning

PART 5

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

- **Item 5.1 – Land at Blind Mary’s Lane, Bredgar**

APPEAL ALLOWED

Another disappointing decision to grant planning permission for a traveller site within the Area of Outstanding Natural Beauty where a previous appeal decision gave clear guidance on the way forward, even leading to the successful prosecution of the occupants and the granting of a High Court Injunction on 23 January (five days before this decision was published).

Whilst the permission is temporary for three years the act of granting permission allows time for additional planting to be undertaken, normally leading to a new application at the end of the temporary period with new circumstances.

Members ought to note the Inspector’s negative conclusions of site provision and five year site supply, which reflects the lack of any site allocations, and a reliance by the Council on windfall permissions, leaving us vulnerable to further new applications for gypsy and traveller sites across the Borough.

- **Item 5.2 – Evaluna, Plum Pudding Lane, Dargate**

APPEALS DISMISSED

Full support for the Council’s decisions.

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Appeal Decision

Hearing held on 3 December 2014

Site visit made on 3 December 2014

by **J M Trask BSc(Hons) CEng MICE**

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

Decision date: 28 January 2015

Appeal Ref: APP/V2255/A/14/2222135

Land at Blind Mary's Lane, Bredgar, Sittingbourne ME9 8AR

- 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 Benjamin Brazil against the decision of Swale Borough Council.
 - The application Ref SW/14/0362, dated 21 March 2014, was refused by notice dated 17 June 2014.
 - The development proposed is a change of use of land to a residential caravan site for one Romani Gypsy family. The site to contain one static caravan, one touring caravan, Portaloo, parking for two vehicles with associated hardstanding and cesspit.
-

Decision

1. The appeal is allowed and planning permission is granted for a change of use of land to a residential caravan site for one Romani Gypsy family. The site to contain one static caravan, one touring caravan, Portaloo, parking for two vehicles with associated hardstanding and cesspit at Land at Blind Mary's Lane, Bredgar, Sittingbourne ME9 8AR in accordance with the terms of the application, Ref SW/14/0362, dated 21 March 2014, subject to the conditions in the attached schedule.

Preliminary Matters

2. The development has previously been the subject of an Enforcement Notice, an appeal¹ against the Enforcement Notice, which was dismissed, and court proceedings in relation to the non-compliance with the Enforcement Notice. Subsequent to these events the appellant submitted an application for planning permission and it is this application and the Council's refusal to grant planning permission that is the subject of this appeal.
3. At the time of my visit a static caravan was positioned on the appeal site. It is not contrary to the law to apply for planning permission retrospectively and I have considered the appeal on this basis.
4. At the Hearing the Council provided an updated assessment of the situation in respect of the provision of gypsy and traveller sites in the borough and the appellant commented on this in writing after the close of the Hearing².

¹ APP/V2255/C/11/2156341

² Document 10

5. The parties agree that the appellant and his family fall within the planning policy definition of "gypsies and travellers" and I have no reason to disagree with that assessment.

Main Issue

6. The main issue in this appeal is whether any harm to the character and appearance of the area, including any effect on an Area of Outstanding Natural Beauty, and any other harm is outweighed by any shortfall in the provision of gypsy and traveller caravan pitches, the availability of alternative accommodation and the personal circumstances of the appellant and his family.

Reasons

7. The development plan includes the saved policies of the Swale Borough Local Plan 2008. Policy E1 seeks to safeguard environmental features, among other things. Policy E9 aims to protect the quality and character of the Borough's landscape and gives priority to the long-term conservation and enhancement of natural beauty in the Kent Downs Area of Outstanding Natural Beauty (the AONB) while permitting development necessary to facilitate the economic and social well-being of the area and its communities. High quality and distinctiveness are promoted by Policy E19 and Policy RC7 seeks to protect the physical features and character of rural lanes.
8. There is an emerging plan which the Council plans to submit for examination in March 2015 but as it has made little progress towards adoption it warrants little weight and is not relied on by the Council.
9. Also of relevance are the National Planning Policy Framework (the Framework) and Planning Policy for Traveller Sites (the PPTS). The relevant development plan policies are broadly consistent with those in the Framework, in particular the Core Principle of recognising the intrinsic character and beauty of the countryside. The Framework also advises that great weight should be given to conserving landscape and scenic beauty in Areas of Outstanding Natural Beauty. The PPTS states that new traveller site developments should be strictly limited in locations in the open countryside away from existing settlements. It also establishes that the existing level of local provision and need for sites, the availability (or lack) of alternative accommodation and other personal circumstances of the appellant should be considered.

Character and Appearance

10. The appeal site is within the Kent Downs Area of Outstanding Natural Beauty. The Deans Hill escarpment covers a large area of the parish and is of high landscape value. In this part of the AONB the landscape is generally open and there are long views over open countryside including towards the Thames, Medway and marshes. Access to the site is off a single track rural lane. There is an unauthorised residential caravan site adjacent to the appeal site, a detached dwelling further along the lane and some houses at Swanton Street and along the road to Bredgar. The surrounding fields are in agricultural use, they were previously hop gardens and orchards. The North Kent main National Grid route is nearby and a pylon is close to the site. Despite the nearby houses the area retains an open and rural character and appearance.
11. The site is on a bend in the road where there are substantial hedgerows such that, while the adjacent site is prominent, the appeal site is only apparent from

the lane when travelling from the direction of Silver Street. The cherry trees that were planted adjacent to the site, between the area of hardstanding and the lane, have not survived and the incongruous conifer and evergreen planting around the site can be seen from the lane near the site entrance and from further afield. Nevertheless, the development is small and has a limited effect in the context of such a large scale and expansive landscape.

12. There is a public footpath which crosses the corner of the area where the cherry trees were planted which local residents indicate is well used. It links to other footpaths and rural lanes in the area and previously crossed open fields. The adjacent unauthorised development can be seen from the footpath and the evergreen planting is close to the footpath so that the section which crosses the appellants' property now appears to be passing through a private garden/yard area.
13. I have had regard to the Inspector's conclusion on this matter in the previous appeal relating to the site and the loss of openness resulting from the hardstanding, static caravan and ancillary structures. Nevertheless, it seems to me that much of the harmful effect of the caravan site on the character and appearance of the area is as a result of the incongruous planting. In this case the appellant has suggested additional and replacement planting and this could be secured by the imposition of a suitable condition. I have taken into account that planting generally should not be used to hide an unsuitable development. Nevertheless, in this case the planting of native woodland species along the boundaries of the site, while resulting in some sense of enclosure, would not be unduly out of place as there are substantial hedgerows with trees along several field boundaries in the area.
14. Drawing matters together, I conclude that there would be moderate harm to the main characteristics of the AONB in this area, comprising the openness and long views, and moderate harm to the character and appearance of the area and that that harm could be mitigated by suitable soft landscaping. I note that this conclusion differs from that of my colleague but I am not aware of the full circumstances of the previous case, in particular whether landscaping was proposed, and in any event assessments of the impact of a proposal on the character and appearance of an area are matters of judgement. Nevertheless, while I have found there would be only moderate harm, great weight is to be accorded to conserving landscape and scenic beauty in an AONB.
15. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. Local Plan Policy E9 gives priority to the long-term conservation and enhancement of natural beauty in the Kent Downs Area of Outstanding Natural Beauty but I note that this is to be tempered by a consideration of the economic and social well-being of the area and its communities which I shall consider later in this decision. Nevertheless, while the scheme would have little effect on rural lanes and so does not conflict with the provisions of Policy RC7, it is contrary to Policies E1 and E19, although this needs to be considered in the light of other material considerations, which I discuss below.

Provision of sites

16. The Council has commissioned a Gypsy and Traveller Accommodation Assessment (GTAA) which in March 2014 identified a need for 82 pitches to be

provided before 2031. The Council confirmed at the Hearing that the GTAA indicated that the effect of in and out migration cancelled each other out. At the time of the refusal of planning permission the Council did not have a five year supply of available and appropriate sites sufficient to meet the need within the borough.

17. During the appeal process the Council advised that planning permission for 20 pitches had been granted since the date of the GTAA and that the remaining requirement for 62 pitches should be spread evenly over the 17 year period such that the demand over the next five years was for 18.2 pitches. The Council also contended that the 10 vacant pitches at Brotherhood Woodyard should be considered as supply rather than provision. On that basis the requirement would be 72, or 21.2 over a five year period, and the supply would be increased by 10 to 22. The Council therefore considered that there was a 5.2 year supply of pitches.
18. At the Hearing the Council confirmed that since the GTAA planning permission had been granted for 42 permanent pitches, 15 were completed and occupied and the Council considered the need should be reduced by that amount, while the remaining 27 were yet to be implemented and so should be considered as supply. Thus the Council considered the need had been reduced from 82 to 67 pitches over the 17 year period, which would equate to 20 over a five year period.
19. The GTAA advises that there is a need for more pitches to be provided at an earlier stage and that the requirement should be 35 pitches by 2018. However, the Council has not adopted a phased approach. The appellant advises that in relation to gypsy and traveller sites there are currently six appeals, 16 sites with temporary consents, some with multiple caravans, eight planning applications for new sites or more caravans, a waiting list for the council site and the issue of household formation to address. As discussed at the Hearing I have some doubts over the methodology employed by the Council and when combined with the conclusions of the GTAA as well as the indication of current need illustrated by the number of applications for sites, this leads me to consider it likely that the level of need would be higher than that identified by the Council.
20. Planning permission has been granted for 42 pitches³ since 2013. The Council's position is that, whether or not the requirement is front loaded, that is whether the need is 20 or 35 pitches over the next five years, the supply is sufficient to meet this need. Of the 42 pitches permitted, 12 are completed and occupied, 27 are yet to be implemented and 4 are personal permissions, only one of which is complete and occupied. The appellant's criticism of the Council's assessment of supply is based mostly on the size and facilities available on a pitch and that the sites were unsuitable for the majority of gypsies and travellers in the area for ethnic reasons. In respect of the requirements for a pitch I have had regard to *Designing Gypsy and Traveller Sites – A Good Practice Guide* as described by my colleague in a recent Appeal Decision⁴. This indicates that an average family pitch should be capable of accommodating an amenity building, a large trailer and touring caravan, parking space for two vehicles and a small garden.

³ Document 4

⁴ APP/V2255/A/14/2220447

21. The site at Brotherhood Woodyard(Dunkirk), which the Council considers contributes 10 pitches towards the supply, contains some pitches that are 500m² in area and others that are 200m². The appellant maintains that the smaller pitches are not suitable for a residential site as there would not be room for a second caravan and utility building. While the Council is content that the construction of the planned amenity block would result in suitable residential pitches, this would be unusual for permanent residential pitches, would raise security issues for children and the appellant has expressed the view that it would not be suitable for most traveller families. Furthermore, the block has yet to be built and I have seen no evidence that guarantees it will be constructed in the near future. Although my colleague⁴ concluded that he did not consider the pitches at Brotherhood Woodyard to be unacceptable, I am not aware of the full detail of the evidence before him and I note that he also concluded that the criticisms of the Council's estimates of supply on the basis of site density and lack of facilities were not refuted by convincing, contrary evidence. While I conclude that the site has its drawbacks in terms of size and facilities there is no reason to entirely discount this site from the potential supply of sites on this basis albeit that at this time the contribution is less than that considered by the Council.
22. The site at Brotherhood Woodyard is owned by a member of the gypsy and traveller community and caters principally for Irish travellers. While my attention has not been drawn to any policy justifying exclusion of the site from the supply on this basis, I recognise that within the traveller community the differences in ethnic origin may lead to strong preferences in terms of with whom families will associate and the site is unattractive to the appellant. I also note that the owner has enquired about leasing part of the site to accommodate foreign seasonal workers, but there is a planning condition which restricts the site to occupancy by gypsies and travellers only.
23. The site at Orchard Park (Upchurch) (8 pitches) also caters principally for Irish travellers but the Council confirmed that this is not a personal permission and the pitches could be occupied by any member of the gypsy and traveller community. Permission was recently granted to increase the number of static caravans on the site. However, while there is no condition restricting permitted development rights for means of enclosure, which would allow for the creation of separate pitches, other restrictions exist. These include the required availability of parking spaces and requirements for planning permission in respect of further development, necessary to meet the usual requirements for a permanent pitch. This leads me towards a conclusion that this permission allows for an increase in density, but not necessarily an increase in pitches. It is not clear whether this permission addresses a specific demand identified in the GTAA.
24. The Council has included in its assessment of supply five pitches at Cricket Meadow (Iwade). The appellant contends the situation is similar to that at Orchard Park and that while permission was granted for four additional mobile homes on the site, there are no individual pitches each with a utility block and no permission for touring caravans. However, while the intention may have been for additional caravans to be provided for members of the family, the Council has confirmed the caravans could be occupied by any member of the gypsy and traveller community.

25. Drawing these matters together, I have found that a determination of the level of future provision and need for sites is subject to a number of considerations, any variation in which could easily alter the conclusions reached. Examples of some of these considerations have been described above. I therefore have reservations that the Council has a five year supply of available and appropriate sites sufficient to meet the need within the borough and conclude that it has not been satisfactorily demonstrated that there is an up-to-date five year supply of deliverable sites. This conclusion is in accord with that of my colleague in the Appeal Decision referred to above⁴ who found that there is an element of unmet need.

Availability of Alternative Accommodation

26. Alternative sites must be able to provide suitable, available, affordable and lawful accommodation. The appellant stated at the Hearing that he had asked the Council about alternative sites and looked at those that had been suggested, but had found none that were available to him. In any event there is no obligation on the appellant to carry out a search of sites.
27. There are 10 vacant caravans at Brotherhood Woodyard but, as described above, I consider that these would not be a realistic alternative at present due to social tensions and the limited facilities on the site.
28. The Council has referred to the possibility of accommodation in bricks and mortar but this would be contrary to the appellant's ethnic preferences. The Council also advised that some land was available with planning permission and that this could be affordable as a neighbour had offered to buy the appellant's land. However, the appellant did not have knowledge of this and without documented evidence I accord this matter little weight. The Council has also brought to my attention the provisions in the emerging *Gypsy and Traveller Site Allocations* document and the current assessment of sites. However, while there has been some consultation it is not anticipated that this document will be put forward for publication/submission until late summer 2015 and so in my view it warrants little weight. At the Hearing the appellant confirmed that if he and his family had to leave their current home then they would have no alternative but to live on the roadside and I attach significant weight to the appellant's lack of alternative accommodation.

Personal Circumstances

29. At the Hearing the appellant confirmed that he, his partner, their two children and his partner's sister and her partner normally resided at the site. The family has been travelling during the summer but most have returned to the site for the winter. I have seen the Health Statement dated May 2014 and the report on the appellant's son's progress at a local nursery and the concerns expressed about attendance at a new establishment.
30. I have had regard to "the primacy of the child" and acknowledge that educational and medical needs do not have to be special or unusual to attract weight, although the weight would increase if that were the case. Access for the appellant and his family to health and educational provision would be more easily maintained from a settled base and would enable the family to enjoy continuity in schooling and healthcare. Nevertheless, this situation is not special or unusual and I attach moderate weight to the appellant's personal circumstances.

Other Matters

31. Although not a reason for refusal, at the Hearing the Council raised concerns about the accessibility of the site. The site is less than a mile from Bredgar but access to Bredgar with its shop, post office, school and bus stop is at least in part along country lanes with no footway and this is unattractive for pedestrians and cyclists. It is therefore likely that most journeys would be undertaken by private vehicle and I understand that most of those attending the school arrive by private car. However, given the limited number of trips likely, I conclude a short drive to services would not result in significant harm.
32. Concerns have been raised about the noise from the on site generator. I listened to this on my site visit and as I visited the local lanes but it was rarely discernible, particularly when heard against the noise emanating from the overhead electricity cables. While I accept that circumstances may change in the future, the imposition of a condition requiring noise insulation would protect the living conditions of neighbours. I do not consider it likely that the use of the limited number of vehicles associated with the site would have any significant effect on traffic in the area and while the access is somewhat restricted, the lane is single track, narrow and with sharp bends near the location of the site so there is unlikely to be any fast traffic. In this situation and given the visibility available I do not consider there would be any significant effect on highway safety. I note there has been no objection from the highway authority.
33. In the previous appeal concerning the site⁵ the Inspector refused planning permission but in considering the planning balance apportioned more weight than I to the effect on the AONB, as discussed above. I am also mindful that that decision was issued nearly three years ago, before the publication of the PPTS, and that in that period, while making some progress, the Council has yet to secure a demonstrable five year supply of sites.
34. I have had regard to all other matters raised but have found no other matters of more than limited weight.

Balance of Considerations

35. I have found that there would be moderate harm to the character and appearance of the area and the AONB and that while priority should be given to the long-term conservation and enhancement of natural beauty in the AONB, development necessary to facilitate the economic and social well-being of the area and its communities may be permitted. Nevertheless, the Framework requires that great weight is given to conserving landscape and scenic beauty. In terms of social well-being, I have found that it has not been satisfactorily demonstrated that there is an up-to-date five year supply of deliverable gypsy sites in the borough, the appellant and his family have a need for accommodation and at present there is no suitable available alternative gypsy site to which the appellant could move.
36. On the particular facts of this case, and having particular regard to the protection of the AONB, the material considerations in support of the proposed development do not outweigh the harm and the balance falls against allowing the appeal.

⁵ APP/V2255/C/11/2156341

37. If planning permission were to be refused, the appellant and his family would lose their home. This would represent a serious interference with the family's right to respect for private and family life and the home (Article 8 of the Human Rights Act 1998). However, if planning permission were granted for a temporary period this would avoid the appellant and his family becoming homeless and give them an opportunity to pursue a site through the local planning process. This would allow long term protection of the environment while having no greater impact on the appellant and his family than would be necessary to address the wider public interest. I have had due regard to the requirements of the Public Sector Equality Duty, in particular the need to eliminate discrimination, advance equality of opportunity and foster good relations between those with protected characteristics and others. In this regard and in coming to my decision I have considered the impacts on the protected group and consider a grant of temporary planning permission would be proportionate in this case. I have therefore considered whether a temporary permission would be acceptable.
38. The possibility of a conditional planning permission granting temporary permission for the development was discussed at the Hearing. In relation to temporary permissions, the PPTS, paragraph 25, provides that, if a local planning authority cannot demonstrate an up-to-date five year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission. That guidance is a relevant consideration in this case. The absence of a demonstrable up-to-date five year supply of deliverable sites, together with the lack of alternatives to meet the appellant's needs and circumstances at this time, are factors which must be given appropriate weight in the context of the temporary period sought.
39. The Council's *Gypsy and Traveller Site Allocations* document is expected to be put forward for publication/submission in late summer 2015 but may be included in the emerging local plan. I would expect three years to be sufficient to allow time for the provision of a permanent gypsy site through the assessment and allocation of sites and then the grant of planning permission following the adoption of the Council's policy on this matter. It would also give the appellant a reasonable timescale within which to find an alternative site.
40. The contribution towards meeting the unmet need would be short lived in these circumstances but the harm to the AONB would not endure permanently. I therefore conclude that in considering whether a temporary permission should be granted, the weight to be attached to the absence of a five year supply of deliverable sites tips the balance and justifies the grant of such a permission in this case.
41. I have found that a five year supply of deliverable sites has not been demonstrated satisfactorily and in these circumstances the Framework advises that housing applications should be considered in the context of the presumption in favour of sustainable development. I have seen little evidence in respect of the economic dimension of sustainable development and while there would be some detriment in terms of the environmental dimension; this would be outweighed by the social benefits provided that permission is given for a temporary period only. In this regard I consider that the impact on the social well-being of the area and its communities results in the development being in accord with Local Plan Policy E9. While I have found there would be

some conflict with Policies E1 and E19 I conclude that the presumption in favour of sustainable development is a material consideration that indicates a decision otherwise than in accordance with the development plan. On balance, the development would be in accordance with the Framework and the PPTS and the appeal should be allowed.

Conditions

42. At the Hearing, the Council's list of suggested conditions to be imposed in the event of the appeal being allowed was discussed. A condition limiting occupation to gypsies and travellers is needed as the development is justified in the context of policies for gypsies and travellers. The personal circumstances of the appellant and his family are material considerations in relation to this appeal, however, they were not determinative in this appeal and I consider a personal condition to be unnecessary. The number of caravans on the site should be restricted to limit the scale of the development in the interests of the appearance of the area and a condition limiting occupation to a temporary period is necessary for planning permission to be granted as described above.
43. The site is on a chalk aquifer and the Council is concerned about the quality of water which is abstracted for drinking. It is therefore reasonable to impose a condition requiring a foul water drainage scheme to be agreed and implemented. Although planning permission would be granted for a temporary period, it seems to me that some landscaping improvement would be worthwhile to limit the harm to the environment. As described above I consider a condition requiring a scheme of noise insulation for the generator to be necessary in the interests of the living conditions of local residents. Since the proposal is partially retrospective, conditions stipulating requirements for providing further details should be imposed together with provisions in the event of non-compliance. The format of the conditions and the timescales for compliance were discussed at the Hearing and there was no objection to the Council's proposals. I consider this type of condition to be particularly important in this case given the weight I have afforded to suitable landscaping and the consequences of failure to protect against pollution.
44. Conditions limiting the size of vehicles to be stationed, parked or stored on the site and prohibiting commercial activity and limiting lighting on the site are also necessary in the interests of the character and appearance of the area.
45. For the reasons given above I conclude that the appeal should be allowed.

J M Trask
INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Joseph Jones	Bucks Floating Support Gypsy Council
Mr Joe Jones	Bucks Floating Support Gypsy Council
Mr Benjamin Brazil	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr Graham Thomas BSc (Hons) DipTP MRTPI	Area Planning Officer, Swale Borough Council
Ms Shelley Rouse BSc(Hons) TP MRTPI	Senior Planner, Planning Policy Team, Swale Borough Council

INTERESTED PERSONS:

Cllr Monique Bonney	Borough Councillor, West Downs Ward, Swale Borough Council
Mr Beverley Willis	Chairman, Bredgar Parish Council
Ms Penny Twaites	Parish Councillor, Bredgar Parish Council and Governor, Bredgar Church of England Primary School
Mr Nicolas Reuttner	Local resident

DOCUMENTS

- 1 Letter from Mr Bill Best dated 1 December 2014
- 2 Appeal Decision Ref: APP/V2255/A/14/2220447
- 3 Questions raised in September 2014 by the appellant in Appeal Ref:
APP/V2255/A/14/2217511
- 4 The Council's response to the questions in Document 3, dated September
2014 and a Table of permissions granted since 8 February 2013, dated
December 2014
- 5 Timetable for production of the Local Plan: Bearing Fruits and the Local
Plan Part 2: Gypsy and Traveller Site Allocations
- 6 Table of Private Gypsy Sites in Swale as at November 2014
- 7 Swale Borough Local Plan 2008 Policy RC7 Rural Lanes
- 8 Drawing showing the layout of the site at Brotherhood Woodyard
- 9 Map of footpaths in the area
- 10 Appellant's response to Document 4

Schedule of Conditions: 1 to 10**Appeal Ref: APP/V2255/A/14/2222135 Application Ref: SW/14/0362**

- 1) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1 of Planning Policy for Traveller Sites.
- 2) No more than two caravans(s), 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.
- 3) The use hereby permitted shall be for a limited period being the period of three years from the date of this decision. At the end of this period the use hereby permitted shall cease, all caravans, buildings, structures, materials and equipment brought on to, or erected on 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 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 the requirements set out in (i) to (iv) below:
 - i) within three months of the date of this decision a scheme for the restoration of the site to its condition before the development took place at the end of the period for which planning permission is granted for the use, (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.
- 5) 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 three months of the date of this decision a scheme for the means of foul water drainage of the site 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 detailed in (i) 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 scheme shall have been approved by the Secretary of State.
 - iv) the approved schemes shall have been carried out and completed in accordance with the approved timetable.
- 6) 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) notwithstanding the details submitted, within three months of the date of this decision details for the landscaping of the site shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for its implementation. The scheme shall include details of the size, species and positions for new trees and plants, boundary treatments, any retained planting and provisions for an ongoing maintenance scheme. Any trees or plants which within the remaining period of the planning permission die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
 - ii) within 11 months of the date of this decision the site development scheme detailed in (i) 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 scheme shall have been approved by the Secretary of State.
 - iv) the approved schemes shall have been carried out and completed in accordance with the approved timetable.
- 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 three months of the date of this decision a noise insulation scheme for the generator shall have been submitted for the written approval of the local planning authority and shall include a timetable for its implementation.
 - ii) within 11 months of the date of this decision the site development scheme detailed in (i) 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 scheme shall have been approved by the Secretary of State.

- iv) the approved schemes shall have been carried out and completed in accordance with the approved timetable.
- 8) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 9) No commercial activities shall take place on the land, including the storage of materials.
- 10) 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 approved in writing by the local planning authority.

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Appeal Decisions

Hearing held and site visit made on 9 December 2014

by Alan Woolnough BA(Hons) DMS MRTPI

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

Decision date: 28 January 2015

Appeal A: APP/V2255/C/14/2219797

Evaluna, Plum Pudding Lane, Dargate, Faversham, Kent ME13 9EY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr David Dighton against an enforcement notice issued by Swale Borough Council.
- The Council's reference is ENF/HER/13/009.
- The notice was issued on 16 May 2014.
- The breach of planning control as alleged in the notice is: 'Without planning permission the material change of use of the land from agricultural use to a use for the stationing of a caravan for residential use'.
- The requirements of the notice are:
 - (i) Cease using the Land for the stationing of a caravan for residential purposes.
 - (ii) Remove the caravan from the Land.
 - (iii) Remove the store shed, kennels or dog housing, all hardstanding and all structures and enclosures and fencing from the Land.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the 1990 Act as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections.

Appeal B: APP/V2255/A/14/2217679

Evaluna, Plum Pudding Lane, Dargate, Faversham, Kent ME13 9EY

- 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 David Dighton against the decision of Swale Borough Council.
- The application ref no SW/13/1447, dated 13 November 2013, was refused by notice dated 21 February 2014.
- The development is described on the planning application form as: 'Proposed sighting [*sic*] of caravan, store shed, dog housing and additional housings associated with smallholding'.

Summary of Decision: The appeal is dismissed.

Procedural issues

Preliminary matters

1. The Appellant's surname is given as Deighton on the Appeal B application and appeal forms. However, it is readily apparent that the correct spelling is that used in the above headings.

2. The postcode for the appeal site is given on both appeal forms as ME13 9EU. However, it is listed as ME13 9EY on the planning application form and, at the Hearing, the Appellant confirmed the latter as correct. This also tallies with Royal Mail records.
3. The Appellant suggests on the Appeal A form, in the context of the appeal against the enforcement notice on ground (a), that there has been no material change of use of the land in this case. However, no appeal on grounds (b) or (c) to this effect has been made and, at the Hearing, the Appellant confirmed that he would not be pursuing that line of argument.
4. The Appellant complains that planning advice he received from a Council officer in relation to his land was misleading. However, this is not a matter for me and falls to be pursued, if necessary, by means outside the scope of the appeal process. Nothing I have seen leads me to give credence to the Appellant's claim that such advice hindered him in presenting a thorough case at appeal regarding the future potential of his smallholding.

Differences between the appeal schemes

5. Appeal B relates only to the western part of the land subject to the Appeal A enforcement notice, the former being the extent of the original planning application. However, both main parties agreed at the Hearing that the whole of the Appeal A land comprises the relevant planning unit, the eastern part of which is grazing pasture in the Appellant's ownership.
6. It is also readily apparent that there are several differences between the schemes subject to Appeals A and B. Appeal A relates to the use of the land and the structures present thereon at the time that the enforcement notice was issued. I have no reason to believe that the situation on site at the time of my visit was any different to that which prevailed when the notice was issued some seven months earlier. I therefore consider that scheme to comprise a mixed use for the stationing of a residential caravan and an agricultural smallholding and the provision of a handful of buildings and shelters used for purposes incidental thereto, including storage and the keeping of dogs, pigs and emus.
7. The Appellant does not take issue with the Council's view that, the caravan aside, all structures presently on the land constitute operational development and, in the absence of cogent evidence to the contrary, I have no reason to conclude otherwise. He did, however, emphasise that he regards all stores and animal/bird shelters on the site at the present time as temporary.
8. He further confirmed that the far more intensive, alternative development set out in application drawing 131106 Rev:001, and thus subject to Appeal B, is aspirational and for the most part has yet to take place. This shows the caravan, dog kennels and store shed in positions different to those used at present, together with two emu houses and 40 houses for chickens, ducks and geese extending further eastward into the appeal site than existing built development. No pig shelters are included and, again, there is no suggestion that any of these items would not be operational development.

The description of development

9. Notwithstanding the description of development used in the enforcement notice and on the planning application form, the main parties agreed with me at the Hearing that the subject use is more accurately described in the case of

each appeal as a mixed residential/agricultural use. Determining the appeals on this basis is not prejudicial to the interests of any party, bearing in mind that the agricultural component of the mixed use does not in itself require planning permission.

Whether Gypsy status should be considered

10. The Council has pursued an argument that the Appellant's status as a Romany Gypsy should not be a consideration to which I should have regard in determining either appeal. No reference was made by the Appellant in the context of these appeals to his status as a Romany Gypsy until April 2014, when Appeal B was submitted. Such status was not mentioned in the planning application, which the Council therefore determined without having regard to it. It also issued the Appeal A enforcement notice without considering Gypsy status, despite this occurring after Appeal B had been submitted.
11. The Council therefore contends that, pursuant to case law arising from the judgment in *Bernard Wheatcroft Ltd v SSE* [1982] 43 PC&R 233 and the Planning Inspectorate's Procedural Guidance for Planning Appeals (PGPA), published on 1 April 2014¹, having regard to the Appellant's claimed Gypsy status would cause injustice to other parties. However, having heard submissions on the matter at the Hearing, I disagree.
12. *Wheatcroft* addressed the question of whether amendments to planning proposals may be accepted at the appeal stage, and established that "the main criterion on which ... judgment should be exercised is whether the development is so changed by the amendment that to grant it would be to deprive those who should have been consulted on the changed development of the opportunity of such consultation". Paragraph M.2.1 of the PGPA states that the appeal process should not be used to evolve a scheme and that it is important that what is considered by the Inspector is essentially what was considered by the local planning authority and on which interested people's views were sought.
13. On my reading, the relevant elements of both *Wheatcroft* and the PGPA are concerned primarily with whether amendments to the physical detail of a proposed development can be accepted without prejudice. Clearly, interested parties are entitled to know with reasonable precision what might be built or what sort of use would be authorised in the event that an appeal is allowed and a planning permission granted, in order that they may comment accordingly. However, the Appellant confirmed unequivocally at the Hearing that he is not seeking planning permission for a general 'traveller site' that would be available for residential occupation by anyone other than himself and his immediate family.
14. The appeal scheme thus remains the same as at the planning application stage and the question of whether or not Mr Dighton enjoys personal status as a Gypsy or Traveller does not alter it. It is simply an additional material consideration, rather than an amendment. It is not uncommon for additional considerations to be introduced at the appeal stage. The essential procedural requirement is that everyone who was notified of the planning application must

¹ The Council refers to paragraph N.2.1 of the PGPA published on 6 March 2014. However, that document relates only to appeals where the subject planning application was determined by the Council prior to 30 September 2013. The version of the PGPA relevant in this case is the document published on 1 April 2014, the equivalent paragraph of which is M.2.1.

also be notified by the Council of the appeal and invited to read and comment on the revised arguments being presented in the appeal submission. I have no reason to believe that the correct procedures were not followed by the Council in this case.

15. I am therefore satisfied that the both local planning authority and potential objectors have had adequate opportunity to address the implications of the Appellant's Romany heritage. Accordingly, I conclude that consideration of the Appellant's potential status as a Gypsy or Traveller for the purposes of applying planning policy does not give rise to any injustice and I duly do so in my reasoning below under the subheading 'Other material considerations'.

The enforcement notice

16. The enforcement notice is addressed to the Appellant and his wife using the postcode ME13 9EU, which relates to elsewhere in Plum Pudding Lane, whilst the land subject to enforcement action is identified in section 2 of the notice as having the postcode ME9 9EU, this being an address in Teynham. The notice will be corrected by substituting the code used in the above headings.
17. As previously stated, the main parties agreed with me at the Hearing that the use of the Appeal A site at the time that the enforcement notice was issued was a mixed use including an agricultural smallholding component. Moreover, requirement (iii) of the notice specifies the removal from the land of 'the store shed, kennels or dog housing, all hardstanding and all structures and enclosures and fencing', all of which were confirmed by the Council at the Hearing as, in its perception, operational development that had solely facilitated the targeted material change of use. In accordance with *Murfit v SSE* [1980] JPL 598, such items may be specified legitimately for removal as part of a change of use notice. It is therefore good practice, in the interests of consistency within the notice, to refer to them as facilitating development in the allegation.
18. The notice will be corrected accordingly at section 3 such that the allegation reads: 'Without planning permission, the material change of use of the Land from agricultural use to a mixed use comprising the stationing of a caravan for residential use and an agricultural smallholding and the provision as facilitating development of a store shed, kennels/dog housing, hardstanding and fencing and other structures and enclosures'. There is no need to amend requirement (i) to reflect the mixed use, given that the agricultural component thereof does not require planning permission in itself.
19. The notice refers at section 4 to the four year time bar on enforcement action that applies to certain types of development. However, a ten year time bar applies to the subject material change use, in accordance with section 171B(3) of the 1990 Act as amended. The notice will be corrected accordingly. No injustice to any party arises from any of these corrections.

Main issues

20. The main issues in determining both appeals are:
- the implications of the subject development for the effectiveness of local rural settlement policy;
 - its effect on the character and appearance of the surrounding countryside;
- and

- whether any harm arising from the above issues is outweighed by other material considerations, including the status of the Appellant and his family for the purposes of applying Gypsy and Traveller policies and the functional needs and financial viability of the smallholding at the appeal site.

Planning policy

21. The development plan for the area includes certain policies of the Swale Borough Local Plan 2008 (LP) which have been saved following a Direction made by the Secretary of State. Reference is also made to the *Swale Landscape Character and Biodiversity Appraisal* Supplementary Planning Document (SPD) 2011 and the emerging Swale Local Plan Part 1 (ELP).
22. Paragraph 215 of the National Planning Policy Framework (NPPF) advises that due weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF. Paragraph 216 adds that decision-takers may also give weight to relevant policies in emerging plans according to certain criteria, including the stage of preparation of the plan and degree of consistency with the NPPF. National guidance contained in the DCLG publication *Planning policy for traveller sites* (PPTS), issued in March 2012, is also relevant. For the most part I find no inconsistency between the development plan policies cited in this case and either the NPPF or PPTS and therefore attribute full weight to them insofar as they are relevant to my decisions. The one exception is saved LP Policy H4 and the cross-reference thereto in saved LP Policy E6.
23. Amongst other things, Policy H4 provides for the granting of planning permission for the use of land for the stationing of homes for use by Gypsies or Travellers who can demonstrate a genuine connection with the locality of the proposed site and limitation of such permissions to no more than four caravans. The Council acknowledges that those particular criteria are not reflected in current national policy. I concur and, accordingly, this tempers the weight that I attach to Policy H4 and criterion 6 of Policy E6. I also attribute only limited weight to the draft ELP Policies drawn to my attention, given that the publication version of the emerging plan is not due to be subject to an Examination in Public until Spring 2015 and has drawn a number of relevant objections during public consultation.

Reasoning***Rural settlement policy***

24. The appeal site is located in open countryside, well outside any defined settlement designated as suitable for new residential development by the development plan. Saved LP Policy E6 seeks to protect the wider countryside from development other than in specific exceptional circumstances. It follows that the granting of planning permission for the appeal schemes would seriously undermine the effectiveness of local rural settlement policy and thus have adverse implications for the character of the countryside, unless they satisfy at least one of the exception criteria listed therein or there are other material considerations that justify a departure from the development plan in this particular case.
25. Any significant compromise of local settlement policy carries very substantial weight. The only exception criteria that are potentially relevant in the context

of the current appeal are point 1, that the development is demonstrated to be necessary for agriculture and point 6, that it relates to a site for gypsies in accordance with saved LP Policy H4. I will explore both, together with other considerations that might weigh in favour of the appeal schemes, under the heading 'Other material considerations' below.

Character and appearance

26. Evaluna lies too far to the north of the Dargate Conservation Area to have a significant effect on its setting or any other heritage assets. Nor does it affect any area designated for wildlife protection. However, it falls within a designated Area of High Landscape Value, the integrity, character and local distinctiveness of which saved LP Policy E9 seeks to protect and enhance. It lies within the Hernhill and Boughton Fruit Belt Landscape Character Area, as defined by the SPD previously referred to. Saved LP Policy RC7, which seeks to safeguard the character of rural lanes, is also relevant, notwithstanding the Appellant's contention to the contrary.
27. The site fronts a twisting country lane which winds its way through an attractive swathe of rolling countryside interspersed with pockets of woodland and a scattering of buildings. I found this part of the lane to be characterised primarily by an absence of footways, high frontage hedgerows and, with the exception of Honeysuckle Villa to the south of the appeal site, an absence of significant built development. All in all, the appeal development occupies a very attractive, spacious and sylvan rural landscape.
28. Any significant residential and agricultural presence is currently limited to the westernmost part of the Appellant's land. Nonetheless, the various items on the site at present (and subject to Appeal A) are highly prominent in views from the public highway, particularly from the north where intervening vegetation is sparse. The utilitarian design and appearance of the caravan and temporary structures provided by the Appellant are a particularly jarring visual presence in such a sensitive rural setting and detract markedly from the character and appearance of the immediate locality and wider landscape designations, contrary to saved LP Policy E19.
29. Whilst I do not question the Appellant's assertion that a gate and gateposts marked the site entrance prior to his involvement, the additional close boarded fencing he has since erected close to the road frontage for security purposes draws the eye as an incongruous, harsh feature in the rural land and reads as an unwanted element of urban intrusion. Further means of enclosure erected within the site subdivide the land to a noticeable degree and are directly at odds with the provisions of Article 4(1) Directions² which, on the Council's evidence, was made for the express purpose of safeguarding the open character of this particular area.
30. The Appellant's longer term aspirations for the site, as represented by the Appeal B scheme, concern a development which would be more regular and tidy in layout but which, on the other hand, would extend much further to the east than at present. It would thus erode to an even greater degree the characteristic openness of the landscape. It is impossible to tell whether the

² Two Directions made by the Council on 7 April 2008 under Article 4(1) of the Town and Country Planning (General Permitted Development) Order 1995 as amended, which remove certain permitted development rights from land which includes the appeal site.

envisaged permanent structures would be in keeping with the rural vernacular of the locality, as the Appellant's submissions lack any detail thereof other than location and proportions.

31. Indigenous planting, proposed by the Appellant in the form of an orchard and boundary hedgerows, would not provide sufficient mitigation in either case. It would take several years to establish an effective screen and, even then, by its very nature would offer only a temporary and partial visual solution. Whilst such planting can have ecological benefits I have seen nothing to suggest that important wildlife habitats occurring naturally in the area are under threat.
32. I have no reason to question the Appellant's claims to have carried out only limited tree removal and to have cleared the site of unsightly fly tipping. However, there are other means by which the relevant authorities could have remedied the adverse impacts of the latter, whilst the retention of much of the site's established vegetation does not in itself render the appeal schemes acceptable.
33. I conclude that both schemes have serious adverse implications for the character and appearance of the countryside and fail to protect and enhance the visual qualities of this sensitive and otherwise attractive landscape and rural lane. The appeal developments are therefore contrary to saved LP Policies E1, E9, E19 and RC7 and the relevant provisions of the NPPF. This finding carries very substantial weight.

Other material considerations

Gypsy matters

34. The Appellant states in his written submissions that he is a Romany Gypsy and contends that, consequently, the appeal schemes must be considered under saved LP Policy H4. This provides for the provision of accommodation for Gypsies and Travellers in the open countryside in certain circumstances. However, for the reasons I have already explained, I find current national policy in the PPTS to carry greater weight. Annex 1 thereof states that, for the purposes of the PPTS, 'gypsies and travellers' means: '*Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently...*'.
35. Mr Dighton has provided limited documentary evidence of his Romany heritage. Whilst this is by no means comprehensive, his claims in this regard have not been challenged by the Council or others and, in the absence of cogent evidence to the contrary, I find no sound reason to question them. Nonetheless, on his own evidence, it seems that neither he nor his wife and son, who reside with him on the appeal site, have ever pursued a nomadic lifestyle. Until late 2013, when he moved onto the land at Dargate, the Appellant had resided for 25 or 26 years in a conventional dwelling in Elm Grove, Sittingbourne. Before that he grew up living with his grandparents in a caravan located in an orchard. However, this was stationary and, despite their heritage, the family did not travel as a way of life.
36. Although at the Hearing Mr Dighton expressed a preference for caravan living, this falls far short of a significant cultural aversion to bricks and mortar in the light of his residential history over recent decades. It was also confirmed that

Mrs Dighton grew up in a conventional dwelling and had never occupied a caravan as her principal home until moving to the appeal site. Moreover, on the evidence before me, the family's sole caravan has not left the site since being based at Dargate and neither Mr nor Mrs Dighton has travelled so extensively for work or other purposes that they have been unable to return on a nightly basis. Nor is there any stated intention to embark on a nomadic lifestyle in the future.

37. In the light of this, and bearing in mind the Appellant's confirmation that permission is not sought for a site that could be occupied by Gypsies and Travellers in general terms, it is not necessary for me to address the question of need for such accommodation within Swale Borough. I conclude that neither the Appellant's Romany heritage nor any demand there may be for Gypsy and Traveller sites in the Borough carry significant weight in this case. Accordingly, neither saved LP Policy H4, emerging ELP Policies DM9 nor DM10 nor the PPTS assist me in reaching my decisions.

The needs of the smallholding

38. The Appellant attempts to present a case to the effect that the presence of residential accommodation on the site is essential in order to cater for the needs of his smallholding. He advised at the Hearing that he owns over 300 ducks, chickens and turkeys, 20 pairs of ornamental pheasants, 20 guinea fowl, 11 pigs, 11 dogs, five emus, four goats, three sheep and a peacock. Due in part to ongoing enforcement action, very few of these animals and birds are present on the appeal site. Mr Dighton explained that the vast majority are instead kept within easy walking distance on a neighbour's land, which enables him to tend to them on a daily basis, with a few accommodated further afield.
39. The Council promotes the methodology set out in Annex A to Planning Policy Statement 7: *Sustainable Development in Rural Areas* (PPS7), published by the Government in 2004, as the best means of assessing whether there is justification for a residential presence on the appeal site. This sets a 'functional test' to establish whether it is essential for the proper functioning of an agricultural enterprise for one or more workers to be readily available at most times. It further indicates that new permanent accommodation cannot be justified on agricultural grounds unless the farming enterprise is economically viable, such that a 'financial test' must be met. It also advises that even temporary accommodation, such as a caravan, should be justified by clear evidence of a firm intention and ability to develop the enterprise concerned.
40. PPS7 was cancelled in March 2012 and, this being so, the guidance within it carries no weight in itself. Nonetheless, no replacement methodology having been published either locally or nationally, it remains a valuable tool in assessing cases such as this. Moreover, it chimes to a significant degree with current advice in the NPPF concerning the economic and environmental roles of sustainable development. I have therefore had regard to the Annex A methodology in the absence of anything more pertinent, whilst bearing in mind that it is not binding on the Appellant or the decision maker.
41. The Appellant owns a substantial amount of livestock and poultry, which must require much care and attention. Although I have not seen this for myself, other than the animals and birds currently on site, I find no sound reason to question Mr Dighton's claims in this regard. He identifies a functional need to

live on the appeal site based on the amount of livestock and poultry he looks after, the need to be present at all hours of the day and night when animals are giving birth and site security, given the supposed financial value of some species kept, or intended to be kept, on the land.

42. However, the Appellant's case in this regard lacks substance. The need for someone to be present at births and times of sickness is not disputed. However, whilst I have taken into account the Appellant's advice regarding the needs of pigs, goats and sheep in this regard, it has not been explained to my satisfaction why a functional requirement of this kind could not be met in this case by one person staying overnight in makeshift sleeping accommodation, such as a small touring caravan, when the occasion demands. Nothing before me suggests that birthing or sickness is likely to occur on such a scale or with such frequency and regularity as to justify a continuous residential presence.
43. Moreover, Mr Dighton has readily acknowledged that, whilst there is a low-key business component to the smallholding, it is not run on a commercial basis, nor is there any intention on his part to do so. His agriculturally-related activity is essentially portrayed as a hobby, with income derived primarily from other work. Nothing resembling a business plan, in the form of a methodology and timetable for future expansion or financial projections, has been provided. At most the Appellant, on his own evidence, aspires to self-sufficiency rather than the operation of a profitable enterprise.
44. A personal desire to carry out what is essentially a hobby on the scale envisaged carries far less weight than a structured plan to establish a viable agricultural business that could contribute to the local rural economy. Furthermore, the absence of financial justification raises the question of why the Appellant's activity need be carried out on this particular site rather than somewhere less sensitive in landscape and settlement policy terms. Nothing before me suggests that a comprehensive search for alternatives was undertaken before the appeal site was acquired.
45. In any event, it is difficult to envisage how a hobby use of this kind might in itself justify residential accommodation in the countryside, irrespective of the precise location, other than in the most exceptional circumstances. The acceptance of such a principle carries with it the potential for abuse of the planning system, whereby a large amount of livestock might be acquired simply for the purpose of securing a new dwelling in a rural area as a departure from settlement policy. I do not suggest that this is, or has ever been, the Appellant's plan. Nonetheless, a grant of planning permission in this case would set a most unfortunate precedent that could cumulatively undermine local rural strategy.
46. A perceived need to guard against trespass, vandalism and theft on the appeal site cannot in itself justify a residential presence in the non-commercial scenario presented by Mr Dighton, irrespective of the value of the livestock and poultry kept on the land and the apparent sensitivity of emus to intrusion. The same applies to unsubstantiated claims regarding a reduction in theft and fly-tipping on neighbouring land since the Appellant took up residence.
47. I am also mindful that Mr Dighton was still able to look after a large quantity of poultry for hobby purposes when residing in Sittingbourne. Moving to the appeal site has merely facilitated the expansion of that hobby and, on the evidence before me, is not essential to its continuation on a lesser scale whilst

living elsewhere. I conclude that the needs of the smallholding at Evaluna are not sufficient to justify residential accommodation in the countryside in the terms of saved LP Policy E6, draft ELP Policy ST3 or the NPPF.

Additional matters

48. I have considered all the other matters raised. The Appellant asserts that, having sold his former residence in Sittingbourne, there is no alternative accommodation to which he and his family could relocate. The Appellant has a young son and I am mindful that the Supreme Court, in the case of *ZH (Tanzania) v SSHD* [2011] UKSC 4, established that the 'best interests' of children should be a primary consideration, reflecting Article 3(1) of the United Nations Convention on the Rights of the Child. In this regard I am mindful that ready access to medical services is desirable and of the educational needs of the Appellant's young son.
49. However, although Mr Dighton expresses a preference for caravan living, his long tenure at Elm Grove does not signal a significant aversion to bricks and mortar. Accordingly, it has not been demonstrated that purchasing or renting a conventional house or flat, where the welfare of the family would be assured, is not a reasonable option in this case. Nor has it been shown that such accommodation is not available locally at an affordable price, or that any other personal circumstances should be taken into account. I therefore give limited weight to claims that alternative accommodation is not available.
50. Article 8 of the European Convention on Human Rights affords the right to respect for private and family life. It is clear that upholding the enforcement notice would interfere with the family's Article 8 rights. However, I am satisfied that, as alternative accommodation is in all probability available, the family would not be made homeless through the dismissal of the appeals and the removal of the caravan from the site. Dismissal would therefore be proportionate in the context of Human Rights if other considerations indicate that it is necessary.
51. Should the appeals fail, it would still be possible to carry out low key agriculture on the appeal site without the need for planning permission. By reason of the limited extent of the Appellant's land and the effect of the Article 4(1) Directions, this could not include the erection of buildings or means of enclosure without the Council's approval. Nonetheless, it could involve the siting of moveable shelters and other items, including a non-residential caravan, provided these were used solely for purposes integral or ancillary to agricultural activity on the land.
52. This provides the Appellant with a lawful fallback position which, necessarily, is a material consideration for the purposes of these appeals. I have no sound reason to believe that the use of the land for such purposes would be unlikely should the enforcement notice be upheld and therefore attribute significant weight to this possibility. Nonetheless, it is improbable that, in the absence of a residential presence on site, agricultural use would be as intensive and visually intrusive as it is at present.
53. The Appellant seeks to justify the unsightly fencing along the road frontage by reference to child safety and the need for site security. However, the importance of these considerations is diminished in circumstances where a residential presence on the site and the need to keep valuable livestock and

poultry there has not been demonstrated. I have noted the Appellant's contention that his is not the only caravan or mobile home in the vicinity. However, such features are far from typical of the wider landscape. In any event, each scheme must be assessed primarily on its own merits and I am not aware of the circumstances associated with any other accommodation of this kind on other sites.

54. I agree with the Appellant that saved LP Policies RC3 and T3, which concern rural housing needs and parking provision and are cited by the Council, are of little relevance to my decisions. I also find that concerns regarding highway safety could be addressed by improving visibility at the site access which, in the absence of cogent evidence to the contrary, I accept as long-established. Nonetheless, this would involve removing substantial swathes of vegetation on both sides with adverse implications for the rural street scene, at least in the short term. The fact that the Appellant pays Council Tax has no relevance to my decision, the need for such payments being assessed with reference to factors other than planning criteria.
55. I acknowledge that most of those who have objected to the appeals live some distance from the site. I also accept that the living conditions of even the nearest neighbours are unlikely to be compromised by the Appellant's activities, either existing or proposed, and that the site is adequately served by utilities and sewage/refuse collection services. Nor have I seen any cogent evidence that the Appellant's developments have adverse implications for flooding. Nonetheless, as passive, 'absence of harm' considerations these all carry very little weight.

Summary

56. The appeal site's location in the countryside outside any designated settlement militates strongly against residential accommodation, whether temporary or permanent, being approved unless exceptional circumstances apply. This alone carries very substantial weight. Moreover, I have found that the appeal development, both existing and proposed, has detrimental implications for the character and appearance of the surrounding countryside. This also carries very substantial weight.
57. Nothing of substance that counters the harm thus identified emerges from the Appellant's references to Gypsy and Traveller policy or the needs of the smallholding, given that the latter operates as a hobby rather than on a commercial footing and would continue to do so. Whilst the lawful fallback position carries more weight, any visual harm arising therefrom would, in all likelihood, be far less significant than that associated with the appeal schemes. All other matters raised by the Appellant in support of his case carry very little weight.
58. I therefore conclude that, on balance, harm to the effectiveness of rural settlement policy as set out in saved LP Policy E6, draft ELP Policy ST3 and the NPPF and the character and appearance of the countryside is not avoided or outweighed in this case by any positive attributes of the appeal schemes, either individually or cumulatively. I have taken into account the DCLG's Planning Practice Guidance, published in March 2014, insofar as it is relevant. However, on the facts of this case, neither this nor any other matter is of such significance as to outweigh the considerations that have led to my conclusions.

It follows that consequent interference with the family's Human Rights is both necessary and proportionate.

Conclusions

59. For the reasons given above I conclude that neither appeal should succeed. I will uphold the Appeal A enforcement notice with corrections and refuse to grant planning permission on the deemed application associated therewith and on Appeal B.

Formal decisions

Appeal A: APP/V2255/C/14/2219797

60. It is directed that the enforcement notice be corrected by:

- (i) in the address at the beginning of the notice immediately after the heading 'MATERIAL CHANGE OF USE', the deletion of the postcode 'ME13 9EU' and the substitution therefor of the postcode 'ME13 9EY';
- (ii) in section 2, the deletion of the postcode 'ME9 9EU' and the substitution therefor of the postcode 'ME13 9EY';
- (iii) the deletion of the wording of section 3 in its entirety, with the exception of the heading, and the substitution therefor of the words: 'Without planning permission, the material change of use of the Land from agricultural use to a mixed use comprising the stationing of a caravan for residential use and an agricultural smallholding and the provision as facilitating development of a store shed, kennels/dog housing, hardstanding and fencing and other structures and enclosures.'; and
- (iv) in section 4(1), the deletion of the number '4' and the substitution therefor of the number '10'.

61. Subject to the above corrections, the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B: APP/V2255/A/14/2217679

62. The appeal is dismissed.

Alan Woolnough

INSPECTOR

Appeal Decisions APP/V2255/C/14/2219797 & APP/V2255/A/14/2217679

APPEARANCES

FOR THE APPELLANT:

Mr D Dighton Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Ms T-A Day BA(Hons) MRTPI Senior Planning Officer, Swale Borough Council

Ms S Rouse BSc(Hons) MRTPI Senior Planning Policy Officer, Swale Borough Council

INTERESTED PERSONS:

Mr G Hart Local resident

Mr D Keane Local resident

Mrs P Keane Local resident

Mr F Krish Local resident

Mr C Maciejewski Local resident

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Appeal decision ref no APP/V2255/A/07/2034424, submitted by the Council
- 2 Appeal decision ref no APP/V2255/A/07/2047417, submitted by the Council

PLANS

- A Plan attached to the Appeal A enforcement notice
- B.1 & B.2 Appeal B application plans comprising location plan and drawing no 131106 Rev:001

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